

February 24, 2006

Ms. Sandra Bushue
Deputy Administrator
Federal Transit Administration
400 7th Street, SW
Washington, DC 20590

**Re: Petition to Reconsider;
Notice of Random Drug and Alcohol Testing Rates; 71 FR 5109**

Dear Deputy Administrator Bushue:

On behalf of the Amalgamated Transit Union (ATU), the Transport Workers Union of America (TWU) and the Transportation Trades Department, AFL-CIO (TTD), we are writing to request that the Federal Transit Administration (FTA) reconsider its decision, published in the *Federal Register* on January 31, 2006, to maintain a random drug testing rate of 50 percent for 2006.

ATU is a labor union representing 140,000 transit employees across the country. TWU represents an additional 130,000 transportation employees nationwide. TTD, through 29 affiliated unions¹, represents millions of workers in the transit, highway, aviation, rail and maritime sectors.

Initially, we want to take this opportunity to clearly state that transit labor does not condone substance abuse. It is well recognized that impaired workers can pose a risk to themselves, their co-workers and the public. Rest assured, we are dedicated to educating our members about these dangers. Nonetheless, we strongly believe that any drug and alcohol testing program must carefully consider the legitimate privacy interest of transit employees and should only intrude upon those interests to the extent necessary to address public safety concerns.

Congress and the FTA acknowledged the need to minimize the intrusion on employees' privacy by granting the Administrator the authority to lower the random drug and alcohol testing rates when presented with data showing a low violation rate. Specifically, 49 C.F.R. 655.45(c)(1) states that:

...the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data...for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

¹ A list of unions affiliated with TTD is attached.

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In the *Federal Register* notice referenced above, FTA announced that the random drug testing rate for 2006 would remain at 50 percent, despite drug testing data showing that the “positive rate” for 2003 and 2004 (the most recent available data) was lower than 1% for both years - 0.96% for 2003 and 0.89% for 2004.

FTA cites the “proliferation of products to defraud the USDOT urine screens” as its reason for refusing to lower the random drug testing rate, stating that this has an "adverse impact ... on reported random rates and the reliability of those results." While FTA is assuming that a significant number of transit employees across the U.S. are attempting to defraud the Department of Transportation (DOT) drug tests, FTA’s own data points to the opposite conclusion.

Since 2001, DOT regulations have allowed laboratories to conduct validity testing on urine specimens to determine if those specimens have been substituted or adulterated. Transportation labor has worked with DOT to ensure that the due process rights of workers are maintained in the development of validity testing regulations and we have closely tracked the implementation of this process. While validity testing has just recently been made mandatory by the DOT, a significant percentage of employers and laboratories have conducted these additional screenings since 2001. In fact, in an October 31, 2005 *Federal Register* notice DOT confirmed that in 2005, an estimated 95 percent of industry specimens were already being tested for specimen validity.²

For the past four years, the results of these validity tests have been reflected in the FTA’s drug testing data, with adulterated or substituted specimens reported as positive results. Even with the addition of validity testing, the positive rate has continued to decline, clearly showing that not only are fewer employees testing positive, but few employees are attempting to defraud the tests.

It is also significant to note that other modal agencies within DOT, including the Federal Railroad Administration and the Federal Aviation Administration, faced with the same evidence as FTA, and the availability of products to defraud DOT tests, have lowered their random testing rates in response to low rates of positive results among employees.

In light of the above, we urge FTA to reconsider its decision in this matter and to lower the random drug testing rate to 25 percent of covered employees. To do otherwise is an unwarranted intrusion on the privacy rights of transit employees and an unnecessary administrative burden on employers.

² 70 CFR 62278

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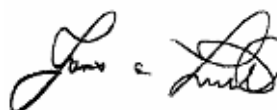
Transit labor is committed to protecting the safety of the general public and the health and safety of its members. At the same time, we remain devoted to protecting the privacy and collective bargaining rights of our members, as well as the safeguards necessary to instill both confidence and compliance with government requirements and protocols.

Thank you for considering this petition. We look forward to your prompt response.

Sincerely,



Warren S. George
International President
Amalgamated Transit Union



James C. Little
Acting President
Transport Workers Union of America



Edward Wytkind
President
Transportation Trades Department, AFL-CIO

cc: The Honorable Norman Mineta, Secretary, U.S. Department of Transportation
Jerry Powers, Drug and Alcohol Program Manager, FTA Office of Safety and Security