

SESSION 3

ALCOHOL AND DRUG PROBLEMS IN THE TRANSPORTATION INDUSTRY

THE DEPARTMENT OF TRANSPORTATION'S PROGRAM ON SUBSTANCE ABUSE

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In November, 1988, the Department of Transportation agencies, (Federal Aviation Administration, Federal Railroad Administration, Federal Highway Administration, U.S. Coast Guard, Research and Special Programs Administration, and the Urban Mass Transportation Administration) issued federal regulations requiring the regulated transportation industries to implement anti-drug programs which included employee drug testing. The regulations effected approximately 226,000 employers of over 4,000,000 employees. In December, 1989 the Office of the Secretary of Transportation issued a final rule detailing specific procedures for drug testing in transportation workplaces. This procedural rule, 49 CFR Part 40 was modeled after the April, 1988 Mandatory Guidelines for Federal Employee Drug Testing Programs issued by the Department of Health and Human Services (DHHS) as a standard for federal employee drug testing under Executive Order 12564. Implementation of the DOT agencies' regulations began in December, 1989.

The regulations were challenged in the court system. Most of the challenges were centered on constitutional issues related to random drug testing of employees. The DOT prevailed in all cases, except on a challenge to the UMTA regulation. In that instance, the court determined that UMTA did not have sufficient statutory authority to mandate a nationwide drug testing program. The cases filed against the US Coast Guard and FHWA did however, result in delays in the implementation of the random testing provisions. In October, 1991 and December 1991 random testing was implemented under authority of the USCG and FHWA. The mass transit industry is currently not required to conduct UMTA mandated drug testing.

The DOT drug testing programs are based on the principle of drug deterrence. General demographic data on drug use prevalence and incidence in the US population have indicated that the transportation workplaces are not immune to the problem of illegal drug use. Early estimates of prevalence rates based on pre-employment drug testing conducted by transportation employers under their own authority and self-report drug use data by people employed in transportation industries ranged from 10-20% of the transportation workforce. The positive rates reported to DOT agencies from aviation and railroad industries since

implementation of the programs in December 1989 have shown rates below 3%. Data from the other regulated industries are not currently reported to the DOT. The DOT is continuing to explore random testing rates in terms of the effectiveness of various levels for achieving maximum deterrence of drug use.

The DOT drug testing regulations provide a comprehensive workplace drug testing program structure. The regulations require drug testing of employees performing safety- and security-sensitive functions. They mandate pre-employment, post-accident, reasonable cause, random, and in some instances periodic testing. The program is a urine drug testing program specific for five classes of drugs: marijuana, cocaine, opiates, amphetamine, and PCP. All urinalysis must be conducted in laboratories certified by the National Institute on Drug Abuse (NIDA), using specific testing protocols and cut-off levels for both screening and confirmatory testing. All urine specimens must be collected from employees using specific collection procedures that protect the rights of the individual, including privacy rights, and provide for the integrity, identification and security of the specimen. Upon confirmatory analysis at the laboratory, test results are provided to a physician who serves as a Medical Review Officer (MRO). If an employee's test result is positive for one or more of the classes of drugs, the individual has the opportunity to discuss the test result with the MRO and offer any alternative medical explanations for the urinalysis results. Only upon verification of the positive result by the MRO, is the test result reported to the employer. In the event of a verified positive test, the individual must be removed from performing safety- or security-sensitive functions, and if an applicant for such a position, cannot be hired.

In addition to the specific requirements for drug testing, the DOT anti-drug regulations emphasize the importance of employee awareness education and training on drug use in the workplace. Supervisors who may be responsible for making reasonable cause determinations are also required to undergo specific training on the signs and symptoms of drug use. The regulations also establish criteria for employees who test positive for drugs to return to safety- or security-sensitive positions. Employers are required to maintain confidential records of their drug testing programs. Employer compliance is monitored by DOT agencies and enforcement actions for non-compliance are initiated from tables of civil penalties.

The implementation of the DOT regulations is still

in its infancy, especially with the delays in random testing implementation. There are, however, some lessons emerging. Some of the issues being explored and evaluated include: redefinition of safety- or security-sensitive positions; adjustments to the random testing rates; adjustments to the testing cut-off levels for screening and confirmatory testing; modifications to procedures aimed at protecting the integrity of the specimen; and the role of third-party providers of drug testing services.

Employer and employee acceptance of the drug testing programs has been much better than originally projected. Positive impact on transportation safety, increased productivity, reduced absenteeism, and workplace morale have not been quantified as yet. However, significant benefits are anticipated. The DOT regulations have served as models for state legislation on workplace drug testing, private sector non-regulated employer drug testing programs, and anti-drug initiatives in other Federal agencies.

In conclusion, the DOT drug testing regulations represent a comprehensive drug demand reduction initiative in a significant segment of the US workplace -- the transportation industries. The overall impetus for such an initiative is improved safety for the public in transportation. An expected benefit is the early identification of drug users, and their referral for appropriate assistance, and the prevention of drug use by entering and incumbent workers in the transportation industries.

Recent legislation passed by Congress as part of the DOT 1991 Appropriations Act will result in further expansion of the DOT workplace testing programs. Title V, Omnibus Transportation Employee Testing, of the statute mandates alcohol and drug testing in the aviation, railroad, highway, and mass transit industries. It further expands testing requirements from the current intrastate operation of commercial motor vehicles. The DOT will issue regulations requiring alcohol testing in the six regulated transportation industries and drug testing in mass transit and intrastate commercial motor vehicle operations.

REDUCING SUBSTANCE ABUSE IN THE RAILROAD INDUSTRY: A SUCCESS STORY

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INTRODUCTION

The Federal Railroad Administration administers a broad-based set of regulatory substance abuse

countermeasures developed through extensive rulemaking during the mid-1980s. This has resulted in the first truly integrated alcohol and drug rule issued by a Federal agency that took advantage of both contemporary chemical testing technology and research with respect to occupational substance abuse developments. Regulations are codified in 49 CFR Part 219.

The regulations bar covered railroad employees (operating employees, dispatchers and train order operators, and signal and train control employees) from going or remaining on duty while using, possessing or being under the influence of or impaired by alcohol or controlled substances. Like other DOT regulations, the FRA rule contains a .04% per se standard for alcohol. Use of controlled substances on or off duty is expressly proscribed, except upon authority of a medical practitioner who has been advised of the employee's safety-sensitive duties. Pre-employment drug testing and post-accident alcohol/drug testing are required. Railroads are authorized to conduct breath alcohol and/or urine drug testing for reasonable suspicion, after unsafe practices, and after lesser-magnitude accidents/incidents for which the employee is believed to be responsible.

Railroads must maintain employee assistance policies under which employees troubled by substance abuse are referred for assistance and returned to work on the recommendation of the substance abuse professional who provides case management for the railroad. On-duty "co-worker reports" also must result in a referral opportunity (in order to promote collective employee participation in compliance). These concepts were derived from preexisting railroad industry programs, which continue to exceed the regulatory floor.

Random drug testing was implemented in 1990. Testing programs are subject to FRA review and approval.

FRA has also provided strong support for "Operation Red Block," the peer prevention program which grew out of employee concern over substance abuse in the railroad industry. This movement symbolizes the principle that permanent behavioral change must result from a cultural transformation.

POST-ACCIDENT TOXICOLOGY

The FRA's post-accident testing program was upheld by the Supreme Court of the United States in the case of *Skinner v. Railway Labor Executives' Association* (March 1989) against a challenge based on the Fourth Amendment to the Constitution. It is the only Federally-mandated Department of Transportation (DOT)