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

FTA Drug And Alcohol Regulation *Updates*

Winter 2006 **Issue 31**

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-one in a series.

Inside....

Random Rates Remain the Same

The random testing rates for employers covered under the Federal Transit Administration (FTA) drug and alcohol testing program will remain the same for 2006. On January 31, 2006, the Federal Register (Volume 71, Number 20, Page 5109-5110) announced the random testing rate for drugs is fifty percent (50%) while the random testing rate for alcohol remains at ten percent (10%).

The testing rates are dependent on the industry's drug "positive rate" and alcohol "violation rate" for the preceding two years. The "positive rate" for drugs means the number of verified positive drug test results plus the number of random test refusals, divided by the total number of random test results. The alcohol "violation rate" is similar to the drug "positive rate" except that it measures the number of confirmation tests with results of 0.04 or greater plus the number of random test refusals divided by the total number of random screening test results.

The testing rate is subject to annual review by the FTA Administrator (§655.45). The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by the regulation. The alcohol random testing rate has remained at ten percent (10%), the lowest allowable by the regulation, because the alcohol "violation rate" has remained well below the 0.05 minimum threshold established (§655.45 (d)).

If the drug "positive rate" is below one percent (1.0%) for two consecutive years, the Administrator has the option to lower the drug random testing rate to twenty-five percent (25%) from the fifty percent (50%) currently required. The "positive rate" has been poised at the one percent (1.0%) threshold rate for many years. For the first time, however, the drug "positive rates" for the two consecutive years of 2003 and 2004 were below one percent (1.0%). In 2003 the "positive rate" was 0.96 and in 2004, the "positive rate" was 0.87. Upon consideration of the state of the testing industry, rise in use of adulterants and efforts to beat drug tests, and safety considerations, the Administrator decided not to lower the random testing rate for drugs in 2006 leaving them at the fifty percent (50%) test rate.

FTA Drug and Alcohol Program National Conference

The 2006 FTA Drug and Alcohol Program National Conference will be held in Las Vegas, NV, March 20-21, 2006. This first national conference will be free to all conference attendees and will be two complete days in length. The conference will include speakers from the Federal Transit Administration, the Office of the Secretary's Office of Drug and Alcohol Policy and Compliance, FTA auditors, and FTA Drug and Alcohol MIS Program and Newsletter staff. Additional Department of Transportation (DOT) Drug and Alcohol testing professionals including Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), Urine Collectors, and Breath Alcohol Technicians (BATs) will also be available.

The workshop sessions will cover a variety of current topics and will provide ample opportunity to interact with policy makers, auditors and experts in the field. Some sessions will focus on achieving and maintaining compliance. Others will focus on best practices and possible new requirements. A separate session will be held for new and inexperienced Drug and Alcohol Program Managers (DAPMs).

To register online go to http://transit-safety.volpe.dot.gov/Training/danatconf. Or you may contact Conference Coordinator Mirna Gustave at (617) 494-3344 with any questions or to register in person. A block of rooms is reserved at the Hampton Inn Tropicana. The hotel's telephone number is (702) 948-8100. Please reference the *FTA Drug and Alcohol National Conference* when making hotel reservation.

VALIDITY TESTING

Where To Find?.....

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

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

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

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

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

Specimen Validity Requirement Topic of NPRM

On October 31, 2005, the Department of Transportation (DOT) published a Notice of Proposed Rulemaking (NPRM) proposing to amend certain provisions of its drug and alcohol testing procedures to change instructions to laboratories, medical review officers, and employers with respect to validity testing. The NPRM was printed in the Federal Register, Volume 70, No. 209, pages 62276-62288. The proposed changes are intended to create consistency with respect to adulterated, substituted, diluted, and invalid specimen results. This NPRM also proposes to make specimen validity testing **mandatory** for all DOT tests.

Comments to the NPRM were accepted through December 31, 2005. However, late filed comments will be considered to the extent practicable. Those interested in commenting should consult the NPRM for submission procedures.

The NPRM seeks to "harmonize" the DOT's specimen validity testing requirements with the requirements contained in the Department of Health and Human Services (HHS) Mandatory Guidelines and the HHS Medical Review Officer Manual. Specifically, the NPRM proposes:

- Specimen validity testing will be mandatory for all DOT covered testing;
- DOT will utilize HHS instructions to laboratories for establishing and directing laboratory procedures for specimen validity testing, and will accept HHS criteria for cutoff levels, laboratory testing equipment and specimen validity testing parameters;
- DOT will modify term definitions to make them consistent with HHS Mandatory Guidelines definitions;
- DOT will continue to require laboratories to contact Medical Review Officers (MROs) when specific invalid results are found;
- DOT will generally adopt HHS procedures for laboratories and MRO action and reporting of primary and split specimens;
- Consistent with the MRO Manual, split testing if not offered for an invalid test result;
- A second invalid result collected under direct observation that occurs for a reason other than the reason determined for the first invalid result will be verified as a test refusal;
- HHS' blind specimen certification criteria will be adopted and HHS' semi-annual laboratory report items will also

be adopted by the DOT.

As part of the NPRM (§40.97, §40.187), the DOT has also established a method of categorizing test results to avoid confusion, promote understanding and facilitate correct MRO verification and reporting responses to the varying test results.

The DOT continues to differ from the HHS Mandatory Guidelines by maintaining its requirement that MROs treat laboratory reported negative-dilute results with creatinine levels within the 2-5mg/dL range as negative-dilutes that require immediate recollections under direct observation. Similarly, the DOT continues to allow employers the policy option to require recollection for other negative dilutes above the range specified above (see article in *Updates*, Issue 30, Page 6.).

The NPRM also proposes that in the instance where an individual has a series of invalid test results for the same reason, the tests will be cancelled. In the event of a pre-employment, return-to-duty, or follow-up test where a negative result is required, the DOT proposes to allow the MRO to label the test as negative if he or she determines there is no clinical evidence that the employee is an illicit drug user using the procedures defined in §40.195. The same process is to be used when an individual has a long-term medical condition that causes an invalid result. If in addition to an invalid result, the specimen is also determined to be adulterated, substituted, positive, or a test refusal, the non-negative test result holds and the MRO need not report the invalid result.

The proposed rule also solicited input on the method of direct observation in relation to realistic-looking prosthetic devices.

MIS REPORTING

MIS Reporting Process Same as Last Year

The new Management Information System (MIS) reporting process that was used to report 2004 calendar year data will be used again to report 2005 calendar year data. In 2004, the Federal Transit Administration (FTA) joined the four other Department of Transportation (DOT) agencies in adopting a single one-page form for use in reporting drug and alcohol test results. FTA strongly encouraged electronic filing of the reports. As a result, over eighty-five percent (85%) of the reporting entities reported via the Internet with no significant problems.

All recipients, states, subrecipients, and safety-sensitive contractors covered by the FTA drug and alcohol testing regulations must file the annual MIS report for the 2005 calendar year by March 15, 2006. FTA sent a mailing to grantees and State DOT offices in late December. This mailing provided guidance for submitting MIS results via the Internet and directions for those desiring to submit hard copies of their reports via the US Postal Service. Included in the mailing was a list of all known safety-sensitive contractors/ subrecipients associated with each recipient or state and corresponding user names and

passwords that are required to submit MIS forms via the Internet. The recipient/state is responsible for providing the correct user name and password to the appropriate contractor/subrecipient.

To complete each section of the form, each item must be carefully read and the appropriate data entered in the fields provided. Each response should be complete and accurate. The system will automatically run several validation checks. The software will flag obvious data errors or omissions. When each section has been completed and all errors and warnings have been addressed, the date and an electronic signature is required to complete the submission. An e-mail confirmation of the submittal may be downloaded.

All safety-sensitive contractors and subrecipients should notify their respective direct recipients/states when their data has been submitted. The recipient/state is responsible for reviewing the data, and determining whether the data will be accepted or rejected. FTA will accept a submission only after the recipient/state has accepted the data.

If a mailing has been received and the information received was incorrect, or there are questions about the reporting process, please contact the FTA Drug and Alcohol MIS Project Office at (617) 494-6336 or e-mail FTA.DAMIS@volpe.dot.gov.

Transit Police, Homeland Security and Testing

Transit police are part of the comprehensive defense that transit systems have against terrorist attacks. They are highly trained individuals that must be able to respond immediately to directives of their commanders. In most cases where transit systems employee their own police force, the police are governed by both Homeland Security and the Federal Transit Administration (FTA).

In a situation where Homeland Security has directed all transit police personnel to report for a post, the police are no longer under the direction of the FTA-regulated transit employer during the specified time. Consequently, if a police officer has been selected for a FTA random drug and/or alcohol test, the transit system Drug and Alcohol Program Manager (DAPM) cannot take the officer away from his/her Homeland Security duties to conduct the test. The DAPM must wait to schedule the test until the police officer returns to safety-sensitive transit duty assuming that the police officer returns to transit duty before the next random selection is made. If the officer is unavailable for the test throughout the testing period, the DAPM must document why the officer was unavailable for testing.

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 10 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.

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

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

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

FTA Seeking Info on Recidivism

The FTA drug and alcohol regulation (49 CFR Part 655) requires that all covered employers include the consequences for a positive test result or test refusal in their policy. At a minimum, the regulation requires all safety-sensitive employees who violate the rule be immediately removed from their position, and be referred for evaluation by a Substance Abuse Professional (SAP). Any further action (e.g., suspension, termination) taken against the employee is left up to the discretion of the employer, consistent with the law.

An employer's decision to be zero tolerant, second chance or a hybrid of the two is based on many factors including collective bargaining agreements, investment in personnel development including training costs, workforce availability, employer size, liability concerns, corporate philosophy, and anticipated recidivism rates, to name a few. This decision is complicated and has far reaching implications. Of all the factors considered, as an industry, we know the least factual information about recidivism, leaving decision makers to make their decisions based on speculation and limited knowledge.

An employer's SAP or local rehabilitation and treatment facilities may provide insights into recidivism rates that correspond to specific programs, but little is known about the experience of transit systems that are covered by the FTA drug and alcohol regulation. FTA has determined that this information would be beneficial to the transit industry to aid employers making informed decisions. Since most covered employers have had their testing programs, return-to-duty, and follow up testing procedures in place for over ten years, FTA believes that there is now sufficient experience from which to draw.

Consequently, in the first week of February, FTA will solicit information on recidivism experience through an electronic questionnaire administered via the FTA website. All employers in the FTA drug and alcohol program database will be sent a notice with directions on how to access and complete the questionnaire. The questionnaire will contain questions on the following topics:

- System information (i.e., size, geographic location, type of service);
- Contractor versus directly operated service;
- Unionization;
- Employer's type of policy (e.g., zero tolerance, second chance, other);
- Consequences for non-negative test results;
- Demographics of employee;
- SAP evaluation process and timeline;
- Extent, scope and frequency of rehabilitation, treatment and aftercare programs utilized;
- Return-to-duty process;
- Follow-up testing procedures including duration and frequency;
- Numbers of employees provided a second chance and percent having a second non-negative test results;
- Experience rates by classification of employee, classification of drug and/or alcohol, treatment program, and frequency and duration of follow-up testing program;
- Characteristics of second positive test (i.e., span of time between first and second positive, same or different substance, extent of participation in after care program);
- Other relevant information

The results of the study will be summarized in the next edition of this newsletter. In addition, the results will be presented at the 2006 FTA Drug and Alcohol Program National Conference in Las Vegas (see article on page one of this newsletter).

For more information regarding this data collection effort, please contact FTA's Drug and Alcohol Program Manager, Jerry Powers or the newsletter editor at RLS & Associates, Inc. at rls@rlsandassoc.com.

RX & OTC MEDICATIONS

Cold Season Has Safety Consequences

When faced with a cold, many transit professionals look to prescription or over-the-counter cold medications to help them get through the work day. In some cases these individuals combine over-the-counter (OTC) cold and fever medications with other OTCs, prescription medications, dietary supplements, alcohol or caffeine. Many of these substances contain the same active ingredient. By combining these medicines, individuals may be taking more than the recommended daily dose of the active ingredient. They may unwittingly overdose on the medications, put their health at risk and compromise their ability to perform safety-sensitive functions.

Experts cite the confusion over the variety of cold medications on the market as the primary reason for this overdose potential. Over 100,000 OTC medications are available on the market. It is essential that transit professionals read the labels of OTC cold medications carefully before selecting a medicine since the risk associated with the misuse of cold medication is still widely underestimated. Special caution should be used with substances that contain alcohol or sedatives. Also, medications should only be taken to treat the particular symptoms being experienced. For example, congestion should be treated with a decongestant. People oftentimes take a decongestant, a pain reliever, and a sleep medication all at the same time, when in fact their only symptom was congestion. Individuals unsure about taking an OTC medicine, should check with their health care provider or pharmacist to determine if it is safe to combine medicines (prescribed or OTC), to take the medicines with alcohol, or to take OTC dietary supplements, such as kava and St. John's Wort with medicines and/or alcohol.

There is no cure for the common cold. Medicine can only make your symptoms less bothersome until your body can fight off the virus. Medicine will not make a cold go away completely. The best advice for fighting a cold is to stay home and rest, especially if the cold is accompanied by a fever. Plenty of fluids such as water, fruit juices and clear soups should be consumed. Warm salt water used to gargle a few times a day may relieve a sore throat, salt water nose drops may help loosen mucus and moisten the tender skin in the nose. Tobacco and alcohol should be avoided, and no employee should return to safety-sensitive duties until he or she is fit for duty.

Time to Empty Your Medicine Chest

The beginning of a new year is a good time to perform a task that many neglect—cleaning out the medicine chest. People tend to let their medicine chests become cluttered with new and old prescriptions, over-the-counter (OTC) medications, preparations, ointments, first aid supplies and various other sundries. Once in the medicine chest, medications are often kept just in case they are needed and sometimes are forgotten entirely. The result is a cornucopia of medications months, if not years, past their expiration dates.

Over time, the chemical makeup and potency of medications change. Many medications become ineffective past their expiration date. Heat, cold and moisture can also affect a medication's potency. Taking outdated medications is dangerous because they may not help you control the condition nor treat the symptoms for which they were prescribed or purchased. Before taking any medicine, check the expiration date and discard ones that have expired.

The American Pharmacists Association (APhA) recommends that consumers avoid keeping certain medications in bathroom or kitchen cabinets and suggests that medication should always be stored according to package directions.

If you order prescriptions and OTC medications online, make sure that a registered pharmacist checks for drug interactions. Access www.nabp.net for a location that the National Association of Boards of Pharmacy has given a Verified Internet Pharmacy Practice Site (VIPDS) seal of approval.

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)
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 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 2002 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

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