

FTA Drug and Alcohol REGULATION UPDATES

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FTA Representatives at 2019 SAPAA Conference



FTA Drug and Alcohol Program representatives will participate at the Substance Abuse Program Administrators Association (SAPAA) on September 16-19, 2019 in Philadelphia, PA.

Please check the SAPAA website, www.sapaa.com, for specific agenda and registration information.

FMCSA CDL Drug and Alcohol Clearinghouse

The Federal Motor Carrier Safety Administration (FMCSA) Commercial Driver's License (CDL) Clearinghouse becomes effective on January 6, 2020, and will contain information about CDL drivers who are covered by the FMCSA's drug and alcohol program. The

Clearinghouse will only contain records of violations of drug and alcohol prohibitions for employees subject to the testing requirements of 49 CFR part 382. For more information on the FMCSA Clearinghouse visit <https://clearinghouse.fmcsa.dot.gov>.

Questions about the FMCSA Clearinghouse can be sent to FMCSA at clearinghouse@dot.gov.



Credit: 123rf/vitpho

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U.S. Department of Transportation
Federal Transit Administration

Access to FTA Drug and Alcohol Testing Records

A state Medicaid agency, contracted transportation broker, managed care organization, or other similar entity that provides for Medicaid Non-Emergency Medical Transport (NEMT) services may provide those services through an agreement or contract with an employer who is also covered by FTA drug and alcohol regulations. Through this contract, the same employees who perform FTA safety-sensitive duties may also provide NEMT services.



Credit: 123rf/Razvan Chisu

In this situation, state Medicaid agencies, transportation brokers, managed care organizations, etc. should not be permitted access to any employee's FTA drug and

alcohol test results. FTA-covered employers are prohibited from releasing any FTA/DOT drug or alcohol records, except in the

circumstances described in section 655.73.

Post-Accident Testing: FTA vs. FMCSA

FTA's rule 49 CFR Part 655 and FMCSA's counterpart 49 CFR Part 382 are similar in their discussion of post-accident testing requirements. Both rules require testing automatically after an accident resulting in the loss of human life (a fatality); both rules require testing after an accident causing an injury necessitating immediate medical attention away from the scene; and both rules require testing after disabling damage necessitating one or more vehicles be towed away from the scene.

There are critical differences between these two rules. The only person subject to testing after an FMCSA-covered accident is the operator of

the commercial motor vehicle (the driver), while FTA requires testing of the operator as well as any other safety-sensitive employee whose performance could have contributed to the accident. Additionally, for non-fatal accidents, FTA allows the employer to discount the employee's performance as a factor contributing to the accident and then refrain from testing them. Conversely, FMCSA only authorizes testing for non-fatal accidents when the operator receives a citation from law enforcement for a moving traffic violation.

If an employer is covered by both FTA and FMCSA—a municipality providing both transit and public works services, for example—and

Employee Rosters for Each Selection Period Shall Be Maintained

Records related to the random testing process shall be maintained for at least two years, per §655.71(b)(2). In addition to the random selection list, these records also include the master roster from which each period's random selections are made.

employees perform safety-sensitive work covered by both rules, it is vital to be aware of these important differences. When an employee is involved in an accident, regulations must be followed which cover the activity the employee was performing at the time of the event. This is true even if the employee's other tests (e.g. random) are performed under the authorization of the other administration.

Step 3 of the ATF: Common Errors

Step 3 of the Federal Alcohol Testing Form (ATF) provides several checkboxes and data fields for the technician to document the circumstances of a test. The following are common errors technicians make when completing Step 3.

1. One of the checkboxes in Step 3 allows the technician to indicate whether the required 15-minute waiting period was observed between a screening test and a confirmation test. The "15-Minute Wait Yes/No" boxes should only be used when a

confirmation test occurs. They should be left blank for tests that only include a screening test.

2. While it is allowable to hand-write a screening test result in Step 3 if the testing device does not print, technicians should never hand-write a result in addition to affixing a printed result to the ATF. Confirmation tests must always be machine-printed by an EBT. For a confirmation test, if no machine-printed result is affixed to the ATF, the test should be cancelled.

Daylight Saving Time Ends November 3



Credit: 123rf/Stephanie Frey

Reminder: Ensure your Breath Alcohol Technicians change the clock on their Evidential Breath Testing devices to reflect the end of Daylight Saving Time on November 3, 2019.

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

Flaws in Alcohol Testing When Using an EBT

Occasionally, problems in alcohol testing may cause a test to be cancelled by the employer or technician. Some of these problems may be corrected by affidavit, while others always cause a test to be cancelled.

Per section 40.269, the following problems may be corrected by affidavit: the technician fails to sign the alcohol testing form (ATF); the technician fails to make a remark explaining the employee did not sign Step 4 of the ATF after a confirmation result of 0.02 or greater; and the use of a non-DOT

form for a DOT test.

Section 40.267 describes problems that always cause an alcohol test to be cancelled. For confirmation tests, fatal flaws occur when the technician does not wait the required 15 minutes between screening and confirmation tests; when an air blank is not conducted before the confirmation test; when there is not a 0.00 air blank result before the confirmation test; and when the Evidential Breath Testing device (EBT) does not produce a machine-printed result (handwritten results in lieu of a machine-printed result are

never acceptable). A fatal flaw also occurs when the next external calibration check of the EBT produces a result outside of the manufacturer's acceptable range. In this case, every result of 0.02 or greater obtained on that EBT since the last valid external calibration check is cancelled. None of these flaws may be corrected by affidavit.

Employers should never treat a cancelled test as a violation. It is critical that employers carefully review any reported alcohol violation for errors before taking action.

Leftover Urine from a DOT Drug Test May Not Be Used for Non-DOT Testing

Section 40.13 requires DOT tests and non-DOT tests to be separate in all respects. The collector must discard any excess urine left over from a DOT test and collect a separate void

for subsequent non-DOT testing.

Urine left in the collection container after the DOT drug test specimen bottles have been sealed may only be used for medical testing (e.g.,

protein, glucose) conducted as part of a physical examination required by DOT agency regulations. No further testing (such as adulteration testing) is permitted.

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Substance Abuse Professional (SAP) Referrals for Education and Treatment

In most circumstances, Substance Abuse Professionals or SAPs are prohibited from making a referral to their own private practice or to any person or organization from which they receive payment or have a financial interest (§40.299). This is to prevent conflicts of interest. There are four exceptions to this rule. A SAP may refer employees to the following entities regardless of their relationship with the SAP:

- A public agency operated by a state, county or municipality
- A treatment provider working for the employer –in-house staff or a contracted treatment provider
- The sole source of therapeutically appropriate treatment under the employee's health insurance program
- The sole source of therapeutically appropriate treatment reasonably available to the employee