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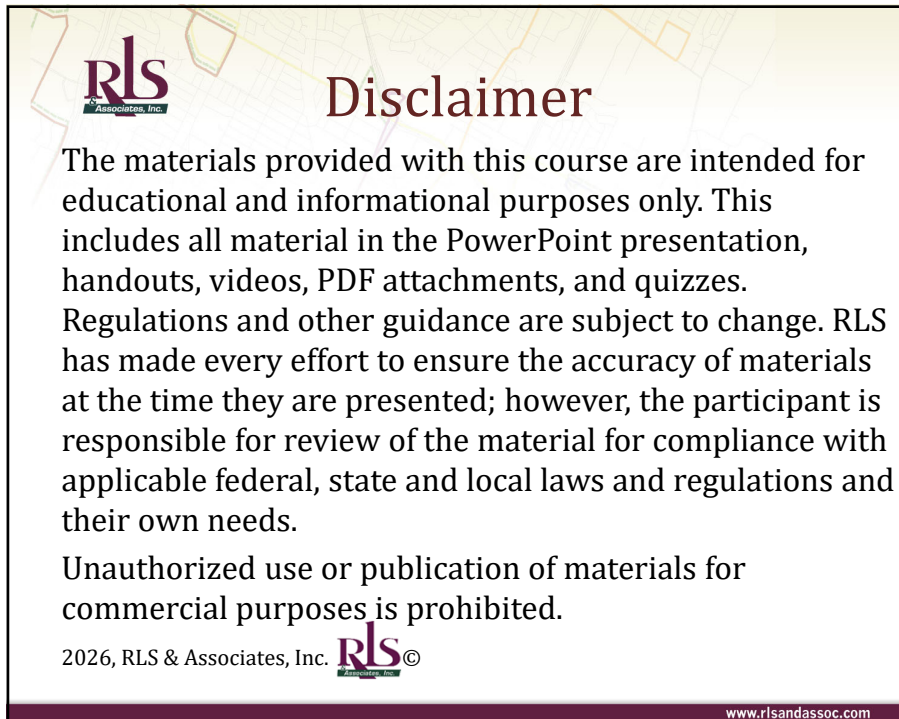
Moving Public Transportation
Into the Future

Ensuring Fairness and Compliance: How to Make Quality Post-Accident Testing Decisions

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POST-ACCIDENT TESTING

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USDOT D&A REGULATIONS

USDOT – 49 CFR Part 655.4 and 655.44

- Definitions
- Testing Criteria

Agency Specific D&A Testing Regulations

- Establishes the Definition of an Accident and Testing Thresholds
- Federal Rules Strive to:
 - Protect the safety of the traveling public
 - Acknowledges employee rights
 - Limits burdensome testing

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BASICS

An Occurrence Associated w/ Operation of Vehicle (whether or not in revenue service) and one or more of following occur:

- Human Fatality
- Individual suffers bodily injury and immediately transported away from scene for medical treatment
- One or more vehicles incurs disabling damage
- *Vessel or trolley removed from operation*

“The 3 (4) Thresholds”

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ALWAYS TEST

Human Fatality

- Operation of a vehicle, even when not in revenue service
- **Test Driver and all other surviving employees**

Decision Made at the Time

- Fatality must occur at the scene
- Fatality must occur as a result of the operation of the vehicle
- Operation of lift is considered operation of the vehicle
- Trip and fall, heart attack, death outside of vehicle NOT testable

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MEDICAL TREATMENT

Medical Treatment Comes First

- If Operator is injured, treatment must supersede testing

Treatment Needed Away from Scene...

- If operator, driver of another vehicle, passenger of any vehicle, or pedestrian is injured and needs medical treatment away from the scene, this will trigger a test
- Decision must be made at the time of the accident
- Test other SS employees who could have contributed

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DISABLING DAMAGE

What is Disabling Damage?

- Vehicle cannot be operated under its own power without further damaging vehicle
- **USUALLY** requires a tow, but not always

What is NOT Disabling Damage?

- Damage to headlights, taillights, turn signals, windshield wipers, horn
- Tire damage/replacement alone is not to be considered disabling damage
- Any other damage which can be easily remedied at the scene of accident with simple tools

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REMOVED FROM OPERATION

Can be Confusing

- Only applies to systems with actual light rail or trolley cars
- Vessels are on the water

Most systems to do apply

- Are your vehicles on the water? NO? Does not apply
- Your trolley must be on a track or overhead electric wire
- Significant damage requires removal from operation

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TIMELY DECISION

Decision to Test

- Made by employer at the time of the accident
- Use best information available AT TIME OF ACCIDENT
- Decisions should not be reversed based on facts learned later on

MUST DOCUMENT DECISION

- Best practice is to use a sample form that is standard for each use and is specific to the D/A Decision

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FTA Post-Accident Drug and Alcohol Testing Decision Making Form

The Federal Transit Administration (FTA) drug and alcohol testing regulation (49 CFR Part 655) requires that safety-sensitive employees involved in a public transportation vehicle accident (as defined at 655.4-d, 655.4-4) submit to tests for alcohol misuse and prohibited drug use as soon as possible following the accident. Part 655 also requires the testing of any other safety-sensitive employee whose performance could have contributed to the accident, as determined by the employer at the scene using the best information available at the time of the decision.

Accident Information:
 Date of Accident: _____ Time of Accident: _____ AM/PM
 Employee Name: _____ Employee ID/SSN: _____

Decision Questions:

- Was the event associated with the operation of a public transportation vehicle?
 _____ NO (FTA drug and alcohol tests are PROHIBITED)
 _____ YES (Answer the following questions to determine need for testing)
- Was there a fatality?
 _____ YES (FTA drug and alcohol tests are REQUIRED) _____ NO
- If there was NO fatality, answer the following questions:
 1. Has any individual suffered a bodily injury and immediately received medical treatment away from the scene of the accident? _____ YES _____ NO
 2. Was there disabling damage to ANY vehicle involved in the accident, requiring the vehicle to be towed away from the scene? _____ YES _____ NO
 3. For rail cars, trolley cars, trolley buses, or vessels ONLY:
 Was the vehicle removed from operation? _____ YES _____ NO

If you answered yes to any of these three questions, can you **completely** discount the performance of the operator of the public transportation vehicle as a contributing factor to the accident?
 _____ NO (FTA drug and alcohol tests are REQUIRED)
 _____ YES. Explain: _____
 (If you answered YES, FTA drug and alcohol tests are PROHIBITED)

- Other than the operator, could the performance of any other safety-sensitive employee have contributed to the accident, using the best information available?
 _____ NO
 _____ YES. Explain: _____
 (If YES, make arrangements to immediately post-accident test that employee)

Did You Decide to Perform FTA Post-Accident Testing?
 _____ YES (Complete page 2 of this form) _____ NO (No further action required)

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Testing Information:
 Collection Site Location: _____ Time Arrived: _____ AM/PM

1. Was the **alcohol** test performed within 2 hours of the time of the accident?
 _____ YES
 _____ NO, Explain: _____
2. Was the **alcohol** test performed within 8 hours of the time of the accident?
 _____ YES
 _____ NO, Explain: _____
 If the alcohol test is not conducted within **8 hours** cease all efforts to administer the test.
3. Was the **drug** test performed within 32 hours of the time of the accident?
 _____ YES
 _____ NO, Explain: _____
 If the drug test is not conducted within **32 hours** cease all efforts to administer the test.

The above documentation was provided by:
 Supervisor Name: _____ Phone No: _____
 Signature: _____ Date: _____

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DEEPER DIVE

FATALITY: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident; and
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

NON-FATAL: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident, **UNLESS** their performance can be completely discounted as contributing factor (**different from fault or citation or vehicle "total"**)
- Any other covered employee who, reasonably may have contributed to accident (mechanic, dispatcher)

Who NOT to Test?

- Employee must be able to give consent
- Cannot test dead or unconscious employee

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CLOCK IS TICKING

Testing Time Requirements

- All testing must occur as soon as possible, after treating injuries and cooperating with law enforcement
- The Post-Accident "Clock" starts at time of accident, not at time of your decision to test

Testing Time Limits

- If alcohol test not conducted within **2 hours** – you must document why
- Cease attempts after **8 hours** for alcohol
- Cease attempts after **32 hours** for drugs
- If any of the above time limits are not met, you **MUST** document the reason why

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PLAN B, IF NEEDED

Acceptance of Law Enforcement Test Results

- Test results of Federal, State, or Local law-enforcement officials can be used only if results are released
- Employer may only use these if they are unable to do their own test
- Must document reason

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MISTAKES & PROBLEMS

Common Findings

- Testing often omitted or significantly delayed
- Ill-defined policies
- No documented procedure
- Inadequately trained supervisor
- Lack of supervisor empowerment

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MISTAKES & PROBLEMS

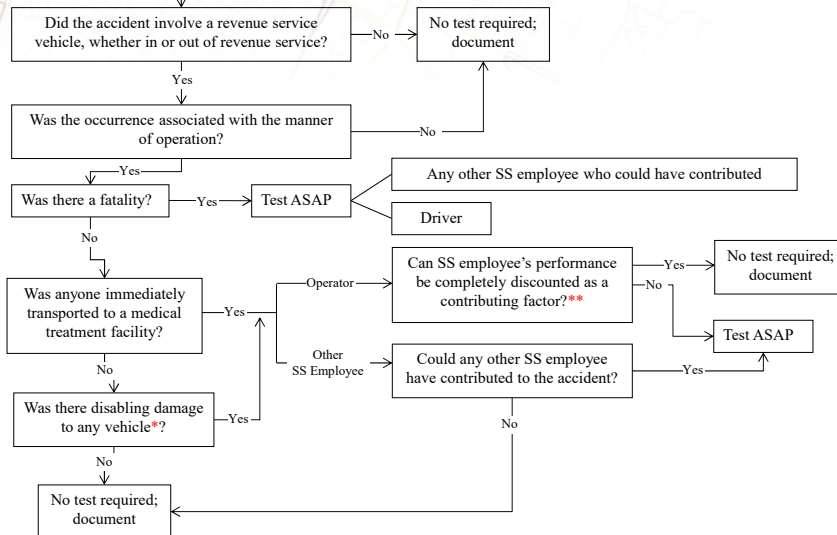
Common Problems

- Ordering USDOT-FTA tests when not required
- The following factors have **NO IMPACT** making your determination for USDOT-FTA post-accident testing:
 - Testing just to be safe★
 - Dollar damage
 - Preventability
 - **Reasonable Suspicion Implications!**
 - Citation vs. No Citation

You are prohibited from conducting a DOT-FTA post-accident test if the DOT-FTA thresholds are not met



ACCIDENT





SHOULD WE or NOT?

Test, Not Test

- Using the criteria discussed earlier, do you think we should test or not?
- Not everyone may agree with all situations
- Let's discuss why or why not to perform an FTA Post-Accident test

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Test, Not Test

- ♦ While driving east on 5th Ave, the transit system van side swipes a pickup truck. The pickup then slams into a parked car. All vehicles involved receive minor damage. A scratch and dent on the van, two dents on the pickup, and a dent on the car. All vehicles can be driven away. No one on the bus is injured, the pickup driver is not injured, however, a person in the car is taken to the hospital by ambulance from the scene.
 - Test?
 - Threshold?

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Test, Not Test

- ◆ Your transit system bus is completely stopped at a marked bus stop location. Passengers are boarding the bus when a dump truck rear ends the bus. The bus and truck receive very little damage. One passenger is killed as a result of the accident.
 - Test?
 - Threshold?

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Test, Not Test

- ◆ While talking on his cell phone, your driver notices the red light just in time to stop. Due to the very rapid application of the brakes, a passenger slid off her seat and hit her head on the seat in front, leaving a three-inch cut on her forehead. The driver offers to call an ambulance but the passenger refuses. The next morning you receive a phone call from the passenger that she went to the hospital later that day and is filing a claim against the system.
 - Test?
 - Threshold?

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Test, Not Test

- ◆ A passenger on the bus slips and falls while boarding. She is conscious but unable to move. The driver calls dispatch to send an ambulance. When the medics arrive they believe the woman has a broken leg and transport her to the hospital.
 - Test?
 - Threshold?

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Test, Not Test

- ◆ You have lost contact with Bus #102. You send a road supervisor to find the bus. He finds the bus with the front end stuck in a snow bank. The operator is asleep in the driver's seat. There is about \$3,500 damage to a car, a fence and mail boxes. The car does not have to be towed. The bus needs to be pulled out of the snow bank but has no damage. No one is injured.
 - Test?
 - Threshold?

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Conclusion

- ◆ Post-Accident Testing is intended to support the general reason for DOT D&A testing
 - Protect the traveling public
- ◆ There is NO “just in case” testing
 - If the thresholds are not met, you must not test
- ◆ Never Forget That the Testing Program is about Public Safety
 - What can you do to make sure EVERYONE is safe everyday?
- ◆ Compliance is Ongoing

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Questions?
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