



U.S. Department of Transportation
Federal Transit Administration

2022 FTA JOINT STATE SAFETY OVERSIGHT AND RAIL TRANSIT AGENCY HYBRID WORKSHOP

OCTOBER 25-27, 2022

WASHINGTON, D.C



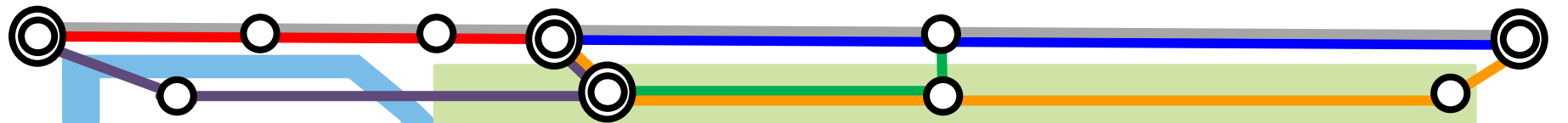
Drug and Alcohol Program Update

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Office of Transit Safety and Oversight

Federal Transit Administration



Part 655 Program Components

Omnibus Transportation Testing Act in 1991 authorized the Federal Transit Administration to issue regulations (49 CFR Part 655) to recipients of transit formula funds to establish a program to test safety-sensitive employees for the misuse of alcohol or the use of prohibited drugs.

Grantees receiving funding for:



Section 5339, Bus and Bus Facilities



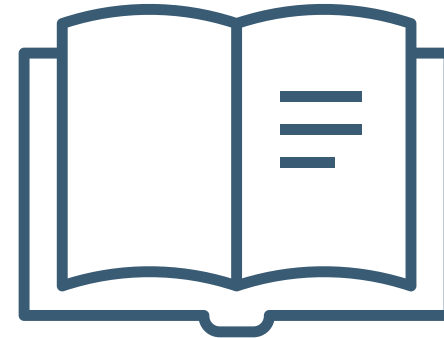
Section 5307, Urbanized Area



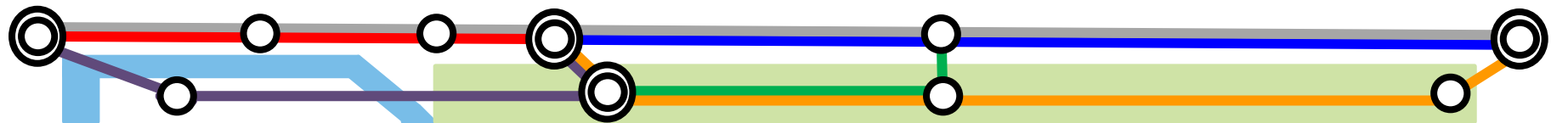
Section 5309, Capital Investment



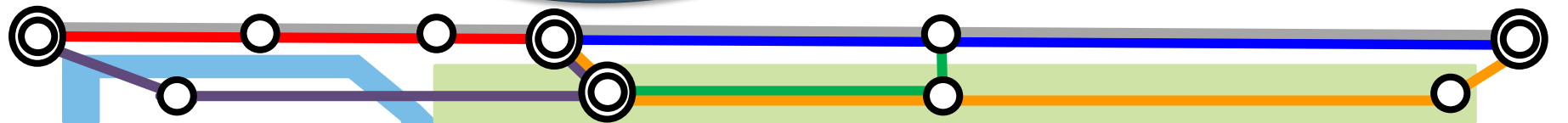
Section 5311, Rural Area Program



Required to test for Cocaine, Marijuana, Opiates, Amphetamines and Phencyclidine (PCP)

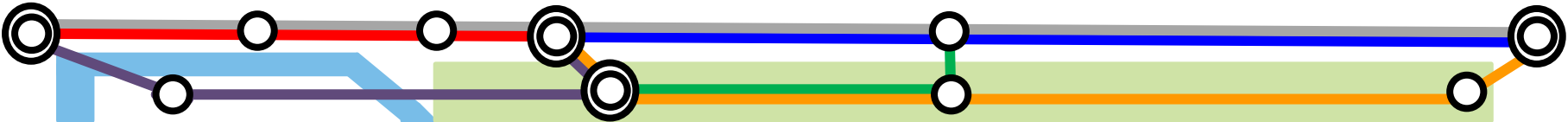


Part 655 Program Components

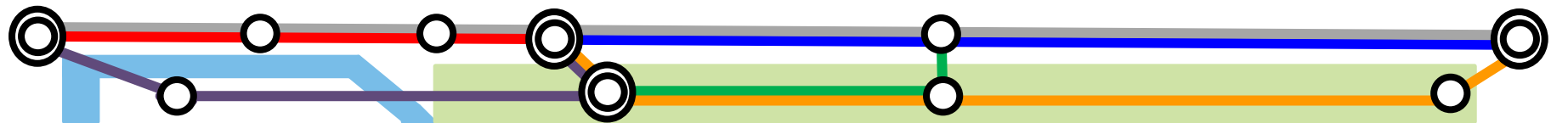


The FTA Regulated Landscape (2021)

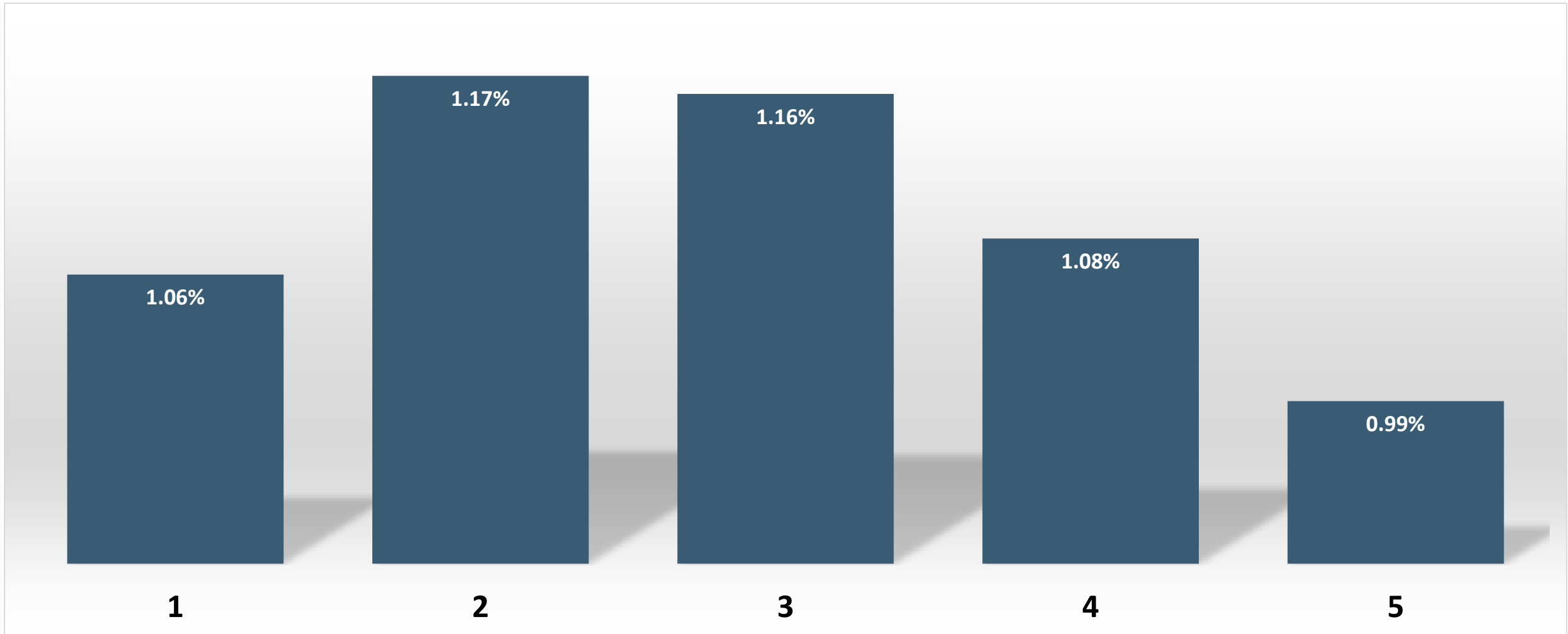
Grantees	Entities	Safety-Sensitive Employees	Random Drug Tests	Random Alcohol Tests	Post-Accident Drug Tests	Post Accident Alcohol Tests
661	3,257	275,432	150,465	63,921	9,767	9,140



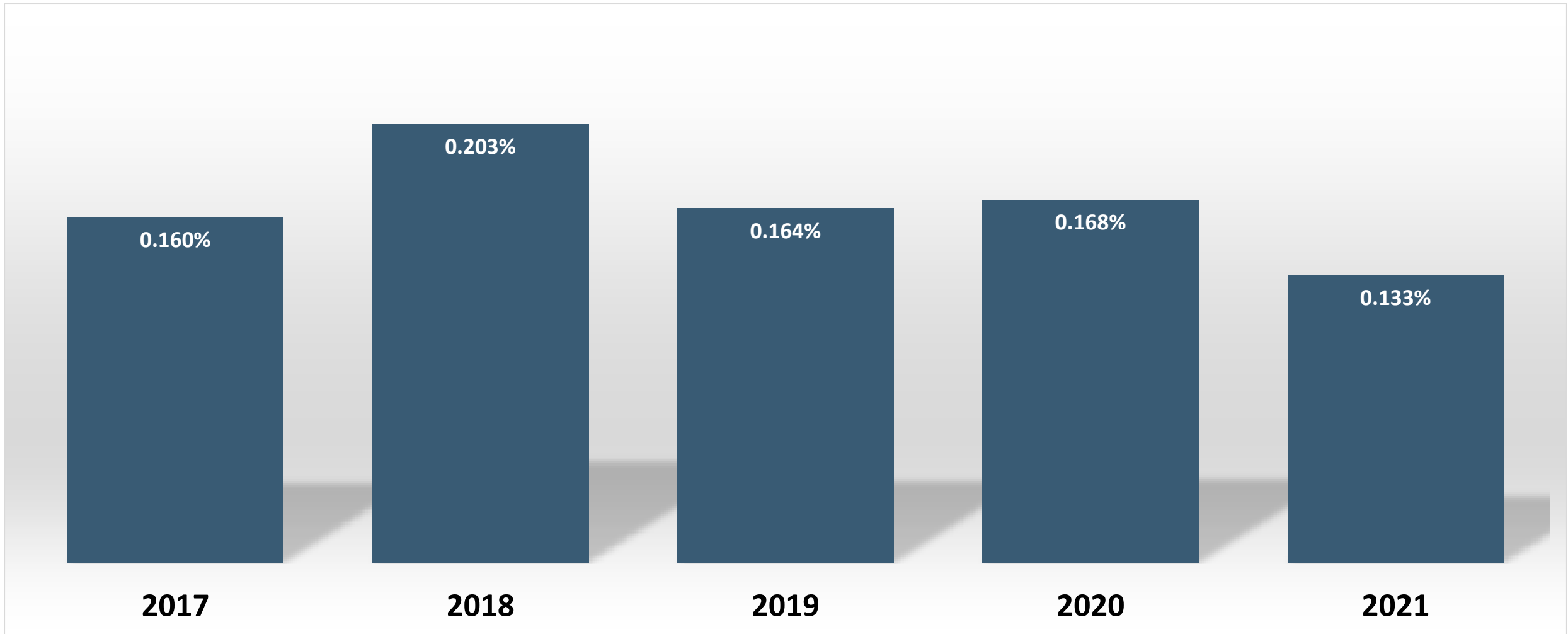
MIS Testing Data



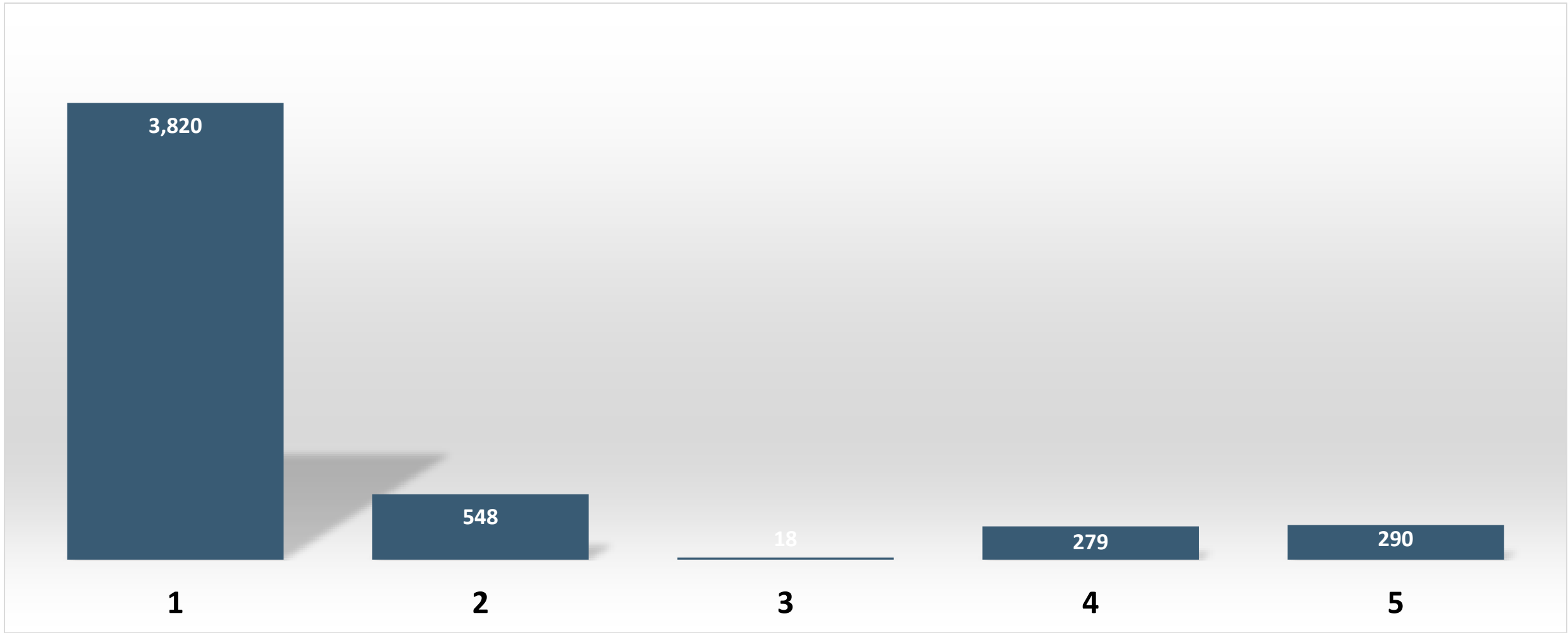
FTA Random Alcohol Testing Positive Rate (2017 - 2021)



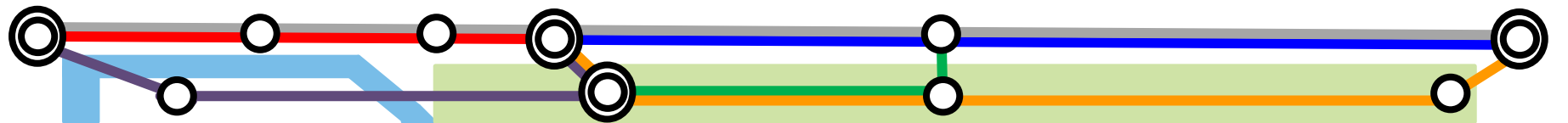
FTA Random Alcohol Testing Violation Rate (2017 - 2021)



Number of Verified Positives – Drug Type (2021)



Part 40 Updates



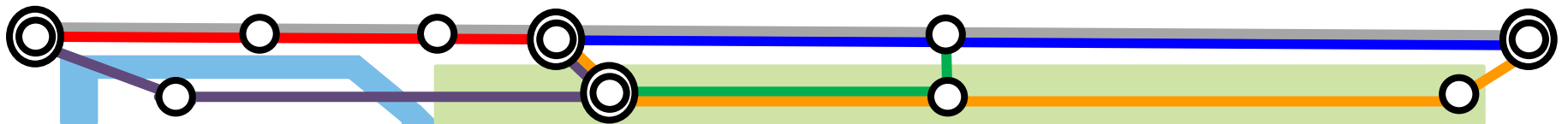
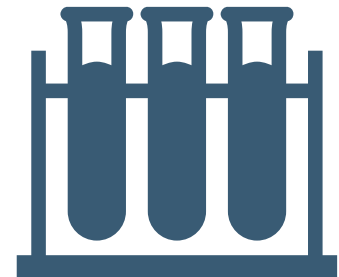
Oral Fluid Testing

Health and Human Service (HHS) – submitted a rule to allow “oral fluids” as a “permissible methodology for Federal employee's drug testing”

OTETA (Omnibus) requires DOT to follow HHS

However, **Oral Fluid** drug testing is **not authorized in DOT’s current drug testing program**

- DOT must develop its own testing process/regulation
- DOT regulations currently require:
 - Split Specimen
 - Test only for use... not exposure



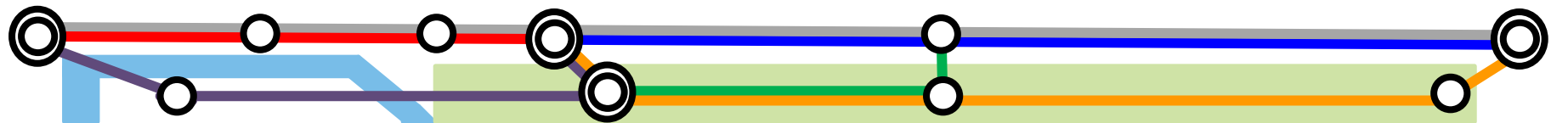
Part 40 NPRM - Background

Published in *Federal Register* on 2/28/2022

DOT proposed to revise Part 40 to:

- add oral fluid testing procedures
 - based on HHS' OFMG final rule effective January 1, 2020
- clarify certain provisions that cover urine testing procedures
- remove/clarify/update other provisions to reflect issues
 - Add/remove/revise definitions
 - Renumber and reorder provisions

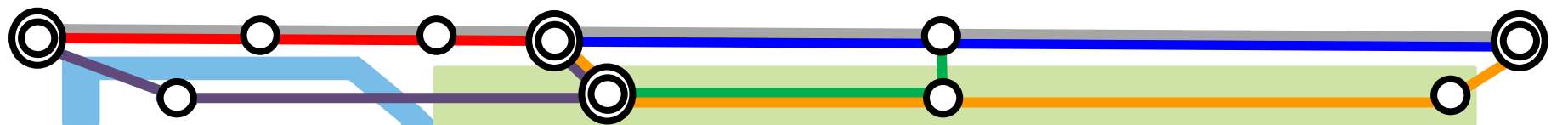
Note: the following are *proposed* changes; Final Rule is expected early 2023.



New Definition – SSN or Employee ID

This number serves as a unique identifier that must be used on the CCF or ATF for a donor, on the MRO's reports, on SAP reports, or on other documents that are required under Part 40

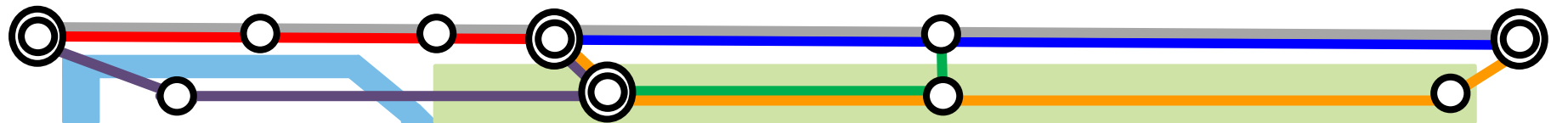
- **For FMCSA:** only the CDL Number and State of issuance
- **For all other modes:** the employee's SSN, a unique identifier issued by the employer, a State-issued identification card number, a State-issued driver's license number (including a CDL number) or any other State-issued or federally-issued identification number.



40.25 Previous Employer Checks

Beginning 1/6/23, FMCSA-regulated employers are not required to comply with § 40.25 requirements when checking with other FMCSA-regulated employers but must continue to comply when checking with employers regulated by other DOT modes.

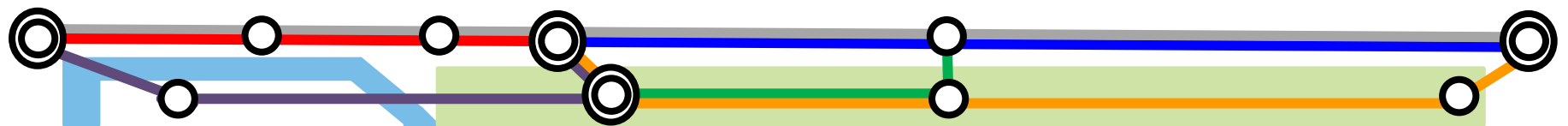
Dual-mode (e.g., FTA/FMCSA) must query the Clearinghouse **and** follow § 40.25(b)-(j).



SAP Remote Evaluations

Allows SAPs to conduct remote evaluations instead of face-to-face if:

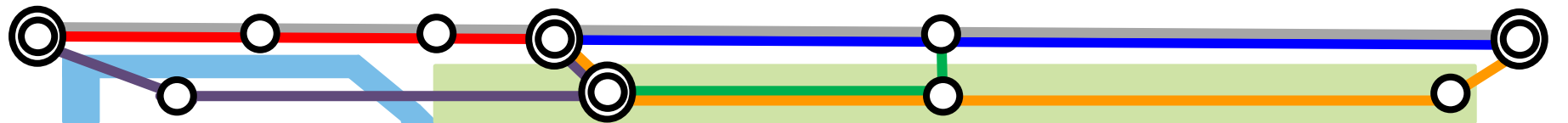
- the technology used permits real-time two-way audio and visual interaction
- the quality of the technology allows the SAP to gather all visual and audible information apparent in face-to-face interaction
- the technology has sufficiently robust security to protect the confidentiality of the conversation
- the SAP's State-issued license authorizes the SAP to use the technology



SAP Remote Evaluations

NPRM Questions – Sought comments from SAPs

- Does State license allow SAPs to evaluate individuals in another state?
- How does DOT ensure a working knowledge of quality programs and qualified counselors outside of the SAP's locality?
- Under what technical parameters would SAPs perform remote evaluations?
- Should remote evaluations be limited to certain circumstances (e.g., natural disasters, pandemic situations, few or no SAPs available)?

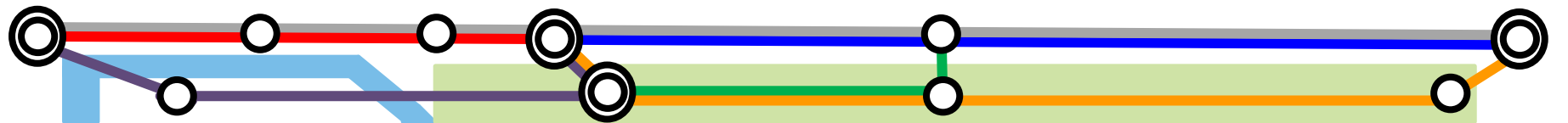


Oral Fluids – Shy Bladder

NPRM discusses two potential uses for oral fluids in the resolution of Shy Bladder scenarios:

Use of oral fluids collection with (or en lieu) the post-s/b medical examination

Immediate pivot to oral fluids upon provision of insufficient sample

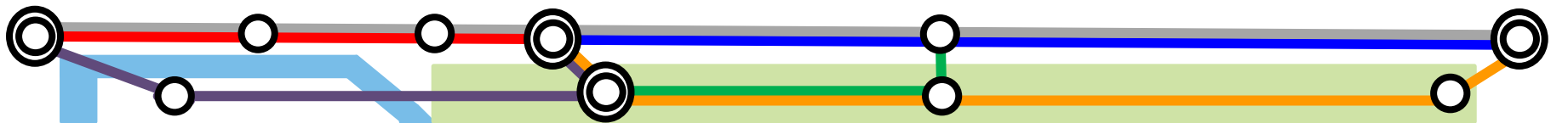


Misc. Technical Provisions

§ 40.31 clarifies that testing can't be done by "...employees, relatives, and close friends of the employees"

§ 40.33 puts in writing that specimen bottle damage does *not* require collector retraining

§ 40.35 seeks comment on who should be the initial trainers for OF collectors, since nobody has been doing it for a year

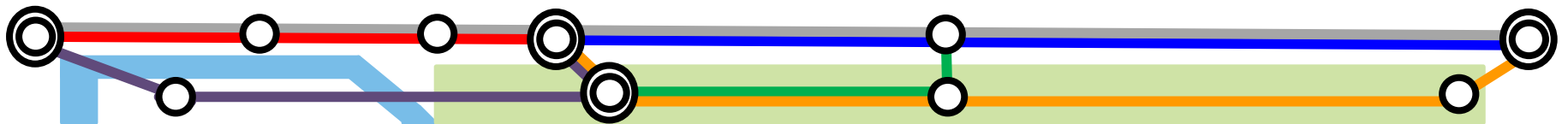


Misc. Technical Provisions

§ § Re-org

PROPOSED REDESIGNATIONS THE FOLLOWING SECTIONS OF PART 40 AS FOLLOWS

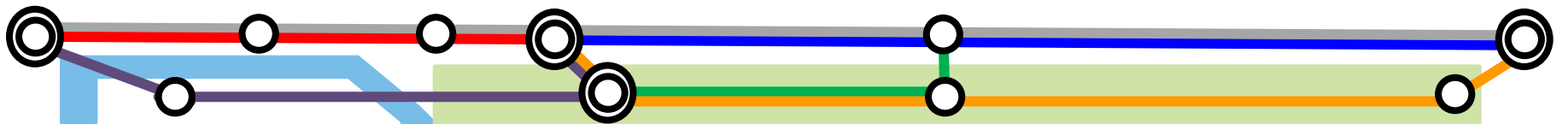
Old section	New section
40.35	40.36.
40.41	40.42.
40.45	40.40.
40.47	40.41.
40.49	40.44.
40.51	40.45.
40.73	40.79.
40.85	40.82.
40.87	40.85.
40.89	40.86.
40.91	40.87.
40.93	40.88.
40.95	40.89.
40.96	40.90.
40.99	40.84.
Appendix B	Appendix D.
Appendix C	Appendix E.
Appendix D	Appendix F.
Appendix E	Appendix G.
Appendix F	Appendix H.
Appendix G	Appendix I.
Appendix H	Appendix J.



Misc. Technical Provisions (collection)

§ 40.49 – Not all OF devices allowed by HHS (i.e., on HHS-approved oral fluid collection device list) will be allowed for DOT

- DOT-acceptable devices must take split specimens
 - Seeking commentary on various methods, but...
 - Must be one collection → two specimens (can't spit twice)
- DOT seeking commentary on whether the devices should be sufficiently transparent to support visual analysis of OF

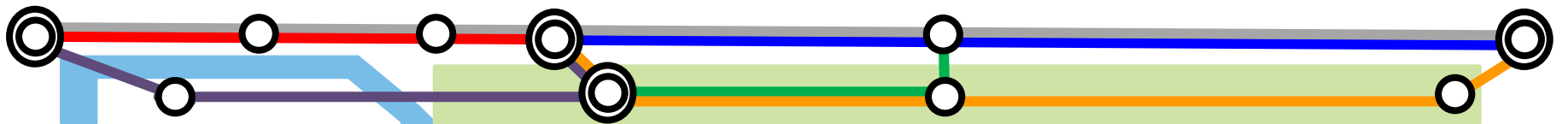


Misc. Technical Provisions (collection)

§ 40.67

- Allowance for opposite-gender observation
- Clarifies that DO remarks are only required when collector is calling an audible
 - Not required if DO is RTD/FU, MRO-required, etc.

§ 40.73[79] – Emphasizes that donor “needs to provide all information required in Step 5”



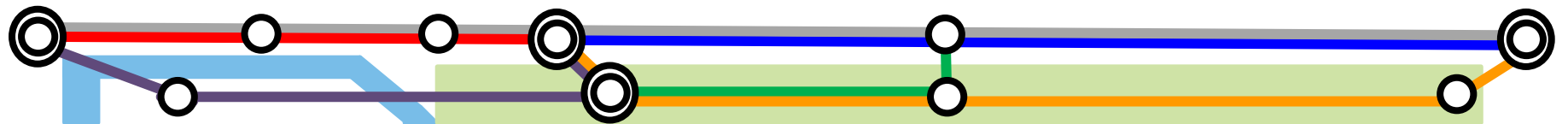
Various Provisions

No one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee (§ 40.13)

Employer must specify the type of test (i.e., urine or oral fluid) to be conducted (§ 40.14)

DER name/contact information may be pre-printed on CCF (§ 40.40)

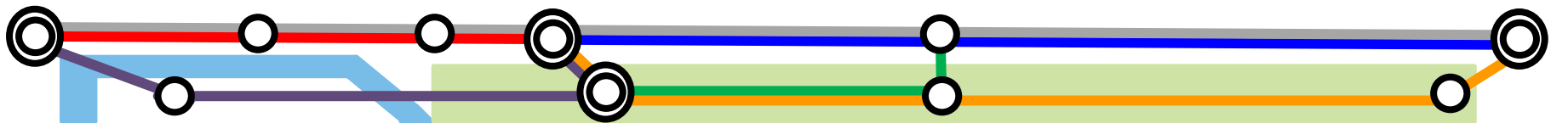
Collector telephone number must give access directly to the collector and/or the collector's supervisor (§ 40.40)



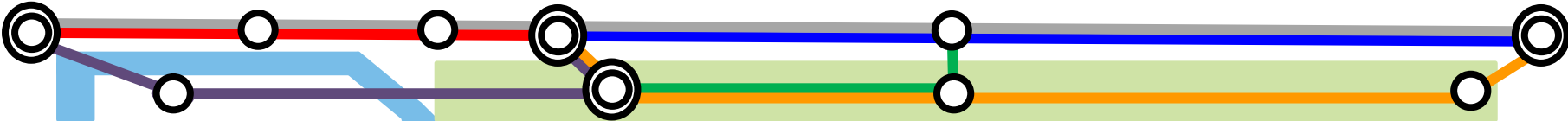
NPRM - Misc

Lab summaries to DOT will be categorized by:

- Type (Urine vs. Oral Fluid)
- Agency (FTA, FMCSA, etc.)
- Reason (Pre-employment, post-accident, etc.)



Resources



Part 655 Program Components

FTA Drug and Alcohol Regulation *Updates* Newsletter

[Drug and Alcohol Newsletter](#)

60 Minute Training Video

Meets the requirements of section 655.14(b)

[60 Minute Training Video](#)

FTA Policy Builder

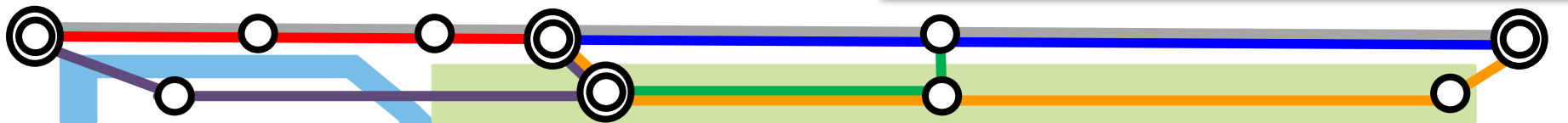
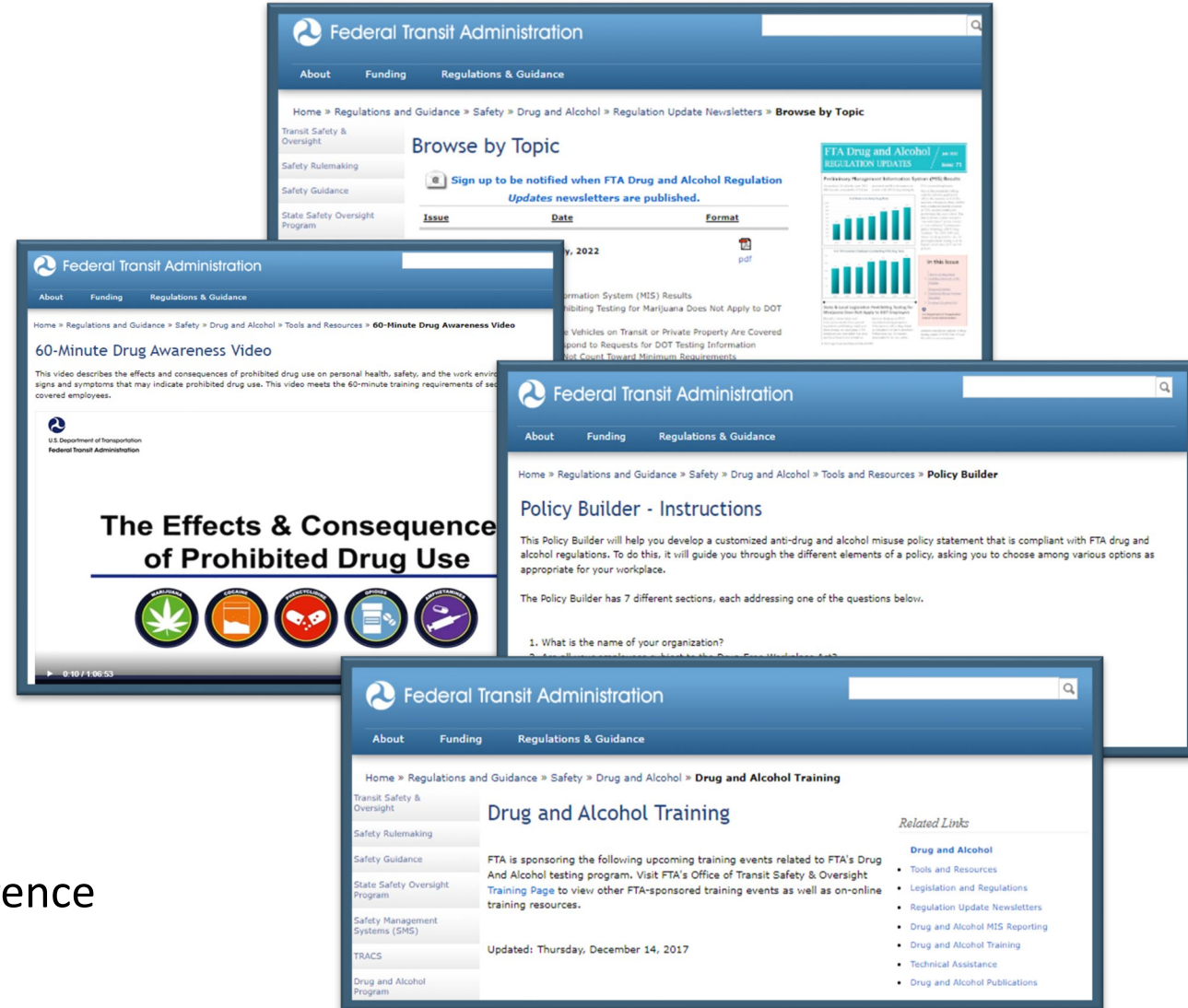
Reflects Recent Part 40 Revisions

[FTA Policy Builder](#)

Trainings and Conferences

Annual FTA Drug and Alcohol Program National Conference

[Training and Conferences](#)



Contact Information

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