

Approved:

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Department of Transportation

## **PUBLIC TRANSIT SUBSTANCE ABUSE MANAGEMENT PROGRAM**

### **AUTHORITY:**

Sections 20.23(3)(a) and 334.048(3), F.S.

### **STATEMENT OF POLICY:**

Recipients, sub-recipients, and contractors of Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 must comply with Federal Transit Administration (“FTA”) regulations concerning the *“Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations”* [49 CFR Part 655] and the US Department of Transportation (“USDOT”) regulations concerning the *“Procedures for Transportation Workplace Drug and Alcohol Testing Programs”* [49 CFR Part 40].

Program oversight shall be a joint activity of the FDOT Central Public Transportation Office (herein referred to as “Central Office”) and the FDOT District Public Transportation Offices (herein referred to as “District Offices”). The following procedure establishes the specific compliance oversight duties of both offices to ensure that agencies receiving Section 5311 funds through the State of Florida (herein referred to as “sub-recipients”) implement a substance abuse management program in compliance with FTA and USDOT regulations, 49 CFR Parts 655 and 40.

[Note: Although FTA performs regulatory compliance oversight of direct grantees of Section 5309 and 5307 funding, FDOT also reviews Substance Abuse Management for all Florida Bus Transit Agencies that must comply with section 341.061(2), Florida Statutes (“F.S.”), during bus safety oversight reviews. The FDOT Substance Abuse Management Review Process outlined in Exhibits 1A and 1B shall guide the review activities.]

### **1.0 CENTRAL OFFICE RESPONSIBILITIES:**

- 1.1 The Central Office shall work with the District Offices to ensure that sub-recipients are operating in compliance with all applicable state and federal regulations, inclusive of the FTA and USDOT regulations pertaining to substance abuse management.

- 1.2 Establish and maintain communication with District Offices on all matters related to the implementation and execution of this procedure.
- 1.3 Certify, on an annual basis to the FTA Regional Office, sub-recipient compliance with **49 CFR Parts 40 and 655**.
- 1.4 Maintain a “**Master 5311 Sub-Recipient Agency & District Contact List**,” which includes all of the state’s 5311 sub-recipient agency and contractor contact information, as provided annually by the District Offices.
- 1.5 Disseminate via email, on or before **January 15** of each year: 1) the Drug and Alcohol Management Information Systems (“DAMIS”) username and password assigned to each sub-recipient by FTA, 2) instructions on how to enter drug and alcohol testing data from the previous calendar year into the FTA DAMIS electronic (web-based) reporting system, and 3) notification of the FDOT submission deadline of **February 15** of each year. The appropriate District Office shall be copied on the email notification.
- 1.6 Review the accuracy of the sub-recipient DAMIS data entered. Assist agencies and/or contractors in resolving data entry errors. Verify and accept the completed sub-recipient DAMIS reports.
- 1.7 Provide electronic copies of DAMIS sub-recipient reports accepted and verified by Central Office to appropriate District Office via email.
- 1.8 Electronically submit to FTA the finalized DAMIS report on or before **March 15** of each year. DAMIS reports will be maintained for a minimum period of five calendar years.
- 1.9 Review and disseminate legislative updates, regulatory revisions, regulatory interpretations, training opportunities, and other relevant information.

## **2.0 DISTRICT OFFICE RESPONSIBILITIES:**

- 2.1 FDOT District Offices shall ensure that rural public transportation providers are operating in compliance with all applicable state and federal regulations, inclusive of the FTA and USDOT regulations pertaining to substance abuse management.
- 2.2 Annually update and provide to the Central Office **by November 15** of each year the “**Master 5311 Sub-Recipient Agency & District Contact List**” MS Excel database, which includes each sub-recipient agency and contractor within the District.
- 2.3 Ensure that sub-recipients and contractors have implemented a substance abuse management program in compliance with FTA and USDOT regulations; 49 CFR Parts 40 and 655, respectively.
- 2.4 Ensure that each sub-recipient and/or its contractor has adopted and disseminated to all covered employees one of the following:

(A) The Department's model "zero tolerance substance abuse policy," in which an applicant or covered employee who violates the substance abuse policy by testing positive or refusing to test is terminated, OR

(B) The Department's model "second chance substance abuse policy", in which a covered employee is provided an opportunity to be evaluated and treated by a U.S. Department of Transportation approved Substance Abuse Professional following a positive result or a refusal to test.

- 2.5 Annually collect and maintain a certificate of compliance from each sub-recipient of Section 5311 funds, prior to **February 15** of each year. See **FDOT Form No. 725-030-10, Certificate of Compliance for a Section 5311 Subrecipient**.
- 2.6 Support Central Office with the annual FTA DAMIS data collection process (See sections 1.4-1.8).
- 2.7 Maintain for at least five calendar years, a copy of the sub-recipient and/or contractor's DAMIS report, which is provided annually by Central Office to the District Offices.
- 2.8 Perform or oversee the performance of on-site Triennial Substance Abuse Management compliance reviews of each sub-recipient and/or contractor using the **FDOT Substance Abuse Management Review Process** outlined in **Exhibits 1A and 1B**.
- 2.9 Maintain for a period of no less than five calendar years, all documentation related to a Triennial Substance Abuse Management compliance review of each sub-recipient and/or contractor, including any corrective action requirements and necessary follow-up compliance review activities.
- 2.10 Ensure that sub-recipients and contractors are aware of the training and technical assistance resources available to them through the FDOT Substance Abuse Management Oversight and Technical Assistance Program (<http://sam.cutr.usf.edu>)

### **3.0 PROGRAM QUALITY CONTROL:**

- 3.1 Quality control and evaluation of program performance is a continuing responsibility of both Central Office and District Offices. Activities shall be regularly monitored and performance evaluated to ensure proper implementation and oversight.

### **4.0 TRAINING:**

- 4.1 Training opportunities are posted on the FDOT Substance Abuse Management Resource website: <http://sam.cutr.usf.edu>. Training may also be provided upon request.

## EXHIBIT 1A

### GUIDELINES FOR SUB-RECIPIENT SUBSTANCE ABUSE MANAGEMENT REVIEW PROCESS

#### 1.0 DESCRIPTION:

- 1.1 District Public Transportation Offices shall schedule and conduct on-site reviews at least triennially (every three years). District Offices may use a contractor to conduct reviews and coordinate the reviews with the triennial **Section 5311** system-monitoring visit required by **Procedure No. 725-030-004, Section 5311 Program**. As needed and at the discretion of the District Office, additional oversight activities or follow-up reviews may be performed.
- 1.2 A substance abuse management review is an on-site inspection of a sub-recipient's substance abuse program records and practices to determine if the sub-recipient has adopted and implemented a drug and alcohol testing program in compliance with USDOT and FTA regulations **49 CFR Parts 40 and 655**, as amended.

#### 2.0 REVIEW ACTIVITIES:

- 2.1 District Offices will notify sub-recipient agencies in writing (formal email notification, with an FDOT District Office-signed document attachment is acceptable), at least 3 weeks prior to a scheduled onsite review. District Offices should coordinate scheduling of the onsite review prior to written notification. Note that for the purposes of the review activities, the "reviewer" and the District Office are the same.
- 2.2 If sub-recipient uses a contractor to provide service, sub-recipient must notify contractor of the schedule on-site review
- 2.3 The notification will contain a request for the following pre-review materials to be sent to the District Office via email within 10 business days:
  - Agency's adopted substance abuse policy
  - Copy of agency's current database of FTA-covered employees
  - Copy of agency's most recent list of randomly selected employees
  - Sample Post Accident Testing Determination & Documentation form
  - Sample Reasonable Suspicion Testing Determination & Documentation form
  - Agency's Testing Notification Form (Notice to Test)
  - Contact information for agency's Medical Review Officer
  - Contact information for agency's primary collection site and alcohol testing facility
  - Contact information for agency's Third Party Administrator (if applicable)
- 2.4 District Office Reviewer shall perform an Entrance Interview with agency's Designated Employer Representative and agency leadership, as applicable.

- 2.5 The Entrance Interview shall include an explanation of the review process and provide an opportunity for the agency representatives to ask questions about the review process.
- 2.6 District Office Reviewer will interview the Designated Employer Representative (“DER”) using the FDOT Substance Abuse Management Review Questionnaire (Exhibit 1B)
- 2.7 District Office Reviewer will conduct a records review, using the FDOT Substance Abuse Management Review Questionnaire (Exhibit 1B)
- 2.8 District Office Reviewer will provide guidance and technical assistance as requested and when areas of concern or deficiencies are noted.
- 2.9 District Office Reviewer will conduct Exit Interview with agency’s Designated Employer Representative and agency leadership, as applicable.
- 2.10 During the Exit Interview, the District Office Reviewer will summarize any areas of concern, deficiencies, and the corrective action requirements necessary to bring the agency into compliance, as applicable.
- 2.11 District Office Reviewer will prepare and deliver to the sub-recipient agency, a written report outlining any areas of concern, deficiencies, and corrective action requirements within 30 calendar days of the onsite review.
- 2.12 District Offices must include in the final written report a requirement for the sub-recipient agency to develop and submit a corrective action plan (“CAP”) and implementation schedule for each deficiency and/or area of concern within 30-calendar days from the date of the final report.
- 2.13 If the sub-recipient fails to initiate corrective action pursuant to the required corrective actions identified by the review report, the District Office shall advise the sub-recipient that part or all of its financial obligations under any proposed or existing Joint Participation Agreement (“**JPA**”) for **Section 5311** financial assistance may be suspended. In addition, the District Office shall advise the sub-recipient that the annual certification of compliance submitted by the sub-recipient shall be deemed invalid until such time the District determines the sub-recipient has achieved compliance.

## EXHIBIT 1B

### Substance Abuse Management Review Questionnaire

#### SECTION 1- Designated Employer Representative Interview (DER):

1	Do you have a 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 CFR Part 655 to use as a resource in complying with the FTA drug and alcohol testing requirements.
	Comment:	
2	Does this employer make available and provide written notice of the availability of the policy to all covered employees and representatives of any employee organizations? How?	Section 5311 Sub-recipient agencies must adopt one of the two versions of the FDOT model substance abuse policy or a modified policy that has been approved by FDOT.
	Comment:	
3	Does this employer make available and provide written notice of revisions to the adopted FTA anti-drug and alcohol misuse policy to all covered employees and representatives of any employee organizations? How?	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."
	Comment:	
4	Does this employer maintain a record that each employee has received a copy of the anti-drug and alcohol misuse policy, or a written notice that the policy is available for review?	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."
	Comment:	
5	Does this employer maintain a record that each employee has received a copy of revisions to the anti-drug and alcohol misuse policy, or a written notice that the revised policy is available for review?	Section 655.15 states: "The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee ..." Section 655.16 states: "Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures."
	Comment:	

6	What job categories or functions are considered safety-sensitive at this company?	49 C.F.R. § 655.15 Section 655.15 states: "...The [policy] statement must be made available to each covered employee, and shall include the following: ... (b) The categories of employees who are subject to the provisions of this part." Section 655.4 defines "covered employee" as "a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this pa."
	Comment:	
7	Do you utilize volunteers and are they FTA-covered employees subject to 49 C.F.R. Part 40?	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."
	Comment:	
8	Are you notified of all FTA test 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."
	Comment:	

9	Does this employer conduct non-DOT drug and/or alcohol testing and if so, is it completely separate (separate random pools, separate CCFs and ATFs, etc.) from DOT testing?	<p>Section 655.15 states: "The [policy] statement must be made available to each covered employee, and shall include the following: ...</p> <p>(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part."</p> <p>Section 40.13 states: "(a) DOT tests must be completely separate from non-DOT tests in all respects.</p> <p>(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.</p> <p>(c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing."</p>
	Comment:	
10	Do you ever perform DOT testing above and beyond what is required by FTA? (E.g., an accident that does not exceed FTA thresholds, alcohol pre-employment, etc.)	<p>Section 40.47(a) states: "... as an employer, you are prohibited from using CCF for non-Federal 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>49 C.F.R. § 40.227(a) states: "... as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations."</p>
	Comment:	
11	Are the Federal Drug Testing Custody and Control Form (CCF) and DOT Alcohol Testing Form (ATF) only used for DOT tests, and are they always used when it is a DOT test?	<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 [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>
	Comment:	

12	If a non-DOT CCF or ATF is used for a DOT test, do you know what the regulations require you to do to correct this flaw?	The transit system has until the end of the business day that the error is discovered to correct the mistake with an affidavit that explains the misuse of forms.
	Comment:	
13	Before performing a drug or alcohol test, how does the transit system inform each employee of the testing authority (i.e., FTA authority, transit system authority)?	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."
	Comment:	
14	What information do you provide to the collection site for each DOT test you are requesting?	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)."
	Comment:	
15	How do you ensure that DOT tests can be conducted at all times when safety-sensitive functions may be performed? (e.g., late night, weekends, holidays, maintenance hours, etc., if applicable.)	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."
	Comment:	

16	<p>Do you ever use a hospital for testing on a contingency basis? Do you know that they use documented trained collectors for DOT testing?</p> <p>Comment:</p>	<p>Section 40.31(a) states: "(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."</p>
17	<p>Have all safety-sensitive employees received receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?</p> <p>Comment:</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>Comment:</p>	
18	<p>Have all employees authorized to initiate FTA reasonable suspicion testing received at least 60 minutes of training on the indicators of probable drug use, and 60 minutes of training on the indicators of probable alcohol misuse?</p> <p>Comment:</p>	<p>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."</p>
	<p>Comment:</p>	
19	<p>For how long do you maintain documentation related to supervisor reasonable suspicion training?</p> <p>Comment:</p>	<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>
	<p>Comment:</p>	
20	<p>Does this transit system document Reasonable Suspicion referrals?</p> <p>Comment:</p>	<p>Use of FDOT Documentation form?</p>
	<p>Comment:</p>	

21	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."
	Comment:	
22	How do you record the first date that new hires or transferees begin safety-sensitive functions?	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."
	Comment:	
23	Do you perform pre-employment alcohol testing for all/any safety-sensitive positions?	Section 655.42 states: "An employer may, but is not required to, conduct pre-employment alcohol testing under this part." Section 655.42 (d) states: "The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40."
	Comment:	
24	If a non-safety-sensitive employee transfers to a safety-sensitive position what testing requirements do you administer prior to allowing the employee to perform safety-sensitive duties?	Section 655.41(b) states: "An employer may not transfer an employee from a nonsafety-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."
	Comment:	
25	When a safety-sensitive employee is to be on extended leave (90 or more consecutive days) and will not be performing safety-sensitive functions, how do you handle their placement in the DOT random testing pool and do you do anything upon their return and prior to their performance of safety-sensitive function?	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."
	Comment:	
26	At what point in the hiring process do you ask the applicant or transferee whether or not they have failed or refused a DOT pre-employment test in the previous two years?	

	Comment:	
27	How and when do you update your DOT random testing pool used for 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>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>
	Comment:	
28	What random selection method is used by this employer to select covered employees for FTA drug and alcohol testing?	<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>
	Comment:	
29	How frequently does this employer 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 that 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>
	Comment:	

30	How do you determine if the random test to be conducted will be a random alcohol, random drug or both?	<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 that 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>
	Comment:	
31	How is the random selection list transmitted to the DER 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>
	Comment:	
32	Does this transit system conduct random testing on all work days when safety-sensitive functions are being performed, including weekends and holidays?	<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>
	Comment:	
33	Does this transit system conduct random testing at all times that safety-sensitive functions are being performed (including maintenance of revenue vehicle, movement of revenue vehicles, etc.)?	<p>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>
	Comment:	

34	After being informed of the test requirement, how long until the employee proceeds to the collection site? How long is the employee given to arrive at the collection site?	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."
	Comment:	
35	If the DAPM is safety-sensitive and is in the random pool and the DAPM's name is selected for a random test, how is the DAPM made aware that their name is on the current random selection list and when does the DAPM proceed for random testing?	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."
	Comment:	
36	When, if ever, would you excuse an employee, selected for a random test, from random testing?	Section 655.45(e) states: "... Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made." The requirements in Section 655.45(e) can not be 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.
	Comment:	
37	If the DAPM or another non-active employee is safety-sensitive and is notified to proceed for random alcohol testing, how does this system ensure that the DAPM is only subject to random alcohol testing just before, during, or just after the performance of safety-sensitive functions?	
	Comment:	
38	Do you use alternates in your random selection process? Under what circumstances would you notify an alternate that they must proceed to the collection site for a random test?	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."

	Comment:	
39	Do you document if an employee is not tested or excused during a random selection period? If so, how?	<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>Written explanations for why employees are excused from testing ensure there is no bias in the random selection process.</p> <p>Section 655.71(c) states: "The following specific records must be maintained:  (1) Records related to the collection process: ...  (ii) Documents relating to the random selection process."</p>
	Comment:	
40	Do you have a way to know if the employee arrived at the collection site in a timely manner? For instance, does the collection site know who is coming for a test and when that individual should arrive?	<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: (1) 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 states: "As the collector, you must take the following steps before actually beginning a collection: (a) 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>
	Comment:	
41	After the testing is complete, does this transit system maintain a copy of each random selection draw list (e.g., paper copy, electronic file)?	<p>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."</p>
	Comment:	
42	Did you and your contractors meet the FTA's minimum random testing rates last year?	
	Comment:	

43	Who is responsible for deciding to perform a FTA post-accident test? (If DAPM, ask for knowledge of thresholds.) If more than one, ask to interview others.	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."
	Comment:	
44	Who has the primary responsibility for assuring that post-accident testing is accomplished?	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."
	Comment:	
45	Does this transit system have some method to document the post-accident decision-making process, especially decisions not to conduct a drug and alcohol test following an accident that reaches an FTA threshold?	Section 655.44(d) states: "The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test." Section 655.71(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."
	Comment:	
46	Would you always perform a DOT post-accident drug and alcohol test after an accident involving a fatality?	Section 655.44(a) states: "(1) Fatal accidents. (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1)." No discretion is permitted by FTA in determining if a surviving employee is to be post-accident tested after an accident involving a fatality.

	Comment:	
47	Can you list and explain the FTA post-accident testing thresholds? And explain disabling damage?	<p>Section 655.4 defines the term "Disabling damage" as "damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.</p> <p>(1) Inclusion. Damage to a motor vehicle where the vehicle could have been driven, but would have been further damaged if so driven.</p> <p>(2) Exclusions. (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.</p> <p>(ii) Tire disablement without other damage even if no spare tire is available.</p> <p>(iii) Headlamp or tail light damage.</p> <p>(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable."</p>
	Comment:	
48	In addition to the operator of a transit vehicle, can other covered employees be post-accident tested under FTA authority? If so, under what circumstances?	<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>
	Comment:	
49	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 public transportation 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>

50	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 public 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>
	Comment:	
51	What are the time limits for drug and alcohol post-accident testing? (if DAPM is involved in post-accident decision-making process)	<p>Section 655.44(a)(2)(ii) states: "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>
	Comment:	
52	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>
	Comment:	
53	Does this company provide the contact information of a qualified Substance Abuse Professional (SAP) readily available to assist any employee who has refused a test or had a positive test? Even if the employee is to be terminated?	
	Comment:	

54	Who would be the person responsible for ensuring that an employee who had a positive drug or alcohol test, or refused a test, was referred to the Substance Abuse Professional, even if the employee is not eligible for reinstatement?	Section 655.62 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 the 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."
	Comment:	
55	Does this transit system have a second chance policy for employees who refuse or test positive on an FTA drug and/or alcohol test?	Section 655.15 states: "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 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."
	Comment:	
56	If the SAP determines that an employee is eligible to be reinstated, who determines that the employee is ready to be sent for a Return-to-Duty test and makes the final "fitness for duty" determination?	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. (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. (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."
	Comment:	

57	<p>Does this employer receive a written SAP evaluation of an employee's readiness to return to duty and a follow-up testing plan? (If Yes, ensure that records-review team has appropriate files for review.)</p>	<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." (b) You [the SAP] must present a copy of this plan directly to the DER (see Section 40.311(d)(9))." Section 40.311(d) states: "The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items: ... (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance; (9) Follow-up testing plan... "</p>
	Comment:	
58	<p>Whose responsibility is it to determine the number of follow-up tests for an individual returning to duty?</p>	<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>
	Comment:	
59	<p>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?</p>	<p>Section 40.309(b) states: "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>
	Comment:	
60	<p>Do you review each return-to-duty plan/schedule submitted by the SAP?</p>	<p>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.</p>
	Comment:	

61	Who is responsible for ensuring that the SAP's follow-up testing plan for each employee is followed? (Ask to see plan and CFFs/ATFs - Ensure that Records-review team has appropriate files.)	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."
62	Whose responsibility is it to determine when an employee must actually go for a follow-up test?	Section 40.309 states: "(a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP. (b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice." Section 40.307(d)(3) states: "You [the SAP] are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's."
63	Would 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."
64	What would you do if you found out that a return-to-duty or follow-up test was not conducted under Direct Observation conditions?	
65	Does this transit system maintain all records related to the drug and alcohol program in a secure location with controlled access?	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."
66	Are you notified of alcohol test results of $\geq 0.02$ ? If so, when and by what method?	Section 40.255(a)(5) states: "Immediately transmit the result directly to the DER in a confidential manner. (i) You [the BAT] may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents."
67	What action would you take upon verbal notification that an employee had an alcohol test result $\geq 0.04$ ? What about 0.02?	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"

68	When an employee has a positive FTA drug test result, by what method and how soon after the test is verified does the MRO or C/TPA notify the transit system?	<p>Section 40.167 states: "As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:</p> <p>(a) You must report the results in a confidential manner.</p> <p>(b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.</p> <p>(1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163)."</p> <p>Section 40.167(c) states: "You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.</p> <p>(1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see 40.163(b) and (c)).</p> <p>(2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report."</p>
	Comment:	
69	What action would you take upon verbal notification from the MRO/TPA that an employee had verified positive drug test?	<p>Section 40.23(a) states "As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test."</p>
	Comment:	
70	Have the transit system and the MRO or C/TPA established a password or other verification method to ensure that verbal transmission of positive test results from the MRO is secure?	<p>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.</p> <p>(1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163).</p> <p>(2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification."</p>
	Comment:	

71	Does the transit system have a method to identify if the MRO or C/TPA has not provided a test result in a reasonable period after the test?	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."
	Comment:	
72	Do you use a consortium or third-party administrator (C/TPA)?	
	Comment:	
73	Are you aware of all safety-sensitive contracts, and do you monitor contractor compliance with Parts 40 and 655?	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." Section 655.81 states: " 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 [49 CFR Part 655]." Correctly identifying contractors who must comply with FTA drug and alcohol testing requirements is the first step in the oversight process.
	Comment:	
74	Does this employer utilize contractors who perform safety-sensitive duties?	
	Comment:	

75	How do you monitor the drug and alcohol programs of your contractors?	<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> <p>Section 655.73(i) states: "An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR Parts 40 and 655."</p>
	Comment:	
76	Did you receive this year's Drug and Alcohol MIS reports or MIS data from all of your contractors in a timely manner and were they submitted to FTA by March 15th?	<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>
	Comment:	
77	Are your covered contractors and vendors in compliance with the FTA drug and alcohol rules?	
	Comment:	
78	Does this employer assemble an annual summary of the results of the drug and alcohol program (MIS), certify that the results are correct and as requested submit to FTA by March 15th?	<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>
	Comment:	
79	Did the employer ensure the accuracy and timeliness of each report submitted by the employer, contractor, consortium and/or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf?	
	Comment:	

SECTION 2- RECORDS REVIEW

1	<p>APPROPRIATENESS OF RECORDS MAINTENANCE: Does the auditor observe that a set of records has been established with the following characteristics: 1) Secure location and access controlled to those few individuals with a need to know; 2) Information released only as appropriate; 3) Federally required tests and testing has priority and is separate from non-DOT testing; 4) Records are maintained for the proper length of time.</p>	
	<p>Comment:</p>	
2	<p>Does the employer maintain records of its anti-drug and alcohol misuse program in a secure location with controlled access?</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>
	<p>Comment:</p>	
3	<p>Does the employer 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>	<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 Section 655.71."</p>
	<p>Comment:</p>	
4	<p>Are DOT tests separate from non-DOT tests in all respects, and 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 for a non-DOT test)?</p>	<p>Section 40.13(a) states: "DOT tests must be completely separate from non-DOT tests in all respects." Section 40.13(b) states: "DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test."</p>
	<p>Comment:</p>	
5	<p>Are the following records maintained for a minimum of five years from the date of creation: (1) covered employee verified positive drug and alcohol test results; (2) documentation of refusals; (3) covered employee referrals to an SAP; (4) employer reports from SAPs; and (5) copies of annual MIS reports submitted to FTA?</p>	<p>Section 655.71(b)(1) states: "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 [must be maintained for five years]." Section 40.311(h) states: "As an employer, you must maintain your reports from SAPs for 5 years from the date you received them."</p>
	<p>Comment:</p>	

6	Does the employer maintain for three years all drug and alcohol test results obtained from previous employers for new hires or transfers into safety-sensitive positions?	Section 40.333(a)(2) states: "You must keep records for three years of information obtained from previous employers under Section 40.25 concerning drug and alcohol test results of employees."
	Comment:	
7	Does the employer maintain records of the collection process and employee training for at least two years?	
	Comment:	
8	Does the employer maintain negative drug and alcohol test results for at least one year?	
	Comment:	
9	EMPLOYEE AND SUPERVISOR TRAINING: Do the records indicate that the employer complies with the employee and supervisor education and training requirements, including: 1) Displaying and distributing drug and alcohol informational material? 2) Providing and documenting 60 minutes of employee drug awareness training? 3) Providing and documenting 120 minutes of supervisor reasonable suspicion drug and alcohol training? 4) Not requiring employees to sign drug and alcohol testing consent forms, except the required "prior employer" records release forms?	
	Comment:	
10	Do supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations 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?	
	Comment:	
11	PRE-EMPLOYMENT RECORDS REQUESTS Does the employer:1) Obtain a specific written release from applicants for safety-sensitive positions; 2) Request the information from all listed covered employers who employed the individual within the past two years; and 3) Ask the applicant whether they have ever been denied a position on the basis of a positive drug or alcohol test?	
	Comment:	

12	Since August 1, 2001, has the employer obtained specific written consent from the applicant or employee to obtain 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?	
	Comment:	
13	Does the employer perform the requests required by this part for all safety-sensitive applicants/transferees, or only those applying to a driver/cdl position?	Section 40.25(b) states: "You must request the information listed in this paragraph (b) from 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."
	Comment:	
14	Does the employer ask each applicant or transferee whether he or she has tested positive, or refused a test, on any pre-employment drug or alcohol test administered by an employer to which the applicant or transferee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years?	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."
	Comment:	
15	PRE-EMPLOYMENT TESTING: Does the auditor observe that the pre-employment testing program has the following characteristics: 1) Notification of FTA authority; 2) Verified negative result is received before the employee performs a safety-sensitive duty (or is hired if the transit system continues with the previous policy); 3) Cancelled tests, if any, must be retaken and passed before the employee performs a safety-sensitive duty (or is placed on the payroll); 4) No more than 90 days between the pre-employment test and the date the employee becomes subject to random testing.	
	Comment:	

16	Does the employer receive a verified negative pre-employment drug test result for each applicant or transferee before the individual performs a safety-sensitive function for the first time?	<p>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."</p> <p>Section 655.41(b) states: "An employer may not transfer an employee from a nonsafety-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."</p> <p>Safety-sensitive functions includes the operation of a revenue-service vehicle, whether or not in revenue service. A pre-employment test result must be received before the employee first performs this function in training or as part of a road test.</p>
	Comment:	
17	Do the records indicate that no more than 90 days elapse between the receipt of the negative pre-employment test and the date the employee first performs a safety-sensitive duty and is placed into the random testing pool?	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."
	Comment:	
18	Do the records indicate that, if a pre-employment drug test is canceled, the employer requires the covered employee to take another pre-employment drug test administered under this part with a verified negative result?	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."
	Comment:	
19	If the employer chooses to conduct pre-employment alcohol testing, does the employer conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40?	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."
	Comment:	
20	<b>REASONABLE SUSPICION TESTING:</b> Do the records of Reasonable Suspicion testing indicate that the tests were properly ordered, adequately documented by trained supervisors, and completed within the required timeframes?	
	Comment:	

21	Do the records indicate that the employer's determination, that reasonable suspicion existed to warrant testing, was based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee?	Section 655.43(b) states: "An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations."
	Comment:	
22	Do the records indicate that all reasonable suspicion tests were ordered by supervisor(s), or other company official(s) trained in detecting the signs and symptoms of drug use and alcohol misuse?	Section 655.14(b)(2) states: "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."
	Comment:	
23	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? If a reasonable suspicion alcohol test is not administered within eight hours, does the employer 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."
	Comment:	
24	POST-ACCIDENT TESTING: Do the records indicate that the post-accident testing program has the following characteristics: 1) Proper observance of FTA testing thresholds; 2) Proper notification of test authority; 3) Proper use of the federal CCF; 4) Testing completed within the required time limits or records maintained of testing efforts.	
	Comment:	
25	Do the records indicate that the employer performs an FTA post-accident test after an accident when an individual dies, regardless of whether the operator's performance can be completely discounted as a possibly contributing factor?	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 public transportation vehicle at the time of the accident."
	Comment:	

26	Do the records indicate that the employer conducts FTA post-accident testing after non-fatal accidents that reach an FTA post-accident testing threshold (unless the employee's performance has been completely discounted as a factor contributing to the accident)?	Section 655.44(a)(2)(i) states: "As soon as practicable following an accident not involving the loss of human life in which a 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."
	Comment:	
27	Do any records indicate that the employer conducts post-accident testing using a federal CCF after an accident that does not meet an FTA post-accident threshold, or after a qualifying accident in which the employee has been discounted?	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 public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation"
	Comment:	
28	Do the records indicate that the employer tests other covered employees whose performance could have contributed to a fatal or non-fatal accident?	Section 655.44(a)(ii) states: "The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision."
	Comment:	
29	Is the decision not to administer a post-accident drug and/or alcohol test documented in detail, including the decision-making process used to reach the decision not to test, in an accident where an FTA post-accident testing threshold was met?	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."

30	If a post-accident alcohol test is not administered within two hours following the accident, does the employer prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered?	Section 655.44(a)(2)(ii) states: "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."
	Comment:	
31	If a post-accident alcohol test is not administered within eight hours following the accident, does the employer cease attempts to administer an alcohol test and maintain the record?	Section 655.44(a)(2)(ii) states: "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. Records shall be submitted to FTA upon request of the Administrator."
	Comment:	
32	Is a covered employee who is required to be drug tested after an accident tested as soon as practicable, but within 32 hours of the accident?	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."
	Comment:	
33	If a covered employee who is subject to post-accident testing fails to remain readily available for such testing, is the employee deemed by the employer to have refused to submit to testing?	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."
	Comment:	
34	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 [Sections 655.44(a) and (b)]."
	Comment:	
35	<b>RANDOM TESTING:</b> Do the records indicate that random testing has the required characteristics: 1) Draws are made frequently enough; 2) Random testing is performed at the required minimum rates; 3) Testing is spread reasonably; 4) Method is scientifically valid; 5) Notices are held confidential; 6) Employees proceed immediately; 6) Excusals are valid and recorded.	

	Comment:	
36	Are random testing selections performed not less frequently than quarterly?	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."
	Comment:	
37	If a C/TPA provides selection lists to the employer, have these lists been provided in a consistent and timely fashion, such that the employer's ability to complete and spread random testing is not hindered?	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."
	Comment:	
38	Has the employer met the FTA's published minimum annual percentage rate for random drug and alcohol testing?	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."
39	Is the selection of employees for random testing made by a scientifically valid method, and does each covered employee have an equal chance of being tested each time selections are made?	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."
	Comment:	
40	Are random drug and alcohol tests unpredictable - e. g. , the dates for administering random tests are spread reasonably throughout the calendar year?	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."
	Comment:	

41	Are random drug and alcohol tests unpredictable - e. g., the tests are conducted on all days of the week when safety sensitive functions are performed?	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. Section 655 regulatory commentary: "FTA reiterated in the NPRM that a primary purpose of random testing is deterrence. Deterrence is most effectively achieved with random, unpredictable drug and alcohol testing that is conducted throughout all workdays and hours of service."
	Comment:	
42	Are random drug and alcohol tests unpredictable - e. g., the tests are conducted at all times of the day when safety sensitive functions are performed?	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."
	Comment:	
43	Do the records indicate that all covered employees are proceeding to the collection site immediately upon notification of their selection for a random drug and/or alcohol test?	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."
44	Are records of excusals maintained, and do the records indicate that employees are only excused from random testing for legitimate reasons (e.g., on vacation, out sick)?	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."
45	ACTIONS AFTER NON-NEGATIVE TEST RESULTS: Do the records indicate that for each non-negative or refused drug or alcohol test result: 1) the employee is immediately removed from safety-sensitive duties; and 2) the employee is referred to a qualified SAP who is reasonably available to the employee?	
46	Upon receiving notice that a covered employee has a verified positive test result, does the DER immediately remove the employee from performing safety-sensitive functions?	Section 655.61(a)(1) states: "Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function."

47	Upon receiving notice from the BAT that a covered employee has a confirmed alcohol test result of 0.02 or greater, does the DER immediately remove the employee from performing safety-sensitive functions?	Section 655.61(a)(2) states: "Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function."
48	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?	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."
49	Does the employer provide each employee who violates a DOT drug and/or alcohol regulation (including applicants or new employees) a list of SAPs readily available to the employee and acceptable to the employer, including names, addresses, and telephone numbers?	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."
50	RETURN TO DUTY AND FOLLOW-UP TESTING: If the company has a Second-Chance policy, do the records indicate that the Return-to-Duty and Follow-up process is conducted properly, including:1) Evaluation by a properly qualified SAP; 2) Receipt of the initial evaluation report by the SAP; 3) Return to Duty test after written recommendation by the SAP; 4) Receipt of the frequency and duration of follow-up testing plan from the SAP; 5) Adherence to the follow-up testing plan; and 6) All RTD/Follow-up tests conducted since 9/1/2009 have been performed under direct observation?	
51	Does the employer ensure that an employee with direct or immediate supervisory responsibility or authority over another employee does not serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee?	Section 655.53 states: "An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee."
52	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 meeting the requirements of section 40.281, and that the employee successfully complies with the recommendations in the SAP evaluation?	Section 40.289(b) states: ". . . [i]f you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of Section 40.281 and that the employee successfully complies with the SAP's evaluation recommendations."

53	Does the SAPs written report of the initial evaluation meet the reporting requirements of Part 40?	<p>Section 40.311(b) states: "The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:</p> <ol style="list-style-type: none"> <li>(1) Employee's name and SSN;</li> <li>(2) Employer's name and address;</li> <li>(3) Reason for the assessment (specific violation of DOT regulations and violation date);</li> <li>(4) Date(s) of the assessment;</li> <li>(5) SAP's education and/or treatment recommendation; and</li> <li>(6) SAP's telephone number."</li> </ol>
54	Does the SAPs written report of the follow-up evaluation meet the reporting requirements of Part 40?	<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> <ol style="list-style-type: none"> <li>(1) Employee's name and SSN;</li> <li>(2) Employer's name and address;</li> <li>(3) Reason for the initial assessment (specific violation of DOT regulations and violation date);</li> <li>(4) Date(s) of the initial assessment and synopsis of the treatment plan;</li> <li>(5) Name of practice(s) or service(s) providing the recommended education and/or treatment;</li> <li>(6) Inclusive dates of employee's program participation;</li> <li>(7) Clinical characterization of employee's program participation;</li> <li>(8) SAP's clinical determination as to whether or not the employee has demonstrated successful compliance;</li> <li>(9) Follow-up testing plan;</li> <li>(10) Employee's continuing care needs with specific treatment, aftercare, dates of any further follow-up evaluation the SAP has scheduled, and/or support group services recommendations; and</li> <li>(11) SAP's telephone number."</li> </ol>
55	If the employer decides to permit an employee to return to the performance of safety-sensitive functions, does the employer ensure that the employee takes a return-to-duty drug and/or alcohol test with a negative result and that this test does not occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment?	<p>Section 40.305(a) states: "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>

56	Do the records indicate that the employer is conducting follow-up testing in accordance with SAPs prescribed testing requirements, and does the employer schedule follow-up tests on dates of its own choosing, in an unpredictable manner, and with no prior notice to the employee?	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."
57	Do the records indicate that the employer ever substitutes any other tests (e.g., random tests, post-accident tests) or a cancelled follow-up test to comply with the SAPs follow-up testing requirement?	Section 40.309(c) states: "You [the employer] cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement." Section 40.309(d) states: "You [the employer] cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected."
58	Do the records indicate that all return-to-duty and follow-up tests conducted since September 1, 2009 have been performed under direct observation?	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."
59	If the record includes any case(s) in which a return-to-duty or follow-up test that should have been observed was not, did the MRO or other vendor hold the original result and request that the employer immediately direct the employee to submit to recollection under direct observation?	A notice from the Department of Transportation's Office of Drug and Alcohol Policy and Compliance, dated September 10, 2009, reads: "If a collector, Medical Review Office (MRO), Third Party Administrator (TPA), or other service agent learns that a Direct Observation collection using the required procedures was not conducted, the employer needs to be informed. Upon learning that a Direct Observation collection using the required procedures was not conducted, the employer needs to direct the employee to have an immediate recollection under Direct Observation."
61	If the employer has received any dilute-negative test results, do the records indicate that the employer has reacted in a manner consistent with its policy?	Section 40.197(b) states: ". . . [i]f the MRO informs you [the employer] that a negative drug test was dilute . . . (2) you may, but are not required to, direct the employee to take another test immediately. (i) 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."

62	Do the records indicate that the employer or other person administering the drug and alcohol testing process reviews CCFs and identifies and corrects any errors in the testing process of which they become aware, even if they are not considered problems that will cause a test to be cancelled?	<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]."</p> <p>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>
63	Do the records indicate that any drug or alcohol tests were cancelled because they were determined to be fatally flawed? If so, has the transit operator sought and received indication that the service agent has received the required retraining?	<p>Section 40.33(f) states: "Error Correction Training. If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining."</p> <p>Section 40.33(g) states: "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."</p>
64	Do the records indicate that any drug or alcohol tests which had correctable flaws were cancelled because they were not properly resolved? If tests were cancelled, has the transit operator sought and received indication that the service agent has received the required retraining?	<p>Section 40.205(b) states: "If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that can be corrected (see Section 40.203), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled."</p> <p>Section 40.33(f) states: "Error Correction Training. If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining."</p> <p>Section 40.33(g) states: "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."</p>

65	Do the records indicate that, after receipt of a cancelled test result when a negative result is required (i.e. pre-employment, return-to-duty, or follow-up test), the employer directed the employee to provide another specimen immediately and was that specimen properly collected?	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."
66	Do the records indicate that, after the MRO required an immediate observed collection, the employer directed an immediate collection under direct observation with no advance notice to the employee, and 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 result had to be cancelled because the test of the split specimen could not be performed . . . ."
67	Does the employer request the following information from the DOT-regulated employers who have employed the applicant or transferee for any period during the two years prior to the date of application or transfer: (1) Alcohol tests with a result of 0.04 or higher alcohol concentration; (2) Verified positive drug tests;(3) Refusals to be tested (including verified adulterated or substituted drug test results); (4) Other violations of DOT agency drug and alcohol testing regulations; and (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests)?	Section 40.25(a) states: "As an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in [Section 40.25(b)]. Section 40.25(b) states: "You must request the [following information] from 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: (1) Alcohol tests with a result of 0.04 or higher alcohol concentration; (2) Verified positive drug tests; (3) Refusals to be tested (including verified adulterated or substituted drug test results); (4) Other violations of DOT agency drug and alcohol testing regulations; and (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-do-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee."
68	Does the employer 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, and MRO and SAP services)?	Section 40.27 states: ". . . [a]s 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)."

69	Before performing a drug or alcohol test under Section 655, does the employer notify the covered employee that the test is required under Section 655?	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."
70	If the C/TPA or other service agent acts as an intermediary in the transmission of drug and alcohol testing information, has the employer chosen to have the C/TPA or other service agent perform this function?	Section 40.345(a) states: "As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in Section 40.345 only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT)."
71	If the C/TPA maintains records for the employer, were those records made available to the audit team in an appropriate and timely manner?	Section 40.331(c) states: "If you are a service agent, you must, upon request of DOT agency representatives, provide the following: (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions. (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency. (3) All items in paragraph (c)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards."
72	Did the employer permit access to all facilities utilized and records compiled in complying with the requirements of this part and disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems?	Section 655.73(d) states: "An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request." Section 655.73(c) states: "An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems."

## Exhibit 2- Central Office Responsibilities

Activity	Frequency
Establish and maintain communication with District Office on all matters related to this procedure <b>(1.1)</b>	Ongoing
Certify sub-recipient compliance to FTA Regional Office <b>(1.2)</b>	Annually, by March 15
Maintain the Master 5311 Sub-Recipient Agency and District Contact database <b>(1.3)</b>	Ongoing
Disseminate the FTA assigned login credentials to all 5311 sub-recipient agencies <b>(1.4)</b>	Annually, by January 15
Review DAMIS data entries for accuracy, assist agencies in resolving data entry error and verify DAMIS reports. <b>(1.5)</b>	Annually, between January 15 and March 15
Provide electronic copies of sub-recipient agency DAMIS reports to appropriate District Office <b>(1.6)</b>	Annually, between January 15 and March 15
Submit the finalized FDOT DAMIS report <b>(1.7)</b>	Annually, by March 15
Review and disseminate legislative updates and other relevant information regarding the FTA drug and alcohol program <b>(1.8)</b>	Ongoing

### Exhibit 3- District Office Responsibilities

Activity	Frequency
Update FDOT Master 5311 Sub-Recipient Agency & District Contact List <b>(2.1)</b>	Annually, prior to November 15
Ensure that all 5311 sub-recipient agencies and/or contractors have implemented a compliant substance abuse management program, including the adoption of an FDOT approved policy. <b>(2.2 &amp; 2.3)</b>	Ongoing
Collect and maintain a certificate of compliance from each sub-recipient agency Form: 725-030-10. <b>(2.4)</b>	Annually, prior to February 15
Support Central Office in the DAMIS data collection and reporting effort <b>(2.5)</b>	Annually, from January 15 - February 15
Maintain a copy of each sub-recipient agency DAMIS report (as provided by Central Office) for a period of no less than five years. <b>(2.6)</b>	Maintain FDOT-approved DAMIS report for five calendar years
Perform, or oversee the performance of, on-site Triennial Substance Abuse Management compliance reviews for each sub-recipient agency and/or contractor. <b>(2.7)</b>	Triennially, beginning in 2017
Maintain all documentation related to Substance Abuse Management Reviews <b>(2.8)</b>	Maintain for five calendar years
Ensure that sub-recipient agencies are aware of the technical assistance and resources available from FDOT <b>(2.9)</b>	Ongoing