

**This comes from Rick Brown, Business Consultant with the Ohio BWC regarding Federal Substance Testing Guideline changes as of 8/16/2010:**

BWC has received formal notification that the U.S. Department of Transportation (DOT), through its Office of Drug and Alcohol Policy Compliance (ODAPC), has approved the rule that will make previously announced changes to federal testing effective October 1, 2010. These changes reflect what the U.S. Department of Health and Human Services (HHS) put into rule earlier this year, with but one significant change.

The substantive changes for DFWP/DF-EZ and DFSP employers will be as detailed below in the email from Jim Swart, Director, ODAPC. The one change from HHS that was not approved by DOT is #7 (underlined) in his email below. Employers will primarily be affected by the need to wait for collection and testing protocols and forms (chain of custody, etc.) to be modified to allow testing for Ecstasy as part of the new 6-panel drug screen, the inclusion of initial 6-AM testing for heroin and the lowering of cut-off levels for amphetamines and cocaine.

For information on the new cut-off levels/changes and the Federal Register detailing the considerations DOT went through in arriving at its final rule, visit the links to the Federal Register and DOT's Web site contained below.

**IMPLICATIONS FOR DFWP/DF-EZ/DFSP EMPLOYERS**

1. Once Oct. 1, 2010 arrives, all systems in support of these testing changes may not be in place. As such, employers will still be considered compliant if – at minimum – they continue to ensure appropriate testing at appropriate times for appropriate employees (including contract employees) using a 5-panel drug test (changing when the 6-panel and other changes become available through collection sites and SAMHSA-certified labs) and testing at CURRENT cut-off levels until the process changes to allow testing that meets the federal changes.
2. Employers need to be prepared in advance with regard to current labor contracts that stipulate which drugs (Ecstasy has to be added), what cut-off levels (lowered cut-off levels for amphetamines and cocaine reflect less tolerance before the presence of either of these substances is considered a “positive” test – how this will affect employers where drug/alcohol testing is a mandated subject of collective bargaining is an unknown).
3. Employers without unions will still have to ensure a review of the company's written drug-free policy to make any needed modifications, and this logically implies a need for legal review from an attorney with a back-ground in employment law/drug-free case law.
4. BWC will update its Drug-Free Web page to include guidance to employers and other interested parties and links to the DOT/ODAPC Web site and to current information.

Please stand by for more information about any other implications of these changes to federal testing. BWC is looking at these changes from every angle.

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## Department of Transportation Final Rule - 8/16/2010

From Jim L. Swart, Director, Office of Drug and Alcohol Policy and Compliance

### Procedures for Transportation Workplace Drug and Alcohol Testing Programs

The following is a summary of the final rule:

- 1) The Department is required by the Omnibus Transportation Employees Testing Act (Omnibus Act) to follow the HHS requirements for the testing procedures/protocols and drugs for which we test.
- 2) Primary laboratory requirements in this final rule include:
  - Testing for MDMA (aka. Ecstasy);
  - Lowering cutoff levels for cocaine and amphetamines;
  - Conducting mandatory initial testing for heroin;
- 3) The Department brought several testing definitions in-line with those of HHS.
- 4) Each Medical Review Officer (MRO) will need to be re-qualified – including passing an examination given by an MRO training organization - every five years. The Final Rule eliminated the requirement for each MRO to take 12 hours of continuing education every three years.
- 5) An MRO will not need to be trained by an HHS-approved MRO training organization as long as the MRO meets DOT's qualification and requalification training requirements.
- 6) MRO recordkeeping requirements did not change from the five years for non-negatives and one year for negatives.
- 7) The Final Rule does **not** allow the use of HHS-Certified Instrumented Initial Testing Facilities (IITFs) to conduct initial drug testing because the Omnibus Act requires laboratories to be able to perform both initial and confirmation testing but IITFs cannot conduct confirmation testing.
- 8) The Final Rule is **effective October 1, 2010.**

You can view the Final Rule at the Federal Register's website:

<http://edocket.access.gpo.gov/2010/pdf/2010-20095.pdf>.

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