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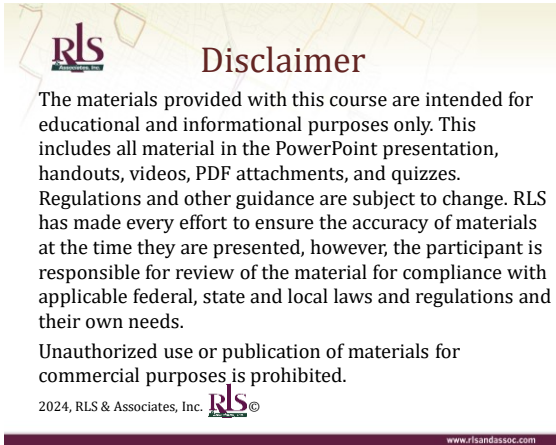
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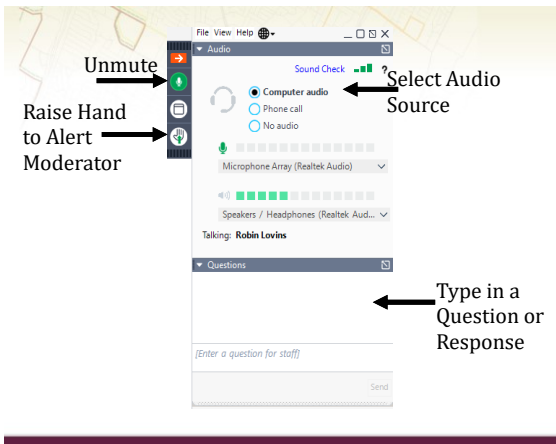
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## COURSE OBJECTIVES

Awareness of DAPM/DER Responsibilities

Provide technical knowledge necessary to perform a "Self-Check" on your own drug and alcohol testing program

Provide information on recent & future changes/updates to USDOT-FTA Drug and Alcohol Regulations

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## D&A Common Findings

Common Compliance Observations from Drug & Alcohol Reviews will be identified throughout this presentation

Special attention **must** be given to these areas upon return to your agency

These areas will be identified by a Red Star ★

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## AGENDA

Regulations

Applicability

Program and Policy

Testing

Prohibited Substances & Behaviors

Testing Categories

Vendor Oversight

Reporting & Record Keeping

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## ACRONYMS

<b>ATF</b>	<b>BAT</b>	<b>CCF</b>	<b>DAPM</b>	<b>DER</b>
Alcohol Testing Form	Breath Alcohol Technician	Custody and Control Form	Drug and Alcohol Program Manager	Designated Employer Representative

<b>EBT</b>	<b>MRO</b>	<b>ODAPC</b>	<b>SAP</b>
Evidential Breath Testing Device	Medical Review Officer	Office of Drug & Alcohol Policy & Compliance	Substance Abuse Professional

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## DEFINITIONS

### ATF

- The DOT form, used to document every DOT alcohol test

### BAT

- A person who instructs and assists employees in the alcohol testing process and operates an EBT

### CCF

- The Federal Drug Testing Form, used to document every DOT urine collection

### DAPM

- An individual responsible for the implementation of the drug and alcohol testing program

### DER

- An employee authorized to take immediate action to remove employees from safety-sensitive duties. The DER also receives test results.

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## DEFINITIONS

### EBT

- A device approved by NHTSA for evidential testing of breath

### MRO

- A person who is a licensed physician and who is responsible for verifying the results of DOT drug tests

### ODAPC

- The office in the Office of the Secretary, DOT, that is responsible for coordinating drug & alcohol testing program matters within USDOT and providing information concerning the implementation of 49 CFR Part 40

### SAP

- A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare

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## DAPM vs. DER?

### Identifying Roles



- ♦ What is a ... Who is the... **DAPM?**
- ♦ DAPM = or ≠ DER
- ♦ Part 40 Defines "Designated Employer Representative (DER)"
  - "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation process... receives test results and other communications for the employer"



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## DAPM vs. DER?

### Identifying Roles



- ♦ Most often there is a SINGLE DAPM
- ♦ Many transit agencies will have 1 DAPM who is also the DER
- ♦ Some times an agency will have a DAPM and multiple DERs
  - Usually different DERs represent different "divisions"
  - i.e., DER for "Operations"; DER for "Maintenance";
  - DER for different locations



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## HISTORY OF D&A TESTING

1986: Reagan Administration  
E.O. 12564

- Established goal of Drug-Free Federal Workplace
- Mandated executive agencies to establish drug testing program
- Directed HHS to publish guidelines, standards, drugs to be tested

April, 1988:  
HHS  
53 FR 11979

- Mandatory Guidelines for Federal Workplace Drug Testing Programs
- Any company with contract over \$25,000 with Feds must have DFW

1991: Bush Administration  
P.L. 102-143

- Omnibus Transportation Employee Testing Act
- Required testing for FAA, FMCSA, USCG, PIPELINE, FRA, & FTA

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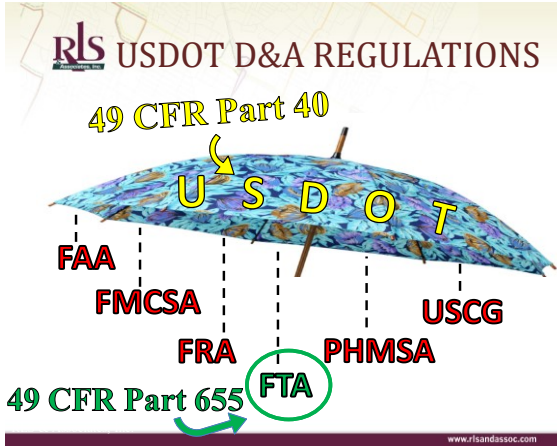
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**USDOT D&A REGULATIONS**

**USDOT – 49 CFR Part 40**

- How to conduct testing
- [www.transportation.gov/odapc/part40](http://www.transportation.gov/odapc/part40)

**Agency Specific D&A Testing Regulations**

- FAA – 14 CFR Part 120
- FMCSA – 49 CFR Part 382
- FRA – 49 CFR Part 219
- FTA – 49 CFR Part 655
  - Who to test / When to test
  - <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-655?toc=1>
- PHMSA – 49 CFR Part 199
- USCG – 46 CFR Part 4 and Part 16

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**USDOT-FTA D&A TESTING**

**Required By Law**

- Employers, employees, service agents, vendors are all subject to USDOT drug & alcohol testing regulations;
- **Obligated by Federal law to submit and cooperate in D&A testing mandated by USDOT and Agency regulation**

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## STAY UP-TO-DATE!

### ODAPC

- [www.transportation.gov/odapc](http://www.transportation.gov/odapc)

### ODAPC List-Serv

- [www.transportation.gov/odapc/get-odapc-email-updates](http://www.transportation.gov/odapc/get-odapc-email-updates)

### FTA Quarterly D&A Newsletter

- FTA's website

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## APPLICABILITY

Who is subject to the USDOT-FTA  
Drug and Alcohol Regulations?

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## APPLICABILITY

### Recipients (Grantee) of FTA Transit Funds

- 5307 Urban Area Capital & Operating
- 5309 Transit Capital
- 5311 Non-Urban (rural) Capital & Operating
- 5339 Transit Capital

### Subrecipients and Contractors of FTA Grantee

- If Grantee uses the subrecipient/contractor to provide any safety-sensitive functions
- If subrecipient/contractor uses vehicle(s) purchased with FTA capital funding

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## APPLICABILITY

### Capital Assistance?

- Segregate FTA funding
- Limit application of FTA testing to funded project

### Operating Assistance (5307 & 5311)

- FTA funding cannot be segregated
- All operations are subject to FTA regulations

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## APPLICABILITY

### Employees Covered?

- ◆ Employees who perform any of the following safety-sensitive functions:
  - Operation of a revenue service vehicle, regardless of whether the vehicle is in revenue service
  - Operation of a non-revenue vehicle when required to be operated by the holder of a Commercial Driver's License
  - Controlling movement or dispatch of a revenue service vehicle (based on employer assessment of safety-sensitive functions)

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## APPLICABILITY

### Employees Covered? (continued)

- ◆ Employees who perform any of the following safety-sensitive functions:
  - Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service
  - Security personnel that carry firearms

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## APPLICABILITY

### Employees Covered? (continued)

- ◆ Employees who perform any of the following safety-sensitive functions:
  - Volunteers who perform safety-sensitive functions if:
    - Required to have CDL to operate vehicle; OR
    - Receive payment in excess of actual expenses

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## CONTRACTOR APPLICABILITY

### Do you use a contractor?

- Are they covered?
- What do they do?
- “Stand in the Shoes”?
- Operations vs. Maintenance

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## CONTRACTOR APPLICABILITY

### Who is Exempt?

- ◆ Maintenance Contractors Performing Services:
  - For 5311 recipients
  - For 5307 / 5309 recipients serving population less than 200,000
  - On one-time or limited, ad-hoc basis

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## CONTRACTOR APPLICABILITY

### Who is Covered

- ◆ If a contractor “Stands in the Shoes” of your public transit operations
  - Payment/Voucher are not the keystone factors
  
- ◆ Making the Decision on Contractor Applicability
  - Who makes the CHOICE for who fulfills the trip?
  - Passenger Choice vs. Transit Agency Choice

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## POLICIES & CONTRACTORS

### D&A Policy: What if I use a Safety-Sensitive Contractor

- USDOT D&A policies must be **EMPLOYER BASED POLICIES.**
  - Although your contractor(s) stand in your shoes, they are not your employees.
  - Your contractor must have their own D&A policy.
  - Your contractor’s D&A policy must be officially adopted/approved by the contractor’s governing authority, **not your governing authority.**
  - By utilizing a contractor, you have oversight responsibilities to make sure your contractor’s policy meets all applicable regulations, rules, etc.

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## PROGRAM & POLICY

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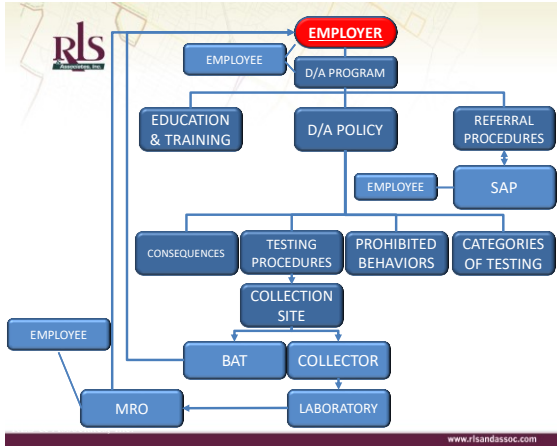
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## POLICY DISSEMINATION

Local governing board or highest ranking official adoption ★

Policy distribution

Must provide written notice to all employees

Employee should be requested to sign a confirmation of receipt form

Employer are not permitted to use consent forms

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## Resources

- ◆ Your D&A Policy Will ALWAYS be a **LIVING** Document
- ◆ Seek Expert Review on Regular Basis
  - FTA or State DOT
- ◆ [FTA Policy Builder](#)
  - Concise and purely compliance oriented
- ◆ Templates
  - Often more "comprehensive" & include more employer specifics
  - Make sure you still show due diligence to ensure current compliance

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## AUDIT FINDINGS: POLICY

Removing employee from SS functions at 0.04 vs. 0.02

Clarifying Language: "Fail" vs. "Refusal" vs. "Positive"

Governing Authority Must Approve EVERY TIME POLICY IS REVISED

2018/2023 Regulatory Updates (especially revisions to definitions)

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## AUDIT FINDINGS: POLICY

### Policy Consequences

- Zero Tolerance vs. 2<sup>nd</sup> Chance
- Determination to terminate or not is 100% outside of the requirements of the federal regulations
- Each employer must make a determination on discipline from DOT test results; list this in their policy; be consistent
- YOU MUST FOLLOW YOUR POLICY!
- Positive Tests vs. Refusals vs. Non-Negative Results (**0.02-0.039**)

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## EDUCATION AND TRAINING

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## EMPLOYEE TRAINING

### Education for all safety-sensitive employees

- 60 minutes on effects and consequences of drug use on personal health, safety, and work place
- No requirement for alcohol
- Must be documented for each employee

### Available Resources

- National RTAP eLearning Module
- FTA's YouTube Video

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## SUPERVISOR TRAINING

Supervisors or company officials that will be making reasonable suspicion determinations

- MINIMUM 60 minutes on physical, behavioral, and performance indicators of probable drug use
- MINIMUM 60 minutes on physical, behavioral, and performance indicators of probable alcohol misuse

Quality Reasonable Suspicion training is longer than the minimum 2 hours

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## TRAINING TIMELINE

60 Min Employee Training

- Upon Hire

Reasonable Suspicion Training

- Best practice is to have reoccurring refresher training (2-3 years)

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## GENERAL PROGRAM REQUIREMENTS

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## PROHIBITED DRUGS

### Marijuana

- Rx and Recreational Prohibited

### Cocaine

### Opioids

- Codeine, Morphine, Heroin, Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone

### Phencyclidine (PCP)

### Amphetamines

- Meth and Ecstasy

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## PROHIBITED ALCOHOL

### Alcohol Prohibited:

- While performing SS duties
- 4 hours prior to SS duties
- While on call to perform SS duties
- Within 8 hours following an accident, or until the test has been conducted

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## PERIOD OF COVERAGE

### DRUGS

- Drug testing can be performed anytime employee is on duty

### ALCOHOL

- Alcohol testing just before, during, or just after performance of safety-sensitive duties

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## REFUSAL TO TEST (excluding pre-employment)

Fail to appear for a test in a reasonable time

Fail to remain at the testing site until testing process is complete

Fail to attempt to provide a specimen

Fail to permit monitoring or direct observation, as required

Fail to provide sufficient quantity of specimen w/o a valid medical explanation

Fail or decline to take a 2<sup>nd</sup> test as directed by the collector or employer

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## REFUSAL TO TEST (excluding pre-employment)

Failure to cooperate with any part of the testing process

Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly –observed urine collection drug test

Possess or wear a prosthetic or other device used to tamper with the collection process

Admit to adulteration or substitution to the collector or MRO

Refuse to sign Step 2 of the ATF

Fail to remain readily available following an accident

Provide an adulterated or substituted specimen, as verified by the MRO

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## PRE-EMPLOYMENT REFUSALS TO TEST

It is NOT a refusal to test on a Pre-Employment if applicant:

- Fails to appear for test;
- Leaves the collection site prior to commencement of test

DRUG TEST  
COMMENCES

- Donor accepts or selects specimen cup

ALCOHOL TEST  
COMMENCES

- Donor accepts or selects mouthpiece

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## TEST RESULTS

Positive drug/alcohol test or test refusal

1. Remove from SS duty
2. Advise employee of available resources & referral to list of USDOT qualified SAPs
3. Follow transit system disciplinary policy

Non-Negative alcohol result (0.02-0.039)

1. Removal from SS duty for minimum of 8 hours unless subsequent test results in BAC less than 0.02
  2. Follow transit system disciplinary policy
- NOT A DOT VIOLATION = NO SAP REFERRAL**

Negative Dilute

- Must determine whether or not to retest after a negative dilute
- The policy must state this determination
- 2<sup>nd</sup> test result is test of record
- Must follow your policy and be consistent for all employees

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## TEST RESULTS

### Cancelled Tests

- Not Negative; Not Positive
- MUST NOT TREAT AS A POSITIVE TEST OR RULE VIOLATION
- Must not treat as a negative test for purposes of pre-employment, return-to-duty, follow-up
- Must not retest after a cancelled test, unless directed by MRO or when negative result is required (as discussed above)
- Cancelled tests don't count toward random testing percentages
- A cancelled test DOES NOT provide a valid reason for the employer to conduct a NON-DOT test

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## TEST RESULTS

### Drug Test Results – Required Information

- Is your MRO providing everything to you as required by the regulations for drug test results?
- You must make sure you have everything required from your MRO
- This is vital for accurate results ... This is also vital for providing oversight of your MRO
- Drug test results can be provided to you from MRO in 1 of 2 ways.
- **Method 1: Copy of CCF**
  - Stamped, Dated, Legible Photocopy of Copy 2

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## TEST RESULTS

### Drug Test Results – Required Information

- Method 2: Result Report
  - Full Name SSN/Employee ID # of Employee
  - Specimen ID Number from CCF
  - Reason for test (e.g., random, post-accident, etc.)
  - Date of COLLECTION
  - Date MRO received Copy 2 of CCF
  - Result of test
  - Date result was verified by MRO
  - Signed/Stamped by MRO
- NOTE\*\* Must never include quantitative values of drug test results

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## TESTING PROCEDURES

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## TESTING METHODS

### System must abide by 49 CFR Part 40 procedures

- Must make Part 40 available to employees upon request

### Drug Testing Process - (detailed discussion optional)

- Split Specimen collection
- CCF with unique #
- Initial Screen at lab
- Confirmatory test at lab
- MRO Review

### Alcohol Testing

- Initial Screen (ASD or EBT)
- Confirmatory test on EBT after 15 minute wait (if screening was 0.02 or above)

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# RLS TESTING NOTIFICATION

## Requirement to Provide Notification for Each Test

- Full Name of Employee & SSN or ID Number
- Laboratory Name and Address (Can be pre-printed on CCF)
- Employer Name, Phone, and Fax
- DER Information
- MRO Name, Address, Phone, and Fax
- DOT Agency Regulating the Test (FTA, FMCSA, etc.)
- Test Reason
- Whether or Not Test is to be Directly Observed
- (Optional) C/TPA information if utilized at your agency

## Reconciliation Process Must be Verified

- If the DAPM is not always the one to send employees for tests, there MUST be an established and reliable procedure in place to ensure the DAPM is made aware of when an employee is sent for test so the DAPM can know to be expecting a result

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# RLS BAT

## What do they do?

- Conduct alcohol screening and confirmation tests (2<sup>nd</sup> test given to an employee with a screening test result of 0.02 or higher)
- Collect and analyze breath using an evidential breath testing (EBT) device
- Document result on an ATF and transmit to the employer timely and confidentially

## What qualifications are necessary?

- Knowledge of basic information (Part 40, applicable DOT regulations)
- Training and proficiency demonstration which meets §40.213
- Refresher training required every 5 years

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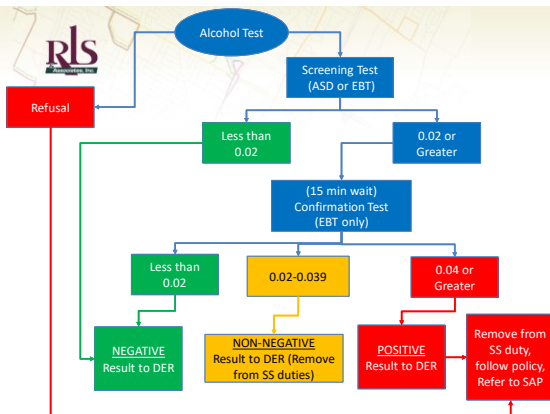
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## URINE COLLECTOR

### What do they do?

- Collect urine specimens using Part 40 procedures
- Ship specimens to DHHS certified laboratories for analysis
- Distribute copies of the CCF to necessary parties

### What qualifications are necessary?

- Knowledge of basic information (Part 40, DOT urine specimen guidelines, applicable DOT - FTA regulations )
- Training and proficiency demonstration which meets §40.33
- Refresher training required every 5 years

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## SPECIMEN VALIDITY

### Adulterated

- Not a normal constituent or contains endogenous substance at a concentration that is not a normal physiological concentration.

### Diluted

- Diluted specimens have creatinine and specific gravity values that are lower than expected for normal human urine.

### Substituted

- Not consistent with normal human specimen

### Invalid

- Unidentified adulterant, unidentified interfering substance, abnormal physical characteristic, or lab cannot complete testing.

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## SPLIT SPECIMEN TEST

### Invalid Test

- Employees do not have access to a test of their split specimen

### Positive/Adulterated/Substituted

- Employee has right to request split specimen to be tested

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## DIRECT OBSERVATION

Return-to-Duty and Follow-Up Testing

Temperature Out of Range

Specimen Appeared to be Tampered With

Collector Observes Materials Brought With Intent to Tamper w/ Specimen

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## DIRECT OBSERVATION

Lab Reported to MRO as Invalid Result; MRO Determines No Medical Explanation

MRO Determines Original Specimen Was Positive/Adulterated/Substituted and Split Test Couldn't Be Performed

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## DIRECT OBSERVATION

### Employee Being Directly Observed for Urine Collection:

- Observed by same gender
- Raise shirt, blouse, or dress/skirt, as appropriate above the waist
- Lower clothing to show the collector, by turning around he or she does not have a prosthetic device.
- Allow observer to see specimen come from body to the cup

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## RLS DIRECT OBSERVATION

Employee Being Directly Observed for Oral Specimen Collection:

- Same gender observer not required
- “Normal” oral fluid collection procedures
- All oral fluid collections are considered “directly observed”

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End of Day 1

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TESTING CATEGORIES

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# PRE-EMPLOYMENT

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**RIS**  
Associates, Inc.

# PRE-EMPLOYMENT

**Scenario 1 – Applicant/New Employee**

- Must have MRO verified negative result prior to SS duties

**Scenario 2 – Employee Transfer → SS Duty**

- Even if NON-DOT pre-employment test result on file

**Scenario 3 – Employee Returns from Extended Leave**

- No SS duties for 90+ days, AND removal from random testing pool

**REMEMBER!**

- Pre-Employment = Clearance to Perform SS Duty
- Return-to-Duty Test = Only done after a positive test/refusal (always directly observed)
- DO NOT CONFUSE PRE-EMPLOYMENT WITH RETURN-TO-DUTY

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# PRE-EMPLOYMENT

**DOT vs. NONDOT Pre-Employment Test**

- You must have a verified negative **USDOT** pre-employment drug test result prior to allowing individual to perform safety-sensitive functions.
- As the employer, you must ensure that your collection site conducts the correct type of test, on the correct form.
- A NON-DOT pre-employment drug test result IS NOT sufficient

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## PRE-EMPLOYMENT

### What if a Pre-Employment Test is Cancelled?

- Must conduct a 2<sup>nd</sup> test

### Negative Dilute Pre-Employment Test?

- Allowed to conduct 2<sup>nd</sup> test (IF IT IS STATED IN YOUR POLICY)
- Employee may begin SS duties

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## PRE-EMPLOYMENT

### DOT Pre-Employment Alcohol Testing

- OPTIONAL, but allowed
- Must follow Part 40
- Only after contingent offer of employment
- Treat all applicants/employees the same
- Must be in your policy

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## PREVIOUS EMPLOYER RECORDS CHECK

### As A Potential Employer, You Must:

- Obtain written consent from applicants to obtain D/A information from previous 2 years
- Contact previous employer – written consent must accompany request
- Ask applicant whether he or she has tested positive or refused a DOT pre-employment test in the previous two years

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## PREVIOUS EMPLOYER RECORDS CHECK

You Must Request the Following Info From Previous DOT Employers:

- Alcohol test results higher than 0.04
- Verified positive drug tests
- Test refusals
- Other violations of the DOT D/A regulations
- If appropriate, documentation of successful completion of return-to-duty process

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## PREVIOUS EMPLOYER RECORDS CHECK

### Getting the Info Back

- Use "standard" uniform letter containing applicant's consent and questions posed to previous employer
- Document your "good faith effort"

### Record Retention

- Must maintain this info for at least 3 years

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## REASONABLE SUSPICION

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## RLS REASONABLE SUSPICION

### What is the Purpose?

- **Addressing potential impairment issues**
- We do this by detecting any sign/symptom consistent with drug use or alcohol misuse

### What is it NOT Supposed to Do?

- Identify the particular substance of use
- Diagnose substance use / Alcohol use disorder

### Should I Do a Drug or Alcohol Test?

- Drug, Alcohol, or BOTH
- Always conduct BOTH if the you are able
- Remember time constraints for alcohol (Just before, during, or just after SS duty)

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## RLS REASONABLE SUSPICION

### Who is Authorized to Make Determination?

- Properly trained Company Officials with regular contact with SS employee work-force

### Determination to Test

- Specific, contemporaneous, articulable observations concerning an employees APPEARANCE, BEHAVIOR, SPEECH, OR BODY ODOR
- Document, Document, Document!!

### Only ONE Trained Supervisor Required

- If ONE trained supervisor makes determination... the test must occur

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## RLS REASONABLE SUSPICION

### Time Requirements?

- **DRUGS** = Anytime employee is on duty
- **ALCOHOL** = Only just before, during, or just after performance of SS functions
- Transport Employee to Collection Site Immediately

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## POST-ACCIDENT TESTING

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## POST-ACCIDENT

An Occurrence Associated w/ Operation of Vehicle  
(whether or not in revenue service) and one or  
more of following occur:

- Human Fatality
- Individual suffers bodily injury and immediately transported away from scene for medical treatment
- One or more vehicles incurs disabling damage

**“The 3 Thresholds”**

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## POST-ACCIDENT

**What is Disabling Damage?**

- Vehicle cannot be operated under its own power without further damaging vehicle
- **USUALLY** requires a tow, but not always

**What is NOT Disabling Damage?**

- Damage to headlights, taillights, turn signals, windshield wipers, horn
- Tire damage/replacement alone is not to be considered disabling damage
- Any other damage which can be easily remedied at the scene of accident with simple tools

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# POST-ACCIDENT

## Decision to Test

- Made by employer at the time of the accident
- Use best information available AT TIME OF ACCIDENT
- Decisions should not be reversed based on facts learned later on

## MUST DOCUMENT DECISION

- Best practice is to use a sample form that is standard for each use and is specific to the D/A Decision

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### POST ACCIDENT TESTING DECISION REPORT

*\*\*A separate sheet must be filled out for each covered employee that contributed to the accident\*\**

System Name: \_\_\_\_\_ Date of Accident: \_\_\_\_\_  
 Time of Accident: \_\_\_\_\_ Time Employer was notified: \_\_\_\_\_  
 Location of Accident: \_\_\_\_\_  
 Safety-Sensitive Employee: \_\_\_\_\_ ID # and Position: \_\_\_\_\_  
 i.e. Driver, Dispatcher, etc.

1. Did the accident involve a public transit vehicle?  Yes  No  
 2. Did the accident involve the operation of the vehicle?  Yes  No  
 3. Was there loss of life as a result of the accident?  Yes  No  
 4. Did an individual suffer a bodily injury and immediately receive medical treatment away from the scene?  Yes  No  
 5. Was there disabling damage to any of the involved vehicles?  Yes  No

6. a) Did you perform a drug and/or alcohol test?  Yes  No  
 (Use Decision Tree on back of this form)  IFA Authority  Company Authority  No  
 b) If no, why not? \_\_\_\_\_  
 c) For a non-fatal accident, can the covered employee(s) performance be completely discounted as a contributing factor to the accident?  Yes  No

7. a) Was an alcohol test performed within 2 hours?  N/A  Yes  No  
 b) If no, why? \_\_\_\_\_

8. If no alcohol test occurred, and more than 8 hours elapsed from the time of the accident, please explain: \_\_\_\_\_

9. a) Was a drug test performed within 32 hours?  N/A  Yes  No  
 b) If no, why? \_\_\_\_\_

10. a) Did the employee leave the scene of the accident without a reasonable explanation?  Yes  No  
 b) If Yes, please explain: \_\_\_\_\_

Test Determination:  
 Name of supervisor making determination: \_\_\_\_\_  
 Time employee was informed of determination: \_\_\_\_\_

Signature & Title: \_\_\_\_\_ Date: \_\_\_\_\_

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# POST-ACCIDENT

## FATALITY: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident; and
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

## NON-FATAL: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident, UNLESS their performance can be completely discounted as contributing factor (**different from fault**)
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

## Who NOT to Test?

- Employee must be able to give consent
- Cannot test dead or unconscious employee

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## POST-ACCIDENT

### Testing Time Requirements

- All testing must occur as soon as possible, after treating injuries and cooperating with law enforcement
- The Post-Accident “Clock” starts at time of accident, not at time of your decision to test

### Testing Time Limits

- If alcohol test not conducted within **2 hours** – you must document why
- Cease attempts after **8 hours** for alcohol
- Cease attempts after **32 hours** for drugs
- If any of the above time limits are not met, you **MUST** document the reason why

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## POST-ACCIDENT

### Acceptance of Law Enforcement Test Results

- Test results of Federal, State, or Local law-enforcement officials can be used only if results are released
- Employer may only use these if they are unable to do their own test
- Must document reason

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## POST-ACCIDENT

### Common Problems

- Ordering USDOT-FTA tests when not required
- The following factors have **NO IMPACT** making your determination for USDOT-FTA post-accident testing:
  - Testing just to be safe ★
  - Dollar damage
  - Preventability
- **Reasonable Suspicion Implications!**
- Citation vs. No Citation

You are prohibited from conducting a DOT-FTA post-accident test if the DOT-FTA thresholds are not met

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## Test, Not Test

- ◆ While talking on his cell phone, your driver notices the red light just in time to stop. Due to the very rapid application of the brakes, a passenger slid off her seat and hit her head on the seat in front, leaving a three inch cut on her forehead. The driver offers to call an ambulance but the passenger refuses. The next morning you receive a phone call from the passenger that she went to the hospital later that day and is filing a claim against the system.
  - Test?
  - Threshold?

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## Test, Not Test

- ◆ A passenger on the bus slips and falls while boarding. She is conscious but unable to move. The driver calls dispatch to send an ambulance. When the medics arrive they believe the woman has a broken leg and transport her to the hospital.
  - Test?
  - Threshold?

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## Test, Not Test

- ◆ You have lost contact with bus #102. You send a road supervisor to find the bus. He finds the bus with the front end stuck in a snow bank. The operator is asleep in the drivers seat. There is about 3,500 dollars damage to a car, a fence and mail boxes. The car does not have to be towed. The bus needs to be pulled out of the snow bank but has no damage. No one is injured.
  - Test?
  - Threshold?

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# RANDOM TESTING

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## RANDOM TESTING

### Random Selection Method

- Scientifically valid method
- Each employee must have equal chance of selection
- Once names have been selected, you cannot then determine what type of test(s) will be conducted

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**RLS**

## RANDOM TESTING

### Random Pool Must be Kept Accurate

- Must happen before EACH testing period
- Adding new hires / transferees
- Removing employees terminated/quit/retired
- Long term absences (FMLA, etc.)
- Must have reconciliation process to ensure requested changes actually occurred

### Who Can Be Included in the Pool?

- Only USDOT covered employees
- Cannot mix DOT and NONDOT employees in one pool
- But the pool can include employees from various USDOT agencies (Transit Department (FTA) & Public Works (FMCSA), for example)
- If mixed pool - the testing rate must be set at the highest rate of the multiple modes

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## RANDOM TESTING

### Minimum Testing Rates

- **DRUGS** = 50% for each calendar year
- **ALCOHOL** = 10% for each calendar year
- Rates subject to change each year
- As the employer, you are responsible for ensuring you meet these minimum percentages each calendar year
- You should keep an ongoing review as the year progress to make sure you are on track

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## RANDOM TESTING

### Random Selection Lists

- Access to the list should be restricted as much as possible
- List must be documented in some kind of written format
- List must be kept in secure location with controlled access
- Lists should be generate JUST prior to beginning of testing period (not weeks in advance or weeks after)
- **What if DAPM is in random pool?**
- Lists must be kept for 2 years

### Random Selection Lists and Testing Period

- Must make selection on at least a quarterly basis (even if you make your percentages before end of year)
- Once a new selection list is received, the previous list is null and void
- All employee selected for a particular period must only be tested during THAT period

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## RANDOM TESTING

### Random Selection Lists (cont.)

- Your random selection list is to be used as a CHECKS AND BALANCES tool
- You must never test someone who is not on your selection list for that testing period
- You must ensure you have a test in your record for every employee on each selection list and that each test was conducted during the appropriate testing period

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## RANDOM TESTING

### Using Alternate Selection

- **ONLY** if employee **ORIGINALLY** selected is unavailable for the **ENTIRE** testing period, may you use an alternate selection
- Must document why original selection was unavailable (**operational difficulties is NOT legitimate reason**)

### Alternate(s) Must Be Selected At Same Time as Original List Was Generated

- You **CANNOT** make an alternate selection as a separate draw later on during the testing period
- The alternate must be identified as an alternate

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## RANDOM TESTING

### Notification of Testing

- Employee must be notified of testing authority
- You must have mechanism to know **IN REAL TIME** if they show up in a timely manner
- **Random alcohol testing can only be conducted just before, during, or just after the performance of safety-sensitive functions**

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## RANDOM TESTING

### Notification of Testing

- No employee can be given advanced notice of test
  - Once notified, they must report immediately!
- On-Call / Standby Employees
  - No advanced noticed
  - Can't be tested until on-duty
  - Can't call them in solely to conduct random test

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## RANDOM TESTING

### Random Testing Consortia

- Your employees are in a pool with multiple groups from multiple employers
- As long as consortium as a whole meets the testing rates, everyone in consortium in compliant
- **You must have documentation showing consortium compliance for each CY** ★
- This means YOUR INDIVIDUAL rates may be either above or below the minimums
- Pros and Cons

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## RANDOM TESTING

### Testing Spread/When to Test



- Very important for deterrence and detection of drug/alcohol use (it is more than a compliance issue)
- Testing must be unannounced and unpredictable
- Must be reasonable spread throughout the times of day, days of week, weeks of month, months of quarter
- Testing must be conducted on all days and times when safety-sensitive functions are performed
- NO BATCH TESTING

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## RANDOM TESTING

### BEST PRACTICE

- The VERY BEST practice is for the DAPM to use some type of “random spread tracker” to visually represent the pattern of random testing
- As a DAPM, if you just send people for random testing “whenever,” it will probably become predictable!
- **“Whenever” = “Convenient” ...**
- **“Convenient” = “Predictable” ...**
- **“Predictable” = “Lowered Deterrence & Detection” ...**
- Tools are available to assist in this effort

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## RETURN-TO-DUTY & FOLLOW-UP TESTING

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## ZERO TOLERANCE vs. 2<sup>nd</sup> CHANCE

**Zero Tolerance**

- Following positive drug/alcohol test, or refusal to test → Employee is terminated
- Remember a positive alcohol test is BAC 0.04 or above
- If you policy says “we will terminate for positive alcohol test” – this would mean you would not terminate for non-negative alcohol test (0.02-0.039)

**2<sup>nd</sup> Chance**

- Following positive drug/alcohol test → employee may be allowed to return to safety-sensitive duties after completing required process

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**RIS**  
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## ZERO TOLERANCE vs. 2<sup>nd</sup> CHANCE

**Required Action NO MATTER YOUR POLICY:**

- Immediate removal from SS duty
- Referral to SAP

**Referral to SAP**

- Even if the employee is being terminated
- Even if the positive/refusal to test was a Pre-employment test
- Zero-Tolerance employer not required to follow-up with SAP and ensure individual actually completes the process (unless they return to duty)
- 2x SAPs required if employee is being terminated or applicant is not being hired

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## Return-to-Duty Testing

### Following a Positive/Refusal to Test

- Must have negative RTD test prior to returning to SS duty
- Eligibility to return as well as the type of RTD test (drug or alcohol) is determined by SAP
- Decision on IF and WHEN the employee ACTUALLY returns to SS duty is made by EMPLOYER
- RTD drug tests always directly observed, if not, the test must be cancelled and redone

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## Follow-Up Testing

### Conducted Once Employee Returns to SS Duty

- SAP writes the F/U testing plan
- Minimum of 6 tests in first 12 months back to work
- Maximum of 5 years worth of F/U testing
- SAP determines if F/U testing will be for drugs, alcohol, or both. It is not tied to original positive test type
- Employer cannot modify F/U testing plan, only the SAP
- All F/U tests must be directly observed, if not, test must be cancelled and redone

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## Follow-Up Testing

### Time Requirements?

- **DRUGS** = Anytime employee is on duty
- **ALCOHOL** = Only just before, during, or just after performance of SS functions

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## Follow-Up Testing

### Follow-Up Testing Schedule

- The dates and time for the F/U testing is decided by the employer (must fit the SAP's plan)
- F/U testing is in addition to any other types of tests (i.e., random)
- Employee remains in testing pool
- Who pays for testing is not mandated by USDOT, but testing must occur if you return them to SS duty

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## RECORDKEEPING AND REPORTING PROCEDURES

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## DAMIS REPORTS

### What is it?

- Employers required to prepare and maintain a summary of its annual testing results
- Employer-based report
- No combined reports

### When is it due?

- Grantees must submit the online report to FTA by March 15 of each year
- Subrecipients will often have an earlier deadline placed upon them by their recipient to allow for accuracy checks, quality control, etc.

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## DAMIS REPORTS

### MAKE SURE IT IS ACCURATE

- Employers **MUST** take sufficient action to ensure the numbers reported on the MIS report are accurate.
- When looking at your D&A files and comparing them to your DAMIS report, the reported numbers must be able to be duplicated exactly

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## DAMIS REPORTS

### CALCULATING # OF EMPLOYEES: VERY IMPORTANT

- You are required to report an **AVERAGE** number employees.
  - Average total number of employees AND
  - Average number of employees in each category (driver, dispatcher, mechanic, etc.)
- How are you supposed to calculate the average?
  - It is based on your random selection period.
  - If you make random selections on a **quarterly** basis, the you will calculate your average number of total employees based on quarters. (See example on next slide)
  - First calculate TOTAL employee average, then calculate employee category averages

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## DAMIS REPORTS

### CALCULATING # OF EMPLOYEES (CONT)

- Example: Acme Transit conducts random selections on a quarterly basis.
  - Quarter 1: **20** safety-sensitive employees TOTAL
  - Quarter 2: **25** safety-sensitive employees TOTAL
  - Quarter 3: **23** safety-sensitive employees TOTAL
  - Quarter 4: **28** safety-sensitive employees TOTAL
- $20 + 25 + 23 + 28 = 96$  cumulative employees
- $96 \div 4$  quarters = 24 average number of TOTAL employees
- Then you will use same process to average out your drivers, dispatchers, mechanics, etc.

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## DAMIS REPORTS

### Pass-Through Agencies

- For example, County governments who receive FTA funds from the state and pass it through to a contracted transit provider
- The Pass-Through entity must still submit a DAMIS report, although it will probably be “zeroed out” (no safety-sensitive employees)
- The Pass-Through cannot report its contractor’s test results in its own MIS report

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## RECORDS RETENTION

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## RETENTION PERIODS

### ONE YEAR

- Verified negative drug test results
- Employer copy of the CCF
- Test result from MRO
- Cancelled test results
- Negative alcohol test records (below 0.02 BAC)

### TWO YEARS

- Education and training records
- Records related to collection process
- Random selection lists; post-accident testing decision forms; reasonable suspicion determination forms; MRO documents
- Records of the inspection, maintenance, and calibration of EBTs

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## RETENTION PERIODS

### THREE YEARS

- Previous DOT employer records request documentation, such as:
  - Records of previous positive drug and alcohol tests (0.02 or above), test refusals, other violations
  - Employee return-to-duty documentation
  - Records showing good-faith-effort to obtain records from previous employers, including consent forms

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## RETENTION PERIODS

### FIVE YEARS

- Verified positive drug test results
- Alcohol test results 0.02 or greater
- Refusals to test
- Adulterations
- Substitutions
- Referrals to SAP
- SAP reports
- Follow-up tests and schedules
- Annual MIS reports

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## RECORDS RETENTION

### CONFIDENTIALITY

- The confidentiality of drug testing information is a critical concern of all employees
- Inadvertent disclosure of the names of employees who were tested and their test results, may result in legal action
- Records must be maintained in a **secure location with controlled access** (separate from personnel records)
- Employer must define who has access to files and for what purpose "**NEED TO KNOW**"
- FTA recipients may have access to contractor's employee-specific information

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## RECORDS RETENTION

### ELECTRONIC RECORDS STORAGE?

- If also stored electronically, you must still ensure the following:
  - **ALL SECURITY REQUIREMENTS REMAIN THE SAME!**
  - Easily accessible
  - **Legible**
  - Formatted
  - Organized/Reviewable

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## RECORDS RETENTION

### Employers may release D&A info in following circumstances:

- The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records;
- Records will be released to a subsequent employer only upon receipt of a written request from the employee.

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## RECORDS RETENTION

### Employers may release D&A info in following circumstances:

- Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.

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## RECORDS RETENTION

Employers may release D&A info in following circumstances (cont.):

- Records will be released to the National Transportation Safety Board during an accident investigation.
- Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

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## RECORDS RETENTION

Employers may release D&A info in following circumstances (cont.):

- Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the employer or the employee.

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## RECORDS RETENTION

Employers may release D&A info in following circumstances (cont.):

- If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
- In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

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## SERVICE AGENTS (VENDORS)

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## BAT

**What do they do?**

- Conduct alcohol screening and confirmation tests (2<sup>nd</sup> test given to an employee with a screening test result of 0.02 or higher)
- Collect and analyze breath using an evidential breath testing (EBT) device
- Document result on an ATF and transmit to the employer timely and confidentially

**What qualifications are necessary?**

- Knowledge of basic information (Part 40, applicable DOT regulations)
- Training and proficiency demonstration which meets §40.213
- Refresher training required every 5 years

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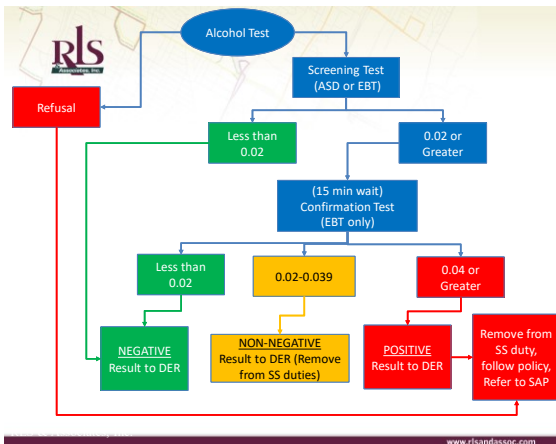
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## URINE COLLECTOR

### What do they do?

- Collect urine specimens using Part 40 procedures
- Ship specimens to DHHS certified laboratories for analysis
- Distribute copies of the CCF to necessary parties

### What qualifications are necessary?

- Knowledge of basic information (Part 40, DOT urine specimen guidelines, applicable DOT - FTA regulations )
- Training and proficiency demonstration which meets §40.33
- Refresher training required every 5 years

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## TESTING LAB

### What do they do?

- Receive, analyze, and report laboratory confirmed results to MRO
- Submit semi-annual statistical results summaries to the employer
- **You must obtain and keep on file these semi-annual statistical result summaries from your lab**

### What qualifications are necessary?

- Certified under Department of HHS through the National Laboratory Certification Program (NLCP)

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## Medical Review Officer

### What do they do?

- Receive laboratory confirmed urine drug test results
- Determine any legitimate medical explanation for a laboratory confirmed positive, adulterated, or substituted result
- Review and report verified results to the employer
- \*Optional Discussion on "Safety Risk" determination/procedures

### What qualifications are necessary?

- Licensed physician (M.D. or D.O.)
- Knowledge on requirements and qualification training of 49 CFR Part 40 for MROs
- Must pass an examination given by a nationally recognized MRO certification board every 5 years

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## SAP

### What do they do?

- Evaluate employees who have violated DOT drug and/or alcohol regulations
- Make education/treatment recommendations
- Determine if employee demonstrates successful compliance with recommended education and treatment
- Prepares a follow-up testing plan

### What qualifications are necessary?

- Licensed physician; licensed or certified psychologist, social worker, EAP; state-licensed or certified marriage and family therapist; drug and alcohol counselor certified by NAADAC, ICRC, NBCC
- Basic knowledge and qualifications training for USDOT qualified SAPs in accordance with 49 CFR Part 40
- Examination administered by nationally recognized professional or training organization

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## TPA

### What do they do?

- Certain program functions on behalf of the employer, such as:
- Random selections
- Preparation of MIS reports
- Coordinate services and billing for collection site, labs, and MROs
- Coordinate SAP referrals

### What qualifications are necessary?

- TPAs must simply ensure the services it provides are in compliance with 49 CFR Part 40

### What can they NOT do?

- Transmit laboratory confirmed drug test results to the MRO
- Transmit medical information from MRO to employer
- Transmit SAP reports to employer
- Transmit positive alcohol tests to employer

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## VENDOR OVERSIGHT

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## VENDOR OVERSIGHT

### EMPLOYER RESPONSIBILITY

- **YOU** are responsible for actions of officials, representatives, and service agents
- **The DAPM at each transit agency is responsible for ensuring service agents are compliant**
- Good faith effort is not a defense for non-compliance

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## VENDOR OVERSIGHT

### ODAPC's List Serve

- All Service Agents (MRO, SAP, UCT, BAT, STT) are now required to be signed up for ODAPC's List Serve
- Sign-up via <https://www.transportation.gov/odapc/get-odapc-email-updates>
- This is an **INDIVIDUAL** requirement, not a "facility" requirement

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## VENDOR OVERSIGHT

### Oversight Activities

- Specifics are not prescribed by USDOT or FTA on how to provide sufficient oversight of your vendors
- Best practices include:
- **DAPM** detailed review of CCF and ATF upon receipt and before filing away ★
- **DAPM** Periodic checks of training credentials
- **DAPM** Periodic (annual) on-site reviews (mock collections)

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## VENDOR OVERSIGHT

### Oversight Activities – Contingency Vendors

- Employers must be aware of if they would ever utilize a collection site other than their normal vendor.
- If an employer does OR MAY ever use a hospital for the purposes of drug/alcohol testing services, the employer must verify the hospital staff and equipment are trained and in compliance with USDOT regulations 49 CFR Part 40
- This verification of staff/equipment must be done proactively and not in response to an immediate need.

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## VENDOR OVERSIGHT

### Mock Collections

- Instructional video available from USDOT: <http://www.dot.gov/odapc/dot-mock-collection-instructional-video>
- You could conduct your “mock collection” on-site review as part of a real test if you are selected for random testing for example
- If not, it is a best practice to schedule an on-site visit for conducting a mock collection at least annually for each collection site

### Facility/Equipment/Records Review

- Check the collection site’s facility for compliance
- Check the calibration log book for the EBT
- Ensure the collection site has a copy of the Quality Assurance Plan (QAP) for the EBT
- Ensure the collection site has a copy of 49 CFR Part 40 and the Urine Specimen Collection Guidelines

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## VENDOR OVERSIGHT

### Resources

- “Collection Site Checklist” included in your D&A Management Forms packet in this webinar
- ODAPC’s “What Employers Need to Know About Monitoring Collection Sites”
  - [https://www.transportation.gov/odapc/employer\\_brochure](https://www.transportation.gov/odapc/employer_brochure)
- ODAPC’s “Mock Collection Video”
  - <https://www.transportation.gov/odapc/dot-mock-collection-instructional-video> ★

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## Examples Vendor Credentials

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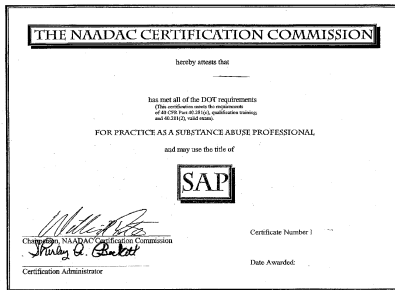
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## SAP CREDENTIALS (EXAMPLE)



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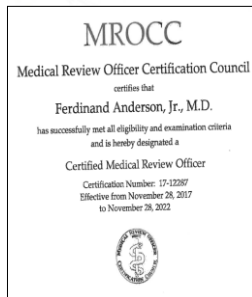
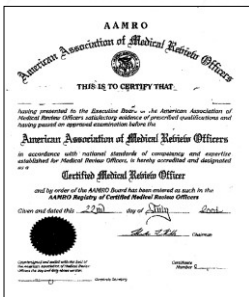
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## MRO CREDENTIAL (EXAMPLES)



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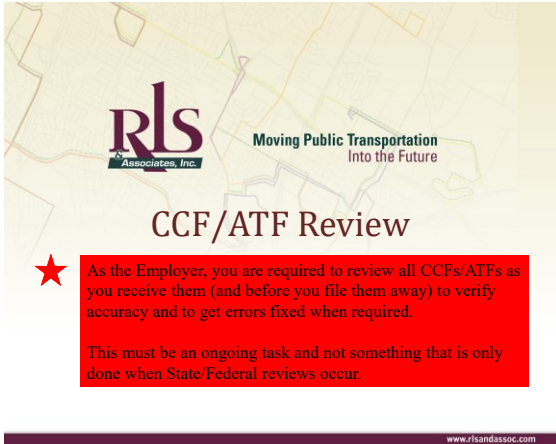
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## CCF/ATF Review

★ As the Employer, you are required to review all CCFs/ATFs as you receive them (and before you file them away) to verify accuracy and to get errors fixed when required.

This must be an ongoing task and not something that is only done when State/Federal reviews occur.

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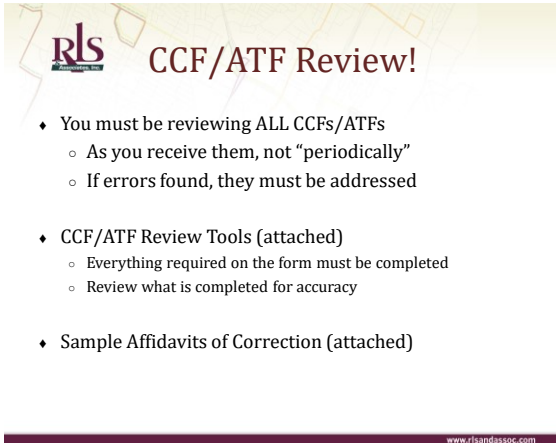
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## CCF/ATF Review!

- ◆ You must be reviewing ALL CCFs/ATFs
  - As you receive them, not “periodically”
  - If errors found, they must be addressed
- ◆ CCF/ATF Review Tools (attached)
  - Everything required on the form must be completed
  - Review what is completed for accuracy
- ◆ Sample Affidavits of Correction (attached)

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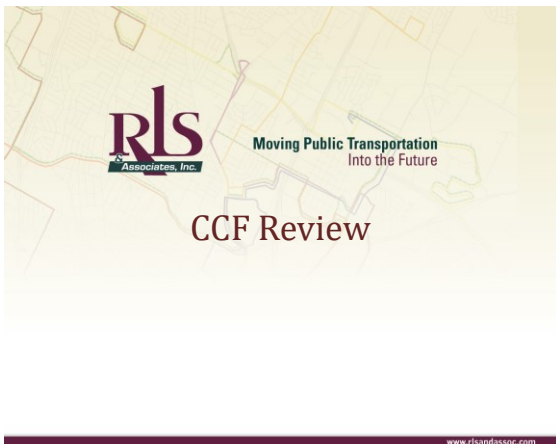
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## CCF Review

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## Employers Review of CCF for Accuracy

The employer has the responsibility to oversee its service agents to ensure compliance. One way to oversee collection sites is for employers to review every Federal Drug Testing CCF for accuracy and completeness following every testing event.

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## Employers Review of CCF for Accuracy con't.

- ♦ Check the top of the form – Does it say “Federal Drug Testing Custody and Control Form”

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## Employers Review of CCF for Accuracy con't.

- ♦ Look at the box labeled Step 1
  - Is all of the information legible?
  - Is the correct employer name, address, phone, and fax listed?
  - Is the correct MROs name, address phone and fax number listed?
  - Is the correct employee ID number or SSN listed?

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## Employers Review of CCF for Accuracy con't.

### Step 1

- ◆ Is the FTA box checked?
- ◆ Is the reason for the test marked correctly?
- ◆ Is the box for THC, COC, PCP, OPI, AMP checked?
- ◆ Is the collection site address indicating the location where the test was actually performed and the site's telephone number completed accurately?

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## Employers Review of CCF for Accuracy con't.

- ◆ Look at the information provided in Step 2
  - If urine collection:
    - Is "urine" box marked
    - Is "split" box marked
    - Is the temperature box indicated correctly
    - Is the "Observed" box marked?
      - Is there an appropriate comment included in the Remarks Section?

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## Employers Review of CCF for Accuracy con't.

- ◆ Look at the information provided in Step 2
  - If oral fluid collection:
    - Is "oral fluid" box marked
    - Is "subdivided" box marked
    - Is the device expiration date marked appropriately?
    - Did the collector write the expiration date in Step 4 of the CCF?

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## Employers Review of CCF for Accuracy con't.

- ◆ Even though there is no information provided in Step 3 of the form, look at the bottom of the CCF in Step 7 of the Employer's copy for a faint shadow, imprint, or traces of carbon ink of a date or employee's initials that indicate the date and initials were written on the label while it was still attached to Copy1 of the CCF rather than on the split specimen bottles.

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## Employers Review of CCF for Accuracy con't.

- ◆ In Step 4, look to see that the collector has legibly printed his or her name, signed it, and listed the correct date and time. If both drug and alcohol tests were performed, make sure the alcohol test was completed first.
- ◆ Make sure the delivery service name is clearly identified in the box.

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## Employers Review of CCF for Accuracy con't.

- ◆ In Step 5, is the employee's information provided?
- ◆ Did the employee sign the form?
- ◆ If not, is this documented in the Remarks Section of Step 2?

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Answers!

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. **0000001** ACCESSION NO.

**STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE**

A. Employee Name, Address, I.D. No. **Acme County Transit Authority**  
 742 Evergreen Ter.,  
 Springfield, CA 12345

B. MRO Name, Address, Phone No. and Fax No.  
 Dr. Julius M. Hibbert, M.D.  
 1709 Broderick St.  
 San Francisco, CA 94115  
 Office: 520.867.5350 | Fax: 520.606.0842

C. Donor SSN, Employee ID, or CDL State and No. **1250856324CA**

D. Specify Testing Authority:  HHS  NRC  Specify DOT Agency  FMCSA  FAA  FRA  PHMSA  USCG

E. Reason for Test:  Pre-employment  Random  Reasonable Suspicion/Cause  Post-Accident  Return to Duty  Follow-up  Other (specify)

F. Drug Tests to be Performed:  THC, COC, POP, OPI, AMP  THC & COC Only  Other (specify)

G. Collector Site Address: **ICUP Services**  
 125 Troy St., Springfield, CA 12345  
 Collector Contact Info: Phone **455-788-1222**  
 Fax **455-788-1223**  
 Other **ICUP@ICUP.COM**

**STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate).**  URINE  ORAL FLUID

COLLECTION:  Split  Single  Name Provided, Enter Remark

URINE: Collector reads urine temperature within 4 minutes. Temperature between 80° and 100° F?  Yes  No, Enter Remark  Observed, Enter Remark

ORAL FLUID: Split Type:  Serial  Concurrent  Subdivided | Each Device Within Expiration Date?  Yes  No  Volume Indicators?  Observed

REMARKS:

**STEP 3: Collector affixes seal(s) to bottle(s)/tube(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 3 on Copy 2 (MRO Copy)**

**STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY**

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable federal requirements.

**SPECIMEN BOTTLE(S)/TUBE(S) RELEASED TO:**

Signature of Collector: **Edith V. Shasta** Date (MM/DD/YYYY): **08/16/21** Time of Collection: **2:17 PM** Name of Delivery Service: **Courier**

**STEP 6: COMPLETED BY DONOR**

I certify that I provided my specimen to the collector, that I have not adulterated it in any manner, each specimen bottle/tube used was sealed with a tamper-evident seal in my presence, and that the information provided on this form and on the label affixed to each specimen bottle/tube is correct.

Signature of Donor: **Dale A. Grubbe** Date (MM/DD/YYYY): **08/16/21** Time of Collection: **08/16/21**

Name of Donor: **Dale A. Grubbe** Date of Birth: **12/25/53**

Daytime Phone No. **937 299 1000** Evening Phone No. **SAME**

Email address: **dale@gmail.com**

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY if you choose to make a list, do so on either an separate piece of paper or on the back of your copy (Copy 5) - DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU!

Find That Flaw!  
Round 2

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. **0000001** ACCESSION NO.

**STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE**

A. Employee Name, Address, I.D. No. **Medical Review Services, Inc.**  
 1709 Broderick St., San Francisco, CA 94115  
 Employer: \_\_\_\_\_ Employer P#: \_\_\_\_\_  
 Employee Fax: \_\_\_\_\_

B. MRO Name, Address, Phone No. and Fax No.  
 Dr. Julius M. Hibbert, M.D.  
 1709 Broderick St.  
 San Francisco, CA 94115  
 Office: 520.867.5350 | Fax: 520.606.0842

C. Donor SSN, Employee ID, or CDL State and No. **123-45-6784**

D. Specify Testing Authority:  HHS  NRC  Specify DOT Agency  FMCSA  FAA  FRA  PHMSA  USCG

E. Reason for Test:  Pre-employment  Random  Reasonable Suspicion/Cause  Post-Accident  Return to Duty  Follow-up  Other (specify)

F. Drug Tests to be Performed:  THC, COC, POP, OPI, AMP  THC & COC Only  Other (specify)

G. Collector Site Address: **ICUP Services**  
 125 Troy St., Springfield, CA 12345  
 Collector Contact Info: Phone **455-788-1222**  
 Fax **455-788-1223**  
 Other **ICUP@ICUP.COM**

**STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate).**  URINE  ORAL FLUID

COLLECTION:  Split  Single  Name Provided, Enter Remark

URINE: Collector reads urine temperature within 4 minutes. Temperature between 80° and 100° F?  Yes  No, Enter Remark  Observed, Enter Remark

ORAL FLUID: Split Type:  Serial  Concurrent  Subdivided | Each Device Within Expiration Date?  Yes  No  Volume Indicators?  Observed

REMARKS:

**STEP 3: Collector affixes seal(s) to bottle(s)/tube(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 3 on Copy 2 (MRO Copy)**

**STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY**

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable federal requirements.

**SPECIMEN BOTTLE(S)/TUBE(S) RELEASED TO:**

Signature of Collector: \_\_\_\_\_ Date (MM/DD/YYYY): **08/16/21** Time of Collection: **2:17 PM** Name of Delivery Service: **UPS**

**STEP 6: COMPLETED BY DONOR**

I certify that I provided my specimen to the collector, that I have not adulterated it in any manner, each specimen bottle/tube used was sealed with a tamper-evident seal in my presence, and that the information provided on this form and on the label affixed to each specimen bottle/tube is correct.

Signature of Donor: **Dale A. Grubbe** Date (MM/DD/YYYY): **08/16/21** Time of Collection: **08/16/21**

Name of Donor: **Dale A. Grubbe** Date of Birth: **12/25/53**

Daytime Phone No. **937 299 1000** Evening Phone No. **SAME**

Email address: **dale@gmail.com**

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY if you choose to make a list, do so on either an separate piece of paper or on the back of your copy (Copy 5) - DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU!

Answers!

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. **0000001** ACCESSION NO.

**STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE**

A. Employee Name, Address, I.D. No. **Medical Review Services, Inc.**  
 1709 Broderick St., San Francisco, CA 94115  
 Employer: \_\_\_\_\_ Employer P#: \_\_\_\_\_  
 Employee Fax: \_\_\_\_\_

B. MRO Name, Address, Phone No. and Fax No.  
 Dr. Julius M. Hibbert, M.D.  
 1709 Broderick St.  
 San Francisco, CA 94115  
 Office: 520.867.5350 | Fax: 520.606.0842

C. Donor SSN, Employee ID, or CDL State and No. **123-45-6784**

D. Specify Testing Authority:  HHS  NRC  Specify DOT Agency  FMCSA  FAA  FRA  PHMSA  USCG

E. Reason for Test:  Pre-employment  Random  Reasonable Suspicion/Cause  Post-Accident  Return to Duty  Follow-up  Other (specify)

F. Drug Tests to be Performed:  THC, COC, POP, OPI, AMP  THC & COC Only  Other (specify)

G. Collector Site Address: **ICUP Services**  
 125 Troy St., Springfield, CA 12345  
 Collector Contact Info: Phone **455-788-1222**  
 Fax **455-788-1223**  
 Other **ICUP@ICUP.COM**

**STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate).**  URINE  ORAL FLUID

COLLECTION:  Split  Single  Name Provided, Enter Remark

URINE: Collector reads urine temperature within 4 minutes. Temperature between 80° and 100° F?  Yes  No, Enter Remark  Observed, Enter Remark

ORAL FLUID: Split Type:  Serial  Concurrent  Subdivided | Each Device Within Expiration Date?  Yes  No  Volume Indicators?  Observed

REMARKS:

**STEP 3: Collector affixes seal(s) to bottle(s)/tube(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 3 on Copy 2 (MRO Copy)**

**STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY**

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable federal requirements.

**SPECIMEN BOTTLE(S)/TUBE(S) RELEASED TO:**

Signature of Collector: \_\_\_\_\_ Date (MM/DD/YYYY): **08/16/21** Time of Collection: **2:17 PM** Name of Delivery Service: **UPS**

**STEP 6: COMPLETED BY DONOR**

I certify that I provided my specimen to the collector, that I have not adulterated it in any manner, each specimen bottle/tube used was sealed with a tamper-evident seal in my presence, and that the information provided on this form and on the label affixed to each specimen bottle/tube is correct.

Signature of Donor: **Dale A. Grubbe** Date (MM/DD/YYYY): **08/16/21** Time of Collection: **08/16/21**

Name of Donor: **Dale A. Grubbe** Date of Birth: **12/25/53**

Daytime Phone No. **937 299 1000** Evening Phone No. **SAME**

Email address: **dale@gmail.com**

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY if you choose to make a list, do so on either an separate piece of paper or on the back of your copy (Copy 5) - DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU!



## CCF REVIEW

### What To Do When You Find Errors?

- Seek affidavit of correction or memorandum for the record (MFR) from the collector who made the error
- Some types of errors can just be fixed by the employer (incorrect testing authority, for example)

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## AFFIDAVIT OF CORRECTION

### Types of Flaws?

- 3 types of flaws:
  - Fatal Flaws
  - Correctable Flaws (Must be corrected or test is canceled)
  - Correctable Flaws (Must be corrected)

Affidavit  
REQUIRED or  
Test Canceled

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## AFFIDAVIT OF CORRECTION

### FATAL FLAWS

- Fatal flaws cause the test to be automatically cancelled
- Fatal flaws CANNOT be corrected
- Fatal flaws must be documented
- Ensure collection site technician receives Error Correction Training (when required)

### 9 Drug Testing Fatal Flaws

1. There is no CCF with specimen
2. When specimen is collected, no specimen submitted with the CCF to the lab
3. Collector fails to print **AND** sign their name in Step 4
4. Two specimens collected using only one CCF

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## AFFIDAVIT OF CORRECTION

### Drug Testing Fatal Flaws (continued)

- 5. Specimen ID numbers on bottles don't match CCF
- 6. Specimen bottle seal is broken/tampered (and split can't be redesignated)
- 7. Insufficient amount of specimen in primary bottle (and split can't be redesignated)
- 8. For oral fluid: Collector used expired device (for oral fluid)
- 9. For oral fluid: Collector failed to enter expiration date in Step 4 of CCF and lab confirmed device was expired

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## AFFIDAVIT OF CORRECTION

### When is an Affidavit Needed? – CORRECTABLE FLAWS

- Some types of errors are correctable
- But if they ARE NOT corrected, they would cause the test to be cancelled

### Correctable Flaws which MUST ALWAYS BE CORRECTED

- Collector's signature is missing from Step 4 of the CCF;
- Employee's signature missing from Step 5 AND there is no notation in the "Remarks" section of the CCF
- Collector uses a Non-Federal CCF for what should have been a DOT test
- Certifying scientist's signature is missing from Copy 1 of the CCF for a Positive, adulterated, substituted, or invalid result

Affidavit  
REQUIRED

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## AFFIDAVIT OF CORRECTION

### When is an Affidavit Needed? – CORRECTABLE FLAWS

- Some flaws will never cause a test to be cancelled, even if they are not corrected through the official affidavit process
- However, 49 CFR Part 40 requires documentation of all flaws, even if they are not severe enough to cancel a test (Part 40.209(a))
- These flaws may still open the employer/collection site up to enforcement under DOT - FTA

### Minor Flaws

- A minor administrative mistakes (e.g., missing/incorrect testing authority; missing phone numbers)
- Procedural errors which don't affect employee protections (e.g., no bluing agent in toilet)
- Collection of a specimen by an untrained collector
- Unauthorized use of directly observed procedures
- Courier name is omitted
- Etc.

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Moving Public Transportation  
Into the Future

## ATF REVIEW



As the Employer, you are required to review all ATFs as you receive them (and before you file them away) to verify accuracy and to get errors fixed when required.

This must be an ongoing task and not something that is only done when State/Federal reviews occur.

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**U.S. Department of Transportation (DOT)  
Alcohol Testing Form**

1. Employer Name: City Transit  
21 Main St.  
Somerville, MA 02111  
Phone: 617-624-1234

3. Employee Name: [Redacted]

4. Reason for Test:  Pre-employment  Random  Post-accident  Return-to-duty

5. Type of Test:  Breathalyzer  Breathalyzer/Oral Fluid  Urine  Other

6. Test Result:  Negative  Positive  Refused

7. Signature of Employer Representative: [Redacted]

8. Signature of Employee: [Redacted]

9. Date: 11/22/18

10. Time: 10:00 AM

11. Location: Somerville, MA 02111

12. Test Station: [Redacted]

13. Test Result: [Redacted]

14. Test Station: [Redacted]

15. Test Station: [Redacted]

16. Test Station: [Redacted]

17. Test Station: [Redacted]

18. Test Station: [Redacted]

19. Test Station: [Redacted]

20. Test Station: [Redacted]

21. Test Station: [Redacted]

22. Test Station: [Redacted]

23. Test Station: [Redacted]

24. Test Station: [Redacted]

25. Test Station: [Redacted]

26. Test Station: [Redacted]

27. Test Station: [Redacted]

28. Test Station: [Redacted]

29. Test Station: [Redacted]

30. Test Station: [Redacted]

31. Test Station: [Redacted]

32. Test Station: [Redacted]

33. Test Station: [Redacted]

34. Test Station: [Redacted]

35. Test Station: [Redacted]

36. Test Station: [Redacted]

37. Test Station: [Redacted]

38. Test Station: [Redacted]

39. Test Station: [Redacted]

40. Test Station: [Redacted]

41. Test Station: [Redacted]

42. Test Station: [Redacted]

43. Test Station: [Redacted]

44. Test Station: [Redacted]

45. Test Station: [Redacted]

46. Test Station: [Redacted]

47. Test Station: [Redacted]

48. Test Station: [Redacted]

49. Test Station: [Redacted]

50. Test Station: [Redacted]

51. Test Station: [Redacted]

52. Test Station: [Redacted]

53. Test Station: [Redacted]

54. Test Station: [Redacted]

55. Test Station: [Redacted]

56. Test Station: [Redacted]

57. Test Station: [Redacted]

58. Test Station: [Redacted]

59. Test Station: [Redacted]

60. Test Station: [Redacted]

61. Test Station: [Redacted]

62. Test Station: [Redacted]

63. Test Station: [Redacted]

64. Test Station: [Redacted]

65. Test Station: [Redacted]

66. Test Station: [Redacted]

67. Test Station: [Redacted]

68. Test Station: [Redacted]

69. Test Station: [Redacted]

70. Test Station: [Redacted]

71. Test Station: [Redacted]

72. Test Station: [Redacted]

73. Test Station: [Redacted]

74. Test Station: [Redacted]

75. Test Station: [Redacted]

76. Test Station: [Redacted]

77. Test Station: [Redacted]

78. Test Station: [Redacted]

79. Test Station: [Redacted]

80. Test Station: [Redacted]

81. Test Station: [Redacted]

82. Test Station: [Redacted]

83. Test Station: [Redacted]

84. Test Station: [Redacted]

85. Test Station: [Redacted]

86. Test Station: [Redacted]

87. Test Station: [Redacted]

88. Test Station: [Redacted]

89. Test Station: [Redacted]

90. Test Station: [Redacted]

91. Test Station: [Redacted]

92. Test Station: [Redacted]

93. Test Station: [Redacted]

94. Test Station: [Redacted]

95. Test Station: [Redacted]

96. Test Station: [Redacted]

97. Test Station: [Redacted]

98. Test Station: [Redacted]

99. Test Station: [Redacted]

100. Test Station: [Redacted]

**REMEMBER!**

- ALL information is required.
- While some things on the form can be "Not Applicable" ...

**Nothing is "Optional"**

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## ATF REVIEW

**IS IT A DOT ATF?**

- Check the type on the very top of the ATF

**U.S. Department of Transportation (DOT)  
Alcohol Testing Form**

1. Employer Name: [Redacted]

2. Employee Name: [Redacted]

3. Reason for Test:  Pre-employment  Random  Post-accident  Return-to-duty

4. Type of Test:  Breathalyzer  Breathalyzer/Oral Fluid  Urine  Other

5. Signature of Employer Representative: [Redacted]

6. Signature of Employee: [Redacted]

7. Date: [Redacted]

8. Time: [Redacted]

9. Location: [Redacted]

10. Test Station: [Redacted]

11. Test Result: [Redacted]

12. Test Station: [Redacted]

13. Test Station: [Redacted]

14. Test Station: [Redacted]

15. Test Station: [Redacted]

16. Test Station: [Redacted]

17. Test Station: [Redacted]

18. Test Station: [Redacted]

19. Test Station: [Redacted]

20. Test Station: [Redacted]

21. Test Station: [Redacted]

22. Test Station: [Redacted]

23. Test Station: [Redacted]

24. Test Station: [Redacted]

25. Test Station: [Redacted]

26. Test Station: [Redacted]

27. Test Station: [Redacted]

28. Test Station: [Redacted]

29. Test Station: [Redacted]

30. Test Station: [Redacted]

31. Test Station: [Redacted]

32. Test Station: [Redacted]

33. Test Station: [Redacted]

34. Test Station: [Redacted]

35. Test Station: [Redacted]

36. Test Station: [Redacted]

37. Test Station: [Redacted]

38. Test Station: [Redacted]

39. Test Station: [Redacted]

40. Test Station: [Redacted]

41. Test Station: [Redacted]

42. Test Station: [Redacted]

43. Test Station: [Redacted]

44. Test Station: [Redacted]

45. Test Station: [Redacted]

46. Test Station: [Redacted]

47. Test Station: [Redacted]

48. Test Station: [Redacted]

49. Test Station: [Redacted]

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51. Test Station: [Redacted]

52. Test Station: [Redacted]

53. Test Station: [Redacted]

54. Test Station: [Redacted]

55. Test Station: [Redacted]

56. Test Station: [Redacted]

57. Test Station: [Redacted]

58. Test Station: [Redacted]

59. Test Station: [Redacted]

60. Test Station: [Redacted]

61. Test Station: [Redacted]

62. Test Station: [Redacted]

63. Test Station: [Redacted]

64. Test Station: [Redacted]

65. Test Station: [Redacted]

66. Test Station: [Redacted]

67. Test Station: [Redacted]

68. Test Station: [Redacted]

69. Test Station: [Redacted]

70. Test Station: [Redacted]

71. Test Station: [Redacted]

72. Test Station: [Redacted]

73. Test Station: [Redacted]

74. Test Station: [Redacted]

75. Test Station: [Redacted]

76. Test Station: [Redacted]

77. Test Station: [Redacted]

78. Test Station: [Redacted]

79. Test Station: [Redacted]

80. Test Station: [Redacted]

81. Test Station: [Redacted]

82. Test Station: [Redacted]

83. Test Station: [Redacted]

84. Test Station: [Redacted]

85. Test Station: [Redacted]

86. Test Station: [Redacted]

87. Test Station: [Redacted]

88. Test Station: [Redacted]

89. Test Station: [Redacted]

90. Test Station: [Redacted]

91. Test Station: [Redacted]

92. Test Station: [Redacted]

93. Test Station: [Redacted]

94. Test Station: [Redacted]

95. Test Station: [Redacted]

96. Test Station: [Redacted]

97. Test Station: [Redacted]

98. Test Station: [Redacted]

99. Test Station: [Redacted]

100. Test Station: [Redacted]

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## ATF REVIEW

### Step 4

- Employee signs and dates if result is 0.02 or higher
- If no signature – the BAT must enter remarks, but this would not be a refusal to test

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## ATF REVIEW

### What To Do When You Find Errors?

- Seek affidavit of correction or memorandum for the record (MFR) from the technician who made the error
- They must supply missing information in writing:
- What the error was; what the correct information should have been; and step the technician has taken to ensure same errors won't reoccur
- If the BAT used a NON-DOT form, they must provide signed affidavit stating:
- NON-DOT form contains all necessary and required information
- That the form was used inadvertently or as the only method to complete the test
- And steps taken to ensure same error won't reoccur

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## AFFIDAVIT OF CORRECTION

### FATAL FLAWS

- Fatal flaws cause the test to be automatically cancelled
- **Fatal flaws CANNOT be corrected**
- Fatal flaws must be documented
- Ensure collection site technician receives Error Correction Training (when required)

### Alcohol Testing Fatal Flaws

- Test number and/or test result displayed on the EBT does not match what is printed out
- Confirmation test conducted SOONER than 15 minutes after the screening test
- No air blank conducted on EBT before confirmation test; or the air blank result is not 0.00 before the confirmation test
- EBT doesn't print the CONFIRMATION test result

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