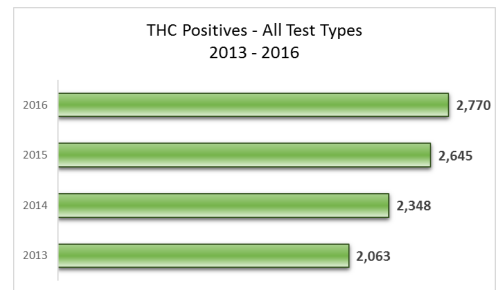
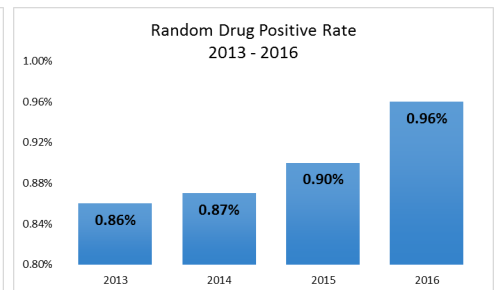
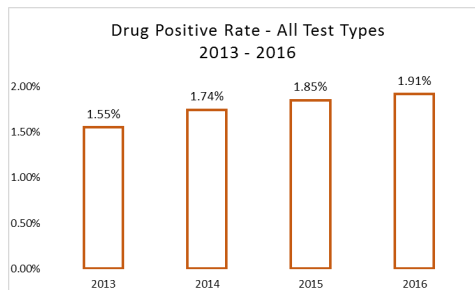


## 2016 Drug and Alcohol MIS Results

2016 FTA drug and alcohol testing results have been compiled from the annual MIS submissions. The random drug positive rate and the drug positive rate for all test types continue to increase. The random drug positive rate is at its highest level since 2004. The number of marijuana positive test results also continues to rise, increasing by 34% in three years.



## Alcohol Results Less Than 0.04 Are Not DOT Violations

FTA has found employers' drug and alcohol testing policies frequently misstate FTA's prohibitions against alcohol misuse. Section 655.31(b) prohibits a covered employee from performing or continuing to perform a safety-sensitive function while having an alcohol concentration of 0.04 or greater. Commonly, employer policies incorrectly convey this FTA prohibition as occurring at alcohol concentrations of 0.02 or greater.

Employers must temporarily remove an employee who has an alcohol concentration of 0.02 to 0.039 from performing safety-sensitive functions, however the employee in

this case has not violated FTA's Rule, provided they ceased using alcohol at least four hours prior to beginning safety-sensitive duty.

**“An employee who has an alcohol concentration of 0.02 to 0.039 has not violated FTA’s Rule.”**

Accordingly, policies must inform covered employees they are prohibited from performing or continuing to perform covered functions while having an alcohol concentration of 0.04 or greater. Please note, an employer may take action against an employee having an alcohol concentration of less than

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U.S. Department of Transportation  
Federal Transit Administration

0.04 under their own authority, but in no case may the employer imply the employee has violated an FTA prohibition (e.g., call the test result "positive," refer the employee to a DOT SAP, or inform a gaining DOT employer of the result under a section 40.25 request).

# Responding to a 40.25 Request for Testing Information

When you receive a request for information about an employee's drug and alcohol testing history from a prospective employer, you are required by §40.25 to take the following steps:

## 1. Review the employee's signed consent.

You may not release the information unless the employee has signed consent. The consent cannot be a "blanket" release, i.e., it must be specific to the employee and to you, as the previous employer, and it must be time-period specific.

FTA follows the Part 40 requirement to request information from DOT employers of the previous two years. However, it is not a violation for an employer to request information dating back more than two years, as long as the employee consents to this request.

## 2. Immediately and confidentially provide the information specified in §40.25(b).

This includes alcohol tests with a result 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 of the applicant's successful completion of DOT return-to-duty requirements.

"*Other violations*" means any other violation of the prohibitions on the use of drugs or the misuse of alcohol under a DOT agency regulation. For FTA, these prohibitions are specified in §655.21(c), and §655.32-§655.34.

Only information about DOT violations should be released. Do not provide information about any non-DOT drug or alcohol test results, or DOT alcohol test results less than 0.04.



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You must provide all the information in your possession concerning the employee's DOT drug and alcohol tests that occurred in the time period requested. This includes information you have obtained from other previous employers about tests that occurred during the specified time period.

## 3. Maintain a record.

You must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.



## The Collector's Role

The collector's role in DOT-regulated drug testing is to collect a urine specimen following the protocols outlined in 49 CFR Part 40 and the Urine Specimen Collection Guidelines. From the time the donor enters the collection site until the time the specimen is securely stored, the collector has a narrowly defined series of steps to follow to ensure the specimen is

faithfully collected in compliance with the regulations. Part 40 contains numerous security procedures to minimize a donor's opportunity to cheat. The collector may not exceed the security requirements of Part 40 to "catch" someone attempting to manipulate the testing process. The integrity of the testing process relies on every party involved, from the employer

and collector to the laboratory and MRO.

Inherent in the regulations are protections for the privacy of the donor, regardless of the suspicions of the collector. Undue searches, such as falsely declaring a specimen's temperature out of range to force the requirement for a directly observed test, are direct violations of an individual's rights.

# Another Successful FTA Drug and Alcohol Program National Conference on the Books!



The FTA held its 12<sup>th</sup> Annual FTA Drug and Alcohol Program National Conference in New Orleans, LA from April 18-20, 2017. According to the online conference evaluations,

43% of participants were first-time attendees, and thought this conference was well worth their time and would attend again, which we love to hear! Responders also indicated they enjoyed the new sessions added this year, and liked us switching around the presenters for courses offered in previous years; stating it gave a new perspective and they appreciated the change in teaching style this provided. Participants also liked the quality and expertise of the presenters and staff available for questions.

We appreciate all the great feedback and will use this information to continue to improve the conference. Our goal is to provide you with

valuable information, and accessibility to the Federal staff and industry experts to ensure you have the tools needed to successfully run compliant drug and alcohol programs for your companies.

If you have additional feedback on the conference or information you would like to see on our website please contact us at [FTA.DAMIS@dot.gov](mailto:FTA.DAMIS@dot.gov), 202-366-2010 or 617-494-6336.

Continue to check the [FTA Drug and Alcohol Program](http://transit-safety.fta.dot.gov/drugandalcohol) website for information regarding the 13<sup>th</sup> Annual FTA Drug and Alcohol Program National Conference. We look forward to seeing you there!

## Drug and Alcohol Training

FTA sponsors free 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 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.

For more information about available training sessions 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 (TSI) Training Schedule

FTA's strategic training partner, TSI, will offer the following upcoming courses:

- **Substance Abuse Management and Program Compliance.** This three-day course for DAPMs and DERs will show 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>.

# Timely Reasonable Suspicion Testing

Should an employer determine there is reasonable suspicion a covered employee has used a prohibited drug or has misused alcohol, reasonable suspicion testing must be promptly conducted. If the employer is unable to administer the alcohol test within two hours, they must create a record explaining the reason for the delay. If eight hours elapsed following the determination and the alcohol test is still not performed, the employer must cease attempting to perform the test and must create a record explaining why the test was not conducted.



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All reasonable suspicion determinations must be made by appropriately trained supervisors or company officials who make a contemporaneous observation, per section 655.43(b). The decision to test must be made at the time of the

observation and must not be based on knowledge the company official has about an employee's lifestyle, including alcohol and/or drug use.

**“The decision to test must be made at the time of the observation.”**

Employers are reminded reasonable suspicion alcohol testing is only allowed if a supervisor's observations leading to testing are made during, just preceding or just after the employee's performance of safety-sensitive duties.

## Employer Oversight of MROs

If a vendor is not in compliance, then the employer is not in compliance. Many employers do not realize, as with any vendor, it is a best practice to review and oversee your Medical Review Officer (MRO). Though confidentiality requirements cover much of the MRO services, below are areas the employer can review.

### 1. MRO Qualifications

- Review documentation of the MRO's credentials and qualification training to ensure the MRO meets requirements as detailed in §40.121(a)-(c).
- Review documentation of the MRO's requalification trainings, every 5 years, as applicable.
- Review documentation of the MRO's successful completion of an examination administered by an approved MRO certifying organization (MROCC or AAMRO).

### 2. Timely Transmission of Results

- Ensure the DER receives results within one business day from the day of MRO verification for positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.

- Ensure the written MRO report is received within two days of test result verification by the MRO. The MRO report can be:

- I. A copy of Copy 2 of the CCF; or
- II. A written report (letter), which must include the following:
  - \* Full Donor Name
  - \* Specimen ID
  - \* Donor SSN or Donor ID
  - \* Reason for Test
  - \* Date of Collection
  - \* Date MRO received Copy 2 of the CCF
  - \* Result of the test (negative, positive, refusal to test, test cancelled)
  - \* Date result verified by MRO
  - \* Drug(s)/Metabolite(s) for positive test
  - \* Reason for cancellation (if applicable)
  - \* Reason for refusal determination (if applicable)
  - \* DOT Agency (if noted on the CCF)

### 3. No Quantitative Values

- Ensure the MRO has not provided quantitative values to the DER for positive drug test results.

# Pre-Employment Test Refusals

Pre-employment testing differs from other test types; a pre-employment drug test does not begin until the applicant/employee selects or accepts the specimen cup. It is not a refusal to test if an applicant/employee fails to appear at the collection site or leaves the collection site prior to accepting or selecting the specimen cup.

This is true for all of the following situations:

- New-hires (applicants)
- Transferees from non-safety-sensitive positions to safety-sensitive positions
- Employees returning to safety-sensitive duties after a 90-day absence from the random testing pool

FTA-covered employers, submitting 2016 testing results through the MIS, reported almost three times as many ‘Other Refusals to Submit to Testing’ than all other test types combined. It is unlikely the applicants/employees, as described above, are arriving at the collection site, beginning the collection (selecting or accepting the specimen cup) and then refusing to cooperate or continue. It is far more likely the applicants/employees are not arriving at the collection site and the non-event is being recorded as an ‘Other’ Refusal. For a pre-employment test, failure to arrive at the collection site is not considered a test refusal, nor is it a Cancelled Result and would not be recorded anywhere on the annual MIS.

Test Type	‘Other’ Refusals to Submit to Testing	Cancelled Tests
Pre-Employment	489	287
All Other Test Types	174	324

## C/TPA Information Required on Annual MIS Submissions

FTA and DOT rules require FTA-covered employers to annually submit a summary of the results for their FTA drug and alcohol testing programs. 49 CFR Part 40, Appendix H stipulates the method and data items to be reported. One of those required data items is the name and telephone number of the Consortium and/or Third Party Administrator (C/TPA), if used by the employer. This data field exists in the DAMIS reporting system under the “Employer Information” tab, section “I. Employer”.

A C/TPA is a vendor or service agent who performs any of a variety of administrative services for the drug and alcohol program of an employer. The term C/TPA could include groups of employers who join together to administer, as a single entity. A C/TPA is not an employer.

**The name and telephone number of the C/TPA must be entered in DAMIS.**

C/TPA services may include, but are not limited to:

- ◇ Managing the random testing pool
- ◇ Scheduling the date and time of random tests
- ◇ Notifying covered employees of a drug and/or alcohol test
- ◇ Acting as an intermediary in the transmission of testing results
- ◇ Providing Substance Abuse Professional (SAP) referrals
- ◇ Maintaining documentation and records
- ◇ Completing and submitting the annual MIS report
- ◇ Procuring agreements with other vendors and service agents (SAP, MRO, collection services, etc.).

# Top 5 Audit Findings

Following are five of the most common findings identified during FTA's drug and alcohol audits, separated into the five primary sections of analysis performed by FTA's auditors.

## Policy Review

As discussed in the article "Alcohol Results Less Than 0.04 Are Not DOT Violations" found in this issue of *Updates*, employers frequently misstate FTA's alcohol prohibition as applying to alcohol concentrations of 0.02 or above, while FTA sets this prohibition at 0.04 or above.

## Drug & Alcohol Program Manager Interview

FTA's DAPM interviews commonly find the employer has not provided drug awareness training consistent with section 655.14(b). The 60-minute training required by FTA must be entirely related to the "effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use." If the employer wishes to also provide training on its policy, alcohol misuse, or other related areas, this must be in addition to the 60 minutes focused solely on the effects and consequences of drug use.

## Records Review

While most public transportation employers do an admirable job of making previous-employer information requests required by section 40.25, many employers have not implemented a method to meet the unique requirements of subsection 40.25(j). The information required in this sub-section must be requested from the applicant/transferee, rather than from a previous employer.

## Breath Alcohol Technician Interview

BATs commonly state, should their EBT's printer malfunction during confirmation testing and no printed result is produced, they would simply write the confirmation result in Step 3 of the ATF, along with a remark indicating the printer broke. Because the printed result constitutes the "evidence" provided by an Evidential Breath Testing device, this would in fact be a cancelled test.

## Urine Collector Interview

Most collectors correctly report to auditors, if they collect a second specimen under direct observation after first collecting a potentially adulterated or substituted specimen, they would send both specimens to the lab for analysis. Few collectors know, if the employee refuses to submit to the required directly observed second collection, the collector must discard the first (suspicious) specimen, rather than send it to the lab. The employee has refused testing in this case, and does not have the right to have their initial specimen analyzed.

# Collector Errors & Affidavits

Stakeholders who review drug and alcohol paperwork will occasionally notice errors on Custody and Control Forms (CCFs) and Alcohol Testing Forms (ATFs). Some need to be corrected by affidavit from the collector or technician who committed the error, or the test must be cancelled, per §40.203 and §40.269. The following errors require correction by affidavit.

1. The collector's signature is omitted on Step 4 of the CCF.
2. The technician does not sign the ATF.
3. The employee's signature is omitted on Step 5 of the CCF, unless the reason for the missing signature is noted on the remarks line of the CCF.
4. The employee's signature is omitted from Step 4 of the ATF for an alcohol test with a confirmed result of 0.02 or greater, and the technician did not make a remark to explain why the signature is missing.
5. A non-Federal or expired form is used.

For the first four items above, the person responsible for omitting the required information must correct the error by supplying the missing information in writing, along with a statement affirming it is true and accurate. In cases where the collector's or technician's signature is omitted, and the individual is unavailable, a supervisor may supply the affidavit.

If the problem is the use of a non-Federal or expired form, the collector (or a supervisor, if the collector is unavailable) must submit a signed statement affirming the incorrect form contains all information needed for a valid DOT test. It must state the incorrect form was used inadvertently, or it was used as the only means of conducting a test. The statement must also list the steps taken to prevent future use of incorrect forms. For a drug test to be successfully corrected, the specimen must have been tested at an HHS-certified laboratory following Part 40's procedures.

Affidavits must be maintained along with the testing forms. The faces of the forms must be marked to ensure it is obvious correction has occurred, such as by stamping and initialing a form to note the correction. In all instances, collection sites must issue corrections on the same business day they become aware of the problem.

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## Clarification: Tire Retreading is Not a Safety-Sensitive Function

The article "Do My Contractors Fall under the FTA Regulations?" in Issue 60 lists tire retreaders as FTA-covered safety-sensitive employees. This needs to be clarified to state individuals retreading tires would only be considered safety-sensitive if they also install the retreaded tires.



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# Drug and Alcohol Word Scramble

1. SPOT-IEDNCTCA

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2. HPMTMTEAAHEIMNE

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3. HLVEEIC

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4. SIADHCPT

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5. DCYIRRNLAHNTOBTAONEA

---

6. COLALHO

---

7. SDPOOII

---

8. EANGETVI DLUITE

---

9. IPNDEYIHNLCCEC

---

10. UDTSCYO ADN TOLRCON ROMF

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## Regulation Updates is Produced By:

Federal Transit Administration  
Office of Safety and Security  
1200 New Jersey Avenue, SE  
4th Floor, East Building  
Washington, DC 20590

## Written by:

U.S. Department of Transportation  
John A. Volpe National  
Transportation Systems Center  
55 Broadway  
Cambridge, MA 02142

Cahill Swift, LLC  
240 Commercial Street  
Boston, MA 02109

RLS & Associates, Inc.  
3131 South Dixie Highway/Suite 545  
Dayton, OH 45439

## Lift Operation and Post-Accident Testing Decisions

### *Is the operation of the lift considered operation of the vehicle?*

Yes, the lift is considered to be equipment used in revenue service, and its proper operation is essential to the operation of the vehicle and protection of public safety.

Given this understanding of “operation of a vehicle,” there may be circumstances when FTA testing will be required following an event associated with the operation of the lift because the post-accident thresholds as defined in §655.4 were met. These circumstances do not always involve a collision with another vehicle or object.

In any case, post-accident testing decisions must be made using the best information available at the time of the accident and in accordance with §655.44. FTA provides multiple “technical assistance” tools and resources to aid employers in making post-accident testing decisions.

### **Resources Available on the FTA Drug and Alcohol Website:**

<https://transit-safety.fta.dot.gov/drugandalcohol/tools/>