

DOT-required urine-testing has shortcomings that have long been known.



A BETTER WAY TO DRUG TEST?

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Since 1988, federal regulations have required commercial drivers to submit urine samples for pre-employment, random, and post-accident testing for prohibited drugs.

Twenty years on, the Government Accountability Office (the investigative arm of

Congress) published a study outlining serious challenges confronting the Federal Motor Carrier Safety Administration in its oversight of the drug-testing program:

- In more than 9% of compliance reviews conducted between 2001 and 2007, carriers had no drug-testing programs at all.
- An unknown number of drug users go through the testing process but avoid detection, in some cases by adulterating or

substituting urine specimens with widely available products marketed as allowing drivers to “beat” the test.

- Among the drivers who test positive, an unknown number continue to drive — primarily by “job-hopping” — without completing a return-to-duty process guided by a substance abuse professional as required by the regulations. Although this study is over a decade old,

these challenges still exist. They've been made more problematic by the opioid epidemic and increasing legalization of marijuana in many states.

Cheating the tests

In that 2008 study, GAO investigators posed as commercial truck drivers needing DOT drug tests. At 10 of 24 testing sites, testers did not ask them to empty their pants pockets to ensure no items were present that could be used to adulterate the specimen. At other collection sites, investigators found substances available that could have been used to dilute or otherwise tamper with their specimen. At some sites, they had ample opportunity to have a different individual come in and provide a sample for them.

Search for "how to pass a drug test" on the Internet and you'll go down a rabbit hole of articles and products that claim they can help drug users pass urine, saliva, and even hair tests. There are detox programs, synthetic urine, special shampoos to use before a hair test, and more.

Quest Diagnostics reported earlier this year a rise in urine specimens reported as invalid suggest more efforts to cheat.

Drug-testing labs are getting more sophisticated about catching cheaters, but at the same time cheaters are getting smarter about how they try to game the system.

"We're fighting urine cheaters daily, and they're getting smarter at it and they're getting good at it," says Gina Kesler, CEO of Phoenix, Arizona-based Impact Employee Solutions, a third-party drug testing administrator serving primarily transportation. "Your good collectors will be able to identify

"It's easy to 'study' for your pre-employment screening."

— Ben Greenberg, Goldberg Segalla

[a suspect specimen] very quickly. Even if it's real urine, they can tell it's just not right," she says — but there's a shortage of good, experienced workers in the drug-testing industry.

Hair testing

"The urinalysis that's mandatory for DOT drug testing is not good enough," says Ben Greenberg, vice chair of trucking practice at the Raleigh, North Carolina, offices of law firm Goldberg Segalla.

In response, some fleets have turned to hair testing, including some of the largest motor carriers in the country, such as Schneider, J.B. Hunt, Swift Transportation, and U.S. Xpress.

Although it is more expensive than urine testing, and fleets still must test urine to meet DOT requirements, these companies say hair testing is less prone to cheating and more likely to catch chronic drug users.

"We have not found any adulterants that can beat a hair drug test at this time," says Quest Diagnostics on its website. "Moreover, the risk is minimized, because [unlike urine testing] every hair collection is observed."

In addition, cocaine, methamphetamine, opiates, and PCP are rapidly excreted and usually undetectable in urine 72 hours after use. Rather than the hours or days covered by saliva or urine tests, respectively, a

hair test covers a period of months, so a drug user can't pass the test by simply abstaining for a few days.

With urinalysis, Greenberg says, "It's easy to 'study' for your pre employment screening. You know you're going to be tested for it, so it's easy to get it out of your system to pass that initial test — and then you can go back to what you're doing" in terms of drug use.

The Trucking Alliance and some large fleets have been lobbying to have hair testing accepted for DOT-required drug and alcohol screening.

In June, the Substance Abuse and Mental Health Services Administration (SAMHSA), part of the Department of Health and Human Services, sent a final rule detailing new mandatory guidelines for federal workplace drug-testing programs allowing the use of hair testing to the White House Office of Management and Budget for approval.

However, using hair testing as a DOT-regulated drug testing method could still be years away, says Dave Osiecki, president of Scopelitis Transportation Consulting. Even after the OMB approves the HHS guidelines (which could take months), two Department of Transportation agencies have to go through a potentially lengthy rulemaking process: the Office of Drug and Alcohol Policy and Compliance and the Federal Motor Carrier Safety Administration.

Criticism of hair testing

As the proposal goes through the rule-making process, it will face challenges from critics such as the Owner-Operator Independent Drivers Association and organized labor.

"The Trucking Alliance has yet to demonstrate that they have experienced a reduction in crash rate since their voluntary adoption of hair testing," the OOIDA Foundation wrote in a briefing on the topic. "Neither have they presented evidence showing that their hair testing labs meet the rigorous standards of scientific methodology for testing or that their hair-testing equipment and protocol has been consistent and unbiased."

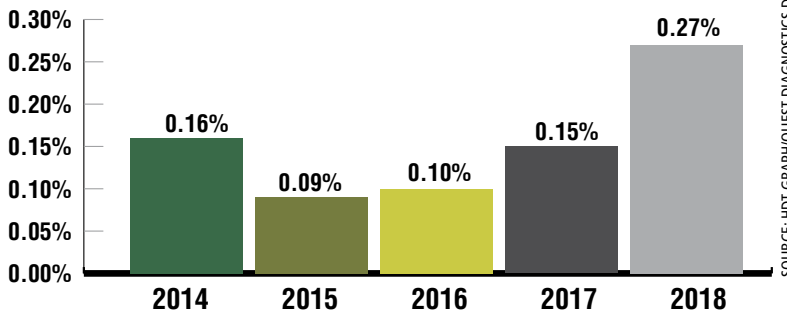
Last year, less-than-truckload carrier ABF's proposal to require hair-testing of all employees was challenged by the Teamsters during labor negotiations. The union noted in a report on the negotiations that "drug-testing hair samples detects possible drug use (illegal and legal prescription) from weeks and



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PHOTO: QUEST DIAGNOSTICS

DRUG-TESTING LAB: INVALID URINE TESTS ON THE RISE



SOURCE: HDT GRAPHQUEST DIAGNOSTICS DATA

Quest Diagnostics' specimen validity testing among the federally mandated, safety-sensitive workforce (which includes truck drivers) indicates that while it is still a very small percentage of the urine tests evaluated, there's a trend of more people trying to cheat drug tests.

months earlier but does not necessarily test for on-the-job use or impairment."

Critics also contend that hair-testing results can result in false positives because certain drugs can be absorbed into the hair from the environment – and that this allegedly happens more easily with African-American hair, leading to accusations of racial bias in these tests as well.

But hair-testing advocates say those concerns are unfounded, provided the testing is done properly.

The National Drug & Alcohol Screening Association explains that when a drug is ingested, it enters the bloodstream and is broken down into specific metabolites. When a hair sample is screened, both the parent drug and the metabolite are isolated and measured.

"If drugs were in the air or on a person's hands and thereby got on a person's hair from outside, the drug would be present as the drug substance itself, and not as certain metabolites or with metabolite/parent drug ratios which are known to be produced by

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ingestion," Psychemedics notes on its website.

Psychemedics says it uses an extensive wash procedure on test samples and analyzes the wash to ensure that any potential contamination has been removed or taken into account. "Other labs may use a less effective wash and/or do not analyze the wash, putting their clients at risk for making employment decisions based on a result that may be reflective of external contamination."

Oral fluids testing

Meanwhile, another type of drug testing is working its way through the regulatory process for transportation workers: oral fluids testing, better known as saliva testing or mouth-swab testing.

In 2015, SAMHSA published proposed guidelines for the inclusion of oral fluid specimens in the mandatory guidelines for federal workplace drug-testing programs. ▶

WHY CAN'T WE MAKE MARIJUANA LEGAL AND JUST TEST FOR IMPAIRED DRIVING?

Marijuana legalization proponents often argue that cannabis should be treated like alcohol – legal to use, but illegal to drive while impaired. But how do you enforce that? With alcohol, decades of science have given us procedures and tests to determine the blood-alcohol level at which a driver is impaired with reasonable accuracy. With marijuana, that's not the case.

"We're nowhere near being able to have a device that measures impairment," says Gina Kesler, CEO of Impact Employee Solutions, a third-party drug testing administrator serving primarily transportation providers.

Not that there aren't plenty of companies trying. In fact, there already are devices available, but their accuracy has been questioned.

"We know from over 50 years of alcohol [studies] that with a certain amount of alcohol, no matter the person's size, they are impaired after reaching certain blood alcohol levels," says Matt Goledzinowski, research scientist with Alcohol Countermeasure Systems, a manufacturer of alcohol screening devices and ignition interlock systems. But with many drugs, including marijuana, he says, there's not a direct correlation between the amount of the drug in the blood and the level of impairment.

"Most legislators want to have a number," as there is for alcohol, Goledzinowski says. "But this is not scientific."

"From plant to plant and leaf to leaf you can get different potency rates," Kesler says of marijuana. "There's no scientific rate to measure that. And it's also highly based on the frequency you smoke or ingest it, and how you metabolize it."

Unlike other drugs and alcohol, marijuana is fat-soluble. "Everything else will be out of your system within 96 hours, because you'll sweat it out, pee it out, cry it out," Kesler says. "But that's not the case with marijuana."

That means the impairing effects of marijuana dissipate far sooner than it disappears from your system.

Marijuana is metabolized very quickly, Goledzinowski explains, reaching its maximum concentration in the blood only a few minutes after smoking it. So, THC levels in the blood tend to spike shortly after smoking, meaning a novice user could be more impaired than blood levels may suggest. On the other hand, regular users may have high THC levels in their blood over 12 hours after consuming.

That's why proper training of law enforcement on how to detect marijuana impairment is so important, he says. This includes looking

for signs such as pupil dilation, bloodshot eyes, a white-coated or green-coated tongue, poor balance during roadside testing, a high pulse, and an inability of a person's eyes to converge as he or she tries to focus on a finger or a pen.



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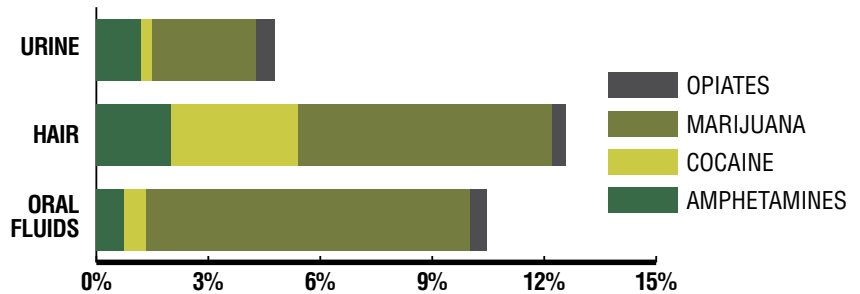
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Abigail Potter, manager of safety and occupational health policy at American Trucking Associations and self-described ATA “drug czar,” says oral fluid testing “is probably as close as we’re going to get to show some level of impairment” for users of legalized marijuana. “Canada is introducing pilot programs to introduce roadside oral fluid testing, and I think that’s going to be the standard going forward. It’s not perfect, but BAC [blood-alcohol content] isn’t perfect either, so we’re hoping oral fluid testing can be kind of that baseline standard.”

In an industry faced with difficulty finding and keeping qualified drivers, some worry that stricter drug-testing protocols, especially in the wake of legalized marijuana in many states, will only make that situation worse. Dean Newell, vice president of safety and driver training for Maverick Transportation, which has been hair testing since 2012, says a fellow trucking exec called him wanting to know what the fallout would be.

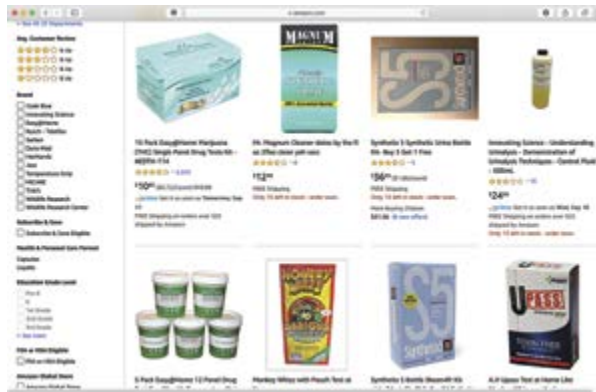
“I look at it from a different perspective of, ‘I don’t want them in a wreck,’ vs. ‘How many am I going to lose’ by going to hair testing,” Newell says. “I’d venture to say generally, you’ve probably got other issues with [drivers who would be driven away by stricter hair-testing] anyway.”

POSITIVE RESULTS FOR DIFFERENT DRUG-TESTING METHODS



SOURCE: HDT GRAPH/QUEST DIAGNOSTICS DATA

Because hair and oral fluid testing are not part of the DOT drug-testing regulations, this data from Quest Diagnostics for 2018 compares its positivity rates for urine, hair, and oral fluids testing among the general U.S. workforce.



Synthetic urine is essentially water that has been fortified with a mix of chemicals (such as creatinine), salts, and yellow coloring. It’s sold at head shops, truck stops, and on the internet, according to DrugAbuse.com, and it’s often sold with temperature-sensing strips and/or hand warmers to make sure it’s at the proper temperature.

DRUG AND ALCOHOL CLEARINGHOUSE TO DEBUT IN JANUARY

The federal Drug and Alcohol Clearinghouse is finally rolling out in January 2020. This electronic database will track commercial driver’s license holders who have tested positive for prohibited drug or alcohol use, as well as refusals to take required drug tests, and other drug and alcohol violations.

The clearinghouse has long been sought as a way to keep commercial drivers who have violated federal drug and alcohol rules from lying about those results and simply getting a job with another motor carrier.

Registration for motor carriers, drivers, and other users is expected to open up in October.

Those required to register for and use the clearinghouse include most commercial drivers, their employers, consortia/third-party administrators used by carriers, medical review officers, substance abuse professionals, and state driver licensing agencies. The FMC-SA recently proposed a three-year delay for state licensing agencies, but everyone else is expected to go forward with implementation as scheduled.

Effective Jan. 6, 2020, the rule requires employers and their service agents to populate the clearinghouse with:

- Their employees’ DOT drug and alcohol violations under Part 382 of the Federal Mo-

tor Carrier Safety Regulations, and

- Verification of a CDL driver’s completed steps in the DOT return-to-duty process.

At the same time, employers will have to begin querying the clearinghouse for required information for driver hiring and annual requirements.

There are two types of queries motor carriers must make:

- Full queries must be done at the pre-employment stage, and the driver has to log into the clearinghouse and give consent first.
- Limited queries must be done at least once a year on each of a carrier’s drivers. Driver consent is required for limited queries, but carriers can add a blanket consent to other pre-employment consent paperwork.

Employers are allowed to authorize service agents to report violations and to conduct queries of the clearinghouse on their behalf.

The “query bundle” an employer purchases from FMCSA will depend on the number of queries that need to be conducted. The flat per-query rate is \$1.25, for both limited and full queries. There are customized “bundles” available to help fit business requirements.

More information at <https://clearinghouse.fmcsa.dot.gov>

BONUS: Read “7 Things You Need to Know About the New Drug and Alcohol Clearinghouse” at www.truckinginfo.com/Clearinghouse

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