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Docket Operations  
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RE: Comments on "Electronic Signatures, Forms and Storage for Drug and Alcohol Testing Records" ANPRM  
Docket No. DOT-OST-2022-0027

The Aeronautical Repair Station Association (ARSA) submits these comments on the Department of Transportation's Advanced Notice of Proposed Rulemaking (ANPRM) "Electronic Signatures, Forms and Storage for Drug and Alcohol Testing Records" (Docket No. DOT-OST-2022-0027). The association's membership not only includes FAA-certificated repair stations subject to the drug and alcohol testing rules of 49 CFR part 40 and 14 CFR part 120, but also a wide range of aviation stakeholders responsible for producing, communicating, and maintaining essential aviation safety records.

The ANPRM explains that DOT seeks information regarding how various regulatory requirements can be amended to authorize the use of electronic forms, signatures, and record retention while protecting the confidentiality of information contained in those documents. ARSA urges the government to minimize or eliminate any limitations on methods for handling required records. Instead, the regulations should continue to focus on the information that must be documented and set standards for confidentiality in handling that data while remaining agnostic about technical specifics.

As currently written, 49 CFR §§ 40.[163](#), 40.[167](#), and 40.[311](#) focus on content and delivery of required reports and need little if any amendment to allow for electronic recordkeeping. A "written report" could satisfy the requirements of any of the sections regardless of the manner it is produced, communicated, or stored. The confidentiality requirements of subpart [P](#) prohibit service agents and employers from releasing information, mandating employers keep records "in a location with controlled access" (see, § 40.333([c](#))). A person required to comply with these rules has an opportunity to show compliance based on "controlling" access to any storage means or media.

Based on this general assessment, ARSA provides the following feedback to the specific questions in the ANPRM:

*(1) What are the practical impacts of authorizing a fully or partially electronic system?*

Allowing the broadest possible range of recordkeeping options permits compliance in ways that are most efficient and secure for the business and operational needs. Electronic systems, when

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preferable, can be used to automatically manage workflows, ensure completion, accuracy, and security of data, and confirm maintenance of data for regulatorily required periods of time.

*(2) What are the economic impacts of authorizing a fully or partially electronic system?*

Providing flexibility to both service agents and employers ensures each entity may best serve its own business and operational needs. Providing choice in selecting recordkeeping methods that secure and maintain data limits the cost burden of compliance by allowing companies to fulfill regulatory obligations in whatever manner is most efficient for their business.

*(3) How would confidentiality and system security be maintained to prevent against data breach and data loss?*

Regardless of the system(s) chosen by service agents and employers, there are options available for controlling access to information. Whether in a locked filing cabinet or a digitally secure database, the rules require protection of data and prevention of unauthorized access/distribution.

*(4) How many levels of authentication should be utilized to ensure the reliability and security of the signatures of program participants?*

As with any other part of the aviation safety system, the requirements for data control should be consistent with the risk associated with release. Ubiquitous systems have been used since the advent of regulations; the risk of exposure is no more or less for any one of them. Access to offices, cabinets, pens, papers, stamps, or any other method or media must be secured against unauthorized individuals or release.

*(5) How is the non-repudiation of a system ensured?*

Both paper and electronic communications provide options for non-repudiation, including read or delivery receipts on e-mail, submission confirmations in electronic repositories, certified delivery confirmations provided by the U.S. Postal Service, passwords, security keys, etc. Regardless of the method of authentication, wherever the rules require such confirmation be obtained sets the standard for the government compliance audit. Regulations must be performance-based, not proscriptive.

*(6) Are there any lessons learned or shared best practices available related to paperless non-DOT regulated testing?*

While not specific to testing, many of aviation safety organizations utilize some form of electronic records management. By focusing procedures on the results of required records management, e.g., accessibility, security, users can improve efficiency while getting the same value out of data availability. Ubiquitous software systems provide the required security, tracking, verification, audit capabilities, and results required by the government.

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*(7) Are there any limitations in either a paperless or electronic environment that impact program efficiency?*

This need not be the concern of this rulemaking effort or the government. Program efficiency is the interest of the service agent and employer in each individual case. DOT must focus on setting programmatic standards and ensuring needed data is captured and retained in a secured manner and let those required to comply with the rules choose attainment means and methods.

*(8) Would moving to a paperless system involve the creation of more labels and bar codes and use of additional packaging, etc., not required in a paper-based system. If so, are there any cost and/or efficiency impacts as a result?*

While the government must consider the costs of new requirements imposed, if DOT proceeds by allowing more options under its rules, then such additional costs can be the concern of those entities choosing to comply. As noted in response to (7) above, service agents and employers may weigh the burdens and benefits of their recordkeeping options.

*(9) What additional definitions would need to be added to part 40 to accommodate any electronic capabilities or a fully electronic system?*

None. The definitions in § 40.3 focus on substantive terms related to drug and alcohol testing programs. The rules should maintain this focus and not add unnecessary heft for the sake of addressing logistical matters.

*(10) What measures need to be established to ensure that, when documents are transmitted to multiple parties, each party is able to properly access and use the electronic system?*

The rules should continue to mandate that records “are easily accessible, legible, and formatted and stored in an organized manner” (see, § 40.333(e)). Adding detail to address transmittal and access is not necessary for regulatory language; inaccessible records would fail the basic standards of the rule, regardless of the methods of delivery utilized.

Further, many ubiquitous programs exist that ensure information is transmitted in a secure manner. Unless delivered by hand, paper record transmittal is more problematic.

*(11) Part 40 requires urine collectors and breath alcohol technicians (BAT) to prepare a memorandum for the record (MFR) when certain problems are encountered during the conduct of a drug or alcohol test under part 40. How would the MFR be created and transmitted to MROs, laboratories, and employers electronically?*

Sections 40.205 and 40.208, as currently written, do not proscribe delivery methods for MFRs. For example, § 40.205(b)(2) defines what must be included in the signed statement and sets a timeline for delivery (e.g., the same business day of problem notification) and states it must be “maintained” with the CCF. Those completing the memoranda aren’t required to use a certain

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Docket No. DOT-OST-2022-0027

form, or ink, or envelope in doing so – the standards for such documentation hold regardless of the means used to create the information.

*(12) Part 40 requires communication between MROs and the employee's physician regarding shy bladder situations, certain safety concerns, and opioids evaluations. Could these communications be handled electronically? If so, how?*

These communications could be handled in any number of acceptable ways, including traditional telephone exchanges, written documentation, or secured electronic messaging.

*(13) Should third parties (i.e., IT and security consultants, data management firms, etc.) play a role in maintaining electronic systems and transmitting data for employers? If so, to what degree?*

Service agents and employers may construct their drug and alcohol testing programs and related recordkeeping actions to suit their needs, while meeting the confidentiality requirements of subpart [P](#).

*(14) If records are kept electronically, and the business relationship ends, how would employers ensure that they have access to their electronic records if switching recordkeeping services, or if the service agent maintaining their electronic records goes out of business? Relatedly, how can employers ensure that records are not deleted, potentially leaving the DOT program participant without the records they are required to maintain under part 40?*

The same risks of loss apply to any recordkeeping system. Natural disaster or careless handling can cause the destruction of required records – which may lead to a violation of part 40 – in the same way poor attention to electronic procedures could cause the loss of data.

Service agents and employers must consider any/all risks related to their choices for showing compliance with the rules. DOT should uphold its substantive standards for compliance and allow the public to determine best logistics for meeting those requirements.

Sincerely,



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