



September 23, 2022

Docket Operations  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
West Building, Ground Floor, Room W12-140  
Washington, DC 20590-0001

**RE: [Docket No. FMCSA–2022–0127]  
Controlled Substances and Alcohol Use and Testing: Application for Exemption; The Trucking Alliance**

Dear Sir or Madam:

National School Transportation Association (NSTA) is pleased to offer comments to the Federal Motor Carrier Safety Administration (FMCSA) on its Controlled Substances and Alcohol Use and Testing: Application for Exemption; The Trucking Alliance, as published in Volume 87 Number 163, of the Federal Register on August 24, 2022.

#### **About The National School Transportation Association**

NSTA has been the leading resource for school transportation solutions and the voice for private school bus operators for over 57 years. We are a membership organization for school bus contract-operators engaged primarily in transporting students to and from school and school-related activities. Members range from small family businesses to large multi-state operators. Private school bus contractors account for 38 percent of the nation's pupil transportation services and employ more than 250,000 individuals as bus drivers, mechanics, maintenance workers, dispatch, and office workers. School transportation represents the largest form of mass transportation in the United States, and daily, almost 26 million K-12 students are transported by an estimated 480,000 yellow school buses.

#### **NSTA Believes this Request is Premature**

NSTA acknowledges that the requirement set forth with the passage of the Fixing America's Surface Transportation (FAST) Act required the Department of Health and Human Services (HHS) issue guidelines for the use of hair testing as a drug testing method. As of the filing date for these comments, we note that HHS has not yet finalized these necessary guidelines – and that overall this process has taken nearly six years. Because the guidelines are integral to this specific application, NSTA believes this Exemption Application is premature.

#### **NSTA Supports Hair Follicle Testing as a Testing Option, not an Additional Requirement**

NSTA has voiced longstanding support to Department of Transportation (DOT) drug and alcohol testing programs, as we believe that they represent a critical component in our quest to keep highways and roadways safe for the motoring public. The safety record of student transportation is unparalleled, and drug testing remains a key component - as we maintain our high standards of operations. As such, NSTA supports the use of hair follicle testing for carriers, but we believe that hair follicle testing should remain an option, not a required method, or an additional requirement to the existing testing scheme. Our concerns are rooted in the demonstrated inconsistencies of this testing method.

For example, the color of one's hair has been shown to influence the results of hair follicle tests, according to a 2018 study. Specifically, individuals with black hair are more susceptible to drugs binding to their hair, even if they have never taken drugs, which means that if an individual is in an environment with drugs present, mere

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exposure could produce a positive drug test<sup>i</sup>. Keep in mind that exposure to drugs is not the same as drug usage, so concerns with hair follicle testing not being able to differentiate between drug use and exposure continue to be concerning. Further, due to a documented history of false positives - courts have felt it necessary to mandate additional tests to confirm drug use following a positive hair follicle test<sup>ii</sup>.

Another concern arises through common differences in human hair that can dramatically alter hair follicle testing results. For example, if hair is not taken from the crown of nape of the head, results can vary up to 20 percent. Additionally, chemical treatments and hair dyes can influence results in the range of 40 percent to 80 percent - depending on the chemicals or dyes used. Also, some hair products contain hemp, an ingredient by itself that could result in a positive test, and studies show that hair growth rate can drastically affect the window of detection and could impact test results to determine if an individual is currently using drugs<sup>iii</sup>. A final issue that should be noted is that hair follicle testing does not detect alcohol, nor can they be counted upon to provide an accurate portrayal of current drug use. According to a publication from the HHS, hair follicle testing cannot detect drug use 1-7 days prior to the test<sup>iv</sup>. Therefore, if a drug testing method is not able to validate recent drug use, then it would stand to reason that it cannot be a required method.

To be clear, we believe there is utility in hair follicle testing, but it does not represent the best option in most cases. Further, NSTA supports the additional option of hair follicle testing, but believes that its usage should remain optional for motor carriers.

### **Summary and Conclusion**

In conclusion, NSTA believes that the exemption request from the Trucking Alliance is premature, due to the fact that HHS has not promulgated its rules as required. On the issue of the usage of hair follicle testing, we continue to support it as an option for motor carriers. We must emphasize that NSTA still has concerns of the overall reliability and accuracy of hair follicle testing – which precludes us from supporting any type of mandate with respect to this specific testing method. Overall, NSTA continues to support DOT required drug testing programs, and we want to ensure that carriers have testing options as these programs continue to evolve.

NSTA appreciates the opportunity to offer comments on Docket No. FMCSA–2022–0127, and we look forward to a continued dialogue with the Agency in monitoring the results of this change to ensure that the school bus remains the safest form of transporting students to school. If you have any questions, or further clarification on our comments is required, please do not hesitate to contact me at 703-684-3200 ext. 700, or via email at [cmacysyn@yellowbuses.org](mailto:cmacysyn@yellowbuses.org).

Sincerely,



Curt Macysyn  
Executive Director  
National School Transportation Association

<sup>i</sup> “The Hairy Problem with Drug Testing”, Ellen Airhart, April 1, 2018, <https://www.wired.com/story/the-hairy-problem-with-drug-testing/>

<sup>ii</sup> “Issues with Hair-Follicle Drug Testing”, Jenna Bouley, August 13, 2018, <https://jolt.richmond.edu/2018/08/13/issues-with-hair-follicle-drug-testing/>

<sup>iii</sup> “Hair drug test: Positive doesn’t always mean positive”, August 25, 2014, <https://www.dnalegal.com/blog/hair-drug-testing-why-positive-doesnt-always-mean-positive>

<sup>iv</sup> Center for Substance Abuse Treatment, “Drug Testing in Child Welfare: Practice and Policy Considerations”, 2010, pg. 8 <https://ncsacw.acf.hhs.gov/files/drugtestinginchildwelfare.pdf>