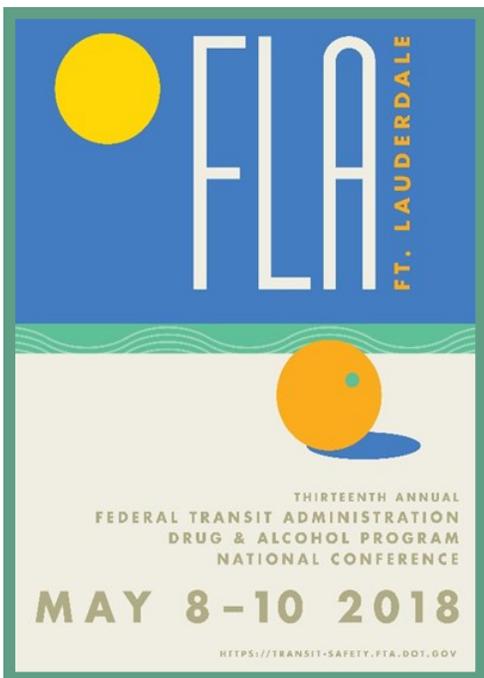


## 13th Annual National Conference Registration Available Soon!



FTA is hosting the 13<sup>th</sup> Annual Drug and Alcohol Program National Conference **May 8-10, 2018** in Fort Lauderdale, FL.

Check the FTA Drug and Alcohol Program website (<https://transit-safety.fta.dot.gov>) for more information and look for registration for this **FREE** conference to open on January 16, 2018.

## Annual MIS Reporting

Grantees will receive notification letters in the mail for 2017 MIS reporting in late December or early January. These letters are sent to the Certifying Official listed on the 2016 MIS report. If you have had changes in staff and need to update the contact information, or if you do not receive your reporting package by mid-January, please contact the FTA Drug and Alcohol Project Office at [fta.damis@dot.gov](mailto:fta.damis@dot.gov) or 617-494-6336.

## No “Expiration” on Return-To-Duty Requirements

An employee/applicant who has violated a DOT regulation is prohibited from returning to the performance of safety-sensitive functions for any DOT-covered employer until the individual successfully completes the return-to-duty process described in Part 40, Subpart O.

The date of the violation has no

impact on this requirement. For example, an employer, interviewing an applicant in 2017 who had a positive DOT test in 2012, may assume since the positive test was five years ago, this individual can be hired without ensuring he or she completed the return-to-duty process. This assumption is false; the applicant must still be able to

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U.S. Department of Transportation  
Federal Transit Administration

demonstrate successful completion of the return-to-duty requirements of Part 40.

# Using Mobile Collection Sites

Many employers use mobile collectors to collect urine and breath specimens for their DOT/FTA drug and alcohol testing programs. A mobile collector eliminates the need for employers to send their employees off-site for testing, allowing the employer to avoid or significantly lessen the operational and cost impacts of losing the service of an employee for an extended period of time. However, employers must carefully monitor the policies

and procedures of their mobile collectors to ensure compliance.

A primary concern is the predictability and pattern of random testing that is often characteristic of mobile collectors. Mobile collectors typically attempt to schedule collections in the most cost-efficient manner possible. Consequently, collectors often ride a circuit from one employer to another, allowing patterns to develop. Furthermore, the employee workforce may begin to

recognize the vehicle driven by the mobile collector, allowing employees an opportunity to “go home sick” or provide some other excuse in order to avoid being tested that day.

Additionally, mobile collectors that are not in close proximity to the agency may not respond in a timely manner for post-accident or reasonable suspicion tests. It is important to work with your collector to mitigate these risks of non-compliance.

## 2018 MINIMUM RANDOM TESTING RATES

The FTA minimum annual percentage rates for random testing for 2018 will remain at 25% for drug and 10% for alcohol.

## Who Should Be Trained to Make Reasonable Suspicion Determinations

Part 655 requires a determination that reasonable suspicion exists be based on observations made by a supervisor(s), or other company official(s), who is trained in detecting the signs and symptoms of drug use and alcohol misuse. The trained determiner need not be a supervisor; however, the individual should be in a position, and in a location, to actually observe employees who are performing safety-sensitive functions. For some employers, it may make sense to authorize and train dispatchers or road and maintenance supervisors as opposed to management officials. In deciding who to train and authorize to make



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reasonable suspicion determinations, the employer should ensure there are company officials and/or supervisors

on all shifts when safety-sensitive functions are performed.

# Reasonable Suspicion Training

FTA requires any supervisor who may decide to send a covered employee for reasonable suspicion testing 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 physical, behavioral, speech, and performance indicators of probable alcohol misuse” (§655.14(b)(2)).

The content of reasonable suspicion training need not be specifically tailored to the public transportation workplace, nor must it explicitly state it is designed to be compliant with Part 655; it must simply meet the

time and subject matter requirements described above. This means compliant supervisor training might be comprised of content designed for and marketed to companies covered by other DOT modes (FMCSA, FAA, etc.) or the general public.

Additionally, FTA does not require refresher training for supervisors, nor does it require supervisors be retrained if they move to a new employer, even across DOT modes or industries. That said, it is incumbent upon the covered employer to diligently review the source of a new supervisor’s reasonable suspicion training. If you,

as the employer, are not comfortable with the adequacy of the prior training, you must provide compliant training before the supervisor is allowed to make any testing determinations.

Note, although FTA does not require the training itself be specific to the public transportation environment, supervisors must still be knowledgeable about the actual testing requirements of §655.43 (e.g., the requirement to ensure alcohol testing is performed within two hours of the time a determination is made).

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## Coming Soon: MIS Reporting Instructional Video

Beginning on January 1, 2018, all FTA-covered employers will once again be required to submit their annual drug and alcohol testing results summaries to FTA by March 15. This new video intends to provide guidance to employers for completing their drug and alcohol MIS report online.



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The video will walk the user through the online reporting process, from log-in to final submission.

Look for a link to this instructional video, available January 2018, on the FTA’s Drug and Alcohol Program website <http://transit-safety.fta.dot.gov/>.

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## Clarification: An Employee Who Consumes Alcohol While On-Call Has Not Violated A FTA Prohibition

The article “Responding to a 40.25 Request for Testing Information” in Issue 63 states a previous employer must disclose whether the employee has violated any of the prohibitions on the use of drugs or the misuse of alcohol under a DOT agency, which

for FTA, are specified in §655.21(c), and §655.32-§655.34.

It is important to clarify, a covered employee who has consumed alcohol while on-call to perform a safety-sensitive function has not violated an

FTA prohibition. Because §655.33 (b) includes provisions allowing for an on-call employee to acknowledge the use of alcohol at the time they are called to report for duty, this behavior would not be considered a violation of an FTA rule.

# Reviewing SAP Letters & Testing Plans

Employers who allow employees to return to a safety-sensitive position following a DOT violation must carefully review all paperwork generated by their Substance Abuse Professional to ensure initial evaluation reports, follow-up evaluation reports, and follow-up testing plans comply with §40.311.

Some problems to look for are: reports missing a required piece of information (the employee's social

security number, for example), reports containing confusing or illogical phrasing, and follow-up testing plans that do not state whether testing is to be for drugs, alcohol, or both. The follow-up testing plan must provide a specific number of follow-up tests and a guideline as to the frequency of testing.

Should an employer discover an error, they must contact the specific SAP who created the flawed

document and have the SAP revise and resubmit it. The employer must then create a record explaining the correction and maintain it along with the related paperwork. All records related to a DOT violation and any subsequent referral, reports, return-to-duty, and follow-up testing records must be maintained for five years following the date of the final required follow-up test.

## After Hours Testing

As stated in §655.45(g), "Random testing must be conducted at all times of day when safety-sensitive functions are performed." Some local collection sites may not provide collection services at all times safety-sensitive functions are being performed. While FTA recognizes this can impact an employer's drug and alcohol program compliance, the requirements remain.

The following are potential solutions to ensure compliance:

- ◆ **Schedule early/late hours and weekend tests in advance**  
Collection sites may be willing to accommodate off-hours testing if they are scheduled ahead of time, with as much notice as possible.
- ◆ **Offer a premium rate for the off-hours and weekend tests**  
Employers may be successful in offering to pay an additional fee for the scheduled tests.
- ◆ **Use a mobile collector**  
Mobile collectors often specialize in providing collection services for hours and days when standard collection sites are unavailable.
- ◆ **Make an agreement with an individual collector or technician**  
Urine collectors, screening test technicians, and breath alcohol technicians who meet Part 40 qualification and proficiency requirements may conduct DOT drug and alcohol testing in any location meeting the requirements of Part 40, Subpart D, and Subpart K.
- ◆ **Employ in-house collectors and technicians**  
Employees who have met the qualification and proficiency training requirements of Part 40 may serve as collectors or technicians for their employer, as long as the employee is not a direct supervisor of the donor (§40.31(c) and §40.211(c)).



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## Firearm Discharge is Not Cause for FTA Post-Accident Testing

Carrying a firearm for security purposes is one of the five safety-sensitive functions defined in 49 CFR Part 655, and therefore those performing this function are subject to DOT/FTA drug and alcohol testing. However, there is no automatic DOT/FTA requirement for drug and alcohol testing following the discharge of a firearm by security personnel. Although the act could trigger a reasonable suspicion interview by a trained and authorized company official, since it does not fall under the FTA definition of an accident, the act itself may not result in DOT/FTA post-accident testing.

# Spot-Checking Your Consortium/TPA

Employers are responsible for all regulated drug and alcohol testing activity performed on their behalf by service agents, per §40.11(b). Should an employer elect to implement random testing with the assistance of a consortium or third-party administrator (C/TPA), oversight of these vendors becomes the employer's responsibility. By periodically following a few easy steps, employers can make sure their C/TPA is performing random selections in a compliant manner.

First, employers should ensure random selection lists are generated and received promptly at the beginning of each selection period. A delay in the provision of random selection lists creates a predictable

interval where no random testing can occur.

**“A delay in the provision of random selection lists creates a predictable testing pattern.”**

Second, employers should assess random testing rosters for accuracy at the time the random selection occurs, with new hires added to the list and employees who no longer perform a safety-sensitive function removed.

Finally, employers whose DOT-covered employees are combined

with employees of other DOT-covered employers in a larger random testing pool should make sure the consortium selects a sufficient number of employees to meet FTA's minimum testing rates. As the employer, you may ask the consortium to provide testing rates from recent years. Choose a calendar year and request the average number of eligible covered employees in the combined pool, and the total number of drug tests and alcohol tests performed, and then determine if the minimum annual rates were met.

**“Oversight of these vendors becomes the employer's responsibility.”**

## Drug and Alcohol Training

FTA sponsors free training sessions to provide essential information to facilitate covered employers' compliance with the drug and alcohol testing regulations (49 CFR Part 655 and Part 40). These one-day trainings are available on a first-come, first-serve basis and are led by the FTA Drug and Alcohol Program and Audit Team Members.

For more information about available training sessions and to register, go to: <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training>.

If you are interested in hosting a one-day training session, contact the FTA Drug and Alcohol Project Office at [fta.damis@dot.gov](mailto:fta.damis@dot.gov) or (617) 494-6336 for more information.

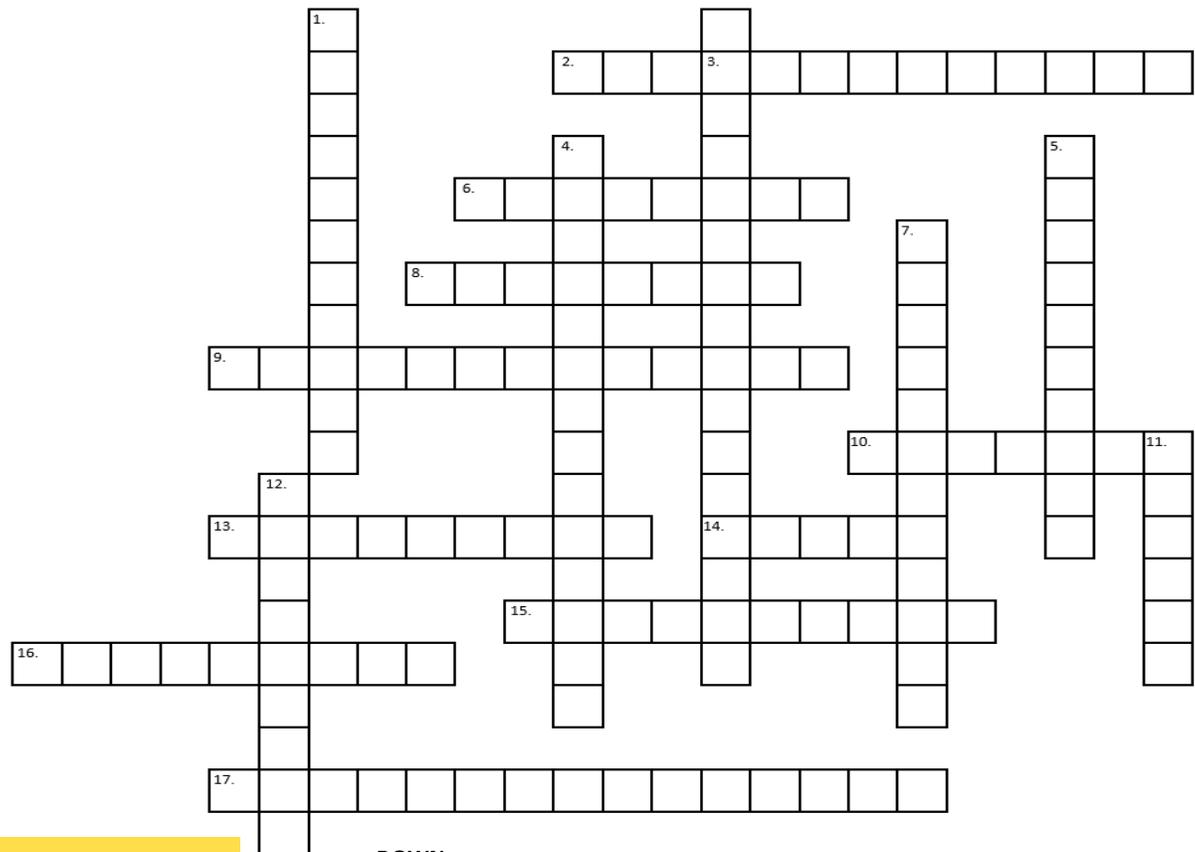
## The Transportation Safety Institute (TSI) Training Schedule

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 for Supervisors.** This half-day seminar educates supervisors about the FTA and DOT regulations requiring drug and alcohol testing of safety-sensitive transit workers, and how to determine when to administer reasonable suspicion and post-accident drug and alcohol tests.

There is a small attendance/materials fee. For more information, please call (405) 954-3682. To register, go to: <http://www.tsi.dot.gov>.

# FTA Drug and Alcohol Crossword Puzzle



## Regulation Updates is Produced By:

Federal Transit Administration  
Office of Safety and Security  
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

Cahill Swift, LLC  
240 Commercial Street  
Boston, MA 02109

RLS & Associates, Inc.  
3131 South Dixie Highway/Suite 545  
Dayton, OH 45439

### DOWN

1. This must be provided to any applicant who fails or refuses a DOT test
3. Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs
4. Location of the upcoming FTA National Conference
5. D' in DER
7. Type of policy where employees may return to safety-sensitive functions after completion of return-to-duty requirements
11. A urine specimen with creatinine and specific gravity values that are lower than expected for human urine
12. Person who receives and makes an initial inspection of a urine specimen provided, and initiates and completes the CCF

### ACROSS

2. Minimum rates for this are 25% and 10%
6. Employee training records must be kept for at least this long
8. Donor writes these on the specimen bottle seals
9. They cannot act as DERs
10. The employer's policy must be \_\_\_\_ by the local governing board of the employer, or other responsible individual with appropriate authority.
13. Employees are prohibited from using alcohol within \_\_\_ prior to performing safety-sensitive functions.
14. MIS reports must be submitted by the 15th of this month
15. 'M' in MIS
16. Records related to positive test results must be kept for at least this long
17. Reasonable suspicion determinations must be based on observations that are specific, articulable, and \_\_\_\_.