



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

FTA Drug And Alcohol Regulation *Updates*

Winter 1998

Issue 7

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 seventh in a series.

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Alcohol Random Testing Rate Reduced

The January 6, 1998 issue of the Federal Register (Vol. 63, No. 3, page 418-419) announced that effective January 1, 1998 the random testing rate for **alcohol was reduced to ten percent (10%)**. The random testing rate for prohibited **drugs remains at fifty percent (50%)**.

The annual random testing rates for drugs and alcohol are determined separately based on the industry-wide positive rate for the preceding two-consecutive year period, based on annual MIS reports submitted by covered employers. The positive rate is calculated by adding the number of positive random tests to the number of refusals of random tests and dividing by the total number of random tests attempted (completed plus refused).

The drug rule (49CFR Part 653) specifies that the drug random rate can only be lowered to 25 percent if the two-year consecutive industry-wide positive rate falls below one percent. Since the rate has exceeded this threshold (see article Page 2), the drug rate remains unchanged at 50 percent.

The alcohol rule (49CFR Part 654)

specifies that the alcohol random rate can be lowered to 10 percent if the industry-wide violation rate is less than 0.5 percent for two consecutive years. Since the industry violation rate was determined to be 0.21 for 1996 and 0.24 for 1995, the random test rate for alcohol is established at ten percent for 1998.

These rates will be in place for calendar year 1998. Rates for all future years will be announced each year with the rates dependent on industry-wide experience rates (See Fall/Winter 1995, Page 6 of the *Updates*). Thus, alcohol rates may increase in future years if industry-wide positive rates exceed the established thresholds. Note: it only takes one year of greater than 0.5 to raise the alcohol random rate back to 25 percent.

Employers should also note that the random testing rates established by the rules should be considered the minimum required. An employer is allowed to exceed these rates. In this case, all tests administered should be reported in the annual MIS report submitted to FTA.

Annual Compliance Certification

Both the drug and alcohol regulations require transit systems to certify compliance each year. Entities that receive FTA funding through Section 5307 and Section 5309 in urbanized areas (formerly Section 9 and Section 3) certify as part of their Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements submitted each year.

State DOT's must certify annually on behalf of their Section 5311 recipients (formerly Section 18) and rural recipients of Section 5309 funding. Since rural systems do not necessarily receive funding on an annual basis, FTA has clarified through the state management review process that states should require annual letters from each of its current subrecipients certifying compliance with the drug and alcohol testing regulations.

Testing Results

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 6 of the *Implementation Guidelines*.

1996 Drug and Alcohol Testing Results

Each grantee, sub-recipient, or contractor which receives FTA funds is required to report the results of their drug and alcohol testing programs to FTA on an annual basis. The results reported for 1996 calendar year have been summarized and published in an annual report. The 1996 report includes data from 2,287 individual employers representing 299 large operators, 1,281 small operators and 707 safety-sensitive contractors. Approximately 69 percent of all employers reported no positive drug test results, and 96 percent of employers reported no alcohol test results of greater than 0.04 percent.

The 1996 drug testing program revealed that the percent of positive random test results was 1.50 percent industry-wide in 1996 slightly down from the 1.73 rate reported in 1995. The positive rate for reasonable suspicion tests was 6.84 percent. Marijuana and cocaine were detected most frequently in the specimens that tested positive for drugs. Of the 3,691 positive specimens, 53.78 percent tested positive for marijuana and 38.66 percent tested positive for cocaine. There were 239 accidents reported that resulted in a positive post-accident drug test. One of these accidents resulted in a fatality.

The 1996 alcohol testing program revealed that industry-wide only 0.16 percent of the alcohol tests resulted in an alcohol

concentration of 0.04 or greater. When test refusals are included the violation rate increases to 0.21 percent. These results are consistent with the random positive rate of 0.17 percent reported in 1995. The positive rate for reasonable suspicion tests was 8.22 percent. There were 16 accidents reported that resulted in a post-accident alcohol test result of 0.04 or greater. There were no fatalities resulting from these accidents.

Large operators, as a whole, indicated they had a positive random alcohol test rate of 0.19 percent, whereas small operators indicated they had a positive random alcohol test rate of 0.07 percent. However, small operators were positive for random drug tests more often than large operators (1.55% versus 1.48%).

In general, the industry-wide drug and alcohol testing results were consistent between the 1995 and 1996 reporting years. The random alcohol testing rate only varied by 0.01 percent between the two years and the random drug testing rate only varied by 0.23 percent between the two years. The statistics also indicate that there is little difference between system size, location, and employee category.

Even though two years of data is not sufficient to make any meaningful analysis, the data is encouraging, indicating that the testing programs are successfully deterring and detecting drug and alcohol use in the transit industry.

Follow-up Testing Not Negotiable

If an employee tests positive for drugs or alcohol, the regulations require that he/she be removed from safety-sensitive duty and referred to a Substance Abuse Professional (SAP) for assessment. If the employer has a "second chance" policy, in addition to the initial assessment, the SAP is also responsible for determining when an employee is making satisfactory progress through the treatment program, when the individual can return to duty and the duration and frequency of follow-up testing above the minimum requirements specified in the regulation. The SAP must make this determination on a case-by-case basis depending on the needs of a particular employee and his/her training and professional judgement. The transit management, employee, union representative or collective bargaining unit cannot specify or limit the SAP stipulations for the frequency and duration of follow-up tests. It is important to note that the employer is not required to pay for treatment or to return the employee to work, but if they choose to do so, follow-up testing requirements are not negotiable.

Clarifications & Corrections

MIS Form Mailing Address Changes

Once again all employers subject to FTA's drug and alcohol testing regulations must file annual reports summarizing test results by March 15 for the preceding calendar year. The forms are the same as those used last year; however, **the submittal address has been changed from last year.** This year, completed, signed FTA Drug and Alcohol Testing MIS Data Collection Forms must be sent to:

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

in the back of the regulations, Appendix I of the *Implementation Guidelines*, or by calling the FTA Office of Safety and Security at (202) 366-2896.

Direct recipients must file one drug MIS form and one alcohol MIS form for each employer including the transit agency, subrecipients, and safety-sensitive contractors. Each set of forms has a detailed set of instructions that must be strictly followed. All forms must be typed or completed in ink and all

blanks must be filled in.

Each set of forms must have an original signature from an authorized representative of the employer on the front page. Direct recipients who do not directly operate service or have any safety-sensitive employees must provide one set of forms from each safety sensitive contractor and a transmittal letter that defines their relationship. Companies that provide service for a number of recipients must provide separate reports for the services provided to each recipient. It is the responsibility of the

recipient to obtain these forms, check for accuracy, and then attach them to the recipient's submittal, if any, in their entirety.

If you have any questions regarding completion of the forms, you may contact the Volpe National Transportation Systems Center at (617) 494-6336 or their contractor for this effort, Science Applications International Corporation (SAIC), at (703) 810-8980. You may also submit questions via e-mail to JEAN.M.AULT@cpmx.saic.com or Redington@volpe3.dot.gov.

**Drug and Alcohol MIS Project
Office, DTS-781
U.S. DOT/Volpe Center
55 Broadway, Kendall Square
Cambridge, MA 02142-1093**

Zero Tolerance Is Local Decision

The alcohol regulation strictly specifies the employer's obligations for an alcohol test that results in a breath alcohol concentration of 0.04 or greater. The regulation, however, leaves the issue of discipline up to the discretion of the employer. Some employers provide a second chance while others who adhere to a zero tolerance policy may chose to terminate the employee.

The regulation also specifies the obligations of the employer when an alcohol test results in a breath alcohol concentration of 0.02 or greater but less than 0.04. Even though a test result within this range is not considered a positive test or a violation of the regulation, the regulation (654.65(b)) does allow the employer to establish its own discipline. Those employers that choose to terminate an employee who tests at 0.02 or greater are not in violation of the regulation as long as employees are aware that the discipline is being promulgated under the authority of the employer and not the FTA.

Employers are cautioned not to define zero tolerance at breath alcohol concentrations below 0.02 as Evidential Breath Testing devices are only accurate at levels of 0.02 and above.

Attempts to Complete Alcohol Test Limited

FTA has found that several transit systems erroneously allow multiple attempts to complete an alcohol test. The procedural regulation (49 CFR, Part 40.69), however, specifically states that only two

attempts are allowed. If the test has not been successfully completed after the second attempt, the effort to obtain the breath specimen must be discontinued and the employee must be referred for a medical

examination that will determine if there is a legitimate medical explanation for the inability to complete the test. Allowing more than two attempts is a violation of the regulation.

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 Chapters 8 and 9 of the *Implementation Guidelines*.

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.

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

Urine Specimen Collection Procedures Guideline
Substance Abuse Professional Procedures Guidelines for Transportation Workplace Drug and Alcohol Testing Programs

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/>

Drug and Alcohol Consortia Manual

Drug and Alcohol Testing Results: 1995 Annual Report

Drug and Alcohol Testing Results: 1996 Annual Report

Random Drug Testing Manual

Substance Abuse in the Transit Industry

Identification of Drug Abuse and/or Alcohol Misuse in the Workplace: An Interactive Training Program

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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