



***AMERICAN
TRUCKING
ASSOCIATIONS***

Drug and Alcohol Testing Commercial Drivers License and Commercial Motor Vehicles

AIIPA 2023

Dan Horvath

Vice President of Safety Policy

American Trucking Associations



Drug and Alcohol Testing Basics

Drug & Alcohol Testing Regulations

CDL Holders...

- FMCSRs (part 382) applicable to “CDL Holders ONLY”
 - Vehicles greater than 26,000 lbs.
 - Passenger vehicles
 - Certain Hazardous Materials

All other CMV operators ...

- Non-CDL holders, but still operating a CMV
 - 10,000-26,000 lbs.
- General Medical Qualification Regulations Apply
- General pre-duty and during duty use Apply

**Just because it's a
Commercial Motor
Vehicle, doesn't mean
you need a CDL!**

CDL Drug & Alcohol Testing Regulations

Controlled Substances and Alcohol Testing

- Pre-Employment
 - Alcohol testing not required but allowed.
- Random
 - Controlled substances: 50% of driver roster.
 - Alcohol: 10% of driver roster.
 - Controlled substances any time, alcohol only just before, during, or immediately after duty period.
- Post Accident
 - Controlled substances within 32 hours, alcohol within 8 hours.
- Reasonable Suspicion
 - Must be direct supervision, by trained supervisor.
- Return-to-duty
 - Used after a testing violation.
- Follow-up

CDL Drivers ONLY!



CMV Drug and Alcohol Testing Regulations

CDL *and* CMV Drivers!

- .04 BAC = DUI/DWI
- .02 BAC = removal from duty for 24 hours
- 49 C.F.R. 392.5:
 - No driver “shall use” alcohol within 4 hours of reporting to duty
 - Possession of alcohol prohibited (unless transporting or bus passengers).
- Violations of the drug and alcohol testing regulations for **CDL** holders are now reported to the Drug and Alcohol Clearinghouse

WELCOME DANIEL

This is your Driver Dashboard, an overview of action items you need to take in the Clearinghouse. This includes responding to consent requests from prospective and current employers. [Learn more about the consent request process.](#)

QUERY CONSENT REQUESTS

[View All Queries](#)

AMERICAN TRUCKING ASSOCIATIONS (USDOT# 1413320)

Full

6/23/2020 AMERICAN TRUCKING ASSOCIATIONS (USDOT# 1413320) has requested to view your Clearinghouse

I CONSENT

I DO NOT CONSENT

Thank you for your consent.

FMCSA notified AMERICAN TRUCKING ASSOCIATIONS that no drug or alcohol violation information about you exists in the Clearinghouse as of 6/23/2020.

OK

Query Overview

Employer Conducting Query: AMERICAN TRUCKING ASSOCIATIONS (USDOT# 1413320)

Query Result: Driver Not Prohibited

Query Status: Completed (6/23/2020 17:20:07)

Conducted By: Daniel Horvath | Query Type: Full | Query Submitted: Manually

Driver Information

Name: DANIEL HORVATH

Date of Birth:

CDL/CLP ⓘ

Consent Information

Requested: 6/23/2020 17:14:35

Recorded: 6/23/2020 17:20:07

Status: Provided

Query History

Created: 6/23/2020 17:14:35

Completed: 6/23/2020 17:20:07

Open Violations

No Open Violations

Violations

0



General
(19 Questions)

[Learn More →](#)



Registration
(20 Questions)

[Learn More →](#)



Security
(3 Questions)

[Learn More →](#)

answers to your questions. If you have additional questions, you can contact FMCSA.

[Show All FAQs](#)

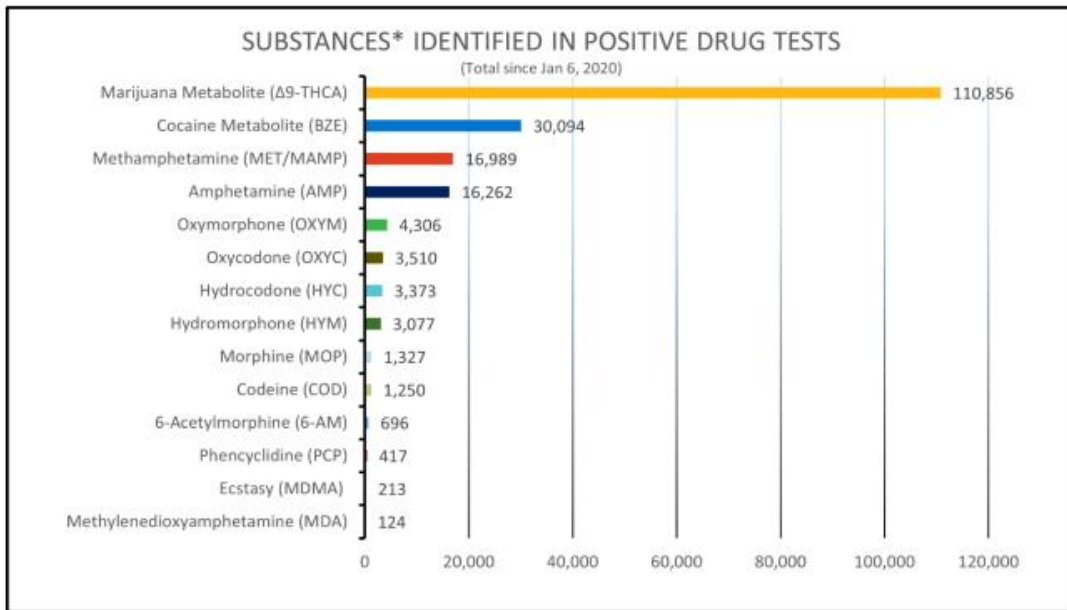
Drug & Alcohol Clearinghouse

Drug Violations (as of 4/01/23)

Actual knowledge of a drug violation	3,459
Drug test refusal	27,117
Positive drug test	164,224
TOTAL	194,802

Alcohol Violations (as of 4/01/23)

Actual knowledge of an alcohol violation	709
Alcohol test refusal	994
Concentration of 0.04 or greater	2,726
TOTAL	4,429



*Positive drug tests reported through March 2023, as of April 1, 2023.

Source: <https://clearinghouse.fmcsa.dot.gov>



DAC-Return to Duty

- A driver is considered “not-prohibited” once they have a negative RTD test
- Driver violation records will remain in the clearinghouse for 5 years from the date of the violation determination, or until the violation is resolved through the completion of the RTD and follow-up testing, whichever is later.

CDL/CLP Holders in the Return-to-Duty (RTD) Process as of April 1, 2023

RTD STATUS	# DRIVERS
All Drivers (with at least 1 violation)	180,664
CDL/CLP holders in Prohibited Status	129,100
RTD Process Not Started	97,833
Substance Abuse Professional (SAP) Request Sent	1,176
SAP Designation Confirmed	3,704
SAP Request Declined	807
Initial SAP Assessment Complete	6,167
Determined Eligible for RTD Testing	19,413
CDL/CLP Holders in Not-Prohibited Status*	51,564
RTD Test with Negative Results	42,260
Follow-Up Testing Plan Complete	9,304

* A driver is no longer prohibited from performing safety-sensitive functions once they have a negative RTD test result.



Closing the gaps...

DOT/FMCSA Actions:

- January 2020: Drug and Alcohol Clearinghouse
- January 2023: Three-Year Anniversary of DAC
- March 2023: DAC Push Notification for Employers
- November 2024: State Agencies Query/Downgrade Compliance

CDL/CLP Downgrade Final Rule

- Final rule published October 7, 2021, compliance no later than **November 18, 2024**
- SDLAs must query, or “**pull**” information from, the Clearinghouse before issuing, renewing, transferring, or upgrading a CDL or CLP
- SDLAs will receive “**push**” notifications from the Clearinghouse of a driver’s violation and will have 60 days to downgrade CDL or CLP (remove commercial driving privileges)
- Some States have begun this process already.

FMCSA Drug and Alcohol Clearinghouse

- **Return-to-duty process not started: 97,833 (76%)**
 - Where are they going, or what are they doing?
- **What can be done?**
 - Driver education. Is 382.601 enough?
 - State legalization awareness.

**Back to the Future
Trucking**

DOT Drug and Alcohol Testing
Requirements
382.601

Back to the Future Trucking
1640 Riverside Drive
Hill Valley, California



Oral Fluids and Hair Testing

Oral Fluid Testing

Final Rule

- **DOT Final Rule Published May 2, 2023**
- Allowed for all testing situations (pre-employment; post accident; etc.)
- It is **NOT** required and remains the option of the employer.
- Carriers *should* consider a standing order for Oral fluid testing, such as when an observed collection is required.
- Employer establishes policies to choose type of testing and when
- Effective June 1, 2023, **however**, HHS has not approved oral fluids labs.



Oral Fluids Testing

- Industry sees benefit in Oral Fluids Testing!
 - Observed Collections
- Potential benefits for “on-site” testing
 - Pre-Employment: ability to administer test when driver is completing pre-hire paperwork.
 - Random: ability to administer test just before or after a driver reports to duty.
 - Reasonable Suspicion: ability to administer test in a shorter timeframe.
- Post Accident
 - Ability to administer test, at accident scene, within DOT required time frames.

Hair Testing

- Proposed guidelines are currently under review at the Office of Management and Budget (OMB)
- ATA met with OMB on 4/18/23.
- Proposal likely not to be final, and will be subject to more inter-agency review.

View Rule

[View EO 12866 Meetings](#)[Printer-Friendly Version](#)[Download RIN Data in XML](#)

HHS/SAMHSA

RIN: 0930-AA33

Publication ID: Fall 2022

Title: Mandatory Guidelines for Federal Workplace Drug Testing Programs--Hair

Abstract:

This action proposes to establish the scientific and technical guidelines for the inclusion of hair specimens in the Mandatory Guidelines for Federal Workplace Drug Testing Programs and standards for certification of laboratories engaged in drug testing for federal agencies.

Agency: Department of Health and Human Services(HHS)

Priority: Other Significant

RIN Status: Previously published in the Unified Agenda

Agenda Stage of Rulemaking: Final Rule Stage

Major: No

Unfunded Mandates: No

CFR Citation: None (To search for a specific CFR, visit the [Code of Federal Regulations](#), or)

Legal Authority: [sec. 503 of Pub. L. 100-71](#) [5 U.S.C. 7301](#) E.O. 12564

Legal Deadline: None

Timetable:

Action	Date	FR Cite
NPRM	09/10/2020	85 FR 56108
NPRM Comment Period End	11/09/2020	
Final Action	12/00/2022	

HHS' Proposed Hair Testing Guidelines

- September 2020: HHS proposes guidelines.
- ATA filed comments voicing concerns with this proposal
- HHS proposed alternative specimen testing for positive hair tests.
- Very unlikely that positive hair test results would be allowed in the Clearinghouse.
- Acceptance of only head hair for testing purposes.
 - No facial hair or body hair.



- Many positive hair test results will likely be reversed due to hair testing's longer window of detection compared to urine or oral fluid testing.
- The HHS proposed standard fails to meet the Congressional mandate for making hair a "true" alternative testing specimen for DOT drug testing purposes.
- The HHS proposed standard discourages the wider adoption of hair testing within the trucking industry.

Hair Testing...What's Next?

- Drug Testing Advisory Board (DTAB) update indicates a Q2 2023 publication of “guidelines”, but perhaps not final.
- ATA continues legislative advocacy to ensure concerns with guidelines are addressed, and HHS moves expeditiously to publish final guidelines.

[Home](#) > [Investigations](#) > [Multivehicle Work Zone Crash o...](#)

Truck-tractor and Mazda Tribute at position of rest. (Source: CPD)

Multivehicle Work Zone Crash on Interstate 75

Completed Investigation

Investigation No
HWY15MH009

Highway

Event Date
6/25/2015



Location
Chattanooga, TN

Family Assistance Contact

assistance@ntsb.gov

Media Relations Contact
NTSB Media Relations
Phone Number
(202) 314-6100

Docket

- [HWY15MH009](#)



NTSB Highway Investigation
Chattanooga, TN
6/25/2015

- **Limitations of current drug testing program:** National Transportation Safety Board (NTSB) investigators reviewed the truck driver's toxicology test results from a variety of sources—including a urine test, a hair test, and a postcrash blood test. The test results indicated a pattern of drug use not identified by the US Department of Transportation drug testing program. This investigation reaffirmed the need to gather data on the prevalence of commercial motor vehicle (CMV) driver use of impairing substances and to consider alternative drug testing methods.

NTSB Safety Recommendation H-16-008

TO THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION: Disseminate information to motor carriers about using hair testing as a method of detecting the use of controlled substances, under the appropriate circumstances.

Marijuana Legalization

September 22, 2021 3:00 PM, EDT

Driver Positive Drug Tests Up Nearly 13% Through August



Positive marijuana tests account for more than 53% of the total number of the 14 different drug panels

2021

February 9, 2022 1:54 PM, EST

Driver Drug Violations Increased by 10% in 2021 Over Prior Year



Thinkstock

[Stay on top of transportation news: [Get TTNews in your inbox.](#)]

The total number of truck driver drug violations increased by 10% in 2021, compared with total numbers reported in 2020, according to a new federal Drug &

2022

Government

Business

Safety

Logistics

Eric Miller | Senior Reporter

January 26, 2023 2:47 PM, EST

Positive Marijuana Tests Among Drivers Grow at Alarming Rate



Marijuana bud with cannabis oil in cartridge of vape pen. (KampolG via Getty Images)

2023


INSIDER

US MARKETS LOADING...
in the news

Premium HOME > TRANSPORTATION

The trucking industry is doubling down on booting marijuana smokers, and it's getting a little ridiculous

Rachel Premack Jul 9, 2021, 3:40 PM



HOME > TRANSPORTATION

Marijuana testing for truck drivers is becoming a leading cause of the growing national trucker shortage, expert says

Grace Kay Feb 21, 2022, 10:00 AM




Image via Business Insider

STATE OF THE INDUSTRY | THE STORIES

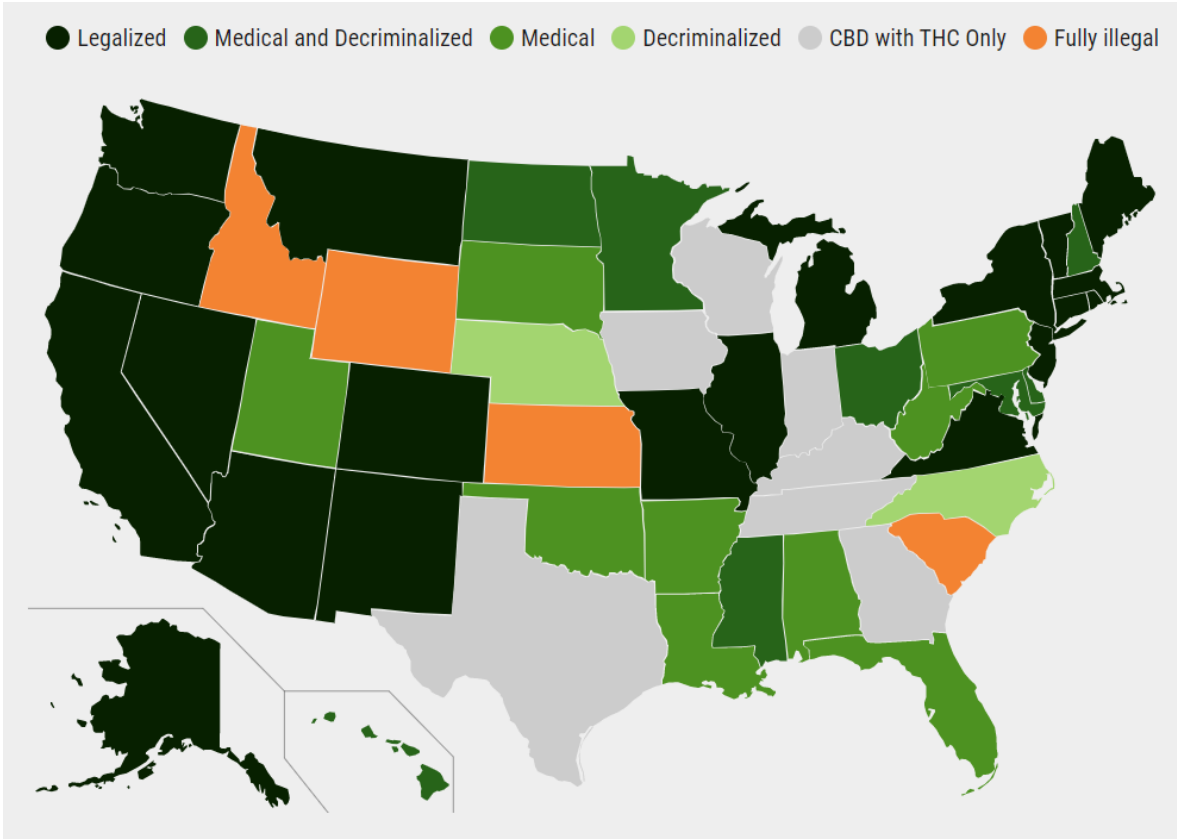
MARIJUANA TESTING BECOMING LEADING CAUSE OF THE TRUCKER SHORTAGE

By Go By Truck News / March 1, 2022

2021/22

Marijuana Legalization

Fully Legal	21 States
Mixed Status	24 States
Fully Illegal	6 States
Medicinal Use	45 States



Source: DISA Global Solutions



October 6, 2022

OCTOBER 06, 2022

Statement from President Biden on Marijuana Reform



BRIEFING ROOM

STATEMENTS AND RELEASES

As I often said during my campaign for President, no one should be in jail just for using or possessing marijuana. Sending people to prison for possessing marijuana has upended too many lives and incarcerated people for conduct that many states no longer prohibit. Criminal records for marijuana possession have also imposed needless barriers to employment, housing, and educational opportunities. And while white and Black and brown people use marijuana at similar rates, Black and brown people have been arrested, prosecuted, and convicted at disproportionate rates.

Today, I am announcing three steps that I am taking to end this failed approach.

First, I am announcing a pardon of all prior Federal offenses of simple possession of marijuana. I have directed the Attorney General to develop an administrative process for the issuance of certificates of pardon to eligible individuals. There are thousands of people who have prior Federal convictions for marijuana possession, who may be denied employment, housing, or educational opportunities as a result. My action will help relieve the collateral consequences arising from these convictions.

Biden Signs Marijuana Research Bill, A Historic First For Federal Cannabis Reform



Published 3 months ago on December 2, 2022

By Kyle Jaeger



Source: Marijuana Moment

Marijuana Legalization

- President Biden's 2022 announcement:
 - Pardoning of federal offenses of simple marijuana possession
 - Health and Human Services and AG to review cannabis classification as a Schedule I drug.
 - Administrative review does not have a set timetable, and unlikely to be completed in 2023.
 - State cannabis convictions far outnumber federal convictions.
- Federal Legislation stalled in 2022 but expect new and reintroduced legislation in 2023!

Marijuana Legislation...what to expect

- **Medical Marijuana and Cannabidiol Research Expansion Act (MMCREA).** **Became law 12/2/22**
 - Research into cannabis medicinal uses
 - Rollback of federal restrictions prohibiting research and cultivation
 - Promotes development of FDA-approved drugs using CBD and cannabis
- **Cannabis Administration and Opportunity Act (CAOA)**
 - Senate proposal 2023?
- **Marijuana Opportunity and Reinvestment Act (MORE)**
 - House proposal in 2023?
- **Secure and Fair Enforcement (SAFE) Banking Act**

DOT Position on Marijuana

- Drivers with a Commercial Driver's License (CDL) are regulated by DOT Drug and Alcohol Testing Regulations.
- General driver medical qualifications standards apply to both CDL and non-CDL drivers.
 - Prohibited use of Schedule I drugs, amphetamine, narcotic, or other habit-forming drug
 - Prohibited use of non-Schedule I drugs without a valid prescription by a licensed medical examiner
- Recreational and medical marijuana is *not* a legitimate explanation for a positive DOT drug screen.

But, I don't have a CDL...

49CFR 391.41

(12)

(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug; or

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107 of this chapter, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.

Legislation and Impact on Trucking

ATA seeks to ensure all legislative efforts contain a DOT carve-out so long as marijuana remains a controlled substance for DOT purposes:

Example from MORE Act...

1) IN GENERAL.—The amendments made by this section may not be construed to abridge the authority of the Secretary of Transportation... to regulate and screen for the use of a controlled substance.

- In this subsection, the term “controlled substance” means—
 - (A) any substance covered under section 102 of the Controlled Substances Act (21 U.S.C. 802) on the day before the date of enactment of this Act; and
 - (B) any substance not covered under subparagraph (A) that was a substance covered under section 102 of the Controlled Substances Act (21 U.S.C. 802) on December 1, 2018, and specified by the Secretary of Transportation.

Education. Education. Education...

- Marijuana legalization has certainly led to an increase in CMV drivers testing positive:
 - “It’s legal in my state, I didn’t know.”
- For ALL drivers, not just CMV, misconceptions of:
 - “I drive safer when I’m high, I’m more focused.”
 - Marijuana doesn’t affect my cognitive ability.
- Alcohol abuse
 - Employees reluctant to self-report alcohol abuse.
- DOT’s testing programs were established to be a deterrent, not necessarily to “catch” misuse.

What's Next?

Infrastructure Investment & Jobs Act (IIJA)

November 2021

- Marijuana Impairment Research
 - Requires the Secretary to submit a report on research related to marijuana-impaired driving.
 - Required “not later than 2 years” after the enactment of IIJA.
- Highway Safety Programs: Marijuana-Impaired Driving
 - Education of drivers regarding the risks associated within marijuana-impaired driving, for states that have legalized .
- FMCSA Large-Truck/Bus Crash Causation Study
 - Impairment as the cause?



Thank you...

703-838-8804 • dhorvath@trucking.org • twitter: @DanNHorvath