

# Now What? FTA's Guide to (Most of) Your Challenges

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FTA Drug and Alcohol Program National Conference

April 14-16, 2026



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Federal Transit Administration



# Disclaimer

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## Now What?

Welcome to “*Now What? FTA's Guide to (Most of) Your Challenges.*”

In this session, we'll walk through real-world scenarios transit employers face in meeting FTA and DOT drug and alcohol testing requirements—and show you how to fix, pivot, or improve your approach.

We'll also cover key FTA tools and resources to help you navigate your toughest compliance challenges.

# Areas Covered

1. Drug & Alcohol Testing Policy (§655.15)
2. Training (§655.14)
3. Pre-employment Testing/Onboarding (§655.41 & §40.25)
4. Reasonable Suspicion (§655.43)
5. Post-accident Testing (§655.44)
6. Random Testing (§655.45)
7. Vendor Oversight
8. General Requirements



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# Drug & Alcohol Policy



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# Policies (§655.12(a) and §655.15)

## Challenge:

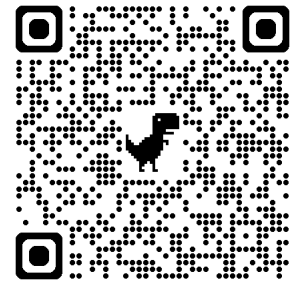
- Many transit employers either have no FTA drug and alcohol testing policy at all, are still referencing long-superseded regulations (Parts 653/654), or are relying on an FMCSA or non-DOT policy that doesn't meet FTA requirements

## Fix:

- Use FTA's "Policy Builder" tool to create a new, compliant policy – customized to your workplace's needs
- But first! Work with your internal stakeholders (HR, Legal, GM, Grantee, etc.) to ensure you're all on the same page about policy selections

## Resource:

- FTA Policy Builder
  - Free web-based tool
  - Simple "Q&A" style policy creation dialogue
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx>



# Policies (§655.12(a) and §655.15)

## Challenge:

- Employers often inherit or adopt a non-compliant policy without fully understanding its contents, then go years without reviewing it — until an audit forces the issue

## Improve:

- Create a plan for consistent (e.g., annual) review of policy, selected policy options
- Use FTA’s “Policy Requirements Checklist” to perform a section-by-section check of your current policy

## Resource:

- Policy Requirements Checklist
  - Downloadable Word document
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Checklist/PolicyReqsChecklist.docx>



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# Employee & Supervisor Training



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# Training: 60-minute Employee Training

## Challenge:

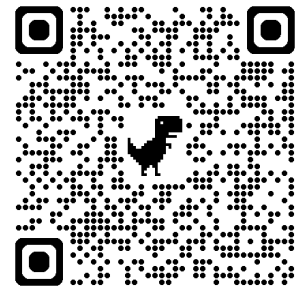
- §655.14(b)(1) requires that:
  - “Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use...”
- Many off-the-shelf or DIY training programs fail to provide a full, standalone 60 minutes dedicated to the effects and consequences of prohibited drug use, as §655.14(b)(1) requires

## Pivot:

- Revise training plan to explicitly indicate requirement for 60’ on drug use
- Ensure training is a discrete, standalone portion of any D&A training
- Training is required *once* only for each SSE (Best practice: Refresh!)

## Resource:

- 60-Minute Drug Awareness Video
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DrugAwarenessVideo/Default.aspx>



# Training: Supervisor Training

## Challenge:

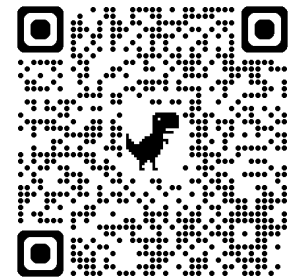
- §655.14(b)(2) requires that:
  - “Supervisors... shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use... and at least 60 minutes of training on the... indicators of probable alcohol misuse.”
- FTA audits often find:
  - Supervisor making RS determination hasn’t been trained
  - Training covers only alcohol, or is of insufficient duration

## Pivot:

- Maintain up-to-date logs of who has/needs training
- Review all RS testing events immediately to confirm trained supervisor
- This training is only required once (but best practice: Refresh!)

## Resource:

- Reasonable Suspicion Testing for Supervisors Video
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/ReasonableSuspicionVideo/default.aspx>



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# Pre-employment/ Onboarding



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# “Have you tested positive...”

## Challenge

- §40.25(j) requires that you ask the employee whether they have:
  - “...tested positive, or refused to test, on any [DOT pre-employment test] during the past two years.”
- One of the most common audit findings is the failure to explicitly ask this question of every safety-sensitive applicant/transferee

## Fix

- Add to application process/interview questionnaires
- Required for *all* SSE applicants, regardless of any prior work
- Use FTA’s “Pre-Employment Notification and Acknowledgement Form”
  - Includes PE testing acknowledgement (a best practice, but *not required*)
  - Includes 40.25(j) inquiry – *required!*

## Resource

- Pre-Employment Notification and Acknowledgement Form
  - Downloadable Word document
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Forms/Pre-Employment%20Notification%20and%20Acknowledgement%20Form.docx>



# Previous Employer Requests (§40.25)

## Challenge

- §40.25 requires that you perform a two-year previous-employer check
- Employers often skip the two-year previous-employer records check for FTA-covered employees because they wrongly assume it only applies to CDL holders under FMCSA.
- Note: *FTA is not covered by (and can't access) the Clearinghouse!*

## Fix

- Ensure all relevant stakeholders (incl GM, TPA, MRO, etc.) are aware that FTA ≠ FMCSA
- If not handled by your department, ensure 40.25 is being addressed consistently
  - And not “Just for CDL!”

## Resource

- Previous Employer Release of Information Form
  - Downloadable Word document
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Forms/Previous%20Employer%20Release%20of%20Information%20Form.docx>



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# Reasonable Suspicion Testing



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# Reasonable Suspicion Testing (§655.43)

## Challenge

- §655.43(b) requires that RS testing be based on “... specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.”
- Even trained supervisors sometimes make reasonable suspicion determinations without documenting the specific, contemporaneous observations of appearance, behavior, speech, or body odors that the regulation requires

## Improve

- Use a simple form to guide your trained supervisor
- Then *train* supervisors on the use of the form (outside the 2hrs of §655.14(b)(2))

## Resource

- Reasonable Suspicion Determination Report
  - Downloadable Word document
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Forms/Reasonable%20Suspicion%20Determination%20Report.docx>



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# Post-accident Testing



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# Post-accident Testing (§655.44)

## Challenge

- Supervisors sometimes struggle to recall FTA's post-accident testing thresholds in the field, leading to missed tests, unnecessary tests improperly conducted under FTA authority, or tests improperly performed after discounting the employee's actions.

## Improve

- Require periodic refresher training on PA decision-making
- Use a form that clearly walks supervisors through the process
- Train supervisors on the use of the form

## Resources

- Post-Accident Decision Making Form, Flow Chart, and Pocket Card
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Post-Accident/PATestingChart.aspx>
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Forms/Post%20Accident%20Decision%20Making%20Form%20-%20202026.docx>
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Publications/Documents/Substance/Cards/Post%20Accident%20Cards%20PDF.pdf>

### [Decision-making Form](#)



### [PA Testing Flow Chart](#)



### [Pocket Cards Template](#)



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# Random Testing



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# Random Testing (§655.45)

## Challenge

- §655.45(g) requires that random testing be
  - “...unannounced and unpredictable, and that... tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.”
- Random testing programs can unintentionally fall into predictable patterns – in timing, day of week, or selection – undermining the "unannounced, unpredictable, and spread reasonably" requirement

## Improve

- Use your own data for comprehensive program analysis
- Create your own tracking system or use FTA’s charts
- Be clear with stakeholders that this is an ongoing requirement

## Resource

- Random Testing Charts
  - Downloadable spreadsheet
  - [https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/RandomCharts\\_v3.xlsx](https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/RandomCharts_v3.xlsx)



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# Vendor Oversight



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# Vendor Oversight – Collection Process

## Challenge

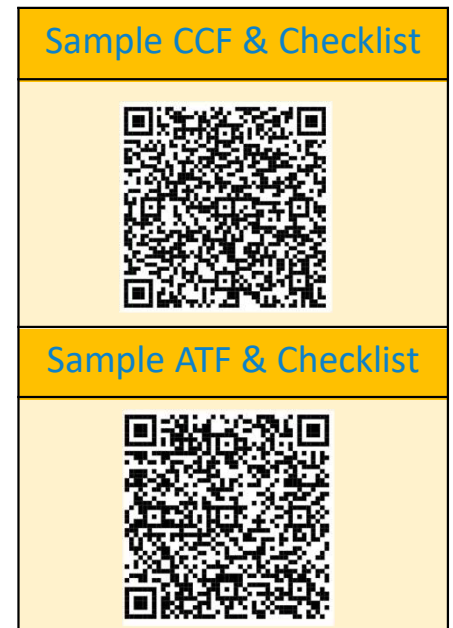
- Employers may assume their collection site is performing well, only to discover recurring test cancellations due to procedural flaws and audit findings that the employer – not the vendor – is ultimately responsible for

## Fix

- Remind vendor that employer remains responsible (§40.15(c))
- Periodically review completed testing forms against samples
- Communicate with vendor!

## Resources

- ATF & CCF and Review Checklists
  - PDFs
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Checklists/Drug%20Testing%20Custody%20and%20Control%20Form%20Review%20Checklist%20and%20Completed%20CCF%202023.pdf>
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Forms/Alcohol%20Testing%20Site%20Affidavit%20Form.docx>



# Vendor Oversight – Return-to-Duty/SAP

## Challenge

- Requirements are specific and to an extent, complex (Subpart O)
- SAP initial evaluation letters, follow-up evaluation letters, and follow-up testing plans frequently fail to meet the specific reporting requirements of Subpart O (§§ 40.307 and 40.311)

## Fix

- Review DOT’s reporting requirements at §§ 40.311 and 40.307
- Review DOT’s “Substance Abuse Professional Guidelines”
  - Provide these to your SAP(s)
- Review SAP’s letters and plan in detail, compare against Part 40 & Guidelines

## Resource

- Substance Abuse Professional Guidelines
  - PDF
  - [https://www.transportation.gov/sites/dot.gov/files/2023-06/ODAPC\\_SAP\\_Guidelines\\_June\\_2023A.pdf](https://www.transportation.gov/sites/dot.gov/files/2023-06/ODAPC_SAP_Guidelines_June_2023A.pdf)



# Vendor Oversight – All Vendors

## Challenge

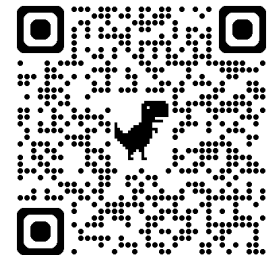
- §40.15(c) states: “You [the employer] remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent.”
- Sometimes vendors can slip on the “basic” stuff – leaving you at risk
- This circumstance increased notably during the 2020-2022 period

## Improve

- Maintain consistent communication with your vendors – and ask them questions!
- Perform periodic document/process inspections
- Provide DOT’s “Back to Basics” resource, created in direct response to this issue

## Resource

- DOT’s “Back to Basics”
  - Web page
  - [https://www.transportation.gov/odapc/back\\_to\\_basics](https://www.transportation.gov/odapc/back_to_basics)



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# General Requirements



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# General Requirements – Employee Notice

## Challenge

- §655.17 requires that each employer notify covered employees about the testing authority
- §655.45(h) requires that the employer ensure the employee proceeds immediately for random testing
- Audits commonly find that employees aren't clearly informed of the authority under which they're being tested, or that employees don't proceed promptly to the collection site

## Improve

- Ensure your policy clearly distinguishes testing authority
- Train relevant personnel (e.g., road supervisors) on importance of §655.17
- Establish simple, consistent method for ensuring random immediacy (§655.45(h))

## Resource

- Notification for Testing Form
  - Downloadable Word document
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Forms/Notification%20For%20Testing%20Form.docx>



# General Requirements – MIS Reporting

## Challenge

- MIS due annually on March 15
- Annual MIS reports are frequently submitted late, contain miscounted or double-counted safety-sensitive employees, or inaccurately report non-negative results like positives and refusals

## Pivot

- Start thinking about annual reporting before the year is out
- Ensure MIS roles are established and known (esp. w/ TPA, if applicable)
- Review semi-annual lab reports

## Resource

- FTA MIS User Manual
  - Downloadable Word document
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/DAMIS/FTA%20MIS%20User%20Manual.docx>



# General Requirements – Self Assessment

## Challenge

- Maintaining ongoing compliance is difficult given semi-frequent regulatory changes and the volume of available resources, and most employers lack a tailored, systematic approach to self-auditing their own program

## Improve

- Keep a written SOP/manual/checklist
- Periodic meetings with stakeholders
- Use FTA’s “Compliance Self-Assessment” checklist

## Resource

- Compliance Self-Assessment
  - PDF Checklist
  - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/AuditQuestions/Assess%20Your%20Compliance%20-%20DAPM%202019.docx>

### Assess Your Compliance – Drug and Alcohol Program Manager

#### General

- Do you have access to current versions of 49 CFR Part 655 and 49 CFR Part 40?
- Do you provide your FTA anti-drug and alcohol misuse policy to all covered employees?
  - Does your policy include all elements in §655.15?
- Do you ensure only employees that perform or may be called upon to perform safety-sensitive functions as defined in §655.4 are subject to FTA testing?
- Do you ensure all safety-sensitive employees receive at least 60 minutes on the effects and consequences of prohibited drug use?



# Thank you!

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