



Moving Public Transportation
Into the Future

DRUG AND ALCOHOL COMPLIANCE TRAINING

Oregon Department of Transportation

**Presented by:
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COURSE OBJECTIVES

- ◆ Regulatory Updates
- ◆ Program Requirements
- ◆ DAPM/DER Responsibilities
- ◆ To provide participants with the technical knowledge necessary to perform a comprehensive assessment of their drug and alcohol testing program
- ◆ To provide participants with information on the changes to 49 CFR Part 40



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POLICY REQUIREMENTS AND REGULATORY UPDATES

Requirements of Part 655

- ◆ Policy (Subpart B)
- ◆ Education and training (Subpart B)
- ◆ Prohibited behavior (Subparts C and D)
- ◆ Supervisor training
- ◆ Testing method (Subpart F)
- ◆ Testing categories (Subpart E)
- ◆ Information, referral, and evaluation (Subpart G)
- ◆ Recordkeeping and reporting (Subpart H)
- ◆ Annual MIS reports (Subpart H)
- ◆ Certifying compliance (Subpart I)



POLICY REQUIREMENTS

- ◆ Designated contact person (person, office, branch, and/or position)
- ◆ Applicability (categories of employees covered)
- ◆ Prohibited behavior
- ◆ Testing circumstances
- ◆ Testing procedures
- ◆ Requirements for testing
- ◆ Test refusal
- ◆ Consequences

POLICY DISSEMINATION

- ◆ Local governing board or highest ranking official adoption
- ◆ Policy distribution
 - Every covered employee
 - Representatives of employee organizations
 - Contract service provider (if applicable)
 - New hires
- ◆ Employees should be requested to sign a confirmation of receipt form
- ◆ **Employers are not permitted to use consent forms**

APPLICABILITY: 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)
- ◆ Security personnel that carry firearms

APPLICABILITY: SAFETY-SENSITIVE FUNCTIONS (CONTINUED)

- ◆ Maintenance of a revenue service vehicle or equipment used in revenue service
 - Includes all engaged in engine, revenue service vehicle, and parts repair, rebuilding, and overhaul

- ◆ *Note: Does not include supervisors unless they perform safety-sensitive functions*

APPLICABILITY: SAFETY-SENSITIVE FUNCTIONS (CONTINUED)

- ◆ Contractor employees that stand in the shoes of Transit System employees also have to comply
 - Maintenance **contractors** of systems that serve populations of < 200,000 are exempt (Section 5307, 5309, and 5311 subrecipients)
 - First tier maintenance contracts are included, second tier are exempt
 - Rule applies to contractors (i.e. taxi operators) when the transit provider enters into a contract with one or more entities to provide service
 - Rule does not apply when the patron chooses the operator

CONSEQUENCES

- ◆ Positive drug or alcohol (≥ 0.04) test result or test refusal
 - Remove from safety-sensitive position
 - Advise employee of available resources
 - Referral for assessment by a Substance Abuse Professional
 - Transit system disciplinary policy
- ◆ Alcohol test result of 0.02 or greater but less than 0.04
 - Removal from safety-sensitive position for a minimum of 8 hours unless subsequent test results in a concentration of less than 0.02
 - Employer disciplinary policy

DRUGS TESTED FOR

- ◆ Consumption of illegal drugs is prohibited at all times
- ◆ Marijuana
 - Includes all hemp products
- ◆ Cocaine
- ◆ Opiates (heroin, morphine, and codeine)
- ◆ Phencyclidine
- ◆ Amphetamine (including Methamphetamine and Ecstasy)

Note: DOT rule preempts state medicinal use of marijuana initiatives

NEGATIVE DILUTE TESTING

- ◆ The employer must make a determination whether or not to retest an employee after a negative dilute test results. The policy must state whether a second test is required after a negative dilute test result.

“Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.”



TEST REFUSALS-ALL CATEGORIES EXCEPT PRE-EMPLOYMENT

- ◆ Refusal to provide specimen
- ◆ Insufficient volume without valid medical explanation
- ◆ Tampering, adulterating, or substituting specimen
- ◆ Failure to appear within a reasonable time-defined by employer
- ◆ Leaving the scene of an accident without a just cause prior to submitting to a test



TEST REFUSALS-ALL CATEGORIES EXCEPT PRE- EMPLOYMENT (CONTINUED)

- ◆ Leave collection facility prior to test completion
- ◆ Failure to permit an observed or monitored collection when required
- ◆ Failure to take a second test when required
- ◆ Failure to undergo a medical examination when required
- ◆ Failure to cooperate with any part of the testing process
- ◆ Failure to sign Step 2 of the ATF

TEST REFUSALS-ALL CATEGORIES EXCEPT PRE- EMPLOYMENT (CONTINUED)

- ◆ Failure to follow the observers instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- ◆ Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- ◆ Admit to the collector or MRO that you adulterated or substituted the specimen.

TEST REFUSALS PRE- EMPLOYMENT

- ◆ Failure to appear is not a refusal
- ◆ Failure to remain at the collection site prior to commencement of a test is not a refusal
- ◆ Failure to provide a specimen before the test commences is not a refusal
- ◆ Once the test is underway, failure to remain at the site and provide a specimen is a test refusal with consequences



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TESTING CATEGORIES

PRE-EMPLOYMENT DRUG TESTING

- ◆ Individuals to be tested
 - All applicants for safety-sensitive positions
 - All transfers into safety-sensitive positions
 - Prior to test, employee/applicant must be notified in writing of the requirement to pass a drug test
 - A negative test result is required prior to the employee's assignment of safety-sensitive duties
 - No waivers
 - No acceptance of previous employer's statement in lieu of FTA test

PRE-EMPLOYMENT TESTING FOLLOWING LEAVE

- ◆ Person does not perform safety-sensitive functions (i.e., seasonal layoff, leave of absence, worker's compensation) are required to have a pre-employment test if 90 consecutive days have elapsed since the employee performed safety-sensitive duties ***and*** the individual was not in the random pool
- ◆ Applicants who were tested more than 90 days before assigned safety-sensitive duties must have new pre-employment test
- ◆ Pre-employment drug test for disabled individuals unable to provide sufficient volume can be reported as negative if medical examination shows no evidence of illegal drug use
 - Contingent offer of employment must be made prior to medical examination



REASONABLE SUSPICION TESTING

- ◆ In order to make a reasonable suspicion determination, the supervisor must evaluate only the following
 - Specific, contemporaneous, and articulable observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse
- ◆ Supervisor and other company officers authorized to make reasonable suspicion determinations must be trained on the facts, circumstances, physical evidence, physical signs and symptoms, or patterns of performance and/or behavior associated with drug use and/or alcohol misuse
- ◆ Only one supervisor is required
 - Employers may require two or more trained supervisors to participate in the reasonable suspicion determination process

REASONABLE SUSPICION (CONTINUED)

- ◆ Sufficient documentation should be maintained for each reasonable suspicion determination
- ◆ An employee is reasonable suspected of prohibited drug use or alcohol misuse when a trained supervisor
 - Can substantiate specific behaviors that may indicate drug use or alcohol misuse
 - Can identify job performance problems that may indicate prohibited drug use or alcohol misuse
 - Actually observes physical indications that prohibited drug use or alcohol misuse may be occurring



REASONABLE SUSPICION PERIOD OF REQUIRED COMPLIANCE

- ◆ Drugs - anytime on duty
- ◆ Alcohol - Only if the observations are made during, just preceding, or immediately following the performance of safety-sensitive functions
- ◆ Employees must proceed immediately to a collection site following a reasonable suspicion determination (employee should be transported)
- ◆ If an alcohol test is delayed beyond 2 hours, reasons for the delay must be documented

POST ACCIDENT TESTING

- ◆ An occurrence associated with the operation of a revenue service vehicle, whether or not the vehicle is in revenue service
- ◆ Fatality (MANDATORY)
 - If fatal accident testing requirements of FMCSA rules
 - apply, no FTA test is required
- ◆ Non-fatality
 - Any time an individual requires transportation to a medical treatment facility or
 - one or more road vehicles have disabling damage that requires a tow from the site unless the employee can be completely discounted as a contributing factor

POST ACCIDENT TESTING (CONTINUED)

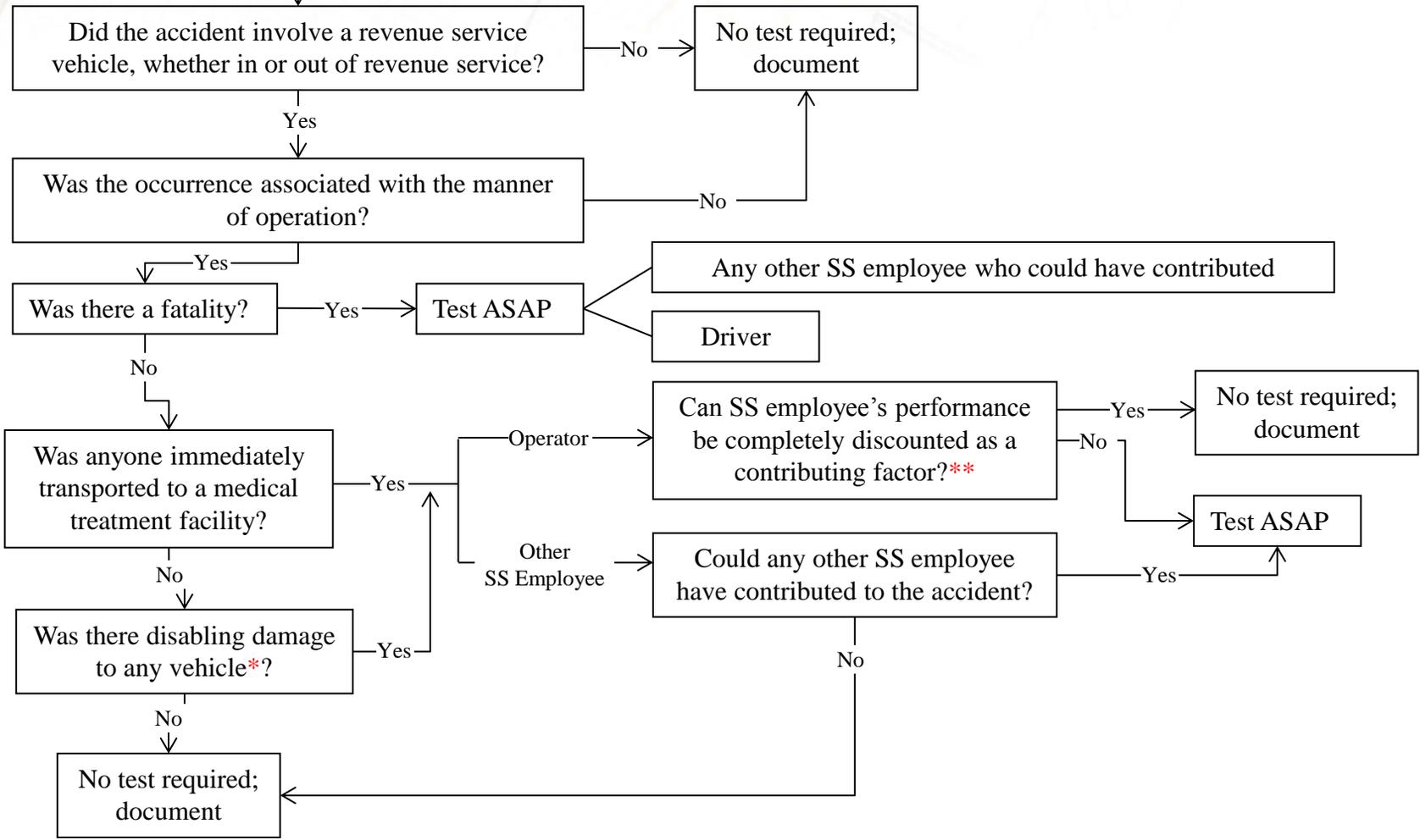
- ◆ Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that make them inoperative.



POST ACCIDENT TESTING (CONTINUED)

- ◆ Must ensure the proper CCF and ATF is used for post accident testing
- ◆ Post Accident decision making process must be documented whether or not a test is actually administered

ACCIDENT





WHO TO TEST

- ◆ Each covered employee operating the vehicle at the time of the accident
- ◆ Any other covered employee whose performance could have contributed to the accident
- ◆ The decision of who to test shall be based on the employer's determination, using the best available information at the time of the determination
- ◆ Employee must remain readily available - employer must know of whereabouts
- ◆ Employee must provide specimen - cannot test deceased or unconscious employee



ACCIDENTS/INCIDENTS

- ◆ Accident definition may include some incidents - if an individual requires immediate transport to a medical treatment facility and the employee cannot be discounted as a contributing factor
- ◆ Tests performed for accidents that do not meet the FTA accident definition, must be performed under the transit system's own authority using non-USDOT forms
- ◆ Post-accident tests of the operator are not required under FTA authority if the covered employee is tested under the fatal accident testing requirements of the FMCSA (49 CFR Part 382.303)
- ◆ Must document decision to/not to test for every accident

RANDOM TESTING

- ◆ Keys to successful testing
 - Scientifically valid method of selection
 - Each employee has an equal chance of being selected
 - Replacement back into random pool after selection
 - Update pool immediately prior to draw
 - Random number selections should be made as frequently as possible
 - ◆ Only USDOT safety-sensitive employees can be included in the pool
 - ◆ Must be completed a minimum of four times per year

RANDOM TESTING (CONTINUED)

- ◆ Scientifically valid method of selection
 - Choose replacement number only if employee is unavailable during the testing period because of legitimate excuse
 - Operational difficulties are not legitimate excuses
- ◆ Test distribution
 - Spread throughout the year, draw period, day
 - Weekends, holidays, late night, early morning
 - Whenever safety-sensitive functions are performed

RANDOM TESTING (CONTINUED)

- ◆ Unannounced testing
 - Test immediately after notifying individual
 - ◆ Drugs: anytime on duty
 - ◆ Alcohol: only before, during, or just after
- ◆ Exercise care in scheduling substitute employees so no advance warning is given

RETURN TO DUTY TESTING

- ◆ Purpose: to provide a degree of assurance to the employer that the individual is presently drug and alcohol free and is able to return to work without undue concern of continued drug use or alcohol misuse
- ◆ Determine whether policy is Second Chance or Zero Tolerance
 - **The decision must be the same for every employee every time**



RETURN TO DUTY TESTING (CONTINUED)

- ◆ Following a positive drug or alcohol test result or test refusal, the individual may not be allowed to perform safety-sensitive duties until
 - Assessed by SAP
 - Completed SAP recommended education/treatment program
 - Completed a return-to-duty test with a negative test result (< 0.02 for alcohol)
- ◆ The employer must make the determination of when the employee can return to work following the completion of the SAP recommended treatment program
- ◆ A cancelled test requires that the employee must submit to and pass another test



FOLLOW-UP TESTING

- ◆ Purpose: to motivate employees to remain drug and alcohol free after returning to duty following a positive test and to provide the employer with assurance that the person has not resumed drug use or alcohol misuse
- ◆ SAP submits follow-up testing plan to the employer
- ◆ Unannounced
- ◆ Minimum of six tests during twelve months after return-to-duty
- ◆ Up to 60 months
- ◆ Frequency and duration dependant on SAP assessment
- ◆ SAP must not establish actual date for follow-up testing - dates are to be scheduled by the employer
- ◆ Employers must not go beyond the SAP recommendations for follow-up testing



FOLLOW-UP TESTING (CONTINUED)

- ◆ An employers follow-up testing plan follows the employee
- ◆ A cancelled follow-up test must be recollected
- ◆ Follow-up testing is non-negotiable
- ◆ Employees subject to follow-up testing are also included in the random testing pool
- ◆ A follow-up test for individuals unable to provide sufficient volume can be reported as negative if medical evaluation shows no evidence of illegal drug use



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RECORDKEEPING AND REPORTING PROCEDURES

RECORDKEEPING

- ◆ Drug and alcohol records kept in a secure location with controlled access
- ◆ Kept separate from personnel records to protect confidentiality



FIVE YEAR RECORDKEEPING REQUIREMENTS

- ◆ Positive test results
 - Alcohol test form (≥ 0.02)
 - Chain of Custody Form
- ◆ Documentation of test refusals
- ◆ Employee disputes
- ◆ Employee referrals to SAP
- ◆ Records of inspection, maintenance, and calibration of EBT
- ◆ Return-to-duty and follow-up testing documentation
- ◆ MIS reports



THREE YEAR RECORDKEEPING REQUIREMENTS

- ◆ Previous employer drug and alcohol test records
- ◆ Good faith effort documentation

TWO YEAR RECORDKEEPING REQUIREMENTS

- ◆ Collection process records
 - Collection log books, if used
 - Random selection process
 - Reasonable suspicion documentation
 - Post accident testing documentation
 - MRO documents verifying existence of a medical explanation for insufficient volume
 - Records of inspection, maintenance, and calibration of EBT



TWO YEAR RECORDKEEPING REQUIREMENTS (CONTINUED)

- ◆ Education and training
 - Drug use awareness training
 - Policy and explanation of regulatory requirements
 - Statement on alcohol misuse awareness
 - Display materials
 - Supervisory training
 - Names of employees attending training and dates/times, and agendas for such training
 - Certification that training complies with requirements



ONE YEAR RECORDKEEPING REQUIREMENTS

- ◆ Negative test results
 - Alcohol test results less than 0.02
 - Alcohol test form with results
 - Employer's copy of the USDOT Custody and Control Form
 - Cancelled drug test results



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Common Findings



DAPM Common Audit Findings

- ◆ Does this employer make available and provide written notice of the availability of the adopted FTA anti-drug and alcohol misuse policy to all covered employees and representatives of any employee organizations? How?
 - Is your policy up to date?
 - Do you have proof that your current policy has been approved by your governing board?



DAPM Common Audit Findings

- ◆ Does this employer conduct non-DOT drug and/or alcohol testing and if so is it completely separate (separate random pools, separate CCFs and ATFs, etc.) from DOT testing?
 - Are you sure about the answer to this question? Often, non-DOT tests are identified even though employer says no to this question.



DAPM Common Audit Findings

- ◆ What information do you provide to the collection site for each DOT test you are requesting?
 - (a) Full name of the employee being tested.
 - (b) Employee SSN or ID number.
 - (c) Laboratory name and address.
 - (d) Employer name, address, phone number, and fax.
 - (e) DER information
 - (f) MRO name, address, phone number, and fax.
 - (g) The DOT Agency which regulates the employee/employer.
 - (h) Test Category.
 - (i) Whether the test is to be observed or not.
 - (j) (Optional) C/TPA name, address, phone, and fax number.



DAPM Common Audit Findings

- ◆ How do you ensure that DOT tests can be conducted at all times when safety-sensitive functions may be performed? (I.e., late night, weekends, holidays, maintenance hours, etc., if applicable.)
 - Must ensure that all days and hours are covered even if special arrangements must be made.



DAPM Common Audit Findings

- ◆ Do you ever use a hospital for testing on a contingency basis? Do you know that they use documented trained collectors for DOT testing?
 - New question due to concerns of quality with hospital collections.



DAPM Common Audit Findings

- ◆ Have all safety-sensitive employees received at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?
 - Must provide documentation that the each employee has had training.
 - Must provide documentation that the time requirement was met.



DAPM Common Audit Findings

- ◆ At what point in the hiring process do you ask the applicant or transferee whether or not they have failed or refused a DOT pre-employment test in the previous two years?
 - Must be asked of ALL applicants of safety-sensitive positions.
 - Should be documented (paper trail)



DAPM Common Audit Findings

- ◆ How and when do you update your DOT random testing pool used for random selections?
 - Procedures often flawed or significantly delayed.

- ◆ What random selection method is used by this employer to select covered employees for FTA drug and alcohol testing?
 - DAPM usually do not know.

- ◆ How is the random selection list transmitted to the DER and who has access to the list?
 - Notifications are often delayed and error-prone



DAPM Common Audit Findings

- ◆ Does this transit system conduct random testing on all work days, when safety-sensitive functions are being performed, including weekends and holidays?
- ◆ Does this transit system conduct random testing at all times that safety-sensitive functions are being performed (including maintenance of revenue vehicle, movement of revenue vehicles, etc.)?
 - Charts will be created to verify your answer.



DAPM Common Audit Findings

- ◆ When, if ever, would you excuse an employee, selected for a random test, from random testing?
 - Must have documentation of actual practice.

- ◆ Do you use alternates in your random selection process? Under what circumstances would you notify an alternate that they must proceed to the collection site for a random test?
 - This practice will be scrutinized closely.



DAPM Common Audit Findings

- ◆ Who is responsible for deciding to perform a FTA post-accident test? (If DAPM, ask for knowledge of thresholds.)
 - DAPM must demonstrate knowledge of thresholds including definition of “disabling damage.”

- ◆ Does this transit system have some method to document the post-accident decision-making process, especially decisions not to conduct a drug and alcohol test following an accident that reaches an FTA threshold?



DAPM Common Audit Findings

- ◆ Does this company provide the contact information of a qualified Substance Abuse Professional (SAP) readily available to assist any employee who has refused a test or had a positive test? Even if the employee is to be terminated?
 - Are you sure your SAP has the correct credentials? Make sure you notify your SAP of the audit and their need to participate in the audit process.



DAPM Common Audit Findings

- ◆ Are you aware of all safety-sensitive contracts, and do you monitor contractor compliance with Parts 40 and 655?
 - If you have contractors, you must demonstrate and document oversight and monitoring of their drug and alcohol testing program.



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Questions?