

Contractor Coverage

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U.S. Department of Transportation
Federal Transit Administration

Disclaimer

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Overview

- How do I know if my contractor is subject to FTA's D&A requirements?
- What are some exceptions?
- How should I oversee my contractor?

Applicability



U.S. Department of Transportation
Federal Transit Administration



Part 655 (and Part 40) Applies to . . .

Section 655.3(a):

- (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.

Section 40.1:

- (a) This part tells all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use.
- (b) This part concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.

Part 655 Applies to . . .

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(2) Any contractor of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.”

– Section 655.3(a)

Covered Federal Funding Sources:

- Section 5307 – Urbanized area formula grants
- Section 5309 – Fixed guideway capital investment grants
- Section 5311 – Formula grants for rural areas

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 - (2) Any contractor of a **recipient** or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.”
- Section 655.3(a)

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

-- Section 655.4

Part 655 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.”

-- Section 655.3(a)

“*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.”

-- Section 655.4

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Covered Activities Include. . .

“*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.”

-- Section 655.4

Key question to determine contractor/sub-recipient coverage:

Does the provider stand in the shoes of the funding recipient?



Common Coverage Exceptions



U.S. Department of Transportation
Federal Transit Administration



Maintenance Contractors

Section 655.4's definition of "Safety-sensitive function" includes:

"(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."



Maintenance Contractors

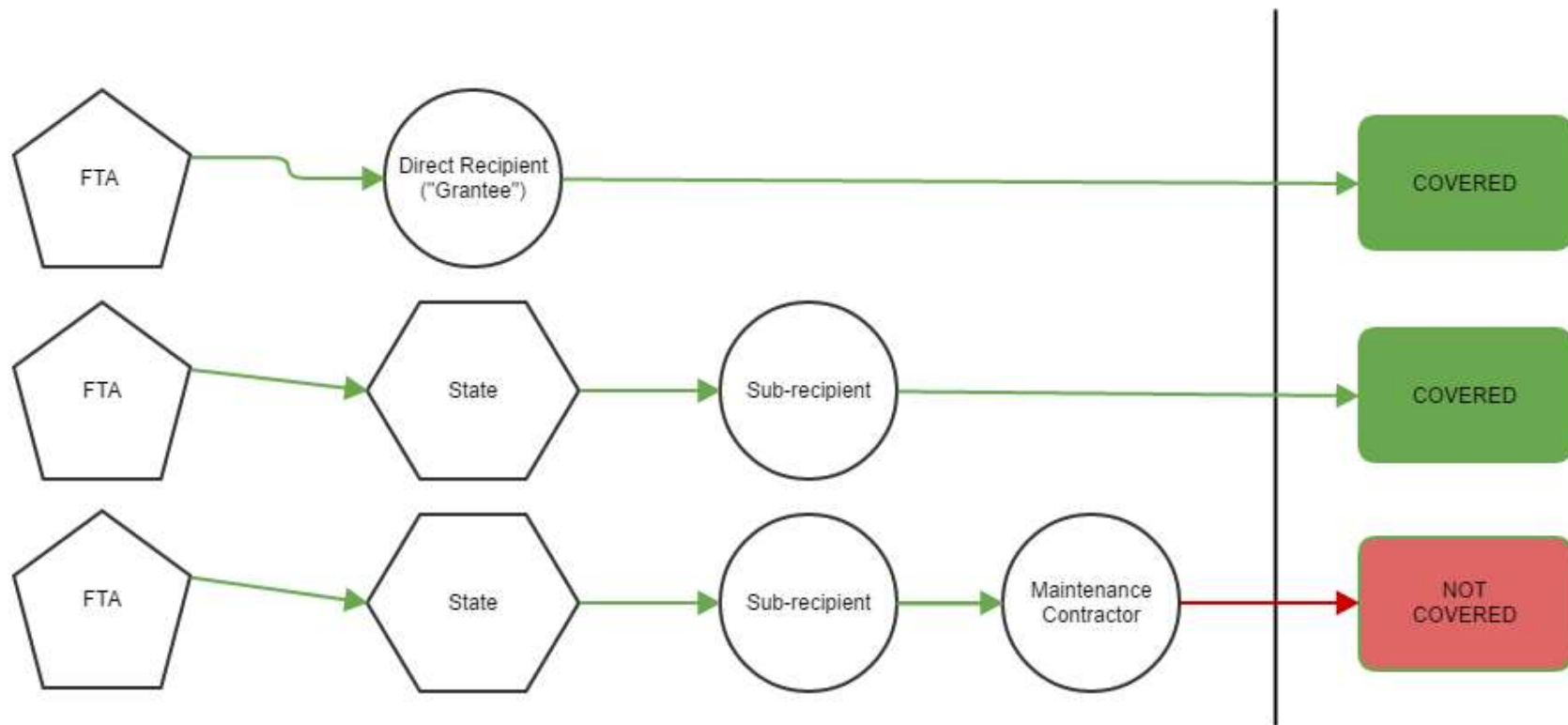
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A maintenance employer is *not* covered if they:

- Contract with § 5307/5309 recipient in service area <200,000
- Contract with § 5311 recipient
- Perform non-safety-sensitive maintenance functions
- Are used on an ad-hoc basis (no "ongoing arrangement" with covered employer)

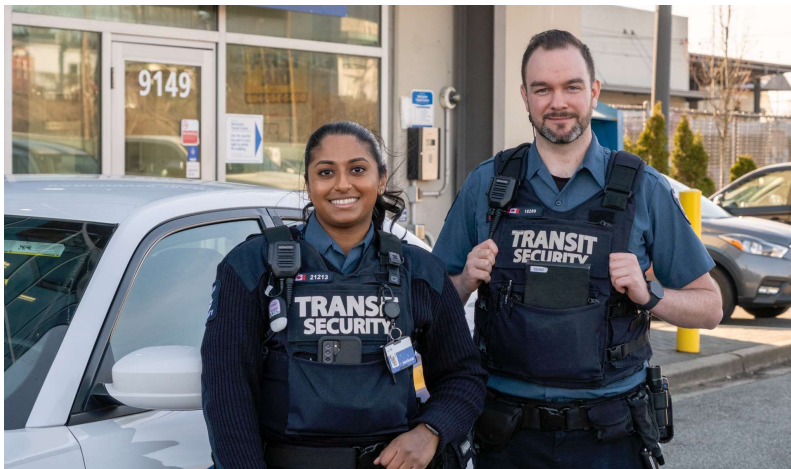
Maintenance Contractors



Security Contractors

Section 655.4's definition of "Safety-sensitive function" includes:

"(5) Carrying a firearm for security purposes."



Security Contractors

Section 655.4's definition of "Safety-sensitive function" includes:

"(5) Carrying a firearm for security purposes."

A security officer is *not* covered if they:

- Are not armed
- Are an active police officer under the supervision of the police department
- Are not in contact with transit patrons (e.g., armored car guards who provide service strictly at administrative or maintenance facilities)

Volunteers

Section 655.4's definition of "Covered employee" states that a volunteer is covered 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.”



Volunteers

Section 655.4's definition of "Covered employee" states that a volunteer is covered 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.”

A volunteer is *not* covered if they:

- Simply hold a CDL; they must drive a covered vehicle that *requires* one to operate.
- Are compensated only for their expenses incurred (e.g., mileage reimbursement).

Ferryboat Contractors

Section 655.3(c) states :

“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.”



Ferryboat Contractors

Section 655.3(c) states :

“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.”

Ferryboat contractors are generally *not* subject to FTA testing requirements, except:

- Random alcohol testing
- All testing of land-based maintenance employees

Contractor Oversight



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.”

- Section 655.81

“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.”

- Section 655.83(c)

Starting Points (Best Practices)

- For new contractors, include drug & alcohol program requirements in RFP process.
- Initial DAPM meeting/training
 - Assess contractor DAPM knowledge
 - Share grantee DAPM knowledge
 - Establish basic communication requirements
 - Establish any required shared resources (e.g., policy)
- FTA training resources
 - “Assess Your Compliance” checklist
 - Ongoing virtual and on-site trainings
 - D&A National Conference!



Shared Resources - Policy

- If contractor is starting from scratch...
 - Encourage FTA's Policy Builder Tool.
 - Walk through employer decisions
 - Zero-tolerance vs. second chance?
 - Pre-employment alcohol testing?
 - Negative dilute results?
- If contractor adopts grantee policy...
 - Each employer must individually adopt, even if language is shared.
 - Ensure contractor version is updated and re-adopted when necessary.
- If contractor has existing policy...
 - Review for compliance.
 - Reference FTA's Policy Requirements checklist.

Policy Builder



Company Info
Purpose
Policy Coverage
Consequences
Pre-Employment
Negative Dilute
Additional
Finish

What is the name of your company?

Employer Name:

Next



Shared Resources - Training

- Minimum requirements
 - Prohibited drug training for new hires (60+ minutes).
 - Reasonable suspicion training for supervisors. (60+ minutes on drug use and 60+ minutes on alcohol use)
 - Maintain documentation.
- Optional requirements
 - DAPM training
 - Post-accident decision-making training for supervisors.
 - Refresher training
- Encourage contractor to:
 - Join on-site trainings at grantee.
 - Make use of FTA's training videos.

60-Minute Drug Awareness Video

This video describes the effects and consequences of prohibited drug use on personal health, safety, and the work environment signs and symptoms that may indicate prohibited drug use. This video meets the 60-minute training requirements of sector covered employees.



Shared Resources - Service Agents

To comply with Part 40:

- Collection sites / after-hours services
 - Ensure testing is possible during all hours of covered service.
 - Confirm all alcohol technicians and urine collectors are DOT-qualified.
- Substance Abuse Professionals (SAPs)
 - Identify 2+ currently practicing DOT-qualified SAPs.
 - Share template termination or referral letter, if used.
- Medical Review Officer (MRO) services
 - Ensure MRO and contractor DAPM can communicate directly and promptly when necessary (avoid grantee DAPM as middle-person).
 - Establish tracking system for verified results.



Shared Resources - Forms

- Acknowledgment of Policy Form
- Previous Employer Request Form
- Pre-Employment Notification and Acknowledgement Form
- Post-Accident Decision-Making Form
- Reasonable Suspicion Determination Report
- Notification Form
- Collection Site Affidavit Form, etc... www.transit-safety.fta.dot.gov/DrugAndAlcohol/Tools
- Encourage contractor to adopt any forms found useful by grantee.
- Likewise, consider adopting – or sharing with other contractors – useful contractor-developed forms (as long as they’re compliant).

EMPLOYER NAME/LOGO

Drug and Alcohol Testing Notification

The Federal Transit Administration (FTA) drug and alcohol testing regulation (49 CFR Part 655) requires all safety-sensitive employees must submit to drug and alcohol testing as a condition of employment in a safety-sensitive position.

Employee Information:
Employee Name: _____
Employee ID/SSN: _____
Date of Notification: _____ Time of Notification: _____ AM/PM
Employee Transported? NO YES Transported by: _____

Collection Site Information:
Name: _____
Address: _____
City, State, Zip: _____

Order for Testing:

Type of Test: Alcohol Drug Both

Testing Authority: DOT/FTA Non-DOT

Test Type: Pre-Employment Random Post-Accident
 Reasonable Suspicion Return-to-Duty Follow-up

Observed Collection: YES NO

Ongoing Review - General Principles (Best Practices)

- Establish responsible party
 - Direct oversight from grantee?
 - Oversight contract with consultant?
 - Ensure contractor understands that oversight conducted by or on behalf of grantee is separate from an FTA audit.
- Establish frequency
 - Monthly? Quarterly? Annually?
 - Consider different frequencies for different oversight activities.
- Establish method(s)
 - On-site visits
 - Electronic submission of records, training documentation, etc.
 - Check-in meetings or phone calls

Ongoing Review - Pre-Employment Testing (655.41, 655.42) and Previous Employer Requests (40.25)

- Are negative test results consistently received prior to SS functions?
- Is alcohol testing conducted (or not conducted) in accordance with policy?
- Are previous employer requests completed?
 - FTA's Previous Employer Release of Information Form
 - Is written consent provided?
 - Is a "good faith effort" made to receive a response?
- Are employees asked about prior pre-employment testing violations?
 - FTA's Pre-Employment Notification and Acknowledgement Form
- Are employees appropriately tested following extended absences?
 - 90+ day SS absence AND 90+ day random pool removal = FTA pre-employment test



Ongoing Review - Random Testing (655.45)

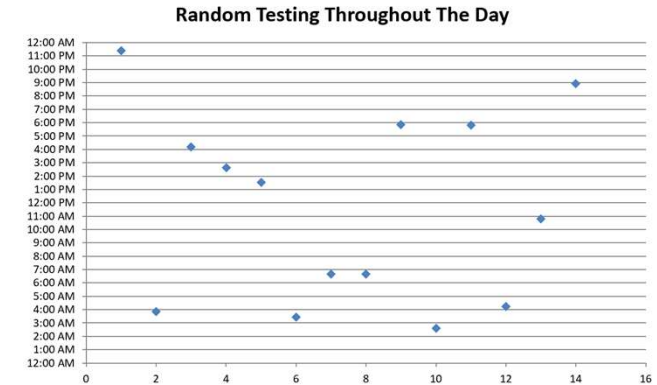
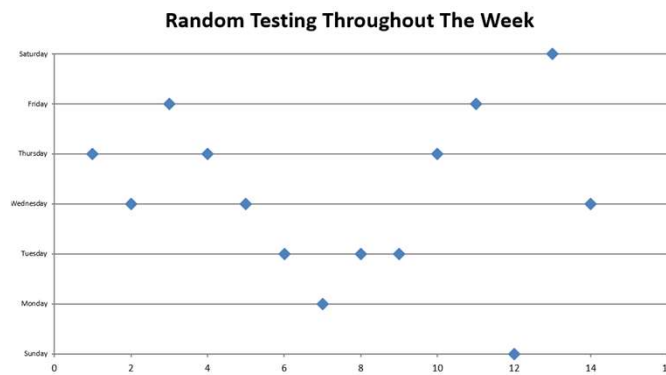
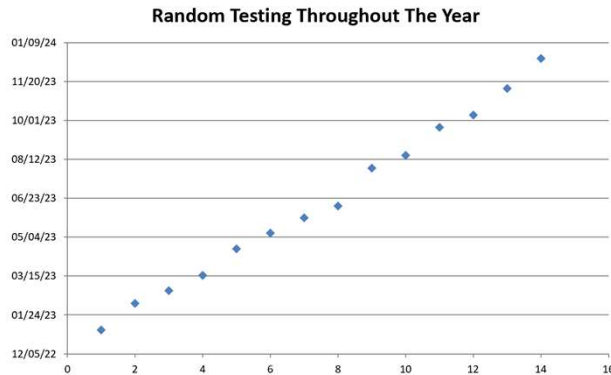
- Is a scientifically valid selection method used?
- Are selections performed at least quarterly?
- Is the testing pool consistently updated?
- Are employees sent for testing in line with the selection list (drugs and/or alcohol)?
- Do employees proceed immediately for testing once notified?
- Are employees only excused for legitimate reasons?



Ongoing Review - Random Testing

- Are tests reasonably spread throughout all months, days, and hours of covered service?

FTA's Random Testing Charts



Ongoing Review - Post-Accident Testing (655.44)

- Do supervisors make correct determinations?
 - FTA testing after FTA testing thresholds
 - No FTA testing if FTA threshold isn't met
- Are delays in testing documented?
 - 2+ hour delay in alcohol testing must be supported
- Is testing conducted only within the maximum time frames?
 - 8 hours alcohol / 32 hours drugs
- Are decisions to completely discount employees from testing clearly supported?

Accident Information:

Date of Accident: _____ Time of Accident: _____AM/PM
 Employee Name: _____ Employee ID/SSN: _____

Decision Questions:

- Was the event associated with the operation of a public transportation vehicle?
 _____ NO (FTA drug and alcohol tests are PROHIBITED)
 _____ YES (Answer the following questions to determine need for testing)
- Was there a fatality?
 _____ YES (FTA drug and alcohol tests are REQUIRED) _____ NO
- If there was NO fatality, answer the following questions:
 1. Has any individual suffered a bodily injury and immediately received medical treatment away from the scene of the accident? _____ YES _____ NO
 2. Was there disabling damage to ANY vehicle involved in the accident, requiring the vehicle to be towed away from the scene? _____ YES _____ NO
 3. For rail cars, trolley cars, trolley buses, or vessels ONLY:
 Was the vehicle removed from operation? _____ YES _____ NO

If you answered yes to any of these three questions, can you completely discount the performance of the operator of the public transportation vehicle as a contributing factor to the accident?

_____ NO (FTA drug and alcohol tests are REQUIRED)
 _____ YES, Explain: _____
 (If you answered YES, FTA drug and alcohol tests are PROHIBITED)

FTA's Post-Accident
 Decision Making Form



Ongoing Review - Reasonable Suspicion Testing (655.43)

- Are specific and real-time indicators of prohibited drug and/or alcohol use clearly documented?
- Are employees only sent for alcohol testing just before, during, or just after safety-sensitive functions?
- Are delays in testing documented?
- Are all determinations made by a trained supervisor?

Reasonable Suspicion Determination Report

Employee Name: _____ Employee ID/SSN: _____

Date/Time of Observation: ____ / ____ / ____ _____ AM/PM

Date/Time of Determination to Test: ____ / ____ / ____ _____ AM/PM

Observed Indicators of Prohibited Drug Use/Alcohol Misuse

Reasonable Suspicion determinations must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee.

Check all indicators observed:

Physical Indicators

- Bloodshot or watery eyes
- Flushed or very pale complexion
- Extensive sweating/skin clamminess
- Dilated or constricted pupils
- Disheveled clothing/unkept grooming
- Unfocused, blank stare
- Runny or bleeding nose
- Jerky eye movement
- Body odor

Behavioral Indicators

- Fidgety/agitated
- Irregular breathing
- Nausea/vomiting
- Slow reactions
- Unstable walking
- Poor coordination
- Hand tremors
- Suspicious, paranoid
- Depressed, withdrawn
- Lackadaisical attitude
- Irritable, moody
- Extreme fatigue

Speech Indicators

- Sturred or slowed speech
- Loud, boisterous
- Incoherent, nonsensical
- Repetitious, rambling
- Rapid, pressured
- Excessive talkativeness
- Exaggerated enunciation
- Cursing, inappropriate speech
- Inability to concentrate
- Impulsive, unusual risk-taking
- Delayed decision-making
- Reduced alertness

FTA's Reasonable Suspicion Determination Report



Ongoing Review - Violations (655.61, 655.62)

- Are SAP referrals provided after all DOT violations, to both applicants and employees?
 - Positive drug test results
 - Refusals to test
 - Alcohol results of 0.04+
- Are SAP referrals *only* provided after DOT violations?
 - Alcohol results of 0.02–0.039 are not DOT violations
- Second chance programs
 - Is a negative return-to-duty result received before resuming SS functions?
 - Is all return-to-duty and follow-up testing directly observed?
 - Is follow-up testing conducted in line with SAP's plan?

Ongoing Review - General Records Maintenance

- Are all required records securely kept for the required time frames?
- Are testing forms complete and legible?
- Are errors corrected when required?
- Are DOT and non-DOT testing correctly distinguished between?



Recommended session: "Records Retention Requirements"



Ongoing Review - MIS Reporting (655.72)

- Are MIS reports submitted to FTA on time?
 - Consider requiring earlier submission (e.g., March 1st) to allow for grantee review and approval by March 15th.
- Are there any red flags in the data?
 - Does pre-employment alcohol testing align with written policy?
 - Does return-to-duty testing align with written policy?
 - Do post-accident drug and alcohol tests align?
- Were minimum annual random testing rates met?
 - Currently 50% drugs / 10% alcohol
 - Calculated using the reported number of covered employees
- Is the Certifying Official an employee of the contractor/sub-recipient?



What About Service Agents?

“As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part. You may require service agents to show you documentation that they meet the requirements of this part.”

- 49 CFR 40.15(b)

- Breath Alcohol Technicians (BATs) / Screening Test Technicians (STTs)
- Urine Collectors
- MROs
- SAPs
- TPAs

Recommended Session: “Ensuring Your Service Agent’s Compliance”



Thank you!

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