

Title 49 —Transportation

Subtitle B —Other Regulations Relating to Transportation

Chapter VI —Federal Transit Administration, Department of Transportation

Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

49 CFR Part 655 (up to date as of 6/22/2023)

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49 CFR Part 655 - Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

Authority: 49 U.S.C. 5331 (as amended); 49 CFR 1.91

Subpart A—General

§ 655.1 Purpose.

The purpose of this part is to establish programs to be implemented by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

§ 655.2 Overview.

- (a) This part includes nine subparts. Subpart A of this part covers the general requirements of FTA's drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer's alcohol misuse and prohibited drug use program, including the elements required to be in each employer's testing program. Subpart C of this part describes prohibited drug use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.
- (b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

§ 655.3 Applicability.

- (a) Except as specifically excluded in paragraphs (b), and (c) of this section, this part applies to:
 - (1) Each recipient and subrecipient receiving Federal assistance under 49 U.S.C. 5307, 5309, or 5311; and
 - (2) Any contractor of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.
- (b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.
- (c) A recipient operating a ferryboat regulated by the United States Coast Guard (USCG) that satisfactorily complies with the testing requirements of 46 CFR Parts 4 and 16, and 33 CFR Part 95 shall be in concurrent compliance with the testing requirements of this part. This exception shall not apply to the provisions of section 655.45, or subparts G, or H of this part.

[§ 655.3 Q&A](#)

§ 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

- (1) An individual dies; or
- (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
- (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the

result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

- (4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

- (1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or
- (2) The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) Inclusion. Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.
- (2) Exclusions.
 - (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts testing
 - (ii) Tire disablement without other damage even if no spare tire is available.
 - (iii) Headlamp or tail light damage.
 - (iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or The Department means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides public transportation service or which performs a safety sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positive, negative, and refusals) under this part.

Railroad means:

- (1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:
 - (i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and
 - (ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

- (2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means a person that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 directly from the Federal Government.

Refuse to submit means any circumstance outlined in 49 CFR 40.191 and 40.261.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- (1) Operating a revenue service vehicle, including when not in revenue service;
- (2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- (3) Controlling dispatch or movement of a revenue service vehicle;
- (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;
- (5) Carrying a firearm for security purposes.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transportation vehicle is a vehicle used for public transportation or for ancillary services.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of alcohol random screening tests (including refusals) conducted under this part.

[§ 655.4 Q&A](#)

§ 655.5 Stand-down waivers for drug testing.

- (a) An employer subject to this part may petition the FTA for a waiver allowing the employer to stand down per 49 CFR Part 40, an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.
- (b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the requirements for obtaining a waiver, as provided in 49 CFR 40.21.
- (c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590.
- (d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§ 655.6 Preemption of state and local laws.

An anti-drug use and alcohol misuse program shall include the following:

- (a) Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that:
 - (1) Compliance with both the state or local requirement and any requirement in this part is not possible; or
 - (2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.
- (b) This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§ 655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

- (a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.
- (b) An education and training program which meets the requirements of § 655.14.
- (c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.
- (d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§ 655.13 [Reserved]

§ 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

- (a) Education. The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.
- (b) Training —
 - (1) Covered employees. Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.
 - (2) Supervisors. 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.

[§ 655.14 Q&A](#)

§ 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

- (a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.
- (b) The categories of employees who are subject to the provisions of this part.
- (c) Specific information concerning the behavior and conduct prohibited by this part.
- (d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.
- (e) The procedures that will be used to test for the presence of prohibited drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.
- (f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

- (g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.
- (h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.
- (i) The consequences, as set forth in § 655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- (j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

[§ 655.15 Q&A](#)

§ 655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures.

[§ 655.16 Q&A](#)

§ 655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

[§§ 655.18-655.20 \[Reserved\]](#)

Subpart C—Prohibited Drug Use

§ 655.21 Drug testing.

- (a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.
- (b) When administering a drug test, an employer shall ensure that the following drugs are tested for:
 - (1) Marijuana;
 - (2) Cocaine;
 - (3) Opioids;
 - (4) Amphetamines; and
 - (5) Phencyclidine.
- (c) Consumption of these products is prohibited at all times.

[§§ 655.22-655.30 \[Reserved\]](#)

Subpart D—Prohibited Alcohol Use

§ 655.31 Alcohol testing.

- (a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.
- (b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function.

§ 655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 655.33 Pre-duty use.

- (a) General. Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.
- (b) On-call employees. An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:
 - (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.
 - (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 655.33 Q&A

§ 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 655.35 Other alcohol-related conduct.

- (a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:
 - (1) The employee's alcohol concentration measures less than 0.02; or
 - (2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.
- (b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§§ 655.36-655.40 [Reserved]

Subpart E—Types of Testing

§ 655.41 Pre-employment drug testing.

- (a)
 - (1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.
 - (2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in § 655.62.

- (b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.
- (c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.
- (d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

[§ 655.41 Q&A](#)

§ 655.42 Pre-employment alcohol testing.

An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

- (a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- (b) 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).
- (c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
- (d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.
- (e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

[§ 655.42 Q&A](#)

§ 655.43 Reasonable suspicion testing.

- (a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.
- (b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.
- (c) Alcohol testing is authorized under this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.
- (d) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

[§ 655.43 Q&A](#)

§ 655.44 Post-accident testing.

- (a) Accidents.
 - (1) Fatal accidents.
 - (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR § 382.303.
 - (ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
 - (2) Nonfatal accidents.
 - (i) As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle is involved, the employer shall drug and alcohol test each covered employee operating the public transportation vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
 - (ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.
- (b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.
- (c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.
- (d) The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.
- (e) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- (f) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section.

[§ 655.44 Q&A](#)

§ 655.45 Random testing.

- (a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.
- (b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates. Each year, the Administrator will publish in the Federal Register the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.
- (c) Rates for drug testing.
 - (1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.
 - (2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug or random alcohol testing to 50 percent of all covered employees.
- (d) Rates for alcohol testing.
 - (1)
 - (i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.
 - (ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.
 - (2)
 - (i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.
 - (ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.
- (e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.
- (f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol

testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.

- (g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.
- (h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.
- (i) A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.
- (j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.
- (k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—
 - (1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or
 - (2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

[§ 655.45 Q&A](#)

§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

§ 655.47 Follow-up testing after returning to duty.

An covered employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR Part 40, subpart O.

§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of § 655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

§ 655.49 Refusal to submit to a drug or alcohol test.

- (a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.
- (b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

§ 655.50 [Reserved]

Subpart F—Drug and Alcohol Testing Procedures

§ 655.51 Compliance with testing procedures requirements.

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.

§ 655.52 Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR Part 40.

§ 655.53 Supervisor acting as collection site personnel.

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine or oral fluid collector, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

§§ 655.54-655.60 [Reserved]

Subpart G—Consequences

§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

(a)

- (1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.
- (2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.
- (3) If a covered employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function.

- (b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure the employee meets the requirements of 49 CFR Part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

§ 655.62 Referral, evaluation, and treatment.

If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

[§ 655.62 Q&A](#)

§§ 655.63-655.70 [Reserved]

Subpart H—Administrative Requirements

§ 655.71 Retention of records.

- (a) General requirement. An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

- (b) Period of retention. In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule:
 - (1) Five years. Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.
 - (2) Two years. Records related to the collection process and employee training.
 - (3) One year. Records of negative drug or alcohol test results.
- (c) Types of records. The following specific records must be maintained:
 - (1) Records related to the collection process:
 - (i) Collection logbooks, if used.
 - (ii) Documents relating to the random selection process.
 - (iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.
 - (iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.
 - (v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or oral fluid or breath sample.
 - (2) Records related to test results:
 - (i) The employer's copy of the custody and control form.
 - (ii) Documents related to the refusal of any covered employee to submit to a test required by this part.
 - (iii) Documents presented by a covered employee to dispute the result of a test administered under this part.
 - (3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.
 - (4) Records related to employee training:
 - (i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.
 - (ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.
 - (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.
 - (iv) Certification that any training conducted under this part complies with the requirements for such training.
 - (5) Copies of annual MIS reports submitted to FTA.

[§ 655.71 Q&A](#)

§ 655.72 Reporting of results in a management information system.

- (a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.
- (b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.
- (c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

- (d) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40, § 40.25 and appendix H. You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: <http://transit-safety.volpe.dot.gov/DAMIS>.
- (e) To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.
- (f) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a paratransit vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.
- (g) A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[§ 655.72 Q&A](#)

§ 655.73 Access to facilities and records.

- (a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.
- (b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.
- (c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.
- (d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.
- (e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.
- (f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

- (g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)
- (h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.
- (i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

§§ 655.74-655.80 [Reserved]

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility.

A recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C. 5307, 5309, or 5311 funds directly from the recipient complies with this part.

§ 655.82 Compliance as a condition of financial assistance.

- (a) A recipient shall not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311, if a recipient fails to establish an anti-drug and alcohol misuse program in compliance with this part.
- (b) If the Administrator determines that a recipient that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 is not in compliance with this part, the Administrator may bar the recipient from receiving Federal financial assistance in an amount the Administrator considers appropriate.
- (c) A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.
- (d) Notwithstanding § 655.3, a recipient operating a ferryboat regulated by the USCG who fails to comply with the USCG chemical and alcohol testing requirements, shall be in noncompliance with this part and may be barred from receiving Federal financial assistance in an amount the Administrator considers appropriate.

§ 655.83 Requirement to certify compliance.

- (a) A recipient of Federal financial assistance under section 5307, 5309, or 5311 shall annually certify compliance with this part to the applicable FTA Regional Office.
- (b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.
- (c) Recipients, including a State, that administers 49 U.S.C. 5307, 5309, or 5311 Federal financial assistance to subrecipients and contractors, shall annually certify compliance with the requirements of this part, on behalf of its applicable subrecipient or contractor to the applicable FTA Regional Office. A recipient administering section 5307, 5309, or 5311 Federal funding may suspend a subrecipient or contractor from receiving Federal transit funds for noncompliance with this part.

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.