



Moving Public Transportation
Into the Future

Navigating Non-Negative Drug/Alcohol Test Results

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ACRONYMS

ATF

Alcohol
Testing
Form

BAT

Breath
Alcohol
Technician

CCF

Custody and
Control
Form

DAPM

Drug and
Alcohol
Program
Manager

DER

Designated
Employer
Representative

EBT

Evidential
Breath Testing
Device

MRO

Medical
Review
Officer

ODAPC

Office of Drug
& Alcohol
Policy &
Compliance

SAP

Substance
Abuse
Professional

DEFINITIONS

ATF

- The DOT form, used to document every DOT alcohol test

BAT

- A person who instructs and assists employees in the alcohol testing process and operates an EBT

CCF

- The Federal Drug Testing Form, used to document every DOT urine collection

DAPM

- An individual responsible for the implementation of the drug and alcohol testing program

DER

- An employee authorized to take immediate action to remove employees from safety-sensitive duties. The DER also receives test results.



DEFINITIONS

EBT

- A device approved by NHTSA for evidential testing of breath

MRO

- A person who is a licensed physician and who is responsible for verifying the results of DOT drug tests

ODAPC

- The office in the Office of the Secretary, DOT, that is responsible for coordinating drug & alcohol testing program matters within USDOT and providing information concerning the implementation of 49 CFR Part 40

SAP

- A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare

DAPM vs. DER?

Identifying Roles

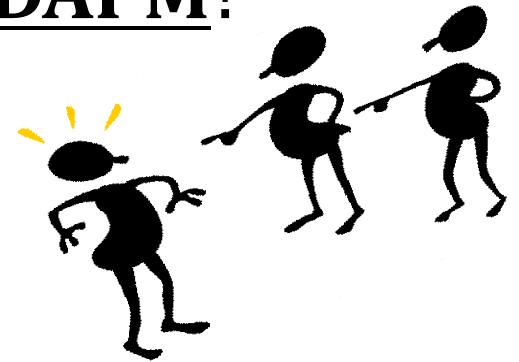


- ◆ What is a ... Who is the... DAPM?

- ◆ DAPM = or ≠ DER

- ◆ Part 40 Defines “Designated Employer Representative (DER)”

- “An 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 process... receives test results and other communications for the employer”

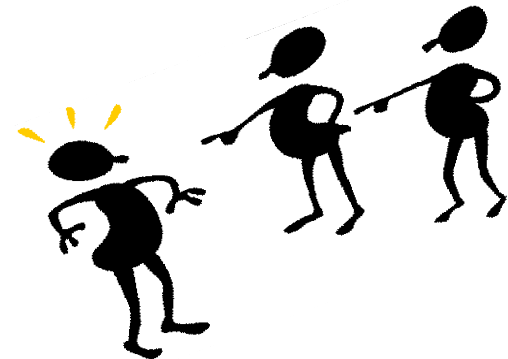


DAPM vs. DER?

Identifying Roles



- ◆ Most often there is a SINGLE DAPM
- ◆ Many transit agencies will have 1 DAPM who is also the DER
- ◆ Some times an agency will have a DAPM and multiple DERs
 - Usually different DERs represent different “divisions”
 - i.e., DER for “Operations” ; DER for “Maintenance” ;
 - DER for different locations



USDOT D&A REGULATIONS

49 CFR Part 40



FAA

FMCSA

FRA

FTA

PHMSA

USCG

49 CFR Part 382

49 CFR Part 655

STAY UP-TO-DATE!

ODAPC

- www.transportation.gov/odapc

ODAPC List-Serv

- www.transportation.gov/odapc/get-odapc-email-updates

FTA Quarterly D&A Newsletter

- FTA's website



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GENERAL PROGRAM REQUIREMENTS

PROHIBITED DRUGS

Marijuana

- Rx and Recreational Prohibited

Cocaine

Opioids

- Codeine, Morphine, Heroin, Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone

Phencyclidine (PCP)

Amphetamines

- Meth and Ecstasy



PROHIBITED ALCOHOL

Alcohol Prohibited:

- While performing SS duties
- 4 hours prior to SS duties
- While on call to perform SS duties
- Within 8 hours following an accident, or until the test has been conducted

PERIOD OF COVERAGE

DRUGS

- Drug testing can be performed anytime employee is on duty

ALCOHOL

- Alcohol testing just before, during, or just after performance of safety-sensitive duties



REFUSAL TO TEST (excluding pre-employment)

Fail to appear for a test in a reasonable time

Fail to remain at the testing site until testing process is complete

Fail to attempt to provide a specimen

Fail to permit monitoring or direct observation, as required

Fail to provide sufficient quantity of specimen w/o a valid medical explanation

Fail or decline to take a 2nd test as directed by the collector or employer



REFUSAL TO TEST (excluding pre-employment)

Failure to cooperate with any part of the testing process

Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly –observed urine collection drug test

Possess or wear a prosthetic or other device used to tamper with the collection process

Admit to adulteration or substitution to the collector or MRO

Refuse to sign Step 2 of the ATF

Fail to remain readily available following an accident

Provide an adulterated or substituted specimen, as verified by the MRO



PRE-EMPLOYMENT REFUSALS TO TEST

It is NOT a refusal to test on a Pre-Employment if applicant:

- Fails to appear for test;
- Leaves the collection site prior to commencement of test

DRUG TEST COMMENCES

- Donor accepts or selects specimen cup

ALCOHOL TEST COMMENCES

- Donor accepts or selects mouthpiece



TEST RESULTS

Positive drug/alcohol test or test refusal

1. Immediate Removal from SS duty
2. Advise employee of available resources & referral to list of USDOT qualified SAPs
3. Follow transit system disciplinary policy

Non-Negative alcohol result (0.02-0.039)

1. Removal from SS duty for minimum of 8 hours unless subsequent test results in BAC less than 0.02
 2. Follow transit system disciplinary policy
- NOT A DOT VIOLATION = NO SAP REFERRAL**

Negative Dilute

- Must determine whether or not to retest after a negative dilute
- The policy must state this determination
- 2nd test result is test of record
- Must follow your policy and be consistent for all employees

TEST RESULTS

Cancelled Tests

- Not Negative; Not Positive
- MUST NOT TREAT AS A POSITIVE TEST OR RULE VIOLATION
- Must not treat as a negative test for purposes of pre-employment, return-to-duty, follow-up
- Must not retest after a cancelled test, unless directed by MRO or when negative result is required (as discussed above)
- Cancelled tests don't count toward random testing percentages
- A cancelled test DOES NOT provide a valid reason for the employer to conduct a NON-DOT test

TEST RESULTS

Drug Test Results – Required Information

- Is your MRO providing everything to you as required by the regulations for drug test results?
- You must make sure you have everything required from your MRO
- This is vital for accurate results ... This is also vital for providing oversight of your MRO
- Drug test results can be provided to you from MRO in 1 of 2 ways.
- Method 1: Copy of CCF
 - Stamped, Dated, Legible Photocopy of Copy 2

TEST RESULTS

Drug Test Results – Required Information

- Method 2: Result Report
 - Full Name SSN/Employee ID # of Employee
 - Specimen ID Number from CCF
 - Reason for test (e.g., random, post-accident, etc.)
 - Date of COLLECTION
 - Date MRO received Copy 2 of CCF
 - Result of test
 - Date result was verified by MRO
 - Signed/Stamped by MRO
- NOTE** Must never include quantitative values of drug test results



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TESTING PROCEDURES



TESTING METHODS

System must abide by 49 CFR Part 40 procedures

- Must make Part 40 available to employees upon request

Drug Testing Process - (detailed discussion optional)

- Split Specimen collection
- CCF with unique #
- Initial Screen at lab
- Confirmatory test at lab
- MRO Review

Alcohol Testing

- Initial Screen (ASD or EBT)
- Confirmatory test on EBT after 15 minute wait (if screening was 0.02 or above)

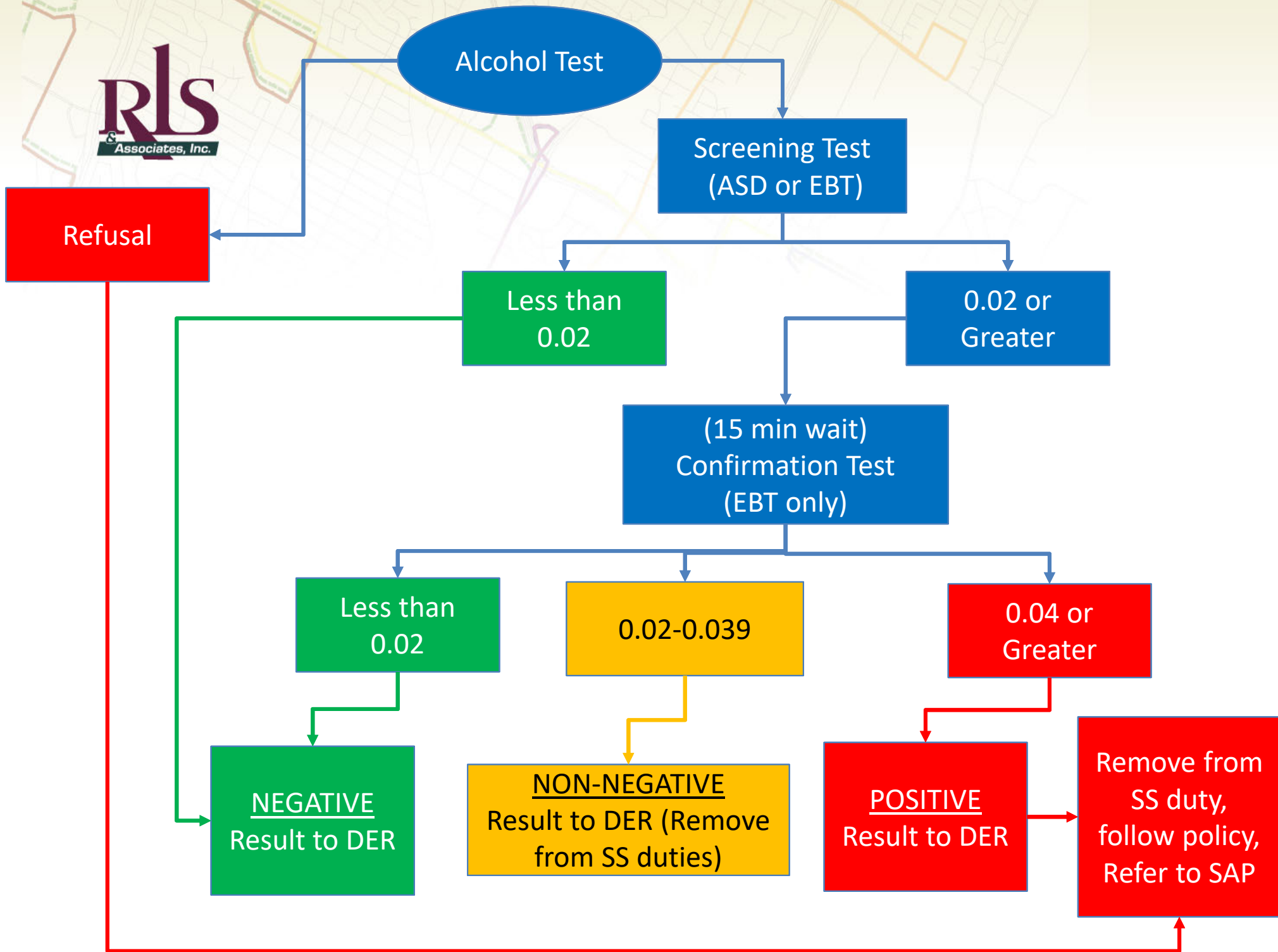
BAT

What do they do?

- Conduct alcohol screening and confirmation tests (2nd test given to an employee with a screening test result of 0.02 or higher)
- Collect and analyze breath using an evidential breath testing (EBT) device
- Document result on an ATF and transmit to the employer timely and confidentially

What qualifications are necessary?

- Knowledge of basic information (Part 40, applicable DOT regulations)
- Training and proficiency demonstration which meets §40.213
- Refresher training required every 5 years



SPECIMEN VALIDITY

Adulterated

- Not a normal constituent or contains endogenous substance at a concentration that is not a normal physiological concentration.

Diluted

- Diluted specimens have creatinine and specific gravity values that are lower than expected for normal human urine.

Substituted

- Not consistent with normal human specimen

Invalid

- Unidentified adulterant, unidentified interfering substance, abnormal physical characteristic, or lab cannot complete testing.

SPLIT SPECIMEN TEST

Invalid Test

- Employees do not have access to a test of their split specimen

Positive/Adulterated/Substituted

- Employee has right to request split specimen to be tested



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RETURN-TO-DUTY & FOLLOW-UP TESTING



ZERO TOLERANCE vs. 2nd CHANCE

Zero Tolerance

- Following positive drug/alcohol test, or refusal to test → Employee is terminated
- Remember a positive alcohol test is BAC 0.04 or above
- If your policy says “we will terminate for positive alcohol test” – this would mean you would not terminate for non-negative alcohol test (0.02-0.039)

2nd Chance

- Following positive drug/alcohol test → employee may be allowed to return to safety-sensitive duties after completing required process



ZERO TOLERANCE vs. 2nd CHANCE

Required Action NO MATTER YOUR POLICY:

- Immediate removal from SS duty
- Referral to a list of SAPs

Referral to SAP

- Even if the employee is being terminated
- Even if the positive/refusal to test was a Pre-employment test
- Zero-Tolerance employer not required to follow-up with SAP and ensure individual actually completes the process (unless they return to duty)
- 2x SAPs required if employee is being terminated or applicant is not being hired



Return-to-Duty Testing

Following a Positive/Refusal to Test

- Must have negative RTD test prior to returning to SS duty
- Eligibility to return as well as the type of RTD test (drug or alcohol) is determined by SAP
- Decision on IF and WHEN the employee ACTUALLY returns to SS duty is made by EMPLOYER
- RTD drug tests always directly observed, if not, the test must be cancelled and redone

Follow-Up Testing

Conducted Once Employee Returns to SS Duty

- SAP writes the F/U testing plan
- Minimum of 6 tests in first 12 months back to work
- Maximum of 5 years worth of F/U testing
- SAP determines if F/U testing will be for drugs, alcohol, or both. It is not tied to original positive test type
- Employer cannot modify F/U testing plan, only the SAP
- All F/U tests must be directly observed, if not, test must be cancelled and redone
- Must be unpredictable

Follow-Up Testing

Follow-Up Testing Schedule

- The dates and time for the F/U testing is decided by the employer (must fit the SAP's plan)
- F/U testing is in addition to any other types of tests (i.e., random)
- Employee remains in testing pool
- Who pays for testing is not mandated by USDOT, but testing must occur if you return them to SS duty

Follow-Up Testing

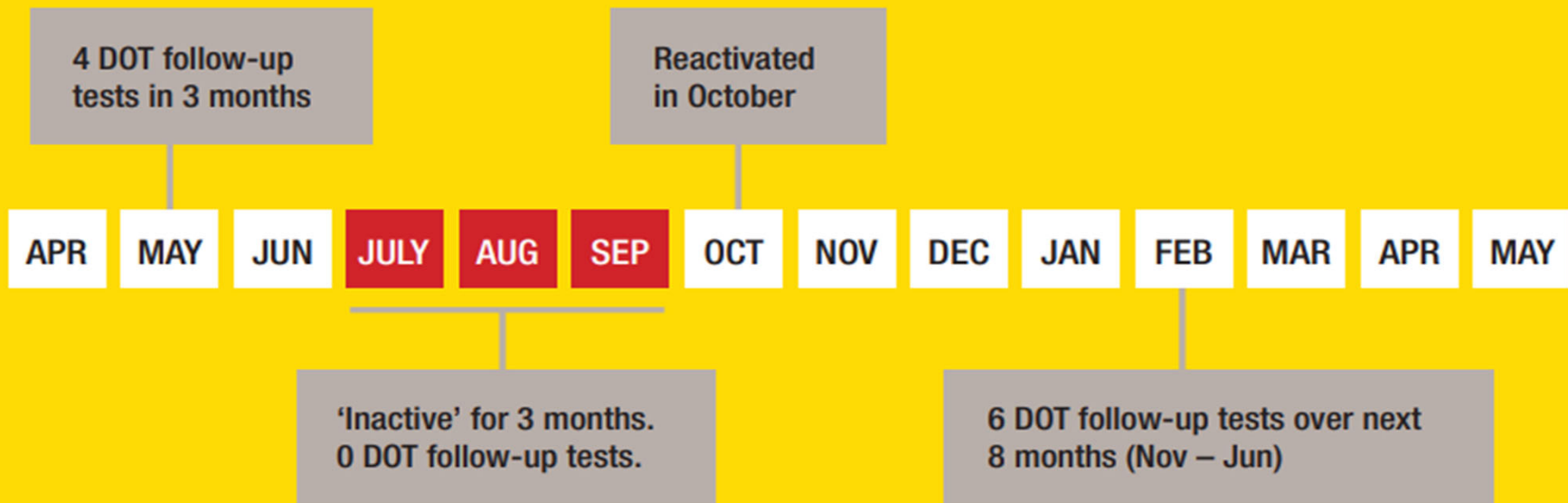
Time Requirements?

- **DRUGS** = Anytime employee is on duty
- **ALCOHOL** = Only just before, during, or just after performance of SS functions

Follow-Up Testing

Follow-Up Testing Common Errors/FAQs

Follow-up testing plan = 10 DOT follow-up tests in first 12 months.



Follow-Up Testing

Follow-Up Testing Common Errors/FAQs

- What if Testing Plan Isn't Followed?
- Employee Not Allowed To Know Testing Plan
- Follow-Up Alcohol Testing **ONLY** Just Before, During, Just After S.S. Functions

Follow-Up Testing

Follow-Up Testing Common Errors/FAQs

- What Happens if Follow-Up Test is Positive, ≥ 0.04 , or Refused?
 - Immediate removal from SS duties
 - Initial plan would cease
 - If returned to duty, RTD would start from beginning
 - SAP referral, SAP evaluations (2x), education/treatment, RTD testing, new Follow-Up testing plan
 - Previous Follow-Up tests don't count toward new plan



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RECORDS RETENTION



RETENTION PERIODS

ONE YEAR

- Verified negative drug test results
- Employer copy of the CCF
- Test result from MRO
- Cancelled test results
- Negative alcohol test records (below 0.02 BAC)

TWO YEARS

- Education and training records
- Records related to collection process
- Random selection lists; post-accident testing decision forms; reasonable suspicion determination forms; MRO documents
- Records of the inspection, maintenance, and calibration of EBTs



RETENTION PERIODS

THREE YEARS

- Previous DOT employer records request documentation, such as:
 - Records of previous positive drug and alcohol tests (0.02 or above), test refusals, other violations
 - Employee return-to-duty documentation
 - Records showing good-faith-effort to obtain records from previous employers, including consent forms



RETENTION PERIODS

FIVE YEARS

- Verified positive drug test results
- Alcohol test results 0.02 or greater
- Refusals to test
- Adulterations
- Substitutions
- Referrals to SAP
- SAP reports
- Follow-up tests and schedules
- Annual MIS reports



Retention Periods Recap

				BEST PRACTICES
Negative & Canceled				Pre-Employment: Best practice to maintain all negative pre-employment results throughout the period of employment
Collection Process and Employee Training				Post-Accident: Regardless of result, best practice to maintain all PA records for statute of limitations Training: Best practice to maintain TX records throughout period of employment Vendor Oversight: Best practice to maintain these records indefinitely
Previous DOT Employer Drug and Alcohol Record Request Documentation				Previous Employer D&A History Checks: Best practice to maintain these throughout period of employment
Verified Positive Drug Tests, Refusals, SAP Referrals/Reports, MIS Reports, Alcohol Results 0.02 or Greater.				Positive/Refusals: Best practice to maintain these indefinitely

1 YR 2 YR 3 YR 5 YR



Questions?

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