

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
WASHINGTON, DC**

**Procedures for Transportation Workplace Drug and Alcohol Testing Programs:  
Addition of Oral Fluid Specimen Testing for Drugs**

**Docket DOT-OST-2021-0093**

**Comments of the Cargo Airline Association**

**Introduction**

By publication in the February 28, 2022, edition of the Federal Register (87 Fed. Reg. 11156 et seq.), the Department of Transportation (DOT) has proposed to amend the drug and alcohol testing protocols applicable to transportation workers by adding an option for oral fluid testing for drugs as an alternative to the current urine sample testing. The Notice of Proposed Rulemaking (NPRM) also proposes to harmonize the existing transportation worker drug testing standards with the current standards established by the Department of Health and Human Services (HHS) for the testing of the federal workplace.

The Cargo Airline Association (CAA or “the Association”) is the nationwide organization representing the interests of United States all-cargo airlines, as well as others in the air cargo supply chain.<sup>1</sup> Association members operate worldwide aviation systems designed to meet the time-definite, scheduled and on-demand delivery needs of their customers around the world.

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<sup>1</sup> CAA airline members include ABX Air, Inc.; Atlas Air, Inc.; FedEx Express; Kalitta Air and UPS, as well as Associate Members DHL Express and Amazon.

CAA members serve over 220 countries and territories worldwide, operate over 1,400 aircraft and have over 1.5 million full-time equivalent employees across the world.

The Association supports the DOT proposal to offer optional oral fluid drug testing as an alternative to the urine testing protocols currently in place. Adoption of this alternative will provide added flexibility to the drug testing program, may well result in more accurate test results, and will potentially result in both time and cost savings.

### **Discussion**

Transportation employee drug and alcohol testing is currently regulated by 49 CFR Part 40 and requires that such testing is conducted through the collection of urine samples. Until relatively recently, urine testing was the only acceptable method of testing for banned substances. However, as noted in the NPRM, “[w]hile the science supporting oral fluid testing did not meet the standards of HHS in 2004, science and research studies have now reached a point where HHS is able to determine that oral fluid testing is an appropriate alternative testing method for identifying illicit drug use in the Federal workplace. As such, HHS proposed adding oral fluid testing to the Federal employee workplace testing program (80 FR 28054, May 15, 2015) and finalized this proposal, which became effective for Federal employee workplace testing on January 1, 2020 (84 FR 57554, Oct. 25, 2019).” 87 Fed. Reg. at 11157. The current NPRM would extend the ability to use oral fluid specimen testing to transportation workers subject to 49 CFR Part 40.

The benefits of expanding the drug and alcohol testing protocols are clearly articulated in the NPRM. For example, the collection of oral fluids would be observed in all cases, thereby virtually eliminating any possibility of adulterating the samples collected. On the other hand, “because the vast majority of DOT-regulated urine drug collections are unobserved, the program remains vulnerable to cheating by employees at the collection site, which can result in adulteration or substitution.” 87 Fed. Reg. at 11157. Indeed, as explained further in the NPRM:

All unobserved specimen collections are at risk for substitution and adulteration. Per HHS’s OFMG preamble, information from the drug testing industry indicates that 0.05 to 3% of urine specimens collected for drug use detection are determined to be substituted or adulterated. (84 FR 57571; Oct. 25, 2019). All oral fluid collections will occur under direct observation, which should substantially reduce the risks of specimen substitution and adulteration that has been associated with urine specimen collections, most of which are unobserved. 87 Fed. Reg. at 11170.

In addition, adoption of the oral fluid collection methodology would provide added flexibility to the drug and alcohol testing regime. If, for example, an employee is unable to provide the required urine sample, an oral fluid test can be substituted thereby eliminating the need to wait for up to three hours for the employee to re-test. This type of flexibility is important to retain in the final rule, and we urge that neither urine sample collection, nor oral fluid collection, be mandated. The choice of which test to use in all cases should be left to the employer, consistent with the requirements in 49 CFR Part 40.<sup>2</sup>

Moreover, the oral fluid test would be less costly to administer. The NPRM estimates that an oral fluid test can cost between \$10 and \$20 less than a urine test (approximately \$50

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<sup>2</sup> At the same time, one testing method should not be interchangeable with another during the same collection process, i.e., an employer should not be able to switch from oral fluid to urinalysis in the middle of the process.

for a urine test and approximately \$35 for an oral fluid test). If correct, these estimates will result in significant cost savings in each company's testing program.<sup>3</sup>

The NPRM also proposes "...to clarify certain Part 40 provisions that cover urine drug testing procedures; to remove provisions that no longer are necessary; to add clarifying language to other provisions such as updated definitions and web links, as appropriate; and to update provisions to reflect issues that have arisen in recent practice." 87 Fed. Reg. at 11156. The Association supports these modifications to Part 40 since they will harmonize DOT requirements with current HHS regulations, will provide more precise definition of terms and will integrate the new oral fluid testing program into existing regulation. The proposed changes will promote clarity and better understanding of the new requirements.

### **Conclusions**

The Association supports the concept of adding oral fluid specimen testing for drugs in the transportation environment. As noted above, this testing regime is consistent with today's HHS standards and will provide needed flexibility for employers.

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<sup>3</sup> DOT has asked commenters to verify these cost estimates, as well as to comment on whether oral fluid testing will continue to be conducted by third-party vendors or will be done internally by specially trained company employees. See, 87 Fed. Reg. at 11158. The answer to this inquiry will likely vary by company and is best left to comments submitted by individual companies.

Respectfully submitted,

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