

FEDERAL TRANSIT ADMINISTRATION

SUBSTANCE ABUSE TRAINING SESSION

Regulatory Overview and Agency Best
Practices

SESSION 1:

49 CFR PART 655

Prevention of Alcohol Misuse and Prohibited
Drug Use in Transit Operations

Overview of Session 1

- Testing categories -- when must a transit system conduct tests?
- Policy -- what must be in a policy? which employees are safety-sensitive?

TESTING CATEGORIES

Testing Categories

- Pre-employment
 - Previous employer requests
- Random
- Post-Accident
- Reasonable Suspicion/Cause
- Return to Duty
- Follow-up

Pre-Employment Alcohol Testing

- Testing is optional
- If conducted, must follow DOT Part 40 Procedures

Drug Testing

- Must test
 - All applicants for safety-sensitive positions
 - All transfers into safety-sensitive positions
- Notify applicant in writing of the requirement to pass a drug test
- Negative drug test result is required prior to the employee's performance of safety-sensitive duties
 - No waivers
 - No acceptance of previous employer's testing

Timing for Pre-Employment Test

- Prior to performance of safety-sensitive duty
 - anytime the employee is driving a revenue service vehicle whether or not in revenue service
- Not more than 90 days prior to date of hire
- Must actually receive negative test report from MRO - i.e. may not assume “no news is good news”

Pros and Cons: Test before Safety-Sensitive

- Pro: Can hire employee immediately and start training
- Con: Must carefully monitor training program to ensure no safety-sensitive duty prior to test result
- Con: If pre-employment test is positive, need clear policy (e.g., contingent hire)
- Tip: Can still require test prior to hire if desired

Pre-Employment Testing Refusals

- NOT a refusal if applicant
 - fails to appear for test
 - delays a test
 - leaves the collection site prior to commencement of the test
- Refusal occurs: once the collection has commenced, the donor must complete it - failure to do so is a test refusal

Previous Employer Record Checks

- As a potential employer, you must
 - obtain written consent from applicants to request information from DOT-regulated employers that had employed the individual within the previous two years
 - ask the applicant whether he/she has tested positive, or refused to test on any pre-employment drug/alcohol test within the last two years
 - only allow employees that provide consent to perform safety-sensitive functions
 - contact previous employers -- written consent for the release must accompany the request

Information to Request from Previous Employers

- Alcohol test results ≥ 0.04
- Verified positive drug tests
- Test refusals including adulterated or substituted
- Other violations of the DOT regulations
- If appropriate, documentation of successful completion of return-to-duty process (if unavailable from the employer, seek out information from employee/applicant)

Previous Employer Record Checks (Cont.)

- Document good faith effort to obtain information
 - Copy of letter sent to previous employer suffices
- Review information received from previous employers
 - If not obtained within 30 days the employer may allow employee to continue to perform safety-sensitive duties with documented good faith efforts
 - If applicant has previous rule violations, document successful completion of the return-to-duty process prior to allowing employee to perform safety-sensitive duties
- Maintain records for 3 years

Releasing Information

- As a previous employer, you must
 - confirm that release signed by previous employee is adequate
 - immediately release the requested information in a written form that ensures confidentiality
 - maintain records of information released

Pre-Employment Testing Following Leave

- Must conduct pre-employment drug test if
 - an employee has been on leave from safety-sensitive duties for 90 days AND
 - the employee was removed from the random pool
- Seasonal operations (e.g., university routes) have choice of leaving employees in random pool during off-season OR retesting for pre-employment at beginning of season
- Test type: pre-employment (not return-to-duty)

Auditor's Records Review: Pre-employment Tests

- Are pre-employment tests in advance of performance of safety-sensitive duties?
Of hire date?
- Do the training records indicate when safety-sensitive duties are first performed?

2002 Rate of Random Testing

- 50% of safety-sensitive employees for drugs
- 10% of safety-sensitive employees for alcohol
 - FTA rates are minimums; can establish higher rates in policy
 - Can increase rate to account for test cancellations to ensure compliance
 - Consortium random rate can be applied to pool size of individual transit system or to total consortium regardless of the number of consortium members - must equal, and can exceed, FTA rates

Scientifically Valid Method of Selection

- Have equal chance for each employee to be selected
 - Include employees in random pool after selection
 - Update pool immediately prior to draw
- Include only USDOT safety-sensitive employees in the pool
- Make random selections as frequently as possible
 - Range is from daily to quarterly

Test Distribution for Random Tests

- Spread throughout the year, the draw period, the hours of service
- Weekends, holidays, late night, early morning
- Whenever safety-sensitive functions are performed

Conduct of Random Testing

- Unannounced testing: test immediately after notifying individual
 - Drugs: anytime on duty
 - Alcohol: only before, during, or just after safety-sensitive duties
- Test all employees chosen at random
 - legitimate excuses: sick, vacation, disability during entire draw period
 - operational difficulties are not legitimate excuses
- Cease attempts to test once the next draw list received

Random Testing Issues

- Non-routine and sporadic performance of safety-sensitive function
 - Drug tests, anytime during shift
 - Alcohol tests just before, during, or after performance of safety-sensitive function
- Fluctuating employee base
 - Number in pool X percent of testing
 - Number of draws to be conducted per year
- Program administrator in pool - alternative contact notified when administrator's number is selected; OR administrator reports immediately once list is received if he/she has been drawn

Random Testing Procedures

- Employee selection and notification cannot be predictable
- Employees must not receive advance notice
- Employees must proceed immediately to the collection site upon notification of test
- Document the selection process including numbers drawn, date, and time of notification and collection

Random Testing Procedures (Cont.)

- If employee is unavailable for testing, document the reason
- Avoid group testing
- Ensure confidentiality and integrity of process - limit number of individuals involved

End of Shift Testing

- ATU letter of Feb 5, 2002 asked FTA to consider excusing employees with previously-arranged family or medical obligations.
- Random drug testing may occur anytime while on duty if employee notified prior to the end of shift
- “End of Shift” testing may pose problems for employees with previously scheduled commitments
- FTA letter to ATU of March 26, 2002 rejects excusal, sets out new interpretation

End of Shift Interpretation

Employees may not be “excused” from end of shift testing because of a valid prior commitment.

However, employers have “limited discretion regarding the scheduling of tests.”

Unions and management not precluded from negotiating a compliant end of shift work rule.

FTA wording ... “Employees who provide advance, verifiable notice of scheduled medical or childcare commitments, to be tested no later than 3 hours before the shift ends.”

ATU memo - May 3, 2002

ATU notified Local Presidents/Business Agents, including sample language for negotiation

Suggested - “Random testing shall be initiated no later than three hours before the end” of shift

If the “verifiable documentation of a previously scheduled medical or childcare commitment for the time period immediately following the employee’s shift” is provided “at least 8 hours before the end of the employee’s shift”

Other points in the FTA letter not in the ATU memo

The negotiated process cannot excuse an employee from random testing once selected.

The negotiated process should not extend to an employee who has not provided advance, verifiable notice of a previously scheduled commitment to the employer.

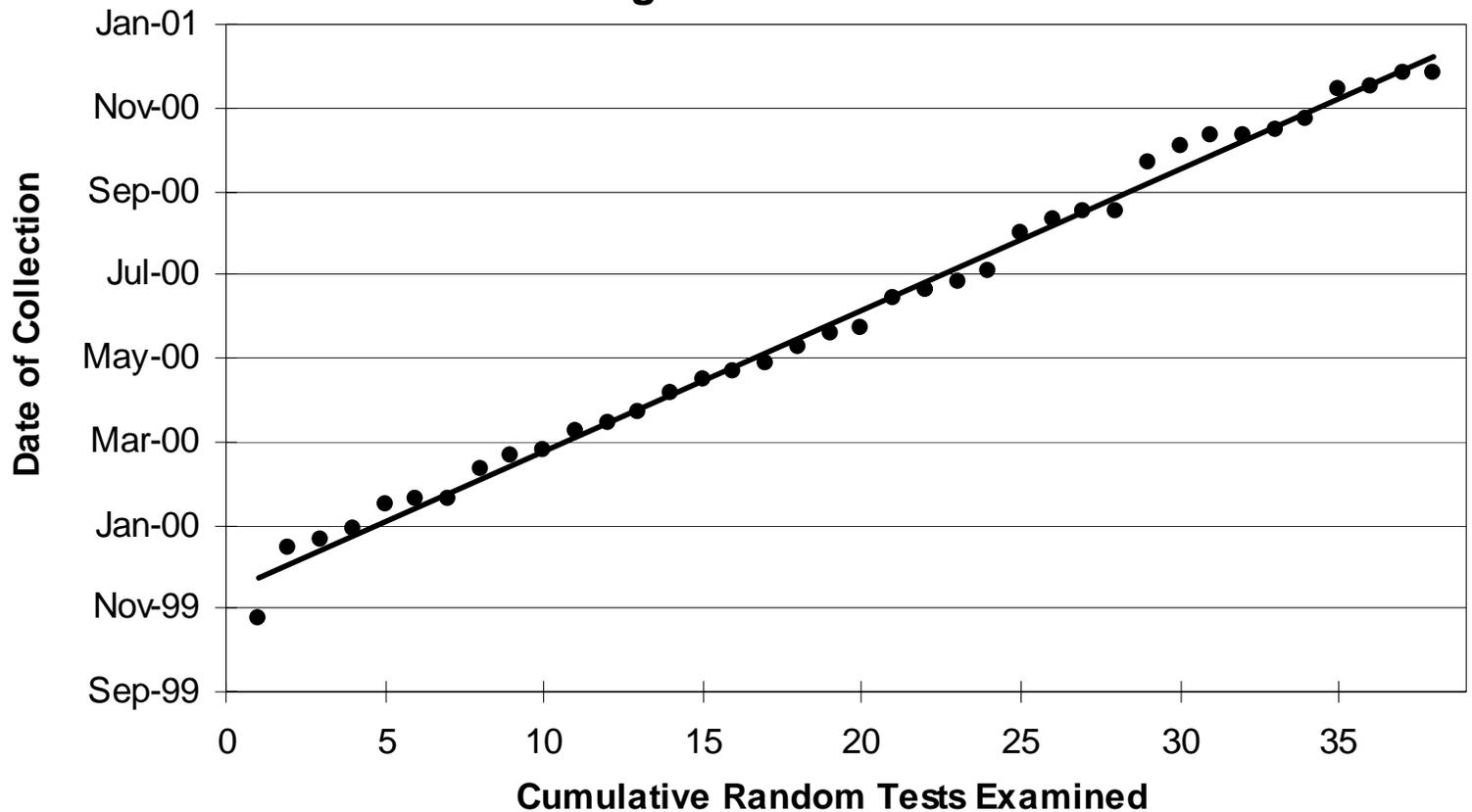
The ATU memo to Local Presidents/Business Agents does not reiterate these points.

Records Review: Random Tests

- Are random tests reasonably distributed throughout the year?

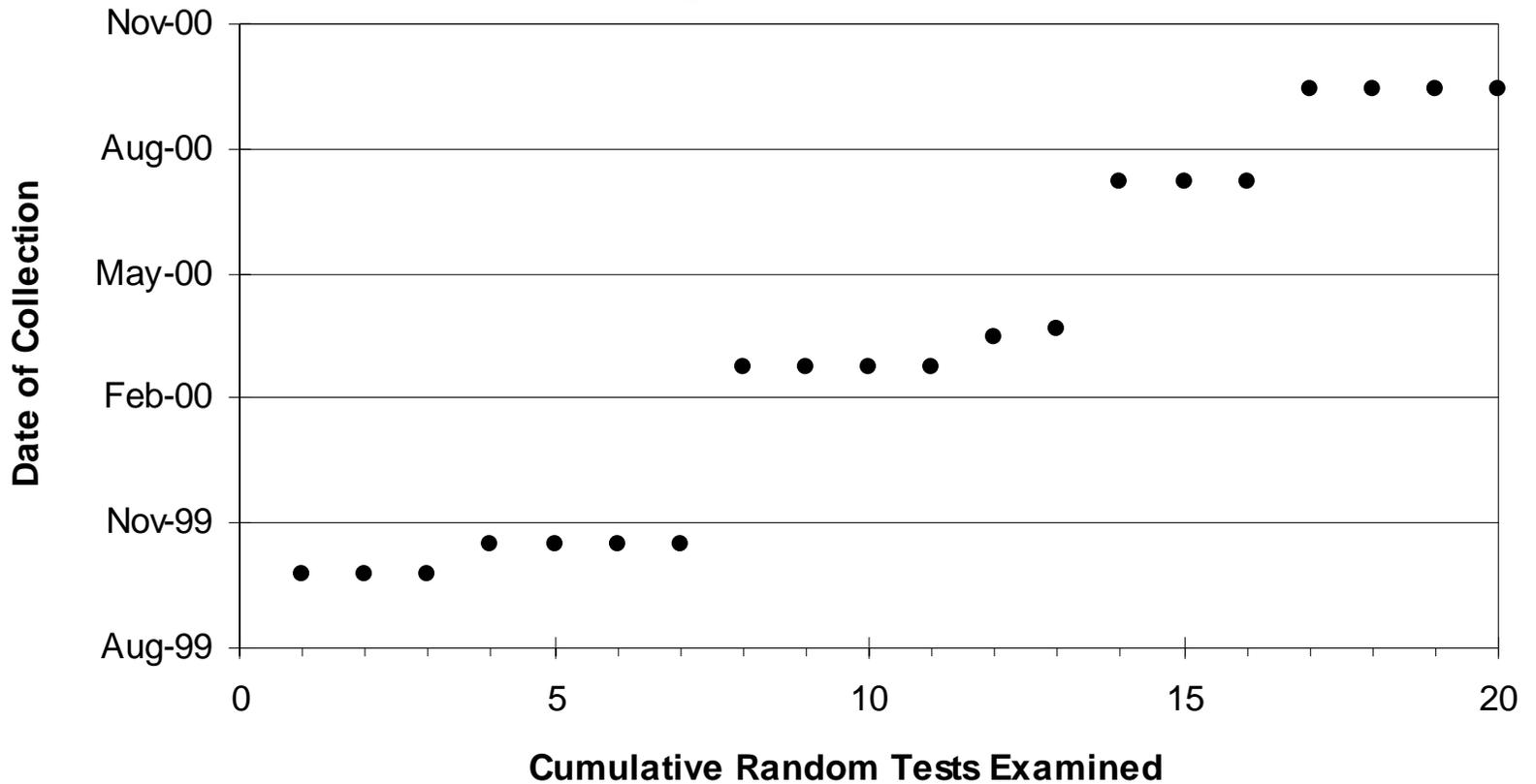
Sometimes Yes

Chart 1: Random Tests Are Reasonably Spread Throughout The Calendar Year



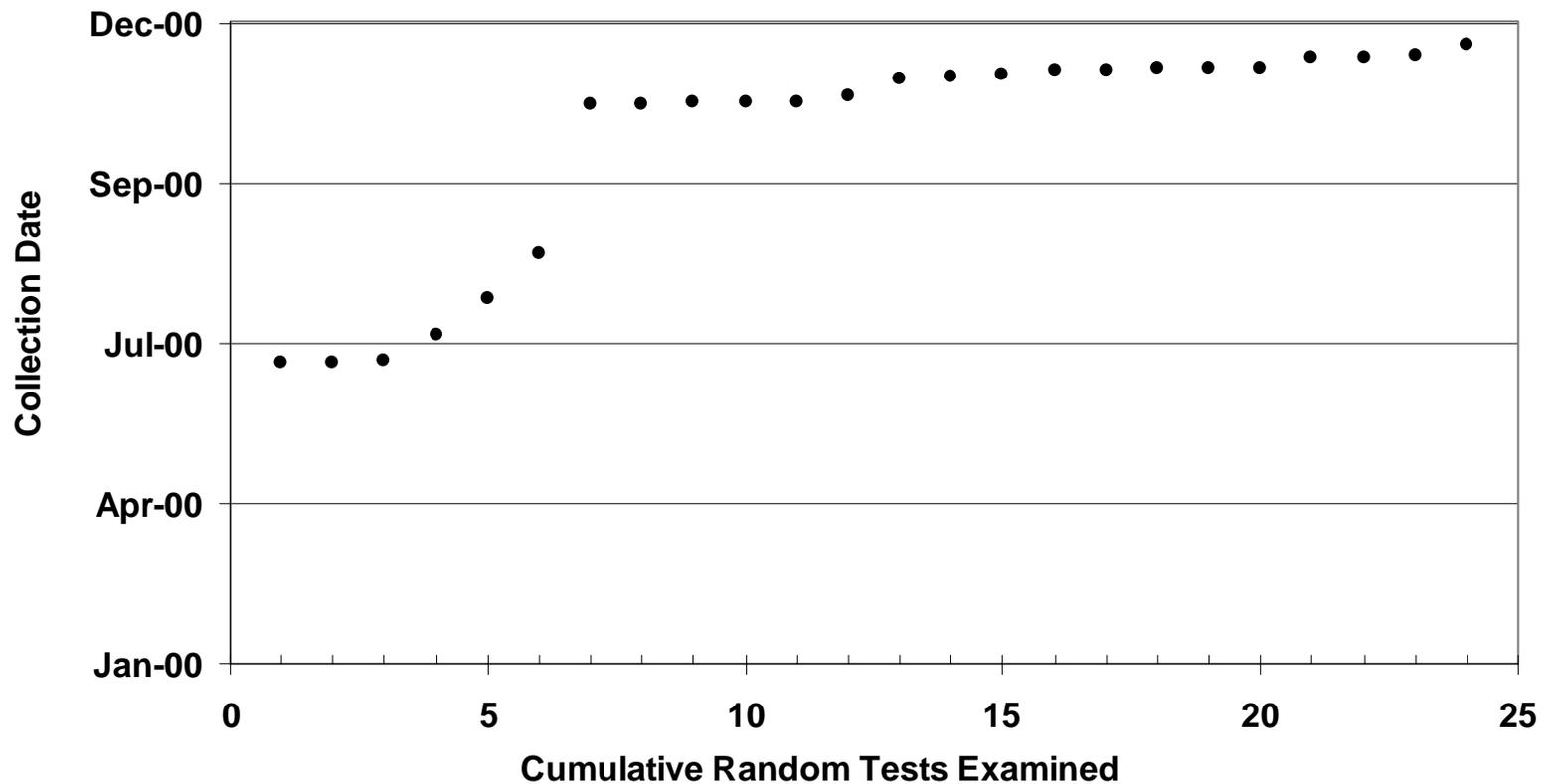
And Sometimes No

Chart 1: Random Tests Not Reasonably Spread Throughout The Calendar Year



And Sometimes Really No

Chart 1: Random Testing Not Reasonably Spread Across All Calendar Days: No Testing Early in 2000, Catch-up Testing at End of Year

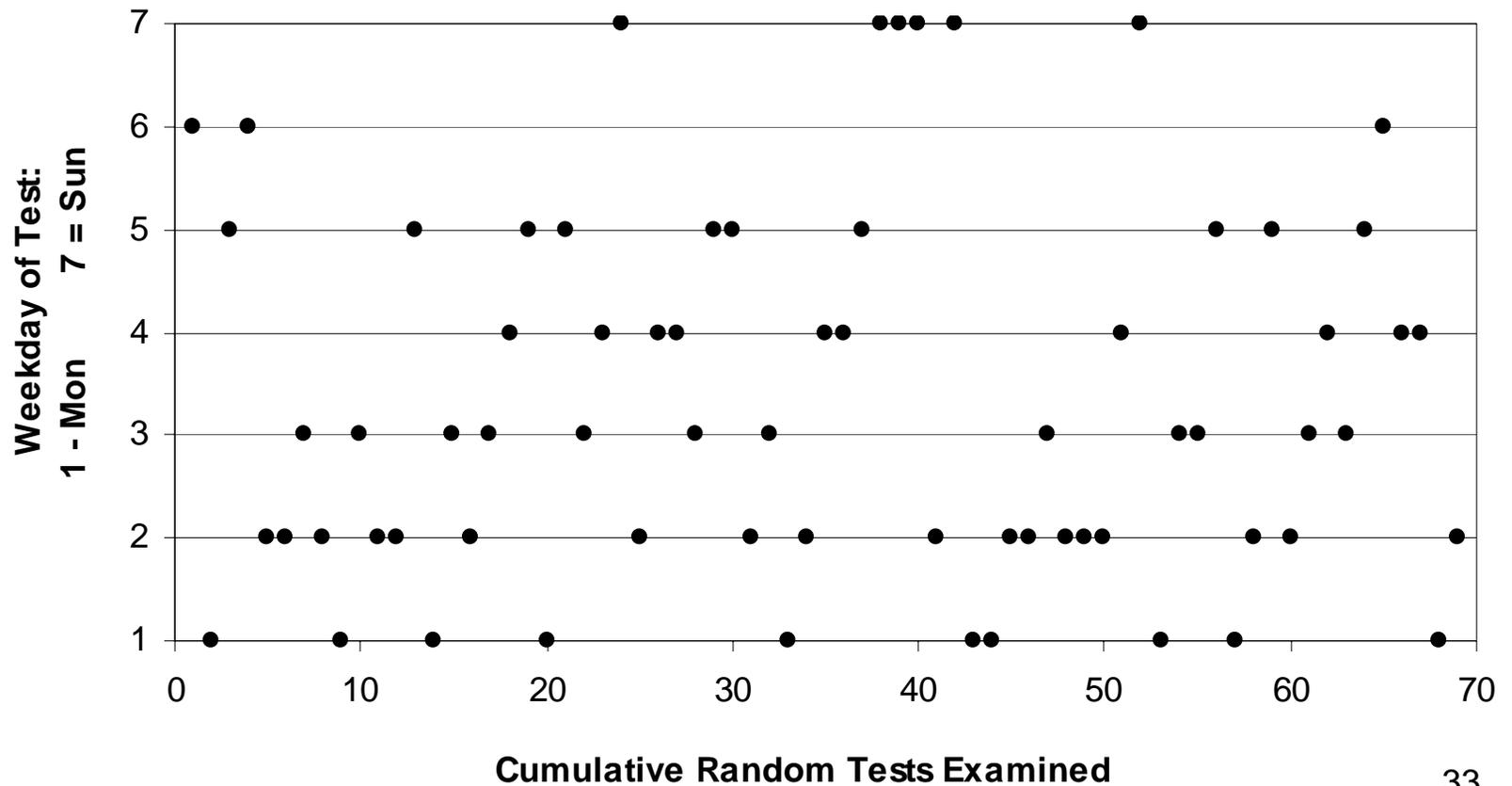


Records Review: Random Tests

- Are random tests reasonably distributed across all days of the week?

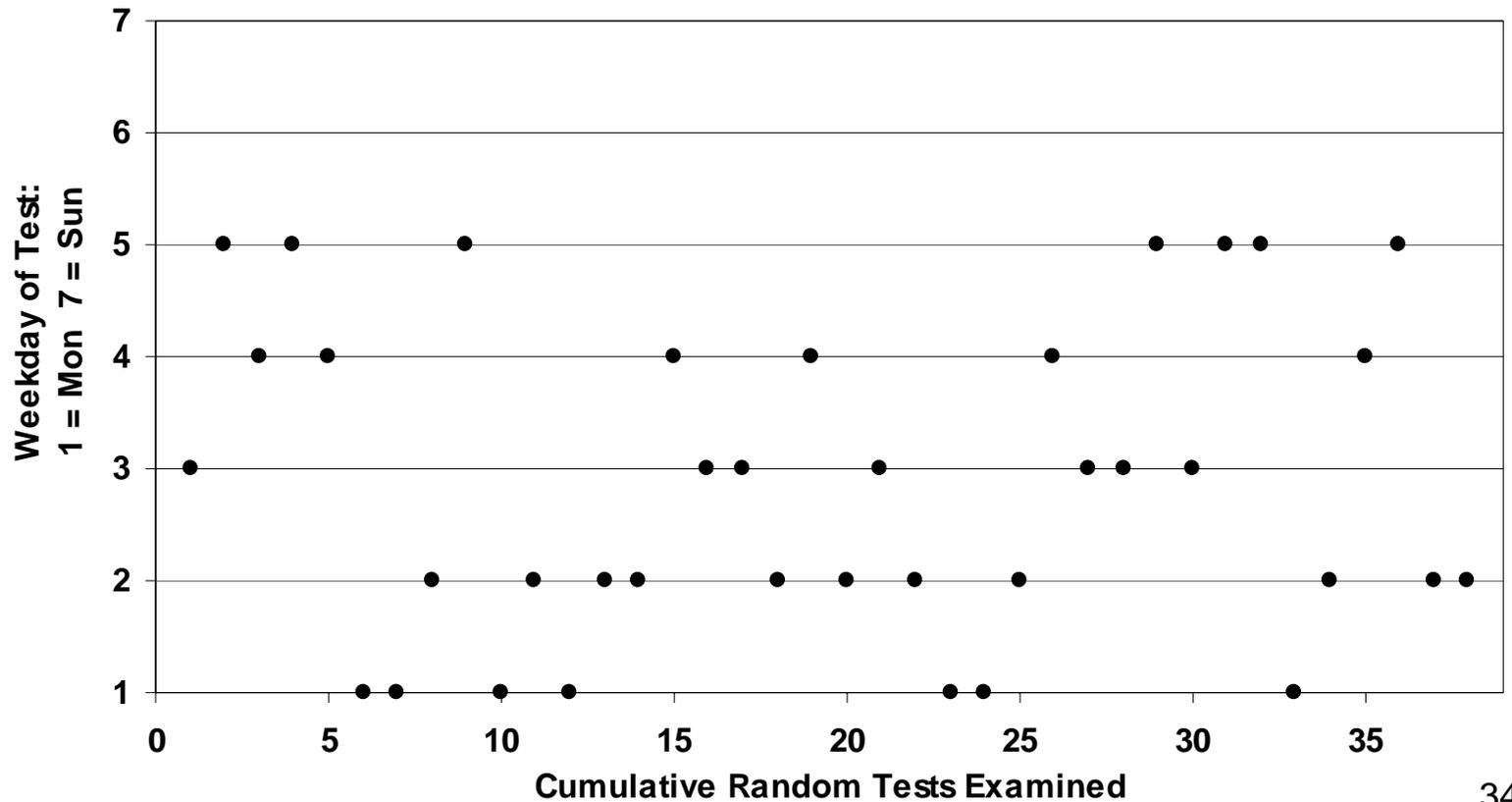
Sometimes Yes

Chart 2: Random Testing Reasonably Spread Across All Days of the Week



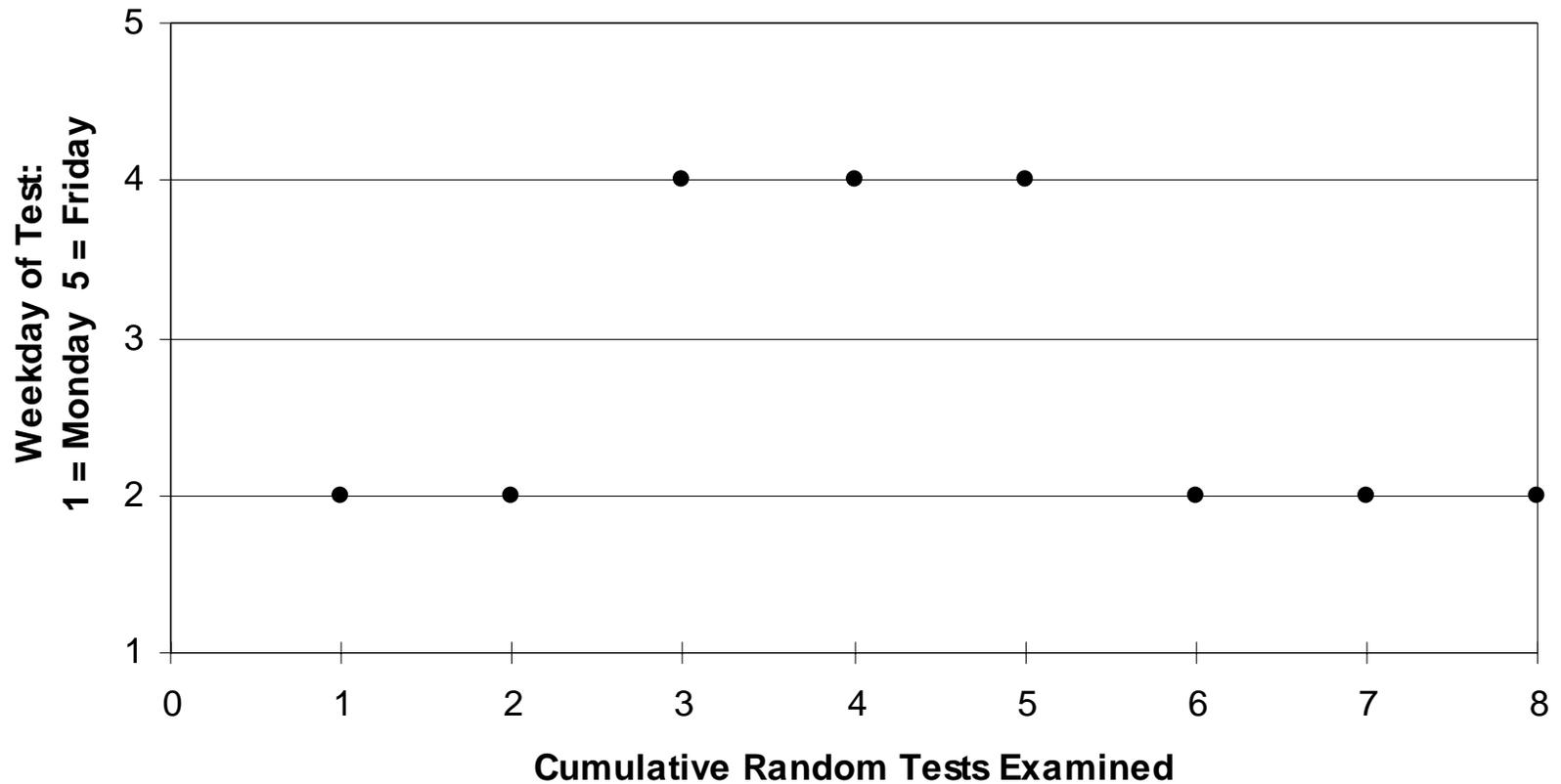
And Sometimes No

Chart 2: Random Testing Is Not Reasonably Spread Across All Service Days (No Testing on Weekends)



And Sometimes Really No

**Chart 2: Random Testing Is Not Reasonably Spread
Across All Service Days**

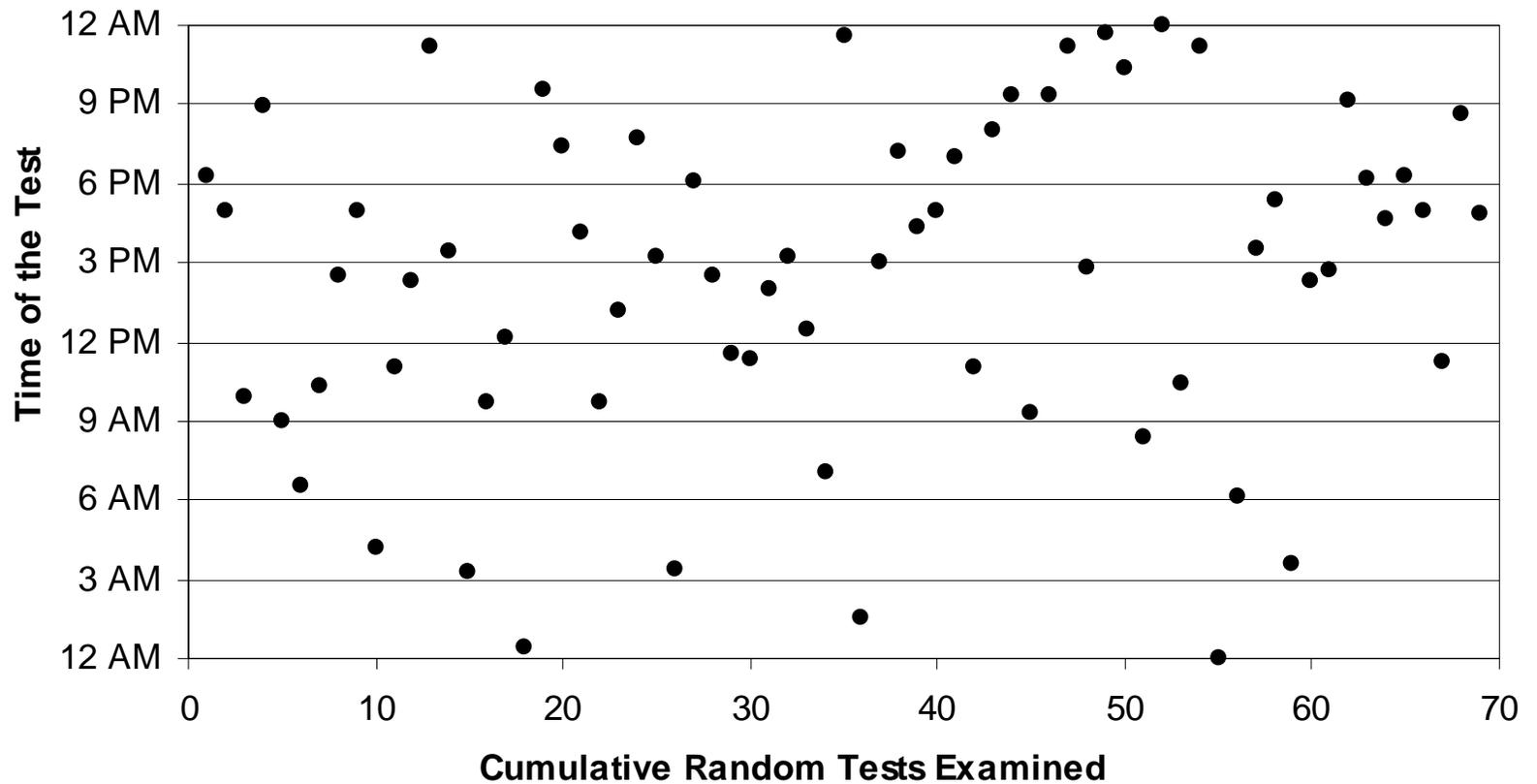


Records Review: Random Tests

- Are random tests reasonably distributed across all hours of service?

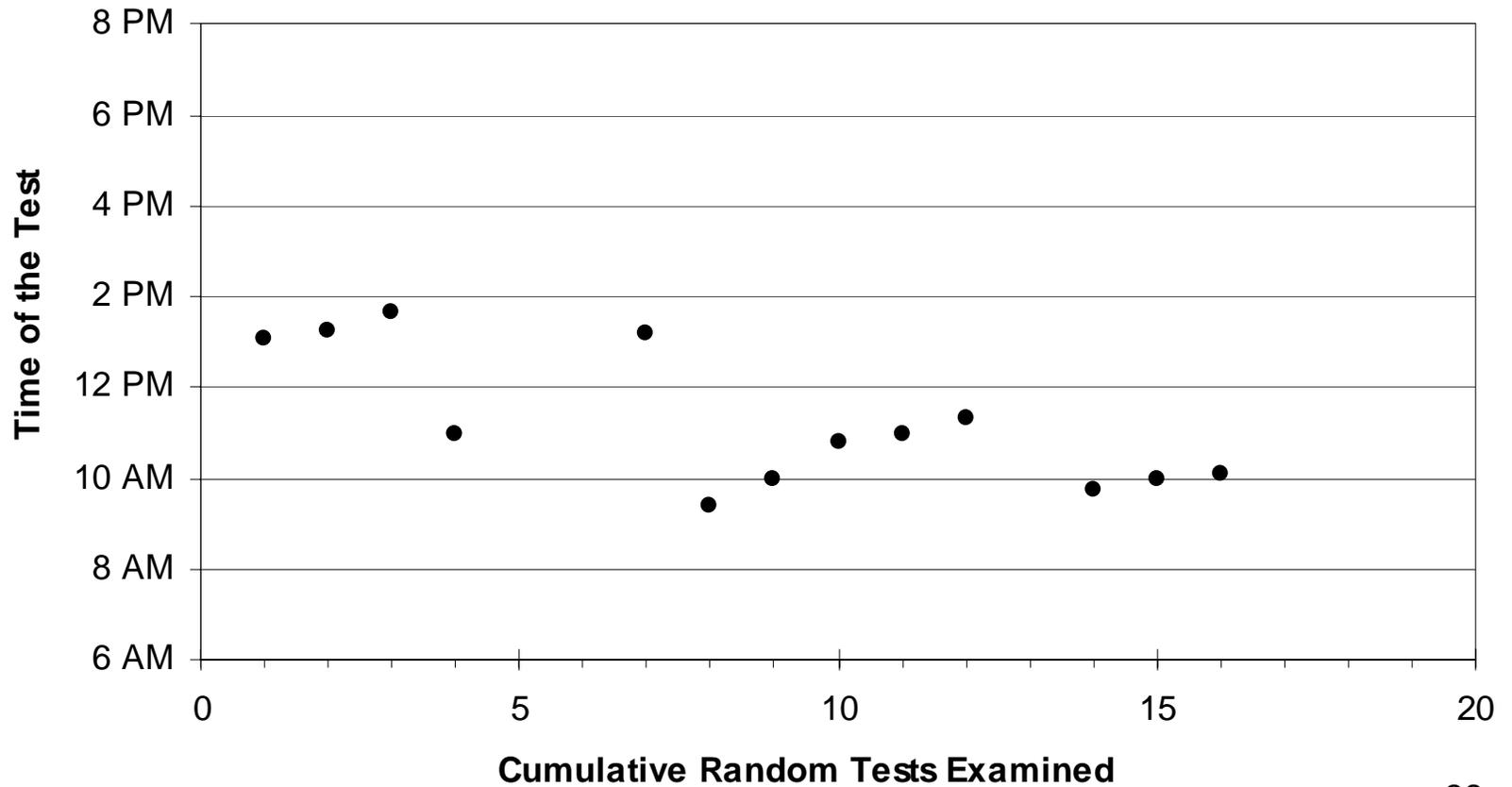
Sometimes Yes

Chart 3: Random Testing Reasonably Spread Across All Hours of Operation



And Sometimes No

Chart 3: Random Testing Not Reasonably Spread Across All Service Hours



Reasonable Suspicion Testing

- Company official must evaluate only the following
 - Specific, contemporaneous, and articulable observations concerning appearance, behavior, speech, or body odors of the employee
- Company official must be trained on the facts, circumstances, physical evidence, physical signs and symptoms, or patterns of performance and/or behavior associated with drug use and/or alcohol misuse

Reasonable Suspicion Testing (Cont.)

- Only one company official is required
 - Employers may require two or more trained company officials to participate in the reasonable suspicion determination process

Reasonable Suspicion Testing (Cont.)

- Sufficient documentation should be maintained for each reasonable suspicion determination
- An employee is reasonable suspected of prohibited drug use or alcohol misuse when a trained company official
 - Can substantiate specific behaviors that may indicate drug use or alcohol misuse
 - Can identify specific and contemporaneous job performance problems that may indicate prohibited drug use or alcohol misuse
 - Actually observes physical indications that prohibited drug use or alcohol misuse may be occurring

Reasonable Suspicion: Period of Required Compliance

- Drugs - anytime on duty
- Alcohol - Only if the observations are made during, just preceding, or immediately following the performance of safety-sensitive functions
- Employees must proceed immediately to a collection site following a reasonable suspicion determination (employee should be transported)
- If an alcohol test is delayed beyond 2 hours, reasons for the delay must be documented

Post-Accident Thresholds

- Accident: associated with the operation of a revenue service vehicle, whether or not the vehicle is in revenue service
- Fatality (TESTING IS MANDATORY)
- Unless the employee can be completely discounted as a contributing factor, test for
 - Injury: an individual requires immediate transportation to a medical treatment facility from the accident scene
 - Disabling Damage: one or more road vehicles have disabling damage that requires a tow from the site
 - Removal from Service: a rail car, trolley car, trolley bus, or vessel is removed from revenue service

Who To Test

- Each covered employee operating the vehicle at the time of the accident
- Any other covered employee whose performance could have contributed to the accident
- The decision of who to test shall be based on the employer's determination, using the best available information at the time of the determination
- Employee must remain readily available - employer must know of whereabouts

Who To Test (Cont.)

- Employee must consent and provide specimen - cannot test deceased or unconscious employee
- If threshold met, employer must document decision NOT to test

Testing for Accidents that do not meet DOT Thresholds

- Tests performed for accidents that do not meet the FTA accident definition, must be performed under the transit system's own authority using non-DOT forms
- Examples: testing after receipt of traffic citation; testing after “fender bender”; testing after damage reaches a certain dollar amount

Time Limitations on Post Accident Testing

- Alcohol
 - Test should be performed as soon as possible, but no longer than eight hours following the accident
 - If alcohol test cannot be performed within two hours, transit system must document reasons for test delay
 - If alcohol test cannot be performed within eight hours, the reasons for the failure to conduct the test must be documented
- Alcohol test must be conducted before drug test

Time Limitations on Post-Accident Testing (Cont.)

- Drugs
 - Test should be performed as soon as possible, but no more than 32 hours following the accident

Acceptance of Other Test Results

- In the rare event the employee cannot participate in the FTA collection process, following an accident, the employer may accept the results of a test performed by Federal, State, or local officials if results are released
- Employer must document why DOT test was not performed within time period

Common Problems: Post-Accident Testing

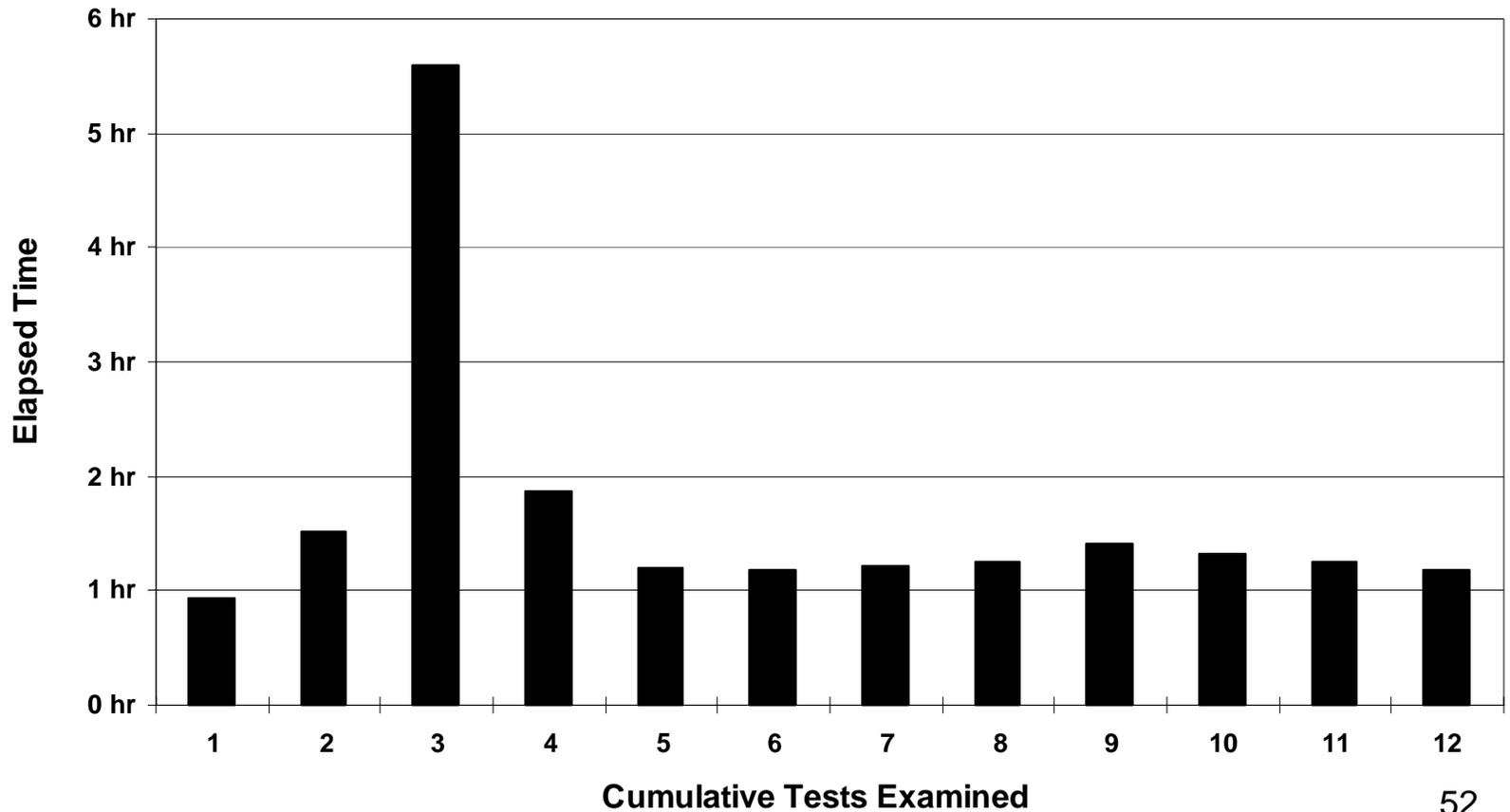
- Must ensure that DOT threshold exceeded prior to testing under DOT authority
- Policies and procedures must be in place to ensure post-accident tests are performed as soon as possible following an accident
 - Testing often omitted or significantly delayed
 - Ill-defined policies
 - No documented procedure
 - Inadequately trained company official
 - Lack of company official empowerment

Records Review: Post-Accident Tests

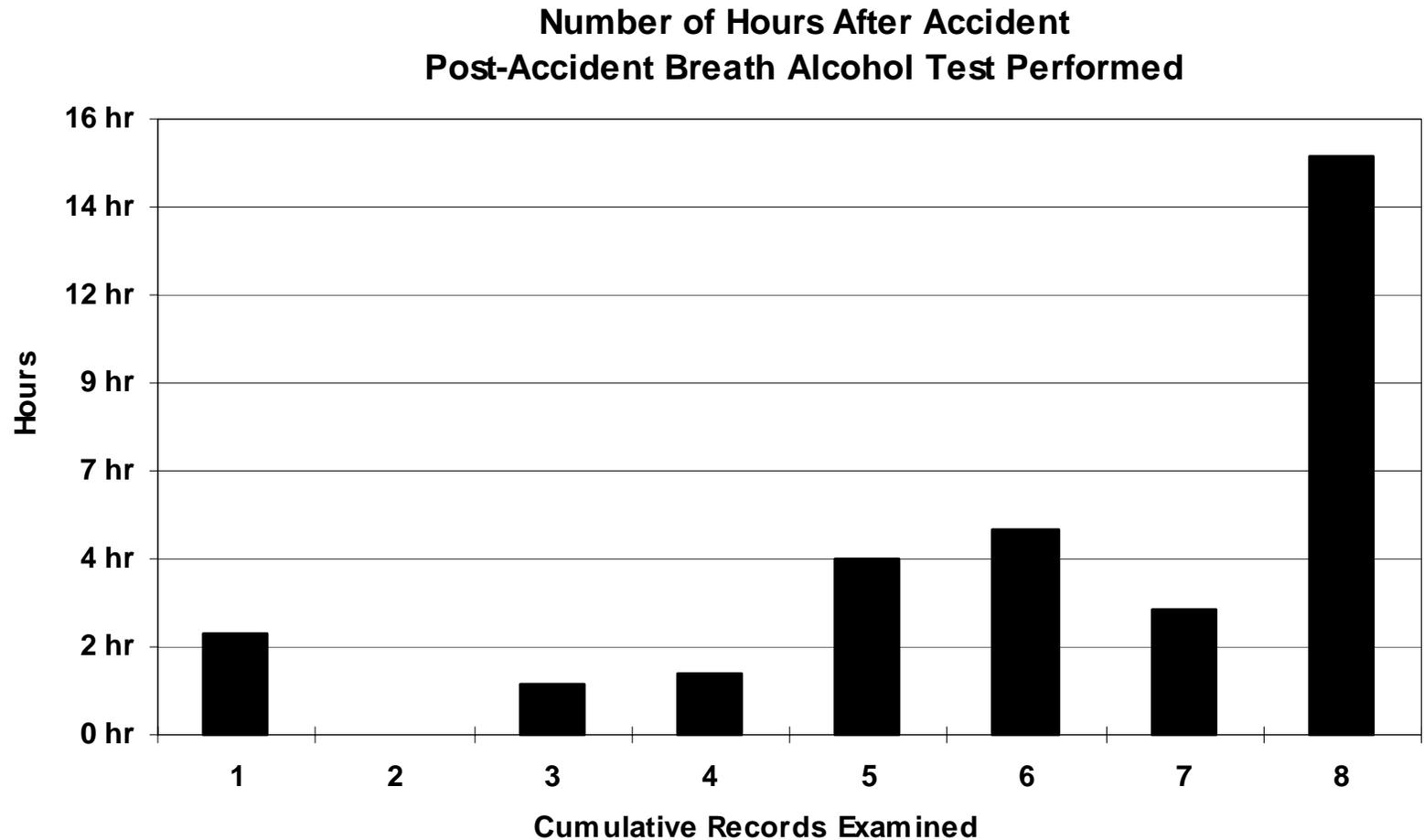
- Are post-accident tests conducted within two hours of accident?

Sometimes Yes

**Number of Hours After Accident
Post-Accident Drug and Alcohol Testing Performed**



And Sometimes No



Return to Duty Testing

- Purpose: to provide a degree of assurance to the employer that the individual is presently drug and alcohol free and is able to return to work without undue concern of continued drug abuse or alcohol misuse

Return to Duty Testing (Cont.)

- Following a positive drug or alcohol test result or test refusal, the individual may not perform safety-sensitive duties until
 - Assessed by SAP
 - Completed SAP recommended treatment program
 - Completed a return-to-duty test with a negative test result (< 0.02 for alcohol)
- The employer must determine when the employee can return to work following the completion of the SAP recommended treatment program

Return to Duty Testing (Cont.)

- Return to Duty test; may test for both drugs and alcohol; must test for the substance for which the employee previously tested positive

Follow-up Testing

- Purpose: to motivate employees to remain drug and alcohol free after returning to duty following a positive test and to provide the employer with assurance that the person has not resumed drug use or alcohol misuse
- SAP submits follow-up testing plan to the employer
 - Unannounced
 - Minimum: six tests within twelve months after return-to-duty

Follow-up Testing (Cont.)

- Up to 60 months
- Frequency and duration dependant on SAP assessment
- Employers cannot go beyond the SAP recommendations for follow-up testing
- Dates scheduled by the employer

Follow-up Testing (Cont.)

- Follow-up testing plan follows the employee to any new employer
- A cancelled follow-up test must be recollected
- Follow-up testing is non-negotiable
- Employees subject to follow-up testing are also included in the random testing pool

Consent Forms Prohibited

- As an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

Lessons Learned from Records Review

- It's easy to institute a self-tracking mechanism to look at random tests
- Very important to have feedback loops in your system to be sure that testing gets done
- A system is as good as its subcontractors
- As grantee, you can request information of subcontractors to monitor their records

SESSION 2:

49 CFR PART 655

POLICY AND DEFINITIONS

Overview of Session 2

- Requirements for Policy in Part 655
- Definitions

Policy Requirements

- Outlined in Section 655.15
 - (a) Designated contact person (person, office, branch, and/or position)
 - (b) Categories of employees covered
 - (c) Prohibited behavior
 - (d) Testing circumstances
 - (e) Testing procedures
 - (f) Requirements for testing
 - (g) Test refusal
 - (h) and (i) Consequence
 - (j) Employer-specific requirements

(a) Designated Contact Person

- Identity of person, office, branch, and/or position
 - if provide specific person's name, consider listing in appendix so easily updated

(b) Applicability: Safety-Sensitive Functions

- Operation of a revenue service vehicle, regardless of whether the vehicle is in revenue service
- Operation of a non-revenue vehicle when required to be operated by the holder of a Commercial Driver's License
- Controlling movement or dispatch of a revenue service vehicle (based on employer assessment of safety-sensitive functions)
 - Always included for fixed rail, transit system assessment for other vehicles
 - FTA anticipates receiving comments on this definition
- Security personnel that carry firearms

(b) Applicability: Safety-Sensitive Functions (Cont.)

- Maintenance of a revenue service vehicle or equipment used in revenue service - includes all engaged in engine, revenue service vehicle, and parts repair, rebuilding, and overhaul
- Contractor employees that stand in the shoes of Transit System employees also have to comply
 - covered in more detail in next section
- Note: Include supervisors only if they perform safety-sensitive functions

Common Problems: Safety-Sensitive Functions

- Incorrectly identified employee safety-sensitive status
 - Review each employee's job function (independent from title) to determine if that employee should be classified as safety-sensitive
- Determine if the employee could cause or contribute to an accident
 - Include employees who can be called upon to perform safety-sensitive functions

(c) Prohibited Behavior

- Consumption of alcohol from any source is prohibited. . .
 - On duty while performing safety-sensitive functions
 - 4 hours prior to duty requiring the performance of a safety-sensitive function
 - 8 hours following an accident
 - While on call
- Consumption of illegal drugs is prohibited at all times

(c) Prohibited Behavior -- Alcohol

- Any covered employee who is found to have an alcohol concentration of ≥ 0.02 but less than 0.04 must be removed from safety-sensitive duty
 - Until a retest shows an alcohol concentration of < 0.02 , or a minimum of eight hours have passed

(c) Prohibited Substances

- Marijuana
- Cocaine
- Amphetamines
- Opiates
- Phencyclidine
- Alcohol -- AS DETAILED ABOVE

(d) Testing Categories

- Pre-employment (prior to performance of safety-sensitive functions and after 90-day exclusion from random pool)
- Random
- Reasonable suspicion
- Post-accident
 - specify FTA accident thresholds
 - include description of additional company testing, if applicable
- Return-to-duty
- Follow-up

(d) Period of Coverage

- Drugs - drug testing performed any time the employee is on duty
- Alcohol - Alcohol testing can only be conducted while the employee is performing a safety-sensitive duty, just before, or just after performing a safety-sensitive duty

(e) Testing Methods

- Consistent with 49 CFR Part 40 procedures
 - policy does not need to reiterate Part 40 procedures
 - incorporate Part 40 as amended by reference
 - make Part 40 readily available to any employee who requests copy
 - establish whether company will retest after dilute negative test result

(e) Testing Methods (Cont.)

- Urinalysis for drugs - including a detailed discussion in policy is now optional
 - Split specimen collection method
 - USDOT Chain of Custody and Control Form with unique number for identification
 - Initial screen
 - Confirmatory test - gas chromatography/mass spectrometry
 - Medical review officer review

(e) Testing Methods (Cont.)

- Breath testing for alcohol - including a detailed discussion in policy is now optional
 - Initial screen: evidential or non-evidential breath or saliva test
 - Confirmatory test: evidential breath testing device

(f) Test Requirement

- All covered employees are required to submit to drug and alcohol tests as a condition of employment

(g) Test Refusal -- Violation of Employer's Policy

- Refusing to provide specimen
 - Insufficient volume without valid medical explanation
- Tampering, adulterating, or substituting specimen
- Failing to appear within a reasonable time - defined by employer
- Leaving the scene of an accident without just cause prior to submitting to a test
- Leaving collection facility prior to test completion
- Failing to permit an observed or monitored collection when required

(g) Test Refusal (Cont.)

- Failing to take a second test when required
- Failing to undergo a medical examination when required
- Failing to cooperate with any part of the testing process
- Failing to sign Step 2 of alcohol test form
- Once test is underway, failing to remain at site and provide a specimen
- For pre-employment, the following are NOT refusals:
 - Failure to appear
 - Failure to remain at site prior to commencement of test
 - Aborting the collection before the test

(h) and (i) Consequences

- Positive drug or alcohol (≥ 0.04) test result or test refusal
 - Remove employee from safety-sensitive position
 - Advise employee of available resources
 - Refer for assessment by a Substance Abuse Professional
 - Apply transit system disciplinary policy

(h) and (i) Consequences (Cont.)

- Alcohol test result of 0.02 or greater but less than 0.04
 - Remove from safety-sensitive position for a minimum of 8 hours unless subsequent test results in a concentration of less than 0.02
 - Apply employer disciplinary policy
 - Note: employer has options in this circumstance and should clearly state disciplinary actions to be taken in policy
 - Range of choices goes from termination to no action beyond the 8-hour removal from duty

SAP Referral Required

- Referral for assessment by a Substance Abuse
 - Professional is required regardless of whether the employee is discharged or given a “second chance”
 - if second chance, employer must carry out full return to duty and follow up testing program as described in morning session
 - if termination, employer must refer to SAP so that employee can complete SAP recommendations and qualify for safety-sensitive positions with other employers in future
- Part 655 and Part 40 require that employer provide listing of qualified SAPs -- policy is an appropriate place to provide

(j) Additional Employer Provisions Allowed

- Must be identified
 - Describe when post-accident testing is required after employer defined thresholds (e.g., after traffic citation, after damage of certain dollar value)
 - Testing must be performed separately on non-Federal Chain Of Custody or Breath Alcohol Test forms
- The provisions of the Drug Free Workplace Act of 1988 may be incorporated in the policy statement but must be so identified

Documentation Required

- Proof of policy adoption
- Effective date of policy

Policy Dissemination

- Adoption by Local Governing Board or Other Authorized Official
- Policy distribution
 - Every covered employee
 - Representatives of employee organizations
 - Contract service provider (if applicable)
 - New hires
- Employees should be requested to sign a confirmation of receipt form
- Part 40 must be available for review by employees

Common Policy Flaws

- Not formally adopted/dated
- Not compliant with FTA regulations
- Confuse FTA/FMCSA requirements
- Not current with regulatory changes
- Consequences not clearly defined
- Insufficient notification of employees
- Use of boilerplate policy without modifying for local circumstances

Compliance Tips

- Update your policy to reflect all regulatory modifications, clarifications, and FTA interpretations that are relevant to your organization and that have occurred since your policy was last revised
- Ensure that your governing board or authorizing official has adopted the current version of the policy
- Make sure the date of the last policy is clearly stated on the policy

Compliance Tips (Cont.)

- Make sure future revisions of a substantive nature also receive Board approval
- Make sure all employees have the most current version of the policy
- Modify your policy as necessary to clearly distinguish between provisions included under FTA's authority, employer authority, or authority of another regulatory agency

SESSION 3:
FTA
BEST PRACTICES

Best Practices

Efficient and effective methods used by recipients of FTA funding to comply with the regulatory requirements that allow flexibility in how to comply:

- Areas where employers have to choose between different options
- Areas where they may want to exceed the minimum FTA requirements.

Best Practices Manual

Identifies:

- Areas requiring choices
- Issues involved in making those choices
- “Real world” examples of choices made, identified in 5 years of FTA audits:
 - Forms and checklists
 - Policy statements
 - Narrative descriptions of approaches

Best Practices Manual (Cont.)

Is organized according to the four required elements of an FTA drug and alcohol testing program:

- 1) Policy statement
- 2) Education and training program
- 3) Testing program
- 4) Procedure for SAP referrals

Policy Examples

Six example policies were chosen to provide a broad cross section of different types of grantees:

- 1) Cincinnati Metro - large bus
- 2) Long Beach Transit (California) - large bus
- 3) Tri-County Metropolitan Transit District/Tri-Met (Portland, Oregon) - large bus & light rail
- 4) Des Moines Metropolitan Transit Authority (Iowa) - medium-size bus
- 5) Ohio Department of Transportation
- 6) Georgia Department of Transportation

Policy Examples (Cont.)

- Cincinnati Metro and Long Beach Transit Policies are zero tolerance for testing positive.
- Ohio DOT Policy permits the subrecipient to specify zero tolerance or a second chance.
- Des Moines MTA Policy is zero tolerance for testing positive on all tests except random, but specifies a second chance for a random positive.
- The Tri-Met and Georgia DOT Policies permit a second chance but do not guarantee it.
- Long Beach Transit Policy is a booklet. It begins with a 22-point summary of the policy followed by “guidelines” for administering the policy.

Policy Discussions

Are organized according to the minimum policy-content requirements in Part 655.15 with specific references to the example policies. The examples are:

- Different ways to meet the requirements, wording and location in the policy.
- Instances where employers exceed the requirements and how they show those requirements in their policy.

Educational Materials

Types of materials on prohibited drug use:

- Posters
- Pamphlets and brochures
- Fact sheets
- Newsletter articles

Educational Materials (Cont.)

Distribution methods:

- Part of orientation materials to new employees
- Postings and displays in common areas of the workplace
- Anti-drug abuse campaigns
- Safety seminars

Training Approaches

- Most involve some type of classroom training with an instructor or facilitator leading the session.
- Best approach is facilitated by both a professional on substance abuse and a representative of the employer and includes:

A lecture

Use of a video or some other interactive technology

Question-and-answer sessions

Discussion of the company policy and other issues

Role playing

Administrative Practices

- Forms and checklists are used to create consistent routines for performing administrative functions and to document completion of those functions.
- A comprehensive set of forms of all required functions provides the records needed to document regulatory compliance.

Forms - Certifications

- Forms signed by employees acknowledging receipt of the policy statement

Frequent finding: no evidence that policy was received

- Lists of employees and supervisors, or other company officials, who attend and complete required training
- Certificates to each employee who completes the training, with file copies of the certificates issued.

Forms – Test Tracking

- Excel spread sheet with tracking facility as a master log to assist with managing each type of FTA tests (City of Albuquerque)
- A log to fill out when a test is ordered that lists order time, employee's departure time, arrival time at site, departure time from site, and return time to work (Broward County, Florida, Transit)
- Forms to notify employees of ordered tests and to document the order

Forms – Reasonable Suspicion

- Forms to document circumstances for ordering reasonable suspicion and post-accident tests.
 - LACMTA, MBTA, Albuquerque issue checklists of symptoms for reasonable suspicion.
 - San Francisco BART and Denver RTD use a single form to document circumstances for ordering both reasonable suspicion and post-accident tests.

Forms – Post Accident

- Forms to assist supervisors in determining whether to test and under what authority):
 - Greater Cleveland RTA issues a two-sided card to its supervisors with decision trees - FTA authority and GCRTA authority
 - San Francisco BART “Observation/Incident Report” requires supervisors to check off post-accident criteria that are met following an accident.
 - LACMTA form summarizes FTA post-accident testing regulations, has questions leading to decision of whether to test, and requires reasons for delay or non-performance of tests.

Random Testing

- Forms to notify employees of selection for a random test
- Excel spreadsheets with a tracking facility to track random testing (City of Albuquerque)

Oversight

- Develop relationship with contractors, subrecipients, and service agents:
 - Talk with them and ask questions.
 - Impose performance standards.
 - Require documentation.
 - Visit facilities at least once a year.
 - Impose corrective action for non-compliance.
- Require quarterly management reports summarizing test reports and annual MIS reports.

Urine Collection Facilities

Best Practices for ensuring compliance:

- Clean rest rooms large enough for observed collection
- Absence of drop ceilings in the rest room
- Sinks with electrical switches that allow the running water to be turned off from outside of the rest room
- A pressurized cold water system in the toilet tank that prevents access without dismantling the system
- Lockable storage containers for securing valuables

Urine collection alternatives:

- Use a typical rest room and safeguard the process.
- Use a mobile collection facility.

Safeguarding Urine Collection

Methods for safeguarding collection in unsecured rest room:

- Have collection technician stand inside rest room but outside private toilet stall while specimen is produced.
- Temporarily secure the water source at the sink:
 - Install winged water faucet controls, drill holes in the wings, and put a metal bar between the wings.
 - Place evidence tape over the faucet handles to enable the collector to detect tampering with the faucets.
- Place evidence tape across ceiling tiles and frames and on toilet tops to enable detection of tampering.
- Remove waste baskets and toilet paper, paper towel, and Kleenex dispensers during collection process.

Breath Collection

Sources of EBT devices and technicians for small operators:

- Mobile collection vendors
- Trucking companies
- School bus companies
- Railroads
- Small airstrips
- U.S. Coast Guard

Note: Most attempts to use EBTs owned by police departments have not proved successful.

Collection Vehicles

- Are popular for both drug & alcohol testing.
- Are available from vendors or can be purchased, equipped, and staffed.
- Can reduce testing life-cycle costs.
- Can have a deterrent effect when merely driven past employee facilities.



Specimen Collection Monitoring

- Conduct mock collections at least once per year.
 - Include refusals and shy bladder scenarios
 - Document violations, errors, or fatal flaws in the process, and whether the collections staff are aware of errors or fatal flaws
- Use forms to provide records of collection process:
 - To communicate collection practices and document occurrences (BART)
 - To document donor's inability, or unwillingness, to produce specimen. (Ohio DOT shy bladder & shy lung forms)

Specimen Collection Monitoring (Cont.)

- **Note: Useful practice for monitoring water consumed by “shy bladder” donors:** Issue 10-ounce bottles of water one at a time to a maximum of four, record the number of empty bottles, and observe the consumption

Record Keeping

- Exceed FTA's retention requirements:
 - Maintain a contractor oversight file.
 - Retain negative test result records for longer than one year.
- Use simple methods—three common approaches:
 - By test category, using a master log for each test category (used by many large authorities)
 - By individual employee (by name or by identification number) - useful only for small and stable work force.
 - By date and by employee within each date file. ¹¹²

Record Keeping (Cont.)

- Store all records in locked filing cabinets in locked room with a combination lock on door, no other entry point, and wall partitions that abut and attach to roof or ceiling.

SAP Monitoring

- Use forms to document referrals.
 - MBTA issues an evaluation form with 28 “yes/no” questions for SAPs to ask new clients, record the answers, and assign points.
 - San Francisco BART uses a follow-up assessment form to document treatment plan, evaluation, date and results of tests.

SAP Monitoring (Cont.)

- Review all correspondence with SAPs as received, to ensure that the SAP monitors the clients throughout their programs and treatment to identify other questionable performance.
 - Always prescribing six follow-up tests within a year of the client's return to duty. (issue: tailoring treatment to the individual)
 - Recommending a return-to-duty test soon after the employee tests positive on a random, reasonable suspicion, or post-accident test. (issue: evaluation before recommending the test)

SESSION 4:

49 CFR PART 40

Procedures for Transportation Workplace
Drug Testing Programs

TEST OUTCOMES, MRO, AND SAP

Overview

- Possible Test Results and Responses to Each Outcome
- Role of MRO in Employee Notification
- Role of SAP in Evaluation, Return-to-Duty, and Follow-up Testing
- Not covered: MRO and SAP qualifications, training, and responsibilities --- some overview information is in Vendor Compliance Session --- for details see 49 CFR Part 40

Possible Laboratory Test Results

- Negative
- Negative-Dilute
- Rejected for Testing
 - Fatal Flaw
 - Uncorrected Correctable Flaw
- Positive
- Positive-Dilute
- Adulterated
- Substituted
- Invalid

Laboratory Standards

- HHS certified
- Follow 49 CFR Part 40 procedure
- Comply with all applicable HHS requirements for DOT testing
- Validity testing
 - Permitted
 - Required when HHS guidance is published

Laboratory Process

- Inspect specimen for fatal flaws
- Inspect for correctable flaws
- Must attempt to correct correctable flaws
- Must retain specimen for 5 days during the attempt to correct

Validity Testing

- Validity testing determines if the specimen is consistent with normal human urine
 - Determines if a specimen was adulterated, substituted, or diluted
- Creatinine level
- Specific gravity
- pH
- Adulterants (HHS guideline)

Dilute

- A dilute urine specimen is a valid test result (both negative and positive)
- Criteria
 - Creatinine < 20 mg/dL, and
 - Specific gravity < 1.003
- Employer may adopt a policy requiring employees and applicants with dilute negative tests to immediately undergo a NON-observed recollection

Dilute (Cont.)

- Notify employees of policy before implementation
- Policy may be specific to test-type (i.e. pre-employment, random but not post-accident) or employee type

Adulterated

- A substance that is not expected in human urine
- A substance that is expected, but is present at levels too high to be human urine
- Physical characteristics are outside normal range
- If unable to identify adulterant, must send to a second HHS lab
- If lab identifies substance not on HHS list, the lab must report

Substituted

- A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine (Part 40 definition)
 - Creatinine ≤ 5 mg/dL, and
 - Specific gravity ≤ 1.001 or ≥ 1.020

Invalid

- Unidentified adulterant or unidentified interfering substance
- Abnormal physical characteristics
- Endogenous substance at an abnormal concentration
- Lab prevented from completing or obtaining a valid test result

Cancelled Tests – Fatal Flaws

- CCF contains neither printed name nor signature of collector
- Specimen ID numbers don't match
- Seal is broken
- Insufficient amount of urine to test

Effects of Cancelled Tests

- Cannot be used by employer as positive or negative
- Cannot be used to justify retest except where specified
- Do not count toward random rate
- Do not provide a valid basis for an employer to test under own authority

Correctable Flaws

- CCF contains either Collector's signature or printed name, but not both
- Employee's signature is missing without remarks
- Certifying scientist's signature is missing
- Non-DOT or expired form used (after October 31, 2001, use of non-corrected expired CCF will result in cancelled test)
- Collection site that doesn't meet requirements
- Courier omitted on CCF
- Personal information inadvertently contained¹⁸⁰ on the CCF

Correction Procedures

- If collector becomes aware of flaws during collection
 - Must attempt to correct problem
 - May begin new collection
- Service agents must take all practical action to correct problems and avoid cancelled tests
- Must correct problem on the same business day of error notification
- Maintain written documentation of correction with CCF
- Mark corrected CCF in obvious manner

Problems not Sufficient to Cancel a Test

- Problems must be documented
- No person may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test
 - MROs have sole authority to make medical judgments about drug test results - arbitrators and others do not have authority to overturn

Problems That Require Correction – But Will Not Cancel A Test

- Examples
 - Minor administrative mistakes
 - Errors that do not effect employee protections
 - Collector without proper training
 - Delay in collection process
 - MRO without proper training or documentation
 - Failure to observe or monitor; unauthorized observation or monitoring
 - Temperature out of range, and no remark

Test Results

- Negative: no action
- Negative - dilute: employer may retest
 - May require retest - no direct observation
 - Must treat all employees or categories of employee the same
 - Give no notice
 - Result of second test is test of record
 - No third test
- Positive: positive - rule violation
- Positive - dilute: positive - rule violation

Test Results (Cont.)

- Test refusal: rule violation
- Insufficient volume (medical explanation): cancelled
- Insufficient volume (no medical explanation): test refusal/rule violation
- Insufficient volume (disability and medical explanation for pre-employment, return-to-duty, and follow-up test): negative
- Fatal flaw/rejected for testing: cancelled

Test Results (Cont.)

- Fatal flaw/rejected for testing pre-employment and return-to-duty: cancelled and retest
- Invalid result (medical explanation): cancelled
- Invalid result (no medical explanation): cancelled and retest under direct observation
- Primary positive/split fails to reconfirm drug: cancelled
- Primary adulterated/substituted, split fails to reconfirm adulteration or substitution: cancelled

Test Results (Cont.)

- Primary positive/adulterated/substituted and split unavailable or invalid: cancelled; retest under direct observation
- Primary positive, split fails to reconfirm but is adulterated: test primary for adulteration

Employer Requirements

- For positive test, take immediate action -- remove the employee from safety-sensitive duties upon notice of a positive or test refusal - should not wait for written report
 - Do not allow employee to return to safety-sensitive functions until he/she completes the return-to-duty process
- For invalid specimen requiring a second collection under direct observation, immediately send the employee for a test without advance notice

Employer Requirements (Cont.)

- A cancelled test is not adequate when a negative test result is required
 - pre-employment
 - return-to-duty
 - follow-up
- Direct the employee to provide another specimen immediately

MRO Process for Notification and Validation of Positive Tests

MRO Process

- Review Copy 1 and Copy 2 of the CCF for fatal and correctable flaws
- Notify employers, collection sites, and laboratories regarding performance issues
- Report to ODAPC or DOT to resolve program issues

Employee Notification Result – Not Negative

- Notify employee of confirmed positive, adulterated, substituted, or invalid test results
 - MRO must make 3 documented attempts in 24 hours
 - if unable to contact, notify the DER and instruct the DER to contact the employee
 - Test results should not be discussed with DER
 - The DER should instruct the employee to contact the MRO immediately, no later than 72 hours
 - If no DER contact within 24 hours, notify the MRO

Employee Notification Result (Cont.)

- Verify test results without interview
 - Employee declines to discuss with MRO
 - Employee fails to contact MRO within 72 hours of notification
 - No contact within ten days

MRO Responsibilities Following Employee Contact

- Provide employee an opportunity to discuss/explain the test result
- Review employee's medical history/records
- Assess possibility of legitimate medical explanation
- Verify laboratory results
 - Negative
 - Positive
 - Cancelled
 - Test refusal (adulterated, substituted)
 - Invalid (if no medical explanation, requires retest)

MRO Responsibilities (Cont.)

- Inform employee of verified result and right to request testing of the split specimen
- Notify employer of verified test result in a timely manner - same day as verification or next business day, written notification within 2 days
 - Notification of DER can be made via C/TPA
- Notify employer when retests are required
- Protect confidentiality
- Notify employer of use of other performance altering substances by safety-sensitive employees

Verification Process

- Positive - marijuana, PCP, amphetamine, cocaine, and opiates ($\geq 15,000$ ng/mL)
 - Burden of proof is on the employee
- Positive - Opiates ($< 15,000$ ng/mL)
 - Burden of proof is on the MRO
- Adulteration or substitution
 - Burden of proof is on the employee
 - Employee must demonstrate how the test results could be obtained legitimately through physiological means
 - Physical examination within 5 days
 - Referral physician must have expertise

Role of SAP in RTD and FU Testing

Notice of SAP

- Employers are required to provide each employee or applicant who violates a DOT drug and alcohol regulation a listing of SAPs
- Employers are not required to provide an SAP evaluation or any subsequent recommended education or treatment
 - If terminate without second chance policy, simply provide SAP referral in termination letter

SAP Responsibilities – Second Chance Policies

- Conduct a face-to-face clinical assessment
- Evaluate the type and amount of assistance needed to resolve problems associated with drug abuse or alcohol misuse and recommend a course of action to the employee
- Refer employee to an appropriate education/treatment program
- Provide recommendation to the DER in a written report
 - This is the first of two SAP reports: Initial Evaluation

SAP Responsibilities – Second Chance Policies (Cont.)

- Conduct face-to-face follow-up evaluation to determine if individual has successfully completed recommended treatment
- Recommend to employer whether a person is ready to return to duty and perform his/her safety-sensitive duties
 - This is the second of two SAP reports: RTD Assessment
- Provide a follow-up testing plan including the frequency and duration of follow-up testing
- State whether RTD testing is drugs only, alcohol only, or drugs and alcohol

SAP Responsibilities - Education and Treatment

- SAP must always recommend assistance
- Education options include
 - Self help group
 - Community lectures
 - Bona-fide drug and alcohol education courses
- Treatment options include
 - In-patient hospitalization
 - Partial in-patient treatment
 - Out-patient counseling programs
 - After-care

Return-to-Duty Assessment

- Obtain appropriate information from education and/or treatment process
- Conduct a face-to-face clinical interview
- Determine successful compliance or not
- Provide written report highlighting clinical determination directly to DER

Return-to-Duty Assessment (Cont.)

- If employee has not successfully complied with the treatment recommendation, the DER must not return the employee to safety-sensitive function
 - DER must take personnel actions consistent with policy and/or labor management agreements
- If the SAP determines after-care is required, the SAP is to include in the RTD assessment
 - DER has the option to require the employee to meet after care recommendations

SAP Responsibilities

- Determine the duration and frequency of follow-up testing
- Provide follow-up drug and alcohol testing plan
- Provide recommendation for continuing education and treatment
- Recommendations are contained in the 2nd evaluation, the RTD assessment

SAP Responsibilities (Cont.)

- SAP must not be influenced by claims that the test was unjustified or inaccurate, or attempts by the employee to mitigate seriousness of the violation
- SAPs may obtain information from MROs regarding drug test results without the consent of the employee
- No second SAP opinions are allowed
- No one except for the SAP can change a SAP's initial evaluation

Employer Responsibilities

- Using the SAP RTD Assessment, determine that the employee is ready to resume safety-sensitive duties
- Schedule the follow-up testing consistent with the SAP recommendations
 - SAP does not select exact dates
 - SAP does determine number of tests in a given time period
 - SAP can advise to test in particular time frames (e.g., Monday morning, after home football game)

VENDOR AND CONTRACTOR OVERSIGHT

Overview

- Responsibility of Drug and Alcohol Program Manager for Vendor Compliance
- Responsibility of DAPM for Contractor Compliance

Vendors that Need Oversight

- Consortium/Third Party Administrator (C/TPA)
- Medical Review Officer (MRO)
- Substance Abuse Professional (SAP)
- Urine Collectors and Urine Collection Site
- Breath Alcohol Technicians and Collection Location
- Saliva Test Technician (if any)

Employer Requirements

- Responsible for actions of officials, representatives, and service agents
- FTA Master Agreement requires recipients to include appropriate clauses in third party contracts requiring contractors to comply with applicable Federal requirements
- Service agents must provide documentation of credentials
- Good faith effort is not a defense for non-compliance

Employer Requirements (Cont.)

- Employer is responsible for obtaining test results and other information that is needed for compliance purposes

**DO NOT ASSUME THAT VENDORS
ARE CONDUCTING TESTS IN
COMPLIANCE WITH REGULATIONS
- THAT INCLUDES C/TPA'S AND
CONSORTIA!**

Are You Satisfied with Your C/TPA?

- Ease of communicating and reporting
- Assistance with implementing required training
- Assistance with full compliance
 - Availability of second laboratory for analysis of split specimens
 - Receipt of semi-annual report from laboratory with results for only your transit agency, not whole consortium

C/TPAS as Intermediaries

- Role of C/TPA is at employer discretion
- C/TPA must
 - maintain confidentiality
 - meet time requirements
 - provide DOT requested information to employer within two days

C/TPAS as Intermediaries (Cont.)

- C/TPA can transmit drug test information from MRO to employer, including
 - verified positive and negative results
 - test refusals
 - cancelled tests
 - split specimen reconfirmation
 - dilute specimens
 - shy bladder refusals
 - laboratory statistical reports
 - response to subsequent employer requests

C/TPAS May Not Act as Intermediaries

- C/TPA can NOT transmit
 - drug test results from laboratory to MRO
 - medical information from MRO to employers
 - SAP reports from SAP to employers
 - positive alcohol test results from BAT to employer

C/TPAs as Program Administrators

- C/TPA may take on the following roles:
 - operate random testing programs
 - maintain random pool
 - assist with other types of testing
 - assist in implementation of follow-up testing
 - receive and maintain all records without employee consent
- Must transfer records immediately upon request without fee
- Must notify employee immediately of business status change
- Must not act as DER

Are You Satisfied with your MRO and SAP?

- Proper and timely completion of paperwork
- Professional and respectful approach when contacting employees
- Clear communication from MRO about test outcome and needed DER action
- Clear communication from SAP in each of two reports
 - Initial Assessment
 - Follow-up Assessment and Test Plan
 - Are the follow-up test plans specific to employee or do all call for the minimum 6 tests in 12 months?

MRO Qualification Training

- Collection procedures
- Chain of Custody, reporting, and record keeping
- Interpretation of drug and validity test results
- Roles and responsibilities of MRO
- Interaction with other participants (DER, SAP, etc.)
- Changes and updates, guidance, interpretations and policies affecting the performance of MRO functions

MRO Qualification Training (Cont.)

- Satisfactorily complete an examination administered by a nationally-recognized MRO certification entity

MRO Training Deadlines

- If currently practicing MRO has met requirements by 8/1/01, the MRO does not have to retake
- If currently practicing MRO has not completed by 8/1/01, training must be completed by 1/31/03
- New MROs that begin practice after 8/1/01 must have training before they perform MRO duties

MRO Continuing Education

- Every three years
 - MROs trained and examined prior to 8/1/01 have until 8/1/04 to complete their first refresher training
- 12 professional developmental hours on MRO functions
- New technologies, interpretations, rule changes, etc.
- Must include assessment process
- Must maintain documentation and provide upon request

SAP Basic Knowledge

- Knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders
- Knowledgeable about the SAP functions as they relate to employer interests in safety-sensitive duties
- No conflicts of interest or financial interest in referrals

SAP Basic Knowledge (Cont.)

- Knowledgeable about
 - 49 CFR Part 40
 - DOT agency (FTA) regulations
 - DOT SAP guidelines
- Keep current on changes to these materials

SAP Qualification Training

- Training
 - 49 CFR Part 40 and DOT agency rules
 - Key DOT drug testing requirements: collections, laboratory testing, MRO review, and problems
 - Key alcohol testing requirements including process, role of BAT/STT, and problems in alcohol testing
 - Role of the SAP in the return-to-duty process
 - SAP consultation with employees, MROs, and treatment providers
 - Reporting and recordkeeping
 - SAP issues

SAP Qualification Training (Cont.)

- Examination -- satisfactorily complete an exam administered by a nationally-recognized professional or training organization

Are You Satisfied with Your Collection Site and BAT?

- Number and explanation for cancelled tests
- Collection and transfer of split specimens
- Volume capacity, location, and service hours
- After hours testing
 - very important that either primary or back-up test site be available for all service hours
 - need to spread random tests across all service hours
 - need availability for post-accident tests across all service hours
- Ease of communicating and reporting
 - establish code for receipt of alcohol tests results⁷⁷ from BAT

Collector Qualification Training

- Collection process including proper completion and transmission of CCF
- Problem collection procedure
 - Adulterated/substitution or tampering
 - Temperature out of range
 - Insufficient volume
- Fatal flaws, correctible flaws, corrective actions
- Responsibility for the integrity of the specimen collection and transfer process
 - Ensure dignity and privacy of the individual
 - Avoid any remarks that may be construed as accusatory, offensive, or inappropriate

Initial Proficiency Demonstration

- Complete five error-free mock collections
 - Two uneventful
 - One insufficient volume
 - One temperature out of range
 - One employee refuse to sign and/or initial the seal

Collector Proficiency Monitoring

- Real-time observation with interaction
- Monitor documents in writing that mock collections were error-free
- Monitor must be a qualified collector
 - Successfully completed collector qualifications training and have conducted collections for at least a year, and either
 - Conducted collector training for a year, or
 - Successfully completed a “Train the Trainer” course

Collector Training Deadlines

- Collector before 8/1/01 and met requirements do not have to repeat
- Collector before 8/1/01 and not met requirements must meet by 1/31/03
- Collector after 8/1/01 must meet before first collection

Collector Refresher Training

- Every five years
- Qualification Training and Proficiency Demonstration

Collector Error Correction Training

- Conduct after mistake that results in a cancelled test (i.e., fatal or uncorrectable flaw)
- Conduct within 30 days of error notification
- Train on subject area of mistake
 - Document in writing by monitor
- Conduct post-training proficiency demonstration
 - Document in writing by monitor
 - Conduct three consecutive error-free mock collections
 - One uneventful
 - Two related to mistake area

BAT/STT Qualification Training

- In accordance with DOT Model BAT or STT course
- Train to proficiency
 - Alcohol test procedures
 - Operation of particular equipment that will be used
- Responsibility for
 - Maintaining integrity of the testing process
 - Ensuring privacy of employees being tested
 - Avoiding conduct or statements that could be viewed as offensive or inappropriate
- Must complete prior to serving as BAT/STT

BAT Initial Proficiency Demonstration

- BATs complete seven consecutive error-free mock tests - using EBT that will be used
- STTs complete five consecutive error-free mock tests using ASD that will be used
- Performance monitored under direct observation including direct interaction
- Monitor attests in writing that collections were error-free
- Must complete prior to serving as BAT/STT

BAT/SST Refresher Training

- Every five years
- BAT/SSTs who received training prior to 1/1/98 have until 1/1/03 to get refresher training
- Meet requirements of Qualification Training and Proficiency Demonstration

BAT/SST Error Correction Training

- Required if mistake results in cancelled test
- Complete within 30 days of when notified of error
- Conduct post-training proficiency demonstration
 - Document in writing by monitor
 - Conduct three consecutive error-free mock collections
 - One uneventful
 - Two related to mistake area

BAT/STT Requirements

- BAT/STT must maintain credential documentation
- Must produce credentials upon request
- Immediate or direct supervisors of an employee may not serve as the BAT/STT for the employee
- Law enforcement officers who have been certified by State or local governments to conduct breath alcohol testing using the EBT/ASD used to conduct DOT tests are qualified as BAT/STTs

Compliance Tips

- Conduct periodic mock collections to identify procedural flaws
- Investigate any reports by employees of flawed procedures
- Provide vendors copies of USDOT and FTA handbooks and procedural manuals
- Require documentation of vendor credentials

Compliance Tips (Cont.)

- Even though not a regulatory requirement, consider requiring vendors to hold memberships in their respective industry's trade association
- Monitor cancelled test rates, and require detailed explanations for each cancelled test
- Include specific and detailed minimum performance standards in contracts that provide disincentives for cancelled tests or non-performance

Trade Associations

- Drug & Alcohol Testing Industry Association
(800) 355-1257 www.datia.org
- American Association of Medical Review Officers
(919) 489-5407
- American Society of Addiction Medicine
(301) 656-3920
- American College of Occupational and Environmental Medicine (847) 228-6850
- Substance Abuse Program Administration Association (800) 672-7229

CONTRACTOR OVERSIGHT

Applicable Contractors

- Safety-sensitive contractors that “stand in the shoes” of the subrecipient are required to have drug and alcohol testing programs that meet the same requirements
 - Maintenance contractors of systems that serve populations of <200,000 are exempt (Section 5307, 5309, & 5311 subrecipients)
 - First tier maintenance contractors are included; second tier are exempt
 - Rule applies to contractors (i.e. taxi operators) when the transit provider enters into a contract with one or more entities to provide service
 - Rule does not apply when the patron chooses the operator, even if only one operator available

Non-applicable Relationships

- Using a supplier on a one-time ad hoc basis does not constitute a contractor
- Such a supplier does not have to have a drug and alcohol program

Safety-Sensitive Contractor

- Identify safety-sensitive contractors who “stand in the shoes” of the recipient
- Require contract or contract language specifying requirements for a compliant drug and alcohol testing program including specific performance standards
- Do not assume that contractors, no matter how reputable, are in compliance
- Develop an on-going monitoring program of contractor compliance
- Immediately take corrective action to remedy problems found

Contract Oversight

- Provide copy of regulations and DOT/FTA guidance
- Make compliance a condition of the contract
- Conduct periodic assessments
 - Policy
 - Testing procedures
 - Training
 - Recordkeeping: an employer may disclose drug and alcohol testing information including test results to the State oversight agency or grantee required to certify compliance

SESSION 5:
PRESCRIPTION AND OVER-
THE-COUNTER DRUG USE
IN THE TRANSIT INDUSTRY

FTA Disclaimer

The information contained in this presentation is based on information provided by the Food and Drug Administration, the Federal Aviation Administration, and the Federal Railroad Administration. The information provided should be used only as guidelines and **does not** constitute Federal Regulations. Sound medical knowledge and understanding of the pharmacological properties of the prescription and over-the-counter medications, and detailed knowledge of an employee's medical history and safety-sensitive job duties must guide the final assessment of potential risks to the public.

Purpose of the RX/OTC Presentation

- PURPOSE IS

- Safety

- Guidelines

- Technical Assistance

- PURPOSE IS NOT

- Drug and Alcohol Testing

- Regulation

- A List of Approved/Not Approved Medications

Overview

- NTSB Directive and FTA Challenge
- Overview of the Issue
- Developing an Rx/OTC Policy
 - Elements
 - Roles and Responsibilities
- Establishing Medical Review Procedures
- Employee Rx/OTC training

NTSB Directive

The National Transportation Safety Board has issued a directive to the FTA to educate transit systems on the potential safety risks associated with the use of Prescription and Over-The-Counter medication by employees who perform safety-sensitive duties.

NTSB Directive (Cont.)

The NTSB recommended that all transit systems inform employees in safety-sensitive positions to inform the system about the employee's use of prescription and OTC medications so that the system can have qualified medical personnel determine the medicines potential effects on employee performance, and train employees about their responsibility under policy.

FTA Challenge

The Federal Transit Administration issued a Dear Colleague letter (5/00) to all grant recipients encouraging them to educate transit operators about the risks associated with the use of prescription and over-the-counter medications.

FTA Challenge (Cont.)

Grantees were encouraged to:

- 1) Review current policies with regard to operators' use of over-the-counter and prescription medications which could result in public safety being jeopardized
- 2) Immediately institute educational programs that address the potential dangers of taking certain types of medications.

Definitions (Rx)

- Prescription drugs (Rx) are medications which require written authorization for use by a healthcare professional whose license permits them to prescribe medication.
 - The prescription must include the patient's name, the name of the substance, quantity/amount to be dispensed, instructions on frequency and method of administration, refills, and date.

Common Types of Rx Medications

- Anti-inflammatory/Pain Medication

Relieves pain

- Antidepressants and Psychoactive Medication

Relieves depression and other psychological conditions

- Antihistamines

Reduces allergy & cold symptoms – also used to treat insomnia

Common Types of Rx Medications (Cont.)

- Motion Sickness Medication

Relieves motion sickness

- Muscle Relaxants

Relieves sore tight muscles

- Steroids

Controls bodily functions

Common Types of Rx Medications (Cont.)

- Stimulants

Causes user to be more alert

- Tranquilizers & Sedatives

Relieves anxiety, stress & insomnia

Definitions (OTC)

- Over-The-Counter (OTC) medications are any legal, non-prescription substance taken for relief of discomforting symptoms.
 - May include capsules, powders, tablets, or liquids.

Common Types of OTC

- Pain relief/fever reducer
- Colds/Flu medication
- Appetite Suppressants
- Bowel Preparations
- Sleeping Aids
- Stimulants

Cause for Concern

- Some side effects of Rx and OTC medications can be a safety issue when taken by safety-sensitive employees
- Can include:
 - Agitation
 - Anxiety
 - Blurred vision
 - Breathing difficulty
 - Chest pain
 - Chest tightness
 - Confusion
 - Dizziness
 - Disorientation
 - Double vision
 - Drowsiness
 - Emotional instability
 - False sense of well being
 - Fatigue

Cause for Concern (Cont.)

- Fever
- Hallucinations
- Severe Headache
- Hyperventilation
- Insomnia
- Light headedness
- Muscle cramps/spasms
- Nausea/vomiting
- Nervousness
- Palpitations
- Poor coordination
- Rapid or irregular heart beat
- Restlessness
- Ringing in the ears
- Sedation
- Seizures
- Severe diarrhea
- Tremors
- Weakness

FTA Recommended Policy Elements

- Purpose of Policy
 - Acknowledges risks associated with Rx/OTC use
 - Emphasizes safety
 - Balances the treatment of medical conditions and the requirements of performing safety-sensitive job duties
 - Not intended to force employees in need of medical attention to work or keep employees who are eligible to work off duty for receiving treatment of a medical condition.

Suggested Elements of an Rx/OTC Policy

- Define processes and procedures that implement the policy, such as:
 - Medical review/authorization
 - Reporting
 - Use of leave benefits; limitations

Suggested Elements of an Rx/OTC Policy (Cont.)

- Define Consequences of Violating Specific Policy Provisions
 - Use of Rx/OTC that contribute to cause or increase the severity of an accident
 - Failure to report use
 - Failure to obtain medical authorization
 - Other policy provision violations

Suggested Elements of an Rx/OTC Policy (Cont.)

- Ensure that the policy emphasizes and maintains confidentiality
 - Records
 - Interaction with medical practitioner

Suggested Elements of an Rx/OTC Policy (Cont.)

- Defined Roles and Responsibilities
 - Employees
 - Management/Supervisors
 - Medical Practitioner (Physician, Dentist, Physician's Assistant, Optometrist, Chiropractor, Other)
 - Pharmacist
 - Employer MRO/Physician

Suggested Management/ Supervisor Responsibilities

- Establish policy and procedures
 - Determine content/process for medical review.
 - Define employer notification process.
 - Determine process for employer physician/MRO review.
- Institute employee Rx/OTC awareness and training program
- Establish consequences for policy violation

Suggested Management/ Supervisor Responsibilities (Cont.)

- Establish record keeping, information disclosure and confidentiality protection procedures.
- Based on medical review, determine if employee is authorized to perform safety-sensitive duties.
- Establish procedures for removing employees from duty.

Suggested Management/ Supervisor Responsibilities (Cont.)

- Incorporate into absenteeism policy.
 - Type of leave
 - Limitations on leave
- Use Rx/OTC program as a method for improving employee and public safety.

Suggested Employee Roles and Responsibilities

- Be aware of medical condition and implications for job
- Be aware of possible Rx/OTC side effects which may compromise safety
- Read warning labels/side effects
 - Rx labels and warnings
 - Pharmacy information summaries
 - OTC Labels
 - OTC Package inserts

Suggested Employee Roles and Responsibilities (Cont.)

How to Read a Label

- Generic or Brand name
- Purpose
- Proper use (indications/contraindications)
- Instructions
- Warnings/Precautions
- Side effects/adverse reactions
- Expiration date
- Other information/storage

Suggested Employee Roles and Responsibilities (Cont.)

- Discuss Rx or OTC with prescribing/medical practitioner or pharmacist.
 - Dosage
 - Frequency
 - Method of use (capsule, liquid, suppository)
 - Possible side effects
 - Interaction with other medications
 - Impact on other medical condition

Suggested Employee Roles and Responsibilities (Cont.)

- Inform medical practitioner of:
 - Safety-sensitive job duties
 - Other Rx, OTC, vitamins, herbal remedies, dietary supplements
 - Medical history
 - Previous experience with Rx/OTCs
 - Medical treatment and prescriptions given by other medical practitioners

Suggested Employee Roles and Responsibilities (Cont.)

- Questions for medical practitioner:
 - Inquire into alternative dosage schedules that minimize impact on work performance (i.e., dose at end of shift rather than before)
 - Inquire into alternative treatment options that do not jeopardize safety

Suggested Employee Roles and Responsibilities (Cont.)

- When ill or injured obtain appropriate medical treatment
- Only use medications for their intended purpose
- Check the strength of the medication
- Keep your medical practitioner informed of your reaction to Rx/OTC
- Always take medication as directed

Employee Warnings

- Do not take larger doses than prescribed
- Do not take longer than prescribed
- Do not double dosage after missing a dose
- Do not self-medicate with OTC or someone else's Rx in lieu of obtaining medical treatment

Employee Warnings (Cont.)

- Do not use an expired prescription
- Do not stop taking medication because you begin to feel better – take for length prescribed
- Do not take for granted that a prescription is correct. Always read the label every time you get it filled. Make sure you have the right medication at the proper dosage.

Employee Warnings (Cont.)

- Never combine medications in the same bottle
- Never store in humid locations (bathroom)
- Make sure you understand the directions
- Ask questions if you don't understand or the prescription doesn't seem right
- Use the same pharmacy
- Always ask about interactions
- Keep medication in original labeled bottle

Employee Warnings (Cont.)

- Individual often can not judge level of own impairment
- Side effects may change/intensify/lessen with prolonged use
- Some medications should be taken with food to minimize adverse reaction while other should be taken on an empty stomach

Employee Warnings (Cont.)

- Changing dosage schedule (without medical practitioner approval) can alter effect
- Monitor your reaction to the Rx/OTC
- Do not perform safety sensitive duty if impaired

Prescribing Physician/Medical Practitioner Responsibility

- Understand responsibility to protect public safety
- Be aware of nature of safety-sensitive job duties
- Consider medical history
- Consider other Rx, OTC, vitamins, herbal supplements

Prescribing Physician/Medical Practitioner Responsibility (Cont.)

- Consider current illness/injury in concert with Rx when assessing employee's ability to safely perform job duties
- Discuss medical condition, Rx dosage, frequency, side effects and possible interactions with patients
- Consider alternative treatment options that will not jeopardize public safety
- Consider alternative dosing schedule

Prescribing Physician/Medical Practitioner Responsibility (Cont.)

- Do not authorize return to safety-sensitive duties if medication use poses safety risk
- Discuss assessment with employee – if employee provides consent- discuss determination with employer
- Cooperate with employer physician/MRO evaluation process

Suggested Employer Physician/MRO Responsibilities

- Provide information on Rx/OTC hazards
- Serve as resource by responding to questions
- Review prescribing medical practitioner authorization and make final determination as appropriate
- Consult with prescribing medical practitioners as needed

Three Medical Review Procedural Models

Medical Review Procedural Model 1

- Employee Responsibility
 - Employee asks about side effects and potential impact on ability to perform duties
 - Employee monitors reaction to Rx/OTC
 - Assumes employee can judge own level of impairment – may not be true
 - Employee requests leave if impaired
 - May or may not get statement from doctor

Medical Review Procedural Model 2

- Medical Authorization
 - Employee obtains medical authorization form from employer
 - Employee asks about side effects and potential impact on ability to perform duties
 - If no adverse impacts – Medical practitioner signs release indicating employee may perform duty
 - If adverse impacts – Medical practitioner signs indicating employee must be off of duty for a specified amount of time

Medical Review Procedural Model 2 (Cont.)

- Medical Authorization (cont.)
 - Employer may or may not keep form for documentation
 - Form may be reviewed by the employer's Physician/MRO
 - After discussing with prescribing physician, may overturn authorization

Medical Review Procedural Model 3

- List of medications
 - Employer provides list of medications to employee or medical practitioner
 - Approved for use, no authorization required
 - Required medical authorization
 - Not approved for use
 - Employee compares Rx to list. Attempts to find alternates if Rx not approved or requiring medical authorization.
 - No alternate available – requests authorization from Medical practitioner

Suggested Employee Awareness Training

- Introduction
 - Purpose of Rx/OTC policy
 - Balance treatment of medical condition with safe performance of job duties
 - Applicability – Safety-sensitive employees or all employees
 - Employee responsibility for treatment and safe performance of duties

Suggested Employee Awareness Training (Cont.)

- Training Elements
 - An overview of your system's Rx/OTC policy
 - An overview of your system's procedures
 - Medical authorization
 - Notification/reporting
 - Forms if applicable
 - Consequences of policy violations
 - Leave policy
 - Sick leave/paid time off
 - Limitations on use

Suggested Employee Awareness Training

- Training Elements
 - Risks associated with Rx/OTC use
 - Definition of Rx and OTC
 - How to read a label
 - How to read Rx information sheets
 - Side effects of concern
 - Common sense rules for taking medication

Suggested Employee Awareness Training (Cont.)

- Training Elements (cont.)
 - Medication list if applicable
 - Approved medications
 - Medications which require authorization
 - Medications not approved for use
- Conclude Training
 - Questions and answers
 - Re-emphasize safety

Suggested Employee Awareness Training (Cont.)

- May conduct Rx/OTC training as a stand-alone training course or as one element of the regular drug and alcohol awareness training
- Always have resource material available
 - If possible have medical practitioner involved in training and/or available for questions
 - Posts on bulletin boards.
 - Hotlines/Nurse help-lines
 - Determine who employees may call for questions.
 - MRO
 - Other medical practitioner

Summary

- The primary objective of developing and implementing a Prescription/OTC policy and training employees, is to enhance the safety of employees, customers, and the public.
- Employees must accept responsibility for their own medical treatment. They must also accept responsibility for protecting the public safety.

Relevant Web Sites

- Aviation Medicine – www.aviationmedicine.com/meds.htm
- Food & Drug Administration – www.fda.gov
- FDA Center for Drug Evaluation and Research – www.fda.gov/cder/
- Agency for Healthcare Research and Quality – www.ahrq.gov
- U.S. Dept. of Health and Human Services – www.hhs.gov
- National Health Info Center – www.health.gov/nhic
- The Internet Drug List – www.rxlist.com