



**16<sup>th</sup> Annual FTA Drug and Alcohol Program  
National Conference**

March 14-16, 2023

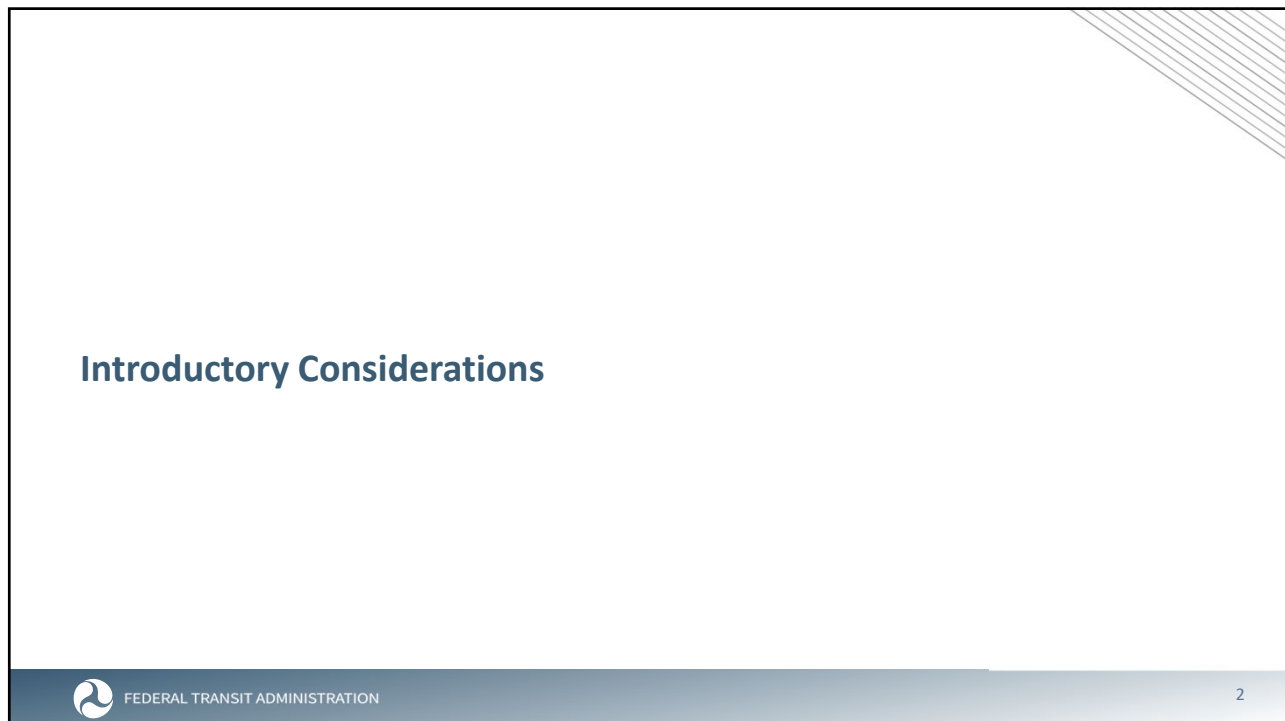
**A Compliant Drug &  
Alcohol Policy**

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FEDERAL TRANSIT ADMINISTRATION

  
U.S. Department of Transportation  
Federal Transit Administration

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**Introductory Considerations**

 FEDERAL TRANSIT ADMINISTRATION

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## What Do Auditors Look For?

- Compliance with 49 CFR Part 655
- Compliance with 49 CFR Part 40
  
- Anything that inaccurately describes or contradicts these regulations is not compliant and must be changed

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## Auditors Do Not Review For . . .

- Best practices
- Redundancy
- Poor phrasing
- Poor organization
- Unnecessary complexity with no apparent benefit

A policy could be poorly written, but if it complies with Parts 40 & 655 auditors will not require changes (though we will make informal helpful suggestions)

**It is possible to have a policy that is compliant but extremely difficult to read or understand**

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## Some Recommendations

- Best practice is short, accurate and to the point
  - Far more likely employees will read it
  - Far more likely they will understand it
  - Much easier to keep up to date



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## Some Recommendations

- Avoid overly complicated policies
  - No need for lengthy definitions sections (unless you really want to)
  - No need to describe laboratory processes in detail (unless you really want to)



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## Some Recommendations

- If you have an overly complicated policy, ask yourself:
  - Why?
    - Some employers have policies that double as a manual for the DAPM. Better to have a policy for employees and a separate manual for DAPMs.
  - Do employees read it?
  - Do you read it?
  - When *you* read it, does it make sense to *you*? (Hint: if the DAPM has trouble understanding a section, so does everyone else)
  - Who benefits?



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## FTA's Free Policy Builder



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## FTA's Policy Builder

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx>

Or just search "FTA Policy Builder"

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## Finding FTA's Policy Builder

Federal Transit Administration

About Funding Regulations & Guidance

Home » Regulations and Guidance » Safety » **Drug and Alcohol**

Transit Safety & Oversight

Safety Rulemaking

Safety Guidance

State Safety Oversight Program

Safety Management Systems (SMS)

TRACS

Drug and Alcohol Program

Bus Safety Program

Safety Training

Stakeholder Outreach

FAQ

### Drug and Alcohol

**16th Annual FTA Drug and Alcohol Program National Conference**

**SAN DIEGO** —CALIFORNIA— **March 14-16, 2023**

Register for the 16th Annual FTA Drug and Alcohol Program National Conference.

FTA requires employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, to implement programs, as specified in 49 CFR Part 655, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

Updated: Friday, January 27, 2023

**Related Links**

**Drug and Alcohol**

- **Tools and Resources**
- Legislation and Regulations
- Regulation Update Newsletters
- Drug and Alcohol MIS Reporting
- Drug and Alcohol Training
- Technical Assistance
- Drug and Alcohol Publications

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# Finding FTA's Policy Builder

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TRACS

Drug and Alcohol Program

Bus Safety Program

Safety Training

Stakeholder Outreach

FAQ

### Tools and Resources

**FTA Publications**

**Implementation Guidelines** [PDF](#)  
 These guidelines assist transit agencies in developing drug and alcohol testing programs that comply with Federal Transit Administration regulation 40 CFR Part 655. Pertinent regulations are cross-referenced throughout the text. Forms, checklists, and lists of additional information are provided throughout the document.

**Best Practices Manual** [PDF](#)  
 This document discusses "best practices" used by employers to establish and maintain a compliant drug testing program. The best practices discussed here were identified during 5 years of FTA-sponsored audits of existing programs.

**Prescription and Over-the-Counter Toolkit** [PDF](#)  
 This Toolkit is a compilation of policies, procedures, forms, and training resources that represent the best practices being used throughout the U.S. by a variety of transit systems. It does not represent all of the effective means that transit systems are using to address and monitor Prescription (Rx) and Over-the-Counter (OTC) medication use, but is the result of an extensive effort by the Federal Transit Administration (FTA) to compile a broad range of materials as examples and models.

**Guidance from ODAPC**

**Related Links**

- **Drug and Alcohol**
  - Tools and Resources
  - Legislation and Regulations
  - Regulation Update Newsletters
  - Drug and Alcohol MIS Reporting
  - Drug and Alcohol Training
  - Technical Assistance
  - Drug and Alcohol Publications

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# Finding FTA's Policy Builder

**Tools**

**Policy Tools**

All anti-drug and alcohol misuse programs must have a statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace.

Use the [Policy Requirements Checklist](#) to ensure your own policy includes all required elements.

Starting from scratch? Use the [Policy Builder](#) to develop a customized policy statement for your organization.

**Sample Forms and Other Useful Tools**

**Pre-Employment/New Hire**

- **New** 60-Minute Drug Awareness Video
- Pre-Employment Notification and Acknowledgement Form
- Previous Employer Release of Information Form
- Acknowledgment of Policy Form
- Acknowledgement of Prohibited Awareness Training for Safety-Sensitive Employees Form

**Random**

- [Random Testing Charts](#) (Generate Random Testing Charts in Excel)

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## FTA Policy Builder – How to Use

- Be ready to answer a few questions
  - What is the name of your organization?
  - Are your employees subject to the Drug-Free Workplace Act?
  - Who will be covered by your policy?
    - Any volunteers
    - Any rail cars, trolley cars, trolley buses, or vessels?
  - If a covered employee tests positive/refuses, what are the consequences?
  - Must all applicants for safety-sensitive positions take a pre-employment alcohol test?
  - Will employees be retested after a negative-dilute result?
  - Do either of these apply?
    - An employee with a substance or alcohol abuse problem can voluntarily self-refer
    - Employees must report RX/OTC medications that could affect performance



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## FTA Policy Builder – Benefits

- Always compliant
- Promptly updated whenever Parts 40 or 655 change
- Easily edited for those with company provisions
- Well-written, well-organized
- Can be used to introduce compliant sections into an existing policy
- Succinct and easy to read – your employees will thank you!\*

*\*They probably won't actually thank you, but they should*



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## But Wait! I'm Also Covered By FMCSA

No problem:

Now you may make any necessary changes. On the cover page, fill in all relevant dates (Effective Date, Policy Adoption Date, and Date of Last Revision). Then continue through the Word document, editing any text in red as it applies to your organization. You may also include additional requirements that are not mandated by FTA. However, you may not impose requirements that are inconsistent or contrary to the procedures required by 49 CFR Part 655 or 49 CFR Part 40. These additional policies must also be clearly identified. Use of **bolding** to differentiate between FTA and company policy prohibitions, terms, etc. is common.

[Click to Begin](#)

\* Note: This Policy Builder is intended to create a policy compliant with FTA drug and alcohol regulations only. For an FTA/FMCSA sample policy, [click here](#).  
Updated: Wednesday, December 14, 2022



U.S. DEPARTMENT OF TRANSPORTATION

▶ FTA News

▶ FOIA



FEDERAL TRANSIT ADMINISTRATION

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## Drug & Alcohol Policy Requirements



FEDERAL TRANSIT ADMINISTRATION

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## Policy Requirements, per § 655.15

- Policies must be formally adopted by governing board/entity
- Must be made available to all covered employees
- Any later revisions must also be made available to all covered employees
  - Full reprint is not always necessary



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## Policy Requirements, § 655.15(a)

- Contact person/office/branch/position who can answer employee questions



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## Policy Requirements, § 655.15(b)

- Categories of employees who are covered
  - Operating a revenue service vehicle, in or out of revenue service
  - Operating a non-revenue vehicle requiring a commercial driver's license
  - Controlling movement or dispatch of a revenue service vehicle
  - Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
  - Carrying a firearm for security purposes
- Don't have armed security, etc.? No need to include, though fine if you do
- If applicable, don't forget volunteers
- Include a list of covered positions with actual job title



## Policy Requirements, § 655.15(c)

- Specific information concerning the behavior and conduct prohibited by Part 655



## Policy Requirements, § 655.15(d)

- Circumstances when covered employees are tested for drugs and/or alcohol (e.g., explain the different test types)
  - Pre-employment
  - Random
  - Post-accident
  - Reasonable-suspicion
  - Return-to-duty (if applicable)
  - Follow-up (if applicable)



## Policy Requirements, § 655.15(e)

“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 covered employee.”

- Two approaches:
  - Short and sweet
  - Long and longer



## Policy Requirements, § 655.15(e)

*Short and sweet. And compliant!*

“All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.” – from the FTA policy builder



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## Policy Requirements, § 655.15(e)

Long and longer

- Partial quote from representative policy (note the following text is not compliant with Part 40):

The [XXX] contracts with an outside vendor to provide certified U.S. Department of Health and Human Services (DHHS) collection sites and to monitor each site for compliance with USDOT standards. The vendor provides services relative to the Maintenance of a Drug and Alcohol-Free Workplace Policy including the provision of the MRO services. The vendor names the MRO, who shall be a certified medical doctor.

Urine drug testing and breath testing for alcohol may be conducted under the [XXX]'s authorization, using non-Federal forms, or as required by federal regulations.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the DHHS. All testing will be conducted consistent with the procedures in 49 CFR Part 40, as amended. Copies of 49 CFR Part 40 is available for review by employees by contacting the DER. An electronic version of 49 CFR Part 40 is also available for download at the Office of Drug and Alcohol Policy and Compliance website (<http://www USDOT.gov/odapc/part40>).

The collection procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result. USDOT regulations only permit urine testing for the following five (5) drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine. Urine specimens will be collected using the split specimen collection method as described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a Federal Drug Testing Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. An initial drug screen will be conducted on the primary urine specimen.

For those specimens with non-negative initial drug screen results, confirmatory Gas Chromatography/ Mass Spectrometry (GC/MS) testing will be performed. The test will be considered positive if the amounts present are above the minimum threshold established in 49 CFR 40.87.

All drug testing laboratory results will only be reported to a MRO. A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test. Before verifying that an employee has a positive test result, the MRO is responsible for contacting any such employee, on a direct and confidential basis, to determine whether the employee wishes to discuss the test or present a legitimate medical explanation for the positive test result.

An employee who has a MRO-verified positive for an illegal drug use will be subject to discipline up to and including termination. An [XXX] covered USDOT safety-sensitive employee who test positive for alcohol or who refuses a drug or alcohol test will be removed from any safety-sensitive function, placed on administrative leave without pay and disciplined according to section 13 of this policy. Additionally, positive test results will be submitted to the XXXXXX of Motor Vehicles, or appropriate licensing entity of the jurisdiction in which the employee is licensed, in accordance with State and Federal laws. Additionally, positive test results will be submitted to the XXXXXX of Motor Vehicles, of appropriate licensing entity of the jurisdiction in which the employee is licensed, in accordance with State and Federal laws.

The MRO will subsequently review the employee's medical history/medical records and conduct a verification interview to determine whether there is a legitimate medical explanation for a positive, substituted or adulterated laboratory result. If no legitimate medical explanation exists to explain the test result, the test will be verified positive, and/or refusal to test because of adulterated or substitution and reported to the designated employer representative (DER).

If the MRO determines that an employee has a legitimate explanation for a positive test result, the MRO will report the test result as negative. The MRO's designee may make the initial contact with the employee to set-up an appointment to speak with the MRO, but only the MRO is permitted to discuss the test result with the employee. If, after reasonable efforts, the MRO or MRO representative and XXX are unable to reach the employee directly, the MRO may render a final determination of positive without review.

An employee terminated based on a confirmed positive/split specimen may appeal his/her termination directly to the Chief Human Resources Officer. The appeal must be in writing and submitted within ten (10) days from the date of termination or the date the employee is aware of the termination. (Note: Since the MRO will have determined a test positive, adulterated, or substituted, the Human Resources Department will not typically be in the position of disputing the findings of the MRO).



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## Policy Requirements, per § 655.15(f)

- Requirement that covered employees submit to drug and alcohol testing in accordance with Part 655

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## Policy Requirements, § 655.15(g)

- Description of the various refusals to tests
- Statement that a refusal to test is a violation

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## Policy Requirements, § 655.15(h)

- Consequences for covered employees with violation (verified positive drug/confirmed alcohol test of 0.04 or greater/test refusal)
- Must include Part-40 requirements for violations
  - Immediate removal from safety-sensitive functions
  - Referral to a Substance Abuse Professional



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## Policy Requirements, § 655.15(i)

- Consequences for covered employees confirm alcohol results of 0.02 or greater but less than 0.04 as stated in § 655.35
  - Removal from SS functions until start of the employee's next regularly scheduled duty period, but not less than eight hours
  - Employees who take a later test with result of less than 0.02 can return to SS
  - REMINDER: Results of 0.02 to less than 0.04 are not DOT violations



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## Policy Requirements, § 655.15(j)

- Inform each covered employee if you implement policy elements 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.
  - All employers are free to add provisions under their independent authority
  - Such provisions
    - Cannot contradict Parts 655 or 40
    - Must be clearly described as included under local – and not federal – authority
    - Must not suggest local provisions would result in DOT tests (always non-DOT)



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## FTA's Handy Policy Checklist

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Default.aspx>

### Tools

#### Policy Tools

All anti-drug and alcohol misuse programs must have a statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace.

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Starting from scratch? Use the [Policy Builder](#) to develop a customized policy statement for your organization.



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## FTA Policy Checklist

### Designated contact person, board adoption

- Identity of the person, office, branch or position designated by the employer to answer employee questions about the anti-drug and alcohol misuse prevention program
- Approval/adoption by the local governing board of the employer or operator, or other responsible individual with appropriate authority

### Covered Employees

- Operating a revenue service vehicle, in or out of revenue service
- Maintaining a revenue service vehicle or equipment used in revenue service
- Controlling dispatch/movement of a revenue service vehicle (determined by employer)
- Operating a non-revenue vehicle requiring a CDL
- Carrying a firearm for security purposes
- Volunteers:*
  1. *Must* have CDL to drive vehicle, or
  2. Remunerated for service in excess of costs incurred

*\*The policy must include a list of the actual positions/categories covered at your company*



## FTA Policy Checklist

### Prohibited Substances

- Marijuana
- Cocaine
- Amphetamines
- Opioids
- Phencyclidine
- Alcohol

### Prohibited behavior

- Use of illegal drugs prohibited at all times
- Alcohol use prohibited 4 hours prior to performing safety-sensitive functions, while on call, and while performing safety-sensitive functions
- Alcohol use prohibited 8 hours after accident or until Post Accident test is performed
- Employees are prohibited from performing safety-sensitive functions while having an alcohol concentration of 0.04 or greater





## FTA Policy Checklist

### Pre-employment

- Negative test before 1st safety-sensitive duty, must be made up if canceled
- If out of safety-sensitive duty for 90+ days, and out of random testing pool, emp needs DOT pre-employment test with negative result prior to returning to covered duty
- Applicant who previously failed/refused a DOT test must show evidence of treatment
- If employer chooses to require alcohol test: *1) pre- SS duty, 2) all covered employees 3) after offer of employment/transfer 4) must follow Part 40 regulations 5) BAC < 0.02*

### Random

- Scientifically valid selection method
- Equal chance of selection on each draw
- No discretion on the part of management/supervisors  
Testing is conducted on all days and hours throughout the year  
Unannounced and immediate
- Alcohol testing only permissible just before/ during/just after actual performance of safety-sensitive functions



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## FTA Policy Checklist

### Post-accident

- FTA Thresholds:*
  1. Fatality
  2. Medical treatment away from scene, unless driver discounted
  3. Disabling damage, unless driver discounted
- All other covered employees whose performance could have contributed to the accident
- Readily available (or considered a refusal to test)
- Readily available (testing is stayed while employee assists in resolution of the accident or receives medical attention following the accident)

### Reasonable suspicion

- Trained supervisor
- Physical signs & symptoms, contemporaneous observation
- Alcohol testing only permissible just before/during/just after SS duty

### Return-to-duty and Follow-up

- Conducted in accordance with Part 40, subpart O
- All tests conducted under direct observation
- Follow-up alcohol testing only permissible just before/ during/just after actual performance of safety-sensitive functions



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## FTA Policy Checklist

### Procedures

- Policy states all FTA-required testing conducted in accordance w/ 49 CFR Part 40

### Requirement to Submit

- All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655

### Period of Coverage

- Drug test – anytime on while on duty
- Alcohol test (random, reasonable suspicion, & follow-up) - Just before, during, or immediately after actual performance of safety-sensitive functions



## FTA Policy Checklist

### Test Refusal

- Failure to remain until the testing process is complete
- Failure to attempt to provide a breath or urine specimen
- Failure to provide a sufficient quantity of urine or breath without a valid medical explanation
- Failure to undergo a medical evaluation as required by the MRO or DER
- Failure to cooperate with any part of the testing process
- Failure to permit an observed or monitored collection when required
- Failure to follow an observer's instructions to raise and lower clothing and turn around (observed)
- Possessing or wearing a prosthetic or other device used to tamper with the testing process
- Failure to take a second test when required
- Admitting the adulteration or substitution of a specimen to the collector or MRO
- MRO verified adulterated/substituted sample
- Refusal to sign Step 2 of alcohol test form
- Failing to appear within a reasonable time

*\*For pre-employment, NOT a refusal: Failure to appear, failure to remain at site prior to start of test, aborting collection before test commences*



## FTA Policy Checklist

### Consequences

- Positive drug or alcohol (above 0.04) test result or test refusal (SAP Referral Required)
- BAC in range of 0.02 to 0.039 (*remove employee from safety-sensitive position- apply transit system disciplinary policy if applicable; DOT SAP referral prohibited*)
- Dilute negative: must have fixed policy to retest or not retest (though policy may differ between test types)

### Additional Employer Provisions Allowed

- Policy delineates between FTA and company policy prohibitions, terms, etc.
- The provisions of the Drug Free Workplace Act of 1988 may be incorporated in the policy statement but must be so identified

### Compliance Tips

- Effective date of policy-normally found on cover of policy
- Make sure future revisions of a substantive nature also receive Board approval
- Make sure all employees have the most current version of the policy
- Clearly differentiate between FTA and company authority



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## Common Findings



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## Common Policy Findings

- Inaccurate representations of Part 40 requirements
  - Gas Chromatography/Mass Spectrometry
  - Imprecise definitions
  - Suggestion that MROs oversee alcohol testing

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## Common Policy Findings

- Failure to clearly identify provisions included under the employer's independent authority
- Suggestion that a local provision could result in a DOT test and/or a DOT violation
- Misuse of DOT terms to describe locally-included provisions, especially misuse of SAP

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## Common Policy Findings

- Failure to keep up with regulatory changes
- Inaccurate contact information
  - MRO, SAP, Collection Site, laboratory, DER/DAPM
- Listing alcohol prohibition as “.02”
- Giving a fixed travel time to collection site
- Non-compliant criteria for reasonable suspicion testing
- Omission of a required policy item

