

# FTA Drug and Alcohol REGULATION UPDATES

December 2020

Issue 70

## 15th Annual FTA Drug and Alcohol Program National Conference to go Virtual in 2021

Due to the COVID-19 public health emergency, the Federal Transit Administration (FTA) will hold the 15th Annual FTA Drug & Alcohol Program National Conference as a virtual online experience instead of hosting an in-person event. This free event

will take place Tuesday, May 11-Friday, May 14.

This free conference will provide attendees with background on Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) and Prevention of Alcohol

Misuse and Prohibited Drug Use in Transit Operators (49 CFR Part 655).

When finalized, the conference agenda and registration information will be available at <https://transit-safety.fta.dot.gov/DrugAndAlcohol>.

## 2021 Minimum Random Testing Rates

The data from the annual Drug and Alcohol Management Information System (DAMIS) submissions for calendar year 2019 showed a positive rate for random drug testing of 1.16 percent and a violation rate for random alcohol testing of 0.16 percent. As a result, the FTA

minimum annual percentage rates for random testing for calendar year 2021 will remain at 50 percent for drug and 10 percent for alcohol. FTA published these rates in the Federal Register on November 24, 2020, available at [https://www.federalregister.gov/documents/2020/11/24/2020-](https://www.federalregister.gov/documents/2020/11/24/2020-25906/prevention-of-alcohol-misuse-and-prohibited-drug-use-in-transit-operations)

[25906/prevention-of-alcohol-misuse-and-prohibited-drug-use-in-transit-operations](https://www.federalregister.gov/documents/2020/11/24/2020-25906/prevention-of-alcohol-misuse-and-prohibited-drug-use-in-transit-operations).

## Daylight Saving Time: Make Sure Clocks Were Changed



Credit: 123rf: reddogs

Ensure your Breath Alcohol Technicians changed the clock on their Evidentiary Breath Testing device(s) to reflect the end of Daylight Saving Time on November 1, 2020.

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U.S. Department of Transportation  
Federal Transit Administration

# Annual Drug and Alcohol Management Information System (MIS) Reporting

Grantees should receive notification letters for 2020 MIS reporting in late December 2020. These letters are sent by mail to the Certifying Official listed on

the 2019 MIS report. If you wish to update the contact information of the letter recipient, or if you do not receive your reporting package by mid-January 2021, please

contact the FTA Drug and Alcohol Project Office at [fta.damis@dot.gov](mailto:fta.damis@dot.gov) or 617-494-6336.

## Updating Your Contractor List in the MIS

Only FTA grantees receive a user name and password to submit Drug and Alcohol MIS (DAMIS) testing results online at <https://damis.dot.gov>. As the grantee, once you login to DAMIS, you

will be directed to a Status Screen which shows a list of sub-recipients and contractors if applicable. This list is based on the information from the 2019 reporting year. If this list is not

correct for 2020, please email a list of additions and/or deletions to the FTA Drug and Alcohol Project Office at [fta.damis@dot.gov](mailto:fta.damis@dot.gov).

## MIS Frequently Asked Questions

**Should I submit test results for DOT 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.

**I am a pass-through of funding and do not have any safety-sensitive employees; do I need to submit an annual MIS report?**

Yes. Employers who pass-through FTA funding are required to submit an annual MIS report with all zeros.

**How do I calculate the “Total Number of Employees in All Categories” in the MIS?**

Take the average number of your FTA-covered employees in the random testing pool(s) at the time of each random selection. See example (using quarterly selections) below.

**Number of Safety-Sensitive Employees in Random Pool:**

Q1: 56 safety-sensitive employees  
Q2: 60 safety-sensitive employees  
Q3: 63 safety-sensitive employees  
Q4: 61 safety-sensitive employees



**Total Number of Safety-Sensitive Employees to Report in MIS:**

$(56 + 60 + 63 + 61) / 4 =$   
240 total employees / 4 quarters =  
**60 total safety-sensitive employees**

# Cancelled Drug Tests

Annual MIS data submitted to FTA for calendar years 2017 through 2019 have shown a significant increase in the number of reported cancelled drug tests. According to the annual MIS, cancellations are most common for pre-employment drug tests.

49F CR § 40.3 defines a cancelled test as “a drug test that has a problem identified that cannot be or has not been corrected, or

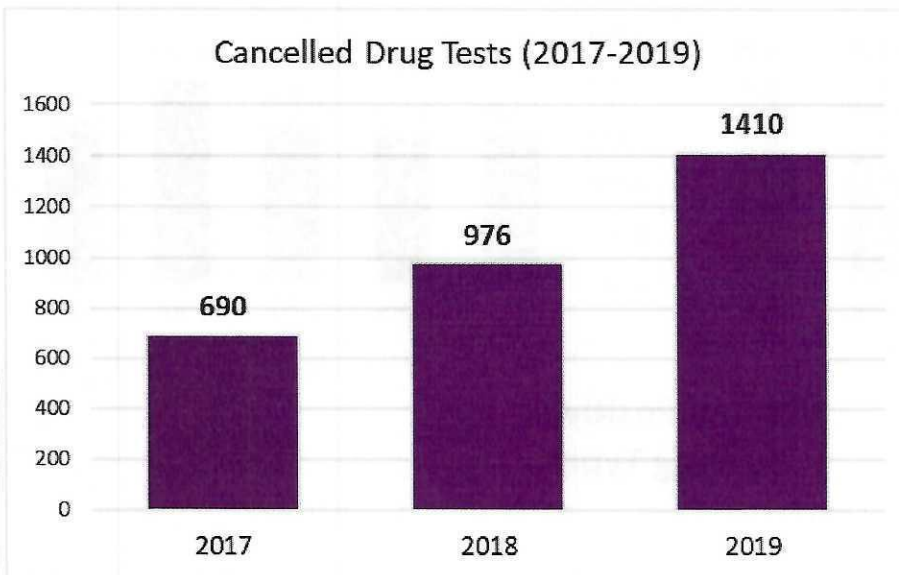
which Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.”

A DOT drug test can be cancelled or directed to be cancelled only by the Medical Review Officer (MRO) and only for the following reasons:

- ◆ A specimen has been reported to the MRO as an “invalid result”.

- ◆ A specimen has been reported to the MRO as “rejected for testing”.
- ◆ A split specimen fails to reconfirm all of the primary specimen results.
- ◆ The MRO determines that a fatal flaw or uncorrected correctable flaw exists on the CCF.
- ◆ The examining physician has determined there is an acceptable medical explanation of the employee's failure to provide a sufficient specimen.

A scheduled pre-employment drug test for which an applicant does not show is not a cancelled pre-employment drug test, and should not be recorded on the MIS report. Similarly, it is not a cancelled test (and should not be recorded) if an applicant arrives for a DOT pre-employment drug test, but does not begin the testing process (by choosing or accepting the specimen cup).



## Third Party Administrators Must Meet DOT Requirements

49 CFR § 40.349 allows a Third Party Administrator (TPA) to receive and maintain records concerning DOT drug and alcohol testing programs. As a service agent, the services the TPA provides to transportation employers must meet the requirements of 49 CFR Parts 40 and 655. The TPA may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of

employees in random pools, random selection lists, copies of notices to employers of selected employees, etc.) on behalf of an employer. However, the TPA must ensure they can make any information the employer is asked to produce by a DOT agency representative available to the employer within two business days. In addition, at the request of an employer, the TPA must immediately transfer all records

pertaining to the employer and its employees to the employer or to any other service agent the employer designates. The TPA must carry out this transfer as soon as the employer requests it and is not required to obtain employee consent for this transfer. The TPA cannot charge more than the reasonable administrative costs for conducting this transfer and may not charge a fee for the release of these records.

# Historical MIS Highlights: 2015-2019

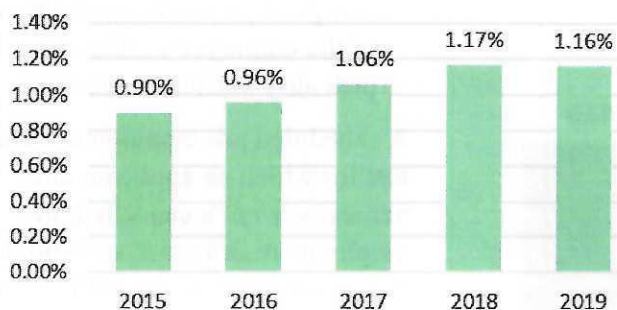
Each FTA-covered employer is required by 49 CFR § 655.72 to annually submit a summary of the results of its anti-drug and alcohol misuse testing program. For calendar year 2019, FTA collected submissions from 3,419 FTA-covered employers with 312,860 safety-sensitive employees, who

submitted the data using the Office of Drug and Alcohol Policy and Compliance (ODAPC) electronic DAMIS application.

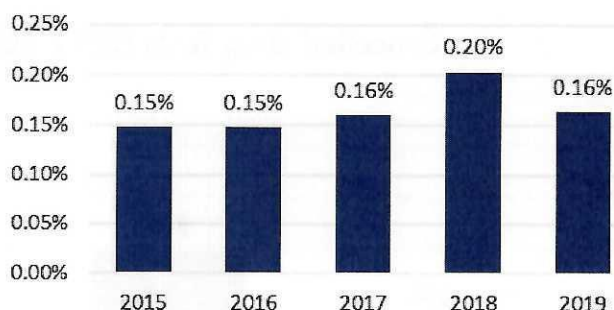
The following charts show drug and alcohol testing historical data from the last five years. Although the drug testing positive rate

steadily increased from 2015-2018, the data showed a slight decrease in 2019. The alcohol violation rate also decreased in 2019. The number of THC positives has increased approximately 49 percent since 2015.

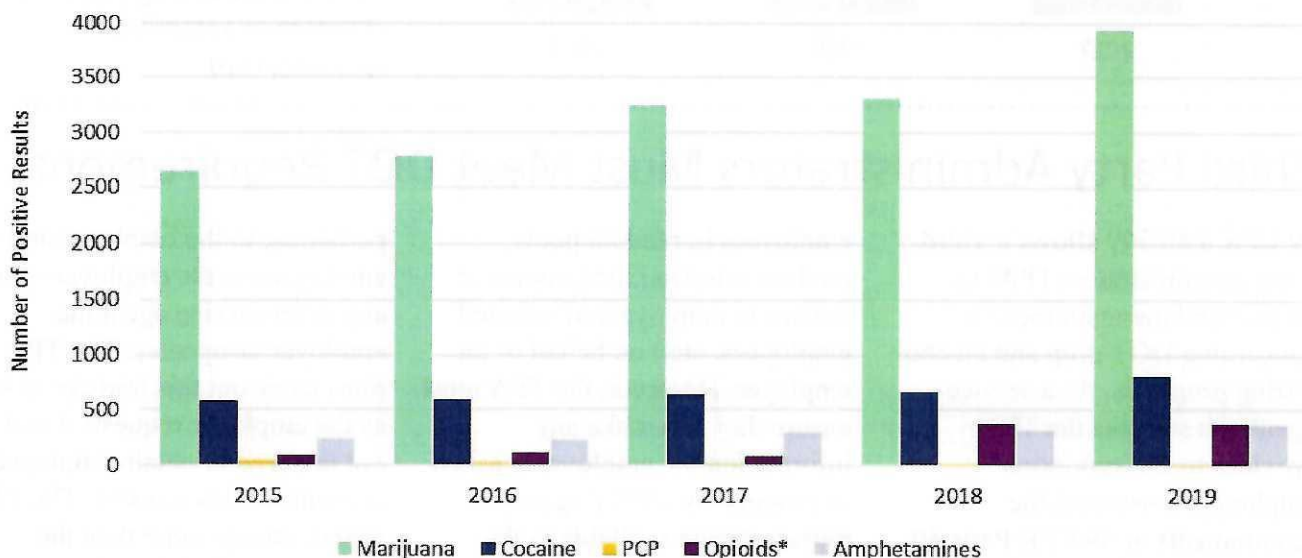
**Random Drug Testing: Positive Rate (2015-2019)**



**Random Alcohol Testing: Violation Rate (2015-2019)**



**Verified Positives By Drug Type**



\*The DOT drug testing panel expanded to include semi-synthetic opioids in 2018.

# Pre-employment Alcohol Tests

Although not required, 49 CFR Part 655 allows an employer to conduct pre-employment alcohol testing. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with Section 655.42 requirements, previously described in [Issue 48](#) of the FTA Drug and Alcohol Regulation Updates Newsletter.

Data from the annual Drug and Alcohol Management Information System (DAMIS) submissions for calendar year 2019 showed 549 of 3,419 FTA-covered employers performed DOT pre-employment alcohol testing. The violation rate for pre-employment alcohol tests

was 0.12 percent as opposed to 0.29 percent for the other alcohol test types.

49 CFR § 655.42(b) states: “The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).” As such, it would be expected that the number of pre-employment alcohol tests would be similar to the number of pre-employment drug tests reported by the 549 FTA-covered employers who have chosen to conduct pre-employment alcohol tests.

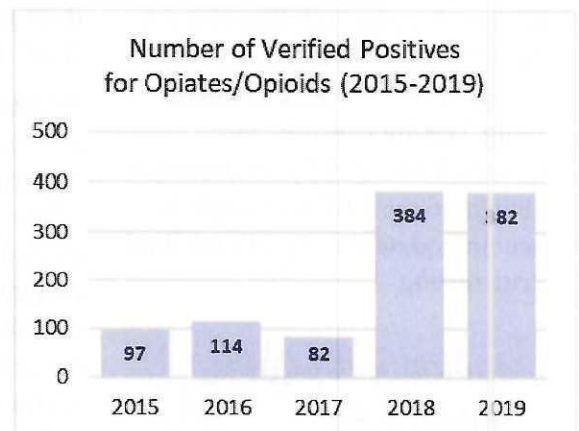
However, approximately 30 percent of the 549 employers reported significant differences in the number of pre-employment alcohol tests conducted compared to the number of pre-employment drug tests conducted in 2019. In most cases, there are significantly fewer alcohol tests conducted. This may indicate a misunderstanding of the requirement that employers treat all covered employees the same. The employer is not permitted to conduct pre-employment alcohol testing selectively, or to conduct non-DOT pre-employment alcohol testing for safety-sensitive positions.

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## Opioid Positives Increase

In January 2018, the drug category “opiates” was renamed to “opioids” to reflect the addition of four semi-synthetic opioids to the DOT drug testing panel. Testing results for 2018 submitted to FTA through annual MIS reporting showed a significant increase in opioid verified positives as opposed to the number of opiate verified positives reported in previous years. The 2019 MIS

testing data confirms this increase was not a one-year trend or anomaly. With this increase, the opioids drug category has supplanted the amphetamines drug category as the category with the third-most verified positives, behind marijuana and cocaine.



## Virtual FTA One Day Substance Abuse Seminars Available

In order to accommodate social distancing protocol, FTA Substance Abuse Seminars are now available for virtual delivery. These free half-day training sessions provide an overview of FTA Drug and Alcohol regulations, program requirements, and current issues with regard to 49 CFR Part 655 and Part 40. The presenter is also able to take questions from attendees. The targeted audience for the seminars is anyone who administers and/or assists in administering an FTA-authorized testing program, with the goal of providing essential information to facilitate compliance with drug and alcohol testing regulations.

If you are interested in scheduling a half-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.

# Testing Other Safety-Sensitive Employees after an Accident

Following an accident, 49 CFR § 655.44 requires the employer to conduct drug and alcohol tests on the operator, unless the operator's performance can be completely discounted as a contributing factor to the accident. The regulations also require the employer to test any other safety-sensitive employee whose performance could have contributed to the accident. The decision to test involved employees must be made using the best information available at the time the decision is made. "Best information

available," refers to any and all information observed or learned during the on-site portion of an accident investigation. This may include phone calls back to the employer for pertinent information, if necessary. The decision to test or not to test must be made using this information, regardless of facts that may later emerge.

Evaluating the involvement of other covered employees should follow the same process as the operator. For example, if mechanical issues contributed to

the accident, were they directly linked to recent maintenance procedures? Could a dispatcher's negligent direction have contributed to the accident? Was another covered employee onboard the vehicle whose actions could have contributed?

Using the best information available at the scene, if the employer can reasonably conclude that other safety-sensitive employees must be sent for post-accident testing, the same time limits apply for these individuals as for operators.

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## Revised Federal Drug Testing Custody and Control Form

The Department of Health and Human Services (HHS) released the Office of Management and Budget (OMB) revised Federal Drug Testing Custody and Control Form (CCF). One notable change to the CCF was made to accommodate the use of oral fluid drug testing.

**Note: DOT's testing program does not currently permit oral fluid drug testing.**

OMB has approved the use of the old version of the CCF until August 30, 2021. The DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) recommends, as a best practice, for laboratories not to mail any of the revised CCFs to DOT-regulated clients until after June 1, 2021, in order to avoid confusion regarding the ability to conduct oral fluid testing.

Another change made to the CCF

is the addition of "CDL State and NO." to the donor identification line in Step 1. The requirement to include the donor's CDL state and number applies only to tests performed under FMCSA authority. Additional information regarding Step 1, Line C can be found in [Issue 69](#) of the FTA Drug and Alcohol Regulations Updates newsletter.

A complete list of the changes made to the CCF can be found on the ODAPC website, at [https://www.transportation.gov/odapc/Notice\\_CCF\\_August\\_2020](https://www.transportation.gov/odapc/Notice_CCF_August_2020).

### Regulation Updates

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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.*