

FTA Review

December 1st, 2018

# Safety First

Drug & Alcohol Testing Program  
Management



# 2018 DOT 49 CFR Revisions

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- **Addition of four new opioid synthetic drugs**
  - Hydrocodone
  - Hydromorphone
  - Oxycodone
  - Oxymorphone
- **Removed testing for MDEA and added MDA**
- **COC form revised to eliminate DOT box in section D**

# 2019 Random Rates

DOT Agency	2019 Random Drug Testing Rate	2019 Random Alcohol Testing Rate
Federal Motor Carrier Safety Administration [FMCSA]	25%	10%
Federal Aviation Administration [FAA]	25%	10%
Federal Railroad Administration [FRA]	25% - Covered Service 50% - Maintenance of Way *	10% - Covered Service 25% - Maintenance of Way *
Federal Transit Administration [FTA]	50%	10%
Pipeline & Hazardous Materials Safety Administration [PHMSA]	50%	N/A
United States Coast Guard [USCG] <i>(with the Dept. of Homeland Security)</i>	25%	N/A

# FTA Statement Concerning Random Rate

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- At 49 C.F.R. 655.45, the FTA's implementing regulation for random testing sets a default that the minimum annual percentage rate for random drug testing must be 50% of covered employees. The regulation allows FTA discretion to lower the minimum random drug testing rate from 50% to 25% where data for the two preceding consecutive calendar years indicate that the reported positive violation rate is less than 1%.

# New Random Platform

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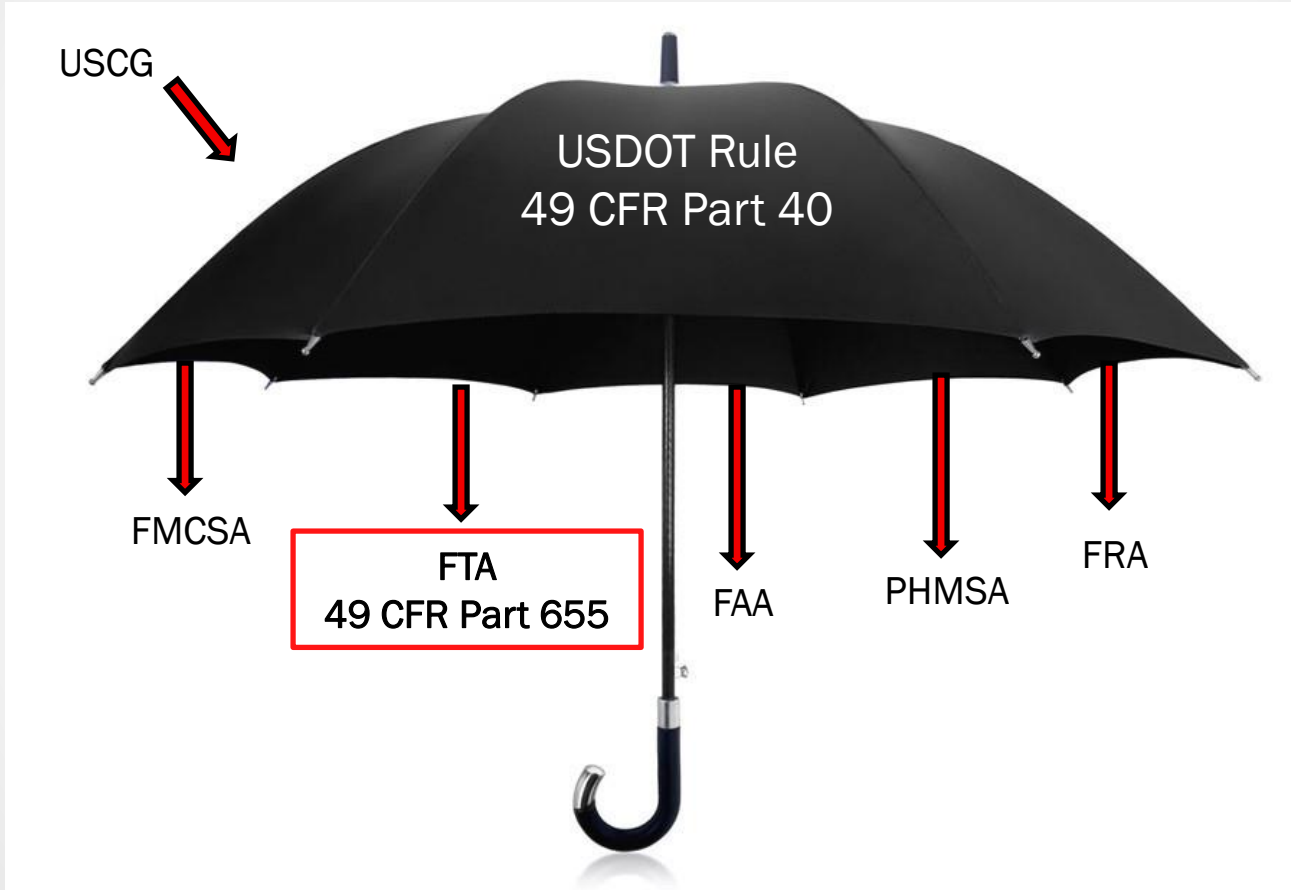
- 2019 quarterly random selections will automatically be generated on the 1st
- All random roster updates must be received by the last day of the month

# 2018 FTA Audit

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- Nine agencies chosen for audit-3 in the north 3 in the central 3 in the south  
BRATS, NARCOG, NACOG, West Alabama, Lee Russell, Chilton County, Washington County, Clastran, Tram
- Primary collection site identified for each agency along with contact information
- All collection sites pre inspected before arrival of FTA audit team
- Collection site inspection included the following:
  - Overview of FTA inspection process
  - Asked that the most proficient team member be available for mocks
  - Inspected collection facilities for issues
  - Provided collection site contact with questionnaires
  - Insured DOT collection manual was current & signed up for ODAPSI updates

# Overview of USDOT Authority



# Policy Statements [655.15]

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- Policy must be dated & approved by governing board and disseminated to all covered employees.
- Required provisions include (in part):
  - Identity of contact person
  - Prohibited behaviors, drugs & alcohol misuse
  - Testing circumstances & procedures
  - Requirement to submit & actions that constitute a refusal
  - Consequences for violations
    - (Zero Tolerance or Second Chance)
    - Substance Abuse Professional Resource



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# Drug & Alcohol Program Manager (DER)

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- Designated Contact/Employer Representative
  - Point of contact for testing program within your agency
  - Receives results, communicates with collectors, MRO, SAP and other vendors
  - Manages the random testing pool
  - Maintains testing records in confidence
  - Has the authority to remove an employee from safety-sensitive duty after receiving MRO verified positive drug test results and confirmed alcohol test results

# Drug & Alcohol Program Manager (DER)

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- Collects and maintains documentation for:
  - Policy dissemination
  - Education and training
  - Post-accident and Reasonable Suspicion testing decisions
- Reviews the Employer copies of the CCFs for errors; corrects errors when found

Note: Large transit systems may have several individuals performing the role of the DER

# FTA Education and Training [655.14]

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- Covered employee education and training:
  - Display and distribute informational material and hot-line number for employee assistance
  - 60 minutes of training on the effects and consequences of prohibited drug use & indicators of drug use
- Supervisory/company officials:
  - 60 minutes on physical, behavioral & performance indicators of drug use
  - 60 minutes on physical, behavioral & performance indicators of alcohol misuse



# Pre-Employment Testing [655.41-42]

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- Urine drug testing required, alcohol testing authorized
- Test all safety-sensitive applicants and transferees
  - Notify in writing that negative result is required
  - Employer must receive negative result, prior to safety-sensitive functions
  - Includes behind-the-wheel training
- Canceled tests must be retaken
- No waivers accepted
- Pre-employment test also required prior to resuming s-s functions following a leave of 90 days or > IF employee's name was removed from random pool



# Pre-Employment Background Check

## [40.25]

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- Drug and Alcohol Background Check:
  - Obtain written consent from applicant
    - No consent = no safety-sensitive functions
  - Send written consent and request to each DOT regulated previous employer within the previous 2 years
  - Document good faith efforts
  - Employee may be placed into s-s duty as long as good faith efforts were made
  - If violations are reported, applicant must have completed the RTD process before performing s-s job functions



# Random



# Random Testing [655.45]

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- 2019 annual FTA minimum testing rates:
  - 50% of s-s employee pool for drugs
  - 10% of s-s employee pool for alcohol
- Consortiums can meet percentages as a whole
- Scientifically valid selection method
- Update pool prior to generating selection list
- Generate no less frequently than quarterly
- Use alternate **ONLY** when selected employee is not available for the entire testing period
- Over generate to ensure compliance
  - Employers can establish higher testing rates



# Random Testing [655.45]

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- Once notified employees must “drop everything and go”
- Ensure that selection list remains confidential
- Be aware of potential non-verbal advance notice
- Conduct testing throughout all hours of the day and all days of the week that s-s functions are being performed
- Unannounced and unpredictable testing = an effective random testing program
- Cancelled tests do not count toward meeting compliance
- Maintain all documentation related to selection process □

# Post Accident



# Post Accident Testing [655.4]

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Definition of an FTA accident 655.4 :

“An occurrence associated with the operation of a vehicle if:

- An individual dies, OR
- An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident OR
- One or more vehicles sustain disabling damage and are transported away from the scene by tow truck or other vehicle”
- With respect to a rail car, trolley car, trolley bus or vessel is removed from operation

# Sample Post Accident Documentation Form

Provided as electronic handout.

## FTA Post-Accident Drug and Alcohol Testing Decision Form

### Accident Information:

Date of Accident \_\_\_\_\_ Time of Accident: \_\_\_\_\_ AM/PM

Employee Name: \_\_\_\_\_

### Decision Questions:

1: Was there a fatality? Yes \_\_\_\_ No \_\_\_\_ (If yes, FTA drug and alcohol testing required)

2. If there was **NO fatality**, answer the following questions:

- Did any individual involved in the accident suffer **bodily injury** and **immediately receive medical treatment away from the scene of the accident**?

Yes \_\_\_\_ (If yes, FTA drug and alcohol testing required) No \_\_\_\_

- Did the mass transit vehicle (bus, electric bus, van, or automobile) or any other vehicle involved in the accident sustain **disabling damage\*** requiring any of the vehicles to be transported away from the scene by a tow truck or other vehicle?

Yes \_\_\_\_ (If yes, FTA drug and alcohol testing required) No \_\_\_\_

- **If there was NO fatality AND you checked YES for either or both of the answers to QUESTION 2**, a FTA Post-Accident DRUG and ALCOHOL test is required unless you determine, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident. **Any reason for discounting the employee's performance as a contributing factor to the accident MUST be documented on the reverse side of this form.**

3. Could the **actions of any other safety-sensitive employee contributed to the accident (e.g., mechanic, dispatcher)?**

Yes \_\_\_\_ (If yes, contact the employee's supervisor to conduct a FTA drug and alcohol test)  
No \_\_\_\_

**If ALCOHOL testing is not conducted within 2 hours after the accident**, document the reason for the delay on the reverse side of this form. If no alcohol test is administered **within 8 hours**, cease all efforts to have the test administered and **update the documentation**.

**If DRUG test is not conducted within 32 hours after the accident**, cease all efforts to administer the drug test and document the reason why the test was not administered.

**DISABLING DAMAGE** is damage that precludes the departure of any vehicle from the scene of an accident in its usual manner in daylight hours after simple repairs. **Disabling damage includes:** damage to vehicles that could have been operated, but would have caused further damage if so operated. **Disabling damage does not include:** damage that could be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no space tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperable.

# Post Accident Thresholds Continued

## [655.44]

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- If accident meets the definition:
  - Due to fatality = always test
  - Due to medical treatment and/or disabling damage = test unless the safety-sensitive employee's actions can be completely discounted as a contributing factor
- Document decision-making process
- Conduct both drug & alcohol tests, when required
- Medical treatment of employee takes priority
- Document reasons for delays in alcohol testing after 2 hours
- Testing windows: 8 hours for alcohol, 32 for drug
- Employee failing to remain available for testing = refusal.



# Reasonable Suspicion [655.43]

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- Only trained supervisors are authorized to make referrals
  - Only one supervisor is needed
- Observations must be “specific, contemporaneous and articulable”
- Based on appearance, behavior, speech or body odors
- Not a diagnostic tool
- Used to “rule out” drugs or alcohol as causal factor for signs and symptoms observed
- Document signs and symptoms
- Perform tests promptly (can perform both drug & alcohol)
  - Document delays in alcohol testing beyond the first 2 hours

# Sample Reasonable Suspicion Documentation Form

## REASONABLE SUSPICION DOCUMENTATION FORM

Employee is reporting for duty  Employee is already on duty:

EMPLOYEE NAME:		DATE OF OBSERVATION	
LOCATION:		TIME OF OBSERVATION	
		FROM	AM TO PM
<b>OBSERVED PERSONAL BEHAVIOR (CHECK ALL APPROPRIATE ITEMS)</b>			
BREATH: (Odor of alcoholic beverage)	<input type="checkbox"/> STRONG <input type="checkbox"/> NONE	<input type="checkbox"/> FAINT	<input type="checkbox"/> MODERATE
EYES:	<input type="checkbox"/> BLOODSHOT <input type="checkbox"/> CLEAR <input type="checkbox"/> DILATED PUPILS	<input type="checkbox"/> GLASSY <input type="checkbox"/> HEAVY EYELIDS	<input type="checkbox"/> NORMAL <input type="checkbox"/> FIXED PUPILS
SPEECH:	<input type="checkbox"/> CONFUSED <input type="checkbox"/> ACCENT <input type="checkbox"/> SLURRED <input type="checkbox"/> NOT UNDERSTANDABLE	<input type="checkbox"/> STUTTERED <input type="checkbox"/> MUMBLED <input type="checkbox"/> GOOD <input type="checkbox"/> COTTON MOUTHED	<input type="checkbox"/> THICK TONGUED <input type="checkbox"/> FAIR <input type="checkbox"/> MUSH MOUTHED OTHER:
ATTITUDE:	<input type="checkbox"/> EXCITED <input type="checkbox"/> INDIFFERENT <input type="checkbox"/> CARE FREE <input type="checkbox"/> COOPERATIVE	<input type="checkbox"/> COMBATIVE <input type="checkbox"/> TALKATIVE <input type="checkbox"/> COCKY <input type="checkbox"/> PROFANE	<input type="checkbox"/> HILARIOUS <input type="checkbox"/> INSULTING <input type="checkbox"/> SLEEPY <input type="checkbox"/> POLITE
UNUSUAL ACTION:	OTHER: <input type="checkbox"/> HICCOUGHING <input type="checkbox"/> FIGHTING <input type="checkbox"/> OTHER:	<input type="checkbox"/> BELCHING <input type="checkbox"/> CRYING	<input type="checkbox"/> VOMITING <input type="checkbox"/> LAUGHING
BALANCE:	<input type="checkbox"/> FALLING <input type="checkbox"/> SWAYING	<input type="checkbox"/> NEEDS SUPPORT <input type="checkbox"/> OTHER:	<input type="checkbox"/> WOBBLING
WALKING:	<input type="checkbox"/> FALLING <input type="checkbox"/> SWAYING	<input type="checkbox"/> STAGGERING <input type="checkbox"/> OTHER:	<input type="checkbox"/> STUMBLING
TURNING:	<input type="checkbox"/> FALLING <input type="checkbox"/> SWAYING	<input type="checkbox"/> STAGGERING <input type="checkbox"/> HESITANT	<input type="checkbox"/> STUMBLING <input type="checkbox"/> OTHER:
ANY OTHER UNUSUAL ACTIONS OR STATEMENTS:			

SIGNS OR COMPLAINTS OF ILLNESS OR INJURY:

\_\_\_\_\_

\_\_\_\_\_

<b>SUPERVISOR'S OPINION</b>		
EFFECTS OF ALCOHOL/DRUG INTOXICATION	<input type="checkbox"/> NONE <input type="checkbox"/> EXTREME	<input type="checkbox"/> SLIGHT <input type="checkbox"/> OBVIOUS
OPERATION OF EQUIPMENT	<input type="checkbox"/> YES <input type="checkbox"/> NO	COMMENTS:
ADDITIONAL COMMENTS:		
_____		
_____		

Reasonable Suspicion Test Performed Yes  No  Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_\_\_

Clinic \_\_\_\_\_

Reasonable Suspicion Test Refused Yes  No  Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_\_\_

Signature of Supervisor \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_ Time \_\_\_\_\_

EX 1A



# Testing Records to be Maintained

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- Documentation of reason for testing (post-accident decision form, random list, etc.)
- Testing Notification Form
- Employer copy of Federal CCF (for drug tests)
- MRO verified test result
- Employer copy of DOT ATF (for alcohol tests)



# Notice to Test Form

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- Notify employees of testing requirement, in writing
- Communicate the necessary test information to the collector (in accordance with 40.14)
  - Donor name & unique identifying #
  - Reason for Test (test type)
  - Testing authority (FTA)
  - Contact information for DER & MRO

# Sample Notification Form

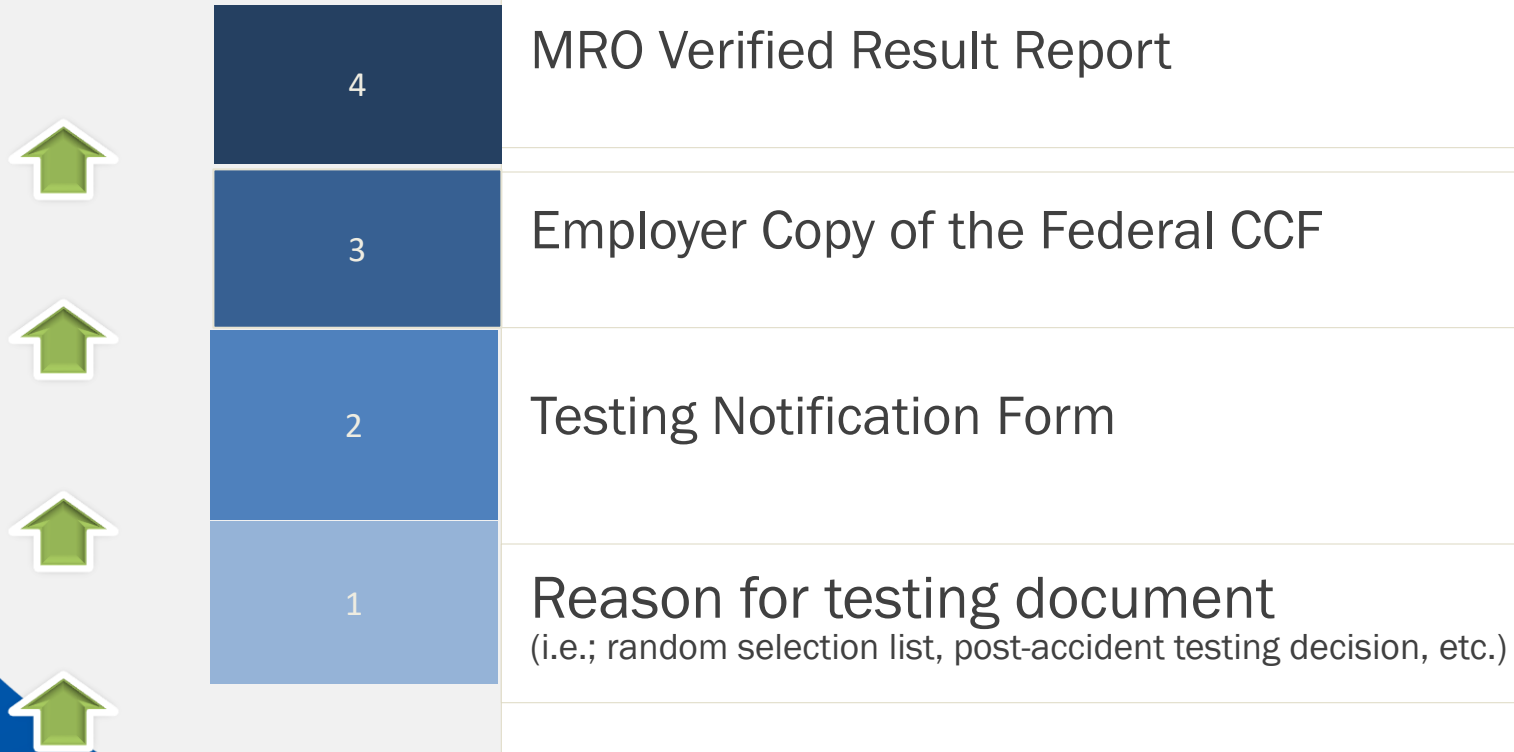
US/DOT FTA TESTING NOTIFICATION FORM

Section 1: FTA Covered Employer Information	
Employer Name: _____	MRO: _____
Name of DER: _____	Street: _____
Street Address: _____	City, State, Zip: _____
City, State, Zip: _____	Phone: _____
Phone: _____	Fax: _____
Fax: _____	_____

Section 2: Donor/Employee Information	
Employee Name: _____	Employee SSN: _____
Notification Date: _____	Expected Arrival Time at Collection Site: _____ a.m./p.m.
Notification Time: _____ a.m./p.m.	<b>Attention Collector:</b> Donor arrived late you must receive specific authorization from the DER to proceed with collection. Employer may deem the delay a refusal to test.
Supervisor Signature: _____	Employee Signature: _____
Collection Site Address and Telephone #: _____	

Section 3: Testing Information / Testing to be Conducted under the Authority of FTA			
Reason for Test	Urine Collection	Observed Collection	Alcohol Test
DOT/FTA Pre-Employment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOT/FTA Random	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOT/FTA Post-Accident	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOT/FTA Reasonable Suspicion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOT/FTA Return to Duty	<input type="checkbox"/>	X	<input type="checkbox"/>
DOT/FTA Follow-Up	<input type="checkbox"/>	X	<input type="checkbox"/>
Attention: Notify DER immediately if Alcohol Confirmation result is over 0.02.			

# Sample Filing System for Drug Testing Records



Chronological Order

# Additional Documents to Maintain

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- Copies of FTA and USDOT regulations
- Agency policy and proof of dissemination
- All records related to training
  - Sign-in sheets, agendas, course materials, etc.
- Records related to the D&A background checks (40.25)
- Documents related refusals to test
- Annual MIS Reports
- Documentation of testing vendor qualifications (MRO, SAP, Collectors, BATs)\*

# Document Storage

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- Maintain all testing records:
  - In a locked cabinet
  - In a locked office
  - Limit access to only those that “need to know”
- Do not combine NON-DOT and DOT records
- Do not combine other personnel records with D&A records
- Records may be stored electronically, provided that they can be printed for compliance monitoring/auditing

# Annual MIS Reporting

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- Drug and Alcohol Management Information Systems- aka: “DAMIS”
  - Annual testing numbers and results (no identifying information) are collected for the purpose of monitoring testing on a national level
  - Web-based reporting is strongly encouraged
  - FTA sends a mailing at the end of each year with your agency’s username and password for electronic data entry
  - FTA DAMIS Hotline: (617)494-6336 ☐