

# Section 5307 Vendor Expectations –

## Drug & Alcohol

The following outlines expectations for Section 5307 vendors that are contracted with IndyGo subrecipients to perform safety-sensitive functions as defined in [49 CFR Part 655.4](#).

### Drug & Alcohol Testing

Transit employers covered by United States Department of Transportation (USDOT)-FTA drug & alcohol regulations must develop, implement, and manage their own alcohol and drug testing program. The major topics covered in this document include:

1. [Designate a DAPM](#)
2. [Obtain Access to Applicable Regulations](#)
3. [Identify Covered Employees](#)
4. [Establish and Implement a D&A Testing Policy](#)
5. [Establish an Education and Training Program for All Covered Employees](#)
6. [Conduct Required D&A Testing](#)
7. [Review Testing Records and Fix Errors When Found](#)
8. [Retention of D&A Program Records](#)
9. [Report D&A Testing Data Annually \(MIS Reporting\)](#)

Below you will find a summary of the major expectations related to each of these areas.

#### 1. Designate a Drug & Alcohol Program Manager (DAPM)

- Each vendor must have one individual designated as the DAPM who is responsible for administering the program.
- The DAPM responsibilities are often assigned to an existing employee with other related duties in human resources, personnel, or risk management. Often the DAPM is responsible for record keeping, preparation of the annual Management Information System (MIS) report, administering required testing, and sometimes also serving as the Designated Employer Representative (DER).
- A DAPM will often act as a DER as well; however, many transit operators will have DERs in addition to the agency's DAPM.
- A DER is any 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 processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs. Service agents include any person or entity, other than an employee of the transit employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements.

#### 2. Obtain Access to Applicable Regulations

- The DAPM is required to have ready access to the two (2) federal regulations that govern your USDOT-FTA drug & alcohol testing program:
  - [49 CFR Part 40](#)
  - [49 CFR Part 655](#)

- It is a best practice to bookmark these regulations on your web-browser for easy access.

### **3. Identify Covered Employees**

- Each employer must identify the categories of employees subject to USDOT-FTA drug & alcohol testing.
- Employees performing any of the following FTA-defined safety-sensitive functions are subject to testing:
  - Operating a revenue service vehicle, in or out of revenue service
  - Operating a non-revenue vehicle requiring a Commercial Driver's License (CDL)
  - Maintaining a revenue service vehicle or equipment used in revenue service
  - Controlling dispatch/movement of a revenue service vehicle
  - Carrying a firearm for security purposes

### **4. Establish and Implement A Drug & Alcohol Testing Policy**

- Any drug & alcohol program must have a statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace.
- The D&A Policy must be written and made available to all covered employees.
- Board Approval
  - Obtain adoption of the policy by the local governing board or another responsible individual with appropriate delegation of authority.
- Policy Distribution ([655.16](#))
  - Provide written notice of the policy to all covered employees and employee organization representatives.
  - Make sure all employees have the most current version of the policy.
  - As a best practice, employees may be requested to sign an acknowledgment of receipt form. A sample form can be found [here](#).
- Policy Resources:
  - The [Policy Builder](#) on FTA's Drug and Alcohol Program website can help develop a customized anti-drug and alcohol misuse policy containing all required elements.
- The [Policy Requirements Checklist](#) can be used to help ensure your own policy includes all required elements.
- The D&A Policy must include the following information ([655.15](#)):
  - I. Identify the person, office, branch, or position designated to answer employee questions about the D&A program
  - II. A complete list or description of the actual positions/categories of employees who are subject to the provisions of Part 655.
  - III. Prohibited Behaviors
  - IV. Testing Categories:
    - Pre-Employment
    - Random
    - Post-Accident
    - Reasonable Suspicion
    - Return to Duty and Follow-Up
  - V. Testing Procedures
    - All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40.

- VI. Requirement to Submit To Testing:
- All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655.
- VII. Period of Coverage:
- Drug testing = Anytime employee is on duty
  - Alcohol testing = just before, during, or immediately after performance of safety-sensitive functions
- VIII. Refusals To Test:
1. Failing to remain at the testing site until the testing process is complete (it is not a refusal if the employee leaves the testing site before a pre-employment test commences).
  2. Failing to appear for any test (except a pre-employment test) within a reasonable time.
  3. Failing to attempt to provide a breath or urine specimen.
  4. Failing to provide a sufficient quantity of urine or breath without a valid medical explanation.
  5. Failing to undergo a medical evaluation as required by the Medical Review Officer (MRO) or Designated Employer Representative (DER).
  6. Failing to cooperate with any part of the testing process.
  7. Failing to permit an observed or monitored collection when required.
  8. Failing to follow an observer's instructions to raise and lower clothing and turn around during a directly observed test.
  9. Possessing or wearing a prosthetic or other device used to tamper with the testing process.
  10. Failing to take a second test when required.
  11. Admitting the adulteration or substitution of a specimen to the collector or MRO.
  12. Submitting an adulterated or substituted sample, as verified by the MRO.
  13. Refusing to sign Step 2 of the Alcohol Test Form.
  14. Failing to remain readily available for testing following an accident
- IX. Consequences for Violations:
- Verified positive drug test result, confirmed alcohol concentration of 0.04 or greater, or test refusal
    - Immediate removal from safety-sensitive functions, referral to a list of USDOT qualified Substance Abuse Professionals (SAPs)
    - Employer decision on employment discipline (e.g., Zero-Tolerance or 2<sup>nd</sup> Chance)
  - Alcohol concentration in range of 0.02–0.039
    - Removal from safety-sensitive position for at least 8 hours or until an alcohol concentration of less than 0.02
    - Apply employer discipline if applicable
    - DOT SAP referral is prohibited
  - Dilute negative
    - Policy must have fixed decision on retest or no retest (policy may differ between test types)
- X. Additional Employer Provisions Allowed

- The policy may provide additional detail or include additional requirements not mandated by USDOT-FTA (though in these cases, FTA's requirements must still be described).
- These additional provisions must be clearly identified in the policy.
- Using clear phrasing, **bolding**, or *italics* to differentiate between FTA and company policy prohibitions, terms, etc., is common.
- You must not impose requirements that are inconsistent with or contrary to USDOT-FTA regulations.

## 5. Establish an Education and Training Program ([655.14](#))

- Display and Distribute Materials
  - Provide informational materials on the effects of drugs and alcohol (e.g., posters, pamphlets).
  - Provide information on community service hotlines or resources for employees needing assistance with drug/alcohol use.
    - Example Resources:
      - Substance Abuse and Mental Health Services Administration ([SAMHSA](#))'s "[Find Treatment](#)" website; SAMHSA National Helpline: 1-800-662-HELP (4357)
      - 988 Help Line
        - Call 988
        - Text 988
        - Chat: <https://chat.988lifeline.org/>
      - Employee Assistance Programs (EAPs)
    - Distribute company anti-drug and alcohol misuse policy (or written notice of its availability)
- Conduct Required Training Programs
  - Employee Training (60 minutes minimum)
    - All safety-sensitive employees must receive 60 minutes of training on the effects and consequences of prohibited drug use.
    - Resources:
      - [FTA's Video](#)
      - National Rural Transit Assistance Program (NRTAP)'s [eLearning Module \(Substance Abuse Training\)](#)
  - Supervisor Training (120 minutes minimum)
    - Reasonable Suspicion Determination training is required for supervisors or other company officials authorized to make reasonable suspicion determinations.
    - Training must include a minimum of:
      - 60 minutes of training on recognizing the physical, behavioral, and performance indicators of probable **drug** use;
      - 60 minutes of training on recognizing the physical, behavioral, speech, and performance indicators of probable **alcohol** misuse
    - Supervisors and/or company officials must complete this training before making any reasonable suspicion referrals.

## 6. Conduct Required D&A Testing As Applicable

- Pre-Employment Testing ([655.41](#) and [655.42](#))
  - Inquire about an applicant's previous USDOT employer D&A testing history in accordance with [49 CFR Part 40.25](#); document.
  - Ask each applicant if they have failed or refused a DOT pre-employment test in the previous two years [per 40.25\(j\)](#); document.
  - Send applicant of safety-sensitive position for USDOT pre-employment drug test and receive verified negative results prior to performance of safety-sensitive duties.
  - If current employee has not performed a safety-sensitive function for 90 days or more and has been out of the random testing pool during that time, send the individual for a new USDOT pre-employment drug test prior to returning to safety-sensitive functions.
  - Conduct required 60 minutes of training on prohibited drug use (See Section 5 above)
  - Provide access to D&A policy and have them sign policy acknowledgment form (See Section 4 above)
  - Resources:
    - [Pre-Employment Notification and Acknowledgment Form](#)
    - [Previous USDOT employer Release of Information Form](#)
    - [Acknowledgment of 60 minutes of training Form](#)
    - [Notification of Testing Form](#)
- Random Testing ([655.45](#))
  - Ensure selections occur no less frequently than quarterly.
  - Ensure selections are made by a scientifically valid method wherein all employees have an equal chance of being selected.
  - Ensure the random selection list is transmitted to the DAPM in a secure manner.
  - Ensure random testing is spread throughout the calendar year in a manner that is unpredictable.
  - Ensure random testing is spread throughout all days of the week and times of the day when safety-sensitive functions are performed in a manner that is unpredictable.
  - Ensure that employees notified of their selection for random testing proceed immediately to the testing site.
  - Ensure random alcohol testing is only conducted just before, during, or just after the performance of safety-sensitive functions.
  - Ensure you are only excusing employees from random testing for legitimate reasons (i.e., employee is unavailable throughout the remainder of the entire selection period) and maintain a record of any excusals.
  - Ensure you meet the current minimum annual testing rates by the end of the calendar year. Current rates can be found here: <https://www.transportation.gov/odapc/random-testing-rates>
  - Resources:
    - [Random Testing Chart Generator](#)
    - [Notification of Testing Form](#)
- Reasonable Suspicion Testing ([655.43](#))
  - Ensure that any decision to conduct reasonable suspicion testing is based on specific, contemporaneous, articulable observations made by a trained supervisor/company official.
  - Ensure reasonable suspicion alcohol testing is only conducted just before, during, or just after the performance of safety-sensitive functions.

- Ensure that if the reasonable suspicion alcohol test is not conducted within 2 hours of the time of the observation, that there is a record of the reason for the delay in the file.
- Ensure that if the reasonable suspicion alcohol test is not conducted within 8 hours of the time of the observation, that all attempts to conduct the test cease.
- Ensure that any decision to conduct reasonable suspicion testing is documented and maintained on file.
- Resources:
  - [Reasonable Suspicion Determination Report](#)
  - [Notification of Testing Form](#)
- Post-Accident Testing ([655.44](#))
  - Ensure all applicable supervisors/agency officials have a comprehensive understanding of [FTA's post-accident testing thresholds](#).
  - Ensure all applicable supervisors/agency officials understand the time limits for FTA post-accident drug testing and alcohol testing.
  - Ensure that all post-accident drug & alcohol testing decisions are documented and maintained.
  - Ensure that FTA post-accident drug & alcohol testing is ONLY conducted following accidents that meet FTA post-accident thresholds.
  - Ensure that if the post-accident alcohol test is not conducted within 2 hours of the time of the observation, that there is a record of the reason for the delay in the file.
  - Ensure that if the post-accident alcohol test is not conducted within 8 hours of the time of the observation, that all attempts to conduct the test cease.
  - Ensure that if the reasonable suspicion alcohol test is not conducted within 2 hours of the time of the observation, that there is a record of the reason for the delay in the file.
  - Ensure that if the post-accident drug test is not conducted within 32 hours of the time of the observation, that all attempts to conduct the test cease.
  - Resources:
    - [Post-Accident Testing Chart](#)
    - [Post-Accident Decision Making Form](#)
    - [Notification of Testing Form](#)
- Non-Negative Test Results ([655.35](#); [655.46](#); [655.61](#))
  - Ensure that an employee is immediately removed from the performance of safety-sensitive functions following any of the following test results:
    - Confirmed Alcohol test  $\geq 0.02$ , but  $< 0.04$
    - Confirmed Alcohol test  $\geq 0.04$
    - Verified positive drug test
    - Refusal to test
  - Ensure that the employee/applicant is provided a list of USDOT qualified SAPs following a confirmed alcohol result of 0.04 or above, a verified positive drug test, or a refusal to test.
- Return To Duty Testing ([655.46](#)) & Follow-Up Testing ([655.47](#))
  - Ensure the employee completes the SAP assessment process.
  - Ensure you receive an initial evaluation letter from the SAP that meets all requirements of [49 CFR Part 40.311\(c\)](#)
  - If the SAP determines the employee has demonstrated successful compliance:

- Ensure you receive a follow-up evaluation letter from the SAP that meets all requirements of [49 CFR Part 40.311\(d\)](#)
- If you determine you will be returning the employee to safety-sensitive functions:
  - Ensure the employee is sent for a return-to-duty drug and/or alcohol test as prescribed by the SAP.
  - Ensure any return-to-duty drug test is conducted under directly observed conditions.
  - After passing return-to-duty testing, return the employee to random testing pool.
  - Ensure the SAP's follow-up testing plan is carried out
  - Ensure all follow-up drug testing is conducted under directly observed conditions
- If the SAP determines the employee has NOT demonstrated successful compliance:
  - Ensure you receive a follow-up evaluation letter from the SAP that meets all requirements of [49 CFR Part 40.311\(e\)](#)
- Resources:
  - [Notification of Testing Form](#)

## 7. Review Testing Records and Fix Errors When Found

- Review Alcohol Testing Forms (ATF) and Custody and Control Forms (CCF).
- Review MRO drug test results.
- Use Affidavit of Correction Forms for ATFs and CCFs when errors are found.
- Resources:
  - [Alcohol Testing Form \(ATF\) Review Checklist](#)
  - [ATF Affidavit of Correction Form](#)
  - [Custody and Control Form \(CCF\) Review Checklist](#)
  - [CCF Affidavit of Correction Form](#)
  - [MRO Drug Test Results Checklist](#)

## 8. Retention of D&A Program Records

- Maintain all USDOT D&A records [in a secure location with controlled access](#) (typically a locked filing cabinet).
  - If you store records electronically, you must ensure that the records are easily accessible, legible, formatted and stored in an organized manner.
  - If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.
- Retain the following records for at least 5 years:
  - Verified positive drug test results
  - Alcohol test results greater or equal to 0.04
  - Documentation of refusals to test
  - SAP Referrals
  - Copies of annual Drug and Alcohol Management Information System (MIS) reports submitted to FTA
  - Return-to-duty and follow-up test results

- Retain the following records for at least 3 years:
  - Previous DOT employer records request documentation
- Retain the following records for at least 2 years:
  - Random selection lists
  - Reasonable suspicion testing documentation
  - Post-accident testing documentation
  - Employee training documentation
- Retain the following records for at least 1 year:
  - Negative test results

**9. Report D&A Testing Data Annually via the MIS System ([655.72](#))**

- Ensure you complete the MIS report by the due date set by IndyGo (but no later than the federal due date of March 15)
- Ensure your MIS report contains only FTA drug & alcohol testing information
- Ensure the MIS report is accurate