



A bold voice for transportation workers

October 26, 2020

Mr. Eugene D. Hayes
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention
Division of Workplace Programs
5600 Fishers Lane, Room 16N02
Rockville, MD 20857

**RE: Mandatory Guidelines for Federal Workplace Drug Testing Programs
Docket No. SAMHSA-2020-0001**

Dear Mr. Hayes,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Health and Human Services Department's (HHS) notification of proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs. TTD consists of 33 affiliate unions representing workers in all modes of transportation who are subject to federally mandated drug and alcohol testing.¹

Through this notice, HHS has issued proposed guidelines that would permit the use of hair follicles as a valid specimen for federally impelled drug tests. If adopted, employers would be able to conduct hair testing in concert with, or in lieu of, urine or oral fluid tests that have been previously approved by HHS. In issuing these proposed guidelines, the Department is acting to comply with Sec. 5402(b) of the Fixing America's Surface Transportation (FAST) Act, which required that HHS develop guidelines for hair testing of commercial motor vehicle drivers. We write today to formally request that HHS hold a public, virtual, hearing on its proposed guidelines in order to discuss the proposal with impacted stakeholders, and to further extend the comment period for 60 days.

¹ Attached is a list of TTD's 33 affiliated unions

Transportation Trades Department, AFL-CIO
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Larry I. Willis, President / Greg Regan, Secretary-Treasurer



As HHS notes, transportation employees by far represent the workforce who may be the most impacted by the deployment of hair testing. While HHS projects approximately 275,000 total annual drug tests among federal agencies, and 150,000 annual tests by the Nuclear Regulatory Commission, its estimates for the transportation workforce surpass six million tests. Drug and alcohol testing plays a critical role in the careers of the employees we represent — pre-employment testing is a determinate factor in hiring, and the results of each random, reasonable suspicion, post-accident, and return to work test could dictate the future of an employee’s career. It is for this reason that ensuring the federal drug testing program is held to the highest standards of accuracy, validity, and equity is of paramount importance.

[TTD](#), other labor unions, and racial and social justice advocacy organizations have long expressed serious concerns about the scientific validity of hair testing, to include questions regarding the accuracy of hair tests, the subjectivity of hair tests to external contaminants, and inherent biases including potential racially disparate impacts. We continue to hold the position that HHS must not approve hair testing unless these and other key questions have been satisfactorily resolved.

However, HHS’s notice requests information on an unusually wide and substantive variety of matters, some of which are foundational to a determination of whether hair follicle testing is appropriate to use in federal drug tests. This includes, but is not limited to, requests for comments and information on:

- Scientific studies comparing drug results and hair color and results comparing urine to hair.
- Recent scientific literature to address the impact of hair color on drug test results.
- Whether hair tests that are positive for the marijuana analyte, delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA), should be excluded from the requirement to test an alternate authorized specimen.
- The potential for added burden should the alternate specimen requirement be necessary
- The availability of a scientifically validated method to identify hair that has been damaged to the extent a drug test may be affected.
- The extent to which (based upon scientific studies) hair specimens can be impacted by hair treatments and whether such specimens should be reported as invalid and an alternate specimen be collected and tested.
- If testing for damaged hair should be performed routinely on all specimens, or only on certain specimens (e.g., based on initial test results).
- The appropriateness of proposed analytes and cutoffs.
- Decontamination procedures that remove drug present as a result of external contamination
- Support from the scientific literature about unique metabolites that can be analyzed on a stand-alone basis.

It is essential that each of the questions be answered definitively, or that a determination be made that available scientific literature is unable to provide conclusive responses. Proceeding forward with guidelines without satisfactory and complete answers on these issues will result in a

degradation of the fairness and accuracy of federal testing programs, and will put the livelihoods of millions of transportation workers in jeopardy. Given the extensive list of subjects on which HHS requires more information, we request a 60-day extension of the comment period in order to more completely answer HHS' solicitations.

Further, HHS's proposal requires expertise on a number of diverse subjects, including toxicology, due process procedures, and civil rights. By holding a public hearing, HHS can gain greater insight into how stakeholders view the complexities involved in hair testing, and stakeholders can be familiarized with the perspective of entities with different areas of focus. Both components will assist HHS in making a fully reasoned decision on its proposal.

We thank the Administration for its consideration of our request, and we look forward to continuing to engage on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Larry I. Willis".

Larry I. Willis
President