

# FTA Drug and Alcohol REGULATION UPDATES

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Issue 79

## 2024 National Conference Coming to Atlanta



FTA is hosting its 17th Annual Drug and Alcohol Program National Conference, April 2-4,

2024 in Atlanta, GA. Visit the [FTA Drug and Alcohol Program website](#) for more information, coming soon!

## 2024 Minimum Random Testing Rates

The data from the annual Drug and Alcohol Management Information System (DAMIS) submissions for calendar year 2022, showed a positive rate for random drug testing of 1.09 percent and a violation

rate for random alcohol testing of 0.5 percent. As a result, the FTA minimum annual percentage rates for random testing for calendar year 2024 will remain at 50 percent for drugs and 10 percent for alcohol. FTA announced these rates in the [Federal Register](#) on November 30, 2023.

## Return-to-Duty Requirements Do Not Expire

When an employee or applicant has a verified positive drug test result, an alcohol test result of 0.04 or greater, a refusal to test, or has otherwise violated a DOT agency drug and alcohol regulation, the employee/applicant may not perform safety-sensitive functions until and unless they have successfully completed the return-to-duty process as defined in [Subpart O](#) of 49 CFR Part 40.

There is no timeframe exempting an individual from this requirement. For instance, if an applicant had a positive DOT drug test result at a previous employer, or has failed a DOT pre-employment test, the applicant must still complete the return-to-duty process, even if, for example, the positive test occurred 10 years earlier.

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U.S. Department of Transportation  
Federal Transit Administration

# New DAMIS Login Process

Login for the Management Information System (MIS) reporting will look different this year for users, as government agencies are required to implement multifactor authentication (MFA). The Drug and Alcohol Management Information System (DAMIS) will use Login.gov to provide MFA services, starting January 1, 2024.

## *What does this mean for users?*

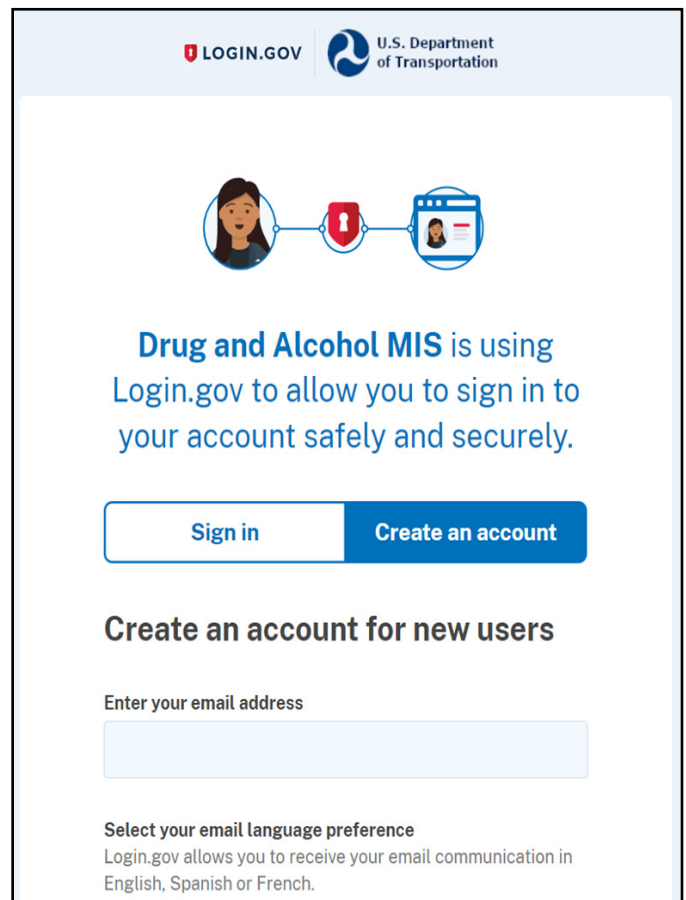
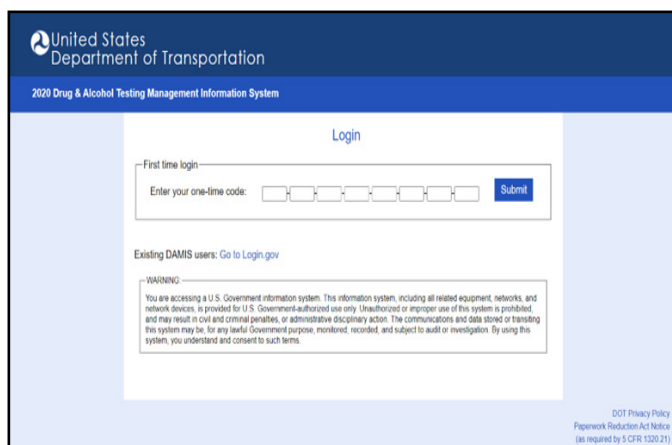
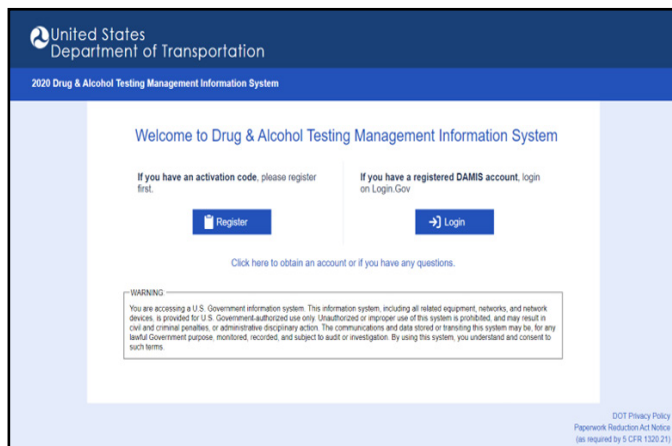
Users will no longer access DAMIS with a username and password. With the notification letters mailing this December, FTA will provide grantees with a 32-character activation code to use at <https://damis.dot.gov>. At the website, you will click the “Register” button and enter your

activation code, and you will be redirected to Login.gov to create an account. If you already have a Login.gov account, you will sign in instead of creating a new account. After signing in, you can view your MIS company page. Grantees must then invite users from their subrecipients and contractors, if applicable, by entering their email addresses. DAMIS will send an email with a link and a 32-character activation code to your subrecipients and contractors to set up Login.gov accounts.

The major change from previous reporting years is now an individual email address is associated with each employer’s account and that email address

may only be used once. As such, anyone (e.g., TPAs, national contractors) who previously entered data for multiple employers/companies will not be able to do so. This includes grantees who have entered data for their subrecipients or contractors. Each individual employer/company must now have their own account.

The FTA will hold several webinars on MIS Data Submission starting in December and will publish guidance documents on the FTA Drug and Alcohol MIS webpage. Check the [FTA Drug and Alcohol website](#) soon for more information.



# Recording Safety-Sensitive Dates

Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, employers must ensure the employee undergoes pre-employment drug testing with a verified negative result, per 49 CFR § 655.41(a)(1).

Many employers hire applicants on a provisional basis, send them for pre-employment testing during

an onboarding period, and then place them into a safety-sensitive position only after receiving a verified negative result from the Medical Review Officer (MRO). In cases where applicants are hired before verified negative results are received, it is a best practice for employers to record not only hire dates, but also the date each employee first performs a safety-

sensitive function. This helps the Drug and Alcohol Program Manager (DAPM) monitor compliance with pre-employment testing requirements. Note, some MRO verifications can take a week or longer – always make sure to wait for the required negative result before allowing a new employee to perform a safety-sensitive function.

## Acceptable Reasons for Random Testing Excusals

FTA's random testing rule, 49 CFR § 655.45(e), requires that all safety-sensitive employees have an equal chance of being tested each time selections are made. Employees must be tested only during the period for which they were selected.

Occasionally, an employee will not be available for testing during a selection period because they are on extended leave for medical care, military service, etc. Should this happen, employers must document why the employee was

unavailable and maintain the documentation for at least two years, as mandated by 49 CFR § 655.71(b)(2).

An employee must only be excused from testing when unavailable for the entirety of the selection period (commencing with the employer's first attempt to notify the employee). “Operational difficulties” are not legitimate excusal reasons. For example, an employer who does not complete random testing on employees because of worker

### 49 CFR Part 655 Q&A Available Now!

The FTA Drug and Alcohol Program has published [Questions and Answers](#) to provide guidance and clarify existing drug and alcohol program requirements for FTA-covered employers. The responses to these questions do not substitute the FTA and DOT drug and alcohol testing regulations. For program requirements, refer to 49 CFR Part 655 and Part 40.

shortages, limited collector availability, or cost would be in violation of FTA's testing rule.

## Taxicab Exception: Passengers Must Contact the Provider Directly

FTA is looking closely at recipients and subrecipients who are utilizing the [taxicab exception](#) to ensure their programs are designed in a manner that is fully compliant with the exception's specifications. For the exception to apply, the transit passenger must choose between two or more taxicab and/or ridesourcing

companies each time they take a ride, and *the passenger must contact the provider directly* to schedule the ride. When a transit employer (not the passenger) contacts the taxicab or ridesourcing company to schedule or dispatch the ride, FTA drug and alcohol testing rules apply to the company providing the service.





# Can Two Collectors Be Involved in a Shy Bladder Collection?



may be involved (e.g., because of a shift change during the three-hour period). Per DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) Section [40.43 Q&A](#), it is permissible for one collector to turn the process over to another collector to complete the collection. When this occurs, the transition must be documented in the Remarks line in Step 2 of the CCF, including the first collector's name and the start time for the three-hour period (i.e., the time the initial insufficient specimen was provided). When a sufficient specimen is provided, the second collector would provide their name and signature in Step 4 of the CCF as the collector of record. If the employee does not provide a specimen, the second collector must still print and sign their name in Step 4.

To protect the security and integrity of urine collections, [49 CFR § 40.43\(d\)](#) requires the collector to maintain personal control over each specimen and Federal Custody and Control

Form (CCF) throughout the entire collection process. However, given the time span involved in a shy bladder collection (see [49 CFR § 40.193\(b\)](#)), there may be instances where two collectors

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## Random Testing During Religious Observances

If an employee is unable to provide a sufficient urine specimen for a drug test, when continuing with the urine collection under [49 CFR § 40.193](#), the collector must urge the employee to drink up to 40 ounces of fluid over a period of three hours or until a sufficient urine specimen is provided. In this situation, employees practicing religious fasting may decline to drink. While it is not a refusal to test if the employee declines to drink fluid, fasting is not considered an adequate medical explanation for

the failure to provide a sufficient specimen (which *is* a refusal, per [49 CFR § 40.191\(a\)\(5\)](#)). DOT does not currently offer religious exemptions for fasting employees.

To avoid this scenario, FTA suggests that employers schedule any fasting employees selected for random testing outside of the religious observance period. To facilitate this, it may be necessary to extend a random testing period beyond the boundaries of the religious holiday. For example, an employer who normally generates or receives

a selection list each month may choose to perform a selection on March 1 that would cover a two-month period to ensure the ability to conduct random testing for fasting employees outside of the beginning and ending of Ramadan. The next monthly selection would then be performed on May 1. FTA does not require random testing periods to be of uniform length, as long as selections are performed at least quarterly.

# What to Do When a Follow-Up Test is Positive

As an employer, if you decide you want to permit an employee to return to the performance of safety-sensitive functions following a DOT violation, you must ensure the employee takes a return-to-duty test. This test cannot occur until after the Substance Abuse Professional (SAP) has determined the employee has successfully complied with their prescribed education and/or treatment. The employee must have a verified negative drug test result and/or an alcohol test with an alcohol

concentration of less than 0.02 before resuming safety-sensitive duties.

The employee must also participate in a follow-up testing program, as prescribed by the SAP. If a follow-up test results in a verified positive, an alcohol test result of 0.04 or greater, or a refusal to test, the employee must be removed from safety-sensitive duties and referred to a SAP. The follow-up testing plan initially prescribed by the SAP would cease. If you decide again to permit the employee to return

to safety-sensitive functions, the return-to-duty process must start from the beginning. Once again, the employee must participate in the SAP's prescribed education and treatment program. If successfully completed, the employee would be required to take a return-to-duty test. The SAP must also prescribe a new follow-up testing plan, and the follow-up tests that occurred because of the initial violation must not be counted as completed tests.

## Drug and Alcohol Substance Abuse Trainings Available

The FTA Drug and Alcohol Program offers one-day, onsite training on FTA and DOT drug and alcohol testing regulations. FTA also offers virtual special topics training sessions running approximately 90 minutes. Past topics include random testing, post-accident testing, and MIS overview. Information about scheduled onsite and virtual trainings can be found on the Program's [training website](#).

If you are interested in hosting an onsite training or have a suggestion for a virtual special topic session, please contact the hotline at 617-494-6336 or [fta.damis@dot.gov](mailto:fta.damis@dot.gov).

### 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 on 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 § 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>.

# What Happens When You Can't Reach an Applicant for a Second Collection?

Per 49 CFR § 40.191(a)(6), it is a refusal to test if an employee fails or declines to take an additional drug test as directed by the employer or collector. This behavior constitutes a refusal for all test types, including when an applicant fails or declines to take a second pre-employment test when directed by the employer. This

is true even when the applicant chooses not to proceed for testing because they have withdrawn their consideration for employment.

But what happens when the employer is unable to reach the applicant to notify them of the requirement to proceed for a second collection? In this case, the applicant has *not* refused

the test because they have not yet been *directed* to proceed for the additional drug test. If the employer cannot reach the applicant, the employer must document their attempts to contact the applicant and maintain this documentation with the test records.

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## Troubleshooting CCF and Cancelled Tests

When collectors complete a urine test, they should enclose the laboratory copy of the CCF (Copy 1) along with the split specimens in a sealed shipping bag. This bag is then delivered to the laboratory for processing. Occasionally, a collector might mistakenly put an incorrect copy of the CCF into the shipping bag.

When these mistakes occur, the laboratory must inform the collection site, and the relevant collector must correct the error by transmitting to the laboratory an explanatory memorandum for the record (MFR) as well as Copy 1 of the CCF bearing the collector's wet (ink) signature. Because a wet signature is required, these corrective materials must be sent by courier or mail – they may not be delivered electronically. If the laboratory does not receive an MFR and Copy 1 with the collector's wet signature, the test will be cancelled.

remark often signifies the collector sent the laboratory a reprint of the laboratory copy of the CCF without providing a wet signature.

To prevent unnecessary test cancellation, collection sites should ensure they have effective means to receive and respond to requests for correction originating with laboratories. Employers with cancelled tests caused by collector error should ensure error correction training occurs in a timely manner, per 49 CFR § 40.33(f) and 49 CFR § 40.35(f).

Collection sites and employers using eCCFs may sometimes have cancellations with the remark "Rejected for Testing, wrong CCF" from the MRO. This

### 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  
Volpe National Transportation  
Systems Center  
220 Binney Street  
Cambridge, MA 02142

#### Cahill Swift, LLC

2 Park Plaza  
Boston, MA 02116

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*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.*