

# 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-fifth in a series.

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## Drug Testing Integrity Act of 2011 (HR 707)

The proposed Drug Testing Integrity Act of 2011, HR 707, will make it unlawful to knowingly manufacture, market, sell, ship, or otherwise provide an individual with any product designed for the purpose of assisting in defrauding a drug test. If enacted, it will be enforced by the Federal Trade Commission (FTC).

This legislation, sponsored by Rep. Eliot Engel [D-NY17] and cosponsored by Rep. Jean Schmidt [R-OH2] and Rep. Lee Terry [R-NE2], defines the term “defraud a drug test” to mean the following:

1. Submit a substance that purports to be from someone other than its actual source, or purports to have been excreted or collected at a time other than when it was

actually collected.

2. Engage in any other conduct with the intent to produce a false or misleading outcome of a test for the presence of a controlled substance.

More information on the official legislation, its current status,

“These products normalize behavior that ruins lives. . .it is ridiculous that you can walk into a store and buy a product that undermines a drug test.” –Rep. Schmidt [R-OH2]

and a link to write to your local representative can be found at <http://www.govtrack.us/congress/bill.xpd?bill=h112-707>.

## 6th Annual Conference A Success

Over 500 Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), Third Party Administrators (TPAs), collectors, trainers, and other related professionals attended the 6th Annual FTA Drug and Alcohol Program National Conference in St. Louis, Missouri April 5-7, 2011. Over one-third of the participants were Drug and Alcohol Program Managers (DAPMs) and Designated Employer Representatives (DERs). A wide range of sessions were offered from the pre-conference DOT Collector Qualification Training and Proficiency Demonstrations, to sessions on managing your transit contractors, post-accident thresholds, and developing tools for the random selection process.

Copies of the conference presentations can be downloaded from the Office of Safety and Security home page <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/NatConf/2011/CourseSynopsis.aspx>.

**Mark Your Calendars**.....The 7th Annual FTA Drug and Alcohol Program National Conference will be held April 10-12 in Miami, FL. More information will be coming in the fall.



## MIS Report Submissions Submitted On Time

Approximately 90% of FTA grantees required to submit Calendar Year 2010 Management Information System (MIS) reports by March 15, 2011 did so on time, a record for the MIS process. FTA applauds these efforts and reports that the MIS process is working well with only a few issues to address. Those grantees that may not have yet submitted their reports or those with problems should expect to be contacted in the near future. Grantees should pay special attention to certifying the submissions of their contractors and sub-recipients.

## Testing Authority Must be Indicated

FTA authorized test, the collector must first mark the “DOT” box on Line D and then the “FTA” box on Line D. Both boxes must be marked.

Old versions of the CCF may be used through September 30, 2011. In this case, the collector must specify the testing authority by writing in “DOT-FTA” in the Remarks Section in Step 2.

DAPMs should review all CCFs to ensure that collectors follow the correct procedures and accurately reflect the testing authority as “DOT-FTA.” Also, in many cases collectors are erroneously indicating the testing authority as FMCSA. These errors should be brought to the attention of the collector and corrective actions taken immediately through the use of a signed affidavit.

## Collector Training Found Lacking

The Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance (ODAPC) is concerned about the quality of urine specimen collections that are being performed for DOT drug tests. This concern has been substantiated by mock collection reviews performed by Federal Transit Administration (FTA) auditors in both announced and unannounced formats. The problems are significant and extensive.

These issues can often be traced back to poor training of collectors. Training is often rushed, out-dated, inaccurate, and corrupted with contradictory or non-compliant collection site policy that is aimed at collection site convenience and profit. Often this is exacerbated by practices where collector training is performed in-house by agency personnel who in turn are trained by the in-house personnel that they trained previously. This circular arrangement results in bad practices being ingrained into agency Standard Operating Procedures (SOPs) with little room for corrections or adjustments. Few collection sites obtain external input into their training curriculum or SOPs and, as a consequence, problems are passed on to each new generation of collectors.

Another major area of concern is the extent and quality of proficiency demonstrations. Following a collector’s qualification training, collectors must demonstrate proficiency by completing five consecutive error-free mock collections. The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the Custody and Control Form (CCF) and initial the specimen bottle’s tamper-evident seal. The demonstrations must be monitored and evaluated in person and in real-time by a qualified collector. The monitor must have demonstrated knowledge, skills, and abilities by being a DOT collector for at least one year, conducting DOT collector training for one year, or successfully completing a “train the trainer” course.

Inquiries into the manner in which proficiency demonstrations are being conducted uncovered practices that do little to assess

collector competencies. In most cases, collectors are only required to complete the CCF forms, but are not required to demonstrate the collection process from beginning to end including:

- Dialog with donor;
- Preparation of privacy enclosure;
- Use of collection cup;
- Reading the temperature tape;
- Inspecting for adulterants;
- Pouring into specimen bottles; and
- Sealing and packaging specimens for delivery.

**Mock collections are intended to portray a real event conducted with someone acting as the donor.**

Urine collection trainers often review several collectors at a time giving little one-on-one attention to any one collector. In many cases, collectors monitor one another with little concern for attention to detail and often overlook errors. Proficiency demonstrations are often viewed as a formality where the focus is on completing the demonstrations quickly rather than ensuring they are performed correctly.

Trainers must be aware that they perform a critical role in DOT drug testing and must perform their responsibilities with diligence. When a trainer attests in writing that a collector’s mock collections were performed error-free, this should mean error-free from beginning to end. The monitor is attesting to the fact that the collector is proficient in the DOT collection procedures. Collection site managers and third party administrators should review their proficiency demonstration monitoring procedures and modify them to ensure collectors can perform their jobs effectively.

While concealed collection site inspections have been in process for several years, some collection sites have scored well, with fewer than three minor findings at several sites, and no findings at several others. One large national collection site sent a delegate to FTA in order to establish better training protocols for their sites.

## FTA Issues 2011 Rx/OTC Medication Toolkit

Toolkit, an update of the original Toolkit released in 2003. The updated version contains a collection of best practice policies, procedures, training aids, and post-accident procedures being used in the industry today, combined with an extensive list of other applicable resources.

The 2011 version is believed to represent some of the best practices being implemented in the transit industry today.

The toolkit is divided into six main sections:

- I. Rx/OTC Medication Overview
- II. Rx/OTC Medication Policies and Procedures
- III. Accident Investigation Procedures
- IV. Forms
- V. Training
- VI. Resources

In addition, a “Frequently Asked Questions” section was added that addresses questions from “Where do I file my Rx/OTC medication information?” to “Will inquiring about my employee’s medical condition and medications violate HIPAA?”

Each of the main sections contains an introduction and discussion of the section describing what is contained in each.

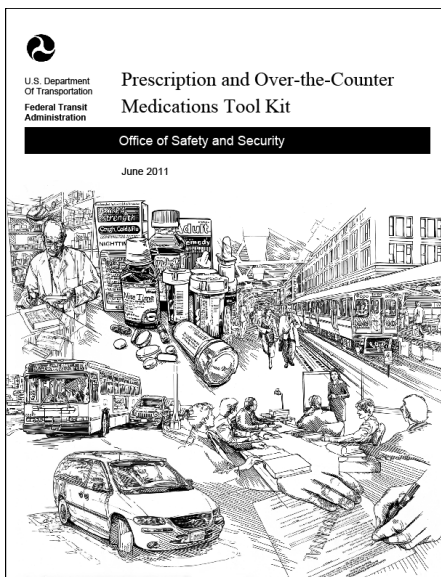
## Working Group Reviews FTA Rx/OTC Medication Study

research over the past two years to determine the transit industry’s progress in addressing Rx/OTC medication use among transit system safety-sensitive employees. The Working Group met April 5, 2011 in St. Louis, MO prior to the FTA’s 6<sup>th</sup> Annual Drug and Alcohol Program National Conference. The group consisted of FTA staff, transit system managers, medical review officers, and consultant staff that led the research study. The purpose of this working review session was to provide feedback to FTA regarding the study’s findings and recommendations.

The Working Group provided several recommendations in addition to those in the draft Study, as well as additional points to address within the Study as it is finalized. Final revisions to the Study are underway, and the final version is expected to be released later this year.

FTA recently issued the 2011 Prescription and Over-the-Counter (Rx/OTC) Medication

Each of the sections should be used and customized as needed by the individual users. For example, if a transit system is only beginning to develop its Rx/OTC policy, or is looking to revise its existing policy, the Policies and Procedures Section provides several examples of excellent working policies as well as a model policy that is currently being used in one state for all of its non-urban transit operators.



Employers may use partial sections of the samples or use them in their entirety as it fits each transit system’s needs. The same is true of all Toolkit sections. Whether a transit system is starting from scratch or simply trying to evaluate or update its existing program, an example of the desired topic, process, or procedure is provided. A contact person and e-mail or telephone number is provided for each best practice or model in the event there are questions or clarification is required regarding a specific statement or requirement contained in the sample document.

This Toolkit is being provided in electronic format so that the examples provided can be easily customized for a transit system’s specific needs. The most recent version of the Toolkit can be download at <http://transit-safety.fta.dot.gov/publications/order/default.asp>.

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**Medicaid Contractors Not Covered by FTA** Only recipients or sub-recipients of federal financial assistance under 49 United States Code (USC) Sections 5307, 5309, or 5311 of the Federal Transit Act as amended, are covered by FTA's Drug and Alcohol Testing regulation. Recipients of FTA Section 5310 financial assistance are not covered by the FTA regulation. Section 5316 and 5317 recipients are covered only if the recipient receives funds from a covered source as well. Agencies or contractors that only receive funding from Medicaid or other Department of Health and Human Service (HHS) agencies are not covered under the FTA regulation.

However, these agencies may be covered under the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulation if they operate vehicles that require Commercial Driver's Licenses (CDLs). Some agencies may be covered under other state or non-federal oversight agency drug and alcohol testing programs. As such, these tests are not performed under federal authority. The agencies should not report their test results on the Management Information System (MIS) reports and must not use Federal Custody and Control Forms (CCFs) for their testing.

## Indiana Requires Medical Qualification Program and Rx/OTC Medication Policy for All Section 5311 Transit Systems

The Indiana Department of Transportation (INDOT) has taken a bold step in protecting the safety of the State's rural transit, safety-sensitive employees and the traveling public with its mandatory Medical Qualification (MQ) Program. Required for Indiana's 45 Section 5311 transit systems, this Program includes the provision of a Medical Determination Officer (MDO) to conduct all medical qualification assessments to ensure that the more than 550 rural transit operators in Indiana are medically qualified, or "fit for duty," despite the lack of compelling regulation from FTA.

Indiana's program is significant for two reasons. First, standardizing medical qualification assessments will ensure that all rural transit systems are using a standardized program for determining that safety-sensitive employees are medically qualified for specified situations. Second, the program requires rural transit systems to implement a supplemental policy for Prescription and Over-the-Counter (Rx/OTC) Medications and conduct an expanded NIDA 10+2 (synthetic opiates) drug test under the transit system's own authority following a qualifying accident.

The MDO services are provided as part of a consortium procurement administered by INCOST, the Indiana Council on Specialized Transportation, an association of transportation professionals working together to promote safe and efficient transportation services and which represents Indiana's rural transit operators.

Each individual transit system must enter into contract with INCOST's contractor. Once in place, the overall MQ Program and the MDO contracts will be administered by the Indiana Rural Transit Assistance Program (RTAP). Once all Section 5311 systems have been included, the program will be open to the state's 19 urban transit systems (Section 5307).

The MDO will perform a variety of medical services including, but not limited to, physical examination services and medical qualification assessments for all safety-sensitive transit positions including Medical Qualification and Substance Abuse Policies. Triggering events for these assessments include new hires; return to active status; following a qualifying accident; as required to comply with the Indiana Prescription and Over-the-Counter (Rx/OTC) Medication Policy and Procedures; and on a case-by-case basis as requested by system management.

For all assessments, the MDO must provide a written recommendation for an applicant's ability to perform the essential duties of a safety-sensitive job. The MDO will also be reviewing all position descriptions to identify the mental and physical requirements necessary to determine whether or not an individual is medically qualified or fit for duty.

Another major component of the MQ Program will be the collection and analysis of before and after data to determine the financial and other impacts to the individual transit systems, and rural transit in Indiana as a whole.

Q

When does the FTA regulation apply to maintenance contractors that perform warranty work? What about original parts manufacturing, part rebuilds, and core trade-outs?

A

Warranty work is considered a continuation of the vehicle manufacturing process and is thereby exempt from the rule as is original parts manufacturing. If a large urban transit system has a part rebuilt and that same part is returned to the system, this is considered maintenance and is covered under the regulation if there is an ongoing relationship with the vendor. If the system trades out an old part for a newly rebuilt part that is not originally the transit system's, this is exempt from the regulation. As a reminder, this only applies to large urban systems, since all contract maintenance for rural and small urban transit systems (UZAs under 200,000) is exempt.

Q

Is the maintenance of track right-of-way and power covered by the FTA drug and alcohol testing regulation?

A

Maintenance on an existing right-of-way and power for a transit rail line is covered by the regulation as it directly impacts the safe operation of the transit vehicles. New construction of track, track bed, etc. is not covered, but if that construction connects to an active rail right-of-way and involves working on existing track and track bed, then those who work on the existing right-of-way track and power are covered.

## COMMON AUDIT FINDINGS

### Random Testing

In order for random testing to be effective, every safety-sensitive employee must be subject to a random test anytime they are on duty. In order to ensure this, the pool of safety-sensitive employees from which the random numbers will be selected must include all employees that could reasonably be expected to perform a safety-sensitive duty during the testing period (e.g., quarterly, monthly, bi-weekly, weekly, daily). To ensure the integrity of the pool, each transit system's Drug and Alcohol Program Manager (DAPM) must effectively communicate changes to the pool to the Third Party Administrator (TPA) or random pool manager on a regular basis. Usually one to two weeks prior to the draw, the TPA/pool manager provides a list of those in the pool to the DAPM, who in return reviews the list and makes modifications to reflect new hires, terminations, and changes to employees' active status. The draw is made from the revised list, and the DAPM is notified of the selections prior to the beginning of the testing period.

In many cases, auditors have found that the communication between the DAPM and the TPA/pool manager is lacking and that random pools are not being kept up-to-date. This results in a dilution of the pool with employees that are no longer active, increase in the number of draws made in subsequent testing periods to make up for inactive employees that cannot be tested, and not testing new employees that have yet to be added to the pool.

In addition, TPA/pool managers can be tardy in getting the selections back to the DAPM. The result is that no tests are being performed during the first few days or weeks of the testing period. This makes the random testing program predictable and compromises its overall effectiveness.

## Pill Mills

A “pill mill” is a term used to describe a doctor, clinic, or pharmacy that is prescribing or dispensing powerful narcotics inappropriately or for non-medical reasons. Functioning as if they are legitimate pain clinics, pill mills are becoming an increasing prescription drug abuse problem across the country. What separates legitimate pain clinics from a pill mill, however, is the quantity and quality of medical care given to the patient. Many people suffer from legitimate pain that needs to be treated effectively. In general, pill mills are not interested in providing medical care, but in making money by selling prescription narcotics for cash. The pill mill adopts an “in and out” practice of prescribing: the more people they see, the more money they make.

Pill mills have evolved over time as a result of increased scrutiny. Physicians of the early pill mills conducted little or no examinations and required no x-rays or other tests; recordkeeping was lax or nonexistent. Today’s pill mills are designed to look “legitimate” conducting cursory physical examinations of the patients, requiring an x-ray or other scan to make a “justifiable” diagnosis, and maintaining much better records.

Within the first 6 months of 2010, the DEA indicated that dispensing doctors in Florida ordered more than 41 million oxycodone tablets from suppliers, nearly nine times more than all other states combined. People venture from all over the United States to visit these pill mills due to their lax prescription standards. And, while the epicenter of the pill mills is Florida, pill mills have spread nationwide. According to the DEA “the number of persons seeking treatment for pain reliever abuse is up more than four-fold between 1998 and 2008.” While there are legitimate pain centers that offer a genuine benefit for those who truly need the prescriptions, individuals have found ways to exploit the system.

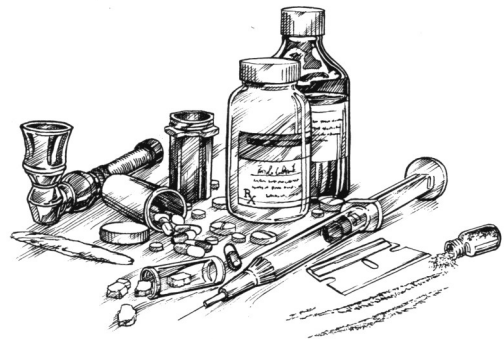
The excess amounts of powerful pain medications can lead to personal abuse and huge amounts of drugs entering the illegal drug market. According to the CDC, “prescription drugs, including opioids and antidepressants, are responsible for more overdose deaths than “street drugs” such as cocaine, heroin, and amphetamines.” They also lead directly to the use of illicit opiates.

State and federal government agencies are stepping up to combat pill mills. The DEA is conducting ‘Operation Pill Nation,’ and a recent bust within southern Florida resulted

in the arrest of 22 people connected with pill mills. State pharmacy and medical boards are enacting legislation to help differentiate legitimate pain clinics from pill mills. Also, the Obama administration is hoping to seek legislation that will require doctors to go through extensive training before they are allowed to prescribe heavy painkillers like oxycodone.

**Oxycodone** is used to relieve moderate to severe pain. It is in a class of medications called opiate (narcotic) analgesics and it works by changing the way the brain and nervous system respond to pain.

The goal is to drive pill mills out of business, which will reduce the amount of prescription narcotics that are being diverted for drug abuse. However, it may be some time until they are eliminated completely. Until then, pill mills present a real concern for the transit industry whose employees experience many of the chronic pain conditions treated by the pain medications, muscle relaxers, and other types of medications that pill mills not only offer, but make easily accessible. Transportation drivers with chronic back pain, for example, might be tempted to obtain painkillers, muscle relaxers, or both from a pill mill because of the easy access. And, with little or no follow up performed by the pill mill physicians, transit employees are at risk for addiction and potential overdoses. In addition to oxycodone, some of the most common medications prescribed by pill mills include Vicodin (hydrocodone), Xanax, Soma, and Ultram (tramadol). Transit systems should incorporate information about the dangers of pill mills and the medications which they commonly prescribe into their overall drug and alcohol program training and work to educate their employees about the dangers of prescription medication abuse.



## New Acting Director FTA Office of Safety & Security

has been appointed the Acting Director for the FTA Office of Safety & Security. Mr. Powers is still maintaining his duties as Drug and Alcohol Program Manager during this appointment.

FTA Drug and  
Alcohol Program  
Manager  
Jerry Powers

Jerry Powers  
Acting Director, FTA Office of Safety & Security  
US Department of Transportation  
Federal Transit Administration  
Office of Program Management - Safety &  
Security TPM-30, Rm. E46-338  
1200 New Jersey Avenue SE  
Washington DC 20590



## Free FTA Substance Abuse Training Sessions

FTA is offering three upcoming free one-day substance abuse seminars. These seminars are an adjunct to the FTA Drug and Alcohol National Conference and are designed to provide essential facts and information to facilitate employers' compliance with DOT's 49 CFR Part 40 and FTA's 49 CFR Part 655. While a high level overview

of the regulations will be discussed, these seminars will focus more on the operational side of a transit agency's functions.

The first seminar is being held in Columbus, OH on September 21, 2011. The second will be in Des Moines, IA on September 27, 2011, and the third will be in Howell, MI on November 3, 2011.

To register, go to <http://transit-safety.fta.dot.gov/Training/new/default.aspx>.

Stay tuned for more free seminars!

## RESOURCES

FTA Drug and Alcohol MIS Project Office: Phone: (617) 494-6336 Email: [fta.damis@dot.gov](mailto: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](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: 1996 through 2008 Annual Reports

FTA Drug and Alcohol Program Assessment

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Revised 2009

Prescription and Over-The-Counter Medications Toolkit, Revised 2011

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, 2010

What Employees Need to Know About DOT Drug and Alcohol Testing, revised October 1, 2010

What Employers Need to Know About DOT Drug and Alcohol Testing, revised October 1, 2010

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

# 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—Instructions for use of new CCF

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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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