

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**COMMENTS OF THE
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.;
IN RESPONSE TO A NOTICE FOR PUBLIC COMMENT**

Controlled Substances and Alcohol Use and Testing: Notice of application for exemption.

Federal Motor Carrier Safety Administration

Docket No. FMCSA-2017-0002

**TODD SPENCER
Executive Vice President
Owner Operator Independent
Drivers Association, Inc.**

February 21, 2017

STATEMENT OF INTEREST

The Owner Operator Independent Drivers Association (“OOIDA” or “Association”) provides comments in response to the Federal Motor Carrier Safety Administration’s (“FMCSA” or “Agency”) Notice Request for Public Comment (“Notice”), upon receiving an application from J.B. Hunt Transport, Inc. (J.B. Hunt), Schneider National Carriers, Inc. (Schneider), Werner Enterprises, Inc. (Werner), Knight Transportation, Inc. (Knight), Dupre Logistics, Inc. (Dupre), and Maverick Transportation, LLC (Maverick) (the Applicants) to allow hair analysis in lieu of urine testing for pre-employment controlled substances testing of commercial driver’s license (CDL) holders.

OOIDA is a not-for-profit corporation incorporated in 1973 and is the largest international trade association representing the interests of independent owner-operators, small business motor carriers, and professional drivers. The approximately 158,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the total active motor carriers operating within the United States, and OOIDA’s average member has more than two million miles of accident-free driving experience. OOIDA recognizes that there are already established procedures in place for pre-employment testing for controlled substances that has proven to be highly successful as the testing compliance rates have been reduced in the last two years because of the decrease in positive test results.

INTRODUCTION

The Applicants are seeking an exemption from 49 CFR 382.105, concerning FMCSA’s controlled substances and alcohol testing regulations that requires that each employer ensure all

alcohol or controlled substances testing conducted on CDL holders complies with the procedures under 49 CFR part 40. Currently, Part 40 only allows urine testing for controlled substances.

This was firmly established by Congress through the Omnibus Transportation Employee Testing Act (OTETA) of 1991, Title V, 105 Stat. 952. OTETA requires the Department to follow the Health and Human Services Mandatory Guidelines for scientific testing issues.

COMMENTS OF THE ASSOCIATION

A. How big an issue is controlled substances use and under the influence of controlled substances in crashes where large trucks are involved?

In 2013, there were 30,057 fatal motor vehicle crashes in the United States and according to data from the National Highway Traffic Safety Administration, 48 of those involved a tractor-trailer where the driver was cited for being under the influence of alcohol or medication. This represents 0.16% of fatal crashes. While OOIDA recognizes that any fatality is too many, it is doubtful that any alternative testing methodology could reduce that percentage.

B. The Applicants present no third-party scientific evidence that their hair testing is better at reducing crashes than the present system.

The Applicants claim that through their research hair testing has shown more controlled drug use by applicants than urine testing. While this may be true for their pre-employment testing, the Applicants offer no evidence that their crash rate has dropped since the use of hair testing as an adjunct to their urine testing. OOIDA believes that before any alternative testing methodology is allowed in lieu of a proven methodology that the Substance Abuse and Mental Health Services Administration (SAMSHA) be allowed access to crash data from the Applicants' hair testing and crash data to review for validity and to substantiate claims of a reduction in crashes.

C. Hair testing has many concerns that have not been tested in a scientific sampling and there have been and continue to be potential for bias.

Some of the concerns for using hair testing for controlled substance use are hair color and texture bias. There have been past studies that indicate that those with darker hair are more likely to show longer periods of time where drug use can be detected. It is believed that passive exposure to various controlled substances could be a concern. While the Applicants' have stated that their research does not show such bias, OOIDA believes that further research from a scientific body such as SAMSHA would provide a greater degree of validity testing than advocates for hair testing. This is especially true in light of a recent court ruling involving drug testing of employees by the Boston Police Department. There have been further concerns for those people who routinely color their hair and how those procedures may affect test results. There is also the problem that different individuals grow hair at different rates which could not be detected by hair testing samples.

D. Urine testing has specific guidelines and those labs that are certified for controlled substance testing have all followed specific protocols that guarantee similar procedures and testing is standardized.

Testing positive for controlled substance use has serious consequences for those CDL holders, especially in light of the new drug clearinghouse regulation. It is imperative that that the testing procedures use equipment and methodology that is scientifically controlled so that all testing follows exact procedures using labs that have been approved by SAMSHA . The Applicants have presented no evidence that the hair testing labs have met the rigorous standards of scientific methodology for testing, nor have they shown that the hair testing equipment and protocol has been consistent and unbiased. Their claim is that using hair testing has shown that controlled substance use is more prevalent than what urine testing has shown.

E. Hair testing does not test for recent controlled substance use.

All controlled substance tests measure the amount of metabolites from drug use that is present in urine or in hair. It takes much longer for metabolites to appear in hair than it does in urine. Hair testing for controlled substance use can detect past use of controlled substances, but not recent use. The Applicants seem to be implying that past use is a better test for controlled substance use than a more immediate test for controlled substance use which again is unsubstantiated by any scientific research or data.

CONCLUSION

OOIDA respects the right of the Applicants to use substance testing for pre-employment testing in addition to the federally mandated, scientifically validity urine testing. However, granting an exemption for an unproven methodology using non-standardized procedures and protocols that could possibly affect the livelihood of thousands of drivers is inappropriate at this time.

SAMSHA has started the process of studying hair testing as an alternative to urine testing, but has not found the evidence or scientific data to offer hair testing as a legitimate alternative to a time tested method. OOIDA believes that this exemption should be denied and allow SAMSHA to continue its examination of alternative methods for controlled substance testing that answers the legitimate questions of concern.

Thank you for your consideration of OOIDA's comments.

Sincerely,



Todd Spencer
Executive Vice President
Owner-Operator Independent Drivers Association