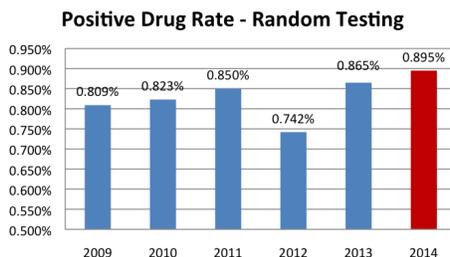


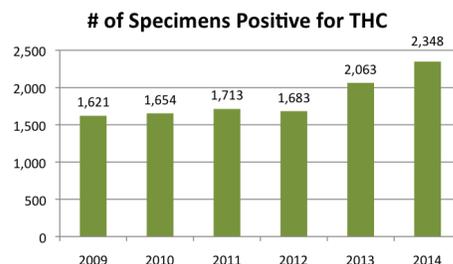
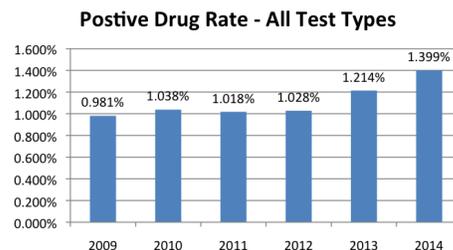
## 2014 Drug and Alcohol MIS (Management Information Systems) Results

2014 FTA drug and alcohol testing results have been compiled from the annual MIS submissions. Results show the drug testing positive rates increasing to their highest levels in several years.

The random positive drug rate is at its highest since 2003, the first year the random positive rate fell below 1.0%. Related to the increase in the positive rate is the increase in number of specimens testing



positive for THC. The number of specimens positive for THC increased by more than 40% in just a two-year period. ●



## A Notice to Collectors on Using the Electronic Federal Drug Testing Custody and Control (eCCF) Form

The Office of Drug and Alcohol Policy and Compliance issued a final rule on April 13, 2015 that allows employers, collectors, laboratories, and Medical Review Officers to use the electronic version of the Federal Drug Testing Custody and Control form (eCCF) in the DOT-regulated drug testing program. The final rule was effective April 13, 2015, and can be viewed at: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-13/pdf/2015-08256.pdf>.

It is important to remember that as a collector, you can begin using the eCCF only when the employer's laboratory has

been approved through the Department of Health and Human Services National Laboratory Certification Program to use a specific eCCF and the employer has decided to use the eCCF.

Because the use of the eCCF is new to the DOT drug testing process, the attached notice to collectors provides guidance on the use of the eCCF. ●

Download here:  
[eCCF\\_Notice\\_for\\_Collectors.pdf](#)

## IN THIS ISSUE

- 2** DAMIS Improvements
- 4** Pre-Employment Tests and the 90-Day Rule
- 6** Stand Downs and Drug Test Results
- 7** Compliance Creep—Consequence of Complacency



## DAMIS Improvements

The Drug and Alcohol Management Information System (DAMIS) web application for reporting and submitting annual testing results (<https://damis.dot.gov>) has undergone the following revisions:

- 1 The E-mail field within the Employer Section (Section I) is now a required field. You must enter the Company, Drug and Alcohol Program Manager's (DAPM's), or Certifying Official's e-mail address. Failure to do so will not allow you to complete and submit the report.
- 2 When a contractor or subrecipient completes and submits their MIS for Grantee review and approval, the FTA Grantee

will receive an e-mail with the following message: "One of your contractors or subrecipients (Company Name) submitted and signed their Drug and Alcohol MIS (DAMIS) report on DD/MM/YYYY. Please review their MIS report on the DAMIS Web Site (<https://damis.dot.gov>) and accept or reject their data. If there is a problem with their data, you must contact the contractor or subrecipient so it can be corrected."

The Grantee will receive an e-mail with this message each time one of their contractors and/or subrecipients revises and submits their annual MIS data. ●

## DAMIS—No Math Requirement

There are three areas in DAMIS on the MIS form that require rows or columns be added. In DAMIS, the software does it for you.

- 1 Under the Covered Employees Tab the "Total Number of Employees in All Categories" will automatically sum the five Number of Employees in Each Category boxes.
- 2 Under both the Drug Testing Data and Alcohol Testing Data tabs, Column 1 (the left-most column) will sum the data that has been entered.

- a. For Drug Data, Column 1 will equal the sum of Columns 2, 3, 9, 10, 11, and 12.
- b. For Alcohol Data, Column 1 will equal the sum of Columns 2, 3, 7, and 8.
- 3 Under both the Drug Testing Data and Alcohol Testing Data tabs, the Total row (bottom row) will sum Columns 1 through 6. ●

## Cancel That

The last column, Column 13 under Drug Testing Data and Column 9 under Alcohol Testing Data records the number of Cancelled Results for each test type. Cancelled Results are not considered a 'test result' for drugs, even if a specimen was collected. In addition, a Cancelled Result is not considered either a Screening Test Result or Confirmation Test Result for Alcohol,

even if a test was attempted. So for cancelled tests, only put the number in the Cancelled Results column.

A cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the FTA's minimum random testing rate). ●

## No Extensions Granted

The due date for submitting of annual MIS reports is **March 15th**. Extensions for submitting the MIS report will not be granted. ●

MARCH						
SU	MO	TU	WE	TH	FR	SA
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## FTA Grantees Responsible for Contractors and Subrecipients MIS

FTA requires that each grantee be responsible for ensuring the accuracy and timeliness of each MIS report required to be submitted by all of its FTA-covered contractors and subrecipients. Each FTA Grantee is required to verify all that FTA has on record of all FTA-covered contractors and subrecipients for the previous calendar year. When FTA Grantees receive the annual MIS noti-

fication letter in December, they must log in using the Username and Password provided and verify the list of covered contractors and subrecipients. If the list is not current, the FTA Grantee must contact the FTA Drug & Alcohol Project Office at **(617) 494-6336** or e-mail **FTA.DAMIS@DOT.GOV** and notify FTA of any covered employees that must be added or removed. ●

## Partial Year Data Still Submitted

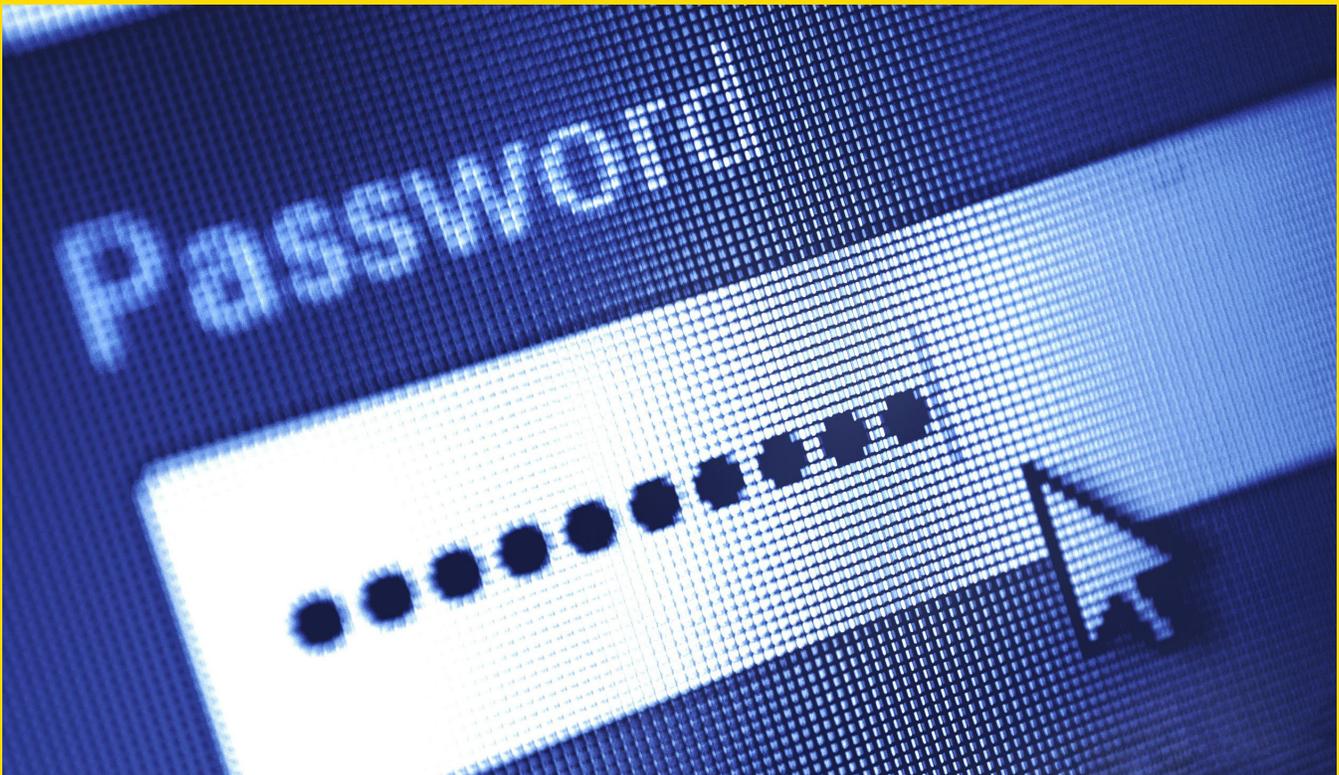
If a FTA Grantee or FTA-covered contractor or subrecipient performed safety-sensitive functions for a portion of the calendar year, they must still submit an annual MIS form to FTA. The Annual MIS submission is a calendar year report but many FTA-covered contractors have agreements which begin and

end other than on a calendar year basis. Totals for the calendar year, even though safety-sensitive functions may have been performed for just a portion of that time period, must be submitted. ●

## New Passwords Every Year

The Usernames and Passwords used to gain access to the DAMIS (<https://damis.dot.gov>) reporting site change each reporting year for all employers. The Username and Password

used last year will not work this year. New Usernames and Passwords were distributed to each FTA Grantee by letter in late December. ●



Credit: 123rf.com

# Pre-Employment Tests and the 90-Day Rule

**Reminder:** When an FTA-covered employee has not performed a safety-sensitive function for 90 consecutive days and they have not been in the random testing pool during that time, the employee must take a pre-employment drug test with a verified negative result before they can perform safety-sensitive duties, per §655.41(d).

This means the employee must be removed from **both** safety-sensitive service **and** from the random pool for at least 90 consecutive days before being subjected to a pre-employment test under FTA authority. If, for example, an employee took medical leave and did not perform safety-sensitive duty for 180 days, but was kept in the ran-

dom pool for the first 150 of these days, then no pre-employment test may be performed, since the employee would have been out of the random pool for only 30 consecutive days. ●

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## The Importance of Accurate Contact Information

Numerous situations may arise during DOT tests that require the collector, breath alcohol technician or MRO to contact the employer, specifically the Designated Employer Representative (DER). These include notification of an alcohol test result of 0.02 or greater, reporting an employee's uncooperative behavior, asking clarifying questions about a desired test, or to report a problem with testing equipment.

Regulations require some vendors to contact the DER immediately, often because an employee must be removed

from safety-sensitive service. As the DER, it is your responsibility to ensure you can be reached when needed and anytime a

**Regulations require some vendors to contact the DER immediately, often because an employee must be removed from safety-sensitive service.**

drug or alcohol test can be conducted. If there are instances when the DER cannot be reached (vacation, holidays, after hours, etc.), there must be an additional DER who will take the appropriate required action.

The DER(s) must provide current and correct contact information anytime they have DER responsibilities. It is suggested that several methods of contact be provided to vendors. ●

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## Semi-Annual Statistical Summaries

Department of Health and Human Services (HHS)-certified laboratories must compile and provide an aggregate statistical summary, for each employer on a semi-annual basis. These six-month periods, cover data reported each January through June and each

July through December. The summary must be sent to the employer by January 20th and July 20th of each year. Each employer, with five or more aggregate DOT test results, must receive the summary of data listed in Appendix B of 49 CFR Part 40.

The employer summary will include all DOT test results reported by the laboratory to the employer for the six-month period. Results reported are lab results and not MRO-verified results. ●

# Discovering the Return-to-Duty Process Was Not Followed—Now What to Do?

For those systems allowing a safety-sensitive employee to return following a DOT drug or alcohol violation, the process to return an employee back to safety-sensitive duty is very clearly defined in Subpart O of 49 CFR Part 40. A violation of the regulation includes a verified positive DOT drug test, a DOT alcohol test result of 0.04 or greater, a refusal to test, or any other violation of the prohibition on the use of alcohol or drugs covered under the regulations.

Before the employee can perform a safety-sensitive duty, the employer must

ensure the employee completes the following process:

- Receives an evaluation by a qualified Substance Abuse Professional (SAP). The SAP must meet the requirements established in §40.281.;
- Successfully complies with the SAP's evaluation, referral and recommended treatment plan; and
- Completes a directly observed return-to-duty drug test with a negative result and/or an alcohol test with an alcohol concentration of less than 0.02.

Upon returning to duty, the employee must undergo directly observed follow-up testing following the SAP's written testing plan. The requirements are straight forward, but even so, some employers have returned employees prematurely. Should this be the case, as soon as the employer is made aware of the issue, the employee in question should be immediately removed from safety-sensitive duties until the process can be completed consistent with the regulatory requirements. ●

## Corrective actions for procedural issues include:

Return-to-duty or follow-up test not conducted as directly observed.	Send back to collection site and re-collect specimen under direct observation procedures.
SAP's follow-up testing plan is not written or distributed to employer.	Employer requests written follow-up testing plan from SAP.
Employer does not carry out specifics of follow-up testing plan.	The employer must establish a process to ensure the follow-up testing is conducted as directed by the SAP. The employer must maintain documentation (Custody and Control Forms (CCFs) and/or Alcohol Test Forms (ATFs)) that demonstrate the plan was followed.
Employer substitutes a follow-up test with a random test.	The employer must send the employee back for follow-up testing and must understand that employees are subject to both random tests and follow-up tests.
Employer seeks and receives recommendations of an additional SAP.	Employer must carry out the follow-up plan of the original SAP. Only the original SAP can change the SAP's evaluation or recommendation.
The original SAP who performed the evaluation is not a qualified SAP.	The employer must have the employee reassessed by a qualified SAP.
An employer reclassifies a DOT return-to-duty test as another type non-DOT test.	Any attempt to circumvent a DOT test is not allowed.

# Stand Downs and Drug Test Results



Credit: 123rf.com

A stand down is the practice of temporarily removing an employee from performing safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Employers may not prohibit employees from performing safety-sensitive duties while they wait for the MRO to complete the verification process. Section 40.21(a) explicitly forbids this practice, stating “you are prohibited from standing employees down, except consistent with a waiver a DOT agency grants under this section.”

While employers may not stand down an employee because they are waiting for an MRO to complete a test verification,

they may maintain a policy of removing employees from safety-sensitive service in certain cases. As the Office of Drug and Alcohol Policy and Compliance (ODAPC) stated in a 2001 Q&A, “an employer could . . . have a company policy saying that,

**Employers may not prohibit employees from performing safety-sensitive duties while they wait for the MRO to complete the verification process.**

on the basis of an event (e.g., the occurrence of an accident that requires a DOT post-accident test, the finding of reasonable suspicion that leads to a DOT reasonable suspicion test), the employee would immediately stop performing safety-sensitive functions. Such a policy, which is not triggered by the MRO’s receipt of a confirmed laboratory test result, would not require a §40.21 waiver.” This policy may not be applied selectively, but must be applied to all FTA-covered employees.

A triggering event must exist for an employer to remove an employee from safety-sensitive service. For this reason, it would never be appropriate to remove an employee from a covered duty pending the result of a random or follow-up test. ●

# Compliance Creep—Consequence of Complacency

The FTA drug and alcohol testing regulations have existed for over 20 years. During this time, employer drug and alcohol testing programs have evolved with changes in the regulations, technology, substance use patterns, and societal norms. For the most part, the drug and alcohol testing program has become part of the fabric of transit agencies. Policies are accepted, the random selection process goes smoothly, and employee trips

stale, contractor oversight minimal, and service agent errors accepted as common place with no real effort made to correct the deficiencies. As other regulatory requirements demand the attention of management, many employers no longer treat their drug and alcohol program as a high priority, ultimately compromising the program's compliance.

As FTA focuses its attention on system safety and charges transit systems to do the

- Re-read the regulations and compare your program; use audit questionnaires to conduct an internal review of your program.
- Evaluate your program to determine what could be improved, and work with your Safety Officer to implement recommendations.
- Update your safety-sensitive employee and supervisor training materials with new information, pictures, videos, etc. Perform refresher training to those safety-sensitive employees who have already received these trainings.
- Create a new internal substance abuse awareness campaign within your organization using new, updated display materials, informative brochures, etc.
- Undertake an updated, comprehensive contractor monitoring approach.
- Meet with service agents to establish a partnership for improving testing program compliance.

**In many cases, decisions about programs are made based on what is easy and least costly, rather than on what is compliant and integral to the employer's safety program.**

to collection sites are routinely conducted without issue. As a result, many programs are showing signs of complacency.

As employers have become comfortable with their programs, it is not uncommon to find a number of years may have passed since these agencies scrutinized their program for compliance, effectiveness, and overall relevance to their mission. In many cases, decisions about programs are made based on what is easy and least costly, rather than on what is compliant and integral to the employer's safety program. As a result, policies are often outdated, training programs

same, drug and alcohol testing programs should be revisited and elevated to a high priority, presenting a clear message of "no use" to safety-sensitive employees. Suggestions for fighting compliance creep include:

- Encourage the DAPM to undergo refresher training.
- Encourage the DAPM to attend the annual FTA Drug and Alcohol Program National Conference to network with peers, obtain updates, and attend informative sessions on all aspects of the regulations.

As an integral part of an agency's safety program, transit systems are encouraged to comprehensively evaluate their program and take the necessary steps to make sure each aspect of their program is in compliance with the regulations. ●

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## No Time Limits on Reasonable Suspicion Drug Testing

There is a common misconception that post-accident and reasonable suspicion testing have the same timeframes and time limits; however, they do not. Whereas 655.44 (b) requires that all post-accident drug testing be conducted within 32 hours

of the accident, 655 does not place a similar time frame or time limit on when to conduct a reasonable suspicion drug test. When a trained official makes a determination that a reasonable suspicion exists, the drug test must be performed as soon as possible,

but there is no time limit on when to cease attempts to test. It is always a good idea to document reasons for extended delays in testing. ●

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## Drug and Alcohol Training

FTA will sponsor 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)
Alabama Department of Transportation	Orange Beach, AL	Fairfield Inn & Suites – Orange Beach 3111 Loop Road Orange Beach, AL 36561	4/28/2016
Mass Transportation Authority	Flint, MI	Mass Transportation Authority 1401 S. Dort Highway Flint, MI 48503	6/7/2016
HIRTA Public Transit	Urbandale, IA	HIRTA Public Transit 2824 104th Street Urbandale, IA 50322	8/3/2016

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.

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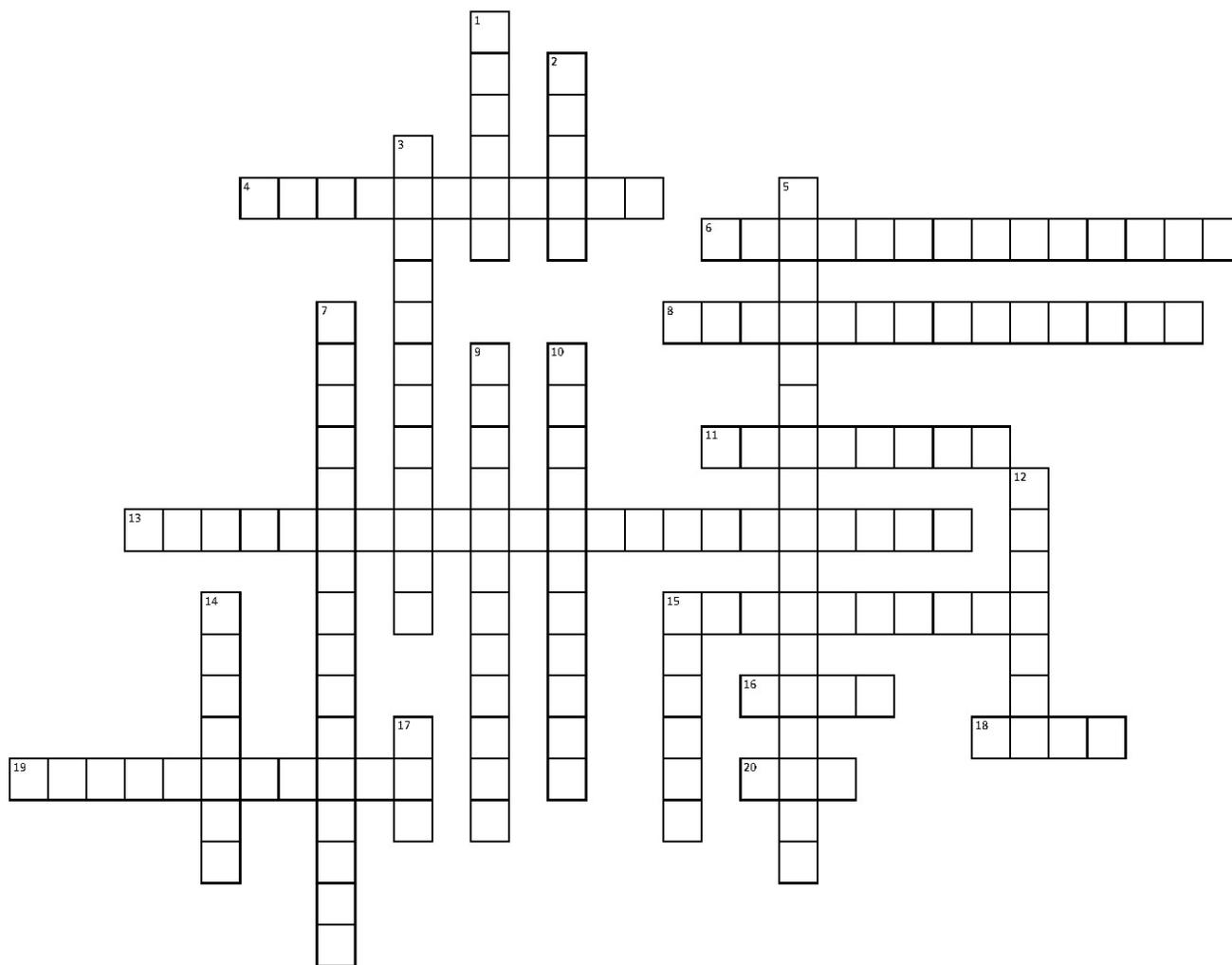
### The Transportation Safety Institute Training Schedule

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

- **Substance Abuse Management and Program Compliance.** This 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>.

# FTA Drug and Alcohol Crossword Puzzle



1. Its deployment does not constitute disabling damage
2. Number of hours allowed to provide a urine specimen
3. It's a refusal to admit this or substitution to a collector
4. An employee notified for random testing must proceed \_\_\_\_ to the collection site
5. All return-to-duty and follow-up tests must be conducted under this
6. Required from an applicant prior to previous DOT employer request
7. Required after screening test result of 0.02 or greater
8. Random selection must be by a \_\_\_\_ valid method
9. Their use is prohibited at all times
11. Maintain training documentation for at least this long
10. 'I' in MIS
12. This type of pre-employment test is optional
13. EBTs approved by NHTSA can be found here
14. Employee must empty these before the urine collection
15. Alcohol screening tests use breath or this fluid
15. Site of the upcoming FTA National Conference
16. Collector writes this on the bottle seals
17. Copy 4 of the CCF must be transmitted to this person within 24 hours or during the next business day
18. Color of toilet water at the collection site
19. These contractors are exempt when performing services on a one-time or ad hoc basis
20. Minimum number of follow-up tests in the first year

# Contractor Tow Trucks Usually Covered by FMCSA

Employees of companies contracted to provide towing services to a recipient of FTA transit operating assistance, in a vehicle/tow truck requiring a CDL, are not considered FTA-covered employees. They do not fall under the safety-sensitive category of “Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License,” since their primary functions are covered by the Federal Motor Carrier Safety Administration (FMCSA). ●



Credit: 123rf.com

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# Acetone Does Not Interfere With DOT Alcohol Testing

A common question is whether acetone in breath may interfere with breath alcohol testing.

Acetone breath in diabetics is caused by an excess production of acetone in the body. Acetone is a ketone, which is a by-product of fat metabolism. When the

**Fuel cell breath testers are not affected and infrared devices use filters to guard against acetone.**

body does not have enough insulin (as with diabetes), it instead uses fatty acids as an alternative source of energy, and ketones (acetone) are the result of this process.

Fuel cell breath testers are not affected and infrared devices use filters to guard against acetone. As such, all Evidential Breath Testing (EBT) devices on the HHS Conforming Products List (CPL) have been tested for acetone, and it has been determined they do not react to the presence of acetone.

In addition, saliva Alcohol Screening Devices (ADS) on the CPL do not cross-react with acetone and ketone produced by diabetic patients. ●