

**AMENDMENT**

**OFFERED BY MR. CRAWFORD OF ARKANSAS**

Amend section 5206 to read as follows:

1 **SEC. 5206. FEDERAL HAIR TESTING GUIDELINES.**

2 (a) **SCIENTIFIC AND TECHNICAL GUIDELINES.**—Not  
3 later than 60 days after the date of enactment of this Act,  
4 the Secretary of Health and Human Services shall issue  
5 scientific and technical guidelines for hair testing as a  
6 method of detecting the use of a controlled substance as  
7 described in section 31306(e) of title 49, United States  
8 Code.

9 (b) **PROCEDURE FOR IMPLEMENTATION BASED ON**  
10 **COMPLETION STATUS OF GUIDELINES.**—

11 (1) **FAILURE TO PUBLISH FINAL GUIDE-**  
12 **LINES.**—If the Secretary of Health and Human  
13 Services does not issue and publish final guidelines  
14 required under subsection (a) on or before the dead-  
15 line described in such subsection, the Secretary of  
16 Transportation shall take the actions described in  
17 subsection (c).

18 (2) **REGULATORY REVISIONS REQUIRED.**—If  
19 the Secretary of Health and Human Services issues  
20 and publishes final guidelines required under sub-

1 section (a) on or before the deadline described in  
2 such subsection, the Secretary of Transportation  
3 shall, not later than 1 year after the date on which  
4 such guidelines are published, revise part 40 of title  
5 49, Code of Federal Regulations, and any other reg-  
6 ulations necessary to—

7 (A) recognize hair as an approved speci-  
8 men type to be collected under transportation  
9 workplace drug and alcohol testing programs  
10 required under such part; and

11 (B) implement such scientific and technical  
12 guidelines with respect to hair testing.

13 (c) ALTERNATIVE PROCEDURES IN THE EVENT OF  
14 FAILURE TO PUBLISH FINAL GUIDELINES.—

15 (1) EFFECTIVE DATE.—This subsection shall  
16 take effect—

17 (A) on the day that is 18 months after the  
18 date of enactment of this Act; and

19 (B) only if the Secretary of Health and  
20 Human Services does not issue and publish  
21 final guidelines required under subsection (a)  
22 on or before the deadline described in such sub-  
23 section.

24 (2) SUBMISSION OF HAIR DRUG TEST RESULTS  
25 TO DRUG AND ALCOHOL CLEARINGHOUSE.—

1           (A) HAIR DRUG TEST.—The Secretary of  
2           Transportation shall require an employer, as  
3           such term is defined in section 31301 of title  
4           49, United States Code, using commercial  
5           motor vehicles as defined in section 31301 of  
6           title 49, United States Code to submit to the  
7           drug and alcohol clearinghouse maintained  
8           under section 31306a of such title any record  
9           of a positive hair drug test result from a pre-  
10          employment drug test, a reasonable suspicion  
11          drug test, a return-to-duty drug test, a follow-  
12          up drug test, or a random drug test that is ad-  
13          ministered through a covered device by the close  
14          of the third business day following the date on  
15          which the employer obtained the positive test.

16          (B) LABORATORY REQUIREMENTS.—Any  
17          hair drug test result submitted pursuant to  
18          paragraph (1) shall be from a laboratory that—

19                 (i) is accredited by the College of  
20                 American Pathologists for forensic hair  
21                 drug testing; and

22                 (ii) incorporates, if available, Depart-  
23                 ment of Health and Human Services sci-  
24                 entific and technical guidelines for hair  
25                 testing.

1 (C) COVERED DEVICE.—In this paragraph,  
2 the term “covered device” means a device that  
3 is cleared under section 510(k) of the Federal  
4 Food, Drug, and Cosmetic Act (21 U.S.C.  
5 360(k)).

6 (3) ESTABLISHMENT OF SCIENTIFIC AND TECH-  
7 NICAL GUIDELINES.—Not later than 18 months  
8 after the date of enactment of this Act, the Sec-  
9 retary of Transportation, in collaboration with lab-  
10 oratories accredited by the College of American Pa-  
11 thologists, shall establish scientific and technical  
12 guidelines for hair testing, including—

13 (A) establishing training requirements and  
14 regulations for hair collectors;

15 (B) collection sites, forms, equipment, and  
16 supplies used in hair collections of the Depart-  
17 ment of Transportation;

18 (C) observation of hair testing;

19 (D) processing of hair specimens by lab-  
20 oratories;

21 (E) testing of fentanyl and norfentanyl in  
22 drug testing panels;

23 (F) cutoff levels for hair testing;

24 (G) procedures for validity testing by lab-  
25 oratories;

1 (H) procedures for medical review officer  
2 review of hair testing results;

3 (I) split specimen testing;

4 (J) procedures for refusal of an employee  
5 to provide a sufficient amount of hair specimen  
6 for a drug test; and

7 (K) other procedural regulations for hair  
8 testing necessary to match procedures for urine  
9 and oral fluid testing.

10 (4) AUTHORITY.—If the Secretary of Transpor-  
11 tation issued guidelines under this subsection on or  
12 before the deadline described in such subsection, the  
13 Secretary may solicit scientific, technical, and regu-  
14 latory guidance to inform the regulations described  
15 in paragraph (3) through a report from one or more  
16 external laboratories or entities that—

17 (A) is accredited by the College of Amer-  
18 ican Pathologist; and

19 (B) is an accredited institution of higher  
20 education.

21 (5) REGULATIONS.—Not later than 18 months  
22 after the date of enactment of this Act, the Sec-  
23 retary shall issue such regulations as are necessary  
24 to carry out this section, including—

1 (A) updating section 382.107 of title 49,  
2 Code of Federal Regulations, to include hair  
3 test results described in such amendment in the  
4 definition of actual knowledge;

5 (B) updating such regulations as are nec-  
6 essary to ensure that drug testing panels in-  
7 clude testing for fentanyl and norfentanyl;

8 (C) updating section 382.107 of such title  
9 to amend the definitions of “Confirmation (or  
10 confirmatory) drug test”, “Confirmation (or  
11 confirmatory) validity test”, “Refuse to submit  
12 (to an alcohol or controlled substance test)”,  
13 and “Screening test (or initial test)” to include  
14 “hair specimens” along with urine or oral fluid  
15 specimens;

16 (D) updating section 382.401(c)(1)(VII) of  
17 such title to include “hair specimen” along with  
18 urine or oral fluid specimens;

19 (E) Updating section  
20 382.705(a)(2)(vii)(D) of such title to include  
21 “sufficient amount of hair” in addition to urine  
22 and oral fluid;

23 (F) updating section 40.3 of such title to  
24 add “hair specimen” to the list of definitions  
25 contained therein and to add “hair specimen”

1 to the definition of chain of custody and con-  
2 firmatory validity test;

3 (G) updating section 40.14(k) of such title  
4 to include “hair”;

5 (H) updating paragraphs (1) and (5) of  
6 section 40.23(f) of such title to include “hair  
7 specimen”;

8 (I) updating section 40.61(f)(5)(i) of such  
9 title to include “hair specimen collection”; and

10 (J) updating section 40.210 of such title to  
11 include “hair testing” as a permitted form of  
12 drug testing.

13 (6) RESTRICTION.—

14 (A) REPORT TO CONGRESS.—Not later  
15 than 20 months after the date of enactment of  
16 this Act, if the Secretary has not issued the  
17 regulations required under paragraph (5), the  
18 Secretary shall submit to the Committee on  
19 Transportation and Infrastructure of the House  
20 of Representatives and the Committee on Com-  
21 merce, Science, and Transportation of the Sen-  
22 ate a report explaining the reasons for the delay  
23 in issuing such regulations.

24 (B) RESTRICTION OF FUNDS.—If the Sec-  
25 retary has not issued the regulations required

1           under paragraph (5) by the date described in  
2           this subsection the Secretary may not obligate  
3           30 percent of funds made available to the Office  
4           of the Secretary for administrative expenses  
5           until such guidance is issued.

