

Submitted to the:

**SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
OF THE
U.S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE**

Written Testimony of

THE AMERICAN TRUCKING ASSOCIATIONS

Regarding

Drug and Alcohol Testing of Commercial Motor Vehicle Drivers

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Driving Trucking's Success

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Introduction

Chairman DeFazio, Ranking Member Duncan, and other Members of the Subcommittee, thank you for the opportunity to communicate the American Trucking Associations' (ATA)¹ recommendations on "Drug and Alcohol Testing of Commercial Motor Vehicle Drivers."

I am Greer Woodruff, Senior Vice President of Corporate Safety and Security for J. B. Hunt Transport Inc. (J. B. Hunt) located in Lowell, Arkansas. I am responsible for all aspects of J. B. Hunt's safety, compliance and security programs, including management of our company's drug and alcohol abuse prevention programs. J. B. Hunt is one of the nation's largest motor carriers serving market leaders in a wide number of industries including retail, beverage, consumer goods, food, paper and manufacturing. J. B. Hunt operates in the contiguous 48 states and Canada deploying approximately 11,700 power units and 56,200 trailers, and employing 13,570 commercial motor vehicle drivers.

It is my pleasure to appear before the Subcommittee today on behalf of ATA. J. B. Hunt is a longstanding and active member of ATA, and I currently serve on its Safety Policy Committee and its safety council's Regulations Committee. ATA has long been a proponent of alcohol and drug testing for commercial drivers and actively supported the Omnibus Transportation Employee Testing Act of 1991. This Act required drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines and other transportation industries.

Our members' drivers, who hold commercial driver's licenses (CDL), are subject to the requirements of 49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs, and the Federal Motor Carriers Safety Administration (FMCSA) regulations 49 CFR Part 382 – Controlled Substances and Alcohol Use and Testing. Many of our member motor carriers also conduct testing programs beyond federal requirements under internal company policy requirements to help assure the safety of our nation's highways.

ATA's comments are directed primarily at how drug and alcohol testing and reporting can be improved in the motor carrier community. ATA and its member carriers support any reasonable and responsible initiatives to eliminate unauthorized usage among CDL drivers and assure an effective implementation of such prevention programs. ATA believes that Congress can aid advancements by:

- Authorizing and funding a National Clearinghouse for Positive Drug & Alcohol Test Results.
- Encouraging the U.S. Department of Transportation (DOT) to better focus their random testing rate requirements.

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

- Banning the sale of and establishing penalties for the use of adulterant and substitution devices.
- Supporting the use of alternate specimen testing methods (i.e., hair).
- Assuring good practices are followed by drug and alcohol collection sites.

Published Statistics on Driver Usage of Alcohol & Drug Usage

Currently published figures indicate that illicit use of alcohol and drugs by truck drivers is relatively low. FMCSA’s Annual Drug and Alcohol Testing Surveys over the last ten years estimate that CDL drivers on the average used controlled substances at the rate of 1.68% and alcohol at the rate of 0.22%. Stated otherwise this is less than two drivers in 100 using controlled substances and about 2 in 1000 using alcohol. This is further illustrated in Table 1 below and in the attached Tables 2 and 3.

Table 1. FMCSA Results of Annual Drug and Alcohol Surveys 1996-2005

Areas of Testing	Estimated Positive Random Rates of Commercial Drivers by Percentage									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Controlled Substance	2.2	1.3	1.5	1.3	2.0	1.5	1.7	2.0	1.6	1.7
Alcohol (BAC ≥ 0.04)	0.2	0.2	0.4	0.2	0.2	0.1	0.4	0.2	0.1	0.2

FMCSA’s November 2005 “Report to Congress on the Large Truck Crash Causation Study” (LTCCS)² is also revealing. It was determined that associated factors³ for *both single vehicle and multi-vehicle truck crashes* mostly involved the driver. This statistically representative study further reports that: “[l]egal drug use, prescription and over-the-counter drugs, show up in a large number of cases. On the other hand, the use of illegal drugs and alcohol and truck driver illness are rare.” Significantly, illegal drug use was reported at 2.3% and alcohol use was 0.8%.

In a separate data analysis involving multi-vehicle crashes (i.e., involving at least one truck and one passenger vehicle), the LTCCS found that legal drug use (i.e., prescription drugs) was very common for drivers of both types of vehicles, but illegal drug use was a much

² See FMCSA website: http://ai.fmcsa.dot.gov/ltccs/data/documents/reportcongress_11_05.pdf for the LTCCS report to Congress.

³ Per the LTCCS report, associated factors were defined as: Any of approximately 1,000 conditions or circumstances present at the time of the crash is coded. The factors coded are selected from a broad range of factors thought to contribute to crash risk. No judgment is made as to whether any factor is related to the particular crash, just whether it was present. The factors present work with the assignment of a critical reason to identify the range of events that lead to crashes. The list of the factors that can be coded provides enough information to comprehensively describe circumstances of the crash. *Example:* The passenger vehicle driver was coded with the following factors: alcohol use and fatigue. There were no vehicle or environmental factors coded for the passenger vehicle. The driver of the wrecker was coded with the following factors: being in a hurry prior to the crash and conversing with a passenger. The wrecker was coded with a defective tail light. There were no environmental factors coded for the wrecker.

larger factor for passenger vehicle drivers. Illegal drug use was 7% of passenger vehicle drivers and only 0.4% of large truck drivers. Alcohol usage was found for 9% of passenger vehicle drivers and 0.3% of large truck drivers.

While FMCSA's data on illegal drug use has been consistently around 2% since 1996, other findings suggest there might be a higher positive percentage in the motor carrier industry. Data from some transportation companies performing drug tests on hair samples pursuant to company policy and not DOT regulations suggests that the drug abuse percentage is higher than 2%, particularly on pre-employment tests. These companies utilizing hair specimens use the same 5 drug panel test and have similar cutoff levels as with DOT urine testing, and employ MROs in the process. Additionally, the Operation Trucker Check Program undertaken by the State of Oregon in 1998, 1999 and 2007 is another example that drug use by commercial drivers might be higher than the FMCSA-published 2% figure. However, Oregon's approach is different from the process regulated by the DOT. The Oregon tests involved four short duration snapshots of driver drug usage, rather a decade of on-going DOT drug and alcohol program information; were locale-specific rather than nationwide in scope; and tested for **more** drugs than the required DOT panel of 5 drugs. The Oregon program also did not appear to use medical review officers (MRO); employed a state forensics lab vs. a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory; and may have involved different cut-off levels for positive drug results. These dissimilarities from the more tightly controlled DOT testing regime makes it difficult to compare the Oregon spot-checks against the more comprehensive data collected by FMCSA.

ATA's Proposed National Clearinghouse for Positive Drug & Alcohol Test Results

Drug abuse, as measured by the percentage of "positive" test results in the trucking industry, is about one quarter of that found in the general workforce.⁴ This has remained steady in a range of 1.3 to 2.2 percent of the truck driver population since the beginning of the required testing program.⁵

Nevertheless, since there are at least 3.4 million truck drivers in the industry, a near 2 percent "positive" rate translates into thousands of truck drivers with a drug abuse problem. This is unacceptable to ATA and the trucking industry.

Unfortunately, there is a loophole in the federal drug and alcohol testing regulations for commercial drivers, which is being exploited by some drug-abusing drivers. The loophole is as follows. A driver applies for a job at a trucking company and tests "positive" for drugs on the DOT-required pre-employment drug test. As a result of the positive test result, the driver is not hired. The driver simply waits a limited amount of time to cleanse his system (a few days to a few weeks depending on the drug used) and then applies for a job at a different trucking company and passes the DOT-required pre-employment test. The driver does not

⁴ "Worker Substance Use and Workplace Policies and Programs," U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, June 2007.

⁵ Information provided by FMCSA in July 2007. This positive test rate is based on an annual statistically valid sampling of trucking fleets subject to testing.

report the previous positive test result on the employment application and, as a result, the second trucking company is not aware of the driver's previous "positive" test result. These drivers have learned to operate a "shell game."

In some cases, collection personnel even recognize that the drivers are coming back in a few days to a few weeks after testing positive. However, these drivers are aware that collection personnel and MROs cannot tell the next motor carrier of a previous positive test result. This is because of the privacy safeguards contained in the current DOT regulations which, in turn, perpetuate this loophole. Thus drivers avoid going through the required substance abuse evaluation, treatment and rehabilitation process that is supposed to follow a positive drug test.

The trucking industry made Congress aware of this loophole and its associated problems in the late 1990s when ATA first began advocating for a national clearinghouse. In 1999, Congress passed the Motor Carrier Safety Improvement Act which, in lieu of directing that a clearinghouse be established, required DOT to evaluate the feasibility and merits of collecting, in some centralized manner, "positive" drug test results of commercial drivers. FMCSA studied this issue and submitted a report to Congress in May of 2004⁶. This report found that a centralized clearinghouse for positive results was feasible, cost-effective and, more importantly, could improve safety. The study also found that a clearinghouse approach was more desirable than the current system of driver self-reporting, and hiring companies contacting previous employers in an attempt to obtain this critical safety-related information.

There are already various forms of positive test results reporting and retention in the states of Arkansas, Oregon, North Carolina, Texas and Washington. We commend the efforts undertaken by these states. However, a national clearinghouse would establish a central and uniform system to report, retain and retrieve information on positive test results more in tune to interstate commerce, while reducing the difficulties and operating conflicts of individual state programs.

ATA urges Congress to address the longstanding loophole by passing legislation that would authorize and fund the development and deployment of a centralized National Clearinghouse for Positive Drug & Alcohol Test Results, with appropriate privacy safeguards for drivers and strict access controls for authorized users. A centralized clearinghouse approach, with strict access controls, will afford drivers more privacy and will be a more secure method of retaining positive tests results than the current distributed system of hundreds of thousands of motor carriers retaining and sharing positive results when this information is sought. ATA also encourages inclusion of positive alcohol test results in the clearinghouse, since both drug and alcohol testing are required as part of DOT's regulatory program.

⁶ "A Report to Congress on the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results to the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License Holder," FMCSA, March 2004.

DOT Random Rate Requirements

ATA supports a more effective means of random controlled substance (drug) testing under 49 CFR 382.305. Since 1995, motor carriers have been conducting drug testing of their employees performing safety-sensitive functions (e.g., driving). Random testing is a central feature of this testing program. Since the start of the program, the minimum annual percentage rate for random drug testing has been 50 percent. In other words, motor carriers must randomly select and test at least 50 percent of their drivers each year. The FMCSA Administrator may lower this minimum annual percentage rate to 25% of drivers if the "reported positive rate for the entire industry" is less than 1% for two consecutive calendar years. Based on FMCSA's annual data sampling of the trucking industry as previously mentioned, the positive rate for the entire industry has remained around 2%. The fact is that there has not been any progress in lowering this positive rate for years. This is a classic case of **'if you always do what you always did, you'll always get what you always got.'** ATA believes it is past time to consider an incentive-based random testing rate to drive down the positive rate in the industry.

ATA's proposal is simple. FMCSA should require each carrier to determine its own positive rate each year. For carriers that have a positive rate of 1% or higher, the minimum annual percentage rate for random testing would remain at 50%. For carriers that have a positive rate of less than 1%, the minimum annual percentage rate for random drug testing would be 25%. This is a carrier-based, performance and incentive-driven approach to random testing. It rewards those carriers who have effective hiring and drug-free workplace programs by allowing them to realize cost-savings by randomly testing at least 25% of drivers (the performance-based aspect). And, for those carriers that have positive rates of 1% or higher, it provides a financial incentive to conduct better screening of driver applicants, and put in place more effective drug-free workplace programs in an effort to realize the cost-savings of testing at the 25% level (incentive-based aspect). And, for those carriers that realize the cost savings of random testing at the 25% level, there is a built-in incentive to maintain an effective testing program in order to continue the ongoing savings afforded by the reduced random rate level. This approach holds real potential to drive down the positive rate in the industry.

This approach leads a reasonable person to question how it might be enforced. In ATA's view, FMCSA and the States conducting reviews for FMCSA could verify past and current random positive rate levels of motor carriers during conduct of compliance reviews. While FMCSA and the States do not currently review as many carriers as they would like, FMCSA's goal under their Comprehensive Safety Analysis 2010 program,⁷ is to conduct 6-8 times as many compliance assessments. And, as part of their CSA 2010 program design, FMCSA already plans to collect and analyze positive drug or alcohol test results of drivers, and evaluate information about motor carrier controlled substances and alcohol testing programs, rather than relying solely on the results of compliance reviews. FMCSA could also employ their Annual Drug and Alcohol Testing Survey to measure differences in positive test results between those motor carriers conducting 25% and 50% random testing to determine any trends and needed system adjustments.

⁷ See FMCSA webpage: <http://www.fmcsa.dot.gov/safety-security/csa2010/overview.htm>.

ATA Supports a Ban on the Sale and Penalties for the Use of Adulterant and Substitution Devices

ATA supports a federal law to ban the manufacture, sale and distribution of products meant to thwart a drug test and to penalize those drug users who choose to employ them to avoid detection. Unfortunately, a cottage industry selling these products has developed over the past decade and internet-based marketing and sales have perpetuated the distribution of these products. As new products meant to evade drug testing enter the market, collection facilities and laboratories must develop and utilize new approaches and detection technologies to catch the lifestyle drug user. These new approaches and technologies come with costs which are passed on to motor carriers.

More than 12 million employees are subject to mandatory drug testing under the DOT regulations.⁸ These employees, including millions of truck drivers, are in safety-sensitive positions. Each drug user who successfully evades testing using these products poses a serious safety risk to the public and imposes a significant financial burden on American businesses. ATA urges Congress to pass a ban to address this continuing problem.

Alternative Specimen Testing

ATA encourages the Substance Abuse and Mental Health Services Administration (SAMHSA) to move forward with rulemaking that would allow the use of alternative specimen testing methods, such as hair, sweat, and oral fluid for federal workplaces.⁹ These alternative methods have shown great promise in applied situations to detect “lifestyle drug users” and those that seek to evade the current urine collection method of controlled substance testing. Testing of hair would be a particularly good addition to the drug prevention arsenal. Information from ATA’s membership indicates that the regular, chronic user is more likely to show a positive drug test result when a hair specimen is employed.

ATA is eager to work with Congress and DOT to allow for addition of optional testing methods. ATA also urges the DOT’s Office of Drug & Alcohol Policy & Compliance (ODAPC) and FMCSA to work closely with SAMHSA to assure that a reliable alternative specimen testing program can be achieved.

Drug & Alcohol Collection Sites

To the best of ATA’s knowledge, FMCSA does not oversee or directly regulate the day-to-day operations of drug and alcohol collection sites. However, DOT specifies by regulation certain aspects under 40 CFR such as Subpart C—Urine Collection Personnel; Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections; and Subpart E—Urine Specimen Collections. DOT’s ODAPC appears to

⁸ See DOT webpage: <http://www.dot.gov/ost/dapc/index.html>. The Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of safety-sensitive transportation employees. These regulations cover all transportation employers, safety-sensitive transportation employees and service agents - roughly 12.1 million people.

⁹ See “Proposed Revisions to Mandatory Guidelines for Federal Workplace Testing Programs, Federal Register, April 13, 2004, pages 19673-19732.

recognize the need for improvement in collection site practices as evidenced by its recent release of the “10 Steps to Collection Site Security and Integrity.” This advisory suggests a need to improve sample collection processes and protocols.

From the motor carrier perspective, many drug and alcohol testing programs share issues involving urine collection sites. These concerns may vary, whether it may be the lack of convenient appointment times, no emergency after hours availability, no off-site collection services, substantial fees, and rejected specimens due to collection errors or undetected adulteration and/or substitution.

ATA supports reasonable efforts for collection sites to improve upon collection practices and for improved government oversight to assure this is accomplished.

Summary

In summary, ATA urges Congress to enhance drug and alcohol testing by:

- Establishing a National Clearinghouse for Positive Drug & Alcohol Test Results.
- Encouraging DOT to modify their random testing rate requirements to focus resources on motor carriers with above average positive test rates.
- Banning the sale of adulterant and substitution devices, and providing for enforcement and penalties for their use.
- Directing SAMHSA to complete rulemaking on alternative specimen testing methods and directing FMCSA to promulgate regulations consistent with the SAMHSA rule.
- Promoting good drug and alcohol collection practices and improved oversight.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity for ATA to offer its recommendations to improve the drug and alcohol testing programs of commercial motor vehicle drivers. We look forward to working with this Subcommittee, the Congress, DOT, FMCSA, and other reasoned stakeholders to improve the safety and productivity of our Nation’s highway transportation system.

ATTACHMENT 1. (ATA Testimony)

Table 2. Estimates of Positive Usage Rates for Drugs Among CDL Drivers from Random and Nonrandom Testing in 2003, 2004, and 2005*

Category	2003		2004		2005	
	Estimate	Standard Error	Estimate	Standard Error	Estimate	Standard Error
Random Testing						
Any drug	2.0%	0.3%	1.6%	0.3%	1.7%	0.3%
Marijuana	0.6%	0.1%	0.8%	0.2%	0.6%	0.1%
Cocaine	0.3%	0.1%	0.5%	0.1%	0.5%	0.1%
Amphetamines	0.1%*	0.05%	0.1%*	0.1%	0.4%*	0.3%
Opiates	0.01%	0.001%	0.1%*	0.1%	0.04%*	0.02%
PCP	0.001%*	0.001%	0.1%*	0.1%	0.0%*	—
Nonrandom Testing						
Pre-employment	3.1%	0.3%	2.2%	0.2%	2.1%	0.1%
Post-crash	1.9%	0.8%	2.5%	0.6%	2.4%	0.5%
Reasonable Suspicion	19.4%*	10.7%	40.3%	14.8%	16.7%	4.1%
Return to Duty	3.6%*	2.3%	9.3%*	6.0%	2.6%	0.9%
Followup	3.1%	0.9%	3.8%	1.4%	2.4%	0.9%

*Indicates extremely low precision.

— = No usage found among sample cases; standard error not calculated.

NA = Category not applicable for survey year.

Table 3. Estimates of Random and Nonrandom Alcohol Usage Rates Among CDL Drivers in 2003, 2004, and 2005*

Category	2003		2004		2005	
	Estimate	Standard Error	Estimate	Standard Error	Estimate	Standard Error
Random Testing						
0.04+ BAC	2.0%	0.1%	0.1%	0.02%	0.2%*	0.1%
Nonrandom Testing						
Pre-employment	0.01%*	0.01%	0.01%*	0.003%	0.03%*	0.03%
Post-crash	0.1%*	0.03%	0.1%*	0.03%	0.1%*	0.02%
Reasonable Suspicion (0.04+)	24.2%	5.3%	11.0%	3.5%	6.4%	1.7%
Return to Duty (0.04+)	0.0%*	—	0.4%*	0.3%	0.05%*	0.02%
Followup (0.04+)	4.7%*	4.8%	0.2%*	0.1%	0.2%	0.06%

*Indicates extremely low precision.

— = No usage found among sample cases; standard error not calculated.

NA = Category not applicable for survey year.

Table 2 and 3 are from Drug and Alcohol Testing Survey: 2004 and 2005 Results, Federal Motor Carrier Safety Administration, Office of Research and Analysis, Analysis Division, July 2007