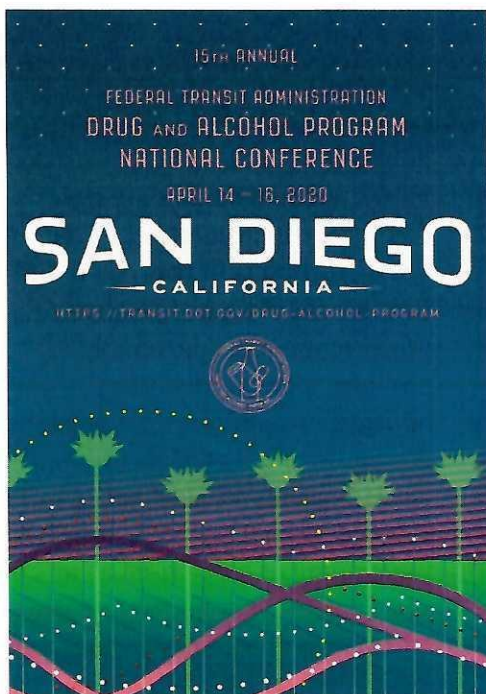


FTA Drug and Alcohol REGULATION UPDATES

February 2020

Issue 68

15th Annual FTA Drug and Alcohol Program National Conference



Please “save the date” for the 15th Annual FTA Drug and Alcohol Program National Conference, April 14-16, 2020, in San Diego, CA. Attendees can choose from a variety of sessions to customize their experience for the specific needs of their employer and their knowledge level of 49 C.F.R. Part 655 and 49 C.F.R. Part 40 regulations.

Sessions will include training for beginner and advanced drug and alcohol program managers, running a compliant drug and

alcohol program, and an update from the Office of the Secretary’s (OST) Office of Drug and Alcohol Policy and Compliance. Additionally, there will be networking opportunities, access to FTA and other Federal drug and alcohol compliance experts and FTA drug and alcohol program compliance auditors, and much more.

Register now for this free conference at <https://transit-safety.fta.dot.gov>.

2020 Minimum Random Testing Rates

The data from the annual Drug and Alcohol Management Information System (DAMIS) submissions for calendar year 2018, showed a positive rate for random drug testing of 1.17 percent and a violation rate for random alcohol testing of 0.20 percent. As a result, the FTA minimum annual percentage rates for random testing for calendar

year 2020 will remain at 50 percent for drug and 10 percent for alcohol. FTA announced these rates in the Federal Register on January 23, 2020, available at <https://www.federalregister.gov/documents/2020/01/23/2020-01071/prevention-of-alcohol-misuse-and-prohibited-drug-use-in-transit-operations>.

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U.S. Department of Transportation
Federal Transit Administration

FTA Follow-up Alcohol Test Timing

FTA's drug and alcohol program staff are frequently asked whether follow-up alcohol testing required by 49 CFR §655.47 is subject to the same timing limitations set forth for random and reasonable-suspicion testing (§§ 655.45 and 655.43, respectively). Those sections restrict the application of FTA-authorized alcohol testing to the period just before, during, and

just after the employee's performance of safety-sensitive functions (in contrast to FTA-required drug testing, which can be conducted any time the employee is on duty per §655.45(i)).

Part 655 maintains no prohibitions against alcohol use outside the specific timeframes set forth in

Subpart D of Part 655 ("Prohibited Alcohol Use"). As such, follow-up alcohol testing should also be limited to the period just before, during, and immediately after the employee's performance of safety-sensitive functions, in line with the random testing and reasonable suspicion timelines at §655.43(c) and §655.45(i).

Late Night & Off-Hours Random Testing Notifications



Credit: 123rf/rudyakovilya

One of the most common findings from FTA's drug and alcohol auditing program remains the insufficient distribution of random testing during the late-night and early-morning shifts which are considered "safety-sensitive" duty hours. Section 655.45(g) requires covered employers ensure "...that random drug and

alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."

FTA's auditors commonly hear that failure to accomplish "off-hours" testing is in part due to the fact that the drug and alcohol program manager personally provides all random testing notifications and does not work during these hours. Because random testing is a critical element of FTA's testing program, functioning as a deterrent as much as a detector, it is imperative that all employers conduct testing, even in these overnight hours.

It is the employer's discretion to determine how they will accomplish necessary late-night and early-morning testing. To that end, it is worth noting that FTA does not require that the DAPM be the person who notifies individuals of the requirement to submit to random testing. The DAPM may delegate this role to a shift supervisor or other individual who will protect the confidentiality of the testing notification process.

Total Number of Employees & MIS Reports

With the annual March 15th Management Information Systems (MIS) reporting deadline approaching, FTA would like to remind employers how to accurately calculate the 'Total Number Safety-Sensitive Employees' (this is the figure that appears in section II (A) of all MIS reports).

Section 655.72(e) describes how to calculate this figure: Add the total number of FTA-covered employees eligible for random testing each time selections were performed over the course of the calendar year, and then divide this total by the number of selection periods. If you conduct quarterly selections, for instance, you would add together the total number of FTA-covered employees present in your random

pool each of the four times selections were made and then divide that number by four, which gives you the average number of FTA-covered employees for the year. This is the number you should input into section II of the MIS. Remember to calculate only FTA-covered employees and not employees covered by another DOT modal administration.

Let's consider the example of an employer who increases in size during a year. In the first and second quarters of the year, the employer has 30 covered employees. After expanding service and hiring additional staff, the employer now has 50 covered employees in the third quarter and 50 covered employees in the fourth quarter. The total number of employees that the employer

would report to the MIS is $40: 30 + 30 + 50 + 50 = 160; 160/4 = 40$.

If you conduct random selections more frequently than monthly (e.g., you make weekly selections), you do not need to compute your total number of covered employees more than once a month. Thus, employers do not need to perform this calculation more than 12 times per year.

MIS Submissions Must Be Retained

Section 655.71(b)(1) requires the employer to maintain copies of annual Management Information Systems or MIS reports submitted to FTA for a period of five years. When logged into the DAMIS reporting application (<https://damis.dot.gov>), employers are able to print a hardcopy of the current year's submission or save it as a PDF and maintain electronically.

Copies of annual MIS submissions from previous years are not available from FTA and cannot be accessed using the DAMIS reporting application.

collection may have been terminated by the collector, or the employee leaves the testing site, before a specimen is produced.

Step 4 of CCF Must Be Completed for Refusals to Test

A collector's failure to complete Step 4 of the DOT urine collection CCF constitutes an error that may cause a test to be canceled. In cases when the collector's name is printed and their signature is missing, this is an error that can be corrected. If the error is not corrected, the test is canceled. In cases where both the collector's printed name and signature is missing from Step 4, this error cannot be corrected and is a fatal

flaw, negating the validity of the test.

It is important to note that any test may be canceled due to these flaws, including instances where an employee refuses to test. When a refusal occurs during a part of the testing process in which the collector is involved, the collector must remember to sign and print their name in Step 4. This is required even though the

SAP Referral Required for Pre-Employment Positives and Refusals

Sections 655.62 and 40.287 require the employer to provide each employee who has a verified positive drug test result, a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a drug or alcohol test with a list of readily available

substance abuse professionals (SAPs), with names, addresses, and telephone numbers.

This information also must be provided to any applicant for a safety-sensitive position who fails or refuses a DOT pre-employment test.

As a reminder, for pre-employment tests only, it is *not* a refusal if the applicant/employee fails to appear at the collection site, or leaves the collection site prior to accepting or selecting the specimen cup.

CCF Errors & FMCSA's Clearinghouse

The Federal Motor Carrier Safety Administration (FMCSA) has recently established a Clearinghouse into which MROs, TPAs, and employers must report drug and alcohol testing violations. The new rule requires MROs to report drug testing violations to the Clearinghouse, including information about positive drug test results and refusals to test. Please visit <https://clearinghouse.fmcsa.dot.gov/> for more information about the FMCSA Clearinghouse.

This Clearinghouse only collects information related to FMCSA violations. Any positive drug tests, refusals to test, or alcohol results of 0.04 or greater on tests conducted under FTA authority should not be reported to the Clearinghouse, even if the



Credit: 123rf/vitpho

employee has a Commercial Driver's License. For this reason, it is important that FTA-covered employers ensure their collectors check the correct modal authority ("FTA") in Step 1(D) of the CCF. Otherwise, MROs could mistakenly report a violation of FTA's Part 655 regulations to the Clearinghouse under the belief the test was conducted under FMCSA authority.

As a best practice to avoid this issue, employers may use a testing

notification form that clearly informs the collector of the correct modal authority for the test. A sample form can be found at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/>.

Employers can also have Step 1 (D) of the CCF preprinted so the correct box is checked, thus removing the prospect of collector error.

Whenever a violation does occur, the employer should always review the testing form to make sure no paperwork errors occurred. In doing so, employers should check CCFs to make sure the correct mode was indicated. If the FMCSA box was checked when it should not have been, the employer should contact the MRO's office to make them aware of the mistake.

Correcting MIS Reports

If you realize you made a mistake on your MIS report, you may correct and resubmit your report until the database closes in

September. You must re-sign your submission on the "Wrap-up" screen if any revisions are made. You may only make corrections to

the current year's data; previous MIS reports cannot be accessed.

Ferry Boat Operators Should Report Random Alcohol Test Results to FTA

FTA-funded ferry boat operators are in compliance with FTA drug and alcohol regulations when they comply with United States Coast Guard (USCG) chemical and alcohol testing requirements. However, section 655.3 (c) requires ferry boat operators to comply with FTA random alcohol testing, as the USCG does not have a similar requirement.

Those ferry boat operators must report their random alcohol testing results to FTA using the MIS. These results should be reported under the “ferry boat” employee category, and not under the “revenue vehicle operation” category (or any other employee



Credit: 123rf/Cliff Estes

category).

If you are an FTA grantee, subrecipient, or contractor with a ferry boat operation and you do not have this capability in DAMIS, please contact the FTA

Drug and Alcohol Project Office at fta.damis@dot.gov or (617) 494-6336.

FTA-Covered Employers Still Use Social Security Numbers or Employee ID Numbers

Effective January 6, 2020, FMCSA requires the collector or breath alcohol technician to note the driver’s Commercial Driver’s License number and State of Issuance, rather than the Social Security number or Employee ID number, in Step 1, Section C of the CCF or Step 1B of the ATF.

This change is required for FMCSA-regulated tests only. For FTA-regulated tests, collectors and breath alcohol technicians should continue to use the employee’s social security number or employee ID number.

Report All FTA Pre-Employment Test Results on MIS

In the annual MIS report, each employer must submit a summary of results for all drug and alcohol tests conducted under FTA authority during the previous calendar year. This includes testing results for all FTA pre-employment tests conducted, regardless of whether an applicant was hired.

2018 MIS Results Summary

Each FTA-covered employer (i.e., recipient, subrecipient, and safety-sensitive contractor) is required to annually submit a summary of the results of its anti-drug and alcohol misuse testing program. For calendar year 2018, FTA collected submissions from 3,376 FTA-covered employers with 305,551 safety-sensitive employees. Data was submitted through the Office of Drug and Alcohol Policy and Compliance (ODAPC) electronic DAMIS application.

The following are highlights of the data collected for calendar year 2018.

- ◆ The pre-employment, random and post-accident drug positive rates are at their highest levels since the implementation of Part 655 in

2001 at 3.48 percent, 1.17 percent and 1.37 percent, respectively.

- ◆ The random alcohol violation rate is at the highest level since 2001 at 0.20 percent.
- ◆ The post-accident alcohol violation rate is at the highest level since 2003 at 1.68 percent.
- ◆ There were 384 verified positives for 'opioids'; the previous year (2017) found 82 verified positives for 'opiates'. *(Note: 2018 was the first year oxycodone, oxymorphone, hydrocodone, and hydromorphone were added to the testing panel and the 'opiate' category was renamed to 'opioids'.)*

There were 4,160 verified positive drug test results for at least one of the five prohibited drugs or classes of drugs. Those drugs were detected at the following rates:

Drug Category	Rate
Marijuana	72.3%
Cocaine	14.5%
Phencyclidine (PCP)	0.6%
Opioids	8.4%
Amphetamines	7.1%

Note: The total is greater than 100% due to laboratory detection of multiple prohibited substances in some specimens.

Drug and Alcohol Training

FTA sponsors free training sessions to provide essential information to facilitate covered employers' compliance with the drug and alcohol testing regulations (49 CFR Part 655 and Part 40). FTA provides these trainings at a host site and opens them to the public on a first-come, first-serve basis. Trainings are led by the FTA Drug and Alcohol Program and Audit Team Members.

For a schedule of upcoming trainings and to register, go to: <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training>.

If you are interested in hosting a one-day training session, contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or (617) 494-6336 for more information.

The Transportation Safety Institute (TSI) Training Schedule

FTA's strategic training partner, TSI, will offer the following upcoming courses:

Substance Abuse Management and Program Compliance. This three-day course for DAPMs and DERs will show how to evaluate and self-assess an agency's substance abuse program and its compliance with FTA regulations.

Reasonable Suspicion and Post-Accident Testing Determination. This half-day seminar is designed to educate participants on DOT/FTA regulations requiring drug and alcohol testing of safety-sensitive transit workers. The focus will be specific training requirements for those employees (e.g., dispatchers, supervisors, managers, etc.) who will be making the determination of when to administer reasonable suspicion and post-accident drug and/or alcohol tests for safety-sensitive employees. This seminar meets and exceeds the requirements under 49 CFR Part 655.14(b)(2).

There is a minimal attendance/materials fee. For more information, please call (405) 954-3682. To register, go to: <http://www.tsi.dot.gov>.

60 Minute Training Must Only Cover Effects and Consequences of Drug Use

A common finding of FTA's drug and alcohol program by auditors is that employers have not provided drug awareness training consistent with section 655.14(b) (1). All covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug

use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. If the employer chooses to also provide training on its policy, alcohol misuse, or other related areas, this should be in addition to the 60 minutes focused solely on the

effects and consequences of drug use.

Note: FTA has a free video that may be used to meet the 60-minute training requirement, available at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DrugAwarenessVideo>.

Employer Requirements When MRO Is Unable to Contact Employee

As part of the drug test verification process, a DER may be contacted by the MRO and given instructions to notify an employee to get in touch with the MRO. The MRO will not share any details about the employee's test result with the DER, and the DER should recognize that the test has not yet been verified. A

verified result of negative, canceled, positive, or refusal to test are all still possible outcomes.

Per section 40.131(d), after receiving instruction from the MRO, the DER must immediately attempt to contact the employee. Upon successfully contacting the employee, the DER then directs the employee to promptly contact the MRO. In addition, the DER must inform the employee that if they fail to contact the MRO within 72 hours, the MRO may verify the test result as a positive or refusal to test. After conveying this information, the DER must then inform the MRO that they successfully reached the employee.

If an initial attempt is unsuccessful, the DER must

continue to make all reasonable efforts to reach the employee. Section 40.131(d)(2) defines "reasonable efforts" as a minimum of three attempts spaced over a 24-hour period using the phone numbers listed on the CCF. If the employee has remained unreachable for this 24-hour period, the DER must leave the employee a message by any practicable means (e.g., e-mail, letter, a voice mail left at an alternate phone number) directing them to contact the MRO. DERs must also document the date and time of all contact attempts, both successful and unsuccessful.

DERs must not inform anyone else working for the employer that they are seeking to contact the employee on behalf of the MRO.

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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Employers should refer to applicable regulations, 49 CFR Part 655 and Part 40 for Drug and Alcohol Program requirements.

