

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

**Deficiency Report**

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**DRUG AND ALCOHOL PROGRAM MANAGEMENT**

#	Question	Finding	Regulation	Action Item
1.	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?	Acknowledgement forms and updates; The current FTA drug & Alcohol policy being used needs slight updates to be compliant with FTA and USDOT regulations.	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."	RLS has provided revisions to the policy with the most recent updates included. This policy must be adopted by the board and made available to all covered employees.

2.	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)?	The DAPM is utilizing a notification for testing form that is provided by their collection site, Corporate Health. However, there are some missing elements that will need to be added to the notification form	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 the steps that have been taken to ensure an updated notification for testing form includes the additional following elements: <ul style="list-style-type: none"> <li>• There must be an area for the DAPM to indicate that the test is to be conducted under the authority of the "FTA"</li> <li>• There must be an area for the DAPM to indicate that an "alcohol" test is required. On the current form, there is only an option for drug testing.</li> </ul>
3.	Does this transit system document Reasonable Suspicion referrals?	At the time of the review, the DAPM did not have an establish procedure or form to document reasonable suspicion referrals.	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 DAPMs must provide a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.71(c) that states the determination to conduct a reasonable suspicion test must be documented. RLS provided the DAPM with a form that could be used to meet this requirement.
4.	Do you perform pre-employment alcohol testing for all/any safety-sensitive positions?	No; however, all transit systems in the State of Ohio receiving funds through Ohio DOT are required to conduct pre-employment alcohol testing.	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. "	The DAPMs must submit a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.42 that states the provisions for conducting pre-employment alcohol testing. Furthermore, RLS has indicated within the RTC Drug & Alcohol Policy Review, certain provisions that must be added to the RTC Drug and Alcohol Policy that address pre-employment alcohol testing (please refer to the Policy Review for specific revisions).

5.	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?	Unsure	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."	The DAPM must provide a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.41(d) that states when a covered employee has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and has not been in the random test pool during that time, that the employer must ensure the employee takes a pre-employment drug test with verified negative results prior to returning to the performance of safety-sensitive functions.
6.	How is the random selection list transmitted to the DER and who has access to the list?	The random selection list is emailed to Tonya from Corporate Health. Tonya then passes the random selection list onto Russ (Transit Manager (who is not in the random testing pool)), Russ takes the list and gives it to one of the dispatchers (who are in the random testing pool) and the dispatchers finally are the one to tell the employee that was selected to report for testing.	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 current process of notifying a selected employee of the requirement for random testing has a high likelihood of compromise. Random testing selection lists should only be transmitted to individuals authorized to receive such information. Furthermore, random selection lists must be maintained in a secure location with controlled access.  The DAPMs and Transit Manager must provide a signed statement detailing the updated step-by-step procedures that will be implemented to reduce the likelihood of compromise. The DAPMs must also submit a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.71(a) that states the random selection list must be maintained in a secure location with controlled access.

7.	Does this transit system conduct random testing on all work days, when safety-sensitive functions are being performed, including weekends and holidays?	Since beginning operations, all random tests were conducted on the same day.	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 DAPMs and the Transit Manager must submit a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.45(g) as well as Section 4, Chapter 6 of the Federal Transit Administration's "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit" that state random drug and alcohol tests must be spread reasonably throughout the calendar year, the testing quarter, the months of the quarter, the weeks of the month, and the days of the week.
8.	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.)?	Since beginning operations, all random tests were conducted at the same time of day.	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 DAPMs and the Transit Manager must submit a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.45(g) as well as Section 4, Chapter 6 of the Federal Transit Administration's "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit" that state random drug and alcohol tests must be conducted and spread throughout all times of the day when safety-sensitive functions are performed.
9.	When, if ever, would you excuse an employee, selected for a random test, from random testing?	Unsure	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	The DAPMs must submit a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.45(e) that states an employee selected for random testing may only be excused from testing if they are legitimately unavailable for testing during the entire testing period.

			<p>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.</p>	
<p>10.</p>	<p>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?</p>	<p>Not at this time.</p>	<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."  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."  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>	<p>The DAPMs and Transit Manager must submit a signed statement explaining the procedures that will be implemented to ensure a mechanism is in place to know if the employee has arrived at the collection site in a timely manner.</p>

11.	Who is responsible for deciding to perform a FTA post-accident test? (If DAPM, ask for knowledge of thresholds.)	Undefined	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 DAPMs and Transit Manager must provide a signed statement identifying the individual(s) that will be responsible for deciding to perform a FTA post-accident test when required. This individual must be someone authorized by RTC industries to remove employees from the performance of safety-sensitive functions.
12.	Would you always perform a DOT post-accident drug and alcohol test after an accident involving a fatality?	Unsure	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 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)." No discretion is permitted by FTA in determining if a surviving employee is to be post-accident tested after an accident involving a fatality."	The DAPMs and Transit Manager must provide a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.44(a)(1)(i) that states as soon as practicable following an accident involving the loss of human life, the employer must conduct drug and alcohol testing on each surviving covered employee operating the transit vehicle at the time of the accident as well as any other covered employees who could have contributed to the accident.

13.	Can you list and explain the FTA post-accident testing thresholds? And explain disabling damage?	Unsurer	<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>	<p>The DAPMs and Transit Manager must provide a signed statement certifying that they have read and fully understand the requirements of the following provisions that define and discuss the post-accident thresholds that would require FTA post-accident testing to occur:</p> <ul style="list-style-type: none"> <li>• 49 CFR Part 655.4 "Disabling Damage";</li> <li>• 49 CFR Part 655.44; and</li> <li>• Chapter 6, Section 3 of the FTA's "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit"</li> </ul>
14.	What are the time limits for drug and alcohol post-accident testing? (if DAPM is involved in post-accident decision-making process)	Unsure	<p>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.</p> <p>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."</p>	<p>The DAPMs and Transit Manager must provide a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.44(ii) and 49 CFR Part 655.44(b) that state the FTA post-accident alcohol test can't be conducted after 8 hours of the time of the accident and that the FTA post-accident drug test can't be conducted after 32 hours after the time of the accident.</p>

15.	What would be the result if an employee fails to remain "readily available" for testing after an accident?	Unsure	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."	The DAPMs and Transit Manager must provide a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 655.44(c) that states if a covered employee fails to remain readily available for testing after an accident may be deemed by the employer to have refused to submit to testing.
16.	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?	No credentials on file	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 provide copies of the credentials of a USDOT-Qualified SAP to include each the following: 1. One of the following credentials as listed in 49 CFR Part 40.281: a. Licensed physician (MD or DO) b. Licensed of Certified social worker c. Licensed of Certified Psychologist d. State Licensed Marriage and Family Therapist e. Licensed of Certified Employee Assistance Professional f. Drug and Alcohol conselor certified by NAADAC, ICRC, or NBCC 2. USDOT-SAP Qualification Training Certificate and Evidence of passing an exam based on the training

17.	What action would you take upon verbal notification that an employee had an alcohol test result $\geq 0.04$ ? What about 0.02?	The employer was unaware of the requirement for an employee that had an alcohol test result of equal to or greater than 0.02 but less than 0.04	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"	The DAPMs must provide a signed statement certifying that they have read and fully understand the requirements of 49 CFR Part 40.23(c) that states if an employee has a alcohol test result of 0.02-0.039, they must be removed from performing safety-sensitive duties for a period of at least 8 hours.
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**BREATH ALCOHOL TECHNICIAN**  
Nikki Aten, Corporate Health Services

No Findings
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**URINE COLLECTION TECHNICIAN**  
Nikki Aten, Corporate Health Services

18.	Do you have:(1) a current copy of 49 CFR Part 40, and (2) the current "DOT Urine Specimen Collection Guidelines?"	Collection Site need to obtain the most recent (2014) version of the Urine Specimen Collection Guidelines	Section 40.33(a) states: "Basic information. You must be knowledgeable about this part, the current "DOT Urine Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom you perform collections, and you must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site ( <a href="http://www.dot.gov/ost/dapc">http://www.dot.gov/ost/dapc</a> )."	The Collector must provide evidence that the collection site has obtained access to the most recent version of the Urine Specimen Collection Guidelines (July, 2014). This can be accessed for free at the following URL: <a href="http://www.dot.gov/odapc/urine-specimen-collection-guidelines">http://www.dot.gov/odapc/urine-specimen-collection-guidelines</a>
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