

**16th Annual FTA Drug and Alcohol Program
National Conference**

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**Record Retention
Requirements and
Best Practices**

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Federal Transit Administration

FTA
FEDERAL TRANSIT ADMINISTRATION

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Today's Topics

- What to keep and for how long
- Record retention best practices
- How to store records
 - Electronic vs. paper
 - Can I hire a Third-Party Administrator to retain my records?
- And more!

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What Do I Have to Keep?

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What Do I Have to Keep?

- “Employers are required to thoroughly document their program, decision-making and compliance with respective DOT regulations. The drug & alcohol testing documents [within] will only make up a part of the overall records you will need to keep.”
- ODAPC’s Employer Record Keeping Requirements for Drug & Alcohol Testing Information


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What Do I Have to Keep?

§ 655.71 Retention of records; § 40.333 What records must employers keep?

1 Year  Negative Drug Tests, < 0.02 Alcohol Tests, & Canceled Tests

2 Years  Collection Process & Employee Training

3 Years  Previous Employer Requests

5 Years  Positive Drug Tests, ≥ 0.02 Alcohol Tests, Refusals, Return-to-Duty, & MIS Reports



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1 Year

Negative Drug Tests, < 0.02 Alcohol Tests, & Canceled Tests



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1 Year – Negative Drug Tests & < 0.02 Alcohol Tests

- Employer copy (Copy 4) of the CCF
- Employer copy (Copy 1) of the ATF
- MRO-verified results
 - CCF (Copy 2)
 - Verification Sheet / Written Report
 - Electronic Data File
 - Not a simple table listing employee name, date, and test result




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1 Year – Canceled Tests

- Employer copy (Copy 4) of the CCF
- Employer copy (Copy 1) of the ATF
- MRO-verified results
- Documentation related to the cancelation (if applicable)
 - e.g., statement from collection site, attempt to correct flaw




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2 Years

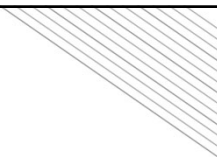
Collection Process & Employee Training



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2 Years – Collection Process – Decision to Test

- “Collection Process” includes documents generated in connection with decisions to administer tests
 - Random
 - Reasonable Suspicion
 - Post-accident



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2 Years – Collection Process – Decision to Test

- Documents related to random selection process
 - Random selection lists
 - Date generated or received
 - Testing period
 - Alternates (if applicable)
 - Test type
 - Random pool at time of each selection
 - Excusals from testing



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2 Years – Collection Process – Decision to Test

- Documents related to reasonable suspicion determinations
 - Referral for testing form (if applicable)
 - Documentation of signs and symptoms
 - Inability to conduct alcohol test within 2 hours and 8 hours



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2 Years – Collection Process – Decision to Test

- Documents related to post-accident decision making
 - Decision making form (if applicable)
 - **Decision to not test after qualifying accident**
 - All post-accident reports
 - Inability to conduct drug and/or alcohol test within required time limits



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2 Years – Collection Process

- Verification of a legitimate medical explanation for a shy bladder or shy lung
- Inspection, maintenance, and calibration of EBTs
 - Typically maintained by service agent



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2 Years – Employee Training

§ 655.14(b)(1) Education and training programs – Covered employees

- Date and time of training on prohibited drug use and names of covered employees who attended training
- Training materials used
- Certification of compliance with section 655.14(b)(1)
 - Length of training, topics covered

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2 Years – Employee Training

§ 655.14(b)(2) Education and training programs – Supervisors (*Reasonable Suspicion*)

- Documentation of training provided
- Certification of compliance with section 655.14(b)(2)
 - Length of training, topics covered

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3 Years

Previous Employer Requests



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3 years – Previous Employer Requests

§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

- Information released from previous employer
 - Positive Drug Tests, Alcohol Test Results > 0.04, Refusals, Information About Employee's Return-to-Duty, Other Violations
- If information is not obtained, documentation of the good faith efforts made to obtain the information
 - Call log, email, certified mail, etc.
- The previous employer must maintain a written record of the information released




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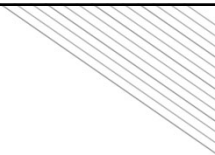


5 Years

Positive Drug Tests, ≥ 0.02 Alcohol Tests, Return-to-Duty Process, & MIS Reports


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5 Years – Positive Drug Tests

- Employer copy (Copy 4) of the custody and control from
- MRO-verified results
 - Signed and dated Medical Review Officer copy (Copy 2) of CCF; or
 - Verification Sheet / Written Report
- SAP Referral
 - Copy of letter sent

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5 Years – Alcohol Test Results ≥ 0.02

- **Alcohol Test Results ≥ 0.04** (Confirmation Test Results)
 - Employer copy (Copy 1) of the Alcohol Testing Form
 - SAP Referral

- **Alcohol Test Results 0.02 - 0.039** (Confirmation Test Results)
 - Employer copy (Copy 1) of the Alcohol Testing Form
 - Documentation of temporary removal of employee from safety-sensitive duty
 - Employer copy (Copy 1) of Alcohol Testing Form for subsequent test (if applicable)

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5 Years – Refusal to Test

- Employer copy (Copy 1) of the Alcohol Testing Form (if applicable)
- Employer copy (Copy 4) of the custody and control form (if applicable)
- MRO-verified results (if applicable)
- Any documentation related to the refusal of the employee to take a federal test
 - e.g., time of notification vs. time of arrival at collection site; statement from collection site regarding employee leaving; failure of employee to undergo a medical examination as part of a shy lung or shy bladder situation
- SAP Referral

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5 Years – Return to Duty Process

- Initial SAP Report
- Follow-up SAP Report(s)
- Follow-up Testing Plan
- Employer copy of Return-to-duty ATF and/or CCF
- MRO-verified results of Return-to-duty Drug Test
- Employer copy of Follow-up ATFs and/or CCFs
- MRO-verified results of Follow-up Drug Tests
- Leave of Absence Dates

All paperwork and documentation related to a DOT violation (e.g., initial violation testing paperwork, SAP referral) must be kept for five years following the final related event (e.g., final follow-up test, employee termination).



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5 years – MIS Reports

- Copy of annual MIS report submitted to FTA



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Additional Requirements



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Additional Requirements

- Corrective affidavits
- Initial & re-tests
 - e.g., After canceled test; if directed by MRO
- CCF/ATF for insufficient specimen event
- Documents presented by employee to dispute results
- Date and time of contact attempts with employee after MRO requests that you contact employee
- Semi-Annual Statistical Summaries from Laboratory



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How Long Must You Keep?

800
300
600

1 2 3

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Canceled Tests

1 Year

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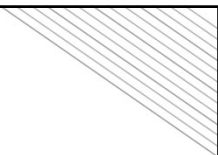


MIS Reports

5 Years


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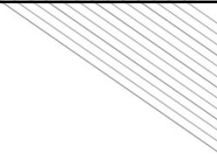


Previous Employer Requests

3 Years


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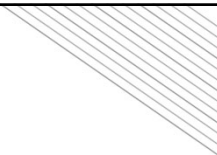


Negative Test Results

1 Year


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Reasonable Suspicion Determination

2 Years

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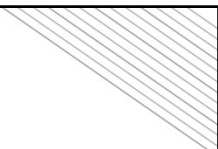
Return to Duty Test

5 Years

(From Last Follow-up Test)


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Physician's Determination in Shy Lung Situation

2 or 5 Years

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Review of What to Keep

- 1 Year – Negative Drug Tests, < 0.02 Alcohol Tests, & Canceled Tests
- 2 Years – Collection Process & Employee Training
 - Random Selection Process, Reasonable Suspicion Determinations, Post-Accident Decision-Making
 - Covered Employee and Supervisor Training
- 3 Years – Previous Employer Requests
- 5 Years – Positive Drug Tests, ≥ 0.02 Alcohol Tests, Refusals, Return-to-Duty Process, & MIS Reports

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Anything Else?

Best Practices



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Anything Else - Employer

- Testing notification forms
- Date employee starts performing safety-sensitive duties
- Covered employee extended leave
 - Last date of safety-sensitive duty
 - First date of safety-sensitive duty
 - Date removed from random testing pool
 - Date returned to random testing pool
- Time and date of removal from safety-sensitive duty following a violation



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Anything Else - Vendors

- Documentation of BAT and Collector Qualification
 - Refresher Training required every 5 years
- Error Correction Training
- Documentation of MRO Qualification
 - Requalification required every 5 years
- Documentation of SAP Qualification
 - 12 Professional Development Hours required every 3 years
- Statement from consortium affirming minimum random testing rates have been met



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Best Practices - Model Forms

- Compliant record maintenance often starts with quality forms
- Good forms cue proper documentation
- [FTA's Tools and Resources](#)
 - Previous Employer Release of Information Form
 - Post-Accident Decision Making Form
 - Reasonable Suspicion Determination Report
 - Notification for Testing Form
 - Collection Site Affidavit Form



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How to Store Records



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How to Store Records

- Access
- Electronic or Paper
- Legibility
- Third-Party Administrators
- Organization



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Access

- Kept in a secure location with controlled access (e.g., locked file cabinet)
- Only designated personnel with a “need-to-know” should have access
- Separate from personnel or medical records
 - Limits the number of individuals who have access



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Electronic Storage

- Collection site can electronically transmit CCFs & ATFs to MRO/DER
- MRO-verified results might only be available in online database
- Records received electronically may be maintained electronically
- Secure access rules apply



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Electronic Storage

- Anything maintained electronically must be easily accessible, legible, and able to be presented in an organized way
 - If electronic records don't meet these standards, employer must be able to convert records to printed documentation in a rapid and readily auditable manner (§ 40.333(e))
 - FTA auditors ask for paper copies of records
- Employer is responsible for legibility and accessibility of records
 - Employer is responsible for their copy of the CCF/ATF
 - Employer must ensure collection site is delivering records in a compliant way



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Legibility

- If scanning paperwork, must be high quality
- If receiving illegible copies from vendors, you must require them to resend or send original
- Even if you scan, you must retain original copy



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Third-Party Administrators

- TPAs may maintain DOT drug and alcohol testing records
- Must be available to employer within two business days
- Employee consent for TPA to receive and maintain records is unnecessary
- Employer's responsibility to ensure accurate and current records are maintained
- TPA must keep records secure and limit access



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Organization

- No right/wrong way
- Must be able to present records in a readily auditable manner

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Organization

FTA Auditors will request records to be broken up by test type

- Pre-Employment
 - CCF, ATF, MRO-Verified Result, Previous Employer Requests
- Random
 - CCF, ATF, MRO-Verified Result, Notification Forms, Selection Lists, Original Rosters, Excusal Documentation
- Post-accident
 - CCF, ATF, MRO-Verified Result, Accident Reports, Decision-Making Form, Documentation of Delays
- Reasonable Suspicion
 - CCF, ATF, MRO-Verified Result, Supervisor Documentation of Event, Documentation of Supervisor's Training

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Organization

FTA Auditors will request records to be broken up by test type

- Positive/Refusal
 - CCF, ATF, MRO-Verified Result, Documentation of Refusal, Evidence that Employee was Removed from Safety-Sensitive Duty, SAP Referral
- Return To Duty
 - SAP Reports, Follow-Up Testing Schedule, RTD CCF, RTD ATF, FU CCF, FU ATF, Leave of Absence Dates
- Canceled Tests
 - CCF, ATF, MRO-Verified Results, Error-Correction Training



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Questions



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