



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

FTA Drug And Alcohol Regulation *Updates*

Spring 2006

Issue 32

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 thirty-second in a series.

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Drug and Alcohol Program National Conference is Success

The Federal Transit Administration (FTA) held the 2006 Drug and Alcohol Program National Conference in Las Vegas, NV on March 20-21. The conference was an overwhelming success with over 400 participants in attendance. The conference was kicked off by presentations from Jerry Powers, FTA Drug and Alcohol Program

Manager, and Mark Snider, Senior Policy Advisor for the Department of Transportation's Office of Drug and Alcohol Policy and Compliance. The conference included speakers consisting of FTA auditors, FTA Drug and Alcohol MIS Program and newsletter staff, and industry professionals including Medical Review Officers (MROs),

Substance Abuse Professionals (SAPs), Breath Alcohol Technicians (BATs), and urine collectors.

Plans are currently underway to hold the second annual FTA Drug and Alcohol Program National Conference in the Spring of 2007 in New Orleans. Be on the look out for future conference announcements.

Sources of Qualified SAPs

Transit systems in small urban and rural communities have been challenged to find qualified Substance Abuse Professionals (SAPs) in their geographic areas. 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 SAPs.

To be qualified, SAPs must meet specific requirements for education, certifications/licenses, clinical experience, specific qualifications training, examination, and continuing education as defined in 49 CFR Part 40.281. Readers should note that the Department of Transportation (DOT) will soon be publishing a final rule that adds state-licensed or certified marriage and family therapists to the list of credentialed professionals eligible to serve as SAPs un-

der subpart O of 49 CFR Part 40.

Given the small number of potential referrals that would come from a small urban or rural transit system, there is little financial incentive for an individual to undertake the necessary effort to become a qualified SAP. As a result many systems have been found to be out of compliance with this part of the regulations. One of the most commonly asked questions is "Where can I find a SAP? Is there a list somewhere? Are there any organizations that have lists of qualified SAPs?"

There is no government listing of qualified SAPs, nor is there a national registry of any kind that can be consulted. Several web sites have popped up claiming to provide a listing of SAPs, but upon further investigation these sites are an advertising/referral tool that does little to substantiate the subscriber's credentials.

The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC), however, has developed a list of organizations currently offering SAP training, continuing education and/or certified examinations. Even though SAPs themselves are not listed, the organizations that appear on the ODAPC list represent a good starting point in the identification process. The list can be accessed by going to www.dot.gov/ost/dapc/testingpubs/SAPEXam-Sources_200605_alpha.pdf. The language, titles, and listing of credentials on the referenced web sites can be confusing. Use care to access information on SAPs that meet the DOT requirements. The SAP should be interviewed and his/her credentials verified prior to their establishment as the employer's SAP.

PROPOSED REGULATORY CHANGES

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.

Notice of Proposed Rulemaking:
June 5, 2006
Federal Register Vol. 71,
Pages 32298-32300
Primary Topic: Proposes to
eliminate duplicative testing
requirement.

The information presented on
this page should be used to
update Chapter 2 of the revised
Implementation Guidelines.

NPRM Proposes Elimination of Duplicative Testing Requirement

On June 5, 2006, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) that would provide regulatory relief to public transportation providers by eliminating duplicative testing requirements.

The NPRM published in the Federal Register (Volume 71, Number 107, Pages 32298-32300) proposes that a private or non-profit motor-carrier employer, with employees who perform safety-sensitive functions regulated by both FTA and the Federal Motor Carrier Safety Administration (FMCSA), may determine whether or not a majority (more than 50 percent) of these employees are regulated by FMCSA. If it is determined that the majority of the employees spend their time performing FMCSA safety-sensitive functions, the employer may opt to comply with FMCSA regulations for the employee or class of employee covered. However, FTA's post-accident and reasonable suspicion requirements would apply when the accident, incident or observation occurs in the performance of public transit activities.

For example, if a private, for-profit over-the-road charter company contracts with the local transit agency to provide supplemental public transit services and determines that only five percent of its CDL-licensed drivers (measured as full-time equivalents) will be used to operate the public transit service, the employer can choose to comply with the FMCSA regulations for all of its CDL-licensed drivers. FTA regulations would only come into play for the employer if/when one of the employer's CDL drivers was involved in an FTA-defined accident or a reasonable suspicion determination is made while the employee is performing public transit functions.

As proposed, the employer would have the discretion to determine the timeframe for the designation. For audit purposes, however, the designation would be made at the

beginning of each calendar year and remain applicable throughout the calendar year. In the instance of contractors with multiple locations, the determination should be made for each distinct location.

Maintenance employees of private and nonprofit motor-carriers who are not covered under the FMCSA regulations, but perform maintenance on transit vehicles remain subject to the FTA regulations.

In the example above, the private charter company would still have to meet FTA regulatory requirements in its entirety for any maintenance personnel that service vehicles.

This provision only applies to private and nonprofit motor-carriers that provide contract services to FTA grantees and sub-grantees. This provision does not apply to municipalities, counties and designated grantees that directly operate transit systems.

Direct recipients with both FTA and FMCSA employees must continue to have FTA and FMCSA programs for each respective group of employees. This NPRM does not change the applicability of the regulations to direct recipients that have employees that perform both FTA and FMCSA safety-sensitive functions. In this case, the employer must determine which functions make up the majority of the time spent on safety-sensitive duties and classify the employee accordingly. The assignment of regulatory authority for reasonable suspicion and post-accident testing will depend on the function an employee is performing at the time of the incident/accident. Return-to-duty and follow-up tests will be assigned to the modal administration that generated the initial positive test result.

Comments regarding this NPRM must be received on or before August 4, 2006 following the procedures described on page 3 of this newsletter. Late filed comments will be considered to the extent practicable. The Docket Number is FTA-2006-24592 and Regulatory Identification Number is 2132-AA86.



PROPOSED REGULATORY CHANGES

FTA Drug and Alcohol
Regulation *Updates*
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NPRM Proposes Codification of Coast Guard Rule Applicability

On April 22, 2002, FTA published a Notice of Interpretation in the Federal Register that changed the applicability of the FTA Drug and Alcohol Testing Regulations to FTA-funded ferry boat operators. Previously, public transit ferry operators were required to comply with both the FTA and the U. S. Coast Guard (USCG) regulations. The interpretation stated that FTA-funded ferry operations that comply with the relevant USCG drug and alcohol testing regulations were to be deemed in concurrent compliance with the FTA drug testing regulations. Since the USCG does not have a random alcohol testing provision that is similar to FTA's, the ferry operators were still required to comply with FTA's random alcohol testing requirements as defined in Section 655.45.

On June 5, 2006, FTA published a Notice of Proposed Rulemaking (NPRM)

that proposes to codify this interpretation in the regulation (Volume 71, Number 107, pages 32298-32300). Comments regarding this NPRM must be received on or before August 4, 2006 following procedures outlined below. The Docket Number is FTA-2006-24592 and Regulatory Identification Number is 2132-AA86.

If a ferry boat operator fails to be in compliance with the USCG testing regulations (46 CFR Part 4 and 16, and 33 CFR Part 95) or the FTA random alcohol testing regulations, the operator will be in non-compliance with 49 CFR Part 655. The employee is also subject to FTA consequences defined in Subpart G of the FTA regulations. The employer is responsible for the administrative and compliance certification requirements defined in Subparts H and I of the FTA regulations.

Docket Comment Procedure

Written comments should be submitted to the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You may also submit comments online at www.regulations.gov or on the DOT electronic docket web site at dms.dot.gov. Faxes will be received at (202) 493-2478. Hand delivered copies will be accepted between 9 a.m. and 5 p.m., weekdays. All submissions must include the agency name and docket number for this notice. For more information, contact Jerry Powers of the Office of Safety and Security at (202) 366-1080.

New Freedom and JARC Guidance Coming Soon

The Job Access and Reverse Commute (JARC) program provides funding for local programs that offer job access and reverse commute services to provide transportation for low income individuals who may live in the city core and work in suburban locations. Formerly, JARC was a discretionary program that was subject to all of the terms and conditions of a grant made under Section 5307 including drug and alcohol testing (see *Updates*, Issue 13, page 1). In its new form, the JARC program is a formula program codified in Section 5316 of Title 49 of the United States Code.

Similarly, the New Freedom Program is also a new formula-based funding program codified in Section 5317 of Title 49 of the United States Code. This program is designed to encourage services and facility improvements to address the transportation needs of persons with disabilities that go beyond those required by the Americans with Disabilities Act.

The applicability of the FTA Drug and Alcohol Testing regulations to these new programs is currently under review by FTA and guidance will be reflected in the JARC and New Freedom program circulars due for publication in the near future.

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

November 9, 2004
Federal Register Vol. 69
Pages 64865-64868
Primary Topic: Specimen
Validity Testing

The information presented on this page should be used to update Chapter 2 of the revised Implementation Guidelines.

FOR YOUR INFORMATION

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.

Web site 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 4 of the revised *Implementation Guidelines*.

Information on Recidivism Still Being Gathered

Little is known regarding recidivism rates associated with FTA Drug and Alcohol Testing Regulations. Recidivism rates represent the percentage of employees that test positive a second time following an initial positive test result. Since FTA has determined that this information would be beneficial to the transit industry, a questionnaire was placed on the FTA web site in February 2006 and transit systems were asked to respond.

The initial response was excellent with over 130 transit systems representing 39 states. The preliminary results represent over 17,600 safety-sensitive transit employees. Of the respondents, 85% had a zero-tolerance policy with the remaining 15% having a second-chance policy.

Information was gathered for the time period from 1995 through 2005. During that span, 1,735 positive test results were recorded among the sample. Thirty-six percent (36%) or 632 employees were given a second chance and entered a treatment program recommended by a Substance Abuse Professional (SAP). Of those receiving treatment, 43.7% received outpatient treatment, 16.5% received group therapy, 13.3% received seven or more sessions of individual counseling, 4.7% received marijuana awareness training, 4.5% received 30-day inpatient treatment and the remaining 17.3% received other types of treatment/counseling. Ninety percent (90%) of those that entered a treatment program (571 employees) completed the return-to-duty process and resumed safety-sensitive duties.

Twenty-seven percent (27%) were in a follow-up testing program with a one year duration, whereas, nearly 63% were in a five year follow-up testing program. The remaining ten percent (10%) were in a two, three, or four year follow-up testing program. In 2000, the industry appeared to undergo a pronounced philosophical change regarding follow-up testing programs. Prior to 2000, 67% of the follow-up testing programs were one year in duration. For the years 2000 and beyond, the pattern changed and 67% of the follow-up testing programs were five years in duration. Of the employees who entered a follow-up testing program, 23% had the minimum six tests during the first year with the ma-

majority (57.2%) having seven to twelve tests within the first year.

Of those employees who completed the return-to-duty process, 38.5 % tested positive a second time. The majority (51%) tested positive within the first year and ninety percent (90%) tested positive within three years. Eighty percent (80%) of the employees tested positive for the same substance as their initial positive, whereas twenty percent (20%) tested positive for a different substance. Marijuana constituted the majority of second-chance positives followed by cocaine and amphetamines. Proportionately, the incidence of amphetamines and marijuana second positive results happened at a rate greater than the initial incidence of positive tests for these substances. This statistic indicates that marijuana and amphetamine users appear to have a higher risk of recidivism.

Of those who tested positive a second time, 74 % were operators and 24 % were maintenance employees. Forty percent (40%) of the operators that tested positive the first time, tested positive a second time and eleven percent (11%) tested positive a third time or more. Thirty percent (30%) of the maintenance personnel that tested positive the first time,



tested positive a second time and three percent (3%) tested positive a third time or more. Less than one-fourth of employees that tested positive were under 34 years of age. Sixty-four percent (64%) of the employees that tested positive were 35-54 years old. Nearly half of the employees in the 45-54 age category that had an initial positive test result tested positive a second time. One third of the employees that tested positive were ten-year plus veterans and over one third of them tested positive a second time.

The information presented here constitutes the preliminary results of the data request. Our effort to expand the data base continues. If you have not completed a questionnaire, please do so. The questionnaire can be completed online at transit-safety.volpe.dot.gov/survey/. Your response is not mandatory, but will be helpful in the creation of a meaningful database. For more information regarding this data collection effort, please contact the newsletter editor at (937) 299-5007 or rls@rlsandassoc.com.

RX & OTC MEDICATIONS

Rx/OTC in Top Ten List of Associated Factors in Truck Accidents

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) conducted a multi-year, nationwide study of factors that contribute to truck crashes. The Large Truck Crash Causation Study (LTCCS) published in March, 2006 assessed up to 1,000 elements in each crash and identified the top twenty factors associated with severe crashes in which at least one injury or fatality occurred.

The study found that an action or inaction by the drivers of the truck or the other vehicles involved were important reasons leading to crashes in eighty-seven percent (87%) of the sample cases. The use of prescription medication was cited as an associated factor in 26.3% of the crashes ranking as the third most commonly cited factor associated with major truck crashes and the

number one driver-related factor in crashes. Use of over-the-counter medications was cited as an associated factor in 17.3% of the crashes ranking as the eighth most commonly cited of all the factors and fourth among the driver related factors. Illegal drug use and



alcohol use did not make the top twenty associated factors. Illegal drug use was cited as an associated factor in 2.3% of the crashes and alcohol use was cited as an associated factor in 0.8% of the crashes.

Even though the study makes no judgment as to

whether any of the associated factors listed caused any of the accidents, it concludes that analysis of the data "can lead to a better understanding of crash causation and guide countermeasure development."

This study is the first national examination of all factors related to causation in large truck crashes. Even though it does not address transit related accidents, the study provides insights into the magnitude of Rx/OTC use in the transportation industry and provides a glimpse of the potential impact legal drugs may have on safety. The transit industry should take note.

The Report to Congress on the Large Truck Crash Causation Study is available to the public from the National Technical Information Service in Springfield, Virginia 22161. Cite report number MC-R/MC-RRA.

Sources of Information on Rx/OTC

- **Partnership for a Drug-Free America**—www.drugfree.org. Comprehensive information, resources and tips from experts.
- **Substance Abuse and Mental Health Services Administration (SAMHSA)**—www.samhsa.gov. Part of the U.S. Department of Health and Human Services (HHS). Provides information, statistics and articles on improving the quality and availability of drug and alcohol addiction treatment.
- **National Clearinghouse for Alcohol and Drug Information (NCDAI)**—www.ncadi.samhsa.gov or (800) 729-6686. Part of HHS and SAMHSA. A federal resource for federal government agency publications dealing with alcohol and drug use prevention and addiction treatment.
- **Center on Substance Abuse Treatment (CSAT)**—www.csat.samhsa.gov or (800) 662-HELP. Part of HHS. Toll-free treatment and referral hotline provides callers with information and listings of treatment and recovery services for alcohol and drug problems.
- **National Institute on Drug Abuse (NIDA)**—www.drugabuse.gov. Part of HHS and one of the National Institutes on Health. Primary source of scientific studies and new discoveries on the effects of drug abuse and how best to prevent drug abuse and treat drug addiction.
- **National Institute of Mental Health (NIMH)**—www.nimh.nih.gov. Part of HHS and one of the National Institutes of Health. Primary source of scientific research on mental and behavioral disorders.

Where to Find?

Conforming Products List
Evidential Breath Testing (EBT) Devices
July 21, 2000
Federal Register Vol.69
Pages 42237 - 42239
Primary Topic: Conforming Products List (CPL)
Web site location: http://www.dot.gov/ost/dapc/testingpubs/20040714_CPL_EBT.pdf

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.

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

FTA Office of Safety & Security: <http://transit-safety.volpe.dot.gov>

FTA Drug & Alcohol Letters of Interpretations:

<http://transit-safety.volpe.dot.gov/Safety/datesting/Legallinterpretations/02toc.asp>

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 through 2003 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: (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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