AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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TELEFAXED

Walter F. Vogl, Ph.D.
Drug Testing Section, Division of Workplace Programs
Substance Abuse and Mental Health Services Administration
5600 Fishers Lane
Rockwall II, Suite 815
Rockville, Maryland 20857

Re: Substance Abuse and Mental Health Services Administration,
Department of Health and Human Services (FR Doc. #04-7984)

Dear Dr. Vogl:

The American Federation of Government Employees, AFL-CIO (AFGE) hereby submits the following comments in response to the proposed revision of the Mandatory Guidelines for Federal Workplace Drug Testing Programs. The proposed regulatory changes published in the Federal Register on April 13, 2004 (69 FR 19673) are primarily directed at expanding the types of specimens that can be collected and tested as part of a federal agency's drug testing program, and making new drug testing technologies available to federal agencies.

As a threshold matter, the preamble reveals that the genesis of the proposed changes stemmed from a three day meeting of the Drug Testing Advisory Board in April 1997 wherein *industry representatives* coordinated presentations on alternative specimens and technologies "to ensure a thoroughly unbiased review based on the science available." On the contrary, AFGE believes that the drug testing industry's overarching involvement in the Board's early consideration of these issues presents a real and apparent conflict of interest that necessarily taints its subsequent deliberations.

It appears that one of the major rationales for expanding specimen types is to address concerns about urine tampering. However, SAMHSA does not openly address this perception in its proposed regulations nor does it provide any hard data to support any conclusions with regard to the rate at which federal employees tamper with urine

collection process. Conversely, as SAMHSA admits, the current state of alternative specimen testing presents substantial concerns with regard to the accuracy and reliability of the test results. With regard to hair, for example, environmental contamination and hair color are factors that may affect the test result. 69 FR 19675. Moreover, because of the length of time that drug metabolites may remain present in hair, such testing may erroneously identify former drug abusers as current users. In addition, a substantially smaller number of laboratories are capable of handling hair tests than are certified for urine tests. Nevertheless, the Department states that "despite these suspected limitations, [it] still proposes to go forward with incorporation of this new technology as an alternative to urine for Federal agencies *who may find it useful in certain missions and tasks that only individual federal agencies can identify.*" How can such testing be useful if it cannot guarantee accurate results? More importantly, however, federal employees risk losing their jobs if they test positive. Under these circumstances, due process demands more than that a seriously flawed alternative to urine testing be deemed "useful."

The move toward point of collection testing and the delegation to individual agencies of responsibility for developing their own field testing procedures is similarly ill-advised. The disparate treatment that federal employees will surely experience under such a hodge podge system of procedural requirements will ensure only that the program will be a source of ongoing litigation for agencies undertaking such a mission.

AFGE sincerely hopes that your Department will reconsider its desire to expand the federal employee drug testing program without ensuring that the necessary safeguards are in place to prevent false positive results. If you have any questions, you may reach me at (202) 639-6426.

Sincerely,

Mark D. Roth (cw for)

Mark D. Roth
General Counsel