



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Mathew M. Sturges, Staff Director

February 21, 2017

Katherine W. Dedrick, Democratic Staff Director

Daphne Y. Jefferson
Deputy Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

RE: Docket No. FMCSA-2017-0002

Dear Ms. Jefferson:

We write to urge you to deny the petition recently submitted by several motor carriers requesting an exemption from certain controlled substances testing requirements outlined in 49 CFR 382.105 and 49 CFR 382.301. These carriers have asked FMCSA to allow the use of hair testing in lieu of urine testing for pre-employment controlled substances testing of commercial driver's license holders. To permit hair testing to be used before scientifically-proven standards have been established by the U.S. Department of Health and Human Services (HHS) would be premature and would contradict the clear intent of Congress.

Congress addressed the issue of hair analysis in the Fixing America's Surface Transportation Act (FAST Act; P.L. 114-94). Section 5402 of the FAST Act requires HHS to issue standards for testing hair samples for the presence of controlled substances. Once such standards are issued, the FAST Act authorizes the Secretary of Transportation to issue regulations that permit the use of hair testing as an acceptable alternative to urine testing. To prevent any confusion about the interpretation of section 5402, the FAST Act Conference Committee included the following language in the Joint Explanatory Statement that accompanied the legislation's conference report (H. Rept. 114-357):

The FMCSA has informed the conferees and the conferees agree that nothing in section 5402 authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human Services establishes federal standards for hair testing.

HHS has established testing protocols and cutoff concentrations for urine controlled substances testing. HHS is in the process of establishing comparable standards for hair testing but has not yet completed its work on the issue. The agency has requested information from the public

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and the scientific community regarding the influence of hair treatments (shampoo, coloring, relaxers, etc.) on test reliability, proper hair decontamination procedures, drug concentration cutoffs, and training standards for testing collectors, among other issues. Allowing carriers to fulfill Federal drug-testing requirements with hair samples in the absence of rigorous guidelines from HHS is unwise. We urge you to deny the petition.

If you need additional information or have questions regarding this letter, please contact Andrew Okuyiga of the Committee staff at (202) 225-9989. Thank you for your consideration.

Sincerely,



PETER DeFAZIO
Ranking Member



ELEANOR HOLMES NORTON
Ranking Member
Subcommittee on Highways & Transit

cc: Larry Minor, Associate Administrator for Policy
Thomas Yager, Chief, FMCSA Driver and Carrier Operations