



A bold voice for transportation workers

August 1, 2022

Bohdan S. Baczara
Deputy Director
Office of Drug and Alcohol Policy and Compliance
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Department of Transportation Drug and Alcohol Testing Data
DOT-OST-2022-0037**

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Department of Transportation's (DOT) request for information regarding drug and alcohol testing data. TTD consists of 37 affiliate unions representing workers across all modes of transportation.¹

DOT requests information to determine if there is a broader audience for certain publicly available modal drug and alcohol testing data, and whether and how to make the information more readily available.

Currently, pursuant to the Omnibus Transportation Employee Testing Act (OTETA) of 1991, DOT gathers this information from covered employers through its Management Information System. Employers are required to use the standardized, one-page "Drug and Alcohol Testing MIS Data Collection Form" (MIS Form) to submit the requested testing data.

Specifically, for each covered employee category, an employer is required to provide (1) drug testing data (number of verified negative tests, verified positive tests (for each drug), refusal to test results (adulterated, substituted, shy bladder, others), and cancelled results), and (2) alcohol testing data (number of screening tests above and below 0.02, number of confirmation tests above and below 0.04, refusal to test results (shy lung, others) and cancelled results) for each type of test conducted (*e.g.*, pre-employment, random, post-accident, reasonable suspicion/cause, return-to-duty, or follow-up).

¹ Attached is a list of TTD's affiliated unions.



As discussed more fully below, the MIS form collects the testing data by employer and employee category. However, because of the limits imposed by the SUPPORT ACT, the employer/employee categories are omitted and only aggregate data by mode is published.

Section 8103 of the SUPPORT ACT, titled “Department of Transportation Public Drug and Alcohol Testing Database” required DOT to, not later than March 31, 2019, establish and make publicly available on its website a database of the drug and alcohol testing data reported by employers for each mode of transportation, and update the database annually.

Specifically, for each mode of transportation, the database must include (1) the total number of drug and alcohol tests by type of substance tested; (2) the drug and alcohol test results by type of substance tested; (3) the reason for the drug or alcohol test, such as preemployment, random, post-accident, reasonable suspicion or cause, return-to-duty, or follow-up, by type of substance tested; and (4) the number of individuals who refused testing.

Mindful of privacy concerns and the potential for adverse consequences to employers and employees, the SUPPORT ACT excluded identifying the data by employer or employee. Thus, the completed MIS reports from each mode contains only aggregate data and do not contain any employee/employer specific information.

The DOT modal administrations and the U.S. Coast Guard use the drug and alcohol MIS testing data primarily to determine the random testing rate(s) for safety-sensitive employees in each industry for subsequent years. Specifically, each DOT modal administration and the USCG uses the random drug testing positive/refusal rate and the random alcohol testing violation rate, as applicable and respectively, from the prior year to determine the random testing rate in the following calendar year. The public MIS reports are available at: https://www.transportation.gov/odapc/DOT_Agency_MIS_Data

TTD has long supported efforts undertaken by DOT to ensure the highest level of safety across the nation’s vast transportation network. We understand that this mandate includes ensuring that transportation workers do not use drugs and alcohol in violation of DOT implemented rules which would undermine the safety of our transportation system. At the same time, any changes to drug testing rules must ensure that the program is fair, transparent, and subject to strict quality control procedures.

The data collected through drug and alcohol testing is intensely private information regarding an individual’s health, and this data must be safeguarded. Particularly because inaccuracies in this data can cause significant adverse effects, including termination of employment, DOT has a duty to protect workers.

As we have discussed in the past, DOT’s drug testing policy has changed over time as more accurate scientific information has been discovered. Before inaccuracies were corrected, employees in numerous cases experienced negative consequences. Given the rapidly evolving

landscape of legitimate prescription medications and testing capabilities, it is possible that future corrections need to be made to drug testing data.

We are therefore concerned about the possible deleterious effects to the millions of transportation workers that could come from making the MIS data available publicly. Reputational harm could be done to workers who have not used drugs or alcohol illegally if inaccurate data identifies certain crafts or classes of employees who have higher rates of positive drug tests.

We have no objection to DOT actions to better direct interested parties to its links for the publicly available aggregate data. However, we strongly oppose any efforts to make the employee group specific MIS information available to third parties other than through a formal FOIA process.

DOT should implement strategies to ensure that FOIA requests are being processed efficiently such as posting contact information for agency officials that can assist in processing FOIA requests and specific deadlines for responding.

TTD acknowledges that organizations or individuals may have valid reasons to use both aggregate and more detailed drug testing data to study, and we believe that the FOIA process can be used to meet these needs – so long as requests are processed in a timely manner, consistent with FOIA policies.

Drug and alcohol testing data is a critical tool that can validate or identify failures in the existing drug testing regime, and TTD encourages continued study and attention to ensure that workers and the public remain safe from the dangers of illegal drug use in safety-sensitive positions while providing worker protections to ensure that workers are not penalized for false infractions. While we acknowledge DOT's mandate to conduct drug testing to ensure transportation workers are not using alcohol or drugs illegally, further study of drug testing data may reveal more effective strategies to identify and prevent illegal substance use, such as employee intervention programs.

We appreciate the opportunity to comment on this matter and look forward to working with DOT in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Regan', written over a circular stamp or mark.

Greg Regan
President