

03/23/07 FTA SUBSTANCE ABUSE MANAGEMENT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

1. LOCAL BOARD ADOPTION: Has the policy, as most recently revised, been adopted by the local governing board of the employer or operator, or other responsible individual with appropriate delegation of authority?

2. CONTACT PERSON: Does the policy identify the person, office, branch or position designated by the employer to answer employee questions about the anti-drug and alcohol misuse prevention program?

Auditor Comment: Section 655.15(a) states that the policy shall provide: "The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs."

3. COVERED EMPLOYEES: Does the policy correctly and completely list, or describe, the categories of employees (covered employees) who are subject to the provisions of the anti-drug and alcohol misuse prevention program?

Auditor Comment: Section 655.15(b) states the policy shall include: "The categories of employees who are subject to the provisions of this part." Safety-sensitive functions are described in Section 655.4, Definitions, under "Safety-sensitive." The policy should clarify which jobs are covered because they do or may involve the performance of safety-sensitive duties.

4. Does the category of covered activities include operating a revenue service vehicle, whether in or out of service?

Auditor Comment: Section 655.4 defines safety-sensitive functions as including "Operating a revenue service vehicle, including when not in revenue service."

5. Does the category of covered activities include maintaining a revenue service vehicle or equipment used in revenue service?

Auditor Comment: Section 655.4 defines safety-sensitive functions as including "Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service."

6. Does the category of covered activities include controlling the dispatch or movement of a revenue service vehicle, and if so, is the category description consistent with Part 655?

Auditor Comment: Section 655.4 defines safety-sensitive functions as including "Controlling dispatch or movement of a revenue service vehicle."

Part III, Subpart A of the preamble to Part 655 states with regard to dispatchers that "Since each employer uses its own terminology to describe job categories that involve safety-sensitive functions, each employer must continue to decide whether a particular employee performs any of the functions listed in the definition of 'safety-sensitive function,' including bus dispatchers. FTA will allow each employer to determine whether a particular dispatcher performs or may perform a safety-sensitive function."

7. Does the category of covered activities include operating a non-revenue service vehicle that requires a CDL?

Auditor Comment: Section 655.4 defines safety-sensitive functions as including "Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License."

8. Does the category of covered activities include carrying a firearm for security purposes?

Auditor Comment: Section 655.4 defines safety-sensitive functions as including "Carrying a firearm for security purposes."

9. COVERED VOLUNTEERS: If an operator has volunteers performing safety-sensitive duties, are the volunteers classified with covered employees (subject to drug and alcohol testing) if: 1) the volunteer is required to hold a CDL, or; 2) the volunteer receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity?

Auditor Comment: Section 655.4 defines covered employee, stating that "A 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."

10. ANALYSIS OF SAFETY-SENSITIVE JOB FUNCTIONS: Does the policy indicate which job titles are covered because the employer has determined that the duties require or may require the performance of safety-sensitive duties?

Auditor Comment: Section 655.15(b) indicates that the categories of employees (covered employees) who are subject to the provisions of the anti-drug and alcohol misuse prevention program shall be included in the policy. The key issue is the type of work performed rather than any particular job title (See preamble to Part 655).

Part III, Subpart A of the preamble to Part 655 states ... "Since each employer uses its own terminology to describe job categories that involve safety-sensitive functions, each employer must continue to decide whether a particular employee performs any of the functions listed in the definition of 'safety-sensitive function'..."

11. PROHIBITED DRUG USAGE: Does the policy indicate that employees may be tested for the five specified drugs anytime while on duty?

Auditor Comment: Section 655.45(i) states "A covered employee may be randomly tested for prohibited drug use anytime while on duty."

12. PROHIBITED BEHAVIOR - ALCOHOL: Does the policy adequately contain specific information concerning employee conduct that is prohibited by the alcohol misuse prevention portion of FTA's rule? The topics include the following periods of compliance:

- 1) No usage four hours before performing and while performing a safety-sensitive duty;
- 2) No usage for 8 hours following an accident or until a post-accident alcohol test is performed; and
- 3) Testing is permissible only just before, during and just following the performance of a safety-sensitive duty.

Auditor Comment: Sections 655.32, 655.33, 655.34, 655.43(c) and 655.45(i) as detailed below.

13. Alcohol Usage: Does the policy indicate that alcohol use is impermissible for 4 hours prior to performing a safety-sensitive duty, while on-call to perform a safety-sensitive duty and while performing a safety-sensitive duty?

Auditor Comment: Section 655.33(a) states: "Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions." Section 655.33(b) states: "An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function [and] (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function."

Section 655.32 states: "Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions."

14. Alcohol Testing: Does the policy indicate that alcohol use by any covered employee required to take a post-accident alcohol test is prohibited for 8 hours following the accident or until the alcohol test is performed, whichever occurs first?

Auditor Comment: Section 655.34 states: "Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under Section 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first."

15. Alcohol Testing: Does the policy indicate that random and reasonable suspicion alcohol testing is only permissible just before an employee performs safety-sensitive duties, during that performance, and just after an employee has performed covered duties?

Auditor Comment: Section 655.45(i) states: "A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions." Section 655.43(c) contains a similar statement for reasonable suspicion alcohol testing.

16. CIRCUMSTANCES OF TESTING: PRE-EMPLOYMENT: Does the policy provide a complete and detailed discussion of the following requirements for pre-employment testing:

Negative drug test result received before 1st performance of a safety-sensitive duty;

Evidence of successful completion of a rehabilitation program from an applicant or employee who has previously failed a DOT drug test;

Testing for an employee who has not performed safety-sensitive duties for 90 consecutive days and has not been in the random pool; and

Part 40 compliant if the employer chooses to do alcohol testing?

Auditor Comment: Section 655.15(d) states that the policy shall include "The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

17. Pre-employment drug testing: Does the policy state that:

The candidate must produce a negative drug test result prior to first performing a safety-sensitive duty;

If the test is canceled, the employee must retake and pass the test before being hired; and

An employee being transferred must provide a verified negative urinalysis prior to performing a safety-sensitive function?

Auditor Comment: 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." If the policy specifies that an applicant may not be hired until after a verified negative drug test result, that is an acceptable alternative to the first performance of a safety-sensitive duty.

03/23/07 FTA SUBSTANCE ABUSE MANAGEMNT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

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."

Section 655.41(b) states: "An employer may not transfer an employee from a non-safety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result."

18. Pre-employment drug testing: Does the procedure for a covered employee or applicant who has previously failed or refused a DOT pre-employment drug test include requiring evidence that the employee has successfully completed a referral, evaluation and treatment plan?

Auditor Comment: Section 655.41(a)(2) states: "When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62."

19. Pre-employment drug testing: Does the policy include the provision that a covered employee who has not performed a safety-sensitive duty for 90 consecutive days or more and has not been in the employer's random selection pool shall take a pre-employment drug test with a verified negative result before returning to safety-sensitive duties?

Auditor Comment: 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."

20. Pre-employment alcohol testing: If the employer chooses to conduct pre-employment alcohol testing, are all the following requirements covered:

- 1) Testing before the first performance of a safety-sensitive function for every covered employee;
- 2) Testing all covered employees for this type of alcohol testing;
- 3) Testing conducted after the employer makes a contingent offer of employment or transfer subject to the employee passing this alcohol test;
- 4) Testing must follow the procedures described in Part 40; and
- 5) The covered employee must not be allowed to begin performing safety-sensitive duties unless the result is a BAC below 0.02.

Auditor Comment: Section 655.42 states: "An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

- (a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- (b) The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).
- (c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

03/23/07 FTA SUBSTANCE ABUSE MANAGEMENT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

(d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.

(e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02."

21. CIRCUMSTANCES; RANDOM TESTING FOR DRUGS AND ALCOHOL: Does the policy describe random testing as:

Scientifically valid;

Reasonably spread;

Unannounced and immediate; and

With no discretion by managers (i.e., all covered employees having an equal chance of being selected)?

Auditor Comment: Section 655.45(e), (g), and (h) state that a compliant random testing program must include the following: (1) selections made using a scientifically valid method; (2) testing spread reasonably throughout all periods of the calendar year; (3) testing is unannounced and immediate; and (4) allows no discretion by personnel as to who is selected or notified to proceed for testing.

22. Random selection method: Does the policy state that random selection shall be by a scientifically valid method, such as a random number table or a computer-based random number generator?

Auditor Comment: 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."

23. Reasonably spread: Does the policy state that random tests are to be spread reasonably throughout the year? Operationally, this means that: (1) Testing is continuous throughout the year (i.e., testing starts in January and there is no period during which testing is halted); and (2) Testing is conducted on all days and hours during which the transit service is in operation.

Auditor Comment: Section 655.45(g) states "Each employer shall ensure 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." This ensures that employees will have a reasonable expectation that they might be called for a test on any day and at any time they are at work.

24. Unannounced and immediate: Does the policy state that random test dates are unannounced and immediate? (Employees are required to go for the test upon notification, and to have little opportunity to circumvent the test procedures.)

Auditor Comment: Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable"

Section 655.45(h) further 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."

25. No discretion: Does the policy state that each covered employee shall have an equal chance of being tested each time selections are made?

Auditor Comment: 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 . . . , each covered employee shall have an equal chance of being tested each time selections are made."

26. CIRCUMSTANCES: POST-ACCIDENT: Required testing for Drugs and Alcohol. Does the policy describe post-accident testing as:

Meeting FTA thresholds;

Meeting drug and alcohol testing time limits; and

Requiring employees to remain "readily available" for testing?

Auditor Comment: Section 655.44 outlines the FTA criteria for conducting post-accident tests.

27. FTA Thresholds: Does the policy state the FTA post-accident testing thresholds as follows:

A fatality;

Bodily injury requiring medical attention away from the scene of the accident or

If the mass-transit vehicle is a rubber-tire vehicle and any of the involved vehicles is towed away;

If the mass transit vehicle is a rail vehicle or vessel and the mass transit vehicle is removed from revenue service?

Auditor Comment: Section 655.4 (Accident) defines the FTA criteria for a covered accident after which drug and alcohol testing must be conducted, as follows:

"Accident means an occurrence associated with the operation of a vehicle, if as a result:

(1) An individual dies; or

(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation."

If company-specific elements are also included, these must be identified as the employer's own criteria for completing post accident tests under the employer's own authority.

28. Who must be tested: FATALITY? Does the policy state that, in a fatality, the following individuals must be tested:

All surviving covered employees operating the mass transit vehicle at the time of the accident; and

All other covered employees whose performance could have contributed to the accident?

Auditor Comment: Section 655.44(a)(1)(i) states: "As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. Post-accident drug and

03/23/07 FTA SUBSTANCE ABUSE MANAGEMNT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

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)."

Section 655.44(a)(1)(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."

29. Who must be tested: NON-FATALITY? Does the policy state that, in a non-fatal accident, the following individuals must be tested:

All covered employees operating the mass transit vehicle unless their performance can be completely discounted as a contributing factor based on the best information available at the time of the decision; and

All other covered employees whose performance could have contributed to the accident?

Auditor Comment: Section 655.44(a)(2)(i) states: "As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision."

30. TIME To Complete Post-Accident DRUG Test: Does the policy state that the employer must complete post-accident testing as soon as possible, not longer than 32 hours following the accident?

Auditor Comment: 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."

31. TIME To Complete Post-Accident ALCOHOL Test: Does the policy state that the employer must: Attempt to complete the test within 2 hours of the accident; and

If not able to obtain a specimen within 2 hours, file a report why not able and continue attempts to obtain specimen; and

If not able to obtain a specimen in 8 hours, cease attempts to obtain a specimen and update the two-hour written report?

Auditor Comment: 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. Records shall be submitted to FTA upon request of the Administrator."

32. Requirement to remain "Readily Available" for testing: Does the policy state that a covered employee 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?

03/23/07 FTA SUBSTANCE ABUSE MANAGEMNT OVERSIGHT PROGRAM QUESTIONAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

Auditor Comment: 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."

33. Requirement to remain "Readily Available" for testing: Does the policy state that accident testing is stayed while employee assists in resolution of the accident or receives medical attention following the accident?

Auditor Comment: Section 655.44(e) 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."

34. CIRCUMSTANCES: REASONABLE SUSPICION: Does the policy state that reasonable suspicion testing is required when:

One or more trained supervisors or company officials can

Articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by

Observing the appearance, behavior, speech or body odors of the covered employee?

Auditor Comment: 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."

Further, Part III, Subpart E, Section C of the preamble to Part 655 states: "FTA also notes that the proposed bar to an employer requiring two or more trained supervisors to make such referrals is not included in the final rule. FTA also agrees that an employer should be permitted to authorize and train other company officers to make reasonable suspicion observations"

35. CIRCUMSTANCES: RETURN-TO-DUTY AND FOLLOW-UP TESTS (drug and alcohol): If the company has a second-chance policy, does the policy require that these tests be conducted as specified in 49 CFR Part 40?

The policy should be clear on whether an employee who refuses or fails a test may be permitted to return to safety-sensitive duties.

Auditor Comment: Section 655.15 -Policy statement contents- states: "The ... policy...shall 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."

If there is a second chance policy, Section 655.46 states: "Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40."

03/23/07 FTA SUBSTANCE ABUSE MANAGEMNT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

36. PROCEDURES: Does the policy include a statement that all drug and alcohol testing will be conducted in accordance with 49 CFR Part 40? This covers the requirement of Section 655.15(e) to include the procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct employee.

Auditor Comment: Section 655.51 states: "The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part."

The preamble to Part 655, Part III, Subpart B, Section A states: "FTA also believes that it is reasonable for employers to incorporate by reference 49 CFR Part 40 in their Policy Statements and make it available for review by employees when requested."

37. REQUIREMENT TO SUBMIT- Drug Testing: Does the policy include the requirement that a covered employee submit to drug tests administered in accordance with Part 655?

Auditor Comment: Section 655.49(a) states: "Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under Section 655.44, a random drug and alcohol test required under Section 655.45, a reasonable suspicion drug and alcohol test required under Section 655.43, or a follow-up drug and alcohol test required under Section 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions."

38. REQUIREMENT TO SUBMIT- Alcohol Testing: Does the policy include the requirement that a covered employee submit to alcohol tests administered in accordance with Part 655?

Auditor Comment: Section 655.49(a) states "Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under Section 655.44, a random drug and alcohol test required under Section 655.45, a reasonable suspicion drug and alcohol test required under Section 655.43, or a follow-up drug and alcohol test required under Section 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions."

39. DILUTE NEGATIVE POLICY; Does the policy contain the transit operator's determination concerning whether or not employees who produce dilute negative specimens will be required to take another test immediately under non-observed conditions. If the operator has determined to require retesting, has that decision been made known in advance to employees, either through inclusion in the policy or through another method?

Auditor Comment: Section 40.197 (b) through (e) states: (b) If the MRO informs you that a negative drug test was dilute, you may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see Sec. 40.67(b) and (c)).

(c) You 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.

(d) If you direct the employee to take another test, you must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site. If you direct the employee to take another test, the result of the second test--not that of the original test--becomes the test of record, on which you rely for purposes of this part.

40. REFUSALS DEFINED: Does the policy state that the following elements are circumstances constituting a refusal:

Refusals for both drug and alcohol testing;

Drug testing - additional refusals;

Alcohol testing - additional refusals; and

No claim that refusal to take a test required under company authority will be considered as a refusal to take a DOT-required test.

Auditor Comment: Section 655.15(g) requires that the policy include "A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy." Refusals are defined in Sections 40.191 and 40.261. Under Sections 40.191(e) and 40.261(d), the refusal to take a non-DOT drug or alcohol test or sign a non-DOT form is not a refusal to take a DOT test.

41. Refusal - Drug and Alcohol Testing: Are all of the following included:

1) Failure to appear in a reasonable time except for pre-employment tests;

2) Failure to remain until the testing process is complete;

3) Failure to provide a specimen;

4) Failure to provide a sufficient specimen with no medical explanation;

5) Failure to undergo a medical evaluation as required by a MRO or DER; and

6) Failure to cooperate with any part of the testing process?

Auditor Comment: Section 40.191(a) lists circumstances that constitute refusals for drug testing and Section 40.261(a) lists circumstances that constitute refusals for alcohol testing.

42. Refusals: Does the policy state that failure to appear in a timely fashion (except for pre-employment tests) for drug and alcohol tests is a refusal?

Auditor Comment: Section 40.191(a) states: "As an 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. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see Section 40.61(a))." A similar statement for alcohol testing is found in Section 40.261(a)(1).

43. Refusals: Does the policy state that the failure to remain until the testing process is complete for drug and alcohol tests is a refusal?

Auditor Comment: Section 40.191(a)(2) states: "As an employee, you have refused to take a drug test if you: Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see Section 40.63(c) of this part) for a pre-employment test is not deemed to have refused to test." A similar statement for alcohol testing is found in Section 40.261(a)(2).

03/23/07 FTA SUBSTANCE ABUSE MANAGEMENT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

44. Refusals: Does the policy state that failure to provide a breath or urine specimen in alcohol and drug testing is a refusal?

Auditor Comment: Section 40.191(a)(3) states: "As an employee, you have refused to take a drug test if you: Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see Section 40.63(c) of this part) for a pre-employment test is not deemed to have refused to test." A similar statement for alcohol testing is found in Section 40.261(a)(3).

45. Refusals: Does the policy state that failure to provide a sufficient specimen with no medical explanation in drug and alcohol tests is a refusal?

Auditor Comment: Section 40.191(a)(5) states: "As an employee, you have refused to take a drug test if you: Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see Section 40.193(d)(2))." A similar statement for alcohol testing is found in Section 40.261(a)(4).

46. Refusals: Does the policy state that failure to undergo a medical evaluation as required by the MRO or DER for drug and alcohol testing is a refusal?

Auditor Comment: Section 40.191(a)(7) states: "As an employee, you have refused to take a drug test if you: Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Section 40.193(d) of this part. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment." A similar statement for alcohol testing is found in Section 40.261(a)(5).

47. Refusals: Does the policy state that failure to cooperate with any part of the testing process for drug and alcohol testing is a refusal?

Auditor Comment: Section 40.191(a)(8) states: "As an employee, you have refused to take a drug test if you: Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)." A similar statement for alcohol testing is found in Section 40.261(a)(7).

48. Refusal - Drug Testing: Does the policy state that the following are refusals in drug testing:

Failure to permit monitoring or direct observation;

Failure to take a 2nd test as directed by the collector or employer; and

Have an adulterated or substituted test result verified by an MRO?

Auditor Comment: Sections 40.191(a) and (b)

49. Refusals: Does the policy state that the failure to permit monitoring or observation under drug testing is a refusal?

Auditor Comment: Section 40.191(a)(4) states: "As an employee, you have refused to take a drug test if you: In a case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see Sections 40.67(i) and 40.69(g))."

50. Refusals: Does the policy state that failure to take a second test as directed by the collector or employer under drug testing is a refusal?

03/23/07 FTA SUBSTANCE ABUSE MANAGEMNT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

Auditor Comment: Section 40.191(a)(6) states "As an employee, you have refused to take a drug test if you: Fail or decline to take a second test the employer or collector has directed you to take."

51. Refusals: Does the policy state that that the MRO's verification of a test as adulterated or substituted constitutes a refusal?

Auditor Comment: Section 40.191(b) states: "As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test."

52. Refusal - Alcohol Testing: Does the policy state that refusal to sign the certification at Step 2 of the ATF constitutes a refusal?

Auditor Comment: Section 40.261(a)(6) states: "As an employee, you are considered to have refused to take an alcohol test if you: Fail to sign the certification at Step 2 of the ATF (see Sections 40.241(g) and 40.251(d))."

53. Refusals: Does the policy address only FTA-required testing under these categories of refusals, not any other employer-required drug or alcohol testing?

Auditor Comment: Section 40.191(e) states: "As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test." A similar statement for alcohol testing is found in Section 40.261(d).

54. Consequences of a failed or refused drug test:

Does the policy describe the consequences for a covered employee who has a verified positive drug test result or refuses to submit to a drug test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function; and

Does the policy state that the individual will be referred to a substance abuse professional?

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."

Section 655.61(a)(3) states "If an employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function." 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 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."

55. CONSEQUENCES OF A FAILED OR REFUSED ALCOHOL TEST:

Does the policy describe the consequences for covered employees found to have violated the alcohol misuse prevention prohibitions, including the requirement that the employee be removed immediately from safety-sensitive functions; and

Does the policy state that the individual will be referred to a substance abuse professional?

03/23/07 FTA SUBSTANCE ABUSE MANAGEMNT OVERSIGHT PROGRAM QUESTIONNAIRE
POLICY REVIEW – UPDATED FEBRUARY 2003

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."

Section 655.61(a)(3) states: "If an employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function."

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 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."

56. CONSEQUENCES OF BREATH ALCOHOL CONCENTRATION (BAC) IN RANGE OF .02 TO .039: Does the policy describe the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04?

Section 655.35(a) states: "No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until (1) The employee's alcohol concentration measures less than 0.02; or (2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test."

Section 655.35(b) states: "Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law."

57. EMPLOYER SPECIFIC ELEMENTS:

If the employer implements elements of an anti-drug program and alcohol misuse prevention program that are in addition to those required by Section 655, does the policy give covered employees specific information concerning which provisions are mandated by the FTA rules and which are not?

Are any such additional policies or consequences clearly and obviously described as being based on independent authority?

Section 655.15(j) states: "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."

58. PROVISIONS CONTRARY TO FTA REGULATIONS: Do any provisions found in the policy have the effect of thwarting the FTA regulations?

Section 655.6(a) states: "Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that: (1) Compliance with both the state or local requirement and any requirement in this part is not possible; or (2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part."

THIS CONCLUDES THE REVIEW OF THE ANTI-DRUG AND ALCOHOL MISUSE PREVENTION POLICY STATEMENT