

Part 655 Questions and Answers

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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Employers should refer to applicable regulations, 49 CFR Part 655 and Part 40 for Drug and Alcohol Program requirements.

§ 655.3 Applicability.

If an FTA recipient uses vehicles required to be operated by a Commercial Driver’s License (CDL) holder, does the recipient have to comply with both the FTA and FMCSA drug & alcohol testing regulations?

No. The FMCSA drug and alcohol testing regulation, 49 CFR Part 382, does not apply to employers and their drivers who are required to comply only with the drug and alcohol testing requirements of 49 CFR Part 655. See [49 CFR § 382.103\(d\)\(1\)](#).

If a recipient funds its public transportation contracts with local dollars, rather than federal funds, do the FTA drug and alcohol testing rules apply?

Yes. The requirements of 49 CFR Part 655 extend to recipients and subrecipients of 49 U.S.C. 5307, 5309, or 5311 funds, as well as their safety-sensitive contractors and subcontractors, regardless of the source of funds for a contract.

§ 655.4 Definitions.

We have several employees who have CDLs but no longer drive any vehicles. Are they covered?

Simply holding a CDL does not require inclusion in an FTA drug and alcohol program. Employees are covered only if they perform a safety-sensitive function, which includes: operating revenue service vehicle, even when not in revenue service; operating a non-revenue service vehicle requiring a CDL; controlling dispatch or movement of a revenue service vehicle; maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or carrying a firearm for security purposes.

Our managers are considered safety-sensitive because they oversee all operations. Is that allowed?

No. Unless the company official/supervisor/manager also performs one of the safety-sensitive functions defined in [49 CFR § 655.4](#) as a regular part of their job, they are not covered by 49 CFR Part 655 and are not subject to drug and alcohol testing under FTA authority.

Are trainers safety-sensitive, even though they only operate the vehicles in training?

Yes. Employees are covered if they perform a safety-sensitive function, which includes operating a revenue service vehicle, even when not in revenue service.

The local police patrol our bus stations. Do they need to be in our D&A program under armed security?

FTA drug and alcohol regulations are intended to cover armed security personnel who provide security specifically for a transit employer, either directly or by contract, and who report to or are supervised by the transit employer. Police officers who, as part of their normal duties, patrol public transit facilities are not subject to FTA drug and alcohol regulations.

§ 655.14 Education and training programs.

How often do covered employees need to take the 60-minute training on the effects and consequences of drug use?

This training is a one-time requirement.

Is there any requirement for reasonable suspicion refresher training for supervisors?

No, reasonable suspicion training is a one-time requirement.

How long do I have to keep employee training records?

Employee training records must be maintained for at least two years.

Is video training available for employees and/or supervisors through the FTA?

An FTA-produced video that meets the requirements of [49 CFR § 655.14\(b\)\(1\)](#) can be found [here](#). Other tools and resources can be found [here](#).

[§ 655.15 Policy statement contents.](#)

Does the policy have to list the prohibited drugs by name or is a reference to Part 40 sufficient?

The employer's policy may reference [49 CFR §40.85](#) rather than listing the prohibited drugs by name.

If an employee was terminated due to a positive test result and was brought back through arbitration, does the employer need to change the zero-tolerance policy to a second chance policy?

No, the employer does not need to change the policy. However, the employer must ensure that the return-to-duty process detailed in [Part 40, subpart O](#) is followed for any employee who fails or refuses a DOT test.

[§ 655.16 Requirement to disseminate the policy.](#)

If we change from zero-tolerance to second-chance, does the policy need to be updated, approved and distributed before allowing an employee to participate in a program through Substance Abuse Professional (SAP) and complete a return to duty program?

If the employer's consequences for failing or refusing a DOT test are stated in the policy, the policy must be updated, approved, and distributed if those consequences are modified.

[§ 655.33 Pre-duty use.](#)

If an on-call employee called to report for duty acknowledges the use of alcohol, but claims ability to perform their safety-sensitive function, what type of alcohol test must be conducted first?

An on-call employee in this situation must take a DOT pre-employment alcohol test with an alcohol concentration of less than 0.02 prior to performance of safety-sensitive functions.

[§ 655.41 Pre-employment drug testing.](#)

Am I required to remove an employee from the random testing pool if I know they will be out for more than 90 days?

No. FTA does not require the employer to remove an employee on an extended leave from the random testing pool. However, if the employer chooses to remove the employee from the testing pool, DOT pre-employment testing must be conducted if the employee did not perform safety-sensitive functions and was out of the random testing pool for 90 or more consecutive days.

Can I conduct a DOT pre-employment test on an employee who has not performed a safety-sensitive function for more than 90 days, but was not removed from the random testing pool?

No. Before performing a pre-employment test under FTA authority, the employer must ensure the employee did not perform any safety sensitive functions and was not in the random selection pool for at least 90 consecutive days. If the employer opts to conduct pre-employment testing in cases where both these criteria have not been met, such tests must be conducted under the employer's own authority, using non-federal testing forms.

[§ 655.42 Pre-employment alcohol testing.](#)

Is it allowable to conduct pre-employment alcohol testing for only a percentage of applicants, if it is randomized?

No. The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

[§ 655.43 Reasonable suspicion testing.](#)

Can you use live HD video to make reasonable suspicion testing determinations?

No. While the video may alert the employer of an employee's suspicious behavior, a supervisor or other company

official who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations in person.

Am I allowed to remove an employee from performing safety-sensitive functions pending a reasonable suspicion test result?

Yes. An employer can have a company policy saying that, based on an event (e.g., the finding of reasonable suspicion that leads to an FTA reasonable suspicion test), the employee must immediately stop performing safety-sensitive functions pending the test result.

§ 655.44 Post-accident testing.

If an armed security officer is involved in a collision, do I test the officer?

No, testing is required after an occurrence associated with the operation of a public transportation vehicle that meets the definition of an accident, as defined by [49 CFR §655.4](#). A typical security vehicle is not considered a public transportation vehicle, and therefore, its operator would not be subject to post-accident testing requirements. An exception is if the security vehicle, when operated by the armed security employee, is providing public transportation and is involved in an FTA-defined accident.

Under what circumstances can I make remote post-accident decisions?

FTA recognizes that some employers operate across very large areas and may have operators who are involved in incidents that take place at locations significantly farther away from a supervisor/company official. In these instances, FTA allows the supervisor/company official to make their determination remotely, using the best tools available. This may include discussing the event with the operator, any witnesses, and available law enforcement personnel.

Regarding fatal accidents, do you test only for loss of human life or does loss of animal life (e.g., deer, moose) trigger FTA post-accident testing?

FTA post-accident testing is required after the loss of a human life. Testing is not required after loss of animal life unless the occurrence otherwise meets the definition of an accident, as defined in [49 CFR § 655.4](#).

If an accident is immediately non-fatal but an individual is critically injured and later dies, do you test? And if so, when?

No. FTA regulations require a responding supervisor or authorized company official to use the best information available at the time of the decision to order post-accident testing under FTA authority. The information available at the time is what should be considered in the post-accident determination, regardless of what facts may later emerge.

If a passenger has a medical emergency on the bus and requires transport to the hospital, should the bus operator be tested?

No. Testing is required after an occurrence associated with the operation of a public transportation vehicle that meets the definition of an accident, as defined by [49 CFR §655.4](#). Since a passenger's medical emergency is not related to the operation of the vehicle, testing in this situation is prohibited.

Is damage to side mirrors considered disabling damage?

No. Damage to side mirrors does not prevent a motor vehicle's departure from the scene of the accident. Therefore, such damage is not considered disabling damage, as defined in [49 CFR § 655.4](#).

We have a policy of never discounting an employee's performance as a contributing factor after an accident - if the thresholds are met, we test the driver. Is that allowed?

No. The employer must determine, using the best information available at the time of the decision, if the covered employee's performance can be completely discounted as a contributing factor to the accident. It is the responsibility of the decision-maker to make this determination, and to determine whether any other covered employee's performance may have contributed to the accident. It is not compliant to have a policy to never discount an employee's performance as a contributing factor to an accident.

§ 655.45 Random testing.

Can FTA- and FMCSA-covered employees be in the same random testing pool?

Yes, you may combine employees covered by different DOT agencies in a random pool, however you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.

Our employees perform safety-sensitive functions seven days a week, but our collection site is only open Monday-Friday. Is that compliant?

No. Arrangements must be made in order to ensure testing can be conducted during all days and times when safety-sensitive functions are performed.

Am I required to remove an employee from the random testing pool if I know they will be out for more than 90 days?

No, FTA does not require the employer to remove an employee on an extended leave from the random testing pool. However, if the employee is removed from the testing pool, DOT pre-employment testing must be conducted if the employee did not perform safety-sensitive functions and was out of the random testing pool for 90 or more consecutive days.

Is it a requirement or a best practice to track when an employee arrives at the testing site for a random test?

Part 655 requires the employer to ensure that the employee ceases to perform all safety-sensitive functions and proceeds to the testing site immediately. It is a best practice to track when the employee arrives at the testing site in order to comply with this requirement.

If an employee is unavailable for random testing during the entire selection period, should I test them when they return during the next period?

No, an employee must be tested only during the period in which they are selected. If the employee is unavailable for testing during the entire selection period, the employer must document the reason the test could not be conducted and maintain the file.

If an employee is selected for random testing two periods in a row, can we use an alternate so that the employee does not feel targeted?

No, the selection of employees for random testing must be made by a scientifically valid method, in which each employee has an equal chance of being tested each time selections are made. It is not permitted to excuse an employee selected for random testing because they have already been tested during another selection period.

If the employee is notified for a random test, and then self-discloses they need treatment for drug abuse, is this a refusal?

FTA allows an employee who has not been notified of the requirement to submit for testing to self-refer for treatment. However, once the employee has been directed by the employer to proceed for testing, the employee's failure to appear for any testing is a refusal to test.

§ 655.62 Referral, evaluation, and treatment.

If I have a zero-tolerance policy, do I have to still provide a SAP referral?

Yes, even with a zero-tolerance policy, you must provide any employee or applicant who violates a DOT drug and alcohol regulation a list of DOT qualified Substance Abuse Professionals. (See [49 CFR § 40.287](#).) This list must include the contact information for least two qualified SAPs or a SAP referral service. It is not compliant to provide only the name of a single person qualified to act as a SAP.

Is the employer required to provide a SAP referral to an applicant who tests positive on a pre-employment test?

Yes, applicants who have failed or refused a DOT pre-employment drug or alcohol test must also be given a list of DOT qualified Substance Abuse Professionals. (See [49 CFR § 40.287](#).) This list must include the contact information for least two qualified SAPs or a SAP referral service. It is not compliant to provide only the name of a single person qualified to act as a SAP.

§ 655.71 Retention of records.

If records are maintained electronically, must I keep paper records?

It is not required to keep paper records as long as the electronic copies are easily accessible, legible, and formatted and stored in an organized manner.

How long do I have to keep employee training records?

Employee training records must be maintained for at least two years.

§ 655.72 Reporting of results in a management information system.

Who is responsible for completing the MIS report: the employer or the TPA?

It is the employer's responsibility to ensure the accuracy and timeliness of the MIS submission. A Third-Party Administrator (TPA) may prepare the MIS report; however, the individual listed as the "Certifying Official" on the report must be an employee of the company reporting the MIS data. If the data is entered by an individual from the TPA, this individual's information should be listed in the "Prepared by" fields within the report.

We are the recipient of FTA funding, but we contract out all safety-sensitive functions. Do we need to submit an MIS report?

Recipients of FTA funding that are pass-through agencies such as MPOs, county governments, etc. are still required to submit an MIS report annually. In this case, the recipient should submit a "zeroed-out" report to indicate all safety-sensitive functions are contracted out. Recipients must also ensure any subrecipients/contractors performing covered functions also submit an MIS report.

Our contractor's safety-sensitive employees are included in our random pool. Do we include those employees on our MIS report?

No. This is an employer-based report, so each employer must submit an individual report with only that individual employer's calendar year data.

Under what category do I report my road supervisors who perform multiple safety-sensitive functions?

An employee who performs multiple safety-sensitive functions should be reported under the employee category in which the employee performs more than 50% of their covered functions.

If we send an employee for a non-DOT test under company authority, should the test result be reported?

No. Only tests conducted under FTA authority should be reported.

Can a change be made to the MIS report after it was submitted? Can I revise previous years' reports?

If necessary, changes can be made to the MIS report for the current reporting year until the database closes, usually around September 1. MIS reports for previous years cannot be modified in the DAMIS online system. If you notice an error on a previous year's MIS report, document the error and maintain with your copy of the report.

How do I access my MIS reports from prior years?

[49 CFR § 655.71](#) requires FTA-covered employers to maintain MIS reports for at least five years. It is necessary to save or print a copy of the submission after completion, as employers cannot access previous years' MIS reports within the DAMIS online system.