

OBJECTIVE:

**Improve public safety by
reducing drug use within
the trucking industry**

FACT:

**There is drug use
in the workplace.**

1 in 12 workers admits using drugs

Marijuana most commonly used, government reports finds

The Associated Press

Updated: 8:53 a.m. CT July 16, 2007

WASHINGTON - One in 12 full-time workers in the United States acknowledges having used illegal drugs in the past month, the government reports.

Most of those who report using illicit drugs are employed full-time, with the highest rates among restaurant workers, 17.4 percent, and construction workers, 15.1 percent, according to a federal study being released Monday. About 4 percent of teachers and social service workers reported using illegal drugs in the past month, which was among the lowest rates.

Federal officials said the newest survey is a snapshot and was not designed to show whether illicit drug usage in the workplace is a growing problem or a lessening one. The current usage rate is 8.2 percent. Two previous government surveys reflected a usage rate of 7.6 percent in 1994 and 7.7 percent in 1997, but those studies involved a much smaller sample of interviews.

The latest study comes from the Substance Abuse and Mental Health Administration, an agency within the Health and Human Services Department. The data is drawn from the agency's annual surveys in 2002, 2003 and 2004 of the civilian, non-institutionalized population. Each survey included interviews with more than 40,000 people, who were each paid \$30 to participate. Joe Gfroerer, an agency official, said most of the illicit drug use involved marijuana.

Anne Skinstad, a researcher and clinical psychologist, called the survey's results "very worrisome" because there are fewer treatment programs than there used to be to assist employees and employers with a dependence on drugs.

However, testing programs for drug use are fairly prevalent, with 48.8 percent of full-time workers telling the government that their employers conducted testing for drug use.

"I used to train supervisors to detect chronic use and intervene as early as possible, and that is a very good, constructive way rather than firing people," said Skinstad, an associate professor and director of the Prairieland's Addiction Technology Transfer Center at the University of Iowa. "Some employers want drug testing. I'm not sure that's the way I would like to go. What I think I would like to focus on is employee performance."

The study also showed that the prevalence of illegal drug use reported by full-time workers in the past month was highest among younger workers.

Nineteen percent of workers age 18 to 25 said they used illegal drugs during the past month, compared with 10.3 percent among those age 26 to 34; 7 percent among those age 35 to 49; and 2.6 percent among those age 50 to 64.

Men accounted for about two-thirds of the workers — 6.4 million — who reported using illegal drugs in the past month, the government said. Men were also more likely than women to report illegal drug use in the past month — 9.7 percent for men, versus 6.2 percent for women.

The study also looked at alcohol use by workers. About 10.1 million full-time workers, or 8.8 percent, reported heavy alcohol use. Heavy alcohol use was defined as drinking five or more drinks on one occasion at least five times in the past 30 days.

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URL: <http://www.msnbc.msn.com/id/19787720/from/ET/>

Some Fortune 500 Companies Testing With Hair

- Anadarko Petroleum Corporation
- Anheuser-Busch Company
- Baker-Hughes
- Boise Cascade
- Burlington Northern Santa Fe
- CSX Corporation
- Deere & Company
- Delphi Automotive
- DTE Energy
- Federal Mogul Corporation
- General Dynamics- Electric Boat
- General Motors Corporation
- Group 1 Automotive
- HealthNet
- Lear Corporation
- Marathon Oil
- Mead/Westvaco
- MGM Mirage, Inc.
- Navistar
- Norfolk Southern
- Northrop Grumman Ship Systems
- Nucor Steel
- PPG Industries
- Sunoco
- Temple-Inland Corporation
- US Gypsum
- US Steel
- Valero Energy

FACT:

**Workplace drug use
extends into the
transportation industry.**



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10 Percent of Truckers Fail Drug Tests in Oregon

May 9, 2007

[Email](#)

[Subscribe](#) News Summary

Anonymous urine samples collected from truck drivers during safety inspections in Salem, Ore., revealed that 10 percent of drivers tested positive for drugs, the [Oregon Statesman-Journal](#) reported May 3.

The state police said "Operation Trucker Check," conducted over a three-day period, involved 500 truckers. Marijuana, methamphetamine, and opiates were the most commonly detected drugs. However, officials did not determine whether any of the drugs were being used legally; some of the 16 drivers who tested positive for opiates, for example, may have been legally using drugs like Vicodin.

"It's a problem bigger than enforcement and state police," said Oregon state police Sgt. Alan Hageman. "It needs to be looked at by the transportation community as a whole."

"We continue to be concerned by any drug use by our drivers. Our industry has a zero tolerance, and that's our goal," said Bob Russell, the president of Oregon Trucking Association. Federal law requires truckers to submit to pre-employment and post-accident drug tests, but not random testing.

Officials said marijuana and methamphetamine use were found to be higher in the most recent safety check than in others conducted in 1998 and 1999.

Some Transportation Companies Performing Hair Tests

J.B. Hunt Transport, Inc.

Schneider National

Gordon Food Service

IWX Motor Freight

McLane Company

Raley's

Stagecoach Cartage

Norfolk Southern

BNSF

CSX

FACT:

**There are significant
consequences to drug
use in the
transportation industry.**

September 2005 – The truck driver was traveling on a 2 lane, non-divided highway. The driver failed to negotiate a curve, crossed the center line, and struck a 1999 Honda Civic head on. The driver of the car was killed in the crash. The truck driver tested positive for cocaine on the post accident drug test and was sentenced to 6 years in prison in September 2007 for vehicular manslaughter as part of a plea deal.



February 2006 – A truck driver crossed the center line of a two lane highway and struck another truck and a Toyota. The drivers of the other vehicles were both killed and two others were injured. The driver who crossed the center line tested positive for cocaine on the post accident drug test.



Fatal Crashes Involving Drugs On FMCSA Daily News

Total fatalities in these crashes = 24

Crashes (and update articles) on daily news reports from January 2008 – August 2008

Sample of Articles

Decatur (Alabama) Daily; Friday, January 25, 2008

HEADLINE: Trucker faces DUI, murder charges

Byline: Seth Burkett, Staff Writer

(Marijuana & Meth)

Associated Press (Forest City, Arkansas); Friday, January 25, 2008

HEADLINE: Not Guilty Plea in Fatal Ark. Bus Crash

Byline: JON GAMBRELL

(Amphetamines)

Centre Daily Times (State College, Pennsylvania); Thursday, January 24, 2008

HEADLINE: Attorney files for dismissal of charges in fatal crash; Action comes after tests suppressed

Byline: Pete Bosak

(Meth)

Honolulu (Hawaii) Advertiser; Wednesday, January 9, 2008

HEADLINE: Hawaii bus driver pleads in fatal crash

Byline: Jim Dooley, Advertiser Staff Writer

(Meth)

Waco (Texas) Tribune-Herald; Thursday, December 13, 2007

HEADLINE: Truck driver indicted in intoxication manslaughter of two highway construction workers

Byline: Tommy Witherspoon, Tribune-Herald staff writer

(Meth)

Chicago Daily Herald; Tuesday, October 30, 2007

HEADLINE: Truck driver gets 8 years for fatal Island Lake DUI

Byline: Charles Keeshan, Daily Herald Staff

(Cocaine, Marijuana, Amphetamine, Meth, and others)

FOX9-TV (Minneapolis-St. Paul); Thursday, August 30, 2007

HEADLINE: Semi Driver Who Hit Trooper Had Drugs in System

Byline: Leif Knutson, FOX 9 Web Producer

(Cocaine & Marijuana)

Stephens Media Group (Arkansas); Wednesday, August 1, 2007

HEADLINE: Charges filed in highway crash that killed family

Byline: Ray King, Stephens Media

(Crack cocaine)

Frankfort (Kentucky) State-Journal; Thursday, January 31, 2008

HEADLINE: Trucker indicted in state worker's death

Byline: Paul Glasser

(Marijuana)

HEADLINE: Witnesses reconstruct fatal crash

Byline: TERRY L. JONES

New Augusta, MS July 20, 2006

(Meth)

Flint (Michigan) Journal; Friday, August 8, 2008

HEADLINE: Even after conviction, family searches for justice for Janelle Durk

Byline: Linda Angelo, The Flint Journal

(Undisclosed controlled substance)

*some accidents may have occurred in prior years but were reported in the FMCSA Daily News within the date range above

FACT:

**The Federal Government
mandated drug testing program
can be more effective with
appropriate alternate testing
methods.**



Official Publication of the
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Medical Review Officers

MROALERT

Updating the Technical,
Legal and Procedural
Aspects of MRO Practice

June/July 2007 Volume XVIII, No. 6

Is a 2% Positive Rate in Trucking Acceptable to Anyone Anymore?

By Theodore F. Shults, JD, MS

In this issue

Is a 2% Positive Rate in Trucking
Acceptable to Anyone Anymore?
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Ten Percent of Truckers Fail
"Anonymous" Drug Tests in Oregon

Suit Against Hair Testing Laboratory
Plaintiff Claims Lab Mixed-Up Hair
Specimen
By Theodore F. Shults, JD, MS

School Bus Driver Alleges School
District Violated DOT Stand-Down
Prohibition and the ADA
High Doses of Amphetamine in
ADD Treatment Trigger IME

Firefighters Get High Fighting
Pot Blaze at Warehouse
Two-Thousand Pounds of
Marijuana Go Up in Smoke in Texas

New Address for DOT

Current List of HHS Certified
Laboratories

According to the public estimate of the Federal Motor Carrier Safety Administration, 2% of truck drivers use illicit drugs. This 2% estimate has been close to the overall positive rate for drugs in the trucking industry. However, the Oregon State Police (OSP) Forensic Services Division recently completed Operation Truckster Check XII, where toxicology tests were performed on nearly 500 voluntarily provided anonymous urine samples. These tests indicated about one in ten commercial drivers had controlled substances in their system. (See article on page 2.)

The Oregon State Police findings present strong evidence of the current weakness in mandatory testing programs in the trucking industry. However, before any direct comparison can be made between the Oregon State Police drug testing results and the FMCSA positive rate, a number of adjustments must be made. First, the Oregon State Police used an expanded panel of drugs, and second, there was no attempt to verify raw but confirmed lab results with an MRO.

However, even if you back out all of the opiates (3.29%), all of the propoxyphene positives (0.62%) and all of the methadone results (0.41%), you still have an overall positive rate of over 5% — not including the 4% who refused to give a specimen at all. And that number (5 + 4) is still 9%, without any opiates. Further, this 9% number still does not include the unknown number of truckers who substituted or adulterated their urine. It does not include the number of truckers who simply avoided driving through these checkpoints. (News of police checks moves on the highways at close to the speed of light.) Thus, the "real" number is above 10%.

The FMCSA estimated in 1999 that 1.3 percent of drivers with commercial driver's licenses (CDL) used controlled substances and 0.2 percent used alcohol. FMCSA data is shown below.

FMCSA Data on Estimated Positive Rates from Random Drug and Alcohol Testing (2000-2003)

Areas of Testing	Positive Rate			
	2000	2001	2002	2003
Controlled Substances (standard error estimate)	2.0% (0.5%)	1.5% (0.3%)	1.7% (0.4%)	2.0% (0.3%)
Alcohol (BAC ≥ 0.04) (standard error estimate)	0.2% (0.1%)	0.1% (0.1%)	0.1% (0.1%)	0.2% (0.1%)

Comparison of Urine and Hair Test Results

21,433 paired hair and DOT urine tests on the same individuals.

May 2006 to July 2008
(Positive includes refusal to test)

Urine	
Positive	326
Positive Rate	1.52%

Hair	
Positive	1,833
Positive Rate	8.56%

Analysis of 21,443 Driver Paired Hair and Urine Test Results (May 2006 - Jul 2008)

19,554	Negative on Both Tests	91.23%
280	Positive on Both Tests	1.31%
46	Positive on Urine Only	0.21%
1,553	Positive on Hair Only	7.25%

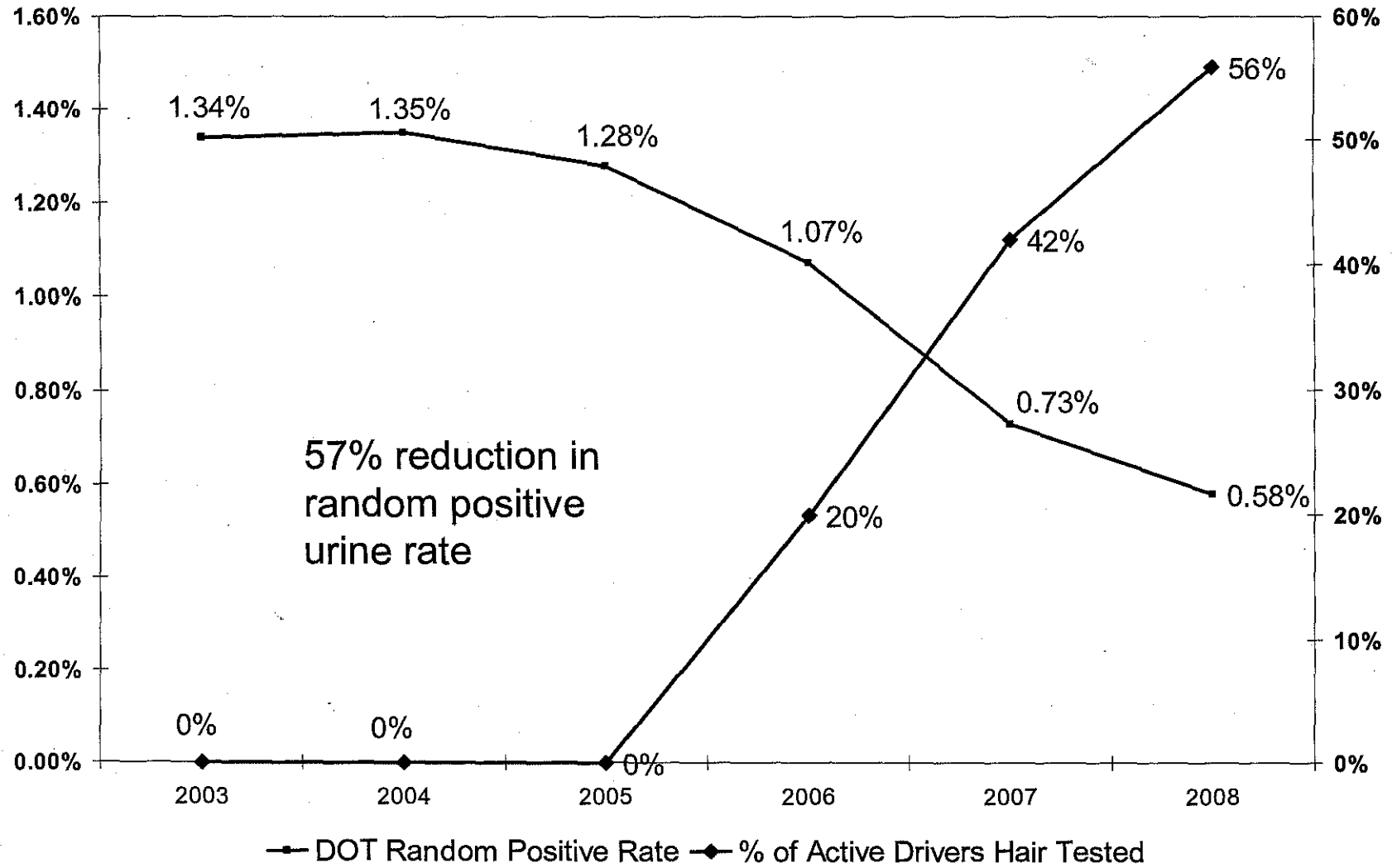
Positive Hair Only	
Cocaine	942
Marijuana	274
Amphetamine/Meth	112
Cocaine, Marijuana	62
Refusal	59
Opiates	41
Amphetamine, Cocaine	18
Cocaine, Opiates	14
Amphetamine, Marijuana	11
Heroin	5
Cocaine, Marijuana, Opiates	5
Cocaine, Heroin	4
Opiates, Marijuana	3
Marijuana, PCP	1
Amphetamine, Opiates	1
Amphetamine, Cocaine, Marij	1

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Positive Urine Only	
Marijuana	36
Cocaine	4
Amphetamine	4
Opiates	2

46

DOT Random Urine Positive Rates (Company Total)



2008 Through July

Hair Tests Are Recognized Effective in Existing Government Policy



Pros and Cons of the Various Drug Testing Methods

TYPES OF TESTS	PROS	CONS	WINDOW OF DETECTION
URINE	<ul style="list-style-type: none"> • Highest assurance of reliable results. • Least expensive. • Most flexibility in testing different drugs, including alcohol and nicotine. • Most likely of all drug testing methods to withstand legal challenge. 	<ul style="list-style-type: none"> • Specimen can be adulterated, substituted, or diluted. • Limited window of detection. • Test sometimes viewed as invasive or embarrassing. • Biological hazard for specimen handling and shipping to lab. 	<ul style="list-style-type: none"> • Typically 1 to 5 days.
HAIR	<ul style="list-style-type: none"> • Longer window of detection. • Greater stability (does not deteriorate). • Can measure chronic drug use. • Convenient shipping and storage (no need to refrigerate). • Collection procedure not considered invasive or embarrassing. • More difficult to adulterate than urine. • Detects alcohol/cocaine combination use. 	<ul style="list-style-type: none"> • More expensive. • Test usually limited to basic 5-drug panel. • Cannot detect alcohol use. • Will not detect very recent drug use (1 to 7 days prior to test). 	<ul style="list-style-type: none"> • Depends on the length of hair in the sample. Hair grows about a half-inch per month, so a 1½-inch specimen would show a 3-month history.
ORAL FLUIDS	<ul style="list-style-type: none"> • Sample obtained under direct observation. • Minimal risk of tampering. • Non-invasive. • Samples can be collected easily in virtually any environment. • Can detect alcohol use. • Reflects recent drug use. 	<ul style="list-style-type: none"> • Drugs and drug metabolites do not remain in oral fluids as long as they do in urine. • Less efficient than other testing methods in detecting marijuana use. 	<ul style="list-style-type: none"> • Approximately 10 to 24 hours.
SWEAT PATCH	<ul style="list-style-type: none"> • Non-invasive. • Variable removal date (generally 1 to 7 days). • Quick application and removal. • Longer window of detection than urine. • No sample substitution possible. 	<ul style="list-style-type: none"> • Limited number of labs able to process results. • People with skin eruptions, excessive hair, or cuts and abrasions cannot wear the patch. • Passive exposure to drugs may contaminate patch and affect results. 	<ul style="list-style-type: none"> • Patch retains evidence of drug use for at least 7 days, and can detect even low levels of drugs 2 to 5 hours after last use.

Hair Testing Has Been Upheld In Key Legal Cases

(For more detail on these cases, ask for handout)

Employment/ Unemployment

Supreme Court of the State of New York in Gregory Hicks et al. v. City of New York et al., Index No.119154 (1999)

New York Supreme Court Appellate Division in Brown v. City of New York, 250 AD2d 546, 673 NYS2d 643, (1998)

New York Supreme Court Appellate Division in Brinson v. Safir, et.al, 680 N. Y.S. 2d 500, 255 A.D. 2d 247, (N. Y.A.D. ,1 Dept. 1998)

Nevada Supreme Court in Nevada Employment Security Department et. al. v. Cynthia Holmes, 914 P .2d 611 (Nev. 1996)

Nevada State Gaming Commission v.. Binion, 1996

State of Ohio Unemployment Compensation Board of Review in Claim of Delbert Otto (Consolidated Biscuit Co.), Case No. B 95-02542-000 (1996)

Bass v. Florida Department of Law Enforcement, (Fla. Dist. Ct. of Appeals 1993), 627 So.2d 1321

Nevada Supreme Court in Holmes v. Hotel San Remo, Nevada Employment Security Department Office of Appeals, Decision No. V3-1403 (June 10, 1993)

United States District Court in Jones et al. v. City of Chicago, Civil Action No.99 C 8201, (N.D. IL, November 28, 2000)

United States District Court in Cruse v. Whirlpool Corp., Civil Action No.99-2129, (U.S.D.C., Dist. AR, June 23, 2000)

Probation/ Parole

United States v. Medina. 749 F. Supp. 59 (E.D.N.Y. 1990)

Arbitrations

Hair analysis has been upheld in arbitrations between Anheuser-Busch, Inc. and its unions:

In an October 1999 decision, the collection of body hair for analysis was upheld.

In a July 1999 decision, union claims of improper specimen collection, and age, race and gender bias related to slow hair growth were found to have no merit and the issues were resolved in favor of the Company.

United States Steel, A Division of USX Corp. and United Steelworkers of America, Local 1557 (1999)

US Steelworkers Local 4134 & Lone Star Steel Co., Case No. 022-96 (1997) and Battle Mountain Gold Co. & Operating Engineers Local 3 (1998).

Rodney Pinkerton v. Chemical Lime Co., April 4, 1997

Child Custody

Superior Court, State of California, City of Los Angeles, Case No. BD077286, July 16, 1999.

Custody Hearing, Livonia, Michigan, 1998.

In the Matter of the Adoption of Baby Boy L., 157 Misc. 2d 353, 596 N.Y.S. 2d 997 (1993).

Burgel v. Burgel, 141 A.2d 215, 533 N.Y.S. 2d 735 (1988) or No. 1651E, 1651 AE, New York Superior Court Appellate Division, 1988.

The Marriage of Turner, King County Superior Court, Case No.97-3-00075-4 KNT, Tacoma, Washington.

Future Actions

J.B. Hunt/ATA is looking for the best tools and techniques available for managing the safety of our operations.

This requires regulatory and/or legislative changes to the HHS, DOT and/or FMCSA regulations to permit (voluntary) alternative specimens, such as hair, to be used by regulated motor carriers to comply with federal drug testing requirements.

HHS should resubmit the proposed rule with alternative specimens such as hair incorporated (ie the agency proposed a rule including hair testing in 2004).

At some point, the random testing rate should be determined using carrier specific results instead of industry wide results. This would be an incentive to carriers willing to take more aggressive drug elimination steps instead of rewarding non-responsive carriers if the industry rate drops because of the safety conscious carriers' efforts.