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From: Carol Gallagher
To: Evangeline Ngbea
Date: Tue, May 4, 2004 11:02 AM
Subject: Comments on Draft Rule Language - Fitness for Duty

Attached for docketing are three comments on the above noted draft rule language from James Davis, NEI, that I received via the Rulemaking website on 5/3/04.

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Carol

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

CC: Garmon West; Rebecca Karas

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SECY-02

Fitness for Duty Comment Number 11
Policy-Procedures-Training
October 7, 2002

Purpose: To compare policies, procedures and training.

Issue: In Subpart B Procedures are required to "describe the methods used in implementing the FFD policy" and training requires understanding of certain KSAs to "implement their responsibilities under the FFD policy." Thus there should be reasonable linkage between the section on policy with those of procedures and training. Using a side by side comparison the following problems appear:

1. Policy (6) appears to be a subset of (4) and should be moved there as part of (4)i.
2. In policy (5) the requirements related to TSC and EOF overshadow the requirement to describe the FFD requirements. This should be a program issue for these special class of people who are called in for unscheduled work. Since these people are not in a duty status the text has been changed to requiring procedures make provisions recognizing that some of these people may have consumed alcohol.
3. The individual's responsibility to report observed FFD problems is not included in the policy requirements. It seems to be an important new element.
4. In the training area items (6) and (7) seem to be closely related. Remember that the testing requirement will put equal weight on each of the 10 areas in the list of KSAs. It is hard to believe that 20% of the exam should be on the effects on the individual and effects on testing. This it is recommended that these two items be combined.
5. Having eliminated one KSA there are now nine. Ten seems like a nice round number. At one point the industry recommended combining employee responsibilities and responsibility to report. It may be worth splitting these two items into two separate KSAs.

Proposed Text:

(b) Policy. Licensees and C/Vs shall prepare a clear and concise FFD policy statement and have the most current revision of this statement readily available to all individuals subject to the policy. *Methods of making the statement readily available include, but are not limited to, posting the policy in multiple work areas, providing individuals with brochures, or allowing individuals to print out the policy from a computer.* The policy statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from lack of adherence to the policy. At a minimum, the written statement shall --

(1) Describe the consequences of the use, sale, or possession of illegal drugs on or off site, and the abuse of legal drugs, including alcohol;

(2) Describe the expectation that individuals who are notified that they have been selected for random testing will report to the collection site within the time period specified by the licensee or C/V;

(3) Describe the consequences of refusals to provide a specimen for testing and subversion of the testing process;

(4) Prohibit the consumption of alcohol, at a minimum:

(i) Within an abstinence period of 5 hours preceding any scheduled working tour. Convey that abstinence from alcohol for the five hours preceding any scheduled working tour is considered to be a minimum that is necessary but may not be sufficient to ensure the individual is fit for duty; and

(ii) During the period of any working tour.

(5) Describe the FFD program requirements;

(6) Address other factors that could affect fitness for duty such as mental stress, fatigue, illness, and the use of prescription and over-the-counter medications that could cause impairment;

(7) Provide a description of programs that are available to personnel desiring assistance in dealing with drug, alcohol, or other problems that could adversely affect the performance of activities within the scope of this part;

(8) Describe the consequences of violating the policy;

(9) Describe the individual's responsibility to report any legal actions; and

(10) Describe the individual's responsibility to report fitness for duty concerns.

(c) Procedures. The licensee and C/V shall prepare written procedures that describe the methods to be used in implementing the FFD policy and the requirements of this part. The procedures shall --

(1) Describe the methods and techniques to be used in testing for drugs and alcohol, including procedures for protecting the individual providing a specimen and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.

(2) Describe immediate and follow-up actions that will be taken, and the procedures to be used, in those cases where individuals subject to this part are determined to have:

(i) Been involved in the use, sale or possession of illegal drugs;

(ii) Consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess before reporting to duty, as demonstrated with a test that can be used to determine BAC;

(iii) Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means;

(iv) Refused to provide a specimen for analysis or to complete the process requirements ; or

(v) Had legal action taken on a drug- or alcohol-related charge.

(3) Describe the process to ensure that persons called in to perform an unscheduled working tour are fit for duty. Consumption of alcohol during the abstinence period shall not by itself preclude a licensee from using individuals needed to respond to an emergency. At a minimum --

(i) The procedure must require a statement to be made by a called-in person as to whether the individual considers himself or herself fit for duty and whether the individual has consumed alcohol within the pre-duty abstinence period stated in the policy;

(ii) If alcohol has been consumed within this period and the person is called in, the procedure must --

(A) Require a determination of fitness by breath alcohol analysis or other means, and

(B) Require the establishment of controls and conditions under which the individual who has been called-in can perform work, if necessary.

(iii) If the individual reports that he or she considers himself or herself unfit for duty for other reasons, including illness, fatigue, or other potentially impairing conditions, and the person is called in, the procedure must require the establishment of controls and conditions under which the individual can perform work, if necessary.

(iv) . Describe process for licensee and C/V personnel who physically report to a licensee's Technical Support Center or Emergency Operations Facility, in accordance with the licensee's emergency plans and procedures.

(4) Describe the process to be followed if an individual's behavior raises a concern regarding possible possession, use or sale of illegal drugs, possession of alcohol on-site, or impairment of any kind that may constitute a risk to the health and safety of the public. The procedure must require that persons who have a concern about another individual's behavior contact the personnel designated in licensee and C/V procedures to report the concern. The procedure also must state that the decision to conduct a determination of fitness of an individual who may be impaired, which may include, but is not limited to testing for drugs and alcohol, shall be made by appropriate personnel.

§26.29 Training.

(a) Content of training. Licensees and C/Vs must ensure that individuals subject to this part have the knowledge, skills and abilities (KSAs) required to implement their responsibilities under the FFD policy, as follows--

(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;

(2) Knowledge of the individual's role and responsibilities under the FFD program;

(3) Knowledge of the roles and responsibilities of others, such as the MRO, and the human resources, FFD and EAP staffs;

(4) Knowledge of the EAP services available to the individual;

(5) Knowledge of the personal and public health and safety hazards associated with abuse of illegal and legal drugs, including alcohol;

(6) Knowledge of the effects of prescription and over-the-counter drugs and dietary conditions that have the potential to affect job performance and the potential to affect drug and alcohol test results;

(7) Ability to recognize drugs and indications of the use, sale, or possession of drugs;

(8) Ability to observe and detect performance degradation, indications of impairment, or

behavioral changes; and

(9) Ability to initiate appropriate action, including referral to the person(s) designated by the licensee or C/V to receive fitness concerns, and to the EAP.

(10) Knowledge of individual responsibility to report fitness concerns.

Policy-Procedures-Training		
<p>(a) General. Each licensee subject to this part, and each C/V with a licensee-approved FFD program, shall establish, implement, and maintain written policies and procedures designed to meet the general performance objectives and applicable requirements of this part.</p>		
<p>(b) Policy. Licensees and C/Vs shall prepare a clear and concise FFD policy statement and make a copy of the most current revision of this statement readily available to all individuals subject to the policy. Methods of making the statement readily available include, but are not limited to, posting the policy in multiple work areas, providing individuals with brochures, or allowing individuals to print out the policy from a computer. The policy statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from lack of adherence to the policy. At a minimum, the written statement shall --</p>	<p>(c) Procedures. The licensee and C/V shall prepare written procedures that describe the methods to be used in implementing the FFD policy and the requirements of this part. The procedures shall --</p>	<p>(a) Content of training. Licensees and C/Vs must ensure that individuals subject to this part have the knowledge, skills and abilities (KSAs) required to implement their responsibilities under the FFD policy, as follows --</p>
<p>(1) Describe the consequences of the use, sale, or possession of illegal drugs on or off site, and the abuse of legal drugs, including alcohol</p>	<p>(2) Describe immediate and follow-up actions that will be taken, and the procedures to be used, in those cases where individuals subject to this part are determined to have --</p> <p>(i) Been involved in the use, sale or possession of illegal drugs;</p> <p>(ii) Consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess before reporting to duty, as demonstrated with a test that can be used to determine BAC;</p>	<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;</p> <p>(5) Knowledge of the personal and public health and safety hazards associated with abuse of illegal and legal drugs, including alcohol</p> <p>(6) Knowledge of the effects of prescription and over-the-counter drugs and dietary conditions that have the potential to affect job performance;</p> <p>(7) Knowledge of prescription and over-the-counter drugs and dietary conditions that have the potential to affect drug and alcohol test results;</p>
<p>(2) Describe the expectation that individuals who are notified that they have been selected for random testing will report to the collection site within the time period specified by the licensee or C/V;</p>		<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;</p> <p>(2) Knowledge of the individual's role and responsibilities under the FFD program,</p>

<p>(3) Describe the consequences of refusals to provide a specimen for testing and subversion of the testing process;</p>	<p>(2) Describe immediate and follow-up actions that will be taken, and the procedures to be used, in those cases where individuals subject to this part are determined to have –</p> <p>(iii) Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means;</p> <p>(iv) Refused to provide a specimen for analysis; or</p>	<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;</p> <p>(2) Knowledge of the individual's role and responsibilities under the FFD program,</p>
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(4) Prohibit the consumption of alcohol, at a minimum:

- (i) Within an abstinence period of 5 hours preceding any scheduled working tour; and
- (ii) During the period of any working tour.

(2) Describe immediate and follow-up actions that will be taken, and the procedures to be used, in those cases where individuals subject to this part are determined to have –

- (ii) Consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess before reporting to duty, as demonstrated with a test that can be used to determine BAC;

(3) Describe the process to ensure that persons called in to perform an unscheduled working tour are fit for duty. Consumption of alcohol during the abstinence period shall not by itself preclude a licensee from using individuals needed to respond to an emergency. At a minimum –

- (i) The procedure must require a statement to be made by a called-in person as to whether the individual considers himself or herself fit for duty and whether the individual has consumed alcohol within the pre-duty abstinence period stated in the policy;
- (ii) If alcohol has been consumed within this period and the person is called in, the procedure must –
 - (A) Require a determination of fitness by breath alcohol analysis or other means, and
 - (B) Require the establishment of controls and conditions under which the individual who has been called-in can perform work, if necessary.
- (iii) If the individual reports that he or she considers himself or herself unfit for duty for other reasons, including illness, fatigue, or other potentially impairing conditions, and the person is called in, the procedure must require the establishment of controls and conditions under which the individual can perform work, if necessary.

(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;

(2) Knowledge of the individual's role and responsibilities under the FFD program,

<p>(5) Describe the FFD requirements, including the prohibition on the consumption of alcohol, for licensee and C/V personnel to be available to physically report to a licensee's Technical Support Center or Emergency Operations Facility, in accordance with the licensee's emergency plans and procedures;</p>	<p>(1) Describe the methods and techniques to be used in testing for drugs and alcohol, including procedures for protecting the individual providing a specimen and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.</p>	<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy; (2) Knowledge of the individual's role and responsibilities under the FFD program,</p>
<p>(6) Convey that abstinence from alcohol for the five hours preceding any scheduled working tour is considered to be a minimum that is necessary but may not be sufficient to ensure the individual is fit for duty;</p>		<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy; (2) Knowledge of the individual's role and responsibilities under the FFD program,</p>
<p>(7) Address other factors that could affect fitness for duty such as mental stress, fatigue, illness, and the use of prescription and over-the-counter medications that could cause impairment;</p>		<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;</p>
<p>(8) Provide a description of programs that are available to personnel desiring assistance in dealing with drug, alcohol, or other problems that could adversely affect the performance of activities within the scope of this part</p>		<p>(3) Knowledge of the roles and responsibilities of others, such as the MRO, and the human resources, FFD and EAP staffs; (4) Knowledge of the EAP services available to the individual</p>
<p>(9) Describe the consequences of violating the policy; and</p>		<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;</p>
<p>(10) Describe the individual's responsibility to report any legal actions</p>	<p>(2) Describe immediate and follow-up actions that will be taken, and the procedures to be used, in those cases where individuals subject to this part are determined to have - (v) Had legal action taken on a drug- or alcohol-related charge.</p>	<p>(1) Knowledge of the policy and procedures that apply to the individual and the consequences of a lack of adherence to the policy;</p>

<p>(none)</p>	<p>(4) Describe the process to be followed if an individual's behavior raises a concern regarding possible possession, use or sale of illegal drugs, possession of alcohol on-site, or impairment of any kind that may constitute a risk to the health and safety of the public. The procedure must require that persons who have a concern about another individual's behavior contact the personnel designated in licensee and CV procedures to report the concern. The procedure also must state that the decision to conduct a determination of fitness of an individual who may be impaired, which may include, but is not limited to testing for drugs and alcohol, shall be made by appropriate personnel.</p>	<p>(2) Knowledge of the individual's role and responsibilities under the FFD program, including the responsibility to report fitness concerns</p> <p>(10) Ability to initiate appropriate action, including referral to the person(s) designated by the licensee or CV to receive fitness and concerns, and to the EAP.</p> <p>(8) Ability to recognize drugs and indications of the use, sale, or possession of drugs;</p> <p>(9) Ability to observe and detect performance degradation, indications of impairment, or behavioral changes;</p>
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