Fall 2010
Issue 43

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 forty-third in a series.

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New Federal Drug Testing Custody and Control Form

On September 27, 2010, the Department of Transportation (DOT) published an Interim Final Rule (IFR) in the Federal Register authorizing the use of the new Federal Drug Testing Custody and Control Form (CCF) for use in DOT regulated testing. The Federal Register announcement (Vol. 75, No. 186, pages 59105-59108) also modifies 49 CFR Part 40 to incorporate necessary procedural changes for collectors, laboratories, and Medical Review Officers that are required to use the new forms. The new CCF can be found at http://www.dot.gov/ost/dapc/documents.html.

The new form's use is authorized beginning October 1, 2010, but its use is not required until October 1, 2011 giving service agents the opportunity to use up their supplies of the old forms. Service agents that use the old forms will be required to add additional information to the forms to capture the new information that is required in the IFR.

The revised CCF includes the following modifications:

- In Step 1 of the new CCF, the collector must specify the testing authority in Line D by checking the DOT box and checking the appropriate DOT modal agency (FTA for all employees testing under FTA authority). **Collectors using the old forms must write in the specific DOT agency under which the specimen is collected in the "Remarks" Section in Step 2 on Copy 1 of the old CCF.**

- In Step 5A on Copy 1 of the new CCF, the laboratory must mark the appropriate boxes in the Primary Specimen Report indicating the test result and if positive check the appropriate box for the drug analytes. New drug analytes have been added for MDMA, MDA, and MDEA for Ecstacy; Delta9-THCA has been added following the Marijuana Metabolite; and, BZE has been added after the Cocaine Metabolite. **When an old CCF form is used, in the instance of a confirmed positive drug test for MDMA, MDA, or MDEA, the laboratory must check the positive box and write in the specific MDMA, MDA, or MDEA analyte in the "Remarks" section in Step 5-A of Copy 1 of the old CCF.**

- In Step 6 on Copy 2 of the new CCF, a line has been added to allow the Medical Review Officer to identify the name of the drug that was verified positive, and a new line for "OTHER" was added under Refusal to Test for the MRO to document other refusal to test situations such as insufficient volume without a legitimate medical explanation.

- In Step 7 on Copy 2 of the new CCF, a box was added for the MRO to check if the split specimen is reported as cancelled.

- The revised instructions for completing the CCF are provided on the back of Copy 5 of the new CCF.

The IFR also clarified that Part 40 now requires laboratories to report quantitations for all confirmed positive drug/drug metabolites to MROs consistent with the new drug testing requirements established by the Department of Health and Human Services. Finally, the IFR added §40.14 that clearly defines the information employers and their third party administrators must routinely provide to test facility in the notification or "order to test." For more information see article on Page 2.

Conference Scheduled for April 5-7, 2011

The 6th Annual FTA Drug and Alcohol Program National Conference will be held in St. Louis, MO on April 5-7, 2011. Conference information and registration will be available at http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/NatConf/2011/.

REGULATORY CLARIFICATION

MRO Requalification Training Requirements Clarified

On August 16, 2010, the DOT published a final rule amending certain provisions of 49 CFR Part 40. One of the amendments changed the requirements for requalification training for Medical Review Officers (MROs). The amendment removed the requirement for MROs to obtain twelve hours of continuing education credit every three years and replaced it with a requirement for comprehensive re-training that addresses all issues required by Part 40 and passing an examination every five years. Some confusion has arisen regarding when the five year period commences in relation to the MRO's initial training and subsequent continuing education efforts.

To clarify, MROs are required to complete the new requalification training and examination no later than five years from the date of having last met either their initial qualification training or their continuing education requirements.

- If an MRO completed his/her initial qualification training/exam on March 4, 2009, the MRO would need to complete the requalification training and pass an examination by March 4, 2014.

- If an MRO completed qualification training/exam on August 16, 2007 and completed his/her first round of 12 hours of continuing education within the subsequent 3-year period (August 16, 2010), the MRO would need to complete the requalification training and pass the examination by August 16, 2015.

- If an MRO completed his/her initial qualification training/exam on November 3, 2007, but failed to complete the continuing education requirement, the MRO would need to complete the requalification training and pass an examination by November 3, 2012.

- If an MRO completed initial qualification training/exam on December 1, 2002 and completed 12 hours of continuing education by December 1, 2005, but failed to complete the next 12 hour requirement for continuing education, the requalification training and examination is due by December 1, 2010.

- New MROs must complete qualification training and pass an examination before serving as an MRO. If a new MRO completed his/her qualification training on October 19, 2010, the requalification training and exam would be due on October 19, 2015.

Following the completion of the new requalification requirements, the MRO will be required to complete requalification training and exam every five years thereafter. Covered employers should request documentation from their MROs to ensure that their MRO has the correct credentials and has successfully completed their training requirements as specified in the amended rule. MROs are required to maintain documentation about their qualification training and are required to provide it to the covered employers they serve upon request.

Time to Use Old ATFs is Running Out

Many Breath Alcohol Technicians (BATs) are still using old versions of the Alcohol Test Form (ATF) and have yet to receive a supply of the revised forms causing frustration and concern among compliance-conscious covered employers. Service agents are allowed to use the old forms until the end of the calendar year, but will not be allowed to do so beginning January 1, 2011. Covered employers should consult with their service agents to determine the status of the new form supply and the anticipated date of implementation. Employers should review the employer's copy of all ATFs received following a breath alcohol test to ensure that the new forms are being used after January 1. An employer can tell if a form is the new version by checking for the revision date at the bottom of the form, Form DOT F 1380 (Rev. 5/2008). The new ATF can be found at http://www.dot.gov/ost/dapc/documents.html.

Employer Requirements Added to Part 40

The Interim Final Rule (IFR) published on September 27, 2010 added a section to Part 40 directed specifically at covered employers and their Consortium/Third Party Administrators (C/TPAs). §40.14 defines the information that employers or their service agents must provide to collectors prior to every urine specimen collection conducted under DOT/FTA authority. The following information must be provided:

- Full name of the employee being tested
- Employee social security number (usually last 4 digits) or ID number
- Laboratory name and address (can be pre-printed)
- Employer name, address, phone number, fax number (can be pre-printed)
- Designated Employer Representative (DER) name and telephone number
- Medical Review Officer name, address, phone number, and fax number (can be pre-printed)
- DOT agency which regulates the employee's safety-sensitive duties (can be pre-printed)
- Test reason (pre-employment, random, reasonable suspicion, post-accident, return-to-duty, or follow-up).
- Test to be observed or not
- Optional—C/TPA name, address, phone, and fax number (can be pre-printed)

The IFR did not prescribe the method that employers must use to convey this information to collectors, but it is standard industry practice for employers to complete an "Order to Test" form that accompanies the employee to the collection site and provides all necessary information to the employee and the collector. If an agency already uses this type of form, slight modifications may be required to capture the necessary additional information required (i.e., DOT agency regulatory authority). Agencies that do not currently utilize a form of this type are encouraged to create one. Sample "Order to Test" forms are included in FTA's Best Practices Manual.

Employers Should Include Ecstasy in Employee Training

Now that Ecstasy has been added to the DOT drug testing regime, employers should incorporate information about this drug into their substance abuse awareness training. This training is required for all safety-sensitive employees and reasonable suspicion training that is required for supervisors making reasonable suspicion determinations (§655.14(b)).

Ecstasy, MDMA (3,4 methylenedioxymethamphetamine), is a synthetic, psychoactive drug that is chemically similar to the stimulant methamphetamine and the hallucinogen mescaline. MDMA causes an increase in serotonin which plays an important role in the regulation of mood, sleep, pain, appetite, and other behaviors. The excess release of serotonin by MDMA likely causes the mood elevating effects experienced by users. However, by releasing large amounts of serotonin, MDMA causes the brain to become significantly depleted of this important neurotransmitter, contributing to the negative behavioral after-effects that users often experience for several days after taking MDMA.

According to the National Institute on Drug Abuse, studies have shown that some heavy MDMA users experience long-lasting confusion, depression, and selective impairment of working memory and attention processes.

Ecstasy users make extremely dangerous drivers. They can exhibit the same impairments as amphetamine, heroin, cocaine, and hallucinogen users. Some ways driving ability is affected by ecstasy use include:

- Slowed thinking and reflexes- making reacting difficult
- Distorted visual and depth perception
- Difficulty making complex decisions
- Lengthened glare recovery time
- Overly confident in driving skills and judgment
- Lapses in attention and concentration - driver is unable to display continuous attention
- Distorted vision
- Auditory and visual hallucinations

FOR YOUR INFORMATION

Employers Should Review CCF for Accuracy

The employer has the responsibility to oversee its service agents to ensure compliance. One way to oversee collection sites is for employers to review every Federal Drug Testing Custody and Control Form (CCF) for accuracy and completeness following every testing event. A one- or two-minute review may identify problem areas that need correction and subsequently may avoid future problems and compromised tests. The following items should be reviewed on every CCF.

- Check the top of the form—Does it say "Federal Drug Testing Custody and Control Form?"

- Look at the box labeled Step 1
  - Is all of the information legible?
  - Is the correct employer name and address listed? The employer's name must be listed here, not the C/TPA.
  - Is the correct MRO's name, address phone and fax number listed?
  - Is the correct employee ID number or SSN listed?
  - Is the DOT box checked? Is the FTA box checked? (If an old CCF is used, did the collector write FTA in the Remarks Section in Step 2?)
  - Is the reason for the test marked correctly?
  - Is the box for THC, COC, PCP, OPI, AMP checked?
  - Is the collection site address indicating the location where the test was actually performed and the site's telephone numbers completed accurately?

- Look at the information provided in Step 2
  - Is the Temperature between 90° and 100°F marked "Yes?"
  - Is the "Split" collection box marked?
  - Should it have been? If not, did the collector provide an explanation in the Remarks section and is the "Observed" box marked?
  - Is there an appropriate comment included in the Remarks Section? The most common need for remarks include: Temperature Out of Range; Insufficient Volume; Adulteration; and Employee Refuses to Sign. See the Urine Specimen Collection Guidelines for what should be included in the comment.

- Even though there is no information provided in Step 3 of the form, look at the bottom of the CCF in the Step 7 portion of the Employer's copy. Look for a faint shadow, imprint, or traces of carbon ink of a date or the employee's initials that indicate the date and initials were written on the label while it was still attached to copy one of the CCF rather than on the split specimen bottles. This practice is unacceptable.

- In Step 4 look to see that the collector has legibly printed his/her name, signed it, and listed the correct date and time. Make sure the appropriate AM or PM time is indicated. (If an alcohol test was performed, compare the time on the ATF with the time on the CCF to make sure the alcohol test was completed first.) Make sure the delivery service name is clearly identified in the box.

- In Step 5, is the employee's information provided? Did the employee sign the form? If not, is this documented in the Remarks Section of Step 2?

You should review every form for accuracy. Even though you may be confident in your collection site and collectors, issues do arise and mistakes are made even in the best of circumstances. By being diligent in your review you can avoid problems and take corrective action when necessary. If you find any issues, inaccuracies, or procedural problems with the collection or the manner in which the CCF was completed, these should be brought to the attention of the collector immediately and corrective action taken as soon as possible. The only uncorrectable flaw in regards to the CCF that would result in a cancelled test is if the collector fails to print his or her name and sign the form in Step 4. All other errors are correctable with a signed affidavit from the collector. The procedures for creating an affidavit are listed in the Urine Specimen Collection Guidelines (see Resources on Page 7 for how to obtain a copy.)

QUESTIONS & ANSWERS

Q Now that the DOT has added Ecstasy to the drugs that we test for, should we refer to the test as a 5-panel or a 6-panel?

A The DOT test will continue to be referred to as a 5-panel drug test that includes Marijuana, Cocaine, Amphetamines, Opiates and Phencyclidine. Ecstasy is included as an Amphetamine. The drugs and their subcategories that are included in a DOT 5-panel test are:

- Marijuana (THC)
- Cocaine
- Amphetamines
  - Amphetamines
  - Methamphetamines
  - MDMA
  - MDA
  - MDEA
- Opiates
  - Codeine
  - Morphine
  - 6-AM (Heroin)
- Phencyclidine

Q If a transit revenue service vehicle is involved in an accident with a bicycle and the bicycle receives disabling damage, does this meet the minimum threshold for a post-accident test if the employee cannot be completely discounted as a contributing factor?

A The portion of the accident definition that describes disabling damage (§655.4) refers to "one or more vehicles (including non-FTA funded vehicles)" that incur disabling damage. The definition of a vehicle that is also provided in this section of the regulation defines a vehicle as "a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel." There is no mention of bicycle. Therefore, in a non-fatal accident where no one is immediately transported to a medical treatment facility, and the only damage is to a bicycle, the minimum threshold for a FTA post-accident test is not met and a DOT test should not be conducted.

Change Clocks

Remind your BATs to change the clock on their EBTs to reflect the end of Daylight Savings Time on November 7, 2010.

COMMON AUDIT FINDINGS

Covered employers are responsible for the compliance of the service agents that perform the drug and alcohol testing program functions on the employer's behalf. If an employer's service agents do not perform testing services consistent with the regulations, the employer's good faith effort is not a defense for non-compliance. Audits often result in numerous service agent findings that could have been prevented if the covered employer conducted basic oversight of the service agent.

Even though the regulation does not stipulate how an employer should monitor its service agents, the employer should do what is necessary to ensure that the agency's compliance is not put in jeopardy. Industry experience has shown that employers that have a good working relationship and good communication with their collectors have better programs. Additionally, those that review service agent credentials, conduct annual inspections or mock collections, and routinely review Federal Drug Testing Custody and Control Forms usually fair better in audits.

All agreements and arrangements, written or unwritten, between employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of the DOT drug and alcohol testing regulations (§40.11(c)). If a service agent is unwilling or unable to perform its duties consistent with the regulations, the employer should obtain services elsewhere.

& Rx OTC MEDICATIONS

Drug Interactions: Take Multiple Rx/ OTC Medications with Caution

It is not uncommon for individuals to take two or more prescription or over-the-counter medications (Rx/OTC) at the same time. If you take several different medicines, see more than one doctor, or have certain health conditions, you and your doctors need to be aware of all the medications you take. Doing so will help you to avoid potential problems such as drug interactions.

Drug interactions occur when two or more drugs react with each other and may make your drug less effective, cause unexpected side effects, or increase the action of a particular drug. Some drug interactions can be harmful to you. Discussing with your physician what other medications you are taking and reading the label every time you use an OTC medication may be critical to your health. For safety-sensitive employees, it becomes a safety risk, both for you and the travelling public. You can reduce the risk of potentially harmful drug interactions, side effects, and safety risks with a little bit of knowledge and common sense.

Drug interactions fall into three broad categories:

- Drug-drug interactions may cause you to experience an unexpected consistency with Drug-food and Drug-condition interactions may cause you to experience an unexpected side effect. For example, mixing a drug you take to help you sleep (a sedative) and a drug you take for allergies (an antihistamine) can slow your reactions and make driving a car or operating machinery dangerous.

- Drug-food/beverage interactions result from drugs reacting with foods or beverages. For example, mixing alcohol with some drugs may cause you to feel tired or slow your reactions.

- Drug-condition interactions may occur when an existing medical condition makes certain drugs potentially harmful. For example, if you have high blood pressure you could experience an unwanted reaction if you take a nasal decongestant.

Your physician should discuss any potential drug interactions with you at the time he or she prescribes a medication for you. Your pharmacist can do the same for OTC medications. It is important to understand that different OTC drugs may contain the same active ingredient. Paying attention to the active ingredients used in your OTC medications will help you avoid taking too much of a particular ingredient and/or possible allergic reactions.

Over-the-counter (OTC) drug labels contain information about ingredients, uses, warnings and directions that is important to read and understand. The label also includes important information about possible drug interactions. Further, drug labels may change as new information becomes known. That's why it is especially important to read the label every time you use a drug. The New Drug Facts label is a brochure produced by the national Council on Patient Information and Education (NCPIE) and available at www.bemedwise.org. This is an excellent tool for understanding what information is provided on each drug label, such as the active ingredients, approved uses for the medication, directions for taking the medication, and, perhaps most importantly, any warnings associated with taking the medication. However, if you have any concerns at all, you should always consult your physician or pharmacist.

Before taking any medication, ask your doctor or pharmacist the following questions:

- Can I take it with other drugs?
- Should I avoid certain foods, beverages or other products?
- What are possible drug interaction signs I should know about?
- How will the drug work in my body?

And, of course, individuals performing safety-sensitive job duties should ALWAYS be sure to communicate this information to their physician or pharmacist.

With more and more prescription medications becoming available over the counter today, you must become an advocate for your own health and never take any medication without first taking the time to inform yourself fully about any risks associated with the medication. At the same time, there are more opportunities today than ever before to learn about your health and to take better care of yourself.

Source: Drug Interactions: What You Should Know, Council on Family Health, National Consumers League of the U.S. Food and Drug Administration.

Resources Updated to Reflect Changes

The DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) has updated its website and several publications to reflect the regulatory changes that went into effect on October 1, 2010. As a matter of convenience and clarity, 49 CFR Part 40 in its entirety with all the changes incorporated is now available for download. Also available for download are three ODAPC notices clarifying points regarding MRO requalification requirements, the 5-panel test and employer policy modification requirements. Additional publications that have been updated include; "Urine Specimen Collection Guidelines," "What Employers Need to Know About DOT Drug and Alcohol Testing," and "What Employees Need to Know About DOT Drug and Alcohol Testing."

The updated regulations, notices, and publications can be obtained by going to http://www.dot.gov/ost/dapc.

Use FTA Website to Search Previous Newsletters

The FTA website now provides a search capability that allows viewers to download all previous editions of the **FTA Drug and Alcohol Regulation *Updates*** and to browse the newsletter by topic. In addition, there is the capability to search all previous newsletters for specific topics or key words. From the FTA Safety and Security home page found at http://transit-safety.fta.dot.gov/ DrugAndAlcohol, click on the Regulation Update Newsletters in the Menu to the right. Use the scroll bar to browse the newsletter topics and download Newsletters as desired. Or click on the "Search Newsletter" option in the menu to the right. At the prompt, enter topics or key words that you wish to search and click on the Search button. All articles that meet your search criteria will appear with an indication of the degree of relevance, an abstract, and link to the Newsletter.

One Day Seminar Scheduled

A one day seminar will be held in Kingston, NY on January 26, 2011. The seminar will provide a high level overview of the FTA drug and alcohol regulations and recent updates , focusing on the operational side of a transit agency's functions. Seminar information and registration are available at http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/SubAbuseKingston.aspx.

RESOURCES

FTA Drug and Alcohol MIS Project Office: Phone: (617) 494-6336 Email: fta.damis@dot.gov
FTA home page: http://www.fta.dot.gov
- Center for Substance Abuse Prevention: http://prevention.samhsa.gov
- DHHS-Certified Laboratories: http://www.workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html
- FTA Office of Safety & Security: http://transit-safety.fta.dot.gov

FTA, Office of Safety and Security Clearinghouse
- Best Practices Manual: FTA Drug & Alcohol Testing Program, Revised 2008
- DOT's 10 Steps to Collection Site Security and Integrity
- DOT's Direct Observation Procedures Poster, revised August 31, 2009
- Drug and Alcohol Consortia Manual
- Drug and Alcohol Testing Results: 1995 through 2007 Annual Reports
- FTA Drug and Alcohol Program Assessment
- Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Revised 2003
- Prescription and Over-The-Counter Medications Toolkit
- Reasonable Suspicion Referral for Drug and Alcohol Testing (Leader's Guide & Video)
- Substance Abuse Professional Guidelines, revised August 31, 2009
- Urine Specimen Collection Procedures Guidelines, revised October 1, 2009
- What Employees Need to Know About DOT Drug and Alcohol Testing, revised October 1, 2009
- What Employers Need to Know About DOT Drug and Alcohol Testing, revised October 1, 2009

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
- Collection Site Security and Integrity Poster
- DOT Direct Observation Instructions Sheet
- DOT's Ten Steps Video
- MIS Data Collection Form and Instructions

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FTA Drug & Alcohol Regulation Updates

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

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

November 30, 2006 Federal Register Vol. 71, Pages 69195-69198 Primary Topic: Applicability of FTA and USCG Regulations to Ferryboats

January 9, 2007 Federal Register Vol. 72, Pages 1057-1058 Primary Topic: Revised Testing Rates

49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs

Revised: December 19, 2000 Federal Register Vol. 65, Pages 79462-79579

August 1, 2001 Federal Register Vol. 66, Pages 41943-41955 Clarifications and Corrections to Part 40; Common Preamble to Modal Rules

Final Rule Changes
August 23, 2006 Federal Register Vol. 71, Pages 49382—49384; Expanded List of SAP Qualifications

June 25, 2008 Federal Register Vol. 73, Pages 35961-35975; Specimen Validity Testing

November 20, 2008 Federal Register Vol. 73, Pages 70283-70284; Direct Observation Collections

February 25, 2010 Federal Register Vol. 75, No. 37, Pages 8524-8526; Release of Results to State CDL Authorities; Pages 8526-8528: Permits New ASD; Pages 8528-8529; New ATF and MIS Forms

August 16, 2010 Federal Register Vol 75, No. 37, Pages 49850-49864; Addition of Ecstasy, Lowering Cutoff Levels, MRO Qualifications.

September 27, 2010 Federal Register Vol 75, No. 186, Pages 59105-59108; Interim Final Rule—Reused CCF Compliance Procedures

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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 address on the right to include them on the mailing list. This publication is free.

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