

**OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION**

**NOTICE OF PROPOSED RULEMAKING ON
PROCEDURES FOR TRANSPORTATION WORKPLACE
DRUG AND ALCOHOL TESTING PROGRAMS**

DOCKET # OST-2010-0026

**SUBMITTED BY:
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I. Introduction & ATA Position

The American Trucking Associations, Inc. (ATA)¹ submits these comments to the Office of the Secretary of Transportation's (OST) Notice of Proposed Rulemaking on Procedures for Workplace Drug and Alcohol Testing, published in the Federal Register on February 4, 2010.

This NPRM amends current OST requirements for laboratories, collectors, Medical Review Officers (MROs), and employers by harmonizing regulations with the newly revised Department of Health and Human Services (HHS) Mandatory Guidelines. The proposed changes would allow employers to use Instrumented Initial Test Facilities (IITF) in lieu of full service laboratories, would require employers to test for two additional drugs, would lower the initial and the confirmatory test cutoff levels for one drug, and would add and revise current definitions. ATA supports the NPRM and believes that the changes will provide the industry with added flexibility and possible cost savings, while at the same time ensuring that drivers who abuse drugs are prevented from driving commercial motor vehicles.

ATA continues to be a strong supporter OST's efforts to harmonize the regulations with HHS Mandatory Guidelines. Since the Omnibus Transportation Employee Testing Act of 1991 which required drug and alcohol testing for employees in all modes of transportation, ATA has continually supported the move toward better testing, added flexibility, and stronger oversight of collection facilities and practices.

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 35,000 companies and every type and class of motor carrier operation.

While ATA supports the new guidelines, we also urge OST, in conjunction with HHS, to aggressively evaluate the use of alternative specimens, specifically hair, for drug testing. In particular, ATA continues to believe it is not only appropriate, but desirable, for OST to partner with ATA to undertake a pilot program with a limited number of motor carriers to evaluate the benefits of hair testing. We are confident that OST will find that hair testing is more reliable and less invasive than urine drug testing. We also urge OST to work with the Federal Motor Carrier Safety Administration (FMCSA) to create a national clearinghouse for non-negative test results for CMV drivers. ATA has been the leading advocate for the creation of a national clearinghouse, which motor carrier employers would be required to query during the pre-employment screening process. Adding hair testing and establishing a national clearinghouse would help make drug testing programs more effective and, as a result, make our national highway system safer.

II. Instrumented Initial Test Facilities (IITF)

The NPRM proposes to allow DOT employers the option of choosing between a full service laboratory and an IITF. An IITF would only be able to provide urine based test results to employers for negative and negative dilute specimens, as well as rejected specimens. All other specimens (e.g., samples that are positive during the initial screening test) would be forwarded to an HHS certified laboratory. Qualifying IITFs would be subjected to the NLCP certification process and would have to provide a semi-annual test report to employers, as appropriate.

ATA supports the use of IITFs and commends OST for giving employers added flexibility for testing employees. The addition of IITFs will naturally increase the number of drug testing facilities which, in turn, could lead to lower testing costs for motor carrier employers. Also, the resulting increase in geographic coverage of testing facilities could help motor carriers obtain test results more quickly.² ATA strongly supports the requirement that IITFs follow the same guidelines as full service laboratories with regard to HHS certification and semi-annual reporting to employers.

III. Drug Testing Changes

The NPRM proposes changes to the initial and confirmatory test cutoff concentration for cocaine, amphetamines, and opiates. OST proposes that cocaine be lowered to 150 (ng/mL) from 300 (ng/mL) for the initial test cutoff concentration and 100 (ng/mL) from 150 (ng/mL) for the confirmatory test. OST proposes that Methylenedioxymethamphetamine, a subset of amphetamines (MDMA- also know as Ecstasy) be added to the initial test cutoff concentration at 500 (ng/mL) and a confirmatory test cutoff concentration of 250(ng/mL), which would also include two subsets of MDMA (Methylenedioxyethylamphetamine [MDEA] and Methylenedioxyamphetamine [MDA]). Finally, OST proposes that 6-Acetylmorphines (6-AM),

² Currently, urine samples must be shipped from collection sites to laboratories for analysis. The distance between the collection site and the lab (and corresponding travel time) can cause delayed test results.

known as heroin, be added to the initial test. 6-AM is currently part of the confirmation test if a specimen contains morphine at a concentration level greater than or equal to 2000 (ng/mL).

ATA supports the proposed changes to the testing thresholds and the addition of MDMA to the testing protocol. Lowering the threshold levels and adding new drugs to both the initial and confirmatory tests will help detect the use of illegal drugs and prevent those who violate the prohibitions on drug use for operating commercial motor vehicles. ATA recognizes that these changes could result in an increase in the number of positive test results. Naturally, this increase in the industry testing rate will erroneously be perceived by some as an increase in illegal drug use by truck drivers. Nonetheless, ATA is strongly supportive of this change to the regulations as it will ultimately increase highway safety.

IV. Changes to Medical Recording Officers Requirements

The HHS Mandatory Guidelines will require that nationally-recognized MRO certification entities or subspecialty boards for medical practitioners in the field of medical review must have their qualifications, training programs, and examinations approved by HHS on an annual basis. The DOT is seeking comment on whether part 40 should require these groups be approved. Would the DOT program be better served if we sought a shared approval process with HHS?

ATA recommends that DOT include in Part 40 the HHS requirement that MRO certification entities and boards be approved on an annual basis. This proposal will help ensure the quality of MRO services. ATA also believes that DOT's testing program would be better served by an approval process that is shared with HHS. In short, HHS has many years of certification experience and could lend the benefit of that experience to the DOT testing program.

The DOT is seeking comment on whether part 40, at 49 CFR Part 40.121(d), should be amended by removing the requirement that MROs must complete 12 Continuing Education Units (CEUs) pertaining to DOT and MRO practices every three years, and instead require MROs to be recertified every five years by an MRO certification board or subspecialty board.

ATA supports the changes but recommends shortening the recertification cycle to 3 years, rather than requiring 12 CEUs every 3 years. CEUs are not directly tied to the MRO process and, as a result, may not be as valuable.

VI. Conclusion

ATA supports the NPRM and believes that the changes will improve safety while at the same time providing employers with added flexibility and potential cost. ATA also urges OST to more aggressively evaluate the use of alternative specimens and work closely with FMCSA to create a comprehensive drug and alcohol test clearinghouse.

Thank you again for the opportunity to file these comments.