



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

# FTA Drug And Alcohol Regulation *Updates*

Summer 2002

Issue 22

## 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-second in a series.

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## Revised **IMPLEMENTATION GUIDELINES** Available

Following the publication of the original FTA drug and alcohol regulations (49 CFR Parts 654 and 655), FTA published the *Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit* to provide a comprehensive overview of the regulations. The *Guidelines* were well received and proved to be an essential tool for transit agencies formulating their new drug and alcohol testing programs.

Since the *Guidelines* were first published, the FTA regulations were revised and consolidated into one regulation (49 CFR Part 655) and the DOT drug and alcohol testing procedures regulation (49 CFR Part 40) was expanded and significantly revised. In addition, numerous letters of interpretation, and clarifications to the testing procedures and program requirements have been issued. Consequently, the *Guidelines* were updated to reflect these changes and to clarify points of confusion that have often troubled transit agencies.

The *Guidelines* were written to assist new FTA-covered employers institute compliant programs and to assist existing employers with well-established programs assess their level of compliance, validate policies and procedures, and identify areas that require modification based on the revised rules. They provide a comprehensive, up-to-date summary of the regulatory requirements, incorporating into one publication all the guidance FTA has issued over the

past several years through technical assistance, letters of interpretation, audit findings, newsletters, training classes, and public speaking engagements. The *Guidelines* explain the various elements of a compliant program and contain decision trees, timelines, flowcharts, forms and other graphic tools to clarify the requirements.

All Section 5307, 5309 and state grantees will be mailed one hard copy of the *Guidelines*. The manuals will be three-hole punched and shrink wrapped for ease of placement in a three-ring binder. Grantees including state DOTs are encouraged to make hard copies of the manual available to their sub-recipients. Grantees and sub-recipients will be provided copies of the manual in PDF format on CD-ROMs.

The text and appendices are already available on the FTA Office of Safety and Security website (<http://transit-safety.volpe.dot.gov>) in both PDF and html format. In the future, the website will provide links from the text to the appendices, regulatory text and *Best Practices* manual for easy reference. The *Best Practices* manual published earlier this year, provides “real world” examples of policies, procedures, sample forms, and approaches that transit employers have used successfully to manage their programs. Together, these two companion manuals provide a comprehensive guide to the FTA drug and alcohol testing program.

## Rx/OTC-New Newsletter Feature

The FTA has begun an initiative to increase awareness of the possible dangers associated with prescription (Rx) and over-the-counter (OTC) medication use in the transit industry. As part of this initiative, each issue of this newsletter will feature a section on Rx/OTC medications and the po-

tential hazards associated with their use. The section will include best practices, policy and procedure guidance, alerts regarding potentially dangerous substances, and resources where additional information can be found. The Rx/OTC feature section can be found on Page 5 of this newsletter.

# Clarifications & Corrections

## 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

### Notice of Interpretation:

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

**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)

### 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

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

## DOT Provides Sample Release of Information Form

All employers covered under the DOT drug and alcohol testing regulations are required to obtain consent from each applicant for a safety-sensitive position to obtain test results from his/her previous DOT-covered employers for the previous two years (49 CFR Part 40.25). To facilitate this process the DOT has developed and published a standardized form to be used for this purpose.

A copy of this form in its entirety is provided on page 3 of this newsletter. In addition, the sample release form is posted on the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) website and can be downloaded at <http://www.dot.gov/ost/dapc/>. Click on Program Guidance material, then on Sample Release of information form under General Information.

## FTA Funded Ferry Boat Operators Coverage Clarified

On April 22, 2002, FTA published a notice of interpretation in the Federal Register (Volume 67, Number 77, Pages 19615-19616) that changed the applicability of the FTA drug and alcohol testing regulations to FTA funded ferry boat operators. Previously, ferry boat operators were required to comply with both the FTA and the U. S. Coast Guard (USCG) regulations. Even though the rules are similar, there is enough difference that made compliance difficult and confusing. Consequently, an interpretation was made that considers FTA funded ferry operations that comply with the relevant USCG drug and alcohol testing regulations (46 CR Part 4 and 16, and 33 CFR Part 95) to be in concurrent compliance with the FTA drug testing requirements set forth in 49 CFR Part 655. Since the USCG does not have a random alcohol testing provision that is similar to FTAs, the ferry boat operators, however, are still required to comply with FTA's random alcohol testing requirements defined in §655.45.

If a ferry boat operator fails to be in compliance with the USCG testing regulations or the FTA random alcohol testing regulations, the operator will be deemed to be in non-compliance of 49 CFR Part 655 and may have its FTA funding suspended. The employee will also be subject to FTA consequences including removal from duty and SAP referral for rule violations (e.g. a test refusal, verified positive drug test result, or a confirmed alcohol test result of 0.04 or greater).

This interpretation applies only to the FTA drug and alcohol testing regulations and does not waive any other regulatory authority that FTA has over ferry boat operators that receive FTA funding.

## Testing At End of Shift

FTA has consistently stated that an employee must remain subject to random testing any time during his or her work shift, including just prior to the shift end, as long as the employer has provided prior notification. However, in a Letter of Interpretation dated March 26, 2002 and addressed to the Amalgamated Transit Union, FTA Chief Counsel, William P. Sears, stated that even though the statutory requirement to conduct random

drug and alcohol testing is subject to collective bargaining, the employer has limited discretion regarding the scheduling of random tests. Therefore, "union and management are not precluded from negotiating a process for employees who provide advance, verifiable notice of scheduled medical or child-care commitments, to be tested no later than three hours before the shift ends." Mr. Sears went on to clarify, how-

ever, that any negotiated process cannot excuse a covered employee from random testing once selected, nor should it extend to an employee who has not provided advance, verifiable notice of a previously scheduled commitment to the employer. For this and other letters of interpretation go to [www.fta.dot.gov/library/legal](http://www.fta.dot.gov/library/legal).

# Suggested Format: "Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing"

## **Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:**

Employee Printed or Typed Name: \_\_\_\_\_

Employee SS or ID Number: \_\_\_\_\_

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### **I-A.**

New Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Designated Employer Representative: \_\_\_\_\_

### **I-B.**

Previous Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Designated Employer Representative (if known): \_\_\_\_\_

## **Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:**

**II-A.** In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

- |   |                        |
|---|------------------------|
| 1. Did the employee have alcohol tests with a result of 0.04 or higher?                                   | YES ___ NO ___         |
| 2. Did the employee have verified positive drug tests?  | YES ___ NO ___         |
| 3. Did the employee refuse to be tested?  | YES ___ NO ___         |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations?             | YES ___ NO ___         |
| 5. Did a previous employer report a drug and alcohol rule violation to you?                               | YES ___ NO ___         |
| 6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? | N/A ___ YES ___ NO ___ |

*NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).*

### **II-B.**

Name of person providing information in *Section II-A*: \_\_\_\_\_

Title: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_

# 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 heading (SAMHSA). 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.health.org/workplace>.

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

**The information presented on this page should be used to update Chapter 1 of the revised *Implementation Guidelines*.**

## FTA Announces Seminar Schedule

FTA will provide a series of briefing sessions on Part 655 throughout the coming year. The sessions will update participants on regulatory changes and provide them with the technical knowledge necessary to modify their drug and alcohol testing programs to ensure compliance with the new rule. The sessions will update participants on the status of validity testing, MIS reporting requirements, and current regulatory interpretations. The sessions will also include a discussion of the hazards associated with the use of prescription and over-the-counter medications by safety-sensitive employees and provide suggestions for employer/employee response.

The briefings will be free with attendees responsible for their own travel and accommodations. Representatives from the FTA Office of Safety and Security will serve as the presenters. The schedule of dates and locations of the briefings is presented below.

| <u>City and State</u> | <u>Date</u>       | <u>City and State</u> | <u>Date</u>       |
|-----------------------|-------------------|-----------------------|-------------------|
| St. Paul, MN          | October 8, 2002   | Orlando, FL           | February 13, 2003 |
| Denver, CO            | November 13, 2002 | Hickory, NC           | March 11, 2003    |
| Oakland, CA           | December 10, 2002 | Philadelphia, PA      | April 24, 2003    |
| Los Angeles, CA       | December 12, 2002 | Beloit, WI            | May 6, 2003       |
| Worcester, MA         | January 14, 2003  | Fort Worth, TX        | May 13, 2003      |
| Jacksonville, FL      | February 11, 2003 |                       |                   |

To register for a session contact Ms. Jennifer Whalley of the Volpe National Transportation Systems Center at (617)494-2686, or e-mail her at [Whalley@volpe.dot.gov](mailto:Whalley@volpe.dot.gov).

The Transportation Safety Institute (TSI) has also published its list of course offerings for the next fiscal year. Dates for the two-day substance abuse management course are still available. The course assists participants conduct an evaluation and self-assessment of their respective agency's substance abuse program and compliance with FTA regulations. The course involves lecture and group discussion. Classes are available for a materials fee of \$15 per participant. For dates and location of classes, contact TSI at (405)954-3682.

## FTA Produces Rx/OTC Toolkit--Available in Fall

The FTA and National Transportation Safety Board (NTSB) have a growing concern about the use of prescription (Rx) and over-the-counter (OTC) medications that can affect the performance of safety-sensitive duties. Investigations of several recent accidents have identified legally obtained and used medications as contributing factors to the cause or severity of the accidents. On May 22, 2000, FTA emphasizing its commitment to safety issued a "Dear Colleague" letter to all its grantees encouraging each to review current policies with regard to operators' use of Rx/OTC medications which could result in public safety being jeopardized and immediately institute educational programs that address the potential dangers of taking certain types of medications.

To assist grantees in their effort, FTA is creating a toolkit of sample policies, procedures and training materials that will be available in early fall and distributed to each grantee. Over two hundred transit agencies were surveyed to identify current practices in the industry. The best examples were drawn from those submittals and will be included in the toolkit with narrative discussion regarding their merits and applicability to others. In addition, examples of materials used by other modes including the Federal Aviation Administration and Federal Railroad Administration will be incorporated as appropriate.

# Rx & OTC Medications

## Safety-sensitive Employee Guidelines for Use of Rx and OTCs

- 1. Be cautious.** All medications, prescription (Rx) and over-the-counter (OTC) medications have the potential to be dangerous. Use medications cautiously and always in accordance with your physician's directions. Do not perform any safety-sensitive function if you are impaired by any medication. However, this caution should not be construed to require any FTA covered employee to delay or deny any necessary medical treatment.
- 2. Inform your prescribing physician, dentist or other medical professional.** Before accepting a prescription, inform your physician of your safety-sensitive position and explain your job duties. Do not assume he/she will remember your explanation from one visit to the next. Remind him/her of any other medications you might be taking; make sure to include those medications prescribed by other physicians. Make sure the physician has your complete medical history. Ask if you will be able to perform your duties safely on these medications. If not, ask if there is an alternative. Follow your employer's policy and procedures for documenting the physician's assessment and release to work statement, if applicable.
- 3. Solicit information from your pharmacist.** Anytime you need additional information about an Rx or OTC, ask your pharmacist. A pharmacist will be very knowledgeable about the medication ingredients, side-effects, precautions, drug interactions, and effects when combined with other drugs. Even if you have already obtained information from your prescribing physician, your pharmacist may be more knowledgeable and be able to provide additional information and insight. Read warning labels and side-effects provided on information summaries provided with Rx and OTCs.
- 4. Do not over-medicate.** Always follow the prescription directly as written. Never increase the dosage or frequency of use without explicit directions from your doctor. Not only is this practice medically risky, but increased doses of a medication may cause impairment when the same medication used as recommended may not.
- 5. Check the strength of the prescription.** Sometimes medicines are prescribed in different strengths (i.e., 500 vs. 250 MG). Do not take a pill without first checking the dosage and comparing it to the prescription, even if you have taken this medication before or this is a refill.
- 6. Never take someone else's medication.** Even if you have taken this medication or one like it before. This is illegal, dangerous, and it may cause impairment.
- 7. Always monitor your reaction.** Anytime you take any medication (Rx or OTC) watch for any side-effects which could impact your ability to perform your job safely including drowsiness, dizziness, confusion, etc. Try to get used to the medication first before reporting for work. The same applies even if you have taken this medication in the past with no previous side-effects. An individual's reaction to a medication may vary with each treatment, the nature of the illness and other medications taken.
- 8. Avoid Rx/OTCs that have been problems in the past.** If you have taken medications in the past that have caused negative side-effects, make a note of the active ingredients and avoid these in the future. Inform your prescribing physician of your problem with the previous medication and ask for alternative medications that do not have this ingredient. For OTCs, read the ingredient portion of the label and ask the pharmacist for assistance.
- 9. Ask for alternative treatments or dosage schedule.** If you notice side-effects that could pose a safety risk, consult your prescribing physician (or pharmacist in the case of an OTC) about alternative treatments, medications, dosages, or schedule of use. You may be able to avoid the negative side-effects by simply shifting the dosage schedule to take your medications following your shift rather than before.
- 10. Do not perform safety-sensitive duties while impaired.** In instances where no alternative is available, you must inform your supervisor and follow your employer's Rx/OTC procedures for removal from safety-sensitive duty. Do not perform any safety-sensitive duty while you are impaired by any medication.

## 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.

**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](http://www.fta.dot.gov)**

*FTA Office of Chief Counsel: [www.fta.dot.gov/office/counsel](http://www.fta.dot.gov/office/counsel)*

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

*FTA Letters of Interpretation: [www.fta.dot.gov/library/legal](http://www.fta.dot.gov/library/legal)*

*DHHS-Certified Laboratories: Center for Substance Abuse Prevention: [www.health.org/labs/index.html](http://www.health.org/labs/index.html)*

**FTA, Office of Safety and Security: (202) 366-2896**

*Best Practices Manual: FTA Drug & Alcohol Testing Program*

*Drug and Alcohol Consortia Manual*

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

*Random Drug Testing Manual*

*Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Revised 2002*

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

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

**USDOT, Office of Drug and Alcohol Policy and Compliance: (202) 366-3784**

*Urine Specimen Collection Procedures Guideline*

*Substance Abuse Professional Guidelines*

| Produced by:   | Published by:   | Edited by:  | Illustrated by: |
|--|---|---|-----------------|
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