



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

FTA Drug And Alcohol Regulation *Updates*

Fall 2007

Issue 34

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-fourth in a series.

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Collection Site Security and Integrity Focus of Attention

Given recent public focus on security and integrity issues at collection sites, the Office of Drug and Alcohol Policy and Compliance (ODAPC) is intensifying its focus on collection sites and increasing its scrutiny of problem areas. ODAPC is reminding employers, consortiums/third party administrators (C/TPA), collectors, and collection sites of the importance of the collection security and integrity procedures outlined in 49 CFR Part 40 and the "DOT Urine Specimen Collection Guidelines."

Specifically, ODAPC is calling on employers and C/TPAs to make sure that each of their collectors and collection sites are following proper procedures, have quality assurance procedures in place, and have had the proper training. ODAPC is calling on all collectors and collection site managers to ensure that they have adequate measures in place to protect the integrity of the collection process and the privacy of employees. They are asking for collection site personnel and management to refresh their knowledge of the proper Part 40 and Collection Guidelines security practices and to take corrective action by modifying standard operating procedures as necessary and retrain accordingly.

ODAPC is asking that special attention be given to the following procedures that collectors "must" follow during each and every collection. Collectors must:

- Pay careful attention to employees throughout the collection process;
- Ensure that there is no unauthorized access into the collection areas;
- Make sure that employees show proper picture identification;
- Require employees to empty pockets and remove outer garments;
- Do not allow briefcases, purses and bags in the privacy enclosure;
- Maintain personal control of the specimen and CCF at all times during the collection;
- Secure water sources making unavailable to employee (turn off water inlet, tape handles);
- Ensure that bluing agent is in the toilet water;
- Ensure that the toilet tank is secured or that bluing agent is placed in the tank water;
- Ensure that no possible adulterants (e.g., soap, cleansers) are present in the privacy enclosure;
- Inspect site to ensure no foreign or unauthorized substances are present;
- Ensure that undetected access is not possible (e.g., through door outside of view);
- Secure areas and items that could be used to conceal contaminants (e.g., trash cans); and
- Re-inspect privacy enclosure after each collection to ensure the site's continued integrity.

3rd Annual FTA Drug and Alcohol National Conference Announced

Mark your calendars. The third annual FTA Drug and Alcohol Program National Conference will be held on April 30 and May 1, 2008 at the Sheraton Safari Hotel in Orlando, Florida. The conference sessions will cover a variety of topics and will provide ample opportunity to interact with policy makers, auditors, and experts in the field. Several panel discussions will be facilitated to encourage increased interaction and networking.

Sessions will be held on a number of topics including the role of the Drug and Alcohol Program Manager, reasonable suspicion training for supervisors (certificates will be granted for satisfying 49 CFR Part 655.14 minimum training requirements), post-accident threshold training, collection procedures, how to develop an in-house training program, and prescription and over-the-counter medication programs. The sessions and panel discussions will focus on achieving and maintaining compliance as well as sharing best practices on a variety of subjects.

In response to feedback obtained from the 2007 conference, all speakers will have scheduled office hours after their sessions to answer your specific questions.

Information on conference registration and hotel accommodations is posted on FTA's website at <http://transit-safety.volpe.dot.gov/DrugAndAlcohol>.

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

January 9, 2007
Federal Register Vol. 72
Pages 1057-1058
Primary Topic: Revised Testing Rates

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 Chapters 4 and 5 of the
revised *Implementation
Guidelines*.

2007 National Drug-Free Work Week

The U.S. Department of Labor (DOL) has established October 14 – 20, 2007 as Drug-Free Work Week. The purpose of the annual campaign is “to educate employers, employees and the general public about the importance of being drug-free as an essential component of a safe and healthful workplace.” All employers and employees are encouraged to actively participate and to implement activities and business practices that promote safer, healthier workplaces and encourage workers with alcohol and drug problems to seek help. Drug-Free Work Week provides the opportunity to highlight activities that should be ongoing throughout the year.

The following suggestions are provided for transit employers and employees participating in the campaign.

- Promote your Drug-Free Workplace Program—Use this opportunity to remind your employees that you have a drug- and alcohol-free workplace. Update, display, and distribute informational materials about the effects of drugs and alcohol to every covered employee. Materials such as posters, brochures, and fact sheets can be obtained from the National Clearinghouse for Alcohol and Drug Information (NCADI) at <http://ncadi.samhsa.gov>. Update materials placed on bulletin boards and in break areas or other locations frequented by employees. Focusing attention on your drug- and alcohol-free workplace during this week can also help you meet the ongoing education program requirements of the Drug Free Workplace Act of 1988.
- Provide Refresher Training for Supervisors—Even though supervisors are only required to have reasonable suspicion training one time, standard industry practice is to provide periodic refresher training. Drug-Free Work Week provides a good opportunity to remind supervisors how to make reasonable suspicion determinations, how to deal with safety-sensitive employees who have performance problems and how to refer employees to available assistance.
- Educate Employees—The focus on Drug-Free Work Week also provides you with the opportunity to review your Drug and Alcohol Testing Policy with all of your employees and conduct training sessions or safety meetings on the negative impact that drug and alcohol use has on safety in the workplace, productivity, and customer relations.
- Remind Employees of Available Assistance—If you have an Employer Assistance Program or if your insurance program has a wellness component, use this opportunity to remind employees of how these services can be accessed. Also advise employees of available community treatment resources and hotline numbers.
- Feature Drug-Free Work Week in Your Employee Communications—Include information about Drug-Free Work Week in your employee newsletter, e-mails, and other employee announcements.
- Distribute Payroll Stuffers—Produce a leaflet, brochure, or letter that reminds employees of your drug and alcohol policy, methods for self-referral (if applicable), and management commitment to creating and maintaining a drug- and alcohol-free workplace.

For more ideas on how to recognize Drug-Free Work Week, go to the DOL’s website at <http://www.dol.gov/asp>. And remember, **in transit, every week is Drug- and Alcohol-Free Week!**

On-Call Employee Pre-Duty Alcohol Use

All safety-sensitive transit system employees are prohibited (49 CFR Part 655.33) from consuming alcohol within four hours of performing a safety-sensitive duty. Consumption of alcohol by a covered employee who is on-call is also prohibited. However, in an on-call situation, the employer must give the covered employee the opportunity to acknowledge the use of alcohol at the time he/she is called to report for duty.

If the employee has consumed alcohol and is unable to perform his or her safety-sensitive function, he/she should not report for duty. In the event the covered employee has acknowledged the use of alcohol, but claims the ability to perform his/her duties and reports to work, the employer must administer a reasonable suspicion test. For these tests, the collector should remark on the Alcohol Test Form (ATF) that the type of test being given is “on-call employee with acknowledged pre-duty alcohol use.” The “reason for test” on the ATF should be marked as “reasonable suspicion” and reported as such in the drug and alcohol MIS. A trained supervisor is also required to make and document a contemporaneous observation concerning the signs and symptoms of alcohol misuse before sending the employee for the test.

TECHNICAL ASSISTANCE

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TSI Expands Course Offerings, Includes Reasonable Suspicion Seminar

The Transportation Safety Institute (TSI) has expanded its offerings of general transit safety courses to include a one-day seminar on reasonable suspicion determinations for supervisors. The course is designed to educate transit system employees who may be called on to make reasonable suspicion determinations under the FTA drug and alcohol testing regulations. Participants will be introduced to the signs, symptoms, and physical, behavioral, speech, and performance indicators of probable drug use and alcohol misuse. Participants are instructed on the roles and responsibilities of supervisors and how to make fair and reliable reasonable suspicion testing referrals.

This course meets the FTA requirement (49 CFR Part 655.14) for supervisor reasonable suspicion training. A certificate of completion will be provided to each participant that completes the class.

To register for an upcoming class or to volunteer to be a host site, call TSI at (405) 954-3682 or go to <http://www.tsi.dot.gov>. The Reasonable Suspicion Seminar is provided for a cost of \$25. The following seminar dates have openings:

Tampa, FL: March 20, 2008
Austin, TX: March 31 and April 1, 2008
Kansas City, MO: July 8 and July 9, 2008

Transit Positive Drug Test Results Lower Than U.S. Workforce

Quest Diagnostics Incorporated recently published its semi-annual Drug Testing Index (DTI) for the 2005 calendar year. The DTI summarizes the results of more than 7.3 million workplace drug tests performed by Quest Diagnostics. It is published as a public service and has been considered a benchmark for national trends since its inception in 1988. The DTI reports positive rates for federally-mandated safety-sensitive workers, the general workforce, and the combined U.S. workforce. Federally-mandated safety-sensitive workers include all employees covered under the Nuclear Regulatory Commission and Department of Transportation regulations including the Federal Transit Administration.

Positive rates for each category are calculated by determining the proportion of positive results for each category to the total number of drug tests performed in the category. The data is reported by type of employee, reason for test, and drug type. Overall, the DTI indicated that workplace drug use fell to its lowest level since the DTI was first published. The combined U.S. workforce in 2005 had a 4.1% positive rate compared to 4.5% in 2004. The decrease was primarily attributed to a decrease in marijuana drug test results among those tested. The data showed that the use of marijuana among the combined workforce fell by approximately 12.0% from 2004 to 2005.

The 2005 federally-mandated, safety-sensitive (FMSS) workforce positive rate of 2.3% is significantly lower than the general U.S. workforce positive rate of 4.5%. When viewing random tests only, the general U.S. workforce had a 6.6% positive rate compared to a 1.8% positive random rate for the FMSS workforce.

Florida Training Video Available

The Florida Department of Transportation funded the development of a new video for use by transit systems to meet the employee drug awareness training required by §655.14(b). The regulation requires that each covered employer provide a minimum of sixty minutes of training to all safety-sensitive employees on the effects and consequences of prohibited drug use on personal health, safety, and the work environment. This training must also address the signs and symptoms that may indicate drug use.

The video created by the Center for Urban Transportation Research (CUTR) at the University of South Florida, was developed to be a fresh, entertaining, up-to-date training tool

that can be used to supplement an agency's own training materials. The twenty minute video provides background on DOT drug and alcohol testing, describes each of the five prohibited drugs and alcohol, outlines the test categories, and describes the consequences of a positive or refused test. CUTR has also developed an accompanying handbook. The video and handbook have numerous references to Florida; however, CUTR is making the materials available to all interested agencies in DVD format and as a streaming media on their website. For more information, contact Ms. Diana Byrnes at (813) 426-6980 or review the webcast at <http://www.cutr.usf.edu/byrnessamsite>.

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
Corrections to Part 40; Common
Preamble to Modal Rules

Interim Final Rule

November 9, 2006

Federal Register Vol. 69
Pages 64865-64868

Primary Topic: Specimen Validity
Testing

Final Rule Change

August 23, 2006

Federal Register Vol. 71
Pages 49382-49384

Primary Topic: Expanded List of SAP
Qualifications

The information presented on this page should be used to update Chapters 5 and 7 of the revised *Implementation Guidelines*.

REGULATORY 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>

To verify the certification status of a laboratory, DHHS has established a telephone Helpline: (800) WORKPLACE.

The information presented on this page should be used to update Chapters 6 and 9 of the revised *Implementation Guidelines*.

Same Standards Apply for Taxi and Paratransit Providers

Contractors that “stand in the shoes” of transit recipients to provide safety-sensitive functions are covered under the regulation and must have a compliant program. The rules apply to all public and private operators, including taxicabs and paratransit agencies, that provide service under an arrangement with an FTA recipient when someone other than the passenger chooses the provider (e.g., a broker or dispatcher who chooses the provider and assigns the trip on behalf of the passenger). The rules do not apply when a taxicab or other paratransit service provider is not providing service under an arrangement with an FTA recipient, but instead is chosen by a passenger (e.g., a subsidized voucher program).

The distinction of whether a service provider is covered or not depends on the manner in which trips are assigned to the provider, not on the type of entity the service provider is.

The FTA grantee must treat all contractors that perform a particular service with a particular type of vehicle (i.e., paratransit vans) in the same manner. Requiring a testing program for one contractor and not another that are performing the same service is inequitable to the employees of the various contractors and creates a competitive advantage/disadvantage.

“Ancillary Vehicles” Defined for Post-Accident Testing

An FTA post-accident test can only be conducted when the vehicle involved in the accident is a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel that is used for mass transportation or for ancillary services. Vehicles used for ancillary services include non-revenue service commercial motor vehicles (e.g., dump trucks, snow plows) that require a CDL to operate and vehicles used by armed security personnel. Accidents involving supervisor

or general manager vehicles that are not used to transport passengers do not meet this definition and do not justify a post-accident test under this regulation.

If an accident occurs involving a vehicle used to provide ancillary services that meets the FTA testing threshold (49 CFR Part 655.4), an FTA post-accident test must be performed on the operator and any other covered employee who could have contributed to the accident.

Sources of SAP Training and Examination Increase

The addition of several Substance Abuse Professional (SAP) training and examination agencies into the marketplace has eliminated a bottleneck that had previously limited the number of qualified SAPs available to the transit industry.

SAPs are required to successfully complete training and pass an examination that has been validated by a nationally recognized professional or training organization. When the credentialing requirements for SAPs were first introduced as a requirement of the Part 40 testing program in 2001, there

were a limited number of agencies providing SAP training that met the specifications outlined in the regulation, and no entities offered validated examinations. Until recently, only two entities provided validated examinations. This list has now been expanded substantially with the introduction of at least eight different firms providing validated examinations.

For an up-to-date list of agencies that offer SAP training and/or examinations go to the ODAPC website at http://www.dot.gov/ost/dapc/testingpubs/SAPEXAMSources_200708_alpha.pdf.

Employers Have Final Word on Test Refusals

An employee will be considered to have refused a drug or alcohol test if he/she fails to cooperate with any part of the testing process (49 CFR Part 40.191 and Part 40.261). The two examples of “failure to cooperate” provided in the regulation are when an employee refuses to empty pockets when instructed to do so; and the employee behaves in a confrontational way that disrupts the testing process. Other examples include when the employee fails to wash his or her hands after being directed to do so by the collector, the employee admits adulterating or substituting the specimen, or the employee is found to have a device whose purpose is to interfere with providing an actual urine specimen.

When the employee refuses to follow instructions or there is a confrontation, the collector should warn the employee of the potential conse-

quences and, if practical, seek assistance from the Designated Employer Representative (DER) or supervisor to ensure that the employee understands the ramifications. If the behavior continues, the collector, BAT, STT, or MRO must terminate the testing process, document the refusal on the Chain of Custody and Control Form (CCF) or Alcohol Testing Form (ATF), and immediately notify the DER of the refusal (49 CFR Part 40.191 (d) and Part 40.261(c)). The DER will exercise his/her non-delegable duty to designate the test as a refusal based on the information provided by the collector (49 CFR Part 355 (i)).

If the issue is admission of adulteration or direct evidence of adulteration or substitution (e.g., presence of a prosthetic appliance), the test must be considered a test refusal.

Physicians Need Additional Training to Assess Driver Impairment

Many transit system employers rely on their employee's medical practitioners to assess and counsel the employee on the level of impairment associated with their physical condition and use of prescription and over-the-counter medication use. The practice may give transit management a false sense of security as the National Transportation Safety Board (NTSB) has concluded that physicians are not trained to make these assessments.

The National Transportation Safety Board (NTSB) publishes articles in its "Lessons Learned" series that cite conclusions and recommendations arising from specific accident investigations and describes the potential benefits for transportation safety. In July, 2005, an article was published entitled "Training Needed to Evaluate Medical Conditions and Ability to Drive Safely."

The article concluded that healthcare professionals need improved awareness and training on the adverse impact serious medical conditions and medications have on many of the nation's drivers. NTSB found that dozens of people have been killed and injured in accidents in which drivers were impaired due to serious medical conditions or the use of prescription medications that diminished their vision, cognitive, and motor skills.

The report concludes that medical professionals need additional training to be adept at recognizing and evaluating medical conditions that may adversely affect a person's ability to drive. There is no required training for medical students or licensed physicians regarding how to identify, rehabilitate, refer, counsel, and report driving impairment due to medical conditions. The NTSB called for increased course work and continuing education in the area of assessing and counseling medically impaired drivers.

Transit employers should be aware of this potential shortcoming and encourage medical practitioners to seek out additional guidance when making fitness-for-duty assessments. The NTSB report cited reference materials that can be used to assist with the assessment process. The NTSB report can be found at <http://www.ntsbn.gov/publicn/2004/SIR0401.htm>.

Guide to Assessing Driver Ability

The *Physician's Guide to Assessing and Counseling Older Drivers* contains a reference list of medical conditions and medications that may impair driving skills for people of all ages. Even though the publication does not address additional requirements associated with Commercial Driver's Licenses, it provides an up-to-date and comprehensive assessment that physicians can use in assessing a driver's ability.

The Guide identifies thirteen categories of medical conditions and medications that may impair driving, including vision, cardiovascular diseases, cerebrovascular diseases, neurologic diseases, psychiatric diseases, metabolic diseases, musculoskeletal disabilities, peripheral vascular diseases, renal disease, respiratory diseases, the effects of anesthesia and surgery, medications, and other conditions.

The discussion on medications addresses the level and type of impairment that might result and the potential side effects that might affect driving performance. Consideration is given to dosage and changes over time, particularly after

drug initiation and withdrawal. The categories of medications that are addressed include alcohol, anticholinergics, anticonvulsants, antidepressants, antiemetics, antihistamines, antihypertensives, antiparkinsonians, antipsychotics, benzodiazepines, and other sedatives/anxiolytics, muscle relaxants, narcotic analgesics, nonsteroidal anti-inflammatory drugs, and stimulants.

The Guide provides recommendations on treating the underlying medical condition to correct problems and prevent further decline, managing the use of medication, advising patients on the risks to safety, recommending driver restrictions, providing additional assessments, counseling drivers, and recommending rehabilitative services.

The Guide that was published in 2003 was a collaboration between the American Medical Association (AMA) and the National Highway Traffic Safety Administration (NHTSA) and is available from the NHTSA website at <http://www.nhtsa.dot.gov/people/injury/olddrive/OlderDriversBook/>.



Where to Find?

**Conforming Products List
Evidential Breath Testing (EBT)
Devices**
July 29, 2006
Federal Register Vol.71
Pages 37159 - 37162
Primary Topic: Conforming Products
List (CPL)
Website 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 home page: <http://www.fta.dot.gov>

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

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) 494-2116

Best Practices Manual: FTA Drug & Alcohol Testing Program

Drug and Alcohol Consortia Manual

Drug and Alcohol Testing Results: 1995 through 2004 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

Urine Specimen Collection Procedures Guideline

Substance Abuse Professional Guidelines

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/>

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