

Transport Topic News

OMB to Review Hair Drug-Testing Proposal

Eric Miller June 11, 2019

ROCKVILLE, Md. --- A hair drug-testing proposed rule has been forwarded to the White House Office of Management and Budget for review, a top official with the U.S. Substance Abuse and Mental Health Services Administration said at a meeting June 11.

However, Ron Flegel, chairman of SAMHSA's Drug Testing Advisory Board, said that the notice of proposed rulemaking is months away from the public comment period.

SAMHSA is a sub-agency of the U.S. Department of Health and Human Services, which has final responsibility and authority for the rule. The Department of Transportation must follow the testing guidelines issued by HHS but can tailor some of the specific procedures, said Patrice Kelly, director of DOT's Office of Drug, Alcohol, and Compliance.

Because the hair-testing rule is a significant regulation, OMB will have from 60 to 90 days to review it, Flegel said.

After the proposal gains OMB approval, the rule will be sent to federal agencies for comment and review before it can be posted in the Federal Register for public comment.

The proposal already has missed a more than two-year-old congressional deadline for implementation without a reason given to Congress for the delay. However, Flegel said the hair-testing rule is only "close to the middle" of a multistep review process.

A large number of motor carriers already has been drug testing prospective employees using hair specimens, in addition to a DOT mandate to test using urine samples. Once the hair-testing guidelines are in effect, carriers would not be required to use urine samples.

Flegel said the advantages of hair testing include testers being able to observe specimen collection, making it difficult for an individual being tested to adulterate or substitute a test. Also, a hair test can detect use as recent as a week prior to collection and has a longer window of detection than a urine test.

In a presentation to DTAB, Flegel also said the agency is "relatively close to the end" of completing a final oral fluid drug-testing rule that could be published in the Federal Register as early as the end of the year.

"While we recognize the fairness, effectiveness and accuracy of urine tests, we also all realize that there is a tremendous cheating problem out there," Kelly said. "Oral fluids and hair offer great promise because both of them are observed collections and arguably in many cases are less intrusive."

Patrice Kelly, director of the U.S. Department of Transportation's Office of Drug, Alcohol, and Compliance

Kelly told the advisory board that a new panel to test truck drivers and other security-sensitive federal DOT employees for opioids implemented last year recorded a 1.01% positive test rate for the first half of 2018. However, the rate for the second half of 2018 is declining but yet to be calculated, she said.

“We are greatly encouraged by the fact that the line is now on the decline,” Kelly said. “It was not a surprise that opioids are a problem.”

Kelly said that marijuana use among DOT safety-sensitive employees has not been a huge problem since being legalized in some states.

“I do attribute that to the fact that we are very, very clear in our policy statements that medical review officers will not downgrade a positive test result for marijuana on the basis that it is medical marijuana.”

DTAB members also were updated on several developments within SAMHSA, including:

A number of agency studies are underway to assess the possible medical benefits of CBD oil derived from industrial hemp.

Discussions are underway at SAMHSA on whether to add fentanyl to federal drug-testing panels. Fentanyl deaths are on the rise, and the drug is becoming more accessible, said Ruth Winecker, a senior research forensic scientist at RTI International. However, safety issues are associated with testing for the drug, she said.

Marijuana state laws are being passed at a dizzying pace across the United States, but federal drug officials have not yet developed a legal standard to evaluate when an individual is impaired due to use of the drug, Kelly said.

“Marijuana issues are pretty complicated,” Kelly said. “We’re not anywhere near detecting a presence of marijuana standard.”

<https://www.tnews.com/articles/omb-review-hair-drug-testing-proposal>