

# BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

## NATIONAL DIVISION

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## VIA ELECTRONIC AND FIRST-CLASS MAIL

January 30, 2017

All Advisory Board Members  
All General Chairmen  
All State Legislative Board Chairmen

Re: Circular Letter Nos. AB-2017-02; GC-2017-03; SLBC-2017-02

Dear Sirs and Brothers:

On January 23, 2017, the Office of the Secretary of Transportation ("OST") published a Notice of Proposed Rulemaking ("NPRM") in the Federal Register, which proposes to revise the Department's Procedures for Transportation Workplace Drug and Alcohol Testing Programs published at 49 C.F.R. Part 40. I have enclosed a copy of the Federal Register publication for your information and files. Among the most significant changes proposed in the NPRM are the following:

- Four (4) opioids — hydrocodone, hydromorphone, oxycodone and oxycodone — will be added to the panel for Agency-regulated drug-testing programs, and may lawfully be used only via a valid prescription that complies with the requirements of the Controlled Substances Act.
- Methylenedioxyamphetamine ("MDA") will be added to the panel as an initial test analyte and methylenedioxyethylamphetamine ("MDEA") will be removed as a confirmatory test analyte.

The NPRM further states that the drug testing panel is being revised "to harmonize with the revised Mandatory Guidelines established by the U.S. Department of Health and Human Services ("HHS") for Federal drug-testing programs for urine testing." 82 Fed. Reg. 7771. OST further states that

... we also propose in this NPRM to modify (for clarification) certain existing Part 40 provisions that cover the handling of urine specimens; to remove provisions that no longer are necessary (such as obsolete compliance dates); and to add clarifying language to other provisions (such as updated definitions and web links where necessary.) The Department also proposes to remove existing Part 40 requirements related to blind specimen testing.

**All Advisory Board Members  
All General Chairmen  
All State Legislative Board Chairmen**

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**January 30, 2017**

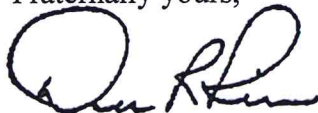
*Id.*

Finally, the NPRM proposes to add language to clarify 49 C.F.R. Part 40.331(f) to prohibit DNA testing of DOT-regulated urine samples. While at first glance it would appear to be a positive development that our members' urine cannot undergo DNA testing by the carrier or a third party, if one of our members contests in a court of law to have a positive sample test result DNA tested to prove the donor's identity, they may have difficulty in doing so should this language be adopted. Privacy concerns have been at the forefront of prior prohibitions on DNA testing; however, this prohibition may have the perverse effect of preventing a member from demonstrating that a misidentification has occurred.

We anticipate significant difficulty arguing against the inclusion of the additional opioids, and likely do not have a great probability for success in excluding them, particularly because the revisions are intended to "harmonize" Transportation Department requirements with those of HHS. Nevertheless, the National Division is preparing comments to file on or before the March 24, 2017 deadline, and if you have any thoughts or objections you wish us to consider including in those comments, please provide them to V. G. Verna, Director of Regulatory Affairs, on or before March 3, 2017.

Also, because it is important for you to be armed with the knowledge of these upcoming revisions so that you may effectively represent your membership, I would ask that the General Chairmen and the State Legislative Board Chairmen disseminate this information through their Committees and Boards, respectively. With warmest personal regards, I remain

Fraternally yours,

A handwritten signature in dark ink, appearing to be "Dan R. Kim", written over a horizontal line.

National President

encl.

cc: E. L. Pruitt, First Vice President (w/encl.)  
S. J. Bruno, National Secretary-Treasurer (w/encl.)  
V. G. Verna, Director of Regulatory Affairs (w/encl.)  
D. W. Davidson, Director of the Arbitration Department (w/encl.)  
M. S. Wolly, Esquire, General Counsel (w/encl.)