

OHIO DEPARTMENT OF TRANSPORTATION

# Drug and Alcohol Program Manager (DAPM) Interview Questions

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## Chillicothe Transit System

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**Ohio Department of Transportation**

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#	Question	Finding	Regulation	Action Item
0	TO START OFF, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT THE REGULATIONS			
1	Do you have a copy of the DOT and Federal Transit Administration testing regulations 49 CFR Parts 40 and 655?	Has it bookmarked on computer, does not have a printed desk copy available	Section 655.11 states: "Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part." The DAPM should have available 49 CF Part 655 to use as a resource in complying with the FTA drug and alcohol testing requirements.	Needs to print it out and have a desk copy available for 655, 40 and 382. Needs to sign up for FTA Quarterly newsletters. RLS will send USB drive with guidelines and websites. Immediate
0	NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT YOUR POLICIES AND PROCEDURES.			
2	Does this employer make available and provide written notice of the availability of the adopted FTA anti-drug and alcohol misuse policy to all covered employees and representatives of any employee organizations? How?	Unsure Does give to each employee and have them sign off on it. In Transit new hire packet. But is not sure where that new hire packet is located. Thinks it is in the Transit office, but is not at her office location.	Section 655.16 states: "Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures."	Needs to keep record of signed receipt of the policy for each employee covered by policy in file available to DAPM and available for review by FTA and ODOT.  Will use sample employee acknowledgement of policy receipt given by RLS.

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3	Does this employer make available and provide written notice of revisions to the adopted FTA anti-drug and alcohol misuse policy to all covered employees and representatives of any employee organizations? How?	Same as above	Section 655.16 states: "Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures."	Same as above
4	Does this employer maintain a record that each employee has received a copy of the anti-drug and alcohol misuse policy, or a written notice that the policy is available for review?	Same as above	Section 655.15 states: "The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee ..." Section 655.16 states: "Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures."	Same as above
5	Does this employer maintain a record that each employee has received a copy of revisions to the anti-drug and alcohol misuse policy, or a written notice that the revised policy is available for review?	Same as above	Section 655.16 states: "Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures."	Same as above

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6	What job categories or functions are considered safety-sensitive at this company?	DAPM is not clear what a safety-sensitive position is, and did not know where to find it in the existing policy. Went over the correct categories at the time of review and sent information on where to find the information in regulation.	Section 655.15 states: "...The [policy] statement must be made available to each covered employee, and shall include the following: ... (b) The categories of employees who are subject to the provisions of this part." Section 655.4 defines "covered employee" as "a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this pa."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.15(b). An employer must know which positions are safety-sensitive and subject to FTA/DOT D&A testing. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.
7	Do you utilize volunteers and are they FTA-covered employees subject to 49 CRF Part 40?	NO	Section 655.4 defines covered employee stating "volunteer is a covered employee 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."	None

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8	Are you notified of all FTA testing, so as to take immediate action, if necessary?	DAPM is DER and receives all testing results. Understands that she needs to take immediate action if positive result is received.	Section 40.3 defines "Designated employer representative (DER)" as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs."	None

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9	Does this employer conduct non-DOT drug and/or alcohol testing and if so is it completely separate (separate random pools, separate CCFs and ATFs, etc.) from DOT testing?	Yes under the City of Cillicothe D&A Policy. Yes has separate pools and procedures in place for separate CCFs and ATFs. Reviewer found two post accident tests that were performed as Non-DOT tests, but one was done on a DOT form by mistake. These tests results were filed in the DOT testing files.	Section 655.15 states: "Policy Statement contents... . The statement must be made available to each covered employee, and shall include the following: ... (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."  Section 40.13 states: "(a) DOT tests must be completely separate from non-DOT tests in all respects. (b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test. © Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.15 (i). An employer must keep Non-DOT testing of employees completely separate from DOT testing. The DAPM must do an affidavit of corrections for the one post-accident test that is on DOT ATF and create a separate file for the Non-DOT tests. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.

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10	Do you ever perform DOT testing above and beyond what is required by FTA? (E.g., an accident that does not exceed FTA thresholds, alcohol pre-employment, etc.)	Not on purpose. Two post-accident tests were performed in 2014 that should not have been done, DAPM was not informed and transit director made decision to send without understanding thresholds. Affidavits of correction need to be done for one of the tests that was done using a DOT ATF.	Section 40.47(a) states: "... as an employer, you are prohibited from using CCF for non-DOT urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations."  Section 40.227(a) states: "... as an employer, BAT, or STT, you are prohibited from using the FTA for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations."	Same as above
11	Are the Federal Drug Testing Custody and Control Form (CCF) and DOT Alcohol Testing Form(ATF) only used for DOT tests, and are they always used when it is a DOT test?	Same as above	Section 40.13(f) states: "As an employer, you must not use the CCF [Federal Drug Testing Custody and Control Form] or the ATF [The DOT Alcohol Testing Form] in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests."	Same as above

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12	If a non-DOT CCF or ATF is used for a DOT test, do you know what the regulations require you to do to correct this flaw?	DAPM stated that she understood that they needed to be corrected, but did not have a procedure in place to do so. RLS provided template for affidavit of correction.	The transit system has until the end of the business day that the error is discovered to correct the mistake with an affidavit that explains the misuse of forms.	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.15. That the transit system has until the end of the business day that the error is discovered to correct the mistake with an affidavit that explains the misuse of forms. The DAPM will use the template affidavit provided by RLS to create her own form to use going forward. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.
13	Before performing a drug or alcohol test, how does the transit system inform each employee of the testing authority (i.e., FTA authority, transit system authority)?	Unsure. DAPM believes it is on the sign off sheet that employees get when they sign off on receiving the policy but she did not have a copy available at the time of the review to check.	Section 655.17 states: "Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.15. That an employer is required to inform a covered employee that the test being requested is required by this part. DAPM will use the template Order for Testing given by RLS to create her own form to use. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.

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14	What information do you provide to the collection site for each DOT test you are requesting?	Current form sent with employee is provided by EDENA and is a general Employer's Authorization for examination or treatment. Is not specific to DOT required D&A testing.	Section 40.14 states: "As an employer, or an employer's service agent – for example a C/TPA, you must ensure the collector has the following information when conducting a urine specimen collection for you: (a) Full name of the employee being tested. (b) Employee SSN or ID number. (c) Laboratory name and address (can be pre-printed on the CCF). (d) Employer name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-A). (e) DER information required at § 40.35 of this part. (f) MRO name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-B). (g) The DOT Agency which regulates the employee's safety-sensitive duties (the checkmark can pre-printed in the appropriate box on the CCF at Step 1-D). (h) Test reason, as appropriate: Pre-employment; Random; Reasonable Suspicion/Reasonable Cause; Post-Accident; Return-to-Duty; and Follow-up. (i) Whether the test is to be observed or not (see § 40.67 of this part). (j) (Optional) C/TPA name, address, phone, and fax number (can be pre-printed on the CCF)."	See above

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			[65 FR 79526, Dec.19, 2000, as amended at 75 FR 59107, September 27, 2010]	
15	How do you ensure that DOT tests can be conducted at all times when safety-sensitive functions may be performed? (I.e., late night, weekends, holidays, maintenance hours, etc., if applicable.)	ADENA provides staff that are on-call and will open the lab to provide testing for post-accident testing after hours. DAPM does not know if random testing is currently done this way, but will check with them.	Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.15(g). That all employers must ensure that random DOT D&A tests are conducted at all times of the day when safety-sensitive functions are performed. DAPM will work with ADENA to ensure that on-call staff will also be available for random testing after their regular hours as needed. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.
16	Do you ever use a hospital for testing on a contingency basis? Do you know that they use documented trained collectors for DOT testing?	No, has used ADENA for last few years.	Section 40.31(a) states "Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing. (b) A collector must meet training requirements of §40.33."	None

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17	Have all safety-sensitive employees received receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?	Yes, all transit employees received a training using Marbles, in 2014 and DAPM has sign-in sheet from that session. Marbles is not a great option for training.	Section 655.14(b)(1) states: "Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. "	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.14(b)(1). DAPM was given document of available on-line training sessions with sign off sheet for each employee. She will review and institute general training for all staff and use for new hires going forward.
18	Have all employees authorized to initiate FTA reasonable suspicion testing received at least 60 minutes of training on the indicators of probable drug use, and 60 minutes of training on the indicators of probable alcohol misuse?	No record available of either the DAPM or action Transit Director receiving any reasonable suspicion training.	Section 655.14(b)(2) states: "Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.14(b)(2). DAPM will arrange for herself and action Transit Director to receive the required reasonable suspicion training and provide documentation of the completed training by both individuals.

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19	For how long do you maintain documentation related to supervisor reasonable suspicion training?	None on file	<p>Section 655.71(c) states: "The following specific records must be maintained: ...  (4) Records related to employee training: ...  (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion."</p> <p>Section 655.71(b) states: "In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule: ...  (2) Two years. Records related to the collection process and employee training."</p>	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.71(b)(c). That reasonable suspicion training records must be kept for a minimum of (2) two years. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.

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20	Does this transit system document Reasonable Suspicion referrals?	None have been made.	Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: ... (iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.71(c). DAPM will use the template for the reasonable suspicion testing log given to her by RLS to create her own form to document reasonable suspicion referrals, and will keep these logs and collection process documents on file going forward.
0	NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT THE PRE-EMPLOYMENT DRUG TESTING PROCESS.			
21	At what point in the hiring process do you require applicants for safety-sensitive positions to pass a FTA pre-employment drug test?	No documentation available on this. DAPM believes that it is done after the interview process, and before the employee begins duties, but is not clear and has no records of this in her files at her office. She thinks they might be available at the Transit Agency Office.	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 she 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 given to her by RLS to create her 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.

#	Question	Finding	Regulation	Action Item
22	How do you record the first date that new hires or transferees begin safety-sensitive functions?	Not done see above	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."	See above
23	Do you perform pre-employment alcohol testing for all/any safety-sensitive positions?	No – 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." Section 655.42 (d) states "The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40. "	DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.42 which states that if an employer requires pre-employment alcohol testing, the tests must be conducted using the alcohol testing procedures set forth in 49 CFR Part 40.
24	If a non-safety-sensitive employee transfers to a safety-sensitive position what testing requirements do you administer prior to allowing the employee to perform safety-sensitive duties?	Explained that pre-employment testing would be required.	Section 655.41(b) states: "An employer may not transfer an employee from a non-safety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result."	None

**Commented [SO1]:** Ohio Systems are required to perform pre-employment alcohol testing.

#	Question	Finding	Regulation	Action Item
25	When a safety-sensitive employee is to be on extended leave (90 or more consecutive days) and will not be performing safety-sensitive functions, how do you handle their placement in the DOT random testing pool and do you do anything upon their return and prior to their performance of safety-sensitive function?	Understood the need for a pre-employment test on return to duty. Was not clear on when to remove from random testing pool. Explained dates and gave referral on where to find regs to follow up on.	Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."	None
26	At what point in the hiring process do you ask the applicant or transferee whether or not they have failed or refused a DOT pre-employment test in the previous two years?	DAPM was not aware of this requirement and does currently request this information from new hires.	Section 40.25(j) states: "As the employer, you 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, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section)."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.25(j). The DAPM must request information from the applicant regarding past failed or refused pre-employment testing and document request and results. The DAPM will use the template for this request supplied by RLS to create her own form to document the requirement going forward.

#	Question	Finding	Regulation	Action Item
0	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT THE RANDOM SELECTION PROCESS.			
27	How and when do you update your DOT random testing pool used for random selections?	DAPM was aware that the administrators of the random testing pool needed to be notified when new covered employees were hired and when covered employees left the transit agency. She faxes the changes to EDENA to make changes. But these adjustments had not been done for a significant period of time before the review. This resulted in covered employees not being in the random draw pool for several months and the necessity of using alternates for multiple random draws. DAPM did not have a clear understanding of the process for removing covered employees on extended leave from the random testing pool.	Section 655.45(e) states: "Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made." The requirement of Section 655.45(e) that "each covered employee shall have an equal chance of being tested each time selections are made" can only be met by the transit system if all employees performing safety-sensitive duties are included in the random testing pool each time random selections are made.	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.45(e). DAPM must state her understanding of the importance of keeping the random pool up to date to ensure that all employees performing safety-sensitive duties are included in the random testing pool and that all employees shall have an equal chance of being tested each time selections are made. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.

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28	What random selection method is used by this employer to select covered employees for FTA drug and alcohol testing?	DAPM uses ADENA to make the random testing draws based on the pool of employees that she supplies. She uses the print-outs that she receives from ADENA and schedules testing once she receives them. She does not know what method ADENA uses to make the selections.	Section 655.45(e) states: "The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.45(e). DAPM will contact ADENA to ensure that they are using a scientifically valid method to make random selections using her pool of covered employees and provide the method as part of her official response.

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29	How frequently does this employer or the C/TPA make random selections?	Quarterly, but DAPM stated that she often does not receive the picks until the second week of each quarter. Review of existing records showed that the picks were received in either the first or second week of each quarter.	Section 655.45(e) states: "... Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made." Generating random selection lists infrequently increases the chance that employee turnover will make meeting Section 655.45(e) unattainable because the transit system does not have an effectively updated testing pool. The preamble to Part 655 states: "FTA believes that the public safety interest is promoted with random testing that is truly random and unpredictable. However, FTA believes that requiring random testing to be conducted at least quarterly strikes a reasonable balance while considering the rule's impact on employers in rural areas."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.45(e). DAPM will contact ADENA and request their written agreement that they will send random selection lists to her at least one week prior to first week of each testing quarter. This will ensure that testing can occur during the first two weeks of the quarter, meeting the requirement that testing be done through the calendar year.

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30	How do you determine if the random test to be conducted will be a random alcohol, random drug or both?	As stated above the DAPM relies on ADENA to make the random selections based on her pool of covered employees and the required minimum testing percentages. It was noted that the 2014 random testing percentages were well above the required minimums at 50% for Drugs and 25% for alcohol. DAPM was not aware of this.	Section 655.45(e) states: "... Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made." Generating random selection lists infrequent increases the chance that employee turnover will make meeting Section 655.45(e) unattainable because the transit system does not have an effectively updated testing pool. The preamble to Part 655 states: "FTA believes that the public safety interest is promoted with random testing that is truly random and unpredictable. However, FTA believes that requiring random testing to be conducted at least quarterly strikes a reasonable balance while considering the rule's impact on employers in rural areas."	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.45(e). DAPM will contact ADENA to request a written statement from them that they will make random selections on a frequency that will meet the quarterly requirements, but not exceed by a large margin the current minimum testing requirements of 25% for drugs and 10% for alcohol.

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31	How is the random selection list transmitted to the DER and who has access to the list?	DAPM receives all of random pull by mail, envelope is large manilla with return address on it. Stamped confidential. Delivered to mayor's office, secretary sorts mail. Puts unopened envelope in DAPM's box. DAPM is only one to open it. If she is not there it does not get opened. DAPM puts it in another envelop, sealed and addressed to manager at transit. Marked confidential and delivered, sometimes by DAPM, sometimes by utility person from transit.	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." To ensure that the random testing process is not compromised, random testing lists should be transmitted by a secure means and only to individuals authorized to receive such information.	The DAPM must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.71(a). The DAPM must create a secure process for transmitting testing lists to ensure that the random testing process is not compromised. Individuals authorized to receive and act on the random testing lists need to be identified and the process needs to ensure that only these individuals have access to the lists. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.
32	Does this transit system conduct random testing on all work days, when safety-sensitive functions are being performed, including weekends and holidays?	No, does not test in the first two weeks of the first month of each quarter due to the late receipt of the testing list from ADENA	Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."	See #29 above.

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33	Does this transit system conduct random testing at all times that safety-sensitive functions are being performed (including maintenance of revenue vehicle, movement of revenue vehicles, etc.)?	<p>No. The system runs from 7am-10pm Monday through Saturday. DAPM was not sure what the hours the maintenance staff were on duty.</p> <p>The majority of the tests performed were on Wednesdays during the 10:am hour. See enclosed charts. There were no tests performed prior to 9am and none performed after 3:30pm. At least one test was done on each service day, but the majority (5) were done on Wednesdays.</p>	Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.45(g) that states random testing must be conducted during all times of the day that safety-sensitive functions are performed in an unpredictable manner. Never testing before 900AM or After 330PM and having the majority of tests on Wednesday presents a clearly identifiable pattern to the employees. This predictable pattern could be used to schedule timing of employee drug/alcohol use to avoid detection. That is, for example, an employee knows that they could drink all the alcohol they wanted as long as it was after 330pm. The DAPM will use the spreadsheet template provided by RLS to track random tests and must indicate, in a written response, what actions will be taken to ensure this requirement is accomplished in the future.

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34	After being informed of the test requirement, how long until the employee proceeds to the collection site? How long is the employee given to arrive at the collection site?	No way of knowing this currently. Employees are sent for testing on their own, and there is no documentatin of when the employee is sent or when they arrive at test site.	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 safety-sensitive function and proceeds to the testing site immediately."	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.45(h) which states that covered employees must proceed to the test site immediately. The DAPM will use the order for testing template provided by RLS to create her own form that will include a section to record when the employee was notified to proceed to testing and when the employee arrived at the testing site. The DAPM's statement will include a copy of this tracking document and an explanation of how this document will be used to keep ongoing record of compliance with this requirement.
35	If the DAPM is safety-sensitive and is in the random pool and the DAPM's name is selected for a random test, how is the DAPM made aware that their name is on the current random selection list and when does the DAPM proceed for random testing?	The DAPM is not safety sensitive and not part of the random testing pool.	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 safety-sensitive function and proceeds to the testing site immediately."	None

#	Question	Finding	Regulation	Action Item
36	When, if ever, would you excuse an employee, selected for a random test, from random testing?	For termination of employment, vacation and leave of absence over 90 days.	Section 655.45(e) states: "... Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made." The requirements in Section 655.45(e) can not met if employees can be excused when they are legitimately at the work site and available for testing. A valid excusal from testing can result if an employee is not working the day of the test (e.g., vacation, long term disability, illness). Excused employees must be tested when they return to work provided the employee returns before the next random selection list is generated. For instance, if a new list is generated each week, the old list expires when the new list arrives. Likewise if a new list is generated each month or each quarter, the previous list expires when the new list is provided.	None
37	If the DAPM or another non-active employee is safety-sensitive and is notified to proceed for random alcohol testing, how does this system ensure that the DAPM is only subject to random alcohol testing just before, during, or just after the performance of safety-sensitive functions?	N/A		None

#	Question	Finding	Regulation	Action Item
38	Do you use alternates in your random selection process? Under what circumstances would you notify an alternate that they must proceed to the collection site for a random test?	Yes, alternates were used often in 2014 due to the random pool not being updated to remove covered employees who were no longer eligible.	Section 655.45(e) states: "... Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made."	See # 27 above
39	Do you document if an employee is not tested or excused during a random selection period? If so, how?	Yes, DAPM writes it on the random selection list, but needs to include more detail as to why the selected employee is not available for testing.	Section 655.45(e) states: "...Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made " Written explanations for why employees are excused from testing ensure there is no bias in the random selection process. Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: ... (ii) Documents relating to the random selection process."	Add to #27 above. The DAPM will record detailed reason why an employee selected for random testing will not be used and why an alternative is being requested and used.

#	Question	Finding	Regulation	Action Item
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?	No, see #34 above	<p>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."</p> <p>Section 40.191(a) states: "As employee, you have refused to take a drug test if you 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."</p> <p>Section 40.61(a) states: "As the collector, you must take the following steps before actually beginning a collection: When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing."</p>	See #34 above.

#	Question	Finding	Regulation	Action Item
41	After the testing is complete, does this transit system maintain a copy of each random selection draw list (e.g., paper copy, electronic file)?	Yes	Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: (i) Collection logbooks, if used. (ii) Documents relating to the random selection process.	None
42	Did you and your contractors meet the FTA's minimum random testing rates last year?	Yes, well over minimum rates.	Section 655.45(a) states: "Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator."	None
0	NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT POST-ACCIDENT TESTING.			

#	Question	Finding	Regulation	Action Item
43	Who is responsible for deciding to perform a FTA post-accident test? (If DAPM, ask for knowledge of thresholds.)	This is unclear at this time. DAPM said that she has final authority, but the acting transit director made referral for two post-accident tests that did get recorded on the MIS even though they should not have been DOT tests. DAPM did not have adequate knowledge of post-accident thresholds and stated that acting transit director (DER) did not either.	Section 40.3 defines "Designated employer representative (DER)" as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs."	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.3 which states that a DER must take full responsibility to remove employees from safety –sensitive duties and to make required decision in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. As part of this statement the DAPM must clearly designate the roles of the DAPM, DER and state who is filling each role for the Chillicothe Transit System.
44	Who has the primary responsibility for assuring that post-accident testing is accomplished?	The DAPM stated that it was her responsibility, but it was then made clear that she was unaware of the two past post-accident test that were done until after they were completed.	Section 40.3 defines "Designated employer representative (DER)" as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs."	Same as above.

#	Question	Finding	Regulation	Action Item
45	Does this transit system have some method to document the post-accident decision-making process, especially decisions not to conduct a drug and alcohol test following an accident that reaches an FTA threshold?	No there were none in place	Section 655.44(d) states: "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." Section 655.71© states: "The following specific records must be maintained: (1) Records related to the collection process: ... (iv) Documents generated in connection with decisions on post-accident drug and alcohol testing."	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.44(d) and 655.71(c) which explains the decision making process for determining of post-accident testing is required and the required documentation process. The DAPM will use the post-accident decision tree and post-accident testing log templates that were supplied by RLS to create a clear and comprehensive post-accident testing decision and testing process. The DAPM will then ensure that any employee designated as a DER is properly trained to complete these processes in her absence.

#	Question	Finding	Regulation	Action Item
46	Would you always perform a DOT post-accident drug and alcohol test after an accident involving a fatality?	The DAPM did answer yes to this question, but appeared to be uncertain if that was the correct answer or not.	<p>Section 655.44(a) states: "(1) Fatal accidents.</p> <p>(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 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)."</p> <p>No discretion is permitted by FTA in determining if a surviving employee is to be post-accident tested after an accident involving a fatality."</p>	None

#	Question	Finding	Regulation	Action Item
47	Can you list and explain the FTA post-accident testing thresholds? And explain disabling damage?	No the DAPM was not able to fully articulate any of the post-accident testing thresholds beyond the one involving a fatality.	<p>Section 655.4 defines the term "Disabling damage" as "damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.</p> <p>(1) Inclusion. Damage to a motor vehicle where the vehicle could have been driven, but would have been further damaged if so driven.</p> <p>(2) Exclusions. (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.</p> <p>(ii) Tire disablement without other damage even if no spare tire is available.</p> <p>(iii) Headlamp or tail light damage.</p> <p>(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable."</p>	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.44 which detail the requirements and testing thresholds for FTA post-accident testing. Combine with numbers 43-46 above.

#	Question	Finding	Regulation	Action Item
48	In addition to the operator of a transit vehicle, can other covered employees be post-accident tested under FTA authority? If so, under what circumstances?	DAPM did not have knowledge of which position would also be referred to FTA post-accident testing and under what circumstances.	Section 655.44(a) states: "(1) Fatal accidents... (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." Section 655.44(a) states: "(2) Nonfatal accidents. (i) 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."	Combine with above
49	Can an FTA post-accident drug test be performed on an employee who is unable to give consent due to death or unconsciousness?	DAPM did not have knowledge of this or the regulations around it.	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." Section 40.61(b)(3) states: "You [the collector] must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee... ."	Combine with above

#	Question	Finding	Regulation	Action Item
50	When would you commence drug and alcohol testing after an accident?	DAPM did not have knowledge of this regulation.	<p>Section 655.44(a) states: "(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 ..."</p> <p>(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 ...".</p> <p>Section 655.44(e) further states: "Nothing in this section shall be 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."</p>	Combine with above

#	Question	Finding	Regulation	Action Item
51	What are the time limits for drug and alcohol post-accident testing? (if DAPM is involved in post-accident decision-making process)	DAPM did not have any knowledge of the time limits for drug and alcohol post-accident testing.	Section 655.44 (ii) states: "(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. Section 655.44(b) states: "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."	Combine with above
52	What would be the result if an employee fails to remain "readily available" for testing after an accident?	DAPM did not have knowledge of this regulation.	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."	Combine with above

#	Question	Finding	Regulation	Action Item
53	Does this company provide the contact information of a qualified Substance Abuse Professional (SAP) readily available to assist any employee who has refused a test or had a positive test? Even if the employee is to be terminated?	DAPM thought that they did, but when reviewer investigated it became clear that the agency that SAP referrals were going to was not qualified as a SAP.	Section 655.62(a) states: "If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs." Section 40.287 states: "As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent."	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.62(a) and Part 40.287. The DAPM will research and secure a properly credentialed SAP to be used as a referral when needed and will send the SAP's contact information and a copy of their credentials as part of the response statement. The DAPM will also create a clear process which includes documentation for when a SAP referral is needed. The DAPM must also provide the following from the identified SAP to show that he/she is qualified as a DOT SAP: <ol style="list-style-type: none"> <li>1. Proof of credentialing in accordance with 49 CFR Part 40.281(a)</li> <li>2. Proof of qualification training meeting the requirements of 49 CFR Part 40.281(C)(1)</li> <li>3. Proof of having successfully completed an examination administered by a nationally recognized professional or training organization in accordance with 49 CFR Part 40.281(c)(2)</li> <li>4. Proof of 12 hours of continuing education credits during each three year period from the date of the</li> </ol>

#	Question	Finding	Regulation	Action Item
				qualification training in accordance with 49 CFR Part 40.281(d).
0	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT RETURN-TO-DUTY AND FOLLOW-UP TESTING			
54	Who would be the person responsible for ensuring that an employee who had a positive drug or alcohol test, or refused a test, was referred to the Substance Abuse Professional, even if the employee is not eligible for reinstatement?	The DAPM stated that she is responsible for the referral to a SAP in all instances.	Section 655.62(a) states: "If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs."	None

#	Question	Finding	Regulation	Action Item
55	Does this transit system have a second chance policy for employees who refuse or test positive on an FTA drug and/or alcohol test?	Yes, but the policy was last updated in 1998 and is not current on return to duty and follow up testing requirements.	The ... policy ... should include the following: (h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.	The DAPM needs to create an updated Drug and Alcohol policy for the Chillicothe Transit system using the template policy supplied by RLS. This policy need to have detailed policy in place to address the second chance policy requirements.

#	Question	Finding	Regulation	Action Item
56	If the SAP determines that an employee is eligible to be reinstated, who determines that the employee is ready to be sent for a Return-to-Duty test and makes the final "fitness for duty" determination?	The DAPM understood that she was responsible for scheduling return to duty testing and follow up testing, but did not know the requirements for the return to duty testing and follow up testing in regards to the amount of testing and length of testing allowed.	<p>Section 40.305 states: "(a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.</p> <p>(b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.</p> <p>(c) As a SAP or MRO, you must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee</p>	None

#	Question	Finding	Regulation	Action Item
			back to work in a safety-sensitive position."	
57	Does this employer receive a written SAP evaluation of an employee's readiness to return to duty and a follow-up testing plan? (If Yes, ensure that records-review team has appropriate files for review.)	The DAPM received a written evaluation and follow up testing plan from the current treatment facility that she is using, for a non-DOT test, but this is not a credentialed SAP program. She also was not aware that the follow up testing plan did not meet the minimum testing requirements.	Section 40.307 states: "(a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment." (b) You [the SAP] must present a copy of this plan directly to the DER (see Section 40.311(d)(9))." Section 40.311(d) states: "The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items: ... (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance; (9) Follow-up testing plan..."	As noted in the action step for #53 the DAPM needs to find and secure a credentialed SAP to use for referral for employees. The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.305 and 307. The DAPM needs to understand the requirements of a second chance policy including return to duty and follow up testing.

#	Question	Finding	Regulation	Action Item
58	Whose responsibility is it to determine the number of follow-up tests for an individual returning to duty?	The DAPM had no idea what the required minimum number of follow-up testing was and did not realize that multiple testing was required, or who was responsible for setting the follow-up testing plan.	Section 40.307(c) states: "You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol."	See above
59	Is the returning employee made aware of the specifics of the follow-up testing schedule (days and times of tests) or is the employee unaware until notification, similarly to random testing?	DAPM was not aware that follow-up testing needed to be as unannounced and unpredictable as random testing.	Section 40.309(b) states: "(b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice."	See above
60	Do you review each return-to-duty plan/schedule submitted by the SAP?	Yes, but DAPM does not understand the requirements of a return-to-duty plan.	Section 40.309(a) states: "As the employer, you must carry out the SAP's follow-up testing requirements." In order to comply with Section 40.309(a), the employer must review and understand the SAP's return-to-duty plan for each employee.	See above

#	Question	Finding	Regulation	Action Item
61	Who is responsible for ensuring that the SAP's follow-up testing plan for each employee is followed? (Ask to see plan and CFFs/ATFs - Ensure that Records-review team has appropriate files.)	DAPM understood that she was responsible for ensuring that the plan was completed, but had no idea what the basic requirements of a plan were.	Section 40.309(a) states: "As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP."	See above
62	Whose responsibility is it to determine when an employee must actually go for a follow-up test?	DAPM understood that she was responsible for sending employees for follow up testing, but was not aware that the testing needed to be as unannounced and unpredictable as random testing.	Section 40.309 states: "(a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP. (b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice." Section 40.307(d)(3) states: "You [the SAP] are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's."	Same as above
63	Would you always conduct return-to-duty and follow-up tests under Direct Observation conditions?	Yes	Section 40.67(b) states: "As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test."	None

#	Question	Finding	Regulation	Action Item
64	What would you do if you found out that a return-to-duty or follow-up test was not conducted under Direct Observation conditions?	DAPM understood that she would have to schedule another test for the employee to be done under direct observation.	40.67(b) states: "(b) As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test."	None
0	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT YOUR DRUG AND ALCOHOL INFORMATION SYSTEM AND METHODOLOGY.			
65	Does this transit system maintain all records related to the drug and alcohol program in a secure location with controlled access?	The records that were in the DAPM's office were in a secure location. It is unclear if there are records relating to the drug and alcohol at the transit office and if they are in a secure location.	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 must provide a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.71(a) and she must explain the new methods of drug and alcohol records maintenance at Chillicothe Transit that will ensure the records are kept in a secure location with controlled access.

#	Question	Finding	Regulation	Action Item
66	Are you notified of alcohol test results of $\geq 0.02$ ? If so, when and by what method?	Yes, by phone call, followed up by mail notification.	Section 40.255(a)(5) states: "Immediately transmit the result directly to the DER in a confidential manner. (i) You [the BAT] may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents."	None
67	What action would you take upon verbal notification that an employee had an alcohol test result $\geq 0.04$ ? What about 0.02?	.04 > DAPM would notify transit manager to remove employee from schedule for safety sensitive duties, and make referral to SAP. $>0.02$ SAP would make sure that employee is removed from safety sensitive duties until a second test is done and comes back negative. Referral would be made to SAP	Section 40.23 © states "As an employer who receives an alcohol test result of 0.04 or higher, you must immediately remove the employee involved from performing safety-sensitive functions. If you receive an alcohol test result of 0.02—0.039, you must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test"	None

#	Question	Finding	Regulation	Action Item
68	When an employee has a positive FTA drug test result, by what method and how soon after the test is verified does the MRO or C/TPA notify the transit system?	By phone, followed by mail notification. Notification comes within 1 day.	<p>Section 40.167 states: "As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:</p> <p>(a) You must report the results in a confidential manner.</p> <p>(b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation adulterated or substituted specimen results, and other refusals to test.</p> <p>(1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163)."</p> <p>Section 40.167(c) states: "You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.</p> <p>(1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see 40.163(b) and (c)).</p> <p>(2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report."</p>	None

#	Question	Finding	Regulation	Action Item
69	What action would you take upon verbal notification from the MRO/TPA that an employee had verified positive drug test?	DAPM would notify transit manager to remove the employee from safety sensitive duties and begin second chance process, beginning with referral to SAP.	Section 40.23(a) states "As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test."	None
70	Have the transit system and the MRO or C/TPA established a password or other verification method to ensure that verbal transmission of positive test results from the MRO is secure?	Yes	Section 40.167(b) states: "You (the MRO or C/TPA) must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test. (1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163). (2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification."	None

#	Question	Finding	Regulation	Action Item
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?	No	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 must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.17. DAPM needs to use the templates for testing logs given to her by RLS to create complete documentation that will allow her to better track testing and test results.
72	Do you use a consortium or third-party administrator (C/TPA)?	DAPM contracts with ADENA to provide random testing lists only.		None
0	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT CONTRACTORS THAT PROVIDE SAFETY-SENSITIVE SERVICES FOR THIS TRANSIT SYSTEM.			DAPM does not know if there is currently a contract in place that would require monitoring for D&A policy compliance. There is an arrangement with an agency that uses office space at the transit building, but she is not sure how that is set up or if any services are being shared or provided beyond office space. This needs to be researched and clarified so that the proper monitoring can take place if needed.

#	Question	Finding	Regulation	Action Item
73	Are you aware of all safety-sensitive contracts, and do you monitor contractor compliance with Parts 40 and 655?	No	<p>Section 40.11 states: "(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.</p> <p>© All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations.</p> <p>Compliance with these provisions is a material term of all such agreements and arrangements."</p> <p>Section 655.81 states: "A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655]."</p> <p>Correctly identifying contractors who must comply with FTA drug and alcohol testing requirements is the first step in the oversight process."</p>	<p>The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 40.11 and 655.81.</p> <p>The DAPM needs to research the existing arrangement with the DD provider currently using Chillicothe Public Transit office space and provide a statement as to status of contractual agreement and the scope of services being shared or provided for each party. This statement must also include an explanation from the DAPM of how this requirement will be met moving forward.</p>
74	Does this employer utilize contractors who perform safety-sensitive duties?	Unknown see above		See above

#	Question	Finding	Regulation	Action Item
75	How do you monitor the drug and alcohol programs of your contractors?	None currently being done, see above	Section 40.11(b) states: "You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations." Section 655.81 states: "A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655]." Section 655.73(i) states: "An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR Parts 40 and 655."	See above
76	Did you receive this year's Drug and Alcohol MIS reports or MIS data from all of your contractors in a timely manner and were they submitted to FTA by March 15th?	See above	Section 655.72(c) states: "Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf."	See above

#	Question	Finding	Regulation	Action Item
77	Are your covered contractors and vendors in compliance with the FTA drug and alcohol rules?	Unknown see above	Section 40.11(b) states: "You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations." Section 655.81 states: "A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655]."	See above
0	NOW, I WOULD LIKE TO ASK YOU A FEW QUESTIONS ABOUT THIS COMPANY'S DRUG AND ALCOHOL MIS REPORT.			

#	Question	Finding	Regulation	Action Item
78	Does this employer assemble an annual summary of the results of the drug and alcohol program (MIS), certify that the results are correct and as requested submit to FTA by March 15th?	DAPM completed DAMIS report and submitted on time. Did not understand that the Non-DOT post-accident tests that were done should not have been reported on the MIS.	Section 655.72 states: "(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year. (b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs. © Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf."	The DAPM must submit a signed statement certifying that she has read and fully understands the requirements of 49 CFR Part 655.72. DAPM needs to understand the difference between DOT required and non-DOT required tests so that she can fill out the MIS correctly.

#	Question	Finding	Regulation	Action Item
79	Did the employer ensure the accuracy and timeliness of each report submitted by the employer, contractor, consortium and/or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf?	None submitted, see above	<p>Section 655.72 states: "(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.</p> <p>(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.</p> <p>© Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf."</p>	See above

#	Question	Finding	Regulation	Action Item
88	Was the Drug and Alcohol Program Manager prepared for the audit team, and did the DAPM cooperate with the audit team and facilitate the audit process, including producing the required records?	The DAPM was not prepared for the audit team and did not have all of the requested records available for viewing. Some of the records are located at the transit office. The DAPM did cooperate with the audit team to the best of her ability, but was not able to produce some required information and at times did not understand the requirements of the program.	Section 655.73(c) states: "An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems." Section 655.73(d) states: "An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request."	
0	THAT WAS THE LAST QUESTION. THANK YOU FOR YOUR TIME AND INPUT.			