



U.S. Department
of Transportation
**Federal Transit
Administration**
Office of Safety and Security

FTA Drug And Alcohol Regulation *Updates*

Fall/Winter 1996

Issue 4

Introduction....

The Federal Transit Administration (FTA) published its final rules on prohibited drug use (49 CFR Part 653) and the prevention of alcohol misuse (49 CFR Part 654) on February 15, 1994. Shortly thereafter, the FTA published the *Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit* to provide a comprehensive overview of the regulations.

Since the *Guidelines* were published there have been numerous amendments, interpretations, and clarifications to the Drug and Alcohol testing procedures and program requirements.

This publication is being provided to update the *Guidelines* and inform your transit system of all of these changes. This Update is the fourth in a series. Four more are scheduled for 1997.

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1995 Test Results Reported

Each recipient of FTA funds is required to report the results of their drug and alcohol testing programs to FTA on an annual basis. Large transit agencies who operate in areas of 200,000 or more in population were required to begin their drug and alcohol testing programs in 1995. The results of this first year of testing were summarized and published recently in FTA's first annual report. FTA received drug and alcohol reporting forms for calendar year 1995 from 548 individual employers representing 277 large transit systems and 271 of their contractors.

Drug test results:

- ◆ 2.1% of *all drug* tests were positive for one or more of the five prohibited drugs.
- ◆ The percent of positive *random* test results was 1.7% industry-wide.
- ◆ Of the six test types, the highest percent of positive specimens was for reasonable suspicion testing (6.3%).
- ◆ Marijuana and cocaine were detected most frequently in the specimens that tested positive for drugs: 54% for marijuana and 41% for cocaine.
- ◆ There were 174 accidents reported that resulted in a positive post-accident test. Of these accidents, 3 had fatalities.

Alcohol Test results:

- ◆ 0.3% of *all alcohol* tests resulted in a confirmed positive test result of 0.04 or greater Breath Alcohol Concentration. (BAC)
- ◆ Random alcohol tests resulted in a confirmed positive rate of 0.17% industry-wide.
- ◆ Of the six test types, the highest percentage of confirmed positive tests was for reasonable suspicion testing (9.4%).
- ◆ There were 45 accidents reported that resulted in a confirmed positive alcohol test.

In general, these statistics are encouraging, indicating that transit systems' testing programs are successfully deterring and detecting drug and alcohol use. However, it should be noted that these results may not be totally representative, given the delays, incomplete start-ups, and implementation problems some of the large transit systems experienced during the first year of their program.

A copy of the 1995 annual report can be obtained by contacting the FTA Office of Safety and Security at (202) 366-2896.

Recordkeeping & Reporting

Where To Find?.....

49 CFR Part 653 , Prevention of Prohibited Drug Use in Transit Operations

February 15, 1994
Federal Register Vol. 59
Pages 7572-7611

Amended:

December 2, 1994
Federal Register Vol. 59
Pages 62217-62231
Primary Topic: Random Drug Testing Rates

August 2, 1995
Federal Register Vol. 60
Pages 39618-39620
Primary Topic: Exemption of Volunteers and Post-Accident Testing Provision

Technical Corrections:

March 6, 1995
Federal Register Vol. 60
Pages 12296-12300
Primary Topic: Corrections and Clarifications

The information presented on this page should be used to update Chapter 9 of the Implementation Guidelines.

MIS Reporting Requirement

FTA requires that all direct recipients of FTA funds subject to the drug and alcohol testing regulations must file annual reports summarizing test results by March 15 of each year for the previous calendar year.

The standard forms to be used can be found in the back of the regulations and in Appendix I of the

Implementation Guidelines. Each set of forms has a detailed set of instructions that must be followed strictly.

Each recipient must complete one form to report the alcohol test results and another form to report the drug test results. Even though the forms look similar, they are not the same and care should be taken to ensure the appropriate forms are used. Also, it should be noted that if a recipient has had no positive drug test results or test refusals, the EZ version of the drug testing form can be used. Likewise, the EZ version of the alcohol testing form can be used if there have been no alcohol test results of 0.02 or higher or no test refusals.

The recipient must also require that each of their safety-sensitive contractors prepare the same MIS reports summarizing their test results. It is the responsibility of the recipient to obtain these forms, check for accuracy, and then attach them to the recipient's submittal in their entirety. The

recipient should not summarize, co-mingle, or in any way incorporate their contractor's reports into their own, but rather should simply include their submittal as attachments. Thus, if a recipient has four safety-sensitive contractors, there should be four sets of drug testing forms and four sets of alcohol testing forms in addition to the recipient's, for a total of ten reports.

Only FTA forms can be used. Computerized replicas of the forms are acceptable as long as the forms are not altered.

Both the alcohol and drug MIS forms must be signed by an authorized official of the employer who certifies that the information presented on the forms is true and correct. Providing false information is punishable by a fine and/or imprisonment.

If an employer is part of a consortium, the name of the consortium must be listed on the form. The consortium can not file the reports directly for the employer. Instead, the employer should request report data from the consortium, allow sufficient time for review, complete the forms, and certify as to their accuracy.

Small systems should submit their forms plus those of their contractors to their respective state DOTs, which will send the forms to FTA. Large systems should submit

their forms directly to the FTA. All forms must be sent to the FTA Office of Safety and Security (TPM-30), 400 7th St., SW, Room 9301, Washington, D.C. 20590.

Checklist

Do you have clean, readable copies of the drug and alcohol MIS forms? If not, call (202) 366-2896.

Are you using the appropriate versions of the drug and alcohol testing forms (i.e., long version versus EZ version)?

Have you completed one form for your alcohol test results, and another for your drug test results?

Has each form been typed or completed in ink? Are there any blanks on the form? If so, fill in correct values.

Have you checked your entries for typos or math errors?

Have you reported information only for the period beginning January 1, 1996 and ending December 31, 1996?

Have you reported information for only FTA authorized tests?

Have you attached a complete set of accurately completed forms from each of your safety-sensitive contractors?

If you are part of a consortium, have you indicated its identity in the appropriate place? Has each set of forms included in your submittal been signed by an authorized official of the employer?

If you are a small system, do you know what your state DOT's deadline is for completed form submittal?

If you are a large system, are you prepared to mail your completed form to FTA by March 15, 1997?

Recordkeeping & Reporting

Drug and Alcohol Testing Forms

The information to be reported on the drug testing MIS form should be easily drawn from your program files and MRO or Consortium reports. The information reported should include only the test results for *required* FTA tests. Test results of non-safety-sensitive employees or test results for other DOT modes (i.e., FHWA) should not be included on FTA forms. Likewise, test results should only be provided for the five DOT mandated drugs. Tests for other drugs conducted under your own authority should not be included.

Forms must be completed in their entirety. If the answer to a question is zero, then a zero must be placed in the appropriate place on the form. The information to be presented on the Drug Testing MIS form includes:

- ◆ Employer identification information.
- ◆ Number of employees by safety-sensitive category included in the testing program throughout the year.
- ◆ The number of urine specimens collected by employee category.
- ◆ The number of drug tests that were verified negative.
- ◆ The number of drug tests that were verified positive for one or more drugs.
- ◆ The total number of positive test results itemized for each drug.
- ◆ A summary of actions taken in response to positive test results.
- ◆ Number of accidents with positive drug test results.
- ◆ Number of test refusals.
- ◆ Number of employees and supervisors trained.

The alcohol forms are very similar and follow the same general guidelines for completion. However, it should be noted that pre-

employment alcohol testing was suspended on May 10, 1995. Consequently, no entries should be made on the pre-employment portion of Section C of the 1996 alcohol MIS form. Also, distinctions are made between screening tests and confirmation tests. All information requested should be easily obtained from your program files. The information to be presented on the Alcohol Testing MIS form includes:

- ◆ Employer identification information.
- ◆ Number of employees by safety-sensitive category included in the testing program throughout the year.
- ◆ Number of screening tests performed.
- ◆ Number of confirmation tests conducted.
- ◆ Number of confirmation tests equal to or greater than 0.02 but less than 0.04.
- ◆ Number of confirmation tests equal to or greater than 0.04.
- ◆ Number of other alcohol provision violations.
- ◆ Number of accidents with positive alcohol test results.
- ◆ Number of alcohol test refusals.
- ◆ Number of supervisors trained.

Where To Find?.....

49 CFR Part 654, Prevention of Alcohol Misuse in Transit Operation

February 15, 1994
Federal Register Vol. 59
Pages 7532-7571

Amended:

May 10, 1995
Federal Register Vol. 60
Pages 24765-24766
Primary Topic: Suspension of Pre-employment Alcohol Testing

August 2, 1995
Federal Register Vol. 60
Pages 39618-39620
Primary Topic: Exemption of Volunteers and Post-Accident Testing Provision

Technical Corrections:

March 6, 1995
Federal Register Vol. 60
Pages 12296-12300
Primary Topic: Corrections and Clarifications

The information presented on this page should be used to update Chapter 9 of the *Implementation Guidelines*.

Compliance Monitoring

Where to Find?

49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs

Amended:

February 15, 1994
Federal Register Vol. 59
Pages 7340-7366
Primary Topic: DOT Alcohol Testing Procedures
Procedures for Split Sample
Procedures for Drug Testing

August 19, 1994
Federal Register Vol.59
Pages 42996-43018
Primary Topic: Clarified Urine Specimen and Collection Procedures and Clarified Alcohol Testing Procedures

April 19, 1995
Federal Register Vol.60
Pages 19535-19537
Primary Topic: Standardized Chain of Custody and Control Form

April 20, 1995
Federal Register Vol.60
Pages 19675-19681
Primary Topic: Established Procedures for Use of Non-evidential Alcohol Screening Devices

The information presented on this page should be used to update Chapter 9 of the Implementation Guidelines.

Time to Assess Your Program

Small transit systems are coming to the end of the first year of their drug and alcohol testing program, while large systems are completing their second year. Even though some problems were experienced during the implementation process, for the most part, testing programs are operating smoothly and have become part of the standard operating procedure of transit systems, large and small.

In the past two years, the testing industry has gone through an evolution with vendors entering and leaving the market, while others have merged to form large, packaged vendors consortia or third-party administrators. At the same time, the transit industry has matured through its increased knowledge and experience base. As a result, now is the time to re-evaluate your program needs, assess your level of satisfaction with your current vendors, and

assess the program's benefits.

Assessing program needs based on actual experience will ensure that vendor services are more closely matched with need, thereby easing program administration, and system expense. Program needs should be evaluated based on actual data including number of tests, location requirements of testing services, relative distribution of tests by time of day, and after hours testing services.

Current vendors should be evaluated to assess the number of and explanation for tests resulting in cancellations, collection of split specimens and ability to meet the program needs in terms of volume, location, service hours, and after hours testing. In addition, the validity of the random selection and notification process, ease of communication and reporting, and overall program administration should be

assessed. If current vendors are not meeting your needs or if they are difficult to deal with, efforts should be made to select other vendors.

Additionally, transit systems should not assume that their vendors are conducting tests in compliance with the regulations. Compliance checks should be performed on vendors to ensure the proper procedures are being used, including the collection of split specimens, the use of a qualified Medical Review Officer and use of a DHHS-certified laboratory.

Transit systems should also take this opportunity to conduct a cost-benefit analysis of the entire testing program, including the actual cost, employee productivity, positive test results, number of accidents, absenteeism, worker's compensation claims, and insurance premium savings.

States Should Take an Active Role

State DOT's are required to submit the MIS forms of the Section 5311 and 5307 transit programs they administer to FTA by March 15 for the preceding calendar year. States should collect completed MIS forms from their programs prior to this date, allowing sufficient time for review and correction if necessary. Accurately completed reports should be bundled and submitted to FTA with a cover letter. No summary is required or desired.

FTA has not specified what actions must be taken by states to ensure compliance; however, simply requiring transit agencies to complete MIS forms may not be adequate. Several states have established oversight programs including technical assistance, training, on-site monitoring, and inspection. Some states have already incorporated drug and alcohol testing program requirements in their on-going regulatory compliance review processes. Others have developed compliance review processes specific to drug and alcohol testing.

State DOT's should contact their small systems directly with their program reporting requirements and timelines, facilitating the compliance review process.

FTA Clarifications

Refresher Training Encouraged

The drug testing regulation requires that all supervisors undergo a minimum of 60 minutes of training on the signs and symptoms of drug use before they are qualified to make a reasonable suspicion determination. A similar provision in the alcohol testing regulation requires supervisors to undergo an additional 60 minutes of training on the signs and symptoms of alcohol misuse. Even though most supervisors were trained prior to implementation of the program, transit systems should make efforts to train all new hires and transfers into supervisory positions prior to the time they actually perform duties where reasonable suspicion determinations might be required.

Refresher training is not required by the regulations. However, FTA encourages transit systems to conduct such training to ensure supervisors are adequately prepared to make reasonable suspicion determinations.

Perform Random Tests Throughout Work Shift

Random tests must be conducted in a manner that eliminates the predictability of the test. As such, transit systems should take care to schedule tests at various times throughout an

employee's work shift (i.e., beginning, middle, and end) rather than at the same predictable time, test after test. A random drug test can be performed any time an employee is on duty, whereas a random alcohol test can only be performed just before, during, or just after the performance of a safety-sensitive job function.

Some transit systems schedule random tests at the end of a shift after the completion of the workday. Some systems pay overtime, others do not.

Neither the alcohol or drug rule specifically addresses this issue.

However, testing at the end of the shift is consistent with the intent of the

regulations as long as testing is also performed at other times throughout the work shift.

Municipal Police not Safety-Sensitive

Many transit systems have their own dedicated police officers to ensure the security of passengers, employees, equipment, and facilities.

Others contract this service out to private security firms.

In both of these

circumstances, security personnel are considered safety-sensitive if they carry a firearm and, therefore are subject to drug and alcohol testing under the FTA regulations.

However, if the security

services are provided for the transit system by municipal police officers acting in that capacity and who are not under the day-to-day control or direct supervision of the transit system, they are not covered by the regulations.

Where To Find?.....

Part 40 Amendments, Con't.

July 16, 1996

Federal Register Vol.61

Pages 37015-37017

Primary Topic: Use of Labs
Outside the U.S.

July 17, 1996

Federal Register Vol.61

Pages 37222-37224

Primary Topic: Expansion of
SAP Definition

July 19, 1996

Federal Register Vol.61

Pages 37693-37700

Primary Topic: Insufficient
Specimen

Conforming Products List

Evidential Breath Testing (EBT)
Devices

January 30, 1996

Federal Register Vol.61

Pages 3078-3080

Primary Topic: Conforming
Products List (CPL)

Note: This list will be updated
periodically.

Non-evidential Testing Devices
August 15, 1995

Federal Register Vol.60

Pages 42214-42215

Primary Topic: Initial Alcohol
Screening Devices

Note: This list will be updated
periodically.

The information presented on
this page should be used to
update Chapter 2,5, and 6 of
the **Implementation
Guidelines.**

FTA Clarifications

Q & A

Q. Where can I find out information on the FHWA regulations?

A. The FHWA recently published the *Implementation Guidelines for Alcohol and Drug Regulations in Highway Transportation*. This manual is similar to the FTA guidelines except it is specific to the FHWA regulations. The guidelines include all changes to the FHWA regulations up to the time of printing. This publication is available *only* from the Department of Commerce's National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. The telephone number is (703) 487-4650. The order number is PB-96-197926. A hard copy is available for \$49.00, a microfiche copy is available for \$19.50.

The information presented on this page should be used to update Chapters 6 of the *Implementation Guidelines*.

Random Rates Stay the Same for 1997

The random testing rates were initially established at 50% for drugs and 25% for alcohol. These rates will remain the same for calendar

year 1997.

The rates will not be subject to change until 1998 when data for two consecutive years will be available. Even

then, rates will only be changed if the industry-wide positive test results meet specific criteria. See page 6 of the Fall/Winter 1995 *Updates*.

Non-Routine and Sporadic Performance of Safety-Sensitive Function

The drug and alcohol testing regulations require the testing of all employees who perform safety-sensitive functions. The drug regulation states that an employee may be randomly drug tested only when he or she is on duty to perform a safety-sensitive function. An employee who may, at any time, be called on to perform a safety-sensitive function and is receiving pay for such time is on duty for the purpose of random drug testing. Random alcohol testing can be performed only just before, during, or just after the actual performance of a safety-sensitive function.

In instances where employees are scheduled to perform a safety-sensitive function at specified intervals, e.g., every three or four months, then the employee can only be randomly tested during those times. However, if an employee could, at any time, be called on to perform a safety-sensitive function, then he or she must be subject to random drug and alcohol testing, even if the employee performs a safety-sensitive function only three or four times a year; however, the employee may be randomly alcohol tested only just before, during, or just after the performance of a safety-sensitive function.

Please note that this interpretation clarifies and supersedes the one that was provided in the Question and Answer on page 9 of the Fall/Winter 1995 *Updates*.

Fluctuating Employee Base

Transit system employee bases often fluctuate over the course of a year due to terminations, new hires, or seasonal variations due to weather, school/university sessions, or tourist seasons. Consequently, the size of the random testing pool also fluctuates.

Some transit systems have established the size of their pool by estimating the number of safety-sensitive employees employed as of January 1 (or any other arbitrary date) of each year. This method is incorrect.

Both the drug and alcohol regulations require that the dates for administering random tests be spread reasonably throughout the year. Depending on the relative number of employees in the pool, the employer will perform the random draw on a quarterly, monthly, or weekly basis. (see Spring 1996 *Update*, page 3) The size of your pool will be determined at the time of your random selection because the pool will

have been updated immediately prior to the draw.

For example, if you draw on a monthly basis, you will calculate the number of safety-sensitive employees in your random testing pool twelve times a year. If you have 120 safety-sensitive employees in January, you would calculate the number of drug tests to be performed by calculating 50% of 120 and then dividing it by the number of months in a year. Thus, 60 divided by 12 equals 5 drug tests to be performed in January. If in May, you only have 48 safety-sensitive employees, 50% of 48 is 24, and 24 divided by 12 equals 2. Thus, you should perform two random drug tests in May. This same calculation should be performed for every month in the year. Similar calculations should be made for alcohol testing using the 25% rate.

FTA Clarifications

Release of Information

Drug and alcohol test results can only be released directly to an authorized representative of the employee's employer of record without written consent.

FTA recipients that contract out the performance of safety-sensitive functions do not have access to individual test results of their contractor's employees since the recipient is not the employer.

Unless the contractor's employee gives specific consent in writing to release the results to the FTA recipient, no employee-specific testing information can be provided. The contractor can only provide program

management information such as the yearly MIS forms.

In addition, employees must give written authorization to release drug and alcohol test information to a Substance Abuse Professional (SAP) when there is a positive test result and referral to a SAP has been mandated. Although it is not required, FTA suggests that employers obtain a written consent to release information to

the SAP at the same time the referral is made. The only time when such a written consent is not required is when the SAP is a direct employee of the transit system.

Since the regulations were first published, the FTA has received numerous requests for interpretations. Many of the responses are unique to individual transit systems, while others are applicable to transit systems in general. A summary of some of the interpretations is presented on this page.

For Interpretations Contact:

**Office of the Chief Counsel
FTA
400 7th Street SW
Washington, DC 20590
(202) 366-4011**

Internal Access to Test Results

All drug and alcohol testing records must be maintained in a secure location with controlled access (i.e., locked file cabinet). The employer should take action to ensure that disclosure to unauthorized persons does not occur. Therefore, the employer must clearly define who will receive test results and for what purpose.

In most cases, access to records and knowledge of test results is limited to one or two people, most commonly the program administrator and the Director of Personnel. Access to information by others within the agency should be restricted. This bar to information includes all system employees, management, supervisory personnel, and Board members.

The confidentiality provisions cover all employee-specific information including the test result, reason for disciplinary action or dismissal, and referrals to Substance Abuse Professionals.

Program Administrator in Pool

In many small transit systems every employee is considered safety-sensitive and is included in the random pool. If your system's drug and alcohol program administrator is in the random pool, someone outside of the pool must be responsible for performing the random number selection. Normally, the transit system's program administrator is the contact person to who the random selections are reported and schedules the tests for all employees. However,

when the program administrator's number is randomly selected, another system employee or responsible individual (e.g., the county personnel director) should be designated as the contact. This person should schedule and notify the program administrator of the need for the test, and ensure that the test is performed immediately upon notification.

DHHS Labs

The current list of DHHS certified labs is published the first week of each month and is printed in the Federal Register under the Substance Abuse and Mental Health Services Administration heading (SAMHSA). Only those labs certified can be used for FTA drug testing. The list should be checked monthly as new labs are being added and others are being removed.

To verify the certification status of a laboratory, DHHS has established a telephone HELPLINE (800) 843-4971.

Resource Materials

Who Should Be Receiving This Update?

In an attempt to keep each transit system well informed, we need to reach the correct person within each organization. If you are not responsible for your system's Drug and Alcohol program, please forward this update to the person(s) who is and notify us of the correct listing. If you know of others who would benefit from this publication, please contact us at the following address to include them on the mailing list. This publication is free to FTA recipients.

RLS & Associates, Inc.
3131 South Dixie Hwy., Suite 202
Dayton, Ohio 45439
Phone: (937) 299-5007
FAX: (937) 299-1055

Urine Specimen Collection Procedures Guideline

Drug Testing Procedures Handbook, Employers Guide to 49 CFR Part 40

Substance Abuse Professional Procedures Guidelines for Transportation Workplace Drug and Alcohol Testing Programs

Medical Review Officer Guide for Regulated Transportation Industries

USDOT, Office of Drug Enforcement and Program Compliance, (202) 366-3784

Bulletin Board Service **FTA, Office of Safety & Security, (800) 231-2061**

FTA World Wide Web home page: <http://www.fta.dot.gov/>

Random Drug Testing Manual

Substance Abuse in the Transit Industry

Employee Assistance Program for Transit Systems

FTA, Office of Safety and Security, (202) 366-2896

USDOT Drug and Alcohol documents FAX on Demand 1-(800) 225-3784

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