



2020 Public Transportation Summit

Idaho Transportation Department Public Transportation Office

FTA

(Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations)

REGULATORY UPDATES & ISSUES

10/27/2020

U.S DOT / Volpe Center

FTA Drug & Alcohol Project Office

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Trainer

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Regulatory Updates & FAQs

- FTA/DOT Updates
 - COVID-19
 - New Custody and Control Form (CCF)
 - Oral Fluids
 - THC/ Medical Marijuana
 - Electronic Records
 - FMCSA Clearinghouse
 - CBD
 - Annual MIS – 2019 Results
- The Regulations

Testing Requirements - COVID-19

- Effect of National, State or Local Emergency
 - Does not exempt FTA-regulated employers from Parts 655 & 40
- If Unable to:
 - Perform DOT/FTA Test or Provide Training(s)
 - Must comply with FTA requirements
 - DOCUMENT THE REASON AND CIRCUMSTANCES
- FTA Q&A
 - <https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#FTAD&A>

Pre-Employment - COVID-19

- Applicants / New Employees
 - Must receive verified negative Pre-Employment test result prior to performing safety-sensitive function
- Employee Returning to Work
 - On Leave, COVID Furlough, etc.
 - Out of random pool 90 consecutive days and not performing safety-sensitive function 90 consecutive days
 - Must receive verified negative Pre-Employment test result prior to resuming/performing safety-sensitive function

Random Testing - COVID-19

- Must meet FTA's Minimum Random Testing Rates
 - 50% Drug, 10% Alcohol
- Can 'make up' tests towards end of year
 - If unable to spread reasonably (must document)
- Document if unable to test randomly selected employee
 - Provide specific reason

Return-to-Duty - COVID-19

- Employee with Violation
 - May not perform safety-sensitive function
- Must follow all Return-to-Duty procedures (Part 40)
- Must have verified negative Return-to-Duty test result

Follow-Up - COVID-19

- Employee must follow Follow-Up Testing Plan
- If Employee is Furloughed
 - Follow-Up Testing Plan stops during absence
- Follow-Up Testing Plan must continue upon return

Refusals - COVID-19

- If employee has concerns with testing
 - “it is the employer’s responsibility to evaluate the circumstances of the employee’s refusal to test and determine whether or not the employee’s actions should be considered a refusal “

Substance Abuse Professional (SAP) COVID-19

- ODAPC - allows SAPs to conduct remote “face-to-face” evaluation/assessment
 - Suggest document evaluation format
 - Technology used – permit real-time two-way audio & visual
 - SAP determines if technology sufficient to gather necessary visual and audible information (same as face-to-face)
 - Only use technology if State-issued license authorizes

New Federal Custody and Control Form (CCF)

- Approved for use - Office of Management and Budget (OMB)
- ‘Old’ CCF authorized until 8/31/2021
- Changes:
 - Changes adopted in the revised CCF were made to accommodate the use of oral fluid specimens
 - **Copies 1-5, Step 1:** Added “CDL State and No.” to donor identification (FMCSA only)
 - **Copies 1-5, Step 1:** Added “Other” (i.e., e-mail) to Collector Contact Info

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE	
A. Employer Name, Address, I.D. No.	B. MRO Name, Address, Phone No. and Fax No.
C. Donor SSN, Employee I.D., or CDL State and No.	
D. Specify Testing Authority: <input type="checkbox"/> HHS <input type="checkbox"/> NRC Specify DOT Agency: <input type="checkbox"/> FMCSA <input type="checkbox"/> FAA <input type="checkbox"/> FRA <input type="checkbox"/> FTA <input type="checkbox"/> PHMSA <input type="checkbox"/> USCG	
E. Reason for Test: <input type="checkbox"/> Pre-employment <input type="checkbox"/> Random <input type="checkbox"/> Reasonable Suspicion/Cause <input type="checkbox"/> Post Accident <input type="checkbox"/> Return to Duty <input type="checkbox"/> Follow-up <input type="checkbox"/> Other (specify) _____	
F. Drug Tests to be Performed: <input type="checkbox"/> THC, COC, PCP, OPI, AMP <input type="checkbox"/> THC & COC Only <input type="checkbox"/> Other (specify) _____	
G. Collection Site Address:	Collector Contact Info: Phone _____ Fax _____ Other _____
STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate). <input type="checkbox"/> URINE <input checked="" type="checkbox"/> ORAL FLUID	

OMB No. 0930-0158

New Federal Custody and Control Form (CCF)

- **Copy 1, Step 5a:** Removed analyte names and checkboxes; repositioned results and checkboxes; and added a line for the certifying scientist to record the positive analyte(s) and concentration(s) if a positive result is recorded
- **Copies 2-5, Step 5:** Added a line for the donor e-mail address
- **Copy 5:** Removed instructions for completing the CCF from the back of the form. Instructions for completing the CCF are posted on the SAMHSA <https://www.samhsa.gov/workplace/drug-testing> and ODAPC <https://www.transportation.gov/odapc/documents> websites.

STEP 5: COMPLETED BY DONOR

I certify that I provided my specimen to the collector; that I have not adulterated it in any manner; each specimen bottle/tube used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle/tube is correct.

X

Signature of Donor

(PRINT) Donor's Name (First, MI, Last)

Date (Mo/Day/Yr)

Email address: _____

Daytime Phone No. () _____

Evening Phone No. () _____

Date of Birth _____

(Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

New Federal Custody and Control Form (CCF)

- May use new CCF beginning September 1, 2020
- Beginning September 1, 2021 must use new CCF
- ODAPC/OST “**Recommendation**” – Delay use until June 1, 2021
 - Confusion regarding Oral Fluid testing
 - Allow existing supplies to be depleted
 - Step 1 (C). “CDL State and No.” - Not Completed for FTA Tests
 - FMCSA Clearinghouse

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address, I.D. No. _____ B. MRO Name, Address, Phone No. and Fax No. _____

C. Donor SSN, Employee I.D. No., **or CDL State and No.** _____

D. Specify Testing Authority: FHIS NRC Specify DOT Agency: FMCSA FAA FRA FTA PHMSA USCG

E. Reason for Test: Pre-employment Random Reasonable Suspicion/Cause Post Accident Return to Duty Follow-up Other (specify) _____

F. Drug Tests to be Performed: THC, COC, PCP, OPI, AMP THC & COC Only Other (specify) _____

G. Collection Site Address: _____ Collector Contact Info: Phone _____
Fax _____
Other _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate). URINE **ORAL FLUID**

OMB No. 0930-0158

Oral Fluids

- Health and Human Service (HHS) – submitted rule to allow “oral fluids” as a “permissible methodology for Federal employee's drug testing”
- OTETA requires DOT to follow HHS
- However, Oral Fluid drug testing is not authorized in DOT's current drug testing program
 - DOT must develop it's own testing process / regulation
 - DOT regulations currently require:
 - Split Specimen
 - Test only for use...not exposure

THC / Marijuana (Medical and Recreational)

- State/Tribal initiatives - no bearing on the USDOT's regulated drug testing program
 - Marijuana remains a Schedule 1 Drug
 - DOT regulations do not authorize marijuana use
 - MRO will not verify drug test as negative based on physician recommended 'medical marijuana'
 - Use of Marijuana is unacceptable
- Prohibited at "all times"
 - Off duty
 - Vacation
 - With a Rx

Electronic Records - Proposal

- DOT – revising Part 40
 - permit the use of electronic forms, signatures and recordkeeping.
 - eATF (electronic Alcohol Testing Form)

FMCSA Clearinghouse

- Effective January 6, 2020 (FMCSA ONLY)
 - MROs report verified drug results to FMCSA Clearinghouse
 - Collector must annotate the driver's CDL number and State of Issuance in Step 1, Section C of the CCF (FMCSA Only)

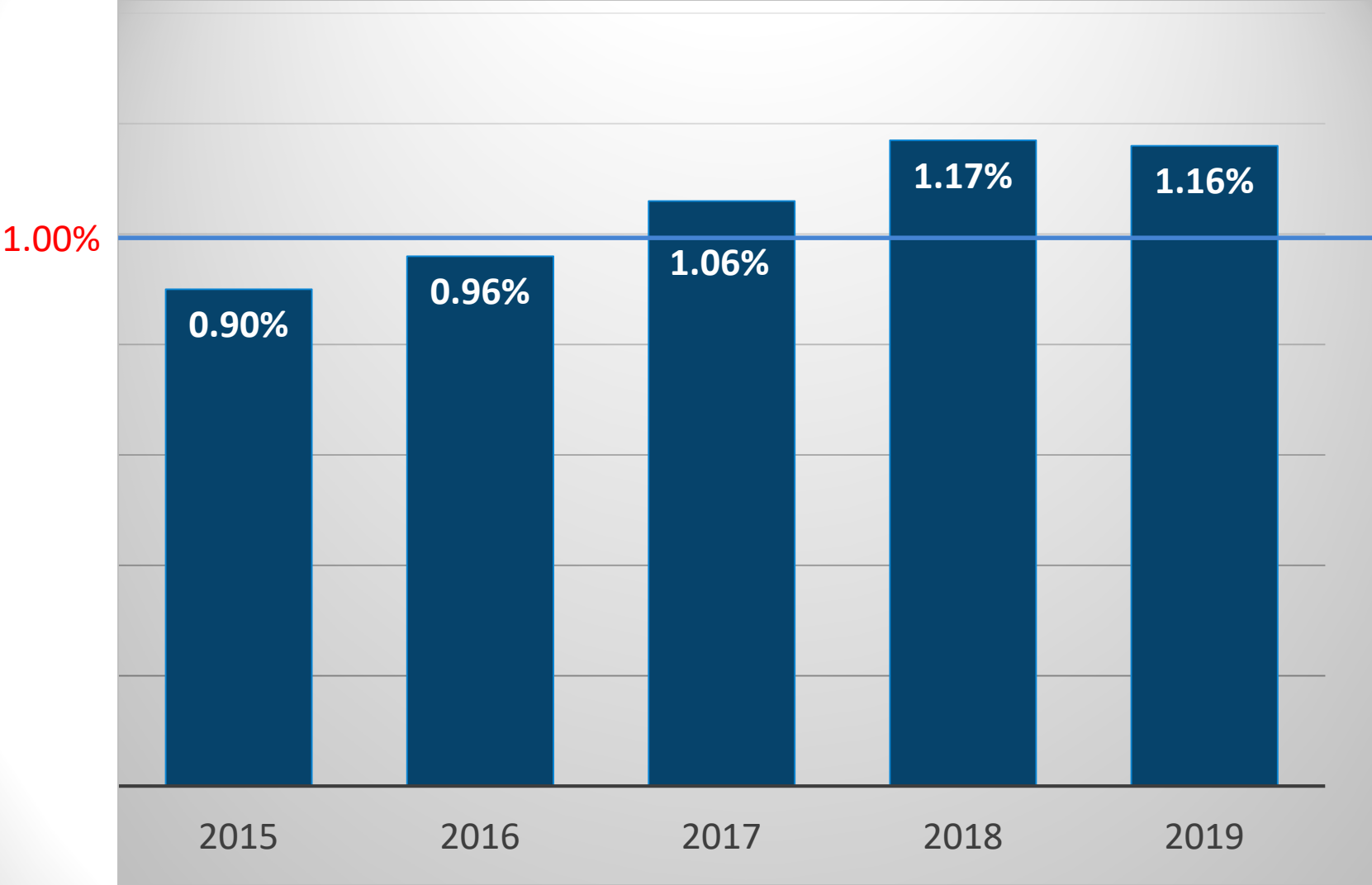
- FTA-Covered Employers not required to participate
 - Ensure collector uses SSN or Emp. ID in Step 1, Section C (FTA)
 - FTA Box is Checked in Step 1, Section D (FTA)

CBD - Cannabidiol

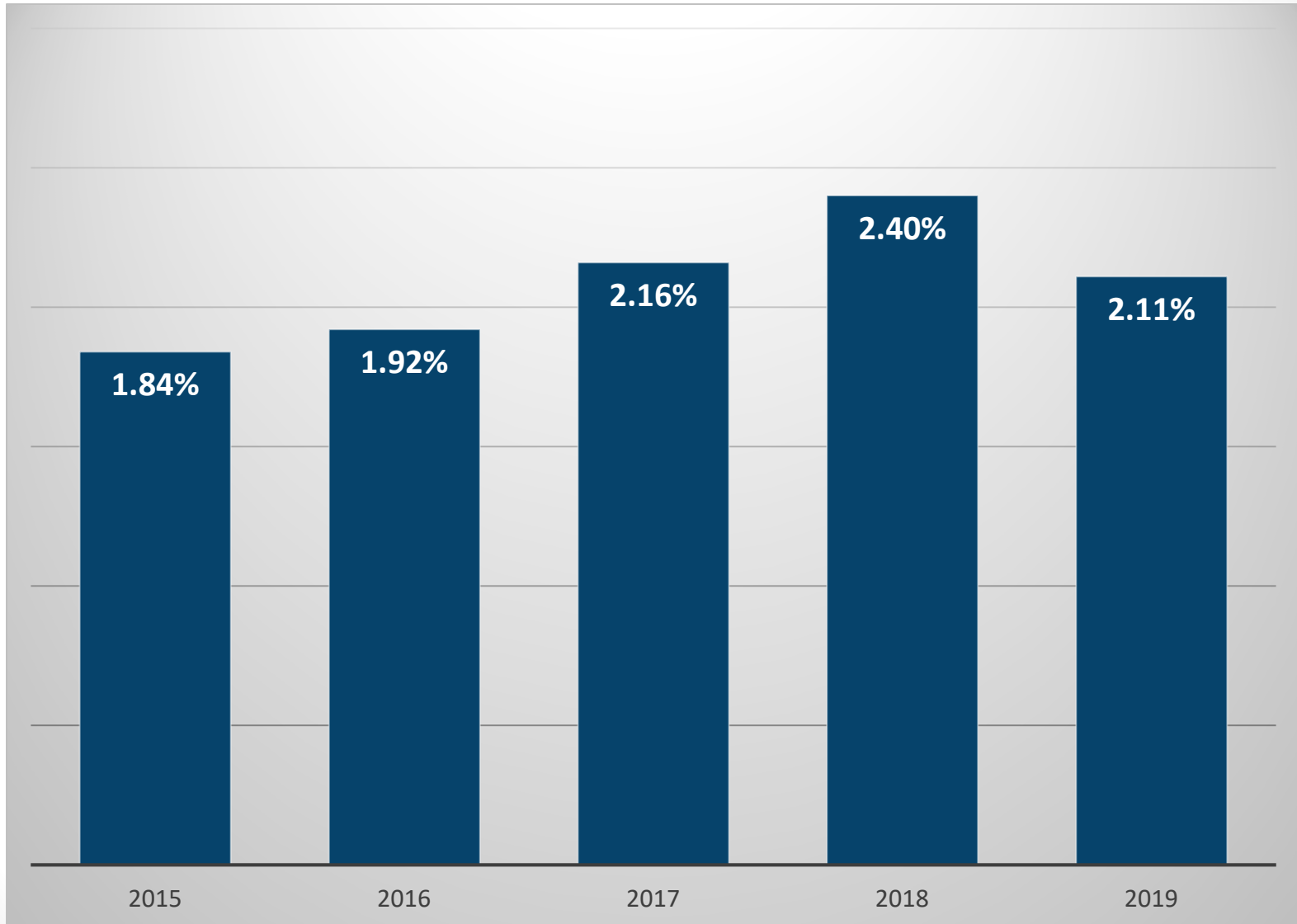
- DOT – OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE (ODAPC)
 - Issued Notice – February 18, 2020
 - Hemp Product < 0.3% THC....not Controlled Substance
 - Any Product \geq 0.3% THC is a Controlled Substance
- DOT Does NOT Test for CBD
 - Not Part of DOT 5-Panel Test - Will Not Test ‘POSITIVE’ for CBD
- DOT Does Test for THC
 - THC is a Schedule 1 Drug
- If use of CBD results in THC Positive...It is a DOT Positive
 - No Legitimate Medical Reason

2019 MIS RESULTS

FTA Random Testing Positive Rate (2015 - 2019)

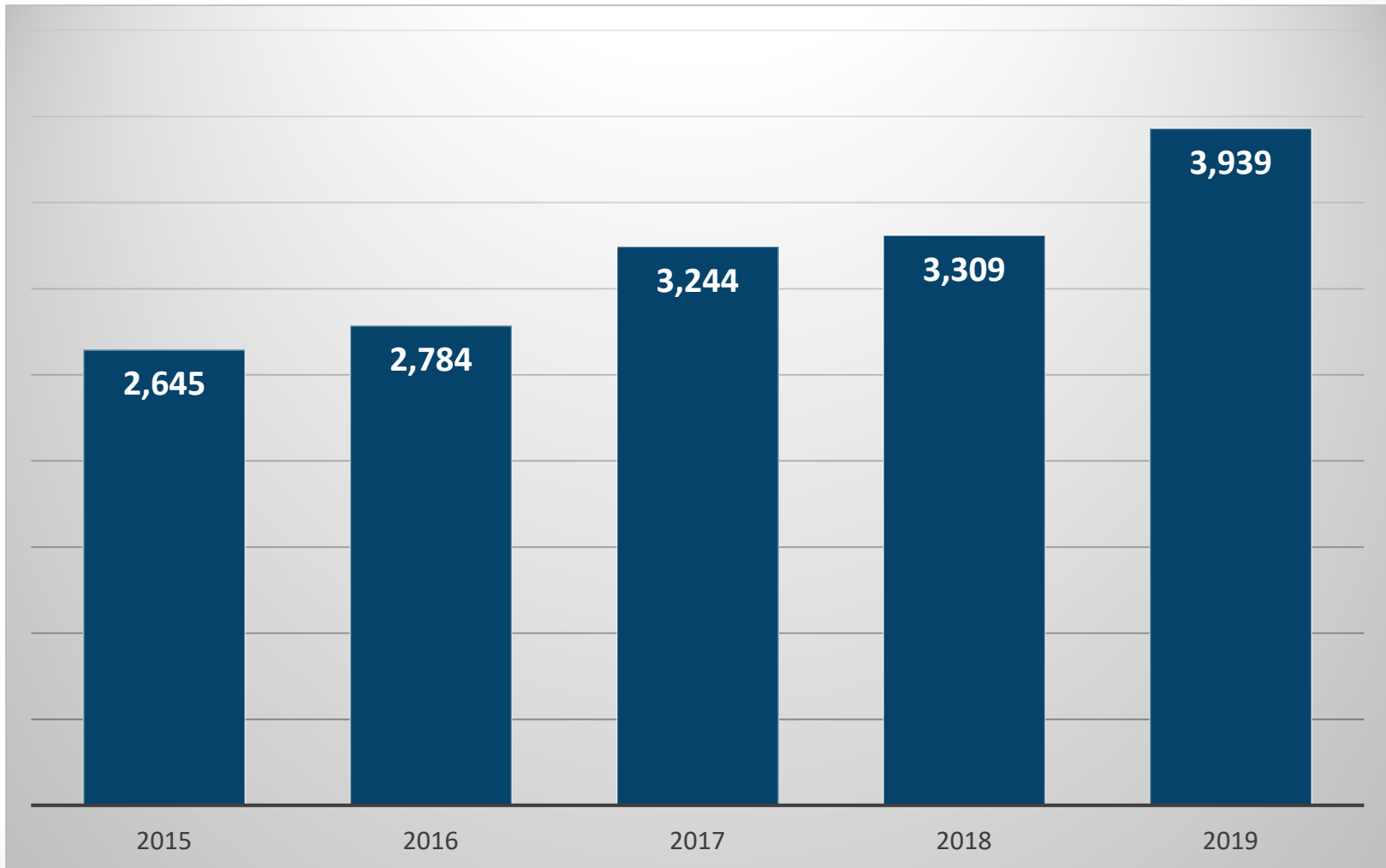


Positive Rate (All Drug Test Types) 2015 - 2019

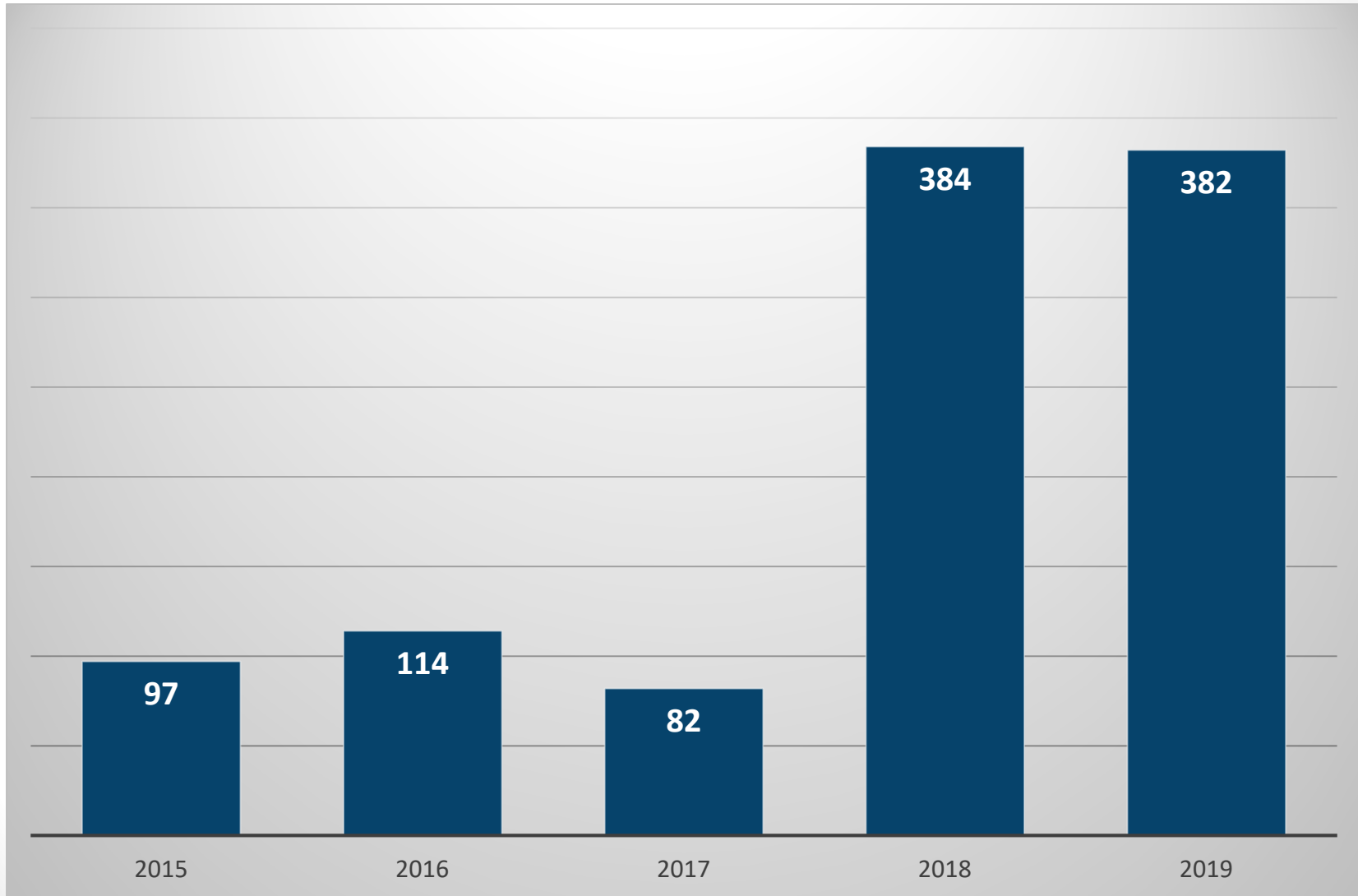


THC Verified Positives

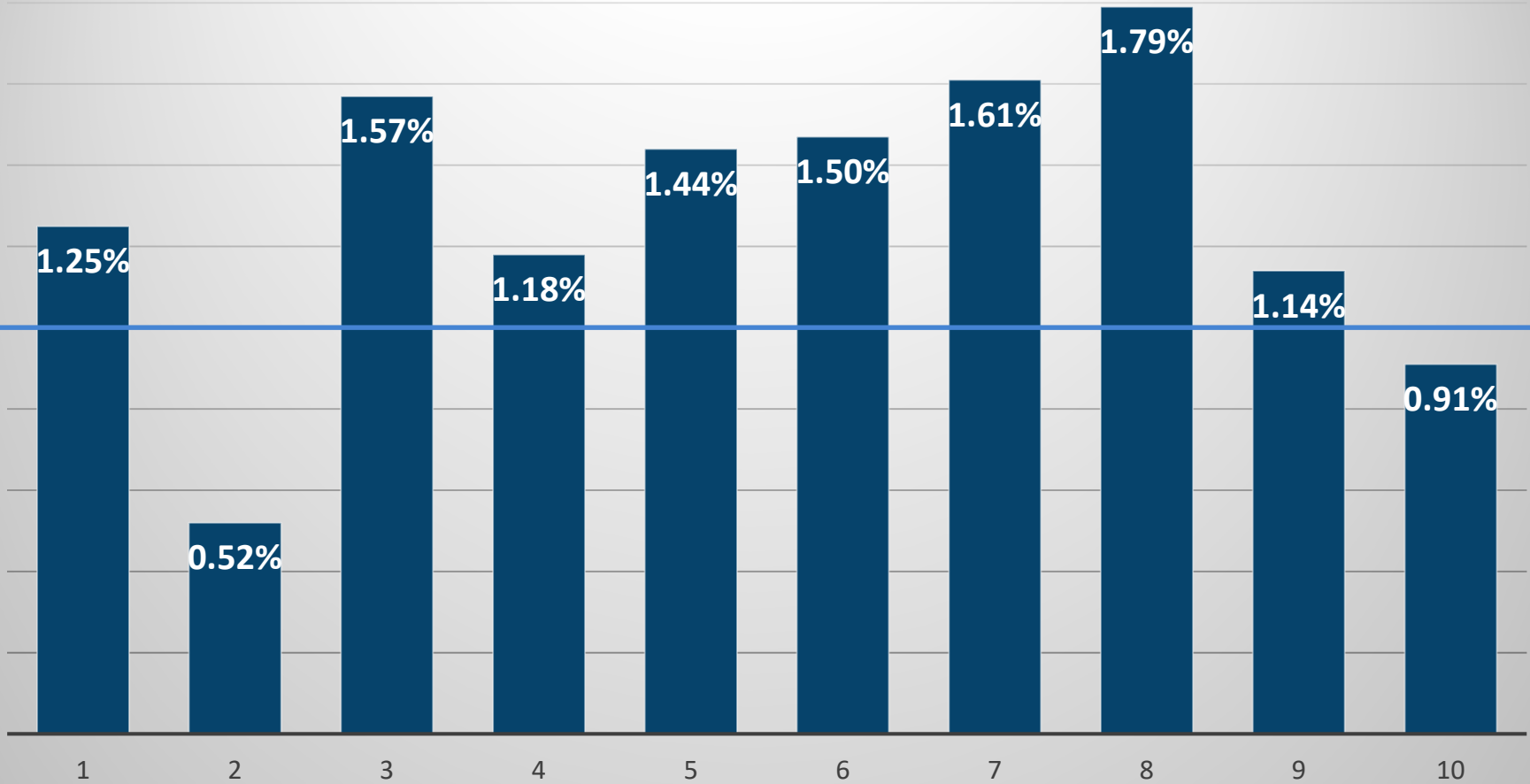
- Increase in Number of THC Positives – 48% from 2015 to 2019



Opiate/Opioid Verified Positives (2015 -2019)



2019 Random Drug Positive Rate - FTA Regions



MANAGEMENT INFORMATION SYSTEM (MIS) 655.72

- ✓ FTA reporting requirements
- ✓ Reporting responsibilities
- ✓ How to submit

MIS – Notification

- Letters mailed to FTA Grantees – Late December (2020)
 - Certifying Official from Previous Year
 - Includes Username & Password, Web Site
 - Will not get to Contractors / Subrecipients
 - FTA Grantees – Ensure that FTA has Current List
 - FTA Grantees – Ensure That Contractors / Subrecipients Submit
 - FTA Grantees – Ensure data is complete and accurate
 - MIS Submissions Due March 15th , 2021
 - DAMIS (<https://DAMIS.DOT.GOV>) - January 1, 2021
 - Each covered employer (Grantee, Contractor, Subrecipient) submits a separate MIS with FTA results

MIS Reporting Questions?

- **FTA Drug and Alcohol Hotline (Volpe Center)**
 - Call (617) 494-6336
 - Email fta.damis@dot.gov
- Online guidance
 - <http://transit-safety.fta.dot.gov/DrugAndAlcohol/DAMIS>

The Regulations

- **49 CFR Part 655 (FTA)**

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

- **who** is subject to testing
- **when** testing is required

- **49 CFR Part 40 (DOT)**

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

- **how** to conduct testing
- **how** to return an employee to duty after a violation

<http://transit-safety.fta.dot.gov/drugandalcohol/regulations/regulations/default.aspx>



Applicability

655.3

Who must have an FTA Drug and Alcohol Program?

Who must have an FTA D&A Program?

- Requirement is based on receipt of FTA funding
- Recipients (Grantees) of FTA Transit Funds
 - 5307: [Urbanized Area Formula](#) (Operating & Capital)
 - 5309: [Transit Capital Investment](#) (Capital)
 - 5339: [Buses and Bus Facilities](#) (Capital)
 - 5311: [Formula Grants for Rural Areas](#) (Operating and Capital)
 - Serving population less than 50,000
- CARES ACT Recipients
- Subrecipients and Contractors of FTA Grantee, when:
 - Subrecipient/contractor provides a safety-sensitive function for FTA Grantee
 - Subrecipient/contractor uses vehicles purchased with FTA capital funding

Employers exempt from FTA D&A requirements

- Maintenance contractors performing services:
 - for 5311 grantees (rural)
 - for 5307, 5309, or 5339 grantees serving areas with a population less than 200,000
 - on a one-time or limited, ad-hoc basis
- Ferryboat Operators
 - Covered mostly by United States Coast Guard
 - Need FTA Random Alcohol

Shared Mobility

(e.g., Uber, Lyft, Curve, Via)

Does the Testing Requirement Apply?

- Yes, rules extend to all employees of contractors performing safety-sensitive functions
 - Unless “Taxicab Exception” applies
 - Taxicab exemption: when a public transit passenger randomly chooses from among a number of taxicab companies providing service
- What if funded with Public Transportation Innovation (§5312) funds?
 - No (even when the recipient also receives §5307, §5309, or §5311 funds)

Safety-Sensitive Functions

- Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service

- “revenue service vehicle” –
 - public transit vehicles used in providing transit service for passengers
 - carries passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual arrangement
 - Includes vehicles operated in 'free fare' service, which carry passengers

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License

- “nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License” –
 - a vehicle used in connection with keeping revenue vehicles in operation, such as a tow truck or a snow plow
 - non-revenue vehicles are safety-sensitive when those operators are required to hold a CDL in order to legally operate the non-revenue service vehicle

(3) Controlling dispatch or movement of a revenue service vehicle

- “controlling movement” –
 - Includes communication concerning specific, detailed, and contemporaneous route/turn instruction to individual operators
- What is Not “controlling movement” – (not safety-sensitive)
 - call-taking, scheduling, and assigning routes
 - functions performed by operations supervisors, such as day-to-day management

(4) Maintaining a revenue service vehicle or equipment used in revenue service

- Includes repairs, overhaul and rebuilding
- Does not include maintenance supervisors who 'approve' maintenance work

(5) Carrying a firearm for security purposes

- Transit Police, Private Security Firms
- Armored Car Personnel?
 - If they perform duties among transit passengers
- Local Police?
 - If their duties are determined by transit employer – directed by transit

“Safety-Sensitive” Employee

- Must have a verified negative DOT Pre-Employment Drug Test Result
- Must be in a DOT/FTA Random Testing Pool
- Subject to DOT Random, Post-Accident and Reasonable Suspicion Testing
- Receives 60-minutes training – effects and consequences of prohibited drug use

Who is NOT “safety-sensitive”?

Not subject to FTA D&A Requirements

- Those employees who do not or will not perform a safety-sensitive function:
 - Supervisors/management who WILL NOT perform any FTA-defined safety-sensitive function
 - Even though they may supervise safety-sensitive functions or safety-sensitive employees
 - DAPM/DER if he/she WILL NOT perform a safety-sensitive function
 - Maintenance supervisors who only ‘approve’ maintenance work
 - Any employee who would only perform a FTA-defined safety-sensitive function in an unusual emergency



Part 655: Program Requirements

1. FTA Drug & Alcohol Policy
2. Education and Training
3. Drug and Alcohol Testing Program
4. Record Retention
5. Management Information System (MIS)

FTA DRUG & ALCOHOL POLICY

655.11-16

- ✓ What is it?
- ✓ What information is included?
- ✓ How do I get one?

FTA D&A Policy: What is it?

- Statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace
 - Provides clear, concise guidelines to employees regarding the DOT/FTA substance abuse prevention program
 - Informs employees of actions that are prohibited by FTA/DOT
 - Describes circumstances for testing
 - Defines consequences for rule violations
 - Provides a program implementation guide for the DAPM

FTA D&A Policy: How do I get one?

- FTA Policy Builder Tool
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx>
- Sample policies – Appendix A to the Best Practices Manual
 - https://transit-safety.fta.dot.gov/publications/safety/bestpractices/bestpractices_oct2009.pdf

EDUCATION AND TRAINING

655.14

- ✓ Display and distribution of materials
- ✓ 60 minutes for all SS employees
- ✓ 120 minutes for supervisors

Training (1): All Safety-Sensitive Employees

- Minimum of **60 minutes** on drugs - §655.14(b)
 - Effects and consequences of prohibited drug use on personal health, safety, and the work environment
 - Signs and symptoms that may indicate prohibited drug use
 - Additional training (policy, alcohol, etc.) does not count towards 60 minutes
- One time requirement

Training (2): All Safety-Sensitive Employees

- **Free** video available from FTA
 - Meets requirements of section 655.14(b)
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DrugAwarenessVideo/>



Training (3): Reasonable Suspicion

- §655.14(c): Supervisors and/or other company officials authorized to make reasonable suspicion determinations must receive:
 - Minimum of **60 minutes** on physical, behavioral, and performance indicators of probable drug use
 - Minimum of **60 minutes** on physical, behavioral, and performance indicators of probable alcohol use
- ★ Training must occur prior to making any reasonable suspicion referrals
- One time requirement

PROHIBITED SUBSTANCES AND BEHAVIORS

655.21 & 655.31

DRUG AND ALCOHOL TESTING

- ✓ Prohibited drug use
- ✓ Prohibited alcohol use

Prohibited Substances: Drugs

- These are the drugs and drug metabolites tested by DOT:
 - Marijuana
 - Cocaine
 - Phencyclidine (PCP)
 - Opioids
 - Codeine, morphine, 6-AM
 - Added in 2018 - hydrocodone, oxycodone, hydromorphone, oxymorphone (semi-synthetic)
 - Common Names: OxyContin[®], Percodan[®], Percocet[®], Vicodin[®], Lortab[®], Norco[®], Dilaudid[®], Exalgo[®].
 - Amphetamines
 - Amphetamines & methamphetamines
- Illegal use of these drugs - prohibited at all times

DOT/FTA Drug Testing

- DOT/FTA Drug Test may occur anytime a safety-sensitive employee is “on duty”
 - Even if not currently performing a safety-sensitive duty or performing a safety-sensitive duty that day

Prohibited Alcohol Use

- Alcohol use is prohibited:
 - **While performing** a safety-sensitive function
 - **Within 4 hours prior** to performing a safety-sensitive function
 - **While on-call** to perform a safety-sensitive function
 - Allow employee the opportunity to acknowledge alcohol use
 - **Within 8 hours following an accident** requiring an FTA post-accident test, or until the test has been conducted

DOT/FTA Alcohol Testing

- DOT/FTA Alcohol Test may only occur just before, just after or during the performance of a safety-sensitive function (except for pre-employment)
 - May NOT conduct a DOT alcohol test if conditions above are not met

Verified Positive Drug Test

- Specimen tests positive at Laboratory
- MRO performs medical reviews of lab result
- Laboratory positive verified by Medical Review Officer (MRO)
- MRO contacts the Employee and DER
- DER –
 - Must immediately remove employee from safety-sensitive duty
 - Must provide the employee with name and contact information of at least two (2) qualified Substance Abuse Professionals (SAPs)
 - Follow policy

Confirmatory Cut Off Levels (1)

- Marijuana Metabolites 15 ng/ml
- Cocaine Metabolites 100 ng/ml
- Amphetamines 250 ng/ml
 - Amphetamine 250 ng/ml
 - Methamphetamine 250 ng/ml
 - MDMA (Ecstasy) 250 ng/ml
 - MDA 250 ng/ml
- Opioids
 - Morphine 2000 ng/ml
 - Codeine 2000 ng/ml
 - Heroin (6-AM) 10 ng/ml

Confirmatory Cut Off Levels (2)

- Semi-synthetic opioids:
 - Oxycodone, hydrocodone,
 - Oxymorphone, hydromorphone 100 ng/ml
- Phencyclidine (PCP) 25 ng/ml

- Confirmatory Levels are lower than Initial Screening Levels

Alcohol Confirmation Test Result ≥ 0.04

- Screening Test Result ≥ 0.02 – Requires 15 minute wait
 - Confirmation test
- Confirmed alcohol test result ≥ 0.04
- Breath Alcohol Technician (BAT) contacts DER
- DER
 - Must not allow employee to return to safety-sensitive duty
 - Must provide the employee with name and contact information of two (2) qualified Substance Abuse Professionals (SAPs)
 - Follow policy

Refusals to Test (1)

- As a covered employee, you have refused to test if you:
 - Fail to appear for a test within a reasonable time
 - Fail to remain at the testing site until the testing process is complete
 - Fail to attempt to provide a breath or urine specimen
 - Fail to permit monitoring or direct observation, as required
 - Fail to provide a sufficient quantity of breath or urine without a valid medical explanation
 - Fail or decline to take a second test as directed by the collector or employer
 - Fail to undergo a medical examination or evaluation, as directed by the MRO or employer
 - Fail to cooperate with any part of the testing process

* May not apply to Pre-Employment

Refusals to Test (2)

- Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test
- Possess or wear a prosthetic or other device used to tamper with the collection process
- Admit to adulteration or substitution to the collector/MRO
- Refuse to sign the certification at Step 2 of the ATF
- Fail to remain readily available following an accident
- Provide an adulterated or substituted specimen, as verified by the MRO

- Refusals are determined by MRO or Employer
- Refusals have same consequences as a verified positive drug test or alcohol confirmation with result ≥ 0.04

PRE-EMPLOYMENT TESTING

655.41 & 655.42

- ✓ Three Situations
- ✓ Drug test required, alcohol test optional
- ✓ PE test refusals
- ✓ Previous employer record checks

Pre-Employment Testing: 3 Situations

1. Applicant/New Employee
2. Current employee transfers to safety-sensitive position
3. Current employee returning from extended leave
 1. No SS duties for 90+ consecutive days AND removed from random testing pool for 90+ days

Pre-Employment Testing: Drugs

- DOT drug test required for all FTA safety-sensitive positions
 - Verified (MRO) negative result required prior to first SS duty

RANDOM TESTING

655.45

- ✓ Minimum testing rates
- ✓ Random selection
- ✓ Consortiums
- ✓ Random testing
- ✓ Records Review

Random Testing

- **“random”** - chosen without method or conscious decision
- Create “random pool” or list
 - Only US DOT ‘covered’ employees in pool
 - Usually only FTA ‘covered’ employees in pool
 - Must be maintained, up-to-date
- Selections by scientifically valid method
 - Each employee in pool “shall have an equal chance of being tested each time selections are made”

Minimum Required Random Testing Rates

- **Drugs: 50%** of covered employees*
- **Alcohol: 10%** of covered employees*
 - *Rates subject to change (published in Federal Register each year)
- Select sufficient number to meet or exceed “Minimum Required Testing Rates”
- Testing above minimum rates is allowed
 - Does **not** need to be stated in the D&A policy
- You may not be able to test all employees selected
 - Terminations, vacations, extended leave, illness, etc.

Random Selections

- Must occur at least quarterly (4 times in CY)
- Once new random selection list generated – previous list is null and void, even if not all selections tested
 - Document reason if test not completed
- Can change-up number of selections each selection period

Consortiums

- Consortium pool must be compliant with testing minimums
 - (50% - Drug, 10% - Alcohol)
 - Individual employers may have testing rates above or below minimum requirements at year-end
 - May include employees covered by multiple DOT agencies

Random Testing

- Must have ability to conduct a DOT test anytime you perform safety-sensitive functions
- Must spread “reasonably” across:
 - Year
 - Days of Week – Weekend, Holiday Testing
 - Hours in which safety-sensitive functions are performed
- Unpredictable – when test will occur
- No discernable pattern
- Early morning, evening, weekends – if safety-sensitive functions

POST-ACCIDENT TESTING

655.44

- ✓ What is an accident?
- ✓ Testing decision
- ✓ Who to test?
- ✓ When to test?

What is an FTA 'Accident'

FTA defines an **accident** as...

- as an occurrence associated with the operation of a vehicle in which one or more of the following occur:
 - An individual dies
 - An individual suffers a bodily injury and immediately receives medical treatment away from the scene
 - An occurrence in which the public transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage
 - If the public transit vehicle is a rail car, trolley car or trolley bus, or vessel, and is removed from operation

What is an FTA 'Accident'

- FTA defines *Vehicle* as a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. .

Post-Accident Testing Criteria

- Decision based on the employer's determination, using the best available information at time of determination
- What is **medical treatment away from the scene**?
 - Any individual goes directly from the scene to receive medical treatment
 - Transported by any means
 - Does not require verification by the employer

Post-Accident Testing Criteria

- What is **disabling damage**?
 - A vehicle cannot proceed under its own power without further damage
 - A vehicle cannot be easily repaired at the scene (headlights/taillights, turn signals, horn, tires, etc.)
 - Requires towing or transport away from the scene by another vehicle
 - Operating vehicle would further damage the vehicle

Post-Accident Testing Criteria

- Factors that *do not* trigger FTA Post-Accident testing:
 - Dollar amount of damage
 - Driver citation
 - Insurance or company requirement
 - “Just to be safe”
 - Reasonable suspicion implications
 - At fault vs. preventable



Post-Accident Testing: Who to Test

- **Fatality:**

- Each surviving covered employee operating the public transportation vehicle at the time of the accident
- Any other covered employee whose performance could have contributed to the accident

- **No Fatality:**

- Each covered employee operating the public transportation vehicle at the time of the accident – unless the employee's performance can be completely discounted as a contributing factor
- Any other covered employee whose performance could have contributed to the accident

Post-Accident Testing Decision

- Decision to test/not to test
 - Made by employer (company official, supervisor) **at the scene**
 - Use **best information available** at the time
 - any and all information on-site
 - do not 'reverse' decision based on facts that may emerge later
 - Document decision-making process

Post-Accident Testing: When to Test

- **Alcohol** and **drug** tests must be performed as soon as possible
 - Always treat injuries and cooperate with law enforcement first
- Clock starts at the time of the accident
 - *Alcohol test (conducted first)*
 - If no test within **2 hours** – document why
 - Cannot test after **8 hours**
 - *Drug test*
 - Cannot test after **32 hours**

REASONABLE SUSPICION TESTING

655.43

- ✓ Goals
- ✓ Authorization to Refer
- ✓ Testing – Why?
- ✓ Testing – When?

Reasonable Suspicion Testing: Goals

- ***The Requirement:*** Test when reasonable suspicion that employee has used prohibited drugs or misused alcohol
- Observation by trained company official is required
 - Only 1 official necessary

Reasonable Suspicion Testing: Why?

- Determination to test
 - Based on specific, contemporaneous, articulable observations
 - **Appearance, behavior, speech, or body odor** of employee
 - Decision to administer test must be documented
 - Including any signs or symptoms observed
 - Sample Reasonable Suspicion Determination Form at <https://transit-safety.fta.dot.gov/drugandalcohol/tools>

Authorized to Make a Referral

- Who should be authorized to make a referral?
 - Company officials who will be in contact with safety-sensitive employees
 - Dispatchers
 - Street supervisors
 - Maintenance supervisors
- Employees (not authorized) should know who to contact if suspicious

Reasonable Suspicion Testing: When?

- **Drugs** – anytime on duty
- **Alcohol** – only if observations are made just before, during, or just after the performance of safety sensitive functions
- Employees must proceed immediately to collection site for testing (should be transported...best practice)
- Same time limits as Post-Accident alcohol tests
 - 2 hours – document reason for delay
 - 8 hours – cease if no test

Confidentiality

- Employer may release drug and alcohol information:
 - to the Employee (written consent)
 - to State oversight agency (i.e., SSO)
 - to Grantee required to certify compliance
 - to DOT Agency and Office of the Secretary (OST)
 - when required in a lawsuit or grievance or other proceeding
 - e.g. worker's compensation, unemployment compensation
 - when requested by National Transportation Safety Board (NTSB) as part of an accident investigation

Previous Employer Records Check

40.25

- As a potential employer, you must:
 - Obtain written consent from applicants to obtain drug and alcohol testing information from previous **2 years**
 - Contact previous employers – written consent must accompany the request
 - Ask applicant whether he or she has tested positive or refused a DOT pre-employment test in the previous two years -§40.25(j)

Previous Employer Records Check

- Request this information from any previous DOT employers:
 - Alcohol test results higher than 0.04
 - Verified positive drug tests
 - Test refusals
 - Other violations of the DOT drug and alcohol regulation
 - If appropriate, documentation of successful completion of return-to-duty process



Technical Assistance

Help, please!

- Iyon Rosario – FTA Drug & Alcohol Program Manager
 - (202) 366-2010, iyon.rosario@dot.gov
- FTA D&A Project Office (U.S. DOT/Volpe Center)
 - **Hotline:** (617) 494-6336, fta.damis@dot.gov
 - Michael Redington: (617) 494-2197, michael.redington@dot.gov
 - Lori DeCoste: (617) 494-2379, lori.decoste@dot.gov
 - Felicity Shanahan: (617) 494-3915, felicity.shanahan@dot.gov



<https://transit-safety.fta.dot.gov>

- Forms
 - Post-Accident, Reasonable Suspicion, Notification, Previous Employer
- Policy Help
 - Checklist, Sample Policies, Policy Tool
- Videos
 - Covered Employees
 - Reasonable Suspicion
- Conference & Training Schedules
- Register for Newsletter

The screenshot shows the website for the Office of Drug & Alcohol Policy & Compliance (ODAPC) under the United States Department of Transportation. The page is titled "Office of Drug & Alcohol Policy & Compliance" and "Overview". It provides information about the office's role as the principal advisor to the Secretary on drug and alcohol testing of safety-sensitive transportation employees. The page includes sections for "Most Requested Information", "Most Viewed Documents", and "Key Resources". There are also promotional banners for National Substance Abuse Prevention Month and National Drug Facts Week. A sidebar on the left contains navigation links such as "Drug and Alcohol Testing", "Resources for Key Persons", and "Regulations and Interpretations".

United States Department of Transportation

Home > Resources > For Partners > Drug and Alcohol Testing

Office of Drug & Alcohol Policy & Compliance

Overview

The Office of Drug and Alcohol Policy and Compliance advises the Secretary on national and international drug testing and control issues and is the principal advisor to the Secretary on rules related to the drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. The Office publishes regulations and provides official interpretations on drug and alcohol testing, including how to conduct tests, and the evaluation and treatment procedures necessary for returning employees to duty after testing violations. The Office also coordinates the Department's involvement with the President's National Drug Control Strategy annually.

Secretary's Statement: Why This Program Is Important

Most Requested Information

- 49 CFR Part 40 (Drug and Alcohol Regulations)
- How do I find a Substance Abuse Professional (SAP)?
- Is there a list of prohibited drugs for being medically qualified to drive a commercial motor vehicle (CMV)?
- Documents and Forms
- Resources for Employers
- Resources for Employees

Most Viewed Documents

- 49 CFR Part 40 (Drug and Alcohol Regulations)
- Employee Handbook
- Employer Handbook
- July 2012 Q&A
- MIS Form and Instructions

Key Resources

- MRO Notification to ODAPC of Split Specimen Cancellation
 - Note: You may receive a certificate error, please disregard this error by clicking "Continue / Proceed". We are working to resolve this issue.
- Mock Collection Instructional Video
- DOT's 10 Steps to Collection Site Security and Integrity
- Am I Covered?
- DOT "Recreational" Marijuana Notice
- DOT "Medical" Marijuana Notice

Updated: Friday, October 3, 2014

October is National Substance Abuse Prevention Month

October is National Drug Facts Week

THE DRUG ENDANGERED CHILDREN TASK FORCE

WhiteHouseDrugPolicy.gov/Children

- Recreational Marijuana Notice
- Medical Marijuana Notice
- Subscribe to ODAPC Email Updates
- DOT Agency/USCG Drug and Alcohol Program Manager Information

Related Links

- SAHMTA's "Opisid" Overseas Test Kit
- Office of National Drug Control Policy
- SAHMTA/Division of Workplace Programs
- Department of Education Safe and Drug Free Schools
- DBA Drug Test Sheets

Contact Us

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Thank you!

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Stay safe!