

FTA Drug and Alcohol REGULATION UPDATES

April 2018

ISSUE 65

FTA Drug and Alcohol at CTAA Expo

FTA Drug and Alcohol Program representatives will participate in activities at the Community Transportation Association of America (CTAA) annual Expo, in Pittsburgh, PA from June 10-14. FTA Drug and Alcohol Program representatives will be available and participating in the following events:

Speed Networking

(June 12, 3:00pm - 4:30pm):

Have a dedicated one-on-one 5-minute session with an FTA Drug and Alcohol auditor.

Trade Fair (June 12 and 13):

Stop by **Booth # 102** for discussions with FTA D&A representatives and



auditors, pick-up the latest technical assistance materials, and learn about upcoming training sessions and more.

Workshop – “Understanding Developments and Challenges in Drug and Alcohol Testing”

(June 13, 3:15pm – 4:45pm):

This session will focus on issues directly related to creating and maintaining an FTA- and DOT-compliant drug and alcohol program for rural and tribal transit systems. It will also review upcoming DOT D&A regulatory revisions, marijuana use laws, and other current issues.

Please check the CTAA web site, <http://web1.ctaa.org>, for specific agenda and registration information.

National Conference Mobile App



This year, conference participants will have an opportunity to connect using the Whova event mobile app. Attendees can use the Whova app to:

- **Create a personal schedule.** Search sessions by title, speaker, or location, and set reminders. Access session synopses, presentation handouts, and speaker profiles.
- **Engage during the session.** Take personal notes, rate the

session, leave comments for the speaker, and participate in live polls.

- **Network with other attendees.** View profiles of other attendees who have shared their information - instant message through the app, or arrange a meeting time. Use the Bulletin Board to introduce yourself, ask questions, and more.
- **Stay updated with emails and push notifications.** Receive important messages and notifications from the organizers.

In this Issue

- 2 [You're Being Audited: How to Prepare](#)
- 4 [Electronic Custody and Control Form Use](#)
- 5 [EBT Maintenance and Test Accuracy](#)



U.S. Department of Transportation
Federal Transit Administration

The Whova app is free for attendees. A download link will be available on the FTA Drug and Alcohol website at <https://transit-safety.fta.dot.gov> prior to the conference, or you can search “Whova” in the App Store or Google Play on your mobile device.

You're Being Audited: How to Prepare

FTA's drug and alcohol audit team routinely visits covered employers to assess their drug and alcohol testing programs. These visits provide FTA with an oversight mechanism to ensure covered employers maintain compliance with 49 CFR Part 655 and Part 40. The audits also exist as an outreach opportunity, affording FTA a means to provide technical assistance to program stakeholders.

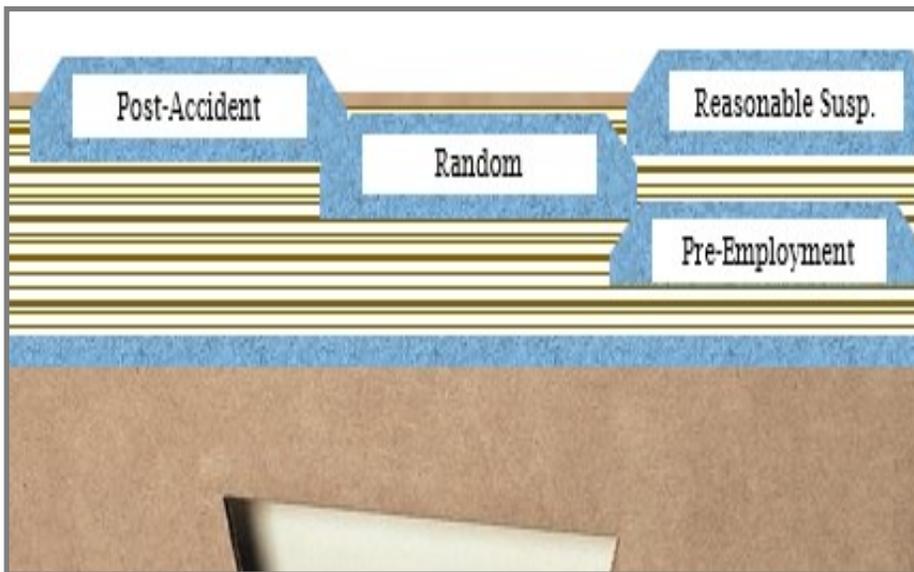
Usually, employers are notified of an audit six weeks before the on-site visit. The notification process begins

with a phone call from the audit team leader, and includes the issue of a formal notification letter, which provides pre-audit instructions as well as a detailed schedule for the grantee and for any contractors and vendors (e.g. collection sites) who will be visited.

The following preparations will help ensure a successful audit:

1. Carefully read the notification letter in a timely manner.
2. Be sure to contact the audit team leader with any questions.

3. Ensure any applicable contractors and vendors are made aware of the audit and its requirements right away.
4. Send requested information for the grantee and all applicable contractors to the audit team leader by the deadline specified in the notification letter.
5. In the week preceding the on-site visit, the grantee's DAPM will receive instruction (for both the grantee and any contractors) on which records must be available for review. If anyone, including a contractor, has any questions, contact the team leader immediately – do not wait until the team arrives.
6. Ensure all requested records are pulled, organized, and are readily available when the team arrives on site.
7. Prior to the visit, take a moment to think of any questions or concerns you might have related to the regulations or to best practices. This will help FTA provide effective technical assistance.



Only EBTs can be used for Alcohol Confirmation Testing

Only EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" may be used to conduct alcohol confirmation tests under 49 CFR Part 40. The EBT must print the test result, test number, manufacturer's device name, serial number and test time. This information may never be handwritten on the Alcohol Testing Form.

**The list of approved EBTs
can be found at:**

[https://www.transportation.gov/odapc/
Approved-Evidential-Breath-Measurement-
Devices](https://www.transportation.gov/odapc/Approved-Evidential-Breath-Measurement-Devices)



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Spring Ahead:

Make sure EBT clocks were changed

On March 11, 2018 Daylight Saving Time took effect, when clocks were moved ahead one hour. Most EBTs on the Conforming Products List (CPL) do not automatically reset the clock time with Daylight Saving Time. DOT-regulated employers should ensure that any EBTs used to conduct DOT alcohol testing on their safety-sensitive employees has been set to the correct local time.

Electronic Custody and Control Form Use

Since 2015, DOT-regulated employers have been allowed to use electronic custody and control forms. The electronic CCF (eCCF) allows for the immediate transmission of testing information (e.g., employer contact information, donor identification number, collector's certification) to all stakeholders in the process, and for the swift transmission of test results from the laboratory to the MRO, and then to the employer.

While many FTA-covered employers have transitioned to

eCCF, most have not. Should you choose to take advantage of this platform, be aware of the following considerations before moving forward.

First, only laboratories and software systems approved by the Department of Health and Human Services to process eCCFs may be used. You may review approved labs at <https://www.samhsa.gov/workplace/resources/drug-testing/eccf-approved-list>. Second, you must ensure your laboratory, collection site, MRO, and third-party administrator (if

applicable) have compatible systems. Finally, you must ensure there are adequate safeguards in place to protect the security and privacy of donors' testing information.

The eCCF process for each laboratory may differ (e.g., it may or may not be completely paperless). Your laboratory and/or its eCCF provider will instruct you on the use of its eCCF in the collection process.

Note: There is no electronic DOT alcohol testing form.

Completion of the eCCF is the only place in Part 40 allowing for the use of electronic signatures; all other signatures, such as an applicant's signature on an information release signed under the requirements of section 40.25, must be ink-on-paper.

Policies Must Clearly Distinguish Company Provisions

The drug and alcohol policies of many FTA-covered employers describe provisions included under company, and not FTA, authority. Among many possible examples, some employers desire to conduct post-accident testing after events not meeting FTA's definition of an

accident, or choose to test for more drugs or types of drugs than those specified in Part 40.

While employers may include company-mandated provisions in their policies, they must clearly distinguish between their own

mandates and FTA's. Such policies must clearly state that company-mandated provisions will lead to testing conducted on non-federal (or "non-DOT") testing forms. Provisions included under company authority may never contradict or be inconsistent with FTA requirements.

FTA-Required Choices and Company Policies

In a few instances, Parts 40 and 655 offer employers a choice related to drug and alcohol testing. Under §655.42, FTA allows employers to choose whether to conduct DOT pre-employment alcohol testing. Under §40.197(b)(2), employers are granted a choice as to whether to retest an employee following a negative-dilute drug test result. And for random testing, FTA allows employers the opportunity to conduct random testing at rates above the minimum random rate specified by the FTA Administrator.

In these cases, even though the company is granted the power to make a choice, any resulting testing is still conducted under FTA authority. Policies that incorrectly describe these choices as included under company authority are not compliant and must be revised. If your company uses a typeface method (e.g., *italics*) to off-set company provisions from FTA provisions – and your company has elected to implement any of these FTA-mandated choices – ensure the provision is set forth as an FTA

requirement; that is to say, in regular typeface.

“Even though the company is granted the power to make a choice, any resulting testing is still conducted under FTA authority.”

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). FTA provides these trainings at a host site and opens them to the public on a first-come, first-serve basis. Trainings are led by the FTA Drug and Alcohol Program and Audit Team Members.

For a schedule of upcoming trainings 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 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 and Post-Accident Testing Determination.** This half-day seminar is designed to educate participants on DOT/FTA regulations requiring drug and alcohol testing of safety-sensitive transit workers. The focus will be specific training requirements for those employees (e.g., dispatchers, supervisors, managers, etc.) who will be making the determination of when to administer reasonable suspicion and post-accident drug and/or alcohol tests for safety-sensitive employees. This seminar meets and exceeds the requirements under 49 CFR Part 655.14(b)(2).

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

EBT Maintenance and Test Accuracy

Manufacturers of evidential breath testing devices (EBTs) used for DOT alcohol tests must include a Quality Assurance Plan (QAP) describing the instructions on use and care with each EBT. These instructions include the required performance of external calibration checks at specified intervals. An “external calibration check”, also known as an “accuracy check” or “calibration check”, is a test of a device’s ability to read a

known alcohol standard within a specified tolerance. If an EBT fails an external calibration check (i.e., it produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard), it must be taken out of service. Every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled. The EBT may not be used for DOT tests until it is repaired and

passes an external calibration check. DOT requirements for the proper use and care of EBTs are described in §40.233.

“If an EBT fails an external calibration check, it must be taken out of service.”



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PHMSA Raised Annual Drug Testing Rate to 50%

On December 8, 2017 the Federal Register was updated to reflect the Pipeline and Hazardous Safety Materials Administration’s (PHMSA) determination to raise the minimum annual random drug testing rate to 50 percent. 49 CFR Part 199.105(c) requires the PHMSA Administrator to raise the minimum annual random drug testing rate from 25 percent to 50 percent of all covered employees when the MIS data indicates the positive test rate is equal to or greater than 1 percent. In calendar year 2016, the random drug test positive rate was greater than 1 percent. Therefore, the PHMSA minimum annual random drug testing rate is 50 percent of all covered employees for calendar year 2018.

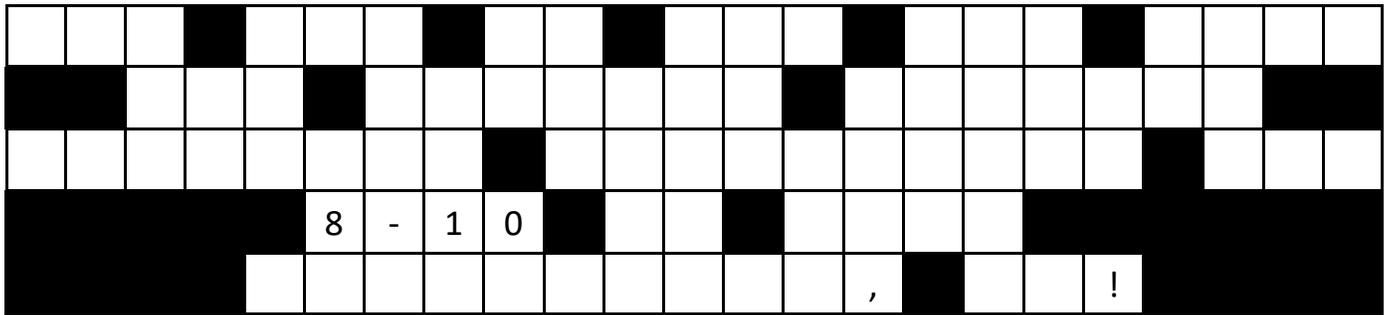
Annual Drug and Alcohol MIS Reports Record Retention

Reminder: Employers are required to maintain MIS reports for five years as stated in 49 CFR Part 655.71(b)(1). Employers may maintain a paper or electronic copy of their annual FTA MIS submission.

The FTA Drug and Alcohol Project Office does not provide copies of previous years’ MIS reports.

Fallen Phrase Puzzle

In the puzzle below, all the letters have fallen to the bottom. They got mixed up on their way down, but remain in the same column. Complete the puzzle by filling the letters into the column they fall under.



A T

O A R I N L E F F G

T D N U L E O H T L E R E O C R

N E E N L O U L C T O O H F O R T L R A M A Y

S A A I Y A A D A C D N F E P R N A E D M U G

Regulation Updates

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"Shy Lung" Breath Alcohol Tests

DOT gives employers and testing site personnel direction on how to handle an employee's inability to provide a sufficient volume of breath for an alcohol test in §40.265. The regulation describes three steps to take in this case. First, give the employee at least one additional opportunity to provide the required volume of breath. If that doesn't work, and the alcohol testing device has the feature, the "manual" test mode can be used to capture and analyze whatever flow of breath the

Direction on how to handle an employee's inability to provide a sufficient volume of breath can be found in §40.265.

donor is able to provide. For a screening test only, if the technician has a saliva alcohol screening device (ASD) and is trained to use it, they may use it in place of the evidential breath testing device (EBT). Note: A screening test of 0.02 or above requires a confirmation test performed using an EBT.

If none of the above methods are successful (or available), the technician must terminate the testing process and inform the DER immediately. The employer must then direct the employee to obtain, within five business days, a signed statement from a physician who has evaluated the employee to determine whether the employee has a medical condition causing their inability to provide a sufficient volume of breath for testing.