



# Kansas RTAP Fact Sheet

A Service of The University of Kansas Transportation Center for Rural Transit Providers

## More Q's and A's from FTA's D&A Discussion Forum

Compiled by Jacob Bustad

[Here are a few more questions and answers from FTA's Drug and Alcohol Discussion Forum at <http://transit-safety.volpe.dot.gov/Safety/BBS>. All answers are from Eve Rutyna, FTA.]

**Question:** Is there a list of acceptable prescription drugs, or more importantly, a list of non-acceptable drugs? If not, can we require a transit driver to provide a statement from their doctor stating that any medication that they are currently taking will not affect their ability to perform their job? If so,

from FTA/DOT as long as those elements do not thwart the FTA regulations as stated in 49 CFR Part 655.6(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."

FTA provides technical assistance in the area of which you questioned with its *Prescription and Over-the-Counter Toolkit* which is available through the FTA Office of Safety and Security web site (<http://transit-safety.volpe.dot.gov>) by clicking on the Publications tab.

**Question:** The following scenario has occurred several times: An employee claims injury but completes his shift without medical attention or visible disability. The next day the employee doesn't report for work as a result of said injury. Must drug testing proceed? Is there a specific rule regarding this situation?

**Answer:** I'm assuming you are having a trained supervisor make a determination that these accidents did not meet FTA's threshold for post-accident testing, hence the employees were allowed to go home without being tested in each case.

In such a "scenario," there would be no provision for testing them for a post-accident test. It may be helpful to review the regulations regarding post-accident testing. See below.

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 mass



**Is there a list of acceptable prescription drugs, or more importantly, a list of non-acceptable drugs?**

can we just wholesale require it for any driver taking a prescription drug?

**Answer:** The drugs for which tests are required under FTA and DOT regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates. FTA/DOT provides no list of acceptable or unacceptable prescription or over-the-counter drugs. An employer may have elements within its drug and alcohol policy that go above and beyond what is required

In addition, should an employer implement additional elements, it must separate those elements and inform employees that those elements are not required by FTA/DOT, as stated in Section 655.15(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."

transit 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 389.303(a)(1) or (b)(1).

(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 mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit 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

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

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.

For clarification, since you were asking about injuries this definition of accident might be helpful. Please note that an individual must IMMEDIATELY receive medical treatment away from the scene. This did not occur in your scenario.

§655.4 *Definitions*. 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 mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

Reprinted from the January 2007 issue of the *Kansas TransReporter*, a publication of the Kansas Rural Transit Assistance Program (RTAP) at the Kansas University Transportation Center.

## A decision to not test an employee involved in an accident] must be documented in detail, including the decision-making process used to reach the decision not to test.

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.

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