



Testimony

Before the Subcommittee on Highways
and Transit, Committee on Transportation
and Infrastructure, House of
Representatives

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MOTOR CARRIER SAFETY

**Preliminary Information on
Challenges to Ensuring the
Integrity of Drug Testing
Programs**

Statement of Katherine Siggerud, Director
Physical Infrastructure Issues





Highlights of [GAO-08-220T](#), a testimony before the Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

Crashes involving commercial motor carriers, including trucks and buses, account for 13 percent of all highway deaths each year. While illegal drug use is not among the most frequently cited factors associated with large truck crashes; studies show that the use of illegal drugs, such as marijuana, heroin, or cocaine, can severely impair driving ability. Since 1988, federal regulations have required commercial drivers to submit urine samples to be tested for drugs. The Federal Motor Carrier Safety Administration (FMCSA) is responsible for ensuring compliance with these regulations. News reports and other investigations have raised concerns that drivers may be escaping detection by avoiding the test or somehow altering the results.

This testimony provides preliminary information on the challenges confronting FMCSA in (1) overseeing and enforcing compliance with drug testing regulations and (2) ensuring the integrity of the drug tests and the processes for keeping drivers with identified drug problems off the roads. It is based on work currently in process, which includes examining options to address these challenges. GAO's work thus far has included interviews with officials from the Department of Transportation (DOT) and the Substance Abuse and Mental Health Services Administration (SAMHSA), along with a wide variety of stakeholders, including motor carriers, unions, and industry associations. GAO discussed this testimony with DOT officials and incorporated their comments as appropriate.

To view the full product, including the scope and methodology, click on [GAO-08-220T](#). For more information, contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov.

MOTOR CARRIER SAFETY

Preliminary Information on Challenges to Ensuring the Integrity of Drug Testing Programs

What GAO Found

FMCSA faces two key challenges in ensuring that commercial motor carriers have drug testing programs in place. First, there appears to be a significant lack of compliance among motor carriers, particularly small carriers and self-employed drivers. Violations of drug testing protocols are noted in more than 40 percent of FMCSA's safety audits conducted since 2003 of carriers that have recently started operations and more than 70 percent of the compliance reviews conducted on carriers already in the industry since 2001. These problems also extend to service agents, which are entities that collect urine samples or administer other aspects of the program. For example, GAO investigators working under cover tested 24 collection sites and determined that 22 did not fully comply with applicable protocols. The second challenge is that FMCSA's oversight activities are limited, both in quantity and scope. Safety audits, which are targeted at new entrants, began in 2003 and, as a result, do not affect carriers in business earlier than 2003. Such companies can be covered in compliance reviews, but these reviews occur at only about 2 percent of carriers a year, according to FMCSA data. In addition, FMCSA oversight does not specifically address compliance by service agents, such as collection sites, unless there are particular allegations or complaints.

Even when FMCSA is able to ensure that carriers and others are in compliance with drug testing requirements, there are additional challenges in ensuring the integrity of drug testing programs. The urine test itself can be subverted in various ways, such as adulterating or diluting the urine sample or substituting synthetic urine or a drug-free sample. Products designed to "beat" the test are brazenly marketed on the Internet. The extent to which subversion is occurring is unknown—and is impossible to determine. SAMHSA officials with whom we met told us when adulterants work well and destroy the evidence of their presence, they are undetectable. Furthermore, the required urine test has certain limitations. For example, it covers only five drug categories (marijuana; cocaine; amphetamines; opiates, such as heroin; and phencyclidine (PCP)), and it may provide a clean result if a person has not used any of these drugs within the past several days. Finally, drivers may not disclose instances in which they failed previous drug tests. If they are able to remain drug-free for enough time to pass a preemployment test, their new employer may not know about their past history of drug use.

GAO identified various options to address these challenges, some of which were proposed by carriers, industry associations, DOT, and others. These options include publicizing educational information about the regulations for carriers, service agents, and drivers; encouraging carriers to do more to ensure service agent compliance; improving and expanding FMCSA oversight and enforcement authority; adopting federal legislation to prohibit products designed to tamper with a drug test; and developing a national reporting requirement for past positive drug test results. GAO's ongoing work will examine the advantages and disadvantages of the various options in more detail; we expect to issue the report in May 2008.

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to participate in this hearing on drug testing for those employed in safety-sensitive positions in the motor carrier industry. The Department of Transportation (DOT) estimates that approximately 4.2 million people, including truck and bus drivers, work in such positions, and their safety on the road affects the safety of the traveling public. Commercial motor carriers¹ account for less than 5 percent of all highway crashes, but these crashes result in about 13 percent of all highway deaths, or about 5,500 of the approximately 43,000 highway fatalities that occur nationwide annually. A DOT study on the factors associated with large truck crashes finds that vehicle factors, such as brake problems, and behavioral factors, such as speeding and driver fatigue, are some of the most frequently cited factors involved in large truck crashes.² While illegal drug use is not among the most frequently cited factors in the DOT study—appearing as an associated factor in only 2 percent of the crashes included in the study—it is clear that the use of illegal drugs, such as marijuana, heroin, or cocaine, can severely impair the ability of individuals to drive. Since 1988, federal regulations have required that these commercial drivers be drug tested. DOT and the Federal Motor Carrier Safety Administration (FMCSA) publish regulations that govern the drug testing process.³ FMCSA is responsible for ensuring compliance with these regulations, and does so through safety audits of

¹There are approximately 711,000 commercial motor carriers registered in Federal Motor Carrier Safety Administration's Motor Carrier Management Information System (MCMIS). This includes an unidentified number of carriers that are registered but are no longer in business. MCMIS contains information on the safety fitness of commercial motor carrier and hazardous materials shippers subject to the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

²DOT, Federal Motor Carrier Safety Administration, Analysis Division, *Large Truck Crash Causation Study*, Publication No: FMCSA-RRA-07-017 (July 2007).

³Title 49, Code of Federal Regulations (CFR), Part 40 provides rules governing how drug tests are to be conducted and what protocols are to be used. The tests cover alcohol as well as drugs, but the focus of our work has been on the testing that covers five drug categories: marijuana, cocaine, amphetamines (including methamphetamines), opiates (including heroin), and phencyclidine (PCP). The Office of Drug and Alcohol Policy and Compliance, within the Office of the Secretary of Transportation, publishes these rules. 49 CFR Part 382 contains FMCSA's specific drug testing regulations.

carriers that have recently started operations⁴ and compliance reviews conducted on carriers already in the market.

Testing results clearly indicate that some drivers are using illegal drugs. FMCSA data show that each year from 1994 through 2005, between 1.3 and 2.8 percent of drivers tested positive for the presence of illegal drugs under random testing. However, concerns exist that some drivers may be escaping detection. Recent drug tests conducted during roadside inspections of trucks in Oregon suggest that the percentage of truck drivers using illegal drugs while operating vehicles may be somewhat higher than FMCSA reports.⁵ Furthermore, recent reports have also suggested that some locations where drug testing specimens are collected are not in compliance with DOT protocols, which can potentially make it easier to tamper with or substitute a urine specimen. In 2005, we reported that products used to tamper with drug use screening tests are widely available, and 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.⁶

My testimony today addresses what we have learned about these and other challenges to establishing an effective drug testing program. It is based primarily on the work we currently are doing for this Subcommittee and for the Chairman of the full Committee. Our current work, which we expect to complete in May 2008, addresses the challenges that may be encountered in implementing federal drug testing regulations; the roles and responsibilities that federal agencies, state agencies, and others have in overseeing industry compliance with drug testing regulations, and the limitations they encounter in regulations or oversight; and the options, if any, that have been proposed for improving compliance with and

⁴Trucking companies are required to receive a new entrant safety audit within the first 18 months of business. Motor coach companies are required to receive a new entrant safety audit within the first 9 months of business.

⁵Oregon's roadside inspections had important differences to DOT-regulated tests that limit the comparability of the results. For example, these inspections (1) may include some drivers who are not subject to DOT drug testing regulations; (2) tested for more substances than does DOT—for example, the state inspection tested for some prescription medications that are not included in DOT tests; and (3) may not have used procedures comparable to DOT's collection, laboratory analysis, and medical review procedures to ensure accurate results.

⁶GAO, *Drug Tests: Products to Defraud Drug Use Screening Tests Are Widely Available*, [GAO-05-653T](#) (Washington, D.C.: May 17, 2005).

addressing the limitations of drug testing regulations, and the advantages and disadvantages of these options. Because this work is not yet finished, my observations today are preliminary in nature. My testimony addresses the types of challenges confronting FMCSA in (1) overseeing and enforcing compliance with drug testing regulations and (2) ensuring the integrity of the drug tests and the processes for keeping drivers with identified problems off the roads. As part of my observations about these challenges, I will discuss options we have identified as possible improvements that we will be looking at in more detail as we continue our work.

To address these issues, we reviewed DOT and FMCSA regulations, policies, and reports and interviewed officials from DOT (FMCSA and the Office of Drug and Alcohol Policy and Compliance (ODAPC)) and the Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA). This review focuses on the controlled substance portion of the drug and alcohol testing regulations, and does not address alcohol testing. We analyzed FMCSA data on the results of compliance reviews and safety audits, and data on enforcement activities. We interviewed representatives from six motor carriers, including large carriers, small carriers, and an owner-operator. We interviewed motor carrier industry associations representing many segments of the motor coach and trucking industry, such as the American Trucking Association, the Owner-Operator Independent Drivers Association, the American Bus Association, and the National Association of Small Trucking Companies. We also interviewed officials from unions representing truck and bus drivers and from a variety of associations representing urine specimen collectors, medical review officers, substance abuse professionals, drug testing consortiums, and others involved in the drug testing industry. We also interviewed representatives from one of the largest laboratories involved in the DOT drug testing industry. In addition, we observed FMCSA oversight activities, including two compliance reviews and two new entrant safety audits in California and Virginia. We selected states in which to observe compliance reviews and new entrant safety audits on the basis of the availability of on-going FMCSA oversight activities. As we continue our work, we plan to observe additional compliance reviews and safety audits. Also, our Forensic Audits and Special Investigations (FSI) team tested compliance with protocols of collection sites in three metropolitan areas selected for the large number of truck drivers residing in those areas, as well as Washington, D.C. Our undercover investigators posed as commercial truck drivers who needed a DOT drug test and, in some cases, tested whether they could successfully adulterate or substitute the specimens. They conducted their investigation

from May to September 2007 in accordance with standards prescribed by the President's Council on Integrity and Efficiency. We determined that the data used in this statement are sufficiently reliable for our purposes. We began our review in June 2007 and are performing it in accordance with generally accepted government auditing standards.

Summary

FMCSA's efforts to ensure that commercial motor carriers have drug testing programs in place face two key challenges.

- **Lack of compliance appears to be widespread.** Our review of FMCSA data, visits to individual carriers, and discussions with industry associations, indicate that carriers, particularly small carriers and owner-operators,⁷ are often not in compliance with the drug testing requirements. According to FMCSA data, more than 70 percent of compliance reviews conducted since 2001 and more than 40 percent of safety audits conducted since 2003 found violations of drug testing regulations, including finding that the carrier had no drug testing program at all.⁸ The most frequently cited drug testing violations in compliance reviews are that drivers operating in safety-sensitive positions have not successfully passed a preemployment drug test, or that drivers are not being tested at all. About 1 percent of compliance reviews per year find carriers that have allowed drivers with a positive drug test to continue to operate in safety-sensitive positions. We also found indications that a lack of compliance with protocols may also be present among entities that collect specimens for testing. Posing as commercial truck drivers needing DOT drug tests, our investigators, in a statement also issued today, determined that 22 of the 24 collection sites they tested were not in compliance with some of the protocols that guide the process of collecting a urine specimen.⁹
- **FMCSA's oversight is limited.** While new entrant safety audits—which began in 2003—are designed to reach all new entrants, compliance

⁷Owner-operators own their own vehicles and hold a valid commercial driver's license. An owner-operator may act as both an employer and a driver at certain times, or as a driver for another employer at other times.

⁸FMCSA data used in this statement include information from compliance reviews and new entrant safety audits conducted through September 21, 2007.

⁹GAO, *Drug Testing: Undercover Test Reveal Significant Vulnerabilities in DOT's Drug Testing Program*, [GAO-08-225T](#) (Washington, D.C.: Nov. 1, 2007).

reviews only reach approximately 2 percent of carriers each year.¹⁰ These activities are limited in the extent to which they can identify and rectify problems in carriers' drug testing programs. In particular, these oversight activities do not address compliance by agents used by carriers to implement drug testing programs—such as collection sites—in part, because of limited resources and the lack of enforcement authority over these service agents.¹¹ However, FMCSA will investigate service agents as a result of specific allegations and complaints. These limitations in FMCSA oversight may lessen incentives for carriers and service agents to comply with drug testing requirements.

Even in situations in which FMCSA is able to ensure that a carrier has a sound framework in place for drug testing, there are additional challenges in ensuring the integrity of drug testing programs.

- **Subversion of the drug test is still possible.** The regulations do not require directly observed collection, nor do they require a thorough search for hidden subversion products. Drivers intent on adulterating or substituting a urine specimen can conceal small vials in socks or other undergarments, which may not be identified. The extent to which subversion is occurring is unknown—and is impossible to determine. SAMHSA officials with whom we met noted that when adulterants work well and destroy the evidence of their presence, they are undetectable. Similarly, when urine samples are successfully substituted with synthetic urine, or another person's drug-free urine, there is no record of them. Our investigators were able to successfully substitute synthetic urine at a collection site that followed all DOT protocols, and the laboratory was not able to detect any of the adulterants or substitutes used in their investigation.
- **There are limitations to the test itself.** Drivers who use illegal substances other than the five that DOT tests for, or misuse certain prescription medications, may not be identified during the drug testing process. Also, the urine test does not provide indications of drug use

¹⁰There were approximately 12,500 compliance reviews conducted on carriers each year from 2001 through 2006.

¹¹Service agent refers to any person or entity, other than an employee of the employer, who provides services to employers and employees in connection with drug and alcohol testing requirements. This category includes, but is not limited to, collectors, laboratories, medical review officers, substance abuse professionals, and consortiums. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of federal regulations.

history because it can only detect the presence of drugs taken within the previous several days.

- **Lack of disclosure of past positive drug tests may be a problem.** DOT regulations require that an employer, in addition to testing an applicant and receiving a negative result, also inquire about a driver's drug test history by contacting the driver's recent employers listed on the employment application. Representatives from several motor carriers with whom we met told us it is easy for drivers to simply omit any previous employer for whom they tested positive or any past preemployment test that was positive. Such drivers can remain drug-free for a period of time leading up to their next preemployment test, get a negative result, and get hired—without their new employer knowing about any past positive drug tests.

We have identified various options to address these challenges, some of which have been proposed by carriers, industry associations, DOT, and others. These options include such steps as providing and publicizing information and successful practices regarding drug testing requirements directly to carriers, service agents, and drivers; encouraging carriers to do more to ensure that the service agents they use comply with DOT protocols; improving and expanding FMCSA oversight and enforcement; adopting federal legislation prohibiting the sale, manufacture, or use of adulterants or substitutes; testing for more and different drugs; testing alternative specimens, such as hair; and developing a national reporting requirement for past positive drug test results. There are advantages and disadvantages to implementing any of these various options. Our ongoing work will examine the advantages and disadvantages of these options in more detail.

Background

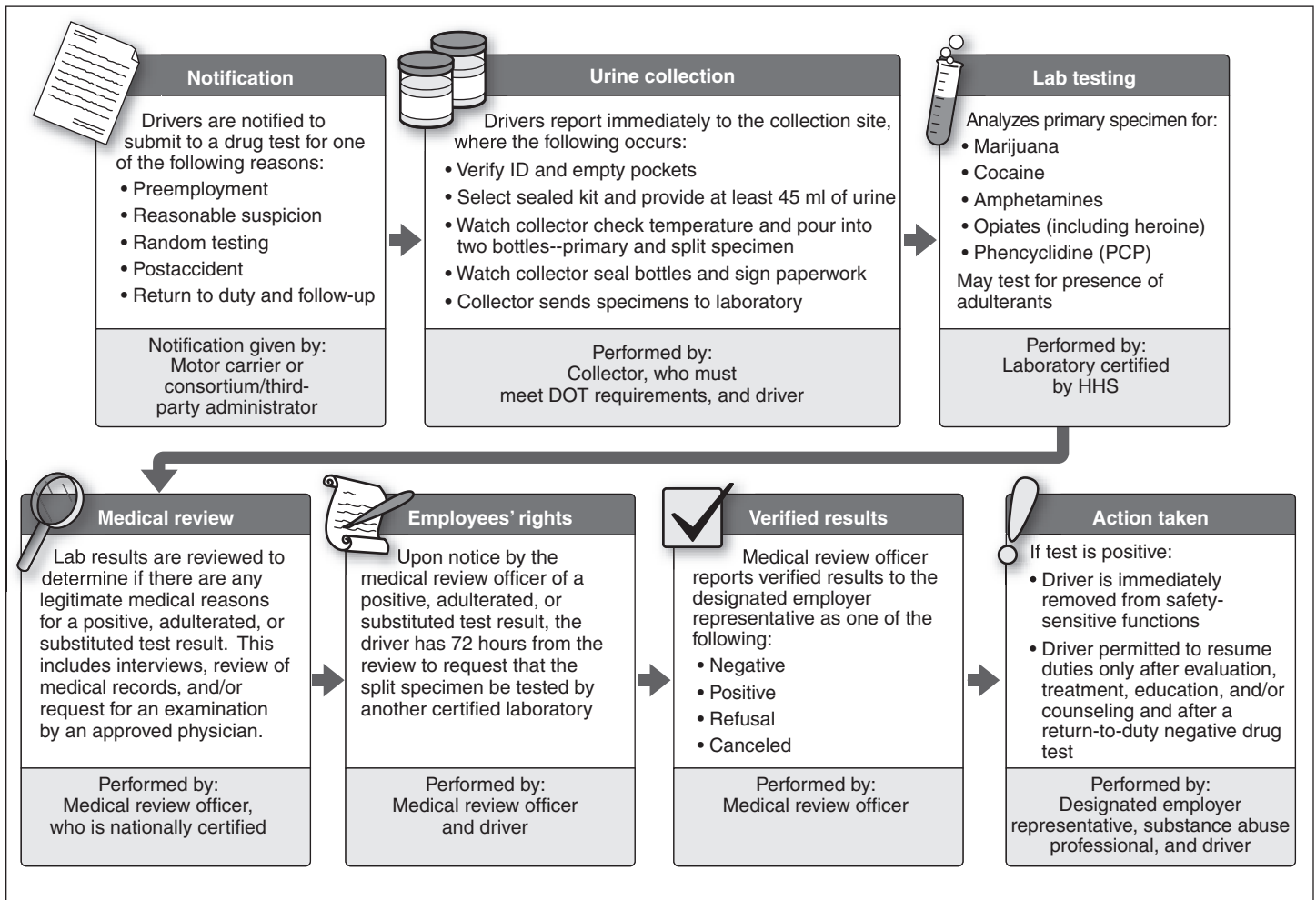
Federal drug testing regulations require commercial motor carriers to have a drug testing program that covers transportation safety-sensitive employees who operate commercial motor vehicles that have a gross vehicle rating of 26,001 pounds or more; are designed to transport 16 or more passengers, including the driver; or are of any size and are used in the transportation of hazardous materials. While the largest motor carriers operate upwards of 50,000 vehicles, most carriers are small, with approximately 80 percent operating between 1 and 6 vehicles. Carriers continually enter and exit the industry, and turnover among small carriers is high, thereby making them harder to track. Since 1998, the industry has increased in size by an average of about 29,000 interstate carriers per year.

The Omnibus Transportation Employee Testing Act of 1991 required DOT to implement drug testing using urine specimens. Carriers are required to obtain a negative test result prior to employing a driver and allowing him or her to engage in safety-sensitive duties. Carriers also must conduct random testing, postaccident testing, and reasonable suspicion testing. As implemented by DOT, testing covers five drug categories: marijuana, cocaine, amphetamines (including methamphetamines), opiates (including heroin), and phencyclidine (PCP). If an employee tests positive, he or she is required to complete a return-to-duty process before reengaging in safety-sensitive duties. The return-to-duty process is guided by a substance abuse professional and may include education, treatment, follow-up testing, and aftercare.

Motor carriers must implement a drug testing program and may use service agents to perform some or all of the tasks needed to comply with DOT drug testing requirements (see fig. 1). A motor carrier must designate an employer representative, who is an employee authorized by the carrier to take immediate action to remove a driver from safety-sensitive duties after being notified of a positive or refusal-to-test result.¹² Service agents must meet qualification requirements and are responsible for implementing the required protocols.

¹²Specimens that have been adulterated or substituted are considered refusals-to-test.

Figure 1: Overview of the DOT Drug Testing Process



Source: GAO analysis of DOT requirements.

Service agents include the following:

- A **collector** instructs drivers during the urine collection process, makes an initial inspection of the specimen provided, divides the specimen into primary and split specimens,¹³ and sends it to the laboratory for analysis. A

¹³In DOT drug testing, the split specimen is tested at a second laboratory in the event that the employee requests that it be tested following a verified positive, adulterated, or substituted test result based on the primary specimen. Verified positive, adulterated, or substituted test results are determined after laboratory analysis and medical review.

collection site can be a portable toilet; any toilet in a clinic, hospital, or office building; or a toilet on-site at a carrier's place of business.

- A **laboratory** analyzes the specimen. Laboratories must be certified by HHS; as of January 2007, there were 46 such laboratories.
- A **medical review officer**, who is a licensed physician, is responsible for receiving and reviewing laboratory results for a carrier's drug testing program and evaluating medical explanations for certain drug test results. In cases of confirmed positive or refusal-to-test results, the officer must verify the laboratory results by speaking with the driver and informing the driver of his or her right to have the split specimen tested.
- A **substance abuse professional** evaluates drivers who have tested positive or refused to take a test and makes recommendations about the return-to-duty process, which could include education, treatment, follow-up testing, and aftercare. Drivers are required to complete the recommended steps before they reengage in safety-sensitive functions.
- A **consortium/third-party administrator** is a company that can provide or coordinate either a variety of or all of the above services for carriers and owner-operators.¹⁴

FMCSA has responsibility for ensuring compliance by trucking and motor coach companies with drug testing requirements. FMCSA does so through safety audits of new entrants and compliance reviews of existing companies—both of which cover compliance with all types of safety regulations, including drug and alcohol testing. Safety audits are required for all new entrants to the trucking industry and are opportunities for FMCSA to provide educational and technical assistance to new carriers, explain carriers' responsibilities under the federal regulations, and check for operational deficiencies. In excess of 40,000 safety audits were conducted in 2006. Compliance reviews occur for four reasons: (1) poor

¹⁴The regulations require owner-operators to implement a random controlled substances testing program. To comply, owner-operators must be enrolled in a random testing pool that includes other drivers. The random testing pool is managed by a consortium/third-party administrator.

carrier safety record in SafeStat,¹⁵ (2) a fatal accident, (3) a complaint against the carrier or driver, or (4) a follow-up investigation after violations. In 2006, FMCSA and state investigators conducted more than 15,000 compliance reviews. In addition to the audits and compliance reviews, FMCSA also makes educational materials about drug testing available on its Web site.

FMCSA Faces Two Key Challenges in Ensuring Drug Testing Programs Are in Place

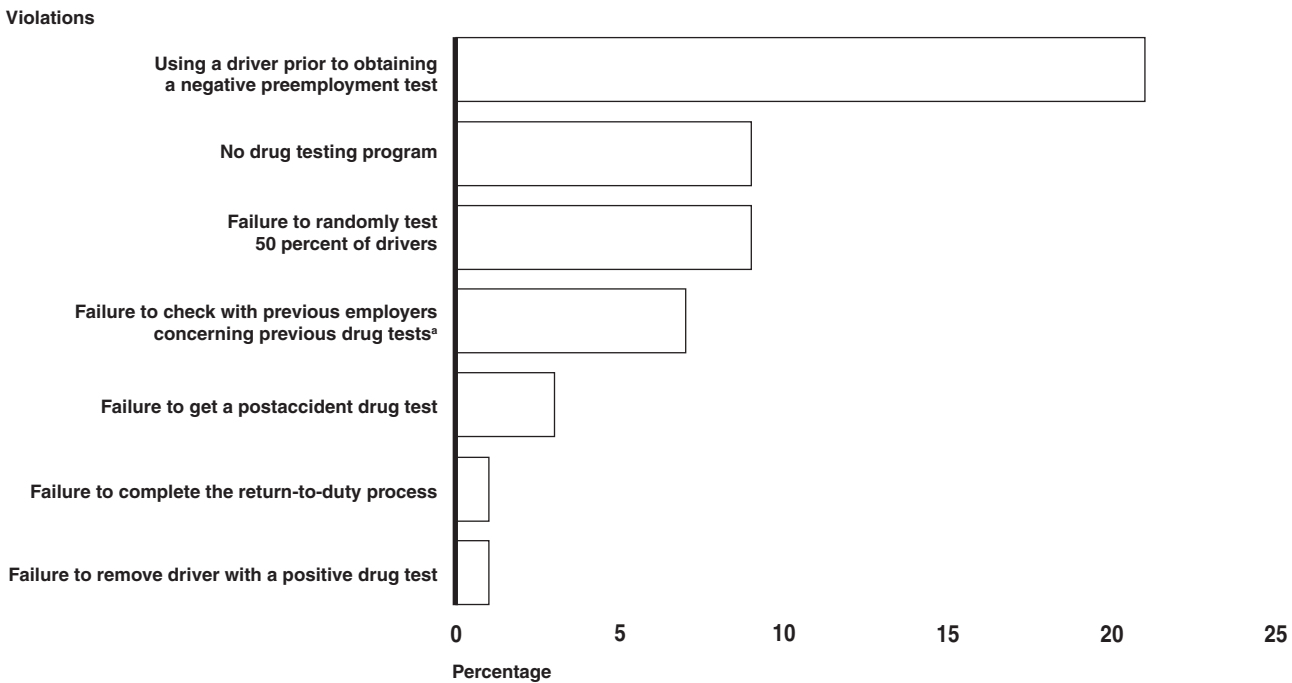
FMCSA's efforts to ensure that commercial motor carriers have drug testing programs in place face two key challenges: limited compliance by carriers and others involved in the process, and limitations in the mechanisms FMCSA uses to ensure that drug testing programs are in place.

Compliance by Carriers and Others Is in Question

Our reviews of FMCSA data, visits to individual carriers, and discussions with industry associations indicate that carriers, particularly small carriers and owner-operators, are often not in compliance with the drug testing regulations, resulting in the possibility that many drivers are not being tested, which increases the potential for drivers who use illegal substances to continue operating in safety-sensitive positions. According to FMCSA data, more than 70 percent of compliance reviews conducted since 2001 and more than 40 percent of safety audits conducted since 2003 found violations of drug testing regulations. The most frequently cited violation found in new entrant safety audits, which was found in 30 percent of safety audits conducted since 2003, was that carriers had no drug testing program at all. The most frequently cited drug testing violations in compliance reviews are that drivers operating in safety-sensitive positions have not successfully passed a preemployment drug test, or that drivers are not being tested at all (see fig. 2). About 1 percent of compliance reviews per year find carriers that have allowed drivers with a positive drug test to continue to operate in safety-sensitive positions.

¹⁵FMCSA targets compliance reviews toward those carriers that its Motor Carrier Safety Status Measurement System (SafeStat) identifies as having a high potential for being involved in crashes. We have recently reported that a statistical approach would better identify commercial carriers for compliance reviews than the current approach. GAO, *Motor Carrier Safety: A Statistical Approach Will Better Identify Commercial Carriers That Pose High Crash Risks Than Does the Current Federal Approach*, [GAO-07-585](#) (Washington, D.C.: June 11, 2007); and *Motor Carrier Safety: Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law*, [GAO-07-584](#) (Washington, D.C.: Aug. 28, 2007).

Figure 2: Percentage of Selected Violations Identified during FMCSA Compliance Reviews, 2001-2007



Source: GAO analysis of FMCSA data from 2001 to September 21, 2007.

^aThis violation may be reported under other applicable sections of DOT and FMCSA regulations.

We saw similar problems in our field visits: in the two compliance reviews and two new entrant safety audits we observed, two of the carriers, both of which were small carriers, were not aware of the drug testing requirements and did not have a drug testing program at all. For example, a representative at one of the carriers we interviewed did not understand the comprehensiveness of the drug testing regulations. The carrier had hired owner-operators, who are enrolled in a random drug testing program through a consortium/third-party administrator, but did not fully understand its responsibility to obtain testing results and other information from the consortium in which those owner-operators are enrolled. Furthermore, for those carriers who use drivers on and off throughout the year, there was confusion regarding how to include them in random drug testing.

Compliance with drug testing regulations is particularly problematic for owner-operators who are not hired by other companies. An owner-operator must follow the drug testing regulations and be in a drug testing program just like all other drivers employed by motor carrier companies.

For example, an owner-operator is required to get a preemployment drug test and to enroll in a consortium for random testing purposes. However, it is unclear how an individual who is both the employer and the employee would comply with drug testing regulations. For example, should the owner-operator who participates in a consortium test positive, there is no one who will remove the individual from safety-sensitive duties, and no one beyond the owner-operator will be notified of the positive result.¹⁶

Posing as commercial truck drivers needing DOT drug tests, our investigators determined that there is also a lack of compliance with protocols among entities that collect specimens for testing, resulting in the ability for drivers to subvert a drug test. Twenty-two of the 24 collection sites our investigators tested were not in compliance with some of the protocols that guide the process of collecting a urine specimen. For example, employees at 10 sites failed to ask the investigator to empty his pants pockets and display items to ensure no items were present that could be used to adulterate the specimen. One employee who did ask the investigator to empty his pockets did not verify that all of his pockets were empty, allowing the investigator to bring an adulterant into the collection area by hiding it in his back pocket.

Mechanisms for Checking Compliance Have Limitations

While almost all compliance reviews and safety audits test compliance with drug and alcohol testing regulations, these activities have several limitations and gaps in how effectively they can identify and correct poor compliance.¹⁷

- **Most carriers are not reviewed.** Safety audits began in 2003, and since these audits are targeted at new entrants, they do not affect companies in business earlier than 2003. FMCSA compliance reviews only reach approximately 2 percent of carriers each year. Owner-operators and small carriers are less likely than larger companies to be selected for a compliance review. Several associations told us that small carriers may be less likely to comply with the drug testing regulations because they may

¹⁶According to the regulations, an employer or owner-operator may authorize a consortium/third-party administrator to act as an intermediary for transmitting drug test results. Therefore, a consortium/third-party administrator may also have information on drug test results.

¹⁷FMCSA does not normally conduct reviews solely on drug testing. However, we have reported that 95 percent of FMCSA compliance reviews in fiscal years 2001 to 2006 included a review of drug and alcohol testing compliance. [GAO-07-584](#).

have less understanding of their responsibilities, and because they have less incentive to comply, given the rarity in which they will be visited by FMCSA or state investigators.

- **Oversight of service agents is lacking.** Except in the case of specific allegations or complaints, FMCSA investigators do not visit or audit collection sites or any other service agents employed by the carrier to observe procedures and enforce compliance with drug testing requirements.¹⁸ FMCSA has a limited number of people to oversee the potentially tens of thousands of sites that can be used to collect urine for DOT drug testing. Collection sites can be located anywhere—for example, a portable toilet or any toilet in a clinic, hospital, or office building—and can operate during differing hours. Few carriers conduct regular oversight of the service agents they employ. One large carrier with whom we spoke tests and verifies that the collection sites it uses are in compliance. Smaller carriers are less likely to conduct such oversight, given their more limited resources. Representatives from a third-party administrator with whom we spoke told us that it observes some of the collection sites it uses, sometimes at a client’s request. If significant problems are found, representatives told us they alert the carriers to discontinue use of that collection site. In addition, representatives told us that some major collection companies internally audit their own sites to ensure the sites comply with all requirements.
- **FMCSA conducts enforcement, but enforcement actions on service agents are limited.** Although not all violations result in enforcement actions, FMCSA can use civil penalties, compliance orders, and out-of-service orders to enforce carriers’ compliance with drug testing requirements. During safety audits of new entrants, FMCSA typically does not assess fines against the carrier for noncompliance, since the purpose of these audits is to educate and inform to encourage compliance.¹⁹ The result of a safety audit is a list of recommendations for corrective action and a requirement to provide documentation that corrective action was

¹⁸There is some oversight of collection sites by other DOT agencies, including the Federal Aviation Administration, the Federal Railroad Administration, and the Federal Transit Administration, and by the United States Coast Guard in the Department of Homeland Security. These other agencies inspect some collection sites used by the employers and operators they regulate. These collection sites may also be used by FMCSA-regulated carriers.

¹⁹Certain violations discovered during a safety audit will result in ending the safety audit and an immediate referral for a compliance review. For example, one such violation is if a carrier is found to have used a driver who had a positive drug test.

taken. FMCSA does not believe it has the authority to levy civil penalties on service agents. If a service agent is found to be out of compliance, FMCSA officials told us that at most, they can only fine the carrier that uses the service agent—not the service agent itself. Several carrier and drug testing industry associations we interviewed also commented that lack of enforcement of the drug testing requirements against service agents, particularly collection sites, is a problem. FMCSA and ODAPC can initiate a process to disqualify service agents from participating in activities related to DOT drug testing programs, known as a Public Interest Exclusion (PIE), in cases of serious noncompliance. While a number of PIEs have been initiated, no PIE has been completed or formally issued. Typically, the service agent has either corrected the noncompliance or gone out of business before the PIE could be completed.

- **There is limited proactive outreach to carriers, service agents, and drivers.** While new entrant safety audits are an important tool for educating and informing new carriers, these audits typically do not occur until after a carrier has been operating for 9 to 18 months. New carriers receive little information about drug testing requirements when they register. When a new carrier applies for a DOT number, the application includes a question in which the carrier must confirm whether it understands its responsibilities related to drug and alcohol testing. However, FMCSA does not provide any educational information on drug testing when it approves the application. The carrier must seek out information on the regulations and other responsibilities. The FMCSA and ODAPC Web sites provide substantial educational information on drug testing responsibilities to carriers, service agents, and drivers. An official from FMCSA told us that its Web site may not effectively reach carriers and drivers, and that there is a need to be more proactive in disseminating information on the drug testing program.

Options that we have identified to address these limitations include

- providing more information to carriers, service agents, and drivers when they enter the industry, and publicizing the materials available on the FMCSA Web site;
- encouraging carriers to do more to test and verify that the service agents they use are in compliance with the requirements; and
- increasing or expanding FMCSA's oversight activities and enforcement authority.

FMCSA's fiscal year 2008 operating plan calls for improving the Web site and better publicizing available information, and its Comprehensive Safety Analysis 2010 (CSA 2010) initiative includes plans to improve current oversight.²⁰ Our ongoing work will examine the advantages and disadvantages of the various options in more detail.

Additional Challenges Threaten Integrity of the Drug Testing Process

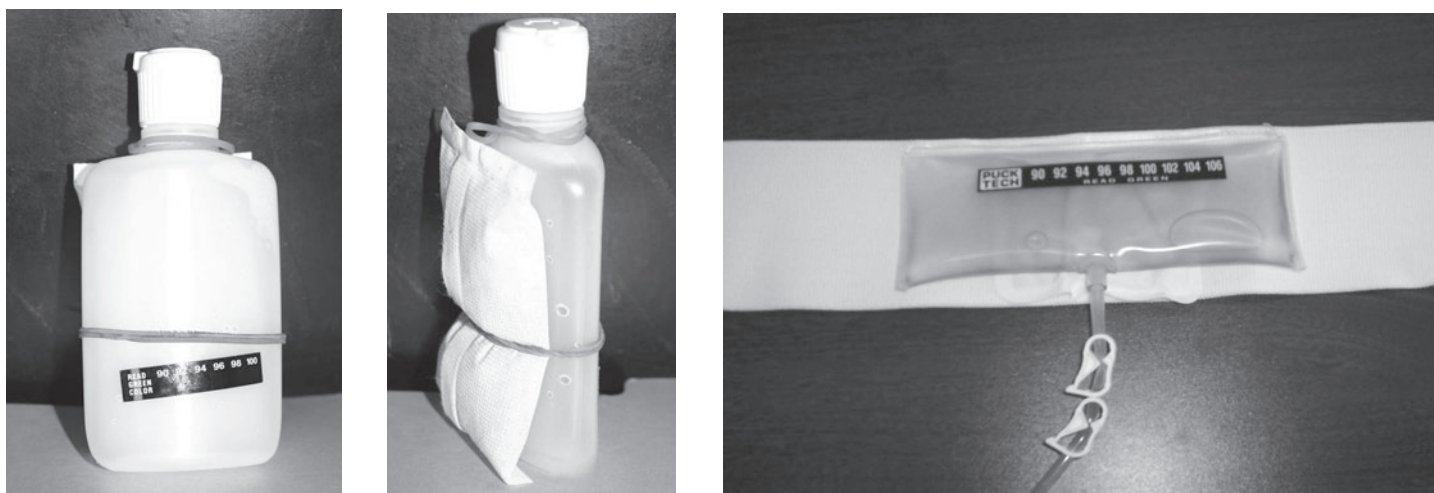
Even in situations in which FMCSA is able to ensure that a carrier has a sound framework in place for drug testing, there are additional challenges that can affect the integrity of results for individual tests. These challenges range from opportunities to subvert the test results to learning about past instances in which applicants may have failed drug tests.

Subversion of Drug Tests Is Still Possible

Adulterating or diluting the urine sample or substituting synthetic urine or drug-free urine is possible, even if carriers and service agents are in perfect compliance with requirements. For example, our investigators were able to successfully substitute synthetic urine at a collection site that appeared to follow all DOT protocols. In most instances, DOT drug testing protocols do not require directly observed collection, nor do they require a thorough search for hidden subversion products. Drivers intent on adulterating or substituting a urine specimen can conceal small vials in socks or other undergarments, such as those shown in figure 3. Products designed to dilute, cleanse, or substitute urine specimens are easily obtained and brazenly marketed on Web sites. Other products—more than 400 in number—are used to adulterate urine samples. 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.

²⁰Through CSA 2010, FMCSA expects to reduce motor carrier crashes, fatalities, and injuries by using better ways to identify unsafe carriers and drivers; assessing a larger portion of the motor carrier industry; and expanding the range of interventions to be used with carriers that and drivers who fail to comply with safety requirements.

Figure 3: Devices Used to Hold Adulterants or Substitutes



Sources: American Association of Medical Review Officers, and Substance Abuse Program Administrators Association.

Note: The two left photographs show a container that was used for substituted or synthetic urine, with a heating pad attached. The photograph on the far right shows a belt designed to hold a urine pack filled with synthetic urine.

Another method of substitution is having another person give the urine specimen instead of the driver. Collection sites are required to identify the driver by looking at a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a federal, state, or local government (e.g., a driver's license). The protocols do not require carriers to provide photographs or other identification of drivers to collectors to validate the identification. For example, our investigators successfully used bogus driver's licenses to gain access to all 24 collection sites—demonstrating that drug users could send someone to take a drug test in their place using fake identification.

The extent to which subversion is occurring is unknown—and is impossible to determine. SAMHSA officials with whom we met noted that when adulterants work well and destroy the evidence of their presence, they are undetectable by laboratories. DOT issued a Notice of Proposed Rulemaking in 2005 to require specimen validity testing to test for the presence of adulterants, and a final rule is expected in fall 2007.²¹ Similarly, when urine samples are successfully substituted, the result is a negative

²¹70 Fed. Reg. 62276-01.

test result; therefore, no data exist on the extent to which such substitution occurs. For example, our investigators adulterated or substituted eight specimens in their investigation, and the laboratory was not able to detect any of the adulterants or substitutes used.

One potential option to addressing this problem is to restrict the sale of products that allow applicants to subvert tests. As we have previously reported, several states have laws that prohibit the manufacture, sale, or use of products intended to subvert drug tests, but these laws are difficult to enforce.²² To our knowledge, very few individuals have been cited or convicted for violating these laws. As we also reported, however, South Carolina convicted individuals for marketing and selling masking products: one who sold urine substitution kits over the Internet, and another who advertised that his store carried products that are used to pass drug tests by cleansing the system. However, the interstate nature of the manufacture and sale of products intended to subvert a drug test lessens the impact of state-based laws. Legislation that would have prohibited the manufacture, marketing, sale, or shipment of such products was introduced in Congress in 2005 and 2006, but was not enacted.

Current Testing Covers a Limited Number of Drugs and Amount of Time

Even if drivers submit legitimate, unadulterated urine samples, the current testing regimen has certain limitations.

- **Drivers may misuse substances other than the five being tested.** Drivers who use illegal substances, such as ecstasy, or misuse legal substances, such as prescription medication containing oxycodone²³ and other synthetic opiates, can go unidentified by the drug tests, although the use of these other substances can impair the ability of these drivers to operate in a safety-sensitive position. In addition, the use, and misuse, of prescription drugs may also be a problem.
- **Test detects drug use only within the past few days.** The urine test detects drugs used by the driver within the past several days (range of 1 to 5 days). This is a particular concern for preemployment testing, according

²²GAO-05-653T.

²³An example of a prescription medication containing oxycodone is OxyContin®, which is a prescription painkiller used for moderate to high pain relief associated with various injuries, and pain associated with cancer. OxyContin® contains oxycodone, the medication's active ingredient, in a timed-release tablet.

to carriers with whom we spoke, since a habitual user can refrain from drug use for several days before the test in order to test negative.

Utilizing other types of tests, such as hair tests, as well as testing for other types of drugs, have been proposed for dealing with these limitations. Hair tests can detect long-term and habitual drug use and representatives from several associations we interviewed told us that hair tests are, therefore, more suitable for preemployment purposes. In fact, some motor carriers supplement the DOT test with these alternative tests, and some carriers also test for additional drugs. One large carrier we interviewed uses hair tests to complement the DOT-regulated urine test and found higher rates of drug use in the hair test (approximately 8 percent compared with 2 to 3 percent for urine tests on the same individuals). However, union representatives with whom we spoke are not in favor of carriers utilizing alternative tests in addition to DOT-regulated tests, because doing so creates multiple standards throughout the industry that their members have to comply with. In addition, hair testing is not effective at detecting current or very recent drug use, and the test is also more expensive than urine testing. Our ongoing work will further analyze the pros and cons of these options.

Information about Past Test Failures Is Limited

DOT regulations require that an employer, in addition to testing an applicant and receiving a negative result, also inquire about a prospective driver's drug test history by contacting the driver's recent employers listed on the employment application. Representatives from several motor carriers with whom we met told us that drivers' applications are often incomplete. In addition, it is easy for drivers to simply omit any previous employer for which they tested positive or any past preemployment test that was positive. Such drivers can remain drug-free for a period of time leading up to their next preemployment test, get a negative result, and get hired—without their new employer knowing about any past positive drug tests and without having gone through the required return-to-duty process.

Various options have been suggested for dealing with this issue, and in particular, many in the industry have proposed developing a national reporting requirement for past positive drug tests. As with the other types of options that we have previously discussed, our ongoing work will analyze the pros and cons of these improvements. According to a DOT official with whom we met, FMCSA is considering implementing a central repository containing national drug and alcohol testing results to which carriers would have access, but its timeline is uncertain.

According to DOT, several states already require some form of information sharing on drivers' past positive drug tests, though implementation varies by state. For example, Oregon requires the medical review officer to report positive results to the state, while Texas requires carriers to report positive test results. Furthermore, there is variation on what states do with such information that is collected. For example, in North Carolina and Washington, positive drug test results will disqualify drivers until they complete the return-to-duty process, while in other states it is unclear whether the information is being utilized at all.

Our Future Work Will Focus on Options to Address Challenges

Our future work, which we expect to complete in May 2008, will provide more definitive information about many of the matters covered in my statement today. This information will include more detailed information about FMCSA's enforcement activities related to the drug testing regulations. Our report in May 2008 will also focus on the various options that have been proposed to address the challenges and problems we have discussed today.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee might have.

For further information on this statement, please contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony were Andrew Von Ah, Assistant Director; Andrea Chinchilla; Paul Desaulniers; Michelle Everett; Bert Japikse; Sara Ann Moessbauer; John Ryan; Sandra Sokol; Stan Stenersen; and Rebecca Kuhlmann Taylor.

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