

# CT StateWide Drug and Alcohol Testing Consortium Newsletter

## Guideline: Responding to a Request for Information about an Employee's Drug and Alcohol Testing History from a Prospective Employer

September 2017



When receiving a request for information about an employee's drug and alcohol testing history from a prospective employer, the following steps shall be taken as required by §40.25:

### 1. Review the employee's signed consent.

You may not release the information unless the employee has signed a consent. The consent cannot be a "blanket" release, i.e., it must be specific to the employee and to you, as the previous employer, and it must be time-period specific.

FTA follows the Part 40 requirement to request information from DOT employers of the previous two years. However, it is not a violation for an employer to request information dating back more than two years, as long as the employee consents to this request.

### 2. Immediately and confidentially provide the information specified in §40.25(b).

This includes alcohol tests with a result of 0.04 or higher, verified positive drug tests, refusals to be tested, *other violations*<sup>1</sup> of DOT agency drug and alcohol testing regulations, and, if applicable, documentation of the applicant's successful completion of DOT return-to-duty requirements.

Only information about DOT violations should be released. Do not provide information about any non-DOT drug or alcohol test results, or DOT alcohol test results less than 0.04.

You must provide all the information in your possession concerning the employee's DOT drug and alcohol tests that

<sup>1</sup> *Other violations* mean any other violation of the prohibitions on the use of drugs or the misuse of alcohol under a DOT agency regulation. For FTA, these prohibitions are specified in §655.21(c), and §655.32-§655.34.

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occurred in the time period requested. This includes information you have obtained from other previous employers about tests that occurred during the specified time period.

### 3. Maintain a record.

You must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

# How Does Pre-Employment Testing Differ From Other Tests?

A pre-employment drug test does not begin until the applicant/employee selects or accepts the specimen cup. It is not a refusal to test if an applicant/employee fails to appear at the collection site or leaves the collection site prior to accepting or selecting the specimen cup.

The following situations apply to pre-employment test:

- New-hires (applicants)
- Transferees from non-safety-sensitive positions to safety-sensitive positions
- Employees returning to safety-sensitive duties after a 90-day absence from the random testing pool.

For a pre-employment test, failure to arrive at the collection site is not considered a test refusal, nor is it a Cancelled Result and would not be recorded anywhere on the annual MIS.

## Collector Errors & Affidavits

Some of the errors on Custody and Control Forms (CCFs) and Alcohol Testing Forms (ATFs) need to be corrected by affidavit from the collector or technician who committed the error, or the test must be cancelled per §40.203 and §40.269.

The following errors require correction by affidavit:

1. The collector's signature is omitted on Step 4 of the CCF.
2. The technician does not sign the ATF.
3. The employee's signature is omitted on Step 5 of the CCF, unless the reason for the missing signature is noted on the remarks line of the CCF.

4. The employee's signature is omitted from Step 4 of the ATF for an alcohol test with a confirmed result of 0.02 or greater, and the technician did not make a remark to explain why the signature is missing.

5. A non-Federal or expired form is used.

For the first four items above, the person responsible for omitting the required information must correct the error by supplying the missing information in writing, along with a statement affirming it is true and accurate. In cases where the collector's or technician's signature is omitted, and the individual is unavailable, a supervisor may supply the affidavit.

If the problem is the use of a non-Federal or expired form,

the collector (or a supervisor, if the collector is unavailable) must submit a signed statement affirming the incorrect form contains all information needed for a valid DOT test. It must state the incorrect form was used inadvertently, or it was used as the only means of conducting a test. The statement must also list the steps taken to prevent future use of incorrect forms. For a drug test to be successfully corrected, the specimen must have been tested at a Department of Health and Human Services (HHS)-certified laboratory following Part 40's procedures.

Affidavits must be maintained along with the testing forms. The faces of the forms must be marked to ensure it is obvious a correction has occurred, such as by stamping and initialing a form to note the correction. In all instances, collection sites must issue corrections on the same business day they become aware of the problem.

# Lift Operation and Post-Accident Testing Decisions

*Is the operation of the lift considered operation of the vehicle?*

Yes, the lift is considered to be equipment used in revenue service, and its proper operation is essential to the operation of the vehicle and protection of public safety.

Given this understanding of “operation of a vehicle,” there may be circumstances when FTA testing will be required following an event associated with the operation of the lift because the post-accident

thresholds as defined in §655.4 were met. These circumstances do not always involve a collision with another vehicle or object.

In any case, post-accident testing decisions must be made using the best information available at the time of the accident and in accordance with §655.44. FTA provides multiple “technical assistance” tools and resources to aid employers in making post-accident testing decisions.

## Hosting Consortium Training

*Contact Nhan Vo-Le, Consortium Coordinator, at 860-247-5329 Extension 3009 or nhvole@ghtd.org if you are interested in hosting a Post-Accident training session at your facility in the next few months. Training will be conducted by Occupational Drug Testing Company (ODT).*

## Consortium Training

**Sexual Harassment Awareness  
Training for Supervisors**

**Presented By:  
The Lexington Group**

**Friday, October 20, 2017  
9:00AM – 11:00AM**

**Location:  
Norwalk Transit District  
275 Wilson Avenue  
Norwalk, CT 06854**

Monica Rosado, LCSW will present a training session designed to provide supervisors with an interactive and informative session which includes an exercise and discussion of the legal and practical information.

RSVP to Nhan Vo-Le, Consortium Coordinator, at 860-247-5329 Extension 3009 or nhvole@ghtd.org by October 12, 2017.

# Contact & Resource Info

Occupational Drug Testing, LLC

[www.occupationaldrugtesting.com](http://www.occupationaldrugtesting.com)

Toll Free # 800-211-4469

The Lexington Group

[www.the-lexington-group.com](http://www.the-lexington-group.com)

Toll Free # 800-571-0197

Are you aware of the availability of program forms and resource documents on GHTD's website? Go to [www.hartfordtransit.org](http://www.hartfordtransit.org) Drug and Alcohol Testing Consortium.

Also, checkout the following materials:

**What Employers Need to Know About DOT Drug and Alcohol Testing – Rev. June 30, 2015**

**What Employees Need to Know About DOT Drug and Alcohol Testing – Rev. April 2014**

**Resources For The Designated Employer Representative (DER)**

**Lexington Newsletter Summer 2017 in English, French, and Spanish**

**FTA Regulation Update Issues**

The following FTA website provides a wealth of information such as trainings, newsletters, etc. on the Drug and Alcohol Testing Program that you might find very helpful

[www.fta.dot.gov/12533.html](http://www.fta.dot.gov/12533.html)