



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

FTA Drug And Alcohol Regulation *Updates*

Winter 2007

Issue 33

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-third in a series.

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Random Testing Rate for Drugs Lowered to 25%

The transit industry's random drug testing positive rate for 2005 was 0.792. This rate has been declining every year since 2002 and is the third consecutive year where the positive rate has been below one percent (1%). The industry's random alcohol testing violation rate for 2005 was stable at 0.115. The information used to determine these rates is drawn from the drug and alcohol Management Information System (MIS) reports provided annually by all covered employers.

These results are of major significance to the transit industry because the random testing rates for employers covered under the Federal Transit Administration's (FTA) drug and alcohol testing program is based on the industry-wide drug positive rate and the alcohol violation rate. Since the alcohol random violation rate has remained well below the 0.5 minimum threshold established in §655.45(d) for at least two consecutive years, the alcohol random testing rate for 2007 will remain at ten percent (10%), the lowest rate allowed by the regulation. Since the drug positive rate has been below one percent (1.0%) for at least two consecutive years, the drug random testing rate will be lowered to twenty-five percent (25%) in 2007. The notice was published in the Federal Register (Volume 72, No. 5, Pages 1057-1058) on January 9, 2007.

The twenty-five percent (25%) rate should be considered the minimum and it is the option of the transit employer to lower the rate. Transit agencies should take into consideration all the implications of the rate change on their testing program before making a change. Factors to consider include the agency's own positive test rate, volume of tests needed to procure quality testing services, and size of the pool. Transit employers that have twelve or fewer employees are encouraged to test at a rate higher than the twenty-five percent (25%) rate to ensure that at least one test is conducted per quarter and to ensure that enough tests are performed to avoid revealing test results for any individual due to a limited number of testing incidents.

Transit employer's need to change their policy statements if they choose to lower their minimum random drug testing rate to twenty-five percent (25%) and their current policy identifies their minimum random testing rate as fifty percent (50%). Employers that do not define a testing rate in their policy, but state that they test at the Federal minimum rate for drug and alcohol, do not need to make a change.

With this change, the FTA joins the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA) and the Pipeline & Hazardous Materials Safety Administration (PHMSA) in lowering the random drug testing rate to twenty-five percent (25%). The Federal Motor Carrier Safety Administration (FMCSA) and the United States Coast Guard (USCG) are maintaining their random drug testing rate at fifty percent (50%).

Employers and Third Party Administrators (TPAs) subject to more than one DOT agency drug and alcohol testing rule may continue to combine covered employees into a single pool. However, employers and TPAs doing so must test at or above the highest minimum annual random testing rates established by the DOT agencies under whose jurisdiction they fall. Thus, transit covered employees that are in a testing pool with employees covered under the FMCSA must be selected for testing at the FMCSA rate of fifty percent (50%) for drugs and ten percent (10%) for alcohol. Transit covered employees that are in a pool by themselves or with other FTA covered employees, need only test at the twenty-five percent (25%) rate for drugs and ten percent (10%) for alcohol.

If an employer has employees that conduct both FTA and FMCSA safety-sensitive duties, the employer must determine which modal administration regulated the majority (>50%) of the employee's safety-sensitive duties. Once determined, the employee must be subject to the random testing rate under the regulatory authority of the primary modal administration.

If a transit employer or TPA has already performed a random selection for the first quarter/first month of 2007, they can test the employees in the selection and then adjust during the remaining testing periods in order to average out their annual random drug testing level to twenty-five percent (25%). Employers also have the option to perform a new random selection based on the reduced rate, excuse all of those untested on the previous list and cite the FTA rate change as the explanation.

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 2 and 5 of the
revised *Implementation
Guidelines*.**

2nd Annual FTA Drug & Alcohol National Conference Announced

The 2007 Federal Transit Administration (FTA) Drug and Alcohol Program National Conference will be held on April 10-12 in New Orleans, LA. The conference will be free to all attendees and will span two and a half days. The conference will include speakers from FTA, the Office of the Secretary's Office of Drug and Alcohol Policy and Compliance (ODAPC), FTA auditors, FTA Drug and Alcohol MIS program and Newsletter staff. Additional industry professionals including a Medical Review Officer (MRO), Substance Abuse Professional (SAP), Urine Collector, Breath Alcohol Technician (BAT), and a representative from an HHS certified lab, will also present topics.

The conference sessions will cover a variety of current topics and will provide ample opportunity to interact with policy makers, auditors, and experts in the field. Sessions will focus on achieving and maintaining compliance and will address all new regulatory interpretations. Topics include post-accident threshold training, procedures for conducting proper collections, duties of third party administrators, how to develop an in-house training program, responsibilities of Designated Employer Representatives (DERs), and what to expect from an FTA audit. Additional sessions will be held on best practices for both large and rural transit operators, and how to save money on your drug and alcohol program.

Multiple classes will run concurrently and at multiple times to allow attendees the opportunity to attend many classes. In response to feedback ob-

tained from last year's conference, the 2007 conference will offer two three-hour morning sessions held on consecutive days specifically for new Drug and Alcohol Program Managers (DAPMs) covering the basics of conducting a successful drug and alcohol program that is in compliance with FTA

Department of Transportation (DOT) regulations. In addition, a three-hour session on Reasonable Suspicion Supervisor Training will be offered. This class will fulfill the reasonable suspicion training requirement of 49 CFR Part 655.14. Special pre-registration is required for the reasonable suspicion and DAPM ses-



sions. Members of the FTA audit, MIS, and newsletter staffs along with various subject matter experts will also be available throughout the conference to provide technical assistance, answer regulatory and other questions, and review transit employers' policies and annual MIS reports. In addition, all speakers will have scheduled times before and after their sessions to answer your specific questions.

To register online go to <http://transit-safety.volpe.dot.gov/Training/danatconf/default.asp>. You may contact Conference Coordinator Mirna Gustave at (617) 494-3344 with any questions. The Conference will be held at the Crowne Plaza Hotel Astor. A block of rooms is reserved at a special conference room rate of \$148. When making reservations, reference the "FTA Drug and Alcohol National Conference" to obtain this rate. The hotel's telephone number is (888) 211-3447. Parking is available on-site for a fee.

Post-Accident Threshold Cards Available

The Federal Transit Administration (FTA) created a quick reference guide that provides information on FTA post-accident thresholds, who should be tested and limitations for testing. The guide is provided as a 3.5" by 2.25" laminated card that can be easily attached to a lanyard for easy use by transit employer representatives that have the responsibility to make post-accident determinations compliant with 49 CFR Parts 655.4 and 655.44.

The cards can be ordered on-line from the Publications tab of the FTA, Office of Safety and Security website at <http://transit-safety.volpe.dot.gov/Publications/order/singledoc.asp?docid=440> at no cost. Please use the comments box to indicate the number of Post-Accident Threshold Cards that you would like to receive.

FOR YOUR INFORMATION

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New EBTs Added to List

The National Highway Traffic Safety Administration (NHTSA) published a revised list of instruments that conform to the Model Specifications for Evidential Breath Testing Devices (EBTs). The revised list published in the Federal Register (Vol. 71, No. 125, pages 37159-37162) on June 29, 2006 replaces the previous list published in 2004. The new list includes five new instruments that have been found to meet the Model Specifications: Alcotest 6810 manufactured by Draeger Safety; Alcotector BAC-100 and the Alcotector C2H5OH sold by Guth Laboratories; EV30 manufactured by Lifeloc Technologies, Inc.; and the DataMaster DMT manufactured by National Patent Analytical System, Inc. When consulting the list, please note that only those devices that are not marked with an asterisk (*) are authorized for use in the DOT alcohol testing program. In total, the list includes seventy-nine (79) EBTs, all of which are mobile except for three.

Pre-employment Test Refusal Clarified

The final rule published on August 23, 2006 in the Federal Register (Vol. 71, No. 163, pages 49382-49384) also included a technical amendment to 49 CFR Part 40 to clarify the pre-employment test refusal provisions cited in §40.191(a)(7). In the instance where a Medical Review Officer (MRO) requires an employee/applicant to undergo a medical examination as part of the verification process for opiates on a pre-employment test, and the employee/applicant fails to undergo the examination, the MRO course of action will differ depending on whether a contingent offer of employment has been made. If a contingent offer of employment has been made, failure to undergo the examination will be deemed a test refusal. If a contingent offer of employment has not been made, the MRO will report the test as cancelled.

List of Qualified SAPs Expanded

On August 23, 2006, the Department of Transportation (DOT) published a final rule in the Federal Register (Vol. 71, No. 163, pages 49382-49384) that expanded the list of credentialed professionals eligible to serve as Substance Abuse Professionals (SAPs) to include state-licensed or certified marriage and family therapists. The final rule went into effect on September 22, 2006.

Previously, state-licensed or certified marriage and family therapists (MFTs) were not considered eligible because they were not licensed or certified to practice in all fifty states. Currently, Montana and West Virginia do not offer MFT licensure or certification. However, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) required that the DOT conduct a rulemaking that would make state-certified or

licensed MFTs eligible to become SAPs. In response to this legislation, as well as the perceived need for more qualified SAPs in the transportation industry, the final rule recognizes the eligibility of MFTs to serve as SAPs in the states where they are licensed/certified and will recognize MFTs in Montana and West Virginia as eligible SAPs when licensure/certification are offered.

In addition to meeting the credential requirement, the MFTs, like other potential SAPs, must also meet basic knowledge and training requirements, pass an examination and complete continuing education requirements as defined in §40.281. The basic knowledge requirements include knowledge about and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Current Complete List of Credentials Eligible to Serve as SAPs

Licensed physician;
Licensed or certified social worker;
Licensed or certified psychologist;
Licensed or certified employee assistance professional;
Licensed or certified marriage and family therapist;
Drug and alcohol counselor certified by:
National Association of Drug Abuse Counselors Certification Commission (NAADAC);
International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); and
National Board for Certified Counselors, Inc Affiliates/Master Addiction Counselor (NBCC).

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 7, 8, and 9 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 2, 6, and 10 of the revised *Implementation Guidelines*.

MIS On-Line Reporting Clarification

FTA requires that all covered employers prepare annual reports summarizing test results for each calendar year (§655.72). The information obtained from the Management Information System (MIS) reports is used to monitor the success of the FTA drug and alcohol testing program and to determine the annual random drug and alcohol testing rates for future years. Grantees and State DOT offices are sent mailings in early January providing guidance for submission of MIS reports. Covered employers have the option of reporting on paper forms or on-line via the Internet, although Internet reporting is strongly encouraged. To submit on-line reports, a User Name and Password is required.

Each direct grantee is provided a User Name and Password as part of the January mailing. When grantees log on, they are able to click on a tab labeled "Print Contractors/Subrecipient Names and Passwords." When clicked, this information will be downloaded to a Word file. Grantees can access this information and provide

User Names and Passwords to each contractor/subrecipient. Subrecipients and contractors should not contact FTA directly to request their

User Name and Password, but should contact their respective grantee to receive this information.

If the list of contractors/subrecipients provided to the grantees is inaccurate or out of date, the grantee should contact the FTA Drug and Alcohol Management Information System (DAMIS) Project Office at

FTA.DAMIS@volpe.dot.gov

or call the FTA Drug and

Alcohol Hotline at (617) 494-6336 to let us know of new contractors/subrecipients who need User Names and Passwords. Grantees should also notify the FTA DAMIS Project Office of contractors/subrecipients that no longer perform safety-sensitive duties so they can be removed from the database.

Each direct recipient, subrecipient, and contractor is issued a new User Name and Password for each calendar year. Therefore, User Ids and Passwords from previous years may not be used again and should be discarded.



2007 FTA Substance Abuse Seminars and TSI Course Offerings

As an adjunct to the FTA Drug and Alcohol National Conference, FTA is offering one-day seminars to provide essential information to facilitate covered employers' compliance with the drug and alcohol testing regulations (49 CFR Part 655 and Part 40). The seminars will include a high level overview of the regulations and practical guidance on important operational issues. There will also be a number of discussion sessions addressing various "real life" scenarios and breakout groups covering common topics (e.g., how do you make post-accident determinations, etc.). Sessions will also be held on new regulatory interpretations, Notices of Proposed Rule Makings (NPRMs), and annual MIS reporting requirements.

The seminars are free and available on a first-come, first-serve basis. The Spring 2007 Seminar will be held in Chicago, IL and the Summer 2007 Seminar will be held in Atlanta, GA. Check the FTA Office of Safety and Security website (transit-safety.volpe.dot.gov) for dates, locations and registration information. Also, information can be obtained from Felicity Shanahan at (617) 494-3915.

The Transportation Safety Institute (TSI) also offers two half-day courses titled, "Substance Abuse Management" and "Program Compliance". To register and receive more information about their classes, please call (405) 954-3682 or go to <http://www.tsi.dot.gov>.

Their upcoming schedule is as follows:

Tampa, FL	Jan. 30—Feb. 1, 2007	Flint, MI	April 3—April 5, 2007
Ft. Worth, TX	Feb. 27—March 1, 2007	Williamsburg, VA	May 22—May 24, 2007
Palm Beach, FL	March 21—March 23, 2007	Pasco, WA	June 5—June 7, 2007

RX AND OTC MEDICATIONS

Misuse and Abuse of Prescription Medications

According to the *2004 National Survey on Drug Use and Health*, the number of Americans reporting abuse of prescription medication was higher than the combined total of those reporting abuse of cocaine, hallucinogens, inhalants, and heroin. The National Survey on Drug Use and Health defines prescription drug abuse as using “any prescription (pain reliever, sedative, stimulant, tranquilizer) that was not prescribed for you or that you took only for the experience or feeling it caused.”

The abuse of prescription medications can have an adverse impact on health including overdose, toxic reactions, hypertension, seizures, cardiovascular collapse, and death. Many prescriptions have high potential for misuse, abuse, dependence, and addiction even in the context of good medical care. Drug classes that have contributed to prescription misuse, abuse, dependence and addiction include opioid analgesics used for management of acute or chronic pain, sedative-hypnotics (Benzodiazepines) for anxiety, panic disorders and acute stress reactions, sedative-hypnotics (Barbiturates) for insomnia, anxiety and seizure control, and stimulants used for attention deficit disorder (ADD) and attention deficit/hyperactivity disorder (AD/HD), narcolepsy, weight loss, and depression.

Inappropriate use of medications can be categorized as non-medical use, misuse, abuse, physiological dependence, and psychological dependence. Non-medical use is when use of the medication is not prescribed by a medical professional and is used for the experience or feeling it causes. Misuse is the incorrect use of a medication by not following prescribed dosage levels, frequency of use, or use for a purpose other than for which it was prescribed.

Abuse is when the pattern of use leads to clinically significant impairment or distress that manifests itself in the individual’s behavior. Physiological dependence is when the individual experiences increasing tolerance for a drug and experiences withdrawal when the medication is discontinued. Psychological dependence or addiction is when the individual experiences an overall loss of control, seeks medication compulsively, and continues use of the medication in spite of negative consequences.

According to the *Substance Abuse Treatment Advisory* published by the SAMHSA’s Center for Substance Abuse Treatment, pre-

scription medication use “may quickly escalate to unintended and initially unanticipated levels beyond the initial intended use, alarming both the patient and treatment provider.” Some individuals may have predisposing factors that lead to psychological dependence on a substance, while, physiological dependence is an expected side-effect of some medical treatments for pain. Others may self-medicate using previously prescribed medication to treat new or under-treated illnesses or disorders. Treatment of individuals with certain conditions, especially those associated with chronic pain, is very complicated and can result in various psychological and physiological disorders that lead to misuse, abuse, and dependence. Individuals may also abuse alcohol or illicit drugs further complicating treatment. Treatment for prescription medication misuse, abuse, and dependency is the same as for illicit substance abuse.

Given the prevalence of prescription medication misuse in American society, employers, especially those that employ safety-sensitive individuals, should proactively address this problem as part of their fitness for duty programs. The *Substance Abuse Treatment Advisory* recommends that individuals with addictions or dependence to prescription medications have access to the following resources or professionals.

- Appropriate dose-tapering or other detoxification services,
- Medical practitioners with expertise in pain management and/or pain clinics,
- Psychiatrists with expertise in addiction treatment and psychotropic medication management, and
- Addiction counselors, social workers, and/or psychiatric nurses with experience and training in providing cognitive-behavioral therapy and other approaches for treating anxiety and panic disorders, post-traumatic stress disorder, ADD, AD/HD, and eating disorders.

Employee educational programs should provide employees with information on how to discuss treatment options with medical practitioners when pain or other psychoactive prescription medications are needed.

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: 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) 494-2108

Best Practices Manual: FTA Drug & Alcohol Testing Program

Drug and Alcohol Consortia Manual

Drug and Alcohol Testing Results: 1995 through 2003 Annual Reports

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Revised 2003

Reasonable Suspicion Referral for Drug and Alcohol Testing (Leaders' Guide & Video)

FTA Drug and Alcohol Program Assessment

Prescription and Over-The-Counter Medications Toolkit

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

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

<http://www.dot.gov/ost/dapc/>

Urine Specimen Collection Procedures Guideline

Substance Abuse Professional Guidelines

Produced by:	Published by:	Edited by:	Illustrated by:
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