

DELAY IN IMPLEMENTATION OF DHHS GUIDELINES REVISIONS

The DHSS issued changes to the DHHS Guidelines in 2008 that were to take effect May 1, 2010. On April 30, 2010, DHHS published a notice in the Federal Register delaying the effective date of the changes to OCTOBER 1, 2010. The changes include lowering of cut-off levels for amphetamines and cocaine; adding testing for MDMA (Ecstasy) as part of the amphetamines class of drugs; adding 6-AM (heroin) screening to the opiates class of drugs; and adoption of a new federal CCF. These changes would apply to testing conducted for applicants and employees of Federal agencies.

The DOT usually follows the DHHS Guidelines for all procedures related to laboratory analysis of urine specimens. However, DOT must publish a rule (regulation change) formally adopting the DHHS changes for DOT testing (FMCSA, FTA, FAA, etc.). The DOT issued a proposed rule to that effect; however has not published a final rule. The DHHS Guidelines changes will NOT APPLY to DOT drug tests until the DOT rule is published and effective. DOT expects to issue its final rule before the October 1, 2010 effective date of the DHHS Guidelines.

For employers whose non-DOT drug testing programs model, reference or mirror the DHHS Guidelines, they will have to make a decision whether they want to continue to do so once the changes are implemented. Collective bargaining agreements, state laws, and/or the employer's written policy may dictate that their testing program must conform to the DHHS Guidelines. If there is no compelling reason that the employer must conform to the DHHS Guidelines, the employer may continue to test using the current cut-offs, test panels, etc.

It is likely that drug testing laboratories will increase their fees/charges for the "new" DHHS testing panel. The increases are based on the addition of MDMA and 6 AM screening assays, and more presumptive positive tests requiring confirmation analysis.