

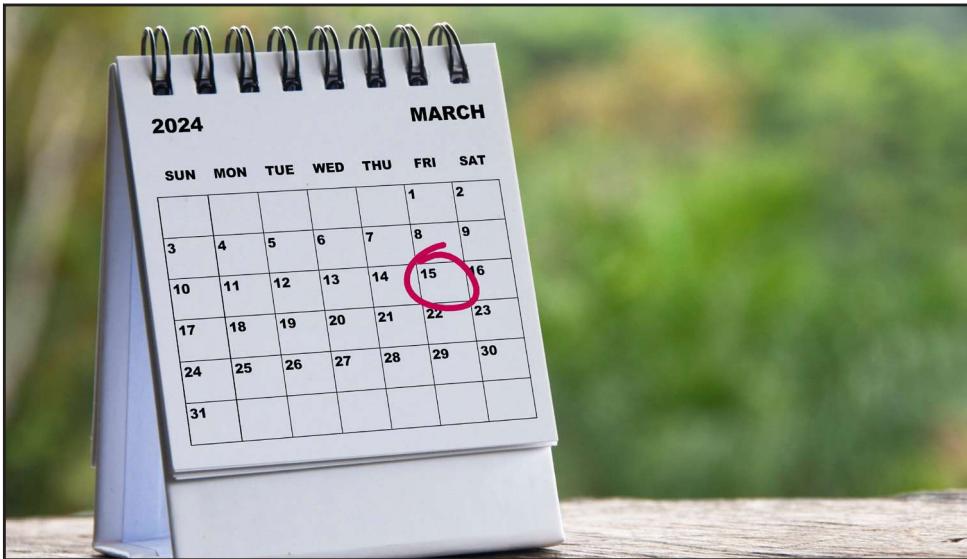
FTA Drug and Alcohol REGULATION UPDATES

March 2024

Issue 80

MIS Reports Due March 15

By March 15, all Federal Transit Administration (FTA) recipients are required to submit a report summarizing the previous calendar year's anti-drug and alcohol misuse program results, per 49 CFR 655.72. March 15 has been the specific date established for submission of the annual Management Information System (MIS) report since 1995. FTA will not grant an extension for 2023 MIS reports. All MIS reports for the year 2023 are due to FTA by March 15, 2024.



Remove “Minimum Threshold” Prohibition from Policy

FTA auditors often see the following phrase when reviewing employers' drug and alcohol policies that have not been recently revised:

“Covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40.”

Many policies based on FTA's samples, including those from the 2009 Best Practices Manual and pre-2021 versions of the Policy Builder tool, contain this language or similar wording. However,

this statement conflicts with DOT and FTA requirements, as it implies minimal drug use is allowed if it does not result in quantities at or above the cutoff concentrations provided in 49 CFR 40.85. As such, this language must be removed from the policy, and replaced with a statement prohibiting safety-sensitive employees from using drugs “at all times”, as required by 49 CFR 655.21(c). Note, it should not be necessary for employers who make this revision to have the policy re-approved by their organization's governing board.

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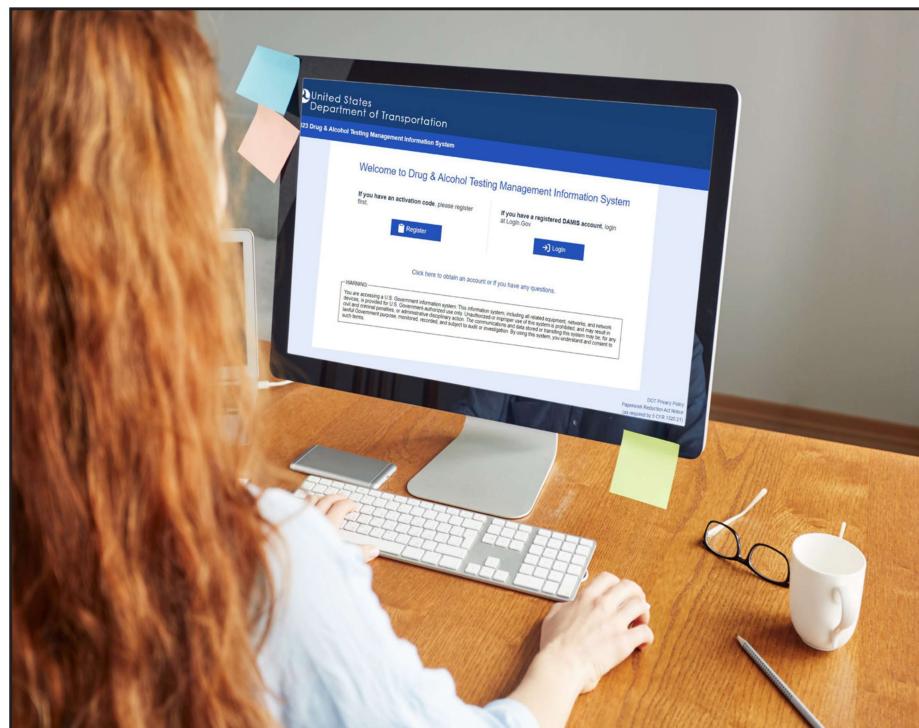


**U.S. Department of Transportation
Federal Transit Administration**

Major Changes to Drug and Alcohol Management Information System (DAMIS) Login and Users

DOT has changed the process of how employers login to submit their MIS report, using Login.gov. Employers receive a 32-character activation code by mail or email, and should register in DAMIS with this code (see [Issue 79](#) for more information). Employers can invite additional users by clicking “Add/Edit Users” and entering a unique email address for that user, and DAMIS will send an activation code to that newly added user.

FTA has heard that the new requirement for a unique email address is causing confusion. Unlike previous reporting years, an individual email address is required to be associated with each individual employer account and an email address may only be used once. As such, anyone (e.g., C/TPAs, national contractors) who previously entered data for multiple employers/companies will need unique email addresses for each employer/company. The change is designed into



the system and is consistent across all DOT modes. For example, if an employer has an email address registered with an FTA-covered company, that email address cannot be used for a company covered under a different modal administration (e.g., the Federal Motor Carrier Safety Administration (FMCSA)).

DAMIS will notify employers if they try to send an invitation using an email address that is associated with another company.

More information and step-by-step instructions for MIS reporting are available on the [FTA website](#).

How Do I Make Revisions to my MIS Report?

The original 32-character activation code is no longer needed after initially registering your Login.gov account in DAMIS. To finish any reporting or make changes to an MIS report, go to <https://damis.dot.gov> and click “Login”. This will bring up the Login.gov webpage. Click “Sign in” and enter your

Login.gov credentials. Once the verification is completed, you will be brought back to your DAMIS employer page where you can make changes or complete the report. DAMIS will record each time you log in and make changes to your submission. If you happen to make a change after March 15, DAMIS will capture

the initial submission date. Any changes made to your submission will require you to re-sign on the “Wrap up” screen. If you are a subrecipient or contractor and you re-sign your submission, you should let the grantee know so they can review and accept or reject the updated submission.

DAMIS: What does "Accept" or "Reject" Mean?

FTA grantees are required by 49 CFR 655.72(c) to review reports submitted to FTA by their subrecipients and contractors to ensure their accuracy. After reviewing a subrecipient's or contractor's submission in DAMIS, the grantee must "accept" or "reject" the submission before it is considered complete.

DAMIS has built-in validation checks to help reporters avoid potential errors. For example, a reporter will receive a warning when there is drug or alcohol testing data under an employee category for which there are zero covered employees, or when the total number of random drug or alcohol tests reported

is substantially different (either lower or higher) than the FTA's minimum random testing rates.

While these warnings may help prevent some data entry mistakes, grantee review is necessary to ensure the data submitted makes sense and is accurate in terms of the safety-sensitive functions provided. A reviewer might ask:

- Does the number of employees indicated align with the level of service provided?
- Did the employer report an accurate number of employees in each safety-sensitive category?
- Does the number of pre-employment tests reported seem sensible, given the

company's hiring needs?

- If the employer is zero tolerance, is the number of return-to-duty and follow-up tests zero?
- Do the number of post-accident drug tests equal, or nearly equal, the number of post-accident alcohol tests?

If the grantee discovers any issues, they should reject the data and contact the subrecipient or contractor to discuss the errors so they can correct any mistakes and resubmit the report. Once the subrecipient or contractor makes any required changes, the grantee must log back into DAMIS to review and accept the revised report.

MIS FAQs

The State DOT told me to combine my testing results with the testing results from my contractor instead of reporting them separately. Is this correct?

This is not correct. Contractors are separate employers covered under 49 CFR Part 655 and must submit an individual MIS report. FTA does not allow multiple employers' testing results on an individual MIS report.

Should a dilute specimen be reported in MIS?

It could be. If the employer, as stated in their FTA Drug and Alcohol Policy, accepts the result of a negative dilute test, and does not require a retest, then the negative dilute result would be reported in the MIS. If the employee underwent a second collection, the second test result is the result reported. A dilute positive test result would always be reported in the MIS.

Who should I list as the certifying official?

Neither FTA nor DOT specify the position of the certifying official other than it must be an employee of the employer for whom the MIS report covers. FTA sends MIS notification letters to the attention of the certifying official and it is the certifying official to whom questions about the submitted data will be directed. The certifying official is stating to FTA and DOT on an official federal form that the data submitted is correct and accurate. It is assumed by FTA the certifying official will have sufficient knowledge to make this statement.



MIS FAQs (continued)



I won't be ready by March 15. Can I get an extension?

No, FTA does not offer extensions and the due date cannot be changed. However, you can edit your information after March 15, 2024 until the system closes in September 2024.

How do I submit an MIS report for a consortium?

Each employer covered under 49 CFR Part 655 must submit an individual MIS report for their employer only. FTA does not accept multiple employer reports or consortium reports.

I use Login.gov for my FMCSA Clearinghouse data. Do I need a new account for reporting in DAMIS?

DAMIS does not use the same account information as the FMCSA Clearinghouse. However, they are both connected to Login.gov. You can use your existing Login.gov account, however you must input the 32-character activation code in order to access DAMIS. The 32-character activation code links your existing Login.gov account to your new 2023 DAMIS account. The activation codes are one time use only, by one email address.

I enter data for multiple employers. Can I use the same email address for all of my entries?

Each FTA-covered employer (e.g., grantee, subrecipient, contractor) must have an individual email address associated with their account. An email address can only be associated with one employer, and cannot be used more than once for DAMIS registration. This email address does not have to be your business address (e.g., you can create and use multiple Gmail accounts for each location).

How do I make changes to my contact information as a grantee or for my subrecipients/contractors?

Send an email to fta.damis@dot.gov. If possible, please include all your requested changes in one email, rather than requesting individual changes in separate emails.

How long are we required to maintain the physical MIS records? Can you send me my report from last year?

You must maintain a copy of your annual MIS report for five years. Once you complete your 2023 MIS report, you have the option to print or save an electronic copy of your report. The FTA Drug and Alcohol Program Office will not send you prior years' reports, nor can you access prior years' reports within DAMIS.

I still have questions. How can I get help?

Contact the hotline via phone (617) 494-6336 or via email - fta.damis@dot.gov.



Use of Urine Hats

Toilet, urine, or nurses' "hats" are collection devices that aid the donor in providing a urine specimen for testing. They fit on the rim of the toilet and typically

assist donors who have a limited range of motion in providing a sufficient urine specimen. There is no requirement for an assistive hat to be made available for a DOT

urine collection. However, DOT allows for use of a hat in cases of medical necessity if the hat is single-use and sterile.

Random Testing throughout the Year

49 CFR 655.45(g) requires random testing be spread unpredictably throughout the year. Employers should ensure that predictable gaps in testing (e.g., toward the beginning or end of selection periods, during holidays, or during a Designated Employer Representative's (DER's) vacation) do not take place. In support of this requirement, employers should not cease testing toward the end of the year, even if they have already met FTA's minimum annual random testing rates. In this case, random testing may slow down, but it must not stop entirely.

It is also important to conduct random testing on all days of the week and throughout all hours of the day during which safety-sensitive functions are performed. This does not necessarily mean that random testing will be evenly spread throughout all days and hours. If an employer provides less service on Sundays relative to weekdays, for example, it follows that less random testing will occur on Sundays. Sufficient testing should be conducted on all days, and at all hours, to create a reasonable expectation among employees that they may be randomly tested at any point

during any shift.

To help maintain unpredictability in random testing, many employers track the dates and times of their random tests. FTA offers a sample tracking spreadsheet on its "Tools and Resources" page, under "Random". Once test dates and times are entered, the spreadsheet generates charts illustrating testing spread throughout the days of the year, days of the week, and hours of the day.



Drug and Alcohol Substance Abuse Trainings Available

The FTA Drug and Alcohol Program offers one-day, onsite training on FTA and DOT drug and alcohol testing regulations. FTA also offers virtual special topics training sessions running approximately 90 minutes. Past topics include random testing, post-accident testing, and MIS overview. Information about scheduled onsite and virtual trainings can be found on the Program's training website.

If you are interested in hosting an onsite training or have a suggestion for a virtual special topic session, please contact the hotline at 617-494-6336 or fta.damis@dot.gov.

The Transportation Safety Institute (TSI) Training Schedule

FTA's strategic training partner, TSI, will offer the following upcoming courses:

Substance Abuse Management and Program Compliance. This three-day course for Drug and Alcohol Program Managers (DAPMs) and DERs will show how to evaluate and self-assess an agency's substance abuse program and its compliance with FTA regulations.

Reasonable Suspicion and Post-Accident Testing Determination. This half-day seminar is designed to educate participants on DOT/FTA regulations requiring drug and alcohol testing of safety-sensitive transit workers. The focus will be on specific training requirements for those employees (e.g., dispatchers, supervisors, managers, etc.) who will be making the determination of when to administer reasonable suspicion and post-accident drug and/or alcohol tests for safety-sensitive employees. This seminar meets and exceeds the requirements under 49 CFR § 655.14(b)(2).

There is a small attendance/materials fee. For more information, please call (405) 954-3682. To register, go to: <http://www.tsi.dot.gov>.

FTA's Newest Drug and Alcohol Program Manager!



Toni Henry-Clay has joined the FTA as a Drug and Alcohol Program Manager. Toni began her compliance career as a national consortium/third party administrator (C/TPA) in 2006, overseeing random testing for more than 30,000 clients across several US DOT modes. Toni is a qualified DOT collector and breath alcohol technician and a certified Medical Review Officer.

Administrator (MRO-A) since 2014. Prior to joining the FTA, she worked as an FTA-contracted compliance auditor for 11 years.

We are excited to have Toni along with her extensive knowledge of drug and alcohol testing and her commitment to public safety to the FTA Drug and Alcohol Program. Welcome Toni!

Guidance on "Re-attempts" during Shy Bladders

An employee who enters "shy bladder" protocols may drink up to 40 ounces of fluid and is given three hours to provide the 45 mL of urine necessary for a sufficient sample. Since [49 CFR 40.65\(a\) \(3\)](#) prohibits the collector from combining urine from separate voids, the employee will need to provide at least 45 mL of urine in a single, subsequent void, regardless of how much was provided in a previous attempt.

The 40 ounces of fluid and three hours are afforded to enable the employee to provide a sufficient amount of urine. If an employee re-attempts a collection after drinking too little fluid or after too short a period, the resulting specimen might again be insufficient. If multiple attempts are made that result in insufficient specimens, it is possible for an employee to produce more than 45 mL of urine during the three-hour period but fail

to meet the 45 mL single void requirement.

The [DOT Urine Specimen Collection Guidelines](#) covers these themes and reminds collectors to be sensitive to how frequently they request employees to re-attempt to provide a specimen. It may be beneficial for employers to remind their collection sites of

this guidance, especially if DERs notice repeated void attempts notated on the CCF during shy bladder testing events. While this may result in some employees spending more time at the collection site, following these guidelines ensures employees are tested fairly and compliantly.



Reviewing Evidential Breath Testing Device (EBT) Printouts after a Confirmation Test

Employers should review the Alcohol Testing Forms (ATFs) received from their collection sites for errors, especially those showing a result of 0.02 or greater. Certain errors may require a test to be cancelled or corrected (see [49 CFR 40.267-271](#)). Below are some key items to review for a test result of 0.02 or greater:

- Both a screening and confirmation test must be conducted, with the confirmation test occurring between 15 and 30 minutes after the screening test. Confirmation tests conducted less than 15 minutes after the screening test must be cancelled. Confirmation tests conducted more than 30

minutes after the screening test should not be cancelled, but the reason for the delay must be noted in the "Remarks" section.

- A printed confirmation test result must be attached to the ATF. Otherwise, the test must be cancelled. Screening test results may be hand-written in Step 3, but confirmation test results may never be hand-written.
- The technician must perform an air blank test with a reading of 0.00 before proceeding with a confirmation test. If the printed results indicate an air blank test was not conducted, or an air blank result of 0.00 was not obtained, the test must

be cancelled.

- Compare the sequential test numbers of the screening test and confirmation test. If the same EBT was used for both tests, these numbers should only be one apart (e.g., Screening Test Number: 630; Confirmation Test Number: 631). Gaps between the sequential test numbers may indicate that additional tests were conducted on the EBT between the screening and confirmation tests or that the wrong test results were affixed to the ATF. If the test numbers are not sequential, employers should contact the collection site to make sure there is a legitimate reason.

Contractors Must Comply with Part 655 Regardless of Funding Source

The FTA Drug and Alcohol Program rules ([49 CFR Part 655](#)) apply to recipients and

subrecipients of the Urbanized Area Program (49 U.S.C. § 5307), Capital Investment Grants

Program (49 U.S.C. § 5309), and Rural Area Program (49 U.S.C. § 5311) funds, as well as their contractors and subcontractors.

The direct recipient or subrecipient is responsible for ensuring that any employer providing public transportation service on its behalf complies with the rules. This includes contractors and subcontractors who may not be funded directly with FTA funds but are providing public transportation services for a recipient or subrecipient.



Commercial Driver's License (CDL) Training

Some transit employers provide a bus operator training program or similar training, which may also include a CDL training program. If, as part of this training, the student/employee performs a safety-sensitive function as defined in [49 CFR 655.4](#), that person would be subject to the requirements of 49 CFR Part 655. In many operator training programs, the employee will operate a revenue service vehicle. Even though the vehicle may not be in revenue service, operation of that vehicle is a safety-sensitive function. An employer may not allow an employee to operate a

revenue service vehicle at any time without first obtaining a DOT pre-employment drug test with a verified negative test result. The

employee must also be in a DOT random pool and is subject to all FTA-required drug and alcohol testing.



Receiving the Employer Copy of Testing Paperwork

Employers must receive and maintain the Employer Copy of the Custody and Control Form (CCF) (Copy 4) and the

Employer Copy of the ATF (Copy 1) for all FTA drug and alcohol tests. To achieve this outcome, the employer should establish consistent, secure protocols for record transmission from each of its collection sites. These protocols must guarantee that each testing record delivered to the employer is a legible Employer Copy. Examples of suitable arrangements for record transmission may be for Employer Copies to be sent via secure email/fax, uploaded to a secure online platform, mailed to the employer, or presented to

a supervisor accompanying the tested employee.

An improper arrangement would be for employees to provide their Employee Copy of the CCF (Copy 5) or their Employee Copy of the ATF (Copy 2) to the employer. Employees are entitled to keep Employee Copies and should not be asked by the employer to relinquish their copies of the testing paperwork. Furthermore, employers that rely on Employee Copies cannot guarantee the secure transmission of testing records in their original state.

Regulation Updates

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