

18. DRUG AND ALCOHOL PROGRAM

PURPOSE OF THIS REVIEW AREA

Recipients receiving Section 5307, 5309, 5311, or 5339 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

QUESTIONS TO BE EXAMINED

1. Does the recipient have a board-adopted drug and alcohol misuse policy?
2. Does the recipient provide the minimum required training for all covered employees and supervisors/officers?
3. Does the recipient obtain drug and alcohol testing records from employees' prior employers and are all records stored in a secure location with controlled access?
4. Do all medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications?
5. Does the recipient ensure that the drug and alcohol testing programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees administer their drug and alcohol programs in accordance with 49 CFR parts 40 and 655?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Copy of board-adopted drug and alcohol policy with date of board adoption
- List of covered employees placed in safety-sensitive positions and supervisors or company officials charged with making reasonable suspicion determinations during the review period (include name and date placed in position or first began making reasonable suspicion determinations)
- Training programs for covered employees and supervisors
- Certificates of service agents
- List of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees

DA1. Does the recipient have a board-adopted drug and alcohol misuse policy?

BASIC REQUIREMENT

Recipients of Sections 5307, 5309, 5311 or 5339 funds must have a board-adopted anti-drug and alcohol misuse policy.

APPLICABILITY

Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER

The recipient and its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees as defined by 49 CFR part 655 must have a drug and alcohol testing policy detailing the provisions of their drug and alcohol programs. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments.

Note: On October 17, 2018, FTA published a dear colleague letter "2019 Random Drug Testing Increase." FTA, as mandated by its drug and alcohol regulation for random testing, at 49 CFR 655.45, will increase the minimum rate of random drug testing from 25 percent to 50 percent of covered employees for employers subject to FTA's drug and alcohol regulation, which takes effect January 1, 2019. This increased random drug testing rate results from a recent uptick in the proportion of violations identified through random drug testing.

The 50 percent random drug testing rate will apply to entities receiving Federal assistance under 49 USC 5307, 5309, 5311 or 5339, including recipients, subrecipients, and safety-sensitive contractors. The required minimum rate for random alcohol testing is unaffected and will remain at 10 percent for calendar year 2019.

The following checklist identifies the minimum requirements of a drug and alcohol testing policy as defined by 49 CFR 655.15.

***Items will be examined during a baseline Comprehensive Review**

- (1) *Proof of policy adoption by the appropriate governing body or other “final authority” with effective date indicated
- (2) *Identity of the person, office, or position designated by the employer to answer questions about the anti-drug and alcohol misuse program
- (3) *Categories of employees who are subject to testing
- (4) *Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs
- (5) *Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty (only for employers with a second-chance policy), and follow-up testing (only for employers with a second-chance policy))
- (6) Drug and alcohol testing procedures consistent with 49 CFR part 40, as amended
- (7) Requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations
- (8) Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the US Department of Transportation (US DOT) program:
 - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer after being directed to do so by the employer
 - b. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test)
 - c. Fail to provide a urine specimen for any drug test or an adequate amount of saliva or breath for any alcohol test required by this part or US DOT agency regulations
 - d. Fail to provide a sufficient amount of urine or breath specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
 - e. Fail or decline to take an additional drug test the employer or collector has directed to be taken
 - f. Fail to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) or employer as part of the drug test verification process, or employer as part of the insufficient breath procedures. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.
 - g. Fail to sign the certification at Step 2 of the alcohol testing form
 - h. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)
 - i. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the provision of a specimen
 - j. For an observed collection, fail to follow the observer’s instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process
 - k. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
 - l. Admit to the collector or MRO that the specimen was adulterated or substituted
 - m. Instead of listing all the refusals, the policy may state that refusals to test are listed in 49 CFR part 40, as amended, or 49 CFR 40.191, as amended, for drug tests and 49 CFR 40.261, as amended, for breath tests. The policy should then state that a copy of 49

CFR part 40 is available upon request. However, if the policy lists any refusals to test, the policy must list all of them

- (9) *Description of the consequences for a covered employee who has a verified positive drug test result, a confirmed alcohol test with an alcohol concentration of 0.04 or greater, or refuses to submit to a test, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be referred to a substance abuse professional
- (10) *Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04
- (11) Policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 that states that if the MRO informs the agency that a negative drug test was dilute, the agency may, but is not required to, direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, the recipient must not retest some employees and not others. The recipient may retest for some types of tests (e.g., pre-employment tests) and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record

Federal Railroad Administration (FRA) regulations cover commuter rail operations. United States Coast Guard (USCG) regulations cover ferry vessel operations. The policy, which would include elements required by USCG, must require employees considered safety-sensitive by the USCG (crew members with a merchant mariners document or under a certificate of inspection) to submit to random alcohol tests under FTA authority.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have a drug and alcohol policy?*
- b. *When was the policy adopted by the governing board?*
- c. *Does the policy include all the required elements listed in the chart below?*

Drug and Alcohol Policy Required Element	Page No.	Reviewer Comments
1. Proof of policy adoption by governing body or other "final authority"		
2. Identity of contact person, office, or position		
3. Employee categories subject to testing		
4. Prohibited behavior		
5. Testing circumstances		
6. Consequences for an employee who has refused testing or is found to have a verified positive drug test result or an alcohol concentration of 0.04 or greater		
7. Consequences for an employee found to have an alcohol concentration of 0.02 or greater, but less than 0.04		

d. How does the recipient distribute the policy to all employees?

INSTRUCTIONS FOR REVIEWER

Review the recipient's drug and alcohol policy and verify all the required elements in the chart above are included and that it has a process for ensuring that the policy statement is made available to each covered employee. Onsite, discuss with the recipient how it distributes a copy to each employee or provides written notice of its availability.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if 1) it does not have a policy that addresses the required elements or 2) there is no process for making the policy available to all covered employees.

DEFICIENCY CODE DA1-1: Drug and alcohol policy missing or lacking required elements

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the Federal Transit Administration (FTA) regional office an amended policy that includes the required elements and evidence that it has been made available to all affected employees.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office a process for ensuring that the current policy is made available to all covered employees.

GOVERNING DIRECTIVE

49 CFR 655.15 Policy statement contents

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, and shall include the following:

- (a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.
- (b) The categories of employees who are subject to the provisions of this part.
- (c) Specific information concerning the behavior and conduct prohibited by this part.
- (d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.
- (e) 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 to 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.
- (f) The consequences, as set forth in §655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

DA2. Does the recipient provide the minimum required training for all covered employees and supervisors/officers?

BASIC REQUIREMENT

Recipients are required to provide at least 60 minutes of drug training for covered employees and at least 120 minutes of training for supervisors and other officers authorized by the employer to make reasonable suspicion determinations.

APPLICABILITY

Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER

Employers of covered employees must establish an employee education and training program for both covered employees and supervisors.

Covered employees: 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.

Supervisors and/or company officials: A recipient’s determination whether to conduct reasonable suspicion testing for drug or alcohol shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. Employers must provide at least 60 minutes of training on each:

- the physical, behavioral, and performance indicators of probable drug use
- the physical, behavioral, speech, and performance indicators of alcohol misuse

NOTE: Records that such training was conducted must be retained by the recipient for a maximum of two years. As a result, recipients are not required to maintain records of training conducted beyond this time period.

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure that all covered employees receive the required 60 minutes of training?*

	Number of records reviewed	Number of records that indicated required training was received
Employees		

b. *How does the training for covered employees cover 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?*

c. *How does the recipient ensure that all supervisors or other officials responsible for making reasonable suspicion determinations receive the required 60 minutes of training on drug use and 60 minutes of training on alcohol misuse?*

	Number of records reviewed	Number of records that indicated required training was received
Supervisors/other officials		

d. *How does the training cover the physical, behavioral, and performance indicators of probable drug use and the physical, behavioral, speech, and performance indicators of probable alcohol misuse?*

INSTRUCTIONS FOR REVIEWER

Review the recipient’s response to the above indicators of compliance submitted in response to the RIR or obtain and review training protocols, as applicable, to ascertain that the recipient provides the required training. Obtain a list of covered employees and supervisors or company officials who make reasonable suspicion determinations along with dates of when they were first placed in a safety-sensitive position.

For those that began safety-sensitive duty within two years of the review, select a sample of covered employees and supervisors for record review. Onsite, sample the training records for these employees to determine if they received the required training and the required topics were addressed. If no employees began safety-sensitive duties within the review period, determination of compliance can only be made on the training program described by the recipient.

NOTE. Recipients are only required to maintain training records for two years.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have an employee education and training program or covered employees have not received the 60 minutes of training.

DEFICIENCY CODE DA2-1: Employee training not provided/insufficient

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office its covered employee training protocols and documentation that covered employees that were placed in safety-sensitive positions within the past two years have received 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, along with procedures for ensuring that covered employees receive the training.

The recipient is deficient if supervisors or other officials who make reasonable suspicion determinations have not received the 120 minutes of training.

DEFICIENCY CODE DA2-2: Supervisor training not provided/insufficient

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office its reasonable suspicion training protocols and documentation that supervisors and other officials designated within the past two years to make reasonable suspicion determinations have received the required training, along with procedures for ensuring training is provided before individuals are allowed to make reasonable suspicion testing decisions.

GOVERNING DIRECTIVE

49 CFR 655.14 Education and training programs

Each employer shall establish an employee education and training program for all covered employees, including:

- (b) *Training*— (1) *Covered employees*. 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.
- (2) *Supervisors*. 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.

DA3. Does the recipient obtain drug and alcohol testing records from employees' prior employers and are all records stored in a secure location with controlled access?

BASIC REQUIREMENT

Recipients must obtain previous drug and alcohol testing program records from prior employers for employees performing safety-sensitive functions and must retain drug and alcohol testing program records for all covered employees in a secure location with controlled access.

APPLICABILITY

Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER

Recipients, after obtaining an employee's written consent, must request information on the US DOT drug and alcohol testing history for the two previous years of any employee who is seeking to begin performance of safety-sensitive duties for the recipient for the first time (i.e., a new hire, an employee who transfers into a safety-sensitive position). Recipients must request the following information from US DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

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

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

The recipient must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the recipient must demonstrate that it has made a good faith effort to obtain and review the information as soon as possible. Good faith effort can be demonstrated through the documentation of obtaining the employee's signature to request information from the previous US DOT-regulated employer(s) and in providing documentation that the previous US DOT-regulated employer(s) was contacted.

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

Recipients must maintain records on program administration and the test results of individuals for whom it has testing responsibility. The records must be maintained by the recipient in a secure location with controlled access. As an example, program records should be maintained in locked file cabinets, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys. If a service agent is used to administer the testing program, the service agent can maintain some or all of the records.

NOTE: Recipients are only required to maintain these records for three years, therefore, documentation of meeting this requirement can only be substantiated for employees placed in safety-sensitive functions during the Comprehensive Review period.

INDICATORS OF COMPLIANCE

- a. *Are previous drug and alcohol testing program records obtained from prior employers before allowing an employee to perform safety-sensitive functions for more than 30 days?*
- b. *Are drug and alcohol testing program records retained in a secure location with controlled access?*

INSTRUCTIONS FOR REVIEWER

On site, discuss how and when in the hiring process the recipient obtains drug and alcohol testing information from prior employers with US DOT drug and alcohol testing programs. Obtain a listing of new hires during the Comprehensive Review period that previously worked for an employer with a US DOT drug and alcohol testing program, along with the date they first began safety-sensitive functions. Sample employee records to review during the site visit to ascertain that previous drug and alcohol testing records were obtained prior to the employee performing safety-sensitive functions. Follow up with the recipient to determine if good-faith efforts were made to obtain the records, if not on file. For any previous records that indicate the employee had violated a US DOT agency drug and alcohol regulation, discuss with the recipient how it confirmed that the employee subsequently complied with the return-to-duty requirements of Subpart O of the regulations.

During the site visit, ask to be shown where the records are stored. Determine the security measures, such as locked cabinets.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it allows employees to perform safety-sensitive functions for more than 30 days, before obtaining, or making a good faith effort to obtain, the drug and alcohol information from prior employers.

DEFICIENCY CODE DA3-1: Deficiencies in process of checking previous drug and alcohol testing records

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a process for ensuring that the previous drug and alcohol testing records for employees are reviewed before allowing employees to perform safety-sensitive functions for more than 30 days.

The recipient is deficient if it does not retain employee's drug and alcohol records in a secure location with controlled access.

DEFICIENCY CODE DA3-2: Drug and alcohol program records not secure

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation that it has moved program records to a secure location with controlled access.

GOVERNING DIRECTIVE

49 CFR 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

- (a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.
- (d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.
- (e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

49 CFR 655.71 Retention of records

(a) *General requirements.* 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.

DA4. Do all medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications?

BASIC REQUIREMENT

Only those individuals with the required qualifications may serve as medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program.

APPLICABILITY

Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER

Medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program must meet specific training requirements as defined in 49 CFR part 40 and maintain current documentation of meeting those requirements.

INDICATOR OF COMPLIANCE

- a. *Do the medical review officers, substance abuse professionals, breath alcohol technicians, and collectors that support the recipient's program have the required qualifications?*

INSTRUCTIONS FOR REVIEWER

Obtain the certificates of the service agents who support the recipient's drug and alcohol testing program. Onsite, confirm that all the qualifications of the service agents are up to date:

- Certifications dated within three years: substance abuse professionals
- Certifications dated within five years: Breath alcohol technicians, collectors, and medical review officers

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it cannot provide up to date certificates of agents supporting its drug and alcohol testing program.

DEFICIENCY CODE DA4-1: Missing qualifications of service agents

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office any missing credential documentation.

GOVERNING DIRECTIVE

49 CFR 40.31 Who may collect urine specimens for DOT drug testing?

(a) 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.

49 CFR 40.33 What training requirements must a collector meet?

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(g) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

49 CFR 40.121 Who is qualified to act as an MRO?

To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

(d) *Requalification training.* During each five-year period from the date on which you satisfactorily completed the examination under paragraph (c)(2) of this section, you must complete requalification training.”

(e) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

49 CFR 40.211 Who conducts DOT alcohol tests?

(a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

49 CFR 40.213 What training requirements must STTs and BATs meet?

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(g) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.

49 CFR 40.281 Who is qualified to act as a SAP?

To be permitted to act as a SAP in the DOT drug and alcohol testing program, you must meet each of the requirements of this section:

(d) *Continuing education.* During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.

(e) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

DA5. Does the recipient ensure that the drug and alcohol testing programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive

employees administer their drug and alcohol programs in accordance with 49 CFR parts 40 and 655?

BASIC REQUIREMENT

The recipient must ensure that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees administer their drug and alcohol programs in accordance with the requirement in 49 CFR parts 40 and 655.

APPLICABILITY

Recipients with subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees

DETAILED EXPLANATION FOR REVIEWER

Recipients and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Recipients are responsible for overseeing the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. The oversight program must ensure that all aspects of the drug and alcohol programs are in compliance with 49 CFR part 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", as amended, and 49 CFR part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Programs", as amended.

FTA does not dictate how recipients must oversee the programs. However, elements of an effective oversight program will ensure:

***Items will be examined during a baseline Comprehensive Review**

- Drug and alcohol policies include required elements and are approved by the governing body
- Employees performing safety-sensitive functions are covered
- Marijuana, cocaine, opioids, phencyclidine, amphetamines, and alcohol are tested for
- Proper forms are used, the forms are completed correctly, the records are stored in a secure location with limited access, and the records are maintained for the required amount of time
- Employees and supervisors have received the required training
- Testing performed under the employer's own authority is segregated from the testing done under FTA's authority (separate random testing pool, separate specimens, non-US DOT forms used)
- *Drug and Alcohol Management Information System (DAMIS/MIS) reports are submitted
- *Medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications

Some recipients ensure compliant drug and alcohol programs by including subrecipients, contractors, subcontractors, or lessees in their programs.

INDICATORS OF COMPLIANCE

- a. *Has the recipient ensured that contractors, lessees, and subcontractors with safety-sensitive employees submitted annual MIS reports in DAMIS?*
- b. *Has the recipient ensured that subrecipients with safety-sensitive employees submitted annual MIS reports in DAMIS?*
- c. *Does the recipient or its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees ensure that the qualifications of the medical review officer(s), substance abuse professionals, breath alcohol technicians, and collectors are up to date?*

INSTRUCTIONS FOR REVIEWER

For the subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees to be visited, request that the recipient obtain or ensure that the providers have available the MIS reports for the past three years and the certificates of the service agents that support the drug and alcohol programs. During the site visit to the subrecipient, contractor, subcontractor, or lessee, confirm that the certificates for all service agents are current. If service agents are listed in the providers drug and alcohol policy,

compare the certificates provided with the service agents listed in the policy to ensure that the qualifications of the current agents was provided.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees submit annual MIS reports in DAMIS or ensure that the service agents that support the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees have current qualifications.

DEFICIENCY CODE DA5-1: Insufficient oversight over drug & alcohol programs of subrecipients, contractors, subcontractors, and/or lessees

SUGGESTED CORRECTIVE ACTION 1: The recipient must ensure that the missing MIS reports are submitted in DAMIS for the past reporting year by September 30 or, if the September 30 deadline cannot be met because of the timing of the site visit, maintain missing MIS reports internally with the reason for revision. The recipient must submit missing MIS reports to the FTA regional office, along with procedures for ensuring that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees submit MIS reports in DAMIS.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office the qualifications of the medical review officers, substance abuse professionals, breath alcohol technicians, and collectors that support the programs of its subrecipients, contractors, subcontractors, and lessees, along with procedures for ensuring that the service agents that support the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees have current qualifications.

GOVERNING DIRECTIVE

49 CFR 655.72 Reporting of results in a management information system

(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.

(c) 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.

49 CFR 655.81 Grantee oversight responsibility

A recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C. 5307, 5309, or 5311 funds directly from the recipient complies with this part.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Has the FTA conducted a drug and alcohol program compliance audit in the past two Federal fiscal years? If yes, when was the site visit?
2. Is an audit scheduled for the current Federal fiscal year?
3. Is the recipient's policy missing required elements not addressed in the chart at indicator DA1c?
4. Is the recipient testing for the required substances?

5. Is there evidence that not all safety-sensitive employees, as defined by FTA, are included in a drug and alcohol testing program?
6. Was the employee's previous US DOT-regulated employer another FTA recipient?
7. Are safety-sensitive employees involved in ferry operations tested randomly for alcohol under FTA authority?
8. Does it appear MIS reports for the recipient, subrecipient, contractor, subcontractor, or lessee were not submitted or were incorrect?
9. Did the recipient achieve the minimum random testing rates of 25 percent (50 percent beginning in January 2019) for drugs and 10 percent for alcohol?
10. Does the recipient conduct post-accident testing?
11. Are there concerns regarding the recipient's oversight of the drug and alcohol programs of its subrecipients, contractors, subcontractors, or lessees?
12. Did background research or site visit observations reveal any other potential drug and alcohol program issues or concerns not previously covered in this section?

REFERENCES

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

USEFUL WEBLINKS

1. FTA Drug and Alcohol Testing Homepage
2. Newsletters
3. Drug and Alcohol MIS Reporting
4. Drug and Alcohol Training
5. Technical Assistance
6. Drug and Alcohol Publications
7. Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit
8. Office of Drug and Alcohol Policy and Compliance
9. Release of Information Form 49 CFR Part 40 – Drug and Alcohol Testing

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