



*A bold voice for transportation workers*

April 25, 2017

Mr. Thomas Yager  
Chief, FMCSA Driver and Carrier Operations Division;  
Office of Carrier, Driver and Vehicle Safety Standards  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**RE: Notice of Application for Exemption and Request for Comments  
Controlled Substances and Alcohol Use and Testing: J.B. Hunt Transport,  
Inc., Schneider National Carriers, Inc., Werner Enterprises, Inc., Knight  
Transportation, Inc., Dupre Logistics, Inc. and Maveric Transportation, LLC  
Application for Exemption  
Federal Motor Carrier Safety Administration  
Docket No. FMCSA-2017-0002**

Dear Mr. Yager:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write in opposition to the petition that several truck companies jointly filed with the Federal Motor Carrier Safety Administration (FMCSA). By way of background, TTD consists of 32 affiliate unions that represents workers in all modes of transportation and are subject to the Department of Transportation's (DOT) drug and alcohol testing standards.<sup>1</sup> This includes members who work in the bus and truck industries and who comply with FMCSA's testing regulations. We therefore have a vested interest in this proceeding.

The truck companies' petition seeks exemption from 49 CFR 382.301, FMCSA's regulations governing pre-employment controlled substances testing, and from 382.105, requiring that employers' drug (and alcohol) testing programs comply with the procedures of DOT's Part 40 standards. The petitioners seek these exemptions so that they can test prospective employees' hair specimen, in lieu of urine specimen, in pre-employment drug tests.

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<sup>1</sup> Attached is a complete list of TTD's 32 affiliate unions.

**Transportation Trades Department, AFL-CIO**

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer

At the outset, we reconfirm transportation labor's commitment to ensuring the highest level of safety across our transportation system. We recognize that an important component of that standard is maintaining a drug-free workforce, and the workers represented by TTD affiliates are dedicated to upholding that principle. TTD unions also share in this commitment by operating effective programs on drug and alcohol education, prevention, and elimination.

TTD opposes this petition because there remains unresolved concerns that hair testing poses a high risk of producing false results and bias that make it incapable of reliably and accurately measuring the amount of a purposely ingested drug. Hair specimen has not been approved for use as an alternative specimen and thus should not be permitted in federal drug tests. Additionally, because this petition seeks to use a test not currently permitted, the important standardization and protection measures codified at 49 CFR Part 40 would not apply to nearly the 50,000 workers who would be impacted by the petition. As a result, there would be a severe inconsistency among the millions of transportation workers who comply with federal drug testing regulations. For these reasons, elaborated on below, we strongly urge FMCSA to reject this petition.

Given that passing a DOT drug test is a condition for employment, DOT and FMCSA must have complete confidence in the accuracy and reliability of that test result. Historically, DOT and FMCSA have relied on the experts at the Department of Health and Human Services (HHS) to accomplish this by adhering to the process Congress set in the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act). The Omnibus Act requires DOT to establish drug (and alcohol) testing standards by adopting HHS scientific and technical guidelines and then promulgating regulations applicable to the transportation workforce. For decades, DOT and FMCSA have complied with that mandate, developing drug testing standards rooted in HHS's Mandatory Guidelines for Federal Workplace Drug Testing Programs.

To date, the only specimen that HHS (and thus DOT/FMCSA) permits in federal drug tests is urine. Urine testing was developed after more than a half-century of scientific scrutiny and research, establishing widely accepted knowledge of how drugs are excreted into urine. Urine testing is highly standardized, evidenced by DOT's and FMCSA's comprehensive drug testing regulations that specify each step of the testing process, training requirements for those administering the test, and protections for workers.

Despite the success of this process and urine specimen testing, the petitioners seek to circumvent the experts at HHS and begin testing hair immediately. Not only would this reverse decades of established policy on how changes to drug testing are implemented, but it is in direct violation of how Congress addressed this issue in the recently completed FAST Act. The Senate-passed version of this bill included a provision that would have allowed motor carriers to seek an exemption from FMCSA standards so that they could begin hair testing. The final bill rejected this approach and instead adopted House-passed language on hair testing. What became Section 5402 of the FAST Act directs HHS to issue scientific and technical guidelines on hair testing and permit bus and truck companies to perform pre-employment hair tests *after* HHS issues those standards. The

accompanying explanatory language plainly states that: “[t]he 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 Department of Health and Human Services establishes federal standards for hair testing.”<sup>2</sup>

In short, the industry is now asking FMCSA to allow a hair testing exemption that was specifically rejected by Congress. We should also note that DOT/FMCSA weighed in on this debate. In a November 2015 letter to Congress, DOT/FMCSA stated that, while both the House and Senate versions caused inconsistency on the drug testing requirements across the modes by permitting hair testing among motor carriers, “[t]he Senate provision is highly problematic.”<sup>3</sup> It continues, “FMCSA supports the House provision which tasks HHS with first establishing scientific and technical guidelines on hair testing.”<sup>4</sup>

It is also important to note that in 2004, HHS issued a proposal that would have established hair as an alternative specimen in drug tests.<sup>5</sup> However, after four years of consideration, HHS rescinded that proposal, writing that, “[w]ith regard to the use of alternative specimens including hair...significant issues have been raised by Federal agencies during the review process which require further examination, and may require additional study and analysis.”<sup>6</sup> The same concerns that caused HHS to withdraw that proposal remain today.

We also note that in several places in their petition the truck companies state that this exemption would alleviate their financial burden of having to pay for urine testing while electing to pay for hair testing. While we understand that the Petitioners have a financial incentive to seek this exemption, this does not overcome the inherent flaws in hair testing that we establish below. Furthermore, the Petitioners’ internal data concerning post-accident hair test rates is not included in the petition and thus are not subject to review by entities other than the carriers themselves.

### **External Contamination**

The Omnibus Act directs DOT to test workers for the illegal *use* of drugs. It is therefore necessary that federal drug tests reliably and conclusively prove that the presence of drugs is the direct result of the donors self-administering the drug and not because they were merely exposed to drugs. In the case of hair specimen, however, this is not possible.

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<sup>2</sup> H. Rept. 114-357 (conference report), page 506.

<sup>3</sup> Secretary Foxx Letter to Chairman Shuster, November 13, 2015, Appendix Page 2.

<sup>4</sup> *Id.*

<sup>5</sup> Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, Proposed Revisions to Mandatory Guidelines for Federal Workplace Drug Testing Programs. April 13, 2004, 69 FR 71, 19673-19732.

<sup>6</sup> Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, Mandatory Guidelines for Federal Workplace Drug Testing Programs, Revised Guidelines. November 25, 2008, 73 FR 228, page 71858.

This is because hair can become contaminated from illicit substances found in the environment. Evidence shows that drugs are found in common public spaces like airports and even schools. These substances can be involuntarily ingested or transferred and imbedded into hair through “dust, smoke, contaminated hands, sweat, or sebum.”<sup>7</sup> Some hair testing laboratories, but not all, employ washing techniques aimed at removing external contaminants; however, it is widely held that such wash procedures are not capable of removing all contaminants, and that the quality of the wash procedure differs between labs. Notably, even the labs themselves acknowledge this, with a leading lab making the claim that its washing procedures have been documented to be superior at removing contaminants than different procedures employed by other labs.<sup>8</sup> The result of this technical difference in washing procedure means that an individual’s employment may hinge solely on which lab the motor carrier uses and which method that lab employs. This arbitrary impact is unacceptable in a federal drug test.

HHS acknowledged external contamination in its 2004 notice, stating that while washing procedures may remove some contaminants, testing for a metabolite that conclusively proves ingestion would allow labs to differentiate contamination from self-administration of the drug.<sup>9</sup> With the exception of marijuana, such unique markers of ingestion do not exist for the drugs that DOT screens for. And previous claims of identifying such unique markers for other drugs have been proven wrong.

Without a unique marker of ingestion or a method capable of fully removing contaminants, it is possible for hair donors to test positive for a drug they did not purposely ingest. In fact, in a 2009 study, contaminated hair samples tested positive for cocaine, even after being decontaminated, at the cutoff levels proposed by HHS in 2004.<sup>10 11</sup> In other words, individuals could have falsely tested positive had HHS’s proposal been enacted.

As a result of the 2009 study, the FBI Laboratory “decided to suspend cocaine analyses in hair for most cases,” given that the study suggested that “positive results could be obtained from contaminated hair samples, even when using the proposed SAMHSA [HHS] guidelines for

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<sup>7</sup>Bjoern Moosmann, et al, Hair Analysis for THCA-A, THC, and CBN After Passive *in vivo* Exposure to Marijuana Smoke, Wiley Online Library, February 2013, page 1.

<sup>8</sup> On its website, Psychemedics states that “Numerous studies have demonstrated the effectiveness of the Psychemedics wash procedure and the ineffectiveness of others.”

<sup>9</sup> Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, Proposed Revisions to Mandatory Guidelines for Federal Workplace Drug Testing Programs. April 13, 2004, 69 FR 71 19673-19732, page 19675.

<sup>10</sup> Jeri D. Roper-Miller and Stout, Analysis of Cocaine Analytes in Human Hair: Evaluation of Concentration Ratios in Different Hair Types, Cocaine Sources, Drug-User Populations, and Surface-Contaminated Specimens, January 2009, page 60.

<sup>11</sup> The same study also found that three cocaine analytes that are frequently tested for can be produced during the cocaine-production process, meaning these substances are not conclusive indicators of ingestion. As a result, the use of cocaine/analyte ratios “confound” the ability to distinguish contamination from ingestion. *Id.*

interpretation.”<sup>12</sup> While elaborated below, we note that the petitioners propose to use those same cutoff levels in their pre-employment tests.<sup>13</sup>

The threat of external contaminants impacting a test result is particularly troubling in hair testing because the thresholds at which labs test for drugs in hair is extremely small – at the nanogram and picogram levels. For example, when testing urine for marijuana, the DOT cutoff level for confirmatory testing is 15ng/ml, whereas the proposed cutoff level for hair is .1pg/mg or one-tenth of 1 part per trillion. Thus, even the slightest remains of passive contamination could cause a worker to test positive for a drug she or he never ingested.

### **Hair Color, Treatments, and Disparate Impact**

Other factors unrelated to drug use can also influence hair tests, including natural qualities and treatment of hair. As a result, hair tests are incapable of treating all individuals equally.

For example, cosmetic treatments such as dying or straightening can impact the absorption of drugs. Similarly, hair color can impact the retention of drugs. Specifically, some drugs bond at greater rates to melanin (which gives hair its color), causing higher drug concentrations in those with darker hair than those with light hair. One study found that darker hair may be responsible for 80% variation in detectable codeine levels.<sup>14</sup> Another found that cocaine bound to African American male hair more than 50-fold greater than it bound to Caucasian blond female hair.<sup>15</sup> There is no shortage of studies showing that hair color impacts test results.<sup>16</sup>

In light of this evidence, there are concerns that hair testing has an inherent bias that treats some workers differently from others. While some may dismiss this, ongoing litigation in federal court demonstrates this is a serious concern that must be resolved.

A group consisting of eight Boston Police Department (BPD) officers, one cadet, and one applicant who are African Americans sued the BPD arguing that the hair testing program it used for hiring and terminating purposes had a disparate impact on African Americans in violation of the Civil Rights Act of 1964. As part of their case, the plaintiffs presented eight years of the BPD’s drug

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<sup>12</sup> FBI Laboratory Letter to the Editor, *Journal of Analytical Toxicology*, Vol. 33, July/August 2009, page 1.

<sup>13</sup> Administrative Procedures for Hair Testing Petition, submitted by petitions and located in docket number FMCSA-2017-0002, page 3.

<sup>14</sup> Robert Kronstrand, et al., “Codeine Concentrations in Hair after Oral Administration is Dependent on Melanin Content,” *Clinical Chemistry*. Vol. 45 (1999): 1493.

<sup>15</sup> Robert E. Joseph, et al, In Vitro Binding Studies of Drugs to Hair: Influence of Melanin and Lipids on Cocaine Binding to Caucasoid and Africoid Hair, *Journal of Analytical Toxicology*, Volume 20, October 1996, page 343.

<sup>16</sup> Among many other available resources on this topic, we point the agency to the following:

- a) Douglas E. Rollins, Expert Report for the Plaintiffs, May 27, 2010, submitted 01/12/2015 in United States District Court for the District of Massachusetts in *Jones et al. v. City of Boston et al.* 1:05-cv,-11832DPW at 17.
- b) J. Michael Walsh, Expert Report filed for the Plaintiffs, US District Court of Massachusetts, Ronnie Jones et al v. City of Boston et al, page 10 and the various studies referenced therein.
- c) Medical Review Officer Handbook, Comprehensive Resource for Substance Abuse Testing Process, Theodore F. Shults, 10<sup>th</sup> Edition, April 2014, Chapter 3.

test results that demonstrated a statistical significance in the difference in rates at which African Americans tested positive for cocaine compared to their Caucasian counterparts.

In May 2014, the US Court of Appeals for the First Circuit found that the “difference in outcomes...were not random” and that, “we can almost be certain that the difference in outcomes associated with race over that [eight year] period cannot be attributed to chance alone.”<sup>17</sup> The Court held that the plaintiffs proved “beyond reasonable dispute a prima facie case of disparate impact under Title VII” of the Civil Rights Act of 1964.<sup>18</sup>

A testing method shown to have a disparate impact has no place in a federal drug test.

### **Lack of Standardization**

Today, there is virtually no standardization among hair testing programs currently in place. While labs performing hair testing conceal much of their information under proprietary protection, publicly available information shows vast inconsistencies in current hair testing practices. Labs collect different amounts of hair and from different locations, they boast superiority of their version of external decontamination wash procedures and analysis of the wash solution,<sup>19</sup> they use various methods to analyze hair specimen,<sup>20</sup> and they even use different cutoff levels at which a test result is considered positive. All these variations have real impacts on the individuals being screened, and as we have seen, these differences can cause the same individual to test positive under one testing scheme and negative under another.<sup>21</sup>

On the other hand, urine specimen testing is highly standardized by the regulations that DOT and FMCSA enforce (Part 40 and 382). Together, these regulations govern every step of the urine testing process, from collection and treatment of the specimen, qualification standards for those involved in the testing, to vital worker protections, and lab certification requirements. These comprehensive regulations help eliminate variances in how specimen are treated, thereby ensuring that all workers’ specimen are handled in identical manners.

The petitioners seek exemption from 49 CFR 381.105 which requires employers to ensure their testing programs comply with Part 40. It is clear that granting this petition would prevent the Part 40 standardization and protection requirements from applying to almost 50,000 workers, making them vulnerable to flaws in every step of the hair testing process. For the reasons provided below,

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<sup>17</sup> *Ronnie Jones, et al. v. City of Boston, et al.* No 12-2280 (1<sup>st</sup> Cir. 2014), page 11.

<sup>18</sup> *Id. at 47.*

<sup>19</sup> [http://www.accessdata.fda.gov/cdrh\\_docs/reviews/K042726.pdf](http://www.accessdata.fda.gov/cdrh_docs/reviews/K042726.pdf)

<sup>20</sup> [http://www.smccmonroe.com/s/1450/images/editor\\_documents/drug\\_alcohol\\_policy/psychomedics\\_patented\\_hair\\_analysis\\_method\\_info.pdf?no\\_cookie=1](http://www.smccmonroe.com/s/1450/images/editor_documents/drug_alcohol_policy/psychomedics_patented_hair_analysis_method_info.pdf?no_cookie=1)

<sup>21</sup> Several police officers challenged their termination from the Boston Police Department after having falsely tested positive on hair tests. In its decision which reinstated several of those officers, the Massachusetts Civil Service Commission considered the procedures used by the lab that performed the hair tests. Those procedures changed over time, and depending on which was used and when, several of the officers who tested positive would have tested negative. *Re Boston Police Department Drug Testing Appeals*, Massachusetts Civil Service Commission, February 29, 2013, Page 109.

we object to the petitioners' claim that no adverse impact would be made to non-drug using drivers. These same reasons make this petition unacceptable.

#### Proposed Treatment of Hair: Procedure and Disproven Proposed Cutoff Levels

In the Administrative Procedures document, the only specification given about how the hair samples will be treated is a statement that the test will use a "validated wash procedure." As indicated above, wash methods vary across hair testing labs, and these labs claim their procedures are superior while others' methods are ineffective. Regardless of the procedure used, it is widely held that no current washing procedure is capable of fully removing external contaminants. This is problematic given that hair tests screen for miniscule levels of drug, meaning even the smallest amount of remaining contaminants could trigger a false positive result. Further, given that HHS does not approve the use of hair specimen and therefore no regulations exist, no 'validated' procedures exist.

As identified in the Administrative Procedures document, the petitioners indicate they will test for synthetic narcotics and derivatives, including hydrocodone, hydromorphone, oxycodone, and oxymorphone. None of these are covered by current DOT drug testing regulations. While entities are permitted to test for drugs beyond those required by regulation, it is problematic that these be included in a federal drug test given that even a minimal trace of external contaminants could cause a positive hair test. We also note that DOT has recently published a proposed rule on adding these specific drugs to its testing panel (Docket DOT-OST-2016-0189)<sup>22</sup> and we believe that DOT should come to a final determination on the utility of testing for these drugs before they are permitted here.

Further, that same document specifies the cutoff levels the petitioners plan to use to determine results on initial and confirmatory tests. With regard to the opiate and metabolite levels specified at (4)(a)(3), petitioners propose a positive cutoff at 200pg/mg. This would trigger a positive result for the presence of a considerably lower quantity of drug than the 500pg/mg cutoff level used by some hair testing labs. In other words, under this testing scheme, individuals are more likely to test positive for opiates.

Additionally, the petitioners identify the confirmatory cutoff levels for cocaine and its metabolites at (5)(2). As mentioned above, these levels are identical to the levels proposed by HHS in 2004 which, as demonstrated by the Roper-Miller and Stout study, are levels at which someone could falsely test positive due to external contamination. To reiterate, that study found that CE, NCOC, and BE (three of the metabolite listed by the petitioners) can simply be by-products of the manufacturing process and that the 2004 proposed cocaine/metabolite ratios – adopted here by the

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<sup>22</sup> Department of Transportation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments, January 23, 2017.

petitioners - cannot distinguish contamination from use.<sup>23</sup> It is inappropriate for FMCSA to permit the use of measures proven capable of producing false positive results.

#### Inadequate Driver Consent and Privacy Protections

Part 40 includes a number of standards that help workers' information remain private and ensure the identity of specimen is secure. Both of these standards are lost under this petition.

While the petition indicates the use of "strict custody and control form protocols" in testing procedures, neither the petition nor Administrative Procedures document describe this requirement in detail. It is unclear how such a form would compare to the Federal Drug Testing Custody and Control Form that make sure specimens are not wrongly attributed to another donor. Additionally, current Part 40 regulations specifically prohibit employers from releasing individuals' test results or medical information to third parties without the employees' written consent. With exemption from Part 40, petitioners would have no obligation to keep workers' personal information confidential. And no consideration is given to privacy and confidentiality issues among the list of proposed protections on page 11 of the petition.

#### Precarious Absence of Lab Oversight

Compounding the issues caused by differing practices is a lack of oversight of hair testing labs. Currently, under Part 40 regulations, only labs certified by HHS under the National Laboratory Certification Program (NLCP) may participate in the drug testing program. By using labs that are not certified under the NLCP, the protections granted by having a strong HHS-run oversight program are lost. The applicants offer no substitution for this oversight body, placing the duty of oversight with the labs. It is unacceptable that the only guarantor of the integrity of the labs is the lab themselves given the impacts drug testing may have on employees. The safeguards offered by the NLCP system are critical to a fair drug testing process and would be sacrificed if this petition were granted.

Additionally, we note that labs have held forth FDA 510(k) certification as evidence of the efficacy of the hair testing procedures. However, 510(k) only refers to the "Premarket Notification" requirement; that companies inform the FDA 90 days in advance of their intent to market a medical device. This certification is not equivalent to the certifications currently issued by HHS and should not be viewed as an interchangeable certification.

#### Training

Furthermore, it is unclear how the Applicant's petition seeks to conduct a drug testing program that mirrors critical Part 40 requirements, which are written for urine testing and do not apply to hair testing labs and procedures. As an example, DOT lays out explicit requirements for specimen collectors in §40.33. These obligations go well beyond the empty "appropriate training" requirement contained in the Administrative Procedures document. §40.33 calls for specific training requirements on items such as handling problematic urine collections and maintaining the

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<sup>23</sup> Jeri D. Ropero-Miller and Stout, Analysis of Cocaine Analytes in Human Hair: Evaluation of Concentration Ratios in Different Hair Types, Cocaine Sources, Drug-User Populations, and Surface-Contaminated Specimens, January 2009, page 60.



integrity of the collection process, and also requires proficiency demonstrations in urine collections before a collector may be considered qualified. Given a lack of federal/regulatory standards for hair specimen collectors, labs would be given free rein to determine by which methods to qualify collectors. This only offers yet another opportunity for disparities to exist in testing.

Similarly, §40.61 provides specific requirements for the collection of urine samples, §40.65 addresses elements collectors must check after receiving a urine sample, and §40.71 addresses sample preparation for urine and containers of urine. These requirements, together represent a clearly defined regulatory framework to ensure that drug testing is completed in a fair and equitable manner. No such system exists for hair testing, and the petition offers no suitable procedures that would mirror existing rules.

#### Return-To-Duty Process and CDL Clearinghouse Records

A critical component of DOT's drug testing program is the return to duty process, through which an employee who has failed a drug test may return to work. This is a difficult process, as well it should be, and is essential in ensuring that employees who have taken the appropriate steps can resume working. While the petition references that compliance with Part 40 Subpart O, it is unclear how this would occur given the petitioners seek exemption from Part 40.

Similarly, the Petitioners request that hair testing data be transmitted to the Commercial Driver's License Drug and Alcohol Clearinghouse. However, given that the Clearinghouse was developed to accommodate urine test results only, it seems unlikely that individuals impacted by this petition would have the same ability to expunge their records, given that Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs) are not trained on hair testing. Given that such employees are barred from working until they have completed the RTD process and have their Clearinghouse records cleared, this poses a serious problem for workers.

#### Other

In defense of hair testing, the Petitioners include in their petition a study which purports to show the difference in rate of detection between urine and hair testing with the conclusion that hair testing provides a higher rate of detection.<sup>24</sup> We raise the agency's attention to all of the defects we described above backed by research which almost certainly played a role in the study results. We also note that the data in the petitioners' study was produced by a for-profit hair testing lab who also filed comments in support of this petition. Further, a 2016 FBI Letter to the Editor suggests that in order to ensure that a hair sample that tests positive for cocaine is truly positive (a result of cocaine use, not exposure), the test must screen and confirm two specific cocaine criteria. It is unclear whether the 2010 study cited by the Petitioners used these criteria. We also note that this criteria is specific to cocaine only and is not applicable to the other drugs for which DOT tests. To our knowledge, the FBI study has not been replicated and HHS has not verified these findings.<sup>25</sup>

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<sup>24</sup> Tom Mieczkowski, Urinalysis and hair analysis for illicit drugs of driver applicants and drivers in the trucking industry, *Journal of Forensic and Legal Medicine*, November 2008.

<sup>25</sup> Madeline Montgomery, et al New Hair Testing Conclusions, Letter to the Editor, *Journal of Analytical Toxicology*, 2016.

Finally, a well-known hair testing lab with an interest in this petition being approved filed comments to the docket referencing the results of a mandatory hair testing program in Brazil as evidence of the positive impact of hair testing. However, there is some evidence that in some parts of Brazil traffic accidents were already sharply decreasing before the introduction of hair testing.<sup>26</sup> Further, the process that Congress set in 1991 and specifically reaffirmed in December 2015 remains in place in order to protect individuals who are regulated by DOT drug testing standards from unreliable, bias testing methods such as hair testing.

We continue to believe that a drug-free, safe workforce can be achieved while simultaneously protecting the rights and dignities of individual workers. The longstanding HHS drug testing standards have proven effective at maintaining a high level of safety while helping to protect workers from flawed testing techniques, human error, and other issues capable of impacting a drug test result. As adopted by DOT, today's urine testing standards also provide workers with appropriate and necessary due process rights. Urine standards are effective and should continue to be held as the gold standard. Hair testing, however, is incapable of meeting these standards. At this time, hair testing procedures carry too great a risk of disparate impact, lack of standardization, and susceptibility to factors unrelated to drug use. Furthermore, the Petitioners do not propose a testing regime which sufficiently replaces the standardization and worker protection provisions currently contained in Part 40.

With jobs on the line, FMCSA must have complete confidence that its drug tests are reliably accurate. Hair testing fails this threshold, and we therefore request that FMCSA deny the Petitioner's petition.

Sincerely,



Edward Wytkind  
President

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<sup>26</sup> Between 2014 and 2015, accidents in Rio Grande do Sul, Brazil's 5th largest state decreased by 16.1%. Brazil's hair testing program had not yet been implemented during this time. Ildo Mário Szinvelski, Accident Reduction Action Plans to Road Safety in RS, 18 Oct 2016.



**Transportation Trades Department, AFL-CIO**  
*A bold voice for transportation workers*

***TTD MEMBER UNIONS***

Air Line Pilots Association (ALPA)  
Amalgamated Transit Union (ATU)  
American Federation of Government Employees (AFGE)  
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, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (IBB)  
International Brotherhood of Electrical Workers (IBEW)  
International Longshoremen's Association (ILA)  
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, Air, Rail and Transportation Workers (SMART)  
SMART-Transportation Division  
Transportation Communications Union/ IAM (TCU)  
Transport Workers Union of America (TWU)  
**UNITE HERE!**  
United Mine Workers of America (UMWA)  
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (USW)

*These 32 labor organizations are members of and represented by the TTD*

