

Alternate Selections in Random Testing

Individuals selected for random testing will be legitimately unavailable for testing. It is essential to document the reason that a person selected for testing cannot be tested. Federal Transit Administration (FTA) allows alternate selections to be tested only when the entire original random draw list has been expunged. An alternate may replace a name on the original random selection list only when it is certain that the original name drawn cannot be tested through the remainder of that selection period. An alternate may not be selected only because an originally selected name is out the day of the scheduled test but will return prior to the end of the selection period.



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If an employer decides to select alternates as part of its random selection method, it can be done in two ways: 1) having some employees specifically selected and identified as an alternate when the random selections are made, and 2) selecting an alternate during the

random selection period, as needed.

When you discover a person selected for testing will not be available for the remainder of the testing period, it is legitimate to make a random selection of an alternate person to be tested. In both

methods of selecting alternates, the type of test (drug, alcohol, or drug and alcohol) will be the same as the employee they are replacing. Employees selected as an alternate can only be tested as an alternate and only in the order in which they were selected. In some random selection periods, it is probable that some or all of the alternates on the list will not be tested.

The rules for random testing apply to the discrete selection of the alternate person. The selection must be made by a valid scientific method and management has no discretion as to who will be selected and whether that person, once selected, will actually be tested.

FTA allows alternate selections and testing. The agency recommends, if possible, that extra names be drawn in the first couple of selection periods to ensure that the minimum 25 percent/10 percent requirement is met, eliminating the necessity for alternate draws. ●

Alternative Methodologies for Drug Testing

Some industry groups believe the U.S. Department of Transportation (DOT) should allow the use of alternative specimen drug tests – hair, oral fluids, and sweat samples – to detect the use of controlled substances as an alternative to testing urine. The DOT’s drug testing policy is unchanged: The DOT continues to require testing of urine specimens only.

All testing must have Health and Human Services (HHS)-approved testing protocols and HHS laboratory certification procedures in place. Those HHS testing protocols and certification procedures are currently exclusive to urine testing. ●

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U.S. Department of Transportation
Federal Transit Administration

Post-Accident: What is the “Best Information Available”?

In FTA post-accident testing, a misconception exists regarding the determination of whether or not to order a test. The FTA regulations require a responding supervisor or authorized company official, as soon as practical, to use the best information available at the time of the decision to order a post-accident test under FTA authority.

What Does “Best Information Available” Actually Mean?

This term refers to any and all information observed or learned during the on-site portion of an accident investigation. This includes the operator’s account as well as input from passengers, law enforcement, witnesses, and forensic evidence concerning road conditions, traffic configurations, and vehicle positioning. The information available at the time is what should be considered in the post-accident determination, regardless of what facts may later emerge. In FTA-defined accidents,

there are often instances when company officials learn of circumstances hours, days, or even weeks after an accident. Had those facts been known at the time of the

“Remember, your obligation is to make a decision. You are not obligated or expected to weigh all eventual facts and circumstances that later arise.”

accident investigation, it would have altered the determination. Facts that emerge later could discount an employee who was not completely disregarded as a contributing factor, during the initial investigation. If you, as a company official, find yourself

saying “Had I known that, I would have never tested the driver” or “Had I known that, I would have certainly tested the driver,” you have done nothing wrong.

Remember, your obligation is to make a decision. You are not obligated or expected to weigh all eventual facts and circumstances that later arise. Further, your determination to order a test should not be delayed while you await further post-accident information. For example, if an onboard camera is easily viewable at the scene, it may be used to determine whether or not to test. If the camera’s footage is not readily viewable or will delay the determination, it should not be factored as it will delay the test.

Supervisors and company officials should remember that the FTA will support their decision either way, as long as the official clearly documents their decisions, and those decisions are based on the best information available at the time the decision was made. ●

ODAPC – Great Source of Information and Technical Assistance Materials

The Office of Drug and Alcohol Policy and Compliance (ODAPC) advises the Secretary of the Department of Transportation on national and international drug testing and control issues and is the principal advisor to the Secretary on rules related to the drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. ODAPC also provides free technical assistance materials that are

helpful to any employer that is required to have a DOT-compliant drug and alcohol testing program. Some of the more popular materials are:

- Current List of HHS-Certified Laboratories
- An Employer Handbook (What Employers Need to Know About Drug & Alcohol Testing)
- An Employee Handbook (What Employees Need to Know About Drug & Alcohol Testing)

- Mock Collection Video
- DOT’s 10 Steps to Collection Site Security and Integrity
- Alcohol Testing Form (ATF) and Federal Custody and Control Form (CCF) suppliers

ODAPC also provides DOT regulatory interpretations, technical assistance, and information to the public. Go to <http://www.dot.gov/ODAPC> for a full list of materials and services. ●

Is Your EBT Compromising Your Compliance?

Part of a covered employer's responsibility is to provide oversight to its service agents. When reviewing a service agent who provides breath alcohol testing services for a DOT alcohol testing program, the employer must ensure the service agent's Evidential Breath Testing (EBT) device is approved and listed on the National Highway Traffic Safety Administration's (NHTSA's) Conforming Products List (CPL). The EBT device must meet the following specifications: generates a printout with all of the information required by the DOT regulation, is maintained and calibrated consistent with the manufacturer's Quality Assurance Plan (QAP), and meets all DOT requirements specified in §40.231 (See article in Issue 52 of the FTA Drug and Alcohol Regulation Updates newsletters). As such, Drug and Alcohol Program Managers (DAPMs) should conduct on-site reviews of the EBT(s) used by their service agents and should review the ATF for every test conducted.

In addition to reviewing ATFs while on site, the DAPM should also ask to see the QAP to ensure the service agent knows of its whereabouts and content. The DAPM should also inspect the device's calibration log to ensure it is operating within the QAP specified tolerance levels. The log inspection should be deliberate and thorough to ensure quality assurance standards are being met.

The following are common problems that may occur with EBT devices:

EXPIRED BATTERIES. In some cases, EBT batteries will die and the device will reset to default settings, making the internal clock and date incorrect.

RECOMMENDED FIX: CREATE A SCHEDULE. Be proactive and schedule battery changes before they die. Add a reminder to annual calendars to do this at least once a year. For example, replace the batteries when clocks are changed to Daylight Savings Time.

EBT CLOCK NOT UPDATED WITH SEASONAL TIME CHANGES. Make sure EBT clocks and dates are changed every spring and fall with Daylight Savings Time. Also, be aware of leap years.

Every time the internal clock is changed, also verify the date has not been reset or that other essential information has not been replaced with default values.

RECOMMENDED FIX: ADD SEASONAL TIME CHANGE REMINDERS. Add reminders to annual calendars at the beginning of each year. DAPMs should also schedule a reminder to contact service agents to ensure the time changes have been addressed. *(continued on next page)*



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LITTLE ROCK

NINTH ANNUAL
FEDERAL TRANSIT ADMINISTRATION
DRUG & ALCOHOL PROGRAM
NATIONAL CONFERENCE

APRIL 15 – 17, 2014

<http://transit-safety.fta.dot.gov/DrugAndAlcohol>



The FTA is hosting the 9th Annual Drug and Alcohol Program National Conference on April 15-17, 2014 in Little Rock, Arkansas. This FREE three-day Conference will provide attendees with a substantial background on 49 CFR Part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 49 CFR Part 655 (Prevention of Alcohol Misuse and Prohibited Drug Use

in Transit Operators). The conference will prove invaluable for those both new and old to the transit industry with sessions tailored to both groups. Please see our website for the agenda, course descriptions and to register at: <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/NatConf>.

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Is Your EBT Compromising Your Compliance?

EBT NON-DOT CONFIGURATION.

EBTs on the CPL may have different configurations depending on their primary use (i.e., law enforcement, hospitals, criminal justice system, DOT). It is imperative that all service agents who perform DOT testing ensure their EBT device performs all required functions. Devices that do not meet these standards may not be used.

RECOMMENDED FIX: ENSURE EBT IS CONFIGURED FOR DOT TESTING.

DAPMs should ensure that service agents use equipment listed on the CPL (those without asterisks), and the equipment meets all requirements specified in §40.231.

BAT TRAINING IS EBT

SPECIFIC. Once Breath Alcohol Technicians (BATs) have completed the

“In addition to reviewing ATFs while on site, the DAPM should also ask to see the QAP.”

prerequisite qualification training and demonstrated proficiency on a specified make and model of EBT, they can only be a BAT on the same make and model.

RECOMMENDED FIX: COMPARE CREDENTIALS WITH EBT.

Compare BAT proficiency demonstration credentials with the make and model of EBT being used. Make sure BAT credentials are up-to-date and have not exceeded the five-year timeline. ●

Drug and Alcohol Training Schedule

The FTA will sponsor the following training sessions:

FTA Substance Abuse Training Session. This one-day, high-level seminar provides covered employers with key information to help them comply with drug and alcohol testing regulations (49 CFR Parts 655 and 40). This free, one-day training is available on a first-come, first-served basis and is led by FTA Drug and Alcohol Audit Program Team Leaders.

| Host | City/State | Training Location | Date |
|---|--------------------|---|-------------------|
| City of Jefferson | Jefferson City, MO | Jefferson City Police Dept. 401 Monroe Street Jefferson City, MO 65101 | 1/22/14 |
| Mississippi DOT | Jackson, MS | Mississippi DOT 401 North West Street Jackson, MS 39201 | 2/06/14 |
| Choctaw Nation of Oklahoma | Durant, OK | Durant Choctaw Casino RV Park, 3650 Enterprise Blvd., Durant, OK 74701 | 2/11/14 |
| Miami Dade Transit | Miami, FL | TBD | 3/20/14 |
| Central Florida Regional Transportation Authority | Orlando, FL | Central Florida Regional Transportation Authority, 2475 Lynx Lane, Orlando, FL 32804 | 3/25/14 |
| West Virginia Division of Public Transit | Charleston, WV | Embassy Suites 300 Court Street Charleston, WV 25301 | 4/22/14 |
| VIA Metropolitan Transit | San Antonio, TX | San Antonio Office of Emergency Management (SAOEM) Emergency Operations Center (EOC) 8130 Inner Circle San Antonio, TX 78235 | 5/7/14 and 5/8/14 |

For more information and to register, go to: <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training>.

If you are interested in hosting a one-day training session, please contact the FTA/Volpe Drug and Alcohol Project Office at: fta.damis@dot.gov or call (617) 494-6336 for more information.

The Transportation Safety Institute Training Schedule

FTA's strategic training partner, the Transportation Safety Institute (TSI) will offer the following upcoming courses:

- Substance Abuse Management and Program Compliance for (2½ days). This 2½-day course for DAPMs and DERs shows how to evaluate and self-assess an agency's substance abuse program and its compliance with FTA regulations.
- Reasonable Suspicion Determination for Supervisors (half day seminar). This half-day seminar educates supervisors about the FTA and DOT regulations requiring drug and alcohol testing of safety-sensitive transit workers and how to determine when to administer reasonable suspicion drug and/or alcohol tests.

There is a small attendance/materials fee. For more information, please call (405) 954-3682. To register, go to: <http://www.tsi.dot.gov> or <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training>.

TSI Training Schedule

| Title | Location | Date |
|--|-----------------|-------------------|
| Substance Abuse Management and Program Compliance | Spokane, WA | 3/4/14 – 3/6/14 |
| Substance Abuse Management and Program Compliance | Baton Rouge, LA | 4/1/14 – 4/3/14 |
| Reasonable Suspicion Determination for Supervisors Seminar | Baton Rouge, LA | 4/4/14 |
| Substance Abuse Management and Program Compliance | Rockford, IL | 5/20/14 – 5/22/14 |
| Reasonable Suspicion Determination for Supervisors Seminar | Rockford, IL | 5/23/14 |
| Substance Abuse Management and Program Compliance | Lynchburg, VA | 6/24/14 – 6/26/14 |
| Reasonable Suspicion Determination for Supervisors Seminar | Lynchburg, VA | 6/27/14 |

* *Schedule Subject to Change*

Early Morning and Late Night Alcohol Tests – Part 2: *How to Accomplish Them*

In Part 1 of this article (Newsletter Issue 52), the importance of early and late night alcohol testing was presented. In this second part, the practical side of the requirement will be outlined: how to ensure these tests are performed.

Early morning and late night alcohol testing has several obstacles. Assuming operations and management have committed fully to the goal, the two biggest hurdles are the collection site's hours and work day limitations of the DAPM.

An employer utilizing a collection site that does not operate outside of standard administrative hours (8:00 a.m. to 5:00 p.m.) may find it difficult to spread testing throughout all hours of operation, if no

other alternatives exist. In the summer 2012 FTA Drug and Alcohol Newsletter (Issue 49), an article titled *Weekend and Off-Hours Testing – Creative Solutions* described in detail a number of techniques and approaches to accomplish testing outside of normal business hours.

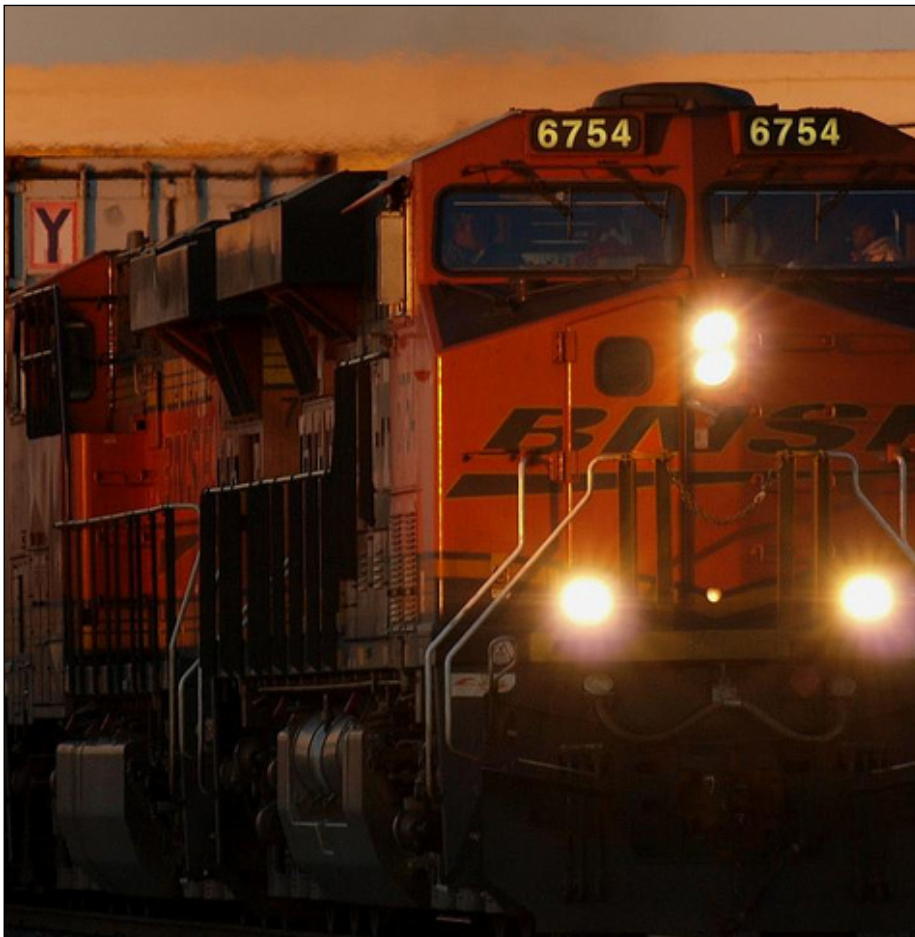
Since then, transit systems have reported the most success with one particular technique described in the article. Scheduling off-hours tests far in advance (as soon as possible following receipt of the selection list) allows a wider application of random testing, especially for alcohol tests. By making early arrangements with the collection site (or a single BAT/STT), DAPMs are able to accomplish their

off-hours alcohol tests with increasing ease. A collection site does not need to even open its doors for an alcohol test to be accomplished. A trained BAT/STT may bring the necessary equipment to the transit system and conduct the alcohol test in any area which affords aural and visual privacy. If no breath-testing equipment is available, a technician may use saliva testing strips to conduct the tests, so long as an approved EBT device is available should a confirmation test be required.

Most collection sites and BATs/STTs have told the FTA they do have contingency plans for off-hours testing. While the majority of collection sites attach a fee to the service, the availability for testing in the early morning and late at night is worth a small premium. The ability to test whenever safety-sensitive functions are performed is a requirement of the program.

One aspect of off-hours testing often overlooked is if safety-sensitive duties are being performed during early morning and late night shifts, making random alcohol testing necessary, there clearly exists the possibility that post-accident alcohol and drug tests would also be required during this time frame. If a contingency plan exists for occasional or rare post-accident testing during off-hours, occasional random alcohol testing during off-hours should be possible.

The vast majority of DAPMs have reported planning and making arrangements well before the testing is needed has allowed them to successfully conduct and complete random alcohol tests outside of normal business and peak-service hours. ●



(Credit: flickr.com/kphaubrich)

Administrative vs. MRO-Produced Refusals

DOT describes behaviors that constitute a refusal to test in 49 CFR Part 40, Sections 40.191 (drug tests) and 40.261 (alcohol tests). First, “administrative” refusals occur when the donor explicitly refuses to submit to testing when notified, fails to appear for testing within a given time frame, fails to remain at the collection site until testing is complete, or refuses to sign Step 2 of the DOT ATF.

The second refusal is the “procedural” refusal, which occurs when the employee fails to cooperate with the collector. This could be exhibited by the donor’s failure to wash their hands when instructed to do so, failure to permit monitoring or observation, admission to the collector of adulteration or substitution of the specimen, or the possession of a prosthetic device.

The final category is “medical” refusals, as determined by the MRO’s analysis

of the testing event. These include the submission of an adulterated or substituted test, admission to the MRO of adulteration or substitution of the specimen, failure to undergo a medical evaluation, or a physician’s determination that an employee could have physiologically provided a full specimen during a three-hour “shy bladder” testing event, but did not.

In reviewing these refusals, the central question for the DER is: Who is the final “decision maker” for the refusal, and how is the refusal documented?

For procedural and medical refusals, the answer is usually simple: The MRO makes the final determination. While the collector is the one who documents obstructive behavior, it is not an official refusal until the MRO certifies it as such. The collector must still call the DER to notify them of the refusal, and the DER

must remove that employee from safety-sensitive duties while awaiting the official MRO result.

In the case of an administrative refusal, it is the DER who determines a refusal has occurred.

The DER must clearly document their decision to deem an employee’s behavior as a “refusal to test” and, in cases where the DER determines there was not a refusal, they must indicate their reason for ruling so. It is important to note the MRO, through training and certification, is required to have professional knowledge of all behaviors constituting a refusal to test. Because the MRO is considered by DOT to be the “gatekeeper” for the drug-testing process, DOT encourages any DER to consult with the MRO at any time you feel the need for assistance in making a refusal determination. ●

Dispatcher/Scheduler/Call-Taker: When Do You Consider Employees Safety-Sensitive?

Employers covered under the FTA drug and alcohol testing regulation (49 CFR Part 655) must identify employees who perform safety-sensitive functions. These employees must also be covered under their employer’s policy and included in the employer’s FTA drug and alcohol testing program. Employers often have a myriad of employee job classifications, and each is challenged by determining which of their job classifications meet the definition of safety-sensitive. As a point of clarification, the regulation does not define job classifications or job titles as safety-sensitive positions, rather it defines what constitutes a safety-sensitive function (§655.4). Even though it is a subtle distinction, employers must

distinguish between title and function to correctly identify employees covered under the regulation who are subject to FTA drug and alcohol testing.

Many transit agencies use the generic term “dispatcher” to refer to employees who are call-takers, schedulers, radio monitors, driver supervisors, and/or employees directing and/or controlling the movement of drivers. The terms may be interchangeable within an organization even though employees may perform all or a subset of these functions. FTA has provided clear direction when addressing this category of employee stating that call-taking, scheduling, monitoring, or even supervising functions are not considered safety-sensitive. Of the job functions

described above, only the “controlling of movement” is considered a safety-sensitive function.

Even with this direction, FTA acknowledges there could be a wide variety of ways in which these functions can be performed from employer to employer, and there cannot be one definitive answer about what constitutes a safety-sensitive function within an agency. As a result, FTA allows the employer latitude in determining which of its employees are considered to “control movement.” Ultimately, each employer is responsible for making their own determinations about who is safety-sensitive and who is not. ●

Common Mistakes Found on Custody and Control Forms (CCF)

| Most Common Problems | Regulatory Requirement | Source |
|--|---|---|
| Collection steps are performed out of order | <p>Correct Order of Steps</p> <p>Step 1</p> <p>Step 2</p> <p>Step 3</p> <p>Step 5</p> <p>Step 4</p> | <p>Back of CCF, Page 5</p> <p>Instructions for Completing Drug and Alcohol Custody and Control Form</p> |
| Bottle seals initialed and dated while on the CCF | <p>“[the collector], not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.” “[the collector], not the employee, must then write the date on the tamper-evident bottle seals.”</p> | <p>40.71(b)(5) and 40.71(b)(6)</p> |
| Donor required/allowed to date the bottle seal | <p>“You [the collector], not the employee, must then write the date on the tamper-evident bottle seals.”</p> | <p>40.71(b)(6)</p> |
| Incorrect DOT agency is checked on CCF (usually FMCSA instead of FTA) | <p>“As an employer, or an employer’s service agent, you must ensure the collector has the following information when conducting a urine specimen collection for you. (g) The DOT agency which regulates the employee’s safety-sensitive duties</p> | <p>40.14</p> |
| No method to consistently and accurately measure 40 ounces in shy bladder scenario | <p>“As the collector, you must do the following: (2) Urge the employee to drink up to 40 ounces of fluid.”</p> | <p>40.193(b)</p> |
| Collector does not explain the basic collection procedure or show the employee the instructions on the back of the CCF | <p>“Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.”</p> | <p>40.61(e)</p> |

Section 40.209(a) states: “As a collector, laboratory, MRO, employer, or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart.

SAMHSA Releases Report on Energy Drinks

The Substance Abuse and Mental Health Services Administration (SAMHSA) recently provided updated information on public health concerns involving the consumption of energy drinks.

Energy drinks are flavored beverages with high amounts of caffeine that typically include other additives, such as guarana, a plant product containing concentrated caffeine. These beverages provide high doses of caffeine that stimulate the central nervous and cardiovascular systems. The total amount of caffeine in a can or bottle of energy drink varies from about 80 to more than 500 milligrams (mg), compared with about 100 mg in a 5-ounce



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cup of coffee or 50 mg in a 12-ounce cola. Research suggests that certain additives may compound the stimulant effects of caffeine.

Energy drinks were originally marketed to appeal to youths. Marketing suggests benefits such as increased energy and stamina, weight loss, and enhanced physical and mental performance. More concentrated forms of energy drinks, known as energy shots, have become increasingly popular among a wider range of age groups, including older adults.

A growing body of scientific evidence documents harmful health effects of energy drinks. Research on college students has shown that links exist between energy drink consumption and problematic

behaviors such as marijuana use, sexual risk-taking, fighting, smoking, drinking, and prescription drug misuse. In one study, bar patrons who consumed alcohol mixed with energy drinks were three times more likely to leave a bar highly intoxicated, and were four times more likely to intend to drive while intoxicated than those who did not consume alcohol mixed with energy drinks. This latter finding may be due to the higher levels of caffeine found in energy drinks masking the symptoms associated with being intoxicated (e.g., feeling lethargic).

The complete report can be found on the SAMHSA website at: <http://www.samhsa.gov/data/2k13/DAWN126/sr126-energy-drinks-use.htm>. ●