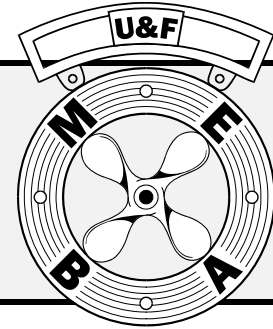


# LEGISLATIVE UPDATE

NOVEMBER 2008



## DOT Drug and Alcohol Testing Regulations Go Into Effect

As previously noted, the U.S. Department of Transportation (DOT) issued new drug testing regulations in August that require direct observation collections for all return-to-duty and follow-up testing. Petitioners including the AFL-CIO's Transportation Trades Department (TTD) (of which M.E.B.A. is a founding member) asked the Department to delay the effective date of the provisions, seek further comment and reconsider them. In response, DOT issued a notice delaying the effective date until November 1, 2008 and opened a comment period on these provisions that ended September 25, 2008.

In MEBA's official comments to the DOT, President Keefe stated:

“We understand the importance of maintaining the integrity of transportation workplace drug and alcohol testing, but fail to see how expanding the reasons that will trigger a direct observation in the manner put forth by DOT strikes the right balance and is the best way to accomplish this objective. Furthermore, while the news that prosthetic devices used to aid in submitting phony samples are available via the internet is alarming, there is no data or formal studies that indicate widespread use by workers. The simple fact that an employee is undergoing follow-up or return-to-duty testing should not, without other evidence, be taken as sufficient incentive to tamper with a test. Without additional study and the support of empirical evidence, DOT's decision to require direct observation for all follow-up and return-to-duty testing does not strike a proper balance between demonstrated need and employee privacy. My members have the unique circumstance of living day-to-day with their supervisors, and potentially the same staff conducting these observations, for months at a time, aboard ships. This could have potentially disastrous consequences which could lead to immense discord and possible civil action.”

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On October 22, the DOT issued the following response to the thousands of comments it received:

“The Department is not changing this amendment, which will go into effect, as scheduled, on November 1, 2008. Beginning on that date, direct observations of collections will be required for all return-to-duty and follow-up tests. When additional

testing methodologies appropriate for use in these tests (e.g. oral fluid and sweat specimens) are approved by the Department of Health and Human Services and adopted by the Department, the Department intends to make these methods available to employers and employees as an alternative to direct observation urine testing in these situations.

TTD and the Air Line Pilots Association have filed a challenge to this rule in the 9th Circuit Court of Appeals.

### **Update on the “Belated Thank You to the Merchant Mariners of World War II Act”**

Little time remains in the current legislative session for a bill that would provide a monthly cash benefit to qualified World War II veteran merchant mariners. H.R. 23 sponsored by Rep Bob Filner (D-CA) passed the House by voice vote in July 2007. But its companion bill in the Senate, S. 961, sponsored by Sen. Ben Nelson (D-NE), has been stalled in Committee.

This bill is also of vital importance to the Union as a whole, not least because it would further the Union’s ever present goal of enhancing the respect and prestige of the Merchant Marine.

Merchant mariners suffered a higher fatality rate than any other branch of the Armed Forces. Despite this, the U.S. Merchant Marine was not included in the 1944 G.I. Bill of Rights. In 1988, they were finally granted veteran status, but some portions of the G.I. Bill have never been made available to merchant mariners and the lost benefits can never be recouped.

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The last major action on the Senate version of the bill was a Veterans' Affairs Committee hearing in May 2008. At that hearing, various Merchant Marine groups were represented. Currently, the Senate bill has 61 co-sponsors. This strong show of support from lawmakers is in partial response to the Union's lobbying activities. M.E.B.A. and the American Maritime Congress continue to stress the importance of the bill to Members of Congress as an issue of fundamental fairness.

Unfortunately, the timing at which the committee addressed S. 961 was not ideal. The hearing on the issues occurred shortly before the long summer recess dominated by the election. Although Congress is technically back in session, very little legislation is ever passed in the period immediately before a Presidential election. What little work was accomplished has, in turn, been dominated by the financial crisis.

M.E.B.A. and AMC will continue to make S. 961 a priority in the final lawmaking session that traditionally occurs following the November election.