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Delta Air Lines, Inc.  
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Atlanta, Georgia 30320-6001

February 25, 2000

Docket Clerk  
Attn: Docket No. OST-9906578 - 31  
Department of Transportation  
400 7<sup>th</sup> Street, S.W.  
Room PL40 1  
Washington, DC 20590

Dear Sir/Madam:

I submit the following comments on behalf of Delta Air Lines in regard to the Notice of Proposed Rulemaking (NPRM) of December 9, 1999 for consideration in developing the Proposed Revision to 49 CFR Part 40.

**Subpart G-Medical Review Officers (MROs)**

**40.145 How does the MRO notify employees of their right to a test of the split specimen or to a retest of a single specimen?**

Background

The NPRM allows testing of bottle B (split specimen) only when the MRO determines that bottle A is confirmed positive for a tested drug. While the Department argues in the NPRM background section that there are several reasons why the split specimen testing should continue to not be allowed in the case of adulteration or substitution findings, Delta Air Lines believes that split-specimen testing should be allowed for substituted specimens.

The Department offers an option for consideration in the NPRM of testing bottle A with two separate aliquots as an extra precaution, instead of allowing testing bottle B. Employers such as this commentor have been performing this safeguard for some time. Still, employees have difficulty understanding why an employee facing disciplinary action due to a “refusal to test” determination cannot have a recheck on bottle B, despite the fact that the Department apparently felt that such a safeguard was appropriate in the case of a positive determination.

Requiring yet a third recheck of bottle A by a new aliquot is offered as another option

by the Department in lieu of testing bottle B. This too would not satisfy the employee who is told that, although the Department felt testing bottle B was an appropriate safeguard in the case of a positive test, it refuses to allow such a recheck of a tampering finding.

Ultimately, the employee will accept the reliability of the process only if they know they will be allowed the choice of requesting a validity retest of the bottle B which was so carefully collected in the testing process. At the least such split specimen testing should be allowed in the case of substitution findings where laboratory technical issues do not exist which might lead to concern about potential false negative bottle B validity testing. Where there exists a scientific reason not to test bottle B, as the Department discusses with respect to adulterants, the Department should provide specific information regarding the technical reasons for prohibiting such testing. Allowing the retest of bottle B is offered by the Department in their second option for rechecking abnormal validity tests. As the Department observes, only this option gives the "refusal to test" employee the same ability to challenge a laboratory's primary specimen determination as an employee with a positive test for drugs.

#### Recommendation

The NPRM should include regulations directing the MRO to advise the employee that they have the opportunity to request repeat testing utilizing bottle B when validity testing is positive for substitution, as well as when they have a confirmed positive result.

Thank you for your consideration of these comments.

Sincerely,



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