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Subject: UPDATE - USDOT Publishes Drug Testing Rule - (Effective 06/10/2026)
Date: Friday, June 12, 2026 3:58:25 PM
Attachments: [image001.png](#)
[Zero Tolerance Policy Template v-0623.1.doc](#)
[Zero Tolerance Policy Template with PreEmployment Alcohol v-0623.1.docx](#)
[Second Chance Policy Template v-0623.1.docx](#)
[Second Chance Policy Template with PreEmployment Alcohol v-0623.1.docx](#)
[Zero Tolerance Policy Template v-0623.1 Tracked Changes 05.29.2026.doc](#)
[Zero Tolerance Policy Template with PreEmployment Alcohol v-0623.1 Tracked Changes 05.29.2026.docx](#)
[Second Chance Policy Template v-0623.1 Tracked Changes 05.29.2026.docx](#)
[Second Chance Policy Template with PreEmployment Alcohol v-0623.1 Tracked Changes 05.29.2026.docx](#)

Dear Transit Partners,

On May 11, 2026, the USDOT published an updated final rule in the Federal Register amending 49 CFR Part 40, effective June 10, 2026. Because these regulatory updates are highly nuanced, RLS has provided a detailed breakdown below. However, the immediate takeaway is relatively simple:

- **Key Takeaway:** You may need to update your Drug & Alcohol (D&A) policies only if those policies contain language affected by the regulatory updates. If you are utilizing the template provided by RLS in the past, then they have updated their template policies (attached) to handle the required language adjustments.

What Happened? (The Summary)

USDOT revised its drug and alcohol testing procedures to address two distinct issues:

- The Oral Fluid "Factual Impossibility": Procedures now allow directly observed urine collections when an oral fluid test is required but unavailable because there is a lack of HHS-certified laboratories.
- Executive Order 14168 Compliance: Terminology within Part 40 has been updated to replace the word "gender" with "sex" to align with E.O. 14168 (Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government).

Background & Technical Notes

- Oral Fluid Drug Testing Is Still Unavailable
 - In May 2023, USDOT amended Part 40 to require a directly observed collection to be an oral fluid test (rather than urine) in specific situations—such as when a same-sex observer cannot be readily found.
 - However, because Health and Human Services (HHS) has not yet certified any oral fluid

testing laboratories, compliance with this rule is currently a factual impossibility. To preserve transportation safety and ensure observed collections can still take place, this new June 10, 2026 change establishes an interim workflow.

- Specific Rule Changes & Technical Workflows
 - **49 CFR Part 40.65:** If a new directly observed urine collection or an oral fluid collection is required under § 40.65(b)(5) or (c)(1), collectors must check if the employer has a standing order dictating which specimen to perform. If no standing order exists, the collector must contact the Designated Employer Representative (DER) for direction.
 - **49 CFR Part 40.67:**
 - A person of the opposite sex is never permitted to act as an observer during a directly observed test.
 - If oral fluid testing is required by Part 40 but unavailable, and a same-sex observer is not present, the collector must contact the DER. The DER will either arrange for a same-sex observer or send the employee to an approved site for a directly observed urine collection.
 - For an employer to utilize oral fluid testing, there must be at least two HHS-certified oral fluid laboratories. Once HHS certifies a second laboratory, an 18-month grace period begins. In circumstances where Part 40 requires oral fluid drug testing, employers may continue conducting directly observed urine collections during this window while they set up their oral fluid programs. ODAPC will officially publish the start and end dates of this 18-month period in the Federal Register.
 - **Terminology Updates (§ 40.67, 40.69, and 40.145):**
 - The word "gender" has been strictly replaced with the word "sex" throughout these sections.

What This Means & Next Steps

No action is immediately necessary. However, transit agencies should review their D&A policies and other D&A program forms/documents to ensure that any language affected by these changes is updated in those documents, policies, or resources.

Per RLS:

- We have updated our model template D&A policies to reflect the new "sex" vs. "gender" terminology. The updated templates are attached (Version 0623.1 in the footer).
 - We have provided both a "tracked changes" version (for quick identification of edits) and a clean, fully revised version.
- FTA Policy Builder Alternative: For subrecipients who prefer the FTA's online "D&A Policy Builder" tool over the RLS template, the FTA policy tool is fully compliant with these new changes.

- Whether you use the FTA template policy, the RLS template, or your own D&A policy, please remember that any substantive D&A policy update requires the following:
 - Review and formal approval by the agency's local governing authority.
 - Written notice of the revisions distributed to all covered employees.
 - Proper retention of this documentation in your D&A files.

If you have any questions regarding these regulatory nuances or the attached templates, please do not hesitate to reach out to Earle McNeil at elmcneill1@ncdot.gov or 919-707-4686.

Thank you and have a wonderful weekend!

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