



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

FTA Drug And Alcohol Regulation *Updates*

Summer 2004

Issue 28

Introduction...

The Federal Transit Administration (FTA) published its revised rule on prohibited drug use and the prevention of alcohol misuse (49 CFR Part 655) on August 1, 2001. The FTA published the revised *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 these changes. This Update is the twenty-eighth in a series.

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New FTA Drug & Alcohol Program Manager

The FTA Office of Safety and Security announced the addition of Jerry Powers as the new FTA Drug and Alcohol Program Manager. In this capacity, Mr. Powers will be responsible for all aspects of the program including the audit program, substance abuse seminars and other technical assistance efforts.

Mr. Powers came to FTA from the Volpe National Transportation Systems Center in Cambridge, MA, an organization within the USDOT. In this capacity, Mr. Powers has worked closely with FTA's Office of Safety and Security on various issues including the drug and alcohol program. Since 2000, he has participated in audits and training seminars, and authored the Program Assessment that quantified the cost and safety benefits of the Program (see *Updates*, Issue 23). He also acted as the on-site FTA Drug and Alcohol Program Manager from August through December of 2003.

Mr. Powers has had a lifelong interest

in public transportation and during his sixteen years at Volpe demonstrated versatility in terms of coordinating both policy and technically-based programs for the Department of Transportation and the Department of Defense. He contributed to the overall revision of the FTA National Transit Database (NTD), and authored the FTA Transit Safety and Security Statistics & Analysis Annual Reports and Newsletters.

Mr. Powers believes the FTA's Drug and Alcohol program is an essential element in contributing to safe, equal and efficient public transportation. He has reaffirmed FTA's commitment to the program and noted that the compliance audit program, along with the technical assistance efforts, will continue and be strengthened. All issues and concerns related to the program should be directed to Mr. Powers at (202) 366-1080 or gerald.powers@fta.dot.gov.

Director of Transit Safety & Security Named

FTA also announced that Michael Taborn was named the Director of Transit Safety and Security. Taborn joined the FTA two years ago as a Transit Security and Emergency Management Programs Specialist. In his new capacity, Mr. Taborn will lead the Office in its efforts to achieve the highest level of safety and security in all modes with special emphasis on FTA's aggressive security efforts in addressing the new threat to mass transportation systems. As the Director of Transit Safety and Security, Mr. Taborn will also oversee the FTA Drug and Alcohol Program.

Prior to joining FTA he was employed with the Washington Metropolitan Area Transit Authority (WMATA) as a Transit Police Officer, Training Division Commander and Police Captain.

Newsletter Goes Electronic!!!

All future editions of this newsletter will be distributed electronically unless otherwise requested. The electronic publication and distribution of this newsletter has been phased in over the past six months. This edition constitutes the last edition that will be distributed both electronically and by mail.

Future editions will be distributed via the Internet to those who have provided email addresses. Hard copies will be mailed only to those individuals who have requested to con-

tinue receipt of the newsletter via the U.S. Postal Service. Persons that have failed to contact us to confirm their continued interest or to request their preferred method of distribution will be removed from the database.

To continue to receive future editions of the newsletter and to indicate your preferred method of distribution, please contact the editor at rlsasc@mindspring.com, call (937) 299-5007, or fax (937) 299-1055.

FOR YOUR INFORMATION

Where To Find?.....

49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

August 9, 2001
Federal Register Vol. 66
Pages 41996 - 42036

December 31, 2003
Federal Register Vol. 68
Pages 75455-75466
Primary Topic: One Page MIS Form

Notice of Interpretation:

April 22, 2002
Federal Register Vol. 67,
Pages 19615-19616
Primary Topic: FTA/USCG
regulation applicability to ferry
boats.

The information presented on
this page should be used to
update Chapter 5 of the revised
Implementation Guidelines.

2005 FTA Substance Abuse Seminars Announced

FTA announced the dates and locations for its 2005 seminar series. These one-day seminars are designed to provide essential facts and information to facilitate employers' compliance with DOT's 49 CFR Part 40 and FTA's 49 CFR Part 655.

The primary focus of the seminars is to present a high-level overview of the regulations. However, this year's seminars will include an emphasis on the operational side of a transit agency's functions. The seminars will include a number of scenarios for participants

to discuss as well as breakout groups to address common topics. Prescription and over-the-counter drug use, and the U.S. DOT Drug and Alcohol Testing Data Collection Form will be reviewed along with a number of other pertinent issues.

To learn more about the seminars and register online, go to: <http://transit-safety.volpe.dot.gov/training/SubstanceAbuse/default.asp> or call Felicity Dickenson at (617) 494-3915 or email: felicity.dickenson@volpe.dot.gov.

<u>Date</u>	<u>City and State</u>
February 1, 2005	Washington, DC
February 8, 2005	Port St. Lucie, FL
February 10, 2005	North Little Rock, AR
March 10, 2005	Austin, TX
April 19, 2005	Akron, OH
April 21, 2005	Raleigh, NC
May 11, 2005	Steamboat Springs, CO

Continuing Ed/Refresher Training Due for Some

All Medical Review Officers (MROs) are required to complete twelve professional development hours of training relevant to MRO functions every three years. MROs that completed the initial formal training course and passed the corresponding exam more than three years ago are now due to have completed the continuing education requirements. Likewise, Breath Alcohol Technicians (BATs) that underwent their qualifications training more than five year ago, are now due for their refresher training.

As overseers of your service agents, you should periodically check the dates of your service agent's qualifications training, continuing education efforts and refresher training dates to ensure that these requirements are being met.

Awaiting DHHS' Alternative Testing Final Rule

On April 13, 2004 the Department of Health and Human Services (DHHS) published a Notice of Proposed Rulemaking (NPRM) that proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs including scientific and technical guidelines for alternative testing methods including hair, sweat, and oral fluid specimens among other things. For an overview of the NPRM see Issue 27 of the *Updates*. Even though the Guidelines do not apply to DOT regulated entities directly, the Guidelines have historically served as the basis for DOT testing and thus, should be of interest to DOT-covered entities.

The DHHS received a number of comments on the NPRM and is working to incorporate comments, concerns, and suggestions as appropriate. Publication of the final rule is expected prior to the end of the year.

NEW GUIDANCE

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SAP Compliance Problematic for Zero Tolerance Systems

The FTA regulations require that any individual (employee or applicant) who has a positive drug test, a breath alcohol concentration of 0.04 or greater, or refused a test must be provided a list of Substance Abuse Professionals (SAP's). If the employer has a zero tolerance policy and terminates the employee, the SAP obligation stops at the referral. The employer is not responsible for paying for the assessment or subsequent treatment.

Most zero tolerance employers have little to no contact with their SAP's and have no financial obligation or contract. Individuals that may have historically been named as an employer's SAP have no financial incentive to undergo the required qualifications training or continuing education requirements and thus, are no longer qualified SAP's. Many employers found through audits, re-views, and self assessments that the individu-

als that they thought were their SAP's did not have the appropriate credentials and/or had little interest in being the employer's SAP. Even systems with second chance policies may have difficulty obtaining a qualified SAP unless there are sufficient numbers of positive tests to justify the SAP's effort.

As a result, many systems have found themselves without qualified SAP's and no means to encourage local professionals to become qualified. One solution to the problem is for zero tolerance systems and small second chance policy systems to identify SAP's used by larger transit systems or DOT covered employers within their region. The SAP need only be within reasonable proximity to the employer and thus, could be located in the closest large metropolitan community.

Social Security Number on CCF

The Federal Chain of Custody and Control Form (CCF) includes a field for the employee's identification number to be completed. The identification number can be any number that uniquely identifies the individual and can be verified. Many employers use employee ID numbers or badge numbers, while others use state issued driver's license numbers. Most, however, use employee social security numbers.

Given recent issues and publicity regarding identity theft, many individuals are reluctant to provide their social security numbers on the CCFs. In some cases, employers have interpreted the refusal to provide a social security number as a refusal to test. This practice is inconsistent with Part 40 and should not be continued, even if under company policy, as it adds an additional requirement and has the effect of undermining DOT testing procedures.

A missing social security number is not listed in Part 40 as a fatal flaw or as one that will cause a test to be cancelled if left uncorrected. The DOT Urine Specimen Collection Guidelines state on page 12, section 5, that the employee's refusal to provide their social security number is not a refusal to test, but requires the collector to annotate it in the remarks section.

If possible, employers are encouraged to use identification numbers other than social security numbers. If social security numbers continue to be used, employers should be aware that failure to provide a social security number can not be considered a test refusal.

DOT Validity Test NPRM Expected Soon

On April 13, 2004, the Substance Abuse and Mental Health Administration (SAMHSA) established standards for determining the validity of urine specimens including specific gravity and creatinine cutoff levels. These standards are consistent with, but not the same as, those published in the DOT Interim Final Rule published on May 28, 2003 (See *Updates*, Issue 25). Consequently, the DOT is expected to publish a Notice of Proposed Rule-making (NPRM) and a subsequent final rule making the DOT rule consistent with the SAMHSA standards. The NPRM is expected to be published prior to the end of the year, simultaneously with the DHHS Alternative Testing Final Rule (see article Page 2).

Where To Find?.....

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

Revised:

December 19, 2000
Federal Register Vol. 65,
Pages 79462-79579.

Primary Topic: Procedures for Transportation Workplace Drug and Alcohol Testing Program Revised Final Rule
(49 CFR Part 40)

July 25, 2003
Federal Register 68
Pages 43946-43964
Primary Topic: One Page MIS Form

January 22, 2004
Federal Register Vol. 69
Pages 3021-3022
Primary Topic: Expand List of SAPS

Technical Amendments:

August 1, 2001
Federal Register Vol. 66
Pages 41943-41955
Primary Topic: Clarifications and Collections to Part 40; Common Preamble to Modal Rules

Interim Final Rule

May 28, 2003
Federal Register Vol. 68
Pages 31624-31627
Primary Topic: Substitute and Dilute Specimens

The information presented on this page should be used to update Chapters 7 and 9 of the revised *Implementation Guidelines*.

CLARIFICATIONS

Where to Find?

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 (SAMHSA) heading. 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.

Website location: <http://www.workplace.samhsa.gov/ResourceCenter/lablist.htm>

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

The information presented on this page should be used to update Chapter 2, 7 and 10 of the revised *Implementation Guidelines*.

Employees Covered By More Than One Mode

Occasionally employers find that they are required to comply with the drug and alcohol testing regulations of other modes in addition to FTA. Most commonly, the other mode is the Federal Motor Carrier Safety Administration (FMCSA) that covers drivers with Commercial Drivers Licenses (CDLs). If the employers are able to segregate the employees who provide transit service from those who perform safety-sensitive functions for the other mode, the employer is required to establish programs for each group of employees reflecting the corresponding regulatory requirements.

However, if employees perform safety-sensitive functions for **both** transit and another mode for the **same** employer, the employer must determine which modal administration regulates the majority (> 50 percent) of the employee's **safety-sensitive** functions covered under the USDOT. For example, a mechanic works on public transit vehicles five (5) hours a day (all safety-sensitive work) and dump trucks for three (3) hours a day (the only portion of this work which is safety-sensitive is the one hour a day during which the mechanic test drives the dump trucks actually using his CDL). In this case, because the majority of his safety-sensitive functions are FTA-regulated, the employee would fall under FTA regulations for pre-employment and random testing. The employee would fall under FTA or FMCSA for post-accident and reasonable suspicion testing depending on the function the employee was performing at the time of the incident/accident. Return-to-duty and follow-up tests are assigned to the modal administration that generated the initial positive test. However, because the random testing rates are the same for both FTA and FMCSA, the random pool can be commingled and administered commonly.

News Releases Of Drug Test Results?

Occasionally, newspaper articles appear that speak of an individual's drug test results generating questions regarding how the information was released and how the release related to the confidentiality provisions set forth in 49 CFR Part 40, Subpart P.

The regulations specifically state that individual test results or medical information about an employee may not be released to third parties without the employee's specific written consent. Information releases associated with legal proceedings can only be re-

leased with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding.

In most cases, where newspapers report test results, the tests are not DOT, but are conducted under another's authority such as local law enforcement as part of their accident investigation procedures. These records may, over time, become part of the public record and do not have the same confidentiality requirements as those conducted under DOT authority.

MRO Procedure Clarified—Adulterant/Split Specimen Testing

Not all DHHS certified laboratories can test for all adulterants and in some cases, only a small number of laboratories have the capability to test. Therefore, in very rare circumstances, it might be possible that there would be no laboratory capable of testing a split specimen when the primary laboratory identified the presence of an adulterant in the primary specimen.

Should this situation arise, the MRO must report to the employer that the specimen, "Failed to Reconfirm: Split Laboratory Not Available for Testing." The MRO must cancel the test, report the result to the Designated Employer Representative and the employee, document the reason for the cancellation, and report the failure to confirm to the Office of Drug and Alcohol Policy and Compliance (ODAPC). The MRO must then direct the DER to immediately send the employee back for a retest under direct observation without any advanced notice. The result of the retest should be considered the result of record.

RX & OTC MEDICATIONS

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Regulation *Updates*
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Model Transit Rx/OTC Approach

In 2000, the FTA began an initiative to increase awareness of the possible dangers associated with prescription (Rx) and over-the-counter (OTC) medication use in the transit industry. In 2003, the best policies, procedures and training materials that were available in the industry were compiled into the FTA *Prescription and Over-the-Counter Medications Tool Kit*.

Since that time, various systems and state Departments of Transportation have worked to develop programs that meet the four FTA objectives for an Rx/OTC program. These include:

1. Develop a policy statement addressing the use of Rx/OTC medications (See *Updates*, Issue 24, Page 5).
2. Educate safety-sensitive employees about the potential dangers associated with the use of Rx/OTC medications (See *Updates*, Issue 26, Page 7).
3. Document Rx/OTC involvement in accidents (See *Updates*, Issue 25, Page 5).
4. Develop a procedure to have qualified medical personnel determine the potential effects Rx/OTC medications may have on employees' performance and their fitness for duty.

The last of these objectives has proven to be the most difficult to accomplish due to perceived operational limitations, complexities of the health care system, logistical impracticalities, and cost. However, a model approach is emerging that promises to address these concerns. The approach is essentially a two step process.

First, transit systems implement a bi-annual fitness-for-duty physical examination that assesses the individual's medical history, current physical condition, current use of prescription and OTC medications, and a discussion of anticipated future use of OTCs. This physical provides a baseline fitness-for-duty assessment, provides the physician with a comprehensive view of the individual's physical health and provides an opportunity to assess the impact of individual medications and their combinations. All of this can be taken into consideration in relation to the individual's safety-sensitive functions and encourages a dialog between the medical practitioner and

employee regarding their fitness for duty. The bi-annual nature of the examinations provides for a periodic reassessment. To ensure an accurate assessment of the risks to public safety, only medical practitioners authorized by the employer should be used.

Employers that already conduct DOT medical examinations for their employees with Commercial Driver's Licenses already have the mechanism in place and need only enhance the Rx/OTC portion of the examination. Employers that do not conduct DOT medical examinations can mimic the process. Even though the cost of a bi-annual physical exam may be costly, the benefits in terms of increased safety and employee health benefits are believed by many to outweigh the cost. This approach is also consistent with the emerging industry focus on fitness for duty.

Second, in the interim between physicals, employees are required to obtain medical authorization from their prescribing physician regarding the use of any additional prescription or OTC use. The medical authorization forms are returned to the employer and then forwarded to the company authorized medical practitioner that conducted the bi-annual physical. By having the Rx/OTC authorizations reviewed by the company authorized medical practitioner, the employer can be confident that the employee's safety-sensitive job duties, medical history and physical condition are all taken into consideration and the employee's fitness for duty has been accurately assessed. The employer reserves the right to overrule the prescribing physician based on the recommendation of the company-authorized medical practitioner.



Where to Find?

**Conforming Products List
Evidential Breath Testing (EBT)
Devices**
July 21, 2000
Federal Register Vol.65
Pages 45419 - 45423
Primary Topic: Conforming Products
List (CPL)
Website location: [www.nhtsa.gov/
people/injury/alcohol](http://www.nhtsa.gov/people/injury/alcohol)

Note: This list will be updated periodically.

Non-evidential Testing Devices
May 4, 2001
Federal Register Vol.66
Pages 22639 - 22640
Primary Topic: Initial Alcohol
Screening Devices

Note: This list will be updated periodically.

**FTA Drug & Alcohol Discussion
Forum:**
[http://transit-safety.volpe.dot.gov/
Safety/BBS](http://transit-safety.volpe.dot.gov/Safety/BBS)

Drug and Alcohol Audit Questions
[http://transit-safety.volpe.dot.gov/
Safety/DATesting/Audit/default.asp](http://transit-safety.volpe.dot.gov/Safety/DATesting/Audit/default.asp)

The information presented on
this page should be used to
update Chapter 5 of the revised
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.

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FTA home page: www.fta.dot.gov

FTA Office of Chief Counsel: http://www.fta.dot.gov/about/offices/hq/4956_4944_ENG_HTML.htm

FTA Office of Safety & Security: <http://www.fta.dot.gov> (then click on Safety & Security)

FTA Letters of Interpretation: <http://www.fta.dot.gov/library/legal/dral/02toc.htm>

DHHS-Certified Laboratories: <http://www.workplace.samhsa.gov/ResourceCenter/lablist.htm>

Center for Substance Abuse Prevention: <http://prevention.samhsa.gov>

FTA, Office of Safety and Security Clearinghouse: (617) 494-2108

Best Practices Manual: FTA Drug & Alcohol Testing Program

Drug and Alcohol Consortia Manual

Drug and Alcohol Testing Results: 1995, 1996, 1997, 1998, 1999, 2000 and 2001 Annual Reports

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Revised 2003

Reasonable Suspicion Referral for Drug and Alcohol Testing (Leaders' Guide & Video)

FTA Drug and Alcohol Program Assessment

Prescription and Over-The-Counter Medications Toolkit

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

USDOT, Office of Drug and Alcohol Policy and Compliance: (202) 366-3784 or <http://www.dot.gov/ost/dapc/>

Urine Specimen Collection Procedures Guideline

Substance Abuse Professional Guidelines

Produced by:	Published by:	Edited by:	Illustrated by:
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