

17. DRUG-FREE WORKPLACE ACT

PURPOSE OF THIS REVIEW AREA

Recipients are required to maintain a drug free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.

QUESTIONS TO BE EXAMINED

1. Does the recipient have a written policy as prescribed in the Drug Free Workplace Act (DFWA) that is distributed to all award-related employees?
2. Does the recipient have an on-going drug free awareness program?
3. Did the recipient report to FTA all criminal convictions of award-related employees drug statute violation that occurred in the workplace since the last Comprehensive Review?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Written drug free workplace policy
- Examples of drug free awareness notification such as brochures, posters, information on bulletin boards, employee assistance programs
- Number of employees with a drug statute conviction during the review period

Recipient Follow-up

- Documentation of conviction notification by an employee to the recipient
- Information about any personnel action(s) taken regarding conviction notifications

DFWA1. Does the recipient have a written policy as prescribed in the Drug Free Workplace Act that is distributed to all award-related employees?

BASIC REQUIREMENT

Recipients are required to have and distribute to award-related employees a written drug free workplace policy as prescribed by the DFWA.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

The recipient is required to have and distribute to award-related employees a written policy that states:

1. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
2. Employees must abide by the terms of the policy statement as a condition of employment
3. If convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction

The DFWA requirement applies to employees of a recipient directly engaged in the performance of work under the award, including both direct and indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to

that employee. The requirements do not apply to volunteers, consultants, or independent contractors not on the recipient's payroll, or employees of subrecipients or contractors in covered workplaces.

The DFWA policy can be in the FTA drug and alcohol testing policy as long as it is clearly differentiated and it is extended to all applicable employees, not just safety-sensitive employees. These requirements should not be confused with FTA drug and alcohol testing requirements, which apply only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have a written DFWA policy?*
- b. *Does the recipient's drug free workplace policy include all of the required elements?*

Required Element	Comment
The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited	
Employees must abide by the terms of the policy statement as a condition of employment	
If convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction	

- c. *Does the recipient have a process to ensure that the recipient's drug free workplace policy has been distributed to all employees?*

INSTRUCTIONS FOR REVIEWER

Obtain and review the recipient's written DFWA policy and/or the recipient's FTA drug and alcohol testing policy.

Review the recipient's written drug free workplace policy or its FTA drug and alcohol testing policy. Determine if the following required elements are included:

- states that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
- states that employees must abide by the terms of the policy statement as a condition of employment
- requires that if convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction

Determine if the recipient has a process for distributing a copy to each employee. On site, discuss with the recipient how it implements its policy for distributing a copy to each employee and what actions it takes if employees fail to abide by the policy. On-site, review sample employee files to ascertain if acknowledgment of receipt of the policy is documented.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have a written Drug Free Workplace Act policy.

DEFICIENCY CODE DFWA1-1: No written DFWA policy

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a written DFWA policy.

The recipient is deficient if its written Drug Free Workplace Act policy does not include all required elements.

DEFICIENCY CODE DFWA1-2: drug free workplace policy lacking required elements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an amended DFWA policy that includes all required elements along with documentation that the revised policy has been distributed to all award-related employees.

The recipient is deficient if it does not distribute the Drug Free Workplace Act policy to award-related employees.

DEFICIENCY CODE DFWA1-3: Drug Free Workplace Act policy not distributed/enforced

SUGGESTED CORRECTIVE ACTION: Direct the recipient to submit to the FTA regional office a process for distributing/enforcing the Drug Free Workplace Act policy to award-related employees, along with documentation that the policy has been distributed.

GOVERNING DIRECTIVE

41 U.S.C. 702. drug free workplace requirements for Federal grant recipients

(a) drug free workplace requirement

(1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug free workplace by:

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug free awareness program to inform employees about:

- (i) the dangers of drug abuse in the workplace;
- (ii) the recipient's policy of maintaining a drug free workplace;
- (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

- (D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will:
 - (i) abide by the terms of the statement; and
 - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
- (E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;
- (F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and
- (G) making a good faith effort to continue to maintain a drug free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

49 CFR 32.205 What must I include in my drug free workplace statement?

You must publish a statement that—

- (a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;
- (b) Specifies the actions that you will take against employees for violating that prohibition; and
- (c) Lets each employee know that, as a condition of employment under any award, he or she:
 - (1) Will abide by the terms of the statement; and
 - (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

DFWA2. Does the recipient have an on-going drug free awareness program?

BASIC REQUIREMENT

Recipients of FTA funds are required to have an on-going drug free awareness program for award-related employees.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

In addition to establishing and maintaining a drug free workplace environment, the recipient must establish an ongoing drug free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, recipients may rely on an employee assistance program to provide drug free awareness information. This procedure is acceptable, provided the material includes a drug free workplace message.

INDICATOR OF COMPLIANCE

- a. *Are award-related employees periodically informed about the dangers of drug abuse and any available counseling and employee assistance programs?*

INSTRUCTIONS FOR REVIEWER

Obtain and review documentation, such as brochures, employee handbooks, and posters on how the recipient communicates to its employees that it has a drug free awareness program, including the availability of the employee assistance program. Follow up onsite by reviewing information on bulletin boards, discussing with the recipient its drug free awareness program, and that information is provided on a consistent basis.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not periodically inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, and the opportunities for assistance.

DEFICIENCY CODE DFWA2-1: No ongoing drug free awareness program

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has implemented a drug free awareness program and informed employees of the dangers of drug abuse and any available rehabilitation, and employee assistance programs.

GOVERNING DIRECTIVE

41 U.S.C. 702. drug free workplace requirements for Federal grant recipients

(a) drug free workplace requirement

(A) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug free workplace by:

(B) establishing a drug free awareness program to inform employees about:

- (i) the dangers of drug abuse in the workplace;
- (ii) the recipient's policy of maintaining a drug free workplace;
- (iii) any available drug counseling, rehabilitation, and employee assistance programs;
and
- (iv) the penalties that may be imposed upon employees for drug abuse violations.

DFWA3. Did the recipient report to FTA all criminal convictions of award-related employees for a drug statute violation that occurred in the workplace since the last Comprehensive Review?

BASIC REQUIREMENT

Recipients must report a criminal conviction of an award-related employee for drug statute violations in the workplace to the FTA within ten calendar days after learning of the conviction and take appropriate action with the employee within 30 days after learning of the conviction.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

When the recipient receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report the conviction to the FTA regional counsel. Recipients must provide the individual's position title and the awards in which the individual was involved. Further, the recipient must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

INDICATORS OF COMPLIANCE

- a. *Did any employee report a drug statute conviction occurring in the workplace? If yes, on what date did the employee report such to the recipient?*
- b. *When did the recipient report the drug statute conviction to FTA?*
- c. *What actions did the recipient take to rectify the situation?*

INSTRUCTIONS FOR REVIEWER

Obtain a listing of drug statute convictions reported to the recipient during the review period and identify the dates upon which such convictions occurred and when the recipient was made aware of such and that it was within five days after such conviction.

Confer with the regional office to ascertain if the recipient reported the conviction of an award-related employee for a drug statute violation that occurred in the workplace and obtain evidence of when the report was submitted. Receive and compare the notification (received from the regional office) with information provided by the recipient to determine if the conviction was reported to the FTA regional counsel within required time frame (ten calendar days after learning of the conviction). Follow-up during the site visit to address any unresolved issues.

Follow-up during the site visit and discuss with the recipient to determine what action(s) was taken relative to the employee involved in the drug statute conviction, up to and including termination or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not notify FTA that a conviction had occurred and/or did not take appropriate personnel actions; or such actions were not within the required time frames.

DEFICIENCY CODE DFWA3-1: Inadequate criminal drug statute violation reporting

SUGGESTED CORRECTIVE ACTION: The recipient must report to the FTA regional office any outstanding convictions and/or actions taken within the period of the Comprehensive Review and develop procedures to report such actions in the future within the required timeframes.

GOVERNING DIRECTIVE

41 U.S.C. 702. drug free workplace requirements for Federal grant recipients

(a) drug free workplace requirement

- (1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug free workplace by:

- (D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will:
 - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
- (E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;
- (F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title...

49 CFR 32.225

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

- (a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by §32.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must:
 - (1) Be in writing;
 - (2) Include the employee's position title;
 - (3) Include the identification number(s) of each affected award;
 - (4) Be sent within ten calendar days after you learn of the conviction; and
 - (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.
- (b) Second, within 30 calendar days of learning about an employee's conviction, you must either:
 - (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or,
 - (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

- 1. Did background research or site visit observations reveal any other potential Drug Free Workplace Act issues or concerns not covered above?

REFERENCES

- 1. 41 U.S.C. Sections 701 et seq., Drug Free Workplace Act of 1988
- 2. 49 CFR 32, Subpart B—Requirements for Recipients Other Than Individuals

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