DRUG AND ALCOHOL PROGRAM MANAGER TRAINING & REVIEW

PennTRAIN

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RLS & Associates, Inc.

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COURSE OBJECTIVES

Awareness of DAPM/DER Responsibilities

Provide technical knowledge necessary to perform a “Self-Check” on your own drug and alcohol testing program

Provide information on recent & future changes/updates to USDOT-FTA Drug and Alcohol Regulations
AGENDA

- Regulations
- Applicability
- Program and Policy
- Testing
  - Prohibited Substances & Behaviors
  - Testing Categories
- Vendor Oversight
- Reporting & Record Keeping
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATF</td>
<td>The DOT form, used to document every DOT alcohol test</td>
</tr>
<tr>
<td>BAT</td>
<td>A person who instructs and assists employees in the alcohol testing process and operates an EBT</td>
</tr>
<tr>
<td>CCF</td>
<td>The Federal Drug Testing Form, used to document every DOT urine collection</td>
</tr>
<tr>
<td>DAPM</td>
<td>An individual responsible for the implementation of the drug and alcohol testing program</td>
</tr>
<tr>
<td>DER</td>
<td>An employee authorized to take immediate action to remove employees from safety-sensitive duties. The DER also receives test results.</td>
</tr>
</tbody>
</table>
### DEFINITIONS

<table>
<thead>
<tr>
<th>EBT</th>
<th>• A device approved by NHTSA for evidential testing of breath</th>
</tr>
</thead>
<tbody>
<tr>
<td>MRO</td>
<td>• A person who is a licensed physician and who is responsible for verifying the results of DOT drug tests</td>
</tr>
<tr>
<td>ODAPC</td>
<td>• The office in the Office of the Secretary, DOT, that is responsible for coordinating drug &amp; alcohol testing program matters within USDOT and providing information concerning the implementation of 49 CFR Part 40</td>
</tr>
<tr>
<td>SAP</td>
<td>• 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</td>
</tr>
</tbody>
</table>
### HISTORY OF D&A TESTING

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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</table>
| 1986: Reagan Administration E.O. 12564 | - Established goal of Drug-Free Federal Workplace  
- Mandated executive agencies to establish drug testing program  
- Directed HHS to publish guidelines, standards, drugs to be tested |
| April, 1988: HHS 53 FR 11979 | - Mandatory Guidelines for Federal Workplace Drug Testing Programs  
- Any company with contract over $25,000 with Feds must have DFW |
| 1991: Bush Administration P.L. 102-143 | - Omnibus Transportation Employee Testing Act  
- Required testing for FAA, FMCSA, USCG, PIPELINE, FRA, & FTA |
USDOT D&A REGULATIONS

49 CFR Part 40

USDOT

FAA
FMCSA
FRA
USCG
PHMSA
FTA

49 CFR Part 655
USDOT – 49 CFR Part 40

• How to conduct testing
• www.transportation.gov/odapc/part40

Agency Specific D&A Testing Regulations

• FAA – 14 CFR Part 120
• FMCSA – 49 CFR Part 382
• FRA – 49 CFR Part 219
• FTA – 49 CFR Part 655
  • Who to test / When to test
  • You can access it on FTA’s website
• PHMSA – 49 CFR Part 199
• USCG – 46 CFR Part 4 and Part 16
Required By Law

• Employers, employees, service agents, vendors are all subject to USDOT drug & alcohol testing regulations;

• Obligated by Federal law to submit and cooperate in D&A testing mandated by USDOT and Agency regulation
STAY UP-TO-DATE!

ODAPC

- www.transportation.gov/odapc

ODAPC Newsletter

- www.transportation.gov/odapc/get-odapc-email-updates

FTA Quarterly D&A Newsletter

- See handout packet for instructions
APPLICABILITY

Who is subject to the USDOT-FTA Drug and Alcohol Regulations?
APPLICABILITY

Recipients (Grantee) of FTA Transit Funds

- 5307 Urban Area Capital & Operating
- 5309 Transit Capital
- 5311 Non-Urban (rural) Capital & Operating

Subrecipients and Contractors of FTA Grantee

- If Grantee uses the subrecipient/contractor to provide any safety-sensitive functions
- If subrecipient/contractor uses vehicle(s) purchased with FTA capital funding
APPLICABILITY

Capital Assistance?
- Segregate FTA funding
- Limit application of FTA testing to funded project

Operating Assistance (5307 & 5311)
- FTA funding cannot be segregated
- All operations are subject to FTA regulations
Employees Covered?

- Employees who perform any of the following safety-sensitive functions:
  - Operation of a revenue service vehicle, regardless of whether the vehicle is in revenue service
  - Operation of a non-revenue vehicle when required to be operated by the holder of a Commercial Driver’s License
  - Controlling movement or dispatch of a revenue service vehicle (based on employer assessment of safety-sensitive functions)
Employees Covered? (continued)

- Employees who perform any of the following safety-sensitive functions:
  - Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service
  - Security personnel that carry firearms
Employees Covered? (continued)

♦ Employees who perform any of the following safety-sensitive functions:
  ○ Volunteers who perform safety-sensitive functions if:
    ▪ Required to have CDL to operate vehicle; OR
    ▪ Receive payment in excess of actual expenses
  ○ Taxi cab operators
    ▪ If “standing-in-shoes” of FTA recipient
    ▪ Unless patron or other transportation providers can choose from a variety of taxi cab operators
APPLICABILITY

Who is Exempt?

♦ Maintenance Contractors Performing Services:
  ○ For 5311 recipients
  ○ For 5307 / 5309 recipients serving population less than 200,000
  ○ On one-time or limited, ad-hoc basis
EMPLOYER

EMPLOYEE

D/A PROGRAM

EDUCATION & TRAINING

D/A POLICY

REFERRAL PROCEDURES

EMPLOYEE

SAP

CONSEQUENCES

TESTING PROCEDURES

PROHIBITED BEHAVIORS

CATEGORIES OF TESTING

COLLECTION SITE

BAT

COLLECTOR

MRO

LABORATORY

EMPLOYEE
<table>
<thead>
<tr>
<th>Designated contact person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability (categories of employees covered)</td>
</tr>
<tr>
<td>Categories of employees covered</td>
</tr>
<tr>
<td>Prohibited behaviors &amp; substance</td>
</tr>
<tr>
<td>Testing circumstances &amp; procedures</td>
</tr>
<tr>
<td>Requirements for testing</td>
</tr>
<tr>
<td>Test refusals</td>
</tr>
<tr>
<td>Consequences (Positive, Negative, Non-Negative)</td>
</tr>
<tr>
<td>Zero Tolerance or Second Chance?</td>
</tr>
<tr>
<td>Negative Dilute?</td>
</tr>
</tbody>
</table>
Policy Dissemination

- Local governing board or highest ranking official adoption
- Policy distribution
- Must provide written notice to all employees
- Employee should be requested to sign a confirmation of receipt form
- Employer are not permitted to use consent forms
EMPLOYEE TRAINING

Education for all safety-sensitive employees

- 60 minutes on effects and consequences of drug use on personal health, safety, and work place
- No requirement for alcohol
- Must be documented for each employee

Available Resources

- National RTAP eLearning Module
- Foundation for a Drug-Free World
Superisors or company officials that will be making reasonable suspicion determinations

- MINIMUM 60 minutes on physical, behavioral, and performance indicators of probable drug use
- MINIMUM 60 minutes on physical, behavioral, and performance indicators of probable alcohol misuse

Quality Reasonable Suspicion training is longer than the minimum 2 hours
TRAINING TIMELINE

60 Min Employee Training

• Upon Hire

Reasonable Suspicion Training

• Best practice is to have reoccurring refresher training (2-3 years)
GENERAL PROGRAM REQUIREMENTS
# PROHIBITED DRUGS

<table>
<thead>
<tr>
<th>Drug Type</th>
<th>Prohibited Drugs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana</td>
<td>• Rx and Recreational Prohibited</td>
</tr>
<tr>
<td>Cocaine</td>
<td></td>
</tr>
<tr>
<td>Opiates</td>
<td>• Codeine, Morphine, Heroin</td>
</tr>
<tr>
<td>Phencyclidine (PCP)</td>
<td></td>
</tr>
<tr>
<td>Amphetamines</td>
<td>• Meth and Ecstasy</td>
</tr>
</tbody>
</table>
PROHIBITED ALCOHOL

Alcohol Prohibited:

- While performing SS duties
- 4 hours prior to SS duties
- While on call to perform SS duties
- Within 8 hours following an accident, or until the test has been conducted
### PERIOD OF COVERAGE

#### DRUGS
- Drug testing can be performed anytime employee is on duty

#### ALCOHOL
- Alcohol testing just before, during, or just after performance of safety-sensitive duties
<table>
<thead>
<tr>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fail to appear for a test in a reasonable time</td>
</tr>
<tr>
<td>Fail to remain at the testing site until testing process is complete</td>
</tr>
<tr>
<td>Fail to attempt to provide a breath or urine specimen</td>
</tr>
<tr>
<td>Fail to permit monitoring or direct observation, as required</td>
</tr>
<tr>
<td>Fail to provide sufficient quantity of breath or urine w/o a valid medical explanation</td>
</tr>
<tr>
<td>Fail or decline to take a 2nd test as directed by the collector or employer</td>
</tr>
</tbody>
</table>
## REFUSAL TO TEST (excluding pre-employment)

<table>
<thead>
<tr>
<th>Condition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to cooperate with any part of the testing process</td>
<td></td>
</tr>
<tr>
<td>Fail to follow an observer’s instructions</td>
<td>Raise and lower clothing and turn around during a directly –observed test</td>
</tr>
<tr>
<td>Possess or wear a prosthetic or other device</td>
<td>Used to tamper with the collection process</td>
</tr>
<tr>
<td>Admit to adulteration or substitution</td>
<td>To the collector or MRO</td>
</tr>
<tr>
<td>Refuse to sign Step 2 of the ATF</td>
<td></td>
</tr>
<tr>
<td>Fail to remain readily available following an accident</td>
<td></td>
</tr>
<tr>
<td>Provide an adulterated or substituted specimen</td>
<td>As verified by the MRO</td>
</tr>
</tbody>
</table>
**PRE-EMPLOYMENT REFUSALS TO TEST**

It is NOT a refusal to test on a Pre-Employment if applicant:

- Fails to appear for test;
- Leaves the collection site prior to commencement of test

<table>
<thead>
<tr>
<th>DRUG TEST COMMENCES</th>
<th>ALCOHOL TEST COMMENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Donor accepts or selects specimen cup</td>
<td>• Donor accepts or selects mouthpiece</td>
</tr>
</tbody>
</table>
## TEST RESULTS

<table>
<thead>
<tr>
<th>Positive drug/alcohol test or test refusal</th>
<th>1. Remove from SS duty</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Advise employee of available resources &amp; referral to USDOT qualified SAP</td>
</tr>
<tr>
<td></td>
<td>3. Follow transit system disciplinary policy</td>
</tr>
<tr>
<td>Non-Negative alcohol result (0.02-0.039)</td>
<td>1. Removal from SS duty for minimum of 8 hours unless subsequent test results in BAC less than 0.02</td>
</tr>
<tr>
<td></td>
<td>2. Follow transit system disciplinary policy</td>
</tr>
<tr>
<td></td>
<td>NO SAP REFERRAL</td>
</tr>
<tr>
<td>Negative Dilute</td>
<td>Must determine whether or not to retest after a negative dilute</td>
</tr>
<tr>
<td></td>
<td>The policy must state this determination</td>
</tr>
<tr>
<td></td>
<td>2nd test result is test of record</td>
</tr>
<tr>
<td></td>
<td>Must be consistent for all employees</td>
</tr>
</tbody>
</table>
TESTING PROCEDURES
TESTING METHODS

System must abide by 49 CFR Part 40 procedures

- Must make Part 40 available to employees upon request

Urinalysis for drugs- (detailed discussion optional)

- Split Specimen collection
- CCF with unique #
- Initial Screen at lab
- Confirmatory test (GC/MS) at lab
- MRO Review

Alcohol Testing

- Initial Screen (ASD or EBT)
- Confirmatory test on EBT after 15 minute wait (if screening was 0.02 or above)
What do they do?

- Conduct alcohol screening and confirmation tests (2nd test given to an employee with a screening test result of 0.02 or higher)
- Collect and analyze breath using an evidential breath testing (EBT) device
- Document result on an ATF and transmit to the employer timely and confidentially

What qualifications are necessary?

- Knowledge of basic information (Part 40, applicable DOT regulations)
- Training and proficiency demonstration which meets §40.213
- Refresher training required every 5 years
Refusal

Alcohol Test

Screening Test (ASD or EBT)

(15 min wait) Confirmation Test (EBT only)

Less than 0.02

Less than 0.02

NEGATIVE Result to DER

0.02-0.039

NON-NEGATIVE Result to DER (Remove from SS duties)

0.04 or Greater

POSITIVE Result to DER

Remove from SS duty, follow policy, Refer to SAP
URINE COLLECTOR

What do they do?

- Collect urine specimens using Part 40 procedures
- Ship specimens to DHHS certified laboratories for analysis
- Distribute copies of the CCF to necessary parties

What qualifications are necessary?

- Knowledge of basic information (Part 40, DOT urine specimen guidelines, applicable DOT - FTA regulations)
- Training and proficiency demonstration which meets §40.33
- Refresher training required every 5 years
<table>
<thead>
<tr>
<th><strong>SPECIMEN VALIDITY</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Adulterated</strong></td>
</tr>
<tr>
<td>• Not a normal constituent or contains endogenous substance at a concentration that is not a normal physiological concentration.</td>
</tr>
<tr>
<td><strong>Diluted</strong></td>
</tr>
<tr>
<td>• Diluted specimens have creatinine and specific gravity values that are lower than expected for normal human urine.</td>
</tr>
<tr>
<td><strong>Substituted</strong></td>
</tr>
<tr>
<td>• Not human urine</td>
</tr>
<tr>
<td><strong>Invalid</strong></td>
</tr>
<tr>
<td>• Unidentified adulterant, unidentified interfering substance, abnormal physical characteristic, or lab cannot complete testing.</td>
</tr>
</tbody>
</table>
Invalid Test

- Employees do not have access to a test of their split specimen

Positive/Adulterated/Substituted

- Employee has right to request split specimen to be tested
Employee Being Observed Will Be Required To:

- Raise shirt, blouse, or dress/skirt, as appropriate above the waist
- Lower clothing to show the collector, by turning around he or she does not have a prosthetic device.
- Allow observer to see specimen come from body to the cup
DIRECT OBSERVATION

- Return-to-Duty and Follow-Up Testing
- Temperature Out of Range
- Specimen Appeared to be Tampered With
- Collector Observes Materials Brought With Intent to Tamper w/ Specimen
Lab Reported to MRO an Invalid Result; MRO Determines No Medical Explanation

MRO Determines Original Specimen Was Positive/Adulterated/Substituted and Split Test Couldn’t Be Performed
TESTING CATEGORIES
PRE-EMPLOYMENT
PRE-EMPLOYMENT

Scenario 1 – Applicant/New Employee
• Must have MRO verified negative result prior to SS duties

Scenario 2 – Employee Transfer → SS Duty
• Even if NON-DOT pre-employment test result on file

Scenario 3 – Employee Returns from Extended Leave
• No SS duties for 90+ days, AND removal from random testing pool

REMEMBER!
• Pre-Employment = Clearance to Perform SS Duty
• Return-to-Duty Test = Only done after a positive test/refusal (always directly observed
• DO NOT CONFUSE PRE-EMPLOYMENT WITH RETURN-TO-DUTY
What if a Pre-Employment Test is Cancelled?

- Must conduct a 2nd test

Negative Dilute Pre-Employment Test?

- Allowed to conduct 2nd test (IF IT IS STATED IN YOUR POLICY)
- Employee may begin SS duties
PRE-EMPLOYMENT

DOT Pre-Employment Alcohol Testing

- OPTIONAL, but allowed
- Must follow Part 40
- Only after contingent offer of employment
- Treat all applicants/employees the same
PREVIOUS EMPLOYER RECORDS CHECK

As A Potential Employer, You Must:

• Obtain written consent from applicants to obtain D/A information from previous 2 years
• Contact previous employer – written consent must accompany request
• Ask applicant whether he or she has tested positive or refused a DOT pre-employment test in the previous two years
PREVIOUS EMPLOYER RECORDS CHECK

You Must Request the Following Info From Previous DOT Employers:

- Alcohol test results higher than 0.04
- Verified positive drug tests
- Test refusals
- Other violations of the DOT D/A regulations
- If appropriate, documentation of successful completion of return-to-duty process
PREVIOUS EMPLOYER RECORDS CHECK

Getting the Info Back

- Use “standard” uniform letter containing applicant’s consent and questions posed to previous employer
- Document your “good faith effort”

Record Retention

- Must maintain this info for at least 3 years
REASONABLE SUSPICION
**What is the Purpose?**
- Detect any sign/symptom consistent with drug use or alcohol misuse
- Addressing potential impairment issues

**What is it NOT Supposed to Do?**
- Identify the particular substance of use
- Diagnose substance use / Alcohol use disorder

**Should I Do a Drug or Alcohol Test?**
- Drug, Alcohol, or BOTH
- Always conduct BOTH if you are able
- Remember time constraints for alcohol (Just before, during, or just after SS duty)
Who is Authorized to Make Determination?

- Properly trained Company Officials with regular contact with SS employee work-force
- Sensitize NON-TRAINED employees on who they should contact if they are suspicious

Determination to Test

- Specific, contemporaneous, articulable observations concerning an employees APPEARANCE, BEHAVIOR, SPEECH, OR BODY ODOR
- Document, Document, Document!!

Only ONE Trained Supervisor Required

- If ONE trained supervisor makes determination... the test must occur
Time Requirements?

- **DRUGS** = Anytime employee is on duty
- **ALCOHOL** = Only just before, during, or just after performance of SS functions
- Transport Employee to Collection Site Immediately
An Occurrence Associated w/ Operation of Vehicle (whether or not in revenue service) and one or more of following occur:

- Human Fatality
- Individual suffers bodily injury and immediately transported away from scene for medical treatment
- One or more vehicles incurs disabling damage

“The 3 Thresholds”
POST-ACCIDENT

What is Disabling Damage?

- Vehicle cannot be operated under its own power without further damaging vehicle
- **USUALLY** requires a tow, but not always

What is NOT Disabling Damage?

- Damage to headlights, taillights, turn signals, windshield wipers, horn
- Tire damage/replacement alone is not to be considered disabling damage
- Any other damage which can be easily remedied at the scene of accident with simple tools
POST-ACCIDENT

**Decision to Test**

- Made be employer at the time of the accident
- Use best information available AT TIME OF ACCIDENT
- Decisions should not be reversed based on facts learned later on

**MUST DOCUMENT DECISION**

- Best practice is to use a sample form that is standard for each use and is specific to the D/A Decision
**POST ACCIDENT TESTING DECISION REPORT**

**A separate sheet must be filled out for each covered employee that contributed to the accident**

<table>
<thead>
<tr>
<th>System Name: __________________________________________________________________</th>
<th>Date of Accident: ____________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time of Accident: ____________________</td>
<td>Time Employer was notified: ____________________</td>
</tr>
<tr>
<td>Location of Accident: ____________________________________________________________</td>
<td></td>
</tr>
<tr>
<td>Safety-Sensitive Employee: ___________________________</td>
<td>ID # and Position: ____________________________</td>
</tr>
<tr>
<td>i.e. Driver, Dispatcher, etc.</td>
<td></td>
</tr>
</tbody>
</table>

1. Did the accident involve a public transit vehicle?  
   - Yes  
   - No

2. Did the accident involve the operation of the vehicle?  
   - Yes  
   - No

3. Was there loss of life as a result of the accident?  
   - Yes  
   - No

4. Did an individual suffer a bodily injury and immediately receive medical treatment away from the scene?  
   - Yes  
   - No

5. Was there disabling damage to any of the involved vehicles?  
   - Yes  
   - No

6. a) Did you perform a drug and/or alcohol test?  
   - Yes  
   - No
   (Use Decision Tree on back of this form)

   b) If no, why not? ____________________________________________

   c) For a non-fatal accident, can the covered employee(s) performance be completely discounted as a contributing factor to the accident?  
   - Yes  
   - No

7. a) Was an alcohol test performed within 2 hours?  
   - N/A  
   - Yes  
   - No
   b) If no, why: ____________________________________________

8. If no alcohol test occurred, and more than 8 hours elapsed from the time of the accident, please explain: ____________________________________________

9. a) Was a drug test performed within 32 hours?  
   - N/A  
   - Yes  
   - No
   b) If no, why: ____________________________________________

10. a) Did the employee leave the scene of the accident without a reasonable explanation?  
    - Yes  
    - No
    b) If Yes, please explain: ____________________________________________

Test Determination:
Name of supervisor making determination: ____________________________________________
Time employee was informed of determination: ____________________________________________

Signature & Title ____________________________ Date ____________________________
POST-ACCIDENT

FATALITY: WHO TO TEST?

• Surviving covered employee(s) operating vehicle at time of accident; and
• Any other covered employee who may have contributed to accident (mechanic, dispatcher)

NON-FATAL: WHO TO TEST?

• Surviving covered employee(s) operating vehicle at time of accident, UNLESS their performance can be completely discounted as contributing factor (different from fault)
• Any other covered employee who may have contributed to accident (mechanic, dispatcher)

Who NOT to Test?

• Employee must be able to give consent
• Cannot test dead or unconscious employee
POST-ACCIDENT

Testing Time Requirements

• All testing must occur as soon as possible, after treating injuries and cooperating with law enforcement
• The Post-Accident “Clock” starts at time of accident, not at time of your decision to test

Testing Time Limits

• If alcohol test not conducted within 2 hours – you must document why
• Cease attempts after 8 hours for alcohol
• Cease attempts after 32 hours for drugs
Acceptance of Law Enforcement Test Results

- Test results of Federal, State, or Local law-enforcement officials can be used only if results are released.
- Employer may only use these if they are unable to do their own test.
- Must document reason.
POST-ACCIDENT

Common Problems

- Testing often omitted or significantly delayed
- Ill-defined policies
- No documented procedure
- Inadequately trained supervisor
- Lack of supervisor empowerment
POST-ACCIDENT

Common Problems

- Ordering USDOT-FTA tests when not required
- The following factors have **NO IMPACT** making your determination for USDOT-FTA post-accident testing:
  - Testing just to be safe
  - Dollar damage
  - Preventability
  - **Reasonable Suspicion Implications!**
  - Citation vs. No Citation
Did the accident involve a revenue service vehicle, whether in or out of revenue service?

- Yes: Was the occurrence associated with the manner of operation?
  - Yes: Test ASAP
  - No: Test ASAP

- No: Was there a fatality?
  - Yes: Test ASAP
  - No: Was anyone immediately transported to a medical treatment facility?
    - Yes: Operator
      - Can SS employee’s performance be completely discounted as a contributing factor?**
        - Yes: No test required; document
        - No: Test ASAP
      - Other SS Employee
        - Could any other SS employee have contributed to the accident?
          - Yes: Test ASAP
          - No: No test required; document
    - No: Was there disabling damage to any vehicle*?
      - Yes: No test required; document
      - No: No test required; document
Random Selection Method

- Scientifically valid method
- Each employee must have equal chance of selection
- Once names have been selected, you cannot then determine what type of test(s) will be conducted
Random Pool Must be Kept Accurate

- Adding new hires / transferees
- Removing employees terminated/quit/retired
- Long term absences (FMLA, etc.)

Who Can Be Included in the Pool?

- Only USDOT covered employees
- Cannot mix DOT and NONDOT employees in one pool
- But the pool can include employees from various USDOT agencies (Transit Department (FTA) & Public Works (FMCSA), for example)
- If mixed pool - the testing rate must be set at the highest rate of the multiple modes
Minimum Testing Rates

- **DRUGS** = 25% of covered employees
- **ALCOHOL** = 10% of covered employees
- Rates subject to change each year
- These rates should reflect number of tests conducted in each year (NOT NUMBER OF EMPLOYEES)
Random Selection Lists

- Access to the list should be restricted as much as possible
- List must be kept in secure location with controlled access
- Lists should be generated JUST prior to beginning of testing period (not weeks in advance or weeks after)
- Must be sent to DAPM/DER in a secure manner
- Lists must be kept for 2 years

Random Selection Lists and Testing Period

- Must make selection on at least a quarterly basis (even if you make your percentages before end of year)
- Once a new selection list is received, the previous list is null and void
- All employees selected for a particular period must only be tested during THAT period
RANDOM TESTING

Using Alternate Selection

- **ONLY** if employee **ORIGINALLY** selected is unavailable for the **ENTIRE** testing period, may you use an alternate selection.
- Must document why original selection was unavailable (**operational difficulties is NOT legitimate reason**).

Alternate(s) Must Be Selected At Same Time as Original List Was Generated

- You **CANNOT** make an alternate selection as a separate draw later on during the testing period.
- The alternate must be identified as an alternate.
<table>
<thead>
<tr>
<th>Testing Spread/When to Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Very important for deterrence and detection of drug/alcohol use (it is more than a compliance issue)</td>
</tr>
<tr>
<td>• Testing must be unannounced and unpredictable</td>
</tr>
<tr>
<td>• Must be reasonable spread throughout the times of day, days of week, weeks of month, months of quarter</td>
</tr>
<tr>
<td>• Testing must be conducted on all days and times when safety-sensitive functions are performed</td>
</tr>
</tbody>
</table>
Employee Notification

- Employee must be notified of testing authority
- Once you notify an employee of requirement for random test, they must proceed immediately to test
- You must have mechanism to know IN REAL TIME if they show up in a timely manner
- Random alcohol testing can only be conducted just before, during, or just after the performance of safety-sensitive functions
Challenges in Conducting Tests During All Hours/Days

- Sometimes transit systems are restricted on when they can conduct tests based on the hours and days of business of their COLLECTION SITE.
- Remember, the only thing that is random about random testing is the selection!
- This allows you to work with your collection site in advance to schedule early morning/late evening tests.
- May even try making agreement with individual collectors/technicians.
Random Testing Consortiums

- Your employees are in a pool with multiple groups from multiple employers
- As long as consortium as a whole meets the testing rates, everyone in consortium in compliant
- This means YOUR INDIVIDUAL rates may be either above or below the minimums
- Pros and Cons
RANDOM TESTING SPREADSHEET

Graph showing times from 6:00 AM to 6:00 PM with open and close times marked.

- Open at 6:00 AM
- Close at 6:00 PM
RETURN-TO-DUTY & FOLLOW-UP TESTING
ZERO TOLERANCE vs. 2nd CHANCE

Zero Tolerance

- Following positive drug/alcohol test, or refusal to test → Employee is terminated
- Remember a positive alcohol test is BAC 0.04 or above
- If you policy says “we will terminate for positive alcohol test” – this would mean you would not terminate for non-negative alcohol test (0.02-0.039)

2nd Chance

- Following positive drug/alcohol test → employee may be allowed to return to safety-sensitive duties after completing required process
**ZERO TOLERANCE vs. 2nd CHANCE**

**Required Action NO MATTER YOUR POLICY:**
- Immediate removal from SS duty
- Referral to SAP

**Referral to SAP**
- Even if the employee is being terminated
- Even if the positive/refusal to test was a Pre-employment test
- Zero-Tolerance employer not required to follow-up with SAP and ensure individual actually completes the process (unless they return to duty)
Following a Positive/Refusal to Test

- Must have negative RTD test prior to returning to SS duty
- Eligibility to return as well as the type of RTD test (drug or alcohol) is determined by SAP
- Decision on IF and WHEN the employee ACTUALLY returns to SS duty is made by EMPLOYER
- RTD drug tests always directly observed, if not, the test must be cancelled and redone
Follow-Up Testing

Conducted Once Employee Returns to SS Duty

- SAP writes the F/U testing plan
- Minimum of 6 tests in first 12 months back to work
- Maximum of 5 years worth of F/U testing
- SAP determines if F/U testing will be for drugs, alcohol, or both. It is not tied to original positive test type
- Employer cannot modify F/U testing plan, only the SAP
- All F/U tests must be directly observed, if not, test must be cancelled and redone
The dates and time for the F/U testing is decided by the employer (must fit the SAP’s plan).

F/U testing is in addition to any other types of tests (i.e., random).

Employee remains in testing pool.

Who pays for testing is not mandated by USDOT, but testing must occur if you return them to SS duty.
SERVICE AGENTS
(VENDORS)
What do they do?

- Conduct alcohol screening and confirmation tests (2nd test given to an employee with a screening test result of 0.02 or higher)
- Collect and analyze breath using an evidential breath testing (EBT) device
- Document result on an ATF and transmit to the employer timely and confidentially

What qualifications are necessary?

- Knowledge of basic information (Part 40, applicable DOT regulations)
- Training and proficiency demonstration which meets §40.213
- Refresher training required every 5 years
Alcohol Test

Refusal

Screening Test (ASD or EBT)

Less than 0.02

(15 min wait) Confirmation Test (EBT only)

0.02 or Greater

Less than 0.02

0.02-0.039

NEGATIVE Result to DER

NON-NEGATIVE Result to DER (Remove from SS duties)

POSITIVE Result to DER

Remove from SS duty, follow policy, Refer to SAP
URINE COLLECTOR

What do they do?

- Collect urine specimens using Part 40 procedures
- Ship specimens to DHHS certified laboratories for analysis
- Distribute copies of the CCF to necessary parties

What qualifications are necessary?

- Knowledge of basic information (Part 40, DOT urine specimen guidelines, applicable DOT - FTA regulations)
- Training and proficiency demonstration which meets §40.33
- Refresher training required every 5 years
What do they do?

- Receive, analyze, and report laboratory confirmed results to MRO
- Submit semi-annual statistical results summaries to the employer
- **You must obtain and keep on file these semi-annual statistical result summaries from your lab**

What qualifications are necessary?

- Certified under Department of HHS through the National Laboratory Certification Program (NLCP)
What do they do?

- Receive laboratory confirmed urine drug test results
- Determine any legitimate medical explanation for a laboratory confirmed positive, adulterated, or substituted result
- Review and report verified results to the employer

What qualifications are necessary?

- Licensed physician (M.D. or D.O.)
- Knowledge on requirements and qualification training of 49 CFR Part 40 for MROs
- Must pass an examination given by a nationally recognized MRO certification board every 5 years
What do they do?

- Evaluate employees who have violated DOT drug and/or alcohol regulations
- Make education/treatment recommendations
- Determine if employee demonstrates successful compliance with recommended education and treatment
- Prepares a follow-up testing plan

What qualifications are necessary?

- Licensed physician; licensed or certified psychologist, social worker, EAP; state-licensed or certified marriage and family therapist; drug and alcohol counselor certified by NAADAC, ICRC, NBCC
- Basic knowledge and qualifications training for USDOT qualified SAPs in accordance with 49 CFR Part 40
- Examination administered by nationally recognized professional or training organization
What do they do?

- Certain program functions on behalf of the employer, such as:
  - Random selections
  - Preparation of MIS reports
  - Coordinate services and billing for collection site, labs, and MROs
  - Coordinate SAP referrals

What qualifications are necessary?

- TPAs must simply ensure the services it provides are in compliance with 49 CFR Part 40

What can they NOT do?

- Transmit laboratory confirmed drug test results to the MRO
- Transmit medical information from MRO to employer
- Transmit SAP reports to employer
- Transmit positive alcohol tests to employer
VENDOR OVERSIGHT

EMPLOYER RESPONSIBILITY

- Responsible for actions of officials, representatives, and service agents
- All agreements between employers and service agents are deemed as a matter of law to require compliance
- Service agents must provide documentation of credentials
- Good faith effort is not a defense for non-compliance
- Employer is responsible for obtaining test results and other information that is needed for compliance purposes
Oversight Activities

- Specifics are not prescribed by USDOT or FTA on how to provide sufficient oversight of your vendors
- Best practices include:
  - Detailed reviews of CCF and ATF upon receipt and before filing away
  - Periodic checks of training credentials
  - Periodic on-site reviews (mock collections)
  - Although not a federal requirement, consider requiring your vendors to hold membership in their industry association
Mock Collections

- Instructional video available from USDOT:
- You could conduct your “mock collection” on-site review as part of a real test if you are selected for random testing for example
- If not, it is a best practice to schedule an on-site visit for conducting a mock collection at least annually for each collection site

Facility/Equipment/Records Review

- Check the collection site’s facility for compliance
- Check the calibration log book for the EBT
- Ensure the collection site has a copy of the Quality Assurance Plan (QAP) for the EBT
- Ensure the collection site has a copy of 49 CFR Part 40 and the Urine Specimen Collection Guidelines
Public Interest Exclusion (PIE)

- Service agent not allowed by law to provide services under USDOT programs
- Protect public interest
- Protect employer and employee from serious noncompliance

Basis for a PIE being Issued

- USDOT determines failure or refusal to provide services consistent with DOT rules
- Failure to cooperate with DOT or inspection, compliance and enforcement reviews, etc.
- Only issued in cases of SERIOUS non-compliance
Examples Vendor Credentials
THE NAADAC CERTIFICATION COMMISSION

hereby attests that

has met all of the DOT requirements
(This certification meets the requirements
of 49 CFR Part 40.281(c), certification training;
and 40.281(2), valid exam).

FOR PRACTICE AS A SUBSTANCE ABUSE PROFESSIONAL

and may use the title of

SAP

Certificate Number

Date Awarded:
MRO CREDENTIAL (EXAMPLE)
This is to certify that

has successfully completed

Department of Transportation (DOT)

Drug Screen Collection Training (49 CFR Part 40).

Authorized By: ____________ Date: ____________
COLLECTOR CREDENTIALS
(EXAMPLE)

Certificate of Completion
This certifies that on March 05, 20XX

successfully completed the curriculum specified by the Department of Transportation
(DOT) and curriculum specified by intoximeters, Inc. for certification as a
Breath Alcohol Technician (BAT) and
Factory Authorized Calibration Technician

The curriculum presented corresponds with the DOT's BAT model curricula established pursuant to 49 CFR Part 40 Procedures. It also corresponds with intoximeters, Inc.'s proficiency in the use of the Breath Alcohol Testing (BAT) curriculum which includes a review of the

The course curriculum was approved by intoximeters, Inc., the manufacturer of the Breath Alcohol Test Device, and complies with the manufacturer's standards for the operation of the instrument.

[Signature]
Intoximeters, Inc.
CCF Review
The employer has the responsibility to oversee its service agents to ensure compliance. One way to oversee collection sites is for employers to review every Federal Drug Testing CCF for accuracy and completeness following every testing event.
Employers Review of CCF for Accuracy con’t.

♦ Check the top of the form – Does it say “Federal Drug Testing Custody and Control Form”
Employers Review of CCF for Accuracy con’t.

♦ Look at the box labeled Step 1
  ○ Is all of the information legible?
  ○ Is the correct employer name and address listed?
  ○ Is the correct MROs name, address phone and fax number listed?
  ○ Is the correct employee ID number or SSN listed?
Employers Review of CCF for Accuracy con’t.

Step 1

- Is the DOT box checked? Is the FTA box checked?
- Is the reason for the test marked correctly?
- Is the box for THC, COC, PCP, OPI, AMP checked?
- Is the collection site address indicating the location where the test was actually performed and the site’s telephone number completed accurately?
Employers Review of CCF for Accuracy con’t.

♦ Look at the information provided in Step 2
  ○ Is the temperature between 90 and 100 degrees F marked “yes?”
  ○ Is the “Split” collection box marked?
  ○ Should it have been? If not, did the collector provide an explanation in the Remarks section and is the “Observed” box marked?
  ○ Is there an appropriate comment included in the Remarks Section?
Employers Review of CCF for Accuracy con’t.

- Even though there is no information provided in Step 3 of the form, look at the bottom of the CCF in Step 7 of the Employer’s copy for a faint shadow, imprint, or traces of carbon ink of a date or employee’s initials that indicate the date and initials were written on the label while it was still attached to Copy1 of the CCF rather than on the split specimen bottles.
Employers Review of CCF for Accuracy con’t.

♦ In Step 4, look to see that the collector has legibly printed his or her name, signed it, and listed the correct date and time. If both drug and alcohol tests were performed, make sure the alcohol test was completed first.

♦ Make sure the delivery service name is clearly identified in the box.
Employers Review of CCF for Accuracy con’t.

♦ In Step 5, is the employee’s information provided?
♦ Did the employee sign the form?
♦ If not, is this documented in the Remarks Section of Step 2?
CCF Review Competition
CCF Review Competition

- 2 Teams
- 2 Rounds
- Review 1 CCF For Accuracy Per Round
- The Team That Discovers The Most Errors Wins Round
- Penalty For Incorrect Answers
Round 1
Round 1 - Answers
Round 2
Round 2 - Answers
What To Do When You Find Errors?

- Seek affidavit of correction from the collector who made the error
- Some types of errors can just be fixed by the employer (incorrect testing authority, for example)
ATF REVIEW
ATF REVIEW

IS IT A DOT ATF?

• Check the type on the very top of the ATF
ATF REVIEW

Step 1

- Employee Name
- Employer Name, Address
- DER information
- Reason for test
Step 2

- Employee Signs and Dates the Form
- No Signature = Refusal to Test

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee ________________________________ Date ______/____/____

Print Confirmation Results Here or Affix with Tamper Evident Tape
Step 3

- BAT signs and dates the ATF
- 15 minute wait box checked ONLY if a confirmation test is done
- Test result may be handwritten if device is NOT designed to print
Step 4

- Employee signs and dates if result is 0.02 or higher
- If no signature – the BAT must enter remarks, but this would not be a refusal to test
What To Do When You Find Errors?

- Seek affidavit of correction from the technician who made the error
- They must supply missing information in writing:
  - What the error was; what the correct information should have been; and step the technician has taken to ensure same errors won’t reoccur
- If the BAT used a NON-DOT form, they must provide signed affidavit stating:
  - NON-DOT form contains all necessary and required information
  - That the form was used inadvertently or as the only method to complete the test
  - And steps taken to ensure same error won’t reoccur
RECORDKEEPING AND REPORTING PROCEDURES
**What is it?**

- Employers required to prepare and maintain a summary of its annual testing results
- Employer-based report
- No combined reports

**When is it due?**

- Grantees must submit the online report to FTA by March 15 of each year
- Subrecipients will often have an earlier deadline placed upon them by their recipient to allow for accuracy checks, quality control, etc.
- Usernames and password change every year
• For example, County governments who receive FTA funds from the state and pass it through to a contracted transit provider
• The Pass-Through entity must still submit a DAMIS report, although it will probably be “zeroed out” (no safety-sensitive employees)
• The Pass-Through cannot report its contractor’s test results in its own MIS report
For example, if a County receives FTA funds from the state for transit, but the county is also covered under FMCSA through their public works department.

Do not double report DOT tests... that is don’t report all tests on both the FTA and the FMCSA MIS report.

If you have employees who, for example, are mechanics who work on public work vehicles (FMCSA) and transit vehicles (FTA) you should report the tests for that employee based under the DOT agency for which the majority of safety-sensitive duties are conducted OR under the DOT agency for which they are randomly tested.
RECORDS RETENTION
RETENTION PERIODS

ONE YEAR

- Verified negative drug test results
- Employer copy of the CCF
- Test result from MRO
- Negative alcohol test records (below 0.02 BAC)

TWO YEARS

- Education and training records
- Records related to collection process
- Random selection lists; post-accident testing decision forms; reasonable suspicion determination forms; MRO documents
• Previous DOT employer records request documentation
• Records of previous positive drug and alcohol tests (0.02 or above), test refusals, other violations
• Employee return-to-duty documentation
• Records showing good-faith-effort to obtain records from previous employers, including consent forms
RETENTION PERIODS

FIVE YEARS

- Verified positive drug test results
- Alcohol test results 0.02 or greater
- Refusals to test
- Adulterations
- Substitutions
- Referrals to SAP
- SAP reports
- Follow-up tests and schedules
- Annual MIS reports
CONFIDENTIALITY

- The confidentiality of drug testing information is a critical concern of all employees
- Inadvertent disclosure of the names of employees who were tested and their test results, may result in legal action
- Records must be maintained in a secure location with controlled access (separate from personnel records)
- Employer must define who has access to files and for what purpose
- Access by others should be restricted
- FTA recipients may have access to contractor’s employee-specific information
RECORDS RETENTION

Employers may release D&A info in following circumstances:

- The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records;
- Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
Employers may release D&A info in following circumstances (cont.):

- Records will be released to the National Transportation Safety Board during an accident investigation.
- Information will be released in a criminal or civil action resulting from an employee’s performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
Employers may release D&A info in following circumstances (cont.):

- Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the employer or the employee.
Employers may release D&A info in following circumstances (cont.):

• If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

• In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.
Questions
An accident occurs when a transit system vehicle rear ends a private automobile. The transit vehicle sustains minor damage to the left headlight. The second vehicle is totaled and towed from the scene. There are no injuries.

- Test?
  - Threshold?
Test, Not Test

- While driving east on 5th ave, the transit system van side swipes a pickup truck. The pickup then slams into a parked car. All vehicles involved receive minor damage. A scratch and dent on the van, two dents on the pickup, and a dent on the car. All vehicles can be driven away. No one on the bus is injured, the pickup driver is not injured, however, a person in the car is taken to the hospital by ambulance from the scene.
  - Test?
  - Threshold?
Your transit system bus is perfectly stopped at the transfer station at a marked bus stop location. Passengers are boarding the bus when a dump truck rear ends the bus. The bus and truck receive very little damage. One passenger is killed as a result of the accident.

- Test?
  - Test?
  - Threshold?
Test, Not Test

- While talking on his cell phone, your driver notices the red light just in time to stop. Due to the very rapid application of the brakes, a passenger slid off her seat and hit her head on the seat in front, leaving a three inch cut on her forehead. The driver offers to call an ambulance but the passenger refuses. The next morning you receive a phone call from the passenger that she went to the hospital later that day and is filing a claim against the system.
  - Test?
  - Threshold?
While traveling east on a three lane, one way street. A truck in front of your bus is towing a trailer with a lawn tractor on it. The tie-downs on the tractor fail sending it hurling at your bus. The bus slams into the tractor. The tractor is completely destroyed. The bus receives damage to the entire front end and will have to be towed away.

- Test?
- Threshold?
A passenger on the bus slips and falls while boarding. She is conscious but unable to move. The driver calls dispatch to send an ambulance. When the medics arrive they believe the woman has a broken leg and transport her to the hospital.

- Test?
- Threshold?
You driver is moving west on route 3. He suddenly stops for no apparent reason. He gets out of the bus and starts walking across the road. He is hit by an on-coming truck and killed. The passengers on the bus have no idea why the driver stopped.

- Test?
- Threshold?
Test, Not Test

- You have lost contact with bus #102. You send a road supervisor to find the bus. He finds the bus with the front end stuck in a snow bank. The operator is asleep in the driver's seat. There is about 3,500 dollars damage to a car, a fence, and mail boxes. The car does not have to be towed. The bus needs to be pulled out of the snow bank but has no damage. No one is injured.
  - Test?
  - Threshold?
Your driver has clocked out and is leaving for the day when he backs his truck into one of the buses in the yard. The bus’ fuel tank is ruptured and a fire breaks out. The bus and the truck are total losses. No injuries.

- Test?
- Threshold?
Your mechanic had just finished a brake job on bus 89. On the first run, the driver of bus 89 slams into a vehicle stopped at a red light. All occupants of the vehicle are taken to the hospital. The car is towed from the scene. The driver states that the brakes did not work when applied.

- Test?
- Threshold?
Prescription and Over-the-counter Drugs  
Post-accident Investigation

This Rx/OTC form should be completed anytime the initial accident investigation indicates that prescription or OTC drugs could be a contributing factor to the accident. The information obtained should be kept confidential and is considered a medical report and afforded the same protections.

Do not ask the employee the “reason” they were/are taking a specific drug. However, if the employee volunteers information, this information should be noted.

Date: _____________________________  Time: _____________________________

Accident Location: ________________________________________________________

Accident Identification: _____________________________________________________

Safety-Sensitive Employee: ________________________________________________

Please list all prescription and OTC drugs that you are currently taking or have taken within the past 7 days. Fill out a copy of the Medication Information Form for each of the listed medications.

Prescription Medication

1. _________________________________________________________________
2. _________________________________________________________________
3. _________________________________________________________________
4. _________________________________________________________________
5. _________________________________________________________________
6. _________________________________________________________________
7. _________________________________________________________________

Overt-the Counter Medication

1. _________________________________________________________________
2. _________________________________________________________________
3. _________________________________________________________________
4. _________________________________________________________________
5. _________________________________________________________________
6. _________________________________________________________________
7. _________________________________________________________________

www.rlsandassoc.com
Medication Information Form

1a) Name of medication: ____________________________________________

1b) How much do you take (dosage)? ________________________________

1c) How often do you take it (frequency)? ____________________________

1d) How long have you been taking this medication? __________________

1e) For prescription medications, is the prescription in your name? ______

1f) When was the last time you took a dose? ___________________________
   How much did you take? _______________________________________________________________________

1g) Did you take a dose prior to the last one? ___________________________
   How much did you take? _______________________________________________________________________

1h) How many times have you taken it in the last 7 days? ________________

1i) Did you experience any side effects? If so, describe: ________________
    _________________________________________________________________________________________
    When did the side effects first appear? _________________________________________________________
    When did the side effects disappear? ___________________________________________________________

1j) Have you discussed the use and potential side effects of this prescription/OTC medications with your physician? _______________________
    If yes, when? _____________________________________________________________________________
    Is the doctor aware of your safety-sensitive job duties? ___________________________________________
    Describe: ________________________________________________________________________________
    _________________________________________________________________________________________

1k) Have you discussed the use of this prescription/OTC medication with your pharmacist? ______ If yes, who? _____________________________
    When? ___________________________________________________________________________________
    Is the physician/pharmacist aware of your safety-sensitive job duties? ______________
    Describe: ________________________________________________________________________________
Do you have the medication with you? If yes, write down the information from the label. If not, ask for the following information:

Name of medication (exactly): _____________________________________________
Expiration date: ________________________________________________________
Dosage information (exactly): ____________________________________________
Note any warning labels: _________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

Form: ______ Pill ______ Capsule ______ Gelcap ______ Liquid ______ Other
Place of purchase: _______________________________________________________
Pharmacist name (if applicable): ______________________________ Phone #: ______
Questions?