

FTA Regulated Drug & Alcohol Programs

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Maryland Department of Transportation

Maryland Transit Administration



Learning Objectives



- ✓ Understand the FTA Drug and Alcohol Regulations as they apply to drug and alcohol testing.
- ✓ Recognize the physical, behavioral, speech, and performance indicators of substance abuse.
- ✓ Provide resources and tools required for implementing a FTA compliant Drug & Alcohol Program.

Course Overview



1. Federal Regulations Overview and History
2. Definitions & Acronyms
3. Program Implementation and Guidelines
4. Prohibited Substances
5. Alcohol Misuse
6. Types of Testing
7. Drug & Alcohol Testing Procedures
8. DAMIS Reporting and FTA Audits
9. Consortia and Third Party Administrators
10. FTA Drug & Alcohol Tools and Resources



Section 1

FEDERAL REGULATIONS OVERVIEW AND HISTORY



Introduction



Substance abuse is a nationwide epidemic and has become a major factor in many of today's tragedies. The U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA) has issued regulations:

**CFR Title 49 PART 40: PROCEDURES FOR TRANSPORTATION
WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS**

**CFR Title 49 PART 655: PREVENTION OF ALCOHOL MISUSE AND
PROHIBITED DRUG USE IN TRANSIT OPERATIONS**

January 4, 1987 Train Crash – Chase, Maryland

- The engineer and 15 passengers were killed, and 174 others received minor to serious injuries. The first three passenger cars were destroyed.
- It would later be determined by the National Transportation Safety Board (NTSB) that the accident was caused by several factors. Conrail engineer Ricky Gates was under the influence of marijuana and failed to stop at a warning signal or properly test his cab signals as required before departure.



August 28, 1991 Union Square Derailment – New York City

- The motorman was found at fault for intoxication and excessive speed, and served time in prison for manslaughter.
- In total, 121 passengers and 24 emergency responders were taken to hospitals; 16 passengers were injured seriously enough to be admitted
- Five people died, all almost immediately.
- The motorman, Robert E. Ray, later said that he had drunk heavily the day before his work shift and had fallen asleep at the time of the accident.



USDOT – U.S. Department of Transportation

Modes

The Omnibus Act – The Omnibus Transportation Employees Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees regulated by the following:

FAA – FEDERAL AVIATION ADMINISTRATION

FMCSA – FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

FTA – FEDERAL TRANSIT ADMINISTRATION – PUBLIC TRANSPORTATION

FRA – FEDERAL RAILROAD ADMINISTRATION

PHMSA – PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

USCG – UNITED STATES COAST GUARD

Industry	Regulation
FAA - Aviation	14 CFR Part 120, Subpart E, section 120.109(b) 14 CFR Part 120, Subpart F, section 120.217(c)
FMCSA – Motor Carrier	49 CFR Part 382.305
FRA - Railroad	49 CFR Part 219.601 and 219.607
FTA - Transit	49 CFR Part 655.45
PHMSA - Pipelines	49 CFR Part 199.105
USCG - Maritime	49 CFR Title 46 Part 16.230

Note: FRA requires employers to submit their random plans for approval.

Each DOT Agency and the USCG has regulations that require certain employers to implement a random testing program.



Drug-Free Workplace Act (DFWA)

- Congress enacted the Drug-Free Workplace Act on November 18, 1988. This act requires recipients of federal funds to certify that they will provide drug-free workplaces for their employees. Agencies that receive FTA funding directly from the FTA must comply with the DFWA.

What Is a Drug-Free Workplace?

- It is an employment setting where all employees adhere to a program of policies and activities designed to provide a safe workplace, discourage alcohol and drug abuse, and encourage treatment.



Section 2

DEFINITIONS & ACRONYMS



Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **FTA:** Federal Transit Administration
- **DOT:** Department of Transportation (USDOT)
- **CFR:** Code of Federal Regulations
- **DFWA:** Drug-Free Workplace Act
- **CDL:** Commercial Driver's License
- **CMV:** Commercial Motor Vehicle
- **EAP:** Employee Assistance Program

- **Designated Employer Representative (DER):** An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40. Service agents cannot act as DERs.
- **Drug & Alcohol Program Manager (DAPM):** An employee authorized by the employer to manage and monitor the drug and alcohol testing program. This person may make required decisions in the testing and evaluation process, maintain required records, update policy and procedures, and monitor contractors and vendors. The DAPM may also receive test results and other communications for the employer, consistent with the requirements of 49 CFR Part 655. The DAPM may act as the DER.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Adulterated Specimen:** A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.
- **Alcohol Concentration:** The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.
- **Alcohol Confirmation Test:** A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.
- **Alcohol Testing Form (ATF):** The procedure used to document the alcohol testing process.
- **Breath Alcohol Technician (BAT):** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- **Cancelled Test:** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Chain of Custody (CCF):** The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.
- **Collector:** A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.
- **Confirmatory Drug Test:** A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.
- **Confirmatory Validity Test:** A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Confirmed Drug Test:** A confirmation test result received by an MRO from a laboratory.
- **Consortium/Third-party administrator (C/TPA):** A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not “employers” for purposes of this part.
- **Dilute Specimen:** A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Evidential Breath Testing Device (EBT):** A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.
- **HHS:** The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.
- **Initial Drug Test/Screening Drug Test:** The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Initial Specimen Validity Test:** The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.
- **Medical Review Officer (MRO):** A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- **Office of Drug and Alcohol Policy and Compliance (ODAPC):** The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Service agent:** Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.
- **Split Specimen:** In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Definitions & Acronyms

DOT Rule 49 CFR Part 40 Section 40.3

- **Split Specimen Collection:** A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
- **Stand-down:** The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.
- **Substance Abuse Professional (SAP):** A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Safety-Sensitive Employees



The FTA designates employees as “safety-sensitive” if their classification requires them to perform any of the following duties:

- Operate a revenue service vehicle, including when not in service
- Operate a non-revenue service vehicle when required to be operated by a commercial driver’s license holder
- Maintenance of a revenue service vehicle or equipment used in revenue service
- Controlling movement or dispatch of a revenue service vehicle
- Carry a firearm for security purposes



Section 3

PROGRAM IMPLEMENTATION AND GUIDELINES



What FTA Regulated Employers Need to Do

- The FTA regulations require the following program elements be implemented:
 - A **policy statement** on prohibited drug use and alcohol misuse in the workplace including consequences.
 - An employee and supervisor **education and training program**.
 - A **drug and alcohol testing program** for prohibited substances for employees and applicants for employment in safety-sensitive positions.
 - Referral of the employee who has violated the drug and alcohol regulations to a **Substance Abuse Professional**.
 - Administrative procedures for **record keeping, reporting, releasing information, and certifying compliance**.

Substance Abuse Policy

- You must adopt a policy statement on substance abuse in the workplace. The policy must include:
 - Identity of the person, office, branch, and/or position designated by the employer to answer questions about the employer's anti-drug use and alcohol misuse program.
 - The categories of employees who are subject to testing.
 - A description of the prohibited behavior and conduct.
 - A description of the specific circumstances under which an employee will be tested (pre-employment, random, etc.).
 - A description of the testing procedures that will be used to test for the use of illegal drugs and alcohol misuse, protect the employee and the integrity of the testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct employee.

Substance Abuse Policy

- You must adopt a policy statement on substance abuse in the workplace. The policy must include (Continued):
 - A statement of the requirement that a covered employee submit to drug and alcohol testing.
 - A description of the kind of behavior that constitutes a refusal to test, and statement that a refusal constitutes a violation of the policy.
 - A description of the consequences for violating the drug and alcohol regulations including the mandatory FTA requirements, and the consequences for an alcohol concentration of 0.02 or greater, but less than 0.04.

Substance Abuse Policy

- The policy statement may provide additional detail or include additional requirements not mandated by FTA, as long as those provisions are identified as being included under the employer's own authority.
 - The additional provisions must not contradict, discourage, or in any way confuse the minimum FTA requirements.
 - These should be clearly noted as provisions under the Employer's Authority and not the FTA's Authority.

Substance Abuse Policy

- Second Chance vs. Zero Tolerance
 - The FTA does not hold a position on the discipline that employers establish for violations.
 - FTA only requires that the minimum consequences are met (*Removal from Service, Evaluation by a Substance Abuse Professional (SAP), Return-to-Duty Testing, and Follow-Up Testing*).
 - Employers must reflect the employee consequences within the policy and clearly identify each as being provided under the employer's own authority.
 - There is no best or recommended disciplinary policy.

Substance Abuse Policy

- How do I build a FTA Compliant Substance Abuse Policy?
 - The FTA Website provides Policy Builder resources to help develop an FTA compliant Policy
 - Also an option for an FTA/FMCSA Combined Policy Builder

Policy Builder - Instructions

This Policy Builder will help you develop a customized anti-drug and alcohol misuse policy statement that is compliant with FTA drug and alcohol regulations. To do this, it will guide you through the different elements of a policy, asking you to choose among various options as appropriate for your workplace.

The Policy Builder has 7 different sections, each addressing one of the questions below.

1. What is the name of your organization?
2. Are all your employees subject to the Drug-Free Workplace Act?
3. Who will be covered by your policy?
4. If a covered employee tests positive or refuses a test, what is the consequence?
5. Must all applicants for safety-sensitive positions take a pre-employment alcohol test?
6. What happens if a drug test has a negative-dilute result?
7. Do any of these additional provisions apply?

To build your policy, go through each section, selecting all applicable elements. Once you have entered your employer name in Section 1, use the [Next](#) button to move forward through the tool, or the [Previous](#) button to go back. The menu on the right (brown box) contains the Topic Headings under which these additional provisions will apply in your generated policy. At any point you may skip to a section by clicking its topic in this menu.

Substance Abuse Policy

- **Policy Adoption:**
 - The Substance Abuse Policy needs to be reviewed by all applicable departments to your agency (*Legal, Labor Relations, etc.*) and should be signed your agency's governing body.
- **Policy Communication:**
 - Once a policy is developed or revised, the agency's employees must be made aware of the policy and subsequent changes, and the effect it will have on them.
 - FTA strongly encourages each employer to have each employee sign a "Confirmation of Receipt" form acknowledging receipt of the policy and the regulation summary.
- **Policy Review:**
 - Employers should stay up to date with the requirements, FTA letters of interpretation, and DOT/FTA guidance. Policy changes should be made as appropriate.

RX and OTC Program Compliance

Suggested elements of Rx/OTC Policy:

- Employee reporting
- Confidentiality
- Medical review/authorization
- Use of leave benefits and limitations
- Consequences of violating policy provisions
- Roles and responsibilities of employees, management, and other key players (*MRO, medical practitioner, pharmacist, etc.*)

RX and OTC Program Compliance (Continued)

- Recording keeping and information disclosures
- RX/OTC policy must be clearly identified as a requirement under **employer authority** only.
- The primary objective of implementing a Rx/OTC policy and employees is to enhance the safety of employees, customers, and the public.
- Employees must accept responsibility for their own medical treatment, likewise they must accept responsibility for protecting public safety .

RX and OTC Program Compliance Continued

RELEASE TO WORK FORM FOR PRESCRIPTION MEDICATIONS

Form 1C1- 2 sides (02/01/02)

Employee's Section:

Printed Name _____ SS# _____

Employee's MTA Safety-Sensitive Job Function – check those that apply.

- ☐ Y Operate a transit bus or train.
- ☐ Y Operate a non-revenue service vehicle requiring a commercial driver's license (e.g., trucks over 25,000 lbs.).
- ☐ Y Control the dispatch or movement of transit buses or trains.
- ☐ Y Maintain/repair transit buses or trains or the electro-mechanical systems controlling train movement.
- ☐ Y Carry a firearm for security purposes.
- ☐ Y Supervisor whose duties require the performance of any of the above functions. (Check those that apply.)

Medication(s) currently being taken

I attest that the foregoing information is complete and correct.

Employee Signature _____ Date _____

Physician's Section:

As the attending physician, I have prescribed the following medication(s) to be taken from _____ to _____.

_____	_____
Name of Medication	Dosage

_____	_____
Name of Medication	Dosage

(PLEASE CHECK ONE OF THE FOLLOWING.)

☐ Employee may not perform safety-sensitive duties while taking this medication. (Employee – give form to your supervisor.)

☐ Employee released to perform safety-sensitive duties while taking this medication. (Employee – keep form on your person while at work.)

_____	_____
Physician's Printed Name	Telephone No.

_____	_____
Signature	Date

OVER-THE-COUNTER AND PRESCRIPTION DRUG POLICY

Rx Medication

- The MTA requires that all safety-sensitive employees obtain a completed form – “1C1” – from their physician for each **Rx medication** prescribed for use, indicating whether or not they should be medically disqualified from performing safety-sensitive functions for the duration of treatment.
- An employee that **may not perform safety-sensitive duties** while taking prescribed medication must give the signed form by the physician to their supervisor.

Over-the-Counter Medication

- Ultimately, the employee may be the best judge of how a substance is affecting them. As such, the employee has the responsibility to refrain from using any over-the-counter medication that causes performance-altering side effects, whether or not the label warns of them.

MTA OVER-THE-COUNTER AND PRESCRIPTION DRUG POLICY 1C1

- The prescribing physician's determination is subject to review by MTA's physician, who may consult with the prescribing physician to obtain additional information, as necessary. Based on the information provided, the MTA physician may overrule the prescribing physician and disqualify the employee from the performance of safety-sensitive functions. **The MTA physician's decision will be deemed final.**
- Violation of this policy will subject an employee to disciplinary action up to and including termination.

Education & Training

- **Substance Abuse Awareness Training**
 - The FTA regulations require that employers provide a minimum of **60 minutes of training to all safety-sensitive employees on the effects and consequences of prohibited drug use on personal health, safety, and the work environment.** This training must also address the signs and symptoms that may indicate drug use.
 - Training safety-sensitive employees on the effects and consequences of alcohol misuse is not required by the FTA regulation. However, information concerning the effects of alcohol misuse on the individual's health, work, and personal life, as well as signs and symptoms of an alcohol problem, must be provided as part of the general education program.

Education & Training

- **Substance Abuse Awareness Training**
 - 60 minutes of Substance Abuse Education should be considered the minimum.
 - Only required once the employee is hired by the organization.
 - Refresher training may be offered during the employee tenure with the organization, but not required.
 - New hires should receive copies of your drug and alcohol program notification, policy, and education materials.
 - Have employees sign acknowledgement form documenting participation in Substance Abuse Training.
 - You must maintain detailed records of your employee drug and alcohol training for 2 years (§655.71).
 - You must keep copies of all your training materials including attendance rosters, dates and times of training, and certifications of training compliance.

Education & Training

- **Substance Abuse Awareness Training**
 - FTA Training Resources:

Pre-Employment/New Hire

- **New** 60-Minute Drug Awareness Video
- Pre-Employment Notification and Acknowledgement Form
- Previous Employer Release of Information Form
- Acknowledgment of Policy Form
- Acknowledgement of Prohibited Awareness Training for Safety-Sensitive Employees Form

- **60 Minute Drug Awareness Video** - describes the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. This video meets the 60-minute training requirements of section 655.14(b)(1) for covered employees.



ACKNOWLEDGEMENT FORM

MDOT MTA Substance Abuse Policy Education, Treatment, and Program – Directive 3200

This is to confirm that I have received a copy of the MDOT MTA Substance Abuse Policy Education, Treatment, and Program Directive No. 3200. This policy is effective 04/01/2018 with an implementation date of 07/01/2018. The Substance Abuse Prevention Program Policies remain in effect as noted below.

<u>MTA Substance Abuse Prevention Program Policies</u>	<u>Effective Date</u>	<u>Issue Date</u>
MTA Promulgation of the Federal Over-The-Counter and Prescription Drug Policy – Policy 1C1	03/01/2002	02/01/2002
MTA Promulgation of the Federal Drug Free Workplace Act – Policy 1C2	03/15/1989	07/18/2003
MTA Promulgation of the State of Maryland Substance Abuse Policy – Policy 1C3	04/11/1991	07/18/2003
MDOT MTA Substance Abuse Policy and Program & MDOT MTA Substance Abuse Education and Treatment – Directive 3200	04/01/2018	07/01/2018
Addendum to the MDOT MTA 3200 MDOT MTA Substance Abuse Policy	04/01/2018	10/05/2021

Employee Signature

Date



Employee Printed Name



Payroll Number

This form is provided as two originals. Please give one copy to the employee and forward the other signed document to the Office of Safety Management & Risk Control - DOT Compliance
1515 Washington Boulevard Bldg. #5 Baltimore, MD 21230 410-454-7209.



ADMINISTRATIVE TRAINING

Acknowledgement of Prohibited Drug Awareness Training For Safety-Sensitive Employees

In accordance with Federal Transit Administration (FTA) Rule 49 CFR Part 655.14(b), I acknowledge that I have received at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Name (Please Print):

Signature: Date:

Payroll#:

Address:

City: State: ZIP:

Education & Training

- **Reasonable Suspicion Training for Supervisors**
 - You must provide additional training for supervisors or other company officials who are authorized to determine when it is appropriate to administer reasonable suspicion drug and/or alcohol tests.
 - Supervisor training must include 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use, and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
 - Therefore, a total of 120 minutes is required.
 - Before making any reasonable suspicion determinations, supervisors and other company officials are required to complete the necessary training.

Education & Training

- **Reasonable Suspicion Training for Supervisors**
 - The training is only required once and there is no regulatory requirement for refresher training.
 - These requirements should be considered minimums.
 - Under their own authority, employers are allowed to exceed these requirements, and they may require training that exceeds 2 hours in length and/or require periodic refresher training.
 - Have Supervisors sign acknowledgement form documenting participation in Reasonable Suspicion Training.
 - You must maintain detailed records of your employee drug and alcohol training for 2 years (§655.71).
 - You must keep copies of all your training materials including attendance rosters, dates and times of training, and certifications of training compliance.

Education & Training

- Reasonable Suspicion Training for Supervisors
 - FTA Training Resources:

Reasonable Suspicion

- [Reasonable Suspicion Referral for Drug and Alcohol Testing - Trainer/Trainee Guide](#)
- [Reasonable Suspicion Referral for Drug and Alcohol Testing Video](#)
- [Acknowledgement of Reasonable Suspicion Training for Supervisors Form](#)
- [Order FTA Reasonable Suspicion Cards](#)
- [Reasonable Suspicion Determination Report](#)

- **This Reasonable Suspicion Training for Supervisors Video consists of four segments:** general requirements on reasonable suspicion referrals; alcohol abuse in the workplace; prohibited drugs in the workplace; and the reasonable suspicion interview.

Substance Abuse Professional (SAP)

- As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers.
 - Instead of a list of SAPs, you may provide the name and phone number of a **SAP network** that will offer qualified SAPs to the employee when they contact the employee or the employee calls them.
 - You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

§ 655.71 Retention of Records

Five Year Recordkeeping Requirements

- Verified positive drug test results and employer copies of CCFs
- Confirmed alcohol test results of 0.02 or greater on ATFs
- Documentation of test refusals (including adulteration or substitution)
- Employee disputes
- Employee referrals to SAP
- SAP reports
- Return-to-duty and follow-up testing documentation
- Annual MIS reports submitted to FTA

§ 655.71 Retention of Records (Continued)

Three Year Recordkeeping Requirements

- Previous employer drug and alcohol test records (pre-employment background checks)
- Good faith effort documentation

Two Year Recordkeeping Requirements

- Collection process records
 - Collection log books if used
 - Random selection process
 - Reasonable suspicion documentation
 - Post accident testing documentation

§ 655.71 Retention of Records (Continued)

Two Year Recordkeeping Requirements (Continued)

- MRO documents verifying existence of a medical explanation for insufficient volume
- Records of inspection, maintenance, and calibration of EBT
- Education and Training
 - Drug use awareness training
 - Policy and explanation of regulatory requirements
 - Statement of alcohol misuse awareness
 - Display materials

§ 655.71 Retention of Records (Continued)

Two Year Recordkeeping Requirements (Continued)

- Supervisory Training
- Names of employees attending training and dates/times, and agendas for such training
- Certification that training complies with the requirements of Part 655
- **Recommendation:** Keep training records for an indefinite period

§ 655.71 Retention of Records (Continued)

One Year Recordkeeping Requirements

- Cancelled drug test results
- Negative test results
 - Alcohol test results less than 0.02
 - Alcohol test form with results
 - Employer's copy of the federal CCF

General Rules on Recordkeeping

- Drug and alcohol records must be kept in a secure location with controlled access
- Kept separate from personnel records to protect confidentially



Section 4

PROHIBITED SUBSTANCES



Substance Abuse



Refers to the patterns of use that result in health consequences or impairment in social, psychological, and occupational functioning.

Controlled Substances

In the regulation, the terms *drugs* and *controlled substances* are interchangeable and have the same meaning. Unless otherwise provided, these terms refer to:

- Cannabis (Marijuana)
- Cocaine
- Phencyclidine (PCP)
- Opioids
- Amphetamines



Prohibited Behavior

- Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum threshold defined in Part 40 Section 40.87:

Cutoff Concentrations for Drug Tests

Initial Test Analyte	Initial Test Cutoff	Confirmatory Test Cutoff Concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	10 ng/mL.
Phencyclidine	25 ng/mL	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	250 ng/mL. 250 ng/mL.
MDMA ⁴ /MDA ⁵	500 ng/mL	250 ng/mL. 250 ng/mL.

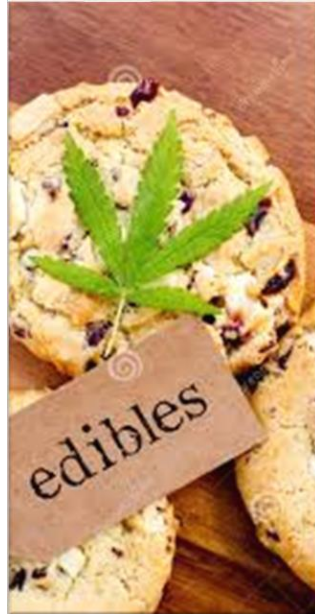
Prohibited Behavior

Drug Detection Periods

Detection periods vary; rates of metabolism and excretion are different for each drug and use. Detection periods should be viewed as estimates. Cases can always be found to contradict these approximations.

Drug	Detection Period
Amphetamines	
Amphetamine	2-4 days
Methamphetamine	2-4 days
Cocaine	
Benzoyllecgonine	12-72 hours
Cannabinoids (Marijuana)	
Casual Use	2-7 days
Chronic Use	Up to 30 days
Ethanol (Alcohol)	12-24 hours
Opiates	
Codeine	2-4 days
Hydromorphone (Dilaudid)	2-4 days
Morphine (for Heroin)	2-4 days
Phencyclidine (PCP)	
Casual Use	2-7 days
Chronic Use	Up to 30 days

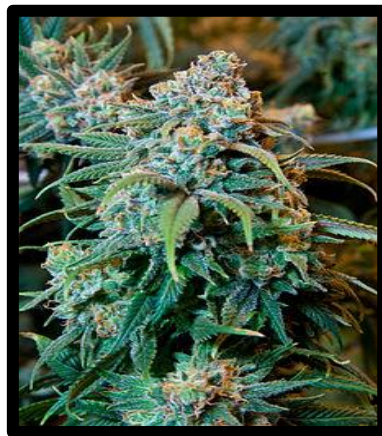
Cannabis (Marijuana)



- The most popular illicit drug in the U.S. and the most commonly abused in the workplace.
- Has a distinctly pungent aroma resembling a combination of sweet alfalfa and incense
- Methods of ingestion
 - Inhaled – most common
 - Oral – eaten in cookies, brownies, or candy (edibles or brewed like tea)

CANNABIS (DRUG)

- Cannabinoids are the psychoactive ingredients in marijuana, the more widely recognized being tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabinol (CBN).
- These are derived from the cannabis plant and are used both medically and recreationally.



Cannabis (Marijuana)

- Signs and Symptoms of Use:
 - Reddened eyes
 - Slowed speech
 - Distinctive odor on clothing
 - Lackadaisical “I Don’t Care” attitude
 - Chronic fatigue and lack of motivation
 - Irritating cough, chronic sore throat
 - Delayed decision-making
 - Diminished concentration
 - Impaired short-term memory, interfering with learning
 - Impaired signal detection (ability to detect a brief flash of light)
 - Impaired tracking (the ability to follow a moving object with the eyes) and visual distance measurements

Medical & Recreational Use Cannabis



- The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40 – **does not authorize the use of Schedule I drugs, including cannabis/marijuana, for any reason.**
- It is important to note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. **It remains unacceptable for any safety-sensitive employee** subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.
- The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize "medical marijuana" or "recreational marijuana" under a state law to be a valid medical explanation for a transportation employee's positive drug test result.
- **Safety-Sensitive employee are prohibited from using cannabis and the Drug Testing Panel utilized by your collection sites must continue to test for cannabis.**

“Cannabidiol” (CBD) Products



- The Agricultural Improvement Act of 2018, removed hemp from the definition of marijuana under the Controlled Substances Act and noted that hemp-derived products containing a concentration of up to 0.3% tetrahydrocannabinol (THC) are not controlled substances. THC is the primary psychoactive component of marijuana. **Any product, including “Cannabidiol” (CBD) products, with a concentration of more than 0.3% THC remains classified as marijuana, a Schedule I drug under the Controlled Substances Act.**

“Cannabidiol” (CBD) Products

DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE



It is important for all employers and safety-sensitive employees to know:

1. The Department of Transportation requires testing for marijuana and not CBD.
2. **The labeling of many CBD products may be misleading because the products could contain higher levels of THC than what the product label states. The Food and Drug Administration (FDA) does not currently certify the levels of THC in CBD products, so there is no Federal oversight to ensure that the labels are accurate.** The FDA has cautioned the public that: “Consumers should beware purchasing and using any [CBD] products.” The FDA has stated: “It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement.” Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label.
3. The Department of Transportation’s Drug and Alcohol Testing Regulation, Part 40, does not authorize the use of Schedule I drugs, including marijuana, for any reason. Furthermore, **CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result.** Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

“Cannabidiol” (CBD) Products

DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE



It remains unacceptable for any safety-sensitive employee subject to the Department of Transportation's drug testing regulations to use marijuana. **Since the use of CBD products could lead to a positive drug test result, Department of Transportation-regulated safety-sensitive employees should exercise caution when considering whether to use CBD products.**

Safety-sensitive employees must continue to comply with the underlying regulatory requirements for drug testing, specified at 49 CFR part 40.

Amphetamines

- Amphetamines are central nervous system stimulants that speed up the body and mind.
- The physical sense of energy at lower doses and the medical exhilaration at higher doses are the reasons for their abuse.
- Although widely prescribed at one time for weight reduction and mood elevation, the legal use of amphetamines is now limited to a very narrow range of medical conditions.
- Regular use produces strong psychological dependence and increasing tolerance to the drug.



Amphetamines

- Signs and Symptoms of Use:
 - Restlessness
 - Dilated pupils
 - Increased heart rate and blood pressure
 - Heart palpitations and irregular beats
 - Profuse sweating
 - Rapid respiration
 - Confusion
 - Panic
 - Talkativeness
 - Inability to concentrate
 - Heightened aggressive behavior

Cocaine

- Cocaine is used medically as a local anesthetic.
- Cocaine is abused as a powerful physical and mental stimulant.
- The entire central nervous system is energized.
- Muscles are more tense, the heart beats faster and stronger, and the body burns more energy.
- The brain experiences exhilaration caused by a large release of neurohormones associated with mood elevation.



Cocaine

- Signs and Symptoms of Use:
 - Frequent and extended absences from meetings or work assignment
 - Increased physical activity and fatigue
 - Isolation and withdraw from friends and normal activities
 - Wide mood swings
 - Unusual defensiveness, anxiety, agitation
 - Runny or irritated nose
 - Difficulty in concentration
 - Dilated pupils and visual impairment
 - Restlessness
 - Profuse sweating and dry mouth
 - Hallucinations
 - Formication (sensation of bugs crawling on skin)

Opioids (Narcotics)

- Opioids (also called narcotics) are drugs that alleviate pain, depress body functions and reactions, and when taken in large doses, cause a strong euphoric feeling.
- Because of tolerance, there is an ever-increasing need for more narcotics to produce the same effect.
- Strong mental and physical dependency occurs.



Opioids (Narcotics)

- Signs and Symptoms of Use:
 - Mood changes
 - Impaired mental functioning and alertness
 - Constricted pupils
 - Depression and apathy
 - Impaired coordination
 - Physical fatigue and drowsiness
 - Nausea, vomiting, and constipation
 - Impaired respiration
- As of 01/01/2018, the FTA has expanded its drug testing panel to include the following four “semisynthetic” opioid drugs. Opioids to include:
 - Hydrocodone
 - Hydromorphone
 - Oxycodone
 - Oxymorphone

Phencyclidine (PCP)

- PCP was originally developed as an anesthetic.
- The adverse side effects prevented its use except as a large animal tranquilizers.
- PCP acts as both a depressant and a hallucinogen and is abused primarily for its variety of mood altering effects.
- PCP is sold as a creamy, granular powder and is often packaged in one-inch square aluminum foil or folded paper “packets”.



Phencyclidine (PCP)

- Signs and Symptoms of Use:
 - Impaired coordination
 - Severe confusion and agitation
 - Extreme mood shifts
 - Muscular rigidity
 - Nystagmus (jerky eye movements)
 - Dilated pupils
 - Profuse sweating
 - Rapid Heart
 - Dizziness





Section 5

ALCOHOL MISUSE



Alcohol



A central nervous system depressant found in beer, wine, hard liquor, and some over-the-counter medications (*ex.: some allergy and cold medications*).

- A person who is legally intoxicated is **6 times** more likely to have an accident than a sober person.

Prohibited Alcohol Use



Alcohol use is prohibited:

- While performing a safety-sensitive function
- Within 4 hours prior to performing a safety-sensitive function
 - Allow employee the opportunity to acknowledge alcohol use
- Within 8 hours following an accident requiring an FTA post-accident test, or until the test has been conducted
- Covered employees may be tested for alcohol just before, during, or after the performance of safety-sensitive functions

What is a Standard Drink?



- It takes one hour for the average person (150 lbs.) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgement can be objectively measured with as little as two drinks in the body.

Alcohol Violations

Alcohol Confirmation Test Results:

- **Less than .020 – Not a Violation;** No Action Required under 49 CFR Part 40; Employee can start or resume safety-sensitive functions
- **0.020 – 0.039 – Prohibited Conduct;** Employee is removed from safety-sensitive functions for at least 8 hours or until you have a test result less than .020
- **0.040 or greater – Violation;** Employee is removed from safety-sensitive functions and may not return until the completion of a Substance Abuse Program and the return-to-duty process



Section 6

TYPES OF TESTING



When Can I Expect to Be Tested?

- Pre-Employment
- Reasonable Suspicion
- Post-Accident
- Random
- Return-to-Duty
- Follow Up
- Other Testing Types (Non-Regulated)

Pre-Employment

- **Pre-Employment Drug Testing** is required for all applicants that are hired into a safety-sensitive role, or any employee being transferred into a safety-sensitive role.
 - If a pre-employment drug test is cancelled, the employer shall require the employee or applicant to submit to and pass another test.
- **Pre-Employment Alcohol Testing** is not required, but an employer may choose to conduct Pre-Employment Alcohol Testing under the FTA's Authority.
 - If you chose to conduct alcohol testing, it must be consistent and reflect equal treatment for all safety-sensitive employees and applicants.
- A verified negative drug (and alcohol) test result must be received before the individual starts their safety-sensitive duties and they must start safety-sensitive duties within 90 days of testing, or retesting is required.

Pre-Employment

- **Previous DOT Employer Record Check:**
 - All FTA covered employers must make a good faith effort to obtain drug and alcohol testing records for the previous two years for all applicants seeking safety-sensitive positions.
 - Require each applicant or employee transfers for safety-sensitive positions to complete a written consent that allows their previous employers to release drug and alcohol testing information to you.
 - If the applicant/transferee refuses to provide this written consent, you must not permit him/her to perform safety-sensitive functions.
 - Submit the applicant/transferee's written consent along with a request for information to each of the DOT-regulated employers who have employed the applicant/transferee for any period during the 2 years before the date of the individual's application or transfer.

Pre-Employment

Previous DOT Employer Record Check:

Sample Previous Employer Release of Information Form

EMPLOYER NAME/LOGO

Release of Information Form – 49 CFR Part 40 Drug and Alcohol Testing

Section I: To be completed by the new employer and signed by the employee, and transmitted to the previous employer.

Employee Name: _____ SS/ID Number: _____

I hereby authorize release of information from my DOT-regulated drug and alcohol testing records by my previous employer, listed in *Section I-B* to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, section 40.25.

Employee Signature _____ Date _____

I-A:
New Employer Name: _____

Designated Employer Representative: _____

Address: _____

Phone #: _____ Fax #: _____

I-B:
Previous Employer Name: _____

Designated Employer Representative: _____

Address: _____

Phone #: _____ Fax #: _____

Section II: To be completed by the previous employer and transmitted to the new employer.

II-A:

In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing:

1. Did the employee have alcohol tests with a result of 0.04 or higher? Yes ___ No ___
2. Did the employee have verified positive drug tests? Yes ___ No ___
3. Did the employee refuse to be tested? Yes ___ No ___
4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? Yes ___ No ___
5. Did a previous employer report a drug and alcohol rule violation to you? Yes ___ No ___
6. If you answered "Yes" to any of the above items, did the employee complete the return to duty process? Yes ___ No ___

II-B:

Person providing information in Section II-A:

Name: _____ Title: _____

Phone #: _____ Date: _____

Sample Pre-Employment Notification and Acknowledgement Form

EMPLOYER NAME/LOGO

Pre-Employment Notification & Acknowledgement

I understand and acknowledge that I will be required to undergo a urine drug test under the authority of the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA) prior to being hired or transferred into a safety-sensitive position as defined in CFR Part 655¹. I understand and acknowledge that I will not be assigned to perform a safety-sensitive function unless my urine drug test has a verified negative result.

(Print Name) _____ (Signature) _____ (Date) _____

Have you tested positive, or refused to test, on any DOT pre-employment drug or alcohol test administered by an employer to which you applied for, but did not obtain, a safety-sensitive position in the past two years? Please circle your response below:

YES NO

If you answered YES, can you provide documentation that you successfully completed the DOT return-to-duty requirements described in 49 CFR Part 40, Subpart O? Please circle your response below:

YES NO

(Print Name) _____ (Signature) _____ (Date) _____

¹ A safety-sensitive function, as described in 49 CFR Part 655 Section 655.4, includes: (1) operating a revenue service vehicle; (2) operating a non-revenue service vehicle, when required to be operated by a CDL holder; (3) controlling dispatch or movement of a revenue service vehicle; (4) maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or (5) carrying a firearm for security purposes.

Pre-Employment

- **Previous DOT Employer Record Check:**
 - If possible, obtain and review this information before the employee performs safety-sensitive functions.
 - If this is not possible, you must make and document a good faith effort to obtain the information.
 - If you have not made a good faith effort, you must not allow the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive job duties.

Pre-Employment

- **Previous DOT Employer Record Check:**
 - If you become aware that the employee has a prior violation:
 - You must confirm that the employee was referred to a SAP for evaluation and completed the recommended treatment program.
 - The Return-to-Duty Testing Process was completed (or take on the responsibility of sending the employee for Return-to-Duty Testing).
 - Obtain a copy of the employees recommended follow-up testing plan and any aftercare instructions.
 - You must accept responsibility for the completion of the recommended follow-up testing plan.

Pre-Employment

- **Extended Leave (90 or More Consecutive Calendar Days (*ex. Sick Leave, Workers' Comp, Withheld, etc.*)):**
 - Was Removed from Safety-Sensitive Pool:
 - Employers should remove employees from the safety-sensitive pool if they know the employee will be out for an extended period.
 - Employee needs to be sent for **FTA Regulated** pre-employment drug testing (and alcohol testing if applicable) and a negative test results is required prior to reassignment of safety-sensitive duties.
 - Remains Part of Safety-Sensitive Pool:
 - It may not be possible to remove employees from the safety-sensitive pool.
 - It is recommended by the FTA that the employee be sent for **Non-FTA Regulated (Under the employers authority)** pre-employment drug testing (and alcohol testing if applicable) and a negative test results is required prior to reassignment of safety-sensitive duties.

Reasonable Suspicion

- Required when the employer has reasonable suspicion that the employee has used a prohibited drug or misused alcohol.
- Determination must be made based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee
 - **Specific**: clearly defined or identified
 - **Contemporaneous**: living or occurring during the same period of time; happening in the here and now
 - **Articulate**: capable of being expressed, explained, or justified (e.g., police observed a drug sale and stopped the defendant on ***articulate*** reasonable suspicion that he was dealing drugs)
- Conducted when **a trained supervisor or other trained company official observes** behavior or appearance that is characteristic of prohibited drug use and/or alcohol misuse.

Reasonable Suspicion

- **Only one trained supervisor is required to make a testing referral.**
 - The supervisor's decision should pass the **“reasonable prudent individual” test**, which simply means a similarly trained supervisor having observed and noted the same facts, signs, and circumstances could have reached the same conclusion.
 - **Consider employee's fitness for duty.**
 - In his/her present condition, could the employee present a safety risk to themselves or others by continuing to perform safety-sensitive work. (Would it be irresponsible of you not to order the test and allow the employee to continue to work?)
- **Used only to rule out that the unusual behavior or appearance observed may be caused by drug abuse or alcohol misuse.**
- Employee will be escorted to the collection site and although not required by FTA Regulations, it is best practice to make arrangements to have the employee transported home (under employer authority).

Reasonable Suspicion

- **Reasonable Suspicion Alcohol Testing:**
 - Because alcohol is a legal substance, testing for alcohol is authorized only during, just before, or just after the employee's performance of safety-sensitive functions.
 - **Alcohol testing must be conducted within 2 hours of the determination to test.** If it is delayed, employer must document the reason for the delay.
 - If unable to perform an alcohol test within **8 hours, cease all attempts** and document the reason for the inability to test.
- **Reasonable Suspicion Drug Testing:**
 - Reasonable suspicion testing for drugs is authorized to be performed anytime the employee is on duty, regardless of whether the employee is performing a safety-sensitive function at the time of the determination.
 - There is no time limit on when to cease attempts to test for drugs.

Reasonable Suspicion

- Documentation is Important!
- Maintain documentation of each reasonable suspicion testing referral.
- Sample Reasonable Suspicion Testing Determination forms are available on the FTA's website.

Sample Reasonable Suspicion Determination Report

EMPLOYER NAME/LOGO

Reasonable Suspicion Determination Report

Employee Name: _____ Employee ID/SSN: _____

Date/Time of Observation: ____/____/____ AM/PM

Date/Time of Determination to Test: ____/____/____ AM/PM

Observed Indicators of Prohibited Drug Use/Alcohol Misuse

Reasonable Suspicion determinations must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee.

Check all indicators observed:

Physical Indicators

- ☐ Bloodshot or watery eyes
- ☐ Flushed or very pale complexion
- ☐ Extensive sweating/skin clamminess
- ☐ Dilated or constricted pupils
- ☐ Disheveled clothing/unkept grooming
- ☐ Unfocused, blank stare
- ☐ Runny or bleeding nose
- ☐ Jerky eye movement
- ☐ Body odor

Behavioral Indicators

- ☐ Fidgety/agitated
- ☐ Irregular breathing
- ☐ Nausea/vomiting
- ☐ Slow reactions
- ☐ Unstable walking
- ☐ Poor coordination
- ☐ Hand tremors
- ☐ Suspicious, paranoid
- ☐ Depressed, withdrawn
- ☐ Lackadaisical attitude
- ☐ Irritable, moody
- ☐ Extreme fatigue

Speech Indicators

- ☐ Slurred or slowed speech
- ☐ Loud, boisterous
- ☐ Incoherent, nonsensical
- ☐ Repetitious, rambling
- ☐ Rapid, pressured
- ☐ Excessive talkativeness
- ☐ Exaggerated enunciation
- ☐ Cursing, inappropriate speech
- ☐ Inability to concentrate
- ☐ Impulsive, unusual risk-taking
- ☐ Delayed decision-making
- ☐ Reduced alertness

Written Summary

Summarize the facts and circumstances surrounding the incident. Attach additional sheets as needed.

Sample Reasonable Suspicion Determination Report

Testing Information:

Collection Site Location: _____ Time Arrived: _____ AM/PM

1. Was the **alcohol** test performed within **2** hours of the reasonable suspicion determination?

____ YES

____ NO, Explain: _____

2. Was the **alcohol** test performed within **8** hours of the reasonable suspicion determination?

____ YES

____ NO, Explain: _____

If the alcohol test is not conducted within 8 hours cease all efforts to administer the test.

The above documentation of the observed physical, behavioral, and performance indicators of the named employee was provided by:

Supervisor Name: _____ Phone No: _____

Signature: _____ Date: _____

Post Accident



Accident means an occurrence associated with the operation of a vehicle, whether or not the vehicle is in revenue service, if as a result:

- **1) An individual dies;**
 - As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident.
 - The employer shall also drug, and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
 - **There is no discounting in this case and all covered employees whose performance could have contributed to the accident must be tested.**

Post Accident

Accident means an occurrence associated with the operation of a vehicle, whether or not the vehicle is in revenue service, if as a result:

- **2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;**
 - It is important to understand that this statement is not limited to medical transport. Anyone involved who confirms that medical treatment will be sought immediately after leaving the scene makes this statement true.
 - The key here is immediate. Individuals denying medical care and stating they will see their doctor tomorrow are not seeking immediate care.

Post Accident

Accident means an occurrence associated with the operation of a vehicle, whether or not the vehicle is in revenue service, if as a result:

- **3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicle (including non-FTA funded vehicles) incurs disabling damage as a result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle;**
 - Section 655.4 defines disabling damage as "damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repair; or damage to any vehicle that could have been operated but which would have further damaged the vehicle if so operated. *Disabling damage does not include damage that could be remedied temporarily at the scene of the occurrence without special tools or parts; tire disablement even if no spare tire is available; or damage to headlights, tail lights, turn signals, horn, or windshield wipers that makes them inoperative.*"

Post Accident

Accident means an occurrence associated with the operation of a vehicle, whether or not the vehicle is in revenue service, if as a result:

- **4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.**
 - This decision point is applicable to Light Rail and Heavy Rail only, this does not apply to any other modes of Mass transit vehicles (i.e. Bus or Mobility Vehicles).

Post Accident

- Can the covered employees' performance be completely discounted as a contributing factor?
 - Just because a POV driver could be deemed at fault by insurance or police does not mean that the Operator can be completely discounted.
 - Does your investigation confirm that the operator exercised appropriate skill throughout the accident?
 - Does your investigation confirm that the actions of our operator in no way contributed to the accident?
- The Post-Accident testing decision must be made with the using the best information available at the time of the decision.

Post Accident

- The employee must remain readily available following the accident for testing and the employer must know their whereabouts.
- The Employee must be **Able to Provide Consent** to the testing.
 - You cannot test a deceased or unconscious employee.
- **Post Accident Alcohol Testing:**
 - As the investigator of the accident, it is your responsibility to ensure the alcohol test is administered within two (2) hours or **you must document the reason** it was not. If the test was not administered within **eight (8) hours** you **MUST NOT TEST FOR ALCOHOL** and **document the reason** it was not.
- **Post Accident Drug Testing:**
 - An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable within 32 hours.
 - Again, **you must document the reasoning.**

Post Accident

- Documentation is Important!
- Maintain documentation of each Post Accident Test Determination.
- Sample Post Accident Testing Determination forms are available on the FTA's website.

Sample Post-Accident Drug and Alcohol Testing Decision Making

EMPLOYER NAME/LOGO

FTA Post-Accident Drug and Alcohol Testing Decision Making Form

The Federal Transit Administration (FTA) drug and alcohol testing regulation (49 CFR Part 655) requires that safety-sensitive employees involved in a public transportation vehicle accident (as defined at 655.4 & 655.44) submit to tests for alcohol misuse and prohibited drug use as soon as possible following the accident. Part 655 also requires the testing of any other safety-sensitive employee whose performance could have contributed to the accident, as determined by the employer at the scene using the best information available at the time of the decision.

Accident Information:

Date of Accident: _____ Time of Accident: _____ AM/PM
Employee Name: _____ Employee ID/SSN: _____

Decision Questions:

- Was there a fatality?
_____ YES (FTA drug and alcohol tests are REQUIRED) _____ NO
- If there was NO fatality, answer the following questions:
 1. Has any individual suffered a bodily injury and immediately received medical treatment away from the scene of the accident? _____ YES _____ NO
 2. Was there any disabling damage to any vehicle involved in the accident, requiring the vehicle to be towed away from the scene? _____ YES _____ NO
 3. Was the vehicle (if rail car, trolley car, trolley bus, or vessel) removed from operation? _____ YES _____ NO

If you answered yes to any of these three questions, can you completely discount the performance of the operator of the public transportation vehicle as a contributing factor to the accident?
_____ NO (FTA drug and alcohol tests are REQUIRED)
_____ YES, Explain: _____

(If you answered YES, FTA drug and alcohol tests are PROHIBITED)

- Other than the operator, could the performance of any other safety-sensitive employee have contributed to the accident, using the best information available?
_____ NO
_____ YES, Explain: _____

(If YES, make arrangements to immediately post-accident test that employee)

Did You Decide to Perform a Drug or Alcohol Test?
_____ YES (Complete page 2 of this form) _____ NO (No further action required)

Time of Decision to Conduct a DOT/FTA Post-Accident Test: _____ AM/PM

Sample Post-Accident Drug and Alcohol Testing Decision Making

Testing Information:

Collection Site Location: _____ Time Arrived: _____ AM/PM

1. Was the alcohol test performed within 2 hours of the time of the accident?
_____ YES
_____ NO, Explain: _____
2. Was the alcohol test performed within 8 hours of the time of the accident?
_____ YES
_____ NO, Explain: _____
If the alcohol test is not conducted within 8 hours, cease all efforts to administer the test.
3. Was the drug test performed within 32 hours of the time of the accident?
_____ YES
_____ NO, Explain: _____
If the drug test is not conducted within 32 hours, cease all efforts to administer the test.

The above documentation was provided by:

Supervisor Name: _____ Phone No: _____
Signature: _____ Date: _____



Random

What's the best tool employers have for deterring drug and alcohol use in the workplace?

Random Testing. And, here are just a few of the reasons why:

- Saves lives and prevents injuries.
- Helps employers identify workers with substance abuse issues and facilitate their treatment.
- Allows employees to easily say no to illegal drug use.
"No, thanks. They drug test at work."
- Reduces employer liability.
- It is a fair way of testing.

➤ ***Random testing is required for safety-sensitive employees***

Random

- **Random Testing Rates:**

- Employers are required to Test **50%** of their safety-sensitive pool for Drugs and **10%** for alcohol during the calendar year.
- It is recommended to increase these rates slightly to account for test cancellations.
- You should account for fluctuations in your employee pool (seasonal hires, etc.)

- **Random Testing Pool:**

- Review your pool regularly to ensure validity of the pool.
- Employers can combine employees regulated by different DOT modes in the same pool (such as FMCSA), but you must then use the highest minimum rate of testing.

Random

- The Administrator of each DOT Agency is authorized to either increase or decrease the random drug and alcohol testing rates. Administrators use information reported from the drug and alcohol Management Information System (MIS) form required by 49 CFR Part 40 and other indicators.
- The rates are always effective starting January 1 of the calendar year. To check for the current rate, visit ODAPC's website at:
<http://www.dot.gov/ost/dapc/rates.html> .
- The random rates are annual minimum requirements. So if a DOT Agency requires a drug testing rate of 50% and an alcohol testing rate of 10%, then an employer with 100 safety-sensitive employees would have to ensure that 50 or more random drug tests and 10 or more random alcohol tests were conducted during the calendar year.

Random

Setting-Up a Random Pool of Employees

A. Who gets tested?

Regardless of job titles like supervisor, volunteer, contractor, owner operators, etc., people are chosen for testing based on their job *function* (known as a safety-sensitive function) not their occupational title. Only DOT safety-sensitive employees may be part of the DOT random pool or pools.

Remember your DOT testing program must always be separate and distinct from your private company or non-DOT testing program. That goes for your random testing pools, too. DOT and non-DOT random testing pools must be completely separate.

Best Practice: Just prior to performing a random selection, refresh the pool to include all safety-sensitive employees subject to DOT random testing, and exclude those not subject to DOT random testing.

Random

B. Can an employer regulated by different DOT agencies put its employees in the same random pools?

Yes. Employers and Consortia/Third Party Administrators (C/TPAs) subject to more than one DOT Agency drug and alcohol testing rule may combine covered DOT safety-sensitive employees into a single random pool. However, companies doing so must test at or above the highest minimum annual random testing rates established by the DOT Agencies under whose jurisdiction the employees fall. So, if you have FMCSA regulated- and FRA regulated-employees in the same pool, and FMCSA has a 50% testing rate and FRA has a 25% rate, you must test the pool at the 50% minimum rate.

Note: PHMSA and USCG do not authorize random alcohol testing for employees in the pipeline and maritime industries. So if employees perform only pipeline duties or maritime duties, they cannot be in any DOT-regulated random alcohol testing pool.

Random

C. Does an employee performing duties covered by more than one DOT Agency need to be in multiple pools?

An employee performing duties subject to more than one DOT Agency's regulations must be randomly tested at the percentage rate established for the calendar year by the DOT Agency regulating more than 50 percent of the employee's function. So if you have an employee who drives your trucks 75 percent of the time and operates your transit busses 25 percent of the time, that employee needs to be in the FMCSA-regulated pool.

Random

D. How are employees selected for testing?

- Everyone in the pool must have an equal chance of being selected and tested in each selection period. Selections can be by employee name, identifying title, or with FRA regulated testing, a group that is clearly delineated in company policy or random plan.
- Be sure to use a scientifically valid method to select employees for testing, which may include: use of a random-number table, a computer-based random number generator that's traceable to a specific employee (or with FRA, a group).
- ***Warning:*** Unacceptable random selection practices include selecting numbers from a hat, rolling dice, throwing darts, picking cards, or selecting ping pong balls.

Random

E. How often should selections and tests take place?

- What makes random testing so effective is the element of surprise.
- While employees know they will be tested, they are never quite sure of *when*, so random selections and testing should be performed at least quarterly.
- **Note:** If you think you might not meet your annual testing rate requirement, increase your testing. But, in an effective random program, testing must be spread equally throughout the year.
- Each workday or weekend, you can enhance the non-predictability of your program by conducting tests at the start, middle, or end of each shift. The worse thing that could happen is for employees to say, *“Yup, the last Friday of every month the second shift gets tested.”*

Random

- How do I determine how many test to perform and how often?
 - Selection Frequency:
 - The size of your organization will determine how frequently you will make selections, smaller organizations can do quarterly selections, whereas larger agencies should make selections more frequently (*monthly, weekly, etc.*)
 - Number of Tests:
 - Formula:
 - $$\frac{\# \text{ of SS Employees} \times \% \text{ of Tests (10\% Alcohol or 50\% Drug)}}{\# \text{ of Testing Periods (Quarterly (4), Monthly (12), etc.)}}$$
 - Example:
 - $$\frac{100 (\text{Employees}) \times .50 (\text{for Drugs})}{12 (\text{Monthly Draws})} = 4.16 \text{ or } 5 \text{ Tests Per Month}$$
 - Reevaluate with each pull to make changes to number of tests. If you have seasonal employees or significant fluctuations, make sure to take this into account when creating selection lists.
 - Over testing is allowed and employers may establish higher rates in their policy.

Random

- **Random Selections:**

- Use a substitute or alternate selection only when a selected employee is unavailable during the entire testing period.
- Once a new list is created, the prior list expires.
 - **Example:** If lists are generated quarterly, employees selected, but not sent for testing in Q1 cannot be sent for testing in Q2, unless they were selected again on the Q2 list.

Random

- **Random Drug Testing:**

- Random Drug Testing can be performed any time an employee is on duty.

- **Random Alcohol Testing:**

- Random Alcohol Testing can only be performed **just before, during, or just after** the performance of a safety sensitive function.

Random

- ***Best Practices:***

- Every employer should have procedures in place to ensure that each employee receives no advanced notice of selection. But, be sure to allow sufficient time for supervisors to schedule for the administration of the test and to ensure that collection sites are available for testing.
- If an employee selected for testing is known to be unavailable during the selection cycle (legitimate extended absence, long-term illness, etc.), document the reason and make-up the rate shortfall by making another selection, or make an extra selection during the next selection cycle.
- An employee is selected for testing but has not received notice since it is his day off, test the employee during his or her next shift within the same selection cycle.
- No employee should be excused from testing because of operational difficulties. See your industry specific regulations and interpretations for legitimate exceptions.
- Once the employee is notified to report for testing and the test does not occur, the opportunity for the random testing is over.

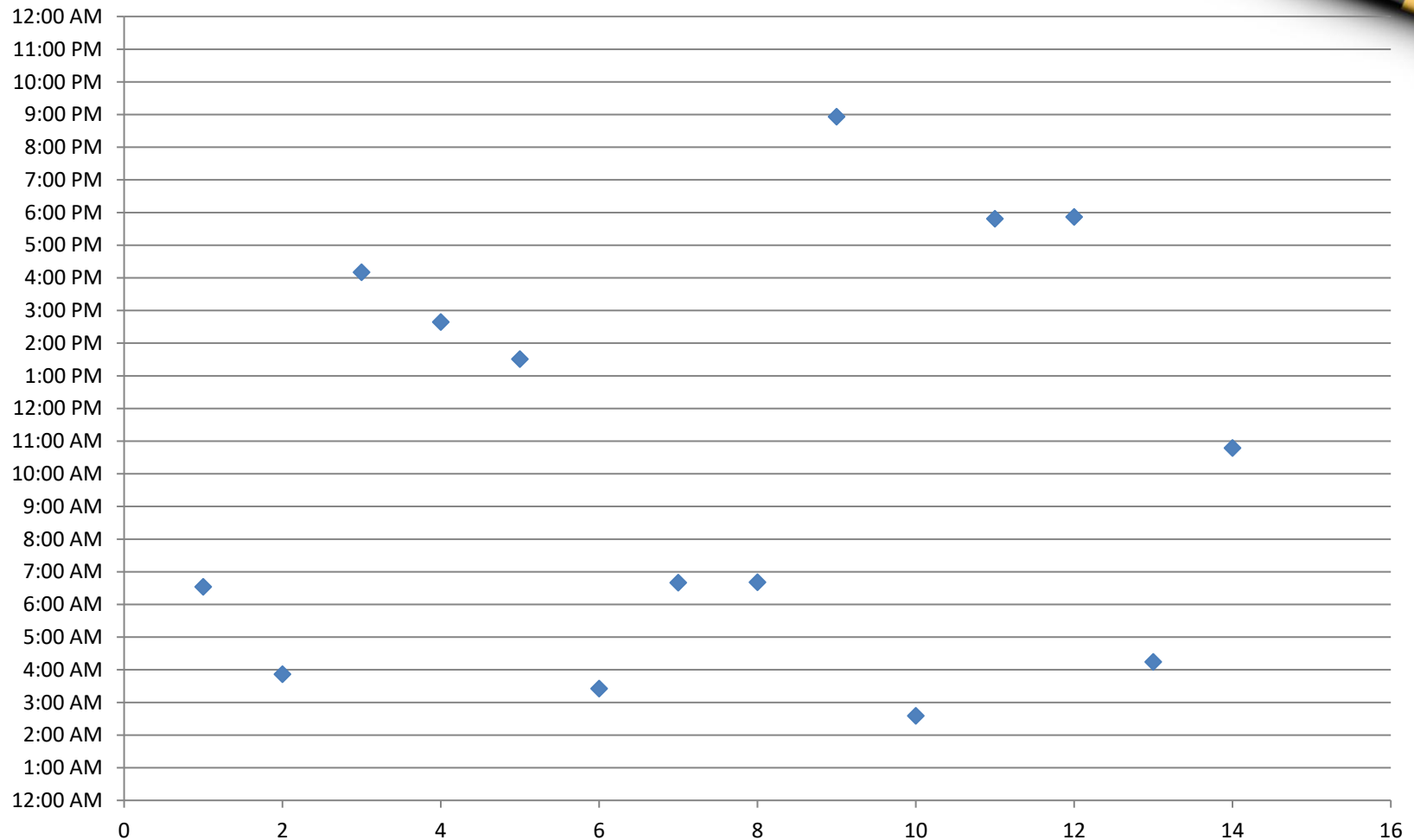
Random Testing Scatter Charts

Employee ID	Test Date	Test Time						
Employee 90	1/7/2014	6:32:15 AM						
Employee 88	1/27/2014	3:51:47 AM						
Employee 70	3/25/2014	4:10:14 PM						
Employee 21	4/20/2014	2:38:48 PM						
Employee 37	5/12/2014	1:30:35 PM						
Employee 87	5/26/2014	3:25:14 AM						
Employee 22	5/26/2014	6:39:47 AM						
Employee 33	6/11/2014	6:40:33 AM						
Employee 61	7/13/2014	8:55:57 PM						
Employee 18	7/18/2014	2:35:12 AM						
Employee 79	7/20/2014	5:48:26 PM						
Employee 62	8/1/2014	5:51:51 PM						
Employee 20	8/5/2014	4:14:21 AM						
Employee 94	8/27/2014	10:47:20 AM						

Generate Charts

Random Testing Scatter Charts

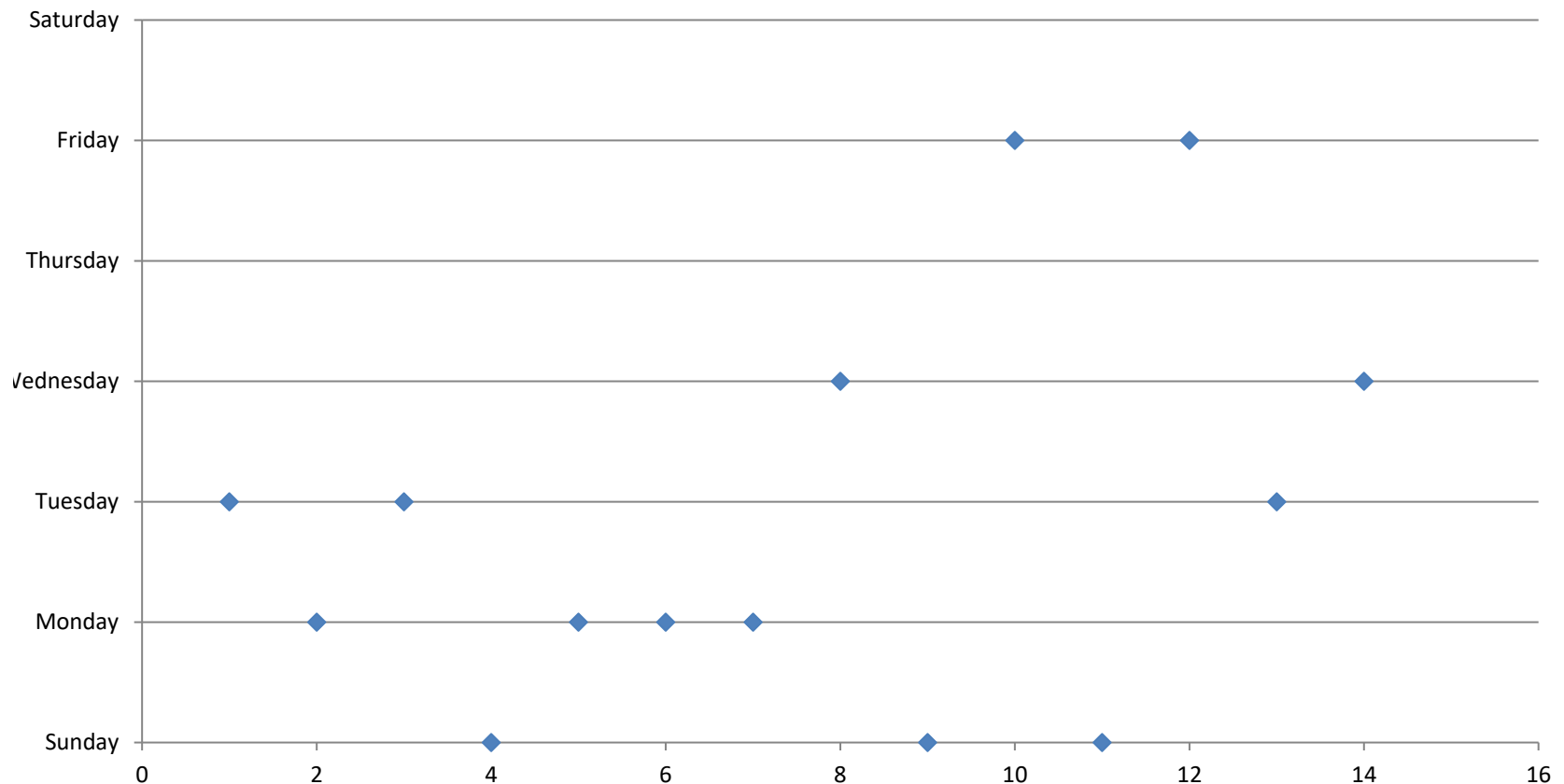
Random Testing Throughout The Day



Random Testing Scatter Charts



Random Testing Throughout The Week



Return-to-Duty

- Before any employee is allowed to return-to-duty to perform a safety-sensitive function following a verified positive drug test result, an alcohol result of 0.04 or greater, a refusal to submit to a test, or any other activity that violates the regulations, that employee must first be evaluated by a SAP and pass a return-to-duty test.
 - The SAP will recommend Return-to-Duty testing for Drugs and/or Alcohol.
 - The Drug Testing collection for Return-to-Duty testing **must be directly observed**.
- A Negative Return-to-Duty Drug and/or Alcohol Test is required before an employee is returned to Safety-Sensitive Duty for **any** employer following a violation.

Follow-Up

- Once an employee has cleared Return-to-Duty Testing, they shall be subject to unannounced follow-up testing for at least 12 but not more than 60 months.
 - The frequency and duration of the follow-up testing will be recommended by the SAP.
 - It is the employer's responsibility to select the dates and times for follow-up testing but must follow the SAP testing plan.
 - **A cancelled follow-up test must be recollected.**
 - Follow-Up Drug Testing collection **must be directly observed.**
 - Follow-up testing is performed in addition to other required testing types (*Randoms, Post-Accident, etc.*).
 - The follow-up testing plan follows the employee through breaks in service and through subsequent employers.

Other Testing Types (Non-Regulated)

- An employer may, under its own authority, require additional drug and/or alcohol testing that is not required by the FTA Regulations.
 - Ex. Non-DOT Accident Testing, Incident Triggered Testing, or Non-Regulated Pre-Employment Testing
 - The testing cannot be performed under the FTA's authority and cannot be performed on a DOT CCF or ATF form. Non-Regulated Drug/Alcohol Testing forms must be utilized.
 - Additional testing types need to be documented in the employer's policy, and be differentiated from the FTA Regulated testing (*Ex. Bolded text, a separate section, etc.*).



Section 7

DRUG & ALCOHOL TESTING PROCEDURES



Urine Specimen Collection Site Procedures

- DAPM/DER must let their collection site know (as part of protocol) what they consider is a “reasonable” amount of time for their employees to arrive at the collection site after test notification.
- The employee must provide positive identification.
 - Faxes or photo copies of identification are not acceptable.
 - Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If this cannot be provided the DER must be contacted to verify the employees identity.
- Alcohol testing must be performed prior to the urine drug test collection.
- The employee or the collector will select a wrapped specimen container.

Urine Specimen Collection Site Procedures Continued

- The employee has up to three hours, to provide an adequate specimen
- The employee must provide a specimen of at least 45 ml.
- The three-hour timeframe begins once the employee is handed the specimen container.
- If the employee fails to provide an adequate specimen, the first specimen is discarded.
- The collector splits the specimen into two bottles (primary – 30 ml, split – 15 ml.). Split bottle to sent to another lab if the employee disputes the test results.
- The collector seals, labels, and dated the bottles in full view of the employee.
- The employee initials the labels after labels are applied.

Urine Specimen Collection Site Procedures Direct Observation Required

- If the employee provides a specimen out of temperature range, or the original specimen appears to have been tampered with.
- Previous specimen is invalid with no medical explanation.
- Split specimen unavailable to confirm following a positive, adulterated, or substituted test result.
- Initial test result was negative-dilute with creatinine between 2 – 5 mg/dl.
- If the test is a DOT Return-To-Duty or Follow-Up test.

Urine Specimen Observed Collection Site Procedures

- Employer or collector must explain to the employee the reason for the direct observation.
- The collector must complete a new CCF.
- Observation must be made by an individual of the same gender as the donor.
- Must view the urine stream from donor to the collection container.
- Prior to specimen collection, observer must request employee to raise their shirt, blouse, or dress/skirt as appropriate above the waist, lower clothing and underpants and to turn around to show that they is not wearing any type of device that could be used to interfere with the collection process.

Urine Specimen - Insufficient Volume

“Shy Bladder” Procedures Continued

- Discard Original specimen (insufficient volume) unless temperature is out of range or shows evidence of adulteration or tampering.
- Instruct the employee to remain at the collection site until the process is completed.
- Urge the employee to drink up to 40 ounces of fluid (water) distributed evenly throughout the 3-hour period.
- Refusal to drink is not a refusal to test.
- Document the amount of fluid provided (Shy Bladder Form/Unusual Collection Form).
- Note the time the collection begins and ends on the CCF.
- If a sufficient is not provided within 3-hours of the first attempt, the collection process will be discontinued.
- Immediately notify the DER if the employee is unable to provide a sufficient sample within a 3-hour time period.

Urine Specimen - Insufficient Volume “Shy Bladder” Procedures Continued

- Fax a copy of the CCF to the DER and MRO.
- After consulting with the MRO, the DER must direct the employee to obtain a medical examination within five “business” days.
- The referral physician must be acceptable to the MRO.
- The medical examination will look for ascertainable physiological conditions or pre-existing documented psychological disorders.
- If other than the MRO, the referral physician submits written recommendation to the MRO
- The MRO reports their written determination to the DER ASAP.

Urine Specimen Collection - Cancelled Tests

- **Fatal Flaws Resulting in Cancelled Tests**
 - No collector's printed name and signature.
 - Specimen ID numbers don't match.
 - Seal is broken after it leaves the collection site or shows evidence of tampering.
 - Insufficient amount of urine to test.
- **Correctable Flaws that may Result in Cancellation**
 - The collector's signature is omitted on the CCF.
 - The specimen temperature was not checked.
 - The employee's signature is omitted without remarks.
 - The certifying scientist's signature is omitted.
 - A Non-Federal form was used.
- **Effect of Cancelled Test**
 - A cancelled test is neither a negative or positive test.
 - Cannot be used to justify a retest except where specified by MRO.
 - Cancelled tests do not count toward compliance with rule requirements (random rate).
 - Cancelled test do not provide a valid basis for an employer to test under its own authority.

Non-Negative or Positive Drug Test Results

- Employee Notification of Non Negative Result
 - MRO will notify employee of confirmed positive, adulterated, or invalid test results.
 - MRO must make 3 attempts within 24 hours (document efforts to make contact).
 - If the MRO is unable to contact donor, notify the DER and instruct the DER to contact the employee immediately (Results are not discussed with DER).
 - The DER should instruct the employee to contact the MRO immediately, no later than 72 hours.
 - If the DER is unable to contact the employee within 24 hours, DER must leave a message with the employee and notify the MRO of inability to make contact. DER may place the employee in temporary medically unqualified status or medical leave. (Sec. 40.131 (d)(2)).

Non-Contact Positive Drug Test Results

- Without the employee interview, the MRO may verify test results as positive or refusal to test because of adulteration or substitution, or as cancelled because the test was invalid if:
 - The employee expressly declines to discuss result with the MRO.
 - The employee fails to contact the MRO within 72 hours of notification by the DER.
 - No contact by either the MRO or the DER within 10 days of the MROs receipt of the lab test result.

Positive Drug Test Results

Split Specimen

- The employee may request a split sample test.
- The request must be made by the employee within 72 hours after the MRO notification.
- Requests after 72 hours may be accommodated if the MRO concludes there was a legitimate explanation for failure to request within 72 hours.
- No split specimen testing for an invalid test result.
- Rule is silent on who pays for the split specimen test.
- The MRO/Employer cannot deny the specimen test if the employee requests it.
- A split test can not be contingent on advance payment by the employee.
- The employer can seek reimbursement.

Drug Confirmatory Testing

Drug and Drug Metabolite Testing:

The laboratory must test for the following five drugs or their metabolites using the testing protocols and minimum cutoff thresholds defined in §40.87: marijuana, cocaine, opiates (e.g., heroin, morphine, codeine), phencyclidine (PCP), and amphetamines. The initial test is an immunoassay test. If any prohibited drug or its metabolite registers above the cutoff level on the immunoassay screen, an aliquot of the same urine specimen must be confirmed by using a technique called gas chromatography/mass spectrometry (GC/MS). The initial test result is based on the ability of antibodies to recognize drugs in biological fluids. Immunoassay tests, called screens, are simple to run and are often automated, and are relatively inexpensive. The confirmatory tests are more accurate, more time consuming, require sophisticated laboratory equipment, and thus are more expensive than immunoassay screens. The only confirmatory test permitted by 49 CFR Part 40 is GC/MS.

§ 40.87 What are the cutoff concentrations for drug tests?

Cutoff Concentrations for Drug Tests

Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

What exactly is a refusal to test and who determines it?

- The DOT regulations outline refusals to test for drugs and alcohol.
 - Some refusals are determined by MROs and BATs and STTs.
 - For others, the determination is your responsibility.
 - All have clear instructions from DOT. You must base your decisions on these DOT instructions and NOT on personal opinions about whether the employee is a long-time reliable worker; has ever tested positive or refused a test; was correctly selected for the test; or claims to have misunderstood the collector's instructions to remain at a collection site, among others.

Test Refusals

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, referred to a SAP.

1. Failure to appear for any test (except pre-employment test) within a reasonable time.
2. Failure to remain at the testing site until the testing process is complete.
3. Failure to attempt to provide a urine, breath, or saliva specimen as required by USDOT Part 40.
4. Failure to permit the direct observation or monitoring of specimen collection when it is required.
5. Failure to provide a sufficient quantity of urine or breath without a valid medical explanation.
6. Failure or decline to take a second test when required by the collector or employer/MRO.

Test Refusals (Continued)

7. Failure to undergo a medical evaluation as required by the Medical Review Officer (MRO).
8. Failure to cooperate with any part of the testing process.
9. Failure to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
10. Possessing or wearing a prosthetic or device used to tamper with the collection process.
11. Admitting to the adulteration or substitution of a specimen to the collector or MRO.
12. Refusing to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
13. Failing to remain readily available following an accident.

Here's a list of Part 40 refusals and the DOT regulation instructions for handling them:

Event	Decision Maker	DOT Instructions
Fail to appear at a urine collection site when directed to report	Employer / DER * [after review of the collector documentation]	If the employee did not get to the site or spent too much time getting there, it is a refusal.
Fail to remain at the urine collection site	Employer / DER * [after review of the collector documentation]	If the collector reports that the employee left the collection site before the testing process was complete, it is a refusal.
Fail to provide a urine specimen	Employer / DER * [after review of the collector documentation]	If the collector reports that the employee left the collection site before providing a required specimen, it is a refusal.
Fail to permit a monitored or observed urine collection	Employer / DER * [after review of the collector documentation]	If the employer ordered an observed collection or if the collector required the collection to be monitored or observed, it is a refusal if the employee does not permit it to occur.
Fail to provide a sufficient amount of urine	MRO	If the MRO finds that there was no medical reason for the employee to provide an insufficient amount of urine, it is a refusal.
Fail or decline to take an additional drug test the employer or collector has directed	Employer / DER * [after review of the collector documentation]	If the employer or collector directs the employee to take an additional test, as required or permitted by the DOT, and the employee does not, it is a refusal.

Here's a list of Part 40 refusals and the DOT regulation instructions for handling them:

Event	Decision Maker	DOT Instructions
Fail to undergo a medical examination or evaluation the MRO or employer has directed	MRO	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.
Fail to cooperate with any part of the urine collection process	Employer / DER * [after review of the collector documentation]	Some examples of failure to cooperate are when the employee: 1. Refuses to empty pockets when directed; 2. Behaves in a confrontational manner that disrupts the collection process; 3. Refuses to remove hat, coat, gloves, coveralls when directed; or 4. Fails to wash hands when directed.
For an observed collection, fail to follow the instructions to raise and lower clothing and turn around	Employer / DER * [after review of the collector documentation]	If the employee does not follow these instructions so that the observer can check for prosthetic or other devices that could be used to interfere with the collection process, it is a refusal.
Possess or wear a prosthetic or other device that could be used to interfere with the collection process	Employer / DER * [after review of the collector documentation]	If the employee is found to have or wear a prosthetic or other device designed to carry clean urine or a urine substitute, it is a refusal.
Admit to the collector to having adulterated or substituted the specimen	Employer / DER * [after review of the collector documentation]	If the employee, during the collection process, admits to having tampered with his or her specimen, it is a refusal
Adulterate or substitute a urine specimen	MRO	If the laboratory reports a confirmed adulterated or substituted specimen to the MRO and the MRO determines there is no medical reason for the result, it is a refusal.

Here's a list of Part 40 refusals and the DOT regulation instructions for handling them:

Event	Decision Maker	DOT Instructions
Admit to the MRO to having adulterated or substituted the specimen	MRO	If the employee, during a medical review, admits to having tampered with his or her specimen, it is a refusal.
Fail to appear for an alcohol test when directed to report	Employer / DER * [after review of the STT or BAT documentation]	If the employee did not get to the alcohol test site or spent too much time getting there, it is a refusal.
Fail to remain at the alcohol test site	Employer / DER * [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the collection site before the testing process was complete, it is a refusal.
Fail to provide an adequate amount of saliva or breath	Employer / DER * [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the alcohol testing site before providing a required amount of saliva or breath, it is a refusal.
Fail to provide a sufficient breath specimen	Evaluating Physician	If the evaluating physician finds that there was no medical reason for the employee to provide an insufficient amount of breath, it is a refusal.
Fail to undergo a medical examination or evaluation as the employer has directed as part of the insufficient breath procedures	Employer / DER	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.

Here's a list of Part 40 refusals and the DOT regulation instructions for handling them:

Event	Decision Maker	DOT Instructions
Fail to sign the certification statement at Step 2 of the ATF	Employer / DER * [after review of the STT or BAT documentation]	If the employee does not agree to have a test accomplished by signing Step 2 of the ATF, it is a refusal.
Fail to cooperate with any part of the alcohol testing process	Employer / DER * [after review of the STT or BAT documentation]	One example of failing to cooperate is when the employee behaves in a confrontational manner that disrupts the alcohol testing process.

***IMPORTANT NOTE:** When a collector for a drug test, or an STT or BAT for an alcohol test, reports a refusal event to the DER, the **EMPLOYEE MUST IMMEDIATELY BE REMOVED FROM SAFETY-SENSITIVE DUTIES**, and after that you [or the DER] must verify if the employee actually refused the test based upon the documentation provided and DOT's instructions. When you [or the DER] determine that there is a refusal, do not return the employee to safety-sensitive duties until the SAP return-to-duty process is successfully completed.

**DOT Rule 49 CFR
Part 40 Section
40.355
Subpart Q - Roles
and
Responsibilities
of Service Agents**

§ 40.355 What limitations apply to the activities of service agents?

- As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program.
- (i) Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.

Alcohol Testing Procedures

- BAT/STT must maintain credential documentation.
- Begin testing process without undue delay.
- To the greatest extent possible, perform the alcohol test before performing a drug test.
- If confirmation test is required, complete that process before starting a screening test on another employee.
- Evidential Breath Testing Device – (EBT) A device used for alcohol breath testing that has been approved by the National Highway Traffic Safety Administration.

Alcohol Testing Collection Site Procedures (Continued)



Explain testing process and show employee the instructions on back of the ATF. Complete step 1 of AFT.



Direct employee to read and sign step 2. Refusal to sign here is a refusal to test.



Provide a sealed mouth piece.



Show the employee the displayed test result.



Ensure the result is printed correctly on the ATF or the printout will be affixed to the ATF.



A copy is given to the employee and a copy is transmitted to the DER in a confidential manner.

Confirmatory Alcohol Testing

Site Procedures

- If the initial test result is 0.02 or greater, a confirmatory test is performed by a BAT using an EBT.
- The confirmatory test will be conducted at least 15 minutes, but not more than 30 minutes, from the completion of the initial test.
- Explain the waiting period to the employee, mark begin and end time in the remarks line of the ATF.
- If transportation to a different site is required for confirmatory test, make sure the employee remains under observation during transportation.
- The employee must not eat, drink or put anything in their mouth during the waiting period. If the employee does to follow instructions, the confirmation test should still be conducted (this is not considered a Refusal).

Confirmatory Alcohol Testing Site Continued

-
- Perform an air blank and show the result to the employee – EBT must register 0.00.
 - Provide a new mouth piece.
 - Show the test result and unique test number to the employee.
 - The result of the confirmatory test is deemed final.
 - The BAT must note the time elapsed between the initial screen and the confirmatory test on the remarks section of the ATF.
 - If the result is 0.02 or higher, direct the employee to sign step 4 of the ATF. If the employee refused to sign step 4 it is not considered a refusal to test.

Alcohol Testing Procedures Continued – Employer Action

- If the confirmatory test result is 0.02 – 0.039, the individual must be removed from duty for eight hours or until the individual tests below 0.02.
- If 0.04 or greater, the result is considered a violation of the FTA rule, therefore:
 - Remove the employee from safety-sensitive duty.
 - Make a Substance Abuse Professional (SAP referral).
 - Apply employer disciplinary policy.

Suggested Mock Collection Procedures

- Use any last, checked, relevant material, or call internally and doing a collection



collection issues



Section 8

DAMIS REPORTING AND FTA AUDITS



Drug and Alcohol MIS Reporting

Grantees and State DOT offices

FTA sent a mailing to grantees and State DOT offices in late December. This mailing provides guidance for submitting your MIS results via the Internet or using paper forms. It also provides instructions on downloading your contractors/subrecipients passwords, which you are required to distribute.

If you are a grantee/State DOT and you did not receive a mailing, or if the list of your contractors/subrecipients was incorrect, please contact the FTA Drug and Alcohol MIS Project Office at (617)494-6336. The office will issue new user names and passwords as needed, and remove any contractors/subrecipients for which you are no longer responsible.

Contractors and subrecipients

Contractors and subrecipients should contact their Grantee or state, respectively to receive user names and passwords for Internet reporting. While paper forms will still be accepted, Internet reporting is strongly encouraged and easy to use!

DRUG & Alcohol MIS Reporting



FTA Audits

- **Purpose:** To assess covered employers' compliance with drug and alcohol testing regulations, and provide specific guidance, as necessary.
 - On site one to two days
 - Includes mock specimen collections
 - Includes audit of safety-sensitive contractor and service agents
- **Process:**
 - Phase I: Notification/pre-audit review
 - Phase II: Onsite Audit
 - Phase III: Post-Audit/Compliance

FTA Audits Continued



- **Audit Process**
 - DAPM/DER notified approximately 7 weeks prior to onsite visit
 - FTA provides audit schedule, deadlines and agenda
 - Identify sub-contractors and subrecipients selected for audit
- **On site process**
 - Comprehensive records review
 - DAPM Interview
 - Collection Site Visit
 - Contractor Site Visits
 - Final Audit Report/Exit Interview
 - Findings response required within 90 days
 - The audit process takes approximately 22 weeks



Section 9

CONSORTIA AND THIRD PARTY ADMINISTRATORS

Consortia & Third Party Administrators

- Consortia/Third Party Administrators (C/TPA) are service agents that provide or coordinate the provision of a variety of drug and alcohol testing services to employers.
 - TPAs usually provide a complete package of services that include most aspects of drug testing, alcohol testing and program administration.
 - These services are provided under one contract and for a set price.
 - **Transit agencies, however, cannot legally delegate their compliance responsibilities to their C/TPA, since the employer remains ultimately responsible for the agency's compliance.**

Consortia & Third Party Administrators

Advantages of C/TPA

- Lower costs
- Greater expertise
- Reduced administrative burden
- Random Pool Maintenance and Selection
- Reduced liability
- Confidentiality

Considerations in Establishing a C/TPA

- Shared design
- Reduced control
- Financial considerations
- Administrative burden

Consortia & Third Party Administrators

C/TPA Limitations

A C/TPA or service agent must not do the following:

- Require an employee to sign a consent, release, waiver of liability, or indemnification agreement for any part of the drug or alcohol testing process covered by Part 40;
- Act as an intermediary in the transmission of drug test results from the laboratory to the MRO;
- Transmit drug test results directly from the laboratory to the employer--all employer interaction with the laboratory must be through the MRO;
- Act as an intermediary in the transmission of alcohol test results (≥ 0.02) between the BAT and the DER;
- Act as an intermediary in the transmission of individual SAP reports to the employer;
- Decide when reasonable suspicion, post accident, return-to-duty, and follow-up tests are needed;
- Make a determination that an employee has refused a drug or alcohol test (except for the MRO in the case of an adulterated or substituted test);
- Act as the DER;
- Send additional information to a laboratory besides the laboratory copy of the CCF;
- Impose conditions or requirements on employers not authorized by the regulations; or
- Intentionally delay the transmission of drug or alcohol test results or related documents due to a payment dispute.

Consortia & Third Party Administrators

- How to determine if a C/TPA is right for our organization:
 - Obtain and review a copy of FTA's Drug and Alcohol Consortia Manual that is available from the Office of Safety and Security
 - Contact other transit systems participating in consortia, ask about their experience, and find out if their approaches might work for you.
 - Consider which consortium model will best serve your needs.
 - Check C/TPA references thoroughly to varying quality.




Section 10

FTA DRUG & ALCOHOL TOOLS AND RESOURCES



FTA Drug and Alcohol Tools and Resources

 Federal Transit Administration

AboutFundingRegulations & Guidance

Home » Regulations and Guidance » Safety » Drug and Alcohol » Tools and Resources

Transit Safety & Oversight

Safety Rulemaking

Safety Guidance

State Safety Oversight Program

Safety Management Systems (SMS)

TRACS

Drug and Alcohol Program

Bus Safety Program

Safety Training

Stakeholder Outreach

FAQ

Tools and Resources

FTA Publications

Implementation Guidelines

PDF

These guidelines assist transit agencies in developing drug and alcohol testing programs that comply with Federal Transit Administration regulation 40 CFR Part 655. Pertinent regulations are cross-referenced throughout the text. Forms, checklists, and lists of additional information are provided throughout the document.

Best Practices Manual


PDF

This document discusses "best practices" used by employers to establish and maintain a compliant drug testing program. The best practices discussed here were identified during 5 years of FTA-sponsored audits of existing programs.

Prescription and Over-the-Counter Toolkit

PDF

This Toolkit is a compilation of policies, procedures, forms, and training resources that represent the best practices being used throughout the U.S. by a variety of transit systems. It does not represent all of the effective means that transit systems are using to address and monitor Prescription (Rx) and Over-the-Counter (OTC) medication use, but is the result of an extensive effort by the Federal Transit Administration (FTA) to compile a broad range of materials as examples and models.



Related Links

Drug and Alcohol

- Tools and Resources
- Legislation and Regulations
- Regulation Update Newsletters
- Drug and Alcohol MIS Reporting
- Drug and Alcohol Training
- Technical Assistance
- Drug and Alcohol Publications

FTA Drug and Alcohol Tools and Resources (Continued)

Guidance from ODAPC

General

- [What Employers Need to Know About DOT Drug and Alcohol Testing](#)
- [What Employees Need to Know About DOT Drug and Alcohol Testing](#)
- [Best Practices for DOT Random Drug and Alcohol Testing](#)

Collection Site

- [Urine Specimen Collection Guidelines](#)
- [Part 40 DOT 5-Panel Notice \(2018\)](#)
- [DOT's 10 Steps to Collection Site Security and Integrity](#)
- [DOT's Direct Observation Procedures](#)
- [Reminder Notice - Direct Observation for Return-to-duty and Follow-Up Testing](#)

Substance Abuse Professional

- [Substance Abuse Professional Guidelines](#)

FTA Drug and Alcohol Tools and Resources (Continued)

Tools

Policy Tools

All anti-drug and alcohol misuse programs must have a statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace.

Use the [Policy Requirements Checklist](#) to ensure your own policy includes all required elements.

Starting from scratch? Use the [Policy Builder](#) to develop a customized policy statement for your organization.

Sample Forms and Other Useful Tools

Pre-Employment/New Hire

- **New** [60-Minute Drug Awareness Video](#)
- [Pre-Employment Notification and Acknowledgement Form](#)
- [Previous Employer Release of Information Form](#)
- [Acknowledgment of Policy Form](#)
- [Acknowledgement of Prohibited Awareness Training for Safety-Sensitive Employees Form](#)

FTA Drug and Alcohol Tools and Resources (Continued)

Reasonable Suspicion

- [Reasonable Suspicion Referral for Drug and Alcohol Testing - Trainer/Trainee Guide](#)
- [Reasonable Suspicion Referral for Drug and Alcohol Testing Video](#)
- [Acknowledgement of Reasonable Suspicion Training for Supervisors Form](#)
- [Order FTA Reasonable Suspicion Cards](#)
- [Reasonable Suspicion Determination Report](#)

Collection Site

- [Notification for Testing Form](#)
- [Breath Collection Checklist](#)
- [Alcohol Testing Form Review Checklist](#)
- [Alcohol Testing Site Affidavit Form](#)
- [Urine Collection Checklist](#)
- **New** [Example of Completed Federal Drug Testing CCF and Drug Test Custody and Control Form Review Checklist \(Updated March 2023\)](#)
- [Drug Test Collection Site Affidavit Form](#)
- [MRO/TPA Results Checklist](#)

Assess your Compliance

- [Use this checklist to assess your level of compliance with FTA and DOT regulations.](#)



Federal Transit Administration

For questions regarding the FTA Drug
& Alcohol Program, please contact
the FTA Drug & Alcohol Hotline at

617-494-6336 or

FTA.DAMIS@DOT.GOV