

74995

MAR- 2-00 THU 13:15

P. 02

MAR 02 REC'D

DEPT. OF TRANSPORTATION

COMM. 15 PM 1:52

OST-49-6578-42

**ISSUES CONCERNING THE DOT DRUG AND ALCOHOL TESTING
REGULATION PROPOSED REVISION - CHAPTER 40.**

One concern is the need to clarify the guidelines and applicability of the random selection and notification process. The issue is that the Union is interpreting the requirement to mean that individuals are selected randomly and that they are then immediately notified on the same, or subsequent, day to go to the designated testing agency to be administered the appropriate test.

Management interprets the regulation to mean that individuals are randomly selected to be tested within a prescribed test window. The test window may range from 30 to 90 days, in which management would then notify a respective individual to report to the testing agency to be tested within the prescribed time limit. Management does not believe that the regulation requires an individual to be notified to test the same day that management receives the list of individuals that were randomly selected by the testing agency, as long as there is a 30 to 90 day test window. Management understands that confidentiality is essential and is not to be violated as far as the list of names selected to be tested within a given period of time. Management also understands the need to select testing days in a manner that precludes establishing a distinguishable pattern.

RECOMMENDATION: That the regulation be written to include clarification to the above. We feel it should state, if appropriate, that if an employer uses a contracted agency to do the random selection of individuals, the employer has a designated window in which to test the selected employees once the names are selected and released to the employer. The employer does not have to test all selected individuals at the same time as long as all selected employees are tested within the prescribed test window. It is the responsibility of the employer to maintain confidentiality and objectivity concerning testing and the list of names, once the names are selected and provided to the employer by the contracted testing agency doing the random selection. The employer does not have to immediately test selected employees upon receipt of the names of those randomly selected by the contract agency as long as the individual to be tested have not been made aware that they were selected.

Issue two concerns individuals selected to be tested but are not available on a given day. This issue is inter-related to the previous concern. Union contends that if employees are randomly selected they are to be immediately tested once the names are determined. If an employee is not available, an alternate name is to be selected.

Management again interprets the issue to be as stated above. The employer has the prescribed number of days to notify and send a respective employee to the test agency to be tested. If an employee is not available to test on a given day, when some of the other selected employees are sent to be tested and as long as the absent employee's name remains confidential, the absent employee can be sent at a later date as long as it is within the designated test window. The only time an employer would require an alternate to be selected is when a selected employee would not be available to be tested within the prescribed test window.

RECOMMENDATION: That the regulation address the issue as outlined in paragraph 2 above. Specifically, an employee that is randomly selected and is not aware that his/her name was selected, and in not available on a respective date that others on the same list are sent to be administered the drug test, can be tested at any time within the prescribed test window. An alternate candidate for testing does not have to be selected unless the absent employee becomes aware of the fact that he/she was selected and/or the employee will not be available to be tested within the prescribed test window do to a leave of absence of some nature.

SUBMITTED BY:

Dan Davis
Winnebago County Highway Department
424 N. Springfield Ave
Rockford, IL 61101-5097
(815) 965-9431
fax: (815) 965-9433