

Chapter 18

FTA Drug and Alcohol Program And Drug-Free Workplace Requirements

CHAPTER 18 OVERVIEW

- ✓ Outlines the **application of drug and alcohol testing requirements to 5310 and 5311 organizations**.
- ✓ Details the required components of **substance abuse policies**.
- ✓ Describes the **pre-employment testing process**.
- ✓ Discusses required **assurances**.

NOTES

A. Drug and Alcohol Testing

Any recipient of federal financial assistance under Sections 5303, 5307 or 5311 of the Federal Transit Act (FTA), as amended, or any recipient of federal financial assistance under Section 103(e)(4) of title 23 of the United States Code must comply with FTA testing regulations. Generally, these are transit agencies that receive FTA funding and state agencies that assist in distributing FTA funding to transit agencies.

Section 5310 operators that do not receive other funding directly or as sub-recipients are exempt from the FTA drug and alcohol regulations. These operators, however, are covered by the Federal Highway Administration (FHWA) drug and alcohol testing regulations if the transit agency operates vehicles that require operators to hold commercial drivers licenses (CDLs). FHWA rules apply only to drivers, not to maintenance personnel, dispatchers, supervisors or other personnel unless they are required to operate vehicles for which possession of a CDL is necessary.

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B. Written Substance Abuse Policy Requirements

Pursuant to federal regulations, all providers must adopt a written substance abuse policy for dissemination to all employees that will be the basis for an ongoing substance abuse program. The policy must include all FTA required elements and describe specific actions taken against employees violating prohibitions. The policy must also specify that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace.

All providers receiving FTA funds are required to have their substance abuse policy statement available for inspection by the Office of Public Transportation upon request. If KDOT should change from the current contracted provider, the transportation providers will follow the administrative policies established by KDOT with the new contracted provider of the alcohol and drug testing program. Employees must be informed of the drug-free workplace policy during training and anytime that the policy is updated. Employees must also be informed of the dangers of drug abuse and the availability of counseling, rehabilitation, and employee assistance programs.

C. Application of Substance Abuse Policies to Employees

1. Pre-employment Testing Rules

In agencies under the regulation of the FTA, persons seeking employment can only be offered a safety-sensitive position under the condition that they test negative for drugs and alcohol in their pre-employment testing. Safety-sensitive functions under the FTA include any of the following:

- Operating a revenue service vehicle, including times when not picking up or dropping off passengers;
- Operating a non-revenue service vehicle when it is required to be operated by a holder of a Commercial Driver's License (CDL);

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- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining equipment or a vehicle used in vehicle service, unless the recipient receives Section 5311 funding and contracts out such services; or
- Carrying a firearm for security purposes.

The only exceptions from testing under the FTA are volunteers. Volunteers operating vehicles requiring CDLs are exempt from testing requirements.

The same pre-employment testing requirements apply to agencies governed by FHWA regulations with one exception. Prospective employees who have already been participating in a work-related drug and alcohol program are not required to undergo pre-employment testing if:

1. the driver/applicant has participated in a controlled substances testing program that meets the requirements of 49 CFR part 382 (or another DOT agency's controlled substances testing program) within the previous 30 days; and
2. while participating in that program, he or she was either tested for controlled substances within the past 6 months or participated in a random testing program for the previous twelve months; and
3. the most recent employer ensures that no prior employer of the applicant reported having records of a violation of the controlled substances prohibited conduct rules or FHWA or of another DOT agency within the previous six months.

The drug and alcohol testing manager for each agency should keep a record of:

1. the date and time they were notified of the persons selected for random testing;
2. the date and time that the employee was notified to report to the collection site for an alcohol or drug test; and
3. the date and time the testing occurred.

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These records will verify that the testing took place within the appropriate testing period and that the employee was tested immediately after being notified to report to the collection site.

Kansas transit employees are a part of the drug and alcohol testing program required by the U.S. DOT. One safeguard of this program is the verification of test results by a Medical Review Officer (MRO). An MRO is a licensed physician with a knowledge of substance abuse disorders and appropriate medical training to evaluate an individual's positive test result along with that person's medical history.

An MRO:

- receives test results from the laboratory;
- reviews control and custody forms that accompany the lab samples to ensure accuracy;
- discusses the test result with the employee;
- evaluates an individual's positive test result in light of additional information provided by the employee and the employee's physician and pharmacists;
- decides whether there is a legitimate medical explanation for the result, such as a legally prescribed medication;
- ensures that each verified positive test result is reported to the person designated in each transit agency to receive the results.

An employee who tests positive for drugs or alcohol will receive a telephone call from the Medical Review Officer (MRO). The employee may request to be retested within 72 hours from the time of notification of the results.

D. Certifications of Assurances and Annual Report Requirements

KDOT and all transit providers must sign a certificate of assurance stating that they are in compliance with the drug and alcohol regulations. Section 5311 compliance certificates must indicate special safety provisions for its employees, including testing and training requirements. Copies of all certificates will be maintained in the KDOT

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files. Transit agency employees are required to sign individual commitments to drug-free workplace forms stating that they have been informed of the policy and understand its terms. Compliance is monitored annually.

KDOT, in collaboration with the consortium administering agency, collects and submits annual Management Information System (MIS) reports for each Section 5311 transit agency summarizing drug and alcohol test results. MIS reports are filed for safety sensitive contractors as necessary.

CHECKLIST

- Are you subject to FTA drug and alcohol regulations? 18-1
- Does your agency have a written substance abuse policy? 18-1
- Do you test applicants for safety sensitive positions for drug or alcohol abuse prior to hiring? 18-2
- Have you filed the appropriate assurances with KDOT regarding your agency's testing procedures? 18-4