



ISSUE #8 DRUG AND ALCOHOL TESTING

PROBLEM

A well known loophole in the federal drug and alcohol testing requirements for commercial drivers is being exploited. When a driver moves from one trucking company to another, some “positive” drug and alcohol test results are not being discovered by the hiring company because these “positive” results are self-reported, and not centrally tracked. As a result, the hiring company may not be aware of a driver’s past “positive” drug test results and could be hiring a driver who has not been evaluated, treated and cleared to return-to-duty by a substance abuse professional.

BACKGROUND

In 1999, Congress passed the Motor Carrier Safety Improvement Act which required DOT to evaluate the feasibility and merits of collecting, in a centralized manner, “positive” drug test results of commercial drivers. FMCSA studied this issue and submitted a report to Congress in May of 2004¹. This report found that a centralized clearinghouse for such results was feasible, cost-effective, and, in many ways, more desirable than the current system of driver self-reports and hiring companies contacting previous employers in an attempt to obtain this critical safety-related information.

A recent hearing before the House Transportation and Infrastructure Committee on this issue established that it is not difficult for a driver to “beat” the DOT drug test through the use of counterfeit documents, synthetic urine, or adulterants. Findings established that fraudulent testing occurs at some collection sites and that there may be a significant lack of compliance with the drug and alcohol rules among motor carriers, particularly small carriers and self-employed drivers. Also the current system makes it difficult, if not impossible, for prospective employers to know if the drivers applying for a job have tested positive for drug use. These conclusions largely stemmed from a recent GAO study of the issue. GAO was the lead witness at the hearing. The hearing also pointed out that in all likelihood the positive drug testing rate for commercial drivers is much larger than the 2-2.5% being reported under the current testing program requirements. Upwards of a 10 percent positive rate has been reported.

SOLUTION(S)

Review the proposals of both the American Trucking Associations and the state of North Carolina to deal with the employer issue and the request of Administrator Hill to Congress to give FMCSA the authority to establish a national clearinghouse as well as

¹ “A Report to Congress on the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results to the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License Holder,” FMCSA, March 2004.



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authority to close down fraudulent drug testing laboratories. Under existing law, all FMCSA can do is “cite” the laboratory.

This authority also needs to fund the development and deployment of the clearinghouse, with appropriate privacy safeguards for drivers, and strict access controls for authorized users. There must be assurances that the driver has a right to appeal a 'positive' test before it is made public, that is, before it is made available to enforcement or carriers. Positive alcohol test results need to also be included since both drug and alcohol testing are required as part of DOT’s regulatory program.

This clearinghouse, when developed, should consider the findings and recommendations of the March 2004 Report to Congress required by Section 226 of the Motor Carrier Safety Improvement Act of 1999.

As a part of this action, Congress and FMCSA should fund and support the actions necessary for establishing and maintaining the National Registry of Certified Medical Examiners. There are significant problems in the examination of commercial drivers in terms of a lack of understanding of many medical practitioners in what are the physical qualification requirements for commercial drivers. Having the registry in place to help oversee and track these practitioners is paramount to enhancing safety on our highways.

The purpose for including this suggestion is to help minimize the costs that would be associated with creating, implementing and supporting two separate databases/information systems – one for drug/alcohol testing and another for medical examiners.