

FTA Drug and Alcohol REGULATION UPDATES

February 2019

Issue 67

Annual MIS Reports Due March 15

The calendar year 2018 annual MIS submissions are due by March 15, 2019 and can be reported at the following website <https://damis.dot.gov>.

User names and passwords were sent to grantees in late December; grantees are responsible for distributing user names and passwords to their subrecipients and contractors. If you need changes

made to your list of subrecipients/contractors or you have not received your notification letter, contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or 617-494-6336.

Reminder: 2019 FTA Minimum Random Drug Testing Rate is 50 Percent

Effective 1/1/2019, the FTA minimum annual percentage rate for random drug testing increased to 50 percent, and remains at 10 percent for alcohol testing.

For more information, see the FTA Drug and Alcohol Regulation *Updates* Special Edition (October 2018) at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/>

[Newsletters/specialedition/SpecialEdition_October2018.pdf](#).

FTA to Host 14th Annual Drug and Alcohol Program National Conference



FTA will host the 14th Annual Drug and Alcohol Program National Conference from April 2-4, 2019 at the Hyatt Regency Milwaukee.

Hyatt Regency Milwaukee

333 West Kilbourn Avenue
Milwaukee, WI 53203

[Hyatt Regency Milwaukee](#)

For additional information and to register, go to <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/NatConf/2019/>.

Hope you can join us!

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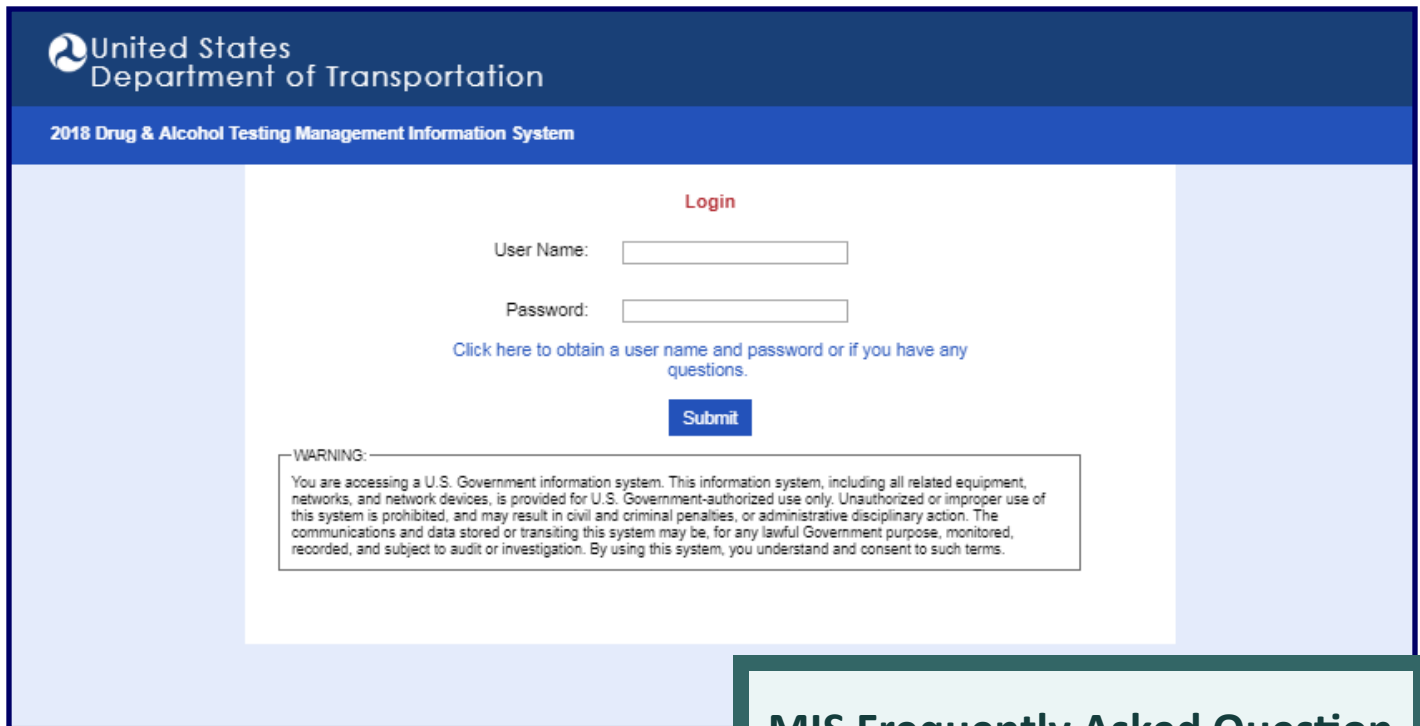
U.S. Department of Transportation
Federal Transit Administration

New Look to the DAMIS Reporting Website

The Drug and Alcohol Management Information System (DAMIS) has a new look and feel. The data collected and functionality of DAMIS remains the same.

DAMIS (<https://damis.dot.gov>) was updated to be compliant with federal security requirements, to include a more modern look, and to improve usability. If you have any questions

or need technical assistance with DAMIS, contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or 617-494-6336.



Ride-Sourcing Pilot Programs Are No Longer Exempt

Generally, ride-sourcing companies who contract with a public transportation employer are subject to the FTA’s drug and alcohol testing requirements. (For more details, see the article “Ubers, Lyfts, and Ride-Sourcing: Do the Regulations Apply?” in Issue 60 of FTA Drug and Alcohol Regulation *Updates* at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Newsletters/issue60/pdf/Issue60.pdf>, and the

FTA’s Shared Mobility Frequently Asked Questions at <https://www.transit.dot.gov/regulations-and-guidance/shared-mobility-frequently-asked-questions>.)

Previously, FTA allowed an exemption from FTA’s drug and alcohol rules for up to one year for pilot programs run by public transit agencies. FTA has discontinued that exemption, with the exception of allowing already-existing pilot

programs to complete their one-year exemption period.

Unless the one-year exemption applies, transit agencies who subsidize ride-sourcing services must either design the service such that the taxicab exception applies, or incorporate the ride-sourcing company drivers into the FTA drug and alcohol program.

MIS Frequently Asked Question

Should I submit test results for pre-employment tests conducted on applicants who were not hired?

Yes. You must enter testing results for all DOT pre-employment tests conducted, regardless of whether an applicant was hired or not.

DOT Prohibits CBD Use

Cannabidiol (CBD) is a non-psychoactive chemical compound extracted from the cannabis plant. Typically found in oil form, CBD is used to treat a variety of medical issues such as inflammation, epileptic seizures, and anxiety.

CBD is chemically distinguishable from THC, and therefore will not cause a positive drug test result under the DOT drug testing panel. However, as the manufacturing and purification processes for CBD products are unregulated, it is possible for CBD products to contain other cannabinoids, such as THC.

The Drug Enforcement Agency recently created an extremely limited exception for CBD formulations that include no more than 0.1 percent THC, moving FDA-approved medicinal formulations to Schedule V of the Controlled Substances Act.



Credit: 123rf/Artit Oubkaew

However, only one medication, EPIDIOLEX®—which is prescribed for two rare epilepsy disorders—is currently available.

All other cannabis products, including CBD, are classified as

Schedule I controlled substances under the Controlled Substances Act and, thus, are illegal under federal law. 49 CFR Part 40 does not authorize the use of Schedule I drugs for any reason.

Non-Emergency Medical Transport Management Organizations Do Not Have Access to FTA Drug and Alcohol Testing Records



Credit: 123rf/Razvan Chisu

A state Medicaid agency, contracted transportation broker, managed care

contract with an employer who is also covered by FTA drug and

organization, or other similar entity that provides for Medicaid Non-Emergency Medical Transport (NEMT) services may provide those services through an agreement or

alcohol regulations. Through this contract, the same employees who perform FTA safety-sensitive duties may also provide NEMT services.

In this situation, state Medicaid agencies, transportation brokers, managed care organizations, etc. must not be permitted access to any employee's FTA drug and alcohol test results. FTA-covered employers are prohibited from releasing any FTA/DOT drug or alcohol records, except in the circumstances described in section 655.73.

Flaws in Alcohol Testing When Using an EBT

Occasionally, problems in alcohol testing may cause a test to be cancelled by the employer or technician. Some of these problems may be corrected by affidavit, while others always cause a test to be cancelled.

The following problems may be corrected by affidavit: the technician fails to sign the alcohol testing form (ATF); the technician fails to make a remark explaining the employee did not sign Step 4 of the ATF after a confirmation result of 0.02 or greater;

and the use of a non-DOT form for a DOT test.

For confirmation tests, fatal flaws occur when the technician does not wait the required 15 minutes between screening and confirmation tests; when an air blank is not conducted before the confirmation test; when there is not a 0.00 air blank result before the confirmation test; and when the EBT does not produce a machine-printed result (handwritten results in lieu of a machine-printed result are never acceptable). A fatal

flaw also occurs when the next external calibration check of the EBT produces a result outside of the manufacturer's acceptable range. In this case, every result of 0.02 or greater obtained on that EBT since the last valid external calibration check is cancelled. None of these flaws may be corrected by affidavit.

Employers must never treat a cancelled test as a violation. It is critical that employers carefully review any reported alcohol violation for errors before taking action.

Step 3 of the ATF: Common Errors

Step 3 of the Federal Alcohol Testing Form (ATF) provides several checkboxes and data fields for the technician to document the circumstances of a test. The following are common errors technicians make when completing Step 3.

1. One of the checkboxes in Step 3 allows the technician to indicate whether the required 15-minute waiting period was observed between a screening test and a confirmation test. The "15-Minute Wait Yes/No" boxes should only be used when a confirmation test

occurs. They must be left blank for tests that only include a screening test.

2. While it is allowable to hand-write a screening test result in Step 3 if the testing device does not print, technicians should never hand-write a result in addition to affixing a printed result to the ATF. Confirmation tests must always be machine-printed by an EBT. For a confirmation test, if no machine printed-result is affixed to the ATF, then the test is cancelled.

Daylight Saving Time Begins March 10



Credit: 123rf/photosampler

Reminder: Ensure your Breath Alcohol Technicians change the clock on their Evidential Breath Testing devices to reflect the beginning of Daylight Saving Time on March 10, 2019.

FTA Representatives at 2019 Industry Association Conferences

FTA Drug and Alcohol Program representatives will participate at the following annual conferences:

- **National Drug & Alcohol Screening Association (NDASA)** Annual Conference and Trade Show
March 26-29, 2019 in San Antonio, TX
- **Drug & Alcohol Testing Industry Association (DATIA)** Annual Conference and Exposition
April 10-12, 2019 in Chicago, IL

Please check the NDASA website, www.ndasa.com, and the DATIA website, www.datia.org, for specific agenda and registration information.

Post-Accident Testing: FTA vs. FMCSA

FTA's rule 49 CFR Part 655 and FMCSA's counterpart 49 CFR Part 382 are similar in their discussion of post-accident testing requirements. Both rules require testing automatically after an accident resulting in the loss of human life (a fatality); both rules require testing after an accident causing an injury necessitating immediate medical attention away from the scene; and both rules require testing after disabling damage necessitating one or more vehicles be towed away from the scene.

There are some critical differences between these two rules. The only

person subject to testing after an FMCSA-covered accident is the operator of the commercial motor vehicle (the driver), while FTA requires testing of the operator as well as any other safety-sensitive employee whose performance could have contributed to the accident. Additionally, for non-fatal accidents, FTA allows the employer to discount the employee's performance as a factor contributing to the accident and then refrain from testing them. Conversely, FMCSA only authorizes testing for non-fatal accidents when the operator receives a citation from law enforcement for a moving traffic violation.

If you are an employer covered by both FTA and FMCSA—a municipality providing both transit and public works services, for example—and you have employees who perform safety-sensitive work covered by both rules, it is vital for you and your operations personnel to be aware of these small but important differences. When an employee is involved in an accident, you must follow the regulation covering the activity the employee was performing at the time of the event. This is true even if the employee's other tests (e.g. random) are performed under the authorization of the other administration.

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). FTA provides these trainings at a host site and opens them to the public on a first-come, first-serve basis. Trainings are led by the FTA Drug and Alcohol Program and Audit Team Members.

For a schedule of upcoming trainings 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 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. 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 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 Part 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>.

Ask the Experts

Can leftover urine from a DOT drug test be used for non-DOT testing?

No. Any excess urine left over from a DOT test must be discarded and a separate void must be collected for subsequent non-DOT testing.

Urine left in the collection container after the DOT drug test specimen bottles have been sealed may only be used for medical testing (e.g., protein, glucose) conducted as part of a physical examination required by DOT agency regulations. No further testing (such as adulteration testing) is permitted.

Must employee rosters for each selection period be maintained?

Yes. Records related to the random testing process must be maintained for at least two years, per section 655.71(b)(2). These records include the master roster from which each period's random selections are made.

Can a Substance Abuse Professional (SAP) ever refer an employee to their own practice?

In most circumstances, SAPs are prohibited from making a referral to their own private practice or to any person or organization from which they receive payment or have a financial interest (§40.299). This is to prevent conflicts of interest. There are four exceptions to this rule. A SAP may refer employees to the following entities regardless of their relationship with the SAP:

- ◆ A public agency operated by a state, county or municipality
- ◆ A treatment provider working for the employer – this can be in-house staff or a contracted treatment provider
- ◆ The sole source of therapeutically appropriate treatment under the employee's health insurance program
- ◆ The sole source of therapeutically appropriate treatment reasonably available to the employee

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5310 Recipients and Subrecipients May Require D&A Program

[FTA Circular 9070.1G](#) provides guidance for 5310 recipients and subrecipients stating the following:

“Recipients or subrecipients that receive only Section 5310 program assistance are not subject to FTA’s drug and alcohol testing rules”.

“Section 5310 recipients and subrecipients that also receive funding under one of the covered FTA programs (Section 5307, 5309, or 5311) should include any employees funded under Section 5310 projects in their testing program.”

It is not necessary for an employer to create a separate testing program for employees funded under Section 5310, but instead, they should be integrated into the existing testing program.