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Jennifer A. Carpenter
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April 25, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

RE: Procedures for Transportation Workplace
Drug and Alcohol Testing Programs:
Addition of Oral Fluid Specimen Testing
for Drugs (Docket DOT-OST-2021-0093)

Dear Secretary Buttigieg:

The American Waterways Operators is the tugboat, towboat and barge industry's advocate, resource and united voice for safe, sustainable and efficient transportation on America's waterways, oceans and coasts. Our industry's 6,200 towing vessels and 33,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry supports more than 270,000 jobs in related industries nationwide. Each year, our vessels safely, securely and efficiently move more than 665 million tons of cargo critical to the U.S. economy.

On behalf of AWO's member companies, thank you for the opportunity to provide comments on the Department of Transportation's proposed amendment of transportation industry drug testing program regulations to include oral fluid testing. AWO members are deeply committed to safe operations and to maintaining a drug-free workplace for the safety of their crews, the waterways, and the public.

The option of oral fluid testing is critically needed to provide operators with additional flexibility to continue upholding that safety imperative. AWO fully supports the addition of oral fluid testing to the Procedures for Transportation Workplace Drug and Alcohol Testing Programs and provides further comments below in response to the Department's notice of proposed rulemaking.

1. **Oral Fluid Testing Provides Needed Flexibility and Cost-Savings**

The transportation industry increasingly faces challenges in navigating uniform, unequivocal federal drug testing requirements and a growing patchwork of state drug legalization decisions. The challenges are particularly acute when hiring new workers into federally regulated

transportation industries who are often unaware of the incongruence between federal and state rules.

The addition of oral fluid testing is an important and needed action to provide industry employers with additional tools for upholding safety and ensuring compliance. Principally, different windows of detection for oral fluid testing as compared to urine testing add flexibility for employers in choosing a testing option best suited to the reason for testing. Oral fluid testing also offers a sample collection method that can be less onerous for job applicants, current employees and employers while still providing the same level of efficacy as urine testing.

While not a primary driver of support for adding oral fluid testing, this option will also result in cost savings to employers. Not only is the test expected to be less expensive than urine testing, but the less invasive and time-consuming collection method and the ability for employers to train qualified collectors can also result in further operational cost savings. The transient nature of transportation workers often creates logistical challenges in obtaining and securing collections. However, the use of oral fluid testing coupled with internal qualified collectors can significantly mitigate those challenges and lead to additional cost savings for the transportation industry.

2. The Department Should Not Mandate or Prohibit Which Drug Testing Method is Used in Certain Testing Situations

The Department notes in its proposal that the Department of Health and Human Services, which evaluates the scientific basis of drug testing methods and establishes the Mandatory Guidelines for Federal Workplace Drug Testing Programs, determined in 2019 that:

“[t]he scientific basis for the use of oral fluid as an alternative specimen for drug testing has now been broadly established and the advances in the use of oral fluid in detecting drugs have made it possible for this alternative specimen to be used in Federal programs with the same level of confidence that has been applied to the use of urine.”

Since the Department of Health and Human Services has determined oral fluid testing provides “the same scientific and forensic supportability of drug test results” as urine testing, the Department should not seek to mandate or prohibit when employers can utilize either urine or oral fluid testing methods. While each testing method has differing windows of detection for certain classes of drugs, the soundness of both methods has been evaluated and their individual efficacy confirmed in detecting drug use. Therefore, restricting the use of one testing method that is equally as effective as another testing method would be an arbitrary constraint on regulated employers’ abilities to effectively implement drug testing programs with scientifically proven testing methods.

3. **The Department Should Permanently Allow Remote Evaluations by Substance Abuse Professionals**

The ability to regularly conduct remote evaluations by Substance Abuse Professionals (SAPs) is needed to ensure transportation workers have access to adequate care and resources. Some geographic areas, particularly more remote or rural areas, are only physically served by one, if any, SAP. That limited coverage forces transportation workers to expend additional time and money in seeking assistance from SAPs and becomes a discouraging factor and impediment to those workers.

While the COVID-19 public health emergency provided a clear impetus for temporarily allowing remote evaluations, advances in technology and the need to better serve transportation workers in all areas of the country support a decision to permanently allow remote evaluations without limitation to specific circumstances. Additionally, the requirements proposed by the Department adequately ensure that remote evaluations provide a similar level of interaction as face-to-face evaluations in allowing SAPs and transportation workers to understand both verbal and non-verbal elements of an evaluation. To further increase transportation workers' access to SAPs, the Department should allow maximum flexibility for an SAP to conduct remote evaluations of individuals outside of the SAP's locality. As a federal program, drug testing requirements for transportation workers already span jurisdictions; it follows that an SAP should likewise be able to conduct evaluations across jurisdictions, provided an SAP has the knowledge of programs and resources available for workers outside that SAP's locality.

Conclusion

The addition of oral fluid testing is a critical step forward to ensure the transportation industry has the necessary tools to sustain a drug-free workplace. The Department should act quickly to finalize the addition of oral fluid testing. The Department should also increase federal efforts, in coordination with the Department of Health and Human Services, to continue adding alternate testing methods with a particular focus on developing scientifically and forensically supported tests for drug impairment.

Thank you again for the opportunity to comment. AWO would be pleased to provide additional feedback or answer any questions as they arise.

Sincerely,



Jennifer A. Carpenter
President & CEO