

August 20, 2015

The Honorable Bill Shuster
Chairman
House Committee on Transportation and Infrastructure

The Honorable Peter DeFazio
Ranking Democrat
House Committee on Transportation and Infrastructure

The Honorable Sam Graves
Chairman
Highways and Transit Subcommittee
House Committee on Transportation and Infrastructure

The Honorable Eleanor Holmes Norton
Ranking Democrat
Highways and Transit Subcommittee
House Committee on Transportation and Infrastructure

Dear Chairman Shuster, Ranking Democrat DeFazio, and Subcommittee Chair Graves and Ranking Democrat Norton:

On behalf of the undersigned labor, medical professional, and civil rights organizations, we urge the Transportation and Infrastructure Committee to reject efforts to allow hair to be used for federal drug tests before the validity and reliability of this testing method can be determined by the Department of Health and Human Services. Specifically, we request that the current hair specimen testing proposals under consideration in Congress, including Section 32611 of the DRIVE Act (H.R. 22) and the Drug Free Commercial Driver Act of 2015 (H.R. 1467/S. 806), not be included in the House surface transportation bill.

When Congress enacted the Omnibus Transportation Employee Testing Act of 1991, it instructed the Department of Transportation (DOT) to create requirements for drug and alcohol testing and adopt the scientific and technical guidelines established by the Department of Health and Human Services (HHS). For decades, DOT has complied with this process, following the lead of HHS and incorporating its guidelines into the transportation testing requirements at 49 CFR Part 40. These DOT and HHS testing procedures have proven effective at identifying users of controlled substances and have enhanced the safety of both the truck and bus industry and the broader transportation system.

But Section 32611 of the DRIVE Act and the Drug Free Commercial Driver Act of 2015 reverse this longstanding process. Instead of allowing the experts at HHS to determine whether scientific and forensic evidence supports the use of hair specimen testing, these legislative proposals arbitrarily grant motor carriers the ability to use this unsubstantiated method of testing.

It is widely known that hair specimen can test positive for a drug that its donor was merely exposed to but never actually ingested. HHS has not established procedures that reliably and accurately distinguish drugs ingested by an individual from those found in the environment and absorbed by the hair. As a result, hair specimen runs serious risk of producing false positives. Studies also show that hair testing may have an inherent racial bias, as darker and more porous hair retains drugs at greater rates than lighter hair. And recently, a federal court of appeals held that Boston police officers subject to hair testing for illegal drugs had proven, “beyond reasonable dispute,” a prima face case that the testing program caused a disparate impact on the basis of race in violation of the Title VII of the Civil Rights Act of 1964.

Further, as a result of unproven advocacy arguments advanced by proponents of hair testing, carriers that choose to continue testing the only HHS-approved specimen (urine) may be labeled as ‘less safe’ than those testing hair. To avoid such unfair mischaracterization and potential liability risks, carriers may effectively be forced to begin testing both specimens. Additionally, the high likelihood of false positive results will increase carriers’ administrative burden as well, in order to spend additional time evaluating existing or current employee test results.

The process Congress established years ago has created drug testing standards that are not only effective, but scientifically and forensically sound. Any changes to these standards must be backed by similar evidential support carefully studied by the experts with such authority. HHS previously reviewed hair specimen, identifying external contamination and hair color as performance standards that need to be sufficiently addressed. Currently, HHS is reviewing the scientific supportability of hair testing, and Congress should permit that assessment to take place. Any effort to immediately permit hair testing circumvents this important process.

Accordingly, we respectfully request that the House surface transportation bill not include the hair specimen testing language in Section 32611 of the DRIVE Act (H.R. 22) or the Drug Free Commercial Driver Act of 2015 (H.R. 1467/S. 806).

Sincerely,

American Civil Liberties Union
Association of Flight Attendants-CWA
Air Line Pilots Association
American Medical Review Officers, LLC
American Train Dispatchers Association
Amalgamated Transit Union
Brotherhood of Railroad Signalmen
International Association of Machinists and Aerospace Workers
International Brotherhood of Teamsters
Jewish Alliance for Law and Social Action
Lawyers’ Committee for Civil Rights and Economic Justice
National Air Traffic Controllers Association
National Workrights Institute
Sheet Metal, Air, Rail and Transportation Workers-Transportation Division
Sailors’ Union of the Pacific

Transportation Trades Department, AFL-CIO
Transport Workers Union of America
United Steelworkers