



Federal Transit  
Administration

## **FINAL AUDIT REPORT FINDINGS**

### **FTA Drug and Alcohol Compliance Auditing Program**

#### **Finding Response Disk**



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# New Orleans Regional Transit Authority

## Policy Manual Review Interview

Ques. # Action Date: 4/26/2023

**2** **Question:** 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 program?

Answer: No.

Supplemental Answer: The policy (p. 1) states: "Refer to the Phone List for the Drug and Alcohol Program Manager/Designated Employer Representative for RTA." However, the name and contact information for this position are not identified.

In response to this and the following policy findings, submit to FTA a revised policy that is compliant with the listed regulatory requirements. To assist in this effort, RTA may elect to use FTA's free policy builder, which may be found at the following site:  
<https://transit-safety.fta.dot.gov/drugandalcohol/tools/PolicyBuilder/CreatePolicy.aspx>.

For this finding, revise the policy to identify the person, office, branch, or position a covered employee can ask questions related to FTA requirements.

**FTA Rule Requirement:** Section 655.15(a) states that the policy statement must include: "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."

Your Response:

This attached policy now reflects this finding and has been properly corrected to show the contact information for the DAPM/DER In APPENDIX #4. The policy builder was used and implemented throughout the attached policy.

See Page # 1, 3, 4 and 65 of D and A Alcohol Free Workplace Policy

Ques. # Action Date: 4/26/2023

**16** **Question:** PROHIBITED BEHAVIOR: Does the policy indicate that covered employees are prohibited from using alcohol within four hours prior to performing a safety-sensitive function, while on-call to perform a safety-sensitive function, and while performing a safety-sensitive function?

Answer: One or more elements is missing or incorrect.

Supplemental Answer: In sections 4.3 and 5.3, the policy states that employees are prohibited from consuming

alcohol for the eight hours that precede the performance of safety-sensitive work. The prohibitions set forth in these sections are broader than those stated in sections 655.32 and 655.33, which prohibit FTA-covered employees from consuming alcohol for four hours prior to performing a safety-sensitive function.

In response to this audit finding, revise the policy for compliance with sections 655.32 and 655.33. Should RTA wish to set prohibitions that are more restrictive than FTA's, they must be clearly designated as RTA policy, and FTA's prohibitions must also be stated.

**FTA Rule Requirement:**

Section 655.15(c) states that the policy statement must include: "specific information concerning the behavior and conduct prohibited by this part."

Section 655.32 states: "Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions."

Section 655.33 states: "(a) 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. (b) 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. (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."

Your Response:

Please See Attached Policy

[See Page 11, 13, and 14 of D and A Alcohol Free Workplace Policy](#)

Ques. # Action Date: 4/26/2023

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**Question:**

PRE-EMPLOYMENT DRUG TESTING: Does the procedure for an applicant or transferee who has previously failed or refused a DOT test include requiring evidence that the individual has successfully completed a referral, evaluation and treatment plan meeting DOT requirements?

Answer:

Other. The policy implies that only applicants with a past DOT violation must receive a background check.

**Supplemental Answer:** The policy (Section 9.1) states: "To be considered for employment, transfer or promotion, all applicants who previously failed a pre-employment drug test are required to give consent to RTA for a background check of their previous USDOT-covered employer(s) over the past two (2) years as defined by 49 CFR 40.25." Prior to beginning a safety-sensitive function, all applicants or transfers who previously held a safety-sensitive function must receive the background check required by section 40.25.

In response to this audit finding, revise the policy for compliance with section 40.25.

**FTA Rule Requirement:** 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 §655.62."

Section 40.25(b) states: "You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer: (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee."

Your Response:

The Pre-Employment section of the policy has been undated and revised using the FTA Policy builder and in compliance with section 40.25

Please see attached

See Page # 37 for red line strikes and corrections were made on page 24-25.

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**Question:** PRE-EMPLOYMENT DRUG TESTING: Does the policy include the provision that a covered employee who has not performed a safety-sensitive duty for 90 or more consecutive days and has not been in the employer's random testing pool must take a pre-employment drug test with a verified negative result before returning to safety-sensitive duties?

**Answer:** Other. The policy states that this provision is applicable after 30 days.

**Supplemental Answer:** The policy (Section 6.4) states: "Any safety-sensitive applicant who undergoes a

pre-employment test, but is not actually assigned safety-sensitive duties, and is not in the random selection pool, within 30 days from the date of the test, will have to retest with negative test results prior to the applicants first performance of safety-sensitive duties." Per section 655.41(d), this provision is only applicable after 90 days for FTA-covered employees. Revise the policy accordingly.

**FTA Rule Requirement:**

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

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."

Your Response:

Please See Attached Policy

[See Page 25 you can find this within the last 2 paragraphs](#)

Ques. # Action Date: 4/26/2023

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**Question:**

REASONABLE SUSPICION TESTING: Does the policy state that reasonable suspicion testing is required when a trained supervisor or company official has reasonable suspicion to believe that a covered employee has engaged in prohibited drug use or alcohol misuse, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the covered employee?

Answer: Other. The policy includes situations that are not cause for a FTA reasonable suspicion test.

**Supplemental Answer:**

The policy (Section 6.5) states: "Such facts and interferences may be based upon, but not limited to, the following . . . Abnormal conduct or erratic behavior while at work or a significant deterioration work in normal performance . . . A report of substance use provided by a reliable and credible source . . . Causing or contributing to a workplace accident." These situations are not cause for a FTA reasonable suspicion test.

In response to this audit finding, revise the policy for compliance with section 655.43.

**FTA Rule Requirement:**

Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or

alcohol misuse under this part."

Section 655.43 states: "(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. (b) 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."

Your Response:

This section of the policy was revised for compliance with section 655.43 using FTA's policy builder.

Please see attached

See Page 27 this can be located where you see the red tracked strikes in the middle of the page.

Ques. # Action Date: 4/26/2023

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**Question:** POST-ACCIDENT TESTING 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; one or more involved vehicles incurs disabling damage and is towed away; the public transportation vehicle is a rail car, trolley car, trolley bus, or vessel, and is removed from operation?

**Answer:** One or more required elements is missing or incorrect.

**Supplemental Answer:** The definition of a FTA accident provided in Appendix #1 implies that, in cases where RTA completely discounts an employee as a contributing factor to an accident, the event no longer meets a FTA post-accident threshold. This is incorrect. Even when an employee is completely discounted from testing, the event remains a FTA-defined accident. Revise the policy accordingly.

**FTA Rule Requirement:** Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

Section 655.4 defines an "accident" as: "an occurrence associated with the operation of a vehicle, if as a result: (1) An individual dies; or (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) With respect to an occurrence in which the public transportation vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded

vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or (4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation."

Your Response:

Please see attached

Revisions and new FTA approved language can be found on page 28.

Ques. # Action Date: 4/26/2023

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**Question:** POST-ACCIDENT TESTING - FATALITY: Does the policy state that, in an accident involving a fatality, the following individuals must be tested: All surviving covered employees operating the public transportation vehicle at the time of the accident; and any other covered employees whose performance could have contributed to the accident?

**Answer:** Other. This provision is stated incorrectly.

**Supplemental Answer:** The policy (Section 6.6) states that an employee's performance can be discounted after an FTA-defined accident. While this provision is true following non-fatal accidents, per section 655.44(a)(1)(i), the operator may not be completely discounted following a fatal accident.

Similarly, the definition of a FTA accident provided in Appendix #1 incorrectly implies that an operator may be completely discounted following a fatal accident.

In response to this audit finding, revise the policy for compliance with section 655.44(a)(1)(i).

**FTA Rule Requirement:** Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

Section 655.44(a)(1) states: "(i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1). (ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision."

Your Response:

Please see attached

Revisions can be found on page 28 old non-compliant language can be found at the top of page 29. In addition, you will find deletions of the same language at the bottom of page 29 throughout page 30 and at the top of page 31.

Ques. # Action Date: 4/26/2023

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**Question:** REFUSALS: Does the policy state that failure to undergo a medical evaluation as required by the MRO or DER is a refusal?

**Answer:** Other. This refusal is stated for drug testing, but not for alcohol testing.

**Supplemental Answer:** In response to this audit finding, revise the policy to state the missing refusal.

**FTA Rule Requirement:** Section 655.15(g) states that the policy statement must 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."

Section 40.191(a) states: "As an employee, you have refused to take a drug test if you: (7) 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 §40.193(d). 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. If there was no contingent offer of employment, the MRO will cancel the test."

Section 40.261(a) states: "As an employee, you are considered to have refused to take an alcohol test if you: (5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c)."

Your Response:

Please See Attached Policy

See page 16

This was updated and revised per FTA requirements.

Page 17 shows the old version.



Ques. # Action Date: 4/26/2023

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**Question:** CONSEQUENCES FOR VIOLATIONS: Does the policy describe the consequences for a covered employee who has a verified positive drug test result, a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test; including immediate removal from safety-sensitive duty and referral to a Substance Abuse Professional?

**Answer:** Other. The policy does not clearly differentiate between DOT and RTA consequences.

**Supplemental Answer:** While DOT consequences are correctly stated, numerous sections of the policy impose additional consequences that are not clearly designated as being implemented under RTA's authority. For instance, Sections 6.0, 6.2, and 6.7 state that employees with DOT violations will be placed on "administrative leave without pay," which is not a DOT consequence. Revise the policy to clearly indicate consequences that are implemented under RTA's authority.

Additionally, the policy (Section 13.1) conflates RTA's EAP with a Substance Abuse Professional (SAP). SAP is a DOT-specific term that must not be conflated with a substance abuse program implemented under RTA's authority. Revise the policy accordingly.

**FTA Rule Requirement:** Section 655.15(h) states that the policy statement must include: "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."

**Your Response:**

Please See Attached Policy

[See page 43 revised on page 42](#)

Ques. # Action Date: 4/26/2023

53

**Question:** EMPLOYER-SPECIFIC ELEMENTS: If the employer implements elements of an anti-drug or alcohol misuse program that are in addition to those required by Part 655, are such elements clearly described as being based on the employer's independent authority?

**Answer:** No.

**Supplemental Answer:** The policy (p. 6) describes employees who are safety-sensitive under RTA authority, and under the authority of USDOT (both FTA and FMCSA). However, throughout the policy, these categories of safety-sensitive employees are not properly distinguished. DOT provisions can often be read to apply to non-DOT employees, and non-DOT provisions can often be read to apply to DOT employees. Additionally, FTA provisions are incorrectly applied to FMCSA-covered employees.

For example, the policy (Section 4.1) states: "Under 49 CFR 655.21, all safety-sensitive employees will be tested for prohibited drugs . . ." This phrasing implies that all three categories of safety-sensitive employees (RTA-covered, FTA-covered, and FMCSA-covered) are subject to Part 655, which is a regulation that applies only to FTA-covered employees.

In response to this audit finding, thoroughly revise the policy so that it correctly distinguishes between RTA, FTA, and FMCSA authority. Ensure the term "safety-sensitive" is used in an accurate manner that does not confuse the various authorities.

**FTA Rule Requirement:** 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."

**Your Response:**

In response to this audit finding, the policy is thoroughly revise the so that it correctlydistinguishes between RTA, FTA, and FMCSA authority. to Ensure the termsafety-sensitive" is used in an accurate manner that does not confuse the various authorities listed in the Drug and Alcohol Policy

Please See Attached Policy

[See page 12 paragraph 2](#)

Ques. # Action Date: 4/26/2023

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**Question:** PROVISIONS CONTRARY TO FTA or DOT REGULATIONS: Does the policy contain any provisions that are inconsistent with, contrary to, or that frustrate the requirements of

Part 655 or Part 40?

Answer: Yes, the following items are not compliant with FTA and DOT regulations.

Supplemental Answer: A) The policy (Sections 4.1 and 6.0) references "opiates." For consistency with changes made to Part 40, amend these references to read "opioids."

See page 21 with red strike. Page 11 shows revision

See page 17 revised on page 16

B) The policy (Section 5.4) states: "The following additional circumstances constitute a test refusal and verified positive by an applicant/employee." Similarly, Section 13.B states: "For drug and alcohol testing, an employee who refuses . . . to submit to a drug or alcohol test when required by this policy will be considered to have tested positive." A refusal is different from a positive test, even though they have the same consequences. Revise these statements accordingly.

See page 20 all red strikes

C) The policy (Section 5.8) provides an incomplete list of entities to which drug and alcohol records can be released. Remove this section from the policy, or revise it to accurately reflect sections 40.321, 40.323, 40.331, and 655.73.

See page 21 1st paragraph and bottom of page

D) The policy (Section 6.0) states that an MRO shall be a certified medical doctor. An MRO may also be a Doctor of Osteopathy. Remove this statement from the policy, or revise it to accurately reflect section 40.121(a).

See page 21 2nd to last paragraph

E) The policy (Section 6.0 and Appendix #1) states that laboratory confirmatory testing is performed using Gas Chromatography/Mass Spectrometry (GC/MS). Since all laboratories do not use GC/MS testing procedures, either remove these statements or verify the process used by your primary laboratory and any laboratories that may be used to perform split specimen testing and ensure that your policy accurately reflects this/(these) process(es).

See page 21 paragraph # 5

F) Similarly, the policy (Appendix #1) states: "Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for the five (5) Substance Abuse and Mental Health Services Administration (SAMHSA) drugs." This is inaccurate. Remove this statement from the revised policy.

See page 22 first and second paragraph

G) The policy (Section 6.0) states: "Additionally, positive test results will be submitted to the Louisiana Office of Motor Vehicles, or appropriate licensing entity of the jurisdiction in which the employee is licensed, in accordance with State and Federal laws." Release of FTA records to this sort of entity is not permitted, per section 655.73. Remove this statement from the revised policy.

See page 23 second to last paragraph

H) The policy (Section 6.2) states: "All breath-alcohol test results will be reported only by a MRO or BAT." MROs do not report breath-alcohol test results. Revise the policy accordingly.

See page 26 updated on page 40

I) The policy (Section 6.4) discusses split specimen testing as a subsection of pre-employment testing. This formatting suggests that split specimen testing is applicable only to pre-employment testing. Remove this section from the revised policy, or move it to a place that correctly indicates it is applicable to all DOT testing.

See page 26 located by the red strikes

J) The policy (Section 6.4) states that if the split specimen fails to reconfirm the results of the primary specimen, both tests are canceled. The split specimen test is a continuation of the primary specimen test, and thus, only one test is canceled. Revise the policy accordingly.

See page 30 paragraph 3

K) The policy (Section 6.6) states: "Operation of a vehicle does not include operation of the lift." This is inaccurate. Remove this statement from the revised policy.

See page 30

L) The policy (Section 6.6) states: "Ancillary services include non-revenue service commercial motor vehicles and vehicles used by armed security personnel." Ancillary vehicles do not include those used by armed security personnel. Remove this statement from the revised policy.

See page 30

M) The policy (Section 6.6) states: "If RTA is unable to perform a USDOT or non-USDOT drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), may use drug and alcohol post-accident test results administered

by State and local law enforcement officials (49 CFR Part 40)." This provision is stated in 49 CFR Part 655, rather than 49 CFR Part 40. **Revise the policy accordingly.**

See page 32 above 7.0 N) The policy (Section 6.7) states: "All USDOT-regulated safety-sensitive employees with a MRO-verified positive or non-negative on a drug or alcohol test upon their first occurrence shall be immediately removed from their safety-sensitive position . . . and referred to a SAP, in accordance with 49 CFR 655." Non-negative test results also include canceled tests, which do not warrant these consequences, per section 40.207(a)(1). **Revise the policy accordingly.**

See page 33 O) The policy (Section 6.8) states: "A return-to-duty breath alcohol test result of 0.02 or greater will be considered the second alcohol violation test within a five-year period." Similarly, Appendix #1 defines a negative alcohol test as a "test result which indicates a breath alcohol concentration of less than 0.02," implying that a result of 0.02 or greater is a DOT violation. DOT violations include breath alcohol test results of 0.04 or greater, not 0.02 or greater. **Revise the policy accordingly.**

See page 33 P) The policy (Section 6.8) states: "For any USDOT (FTA) safety-sensitive employee, a confirmatory breath alcohol test result of 0.04 or greater will be considered a positive alcohol test result and in violation of this policy and the requirements in 49 CFR Part 655 for safety-sensitive employees, which includes a mandatory SAP referrals are not permitted for results for less than 0.02, or for results of 0.02 to less than 0.04. SAP referrals." Typos in this section prevent it from clearly describing DOT requirements for SAP referrals. **Remove this statement from the policy, or revise it to clearly reflect DOT requirements.**

See page 37 Q) The policy (Section 9.2) provides an incomplete list of records retention requirements. **Remove this section from the policy, or revise it for compliance with section 655.71.**

See page 39 R) The policy (Section 10.1) states that employee training must also include "manifestations and behavioral cues that may indicate prohibited drug use." This is not a FTA-required element of employee training. Should RTA wish to provide training on these topics, it must be in addition to the 60-minute training requirement of section 655.14(b). **Revise the policy accordingly.**

See page 41 D S) The policy (Section 13.C) states: "If the employee continues to allege an inability to provide a sufficient amount of breath for the test, RTA shall be notified that the employee has refused to be tested." This case may not be deemed a refusal until the employee has undergone a medical evaluation, per section 40.265(c)(1)(iv)(B). **Revise the policy accordingly.**

See page 41 T) The policy (Section 13.C) states that employees unable to provide a sufficient amount of breath for an alcohol test will be directed to obtain an evaluation within 72 hours from a licensed physician . . . " In this case, employees must be directed to obtain a medical evaluation within five days, per section 40.265(c). **Revise the policy accordingly.**

U) The policy (Appendix #1) states that alcohol tests may include blood screening. Blood tests may not be used for a DOT alcohol test, per section 40.277. **Revise the policy accordingly.**

V) The policy (Appendix #1) states: "Qualified Negative, with respect to the results of a drug test, means a test in which the lab result is consistent with legal drug use." This definition does not reflect Part 40 and **must be removed from the policy.**

W) The policy (Appendix #1) lists the term "Substance Abuse Counselor" without an accompanying definition. To avoid conflating this term with the subsequently defined "Substance Abuse Professional (SAP)," remove "Substance Abuse Counselor" from the revised policy, or provide an accurate definition.

X) The policy (Appendix #1) provides an incomplete list of the organizations that may certify a drug and alcohol counselor qualified to act as a SAP. **Remove this definition from the policy, or revise it for compliance with section 40.281(a).**

FTA Rule Requirement: 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

Pages 46-61 Can now be found in our  
Safety and health Handbook

See Page 46-61

See Page 46-61

See Page 46-61

See Page 46-61

by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part."

Your Response:

Please See Attached Policy