

#	Question	Response	Regulation
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# Drug and Alcohol Program Manager Questionnaire

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**DAPM:**

**Transit System:**

**Interviewer:**

**Date of Completion:**

#	Question	Response	Regulation
1.	Do you have an updated copy of the DOT and Federal Transit Administration testing regulations 49 CFR Parts 40 and 655?		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.
2.	A. Do you make available and provide written notice of the availability of the adopted FTA anti-drug and alcohol misuse policy (including revisions) to all covered employees and representatives of any employee organizations?  B. How?		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."
3.	Where do you display informational material and a community service hotline telephone number for employee assistance?		Section 655.14 states: "Each employer shall establish an employee education and training program for all covered employees, including: (a) <i>Education</i> . The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available."
4.	Do you maintain a record that each employee has received a copy of the anti-drug and alcohol misuse policy (Including revisions), or a written notice that the policy is available for review?		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 employ 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."

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5.	Do you require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by Part 40 (including, but not limited to, collections, laboratory testing, MRO or SAP services)?		Section 40.27 states: "No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services)."
6.	What job categories are considered safety-sensitive at this agency?		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 part."
7.	Do you utilize volunteers and are they FTA-covered employees subject to 49 CFR Part 40 testing?		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."

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8.	Are you notified of all FTA testing results, so as to take immediate action, if necessary?		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."
9.	Do DOT tests take priority (i.e. DOT tests conducted and completed before a non-DOT test is begun, urine collected in a DOT test not used or a non-DOT test)?		Section 40.13(b) states: "OT 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."
10.	Can excess urine from a DOT test ever be used for any other purpose?		Section 40.13(c) states: "Except as provided in paragraph (d) of this section [when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations], 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."

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11.	<p>Do you ever perform testing above and beyond what is required by FTA? (E.g., testing after an accident that does not meet FTA thresholds, but is authorized by agency policy.)</p> <p>If so, is this testing identified as non-DOT, using non federal CCFs and ATF?</p>		<p>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."</p> <p>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."</p>
12.	<p>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?</p>		<p>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."</p>

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13.	What do the regulations require be done to correct a flaw if a non-DOT CCF or ATF is used for a DOT test?		<p>Section 40.205(b)(2) states: "If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier."</p> <p>Section 40.271.(b)(2) states: "If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier."</p> <p>If the problem is not corrected, the test is canceled.</p>

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14.	<p>A. 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)?</p> <p>B. Does this process involve any type of form? If so, please provide a sample copy of this form.</p>		<p>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."</p>
15.	<p>A. What information do you provide to the collection site for each DOT test you are requesting?</p> <p>B. Does this process involve any type of form? If so, please provide a sample copy of this form.</p>		<p>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)."</p>

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16.	<p>A. Who at the transit agency would be notified of non-negative alcohol test results are equal to or greater than 0.02 BAC?</p> <p>B. What actions would be taken upon verbal notification that an employee had a non-negative alcohol test of equal to or greater than 0.02 but less than 0.04?</p> <p>C. What actions would you take upon verbal notification that an employee had a positive alcohol test result of equal to or greater than 0.04?</p>		<p>Section 40.255(a)(5) states: "Immediately transmit the result directly to the DER in a confidential manner.</p> <p>(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."</p> <p>Section 40.23(c) 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"</p>



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17.	<p>A. Outside of your primary collection site, do you ever use a hospital or secondary collection site for testing on a contingency basis?</p> <p>B. Have you verified that this location(s) has documented trained collectors/technicians for DOT testing/specimen collection?</p>		<p>Section 40.33(g) states " You [the collector] 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.."</p> <p>Section 40.213(g) states: "You [the BAT] 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.</p>
18.	<p>A. Can you demonstrate/document that all safety-sensitive employees 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?</p> <p>B. Is additional training provided on the effects and consequences of prohibited alcohol use? (This is not a finding as long as this training is in addition to the 60-minutes of drug training.)</p>		<p>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. "</p>
<p><b>NOW, I WOULD LIKE TO ASK A COUPLE QUESTIONS ABOUT REASONABLE SUSPICION TRAINING.</b></p>			

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19.	Can you demonstrate/document that all employees authorized to initiate FTA reasonable suspicion testing have 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?		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."
20.	<p>A. How does/would this transit agency document Reasonable Suspicion determination referrals?</p> <p>B. Does this process involve any type of standard form? If so, please provide a sample copy of this form.</p>		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."
21.	Do the records indicate that if the reasonable suspicion alcohol test was not administered within two hours, there is a record stating the reasons the alcohol test was not promptly administered? (Based on a review of records)		Section 655.43(d) states: "If an alcohol test required by this section is not administered within two hours following the determination [to test], 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 determination [to test], the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test."

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22.	If a reasonable suspicion alcohol test is not administered within eight hours, do you cease attempts to administer an alcohol test and state in the record the reasons for not administering the test?		Section 655.43(d) states: "If an alcohol test required by this section is not administered within two hours following the determination [to test], 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 determination [to test], the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test."
<b>NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT THE PRE-EMPLOYMENT DRUG TESTING PROCESS.</b>			
23.	At what point in the hiring process do you require applicants for safety-sensitive positions to pass a FTA pre-employment drug test?		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."

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24.	Do you record the first date that new hires or transferees begin safety-sensitive functions? If so, how?		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."
25.	Do the records indicate that, if a pre-employment drug test is canceled, the employer requires the covered employee take another pre-employment drug test administered under this part with a verified negative result? (Based on records review)		Section 655.41(c) states: "If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result."
26.	<p>A. Do you perform pre-employment alcohol testing for all/any safety-sensitive positions?</p> <p>B. If so, how are you documenting a contingent offer of employment to the applicant/transferee prior to the pre-employment alcohol test?</p>		<p>Section 655.42 states "An employer may, but is not required to, conduct pre-employment alcohol testing under this part."</p> <p>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. "</p>
27.	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?		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."

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28.	<p>A. When a safety-sensitive employee is not performing a safety-sensitive function for an extended period of time (90 or more consecutive days), how would you handle their placement in the DOT random testing pool?</p> <p>B. Would you be required to do anything upon their return and prior to their performance of safety-sensitive functions?</p>		<p>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."</p>
29.	<p>A. 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?</p> <p>B. Does this process involve any type of standard form? If so, please provide a sample copy of this form.</p>		<p>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)."</p>

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30.	<p>A. At what point in the hiring process do you obtain specific written consent from the applicant or employee to request information about prior DOT drug and alcohol test records from all DOT-regulated employers who employed the individual within the two years prior to the date of application?</p> <p>B. How do you document a “good faith effort” that you tried to obtain the requested information back from the previous DOT-regulated employers?</p> <p>C. Do either or both of the processes referenced in A and B above involve any type of standard form? If so, please provide a sample copy of this form.</p>		<p>Section 40.25(a) states: “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.”</p> <p>Section 40.25(i) states: “As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.”</p>
<p><b>NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT THE RANDOM SELECTION PROCESS.</b></p>			

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31.	<p>A. When and how do you update your DOT random testing pool used for random selections?</p> <p>B. Are your employees in a larger “consortium” with other systems or are they in a random testing pool by themselves?</p>		<p>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."</p> <p>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.</p>
32.	How frequently do you or the C/TPA make random selections?		<p>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."</p> <p>Generating random selection lists infrequently increases the chance t employee turnover will make meeting Section 655.45(e) unattainable because the transit system does not have an effectively updated testing pool.</p> <p>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."</p>

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33.	How is the random selection list transmitted to the DAPM and who has access to the list?		<p>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."</p> <p>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.</p>
34.	If selection is conducted by a TPA or Consortium: are the random selection lists provided in a consistent and timely fashion, allowing the employer the ability to spread random testing throughout the year?		<p>The preamble to Part 655 states: "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." 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."</p>
35.	What method is used to ensure that DOT tests are being conducted at all times when safety-sensitive functions may be performed? (I.e., late night, weekends, holidays, maintenance hours, etc., if applicable.)		<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."</p>



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36.	<p>A. After being notified of their selection for a random drug and/or alcohol test, how long until the employee proceeds to the collection site?</p> <p>B. How long is the employee given to arrive at the collection site?</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. 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."</p>
37.	<p>A. Does the collection site know who is coming for a test and when that individual should arrive?</p> <p>B. How does the collection site inform you if the employee arrives late or does not arrive at all?</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."</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>

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38.	<p>A. If you are in the random test pool, how are you made aware if your name is selected for a random test?</p> <p>B. Do you receive the random selection list showing that you have been selected?</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. 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."</p>
39.	<p>Does the selection process provide each covered employee with an equal chance of being tested each time selections are made?</p>		<p>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."</p>

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40.	<p>A. When, if ever, would you excuse an employee from random testing?</p> <p>B. How is this documented?</p>		<p>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."</p> <p>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.</p>
41.	<p>If you or another non-active safety-sensitive employee is notified to proceed for random alcohol testing, how does this system ensure that you are subject to alcohol testing just before, during, or just after the performance of safety-sensitive functions?</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. 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."</p>
42.	<p>A. Do you use alternates in your random selection process?</p> <p>B. If so, what is the process for selecting an employee from a list of alternates?</p>		<p>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."</p>

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43.	After the testing is complete, for how long do you maintain a copy of each random selection draw list (e.g., paper copy, electronic file)?		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.
44.	Did the transit system (and contractors, if applicable) meet the FTA's minimum random testing rates last year? (Submit a copy of the previous year's DAMIS as evidence.)		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."
<b>NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT POST-ACCIDENT TESTING.</b>			
45.	<p>A. Who is responsible for deciding if an FTA post-accident test is performed?</p> <p>B. Who has the primary responsibility for assuring that post-accident testing is accomplished?</p>		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."

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46.	<p>A. What are the different thresholds defined by FTA which would require you to send a covered employee for a USDOT-FTA post-accident drug and alcohol test?</p> <p>B. What is the definition of “disabling damage”?</p>		<p>Section 655.4 defines the term “Accident” as “an occurrence associated with the operation of a vehicle, if as a result:</p> <p>(1) An individual dies; or</p> <p>(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or</p> <p>(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or</p> <p>(4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.”</p> <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>

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			(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable."
47.	<p>A. Does this transit system have some method to document the post-accident decision-making process, especially decisions <b>not</b> to conduct a drug and alcohol test following an accident that reaches an FTA threshold?</p> <p>B. If this process involves a form, please provide a sample copy</p>		<p>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."</p> <p>Section 655.71(c) 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."</p>

#	Question	Response	Regulation
48.	Do records indicate that the employer conducts post-accident testing using a federal CCF after an accident that <u>did not</u> meet an FTA post-accident threshold, or after a qualifying accident in which the employee has been discounted? (Determined through a record check) If so, was there documentation indicating the error was corrected?		Section 40.13(f) states: "As an employer, you must not use the CCF or the ATF 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." An "Accident" is defined in Section 655.4 as: "an occurrence associated with the operation of a vehicle, if as a result: (1) An individual dies; or (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or (4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation"

#	Question	Response	Regulation
49.	Describe what it means to “completely discount” an employee’s performance as a factor contributing to an accident.		Section 655.44(a)(2)(i) states: “As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle is involved, the employer shall drug and alcohol test each covered employee operating the public transportation vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
50.	<p>A. In addition to the operator of a transit vehicle, can other covered employees be post-accident tested under FTA authority?</p> <p>B. If so, under what circumstances?</p>		<p>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."</p> <p>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."</p>



#	Question	Response	Regulation
51.	Can an FTA post-accident drug test be performed on an employee who is unable to give consent due to death or unconsciousness?		<p>Section 655.44(a)(1)(i) states: "As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident."</p> <p>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... ."</p>
52.	When would you commence drug and alcohol testing after an accident?		<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>

#	Question	Response	Regulation
53.	What are the time limits for drug and alcohol post-accident testing?		<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>
54.	What would be the result if an employee fails to remain "readily available" for testing after an accident?		<p>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."</p>

#	Question	Response	Regulation
55.	If the employer is unable to perform a post-accident test within the required timeframe and the employer uses the results of a blood, urine, or breath test conducted by Federal, State, or local officials having independent authority for the test, do such tests conform to the applicable Federal, State, or local testing requirements, and are the test results obtained by the employer?		Section 655.44(f) states: "The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section."
<b>NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT RETURN-TO-DUTY AND FOLLOW-UP TESTING</b>			

#	Question	Response	Regulation
56.	<p>A. Does the employer provide each employee who violates a DOT drug and/or alcohol regulation a list of SAPs readily available to the employee and acceptable to the employer, including names, addresses, and telephone numbers?</p> <p>B. Would this also occur on a non-negative pre-employment test?</p> <p>C. Would this occur even if the employee is being terminated?</p>		<p>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."</p>
57.	<p>Who is 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?</p>		<p>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."</p>

#	Question	Response	Regulation
58.	<p>Does this transit system have a second chance policy for employees who refuse or test positive on an FTA drug and/or alcohol test?</p> <p><b>If the system has a “Zero Tolerance” Policy, skip to Question #69.</b></p>		<p>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.</p>
59.	<p>Does the employer ensure that before an employee returns to safety sensitive duties following a regulatory violation, the employee receives an evaluation by a SAP.</p>		<p>Section 40.305(b) states: “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>

#	Question	Response	Regulation
60.	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?		<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 back to work in a safety-sensitive position."</p>

#	Question	Response	Regulation
61.	Do you receive a written SAP evaluation of an employee's readiness to return to duty and a follow-up testing plan? (If Yes, submit the appropriate files for review.)		<p>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."</p> <p>(b) You [the SAP] must present a copy of this plan directly to the DER (see Section 40.311(d)(9))."</p> <p>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: ...</p> <p>(8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;</p> <p>(9) Follow-up testing plan... "</p>
62.	Whose responsibility is it to determine the number of follow-up tests for an individual returning to duty?		<p>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."</p>

#	Question	Response	Regulation
63.	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?		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."
64.	Do you review each return-to-duty plan/schedule submitted by the SAP?		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.
65.	Who is responsible for ensuring that the SAP's follow-up testing plan for each employee is followed?		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."
66.	<p>A. Who is responsible for determining when an employee must actually go for a follow-up test?</p> <p>B. What would you do if you found out the SAP's follow-up testing plan was not accurately followed?</p>		<p>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.</p> <p>(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."</p> <p>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."</p>



#	Question	Response	Regulation
67.	Do you always conduct return-to-duty and follow-up tests under Direct Observation conditions?		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."
68.	What would you do if you found out that a return-to-duty or follow-up test was not conducted under Direct Observation conditions?		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."
<b>NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT COMMUNICATION WITH THE MRO AND/OR C/TPA</b>			
69.	If you utilize a C/TPA, how do you monitor its compliance with federal regulations?		Section 40.11 states: "(a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part. (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. (c) 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. Compliance with these provisions is a material term of all such agreements and arrangements."

#	Question	Response	Regulation
70.	By what method and how soon after a positive test is verified, does the MRO or C/TPA notify the transit system?		<p>Section 40.167(a) and (b) state: "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 §40.163).</p> <p>(2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.</p> <p>(3) The MRO's report that you transmit to the employer must contain all of the information required by §40.163"</p>
71.	Upon receiving notice that a covered employee has refused to submit to a test, does the DER immediately remove the employee from performing safety-sensitive functions?		<p>Section 655.61(a)(3) states: "If an employee refuses to submit to a drug or alcohol test, the employer shall require that the covered employee cease performing a safety-sensitive function."</p>

#	Question	Response	Regulation
72.	What password or other verification method has the transit system and the MRO or C/TPA established to ensure that verbal transmission of positive test results from the MRO is secure?		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."
73.	How do you ensure that the MRO or C/TPA has provided a test result in a reasonable period after the test?		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."

#	Question	Response	Regulation
74.	What is the response if you receive the report of a dilute-negative drug test result?		Section 40.197(b) states: "If the MRO informs you [the employer] that a negative drug test was dilute, you may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation." Section 40.197(c) states: "You [the employer] must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment test situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters."
75.	If the MRO requires an immediate observed collection, do you direct an immediate collection under direct observation with no advance notice to the employee, and ensure that the specimen was properly obtained?		Section 40.67(a) states: "As an employer you must direct an immediate collection under direct observation with no advance notice to the employee, if: ... (2) The MRO reported to you that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed."
76.	<p>A. After receipt of a canceled test result when a negative result is required (i.e. pre-employment, return-to-duty, or follow-up test), do you direct the employee to provide another specimen immediately?</p> <p>B. Is this collection conducted under direct observation?</p>		Section 40.23(g) states: "As an employer who receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen immediately."

#	Question	Response	Regulation
77.	<p>A. What do you do if the MRO contacts you because they are unable to reach an employee?</p> <p>B. How many times, and over what period of time, must you attempt to contact the employee?</p>		<p>Section 40.131(d) states: “(d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you successfully contact the employee (i.e., actually talk to the employee), you must document the date and time of the contact, and inform the MRO. You must inform the employee that he or she should contact the MRO immediately. You must also inform the employee of the consequences of failing to contact the MRO within the next 72 hours (see §40.133(a)(2)).</p> <p>(1) As the DER, you must not inform anyone else working for the employer that you are seeking to contact the employee on behalf of the MRO.</p> <p>(2) If, as the DER, you have made all reasonable efforts to contact the employee but failed to do so, you may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.</p> <p>(i) As the DER, you must document the dates and times of these efforts.</p> <p>(ii) If, as the DER, you are unable to contact the employee within this 24-hour period, you must leave a message for the employee by any practicable means (e.g., voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.”</p>

#	Question	Response	Regulation
78.	Does any employee serve as a urine collector, BAT or STT? If so, how do you ensure that no employee with direct immediate supervisory responsibility or authority over another safety-sensitive employee will conduct a test on such an employee?		<p>Section 40.31(c) states: "As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations."</p> <p>Section 40.211(c) states: "As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so."</p>
<p><b>NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT CONTRACTORS THAT PROVIDE SAFETY-SENSITIVE SERVICES FOR THIS TRANSIT SYSTEM.</b></p>			

#	Question	Response	Regulation
79.	<p>If you use a contractor to perform safety-sensitive duties, how do you monitor the contractor's compliance with Parts 40 and 655?</p> <p><b>If the agency does not use contractors, skip to Question #82.</b></p>		<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. (c) 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. 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>
80.	<p>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?</p>		<p>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."</p>

#	Question	Response	Regulation
81.	How do you ensure your covered contractors and vendors in compliance with the FTA drug and alcohol rules?		<p>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."</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>
<b>NOW, I WOULD LIKE TO ASK YOU A FEW QUESTIONS ABOUT THIS COMPANY'S RECORDS MANAGEMENT AS WELL AS DRUG AND ALCOHOL MIS REPORT.</b>			
82.	Did you complete and submit your DAMIS report to the FTA by March 15 <sup>th</sup> ?		<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>(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."</p>



#	Question	Response	Regulation
83.	<p>A. Do you maintain all records related to the drug and alcohol program in a secure location with controlled access (including any records which may be moved to a “longer-term” storage location)?</p> <p>B. Please provide a detailed description of how this requirement is met.</p>		<p>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."</p>
84.	<p>Do you review CCFs and ATFs to identify and correct any errors in the testing process, even if the errors are not considered problems that will cause a test to be canceled?</p>		<p>Section 40.209(a) states: "As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph b of this section [40.209(b)]." Section 40.275(a) states: "As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not fatal flaws or correctable flaws."</p>
85.	<p>Do you maintain current DOT training Credentials for:</p> <ul style="list-style-type: none"> <li>A. Medical Review Officer (MRO)</li> <li>B. Urine Collectors</li> <li>C. Breath Alcohol Technicians</li> <li>D. Saliva Screening Technicians (If applicable)</li> <li>E. Two Substance Abuse Professionals (including professional license and training credentials)</li> </ul> <p>Please provide copies.</p>		<p>Sections 40.33(g), 40.121(e), 40.213(g) and 40.281(e) state: "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."</p>

#	Question	Response	Regulation
86.	How do you ensure that any urine collector, BAT or STT, who has caused a test to be canceled or rejected due to a fatal or uncorrected flaw, has undergone error correction training within the time allotted?		Section 40.11 states: “(a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part. (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.”
87.	<p>Are the following records maintained for a minimum of <u>five years</u> from the date they were created?</p> <ul style="list-style-type: none"> <li>A. Covered employee verified positive drug and alcohol test results;</li> <li>B. Documentation of refusals to take required drug or alcohol tests;</li> <li>C. Covered employee referrals to the SAP;</li> <li>D. Employer reports from SAPs; and</li> <li>E. Copies of annual DAMIS reports submitted to FTA?</li> </ul>		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: (1) Five years. Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.”
88.	Do you maintain all drug and alcohol test results obtained from previous employers for new hires or transfers into safety-sensitive positions for a minimum of <u>three years</u> ?		40.333(a) states, “As an employer, you must keep the following records for the following periods of time:... (2) You must keep records for three years of information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees.

#	Question	Response	Regulation
89.	Do you maintain records of the collection process and employee training for at least <u>two years</u> ?		<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."  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>
90.	Do you maintain negative drug and alcohol test results for at least <u>one year</u> ?		<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:  (3) One year. Records of negative drug or alcohol test results.</p>
91.	Would you only release drug and alcohol testing information related to covered employees as permitted by law or in accordance with the circumstances described in Section 655.73?		<p>Section 655.73(a) states, "Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by §655.71."</p>

#	Question	Response	Regulation
	<b>THAT WAS THE LAST QUESTION. THANK YOU FOR YOUR TIME AND INPUT.</b>		