

# FTA Drug & Alcohol Regulation Updates

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

**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-fifth in a series.

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## Register Now for the 3<sup>rd</sup> Annual FTA D&A Program National Conference

Registration is now open for the 3<sup>rd</sup> Annual FTA Drug and Alcohol Program National Conference. Even though this two-day conference is free, individuals planning on attending must register as there is a limit on the number of attendees due to space. The conference will be held on April 30 and May 1, 2008 at the Sheraton Safari Hotel in Orlando, Florida. Information on conference registration and hotel accommodations is posted on FTA's website at <http://transit-safety.volpe.dot.gov/DrugAndAlcohol>. Registration does not include meals.

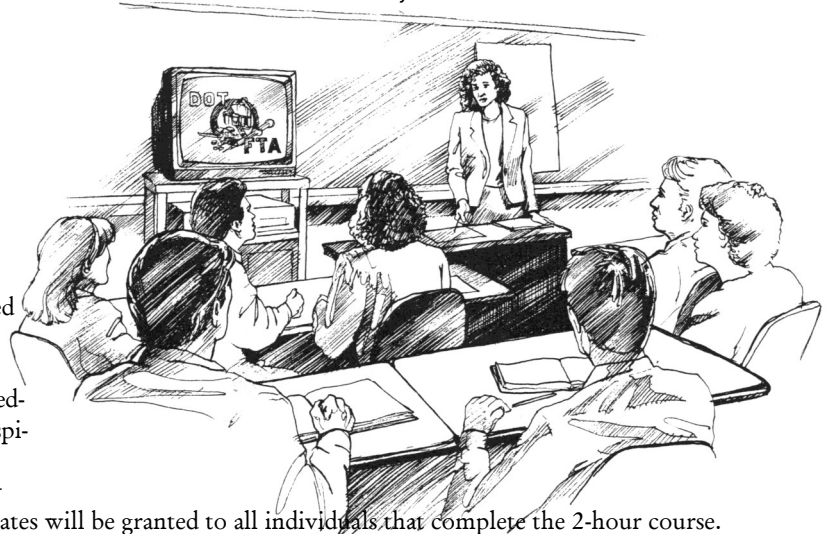
Multiple sessions and facilitated panel discussions will run concurrently throughout the two days. A detailed agenda is available on FTA's website. The following 90-minute sessions are the highlights of the conference.

### Workshop Sessions

- *How to Review your Collection Site for Compliance*
- *USDOT/ODAPC Interpretations and Regulations*
- *Best Practices*
- *Post-Accident Thresholds*
- *FTA versus FMCSA: A Regulatory Comparison*
- *The Role of the Medical Review Officer*
- *The Role of the Substance Abuse Professional*
- *Mock Collections and EBT Demonstration*
- *How to Develop an In-House Training Program*
- *Prescription and Over-the-Counter Medications*

### Panel Discussions

- *Operational Issues Medium and Small Urban Systems Face*
- *Operational Issues Large Systems Face*
- *State DOTs: How to Manage your Program*
- *The Audit Process*
- *The Role of a Third Party Administrator*



In addition, two additional training sessions will be provided that require pre-registration and are on a first-come, first-served basis as space permits. The new Drug and Alcohol Program Manager (DAPM) Training is a 2½-hour class scheduled for the morning of April 30. A 2-hour Reasonable Suspicion Training will be held at two different times during the conference. The Reasonable Suspicion Training will satisfy 49 CFR Part 655 minimum training requirements. Certificates will be granted to all individuals that complete the 2-hour course.

Sessions will be conducted by speakers from the Federal Transit Administration (FTA), the Transportation Safety Institute (TSI), the Secretary's Office of Drug and Alcohol Policy and Compliance (ODAPC), FTA auditors, and FTA Drug and Alcohol MIS Program and Newsletter staff. In addition, sessions and panel discussions will be led by professionals from the DOT Drug and Alcohol testing industry including a Medical Review Officer, Substance Abuse Professional, Urine Collector, Breath Alcohol Technician, and representatives from State DOT's and urban and rural transit systems.

All speakers will be available at a scheduled time before or after their sessions to answer questions. FTA auditors, MIS Team members, and subject matter experts will also be available to review policies, provide technical assistance, and answer regulatory questions.

The Sheraton Safari is holding a limited number of rooms at a special conference room rate of \$99, available until March 29, 2008. Refer to the FTA Drug and Alcohol Conference when making your reservation (website: <http://www.sheratonsafari.com>).

# REGULATORY CLARIFICATION

## Random Testing Rates Remain the Same for 2008

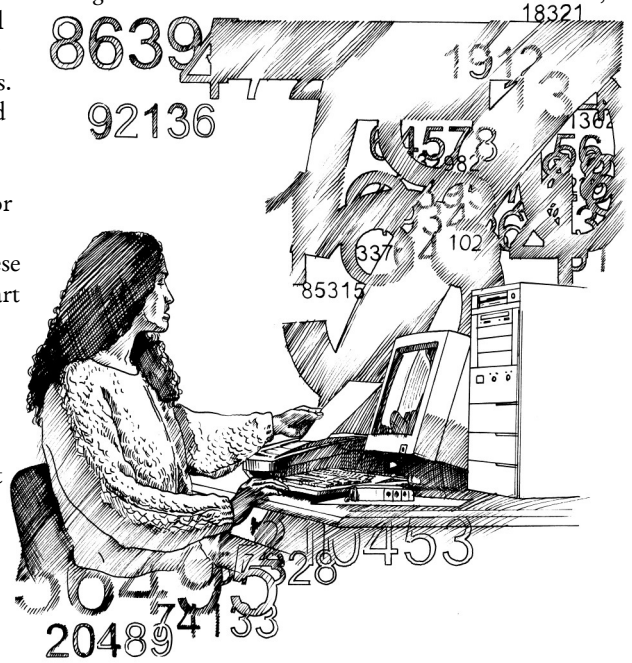
On December 21, 2007, the Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance posted the 2008 Random Testing Rates for all DOT modal administrations on its website <http://www.dot.gov/ost/dapc/rates.html>. The Federal Transit Administration (FTA) random testing rate for drugs remains at 25% and the random testing rate for alcohol remains at 10% for 2008.

The drug testing random rate is based on the transit industry's random drug testing positive rate for the preceding two years. The transit industry's random positive test rate for drugs was 0.78% in 2006 and 0.792% in 2005. In 2006, the transit industry's random positive test rate for alcohol was 0.13% up from 0.115% in 2005. The positive rate for drugs has remained below 1.0% for four consecutive years. The positive rate for random alcohol testing has remained below 0.5% since FTA testing first began.

Transit employers should consider the 25% testing rate for drugs and 10% testing rate for alcohol to be minimums. Transit systems that establish their testing rates above these minimums are still considered compliant with 49 CFR Part 655.

Employers and Third Party Administrators (TPAs) subject to more than one DOT agency drug and alcohol testing rule may combine covered employees into a single pool as long as tests are performed at or above the highest minimum annual random testing rates established by DOT agencies under whose jurisdiction they fall.

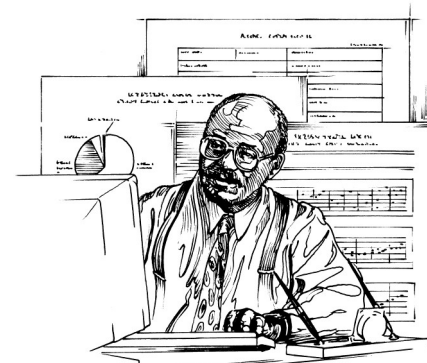
Since the Federal Motor Carrier Safety Administration (FMCSA) 2008 random testing rates are 50% for drugs and 10% for alcohol, employers that maintain one testing pool for employees that are covered under FTA's jurisdiction and employees that are covered under FMCSA's jurisdiction must be selected for testing at the FMCSA rate of 50% for drugs and ten percent for alcohol.



## MIS Reporting Process Unchanged

Each employer covered by the FTA drug and alcohol testing program is required to submit annual MIS reports that summarize test results for the preceding calendar year. The 2007 Management Information

Systems (MIS) reports are due by March 15, 2008. The reporting process will remain the same as last year with continued emphasis on reporting on-line.



To submit on-line reports, a User Name and Password is required. The

2006 User Name and Password will not work for 2007 reporting as these are changed every year. If you are a direct recipient, your new User Name and Password was mailed to you in late December.

User Names and Passwords for contractors and subrecipients can be accessed by the grantee by logging in and clicking the "print Contractor/Subrecipients Names and Passwords." Grantees can access this information and provide the User Names and Passwords to each contractor/subrecipient.

Questions about the reporting process or problems with User Names and Passwords should be directed to the FTA Drug and Alcohol Management Information System (DAMIS) Project Office at [FTA.DAMIS@volpe.dot.gov](mailto:FTA.DAMIS@volpe.dot.gov) or call the FTA Drug and Alcohol Hotline at (617) 494-6336.

## Collection Site Scrutiny Continues

The integrity of the urine specimen collection process continues to be under scrutiny and has received national exposure with a recent story reported on NBC Nightly News. The news story, aired on November 1, 2007, reported the findings of a Government Accountability Office (GAO) undercover investigation that found it was surprisingly easy to cheat on random drug tests. The news report was aimed specifically at truck drivers, but the GAO findings are relevant for all employers covered under the DOT drug testing program including those in the transit industry.

The undercover investigation assessed the urine specimen collection procedures at twenty-four (24) drug testing sites. The procedural errors found were in direct violation of the testing procedures defined in 49 CFR Part 40.

- *75% failed to restrict access to items that could be used to adulterate or dilute the urine specimen; individuals had access to soap, air freshener, and other potential adulterants in the privacy enclosure.*
- *67% had access to running water in the privacy enclosure.*
- *42% failed to ask the employee to empty his/her pockets and display items to ensure no items were present that could be used to adulterate the specimen. The GAO Investigators brought drug masking agents and synthetic urine (bought over the Internet) into the collection sites and mixed them with their specimen without being detected by trained collection site personnel.*
- *19% failed to check the temperature of the specimen.*
- *17% failed to add bluing agent in the toilet water or secure the tank with tape.*

In addition, the Investigators used bogus identification to initiate the testing process in all (100%) of the 24 sites that were investigated demonstrating the ease at which safety-sensitive employees can send other (presumably drug-free) individuals to take the tests for them. Only two of the twenty-four sites followed all of the remainder of the testing procedures tested by the Investigators. The remaining twenty-two (91.7%) had two or more serious protocol violations. One site failed to adhere to 75% of the testing protocols.

Even though the results of this investigative report are alarming, experts in the field and DOT officials were not surprised by the findings. In fact, collection site protocol violations are a source of many FTA audit findings.

Based on random test results, the DOT estimates that less than two percent (2%) of truck drivers test positive for illegal drugs. The DOT has no estimate of how many truck drivers might be beating the drug testing process through the use of masking agents, specimen substitution, dilution or adulteration enabled, in part, by a flawed collection process. However, "Operation Trucker Check" conducted in Salem, Oregon in May 2007 suggests that the DOT estimate may be significantly underestimated. During a three-day period, Oregon state police collected anonymous urine samples from truck drivers during safety inspections. Of the 500 truckers involved, ten percent (10%) tested positive for drugs. Marijuana, methamphetamine, and opiates were the drugs most commonly detected.

In response, the DOT has developed a poster with ten key DOT drug testing protocols that are available to urine collection sites. These posters are designed to assist collectors in their efforts to follow the DOT testing protocols during the collection process. Collection sites may order copies of the poster from FTA's publications clearinghouse by going to FTA's website at <http://transit-safety.volpe.dot.gov>. Click "Publications" and then "Drug and Alcohol Program."

In addition, the DOT sent notices to individuals on the DOT email list-serve, calling on employers and Consortiums/Third Party Administrators to make sure that each of their collectors and collection sites follow the testing protocols. They also asked collection site personnel and management to refresh their knowledge of 49 CFR Part 40 and the Urine Specimen Collection Guidelines, and to modify their Standard Operating Procedures if necessary. The FTA is requesting that covered employers strengthen their collection site compliance monitoring procedures and take corrective action where necessary. The FTA has also enhanced the scrutiny of collection sites during the audit process.

The GAO is currently examining options to deal with these and related drug testing issues. A report is expected to be completed in summer 2008.

## List of EBTs Expanded

The Conforming Products List (CPL) that identifies breath testing instruments that meet the Model Specifications for Evidential Breath Testing Devices was updated on December 17, 2007. The updated CPL, published by the National Highway Traffic Safety Administration (NHTSA), can be found in the Federal Register, Volume 72, No. 241, pages 71480-71483. When viewing the CPL, a special note should be made that only those devices listed without an asterisk (\*) were tested at Breath Alcohol Concentrations (BACs) of 0.000, 0.020, and 0.040 and are authorized for use in confirmatory alcohol testing under the DOT alcohol testing program.

The update added six additional instruments to the existing list of seventy-seven makes and models resulting in a total of eighty-three instruments that currently conform to the specifications. The new instruments added to the CPL are:

- Intoxilyzer 240 manufactured by CMI
- Alcotest 9510 manufactured by Draeger Safety, Inc.
- AlcoQuant 6020 manufactured by EnviteC
- EC-IR-II (enhanced with serial numbers above 10,000) manufactured by Intoximeters, Inc.
- Phoenix 6.0 manufactured by Lifeloc Technologies, Inc.
- ALC-PRO II (US) manufactured by Tokai-Denshi, Inc.

## Meth Labs—Know What to Look For

Methamphetamine is a potent central nervous system stimulant that is manufactured in clandestine labs in urban and rural communities throughout the United States. Reckless practices of untrained “cooks” can result in explosions, fires, and extensive environmental contamination. The manufacturing process generates approximately six pounds of hazardous toxic waste for each pound of methamphetamine produced. Surplus chemicals, solvents and by-products are often dumped down household drains, storm drains, wells or directly onto the ground.

Many of the chemicals used to manufacture methamphetamine are readily available in transit system maintenance facilities. Managers should be aware of substances used, by-products and waste generated, and signs of a meth lab operation to ensure that the transit system does not fall victim to criminal activity.

### Products Used to Manufacture Methamphetamine

- Alcohol
- Toluene (brake cleaner)
- Ether (engine starter)
- Sulfuric Acid (drain cleaner)
- Red Phosphorous (matches or road flares)
- Salt
- Iodine (teat dip)
- Lithium (batteries)
- Trichloroethane (gun scrubber)
- MSM (cutting agent)
- Sodium Metal
- Methanol/Alcohol (gasoline additives)
- Muriatic Acid
- Anhydrous Ammonia (farm fertilizer)
- Sodium Hydroxide (lye)
- Pseudoephedrine/Ephedrine (cold tablets)
- Acetone
- Kitty Litter
- Ammonium Sulphate Fertilizer
- Liquid Propane
- Dry Ice
- Drierite

### Other Signs of a Meth Lab

- ⇒ Chemical odors coming from buildings or garbage.
- ⇒ Garbage contains numerous empty bottles and containers of substances used in the manufacturing process.
- ⇒ Coffee filters, bed sheets, or other material stained from filtering red phosphorous.
- ⇒ Evidence of chemical or waste dumping.
- ⇒ Jugs/bottles, pails/buckets, plastic storage containers, and ice chests.
- ⇒ Gas cans, propane cylinders, funnels, and laboratory beakers/glassware.



**Q** When we sent an employee to the collection site for his random alcohol test, we were told that the EBT was broken. What should we have done?

**A** Employers should work with their service agents to make arrangements for a back-up EBT for times when the primary EBT is unavailable, out of calibration, or being serviced. In some cases, agencies acquire a second instrument, others arrange for a “loaner” from the manufacturer, and others arrange to use another transit agency or DOT employer’s EBT when necessary. In this case, the employer should have taken the employee to the site of the back-up EBT and concluded the testing as specified in the regulation.

**Q** I had an employee that was out on Family Medical Leave for six months. During this time he had been removed from the random pool. Now that he is ready to return to work, should he be tested?

**A** Yes, the employee should be given a **pre-employment test** resulting in negative test results before he can resume his safety-sensitive duties. When an existing covered employee has not

performed a safety-sensitive function for ninety (90) consecutive days or longer, the employee must have a pre-employment test if there was at least a ninety-day period during the absence when the employee was not in the employer’s random testing pool. Employers should note that this type of test should be considered pre-employment and **not** return-to-duty.

**Q** If an employee is not able to provide a sufficient volume of urine during the collections process, and the employee must undergo a medical examination to determine if there is a legitimate medical explanation for the “shy bladder,” can the employer make arrangements for the employee to see an employer designated physician?

**A** Yes, in the instance of insufficient volume for a drug test, the employer is required to direct the employee to obtain a medical evaluation from a licensed physician who is acceptable to the Medical Review Officer, and has expertise in the medical issues raised by the employee’s failure to provide a sufficient specimen. The employer can facilitate the medical evaluation by making arrangements with a MRO approved physician to conduct the evaluation.

## COMMON AUDIT FINDINGS

### Negative Dilute Policy

Section 40.197 (b) states that “if the MRO informs you that a negative drug test was diluted, you may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see Sec. 40.67(b) and (c)). The regulation goes on to say in 40.197 (c) “you must inform your employees in advance of your decisions on these matters.”

Since the regulation gives the employer discretion, the employer should specify in its policy whether retests will be required for negative dilutes. A covered employer may not remain silent on this issue.

### Substance Abuse Professional Referrals Following Pre-employment Positives

Section 40.287 states that “as an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers.”

Consequently, Substance Abuse Professional (SAP) referrals are required **anytime** a covered employee or applicant tests positive or refuses a test. Many transit employers fail to refer applicants to a SAP following a pre-employment test positive.



## Abuse of Cough and Cold Medicine Increasing

The cough suppressant is found in popular caplet and liquid form in Over-the-Counter (OTC) medications such as NyQuil® Products, Coricidin® Products and Robitussin® Products. When taken as recommended, DXM is generally safe.

When taken in very large doses, DXM can produce a high or “out-of-body” experience similar to the hallucinogenic effects caused by phencyclidine (PCP). It also has the potential to impair judgment and mental functioning, and may result in loss of coordination, blurred vision, dizziness, nausea, hot flashes, hallucinations, rapid heartbeat, brain damage, seizure, and death. Side effects can be worse when the OTC consumed has other active ingredients such as pseudoephedrine, acetaminophen, antihistamines, expectorants or alcohol.

The Substance Abuse and Mental Health Administration’s (SAMHSA) National Survey on Drug Use and Health found that in 2006 about 3.1 million persons aged 12 to 25 had used cough and cold medication to get high. The survey did not address the use by persons older than 25 as adolescents and young adults are thought to have the

Dextromethorphan (DXM) is a cough suppressant found in over 140 cough and cold medications and is available without a prescription.

highest rates of abuse of such medications. According to the SAMHSA report, the level of abuse of these drugs is comparable to levels of use of LSD, methamphetamine, or ecstasy in this age group.

Abuse of DXM, however, is not limited to young people. A review of Emergency Room visits in 2004 reported by SAMHSA’s Drug Abuse Warning Network indicated that 26% of emergency room visits for the non-medical use of DXM were made by people between 21 and 34 years old and an additional 21% were made by persons 35 years or older. For individuals over 20, abuse of DXM resulted in 2.6 visits per 100,000 in population.

Street names for DXM include Candy, C-C-C, Dex, DM, Drex, Red Devils, Robo, Rojo, Skittles, Tussin, Velvet, and Vitamin D; names for DXM abuse include Dexing, Robotripping, and Robodosing.

Your employee training program should address the risks of OTCs and what constitutes responsible use. Employees should know how to read and follow label directions and should be warned not to use OTCs for non-medical purposes.

## Kibbles & Bits?

Kibbles and Bits and Pineapple are two street names for Ritalin®, a commonly prescribed medication used to treat attention-deficit hyperactivity disorder (ADHD) for children and occasionally prescribed for treating narcolepsy. The medication is a stimulant stronger than caffeine, but less potent than amphetamines when taken as prescribed.

However, when abused, this central nervous system stimulant can be very powerful with serious side effects resembling the stimulant characteristics of cocaine. Ritalin® is prescribed in pill form, but can be injected, snorted, or swallowed in large amounts. This drug is abused to suppress appetite, prolong periods without sleep, increase focus and attentiveness, and to obtain a sense of euphoria. Signs of use include dilated pupils, sweating, dry mouth, flushed skin, increased

energy, and dangerously high body temperature.

Ritalin® is a Schedule II narcotic, and as such is considered to have a high potential for abuse and addiction. According to The Partnership for a Drug-Free America, short term effects can include nervousness and insomnia, loss of appetite, nausea and vomiting, dizziness, palpitations, headaches, changes in heart rate and blood pressure, skin rashes and itching, abdominal pain, weight loss, digestive problems, toxic psychosis, psychotic episodes, drug dependence syndrome, and severe depression upon withdrawal. Long term effects can include anxiety, restlessness, paranoia, hallucinations, delusions, irregular heartbeat, tremors, and loss of appetite.



Individuals in the transportation industry have been found to abuse this drug to stay awake for extended periods of time. Ritalin® is commonly obtained from family members or friends that have valid prescriptions for the medication. Transportation professionals need to be aware of the dangers associated with this drug and alternative methods for dealing with fatigue. Abuse of stimulants can be a dangerous proposition for safety-sensitive employees.

## Transportation Safety Institute Course Offerings

### Substance Abuse Management and Program Compliance

This 2½-day course provides participants with an overview of the FTA drug and alcohol testing regulations. Participants will obtain necessary information to evaluate their agency's substance abuse program compliance.

- *Charlotte, North Carolina* January 23-25, 2008
- *Tampa, Florida* March 18-20, 2008
- *Austin, Texas* April 2-4, 2008
- *Long Beach, California* April 8-10, 2008

### Reasonable Suspicion Determination for Supervisors Seminar

This course is designed to educate transit system supervisors and management officials that may be called on to make reasonable suspicion determinations under the FTA drug and alcohol testing regulations. Participants are introduced to the signs, symptoms, and physical, behavioral, speech, and body odor associated with probable drug use and alcohol misuse. This course meets the FTA requirement (49 CFR Part 655.14) for supervisor reasonable suspicion training.

- *Atoka, Oklahoma* February 20, 2008
- *Tampa, Florida* March 20, 2008
- *Austin, Texas* March 31 and April 1, 2008
- *Kansas City, Missouri* July 22 and July 23, 2008

To register for an upcoming class or to volunteer to be a host site, call TSI at (405) 954-3682 or go to <http://www.tsi.dot.gov>.

With this issue we've introduced a new look. We hope you find the new look to be both easy to follow and helpful in your day-to-day drug and alcohol compliance responsibilities. In addition to the informational articles, Regulation Clarifications, Rx and OTC Medication news, and other resources, each issue will feature a "Q&A" section of some of the most frequently asked questions from the transit industry, as well as a section on Common Audit Findings. We believe that these newest additions will not only assist you in your daily tasks, but also help to ensure a safe working environment for your passengers and your employees. We welcome your comments. Please e-mail any questions, comments, or concerns to [rls@rlsandassoc.com](mailto:rls@rlsandassoc.com).

## ODAPC Employer Page

The DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) has launched a new page on its website designed specifically for employers. The "Employer Page" is a resource page that provides links to publications, documents, regulations, and other relevant information that is useful to employers that are subject to DOT drug and alcohol testing regulations. The page can be found at <http://www.dot.gov/ost/dapc>.

## RESOURCES

FTA home page: <http://www.fta.dot.gov>  
FTA Office of Safety & Security: <http://transit-safety.volpe.dot.gov>  
DHHS-Certified Laboratories: <http://www.workplace.samhsa.gov/ResourceCenter/lablist.htm>  
Center for Substance Abuse Prevention: <http://prevention.samhsa.gov>  
FTA, Office of Safety and Security Clearinghouse: (617) 494-2116  
Best Practices Manual: FTA Drug & Alcohol Testing Program  
Drug and Alcohol Consortia Manual  
Drug and Alcohol Testing Results: 1995 through 2005 Annual Reports  
Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Revised 2003  
Reasonable Suspicion Referral for Drug and Alcohol Testing (Leader's Guide & Video)  
FTA Drug and Alcohol Program Assessment  
Prescription and Over-The-Counter Medications Toolkit  
Urine Specimen Collection Procedures Guidelines  
Substance Abuse Professional Guidelines  
DOT's 10 Steps to Collection Site Security and Integrity  
USDOT Drug and Alcohol Documents FAX on Demand: (800)225-3784  
USDOT, Office of Drug and Alcohol Policy and Compliance: (202) 366-3784 or  
<http://www.dot.gov/ost/dapc>

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

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Produced by: FTA—Office of Safety and Security  
1200 New Jersey Avenue, SE  
4th & 5th Floors—  
East Building  
Washington, D.C. 20590

Edited and Published by:  
USDOT—John A. Volpe  
National Transportation  
Systems Center  
Kendall Square  
Cambridge, MA 02142

Written by:  
RLS & Associates, Inc.  
3131 South Dixie Highway  
Suite 545  
Dayton, OH 45439

Illustrated by:  
Dan Muko

RLS & Associates, Inc.  
3131 South Dixie Highway  
Suite 545  
Dayton, OH 45439  
Phone: (937) 299-5007  
Fax: (937) 299-1055  
Email: [rls@rlsandassoc.com](mailto:rls@rlsandassoc.com)

## 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.

### 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 Vol. 68, Pages 43946-43964  
Primary Topic: One-Page MIS Form

January 22, 2004 Federal Register Vol. 69, Pages 3021-3022  
Primary Topic: Expanded 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

Visit the ODAPC website at <http://www.dot.gov/ost/dapc/> for a list of DHHS-certified testing facilities, conforming products lists for Evidential Breath Testing Devices (EBTs) and other useful information.

## 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. 545  
Dayton, OH 45439  
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Regulation Updates