



The National Association of Small Trucking Companies

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October 28, 2020

Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention
Division of Workplace Programs
5600 Fishers Lane, Room 16N02
Rockville, MD 20857

RE: Document No. SAMHSA-2020-0001-0002

To whom it may concern:

The National Association of Small Trucking Companies (NASTC), which represents more than 13,500 small-business commercial motor carriers, is pleased to respond to the Substance Abuse and Mental Health Services Administration (SAMHSA) notice requesting comment regarding inclusion of hair sample testing in the “Mandatory Guidelines for Federal Workplace Drug Testing Programs” (Document No. SAMHSA-2020-0001-0002).

NASTC is a member-based association whose member companies range from one or a few power units to more than 100 power units; however, our members average 12 power units. These companies mainly operate in the long-haul, over-the-road, full-truckload, for-hire sector of interstate trucking. NASTC’s members come from the largest segment of America’s long-haul trucking — small motor carrier businesses. Thus, they are more representative of the vast majority of our nation’s commercial motor carriers, the almost 440,000 carriers with fewer than 100 power units, in contrast to the 1,441 megafleet carriers. Moreover, NASTC administers drug and alcohol testing programs for approximately 4,500 member motor carriers of all sizes. This experience since 1991 provides NASTC with keen insight regarding this important subject.

We appreciate SAMHSA’s mission “to maintain the integrity and ensure the quality of federal drug-free workplace programs by a commitment to identify and mandate the use of the most accurate, reliable drug tests and testing methods available.” We commend SAMHSA for its adherence to high standards and its deliberative approach. In NASTC’s view and based on our extensive experience, we contend that in long-haul trucking, urine specimens provide the best means of ensuring integrity and quality through the most accurate and reliable testing methods.

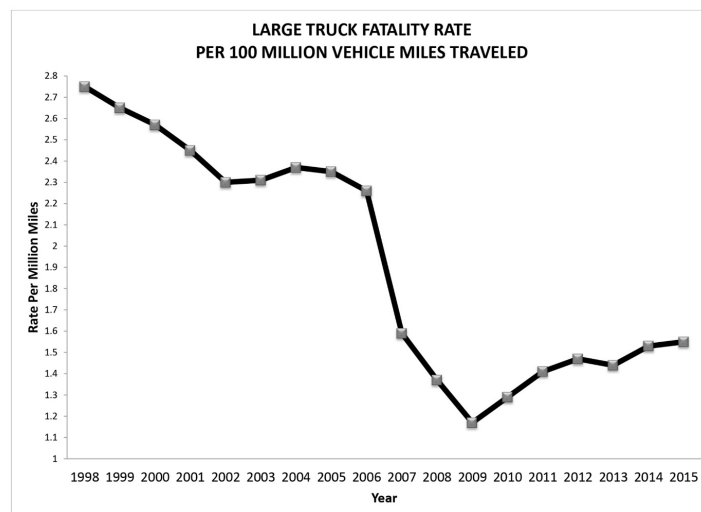
We acknowledge that a sizable share of the 1,441 largest motor carriers have incorporated hair testing for drug use into their drug testing programs. That is a business decision they have made on their own. The large carriers’ intent here is plain: Making hair

testing not merely an alternative to or supplement to urine drug testing of commercial truck drivers, but to replace such testing with hair testing.

Their criticism of the proposed guidance as not clearing the way for hair testing at full speed ahead seems to have less to do with the science and performance of certain drug testing methods and more to do with saddling their numerous small competitors with additional compliance costs. As this notification states, urine drug testing will cost a little less than hair testing when the costs of recontouring the infrastructure to use hair are included. That hard cost remains a mystery in that the entire protocol will change. Training, collection, certification, and the duties of a medical review officer will have to be reconstructed based on FMCSA's regulations. Also, as pointed out above, in many cases there will have to be dual systems run. This has the potential to undo all the good work the industry has done now for almost 30 years, especially with *small* carriers who make up 99.9 percent of those regulated. This isn't just a bad idea – it's a horrible and short-sighted regulatory mistake!

The economic case for forcing small motor carriers to switch drug testing methods falls flat on its face. There is no reason to put the government's thumb on the scales for economic and competitive outcomes desired by and disproportionately favorable to the relative handful of the largest motor carriers.¹ We recognize that economic considerations may be of less concern than scientific ones to SAMHSA; however, it is important that this agency be aware of the broader picture.

In 1991, when testing for drugs was first required for all carriers regardless of size, the positive rate for drug usage for the general population exceeded 15 percent while the positive rate for professional truck drivers was 9.5 percent. Today, the positive rate for drivers in the long-haul niche has hovered just above or just below 1 percent for the past three years. This is a regulatory area where the policies as implemented have been extremely effective. Also, over the years as our industry's positive rate has declined, so have the numbers for large truck-car fatalities fallen almost as a direct correlation. See the graphic below.



¹ Ivan Espinoza-Madrigal & Larry Willis, "Hair drug testing is not accurate, we shouldn't rely on it," The Hill, September 25, 2017 (<https://thehill.com/opinion/healthcare/352235-hair-drug-testing-is-not-accurate-lets-stop-relying-on-them>)

The drug testing methods presently employed have achieved this remarkable reduction in commercial driver drug usage and corresponding improvements in highway safety. Therefore, a high bar should be required for supplementing — and certainly for displacing — the existing, successful drug testing method. And the burden of proof for making a change resides with the special interests advocating such dramatic change.

Megacarriers' opinions notwithstanding, hair testing would not improve on urine testing for detecting drug usage by commercial drivers.² The reason is because drug screening serves the purpose of determining the condition of a driver at the time the driver is behind the wheel. This is generally shorter-term or immediate, rather than a week up to 90 days earlier.

In the trucking sector, random drug tests of 50 percent of drivers must occur while a driver is on duty. Thus, while hair testing may detect past drug usage by a driver, it does not indicate the status of the driver's drug usage during a period when the truck driver will have just been behind the steering wheel. Nor would hair tests be feasible in postaccident or for-cause screening situations for the same reasons. Notably, law enforcement will not perform roadside drug tests. A delay in collecting specimens from drivers at the time of a reportable accident has implications regarding determining contemporaneous drug usage, chain of custody of specimens, potential for fraud, and accuracy with respect to the facts at time of accident.

The only instance of the four types of drug screening in which hair testing may be suitable is preemployment screening. Even then, this method would typically need to be supplemented with urine testing so as to provide more recent drug usage readings, due to there being 5 days before drugs consumed appear in hair. Thus, a dual system of both urine and hair tests would be required.

As the notice recounts, controlled substances may be detected in hair due to contamination from environmental exposure or cosmetic hair treatments, and how variation occurs in connection with hair color. A recent journal item sums up the challenges with drug testing by hair as "someone could be exposed to a drug without having ingested it and therefore test positive as well as the fact that the drugs bond with some hair types better than others, which cause inaccuracies about when a drug might have been taken."³ Another journal article confirms how with hair treatments, "drugs may be lost from the hair matrix or, under conditions of environmental contamination, be more easily incorporated into the hair matrix."⁴ This study found that damaged hair decreases drug concentration by 40-60 percent. Other "research suggests that there isn't that strong [a] link between cannabis consumption and chemical deposits in the hair after all," calling into question the efficacy of hair drug testing.⁵

² Eric Miller, "HHS Issues Proposed Hair Testing Guidelines," Transport Topics, September 8, 2020 (<https://www.ttnews.com/articles/hhs-issues-proposed-hair-testing-guidelines>)

³ Jenna Bouley, "Issues with Hair-Follicle Drug Testing," Richmond Journal of Law and Technology, August 13, 2018 (<https://jolt.richmond.edu/2018/08/13/issues-with-hair-follicle-drug-testing/>)

⁴ C. Jurado, P. Kintz, M. Menéndez, & M. Repetto, "Influence of the cosmetic treatment of hair on drug testing," International Journal of Legal Medicine, 1997;110(3):159-63 (<https://pubmed.ncbi.nlm.nih.gov/9228567/>)

⁵ "Update on Hair Follicle Drug Tests Effectiveness," Euro Pharm Forum, August 10, 2017 (<https://www.europharmforum.org/2017-update-on-hair-drug-test-efficacy/>)

To the extent these confounding factors have a disparate adverse impact on racial and ethnic minorities, it would be advisable to err on the side of caution with regard to hair testing in the trucking sector. It is clear that, for small- and medium-sized motor carriers, the legal exposure caused by false positives from hair tests would skyrocket, especially with respect to hair test results jeopardizing minority truck drivers' livelihoods.

In 2020, the entire country has gained a view of the problems arising from false positives and false negatives in COVID screening tests. In similar fashion, hair testing for drugs would likely produce many more false readings for drug use. In order to confirm the initial false-positive reading, further testing, perhaps a screening of a urine sample, would be required. In other words, a dual system, with all the added costs and ramifications, would be layered onto the trucking industry. That is ludicrous. The proliferation of false positives and false negatives from hair tests would dramatically increase legal liability exposure for motor carriers, brokers, shippers, and every part of the trucking industry.

Simply put, an unwise testing shift would do unnecessary harm to small businesses, truckers, and others involved in the business.

In NASTC-managed carriers' drug and alcohol screening programs since 1991, working with NIDA-certified laboratories, about 100 urine tests are performed per day. Results are produced within 24 hours on the initial test, and on average one out of every 100 drug screenings yields a positive reading for drug usage. For the one out of 100 positive drug tests using urine samples, these "laboratory positives" are dealt with according to our protocols, which enable timely verification through direct interactions between a medical review officer, the driver, the drivers' doctor and/or pharmacy. This ensures due process, balance, accountability, and fairness.

A positive drug test result for a commercial truck driver constitutes a one-strike-and-you're-out standard. A single positive drug test effectively bars that driver from continuing to work in the trucking industry. The federal Drug and Alcohol Clearinghouse in effect precludes someone whose record has a positive drug test from ever driving a commercial vehicle again. Thus, it is important both to ensure a clean truck-driving workforce on our highways and to be absolutely certain that the driver in question is not a victim of false positives that would close off his or her livelihood if positive drug test results are erroneous. Also, false negatives potentially create increased liability for a company owner.

While hair testing may yield more positive drug tests than do urine tests because certain drugs remain detectable in hair much longer than in urine, those results do not indicate corresponding risks to the driving public. The drug might have been lawfully consumed or responsibly dispensed and used, and pose no danger when a driver is on duty driving. For instance, a truck driver who lives in a state where marijuana is legal may use this drug when off duty, or he or she was legitimately prescribed an opioid weeks or months before in connection with medical treatment under a physician's care. Again, the concern with regard to truck driver drug usage is a driver's condition at the time he or she is driving. Is there evidence that the driver's usage affected his or her ability to operate a vehicle safely while on duty? In this light, hair testing for drugs seems of less benefit where professional drivers are concerned.

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While hair testing for drug use may be useful in some industries and for applications such as legal and criminal justice purposes, its utility in the trucking industry, and perhaps in other transportation sectors, strikes us as less beneficial and less practical. In any event, hair-based drug testing in trucking would leave us either sole use of another method of testing in most circumstances or serve as a supplement to urine or saliva tests — a dual system, entirely needlessly.

In conclusion, NASTC appreciates the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink that reads "David Owen". The signature is written in a cursive, flowing style.

David Owen
President