

Ohio Department of Transportation- FTA Drug & Alcohol Program Technical Assistance Review

Deficiency Report

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Date	March 27, 2015
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Policy Review Interview

#	Question	Finding	Regulation	Action Item
2.	CONTACT PERSON: Does the policy identify the person, office, branch or position designated by the employer to answer employee questions about the anti-drug and alcohol misuse prevention program?	There is a place in the policy for this information, however it is outdated. The new General Manager information is on the page that the employee signs and keeps a copy of but the incorrect contact information is in the current policy.	Section 655.15(a) states that the policy shall provide: "The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employers anti-drug use and alcohol misuse programs."	The DAPM must provide a signed statement certifying that he has read and fully understands the requirements of 49 CFR Part 655.15(a). The DAPM will get the current policy updated to include the contact information for the current General Manager, and provide a copy of the updated policy after it has been signed by the Ride-Ready CEO for the review records.
20.	PRE-EMPLOYMENT ALCOHOL TESTING: If the employer chooses to conduct pre-employment alcohol testing, are all the following requirements	None done- Ohio DOT requires that pre-employment alcohol testing be done for all safety sensitive positions.	Section 655.42 states: "An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with	DAPM must provide a signed statement certifying that he has read and fully understands the requirements of 49 CFR Part 655.42 which states that if an employer

	<p>covered:1) Testing before the first performance of a safety-sensitive function for every covered employee;2) Testing all covered employees for this type of alcohol testing;3) Testing conducted after the employer makes a contingent offer of employment or transfer subject to the employee passing this alcohol test;4) Testing must follow the procedures described in Part 40; and 5) The covered employee must not be allowed to begin performing safety-sensitive duties unless the result is a BAC below 0.02.</p>		<p>the following requirements: (a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions). (b) The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others). (c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test. (d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40. (e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02."</p>	<p>requires pre-employment alcohol testing, the tests must be conducted using the alcohol testing procedures set forth in 49 CFR Part 40. DAPM must add Pre-employment alcohol testing guidelines to the policy.</p>
29.	<p>WHO MUST BE TESTED: Does the policy state that, in a fatality, the following individuals must be tested: All surviving covered employees operating the mass transit vehicle at the time of the accident; and All other covered employees whose performance could have</p>	<p>Covered in section 13, but does not clearly state "All surviving covered employees operating the mass transit vehicle at the time of the accident;"</p>	<p>Section 655.44(a)(1)(i) states: "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 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</p>	<p>DAPM should attempt to clarify the description used in section 13 of the policy under Fatal Accident to clearly indicate that a covered employee operating the revenue service vehicle would be tested.</p>

	contributed to the accident?		Administration rule 49 CFR 389.303(a)(1) or (b)(1)." Section 655.44(a)(1)(ii) states: "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."	
30.	WHO MUST BE TESTED: NON-FATALITY? Does the policy state that, in a non-fatal accident, the following individuals must be tested: All covered employees operating the mass transit vehicle unless their performance can be completely discounted as a contributing factor based on the best information available at the time of the decision; and All other covered employees whose performance could have contributed to the accident?	Covered in section 13, but does not clearly state "All covered employees operating the mass transit vehicle at the time of the accident;"	Section 655.44(a)(2)(i) states: "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 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."	DAPM should attempt to clarify the description used in section 13 of the policy under Non-Fatal Accident to clearly indicate that a covered employee operating the revenue service vehicle would be tested.
31.	REQUIREMENT TO REMAIN "READILY AVAILABLE" FOR TESTING: Does the policy state that a covered employee 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	Covered in section 13, but does not clearly state "covered employee" and does not mention 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.	Section 655.44(c) states: "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."	DAPM should attempt to clarify the description used in section 13 of the policy in the third paragraph to clearly indicate that a covered employee subject to post-accident testing must remain readily available to testing, including notifying the employer of his or her location if leaving the scene of the accident.

	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?			
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Drug and Alcohol Program Manager Interview

22.	How do you record the first date that new hires or transferees begin safety-sensitive functions?	Currently only in each employees record, but will create a spreadsheet of all of those dates, or use template supplied by RLS going forward	Section 655.41(a)(1) states: "Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result."	The DAPM must provide a signed statement certifying that he has read and fully understands the requirements of 49 CFR Part 655.41(a)(1). That the employer must verify that a covered employee has taken a pre-employment drug test with a verified negative result before performing any safety-sensitive duties. DAPM will use the template for the pre-employment testing log supplied by RLS or create his own form to track this required testing. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.
40.	Do you have a way to know if the employee arrived at the collection site in a timely manner? For instance, does the collection site know who is coming for a test and when that individual should arrive?	Employee are transported by DER and DER stays until test is performed. Will add time sign in on Order to Test form from now on. DAPM is not in pool but General Manager/DER is, Ride-Right Director of Safety does notification and GM transports himself to testing, Director of safety will check in with test site to make sure	Section 655.45(h) states: "Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the	The DAPM must provide a signed statement certifying that he has read and fully understands the requirements of 49 CFR Part 655.45(h). That the employer must verify that a covered employee has arrived in a timely fashion for a random drug test DAPM will add a time check in section on the Order for Testing form that

		that he got there in a timely manner.	safety-sensitive function and proceeds to the testing site immediately."	will ensure that this information is tracked. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.
65.	Does this transit system maintain all records related to the drug and alcohol program in a secure location with controlled access?	Yes, in General Manager's Office. He did not however have the key to the file cabinet on his person. He will keep the key on him at all times from now on.	Section 655.71(a) states: "An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access."	The DAPM/DER must provide a signed statement certifying that he has read and fully understands the requirements of 49 CFR Part 655.71(a). That the employer must maintain records in a secure location with controlled access. This statement must also include an explanation from the DAPM/DER of how this requirement will be met moving forward.
71.	Does the transit system have a method to identify if the MRO or C/TPA has not provided a test result in a reasonable period after the test?	Kept on employee file, but not easily summarized. Will begin using tracking form for all testing to ensure that this is met.	Section 40.17 states: "... as an employer, you are responsible for obtaining information required by this part from your service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations."	The DAPM/DER must provide a signed statement certifying that he has read and fully understands the requirements of 49 CFR Part 655.17. That the employer is responsible for ensuring that test results are received within a reasonable period after the test. The DER will create a tracking method for this information. This statement must also include an explanation from the DAPM/DER of how this requirement will be met moving forward.

URINE COLLECTION TECHNICIAN
First Medical Urgent & Family Care

13.	Does the collector ensure that in the privacy enclosure for urination:(1) all sources of clear water have been eliminated, (2) possible specimen contaminants have been removed; and (3) all places where paraphernalia could be hidden were secured or removed?	Collector always inspects the room before the employee enters. When I inspected the room I found that the drop ceiling was not tamper resist and could be reached if a person stood on the toilet. I also discovered open holes in the bottom of the sink that the collector was not aware could be used to hide paraphernalia in.	Section 40.43(b) states: "As a collector, you must do the following before each collection to deter tampering with specimens:(1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets); (2) Ensure that the water in the toilet is blue; (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present; (4) Inspect the site to ensure that no foreign or unauthorized substances are present; (5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;(6) Ensure that undetected access (e.g., through a door not in your view) is not possible;(7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity."	The Collector must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.43(b)(1) and (3) that state all sources of clear water must be removed or secured and that all contaminants must be removed or secured. Collection site needs to be made more secure by taping or marking the ceiling tiles so that it is immediately apparent that they have been tampered with. The holes in the sink need to be plugged or taped over or the collection techs need to inspect them every time the room is used.
14.	If a non-dedicated facility (public restroom or hospital examining room) is used for collections, is the location used for testing secured during drug testing by: 1) visually inspecting the privacy enclosure; 2) assuring that	There was a door in the collection room that led into another exam room on the other side. I was able to open the door easily and in fact found someone waiting for a doctor in the adjoining room. The collector stated that during a real test one of the other nurses stands in front of	Section 40.43(c) states: "If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that: (1) Access to collection materials and specimens is effectively restricted; and(2) The facility is secured against access during the	The Collector must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.43(c). Collection site needs to make sure that the privacy enclosure used for testing is secured against access. The door that joins the collecton

	undetected access (e.g., through a rear door) is prevented; and 3) posting limited access signs during the collection process?	that door on the other side to prevent an employee from opening it. The door should also be blocked shut or locked from the other side during the testing process. I did not see any signage for limited access on either side of the door.	procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted."	room and the other exam room needs to be secured and signs need to be posted to ensure that access to collection materials and specimens is restricted and that the privacy of the employee is guaranteed.
15.	Does the water in the toilet contain a bluing agent? And is the toilet tank secured if it contains a feeder hose, or blued if it does not?	Yes, however the water was not shut off to the toilet and I was able to flush the toilet before exiting the room, allowing clear water to fill the toilet bowl.	Section 40.43(b)(2) states: "Ensure that the water in the toilet is blue." Section 40.43(b)(5) states: "Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank."	The Collector must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.43(b)(2). The collection site needs to add bluing to the toilet tank, or shut the water off to the toilet as well as the sink in the collection site.