



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

# FTA Drug And Alcohol Regulation *Updates*

Fall 1998

Issue 9

## 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 ninth in a series.

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## FTA Provides Technical Assistance

FTA continues its efforts to be responsive to the needs of its recipients and to provide additional technical assistance and information. To address concerns raised by several state DOTs, the checklists provided on pages 3 and 4 of this *Update* include a separate checklist for state oversight. In addition, this issue of the *Update* also provides information on resource materials and introduces a new course offered by the Transportation Safety Institute (see articles this page). If readers would like to see articles on specific subjects related to FTA's rules or would like to share "lessons learned" and solutions to common problems, please contact the newsletter editor (see page 6 for name, address, fax, and e-mail address).

## TSI Course Offered

The Transportation Safety Institute (TSI) plans to offer a new course that is designed to provide participants with the technical expertise necessary to perform a comprehensive assessment of their systems' drug and alcohol testing programs. The course will update participants on regulatory changes, FTA interpretations, best practices, and will include discussions on how to avoid the most common problems that systems and DOTs have encountered when implementing their programs. As part of the course, participants will evaluate each component of their own program in light of the material presented and will develop an action plan to enhance their respective programs and to bring them into compliance with the FTA drug and alcohol testing regulations.

Two pilot programs are scheduled to be offered this year. The first is scheduled for November 17 - 19 in Atlanta, and the second is scheduled for December 8 - 10 in Washington, D. C. If funding is available, the course will be offered monthly beginning in March 1999 at locations around the country. Individuals who are interested in registering for one of the courses should contact TSI at **(405) 954-3682**.

## Fax On Demand

The Department of Transportation (DOT)/Office of Drug and Alcohol Policy and Compliance provides an extensive "Fax On Demand" service that provides up-to-date information on DOT drug and alcohol testing policies, procedures, and guidelines. The information includes the current Conforming Products Lists for Evidential Breath Testing Devices (EBT) and alcohol screening devices; up-to-date lists of DHHS-certified laboratories; order forms for BAT/STT training manuals, testing forms, and guidelines; and current news releases and letters of clarification regarding drug and alcohol testing issues. The information can be obtained by calling **1-800-225-3784**.

## Mailing List Update

This newsletter is FTA's primary tool to update and inform the transit industry of regulatory changes and FTA interpretations of the drug and alcohol testing regulations. Nine issues have been published to-date.

The mailing list continues to grow as more individuals recognize the need to stay informed. However, over time, people change addresses, so we are making efforts to update our mailing list and bulk mail distribution method. Please assist us by reviewing the mailing label on this issue and checking it for accuracy. Make sure the address is as specific as possible. If changes are necessary, please fax the corrections to RLS & Associates, Inc. at (937) 299-1055, being sure to note that this is a correction, not an addition to the mailing list.

# Regulatory Changes

## 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

January 6, 1998  
Federal Register Vol. 63  
Pages 418-419  
Primary Topic: Random Drug Testing Rate at 50%

#### 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 7 of the *Implementation Guidelines*.

## Insufficient Volume on a Pre-employment Test

On June 26, the Department of Transportation (DOT) issued a notice that clarified how a valid insufficient volume test result should be addressed for a DOT pre-employment drug test. The notice explained that in instances where (1) an otherwise qualified individual is unable to provide a sufficient volume of urine for a pre-employment test, (2) the inability to provide a sufficient specimen is due to a permanent or long-term disability, and (3) a medical evaluation reveals no clinical evidence of drug use, the MRO should report the result of the test to the employer as a negative test rather than a cancellation.

Prior to this policy change, drug tests for individuals who could not provide a sufficient volume of urine for a pre-employment drug test due to a valid medical explanation were reported as canceled. Since a negative drug test result is required prior to hire under the Federal Transit Administration regulation (49 CFR Pat 653), the individual could not be hired. Thus, a person with a permanent or long-term medical condition that makes adequate urination impossible would have been unable to test negative as stipulated and in effect, an otherwise qualified person would have been prevented from obtaining a safety-sensitive job with a transit system.

The DOT has chosen to modify its urine drug testing procedures in pre-employment test circumstances to address this issue while still allowing the FTA and other DOT operating administrations to achieve their safety objectives. The pre-employment drug test procedures have subsequently been modified in the following manner.

If the collection process has resulted in insufficient volume, efforts to complete the test must stop after the required three hours and the individual must be referred for a medical examination to determine if the individual has a medical condition that precluded him or her

from providing the required volume of urine. If the condition is considered permanent or long-term, the Medical Review Officer (MRO) must consult with the applicant's physician and/or the physician who made the insufficient volume determination and conduct a medical examination to determine if there is clinical evidence that indicates the individual is an illicit drug user. If the MRO is unable to perform the evaluation, the MRO must arrange to have one conducted by a qualified physician suitable to the employer. The examining physician may require a blood test to be one of the medically-appropriate procedures used in determining clinical evidence of drug use.

If the medical examination reveals no clinical evidence of drug use, the MRO must report the result to the employer as a negative test result with written notations regarding results of the medical evaluation. A finding that the individual is free of evidence of drug use will be accepted by the FTA as the equivalent of a negative test result



for pre-employment tests. If the medical examination reveals clinical evidence of drug use, the test will be deemed canceled and the MRO will note that the signs and symptoms of drug use

exist.

The drug regulation remains unchanged for employer and MRO requirements regarding insufficient volume for all other testing categories and for pre-employment testing where no permanent or long-term medical condition is shown to exist. Likewise, the employer's responsibilities with respect to negative and canceled pre-employment tests remain unchanged.

Once employed, all individuals including those with disabilities, will be subject to random, reasonable suspicion, post-accident, return-to-duty and follow-up testing as a condition of employment. If the disabled employee is unable to provide sufficient volume, the employee must still be required to undergo a medical examination unless the MRO verifies that the person's medical condition has not changed. In these cases, the test result would be reported as canceled.

# Random Testing Checklist

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## FTA Random Testing Procedures Checklist

The FTA drug and alcohol regulations require random testing of all safety-sensitive employees. To assist in clarifying or identifying missing or incorrect random testing procedures, the FTA has developed this checklist for use by employers in their program assessments. The checklist includes regulatory requirements, as well as "best practice" recommendations; it should not be construed as the "last word" in regulatory compliance - it merely provides guidance.

- Is the employer using a scientifically valid random-number selection method to select safety-sensitive employees to be tested?
- Are the minimum number of tests being conducted (50% for drugs, 10% for alcohol)?
- Are only USDOT safety-sensitive employees included in the random pool?
- Are the number of random tests conducted each period based on the number of safety-sensitive employees employed at the beginning of the test period?
- Are the random number selections being made as frequently as necessary given the number of random tests to be conducted each year?
- Are test dates spread evenly throughout the year and draw period in a pattern that is not predictable including weekend and holiday testing if safety-sensitive functions are performed?
- Is testing evenly distributed throughout the day (i.e., early morning, afternoon, late evening) and shift times (i.e., beginning, middle, end)?
- Is there any policy, practice, or pattern of the random tests that makes them predictable?
- Are random alcohol tests only conducted just before, during, or just after the performance of a safety-sensitive job function? Are random drug tests performed any time an employee is on duty?
- Are employees required to proceed immediately to the testing site upon being notified of the random testing requirement?
- Are replacement numbers substituted only when the selected individual will not be performing safety-sensitive duties during the testing period? Are excuses legitimate (i.e., extended sick, lengthy vacation, etc.)? Are substitutes selected in a valid manner?
- If employees do not work on the day they are scheduled to have a random test are they tested upon return to work provided a new draw has not been conducted?
- Is scheduling for convenience of the collection site, employee, or employer avoided if such scheduling practices make testing predictable?
- Are employees excused from random testing because of operational inconveniences?
- Is group testing avoided (i.e., individuals are sent all at once)?
- Is the random number selection process conducted in strict confidence to ensure that individuals have no advance notice? Do an absolute minimum number of persons handle the random lists to ensure confidentiality and integrity of the process?
- If the drug and alcohol program manager is in the random pool, is an alternative contact person notified when the manager is selected to ensure the test is performed consistent with employer procedures?
- Are the random number selection process, date and time of notification and collection documented?

(This information was excerpted from the FTA Random Testing Checklist developed by KETRON, a Division of Bionetics)

## 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

January 6, 1998  
Federal Register Vol. 63  
Pages 418-419  
Primary Topic: Random Alcohol Testing Rate Changed to 10 Percent

### 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

# Checklists Cont'd

## 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 2 of the  
*Implementation Guidelines*.

## State Oversight Checklist

The regulations (49 CFR Parts 653.83 and 654.83) require that states certify compliance with the FTA drug and alcohol testing program on behalf of the Section 5311 and 5307 transit programs they administer. To assist states in conducting oversight this issue provides a checklist for policy review and the random selection process. Future issues will address other drug and alcohol testing program components.

### Random Selection and Testing Procedure

- Check that the random selection process is scientifically valid.
- Check that only DOT safety-sensitive employees are included in the random pool.
- Check that the minimum random testing rates are being met.
- Check that employees report immediately for the test after being notified of their selection and check that group testing is avoided.
- Check that procedures are in place to ensure that random testing is spread throughout the year, draw period, and day and that there is no pattern or practice that would make the testing predictable.
- Check that random test scheduling procedures ensure that tests are performed on individuals that are selected and that substitutions are only made in justifiable situations where the employee is not available during the draw period.
- Check that procedures are in place to ensure the confidentiality and integrity of the random testing process and to protect the privacy of individuals being tested.
- Check that all aspects of the random testing process are documented.

### Policy

- Check that the policy meets all requirements outlined in the regulations, and is updated to include the most recent regulatory changes. (Refer to policy checklist in last newsletter for listing of required elements).
- Check that all names and contact information are up to date in the policy.
- Check that the most recent drug and alcohol policy has been approved by the local governing board.
- Check that the most recent version of the policy has been distributed to all covered employees and representatives of employee organizations.

## TPA Oversight Checklist - Random Testing

- Check that the most recent version of policy is distributed to new employees.

### Random Selection Process

- Does the TPA have a procedure in place to ensure that the employer's database is up-to-date prior to random selections?
- Does the TPA monitor the quality of services provided at collection sites including proper collection procedures, recordkeeping, and staff training?
- Does the TPA have a procedure in place for random testing that ensures the scientific validity, unpredictability, and distribution of the tests as defined in the random checklist provided on page 3 of this issue of the *Updates*?
- Is the TPA achieving the required random testing rates for drug (50%) and alcohol (10%)?

# Clarifications & Corrections

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## Blind Performance Testing

All employers covered by the FTA drug testing regulation (49 CFR Part 653) are required to perform blind sample quality control tests to assess the performance of the DHHS-certified testing laboratories. Employers are required to submit three quality control specimens to the laboratory for every 100 specimens sent for analysis. These specimens are to be sent to the laboratory in such a way that the laboratory does not know they are quality control specimens rather than actual employee specimens. The specimens can be either blanks containing no drugs or spiked with a known quantity of specific drugs. Twenty percent (20%) of the blind samples performed by employers or consortia with over 2000 safety-sensitive employees must be spiked. Smaller employers can provide all blanks.

Individual employers should not assume

that blind performance testing is automatically being performed by their consortium. If the employer administers its own drug testing program, the program manager must establish procedures to ensure the blind sample tests are being performed as needed. The program manager may provide the specimens directly or may contract out the responsibility to the MRO or the collection site. If the employer is part of a consortium, steps should be taken to contractually obligate the vendor to perform blind specimen tests and efforts must be made to monitor the consortium to ensure that the requisite blind specimen testing is being performed. If blind specimen testing is not part of the consortium's defined responsibilities, the responsibility falls back to the employer.

## Internal Access to Test Results

Each employer is required to ensure that no unauthorized persons have access to test results. Therefore, the employer must clearly define who will receive test results and for what purpose. In most cases, access to test results is limited to one or two people within the organization, most commonly the program manager and the Personnel Director. Others in the organization would only be privy to the information on a "need to know" basis. Thus, in a case of a pending dismissal or disciplinary action due to a positive test result, the employee's supervisor who normally handles dismissals would "need to know" the reason for the dismissal and therefore, should be informed of the positive test result. Care should be taken, however, to ensure that the test results do not become "common knowledge" due to any action or comment of management personnel. (See related articles on Page 7 of Issue 4).

## Use of Correct

All drug tests performed under the authority of the Department of Transportation (DOT) including the FTA, must utilize the standard DOT Chain of Custody and Control Form. Tests performed using forms other than the DOT form will not be considered valid FTA tests. Similarly, tests that are not performed under FTA authority must not use the standard DOT form. Correct use of the forms is imperative to avoid any compromise or frustration of the required FTA testing process, documentation process, and recordkeeping procedures. In addition, use of correct forms ensures that individuals understand under whose authority the test is being conducted.

## Opiate Testing Thresholds Remain Unchanged

The Department of Health and Human Services (DHHS) published a final notice in the Federal Register on September 30, 1997 that raised the initial test level for opiate metabolites to 2,000 ng/ml, and the confirmation cutoff for morphine and for codeine to 2,000 ng/ml, from the 300 ng/ml levels. The DHHS suspended the effective date indefinitely, however, pending resolution of several logistical issues. Consequently, the DOT has determined that the current cutoff levels (300 ng/ml) will be maintained until such time as the DHHS publishes a new effective date for the rule change.

## 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  
February 27, 1998  
Federal Register Vol.63  
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 7 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  
rlsasc@mindspring.com

*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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RLS & Associates, Inc.  
3131 S. Dixie Hwy, Ste 202  
Dayton, OH 45439  
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