

El Aguila
RURAL TRANSPORTATION
Drug & Alcohol
Free Workplace Policy

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WEBB COUNTY, TEXAS

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Webb County Commissioners Court
1000 Houston Street
Laredo, Texas 78040

Amended September 12, 2022
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TABLE OF CONTENTS

1.0 POLICY STATEMENT	2
2.0 PURPOSE	2
3.0 DRUG AND ALCOHOL DESIGNATED EMPLOYER REPRESENTATIVE (DER) .	2
4.0 SAFETY- SENSITIVE FUNCTIONS	3
5.0 SAFETY SENSITIVE POSITIONS	3
6.0 PARTICIPATION AS A REQUIREMENT OF EMPLOYMENT	3
7.0 PERIOD OF COVERAGE AND PROHIBITED BEHAVIOR	3
8.0 ON- CALL EMPLOYEES	4
9.0 VIOLATION OF A CRIMINAL DRUG STATUTE	4
10.0 PREVIOUS DOT EMPLOYER RECORD CHECK	4
11.0 CIRCUMSTANCES FOR TESTING	5
11.1 PRE-EMPLOYMENT TESTING (655.41 & 655.42)	5
11.2 REASONABLE SUSPICION TESTING (655.43)	6
11.3 POST ACCIDENT TESTING (655.44)	7
11.4 EL AGUILA POST- ACCIDENT NON-DOT TESTING	8
11.5 RANDOM TESTING (655.45)	8
12.0 PROHIBITED SUBSTANCES (<i>Types of Drugs</i>)	9
13.0 TEST STANDARDS	9
14.0 BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST	9
15.0 FTA DRUG AND ALCOHOL REQUIRED TESTING PROCEDURES	10
15.1 OBSERVED COLLECTIONS CONDUCTED	11
16.0 CONFIDENTIALITY	12
17.0 VIOLATIONS AND CONSEQUENCES OF THE MISUSE OF DRUGS AND ALCOHOL	13
18.0 DISCIPLINARY ACTION: GROUNDS FOR IMMEDIATE DISCHARGE	13
19.0 RETURN-TO-DUTY TESTING (655.46 & 40.285)	14
20.0 FOLLOW —UP —TESTING (655.47 & 40.301)	14
21.0 DILUTE NEGATIVE (40.197)	14
22.0 EDUCATION AND TRAINING PROGRAMS AND REQUIREMENTS (655.14) ...	15
23.0 REFERRAL, EVALUATION, AND TREATMENT (SECTION 655.62)	16
24.0 TEXAS ALCOHOL AND DRUG ABUSE LICENSED SITE FACILITIES FOR THE EL AGUILA AREA	16
25.0 EFFECTS OF ALCOHOL	16
26.0 ADDITIONAL PROVISIONS REQUIRED BY STATE LAW	17
27.0 PRESCRIPTION DRUGS/OVER THE COUNTER DRUGS	17

El Aguila RURAL TRANSPORTATION DRUG/ALCOHOL-FREE WORKPLACE POLICY

1.0 POLICY STATEMENT

El Aguila Rural Transportation by and through the Webb County Commissioners Court is committed to promoting the safety and well-being of its employees, passengers, motorists and pedestrians. To ensure that transit service is delivered safely, efficiently and effectively, each employee has the responsibility to perform his/her duties in a safe, conscientious, and courteous manner.

A drug/alcohol-free workplace is essential to creating a safe environment for employees and the public while providing transit services. El Aguila is committed to providing a drug/alcohol-free workplace through the enforcement of the regulations issued by the Federal Transit Administration (FTA). In February 1994, the Federal Transit Administration (FTA) published two regulations prohibiting drug use and alcohol misuse by transit employees and required that transit agencies test for prohibited drug use and alcohol misuse. In August 2001, these regulations were updated and consolidated into one regulation. The new regulation is 49 CFR Part 655 "*Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations*". In addition, the U.S. Department of Transportation (DOT) issued 49 CFR Part 40, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs* which describes the testing procedures to be followed. A complete copy of regulation Part 49 CFR Part 40 as amended will be made available to an employee upon request.

2.0 PURPOSE

In order to meet its public safety responsibilities and to comply with the requirements of the above laws and regulations, including the requirements of the FTA and State regulations regarding the prevention of prohibited drug use and misuse of alcohol in transit operations, El Aguila has adopted the following Drug/Alcohol-Free Workplace Policy *and a copy of this policy will be distributed to each covered employee.*

Any provisions set forth in this policy that are included under the sole authority of El Aguila Rural Transportation and are not provided under the authority of the above-named Federal regulations are underlined. Tests conducted under the sole authority of El Aguila Rural Transportation will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

3.0 DRUG AND ALCOHOL DESIGNATED EMPLOYER REPRESENTATIVE (DER)

Any questions regarding this policy or any aspect of El Aguila's Substance Abuse Program should be addressed to the following transit system representatives:

Margie Gomez Drug & Alcohol Program Manager (DAPM) Webb County Human Resources 1110 Washington Street, Suite 305 Laredo, Texas 78040 956-523-4717	Margie Gomez Ernesto Guajardo Designated Employer Representative (DER) Webb County Human Resources 1110 Washington Street, Suite 305 Laredo, Texas 78040 956-523-4166
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4.0 SAFETY- SENSITIVE FUNCTIONS

The Federal Transit Administration (FTA) has determined that safety-sensitive functions are performed by those who:

1. Operate revenue service vehicles, whether or not the vehicle is in revenue service.
2. Operate non-revenue service vehicles that require drivers to hold a Commercial Driver's License (CDL).
3. Control dispatch or movement of a revenue service vehicle.
4. Maintain revenue service vehicles or equipment used in revenue service.
5. Carry a firearm for security purposes.

5.0 SAFETY SENSITIVE POSITIONS

Safety sensitive position- a duty position or job category which requires the performances of a safety-sensitive function(s) such as those job titles listed below:

1. Drivers/Operators
2. Director of Rural Transportation
3. Director, Economic Development/Community Action Agency
4. Scheduler/Dispatcher
5. Maintenance
6. Mechanic

6.0 PARTICIPATION AS A REQUIREMENT OF EMPLOYMENT

Every employee of the El Aguila working in a job classified as a safety-sensitive position must participate in the employer's prohibited drug and alcohol testing program. *All covered employees are required to submit to drug and alcohol tests conducted in compliance with 49 CFR Parts 40 & 655.* Participation in this program is a condition of employment with El Aguila.

7.0 PERIOD OF COVERAGE AND PROHIBITED BEHAVIOR

An employee must not consume alcohol while performing a safety-sensitive function. (655.32).

Consumption of Alcohol is prohibited:

1. Four hours prior to performing a safety-sensitive function (655.33).
2. Eight hours following an accident unless the employee has already undergone a post-accident test (655.34).
3. Employees are also prohibited from consuming alcohol during the hours the employee is on-call (655.33(b)).
4. A blood alcohol concentration of 0.04 or greater is considered a positive test result (655.31).

Employees with an alcohol concentration of 0.02 or greater, but less than 0.04 will not be allowed to perform or continue to perform safety-sensitive functions until a subsequent test measures less than

0.02, or the employee has been removed from duty for at least 8 hours.

Use and ingestion of illegal drugs is prohibited at all times and can be tested for drugs anytime while on duty.

8.0 ON- CALL EMPLOYEES

On call employees who are called for duty will be given the opportunity to acknowledge any use of alcohol or the inability to perform his/her safety sensitive function when called to report to duty. In the event that a covered employee acknowledges the use of alcohol, but claims the ability to perform his/her duties and reports to work, El Aguila must administer an alcohol test.

9.0 VIOLATION OF A CRIMINAL DRUG STATUTE

In accordance with the federal drug free workplace act, if an employee pleads guilty or nolo-contendere (no contest) to a violation of a criminal drug statute, the employee must notify his/her supervisor no later than five (5) days after the conviction. El Aguila is then required to notify the federal government and the Texas Department of Transportation (TX DOT) within ten (10) days of said notification by the employee or other actual notice of this conviction. An employee convicted of a violation of a criminal drug statute will be terminated.

In addition, the distribution, dispensation, possession, concealment, use, sale, or unlawful manufacture of alcohol or drugs while on duty or on El Aguila premises or conviction of a criminal drug statute for a violation occurring in the workplace is strictly prohibited and will be grounds for termination. All El Aguila employees must comply with this policy and report within 5 days any conviction for a violation of a drug statute that occurred in the workplace.

10.0 PREVIOUS DOT EMPLOYER RECORD CHECK

Section 40.25 of the Revised DOT Drug and Alcohol Testing rule states that all DOT covered employers must make a good faith effort to obtain testing records for the previous (2) two years, for all applicants seeking safety-sensitive positions. Every applicant will be required to complete a written consent that allows their previous employer (s) to release drug and alcohol testing information to the El Aguila. Should applicant refuse to provide this consent he/she will not be permitted to perform safety-sensitive functions.

El Aguila will submit the applicant/transferee's written consent along with a request for information to each of the DOT-regulated employers who have employed the applicant/transferee for any period during the 2 years before the date of individual's application or transfer: The following information will be obtained:

1. Alcohol test results of 0.04 alcohol concentration or greater;
2. Verified positive drug tests;
3. Refusals to test;
4. Other Violations of FTA/DOT rules; and
5. As appropriate, documentation of the successful completion of DOT return-to-duty requirements including follow up tests.

If the previous employer does not have this information, this documentation will be obtained from the employee. El Aguila expects that any report turned in is not a false report from any previous

DOT employer.

If possible, El Aguila will obtain and review this information before the applicant employee performs safety sensitive functions. If El Aguila does not receive information within (30) thirty days El Aguila will document a good faith effort to receive the information. If El Aguila has not made a good faith effort to obtain the information, El Aguila will not allow the employee to perform safety sensitive functions after 30 days from the date on which the employee first performed safety sensitive job duties.

El Aguila must also ask all applicants/transferees whether he/she has tested positive, or refused to test, within the past two years on any DOT pre-employment drug or alcohol test administered by a DOT covered employer for which they did not get the job.

If information obtained from a previous employer indicates a violation of a DOT/FTA regulation El Aguila will not allow the employee to perform safety-sensitive duties unless documentation is obtained stating that the employee has complied with the return-to-duty requirements including SAP assessment, successful treatment, negative return-to-duty test and follow-up tests.

Any employee who previously violated a DOT drug and alcohol regulation or who had a positive test result and who cannot confirm completion of any treatment program will be terminated under El Aguila authority.

El Aguila will keep the following confidential documentation received and or good faith efforts for a minimum of 3 years:

1. Alcohol test results of 0.04 alcohol concentration or greater;
2. Verified positive drug tests;
3. Refusals to test;
4. Other violations of FTA/DOT rules; and as appropriate, documentation of the successful completion of DOT return-to-duty requirements including follow up tests.
5. If the previous employer does not have this information, this documentation must be obtained from the employee.

11.0 CIRCUMSTANCES FOR TESTING

Under El Aguila authority if an employee comes forward with a Drug or Alcohol problem, the employee will not be allowed to continue to perform safety-sensitive functions and will be subject to El Aguila personnel policies regarding fitness for duty. A covered employee will be tested for prohibited misuse under this part and all different types of tests will follow same policies:

11.1 PRE-EMPLOYMENT TESTING (655.41 & 655.42)

Prior to conducting a pre-employment test, El Aguila will inform the applicant or employee in writing of the testing requirement. (655.17)

El Aguila will require that all applicants for employment in safety-sensitive positions or individuals

being transferred into safety-sensitive positions from non-safety sensitive positions be given a pre-employment drug test. Applicants will not be assigned safety-sensitive functions unless the individual has a verified negative test result.

When an existing covered employee has not performed a safety-sensitive function for 90 consecutive calendar days and the employee has not been in the employer's random testing pool during that time, the employee will be required to take a pre-employment drug test and obtain a negative test result prior to the reassignment of safety-sensitive duties.

El Aguila has chosen to conduct under FTA authority pre-employment alcohol testing only after making a contingent offer of employment (or transfer).

El Aguila will follow the procedures set forth in Part 655.42 and Part 40 (Subparts J through N). The applicants must have a negative alcohol test (less than 0.02 BAC) before he or he is assigned any safety-sensitive duties.

When an 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 program.

If a pre-employment test is cancelled, El Aguila shall require all applicants/transferee to submit to and pass another test.

11.2 REASONABLE SUSPICION TESTING (655.43)

The FTA regulations (Sec. 655.43) require that a safety-sensitive employee submit to a test when El Aguila has reasonable suspicion that the employee has used a prohibited drug or has misused alcohol. The request to undergo a reasonable suspicion test will be based on a specific, contemporaneous, articulable observation concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee and determinations will only be made by trained supervisors trained in detecting the signs and symptoms of drug use and alcohol misuse.

El Aguila supervisor(s) may direct a covered employee to undergo reasonable suspicion testing for alcohol only 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.

Likewise, an El Aguila supervisor may direct a covered employee to undergo reasonable suspicion testing for drugs anytime the employee is on duty.

Under most circumstances, the alcohol test will be administered immediately following the determination. If testing takes longer than 2 hours, El Aguila will prepare and maintain a record stating the reasons the alcohol test was not promptly administered. All attempts to conduct alcohol testing will stop after 8 hours of the accident.

11.3 POST ACCIDENT TESTING (655.44)

Fatal Accident Testing -

El Aguila will perform a drug and alcohol test as soon as possible following an accident involving the loss of human life. El Aguila will test each surviving covered employee that operated the public transit vehicle at the time of the accident. El Aguila will also 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 accident.

Non-fatal Accident Testing-

El Aguila will perform a Drug & Alcohol test as soon as possible following an accident not involving the loss of human life, in which a public transit vehicle is involved and at least one of the following conditions are met:

The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.

One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.

In addition, 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, will be tested. As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

El Aguila employees shall remain readily available for testing at the scene of the accident. 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 or if he or she leaves the scene of the accident prior to submission to such test, will be deemed by the employer to have refused to submit to testing.

If determined, El Aguila shall test for alcohol as soon as possible, but within eight (8) hours and within thirty-two (32) hours for drugs following an accident. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempt to conduct the test must cease and the reasons for the failure to test documented.

El Aguila, prohibits employees from consuming alcohol for 8 hours, following an accident, or until a post-accident test has taken place, whichever comes first.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an 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.

11.4 EL AGUILA POST- ACCIDENT NON-DOT TESTING

El Aguila holds the right under its own authority to test any operator involved in an accident, if the operator is operating any El Aguila vehicle at the time of the accident. Test administered will be a non-DOT test.

11.5 RANDOM TESTING (655.45)

The FTA regulations (655.45) require random testing of drugs and alcohol for all employees performing safety-sensitive functions.

El Aguila will use a valid scientifically computer- based method to select safety-sensitive employees for random testing. The random number computer generator is matched with the employees' identification number (i.e., social security number or other identification number).

The number of covered employees randomly selected for drug/alcohol testing during the calendar year shall be no less than the percentage rates set each year by the FTA Administrator. The current year testing rates can be viewed online at <http://www.transportation.gov/odapc/random-testing-rates>. Tests will be unannounced as well as unpredictable and testing will be spread reasonably throughout all periods of the calendar year. Random drug testing shall also be conducted at all times of the day when safety sensitive functions are being performed to include nights, weekends, and holidays. Once the employee has been notified that he/she has been selected for testing, he/she should then report immediately to the collection site.

All safety-sensitive employees will have an equal chance of being selected for testing and shall remain in the pool, even after being tested. It is possible for some employees to be tested several times in one year, and other employees not to be tested for several years. Every effort shall be made to provide the maximum privacy possible. Employees shall be individually and discretely notified to report to the collection site, and employees selected will be assured that testing is a routine random test.

Any employee required to submit to a drug and/or alcohol test must cooperate fully with the collection process and complete all required forms and documents. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

El Aguila requires each covered employee who is notified of selection for random drug or alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employee ceases to perform the safety sensitive function and proceeds to the testing site immediately.

A covered employee shall only be randomly tested for alcohol misuse before the employee is performing safety-sensitive functions, during, or after the employee is performing safety sensitive duties. A covered employee may be randomly tested for prohibited drug use anytime while on duty. If an employee is off-duty or unavailable at the time El Aguila desires to conduct a test, the test may be postponed until the employee is on duty only if the test can be performed during the same testing period.

El Aguila does not allow any discretion by management personnel as to who is selected or notified for random testing.

El Aguila will give no advance warning; testing will be unannounced and immediate. El Aguila will exercise care in scheduling substitute employees for those employees who are unavailable at the time El Aguila desires to conduct a test.

12.0 PROHIBITED SUBSTANCES (Types of Drugs)

Under the FTA drug testing regulation for safety-sensitive employees, El Aguila is required to conduct laboratory testing of urine specimens for the following five (5) types of drugs. (655.21):

Marijuana
Cocaine
Opioids
Phencyclidine (PCP)
Amphetamines

Alcohol is also a prohibited substance.

13.0 TEST STANDARDS

The initial test will use an Immunoassay with the following initial cutoff levels (ng/ml) for a negative result. All specimens indicated positive on the initial test shall be confirmed using techniques consistent with 49 CFR Part 40, as amended. Negative results are based on cutoff concentrations set forth in 49CFR Part 40.87.

El Aguila reserves the right under its own authority to test for other drugs.

14.0 BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

- Failure to appear for any test (except a pre-employment) at the collection site in the time allotted.
- Failure to remain at the test site until the testing process is completed, except in pre-employment situations where leaving before the testing process begins is not deemed to be a test refusal.
- Failure to attempts to provide a urine, breath, or saliva specimen (verbal or physical) as required by DOT Part 40. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- Failure to permit the observation or monitoring of specimen collection when it is required.
- Failure to provide a sufficient amount of urine or breath specimen collection when it is required with no medical explanation.
- Failure or decline to take a second test when required by the collector or the employer.
- Failure to undergo a medical evaluation when required by an MRO or DER.
- Failure to cooperate with the testing process. (Examples: refusal to empty pockets or wash hands after being directed to so by the collector, or behaving in a confrontational manner that disrupts the collection process).

- For an observed collection, failure to, follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if individual is wearing any type of prosthetic device that could be used to interfere with the collection process.
- Possession or wearing of a prosthetic or other device that could be used to interfere with process.
- Admitting adulteration or substitution of the specimen to the collector or the MRO.
- If the MRO reports a verified adulterated or substituted test result.
- In alcohol testing, refusal to sign Step 2 of the Alcohol Testing Form (“ATF”).
- Failure to remain readily available to test following an accident.

An employee who refuses to take a non- DOT test or to sign a non-DOT form, is not considered to have refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test. However, under El Aguila authority, an employee who refuses to take a non-DOT test or sign a non-DOT form will be terminated.

15.0 FTA DRUG AND ALCOHOL REQUIRED TESTING PROCEDURES

Drug and alcohol testing of safety-sensitive employees and safety-sensitive job candidates will be conducted in a manner designed to protect employees and the integrity of the testing process, safeguard the validity of test results, and ensure that those results are attributable to the correct employee.

Urine samples for drug testing will be collected in private at the collection site designated by El Aguila, using the split sample collection method. If the collection site personnel and the El Aguila representative have a reason to believe that an adulterated or substituted sample has been provided, or that the employee altered or substituted the sample, the employee will be required to submit a second, sample under direct observation of collection site personnel of the same gender as the employee. The determination to submit a second sample or to provide the original sample under observed collection shall be made in accordance with Section 49 CFR Part 40, as amended.

Any covered employee who questions the results of a required Federal DOT Regulated Test under the paragraphs of this policy may request that the split sample be tested. The split sample must be transported to and analyzed at a second DHHS-certified laboratory. The split sample must be provided at the same time as the primary sample to be tested. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. El Aguila will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however, El Aguila reserves the right to seek reimbursement for the split sample test from the employee in the event that the analysis of the split specimen reconfirms the presence of the drug(s) detected in the primary specimen.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled. Employees do not have access to a test of their split specimen following an invalid result.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary specimen is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the computer, by the MRO, or by the relevant DOT agency.

Direct Observation Procedure: Prior to specimen collection, observer must request employee to raise his/her shirt, blouse, or dress/skirt as appropriate above the waist, lower clothing and underpants and to turn around to show that he/she is not wearing any type of device that could be used to interfere with the collection process.

An approved chain of custody procedure will be followed in the administration of all drug tests. Urine samples will be sealed and installed by the employee and a witness. The drug testing custody and control form will be completed in the manner specified in 49 CFR Part 40, as amended.

Urine samples will be promptly sent to and tested by a laboratory that is certified to perform drug tests by the Department of Health and Human Services (DHHS), in accordance with the procedures set forth in 49 CFR Part 40, as amended.

Breathalyzer tests will be conducted in a manner that provides the employee with privacy to the greatest extent possible. All of the procedures regarding such tests set forth in the 49 CFR. Part 40, as amended, including procedures relating to completion of the breath alcohol testing form, will be followed.

Alcohol tests will be conducted using a National Highway Traffic Safety Administration (NHTSA) approved Evidentiary Breath Testing device (EBT) operated by a trained breath alcohol technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test.

Specimen Validity "Testing will be conducted on all urine specimens provided for testing under DOT authority. 49 CFR Part 40. Specimen Validity Testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of Validity Testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

15.1 OBSERVED COLLECTIONS CONDUCTED

- On all return-to-duty and follow-up tests;
- Any time the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90 F -100 F;
- Any time the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- Any time a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- Any time the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
- Any time the employee is directed to provide another specimen because the MRO determined

that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

- Any time the laboratory reported to the MRO that the specimen was negative dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation.

16.0 CONFIDENTIALITY

Drug/alcohol testing records shall be maintained by the El Aguila Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certification. Employees may not have access to SAP follow-up testing plans.

Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

Records will be released to a subsequent employer only upon receipt of a written request from the employee.

Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.

Records will be released to the National Transportation Safety Board during an accident investigation.

Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

Records will be released if requested by a Federal, state or local safety agency with regulatory authority over El Aguila or the employee.

If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the

FTA.

17.0 VIOLATIONS AND CONSEQUENCES OF THE MISUSE OF DRUGS AND ALCOHOL

Violations occur when an employee:

- Has a verified positive drug test result.
- Has a confirmed alcohol concentration of 0.04 or greater;
- Refuses to submit to a test.
- Uses drug and or alcohol while performing a safety-sensitive function(s); just before or just after performing a safety-sensitive function(s). Under the El Aguila authority any employee who uses alcohol before, while, or just after performing a safety-sensitive function will be terminated.
- Uses alcohol during specified on calls hours when they are on-call. Under the El Aguila authority any employee on call having an alcohol level of 0.04 or greater will be terminated.

Since El Aguila practices zero-tolerance, any El Aguila employee having any of the above violations will immediately be removed from Safety Sensitive duties and under El Aguila authority employee will be terminated. The employee shall receive referral information of a Substance Abuse Professionals (SAPs) in the area.

El Aguila will not permit a covered employee tested under the provisions of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 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.

The foregoing regarding the use of alcohol will apply to periods when employees are on breaks, between shifts, or at lunch, if they are scheduled or may be assigned to work thereafter on the same day. These rules will also apply to non-safety sensitive employees.

18.0 DISCIPLINARY ACTION: GROUNDS FOR IMMEDIATE DISCHARGE

Since El Aguila practices zero-tolerance, the following rules will apply to non-safety sensitive employees and Safety-Sensitive employees. Under El Aguila authority, any employee who violates these rules will be terminated.

1. Failure to report an arrest for violation of a drug or alcohol statute within five (5) days of the arrest. An employee who is terminated for failure to comply with this section will be reinstated only if he/she supplies evidence that it was not reasonably possible to comply.
2. Refusal to submit to an authorized drug or alcohol test.

3. Consuming alcoholic beverages or any substances containing alcohol, during working hours, during breaks, between shifts, at lunch, if the employee is scheduled for work or may be assigned to work.
4. Distribution, dispensing, possession, concealment, use, sale or unlawful manufacture of any prohibited substance, while on duty or on El Aguila premises.
5. Conviction of any criminal drug statute and failure to notify El Aguila of such conviction within five (5) days.

The policy of El Aguila is to terminate Safety Sensitive employees after the first violation. However, in the event that an employee is returned to Safety Sensitive duties for any reason, he/she will be subject to all Return-To- Duty and Follow-up testing as specified in 49 CFR Part 40, as amended and Part 655.

19.0 RETURN-TO-DUTY TESTING (655.46 & 40.285)

El Aguila will terminate the employment of any employee that tests positive or refuses a test as specified in this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions.

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test, a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety.

20.0 FOLLOW —UP —TESTING (655.47 & 40.301)

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

21.0 DILUTE NEGATIVE (40.197)

If El Aguila is informed by the MRO that a positive drug test was dilute El Aguila will simply treat the test as a verified positive test. El Aguila will not direct the employee to take another test based on the fact that the specimen was dilute.

If the MRO informs El Aguila that a negative test was dilute then El Aguila will take the following action:

If the MRO directs El Aguila to conduct a second test under direct observation (i.e., because the

1. Creatinine concentration of the specimen equal to or greater than 2mg/dl, but less than or equal to 5 mg/dl-El Aguila will do so immediately with no advance notice.
2. If the creatinine is greater than 5mg/dl but below 20 mg/dl El Aguila will direct the employee to take another test immediately with no advance notice- not directly observed. El Aguila will conduct retests in pre-employment situations and in random test situations.
3. Such recollections will not be under direct observation, unless there is another basis for use of direct observation (see 40.67) and (c).
4. El Aguila will treat all employees the same for this purpose.
5. El Aguila will treat the result of the test the employee was directed to take under paragraph (I) and not a prior test as the test result of record, on which El Aguila will rely for purposes of this part.
6. If the result of the test El Aguila directed the employee to take is also dilute negative, then El Aguila will not permit the employee to take an additional test because the result was dilute. However, should the MRO direct El Aguila to conduct a recollection under direct observation under paragraph (1) of this section, El Aguila will immediately do so.
7. Note: There is no split specimen testing authorized for an invalid test result.
8. If the employee declines to take a test that El Aguila directed him/her to take under this section, the employee has refused the test for purposes of this part and DOT agency regulations.

22.0 EDUCATION AND TRAINING PROGRAMS AND REQUIREMENTS (655.14)

1. Community Service Hotline Phone Numbers: National Technical Assistance
 - a. Drug-Free Workplace Help Line- 1-800-843-4971
 - b. National Clearinghouse for Alcohol and Drug Information- 1-800-729-6686
 - c. National Institute on Drug Abuse Treatment Hotline (NIDA)- 1-800-662-HELP (4357)
 - d. Department Of Transportation=S Anti-Drug Information Center- 1-800-CALDRUG
 - e. Employee Assistance Professionals Association (EAPA)- 703-522-6272
 - f. National Association of State Alcohol and Drug Abuse Directors (NASADAD) 202-783-6868
2. El Aguila shall establish an employee education and training program for all covered employees, including:
 - a. Education- The education component shall include display and distribution to every covered employee of: informational material and a community service hot line telephone number for employee assistance, if available.
 - b. Training- Covered employees. El Aguila covered employees *will* 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.
 - c. Supervisors- Supervisors and/or other company officers authorized by the El Aguila 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.

23.0 REFERRAL, EVALUATION, AND TREATMENT (SECTION 655.62)

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 resource 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.

24.0 TEXAS ALCOHOL AND DRUG ABUSE LICENSED SITE FACILITIES FOR THE EL AGUILA AREA

Gabriela Martinez-Vela
3301 Chacota St. Ste. 2A
Laredo, Texas
(956) 723-4488

25.0 EFFECTS OF ALCOHOL

Alcohol is the most commonly abused drug in the United States and its effect on an individual's health, work and personal life is immense. It is estimated that each alcoholic affects four to five other people, including family, friends and co-workers. The average American pays \$1000 annually to cover the hidden costs of alcoholism such as decreased productivity, accidents, increased health costs, jail, and treatment costs. Approximately 65 percent of murders, 60 percent of child abuse cases, 40 percent assaults, and 55 percent of domestic violence cases are alcohol related. Additionally, alcohol is a major factor in the majority of the traffic fatalities that occur each year.

Alcoholics put themselves at constant risk of death and illness. Those who don't die in traffic accidents are likely to succumb to one of a number alcohol related illness, such as liver disease, malnutrition, and a weakened immune system.

There is a wide spectrum of signs and symptoms of an alcohol problem which can include the following: urgency of first drinks, feelings of guilt about drinking, onset of memory blackouts, increased dependence on alcohol, decreases ability to stop drinking when others do so, neglect of food and physical deterioration.

If an employee believes he or she has an alcohol problem, he or she should seek the help of a substance abuse professional.

26.0 ADDITIONAL PROVISIONS REQUIRED BY STATE LAW

El Aguila as an employer in the State of Texas must comply with the Texas Workers Compensation Act. Tex. Rev. Civ. Stat. Ann. Art. 6308 s. 7.10 (Vernon Supp.1991) which mandates that the following section be part of an employer's Drug-Free Workplace Policy.

27.0 PRESCRIPTION DRUGS/OVER THE COUNTER DRUGS

The appropriate use of prescription drugs and over the counter medication is not prohibited. However, the following guidelines must be observed.

Any employee using a prescription drug should consult with his/her physician regarding the


1. Effects of that drug in relation to the operation of motorized vehicles, machinery, or safety-sensitive functions.
2. Employees should read all labels carefully.
3. On-duty employees may not use over the counter medications where the manufacturer advises against their use while operating motorized vehicles, machinery, safety-sensitive functions, or where their use during working hours has not been approved by the employee's physician.
4. In the event of a question regarding the use of any prescription drug or over the counter medication, the employee must notify their supervisor, and must submit written approval for use of the medication from his/her physician, upon request.
5. Any employee reporting for a drug/alcohol test must provide the Medical Review Officer (MRO) with names of prescriptions and over the counter medication that they are currently taking.
6. An employee who reports for duty while using any over the counter or prescription medication where the manufacturer advises against their use while operating motorized vehicles or machinery, who informs El Aguila of such, and does not provide the written approval from her/his physician, will not be allowed to perform the safety-sensitive duties for failure to provide said written approval shall have any time beyond the remainder of the day of the report charged against her/his attendance records, and any instance thereafter.

WEBB COUNTY




Tano E. Tijerina
Webb County Judge

ATTESTED:



Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:



Nathan R. Bratton
General Counsel

Webb County Civil Legal Division *

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

*Passed and approved by the Webb County Commissioners Court
On September 12, 2022; item no. 11.a.*