

**STATEMENT OF JOHN HILL  
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BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND  
INFRASTRUCTURE  
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT  
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Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee, thank you for inviting me today to describe how the Federal Motor Carrier Safety Administration (FMCSA) is working to improve oversight of drug and alcohol testing of commercial motor vehicle (CMV) drivers. I am pleased that the Subcommittee has provided this forum for our partners and stakeholders to discuss how they believe the existing program may be improved. Joining me this morning is Mr. Jim Swart, Acting Director of the Department's Office of Drug and Alcohol Policy Compliance (ODAPC).

The FMCSA is responsible for regulating approximately 4.2 million employees and the vast majority of the regulated employers (approximately 600,000 companies). Utilizing our inspectors in the field, FMCSA has implemented an aggressive program to examine compliance with the drug and alcohol regulations during roadside inspections, safety audits, and compliance reviews (CRs) to deter impaired driving. The Agency takes every opportunity to educate the industry regarding the drug and alcohol testing regulations. I am happy to report today that the data indicates that commercial vehicle operators are among the safest transportation workers in the United States. FMCSA's most comprehensive commercial vehicle crash study, the 2006 Large Truck Crash Causation Study (LTCCS), found very little illegal drug use or alcohol abuse among the CMV drivers, just 2.3 percent for illegal drug use and .8 percent for alcohol use for all large trucks involved in the LTCCS crashes. The last completed annual survey of drug and alcohol testing results revealed that fewer than two percent of CDL drivers are testing positive for controlled substances and that fewer than one percent are testing positive for alcohol, based on random testing performed by motor carriers. The fact of the matter is that while some transportation workers use illicit drugs, the overwhelming majority does not.

While these data are positive, FMCSA continues to look for ways to improve our programs to further deter drug and alcohol use by commercial vehicle drivers. Challenges continue to exist with regard to "job-hoppers," those who move to other companies after testing positive for drugs or alcohol, oversight of owner-operators, and the increased sophistication of adulterants that can mask "positive" drug tests.

To meet these challenges, our Agency works to continually improve our strategies to increase the knowledge of our regulated employers, service agents, and employees about regulatory compliance. FMCSA is increasing the effectiveness and efficiency of our compliance and enforcement activities to ensure that identified problems are addressed swiftly. We enjoy the support of our safety partners and the regulated industry in our

common effort to deter alcohol abuse and illegal drug use by CMV drivers. These initiatives give us hope for our program's continued success.

## **TARGETING HIGH RISK CARRIERS AND DRIVERS**

FMCSA, with our State partners, focuses on drug and alcohol compliance during all compliance activities, which include roadside inspections, safety audits, and CRs. The Agency uses an aggressive risk-based approach in addressing safety priorities with our compliance and enforcement resources. This strategy has produced significant safety results and has increased the regulated industry's awareness of areas to improve. In 2006, FMCSA and the States reviewed the compliance of more than 15,000 drug and alcohol programs during CRs of high risk motor carriers. Nearly 64 percent identified implementation deficiencies. All of these carriers received regulatory guidance and technical assistance to correct the problems; 2,775 of them were fined for serious noncompliance. Additionally, since the program's inception in 2003, 147,815 new entrant safety audits have been completed. Last year, we reviewed the drug and alcohol testing programs of more than 40,000 new entrants to the motor carrier industry through our safety audit activities and counseled more than 42 percent of them about deficiencies in their drug and alcohol programs. Our revised New Entrant Rule will only enhance this issue with motor carriers when published in 2008.

In addition to reviewing the effectiveness of drug and alcohol testing programs during CRs and new entrant safety audits, FMCSA and our State partners conducted over 3 million roadside inspections last year. During each of these inspections, drivers were evaluated for signs of drug or alcohol use and, if use was discovered, they were removed from the roadway. In 2006, 5,466 drivers, or 2 tenths of a percent, were discovered under the influence or in possession of drugs or alcohol during roadside inspections and were removed immediately from the highways. Once convicted, these drivers are subject to disqualification of their Commercial Driver's License (CDL) and, consequently, their privileges to operate a CMV. FMCSA has worked with the States to strengthen the CDL program to ensure that CMV drivers convicted of driving under the influence, as well as many other convictions, lose their driving privileges. The Agency has implemented the CDL provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) as part of our continuing efforts to improve the safety of trucks and buses.

FMCSA also performs significant outreach to the motor carrier industry about drug and alcohol testing regulations. As members of a regulated industry, motor carriers are responsible for being aware of their obligations to comply with FMCSA safety regulations, including those concerning drug testing. In cooperation with ODAPC and the other DOT operating Administrations, we have developed a number of implementation guides that simplify the requirements and illustrate what employers, drivers, collectors, and medical review officers (MROs) must do in order to make the testing process effective. We have produced and distributed thousands of brochures, books, and posters, and continually make presentations to industry associations and other

groups to help clarify the drug and alcohol testing requirements and to promote awareness and quality implementation.

## **DRUG AND ALCOHOL TESTING REGULATORY CHALLENGES**

Using our dual and complementary strategies of education and enforcement, FMCSA and our State partners have been able to minimize impaired driving in the commercial motor vehicle industry. While we are pleased with these results, we seek better information sources regarding drug and alcohol noncompliance and ways to better educate the industry about the requirements. Additionally, FMCSA identifies and addresses challenges not met through the oversight scheme I discussed previously.

### Job Hoppers

One of the greatest challenges facing FMCSA and the industry as we try to eliminate alcohol abusers and drug users from the CMV driver population is the “job hopper.” A job hopper is the driver who tests positive for drug and/or alcohol use and is discharged by one carrier, only to be hired by another carrier in a week or two after the driver has cleansed all illicit substances from his or her body. Generally, the “positive driver” fails to reveal the identity of the previous employer with whom he or she had tested positive. Thus, the subsequent employer has no way of knowing about the positive test. Such a driver could continue to use illegal drugs or abuse alcohol until being caught again, at which time the driver could repeat the process with the next carrier.

The job-hopping driver is not a new regulatory challenge. Section 226 of MCSIA required a study of the feasibility and merits of requiring MROs and employers to report positive test results to State CDL licensing agencies. The study was done and the findings and recommendations were reported to Congress with a copy to this Subcommittee. The study concluded that it is feasible to establish a national database of positive drug test results. If a database were established, the report recommends that it be operated by the Federal government to ensure consistency and uniformity. FMCSA is moving forward to address this problem.

A number of strategies are being evaluated. FMCSA has begun a compliance initiative to identify drivers who fail to comply with the return-to-duty process – the process of being evaluated by a substance abuse professional (SAP) and undergoing the counseling or follow-up testing the SAP prescribes. We have been successful in identifying a number of drivers that have avoided the required return-to-duty process and have removed them from the highways by having the State rescind the CDL. While the process effectively identifies noncompliant drivers and removes them quickly from the roadway, it is labor-intensive. Currently, our efforts have not provided the broad-based results necessary to discourage drivers from job-hopping but modifications are being developed to streamline and improve the effectiveness of the process.

Another strategy being assessed is one initiated by a number of States. Some States require the reporting of positive drug test results to the State licensing agency, usually the Department of Motor Vehicles (DMV). Two States, North Carolina and Washington, take action to revoke or suspend the driver's CDL until the driver proves he is in compliance with the return-to-duty requirements. Other States merely gather the information and may list the positive test result on the driver's record or they may use it for "statistical purposes." Unfortunately, these programs impact drivers only with licenses from the State in which they are tested and the State enforcement authority may be limited regarding employers who fail to report the positive test. Nevertheless, FMCSA is exploring the possibility of this becoming an effective tool if all States were to participate.

Along a similar line, FMCSA's reform of our compliance and enforcement efforts – known as the Comprehensive Safety Analysis 2010 (CSA 2010) – recognizes the need to collect more comprehensive data regarding drug and alcohol compliance. Compliance with drug and alcohol regulations is one of seven performance-based Behavioral Safety Analysis Improvement Categories (BASICS) that FMCSA plans to use in the future to target motor carriers and drivers for compliance. CSA 2010 is examining strategies for collecting drug and alcohol testing information to ensure our new compliance model is able to identify drivers and carriers that do not comply with our drug and alcohol regulations.

Many people have mentioned, over the years, that it would be desirable to create a national data base of drivers who have violated the Department's drug testing rules. Employers could query such a data base to determine if an applicant was out of compliance with our rules. As with any large database containing personally sensitive information, we would have to ensure that: only the minimum information necessary to perform our safety function is collected; the information is used only for safety-sensitive purposes; the information is secure; the information is reported and updated promptly; and there is an adequate mechanism to ensure that individuals can get erroneous information corrected or eliminated from the system.

### Owner-Operators

Another challenge to the effectiveness of FMCSA's Drug and Alcohol Testing Program is the "owner-operator," often a one-person trucking company that generally has its own operating authority and does not work regularly for any one motor carrier. Currently, owner-operators are required to join a consortium to administer their random drug testing but if the owner-operator tests positive for drugs or alcohol or refuses to test, the consortium may report the positive result or refusal to the owner-operator only, and not to the State or FMCSA.

Unfortunately, there exists very little data about owner-operators. Recent statistics indicate that there are nearly 143,000 owner-operators. We suspect that many of these are leased to other larger motor carriers but continue to maintain their own operating authority. We have not determined the answer to the owner-operator problem but believe

that a reporting requirement similar to that discussed previously for job-hoppers would improve the situation.

### Cheating

As we work to deter safety-sensitive workers from using illegal drugs, we are aware of the problem of cheating. Cheating is a serious matter because it diminishes the deterrent effect of our program if employees believe they can get away with using drugs. As a former law enforcement official, I saw first-hand the awful consequences to impaired drivers –both CMV and passenger vehicles.

As a Federal program, FMCSA’s rules must maintain a proper balance between our compelling interest in safety and the legitimate privacy expectations of employees. The Supreme Court and other Federal court cases have approved or upheld the DOT testing program because it maintains this balance.

For this reason, Part 40 requires that all testing take place in Department of Health and Human Services (DHHS) – certified laboratories, using stringent protocols to ensure that the tests are scientifically sound. Manufacturers of alternative testing methods, involving the testing of hair, saliva, and sweat, frequently market their products as the answer to cheating. To date, only urine testing meets the Part 40 requirement.

Perhaps the most obvious way of countering the use of adulterants and substituted specimens would be to make all tests observed directly. I think most people would agree that, in the civilian context, directly observing all employees for all tests would make the testing process vastly more intrusive, as well as more costly. It is likely that such a change to the program would require additional legislative authority. Even with this authority, the Department is concerned that the Courts may reasonably conclude that such a change would adversely affect the balance between the safety purposes of the program and employees’ privacy interests.

Laboratories already use “specimen validity testing” (SVT) methods to detect many adulterants and substituted specimens. According to from the laboratory community, approximately 98 percent of DOT tests are estimated to undergo SVT at the present time. When SVT cannot specifically identify an adulterant, the employee who provided a compromised specimen will undergo an additional test, this time under direct observation. A number of States have enacted criminal laws regarding products used to circumvent drug testing and DOT has supported these efforts, as well as Federal legislation.

### Collection Facility Oversight

Most motor carriers use service agents to perform the testing program functions. These are people or organizations such as collection sites, third party administrators, MROs, and substance abuse professionals. FMCSA reviews the compliance of these entities during the CR process and has found more than 22,000 violations in the past 7 years.

Employers are responsible for meeting the requirements of our drug testing rules, including the procedural rules of Part 40, whether they perform the functions themselves or contract them out. If a service agent fails to meet a Part 40 requirement, it is the motor carrier that is accountable to FMCSA.

Part 40 gives us an additional tool to address serious problems that we discover in the performance of service agents. This is the Public Interest Exclusion (PIE) process, based on the Federal government's suspension and debarment rules. After appropriate administrative due process, a service agent who is failing to comply in significant ways with Part 40 can be prohibited from working in the drug testing program for DOT-regulated employers for up to five years. ODAPC has not yet had to issue a PIE and barred someone from working in our program because, when we encounter serious misconduct by a service agent, we inform the agent that a PIE may be considered. This has caused the service agent to correct the identified problem or to stop serving DOT-regulated employers. The deterrent presence of the PIE provision can be effective in addressing program deficiencies.

FMCSA's perception is that collection sites generally comply with most of the key portions of the rules, but may not fully comply with all the rules all the time. This is generally consistent with what GAO found in its review. The Department has taken important steps to ensure that the collection process does comply with our rules. In 2000, Part 40 started requiring initial and refresher training for collectors. DOT has worked with the drug testing and transportation industries to give special emphasis to collection site integrity. We have also asked for our inspectors and auditors to pay close attention to collection site issues. They have done so.

On the ODAPC web site and in personal emails to a number of drug and alcohol testing administrators and laboratories, we have reminded program participants to ensure that collectors whose services they use or manage pay special attention to collection site procedures. ODAPC also provided English and Spanish versions of the reminders. In all, 14 major organizations reported that they notified nearly 43,000 service centers, clients, collection sites, and collectors.

ODAPC developed the "DOT's 10 Steps to Collection Site Security" and provided 16" x 20" posters to nearly 25,000 collection sites throughout the U.S. The Department will continue to emphasize collection site integrity during inspections and audits, our numerous training activities, and speaking engagements.

## **FUTURE PLANS**

As we move forward, FMCSA, in cooperation with ODAPC and the other operating administrations, continues to look for ways to make our highways safer by ensuring that no commercial vehicle driver is driving while impaired. We continue to refine our drug and alcohol enforcement strategies, including more effectively and efficiently identifying job-hoppers, overseeing collection sites, and pursuing PIEs where appropriate. We have

asked our investigators and State partners to focus on carrier compliance with regulations requiring employers to check with previous employers regarding drug or alcohol use and owner-operator drug and alcohol regulatory compliance. FMCSA is also exploring the possibilities of using laboratory data as a targeting mechanism for problem drivers and motor carriers.

The FMCSA is in the process of bolstering our drug and alcohol testing compliance program by increasing the training provided to State and Federal enforcement staff. From the program's inception, we have had a group of investigators with additional training and expertise in the drug and alcohol testing regulations. These investigators make up FMCSA's Drug & Alcohol Technical Assistance Group (TAG). The TAG members are available to assist any investigation. Additionally, FMCSA is upgrading the knowledge of drug and alcohol testing procedures among our entire field staff, incorporating a module on drug and alcohol testing procedures into the investigator and auditor training academies, and will soon offer additional training for all current investigators. We also plan to develop a new Drug and Alcohol Testing Enforcement Course and develop web-based in-service training for State and Federal enforcement staff.

Using the Drug and Alcohol TAG, FMCSA is in the process of improving the information on the FMCSA website regarding Drug and Alcohol Testing requirements. We are working to make the site more user-friendly for the primary target audiences – motor carriers, drivers, and service agents. The website will be loaded with user guides on how to implement a DOT drug and alcohol program and a series of outreach brochures, posters, etc., for drivers and employers to improve the awareness of program implementation and to increase their knowledge of the consequences of a refusal or positive test.

Looking to the future, FMCSA will increase the focus on our CSA 2010 initiative. This will place additional emphasis on drug and alcohol testing compliance and targeted enforcement for those drivers and carriers that choose not to comply.

Finally, FMCSA has close relationships with our DOT, State, and industry partners on drug and alcohol testing issues and continues to develop and enhance these partnerships. This is critical because our success is dependent on our ability to leverage the available safety resources.

## **CONCLUSION**

Thank you for the opportunity to allow me to discuss the FMCSA Drug and Alcohol Program and what steps we are taking to ensure that commercial vehicle drivers do not drive while impaired. Removing impaired drivers from our roadways has been a focus of my career during my 29 years with the Indiana State Police and my four years with FMCSA. Given the size and scope of our responsibilities, FMCSA will continue to find

new ways to ensure a comprehensive enforcement program aimed at identifying noncompliant drivers and carriers.

I look forward to working with you to achieve our common goals. I would be happy to respond to any questions you may have.