

SUB-RECIPIENT AND CONTRACTOR OVERSIGHT

FTA Drug & Alcohol Program National Conference
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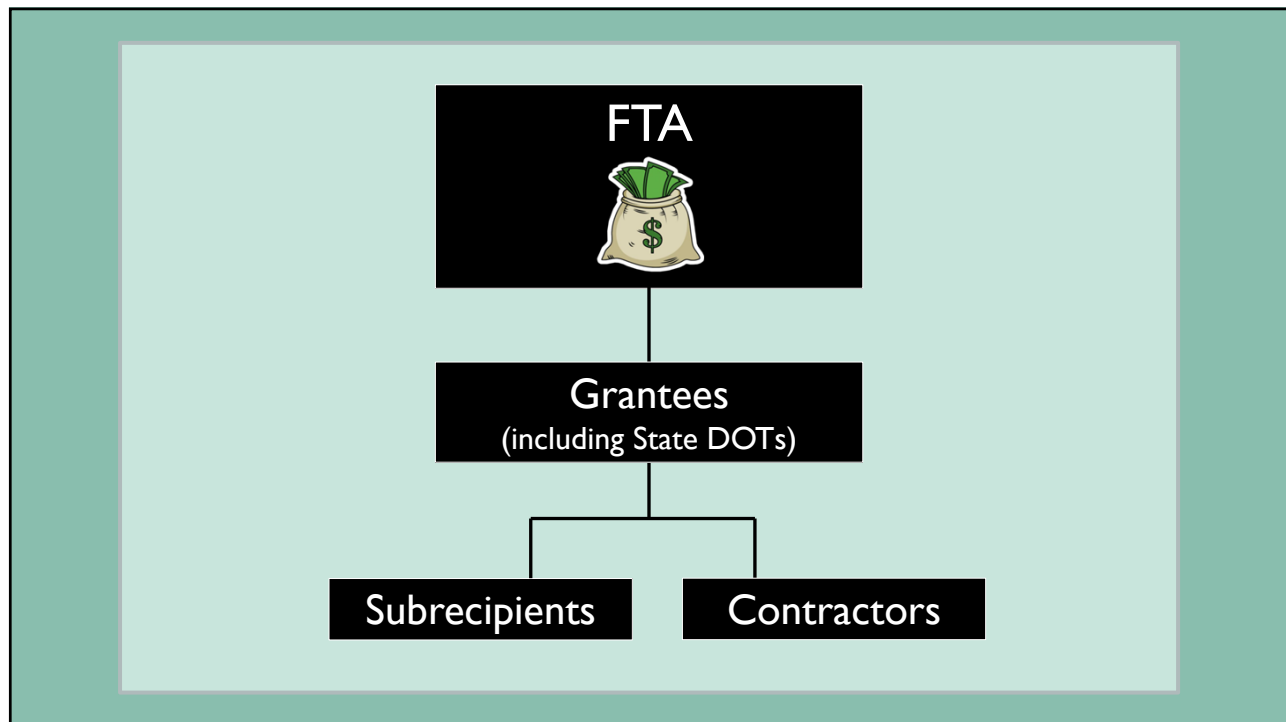
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SESSION AGENDA

- Describe applicable funding sources
- Outline oversight responsibility and authority
- Discuss contractor applicability
- Address contractor exemptions
- Identify methods of performing oversight
- Provide tools and checklists to aid DAPMs in their oversight efforts



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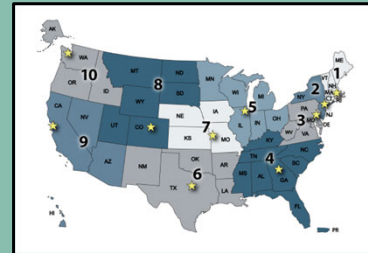
OVERSIGHT RESPONSIBILITY

- **49 CFR Part 655.81**
 - A recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C. 5307, 5309, 5311, or 5339 funds directly from the recipient complies with this part
- **49 CFR Part 655.82**
 - FTA can bar a recipient from receiving, or continuing to receive, federal assistance when not in compliance with FTA and USDOT testing regulations
- **49 CFR Part 655.83**
 - Requirement to certify compliance on an annual basis

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OVERSIGHT AUTHORITY

- FTA, Grantees (including State DOTs), and State Rail Safety Oversight Agencies
 - FTA Drug & Alcohol Program audits
 - FTA Triennial Reviews performed by regional offices
 - Grantees may contract with consultants to perform audits (must be clear that these are performed on behalf of the grantee, not an FTA audit)



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APPLICABLE CONTRACTORS

- The regulations (Parts 655 & 40) apply to any contractor who performs safety-sensitive functions for a grantee or subrecipient of federal funding
- Safety-sensitive functions include:
 1. Operating a public transportation vehicle, in or out of service
 2. Operating an ancillary vehicle which requires a CDL to operate
 3. Controlling movement or dispatch of public transportation vehicles*
 4. Performing maintenance on public transportation vehicles or equipment used on public transportation vehicles
 5. Carrying a firearm as part of transit security detail

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EXAMPLES OF APPLICABLE CONTRACTORS

- Contractors providing bus drivers, paratransit drivers, rail operators, motormen, conductor or yard drivers to operate service
- Contractors conducting vehicle maintenance, road call repairs, electrical system repairs, tire maintenance, overhaul or rebuilding of engines and parts, repairing lifts and communication systems
- Contractors providing hands-on rail maintenance, including electrical infrastructure, train control, track and ROW, signal and communications maintenance, substations, line crews, etc.



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EXAMPLES OF APPLICABLE CONTRACTORS, CONT.

- Contractors providing drivers to operate ancillary vehicles which require a CDL to operate (*drivers may be covered under FMCSA)
- Contractors providing dispatchers, starter, tower operators or other employees who control the movement of public transportation vehicles
- Contractors performing retread and tire changes on vehicles
- Contractors providing transit security (*see exemptions)



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CONTRACTOR EXEMPTIONS

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MAINTENANCE CONTRACTOR EXEMPTIONS

- Contractors who perform maintenance for grantees of Section 5307 funding in areas of less than 200,000 population (small urban) and subrecipients of Section 5311 funding (rural)
 - “In-house” maintenance employees are covered by the rule, regardless of the funding formula received by the grantee or subrecipient



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SECURITY CONTRACTOR EXCEPTION

- Active Police Officers under the supervision of the Police Department are not covered by the testing rule



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CONDUCTING OVERSIGHT

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GENERAL OVERSIGHT ACTIVITIES

- Start with the grant application/RFP process; make compliance a condition
- Meet with DAPMs at commencement of contract to determine knowledge
- Prepare policy templates and require subrecipients/contractors to adopt
- Require DAPM training for subrecipient/contractor
- Create email distribution system to disseminate regulatory guidance, technical assistance and training materials
- Require subrecipients/contractors to provide monthly or quarterly testing data
- Consider contracting with a Third-Party Administrator to provide testing services to subrecipients/contractors, and obtain access to testing data

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CONDUCTING ON-SITE RECORD REVIEWS

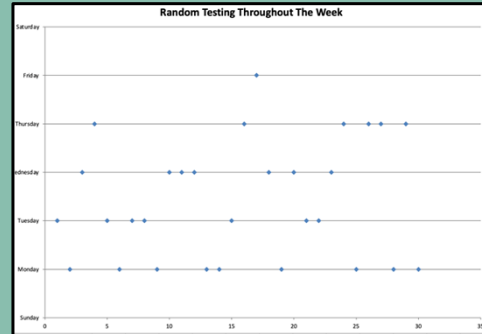
- **Pre-employment Testing and Administrative Records**
 - Negative pre-employment result received prior to first performance of safety-sensitive duty
 - Consent collected for DOT drug and alcohol background checks (40.25)
 - Good faith efforts documented?
- **Policy and Training**
 - Documentation that all covered employees received drug and alcohol policy
 - Documentation of training provided to all covered employees and supervisors in accordance with 655.14

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RECORDS REVIEW, CONTINUED

▪ Random Testing Records

- Random pool updated prior to new draw?
- Scientifically valid method of selection?
- Chart testing dates/times to determine if a predictable pattern of testing exists
- Correct application of “alternates”?
- Annual FTA minimum percentages met? (50/10)
- Employees report directly for testing following notification
- Alcohol testing only performed before, during or just after safety-sensitive duties?



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RECORDS REVIEW, CONTINUED

▪ Post-Accident Testing Records

- Review Post-Accident Decision and Documentation Forms for accuracy and completeness
- FTA testing thresholds met for all FTA/DOT tests? (review accident reports)
- Testing delays documented?
- Testing conducted within maximum testing windows (8/32)?
- Road supervisors/decision-makers understand thresholds for testing and/or completely discounting employee’s actions as a contributing factor



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RECORDS REVIEW, CONTINUED

- Reasonable Suspicion Testing Records
 - Review documentation forms for accuracy and completeness
 - Verify referring supervisor's training record
 - Alcohol testing only just before, during or just after the performance of safety-sensitive duties?
- Post-Violation Records
 - At least 2 DOT-Qualified Substance Abuse Professional referral resources?
 - Return to Duty test(s) performed prior to return to safety-sensitive work and directly observed collection? Do you split alcohol test from drug?
 - Follow up testing performed in accordance with SAP's plan? Directly observed, unannounced and unpredictable?

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RECORDS REVIEW, CONTINUED

- Service Agent Records
 - Collectors, BATs, STTs qualified to conduct DOT testing?
 - Medical Review Officer and Substance Abuse Professional credentials on file?
- Record Maintenance and Retention
 - All DOT testing records maintained separately from NON-DOT records and other personnel records?
 - Access to records limited only to DAPM and back-up?
 - Records maintained in accordance with 1, 2, 3 and 5-year retention requirements?



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RECORDS REVIEW, CONTINUED

- Drug & Alcohol Management Information System (DAMIS)
 - Grantee provides usernames and passwords received from FTA
 - Provide link to FTA tutorial video
 - Require submission early to allow time for grantee review
 - Review DAMIS reports for “red flags” such as an unequal number of post-accident drug tests vs alcohol tests, pre-employment tests incorrectly marked as return-to-duty tests, annual random testing percentages not met, average number of employees not used
 - Partial year submission when contract ends
 - Retention of DAMIS reports for at least 5 years



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FINAL TIPS AND RESOURCES

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FINAL TIPS

- Be a source of accurate information and support
- Create an environment that welcomes the subrecipient/contractor to reach out for help when they have problems with their program
- Include subrecipients/contractors in your agency’s training programs
- Encourage subrecipients and contractors to subscribe to the FTA and ODAPC email list-serve
- Encourage participation in FTA-sponsored training

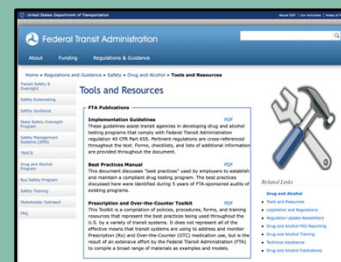


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RESOURCES: OUR FAVORITES

- FTA Regulatory Updates Newsletters!!
- FTA Policy Builder and Policy Requirements Checklist
- FTA Drug Awareness Video (covered employee training)
- FTA’s “Assess Your Compliance” Checklist
- Post-Accident & Reasonable Suspicion Threshold Lanyard Cards

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Default.aspx>



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