

21. DRUG AND ALCOHOL PROGRAM

BASIC REQUIREMENT

Grantees receiving FTA funds under Capital Grant (Section 5309), Urbanized Area Formula Grant (Section 5307), or Non-Urbanized Area Formula Grant (Section 5311) Programs must have a drug and alcohol testing program in place for all safety-sensitive employees.

The FTA-mandated drug and alcohol testing program is separate from and in addition to the provisions of the Drug-Free Workplace Act (DFWA). Policy provisions and reporting requirements mandated by that Act are discussed in Section 20 of this Contractors' Guide.

AREAS TO BE EXAMINED

1. ***Policy statement on prohibited drug use and alcohol misuse in the workplace***
2. ***Types of tests and substances***
3. ***Rate of random testing***
4. ***Post-accident determinations***
5. ***Monitoring contractors and/or subrecipients with safety-sensitive employees***
6. ***Monitoring program vendors (e.g., collection sites, MROs, and SAPs).***

Note: The time frame for corrective actions in this area is shorter (typically 30 to 60 days), rather than the customary 90 days for most other areas.

REFERENCES

1. [49 CFR Part 655](#), "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations."
2. [49 CFR Part 40](#), "Procedures for Transportation Workplace Drug Testing Programs."

QUESTIONS FOR THE REVIEW

1. *Has a Drug and Alcohol Program compliance audit been conducted in the past two fiscal years? If yes, when was the site visit? Is an audit scheduled for the current fiscal year?*

EXPLANATION

Consistent with FTA's oversight responsibilities, FTA conducts grantee audits assessing compliance with the drug and alcohol regulations. The audit is comprehensive in nature, including a review of each agency's and selected contractor's policies, procedures, and recordkeeping. Vendors, including collection sites, third-party administrators (TPAs), MROs, and SAPs also are interviewed and a mock collection is performed.

After the audit is complete, the audit team conducts an exit interview presenting the findings, if any, to the grantee. A letter and final report documenting the deficiencies and necessary corrective actions are provided to the grantee during the exit interview. The grantee then has 90 days to take corrective actions and provide appropriate documentation to the audit team. The Office of Safety and Security issues a closeout letter once the grantee is fully in compliance.

If a Drug and Alcohol Program compliance audit has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year (FYs 2006, 2007, or 2007), a review of the Drug and Alcohol Program area is not necessary.

REASON FOR THE QUESTION

Input to triennial review

SOURCES OF INFORMATION

The reviewer should contact the regional office to determine if a Drug and Alcohol Program compliance audit is scheduled for the current year or has been conducted during the past two fiscal years.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

2. *Does the grantee have a drug and alcohol testing program for safety-sensitive employees as defined by FTA? Do contractors and subcontractors with safety-sensitive*

employees have drug and alcohol testing programs?

EXPLANATION

Grantees and their contractors and subcontractors that have safety-sensitive employees are required to have a drug and alcohol testing program for these employees. For grantees that use volunteer drivers, the volunteers are not subject to testing unless the volunteer is required to hold a commercial driver's license (CDL) or receives remuneration in excess of expenses incurred while engaged in a safety-sensitive function. Safety-sensitive employees are employees that perform the following functions:

- operating a revenue vehicle including when not in revenue service
 - operating a non-revenue vehicle when required to be operated by a holder of a Commercial Driver's License (CDL)
 - controlling dispatch or movement of a revenue service vehicle
 - maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the exception of:
 - all maintenance contractors of grantees in UZAs under 200,000; and
 - subcontractors of maintenance contractors.
- Note: contractors or subcontractors that provide maintenance services to an operations contractor are subject to FTA's drug and alcohol testing regulations.
- carrying a firearm for security purposes.

Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations, and follow FTA regulations for its non-railroad operations. Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard's (USCG's) chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered safety-sensitive by the USCG, since the USCG does not have a similar requirement.

Grantees that have employees, contractors, or subcontractors that are subject to drug and alcohol

testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

Contractors that overhaul or rebuild vehicles, engines and parts, or that perform body work are subject to FTA regulations, unless this work is done on an ad hoc or one-time basis. Also, vendors from whom grantees purchase or exchange rebuilt engines or other components are not subject to the regulations.

If a grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of the drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab company, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

REASON FOR THE QUESTION

49 CFR [655.3](#) and [655.4](#)

SOURCES OF INFORMATION

Reviewers should ask the grantee to provide evidence that all safety-sensitive employees (including contractor and subcontractor employees) are covered by a drug and alcohol testing program. Reviewers should request a list of all contractors and subcontractors in order to determine if the requirement applies.

DETERMINATION

If the grantee and its contractors and subcontractors have a drug and alcohol testing program for all covered employees, the grantee is not deficient. If the grantee or any of its contractors and subcontractors has not adopted an FTA program, as applicable, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to develop and implement a drug and alcohol testing program for all covered employees within 60 days and submit evidence of such to FTA. The grantee can include the contractor's employees in its program or require the contractor to have its own program based on FTA requirements. If a contractor is lacking a drug and alcohol testing program, the grantee needs to ensure

that the contractor implements a program within 60 days and have the grantee provide evidence of such to FTA.

- 3. Does the grantee have a drug and alcohol policy as required by FTA drug and alcohol regulations? Does the policy contain the following elements: approval by governing board or other "final authority" for the agency, identity of contact person, employee categories subject to testing, prohibited behavior, testing circumstances, testing procedures, requirement that covered employees submit to testing, behavior that constitutes a refusal to submit to a test, consequences for an employee who has a verified positive test result, consequences for an employee found to have an alcohol concentration of 0.02 or greater but less than 0.04, and a policy regarding secondary testing upon receipt of a negative-dilute result from the Medical Review Officer (MRO)?*

EXPLANATION

Grantees and their contractors and subcontractors covered by [49 CFR Part 655](#) must have a drug and alcohol policy detailing the provisions of their drug and alcohol program. The policy should cover all the provisions noted above and should reflect all updates and regulation amendments.

The following checklist identifies the minimum requirements of a policy as defined by [49 CFR 655.15](#):

- Proof of policy adoption by the appropriate governing body with effective date indicated.
- Identity of the person designated by the employer to answer questions about the anti-drug and alcohol misuse program.
- Categories of employees who are subject to testing.
- Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs.
- Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident,

reasonable suspicion, return-to-duty, and follow-up testing.

- Drug and alcohol testing procedures consistent with [49 CFR Part 40](#), as amended. (Note: a grantee does not have to reiterate Part 40 in the policy provided that Part 40 is referenced in the policy and is readily available to any employee who requests a copy).
- The requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations.
- Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the DOT program:
 1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.
 2. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test).
 3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations.
 4. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen.
 5. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
 6. Fail or decline to take an additional drug test the employer or collector has directed you to take.
 7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or employer. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.

8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
9. For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
11. Admit to the collector or MRO that you adulterated or substituted the specimen.

- Description of the consequences for a covered employee who has a verified positive test result. If the system has a second chance policy, a description of the evaluation and treatment processes must be included.
- Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

In addition to the requirements listed above, the grantee's policy should include the following requirement identified in [49 CFR 40.197](#):

- If the MRO informs the agency that a *negative* drug test was dilute, the agency may (but is not required to) direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, you must not retest some employees and not others.

Some grantees may have modeled their testing programs after Federal Motor Carrier Safety Administration (FMCSA) regulations ([49 CFR Part 382](#)). FMCSA regulations do not meet FTA requirements. For example, the definition of covered employee is different. If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.

REASON FOR THE QUESTION

[49 CFR 655.15](#)
[49 CFR 40.191; 197](#)

SOURCES OF INFORMATION

The grantee's drug and alcohol policy as well as the policies of any contractors or subcontractors with safety-sensitive employees should be reviewed. If

there are numerous contractors, the reviewer may choose to review a sample of contractor policies. If the grantee is covered by FRA or the USCG, the grantee should provide documentation that it complies with FRA or USCG regulations. In these situations, the grantee should confirm that there are no employees subject to FTA requirements.

DETERMINATION

If the policy contains all of the provisions mentioned in the above question, the grantee is not deficient. If the policy neglects any of the above provisions required by the regulations, the grantee is deficient. If the grantee is covered by FRA or the USCG and provides documentation that it complies with FRA or USCG regulations, the grantee is not deficient. If a grantee or its contractor has not updated its policy to reflect updates and/or amendments to the regulations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to correct the policy to bring it into compliance, obtain governing board or other "final authority" approval, and recommunicate the policy to all affected employees within 60 days. If a grantee or its contractor has not updated its policy to reflect updates and/or amendments to the regulations, the grantee needs to update the policy; obtain approval by appropriate governing board; and recommunicate the policy to all affected employees within 60 days.

4. Does the grantee conduct the following types of drug and alcohol testing:

- a. *Pre-Employment (alcohol optional)*
- b. *Random*
- c. *Post-Accident*
- d. *Reasonable Suspicion*
- e. *Return to Duty*
- f. *Follow-up?*

Does the grantee test for the following substances: Marijuana, Cocaine, Opiates, Phencyclidine, Amphetamines, Alcohol?

EXPLANATION

Six types of testing are required by the drug and alcohol testing regulations. Pre-Employment (mandatory for drugs and optional for alcohol), Random, Post-Accident, and Reasonable Suspicion under certain conditions must be conducted by all grantees. If the grantee offers rehabilitation and the opportunity for an employee who tested positive to

return to work, the grantee must conduct Return to Duty and Follow-up testing also.

The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol.

Note: if the grantee optionally conducts pre-employment alcohol tests of covered employees, the grantee must follow Part 40 testing procedures.

REASON FOR THE QUESTION

49 CFR 655.31, 655.33, 655.34, 655.41, 655.42, 655.43, 655.44, 655.45, 655.46, and 655.47

SOURCES OF INFORMATION

The grantee's drug and alcohol policy should indicate clearly when and under what circumstances employees will be tested for drugs and alcohol. The policies and procedures for each type of testing should be explained clearly.

DETERMINATION

If the policy includes the types of employee testing and the substances to be tested, and all tests are being conducted, the grantee is in compliance. If the policy omits the required information, tests are not being conducted, or substances are not being tested, the grantee is deficient. The reviewer is not permitted to examine specific employee records to make this determination.

SUGGESTED CORRECTIVE ACTION

The grantee needs to correct the policy to bring it into compliance, obtain governing board approval and recommunicate the policy to all affected employees within 60 days. The grantee must implement the testing program immediately if any requirement is lacking.

5. Is the grantee testing at a random rate of 25 percent for drugs and 10 percent for alcohol?

Please provide:

- a. *Total number of safety-sensitive employees = _____*
- b. *Number of random test periods per year = _____*
- c. *Number of test periods completed as of site visit: _____*
- d. *Actual number of random tests:*
 - (1) *for drugs = _____*
 - (2) *for alcohol = _____*

EXPLANATION

Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current rate for random drug testing is set at 25 percent of the number of safety-sensitive employees annually. This is a reduction in the drug testing rate for 2005 and 2006, which was 50 percent. The random testing rate for alcohol is 10 percent of the number of safety-sensitive employees annually.

Grantees that have their own random pool of safety-sensitive employees must be able to document that they are meeting the required rates for random drug and alcohol tests. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing meets the FTA required rates.

REASON FOR THE QUESTION

[49 CFR 655.45](#)

SOURCES OF INFORMATION

Most grantees and consortiums perform random selections four times a year. To determine the appropriate number of random tests for calendar year 2007, the reviewer should perform the following calculation:

$$T = 0.25 * (D / P) \quad (a)$$

Where:

T = the number of required random tests;

D = the number of safety-sensitive employees to be tested; and

P = the number of random test periods per year.

For example, if a grantee or consortium selects for random tests four times per calendar year and the triennial review is conducted in July, there should have been two selections (one for each quarter). If there were 60 safety-sensitive employees at the time of the first selection and 80 safety-sensitive employees at the time of the second selection, the number of random test to be conducted for drugs would be calculated as follows:

$$T = 0.25 * [(60+80)/4] \quad (b)$$
$$T = 8.75$$

In which case, the answer in (b) would be rounded up to the nearest whole number. As such, the grantee should have conducted 9 random tests for drugs.

To calculate the number of random alcohol tests, the reviewer would substitute 0.1 for 0.25 in the equation shown in (a). As such, the number of random tests for alcohol would be calculated as follows:

$$T = 0.1 * [(60+80)/4] \quad (c)$$
$$T = 3.5$$

In which case, the answer in (c) would be rounded up to the nearest whole number. As such, the grantee should have conducted 4 random tests.

DETERMINATION

If the grantee or its consortium has conducted within 10 percent of the required number of random tests, the grantee is not deficient. If the number of random tests are below 90 percent of the required number, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to develop and implement a plan to bring the random testing rate to the required level within 90 days.

6. *Does the grantee make proper post-accident determinations?*

EXPLANATION

Following a fatal accident involving a transit vehicle, grantees and/or their contractors and subcontractors with safety-sensitive employees are required to test all surviving covered employees on duty in the vehicle at the time of the accident as well as any other covered employee whose performance may have contributed to the accident. The determination of who should be tested must be made by the employer using the best available information at the time the decision is made.

Following a nonfatal accident all covered employees operating the vehicle or deemed to have otherwise contributed to the accident must be tested unless the employer determines that an employee's performance did not contribute to the accident. The determination of who should be tested must be made by the employer using the best available information at the time the decision is made. The decision of who should and should not be tested following an accident must be documented in detail, including the decision-making process used to make the determination.

A non-fatal accident is defined by the following:

- One or more individuals is immediately transported for medical treatment away from the accident
- Any vehicle incurs disabling damage requiring a tow truck.
- A rail transit vehicle is taken out of service as a result of the accident

Note: Failure to conduct any required testing is addressed under Question 4 of this section.

REASON FOR THE QUESTION

[49 CFR 655.44](#)

SOURCES OF INFORMATION

The reviewer should request to see copies of accident reports in which post-accident testing was performed as well as copies of accident reports in which post accident testing was not performed. Minutes from accident review committee meetings should also be reviewed if these are relevant to post accident determinations.

DETERMINATION

If the grantee's contractor's and/or subcontractor's post-accident determinations are properly documented, the grantee is not deficient. If a covered employee was not tested following a nonfatal accident and the grantee cannot properly document its determination, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Within 30 days, the grantee must develop and implement a process to make proper post accident determinations including procedures to document the decision-making process.

7. *Does the grantee check on the drug and alcohol testing record of new hires and transfers that it is intending to use to perform safety-sensitive duties?*

EXPLANATION

Grantees must, after obtaining an employee's written consent, request the information about any employee who is seeking to begin performing safety-sensitive duties for the grantee for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position). Grantees must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

1. Alcohol tests with a result of 0.04 or higher alcohol concentration;
2. Verified positive drug tests;
3. Refusals to be tested (including verified adulterated or substituted drug test results);
4. Other violations of DOT agency drug and alcohol testing regulations; and
5. The employee's successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable.

If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must seek to obtain this information from the employee.

Grantee must obtain and review this information before the employee first performs safety-sensitive

functions, if feasible. If this is not feasible, the grantee must obtain and review the information as soon as possible. However, the grantee must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the grantee has obtained or made and documented a good faith effort to obtain this information.

If the employee refuses to provide this written consent, the grantee must not permit the employee to perform safety-sensitive functions. If the grantee obtains information that the employee has violated a DOT agency drug and alcohol regulation, the grantee must not use the employee to perform safety-sensitive functions unless the grantee also obtains information that the employee has subsequently complied with the return-to-duty requirements.

Grantees must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions, until and unless the employee documents successful completion of the return-to-duty process.

REASON FOR THE QUESTION

[49 CFR 40.25](#)

SOURCES OF INFORMATION

The reviewer should request to see the grantee's, contractor's, and/or subcontractor's written policies and/or procedures related to hiring safety-sensitive employees to ensure that these requirements are being met. Reviewers should not request to see copies of employee drug test results, consent forms, and/or any other potentially confidential material.

DETERMINATION

If the grantee's contractor's and/or subcontractor's policies and/or procedures properly document that they are following these requirements, the grantee is not deficient. If the grantee can not demonstrate that they are following these requirements, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

Within 30 days, the grantee must develop and implement a process to ensure that the previous drug and alcohol testing records of first-time safety sensitive employees are reviewed.

8. *Are drug and alcohol testing program records maintained in a secure location with controlled access?*

EXPLANATION

The grantee must maintain records on program administration and the test results of individuals for whom the grantee has testing responsibility. The records must be maintained by the grantee in a secure location with controlled access. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records. It is necessary, under this circumstance, for the grantee to maintain a duplicate set of records. It is the responsibility of the grantee to exercise and document oversight/compliance activities to ensure that records are accurate and current and that they comply fully with FTA regulations.

As an example, the grantee should maintain program records in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys.

REASON FOR THE QUESTION

[49 CFR 655.71](#)

SOURCES OF INFORMATION

The drug and alcohol testing program records must be maintained in a secure location with controlled access. The records must be at the grantee's office.

DETERMINATION

If the drug and alcohol testing program records are maintained in a secure location with controlled access, the grantee is not deficient. If the drug and alcohol testing program records are not maintained in a secure location with controlled access, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should move program records to a secure location with controlled access.

9. *Does the grantee prepare and maintain an annual management information system (MIS) report of drug and alcohol test results?*

EXPLANATION

All grantees must prepare, maintain and submit annual reports to FTA summarizing their drug and alcohol testing program results from the previous calendar year. The standard MIS report forms that must be used are on the web at:

<http://www.dot.gov/ost/dapc/>. The MIS forms must be used "as-is"; they may not be combined or modified by a grantee and must be filled out completely. Grantees are responsible for ensuring the annual MIS reports of their contractors with covered employees are prepared, maintained, and submitted to FTA.

The annual reports covering the prior calendar year must be submitted by March 15th to the FTA Office of Safety and Security or its designated agent. The MIS reports can also be submitted on-line at: <http://damis.dot.gov/>. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet.

REASON FOR THE QUESTION

[49 CFR 655.72](#)

SOURCES OF INFORMATION

Copies of the MIS reports must be retained for five years. The grantee should provide documentation that the MIS reports were submitted as required.

DETERMINATION

If the MIS reports are properly submitted, the grantee is not deficient. If a grantee uses contractors, an MIS report must be filed for each of those contractors. If the MIS reports for a grantee and/or contractors are not being submitted, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must prepare and submit all delinquent MIS forms.

10. *What efforts does the grantee make to monitor the FTA Drug and Alcohol testing program requirements of its contractors, subrecipients, or lessees with safety-sensitive employees?*

EXPLANATION

If the grantee contracts with another agency or firm (contractors, subrecipients, or lessees) to provide safety-sensitive functions, it must monitor each contractor's drug and alcohol program proactively over the course of the contract. For example, it is suggested that each contractor provide the grantee a copy of its policy; employee and supervisor training documentation; name and location of the collection site; and name of the DHHS certified testing laboratory. Also, the grantee should consider verifying the credentials and/or certifications of the MRO, Breath Alcohol Technician (BAT), urine collectors and Substance Abuse Professional (SAP). Other documentation may include a description of the contractor's random selection process, quarterly management reports summarizing test results, and annual MIS reports.

Many grantees contract with service providers that already are required to comply with Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations. If this situation exists, special procedures apply and the reviewer should consult FTA Drug and Alcohol Regulation *Updates*, Spring 1996, Issue 2, for more information.

Note that there is no need to solicit information from terminated or former contractors despite the fact that they may have provided service within the previous two fiscal years.

REASON FOR THE QUESTION

49 CFR 655.81

SOURCES OF INFORMATION

At the site visit, the grantee should provide copies of documentation demonstrating that contractors, subrecipients, and lessees are properly monitored. Such documentation may include monitoring reports, site visit reports, memoranda summarizing site visits, and self-certification documentation submitted by the contractors, subrecipients, or lessees. Note: the FTA does not prescribe how a grantee must monitor its contractors, subrecipients and lessees. They simply must show evidence that monitoring is being performed at some level.

DETERMINATION

If the grantee has shown that it is monitoring its contractor(s) proactively, the grantee is not deficient. If the grantee has not made efforts to monitor its contractor(s), it is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to begin monitoring contractors, subrecipients, or lessees with safety-sensitive employees within 30 days.

11. *If the grantee contracts out any or all aspects of its Drug and Alcohol Program, what steps is the grantee taking to monitor vendor (e.g., collection sites, MROs) compliance with program requirements?*

EXPLANATION

If the grantee contracts out any aspects of its Drug and Alcohol Program implementation to a vendor(s), the grantee remains responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, grantees should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. The grantee should not assume that its

vendors are following the correct procedures or that they are knowledgeable about FTA regulations.

REASON FOR THE QUESTION

49 CFR 40.15

SOURCES OF INFORMATION

The grantee should have a written contract with each vendor. The grantee should provide copies of contracts and monitoring reports to show that it is monitoring vendor compliance. Some examples of monitoring activities may include making periodic mock collections, investigating reports by employees of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training. Note: the FTA does not prescribe how a grantee must monitor its vendors. They simply must show evidence that monitoring is being performed at some level.

DETERMINATION

If the grantee has written contracts with vendors and can show that it is monitoring vendor operations, the grantee is not deficient. If the grantee does not have written contracts and/or it cannot show that it is monitoring vendor operations, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee needs to execute contract(s) with vendor(s) and/or begin monitoring the vendor(s) within 30 days.