DOT Publishes Notice of Proposed Rulemaking

The Department of Transportation is proposing to amend its drug-testing program regulation to add four opioids (hydrocodone, hydromorphone, oxymorphone, and oxycodone) to its drug-testing panel; add methylene-dioxyamphetamine (MDA) as an initial test analyte; and remove methylene-dioxyethylamphetamine (MDEA), as a confirmatory test analyte. The proposed

"The DOT is proposing to amend its drug-testing program to add four opioids."

revision of the drug testing panel is intended to harmonize with the revised Mandatory Guidelines established by the

The Federal Register NPRM

Available at https://www.gpo.gov/fdsys/pkg/FR-2017-01-23/pdf/2017-01131.pdf

and on the **Office of the Secretary's Office of Drug and Alcohol Policy and Compliance website.**
https://www.transportation.gov/odapc/frpubs

U.S. Department of Health and Human Services for federal drug-testing programs for urine testing. This proposal also adds clarification to certain drug-testing program provisions where necessary, removes outdated information in the regulations that is no longer needed, and proposes to remove the requirement for employers and Consortium/Third Party Administrators to submit blind specimens. ●

FTA Drug and Alcohol Management Information System (DAMIS) Reporting

DAMIS reports with 2016 testing results were to be submitted by all FTA-covered employers by March 15th of this year. Late letters will be sent out shortly to all FTA grantees who did not complete their submissions or who have contractors/subrecipients who did not report.

Should you have any questions, please call the FTA Drug and Alcohol Project Office at 617-494-6336 or email fta.damis@dot.gov. ●

U.S. Department of Transportation
Federal Transit Administration

Alere Records Drug Tests Times in Central Time Zones

Alere Toxicology Services was the first HHS-certified test facility approved to use a Federal eCCF (Electronic Custody and Control Form) for regulated specimens. Users of the eCCF on the Alere eScreen system should be aware that Step 4 of the eCCF generated by the system, which records "Time of Collection" (AM or PM) automatically records time in Central Standard Time (CST).

FTA strongly recommends covered employers review test times, on the CCF for drug and ATF for alcohol. Those employers using the eCCF from Alere test facilities should be aware the drug test time will be in CST, whereas other recorded times (notification, alcohol, etc.) will be in the local time zone and could be different if the collection occurs in a different time zone (EST, MST, PST, etc.). ●

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Daylight Savings Time:
Make Sure Clocks were Changed!

Ensure your Breath Alcohol Technicians changed the clock on their Evidentiary Breath Testing device to reflect the beginning of Daylight Savings Time on March 12, 2017.

Drug and Alcohol Training

FTA sponsors free training sessions that provide essential information to facilitate covered employers' compliance with the drug and alcohol testing regulations (49 CFR Part 655 and Part 40). These one-day trainings are available on a first-come, first-serve basis and are led by the FTA Drug and Alcohol Program and Audit Team Members.

For more information about available training sessions 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 Training Schedule

FTA's strategic training partner the Transportation Safety Institute (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 Determination for Supervisors.** This half-day seminar educates supervisors about the FTA and DOT regulations requiring drug and alcohol testing of safety-sensitive transit workers, and how to determine when to administer reasonable suspicion drug and/or alcohol tests.

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

How Many SAP Referrals?

FTA requires employers to provide any covered employee who violates the prohibitions of Part 655 with the name and contact information for local DOT-qualified Substance Abuse Professionals (SAPs).

DOT has long held a compliant referral practice includes providing contact information for at least two SAPs (see Section V of DOT's Substance Abuse Professional Guidelines). The one limited exception to this requirement is where the employer intends to return the employee to safety-sensitive duty after the employee completes the DOT return-to-duty process, and where the employer has a contract or other arrangement with one specific SAP for this process; it is then acceptable to provide the employee with a single contact.

There are two important caveats. First, an employer who chooses to terminate an employee after a second or third violation, and who had previously provided only one SAP referral as allowed above, must now provide information for at least two SAPs. Secondly, for the purposes of DOT drug and alcohol rules, the term "employee" also includes applicants or transferees seeking to begin performing safety-sensitive functions. Accordingly, compliant SAP referrals must be made for individuals who fail or refuse a pre-employment test. ●

Free Drug & Alcohol Resources

FTA's Office of Transit Safety & Oversight provides many useful–and free–resources to help covered employers implement their drug and alcohol programs. These resources may be found at http://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Default.aspx. Among the most popular items are FTA's policy builder, where an employer can answer several simple questions to develop a customized and FTA-compliant drug and alcohol policy; forms to document post-accident and reasonable-suspicion testing decisions; and a convenient collection of guidance from the Office of Drug and Alcohol Policy and Compliance (ODAPC), such as the publication What Employers Need to Know about DOT Drug and Alcohol Testing.

Tools

Policy Tools

- All anti-drug and alcohol misuse programs must have a statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace.
- Use the Policy Requirements Checklist to ensure your own policy includes all required elements.
- Starting from scratch? Use the Policy Builder to develop a customized policy statement for your organization.

Sample Forms and Other Useful Tools

Pre-Employment/New Hire

- Pre-Employment Notification and Acknowledgement Form
- Previous Employer Release of Information Form
- Acknowledgment of Policy Form
- Acknowledgement of Prohibited Awareness Training for Safety-Sensitive Employees Form

Random

- Random Testing Charts (Generate Random Testing Charts in Excel)

Post-Accident

- (New) Post-Accident Testing Chart
- Decision Making Form
- Order Post-Accident Threshold Cards

Telephone Preferred for Positive Drug Test Results

When a Medical Review Officer (MRO) reports a positive drug test result to an employer, telephone is the preferred method of contact (49 CFR Part 40.167(b)(1)). Use of the telephone allows for immediate and unambiguous delivery of important information, enabling the Designated Employer Representative (DER) to promptly remove the employee from safety-sensitive duties. Delivery by other methods (e.g., fax, email) can cause a delay between the time the result is sent and the time the DER reads it. See "Transmission of Non-Negative Results" in issue 50 of the FTA Drug and Alcohol Regulation Updates for

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more information on the electronic transmission of non-negative results.

It is a best practice for an employer to proactively provide their MRO with the DER's direct contact information including, their office phone number, mobile number, and any alternative phone numbers. If there is a backup DER, the MRO should have their direct contact information as well.

While a DER should wait for documentation of the MRO's verified result before taking official disciplinary action relating to the employer's stated policy concerning a positive drug or alcohol test result, DERs must remember no documentation is required to remove an employee from safety-sensitive duties once they receive a verified result verbally from an MRO. ●

Policies and the Term "Substance Abuse Professional"

FTA-covered employers' written drug and alcohol policies often misuse the term Substance Abuse Professional (SAP) by referencing SAP referrals which might occur after events that are not legitimate DOT violations. Part 40 explicitly defines SAPs as gatekeepers for the DOT return-to-duty process, and the term SAP is understood in the transportation and health industries to refer only to DOT testing. For these reasons, only FTA -covered employees with DOT drug or alcohol violations may be referred to a SAP; a technical point that must be reflected in written policies.

> **"Employers' written drug and alcohol policies often misuse the term SAP."**

Many FTA-mandated policies discuss referrals after non-qualifying events, such as an employee with a confirmed alcohol concentration of 0.02 or greater but less than 0.04, employees who voluntarily seek help for a drug and/or alcohol problem, and employees who fail or refuse a non-DOT test. Such a policy must refer employees in these circumstances to a professional/organization other than a SAP (e.g., a substance abuse counselor, Education Assistance Program (EAP), etc.), even if that professional is the same individual who would act as a SAP after an actual DOT violation. ●

Random Rosters— Accuracy Counts

FTA requires random selections be conducted no less frequently than quarterly. Whether an employer chooses to perform selections on a quarterly, monthly, weekly, or even daily basis, they must ensure the random rosters are accurate at the time the selection list is created.

Thus, every employer must have a method to ensure rosters are consistently updated to include newly hired employees and to remove terminated or retired employees. Depending on your company's policy, employees on extended leave (those who will not return to safety-sensitive duties for one or more selection periods) may also be removed from the random pool.

Roster accuracy ensures all safety-sensitive employees are subject to random testing and have an equal chance of being selected. ●

Removal of an Employee from Safety-Sensitive Duty Following a Post-Accident or Reasonable Suspicion Occurrence

Part 655 does not prohibit an employer from automatically removing an employee from safety-sensitive function following an occurrence resulting in

"It must be done consistently and be done immediately."

a post-accident or reasonable suspicion test. If the employer chooses to do so, it must be done consistently, and be done immediately following the completed test (i.e., prior to the start of the Medical Review Officer [MRO] verification process). An employer may have differ-

ent policies for different test types and/or different safety-sensitive functions. For instance, an employer may have a policy to remove a revenue vehicle operator from a safety-sensitive function following an FTA-defined accident until a verified test result is received, but may decide not to do so for a dispatcher found to have contributed to the same accident. In any case, this decision must be clearly stated in the employer's FTA drug and alcohol policy.

The above policy is based on a testing event due to an occurrence which results in a post-accident or reasonable suspicion tests and differs for a stand down. Part 40 defines a stand down as the practice

of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed

"It must be clearly stated in the employer's policy."

positive test including: a drug, drug metabolite, adulterated test, or a substituted test, before the MRO has completed verification of the test result. A stand down policy is not allowed, unless the employer petitions FTA and receives a waiver. ●

Common Mistakes and How to Fix Them

Question: I noticed an error on my 2016 MIS report, but it is after March 15. What do I do now?

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Answer: You are still able to access the DAMIS reporting system (http://damis.dot.gov) even after the March 15 deadline. Log in and make your revisions. Be sure to return to the "Wrap Up" section and sign your submission again, or it will appear as "Incomplete."

If you are a contractor or subrecipient, it is a good idea to notify your grantee you have made changes to your report, as it will need to be reapproved by the grantee. ●

The Anti-Drug and Alcohol Misuse Policy

The FTA allows an employer to make available, by electronic distribution, the FTA anti-drug and alcohol misuse policy statement to their covered employees and employee representatives. The policy can be individually distributed to an individual employee's company e-mail account or can be posted on a company website when accessible to all covered employees.

A new or revised policy posted on a company web site requires the employer to provide individual notice of the policy's location. ●