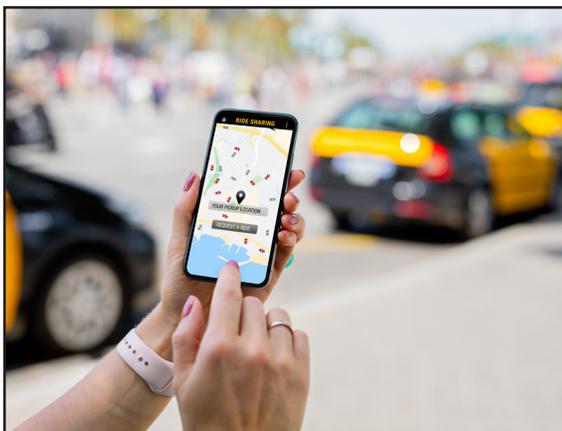


Contracted Ridesourcing Companies Are Subject to Part 655

Recipients of Urbanized Area Program (§ 5307), Capital Investment Grant Program (§ 5309) and Rural Area Program (§ 5311) funds must conduct DOT drug and alcohol testing



of all employees and contractors performing safety-sensitive functions as specified in 49 CFR Part 655. Ridesourcing companies are subject to the testing requirements to the extent they are a contractor of an FTA recipient and perform a safety sensitive function covered under Part 655. The contract employer does not need to be directly funded by the FTA grant to be subject to Part 655 requirements. The “taxicab exemption” may apply to ridesourcing

companies in very limited situations. The FTA has stated that if a public transit passenger can randomly choose from among two or more ridesourcing providers or taxicab companies, the FTA testing regulations do not apply to those companies. This exemption is based on FTA recognizing the practical difficulty of administering a drug and alcohol testing program for taxi companies that only incidentally provide transit service. For the taxicab exemption to apply, the passenger must choose the service provider from a number of service providers for each individual trip.

Reminder: MIS Reports Due March 15

Drug and Alcohol Management Information System (DAMIS) notification letters were mailed to FTA grantees at the end of December for the 2021 reporting year. All grantees are required to submit an MIS report to FTA by March 15, 2022. If you are an FTA grantee and you did not receive your reporting letter, please contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or 617-494-6336. The [DAMIS online reporting system](#) opened for submissions on January 1, 2022.

The FTA Drug and Alcohol Project Office uses last year’s information to create the grantee’s list of subrecipients and contractors. If this list has changed since the 2020 reporting year, you must contact the FTA Drug and Alcohol Project Office for updates. FTA grantees are responsible for reviewing and accepting the data for their contractors and subrecipients. If you have questions, please contact the FTA Drug and Alcohol Project Office.

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U.S. Department of Transportation
Federal Transit Administration

Who should be listed as the Certifying Official on the Annual Drug and Alcohol MIS Report?

Section I. Employer Information of the annual MIS report requires the name and complete telephone number of the company official certifying the accuracy of the report. The individual listed as the “Certifying Official” must be an employee of the company reporting the MIS data. It is recommended that the Certifying

Official be knowledgeable of the information reported, as the FTA Drug and Alcohol Project Office would contact the Certifying Official listed if there were questions about the reported data.

If the testing data is entered by another individual, either from the company or a Third

Party Administrator (TPA), this individual’s information should be listed in the “Prepared by” fields also located in Section I.

For additional information about MIS reporting, visit the Office of Drug and Alcohol Policy and Compliance (ODAPC) [MIS Instructions](#).

Statement of Enforcement Discretion for Substance Abuse Professionals and Service Agents Extended



On November 29, 2021, ODAPC updated [guidance](#) regarding compliance with DOT drug and alcohol testing regulations and practices of substance abuse professionals and service agents. This guidance is now effective until June 30, 2022.

Special Topic Virtual Seminars

The FTA Drug and Alcohol Project Office is now offering free virtual seminars covering special topics relevant to grantee interests. The goal of these seminars is to provide a more in-depth and nuanced overview of particular aspects of a compliant drug and alcohol program. New topics will be added on an ongoing basis. To see what topics are scheduled and to register for one or more of the sessions, please visit the Drug and Alcohol [Training page](#).

Random Testing Rates for All Modes

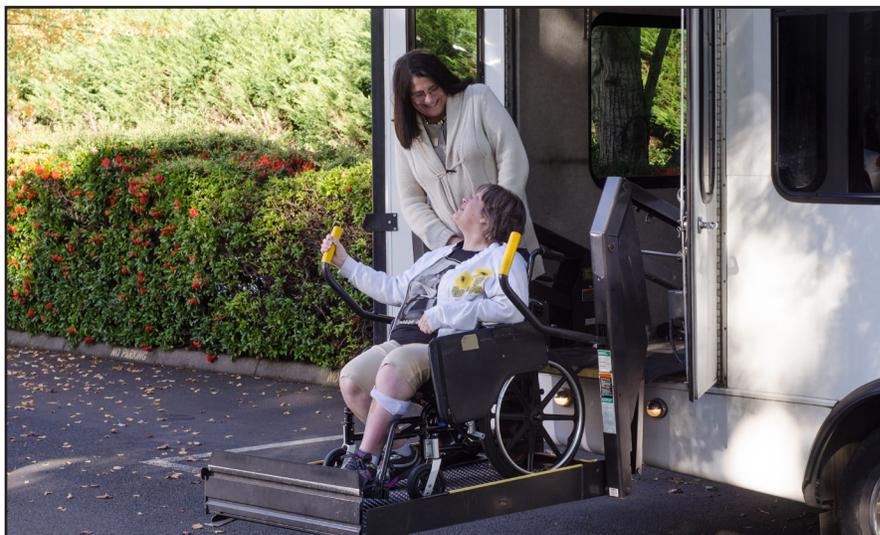
ODAPC has posted the 2022 drug and alcohol [Random Testing Rates](#) for all DOT agencies. The drug testing rates remain the same as 2021 for the DOT agencies, apart from FRA’s Maintenance-

of-Way (MOW) employees which was lowered to 25% for drugs for 2022. Alcohol testing rates remain unchanged for all DOT agencies.

Section 5310 Funding FAQs

FTA has published [FAQs](#) to assist recipients of Section 5310 funds with determining whether they are subject to the FTA drug and alcohol testing regulations.

If employers need assistance or have questions about FTA drug and alcohol testing requirements, contact the FTA Drug and Alcohol Sr. Program Manager at 202-366-2010 or iyon.rosario@dot.gov or the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or 617-494-6336.



How Do You Know You Are Having an FTA Drug and Alcohol Audit?

FTA Drug and Alcohol Program Compliance Audits are scheduled by FTA Headquarters in Washington, DC and are

conducted by a team of experts trained on the regulations. All FTA audit teams include FTA or USDOT/Volpe Center federal personnel and FTA-contracted consultants.

monitor or provide oversight of their subrecipients and contractors. Private consultants should never present themselves as FTA auditors and should be clear as to their non-FTA sponsoring organization. Oversight agencies who procure the services of private consultants to review their FTA drug and alcohol program should be aware that private consultants do not speak on behalf of the FTA or as agents of FTA. Such oversight agencies should also ensure that their subrecipients/contractors whose programs will undergo review are made aware of this distinction.

If you have questions about the official nature of your upcoming audit, please contact Iyon Rosario at iyon.rosario@dot.gov, or the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or 617-494-6336.

Employers Cannot Access Previous MIS Reports

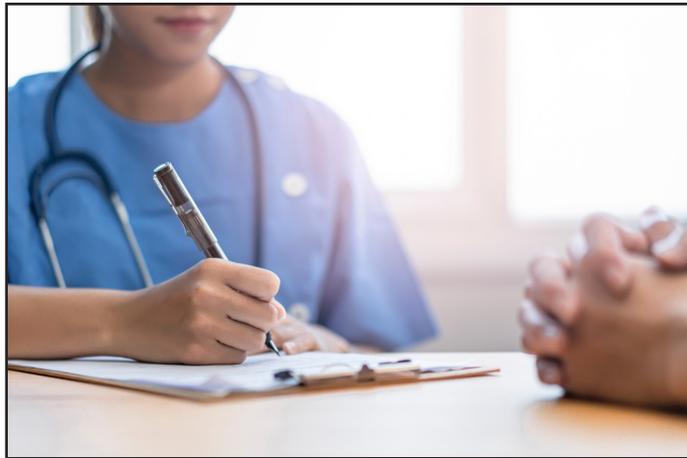
49 CFR §655.71 requires FTA-covered employers to maintain MIS reports for at least five years. Employers may maintain a paper or electronic copy of their annual FTA MIS submission. It is necessary to save or print a copy of the submission after completion, as employers cannot access previous years' MIS reports within the DAMIS online system. The FTA Drug and Alcohol Project Office does not provide copies of previous years' MIS reports.

Notification to a grantee selected for an FTA Drug and Alcohol Program Compliance Audit occurs approximately seven weeks prior to the audit start date in the form of an official Notification Letter on FTA letterhead, signed by the FTA Sr. Drug and Alcohol Program Manager, Iyon Rosario, and a phone call from an FTA-contracted consultant. At the conclusion of the audit, the team provides a Final Audit Report, with a cover letter signed by Ms. Rosario, detailing its findings and required corrective actions.

Some employers choose to hire private consultants to help

Old CCFs Can Still Be Used

Due to a shortage of raw materials needed for the 2020 Federal Custody and Control Form (CCF), the Office of Management and Budget (OMB) has granted an extension for using the 2017 Federal CCF when collecting urine specimens for DOT tests until August 31, 2023. With this extension, either the 2020 CCF



or the expired 2017 CCF may be used for DOT drug tests.

Effective November 23, 2021, the use of the 2017 CCF is permitted without a memorandum for the record (MFR).

Note: for specimens collected using the 2017 CCF between August 30, 2021 and November 22, 2021, an MFR must be completed as required by 49 CFR §40.205(b)(2). For more information, view the ODAPC [List Serve Notice](#).

Diabetes Does Not Interfere with DOT Alcohol Testing

Diabetes is the most common pathological cause of elevated blood ketones. Acetone is a type of ketone, and its presence can result in “acetone breath”, which has been described as smelling like alcohol. Acetone breath in diabetics is caused by an excess production of acetone in the body.

A common question is whether acetone in breath may interfere with DOT breath alcohol testing. All Evidential Breath Testing devices (EBTs) on ODAPC's list of [Approved Evidential Breath Measurement Devices](#) 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 (ASDs) on ODAPC's list of [Approved Screening Devices to Measure Alcohol](#) do not cross-react with acetone and ketones produced by diabetic patients.

Virtual FTA Substance Abuse Seminars Available

FTA Substance Abuse Training Seminars are being held virtually via MS Teams. These free half-day training sessions provide an overview of FTA Drug and Alcohol regulations, program requirements, and current issues with regard to 49 CFR Part 655 and 49 CFR Part 40. The presenter is also available to take questions from attendees. The targeted audience for the seminars is anyone who administers and/or assists in administering an FTA-authorized testing program, with the goal of providing essential information to facilitate compliance with drug and alcohol testing regulations.

Scheduled trainings will be posted on the FTA Drug and Alcohol Program [Training page](#), and interested attendees may register themselves.

If you are unable to attend the sessions currently scheduled and are interested in scheduling a half-day training session, contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or 617-494-6336.

Situation Changes After Post-Accident Determination

49 CFR §655.44 requires employers to determine if FTA-post accident testing thresholds are met, using the best information available at the time of the determination. “Best information available” refers to any and all information observed or learned during the on-site portion of an accident investigation. The decision to test or not test must be made using this information only, regardless of facts that may later emerge. It is imperative to note FTA requires the decision be made promptly.

Because post-accident testing is time sensitive, employers should not undertake a prolonged investigation (e.g., returning to the

garage to review video from the vehicle), but must instead make a decision at the accident site, as soon as practicable.



DOT Publishes Notice of Proposed Rule Making – Oral Fluids

Regulation Updates

Produced By:
Federal Transit Administration
Office of Transit Safety & Oversight
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

On February 28, 2022, a DOT [Notice of Proposed Rulemaking](#) (NPRM) was published in the Federal Register. DOT is proposing to amend the transportation industry drug testing program procedures regulation to include oral fluid testing. The proposal also includes other provisions to update 49

CFR Part 40, and to harmonize, as needed, with the new Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the U.S. Department of Health and Human Services.

For further information, contact ODAPC at ODAPCwebmail@dot.gov.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Employers should refer to applicable regulations, 49 CFR Part 655 and Part 40 for Drug and Alcohol Program requirements.