



# ***U.S. Department of Transportation***

***Office of the Secretary of Transportation***

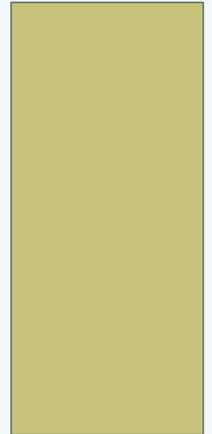
***Office of Drug and Alcohol Policy and Compliance***

***Patrice M. Kelly, J.D.***

***Director***

## **“DOT Program Update”**

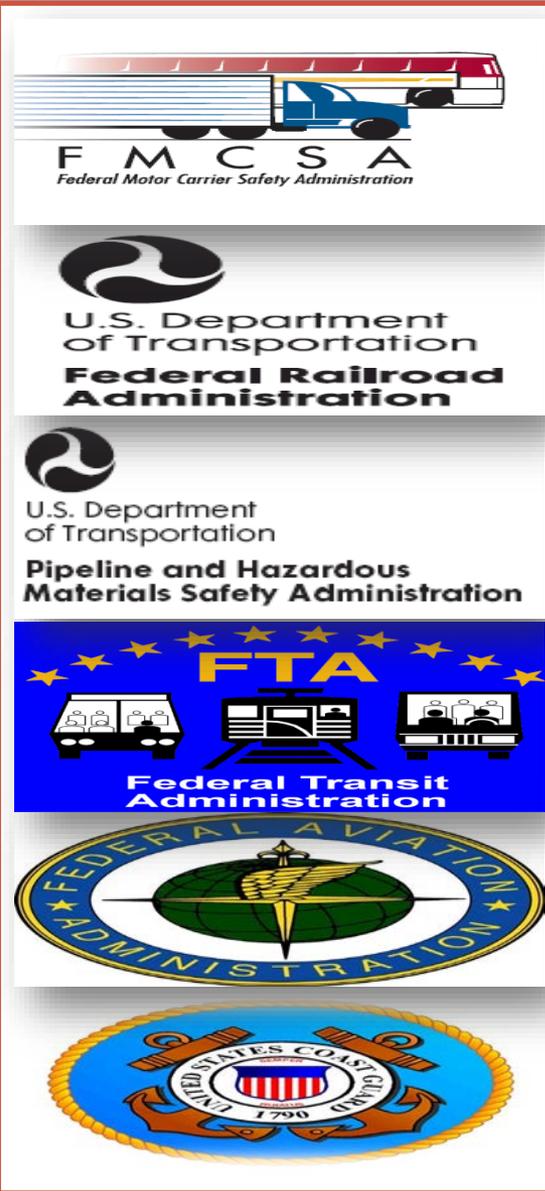
***Federal Drug Testing Advisory Board***  
***December 4, 2018***



# Office of the Secretary of Transportation



**49 CFR Part 40**



**49 CFR Part 382**

**49 CFR Part 219**

**49 CFR Part 199**

**49 CFR Part 655**

**14 CFR Part 120**

**46 CFR Parts 4,16**

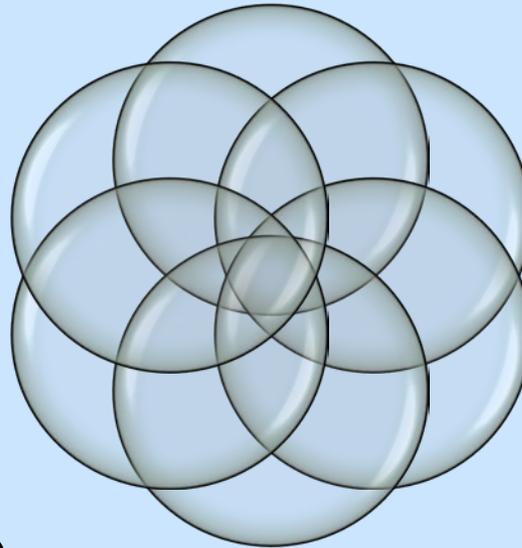


# DOT'S HORIZON ISSUES

## Marijuana Issues

**Opioids Act –  
Transparency  
of DOT's MIS  
Data**

**Driver  
Clearinghouse  
Database**



**Electronic  
Reporting/Records**

**Alternative  
Specimen Testing  
Methodologies:**

- Oral Fluids
- Hair

**Public Interest  
Exclusions (PIE)**



# DOT RANDOM DRUG TESTING RATES

- Calendar Year 2019 Minimum Annual Random Drug Testing Rates for which Regulated Employers Must Test Safety-sensitive Employees:
  - The Federal Transit Administration (FTA) will raise the annual minimum random drug testing rate from 25% to 50%
  - The Pipeline and Hazardous Materials Safety Administration (PHMSA) will remain at 50%
  - The Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Administration (FMCSA), and the United States Coast Guard have not yet announced its rate



# ODAPC TECHNICAL ASSISTANCE

In 2017, ODAPC's outreach included:

- **15,662** emails, phone calls, Ask ODAPCs & other interactions with DOT Program Managers and our regulated public
  - More than double the 7,290 contacts in 2012
- There were **64,882** list serve subscribers as of November 1, 2018
  - That is more than triple the number of subscribers in 2012

ODAPC's website – one of the Department's most viewed website:

- **785,762** sessions on ODAPC's web page in 2017
  - **1,956,479** subpages viewed



# OUTREACH ABOUT OPIOIDS

- ODAPC spoke to more than 2,000 about opioids at industry conferences, union meetings and in other venues.
- ODAPC sent list serve notices to our more than 64,000 subscribers.



# OUTREACH ABOUT OPIOIDS

- After publishing our final rule on November 13, 2017, which became effective on January 1, 2018, we published, through our list serve, 5 informational notices:
- Summary of Changes -  
[https://www.transportation.gov/odapc/Part 40 Final Rule Summary of Changes](https://www.transportation.gov/odapc/Part_40_Final_Rule_Summary_of_Changes)
- CCF Notice -  
[https://www.transportation.gov/odapc/Notice\\_CCF December 2017](https://www.transportation.gov/odapc/Notice_CCF_December_2017)
- Policies Notice (for Employers) –  
[https://www.transportation.gov/odapc/Part 40 DOT Policies Notice 2017](https://www.transportation.gov/odapc/Part_40_DOT_Policies_Notice_2017)
- Employee Notice –  
[https://www.transportation.gov/odapc/Part 40 DOT Employee Notice 2017](https://www.transportation.gov/odapc/Part_40_DOT_Employee_Notice_2017)
- 5 Panel Notice -  
[https://www.transportation.gov/odapc/DOT 5 Panel Notice 2018](https://www.transportation.gov/odapc/DOT_5_Panel_Notice_2018)



# OUTREACH ABOUT OPIOIDS

- Employee Notice issued via list serve on December 11, 2017  
[https://www.transportation.gov/odapc/Part\\_40\\_DOT\\_Employee\\_Notice\\_2017](https://www.transportation.gov/odapc/Part_40_DOT_Employee_Notice_2017):
  - Educated DOT safety sensitive employees about the potential opioids addiction issues
  - Reminded employees to have continuing dialog with their treating physicians about using the Opioids before performing DOT safety sensitive functions
  - Educated employees that a Medical Review Officer has the discretion to report to a third party to say that continued performance is likely to pose a significant safety risk. The MRO may report this information even if the MRO verifies your drug test result as 'negative.'
- We are working on a new employee notice – stay tuned!



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

- DOT-FRA: Require the Secretary of Transportation to publish a final rule revising the regulations promulgated under section 20140 of title 49, U.S.C., to designate a rail mechanical employee as a railroad employee responsible for safety-sensitive functions.



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

- DOT: Require the Department of Transportation to establish and make publicly available on its website a database of the drug and alcohol testing data reported by employers for each mode of transportation. This data will be updated annually and will include:
  - the total number of drug and alcohol tests by type of substance tested;
  - the drug and alcohol test results by type of substance tested;
  - the reason for the drug and alcohol test (pre-employment, random, post-accident, reasonable suspicion or cause, return-to-duty) by type of substance tested; and
  - the number of individuals who refused testing.
- In addition, in providing this data, the DOT must not release commercially sensitive data.



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

- Comptroller General: Review the DOT Drug and Alcohol Testing Management Information System and submit its report to the Senate Committee on Commerce, Science, and Transportation.



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## **Fentanyl**

- HHS: The Secretary of Health and Human Services must determine whether a revision to the Mandatory Guidelines for Federal Workplace Drug Testing Programs to expand the opiate category to include fentanyl is justified.
- DOT: If fentanyl is added to the testing panel by HHS, the Secretary of Transportation must publish a final rule revising part 40 of title 49, Code of Federal Regulations, to include fentanyl in DOT's drug-testing panel, consistent with the Mandatory Guidelines for Federal Workplace Drug Testing Programs.



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## **Hair Testing**

- HHS was given 2 requirements:
  1. Reporting requirement: Not later than 30 days after enactment of S. 2848 and every 180 days thereafter until the Secretary of Health and Human Services publishes a final notice of scientific and technical guidelines for hair testing in accordance with section 5402(b) of the FAST Act, the Secretary of HHS must submit a status report to the Senate Committee on Commerce, Science, and Transportation.



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## **Hair Testing**

- HHS was given 2 requirements:

### 2. Requirement regarding passive exposure:

“To the extent practicable and consistent with the objective of the hair testing ... the final notice of scientific and technical guidelines ... shall eliminate the risk of positive test results, of the individual being tested, caused solely by the drug use of others and not caused by the drug use of the individual being tested.”



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## Oral Fluids Testing

- HHS: Not later than December 31, 2018, HHS must publish a final notice of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid to detect illegal or unauthorized use of substances.
- The requirement to eliminate passive exposure:
  - “To the extent practicable and consistent with the objective of the testing ... the scientific and technical guidelines under that subsection shall eliminate the risk of positive test results of the individual being tested, caused solely by the drug use of others and not caused by the drug use of the individual being tested.”



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## **Paperless Electronic Chain of Custody Forms**

- HHS: Requires HHS to “ensure that each certified laboratory that requests approval for the use of completely paperless electronic Federal Drug Testing Custody and Control Forms from the National Laboratory Certification Program’s Electronic Custody and Control Form systems receives approval for those completely paperless electronic forms instead of forms that include any combination of electronic traditional handwritten signatures executed on paper forms.”
- Deadline: October 24, 2019



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## **Electronic Records under Part 40**

- DOT: Requires that 18 months after HHS approves the paperless electronic CCFs, DOT will issue a final rule revising Part 40 “to authorize, to the extent practicable, the use of electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms.”



# FIGHTING OPIOIDS IN TRANSPORTATION ACT OF 2018 PL 115-271

## **FMCSA CDL Drug and Alcohol Clearing House**

- DOT-FMCSA: Requires not later than 180 days after the date of enactment, and biannually thereafter until the compliance date, the Administrator of the Federal Motor Carrier Safety Administration, to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure an updated schedule, including benchmarks, for implementing the final rule, a description of each early action FMCSA is taking to implement the final rule before the compliance date. (January 6, 2020 or the date of the national clearinghouse required under 31306a of title 49, U.S.C.)



# Refresher on the DOT-HHS Relationship

- **The Omnibus Transportation Employees Testing Act of 1991 (OTETA) codified DOT's already existing relationship with the Department of Health and Human Services (HHS) as our scientists for the purpose of drug testing.**



# Refresher on the DOT-HHS Relationship (cont.)

- **OTETA requires that the DOT follow HHS on certain specific aspects of the science of drug testing:**
  - “for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines ... establishing”:
    - **Comprehensive standards for laboratory controlled substances testing;**
    - **Minimum list of controlled substances for which individuals may be tested; and**
    - **Appropriate standards for certifying and reviewing labs**



# Refresher on the DOT-HHS Relationship (cont.)

- DOT tailors many procedural aspects of our regulated testing to fit the needs of the transportation industry employers and their employees:
  - Collection process
  - MRO verification of test results
    - Reporting that the employee may be medically unqualified under an applicable DOT agency regulation
    - Reporting of significant safety risks to third parties
  - The return-to-duty process



# EXAMPLE OF DOT & HHS DIFFERING ON NEGATIVE-DILUTE RESULTS

- DOT and HHS
  - Creatinine (Cr) below 2 - substituted
- DOT
  - Negative and Cr between 2 and 5
    - Immediate re-collection under direct observation (DO)
  - Negative and Cr of greater than 5
    - May re-collect but not under DO; treat all employees the same
- HHS
  - Negative and Cr between 2 and 20
    - Immediate recollection (not under DO)

## DOT rationale:

- "The Department has become aware of a small number of cases in which individuals appear to have had legitimate medical explanations for producing specimens with a creatinine level of less than or equal to 5 mg/dL. "[May 28, 2003; 68 FR 31624]
- "...to provide the maximum margin of safety to ensure that people who may naturally produce low creatinine levels—most cases that have been brought to the Department's attention have been in the 4.1–4.9 mg/ dL range—will not be reported to employers as having substituted their specimens." [May 28, 2003; 68 FR 31625]



# REFRESHER ON THE DOT-HHS TESTING RELATIONSHIP (CONT.)

- We cannot follow HHS when the Omnibus Act prohibits it
  - For example: IITFs
    - The Omnibus Act requires “that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests.”
    - An IITF can conduct the initial screening for drugs in a urine specimen, but it is not certified to provide a confirmation test. Therefore, we could not follow HHS for this option.



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<https://www.transportation.gov/odapc>

- Drug and Alcohol Testing**
- Resources for Key Persons ▼
- Regulations and Interpretations ▼
- Guidance ▼
- Part 40 Federal Register Notices, Court Decisions, Legislation
- FAQs
- Public Interest Exclusions
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## Office of Drug & Alcohol Policy & Compliance

### Overview

The Office of Drug and Alcohol Policy and Compliance advises the Secretary on national and international drug testing and control issues and is the principal advisor to the Secretary on rules related to the drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. The Office publishes regulations and provides official interpretations on drug and alcohol testing, including how to conduct tests, and the evaluation and treatment procedures necessary for returning employees to duty after testing violations. The Office also coordinates the Department's involvement with the President's National Drug Control Strategy annually.

### Most Viewed Documents

- [Drug and Alcohol Testing Regulations \(49 CFR Part 40\)](#)
- [Part 40 DOT - Employee Notice](#)
- [DOT "Medical Marijuana" Notice](#)
- [Part 40 DOT - 5 Panel Notice](#)
- [Reminder - CCF Notice \(May 2018\)](#)

### Most Requested Information

- [Drug and Alcohol Testing Regulations \(49 CFR Part 40\)](#)
- [Am I Covered?](#)
- [Documents and Forms](#)
- [Employee Page](#)
- [How do I find a Substance Abuse Professional \(SAP\)?](#)

### Key Resources

- [MRO Notification to ODAPC of Split Specimen Cancellation](#)
- [Mock Collection Instructional Video](#)
- [DOT's 10 Steps to Collection Site Security and Integrity](#)



(click the banner to learn more)

- [DOT "Recreational Marijuana" Notice](#)
- [DOT "Medical Marijuana" Notice](#)
- [DOT Agency/USCG Drug and Alcohol Program Manager Information](#)
- [Subscribe to/Read ODAPC List Serve Notices](#)

#### Related Links

- [Opioid Overdose Prevention Tool Kit](#)
- [Office of National Drug Control Policy](#)
- [SAMHSA/Division of Workplace Programs](#)
- [DEA Drug Fact Sheets](#)

#### Contact Us

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#### Tags