



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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October 30, 2007

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit
FROM: Subcommittee on Highways and Transit, and Oversight and Investigations Staff
SUBJECT: Hearing on "Drug and Alcohol Testing of Commercial Motor Vehicle Drivers"

PURPOSE OF THE HEARING

The Subcommittee on Highways and Transit will meet on Thursday, November 1, 2007 at 10:00 a.m., in 2167 Rayburn House Office Building, to receive testimony regarding vulnerabilities in the Drug and Alcohol Testing (DAT) programs administered by motor carriers. The Oversight and Investigations staff has conducted an in-depth review of conditions at facilities that perform urine collections for drug tests regulated by the Department of Transportation (DOT). The hearing will examine weaknesses in the collection process that could allow drug-using commercial drivers to disguise their drug use. We will identify the extent to which those products manufactured and sold specifically to beat drug tests affect the integrity of the drug testing process. Finally, the hearing will explore factors that enable drug-using drivers to continue to operate commercial motor vehicles and potential solutions to the identified weaknesses.

BACKGROUND

The DOT rules include procedures for urine drug testing and breath-alcohol testing. DOT Part 40 Drug and Alcohol Testing Rules were finalized in December of 2000, after which all of the transportation modes incorporated Part 40 requirements into their own regulations. In August of 2001, the Federal Motor Carriers Safety Administration (FMCSA) published motor-carrier specific rules in 49 CFR Part 382 (Part 382).

FMCSA rules apply to safety-sensitive employees who operate commercial motor vehicles requiring a CDL. These include anyone who owns or leases commercial motor vehicles, for-hire motor carriers, private motor carriers, bus operators, and civic organizations (for example, Boy Scouts, churches, etc.).

The Committee chose to focus on DAT oversight in the motor carrier industry because of differences in that industry in terms of size and geographic diversity. However, vulnerabilities found in the collection process for motor carriers potentially affect all DOT-regulated industries that rely upon privately-owned and operated collection facilities to perform specimen collections.

FOX News Report Precipitates Committee Investigation

On February 19, 2007, Fox News in Minneapolis, MN aired the results of their investigation of five local businesses that collect urine for DOT-mandated drug tests. In four out of five collection facilities, they found conditions that afforded employees opportunities to cheat. Contrary to DOT's collection facility requirements, the reporters found restrooms with running water (potential dilution); discovered use of shared public bathrooms (another individual could provide the specimen); the test administrator failed to require reporters to take off jackets or empty their pockets (an adulterant or clean urine sample could be brought in). After the story aired, the Committee requested that the General Accountability Office (GAO) investigate the practices of collection facilities that service commercial drivers. In addition, we requested that they evaluate FMCSA's oversight of the DAT program requirements and assess potential ways to improve the program.

OVERVIEW OF DOT'S DRUG AND ALCOHOL TESTING PROGRAM

DOT requires DAT under several conditions: pre-employment, reasonable suspicion, post-accident, random, return-to-duty, and follow-up.¹ The Part 40 DAT rules require a urine drug screen that tests for five drugs: marijuana, opiates, cocaine, amphetamines, and PCP. DOT requires employers of commercial drivers to randomly test 50 percent of their safety-sensitive employees each year.²

Collection facilities are privately owned and operated centers that collect urine from drivers in accordance with DOT requirements. The Part 40 rules prescribe the physical and procedural requirements of the collection facility; including configuration of the restrooms, accessibility to running water, supervision and monitoring of the test, how the specimen should be prepared and sealed, and the appropriate forms to be filled out and signed prior to being transmitted to the laboratory for testing. Employers are responsible for ensuring that collection facilities meet the Federal regulatory requirements.

Employers collect urine specimens for drug testing at facilities in their workplaces, mobile or on-call services, physician's offices, out-patient clinics, or hospitals. While these collection facilities are required to meet Federal regulations governing personnel training and collection procedures, they are not inspected, certified, or regulated by the Department of Health and Human Services (HHS) or DOT. The collection facilities are not certified, but analysis of the urine specimens must be conducted in a laboratory that is certified and monitored by HHS. The list of HHS-approved laboratories is published monthly in the Federal Register.

¹ Return-to-duty and follow-up tests are done after an employee tests positive, rehabilitates, and begins the process to reinstate his operating eligibility.

² DOT obtains year-end data on positive drug tests from a non-random sample of employers in all DOT-regulated industries through an electronic management information system. Based on the industry positive test rate, DOT determines the level of risk presented by each industry and establishes a random testing rate accordingly. In 2005, the motor carrier industry positive rate was 1.7 percent; upon which DOT imposed a 50-percent random test rate.

All drug test results are reviewed and interpreted by a physician who serves as the Medical Review Officer (MRO). If the laboratory reports a positive result, the MRO consults with the employee to determine if there is an alternative medical explanation for the drugs found in the specimen. If the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer. If the MRO determines that the test is positive for controlled substances, the MRO reports the result to the employer who must remove the employee from safety-sensitive duty until he or she completes a return-to-duty process.

Of the 711,000 carriers with operating authority in the United States, more than one-half are single truck owner-operators. These operators are still responsible for implementing a DAT program, which they do primarily through a third-party administrator or consortium.

VULNERABILITIES IN COLLECTION FACILITIES ENABLE SOME DRUG USERS TO EVADE DETECTION

The Substance Abuse Program Administrators' Association (SAPAA) estimates that there are between 8,500 and 10,000 facilities that provide urine specimen collection for DOT-regulated industries. While the Committee's review focused on issues affecting the motor carrier industry, other modes that rely upon privately-owned and operated collection facilities likely experience similar difficulties with the collection process and are similarly vulnerable to employee specimen-tampering.

The Committee will hear from GAO investigators that 75 percent of the collection facilities they tested in an undercover operation failed to secure the facility from substances that could be used to adulterate or dilute the specimen. They found facilities with cleaning fluids stored in the restrooms, restrooms with running water, and collectors that allowed investigators to leave the facility and return later to complete their drug tests—all violations of the Federal requirements.

One of the most challenging collection issues is maintaining a qualified workforce. Turnover is as high as 150 percent in specimen collection facilities, and it is difficult to keep the ever-changing staff current on required training. Collectors must receive qualification training that includes: all steps necessary to complete a collection; how to handle "problem" collections, including suspected attempts to tamper with a specimen; and five supervised "mock" collections to demonstrate proficiency.

Facilities present another challenge. For the vast majority of collection facilities, drug testing is not their "core service offering." These facilities can range from an insurance agent's office to an emergency room; and because the facilities are multi-purpose, they are often not configured optimally to discourage or prevent specimen tampering. For example, DOT requires that no one but the employee be present in the room during the collection. This would either require a single-stall restroom or a monitor to ensure that nobody but the employee enters a multi-stall restroom while the test is being conducted.

When collectors do not follow required protocols and facilities are not in compliance with DOT regulations, an opportunity exists for drug users to evade detection. As the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention noted in 2005, "a drug user, who is part of a workplace drug testing program, will most likely try to

defeat the drug test if given the opportunity.³” As the following section illustrates, there is no shortage of tools available for that purpose.

PRODUCTS INTENDED TO DEFAUD A DRUG TEST HAVE PROLIFERATED

The widespread implementation of workplace drug testing has created a niche market for products designed to beat a drug test so that illicit drug users can continue their drug use and keep their jobs (or get new ones). In 2005, GAO testified before Congress that approximately 400 different products were available to adulterate samples. GAO found that, “the sheer number of these products, and the ease with which they are marketed and distributed through the Internet, present formidable obstacles to the integrity of the drug testing process.”⁴ There are no other uses for these products. Their sole and explicit purpose is to enable a drug user to defraud a drug test.

The websites where these products are sold make clear their intent. For example:

- <http://www.howtopassyourdrugtest.com>
- <http://www.urineluck.com>
- <http://www.testclear.com>
- <http://gonumber1.com>
- <http://www.perfecturine.com>

The products can be classified by how they work.

“**Dilution**” products reduce the concentration of drug in the urine below the testing cut-off level. Special “detoxifying” drinks taken with water cause frequent urination which dilutes the level of toxins. This method is marketed for “light” users; 1-4 times per week. Some products are marketed by individual’s size. “Absolute De-Tox XXL,” pictured right, is marketed to persons weighing more than 200 pounds.



“**Adulterants**” are chemicals that are added to urine to mask the presence of toxins. These chemicals are purposely sold in small vials and tubes so they can be easily concealed. Some of these products are extremely successful as the labs can’t keep up with the constantly evolving formulas. For example, “UrineLuck,” pictured right, is now on version 6.8. As its manufacturers advise, “Don’t let your job go up in smoke!”



³ Substance Abuse and Mental Health Services Administration; Center for Substance Abuse Prevention; Division of Workplace Programs; “Preventing Employees from Cheating on a Urine Drug Test.” (March 2005)

⁴ “DRUG TESTS: Products to Defraud Drug Use Screening Tests Are Widely Available: GAO-05-653T

“**Substitution**” involves providing a clean urine specimen—either real or synthetic—in place of the donor’s dirty urine. Synthetic urine can come in several forms: concentrated, powdered, or pre-mixed. “Quick Fix,” pictured right, is advertised as, “Complete 100% Fake/Synthetic Urine.” It is also available bulk for frequent users: sold in 3-packs or 6-packs.



While substitution can be done effectively by concealing a vial of urine in a pocket or sock, some entrepreneurial individuals have gone a step further. Puck Technologies has manufactured a belt-like anatomically correct prosthetic device containing a heated receptacle which can store clean human urine or synthetic urine. The device comes in five skin tones and is especially effective in defeating an observed drug test. (In the interest of taste, this product can be viewed at www.whizzinator.com.)

These products can be found in drug stores, general nutrition shops, the backs of magazines like “High Times,” and most ubiquitously, on the Internet. During the course of this investigation, Committee staff found a posting on Washington, DC’s “Craig’s List” from an individual selling, “Clean urine for drug testing!!!!-\$35.” Staff also found a link from a DOT Drug Testing Clinic’s website to a site advertising the, “Insider’s Guide to Passing a Drug Test, --*What the Labs Don’t Want You to Know*.” Numerous products, such as “UrineLuck” were widely available on eBay.

Insiders Guide to Passing a Drug Test
What the Labs Don't Want You to Know

By: Jack Price
Former Drug Testing Lab Technician

Many other books have been released on drug testing. These books have provided some insight on how the labs operate, and the different methods used to fail a drug user. The problem is these books haven't been updated to the new testing standards. Most are filled with technical information that is over the heads of most people. Even worse, some techniques once used to pass a test are now detectable.

This book will take a non-technical approach in explaining how the drug testing labs operate, and ways to pass any drug test in existence. All information presented in this document has been known to work as of November 17, 2006. You can always find an updated version of this document at www.how-to-pass-a-drug-test.org if you feel your copy may be out of date.

Do not pay for this document! It can be obtained through www.how-to-pass-a-drug-test.org for free!

SAMHSA, which oversees the laboratories where the urine specimens are tested, has seen a marked increase in the number of specimens that have been either adulterated or substituted—so many that SAMHSA issued guidance in 2005⁵ to help collectors minimize the opportunity for a donor to cheat:

- (1) Ensure that the employee does not have access to anything at the collection site that could be used to adulterate or substitute a urine specimen; and
- (2) Request the employee to remove and display any items he or she may have concealed in pockets, coats, hat, etc.

But SAPAA does not believe that these precautions have any effect. “Securing the collection site, having specimen donors remove outer clothing and empty their pockets in view of

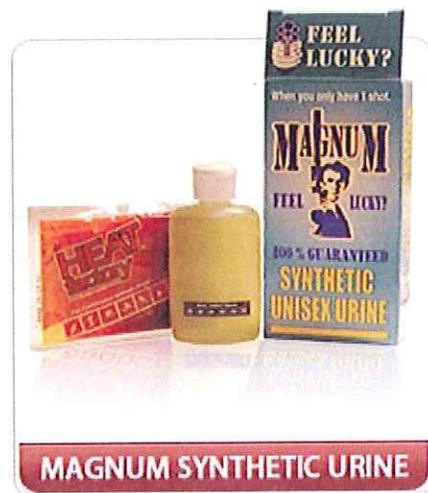
⁵ See earlier footnote; reference SAMHSA.

the collector, disabling sources of water, and checking the temperature [...] can only prevent or detect the most rudimentary of attempts to defraud the test.” GAO investigators also found how easy it is to defraud even a monitored test. At one collection facility, even though the collector told the investigator to leave the restroom door open, he was still able to substitute a vial of synthetic urine for his own specimen.

PRODUCTS ARE EFFECTIVE IN DEFRAUDING DRUG TESTS

All of the websites that sell products intended to defraud a drug test claim their products are 100 percent effective. For example, the manufacturers of Magnum Synthetic Urine have so much faith in their product that they offer a 400% money-back guarantee.

Manufacturers can make these offers because their products work. In April 2004, a new requirement was instituted that every Federal job applicant or employee urine specimen be tested not only for illicit drugs, but also to determine if the specimen provided is a valid one – i.e., consistent with normal human physiology.⁶ However, the product manufacturers have succeeded in formulating new versions of the adulterants so that they are not detected by the specimen validity tests. HHS is required to publish the list of adulterants and the tests developed for them in the Federal Register,⁷ and the manufacturers are able to change the formulas to prevent detection. As soon as HHS is able to reverse-engineer the active adulterant compounds, the manufacturers have already changed the formula to include different—and, as yet, undetectable—compounds.



An example is the chemical oxidant potassium nitrite, an active ingredient in many adulterants. As soon as the Federal drug testing program established (and published) methods to detect potassium nitrite and thresholds beyond which to report it in specimens, new formulations of adulterants were released that had lower concentrations of that compound and increased levels of acids – not yet detectable, but every bit as effective.

RESOURCE CONSTRAINTS LIMIT EFFECTIVENESS OF FMCSA'S DAT ENFORCEMENT

Representatives of labs, collection facilities, third party administrators, and DAT workplace programs believe that FMCSA is under-staffed and under-funded to accomplish meaningful audits and inspections of motor carrier employers.

In 2006, Federal and State inspectors, combined, conducted 15,177 compliance reviews, representing about 2 percent of all carriers. The limited number of reviews is largely a function of the size of the industry and the very limited size of the investigator workforce. With 711,000 carriers and 29,000 new entrants every year, the 258 FMCSA investigators are stretched thin. With just the

⁶ The rule applied to tests performed on the Federal workforce, but was not adopted by DOT. The tests are authorized; however, and are currently performed on approximately 98 percent of all DOT tests.

⁷ Public Law 100.71; Section 503 (July 11, 1987)

current number of motor carriers, the ratio of investigators to carriers is 1:2,577. In contrast, the Federal Aviation Administration—which has a force of 40 inspectors dedicated *exclusively* to DAT reviews—has a ratio of 1:175.

When FMCSA’s investigators conduct compliance reviews, DAT is only one component of the review. Inspectors are also looking for maintenance, insurance, and hours of service compliance violations. And within the DAT component, collection facility conditions receive relatively little scrutiny. It is not feasible for FMCSA to inspect all collection facilities used by a carrier, especially if that carrier uses drivers in different geographic locations.

Auditing and inspection of collection facilities is an essential component of enforcement and compliance and has been significantly lacking in FMCSA’s efforts to evaluate, assess and enforce compliance with the DOT drug and alcohol testing regulations. A “paper audit” is inadequate and auditors and inspectors need to physically go to collection sites to interview collection personnel and observe collection processes.

OWNER-OPERATOR BUSINESS MODEL COMPLICATES DAT PROGRAM IMPLEMENTATION

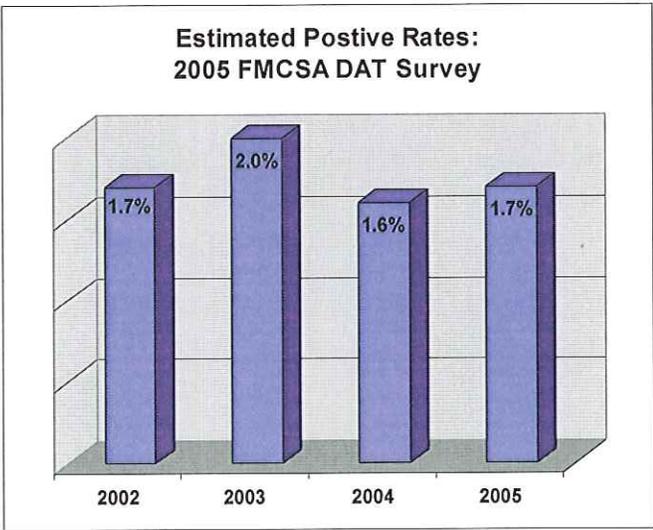
Of the 711,000 carriers with operating authority in the United States, more than one-half are single truck owner-operators. These operators are still responsible for implementing a DAT program, which they do primarily through a third-party administrator or consortium. The consortium operates as a sort of a “super-employer” for multiple small motor carriers and owner-operators. The consortium performs the same functions as a large employer, including randomly testing 50 percent of the consortium members each year (per regulation), and assuming the role of the MRO to confirm lab test results.

While the consortium can perform a number of functions, it has no authority to enforce the regulatory requirements if a driver tests positive. According to the National Transportation Safety Board (NTSB), owner-operators are, “in the precarious position of overseeing their own substance abuse program.”⁸ The consortium must inform the employer of a positive test, but the employer is responsible for taking the driver out of service until the return-to-duty process is completed. According to NTSB, “such an arrangement requires owner-operators who are abusing controlled substances to remove themselves from driving if they test positive.” NTSB concludes that it seems unlikely that s will comply with those sections of the drug testing regulations if they are already choosing to not comply with other regulations that require employers to maintain a drug-free workplace. The Board concluded that, “the current Federal drug-testing regulations cannot adequately identify owner-operators who abuse controlled substances.”

⁸ Carol J. Carmody, Acting Chairman. Safety Recommendation. National Transportation Safety Board. September 10, 2001. <http://www.nts.gov/recs/letters/2001/H01_17_25.pdf>.

**QUANTIFYING THE PROBLEM: CONTRADICTORY STATISTICS ON
DRUG USE AMONG COMMERCIAL DRIVERS**

DOT found that 1.7 percent of commercial drivers tested positive for drugs in 2005; the Oregon State Police report use at around 10 percent, and heavy truck drivers self-report rates of 7.4 percent. Many believe that the true number is somewhere in-between. But because employees are able to defraud drug tests—through products designed to defeat a drug test or other means—it is impossible to quantify the true extent of the problem.



In 2005, FMCSA reported an estimated drug-positive rate of 1.7 percent; this is consistent with prior year levels which ranged from 1.6 to 2.0 percent. This rate has remained relatively unchanged since 1997. While the rate itself is low, the absolute number of drivers testing positive would approach 170,000. Even assuming that one-half of the population of CDL-holders are not active and subject to DAT screening, the absolute number of drug-using drivers would exceed 80,000.

Oregon’s Anonymous Testing of Truck Drivers Suggest Higher Levels of Drug Use

In April 2007, the Oregon State Police (OSP) conducted a 72-hour exercise (“Operation Trucker Check”) at the Woodburn, OR inspection facility on I-5, the busiest North-South commercial truck route on the west coast. OSP collected nearly 500 anonymous urine samples from commercial drivers; the majority of which were driving heavy trucks or tractor-trailers. In total, 9.65 percent of the drivers tested positive for illegal drugs and prescription narcotics. A similar exercise conducted in September 2007 on a major East-West truck route in Oregon (Cascade Locks), produced similar results—8.97 percent of truck drivers tested positive for illicit drugs or controlled narcotics.

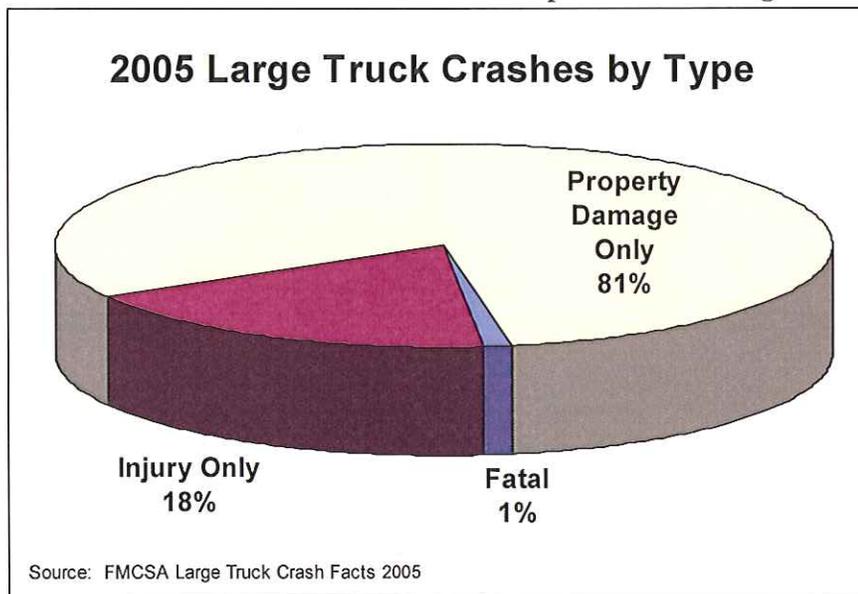
Because both tests were anonymous, it was impossible to follow up with an MRO to determine whether there were alternative explanations for the positive results, such as a positive-opiate reading from prescription OxyContin®. Because it is likely that some of the tests were false positives, the rate of drug use reported is likely overstated. In addition, the drugs tested for by the States included some drugs not required to be tested for in the DOT drug tests and in some cases, were tested at a lower threshold than the DOT tests. These factors could also explain the higher number of positives.

Large Truck Drivers Self-Report a Higher Level of Illicit Drug and Heavy Alcohol Use

In June 2007, SAMHSA issued its annual report on occupational drug use, “Worker Substance Use and Workplace Policies and Programs.”⁹ The report reflects a 3-year survey of drug and alcohol use by workers across a range of industries. In the most recent report, 7.4 percent of Heavy Truck and Tractor-Trailer Drivers¹⁰ reported illicit drug use in the prior month. The most prevalent drug used was marijuana, reported by 5.2 percent of drivers. Of the same sample, 11.2 percent reported heavy alcohol use in the prior month. In the prior year, 2.6 percent of truck drivers admitted drug dependence or abuse, and 11.6 percent reported alcohol dependence or abuse.

The Contribution of Illegal Drugs to Crashes

According to FMCSA’s “Large Truck Crash Facts 2005,” 1.2 percent of large truck crash fatalities in 2005 were attributed to illegal drug use. This statistic only takes into account the one percent of crashes that involve fatalities. There are no good statistics for the remaining 99 percent of crashes that result in injuries and/or property damage. Part 382 regulations require drivers to be drug and alcohol-tested following all crashes that result in a fatality. Drivers are only required to be tested in other crashes if they are issued a traffic citation. According to NHTSA’s Large-Truck Crash Causation Study published in August 2006, between April 1, 2001 and December 31, 2003, two-thirds of truck drivers involved in crashes were not post-accident drug- or alcohol-tested.



Opportunities Exist for Drivers Who Have Failed a Drug Test to Circumvent FMCSA Requirements Regarding Return-to-Duty Process

On May 9, 1999, a charter motor coach carrying 43 passengers was en route from La Place, Louisiana, to a casino in Bay St. Louis, Mississippi. As the bus approached milepost 1.6 in New

⁹ “Worker Substance Use and Workplace Policies and Programs”; Department of Health and Human Services; Substance Abuse and Mental Health Services Administration, Office of Applied Studies. June 2007.

Orleans, it departed the right side of the highway, crossed the shoulder, and went onto the grassy side slope alongside the shoulder. The bus continued on the side slope, struck the terminal end of a guardrail, traveled through a chain-link fence, vaulted over a paved golf cart path, collided with the far side of a dirt embankment, and then bounced and slid forward upright to its final resting position. Twenty-two passengers were killed, the bus driver and 15 passengers received serious injuries, and 6 passengers received minor injuries. The NTSB attributed the crash, in part, to the driver's use of marijuana and a sedating antihistamine.

The driver had tested positive for drugs on four previous occasions, twice as an employee of The Regional Transit Authority, once as an employee of Westside Bus Service, and once when applying for a job with Greyhound. When the New Orleans driver applied at Custom (his employer at the time of the accident) he listed his former positions with Hertz Car Rental and Turner Bus Service but did not mention the positions held with the Regional Transit Authority and with Westside Bus Service, where he had been fired following his positive tests.

According to SAPAA, "conservative estimates" are that less than one half of CDL holders who test positive or refuse to test actually complete the return to duty process necessary to reinstate their driving status. Yet it is possible for drivers who have failed a drug test to continue driving by moving from job to job. Title 49 CFR 391.21 requires drivers to provide carriers with the names and addresses of employers from their previous 3 years of employment. But job applicants are able to avoid negative scrutiny from new employers by omitting jobs where a drug test came back positive or by failing to disclose prior failed pre-employment tests. In NTSB's accident report on the New Orleans crash, the Board stated that it, "does not believe this self-reporting method will effectively identify problem drivers because drivers are unlikely to provide information that may limit their employment opportunities." In addition, the NTSB noted that although Custom obtained the driver's permission to investigate his prior employment, it did not receive a response from any of the former employers it contacted. The extent to which employers do not provide information on former employee drug tests is not quantified, but the NTSB advises that non-responsiveness is a problem and that, "no enforcement mechanism or incentive exists to compel previous employers to comply with information requests."

PROPOSALS TO FIX WEAKNESSES IN THE DRUG AND ALCOHOL TESTING PROGRAM

National Ban on Adulterants and Products Designed to Defraud Drug Tests

On March 8, 2006, Representatives Whitfield and Engel introduced H.R. 4910, the "National Drug Testing Integrity Act." The bill required the Consumer Product Safety Commission to promulgate a rule declaring any, "instrument, tool, substance, or device designed or intended to falsify, alter, or defraud any lawfully administered drug test designed to detect the presence of chemical substances or controlled substances in the body," a product to be banned as a "hazardous product." The bill was referred to the Energy and Commerce Committee but was not considered.

State Bans on Adulterants and Products Designed to Defraud Drug Tests

Four states (NE, TX, IL and SC) have enacted laws that criminalize both the sale and use of products intended to defraud a drug test. The legislative language in the three states are similar and

make it illegal to, “manufacture, sell, or market synthetic or human substances with the *intent to defraud* a drug test,” and also make it illegal to, “substitute a sample or adulterate synthetic human substances with the *intent to defraud* a drug test.”

While some of the product manufacturers indicate that they will not sell or ship products to residents of those states, others have attempted to circumvent the law by adding disclaimers that the products being sold are not intended to pass a drug test. For example, products sold by www.ureasample.com come with the following disclaimers:

This equipment and specimen may only serve as a control sample when conducting private home tests. Any reference to “passing drug tests or screens” on this site refers solely to private home tests.

UreaSample.com no longer markets this URINE TEST substitution kit for use in drug testing in these states (TX, NE, IL and SC). If you order from one of these states, you will receive our novelty kits. These are fully functioning copies of our original kits. In all cases the sample included has been pre-tested to the highest possible standards.

Manufacturers also capitalize on the fact that only a few states have laws. UreaSample.com’s shipping instructions state, “Kits are not available to residents of New Jersey and Illinois. If you are from one of the aforementioned states...you may have it shipped to a friend or family member in a neighboring state.”¹¹

Provide FMCSA Resources to Create a Dedicated DAT Inspector Workforce

FAA has established a dedicated staff of about 70 inspectors and auditors whose mission is to exclusively enforce DAT program requirements at the (approximately) 7000 FAA-regulated air carriers. These inspectors ensure that FAA-regulated carriers are complying with all Part 40 DAT requirements, including the specimen collection process. FAA’s force of inspectors conducts about 1,000 DAT audits each year, equating to about 15 percent of all carriers; although the largest carriers are audited every 12-18 months. FMCSA would need to determine, based upon its own industry needs, whether a dedicated inspection staff would be desirable, what its duties would encompass, and what size the workforce should be.

National Clearinghouse for Positive Drug and Alcohol Results

One of the gaps in available authority in FMCSA’s Drug and Alcohol Testing program is the ability for drivers to “job-hop” from one trucking company to another without their drug history following them. The NTSB identified this as a significant problem in its investigation of the 1999 New Orleans bus accident. In the accident report, the NTSB recommended that FMCSA:

Develop a system that records all positive drug and alcohol test results and refusal determinations that are conducted under the U.S. Department of Transportation testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system before making a certification decision.

¹¹ <http://www.ureasample.com/buy-drug-test-solutions/store/whizzinator.htm>

In recent years, support has grown within the trucking industry and government for such a clearinghouse. The Motor Carrier Safety Improvement Act of 1999 directed the FMCSA to evaluate the feasibility and merits of requiring MROs and/or employers to report all verified positive controlled substance test results on drivers tested under Part 382 to the States who issued the driver's Commercial Driver License. The study, published in 2004, concluded that, "the most cost effective and logical organization would be to mandate a single Federal database covering the entire country, sponsored or operated by FMCSA." The study further concluded that the database requirement should be authorized by Congress through legislation (rather than regulation), and that the legislation should, "prohibit the establishment of any competing commercial or trade association-sponsored databases."

The American Trucking Associations (ATA) has developed a proposal to create a centralized, national clearinghouse to collect positive drug and alcohol tests results of Commercial Driver's License holders. In addition to reporting positive results, this proposal would require reports of an employee's refusal to provide a specimen for testing. Organizations representing commercial drivers have expressed concern over this proposal based on privacy issues, the need to ensure due process in any clearinghouse, and how access to the data will be controlled.

State Clearinghouse for Positive Drug and Alcohol Results

Seven States have enacted legislation that requires commercial drivers' positive drug and alcohol tests to be reported to State licensing officials. The laws vary in the degree to which this information is used in the licensing process and who has access to that data. The following table summarizes and highlights the differences in the seven States' reporting laws.

State	Drugs	Alcohol	Refusals	Employee Sanctions	Available to Other Employers
AR	x	x	X	None	Employee Consent
CA	x		X	Revoke license 3 years	No
NC	x	x		DQ until Return to Duty process complete	No
NM	x			None	No
OR	x			None	Employee Consent
TX	x	x	X	None	Employee Consent
WA	x	x	X	DQ until Return to Duty process complete	No

WITNESSES

PANEL I

The Honorable John Hill
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Washington, DC

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U.S. Department of Transportation

Mr. Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations
U.S. Government Accountability Office
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Ms. Katherine A. Siggerud
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