

Scalability of drug and alcohol management program requirements

Fact Sheet 3 – January 2013

Below is an example contrasting the approaches of two rail transport operators with different risk profiles and how they each have met the requirements of regulation 28 of the National Regulations.

It should be noted that the example provides only one means by which the operators may comply, and other alternatives may exist.

The example itself imposes no legal duty and where actions or requirements are described as mandatory these reflect requirements in the Rail Safety National Law or National Regulations. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between the example and the legislation, the legislation will prevail. It will be recommended that duty holders obtain their own independent legal advice about the legislation or contact the Regulator for advice if clarification is required.

Operator 1 – higher D&A risk

A large commercial operator with a diversity of rail safety tasks, multiples sites, 24/7 operation, high numbers of rail safety workers, complex management structure with less visibility of individual workers.

This operator would likely have complex risk assessments documented in the safety management system (SMS), and may perform risk assessments for different classes of rail safety worker or geographical locations/routes.

The risk assessments and historical data indicate greater drug and alcohol risk (likelihood and consequence) associated with different classes of rail safety worker and identify certain geographical areas with greater risk.

Operator 2 – lower D&A risk

A small operator with few relatively rail safety tasks, operating weekends and public holidays, a single site/office, low number of rail safety workers, flat management structure.

This operator is likely to have less complex risk assessments documented in the SMS, but may identify greater alcohol risks in early morning operations on weekends and public holidays. Prescription drug use may be a greater risk than illicit drugs.

Both operators must manage risks to safety so far as is reasonably practicable and implement controls commensurate to the level of risk. All aspects must be documented in accordance with the SMS. What follows is a discussion of how each operator may demonstrate compliance with each subsection of regulation 28 of the National Regulations.

Further information

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Regulation 28—Drug and alcohol management program

(1) A drug and alcohol management program of a rail transport operator must include the following:

(a) a drug and alcohol policy that sets out the objectives of the rail transport operator with respect to drug and alcohol management in the workplace;

Operator 1 may develop a written document, in consultation with employees and health and safety/union representatives, applicable to all workers. The focus of the policy may be to reduce or eliminate the hazards associated with alcohol and drug use in the workplace in a way that is consistent and fair to all employees and may stress prevention, education, counselling and rehabilitation. The policy document may be included in induction documentation, discussed in regular training, available in staff break rooms, published on the website, etc. The policy must be included in the SMS.

Operator 2 may include a policy statement as part of an induction program and reiterated in staff meetings/regular training around its position on alcohol and drug use. The policy must be included in the SMS.

(b) systems and procedures for the provision of information and education to rail safety workers in relation to the drug and alcohol management program;

Operator 1 may include online or formally delivered information and education for all employees in relation to the contents of the drug and alcohol management program. The systems and procedures for delivery must be specified in the SMS.

Operator 2 may include a short briefing on the drug and alcohol management program in their regular quarterly meeting or newsletter. The procedure for delivery must be specified in the SMS.

(c) systems and procedures to ensure the confidentiality of personal information obtained from, or in respect of, a rail safety worker in relation to drug or alcohol testing, counselling, treatment or rehabilitation;

Operator 1 may electronically store employee's personal information in HR files with limited and secure access. The system and access limitations must be specified in the SMS.

Operator 2 may store hardcopy files in a safe in the office, with access limited to the Safety Manager. The system and access limitations must be specified in the SMS.

(d) details of the drug and alcohol testing regime, including testing procedures and procedures for the management of rail safety workers in respect of the results of such testing;

Both operators must develop a testing regime that is appropriate to their operations and that addresses the risks identified through their documented risk assessment process.

Operator 1 would likely include a comprehensive regime. The operator may make use of external contractors to deliver its drug and alcohol testing regime, due to the larger scale of the organisation and testing program. They may wish to have a random component to testing, perhaps assigning a percentage of the workforce to be tested each month. They may choose to perform more targeted testing focussing on the areas identified with the greatest risks. Testing would likely include both alcohol and drug screening tests. A confirmatory process may be established if the operator wishes to take disciplinary action against an individual worker who has returned a non-negative result to a screening test. The details of the testing regime and testing procedures must be included in the SMS. Rail safety workers that return a positive non-negative test may be suspended with pay until confirmatory testing is completed; they may then be referred to counselling and, if habitual use is detected, may be provided rehabilitation. In accordance with the SMS, disciplinary action may be considered. The procedures around the management of rail safety workers must be documented and form part of the drug and alcohol management program.

Operator 2 would likely implement a simpler testing regime, administered by in-house staff. While the operator's risks may be lower than Operator 2, it is reasonably practicable that Operator 2 perform some form of testing for deterrence and to monitor this risk. The operator may wish to perform some random alcohol tests using a handheld breathalyser (certified AS3547 compliant) before commencing operations; this may involve two rail safety workers at a time and occur on a random basis. Drug testing may be more expensive and readily available test kits were assessed as having limited reliability by the operator; it is determined that it is not reasonably practicable to perform random drug testing. Nonetheless, to manage the identified risk, the operator requires a drug screening test to be conducted with the medical assessment under the health assessment standard. Due to the fewer number of employees, the operator ensures that adequate training is provided to assist workers in identifying the effects of drugs and alcohol in their co-workers. The details of the testing regime must be included in the SMS. If a worker tests positive to an alcohol test, the worker must be stood down and then re-tested before commencing their next shift. A worker may be provided a taxi home for the day if public transport is not available. Workers may also be subject to disciplinary action. The procedures around the management of rail safety workers must be documented and form part of the drug and alcohol management program.

For both operators, the results of testing can be used to monitor compliance and analysis of results can be used to continually improve the testing regime and drug and alcohol management program as a whole.

(2) The drug and alcohol management program of a rail transport operator must provide for the following measures to be taken by or on behalf of the operator:

(a) the establishment of rules relating to the use of alcohol and other drugs by rail safety workers (including prohibitions and restrictions on use);

Both operators may specify rules in employment agreements around drug and alcohol use or a 'zero tolerance' policy statement.

(b) the identification of rail safety workers who have alcohol or other drug related problems and, where appropriate, referral of those workers to assessment, treatment, counselling or rehabilitation.

Identification may be through testing, self-reporting or peer recognition.

Operator 1 may have in-house counselling, an employee assistance program or engage a third-party provider for such services.

Operator 2 may refer employees to a local GP or health practitioner.

(3) The drug and alcohol management program of a rail transport operator must set out the obligations of rail safety workers with respect to the management of alcohol and other drug use and the actions that may be taken by the operator if there is a breach of those obligations, including the following:

(a) a requirement that a rail safety worker notify the operator, or a nominated person, if the worker is aware that the ability of the worker, or another worker, to carry out rail safety work may be impaired by alcohol or any other drug;

In Operator 1 this may be the direct line manager or HR representative.

In Operator 2 this may be the Safety Manager.

(b) the provision of education and rehabilitation measures for rail safety workers, including provision for information to be provided about referral to counselling, treatment and rehabilitation services where appropriate;

Both operators should provide rail safety workers with education on various matters, such as the drug and alcohol management program (under 28(1)(b) above and any related internal processes, such as those under 28(3)(d) and (e) below), and the effects of alcohol and other drugs (28(3)(d) below). The referral procedures would be as per 28(2)(b) above).

Operator 1 may deliver this education and information online, deliver it through formal information sessions and may make information available on intranet. The systems and procedures for delivery must be specified in the SMS.

Operator 2 may include a short briefing on the drug and alcohol management program in their regulator monthly meeting or newsletter, and may deliver a group information session bi-annually. The procedure for delivery must be specified in the SMS.

(c) the provision of information to rail safety workers about their responsibilities and obligations in relation to alcohol and other drug use under the Law;

Both operators must provide information to rail safety workers on their legislative obligations – these have been outlined above.

(d) the provision of information to rail safety workers with respect to the effect of alcohol and other drugs and the possible disciplinary action and other penalties that may apply if a rail safety worker fails to comply with the drug and alcohol management program;

May be incorporated with other education and information requirements (refer 28(3)(b) above).

(e) appeals and grievance mechanisms for dealing with complaints about the application of disciplinary action and other penalties, or the implementation of the drug and alcohol management program;

Operator 1 may have formal mediation and grievance mechanisms for dealing with complaints through HR.

Operator 2 may have less formal processes, such as employees being able to seek a meeting with the Safety Manager.

(f) protocols for fair procedures relating to the operation of the drug and alcohol management program.

Both operators should ensure that matters relating to drug and alcohol management be handled discretely and confidentially.

Operator 1 may have documented procedures relating to human resource management and discrimination.

Operator 2 may have less formal processes, but should ensure that management document their actions relating to drug and alcohol management to ensure transparency in decision-making.