FTA Drug & Alcohol Program Management For Beginners

Presented by
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Part 1 Agenda

- Background of testing regulations
- Agency applicability
- Employee applicability
- Employer requirements
  - Policy
  - Designated Employer Representative
  - Training
- Testing circumstances/thresholds
- Q&A for Part 1
Background: Fatal Transportation Events

- Conrail and Amtrak collision, January 1987 - marijuana
- NYC subway derailment, August 1991 - alcohol

USDOT Regulation 49 CFR Part 40

US DOT’s Procedures for Transportation Workplace Testing

- Addresses the technical details related to drug and alcohol testing of covered employees
  - Which specimens are approved for testing
  - How the specimens are tested
  - How the results are reported and to whom
    - Medical Review Process
- Applies to all transportation workplaces
- Link to regulation provided on handout
FTA Regulation 49 CFR Part 655

**Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations**

- Identifies applicable agencies and covered employees
- Outlines the minimum policy statement requirements, minimum training requirements and the circumstances for testing:
  - Pre-employment
  - Random
  - Post-accident
  - Reasonable suspicion
  - Post violation tests
    - Return to Duty
    - Follow Up

Agency Applicability

- 49 CFR Part 655 & Part 40 are applicable to:
  - Direct grantees of Section 5307, 5309 & 5339
  - Sub-recipients of Section 5311 (rural transit)
  - Contractors that “stand in the shoes” of a direct grantee or sub-recipient are covered by the regulation
    - The recipient of the funds has oversight authority
    - Exempt: *Maintenance* contractors in areas of population less than 200K
Covered Employees

- When an employee routinely performs or is likely to perform a safety-sensitive function, the regulation applies to the employee.
  - There are five categories of safety-sensitive functions:

1. Operating a Public Transportation Vehicle (in or out of service)

- Regardless of vehicle size (CDL has no bearing)
- Includes operating the vehicle **within** the bus yard
2. Operating an Ancillary Vehicle Requiring a CDL

- Examples: Snowplow equipment and tow trucks

3. Controlling movement or dispatch of a public transportation vehicle

- Employer can determine if “dispatch” job duties are truly safety-sensitive
  - Does the employee truly control the movement of the vehicle?
    - Provide turn-by-turn direction?
    - Will keeping this employee in my testing pool “dilute” the pool?
4. Performing maintenance on a public transportation vehicle

Exemption:
When a transit agency serves an area with a population of 200K or less, maintenance contractors are exempt
• All in-house maintenance employees are covered by the rule, regardless of the source of funding or population size

5. Carrying a firearm as part of transit security detail

▪ If your agency contracts with a local law enforcement agency, the officers are exempt.
▪ If your agency contracts with a security contractor, such as Allied, the contractor is covered by the rule and your agency is responsible for ensuring their compliance.
Supervisors/Managers

- Supervisors are *not* automatically covered by the rule simply because they supervise safety-sensitive employees.
- A supervisor, manager or other company official is only covered by the rule if they actually *perform* safety-sensitive functions.

Employer Requirements
Policy

- FTA covered employers must have a policy that includes all the required elements per 49 CFR Part 655.15
  - Your agency’s policy is a legal document
  - Should be written in “plain language”
  - Drug & Alcohol Program Managers should have a firm understanding of the policy provisions and how to apply consequences of the policy

- Must provide a compliant policy to all covered employees,
  - Maintain documentation of employee’s receipt of policy
  - Provide policy updates/revisions to all covered employees

- Policy templates available from FDOT
  - Zero Tolerance or Second Chance version is required to be adopted by all Florida 5311 sub-recipient agencies
  - Link provided on handout

- FTA policy builder tool
  - Link provided on handout

Designated Employer Representative (DER)

- 40.3 “An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part.”
  - Service agents cannot act as DERs.
  - The DER must maintain all testing information in a confidential manner, including all testing records
  - The term Drug & Alcohol Program Manager has the same meaning
  - Agencies can have more than one DER
**Education and Training for Safety-Sensitive Employees**

- **Education**: Display and distribution to every covered employee, informational material and a community service hot-line number for assistance, if available
  - FDOT’s Drug and Alcohol Testing Program Handbook, link provided on handout
- **Training**: A full 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety and the work environment and the signs and symptoms of prohibited drug use
  - A review of your agency’s policy does not count toward the 60 minutes
  - Training should be provided as soon as possible upon hire
  - Documentation of employee training must be maintained, to include date of training, the training tools used, the employee’s name and signature

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**Training for Supervisors/Company Officials**

- Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use **AND** at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse
  - Training is required to authorize a supervisor to make a reasonable suspicion testing determination
  - Documentation of the supervisor’s training must be maintained (best practice = indefinitely)
Free Training Tools

- **FDOT’s Testing Program Handbook**
  - Link provided on handout

- **FTA Drug Abuse Awareness Video**
  - Meets the full 60-minute requirement for all covered employees
  - Link to video is provided on handout

- **National RTAP Reasonable Suspicion Training for Supervisors**
  - Self-paced online course
  - User can print a certificate from the e-learning platform upon successful completion
  - Link included on handout

Testing Circumstances & Thresholds
Pre-Employment Tests

- Pre-employment drug testing is required, alcohol testing optional
- Employer must receive a verified negative drug test result, prior to the employee’s first performance of a safety-sensitive function
  - This includes behind-the-wheel training
  - DERs should track the date of first performance of s/s duties and the date the MRO-verified negative test result was received
- Pre-employment testing is also required prior to an employee resuming s/s duties after a leave of absence 90 days or more, if the employee's name was removed from the random testing pool for 90 days or more.
Drug & Alcohol Background Checks

- Applicants and transferees being placed into a safety-sensitive position must provide written consent to your agency to conduct the previous DOT employer drug and alcohol background check
  - Failure to provide consent makes applicant ineligible
- The employer must inquiry with each of the applicant’s previous DOT-covered employers for the past 24 months
- If the background check reveals a violation, the applicant must have completed the USDOT’s Return to Duty process to be eligible for a safety-sensitive position

Random
Random Tests

- Each covered employee must have an equal chance of being selected each time a draw is made.
- Random draws (selections) must be made using a scientifically valid method of selection.
- FTA sets the minimum annual percentages for random testing of safety-sensitive employees; currently they are:
  - 50% of employee pool must be tested for drugs annually.
  - 10% of employee pool must be tested for alcohol annually.
  - Employers must ensure that selections are generated at a rate that accounts for fluctuations in the employee pool.

Random Tests Continued

- Random testing must be spread throughout the entire testing period (quarter, month, etc.); all days of the week and all hours of the day in which safety-sensitive functions are being performed so as not to create a predictable pattern of testing.
  - Employee must never be given advance notice of any kind.
  - Once notified, the employee must report for testing immediately.
Post-Accident Testing

- **Testing is prohibited** when the accident does not meet the definition of an accident under 49 CFR Part 655.4:
  - Fatality at the scene
  - Bodily injury with immediate medical treatment away from the scene
  - Disabling damage of one or more vehicles
- **In a non-fatal event, the supervisor has the obligation to consider:** “Can the employee’s actions be completely discounted as a contributing factor?”
Post-Accident Testing (cont’d)

- Document the decision-making process
- When testing is authorized, you must conduct both drug and alcohol tests
- Perform the alcohol test first and ideally within 2 hours of the accident:
  - Document reasons for delay beyond the first 2 hours
  - Cease attempts after 8 hours, document reason
- Conduct the drug test within 32 hours following the accident
- FDOT produced a post-accident training video, link provided on handout

Supervisor Vehicles

- Supervisor vehicles are not public transportation vehicles and therefore post-accident testing does not apply when the supervisor’s vehicle is involved in an accident
  - Caveat: If a supervisor’s vehicle is temporarily being used to transport passengers and is involved in an accident that meets the FTA’s definition of an accident, the post-accident testing rule applies to the supervisor as the “operator” in these rare cases
Reasonable Suspicion Testing

- Observations must be made by a trained supervisor (no second-hand information)
  - Document signs and symptoms observed
  - Alcohol testing is only authorized just before, during or just after safety-sensitive duties are performed
  - After 8 hours cease attempts to conduct alcohol testing

- Employers should ensure that a trained supervisor is available throughout all hours of the day in which safety-sensitive functions are being performed
Post Violation

Post-Violation Tests

- Return to Duty and Follow Up Testing
  - **ONLY APPLICABLE AFTER A VIOLATION** (positive drug test, alcohol result of 0.04 or a refusal to test)
  - Return to Duty testing occurs after the violating employees has successfully completed the USDOT's Return to Duty process with a DOT-qualified SAP
- Follow Up testing plan is determined by the SAP
  - 6 tests in first 12 months is the minimum, may last up to 5 years
- These tests are always performed using direct observation collection procedures
- Do not use Return-to-Duty testing for an individual who is returning from a leave of absence.
Part 2 Agenda

- Identify DER duties
- Describe service agents
- Outline drug testing process
  - Collection site
  - Laboratory
- Role of the Medical Review Officer
- Drug test results
- Alcohol testing
- Record keeping
Designated Employer Representative

- Person responsible for the management of the program:
  - Initiates drug and alcohol testing
  - Monitors employee arrival at the collection site
  - Manages the random testing pool
  - Receives test results from the MRO
  - Maintains all testing records in a confidential manner
  - Will be interviewed during a state triennial review and an FTA drug and alcohol program audit
  - Oversees all aspects of the testing program compliance:
    - Policy, training, and service agent compliance with Part 40

Service Agents

- Service agents needed to execute a compliant drug and alcohol testing program:
  - DOT-qualified urine specimen collectors
  - HHS certified laboratory to analyze urine specimens
  - Certified Medical Review Officer
  - DOT-qualified alcohol test technicians (saliva for screening and/or breath testing)
  - Substance Abuse Professionals
## Testing Process

### Testing Notification Form and Federal Custody and Control Form

**FTA DRUG AND ALCOHOL TESTING NOTIFICATION FORM**

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1: Employer and Medical Review Officer Information</strong></td>
<td></td>
</tr>
<tr>
<td>Employer Name</td>
<td></td>
</tr>
<tr>
<td>Employer ID</td>
<td></td>
</tr>
<tr>
<td>Notification Date</td>
<td>Expected arrival time at collection site</td>
</tr>
<tr>
<td>Notification Time</td>
<td></td>
</tr>
<tr>
<td><strong>Section 2: Employee Information</strong></td>
<td></td>
</tr>
<tr>
<td>Employee Name</td>
<td>Employee ID</td>
</tr>
<tr>
<td>Notification Date</td>
<td>Expected arrival time at collection site</td>
</tr>
<tr>
<td>Notification Time</td>
<td></td>
</tr>
<tr>
<td><strong>Section 3: Collection Site Information</strong></td>
<td></td>
</tr>
<tr>
<td>Collection Site Address</td>
<td>Employee Signature</td>
</tr>
<tr>
<td>Collection Site Phone Number</td>
<td></td>
</tr>
</tbody>
</table>

**FTA DRUG AND ALCOHOL TESTING NOTIFICATION FORM**

**FEDERAL CUSTODY AND CONTROL FORM**

[Image of FTA DRUG AND ALCOHOL TESTING NOTIFICATION FORM and FEDERAL CUSTODY AND CONTROL FORM]
Testing Notification Form (cont’d)

Section 1 provides the employer, DER and MRO information that the collector will need to ensure the results report correctly.

FTA DRUG AND ALCOHOL TESTING NOTIFICATION FORM

<table>
<thead>
<tr>
<th>Section 1: Employer and Medical Review Officer Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer:</td>
</tr>
<tr>
<td>Name of DER:</td>
</tr>
<tr>
<td>Street Address:</td>
</tr>
<tr>
<td>City, State, Zip:</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>Fax:</td>
</tr>
</tbody>
</table>

Testing Notification Form

Section 2 is where the employee (donor) is notified in writing of the requirement to report and the expected arrival time at the collection site. The collector is alerted to call the DER if the donor is late.

<table>
<thead>
<tr>
<th>Section 2: Employee (Donor) Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Name:</td>
</tr>
<tr>
<td>Notification Date:</td>
</tr>
<tr>
<td>Notification Time:</td>
</tr>
<tr>
<td>Expected arrival time at collection site:</td>
</tr>
<tr>
<td>Attention Collector: If donor arrives late you must call the DER before proceeding. The DER may determine that the employee’s delay is a refusal to test</td>
</tr>
<tr>
<td>DER or Supervisor Signature:</td>
</tr>
<tr>
<td>Collection site address</td>
</tr>
<tr>
<td>Collection site phone number:</td>
</tr>
</tbody>
</table>
Testing Notification Form (cont’d)

Section 3 is where the collector is provided the “order for testing” – the test type and reason for testing.

<table>
<thead>
<tr>
<th>Reason for Test</th>
<th>Urine Collection</th>
<th>Direct Observation Required</th>
<th>Alcohol Test*</th>
</tr>
</thead>
<tbody>
<tr>
<td>FTA Pre Employment</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>FTA Random</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>FTA Post Accident</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>FTA Reasonable Suspicion</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>FTA Return-to-Duty</td>
<td>☐</td>
<td>Always required</td>
<td>☐</td>
</tr>
<tr>
<td>FTA Follow-Up</td>
<td>☐</td>
<td>Always required</td>
<td>☐</td>
</tr>
</tbody>
</table>

*Notify DER at the number provided above if confirmation result is 0.02 or above.

Drug Testing Process
Drug Testing Laboratory

- Urine specimens collected for DOT testing must be analyzed at a laboratory that is certified by the Department of Health and Human Services (HHS)
  - The laboratories are highly regulated and undergo rigorous quality assurance inspections
  - Urine specimens are analyzed at the laboratory for the metabolites of the five drug classes:
    - Amphetamines
    - Cocaine
    - Marijuana
    - Opioids
    - PCP
  - Confirmed lab results are only reported to a Medical Review Officer for verification (never reported directly to the employer)

Medical Review Officer (MRO)

- An MRO is a licensed physician with specific knowledge and certification in DOT drug testing
  - Receives and interprets laboratory confirmed drug test results
  - Reviews laboratory reports and Federal Custody and Control Forms for fatal flaws and has the authority to cancel a test
  - Conducts interview with donors to determine if legitimate medical explanations exist for non-negative results
  - The MRO is the only individual who can verify a drug test result
  - The MRO is also responsible for reporting Medication Safety Concerns to the employer
Drug Test Results

- The MRO will verify and report drug test results as one of the following:
  - Negative
  - Negative-dilute*
  - Positive
  - Positive-dilute
  - Canceled*
  - Refusal to test due to adulteration or substitution

*May require retest

Sample Drug Test Result Report
Alcohol Testing

- **Alcohol screening** tests may be performed using a saliva specimen or a breath specimen.
- **Alcohol confirmation** tests must be performed using a breath specimen and an Evidential Breath Testing device.
  - Results of 0.02-0.039 BAC require an employee to be removed from safety-sensitive duties for a period of at least 8 hours or until the results fall below 0.02.
  - A confirmed BAC of 0.04 or above is a violation (treated the same as a positive drug test.)
Record Keeping

- All records related to drug and alcohol testing must be maintained separately
  - If your agency performs NON-DOT testing, these must be maintained separately from DOT testing records

- All records related to drug and alcohol testing must be maintained confidentially
  - Only the DER and back up personnel can have access

- Best practice: file by test type and by year, not by employee name

- Recordkeeping video link provided on handout

On the Horizon

- 49 CFR Part 40 is being revised to authorize oral fluid specimens for DOT drug testing

- The benefits include:
  - Oral fluid collection is a much less invasive collection process
  - It’s essentially a “directly observed” collection, which offers much less opportunity for tampering/adulterating, etc.
  - Employers can perform these tests “in-house”
  - Employees will still have the same employee protections (lab analysis and Medical Review)

- Stay tuned for more information and regulatory updates
End of Part 2

- Question and Answer Period

Resources
Resources

▪ The Substance Abuse Management website:  
  https://sam.cutr.usf.edu
  • Testing Notification Forms
  • Reasonable Suspicion documentation form
  • Post Accident Decision and Documentation form
  • Policy templates
  • Training videos, booklets and presentations
  • FTA D&A Newsletters

▪ Sign up for the SAM Listserv to stay in the loop

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