

## Public Interest Exclusion (PIE) Order Issued

The U.S. Department of Transportation (U.S. DOT) issued a Public Interest Exclusion (PIE) decision and order under the Procedures for Transportation Workplace Drug and Alcohol Testing Programs excluding DOT-regulated employers and their service agents from using the drug and/or alcohol testing services of service agent Elizabeth “Betsy” Pope d/b/a Eastgate Laboratory Testing in Tennessee, and all other places it is doing business.

- The duration of this PIE is 5 years. This is the maximum sanction permitted under Part 40.

- The Federal Motor Carrier Safety Administration (FMCSA) brought this PIE action based upon a criminal conviction that resulted from the

### **Ms. Pope wrongfully used the signature of an MRO to certify results.**

Medical Review Officer (MRO) services Ms. Pope provided to a DOT-regulated trucking company through

her company, Eastgate Laboratory Testing. Ms. Pope was not a licensed physician (a Doctor of Medicine or Osteopathy), and therefore not qualified to act as an MRO.

- The U.S. DOT’s Office of the Inspector General conducted a criminal investigation revealing Elizabeth “Betsy” Pope d/b/a Eastgate Testing Laboratory, served as a third-party administrator to oversee FMCSA drug testing for a trucking company. In that capacity, Ms. Pope wrongfully used the signature of an MRO to certify results, while the MRO had not worked for the company

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## Collectors and Refusal Documentation



Photo credit: iStockphoto

During the testing process, collectors occasionally encounter disruptive, uncooperative, or obstructive donors whose actions or statements make clear they are refusing to participate in the test. Per §40.261(c) and §40.191(d), collectors are required to document and record actions they deem to be a refusal to test. This is usually done in the remarks section of the Alcohol Testing Form (ATF) (under Step 3) or Custody and Control Form (CCF) (under Step 2). Collectors are also required to advise the donor that failure to comply is a refusal to test.

Collectors often simply write “Refused” in the remarks section to indicate unacceptable behavior has

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U.S. Department of Transportation  
Federal Transit Administration

# No Need for Redundant Pre-Employment and Return-to-Duty Tests



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Occasionally, there are cases in which both a DOT pre-employment and return-to-duty negative drug test result is required, prior to the performance of covered duties. Typically, DOT and FTA do not require redundant testing. Instead, only the more stringent test need be performed, which is the directly observed return-to-duty drug test. The employer must maintain in the employee's secure file a memorandum providing details on the use of the negative return-to-duty test as evidence pre-employment testing requirements are being met.

For the purposes of MIS reporting, employers should report the results of only the test(s) performed. Do not double-report a single return-to-duty test as both a return-to-duty test and a pre-employment test. ●

**“Typically, DOT and FTA do not require redundant testing.”**

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## Prior Employer Testing Histories

When conducting a previous employer check per 40.25, current employers are required to contact all DOT-regulated employers where the employee performed a safety-sensitive function during the two years before the date of the employee's application (or transfer). These prior employers would then provide the

information specified in 40.25(b), including alcohol tests with a concentration of 0.04 or higher, verified positive drug tests, refusals to be tested, other violations of DOT agency drug and alcohol testing regulations and, if applicable, documentation related to the return-to-duty process.

Note: It is not a violation of Part 40 or DOT agency rules if you provide, in addition to, information about the employee's DOT drug and alcohol tests obtained from former employers that dates back more than two years ago. ●

# Securing Donor Items for DOT Collections

Prior to entering the privacy enclosure, each employee must be directed to empty and display the contents of their pockets to ensure no items are present which could be used to adulterate a specimen. If there is nothing that could be used to adulterate a specimen, the employee may place the items (for example, business cards, change or a comb) back into their pockets, or place the items in a location agreed upon with the collector. Employees must be directed to leave behind any briefcase, purse, cellphone, or other personal belongings they might have brought to the collection site.

In order to protect their property, an employee must always be allowed to keep their wallet, though the collector may examine the wallet first to determine if it contains contraband. Additionally, if the employee asks for a receipt for any belongings left with the collector, one must be provided.

Items removed from the employee's pockets must be examined by the collector to determine if there are any materials present that could be used to tamper with a specimen. If an item is found which appears to have been deliberately brought



Photo credit: iStockphoto

with the intent to adulterate the specimen, a directly observed test is required. However, if an item could be used to tamper with a specimen appears to have been inadvertently brought to the collection site, then the item is simply secured and a normal collection is conducted. For example, a donor found to have a bottle of eye drops or a trial-sized bottle of mouthwash may have inadvertently brought these items. However, a donor who presents a plastic bottle filled with urine

suggests intent to tamper, which would require a test under direct observation.

Any item, regardless of its intended use, brought to the collection site, should be returned to the employee at the end of the collection. Items appearing to have been brought intentionally to tamper with a specimen must be described in detail in an attached memorandum. Copies of this memo must be sent to the MRO and the employer. ●

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## Public Interest Exclusion (PIE) Order Issued *(Continued from cover)*

since June 2005. Specifically, the NOPE cited a guilty plea that Ms. Pope entered in the United States District Court for the Western District of Pennsylvania and the resulting “conviction for mail fraud relating to [Ms. Pope’s] forgery of an MRO’s signature on commercial motor vehicle operator drug tests.”

- In accordance with the terms of the U.S. DOT’s Decision and Order and per 49 CFR §40.403(a), Elizabeth “Betsy” Pope d/b/a Eastgate Laboratory Testing, has been required to directly notify

each of the affected DOT-regulated employer clients in writing about the issuance, scope, duration, and effect of the PIE. In addition, the U.S. DOT has notified employers and the public about this PIE by publishing a “List of Excluded Drug and Alcohol Service Agents” on its website at: <http://www.transportation.gov/odapc/pie>.

- As required by 49 CFR §40.401(d), the U.S. DOT will publish a Federal Register notice to inform the public that Elizabeth “Betsy” Pope d/b/a

Eastgate Laboratory Testing is subject to a PIE for 5 years. After August 18, 2020, Elizabeth “Betsy” Pope d/b/a Eastgate Laboratory Testing will be removed from the list and the public will be notified, also in accordance with 49 CFR §40.401(d).

- A full copy of the U.S. DOT’s Decision and Order can be found at: [https://www.transportation.gov/sites/dot.gov/files/docs/PIE\\_Decision\\_POPE\\_Eastgate\\_Laboratory\\_Testing.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/PIE_Decision_POPE_Eastgate_Laboratory_Testing.pdf). ●

# HHS Proposes Major Changes to Drug Testing Procedures

During the month of May, HHS published three important notices that could potentially impact the U.S. DOT's drug testing program in the future. Even though the proposed revisions are currently limited to federal workplace testing, the U.S. DOT must follow the scientific guidelines of HHS for DOT-regulated drug testing. Thus, any final rule issued by HHS will be taken into consideration in subsequent U.S. DOT rulemaking. Given this relationship, any employers, employees, or service agents covered under the U.S. DOT drug testing program are encouraged to be aware of the important HHS-proposed modifications and comment as appropriate.

On May 15, 2015, HHS published two notices proposing revisions to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs." The proposed revisions were published in the Federal Register, Volume 80, No. 94, pages 28054–28100 and 28101–28151.

First, HHS proposes to establish scientific and technical guidelines for the inclusion of oral fluid (saliva) specimens in the Mandatory Guidelines. The proposed revisions

establish standards and technical requirements for oral fluid collection devices, initial oral fluid drug test analytes and methods, confirmatory oral fluid drug test analytes and methods, processes for review by a MRO, and requirements for federal agency actions. The Federal Register notice

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can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-15/pdf/2015-11523.pdf>.

Second, HHS proposes to revise drug testing procedures for urine testing including the initial and confirmatory drug tests analytes and methods for urine testing, cutoff levels for adulterated specimens, and the requalification requirements for MROs. Additionally, the proposed revisions will allow federal agencies to test for additional Schedule II of the Controlled Substances Act prescription medications (oxycodone,

oxymorphone, hydrocodone, and hydromorphone) in federal drug-free workplace programs. The Federal Register notice can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-15/pdf/2015-11524.pdf>.

On May 29, 2015, HHS published a notice requesting information regarding the

use of hair specimens for drug testing. The notice was published to solicit input from the general public and industry stakeholders regarding a variety of issues related to hair specimen drug testing, including the hair specimen, its collection, specimen preparation, analytes, cutoffs, specimen validity, and initial and confirmatory testing. HHS is specifically concerned about the scientific methodology and forensic defensibility of hair testing. The Request for Information can be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-29/pdf/2015-12743.pdf>. ●

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## **Collectors and Refusal Documentation** *(Continued from cover)*

occurred. Since in many cases it is the employer who makes the official 'refusal' designation and is responsible for assessing the documentation provided by the collector, a detailed and descriptive statement of events is necessary. See "Refusal Decision Makers" in Issue 55 of the FTA Drug and Alcohol Regulation Updates for more information on refusal stakeholders.

Short but descriptive narratives are essential, such as "donor did not provide a

sufficient specimen and left the collection site before three hours elapsed," "donor refused to empty their pockets" or "donor admitted their specimen was diluted with toilet water." Collectors must not write only an employee "refused to test," since this is too vague.

By making genuinely descriptive remarks, collectors assist the MRO, Designated Employee Representative (DER), or reviewing physician in their decision-making responsibilities.

Documentation of the events resulting in termination of the testing process is required to be included on the ATF and CCF. However, as the remarks section is relatively small, it is a good idea (but not required by Part 40) to include a supplemental account on a separate paper describing the circumstances, conversations, and any other information, and transmit documentation along with the relevant copies of the ATF and CCF. ●

# Part 40 Amended to Include eCCF



Image credit: Volpe staff

On April 15, 2015, the U.S. DOT amended Part 40 to expand the definition of the CCF used in the DOT drug testing process to include electronic versions. The CCF is used to identify the specimen and document its handling throughout the collection and laboratory result reporting process. The CCF ensures the specimen results are actually those of the tested employee. The eCCF requires the same information and distribution as the paper version. The only change is the mechanism for collection and transmission of the required information.

Since congress directed DOT to incorporate the scientific and technical

guidelines and subsequent amendments approved by the Department of Health and Human Services (HHS) for controlled substance testing, the amendment was required to make Part 40 consistent with the HHS mandatory guideline changes approved on May 28, 2014. The amendment modifies §40.3 to expand the definition of the CCF to include all versions of the form, and §40.45 explains the five part form can be paper or electronic. Part 40.73 was modified to require only entities following a detailed plan and standard operating procedures approved by the National Laboratory Certification Program (NLCP) can use eCCFs.

Use of electronic forms promises to streamline the collection process and reduce errors in the collection and billing processes. However, while use of eCCFs is allowed, it is not required. Employer Drug and Alcohol Program Managers (DAPMs) are encouraged to meet with their collection sites to determine if eCCFs will be used, and if so, the process to be used, including transmittal of the employer and employee copies of the form. DAPMs should also note electronic signatures are only allowed on eCCFs, but are not allowed anywhere else in the testing process. ●

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## FAA Creates DER Video Series

The Federal Aviation Administration's (FAA) Drug Abatement Division created a video series for drug and alcohol program DERs. The videos address common scenarios that DERs encounter and proper responses to ensure compliance is not compromised. The videos also include best practices to help DERs ensure compliance.

The video series entitled "Doing Everything Right" is made up of five videos: pre-employment, random testing, return-to-duty process, the collection process, and employee education. The videos can be downloaded by going to [http://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/drug\\_alcohol/der\\_awareness/](http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/der_awareness/) or use the search function at [www.faa.gov/](http://www.faa.gov/), and enter the name of the

video. The website also has associated brochures and posters available for download.

Please note the information provided is in the context of the airline industry, and as such has references to the FAA drug and alcohol testing regulations. However, the information provided for DERs is transferable across all modes and may be useful within an employer's internal DER training program. ●

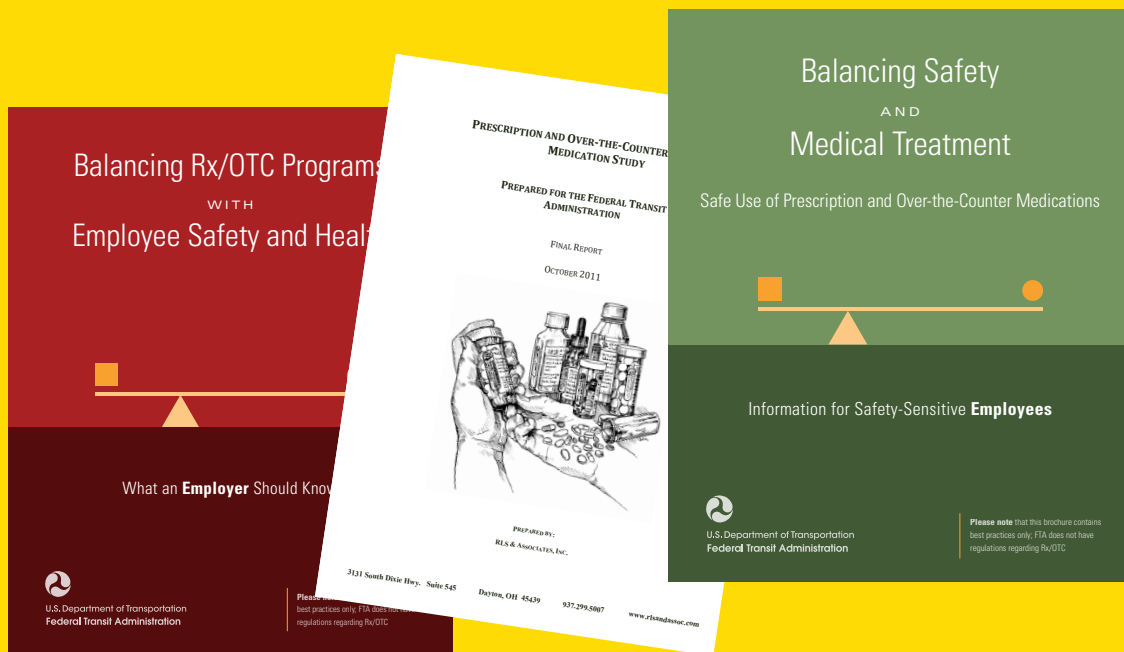
# FTA Issues Series of Rx/OTC Brochures

FTA has issued a series of educational brochures on prescription and over-the-counter (Rx/OTC) medications to explain their impact on transit system safety to employers and safety-sensitive employees. The brochures represent best practice only, as the FTA does not currently have regulations regarding Rx/OTC medications.

The employer brochure provides guidelines on developing an Rx/OTC program balancing employee safety and health, including the development of policies, employee education, and confidentiality. The employee brochure contains information on the general use of Rx/OTC medications by safety-sensitive employees—in particular, those medications

which have the potential to impair driving—and questions to ask of prescribers and pharmacists.

The brochures are available to download from the publications menu on the FTA website at <http://transit-safety.fta.dot.gov/publications/Default.aspx>.



## Possession of CDL Not Automatically Safety-Sensitive

An FTA-covered employee is a person who performs, or will perform a safety-sensitive function for any entity subject to Part 655. Safety-sensitive functions are defined in Section 655.4 “Definitions.” Though an employer may use its own terminology to describe job categories, it

is the actual performance of any of the functions listed under the definition of “safety-sensitive function” which determines if an employee is safety-sensitive and therefore an FTA-covered employee. Possession of a Commercial Driver’s License (CDL) is not a safety-sensitive

function nor does it automatically result in the designation of FTA-covered employee. Possession of a CDL by itself may subject employees and their employers to FMCSA drug and alcohol testing regulations, but not to FTA’s regulations.

## Drug and Alcohol Training

FTA will be sponsoring the following upcoming training sessions to provide essential information to facilitate covered employers' compliance with the drug and alcohol testing regulations (49 CFR Part 655 and Part 40). These free, one-day trainings are available on a first-come, first-serve basis and are led by the FTA Drug and Alcohol Program and Audit Team Members.

### Cost \$0

Host	City/State	Training Location	Date(s)
Lee County Transit	Ft. Myers, FL	Lee County Transit 3401 Metro Parkway Ft. Myers, FL 33901	11/5/15
Port Arthur Transit	Port Arthur, TX	Port Arthur Transit 344 Procter Street Port Arthur, TX 77640	11/5/15

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, contact the FTA Drug and Alcohol Project Office at [fta.damis@dot.gov](mailto:fta.damis@dot.gov) or (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. 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. 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>.

## Save the Date!

The 11th Annual FTA Drug and Alcohol Program National Conference will be held **March 22–24, 2016** in Sacramento, CA at the Hyatt Regency Sacramento. Please visit our website in the fall for more information on the conference and to register!

Go to: <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Default.aspx>

## FTA Drug and Alcohol

# Word Scramble

Practice Space:

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*Please unscramble the words below*

1. ioiepstv
2. oestnnc
3. emnepahaimt
4. valitiedn
5. itrstan
6. ipcssnuio
7. taysf
8. moanrd
9. erteoinn
10. ieoacnlmpc

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### *Regulation Updates* is Produced By:

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Washington, DC 20590

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## SAP Referral Required for Pre-employment Positives/Refusals

Part 40.287 requires each employee who has a positive drug test, a breath alcohol concentration of 0.04 or greater, or refuses a test be provided with a list of readily available qualified Substance Abuse Professionals (SAPs)—including names, addresses, and telephone numbers. This list can be provided directly by the employer, or through a C/TPA or other service agent.

Employers are reminded this information must be provided to any applicant for a safety-sensitive position who fails or refuses a DOT pre-employment test. If SAP referrals are sent through the postal service, it is a best practice to send the letter as certified mail. This provides a source of documentation and assurance the applicant has received the letter. ●



Credit: Wikipedia.org/Stan Shebs