



August 12, 2008

Ms. Patrice Kelly
Acting Deputy Director of Policy
Office of Drug and Alcohol Policy and Compliance
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Procedures for Transportation Workplace Drug and Alcohol Testing Programs: State Laws Requiring Drug and Alcohol Rule Violation Information Docket No. OST-2008-0184, Interim Final Rule

Dear Ms. Kelly:

The Transportation Trades Department, AFL-CIO (TTD)¹ is pleased to submit this letter in response to the Department of Transportation's (DOT) request for comments on the above captioned interim final rule.

The amendments to the drug and alcohol testing procedures, which authorize employers to respond to state law requirements to disclose positive drug test result information to state commercial driver licensing (CDL) authorities without the written consent of the employee, raise serious concerns. We recognize that impaired workers can pose a risk to themselves, their co-workers and the public. However, we strongly believe that without the appropriate safeguards in place, DOT should not permit employers to disclose positive drug test results without the written consent of the employee. Any drug and alcohol testing program must carefully consider the legitimate privacy interest of transportation employees and should only intrude upon those interests to the extent necessary to address public safety concerns.

DOT must ensure that state law provides the same protections and limitations as the federal DOT drug and alcohol testing laws before authorizing employers to disclose positive drug test results to state CDL authorities. Federal regulations state that the drug and alcohol testing records are maintained in an individual's driver record for no more than two years.² DOT must ensure that

¹ TTD, which consists of 32 affiliated unions, is the transportation labor umbrella of the AFL-CIO. A complete list of TTD affiliated unions is attached.

² 49 CFR §40.25 requires employers to obtain an employee's written consent prior to requesting information from other DOT-regulated employers who have employed a worker during any period during the previous two years concerning that employee's performance on alcohol and drug tests.

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President • Patricia Friend, Secretary-Treasurer

states with laws requiring employers to disclose positive drug test result information to CDL authorities must also have laws consistent with the federal two year look back. Otherwise, transportation workers may be held to separate and uncoordinated standards.

This interim final rule neither addresses what occurs after employers disclose positive test results to state CDL authorities, nor what recourse a worker has should he or she be mistakenly reported to state CDL authorities. First, because the amendments to 49 CFR Part 40 in this interim final rule waive the requirement of an employee's written consent prior to disclosing a positive test result,³ states should notify individuals upon receipt of a positive test result from an employer. Additionally, a worker must have the ability to offer any corrections to the information contained in their driver record and be able to remove incorrect information. Finally, DOT must ensure that once an employee has successfully completed the DOT Return to Duty process, drug and alcohol testing results are purged from his or her driver record. Prior to authorizing employers to respond to state law requirements to disclose positive test result information, DOT must make certain that the state has such safeguards in place.

Thank you in advance for consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized flourish at the end.

Edward Wytkind
President

³ 49 CFR §40.25(a) states that "... as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)