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# MOTOR CARRIER SAFETY

## Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road





Highlights of [GAO-08-600](#), a report to congressional requesters

## Why GAO Did This Study

Federal law requires commercial drivers to submit urine specimens for drug testing. The Federal Motor Carrier Safety Administration (FMCSA) is responsible for ensuring that motor carriers comply with these regulations. Recent reports have raised concerns that some drivers may not be tested, some may be tested but avoid detection, and some may test positive but continue to drive. GAO was asked to look at these challenges. This report reviews (1) the factors that contribute to challenges related to drug testing and (2) the various options that exist to address these challenges. GAO obtained information from a wide variety of stakeholders in the drug testing industry, and analyzed data from FMCSA and others to determine the potential effectiveness of various options.

## What GAO Recommends

GAO recommends that the Secretary of Transportation expedite efforts related to improving safety audits and implementing a national database of drug testing information. GAO suggests Congress consider (1) adopting legislation to ban subversion products, (2) providing FMCSA with additional authority over entities involved in the drug testing process, and (3) encouraging or requiring states to suspend commercial driver's licenses of drivers who fail or refuse to take a drug test. DOT and HHS generally agreed with the findings and recommendations in this report.

To view the full product, including the scope and methodology, click on [GAO-08-600](#). For more information, contact Katherine A. Siggerud at (202) 512-2834 or [siggerudk@gao.gov](mailto:siggerudk@gao.gov).

## MOTOR CARRIER SAFETY

### Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road

#### What GAO Found

Many factors contribute to the challenges of detecting drivers who are using illegal drugs and keeping them off the road until they complete the required return-to-duty (treatment) process. Factors contributing to drivers not being in a drug testing program include FMCSA's limited oversight resources for all carriers and limited enforcement options for safety audits of new carriers. Although FMCSA and its state partners review thousands of carriers each year, these reviews touch about 2 percent of the industry. As a result, carriers have limited incentives to follow the regulations. Factors contributing to failures to detect drug use include the ease of subverting the urine test, either because collection sites are not following protocols or because drivers are using products that are widely available to adulterate or substitute urine specimens. For example, GAO investigators, posing as commercial truck drivers needing drug tests, found that employees at 10 of 24 collection sites tested did not ask the investigator to empty his pants pockets, as they are required to do, to ensure he was not carrying adulterants or substitutes. Factors contributing to drivers testing positive yet continuing to drive include drivers not divulging past drug test history, carriers' failure to conduct thorough background checks on a driver's past drug testing history, and self-employed owner-operators' failure to remove themselves from service.

GAO's analysis identified the following options as having the greatest potential for addressing these challenges:

- For increasing the number of drivers tested: **strengthen the enforcement of safety audits for new carriers.** Stiffer requirements for having a testing program will likely result in more new entrants having effective drug testing programs. DOT has begun this improvement.
- For reducing opportunities to subvert the test: **additional authority to levy fines when collection sites do not follow federal protocols.** This could decrease the opportunity to subvert the test. Also, **congressional action to ban subversion products at the federal level** could make these products more difficult to obtain.
- For reducing the number of drivers who test positive and continue to drive: **a national database of drug testing information.** This would allow for more thorough checking of applicants' past test results. FMCSA has begun to lay the groundwork for a database, but FMCSA may need additional authority to ensure accurate reporting of information. Also, using the database to **encourage states to suspend a driver's commercial driver's license** after a positive drug test or refusal to test would be a more direct way to compel drivers to complete the return-to-duty process.

Any of these options would require either additional resources or a transfer of resources that fund other safety-related initiatives, and some of the options require federal or state legislation and rule making. A national database would have to consider driver protections and a process by which information can be corrected or removed.

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## Abbreviations

AAMVA	American Association of Motor Vehicle Administrators
CCF	Federal Drug Testing Custody and Control Form
CDL	commercial driver's license
CDLIS	Commercial Driver's License Information System
DOT	Department of Transportation
FAA	Federal Aviation Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HHS	Department of Health and Human Services
MVR	motor vehicle record
ODAPC	Office of Drug and Alcohol Policy and Compliance
PCP	phencyclidine
SafeStat	Motor Carrier Safety Status Measurement System
SAMHSA	Substance Abuse and Mental Health Services Administration

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United States Government Accountability Office  
Washington, DC 20548

May 15, 2008

The Honorable James L. Oberstar  
Chairman  
Committee on Transportation and Infrastructure  
House of Representatives

The Honorable Peter A. DeFazio  
Chairman  
Subcommittee on Highways and Transit  
Committee on Transportation and Infrastructure  
House of Representatives

Every year, approximately 5,500 fatalities and 160,000 injuries result from crashes involving large trucks and buses. While vehicle problems and driver behaviors such as speeding or fatigue are the most frequently cited factors involved in these crashes,<sup>1</sup> studies indicate that operating a motor vehicle while under the influence of drugs or alcohol, or both, can increase crash risk anywhere from two- to six-fold.<sup>2</sup> Since 1988, federal regulations have required commercial drivers to be tested for drugs and alcohol in order to reduce the number of crashes that occur as a result of illegal drug use and alcohol misuse.<sup>3</sup> This is a sizable undertaking since more than 700,000 commercial motor carrier companies are registered with the federal government and thousands of new, often small, carriers enter the industry each year. The Department of Transportation (DOT) and one of its administrations, the Federal Motor Carrier Safety Administration (FMCSA), publish regulations that govern the drug and alcohol testing

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<sup>1</sup>DOT, Federal Motor Carrier Safety Administration, *Large Truck Crash Causation Study*, Publication No: FMCSA-RRA-07-017 (July 2007).

<sup>2</sup>Transportation Research Board, *Drugs and Traffic: A Symposium*, June 20-21, 2005 (Transportation Research Circular E-C096) (Washington, D.C., 2006); and K.L.L. Movig et al., "Psychoactive substance use and the risk of motor vehicle accidents," *Accident Analysis & Prevention*, vol. 36, issue 4 (2004).

<sup>3</sup>Similar requirements are in place for other industries, such as the aviation, rail, and transit industries, that employ individuals in transportation safety sensitive positions.

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process for truck and motor coach drivers.<sup>4</sup> FMCSA is responsible for ensuring that motor carriers comply with these regulations and does so through safety audits of carriers that have recently started operations and compliance reviews of carriers already in the industry. FMCSA officials and some stakeholders we met with agreed that FMCSA's drug testing requirements have been successful in deterring and reducing illegal drug use among those employed in transportation safety-sensitive positions.

Drug testing results indicate that some drivers are using illegal drugs. FMCSA data show that each year from 1994 through 2005, between 1.3 percent and 2.8 percent of drivers tested positive for the presence of illegal drugs under random testing. However, these statistics do not indicate the full extent of drug use among truck drivers, and the current drug testing program does not guarantee that drivers who do test positive or refuse to be tested are disqualified from driving until they complete the required return-to-duty process.<sup>5</sup> In particular, the following issues have been identified that suggest there is reason for concern regarding the potential extent of drug use among truck drivers:

- An unknown number of commercial drivers who use illegal drugs are not part of a drug testing program. Statistics from compliance reviews indicate that over 9 percent of these reviews conducted between 2001 and 2007 found that carriers have no drug testing program at all, meaning that many drivers are not subject to a drug testing program. While most of those who are not tested would likely test negative for drugs, it is likely that some drivers who would test positive for drugs are not being tested.
- An unknown number of drug users manage to avoid detection even when they go through the testing process. For example, some drivers are successfully adulterating or substituting their urine specimens with

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<sup>4</sup>Title 49, Code of Federal Regulations (CFR), Part 40 provides rules governing how drug tests are to be conducted and what protocols are to be used. The tests cover alcohol as well as drugs, but the focus of our work has been on the testing that covers five drug categories: marijuana, cocaine, amphetamines (including methamphetamines), opiates (including heroin), and phencyclidine (PCP). The Office of Drug and Alcohol Policy and Compliance, within the Office of the Secretary of Transportation, publishes these rules. FMCSA's specific drug testing regulations are contained in 49 CFR Part 382.

<sup>5</sup>If employees test positive, refuse to test, or otherwise violate the regulations, they are required to complete a return-to-duty process before re-engaging in safety-sensitive duties. The return-to-duty process is guided by a substance abuse professional and must include education or treatment, return-to-duty testing, and follow-up testing. This process may also include aftercare.

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products that are widely available and marketed as allowing drivers to “beat” the test.

- Among the drivers who test positive, an unknown number continue to drive—primarily by “job-hopping”—without completing a required return-to-duty process guided by a substance abuse professional. There is little data on the number of drivers who complete the return-to-duty process. A Director of the Substance Abuse Program Administrators Association conservatively estimates that less than half of commercial driver’s license (CDL) holders who test positive or refuse to test successfully complete the return-to-duty process before returning to their jobs.<sup>6</sup> Those who do not go through the return-to-duty process and continue to drive are called job-hoppers—job-hoppers test positive for one carrier; are fired, quit, or are not hired; do not go through the return-to-duty process; abstain from drug use for a short period; test negative on a pre-employment test for another carrier; go to work for another carrier; and could continue to use drugs. Furthermore, self-employed owner-operators are also unlikely to remove themselves from safety-sensitive duty in the event of a positive test, though it is not known how many truly self-employed owner-operators exist.<sup>7</sup>

In light of these issues, this report examines (1) the factors that contribute to the main challenges of ensuring all drivers are in a drug testing program, limiting drivers’ ability to avoid detection by a drug test, and keeping drivers off the road once they have tested positive; and (2) the options that exist for addressing these challenges, the potential effect of these options, and the challenges that would be faced in implementing them.

To address these issues, we reviewed DOT and FMCSA regulations, policies, and reports, and interviewed officials from FMCSA and DOT’s Office of Drug and Alcohol Policy and Compliance (ODAPC) and the

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<sup>6</sup>Donna Smith, Substance Abuse Program Administrators Association, “Drug and Alcohol Testing of Commercial Motor Vehicle Drivers” (a testimony presented to the Committee on Transportation and Infrastructure’s Subcommittee on Highways and Transit, Nov. 1, 2007).

<sup>7</sup>Owner-operators own their own vehicles and hold a valid commercial driver’s license. An owner-operator may be self-employed and act as both an employer and a driver at certain times, or may act as a driver for another employer at other times. Little data exist about the number of self-employed owner-operators. According to DOT, recent statistics indicate that there are nearly 143,000 owner-operators; however, many of these may be leased to other larger motor carriers but continue to maintain their own operating authority, or DOT number.



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Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA). This review focuses on the controlled-substance portion of the drug and alcohol testing regulations and does not address alcohol testing. We analyzed FMCSA data on the results of compliance reviews and safety audits, as well as data on enforcement activities. We interviewed motor carrier industry associations representing many segments of the motor coach and trucking industry, such as the American Trucking Association, the Owner-Operator Independent Drivers Association, the American Bus Association, and the National Association of Small Trucking Companies. We also interviewed officials from unions representing truck and bus drivers and from a variety of associations representing urine specimen collectors, medical review officers, substance abuse professionals, consortiums/third-party administrators, and others involved in the drug testing industry. We also interviewed representatives from a company that manages several HHS-certified laboratories that analyze DOT drug test specimens. We observed FMCSA oversight activities, including four compliance reviews and two new-entrant safety audits in several states. We selected states in which to observe compliance reviews and new-entrant safety audits on the basis of the availability of ongoing FMCSA oversight activities. We interviewed representatives from the motor carriers being audited. In total, we interviewed 10 motor carriers, including both large and small carriers, and one owner-operator. We interviewed officials from motor vehicle licensing departments in states that had passed laws to require reporting of positive drug test results. We interviewed the state attorney general's office of a state that passed a law banning adulterants and substances to subvert a drug test. We also interviewed officials involved in the drug testing programs at other DOT modal administrations, including the Federal Aviation Administration, the Federal Transit Administration, and the Federal Railroad Administration, to gather information on whether these problems are common across the administrations, how problems are addressed by the other administrations, and how issues and circumstances in the other modal administrations can or cannot be compared with FMCSA's experience.

In the course of our interviews and analyses, we identified many options that have been suggested as possible ways to address problems or weak points in FMCSA's current drug testing program. We assessed the various options for their likely effectiveness in addressing the particular problem they were designed to address and their feasibility from the standpoint of cost, support, and amount of effort involved in implementation. Our assessments were based on (1) analyzing and synthesizing the views of the various government officials and industry stakeholders we interviewed

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with regard to their estimations of the potential effectiveness and feasibility of pursuing various options; (2) reviewing studies that have been conducted regarding the feasibility of certain options; (3) analyzing cost and other data; and (4) analyzing the experience of other modal administrations or entities in implementing various options, where applicable. Inherently there are certain limitations and variances in the quality of data and information available about certain options. Therefore, we used a certain amount of professional judgment in comparing options relative to one another. We determined that the data used in this report are sufficiently reliable for our purposes. We conducted this performance audit from June 2007 to May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Results in Brief

Many factors contribute to the three main challenges FMCSA faces in ensuring all drivers are in a drug testing program, limiting drivers' ability to avoid detection by a drug test, and keeping drivers off the road once they have tested positive or refused-to-test.

- First, factors that lead to drivers not being in a drug testing program include limitations in FMCSA's oversight resources for existing carriers and limitations in FMCSA's enforcement options when conducting safety audits of new carriers. FMCSA's limited oversight resources lessen the incentive for existing carriers to follow the regulations. FMCSA and its state partners conducted an average of approximately 13,000 compliance reviews on carriers each year from 2001 through 2007, and these reviews were targeted based on risk.<sup>8</sup> However, over 700,000 carriers are registered with DOT, and over 70 percent of those do not have a safety record and therefore would not be targeted for a compliance review. Furthermore, FMCSA has conducted safety audits on tens of thousands of new carriers each year, often finding that carriers do not have a drug testing program.

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<sup>8</sup>FMCSA targets carriers for compliance reviews based primarily on a poor carrier safety record in its Motor Carrier Safety Status Measurement System (SafeStat). SafeStat is an automated, data-driven analysis system that uses data on crashes, vehicle and driver violations, and other information to develop numerical scores for carriers. SafeStat then assigns each carrier a priority to receive a compliance review. FMCSA will also target carriers for compliance reviews based on a fatal accident, a complaint against the carrier or driver, or a follow-up investigation after violations.

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However, a new carrier can still pass a safety audit without a drug testing program, and FMCSA follow-up to ensure that problems were corrected does not always occur.

- Second, factors that create opportunities for subversion of the urine test and lead to drug users avoiding detection include lack of compliance with DOT protocols by collectors, little oversight of collectors and service agents by FMCSA, and the availability of subversion products.<sup>9</sup> For example, a recent GAO investigation found that collectors at 10 of 24 sites tested failed to ask the GAO investigators, who were posing as truck drivers, to empty their pants pockets to ensure no items were present that could be used to adulterate the specimen, as required by DOT protocols.<sup>10</sup> However, FMCSA does not conduct regular oversight over collectors and other service agents and does not have authority to impose civil penalties against service agents to enforce compliance. Furthermore, subversion products are widely available and marketed on the Internet and are not illegal under federal law. Also, GAO investigators purchased adulterants and synthetic urine through the Internet and used them in 8 of the 24 drug test specimens.<sup>11</sup> The laboratories that analyzed the 8 specimens did not detect the adulterants or substitutes the investigators used.
- Third, factors that contribute to drivers continuing to drive after testing positive or refusing to test include drivers not reporting their drug testing history, incomplete background checks by carriers, and loopholes for self-employed drivers. For example, drivers are not likely to list on their job application any previous employment where they tested positive or refused to test, although they are required to include this information. Further, a failure to conduct required background checks—which includes checking for past positive drug tests—is one of the top violations found in compliance reviews. Finally, self-employed drivers are not likely to remove themselves from service after testing positive.

Our analysis and discussions with carriers, industry associations, DOT, and others identified a number of options that could potentially address some of the factors that contribute to the challenges in FMCSA's drug testing program. The options involve trade-offs between effectiveness and

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<sup>9</sup>Collectors are one of several types of "service agents" that a motor carrier can hire to perform tasks needed to comply with DOT drug testing requirements.

<sup>10</sup>GAO, *Drug Testing: Undercover Tests Reveal Significant Vulnerabilities in DOT's Drug Testing Program*, [GAO-08-225T](#) (Washington, D.C.: Nov. 1, 2007).

<sup>11</sup>[GAO-08-225T](#).

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feasibility, and no one option comprehensively addresses all three main challenges we found. Implementing any options would require either additional resources or a transfer of resources that fund other initiatives related to road safety, and some options require a federal rule-making process and legislation. Among the various options available, the following appear to offer the greatest benefit for the additional resources that would be needed:

- *For increasing the number of drivers that are in a drug testing program:* strengthening the enforcement of safety audits for new carriers. Under this option, which DOT has already begun to implement, a new entrant would risk failing the safety audit if a drug testing program is not in place. We also considered other options, such as increasing oversight of carriers or conducting additional audits, but these options would generally require a higher level of expenditures to produce effective results, and such expenditures should be viewed relative to expenditures that can be made in other areas that may also have an impact on safety.
- *For ensuring better reliability of the test itself:* additional authority over service agents and congressional action to ban subversion products at the federal level. FMCSA currently does not have authority to levy fines for service agents' noncompliance with DOT requirements. Such authority would likely send a message to the industry that there are consequences for failing to comply and could bring many service agents into compliance. A ban on subversion products at the federal level could have a deterrent effect on some sellers and on buyers because the banned product would be more difficult to obtain. Further, a federal law would allow for prosecution in any state, if an individual were found to be manufacturing, selling, or possessing such products.
- *For reducing the number of drivers who test positive and continue to drive:* a national database of drug testing information and authority to suspend a commercial driver's license (CDL) for a positive drug test result or refusal-to-test. A national database is attractive because it provides information on a driver's past drug test history and helps ensure that a carrier will not unknowingly hire a job-hopper. Furthermore, FMCSA has begun to lay the groundwork for such a database. FMCSA may need additional authority over service agents to ensure reporting of information to the database. FMCSA would also need to consider driver protections and a process by which information can be corrected or removed from the database. State suspension of a driver's CDL for a positive test or a refusal to take the test could be an effective deterrent because it directly affects a driver's commercial license and ability to operate a commercial motor vehicle and addresses issues surrounding poor compliance by carriers as well as inherent problems with

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self-employed drivers. Because CDLs are issued by states, Congress would need to take action to encourage or compel states to create or modify existing state laws to suspend a driver's CDL.

To improve the reliability of the drug test to detect illegal drug use, to ensure that FMCSA has the appropriate authority over service agents in the drug testing process, and to increase compliance with drug testing requirements, Congress should consider (1) adopting legislation to ban drug testing subversion products, (2) granting FMCSA oversight and enforcement authority over service agents involved in the drug testing process, and (3) taking action to encourage or compel states to require the suspension of the CDLs of drivers who have tested positive or who have refused to take a DOT drug test. To help FMCSA ensure drivers who should be drug tested are in a drug testing program, and drivers who have tested positive are kept off the road until they have complied with return-to-duty requirements, we recommend the Secretary of Transportation expedite the rule-making process (1) to strengthen the requirements of safety audits for new entrants and (2) to create a national database of positive and refusal-to-test drug and alcohol test results.

We are making recommendations in this report that the Secretary of Transportation take actions to assist FMCSA in ensuring drivers who should be drug tested are in a drug testing program, and drivers who have tested positive are kept off the road until they have complied with return-to-duty requirements. In commenting on a draft of this report, DOT and HHS generally agreed with the findings and recommendations and provided technical clarifications, which we incorporated as appropriate.

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## Background

Federal drug testing regulations require commercial motor carriers to have a drug testing program that covers transportation safety-sensitive employees who operate commercial motor vehicles with a gross vehicle rating of 26,001 pounds or more; are designed to transport 16 or more passengers, including the driver; or are of any size and are used in the transportation of placarded quantities of hazardous materials.<sup>12</sup> While the largest motor carriers operate upward of 50,000 vehicles, most carriers are small, with approximately 80 percent operating between one and six vehicles. Carriers continually enter and exit the industry, and turnover among small carriers is high, thereby making them harder to track. Since

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<sup>12</sup>This includes both interstate and intrastate drivers and carriers.

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1998, the industry has increased in size by an average of about 29,000 interstate carriers per year.

The Omnibus Transportation Employee Testing Act of 1991 required DOT to implement drug testing using urine specimens. According to DOT, in 2006, there were approximately 7.32 million DOT-regulated tests conducted. DOT's drug testing both identifies and deters illegal drug use, with the objective of improving road safety by preventing crashes in which the driver's use of illegal drugs may be a contributing factor. According to the Substance Abuse Program Administrators Association, illegal drug use impacts driver safety in more ways than simply "impairment." Risk-taking behavior, cognitive degradation, and inattention are all correlated with illegal drug use, even when the individual is not "impaired" from a toxicological perspective. As implemented by DOT, testing covers five drug categories: marijuana, cocaine, amphetamines (including methamphetamine), opiates (including codeine, morphine, and heroin<sup>13</sup>), and phencyclidine (PCP). Motor carriers are required to obtain a negative test result prior to employing drivers and allowing them to engage in safety-sensitive duties. Carriers also must conduct random testing,<sup>14</sup> postaccident testing, and reasonable suspicion testing. If employees test positive, refuse to test, or otherwise violate the regulations, they are required to complete a return-to-duty process before re-engaging in safety-sensitive duties. The return-to-duty process is guided by a substance abuse professional and must include education or treatment, return-to-duty testing, follow-up testing, and possible aftercare.

Motor carriers must implement a drug testing program and may use service agents to perform some or the majority of the tasks needed to comply with DOT drug testing requirements. At a minimum, a motor carrier must designate one of its employees to act as an employer representative. A designated employer representative is authorized by the carrier to take immediate action to remove a driver from safety-sensitive duties after being notified of a positive or refusal-to-test result.<sup>15</sup> Service agents cannot act as designated employer representatives. Service agents

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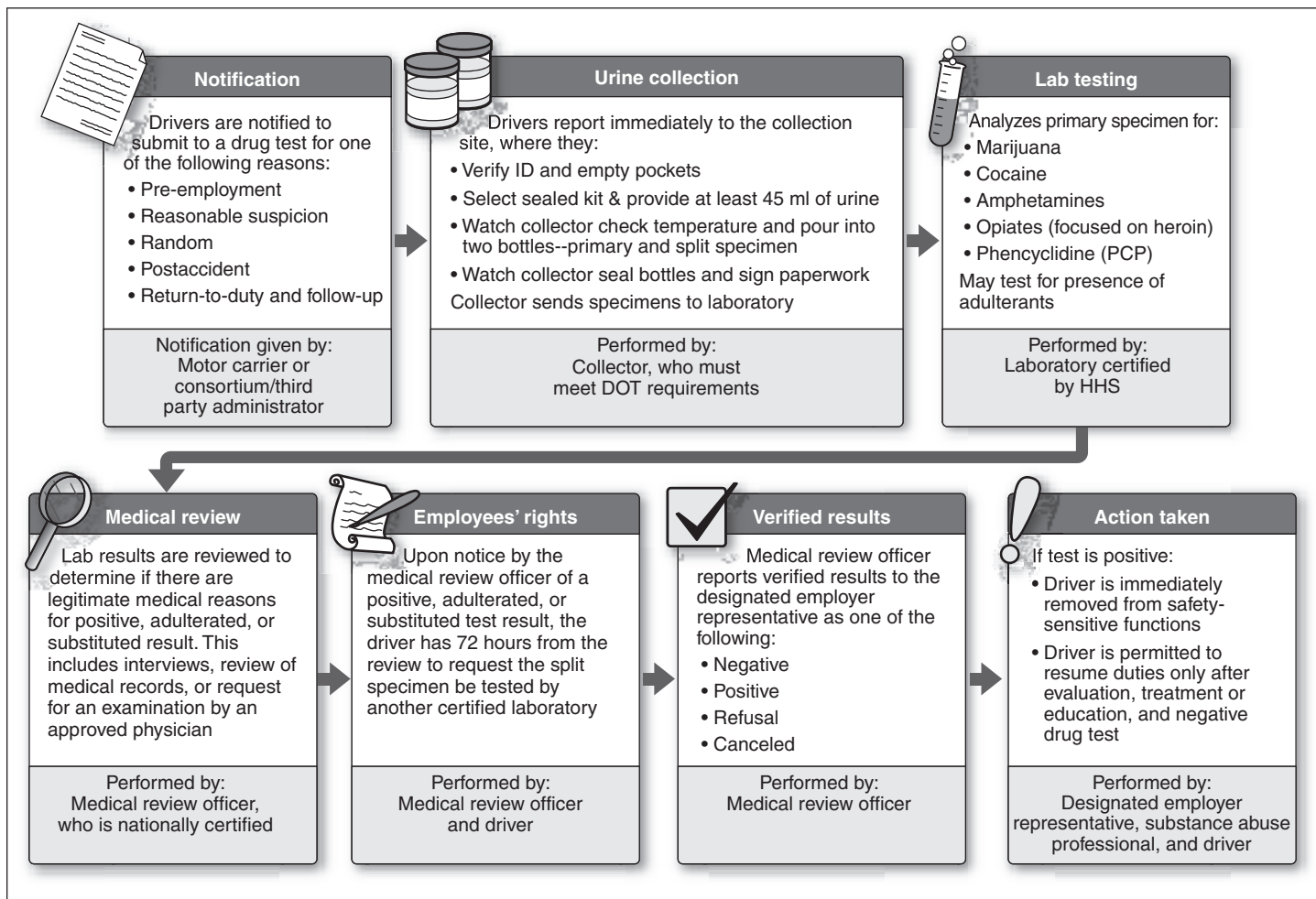
<sup>13</sup>The test analyzes urine for a heroin metabolite—6-acetylmorphine.

<sup>14</sup>FMCSA requires 50 percent random drug testing rates for CDL drivers in 2008. DOT administrations can lower the random rate for drug testing to 25 percent when drug testing data show that employees are testing positive at a rate of less than 1 percent for two years in a row.

<sup>15</sup>Refusals-to-test include specimens that have been adulterated or substituted.

must meet qualification requirements and are responsible for implementing the required protocols. Figure 1 provides information about DOT's drug testing process and the role of service agents.

**Figure 1: Overview of the DOT Drug Testing Process**



Source: GAO.

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Service agents include the following:

- A **collector** instructs drivers during the urine collection process, makes an initial inspection of the specimen provided, divides the specimen into primary and split specimens,<sup>16</sup> and sends it to the laboratory for analysis. A collection site can be any toilet in a clinic, hospital, or office building; a toilet on site at a carrier's place of business; or a portable toilet.
- A **laboratory** analyzes the specimen. DOT is required to adhere to testing protocols developed by HHS and to use laboratories certified by HHS; as of April 2008, there were 42 such laboratories.
- A **medical review officer**, who is a licensed physician, is responsible for receiving and reviewing laboratory results for a carrier's drug testing program and evaluating medical explanations for certain drug test results. In cases of confirmed positive, adulterated, substituted, or invalid test results the officer must verify the laboratory results by speaking with drivers and informing them of their right to have the split specimen tested.
- A **substance abuse professional** evaluates drivers who have tested positive or refused to take a test and makes recommendations about the return-to-duty process, which could include education, treatment, return-to-duty testing, follow-up testing, and aftercare. Drivers are required to complete the recommended steps before they re-engage in safety-sensitive functions.
- A **consortium/third-party administrator** is a company that can provide or coordinate either a variety of or all of the above services for carriers and owner-operators.<sup>17</sup>

The enormity and fluidity of the motor carrier industry and its service agents, and FMCSA's limited resources, do not allow for firm control over motor carriers or service agents in following drug testing requirements. As of September 2007, there were approximately 724,000 commercial motor

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<sup>16</sup>In DOT drug testing, the split specimen is tested at a second laboratory in the event that the employee requests that it be tested following a verified positive, adulterated, or substituted test result based on the primary specimen. Verified positive, adulterated, or substituted test results are determined after laboratory analysis and medical review.

<sup>17</sup>The regulations require owner-operators to implement a random controlled-substances testing program. To comply, owner-operators must be enrolled in a random testing pool that includes other drivers. The random testing pool is managed by a consortium/third-party administrator.



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carriers registered in FMCSA's Motor Carrier Management Information System.<sup>18</sup> FMCSA partners with states to provide oversight for safety requirements, including drug testing. In addition to FMCSA, other DOT administrations such as the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and Pipeline and Hazardous Materials Safety Administration oversee safety requirements, including drug testing, in the aviation, railroad, transit, and pipeline industries respectively.<sup>19</sup> According to the Substance Abuse Program Administrators Association, of these administrations, FMCSA has the largest number of entities to oversee and the fewest personnel, per company, to do so. See appendix II for more detailed information on DOT administration oversight of drug testing programs.

FMCSA has responsibility for ensuring compliance by trucking and motor coach companies with all types of safety requirements, such as vehicle inspections and hours of service, as well as drug and alcohol testing requirements. FMCSA and its state partners ensure compliance through several oversight activities, including safety audits of new entrants and compliance reviews of existing companies—both of which cover compliance with all types of safety requirements, including drug testing.<sup>20</sup> Safety audits are required for all new entrants to the trucking industry and are opportunities for FMCSA and states to provide educational and technical assistance to new carriers, explain carriers' responsibilities under the federal requirements, and check for operational deficiencies. Nearly 37,000 safety audits were conducted in 2007. FMCSA uses a risk-based approach in addressing safety priorities with compliance and enforcement resources. For example, FMCSA targets carriers for compliance reviews based primarily on a poor carrier safety record in SafeStat, which assigns each carrier a priority to receive a compliance

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<sup>18</sup>This includes an unidentified number of carriers that are registered but are no longer in business.

<sup>19</sup>The United States Coast Guard in the Department of Homeland Security also oversees drug and alcohol testing programs in accordance with 49 CFR Part 40 in the maritime industry.

<sup>20</sup>Ninety-five percent of FMCSA compliance reviews in fiscal years 2001 to 2006 included a review of drug and alcohol testing compliance. GAO, *Motor Carrier Safety: Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law*, [GAO-07-584](#) (Washington, D.C.: Aug. 28, 2007).

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review.<sup>21</sup> FMCSA also targets carriers for compliance reviews based on a fatal accident, a complaint against the carrier or driver, or a follow-up investigation after violations. In 2007, FMCSA and state investigators conducted 16,000 compliance reviews. In addition to the audits and compliance reviews, FMCSA also makes educational materials about drug testing available on its Web site.

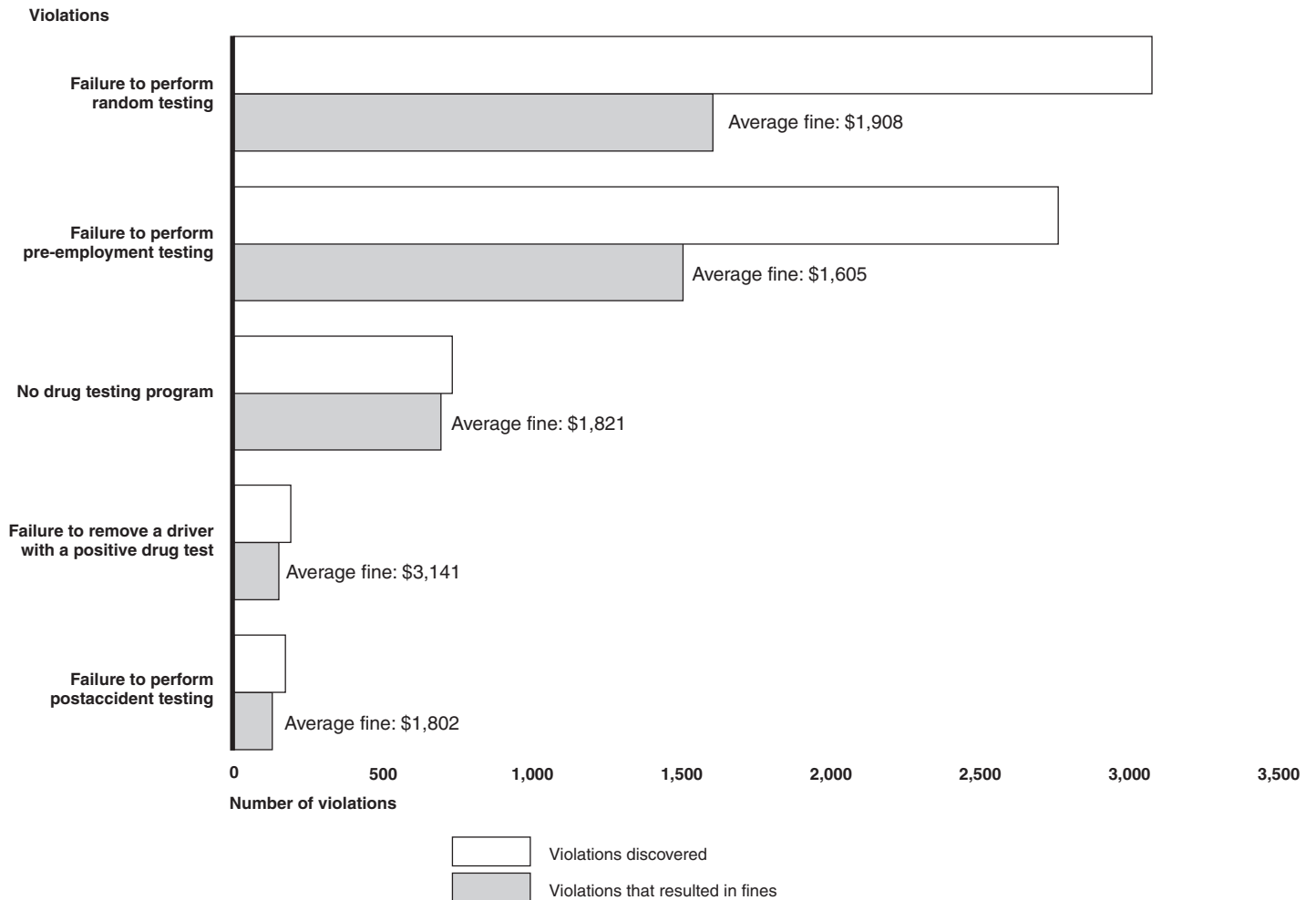
Data from FMCSA's oversight activities show that noncompliance and poor compliance with the drug testing requirements is widespread. The most frequently cited drug testing violation found in new-entrant safety audits, which was found in 30 percent of safety audits conducted since 2003, was that carriers had no drug testing program at all. The two most frequently cited drug testing violations in compliance reviews in 2007 were that carriers have failed to adequately implement random drug testing or pre-employment testing (see fig. 2). Over half of the 3,075 random testing violations and 2,761 pre-employment testing violations resulted in fines, with an average fine of \$1,908 for random testing and \$1,605 for pre-employment testing.<sup>22</sup> Of the 190 cases in which a carrier failed to remove a driver with a positive drug test from service, almost 80 percent resulted in a fine, averaging \$3,141.

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<sup>21</sup>FMCSA targets compliance reviews toward those carriers that its Motor Carrier Safety Status Measurement System (SafeStat) identifies as having a high potential for being involved in crashes. We have recently reported that a statistical approach would better identify commercial carriers for compliance reviews than the current approach. GAO, *Motor Carrier Safety: A Statistical Approach Will Better Identify Commercial Carriers That Pose High Crash Risks Than Does the Current Federal Approach*, [GAO-07-585](#) (Washington, D.C.: June 11, 2007); and [GAO-07-584](#).

<sup>22</sup>Some violations do not result in fines due to inspector discretion, supervisory review, or a carrier refuting the violation.

**Figure 2: Top Five Drug and Alcohol Testing Violations and Associated Fines in Compliance Reviews, 2007**



Source: GAO analysis of FMCSA data.

While FMCSA conducts oversight of motor carriers to ensure compliance with drug testing requirements, FMCSA only conducts oversight of service agents employed by the carrier in cases of specific allegations or complaints. Few carriers conduct regular oversight of the service agents they employ, and smaller carriers are less likely to conduct such oversight, given their more limited resources. Other DOT administrations, including FAA, FRA, and FTA, oversee service agents in various ways by conducting

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regular compliance reviews, drug testing-specific audits, service agent-specific audits, and follow-up after complaints. These administrations can also use public interest exclusions to enforce service agent compliance.<sup>23</sup> A recent GAO report found that there is a lack of compliance with protocols among service agents that collect specimens for testing. Posing as commercial truck drivers needing DOT drug tests, GAO investigators determined that 22 of the 24 collection sites they tested were not in compliance with some of the protocols that guide the process of collecting a urine specimen.<sup>24</sup>

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## Several Factors Contribute to the Challenges in FMCSA's Current Drug Testing Program

A number of factors create challenges for FMCSA to ensure that all drivers are in a drug testing program, drivers' ability to avoid detection by a drug test is limited, and drivers who test positive are removed from safety-sensitive duties until they have completed return-to-duty requirements. First, the factors that contribute to drivers not being subject to testing include limitations in FMCSA's oversight resources. Limited resources mean many carriers have little likelihood of ever being reviewed, which may reduce the incentive for carriers to follow the regulations. Some carriers also report confusion about how to implement effective drug testing programs. Second, factors that contribute to drivers' ability to avoid detection include the ease with which the urine specimen can be subverted because of noncompliant collection sites and the wide availability of products for adulterating or replacing the urine sample. In addition, drivers could be using drugs for which DOT does not test. Third, factors that lead to potentially thousands of drivers who test positive to continue to drive without completing the required return-to-duty process include the nonreporting of past positive drug tests by drivers to prospective employers and self-employed owner-operators who fail to remove themselves from service.

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<sup>23</sup>A public interest exclusion excludes a service agent with serious noncompliance with drug and alcohol testing rules from participation in DOT's drug and alcohol testing program. After receiving a correction notice from a DOT administration or the Office of Drug and Alcohol Policy and Compliance (ODAPC), the service agent has 60 days to make and document changes to correct the noncompliance. If the noncompliance is not corrected, the DOT administration or ODAPC may issue a Notice of Proposed Exclusion to initiate the public interest exclusion. After receiving a Notice of Proposed Exclusion, the service agent has 30 days in which to contest the public interest exclusion. The ODAPC Director makes the final determination on whether to issue a public interest exclusion.

<sup>24</sup>[GAO-08-225T](#).

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## Limited Incentive for Carrier Compliance and Poor Understanding of Regulations by Some Carriers Can Result in Drivers Not Being Subject to Drug Testing

Due to the large number of motor carriers regulated, FMCSA reviews only a small percentage of the total number of carriers. Although those reviewed typically have been identified as having significant safety problems, the limited number of reviews lessens the incentive for existing carriers to comply with drug testing requirements. FMCSA and its state partners conducted an average of over 13,000 compliance reviews annually on carriers from 2001 through 2007, but the majority of carriers were not visited and have little likelihood of ever being visited.<sup>25</sup> Existing owner-operators and small carriers are less likely than larger companies to be selected for a compliance review, since they are less likely to have a safety record. Several associations told us that small carriers may have less incentive to comply with drug testing regulations since visits by FMCSA or state investigators are rare.

New-entrant safety audits provide essential educational information to new carriers. An FMCSA official told us the majority of new entrants are typically visited 8 to 9 months after beginning operations. However, before the safety audit occurs, new entrants may operate without adequately implementing safety management regulations, including drug testing—FMCSA data indicate 30 percent of new entrants lack a drug testing program. The purpose of the audit is to educate and encourage compliance; under the current rules, absence of a drug testing program does not result in a failure of the audit. An FMCSA official estimated that less than 1 percent of new entrants fail safety audits. After an audit, the carrier is given a list of recommendations for corrective actions, but follow-up to ensure these actions were taken does not always occur. However, if certain violations are discovered during a safety audit, such as if a carrier is found to have used a driver who had a positive drug test, the safety audit would end and the carrier would be immediately referred for a compliance review. FMCSA published a Notice of Proposed Rulemaking to strengthen the safety audit pass/fail criteria to give more significance to basic safety management requirements, including drug testing, in December 2006. A Final Rule is expected before the end of 2008.

Several stakeholders we met with told us that for some carriers, particularly small carriers, a poor understanding of their responsibilities to

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<sup>25</sup>As we have previously reported, as of June 2004 only 23 percent of carriers registered with DOT had a SafeStat rating, which FMCSA uses to target carriers for compliance reviews; the remaining 77 percent of carriers are unlikely to receive a compliance review unless they are involved in a roadside inspection or fatal crash, or are identified by complaint calls to FMCSA. [GAO-07-585](#).

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implement drug testing regulations can also lead to carriers failing to implement a drug testing program, or considerable noncompliance with drug testing regulations. For example, one of the carriers we met with is in the event industry and uses trucks to haul equipment. Since trucking is not the company's core business, the company was not aware of the requirement to drug test its drivers. In another example, a representative from one carrier we visited explained that the company was not sure how to test drivers who work only periodically.

Compliance with drug testing regulations is particularly problematic for self-employed owner-operators. Like other drivers employed by motor carrier companies, self-employed owner-operators must follow drug testing regulations and participate in a drug testing program. A pre-employment drug test must be performed, and FMCSA requires that the owner-operator must enroll in a consortium for random drug testing purposes. However, it is not clear how an individual who is both the employer and the employee would comply with drug testing reporting requirements. If a self-employed owner-operator tests positive, there is no one to remove the individual from safety-sensitive duties. Furthermore, self-employed owner-operators probably have the smallest chance of being selected for a compliance review because FMCSA will most likely not have sufficient data available to create SafeStat ratings, unless they are in a crash with a fatality.

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## Several Factors Lead to Subversion of the Test and Result in Drug Users Avoiding Detection

### Lack of Compliance by Collection Sites and Other Service Agents

Collection sites that are out of compliance with DOT protocols for specimen collection make it easier for drivers to subvert a test. For example, GAO investigators, posing as commercial truck drivers needing DOT drug tests, found that employees at 10 of 24 sites the investigators tested failed to ask an investigator to empty his pants pockets to ensure no items were present that could be used to adulterate the specimen. One employee who did ask the investigator to empty his pockets did not verify that all of his pockets were empty, and the investigator had hidden an adulterant in his back pocket. At other collection sites, investigators found substances available at the collection site that could have been used to dilute or otherwise tamper with their specimen. At some sites, the

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investigators found they were given ample opportunity to have a different individual come in and provide a sample for them.

While compliance with the regulations and collection protocols certainly helps to reduce the opportunity for a driver to adulterate, dilute, or substitute a specimen, as evidenced by our investigators' findings, full compliance with all protocols does not ensure that no cheating will occur. In fact, our investigators were able to substitute a specimen at one site that followed all protocols. In addition, the investigators concluded that at any collection site they visited, they would have been able to tamper with their specimen despite DOT protocols.

Carriers can mitigate the opportunity to cheat on a drug test by having on-site collections and limiting the opportunity drivers have to retrieve adulterants or substitutes or to dilute their sample. One large carrier we interviewed conducts on-site collections with its own personnel and has a policy and protocol aimed at minimizing any opportunity a driver would have to retrieve an adulterant or substitute. At this company, drivers are notified in person of a random drug test and are immediately taken to have a specimen collected, without the ability to go to a locker, a car, or anywhere else before providing the specimen. In order to subvert the specimen in this environment, drivers would need to carry an adulterant at all times when in the facility. In addition to the DOT-mandated tests, this carrier conducts more frequent drug testing. Specifically, the company conducts unannounced tests of all drivers at least once each year. Also, new drivers, in addition to taking a pre-employment test, are tested again, at an unannounced time, within the first 90 days of employment. On-site collections may not be practical for smaller companies due to their more limited resources and the impracticality of having drivers come into the facility without being alerted to the possibility that they are being called in for a drug test.

In addition, other service agents, including consortiums/third-party administrators, medical review officers, and substance abuse professionals, may be out of compliance. For example, in one of its own reviews, FMCSA found that a third-party administrator was not selecting drivers at the required 50 percent rate for random tests. In other examples, FMCSA found one unqualified individual who was acting as a medical review officer and another unqualified individual acting as a substance abuse professional who was issuing return-to-duty reports for drivers that had not completed their prescribed treatment, in violation of return-to-duty requirements.

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## Little Oversight of Service Agents by FMCSA

Except in the case of specific allegations or complaints, FMCSA investigators do not visit or audit collection sites or other service agents to observe procedures and enforce compliance with drug testing requirements.<sup>26</sup> FMCSA and its state partners have a limited number of staff who are currently conducting thousands of compliance reviews and safety audits. DOT officials have stated that there are over 20,000 collection sites across the country that can be used to collect urine for DOT drug testing, making oversight of these sites a daunting task.<sup>27</sup> Oversight by carriers—who are ultimately responsible for compliance of their service agents—or by other entities that employ the services of collection sites, such as third-party administrators, is also limited. One large carrier with whom we spoke tests and verifies that the collection sites it uses are in compliance, but none of the small carriers we interviewed that had a drug testing program in place conducted any oversight. Smaller carriers are less likely to conduct such oversight, given their more limited resources. Representatives from a consortium/third-party administrator with whom we spoke told us that it observes some of the collection sites it uses, but it is not clear that this is a common practice. In addition, representatives told us that some major collection companies internally audit their own sites to ensure compliance with all requirements, but again, it is not clear whether this is a widespread practice or whether any undercover testing of protocols is occurring.

FMCSA does not have the authority to levy civil penalties on service agents found to be out of compliance. FMCSA officials told us that, at most, they can only fine the carrier that uses the service agent—not the service agent itself. Several carrier and drug testing industry associations we interviewed agreed that a lack of accountability that results from limited oversight and enforcement leads to poor compliance or noncompliance. FMCSA, ODAPC, and other DOT administrations can initiate and have initiated a process known as a public interest exclusion

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<sup>26</sup>There is some oversight of collection sites by other DOT administrations, including the Federal Aviation Administration, the Federal Railroad Administration, the Federal Transit Administration, and the Pipeline and Hazardous Materials Safety Administration, and by the United States Coast Guard in the Department of Homeland Security. These other administrations inspect some collection sites used by the employers and operators they regulate, either as part of a review of the employer, or as a separate review of service agents. These collection sites may also be used by FMCSA-regulated carriers. In addition, FMCSA has a service agent review initiative—focusing mostly on collection sites—along the Southern border in the U.S. commercial zone.

<sup>27</sup>Collection sites can be located anywhere—for example, a portable toilet or any toilet in a clinic, hospital, or office building—and can operate at various times.



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to disqualify noncompliant service agents. While no public interest exclusion has been formally issued, the process has resulted in service agents either correcting noncompliance or going out of business. Officials we interviewed who have been involved in initiating a public interest exclusion stated that the process could provide a greater deterrent if it could be fully completed and a public notification of exclusion were issued in the *Federal Register*.

### Widely Available Products and Other Methods Can Be Used to Subvert the Test

Several hundred products designed to dilute, cleanse, or substitute urine specimens can be easily obtained. The ease with which these products are marketed and distributed through the Internet presents formidable obstacles to the integrity of the drug testing process. As we have previously reported, several states have laws that prohibit the manufacture, sale, or use of products intended to subvert drug tests.<sup>28</sup> To our knowledge, few individuals have been cited or convicted for violating these laws. The interstate nature of the manufacture and sale of products intended to subvert a drug test lessens the impact of state-based laws. In most instances, DOT drug testing protocols do not require directly observed collection or a thorough search for hidden subversion products.<sup>29</sup> Drivers intent on adulterating or substituting a urine specimen can conceal small vials in socks or other undergarments. For example, our investigators were easily able to bring in adulterants and synthetic urine they purchased through the Internet at eight collection sites where they attempted to do so.

Another method for substitution is to have someone other than the applicant or driver provide the urine specimen. Specimen collectors are required to supervise drivers at all times and ensure that undetected access to the collection area is not possible. Further, collectors are required to identify the driver by looking at a photo ID issued by the employer (other than in the case of a self-employed owner-operator) or a

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<sup>28</sup>GAO, *Drug Tests: Products to Defraud Drug Use Screening Tests Are Widely Available*, GAO-05-653T (Washington, D.C.: May 17, 2005).

<sup>29</sup>According to ODAPC officials, the decision not to require directly observed tests relates to the need to balance individual privacy with the need for transportation safety. DOT is required by law to protect employee collection site privacy to the maximum extent practicable. DOT-wide protocols only require directly observed tests in certain circumstances. For example, a collector must immediately conduct a collection under direct observation if the collector observes materials brought to the collection site, or the employee's conduct clearly indicates an attempt to tamper with a specimen. See 49 CFR § 40.67 for further information on the circumstances in which an employer or collector must directly observe the collection of the specimen.

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federal, state, or local government.<sup>30</sup> However, GAO investigators found that at some collections sites, collectors either failed to supervise drivers or failed to ensure that access to the area was secure. GAO investigators also were able to successfully use fake driver's licenses to gain access to all 24 collection sites.<sup>31</sup> These findings demonstrate that drug users may have opportunities to have someone else take a drug test in their place.

DOT does not require specimens to undergo validity testing, which may detect the presence of some adulterants or substitutes, although DOT officials stated that laboratory data show that between 98 percent and 99 percent of DOT specimens undergo such testing.<sup>32</sup> However, because validity testing procedures are available to the public, makers of adulterants can use the information to formulate their products. According to statistics from one of the largest HHS-certified laboratories, less than 0.1 percent of DOT tests are identified as adulterated and substituted. SAMHSA officials with whom we met noted that the potential exists for adulterated specimens to go undetected. Similarly, when urine specimens are substituted, the test results could be negative; therefore, no data exist on the extent to which successful substitution occurs. As a result, the rate at which adulteration or substitution is occurring is unknown and impossible to determine. Of the eight specimens our investigators adulterated or substituted, the laboratory did not detect any of the adulterants or substitutes used.

## Drugs for Which DOT Does Not Test

Drivers who use illegal substances, such as ecstasy, or misuse legal substances, such as a prescription medication containing oxycodone or other synthetic opiates, may also be impaired, but they will not be flagged by DOT drug tests.<sup>33</sup> According to a study by the Office of National Drug Control

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<sup>30</sup>The protocols do not require carriers to provide photographs or other identification of drivers to validate the ID.

<sup>31</sup>DOT officials stated that the use of fake IDs is likely not prevalent given the time frames required to report to a collection site from the time of notification. In addition, substitution of this kind also assumes that there is another person willing and available to participate in the testing process on behalf of the employee, with a fake ID, and with information that would identify the person as the driver.

<sup>32</sup>DOT issued a Notice of Proposed Rulemaking in 2005 to require specimen validity testing to test for the presence of adulterants, consistent with requirements for federal workplace testing, and as of April 2008, the rule is in final review.

<sup>33</sup>An example of a prescription medication containing oxycodone is OxyContin®, which is a prescription painkiller used for moderate to high pain relief associated with various injuries, and pain associated with cancer. OxyContin contains oxycodone, the medication's active ingredient, in a timed-release tablet.

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Policy, prescription drugs account for the second most commonly abused category of drugs, after marijuana, but ahead of cocaine, heroin, and methamphetamine.<sup>34</sup> The Substance Abuse Program Administrators Association has stated that many controlled-substance medications, including painkillers, tranquilizers, sedatives, and stimulants can potentially impair an individual's ability to drive commercial vehicles, although the extent of impairment compared with illegal drugs depends on many factors, including the medication dose, the timing of the dose, the individual's tolerance to the medication's effects, and interactions with other factors, such as fatigue.

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### Nonreporting of Past Positives, Incomplete Background Checks, and Loopholes for Self-employed Drivers Can Lead to Drivers Testing Positive and Continuing to Drive

Drivers can easily omit from a job application any previous employer for which they tested positive or refused to test or can easily not disclose an incomplete return-to-duty process.<sup>35</sup> FMCSA officials, industry associations, and carriers with whom we spoke told us that employers usually terminate drivers who test positive (or do not hire those who test positive on a pre-employment test), rather than send them through the return-to-duty process, due in part to the expense of treatment and rehabilitation. Drivers who do not complete a return-to-duty process may either leave the industry or seek employment elsewhere in the industry. Such drivers can remain drug free for a period of time to pass a pre-employment test and be hired by another carrier. The number of drivers who engage in such job-hopping is unknown but could be substantial. Of the approximately 85,000 drivers that FMCSA data suggest test positive each year on random drug tests, the Substance Abuse Program Administrators Association estimates that less than half successfully complete the return-to-duty process.

Noncompliance by carriers can also lead to the possibility of hiring a job-hopper. One of the top violations found in compliance reviews is a failure to conduct required background checks, which includes checking for past positive drug tests. If carriers do request previous drug test information,

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<sup>34</sup>Office of National Drug Control Policy, *Synthetic Drug Control Strategy: A Focus on Methamphetamine and Prescription Drug Abuse* (May 2006), [http://www.whitehousedrugpolicy.gov/publications/synthetic\\_drg\\_control\\_strat/index.html](http://www.whitehousedrugpolicy.gov/publications/synthetic_drg_control_strat/index.html) (accessed Mar. 4, 2008).

<sup>35</sup>Carriers are required to check with a prospective employee's previous DOT-regulated employers regarding past drug test history, covering the previous 3 years. If a driver tests positive on a pre-employment test and is not hired, the driver is still required to complete a return-to-duty process. If a previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), a prospective employer must seek to obtain this information from the prospective employee.

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previous employers may not respond to them or may not respond in a timely fashion, which was an issue mentioned at all of the compliance reviews we observed. In some cases, previous employers may have gone out of business. Moreover, in one of the compliance reviews we observed, the carrier indicated that some carriers from which he requested information charged him for researching their records.<sup>36</sup> In our observations of compliance reviews, FMCSA investigators do not target these nonresponding carriers in order to take action against them for noncompliance.<sup>37</sup>

Self-employed owner-operators who test positive will likely continue to drive without going through a return-to-duty process. Owner-operators are required to follow the drug testing regulations and be in a drug testing program like all other drivers employed by motor carrier companies; however, there are inherent conflicts for a self-employed owner-operator in complying with the requirements. Even if an owner-operator who participates in a consortium tests positive, there is no process for removing the individual from safety-sensitive duties, and no one beyond the owner-operator will be notified of the positive result.

FMCSA is taking actions to try to target drivers who test positive and then test negative again within a short period of time, indicating a likelihood that they have not completed a return-to-duty process but are seeking new employment. This process involves using data from service agents who work with multiple companies and have noticed the same driver testing positive with one employer and then testing negative within a 2-week period for a different employer. According to a carrier association, in a recent investigation, FMCSA looked at 69 positive tests that were received within a 15-day period by a service agent and found that 21 of the drivers tested negative in the same period for a different employer. According to FMCSA officials, this process has been streamlined and simplified and will be included in future training for field staff.

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<sup>36</sup>According to ODAPC officials, no carrier may delay information relating to drug testing history pending payment for its retrieval.

<sup>37</sup>FMCSA officials told us that, since September 2007, the administration has mailed a uniform warning letter to motor carriers failing to provide drug and alcohol background information.

## Options for Addressing Challenges Involve Effectiveness and Feasibility Trade-offs

In discussions with DOT, industry experts, motor carriers, industry associations, and other stakeholders, and in reviews of previous studies, we identified many options for addressing challenges of the current drug testing program. Table 1 lists options that were suggested to us most often, have been studied in some detail, or were identified through our analysis. No option fully addresses the three main problems of drivers not being tested, drivers testing negative but using drugs, and drivers testing positive but continuing to drive. Each option would require either additional resources or diverting resources currently used for other road safety issues. In assessing the potential effectiveness and financial and operational feasibility of these options, several stood out. The following sections present the best options on a problem-by-problem basis.

**Table 1: Approaches to Improve Effectiveness of DOT’s Drug Testing Program**

<b>Options to reduce the number of drivers not subject to drug testing</b>	
Improve compliance by existing carriers	Increase carrier compliance reviews
	Conduct drug testing-only audits of carriers
	Improve dissemination of information
Improve compliance by new entrants	Strengthen safety audit enforcement
	Toughen entry requirements
<b>Options to detect more drivers who are using drugs</b>	
Improve compliance by service agents	Conduct service-agent-only audits
	Visit service agents during carrier compliance reviews
Increase enforcement authority over service agents	Give FMCSA authority to impose civil penalties against service agents
	Increase use of the public interest exclusion process
Limit ability to subvert urine tests	Adopt a federal adulterant product ban
	Stop publishing methods for specimen validity testing
	Test alternative specimens
	Verify identification of drivers at collection sites
Test for drugs not currently included in DOT tests	Test for additional illegal drugs or some prescription drugs
<b>Options to reduce the number of drivers who test positive or refuse to test and continue to drive</b>	
Reduce job-hoppers	Create a national database of drivers who have tested positive or refused to test
Reduce job-hoppers and self-employed owner-operators who fail to remove themselves from service after testing positive	Create a procedure for CDL suspension

Source: GAO.

## Improving Carrier Awareness and Compliance with DOT Requirements May Reduce the Number of Drivers Not in Drug Testing Programs

Increasing the number of drivers who are in drug testing programs requires improved compliance by carriers that are already in business and by new entrants. There are different options for existing carriers and new entrants since some oversight avenues by FMCSA are available for new entrants but not for existing carriers. Table 2 summarizes our assessment of the effectiveness and feasibility of the options relevant to each group. In each case, we identified one option—delineated with a check mark—that we believe represents the best combination of effectiveness and feasibility.

**Table 2: Approaches to Reduce the Number of Drivers Who Are Not in Drug Testing Programs**

Options	Effectiveness	Feasibility
<b>Improve compliance by existing carriers</b>		
<b>Increase the number of carrier compliance reviews</b>	Has greatest potential impact on increasing drug testing compliance and overall safety	Substantial cost required for meaningful benefit
<b>Conduct drug testing-only audits of carriers</b> In addition to compliance reviews, begin reviews that focus only on carriers' drug testing compliance	Depends on effective targeting of carriers	Less cost than full compliance reviews
<b>Improve dissemination of information</b> Educate carriers through promotional materials, Web site, carrier conferences	Facilitates voluntary compliance. But does not address systemic problems and can easily be disregarded by carriers	Relatively simple and low cost
<b>Improve compliance by new entrants</b>		
✓ <b>Strengthen enforcement of new-entrant safety audits</b> Bolster consequences for failing to implement basic safety requirements	Ensures new carriers will rectify noncompliance	DOT has begun a rule-making process; minimal additional costs
<b>Toughen entry requirements</b> Require carriers to pass a new-entrant safety audit prior to obtaining a DOT number	Ensures new carriers are aware and understand requirements from the start	Rule-making process required; resources needed to initiate

Source: GAO.

Note: Check mark (✓) indicates the option GAO believes represents the best combination of effectiveness and feasibility.

## Options for Improving Compliance by Existing Carriers

Of the three options for improving compliance by existing carriers, increasing the number of carrier compliance reviews provides the best combination of effectiveness and feasibility. Conducting more reviews would improve overall compliance with safety requirements. The increase in reviews by FMCSA would provide an incentive for carriers to implement sound drug testing programs in order to avoid fines for noncompliance.

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FMCSA is planning some changes to the way it targets carriers for compliance reviews, which will include additional information on illegal drug use and alcohol misuse.<sup>38</sup> The effectiveness of this option, however, is dependent on how many more compliance reviews would be conducted. Compliance reviews are conducted for only a small percentage of carriers each year. Providing a more meaningful incentive for carrier compliance would likely require a substantial increase in this percentage, which reduces the feasibility of this option. FMCSA and its state partners currently conduct an average of over 13,000 compliance reviews each year. Increasing the number of reviews to cover a more substantial portion of the approximately 724,000 carriers in the industry would require hiring, training, and paying additional investigators or diverting them from other existing safety-related tasks.

Conducting audits specific to drug testing regulations is a second option, and while it may be less costly than substantially increasing compliance reviews, its potential effectiveness is not as great and depends on effectively targeting carriers. Targeting of carriers that have already been found to be out of compliance with drug testing regulations could be done based on findings of existing compliance reviews, but targeting additional carriers may be difficult because of a lack of data on drug testing programs outside of compliance reviews. Conducting audits specific to drug testing requirements would take less time than traditional oversight methods but would require additional resources, although not to the same degree as substantially increasing carrier compliance reviews. However, this option would dedicate resources to drug testing only at the expense of using those resources in other ways that could improve overall safety, such as in a full compliance review. The audit protocol to be used could be similar to the other DOT administrations that conduct drug testing audits, with minor changes to reflect FMCSA-specific requirements.

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<sup>38</sup>FMCSA's initiative under the Comprehensive Safety Analysis 2010 is to achieve a greater reduction in large truck and bus crashes, injuries, and fatalities through measurement, intervention, safety evaluation, and information technology. Under the new measurement system, the safety performance data is grouped into Behavioral Analysis Safety Improvement Categories. These categories are (1) unsafe driving, (2) fatigued driving, (3) driver fitness, (4) drugs/alcohol, (5) vehicle maintenance, (6) cargo securement, and (7) crash history. These data will be scored and weighed based on their relationship to crashes. For more information, see GAO, *Motor Carrier Safety: The Federal Motor Carrier Safety Administration Has Developed a Reasonable Framework for Managing and Testing Its Comprehensive Safety Analysis 2010 Initiative*, [GAO-08-242R](#) (Washington, D.C.: Dec. 20, 2007).

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A third option for improving compliance with drug testing requirements among existing carriers is through better education. This would be the easiest option to implement, would be effective for carriers and facilities that want to comply with regulations, but would likely yield fewest results for those deliberately trying to circumvent the regulations. Some carriers with whom we spoke, including one whose primary business was not transportation, told us that they either were not aware of the requirement to drug test their drivers or were confused about their responsibilities under the requirements. These carriers implied that if they could have more easily understood the guidelines, they would have complied. FMCSA already sends some information to carriers and provides information on its Web site, and officials told us they have plans to send additional materials on the drug testing program to carriers and to make the drug testing portion of the Web site more user friendly. In dealing with specific situational questions, FMCSA also responds to hundreds of drug and alcohol telephone inquiries and e-mails every week that deal with company specific situations. In addition, ODAPC provides information on drug testing requirements through speaking engagements and its Web site, which has a Web page dedicated to employer issues. Employers and others who go to ODAPC's Web site have the ability to "Ask ODAPC" specific questions they have regarding program implementation. Employers also can phone and fax their inquiries. ODAPC officials indicate that they answer the vast majority of email and phone inquiries directly.

### Options for Improving Compliance by New Entrants

The most promising option for improving compliance by new entrants—strengthening follow-up requirements on safety audits already required for entry into the industry—is currently under way. In December 2006, FMCSA published a Notice of Proposed Rulemaking to strengthen the safety audit pass/fail criteria to give more significance to basic safety management requirements, including drug testing. The proposed changes would require a new carrier to implement a drug testing program or risk failing the safety audit. Under the proposed changes, a motor coach or hazardous materials carrier who fails an audit will have 45 days to correct the deficiencies. All other carriers will have 60 days. If the new entrant fails to respond to the notice or fails to correct the deficiencies within the 45- or 60-day grace period, FMCSA will issue an out-of-service order and revoke the new entrant's registration. Strengthening the audit in this way helps ensure new carriers will rectify noncompliance, as opposed to the current approach in which the carrier receives a list of requirements to implement but may not be subject to any follow-up. DOT expects a final rule to be published before the end of 2008. Strengthening safety audits requires some additional resources to follow up if a carrier fails the audit.



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A second option to improve compliance by new entrants is to require them to pass the safety audit before they begin operations. According to an FMCSA official, safety audits generally do not occur until 8 to 9 months after a new entrant has begun operations; this option would make passing the safety audit a precondition to operating. Conducting the audit before carriers begin operations would help FMCSA ensure that all new motor carriers in operation understand their responsibility to comply with all safety requirements, including drug testing, but includes feasibility challenges. FMCSA officials told us that visiting a carrier before it begins operating would not provide an opportunity to determine how well that carrier is implementing safety requirements. For example, the applicant may not yet have hired drivers, and there would be no logs to review. Officials told us that FMCSA waits at least 90 days after a carrier has entered the industry to get an accurate impression of its operations. The increased requirements to obtain a DOT number and begin operations would initially require more FMCSA resources, so that it could complete its existing backlog of safety audits for carriers currently in their first 9 or 18 months of operations. The change to entry requirements would also be time consuming since a rule-making process would be required. Stricter requirements for entering the industry might reduce the ability of small companies to begin operations and compete with larger, established carriers because they would need to spend resources upfront, before their business is up and running.

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### Improving Detection of Drivers Using Drugs Focuses on Minimizing Opportunities to Subvert the Test

Improving efforts to detect drivers using drugs potentially involves four types of actions: (1) improving compliance by having service agents who administer the tests for many carriers use proper testing procedures; (2) increasing FMCSA's enforcement authority against noncompliant service agents; (3) limiting drivers' ability to subvert the current test; and (4) expanding the array of tested drugs. Table 3 summarizes our assessment of the effectiveness and feasibility of each of these options. We identified several options—delineated with check marks—that in our view represent the best combination of effectiveness and feasibility.

**Table 3: Approaches to Increase the Detection of Drivers Using Drugs**

Options	Effectiveness	Feasibility
<b>Improve compliance by service agents</b>		
Conduct service agent-only audits	Extends oversight to include service agents, a group that is not currently audited by FMCSA	Costs associated with new investigations
Visit service agents during carrier compliance reviews	Extends oversight to include service agents, but review may not be as in-depth	Costs associated with a new step during a review.
<b>Increase enforcement authority over service agents</b>		
✓ <b>Seek civil penalty authority</b> Seek authority to levy civil penalties against noncompliant service agents.	Provides monetary deterrent to service agent noncompliance	Legislation required
<b>Use public interest exclusion process</b> No public interest exclusion has ever been issued.	Deterrent effect is potentially strong if issued	DOT is considering making changes to improve the process
<b>Limit the ability to subvert urine test</b>		
✓ <b>Adopt a federal adulterant product ban</b>	Deterrent effect may limit the manufacture, marketing, sale, and possession of products—federal statute allows for prosecution in any state	Unclear how to enforce; legislation required
<b>Stop publishing methods for specimen validity testing</b>	Could limit the effectiveness of adulterants	Lack of formal publication will not keep it out of the public domain
<b>Test alternative specimens</b> Additional drug testing of hair or oral fluids in certain circumstances	Some advantages relative to urine testing	Protocol development required by SAMHSA; rule-making process required
<b>Verify driver identification at collection sites</b>	Reduces opportunity to substitute specimen by having someone else provide it	Unclear how it can effectively be accomplished
<b>Test for drugs not currently included in DOT tests</b>		
<b>Test for additional illegal drugs, such as ecstasy or some prescription drugs (e.g., synthetic opiates)</b>	Identifies use of drugs that may affect driving ability	Differentiating between use and abuse of prescriptions may be difficult

Source: GAO.

Note: Check marks (✓) indicate the options GAO believes represent the best combination of effectiveness and feasibility.

Options for Improving Compliance by Service Agents

All types of service agents are included in both options that aim to improve compliance because currently service agents are visited by FMCSA only as a result of specific allegations. However, improving compliance by collection sites in particular is central to reducing opportunities to undermine a drug test. Recently, in recognition of the

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importance of improving adherence to DOT protocols at collections sites, ODAPC developed a checklist of critical DOT protocols that was sent to collection sites for posting in their facilities. GAO investigators found that collection sites that had checklists of DOT protocols were in better compliance than those that did not. While this is a positive step that will help collection sites better follow protocols, the following options focus on providing a greater oversight presence at collection sites to ensure better compliance. As discussed previously, however, adhering to protocols will only minimize, not eliminate, the opportunity for subversion.<sup>39</sup>

The option to conduct service agent-only audits and clandestine inspections appears to hold the most promise since these audits and surprise inspections, according to stakeholders and our own analysis, would provide an incentive for service agents to follow proper protocols and comply with DOT requirements. Currently, FMCSA is testing a service agent-only audit. Service agent-only audits would create an oversight presence that previously has not existed and would identify noncompliance and provide corrective action. Furthermore, these types of audits would likely send a message to the service agent industry that noncompliance can be discovered and will have consequences. The costs associated with this option, however, affect its feasibility. The service agent industry is large and diverse, and covering it would require a large number of audits, with attendant costs for hiring, training, and paying new staff or transferring resources from other current safety-related duties. However, FMCSA officials indicated that their goal in testing a new service agent-only audit is to improve the effectiveness of their service agent compliance activities, regardless of how many reviews they conduct. ODAPC provides inspector and auditor training on issues related to drug testing requirements for service agents. For example, ODAPC is working with DOT's Research and Innovative Technology Administration to develop a video on collection-site security and integrity for use by inspectors, auditors, and collection personnel.

While the service agent industry is large and diverse, a number of stakeholders suggested that even a small number of audits or clandestine inspections would send an initial message that noncompliance by service

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<sup>39</sup>There are several other ways FMCSA could increase its oversight of service agents, such as visiting service agents as part of drug testing-only audits. This option is similar in its effectiveness and feasibility, as visiting service agents—as part of a carrier compliance reviews—only focused on compliance with the drug testing regulations.

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agents is serious enough to warrant FMCSA's attention.<sup>40</sup> This option may result in increased costs for collection sites in particular, which might need to conduct additional training for collectors, and for carriers, which might have to absorb these costs in the form of higher fees for conducting tests. DOT is in the early stages of implementing efforts to address this issue. ODAPC officials told us they are developing a database that centralizes the results of all of the other DOT administrations' oversight of service agents, starting with collection sites and ultimately including medical review officers and others. Officials told us that all DOT administrations can use the database to determine whether collection sites have been visited and access the findings of the visits. The database could serve as a method to target service agents with a history of poor compliance. FMCSA officials stated that some of its investigators in the field have been trained on how to conduct audits of collection sites and that they hope to expand oversight activities with regard to service agents.

A second option for ensuring compliance by service agents is visiting service agents or conducting clandestine inspections as part of carriers' compliance reviews, but this option would be less effective for two reasons. First, such visits would not be as thorough as a service agent-only audit. Second, including service agents as part of compliance reviews may not be practical because some carriers use service agents in different cities or states. FMCSA targets carrier compliance reviews on the basis of highway safety risk, but there currently are no corresponding data indicating that the service agents used by such carriers also carry greater risk. However, when the database of service agents is operational, an ODAPC official said that an FMCSA inspector could query the database to find out whether a carrier was using a service agent that had been visited by a DOT administration and what the findings were from such visits. This option would be less expensive than the first because the investigator would be adding a step to an existing process rather than conducting a wholly different audit.

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<sup>40</sup>The Substance Abuse Program Administrators Association, for example, supports increased efforts to ensure that specimen collectors are diligent in following the current DOT specimen collection procedures. According to a Substance Abuse Program Administrators Association representative, the auditing and inspection of collection facilities is an essential component of enforcement and compliance, an element that has been lacking in order to evaluate, assess, and enforce compliance with the DOT drug testing regulations. Further, the representative stated that auditors and inspectors must physically go to collection sites used by employers and interview and observe collection site personnel.

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## Options for Increasing FMCSA's Enforcement Authority

Expanding FMCSA's enforcement authority to include service agents may result in greater compliance by service agents. Currently, FMCSA can only fine the carrier that uses the service agent—not the service agent itself. Stakeholders told us that the ability for FMCSA to fine service agents would provide an effective incentive to follow protocols. The effectiveness of this option depends on FMCSA's ability to expand its oversight activities, yet stakeholders said merely having the authority to fine service agents would likely send a message to the service agent industry that there are consequences for failing to comply with protocols. For example, FRA officials indicated they had successfully warned service agents that their continued noncompliance could lead to civil penalty action. These warnings produced the desired resolution of noncompliance matters. Representatives from one of the drug testing industry associations that represent service agents told us that if FMCSA were to actually fine a service agent, many service agents would come into compliance. Giving FMCSA the authority to fine service agents would require legislation. Officials from ODAPC told us they have created a committee to review existing authorities of all DOT administrations to determine the current authority of each administration. Consistency in authority to impose civil penalties against service agents across the department may be important given that service agents may be used and audited by more than one DOT administration.

A second but less promising option for increasing FMCSA's enforcement authority is to encourage greater use of the public interest exclusion process. Our discussions with stakeholders indicated that in instances where the process has been initiated, it has been an effective tool in addressing noncompliance. However, officials in FMCSA and elsewhere within DOT indicated the process is ineffective because a public interest exclusion has never been issued. ODAPC officials told us they are exploring changes to the process, such as getting an interim administrative injunction against service agents pending the execution of a public interest exclusion process, for instances when egregious noncompliance is found—which FMCSA officials believe would increase the number initiated. To make more use of the public interest exclusion process, FMCSA would also need to find better ways to identify noncompliance by service agents—either by visiting service agents during compliance reviews or by conducting service agent-only audits. Because the public interest exclusion process was designed to provide due process to service agents, changing the process may be difficult. Additional costs would depend on the extent to which improving the process results in additional investigations.

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## Options for Limiting the Ability to Subvert the Current Test

Options for limiting the ability to subvert drug tests include banning or limiting the effectiveness of products that drivers can use to alter a urine specimen, testing alternative specimens, and changing protocols at collection sites to verify drivers' identification.

The first option, a federal law prohibiting the sale, manufacture, or use of subversion products, would be an improvement over the patchwork of laws several states have in place, but implementation would be difficult given the ease with which these products can be distributed.<sup>41</sup> SAMHSA has stated that it is critical to make the production and knowing use of adulterant and substitution products illegal under federal law. This option is also generally supported by representatives of the trucking and service agent industries. The adoption of a federal prohibition may have a deterrent effect on some sellers and buyers of the banned products. Sellers of these products may reduce marketing, and some may decide to exit the industry rather than face potential prosecution. Further, a federal law would allow for prosecution in any state, if an individual were found to be manufacturing, selling, or possessing such products.

However, the deterrent effect of such a law on drivers who buy these products may be limited since the individuals who would purchase them also presumably bought and used the illegal drugs they are trying to mask. Some other limitations on the effectiveness and feasibility of this option include the following:

- Gathering sufficient evidence to successfully prosecute makers, sellers, and users of these products may be difficult, and the costs in time and resources of enforcing the prohibition and investigating and prosecuting violations may be significant. Web sites, for example, may try to circumvent the law by posting disclaimers that their products are not intended to subvert federal drug tests.
- Determining which law enforcement agencies would be responsible for investigating and prosecuting cases may be difficult.
- Implementing a law to prohibit the purchase of adulterants and substitutes does not address other subversion methods, such as diluting urine by drinking large amounts of water or having someone else take a test in place of the applicant or driver.

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<sup>41</sup>Legislation that would have prohibited the manufacture, marketing, sale, or shipment of such products was introduced in Congress in 2005 and 2006 but was not enacted.

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Limiting the ability to subvert drug tests might be facilitated if the methods used to identify adulterants are not published.<sup>42</sup> This option has two primary limitations. First, while it might help detect adulterated specimens, it would not help detect substituted specimens. Drivers intent on not being detected by drug tests may use a substituted specimen instead of adulterating their own specimen. Second, SAMHSA officials said restricting the publication of protocols would at best be a short-term advantage because if validity testing protocols become the subject of a litigation, they will become public.

Another option for minimizing subversion tactics is to test hair or oral fluids. One benefit would be that collections of these specimens would be directly observed, thus reducing (but not eliminating) the opportunity to adulterate or substitute specimens. Further, while products are available for subversion of such tests, it is not clear whether these products are effective in masking drug use.<sup>43</sup> Some transportation companies already conduct hair tests in addition to urine tests, and the result has been a higher detection rate of illegal drug use. For example, one large carrier conducted both hair and urine tests on over 15,000 employees in safety-sensitive positions from May 2006 to January 2008. The positive rate for the hair tests was approximately 9 percent, compared with approximately 1.6 percent for the urine tests. The higher positive rate for the hair tests may be a result of the fact that hair specimens generally retain evidence of drug use for a longer period of time than urine specimens.<sup>44</sup>

These alternative testing methods hold promise for certain testing purposes but are not suitable for others. Evidence of drug use becomes apparent in oral fluids almost immediately but can only be detected for a short time, making oral fluids suitable for postaccident tests and

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<sup>42</sup>The Administrative Procedure Act requires publishing a notice and giving those being regulated by federal agency rules and regulations an opportunity to comment. The protocols in use were adopted by HHS, following this procedure.

<sup>43</sup>If testing alternative specimens such as hair or oral fluids is accepted, this will create a more lucrative market for adulterant manufacturers to create new and improved products designed to beat the test.

<sup>44</sup>According to an HHS-certified laboratory and a drug testing professional, hair testing detects drug use in the previous 7 to 90 days. By contrast, urine testing detects drug use in the previous 5 hours to 5 days (except for marijuana, which can be detected for up to 4 weeks depending on frequency of use), while oral fluid testing detects drug use in the previous 1 to 36 hours.

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unsuitable for pre-employment tests.<sup>45</sup> On the other hand, evidence of drug use does not become apparent in hair for several days after drug use but has a long detection window, making hair more suitable for pre-employment tests and unsuitable for postaccident tests. In 2004, SAMHSA published proposed revisions to mandatory guidelines for federal workplace drug testing programs that included proposals to establish scientific and technical guidelines for the testing of hair, sweat, and oral fluid specimens. According to SAMHSA officials and some stakeholders in the drug testing industry, the scientific issues related to hair testing—including differing detection based on hair length, color, and contamination of hair from the environment rather than from direct use of drugs—will require further exploration before protocols can be established. For example, SAMHSA officials told us that at least two scientific studies show that a drug will bond into hair when the hair is exposed to environmental drug use.<sup>46</sup>

Other unresolved issues related to adopting hair testing include establishing collection protocols for hair specimens,<sup>47</sup> establishing appropriate criteria for a positive test result, and determining how drivers might challenge results via a specimen tested at a second laboratory.<sup>48</sup> SAMHSA officials, who currently are studying hair testing, said that

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<sup>45</sup>It is important to note that according to the Office of National Drug Control Policy, oral fluids may be less efficient in detecting marijuana use.

<sup>46</sup>See P. Stout, J. Roper-Miller, M. Baylor, and J. Mitchell, “External Contamination of Hair with Cocaine: Evaluation of External Cocaine Contamination and Development of Performance-Testing Materials,” *Journal of Analytical Toxicology*, vol. 30 (2006); and G. Romano, N. Barbera, and I. Lombardo, “Hair Testing for Drugs of Abuse: Evaluation of External Cocaine Contamination and Risk of False Positives,” *Forensic Science International*, vol. 123 (2001).

<sup>47</sup>The collection of hair specimens can be complicated. According to a stakeholder, the correct collection and processing of a hair specimen may require greater skill and care than the correct collection and processing of a urine specimen. Collection of hair is complicated when sufficient quantities of head hair are not available, and the collector may have to shave or cut hair from other areas of the body. For example, individuals who are bald, shave their heads or have short hair, or with hair-loss medical conditions may not be able to provide an adequate hair specimen. In addition, there may be objections to cutting head hair for testing purposes because of cosmetic or religious reasons.

<sup>48</sup>In DOT drug testing, split specimens are used to corroborate test results when they are disputed. Urine specimens are divided into a primary and split specimen. The split specimen is tested at a second laboratory in the event the employee requests it be tested following a verified positive, adulterated, or substituted test result based on the primary specimen. Verified positive, adulterated, or substituted test results are determined after laboratory analysis and medical review.



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because of these and other issues, they cannot predict when a final rule on hair testing will be issued. Also, since DOT is obligated by statute to use SAMHSA guidelines on drug testing protocols, considerable work remains before hair testing can supplement urine testing.

Finally, another option that can limit the ability of drivers to substitute their specimen by having someone else provide it would be to change DOT protocols at collection sites to require verification of the drivers' identification. However, it is not clear how verification could be effectively accomplished. For example, carriers could be required to fax a copy of an individual's CDL to the collection site prior to a pre-employment or random test, but there is no guarantee that the fax would be clear enough to reliably authenticate identification.<sup>49</sup>

#### Testing for Drugs Not Currently Included in DOT Testing

Testing for additional drugs, such as abused prescription drugs and other illegal drugs, may be worthwhile. Representatives of the drug testing industry, for example, generally supported testing for more and different drugs, including prescription drugs. SAMHSA officials agreed that testing for more and different drugs might have a deterrent effect on their use, but expanding the test presents feasibility challenges, such as the cost of additional laboratory analysis and increased medical review, to determine whether the use of prescription drugs was proper. ODAPC officials said they follow the lead of SAMHSA and federal workforce testing policies, which allows tests only for drugs for which HHS has established protocols.

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#### Reporting Positive Drug Test Information May Reduce the Number of Drivers Who Test Positive or Refuse to Test Yet Continue to Drive

Two key options have been suggested to reduce the number of drivers who test positive or refuse to test and continue to drive without going through a return-to-duty process. The options—developing a national database of drug and alcohol testing results that carriers could query, and encouraging or compelling states to suspend the commercial driver's license (CDL) of a driver who tests positive—differ in their potential effectiveness and feasibility, as shown in table 4. However, a CDL suspension could build on a national database. That is, if an accurate national database were created first, state licensing agencies could use the information in the database to trigger action to suspend a driver's CDL.

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<sup>49</sup>According to ODAPC, such a requirement would put a tremendous paperwork burden on employers and service agents.

**Table 4: Approaches to Reduce the Number of Drivers Who Test Positive or Refuse to Test Yet Continue to Drive without Going through the Return-to-Duty Process**

Options	Effectiveness	Feasibility
<p><b>National database</b></p> <p>✓ FMCSA maintains database of drug test positives and refusals-to-test that carriers must query prior to hiring</p>	<p>Depends on carrier compliance with regulations; does not address self-employed owner-operator problem</p>	<p>FMCSA has a rule-making process under way</p>
<p><b>CDL suspension</b></p> <p>✓ State licensing agencies suspend the CDLs of drivers who test positive or refuse to test</p>	<p>Independent of carrier compliance with regulations; addresses both job-hopper and owner-operator problem</p>	<p>Requires federal and state legislation; FMCSA could use a national database to implement</p>

Source: GAO.

Note: Check marks (✓) indicate the options GAO believes represent the best combination of effectiveness and feasibility.

## National Database

A national database that carriers must query in screening a prospective employee would provide information about whether the applicant had previously tested positive for drugs or refused to take a DOT drug test, and whether the applicant had completed the required return-to-duty process. Applicants can easily omit previous employers for whom they tested positive or refused to test, and easily not disclose an incomplete return-to-duty process. FMCSA reported to Congress on the feasibility of such a database in 2004 and, as part of its Comprehensive Safety Analysis 2010 initiative, is working toward initiating a rule-making process for the creation and implementation of a database comprising positive test results and refusals-to-test for both drugs and alcohol.<sup>50</sup> According to FMCSA officials, current plans call for medical review officers to report positive drug test results and refusals-to-test, but FMCSA would also solicit comments on obtaining the information directly from carriers and for carriers to report positive alcohol test results and refusals-to-test.<sup>51</sup> While the rule-making process is being initiated, FMCSA officials told us that additional authority over service agents would be necessary to require the

<sup>50</sup>In 2004, FMCSA reported to Congress on the feasibility of how a national database could work. George M. Ellis, Jr. *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 (CDL) Holder*, a special report prepared at the request of the Federal Motor Carrier Safety Administration, March 2004.

<sup>51</sup>FMCSA is also considering requiring consortiums/third-party administrators that administer drug testing programs for self-employed owner-operators that do not lease on to other motor carriers to report refusals-to-test.

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reporting of drug testing information. Carriers would be required to query the database prior to using drivers, which could supplement or possibly replace the current requirement to check with previous employers regarding past positive tests. FMCSA also plans to allow roadside inspectors to query the national database to determine whether a carrier is illegally using a driver who has failed a drug test. Four states already have some form of database of drivers' past positive drug tests, though implementation varies by state (see app. III).<sup>52</sup>

A national database would enhance FMCSA's ability to identify drivers who engage in job-hopping, and ensure compliance with return-to duty requirements. Since there is currently no effective way to identify job-hoppers, a national database would make positive test information more readily available to carriers and to FMCSA for use in its initiative targeted at carriers that employ job-hoppers and job-hoppers themselves. A national database would also likely encourage drivers to go through the return-to-duty process in order to continue working in the trucking industry. However, a database would not be effective at stopping all job-hopping because not all carriers will report to or query the database, particularly if they are not complying with drug testing regulations or do not have a drug testing program in place. In addition, a database would not necessarily address the problem of self-employed owner-operators who test positive and fail to remove themselves from service, and fail to complete the return-to-duty process.

Stakeholders generally support a national database, which FMCSA is considering, but several challenges would need to be addressed. Many stakeholders, including carriers, industry associations, and one union with whom we spoke are supportive of a database, particularly if privacy concerns and drivers' rights are adequately addressed. Some of these stakeholders said a national database could affect drivers' rights if results are reported by unauthorized entities, if unauthorized persons gain access to the information, if drivers are unable to clear inaccurate reports from their records, or if drivers are unable to have return-to-duty completion information posted to their records.

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<sup>52</sup>Currently ODAPC is working on an Interim Final Rule to clarify the ability of motor carriers and consortiums/third-party administrators to share information on positive drug tests with states.

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Other challenges to implementing this option include the following:

- The time and technological resources required to receive, process, and respond to potentially thousands of queries each day could be significant, even though the database would only maintain records on the drivers who test positive or refuse to test. A 2004 FMCSA report estimates the number of national database users at up to 750,000 or more. This report also estimates the one-time cost of developing and implementing a national database at approximately \$1.2 million and ongoing annual costs, including project and FMCSA staffing, at \$994,000. FMCSA and ODAPC officials noted that the costs in this report were likely underestimated. FMCSA officials are estimating the initial cost of the database to be nearly \$9 million. FMCSA plans to refine its cost estimate as part of its rule-making process. Funding for this project would come at the expense of FMCSA's other safety-related activities, absent additional funding from Congress.
- Processes for authenticating and registering the enormous number of entities that submit to and query the database, and protecting database information, could be challenging. A DOT Inspector General report on the National Driver Register notes privacy concerns that would also need to be addressed in the creation of a national database of drug test results, including sufficient encryption of personal information during transmission between entities, background checks on personnel responsible for maintaining the database, and security of hard copy records storage and computer access.<sup>53</sup> Procedures would need to be developed to ensure that only those authorized gain access to the database. Procedures for verifying the qualifications and credentials of those who report positives and refusals would need to be in place to maintain the integrity of the system and avoid inaccurate database information.
- Federal legislation would not be required to give FMCSA authority to develop the database, but a 2004 report by FMCSA suggested a federal mandate—rather than simply changing FMCSA regulations—would help avoid conflicts with state laws and support DOT's rule-making process. Further, DOT and FMCSA will require additional authority over service agents to ensure service agents report information.

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<sup>53</sup>Department of Transportation, Office of the Secretary of Transportation, Office of Inspector General, *Audit of Security and Controls Over the National Driver Register* (2007).

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There are several things to consider in developing a database, including (1) reporting issues such as determining who reports, what they report, how they report, and how reporters are verified as legitimate; (2) access issues such as determining who can access the information, what information they can obtain, how they can access the information, and how those who access the information are verified as legitimate; (3) the length of time information is maintained; and (4) how inaccurate information is corrected—all of which affect the potential effectiveness and feasibility of a database. See appendix IV for a detailed description of these issues.

## CDL Suspension

Another option would be to encourage or compel states to make a positive test or refusal-to-test result grounds for a suspension of a driver's CDL until the driver has completed the required return-to-duty process.<sup>54</sup> This option would require congressional action to encourage or require states to suspend a CDL, and may require states to also adopt legislation (North Carolina and Washington already suspend CDLs following positive and refusal-to-test results).<sup>55</sup> In order to transfer drug test information to state licensing agencies, medical review officers and possibly carriers could report drug test information to FMCSA, or they could be required to report directly to the state of licensing. If a national database is in place, FMCSA could potentially disseminate this information to the state licensing agency of the CDL holder through the Commercial Driver's License Information System (CDLIS).<sup>56</sup> Carriers would then check drivers' motor vehicle records, as they are required to do, during the hiring process and annually

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<sup>54</sup>CDLs are issued by state licensing agencies and their issuance must adhere to minimum federal CDL licensing requirements as stipulated in the Motor Carrier Safety Improvement Act of 1999.

<sup>55</sup>North Carolina and Washington already require disqualification of a driver's CDL following a positive or refusal-to-test result on a drug test, though implementation differs in each state. California revokes special driver certificates for school bus and paratransit drivers following a positive or refusal-to-test result on a drug test. See appendix III for more information.

<sup>56</sup>CDLIS is operated by the American Association of Motor Vehicle Administrators's subsidiary AAMVAnet, and facilitates the exchange of commercial driver information among states and the District of Columbia. CDLIS contains identification information on all commercial drivers, including an individual's state of record for a commercial driver's license. Since information would be processed through FMCSA and then sent to state licensing agencies via CDLIS, there would be a delay in suspending the driver's CDL after a positive or refusal-to-test result. Paperwork access issues could also result, delaying suspension or delaying hearings for individuals who dispute the suspension, especially if electronic document submission is not used.

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thereafter. In doing so, they would identify drivers with disqualified CDLs due to a positive or refusal-to-test result.

We consider this option to be even more effective in keeping drivers who test positive or refuse to test off the road, because its success does not depend on full compliance by carriers in reporting drug test results or following drug testing regulations. Most results would likely be submitted by medical review officers, and the CDL suspension would affect drivers even if their current or potential employer is not in compliance with the regulations. In addition, a CDL suspension would affect both job-hoppers and self-employed owner-operators that are participating in a drug testing program. Many stakeholders with whom we spoke said this option would better address job-hopper and owner-operator issues than a national database. Carriers would know whether drivers are eligible to drive based on drug test history when making inquiries into driving records, already required by regulations. Also, owner-operators whose CDL is suspended following a positive or refusal-to-test could lose their insurance.<sup>57</sup> The CDL suspension would provide incentive for drivers to go through the return-to-duty process in order to have their CDL reinstated.

Using a national database to send information on positive drug tests to state licensing agencies would have some advantages over having medical review officers or carriers report directly to each state licensing agency. For example, using a national database would ensure that the legitimacy of those who report information on positive drug tests is verified, such as ensuring that medical review officers reporting information are actually licensed physicians. If the option were to be implemented through direct reporting to each state, ensuring consistent verification efforts would be difficult. Furthermore, a single database would make reporting information easier for medical review officers or carriers compared with having to report to each state licensing agency.

Implementing the CDL-suspension option presents a number of challenges. This option would require congressional action to either require or encourage states to suspend CDLs based on DOT drug test results, as well as adoption and implementation by each state, which could take several years. Stakeholders cited the following challenges and issues:

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<sup>57</sup>Insurance companies generally check motor vehicle records when insuring a new driver and periodically thereafter. Allowable reasons for canceling insurance policies vary by state, and not all states would permit policy termination as a result of a positive drug test.

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- Obtaining the funding necessary for state licensing agencies and FMCSA to implement the requirement could be a concern. For example, North Carolina's initial costs for its current system included \$50,000 in one-time costs plus personnel costs for a half-time employee. Complying with a broader federal requirement would clearly require more resources from every state, potentially at the expense of other initiatives that can also impact safety. States could utilize their existing systems for recording information on motor vehicle records, although states would need to have personnel in place to handle the drug test submissions. FMCSA may also face additional costs with this option.<sup>58</sup>
  - As with the national database, implementing processes for authenticating and registering entities that submit drug test information to FMCSA for the CDL suspension in order to avoid inaccurate information, or malicious intent, could be challenging. A CDL suspension could affect drivers' rights if results are reported by unauthorized entities, if drivers are unable to clear inaccurate suspensions from their records, or if drivers are unable to have return-to-duty completion information posted to their records.
  - States would have to create or change their licensing procedures through legislation in order to suspend CDLs based on the results of DOT-regulated drug tests. Enacting legislation could be difficult and time-consuming and would occur at different times in different states, resulting in some states beginning to suspend CDLs later than others.

Issues that affect the potential effectiveness and feasibility of the CDL suspension are similar to those for a national database in terms of reporting, the length of time information is maintained, and how inaccurate information is corrected, but also include determining how drivers' CDLs would be reinstated. See appendix IV for a detailed description of these issues.

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## Conclusions

While drug testing in the motor carrier industry has been successful at identifying many drug users for nearly 20 years, the problems described in this report suggest that the potential exists for many drug users to avoid

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<sup>58</sup>Since FMCSA is moving forward with plans for a national database, FMCSA's additional costs for implementing a CDL suspension could include costs for additional software to give FMCSA the ability to send information using CDLIS and additional FMCSA personnel. In comparison to a national database, however, a CDL suspension requirement may require fewer personnel and technology resources in the long run since carriers may not need to query the database.

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detection and continue to operate a commercial motor vehicle. Given the enormity and fluidity of the motor carrier industry and the extent of FMCSA's oversight resources, establishing a drug testing program that approaches 100 percent reliability in testing all drivers and identifying drivers who have been using illegal drugs—and keeping them off the road until they have complied with return-to-duty requirements—are unrealistic expectations. However, this report has described a wide range of options that can be considered to make incremental improvements in the ability of FMCSA's drug testing program to keep drivers using drugs off the road. In our view, a comprehensive approach that encompasses several of the identified options is needed to effectively address the problems we identified, to re-establish the importance of the program throughout the industry, and to reassert the federal government's interest in ensuring compliance with drug testing programs.

ODAPC and FMCSA have both recently initiated a number of actions that are intended to address challenges to the drug testing program in the motor carrier industry. These actions, such as sharing information on compliance of service agents across modal administrations, taking steps to strengthen the new-entrant safety audit and the public interest exclusion process, and beginning a rule-making process to establish a national database, among others, all hold promise to improve the effectiveness of drug testing programs. However, several of these actions are only just beginning, and FMCSA may not have the authority it needs to pursue some of the options we identified as potentially having the most impact and the greatest feasibility. For example, while FMCSA has a rule-making process under way to improve the enforcement of safety audits for new entrants and has plans to initiate a rule-making process to implement a national database, these actions have yet to come to fruition, and FMCSA may have to seek additional authority to ensure service agents report to a database. FMCSA's rule-making process will also need to consider driver protections and a process by which information can be corrected or removed. Furthermore, the national database could serve as the information foundation for enforcing suspension of a CDL—a direct way to address issues surrounding poor compliance by carriers, as well as inherent problems with self-employed drivers who test positive but continue to drive—but requiring CDL suspension is beyond FMCSA's authority. Moreover, while ODAPC and FMCSA are working on ways to improve identification of service agent noncompliance, FMCSA does not have authority to levy fines against service agents for noncompliance with DOT requirements.

While actions that improve compliance with DOT protocols by carriers and service agents would have some impact on ensuring that more drivers



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are in drug testing programs and reducing the opportunities individuals have to defraud a drug test, cheating on a drug test will still be possible. All options to reduce opportunities to cheat face feasibility issues. For example, while the testing of hair or oral fluid specimens, which can be collected by direct observation, may reduce the ability to subvert drug tests, additional scientific study and a rule-making process by SAMHSA are required; even then, products designed to mask the presence of drugs in specimens already exist and are likely to proliferate. A federal ban on subversion products also faces challenges in that it would be difficult to enforce and may not have a significant deterrent effect. However, a federal ban on subversion products would have advantages. Not only would a ban have wide support within the industry, but it also would reassert the federal government's interest in ensuring compliance with its drug testing programs and allow for prosecution in any state.

Any of these options for improving FMCSA's drug testing program would require either additional resources or a transfer of resources funding other initiatives that also work to improve road safety. Taking steps to improve the program needs to be considered in the context of other programs that also work to achieve safety advancement, such as ensuring drivers are complying with hours of service regulations and that vehicles are maintained and inspected.

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## Matters for Congressional Consideration

Taking action to address the challenges FMCSA faces to ensure that its drug testing program detects drivers who are using illegal drugs, and to keep drivers who have tested positive off the road until they have completed the return-to-duty process, provides an opportunity to improve safety on the roads. In order to assist DOT and FMCSA in addressing these challenges, and thereby improving road safety, Congress should consider

- adopting legislation to ban subversion products, and
- providing FMCSA with the ability to exert oversight and enforcement authority over service agents involved in the DOT drug testing process—which would enable DOT to address issues related to requiring service agents to report drug testing information to FMCSA's national database and levying civil penalties on service agents that are not in compliance with DOT drug testing regulations.

In addition, Congress should consider taking action to encourage or compel states to use the national database to take action to suspend the CDL of drivers who have tested positive or refused to take a DOT drug test.

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## Recommendations for Executive Action

In order to address the challenges facing FMCSA to ensure drivers are in a drug testing program, and to keep drivers off the road once they have tested positive, we recommend that the Secretary of Transportation expedite the rule-making process to

- improve the enforcement of safety audits for new entrants, and
- create a national database of positive and refusal-to-test drug and alcohol test results.

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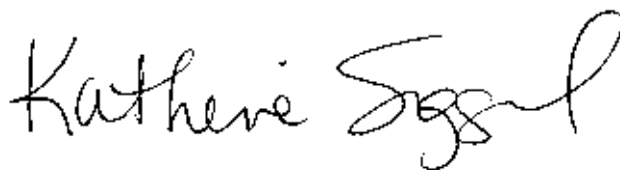
## Agency Comments

In commenting on a draft of this report, DOT and HHS officials generally agreed with the findings and recommendations and provided technical clarifications, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to appropriate congressional committees and to the Secretary and other appropriate DOT and HHS officials. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-2834 or [siggerudk@gao.gov](mailto:siggerudk@gao.gov). Contact points for Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Katherine A. Siggerud  
Director, Physical Infrastructure Issues

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# Appendix I: Scope and Methodology

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To determine the factors that contribute to the challenges of ensuring all drivers are in a drug testing program, limiting drivers' ability to subvert a drug test, and keeping drivers off the road once they are found to test positive, we reviewed Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA) regulations, policies, and reports and conducted interviews with individuals from FMCSA and DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) and the Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA) to understand the drug testing process and how carrier compliance with drug testing regulations is evaluated and to identify the factors that contribute to the challenges faced by FMCSA. We also interviewed officials from FMCSA and its state partners that conduct compliance reviews and new-entrant safety audits to understand what information related to the drug testing requirements is covered during these activities and how violations with drug testing requirements are uncovered.

We analyzed data on the results of compliance reviews and safety audits conducted by FMCSA and its state partners, as well as data on enforcement activities, to determine industry compliance with drug testing requirements and to capture the most frequently violated regulations related to drug testing and associated enforcement actions. We conducted semistructured interviews with representatives from 10 motor carriers, including large and small carriers and an owner-operator. We structured the interviews to elicit the types of challenges that carriers face in complying with the drug testing requirements and in ensuring that service agents they use are also in compliance. In addition, two of the carriers we met with conducted on-site collections of urine specimens. We interviewed motor carrier industry associations representing many segments of the motor coach and trucking industry, such as the American Trucking Association, the Owner-Operator Independent Drivers Association, the American Bus Association, and the National Association of Small Trucking Companies. We also interviewed officials from unions representing truck and bus drivers and from a variety of associations representing urine specimen collectors, medical review officers, substance abuse professionals, consortiums/third-party administrators, and others involved in the drug testing industry. We also interviewed representatives from one of the largest laboratories involved in the DOT drug testing industry. During these meetings, we discussed the factors that contribute to the difficulties of implementing an effective drug testing program. We interviewed service agents that conduct various combinations of background checks, collections, laboratory, and counseling activities, as well as an insurance entity specializing in motor carrier coverage, to

understand the intricacies, similarities, and differences of the causal factors limiting the effectiveness of detecting drivers who drive while impaired.

In addition, we observed FMCSA oversight activities, including four compliance reviews and two new-entrant safety audits in California, North Carolina, Oregon, and Virginia. We selected states in which to observe compliance reviews and new-entrant safety audits on the basis of the availability of ongoing oversight activities, and well as our visits to states that adopted laws requiring the reporting of positive DOT-regulated drug tests and refusals-to-test. These oversight activities were conducted by either FMCSA investigators; FMCSA's state partners, such as state or local law enforcement; or Consolidated Safety Services, to which FMCSA contracts new-entrant safety audits.

Also, we conducted semistructured interviews with officials from the state licensing agencies of the states that have adopted laws requiring the reporting of positive DOT-regulated drug tests and refusals-to-tests including Arkansas, New Mexico, North Carolina, Oregon, Texas, and Washington, to understand the issues considered in creating the reporting requirement and to determine how the reporting requirement was implemented to gather information on costs and effectiveness. We discussed how information is currently shared between states and how a national reporting requirement could work. We also interviewed officials from a state Attorney General's Office of a state that adopted a law banning adulterants and substances to subvert a drug test to determine the issues associated with such a law, including costs, and the law's effectiveness.

We used the results from our Forensic Audits and Special Investigations (FSI) team, which tested compliance with protocols of collection sites in three metropolitan areas selected for the large number of truck drivers residing in those areas, as well as Washington, D.C. Our undercover investigators posed as commercial truck drivers who needed a DOT drug test and, in some cases, tested whether they could successfully adulterate or substitute the specimens. They conducted their investigation from May to September 2007 in accordance with standards prescribed by the President's Council on Integrity and Efficiency.

To identify the options that have been suggested as possible ways to address problems in FMCSA's current drug testing program, we reviewed several reports, articles, and other published information on options to address challenges faced in drug testing. For example, we reviewed

FMCSA's 2004 *Report to Congress* on the feasibility of creating a national database of drug test information. We also interviewed officials from DOT and FMCSA, industry experts, representatives from motor carriers, industry associations, and other stakeholders to identify options and understand the issues associated with each option. For example, in interviews with FMCSA and other stakeholders, we discussed various ways to improve compliance with drug testing requirements by both carriers and service agents and gauged the level of support such options garnered.

We also interviewed officials involved in the drug testing programs at other DOT modal administrations, including the Federal Aviation Administration, the Federal Transit Administration, and the Federal Railroad Administration to gather information on whether these problems are common across the administrations, how problems are addressed by the other administrations, and how issues and circumstances in the other modal administrations can or cannot be compared with FMCSA's experience. For example, we gathered information on whether and how other administrations oversee service agents. Then, we compared and contrasted this information with FMCSA's current oversight approach in order to understand other ways of addressing challenges and to develop other options.

We also interviewed representatives from American Association of Motor Vehicle Administrators, which monitors the Commercial Driver's License Information System (CDLIS), in order to find out the capabilities and challenges of the system and whether it could be used to send information about the results of DOT drug tests. In addition, we interviewed representatives from companies who specialize in gathering background information for carriers and other various interested parties to determine how easy it was to obtain privacy information, such as positive drug tests, on individuals and how they kept the information private after they obtained it.

In the course of our interviews and analyses, we identified many options that have been suggested as possible ways to address problems or weak points in the current drug testing program. We assessed the various options for their likely effectiveness in addressing the particular problem they were designed to address and their feasibility from the standpoint of cost, support, and amount of effort involved in implementing them. Our assessments were based on (1) analyzing and synthesizing the views of the various government officials and industry stakeholders we interviewed with regard to their estimations of the potential effectiveness and

feasibility of pursuing various options; (2) reviewing studies that have been conducted regarding the feasibility of certain options; (3) analyzing cost and other data, where available; and (4) analyzing the experience of other modal administrations or other entities in implementing various options, where applicable. Inherently, there are certain limitations and variances in the quality of data and information available about certain options. Therefore, we used a certain amount of professional judgment in comparing options relative to one another. The agencies and other stakeholders we included in our interviews are listed in table 5; however, we did not include the names of the carriers or service agents with whom we met. We determined that the data used in this report are sufficiently reliable for our purposes.

We conducted this performance audit from June 2007 to May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Table 5: List of Federal Agencies, State Agencies, and Industry Associations Interviewed**

<b>DOT</b>
Federal Motor Carrier Safety Administration
Federal Aviation Administration
Federal Railroad Administration
Federal Transit Administration
Office of Drug and Alcohol Policy and Compliance
<b>HHS</b>
Substance Abuse and Mental Health Services Administration
<b>State agencies</b>
Arkansas Department of Licensing
California Highway Patrol
California State FMCSA
North Carolina Attorney General
North Carolina State FMCSA
North Carolina Department of Motor Vehicles
North Carolina State Highway Patrol
New Mexico Motor Vehicle Division

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**Appendix I: Scope and Methodology**

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Oregon Driver and Motor Vehicle Services
Oregon State Police
FMCSA—Oregon Division
Texas Highway Patrol, Commercial Motor Vehicle Enforcement
Washington Department of Licensing
Washington State Patrol Division
Washington State FMCSA
<b>Industry associations</b>
American Association of Motor Vehicle Administrators
American Bus Association
American Federation of Labor and Congress of Industrial Organizations
American Trucking Association
National Association of Small Trucking Companies
North Carolina Trucking Association
Owner-Operator Independent Drivers Association
United Motorcoach Association
<b>Drug testing industry associations</b>
American Association of Medical Review Officers
American College of Occupational and Environmental Medicine
American Substance Abuse Professionals
Drug and Alcohol Testing Industry Association
Medical Review Officer Certification Council
Substance Abuse Program Administrators Association

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Source: GAO.

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# Appendix II: Oversight of Drug Testing Programs by Selected DOT Administrations

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In addition to FMCSA, other DOT administrations, including the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA), oversee safety regulations, including drug testing, in the aviation, railroad, and transit industries, respectively.<sup>1</sup> Table 6 provides a comparison of each administration's oversight of compliance with drug testing regulations by both its carriers and service agents. Each of these administrations, except FMCSA, conducts oversight of the majority of its industry either through reviews that cover all safety requirements or reviews that specifically cover the drug and alcohol testing requirements. By contrast, FMCSA has the largest and most fluid industry to oversee and is not able to visit the majority of its industry. In addition, each of these administrations, except FMCSA, conducts consistent oversight of service agents, including collection sites, medical review officers, third-party administrators, and substance abuse professionals.<sup>2</sup> While the oversight of service agents is intended to cover service agents used by the employers and operators each administration regulates, these service agents may also be used by FMCSA-regulated carriers. For example, FAA, FRA, and FTA conduct oversight of collection sites by checking qualification documentation for collectors and conducting mock collections to determine whether collections are done according to protocols. In addition, if significant noncompliance is discovered at a collection site through these methods, FTA covertly audits collection sites. ODAPC officials told us that they fully support clandestine inspections and audits by all DOT agencies and are developing a training course for clandestine inspections.

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<sup>1</sup>The Pipeline and Hazardous Materials Safety Administration also oversees compliance of drug and alcohol testing regulations.

<sup>2</sup>There is also some oversight of collection sites by the United States Coast Guard in the Department of Homeland Security.



**Appendix II: Oversight of Drug Testing Programs by Selected DOT Administrations**

**Table 6: DOT Administration Oversight of Drug Testing Programs**

<b>DOT administration</b>	<b>Size of industry</b>	<b>Number of inspectors</b>	<b>Portion of industry covered</b>	<b>Oversight of industry drug testing programs</b>	<b>Oversight of service agents</b>	<b>Enforcement authority</b>
FAA	6,784 carriers; 444,344 safety-sensitive employees.	50.	Large carriers are visited once every 12-18 months, and smaller carriers every couple of years. Some smaller carriers may have never been visited.  Conducted 1,263 drug testing-specific inspections in fiscal year 2007.	Drug testing-specific inspections.	Service agents used by carriers are audited as part of the carriers' drug testing-specific inspections; FAA also conducts service agent-specific inspections after complaints or during investigations of positive tests.	Enforcement authority over carriers, but not service agents; can initiate public interest exclusions against service agents.
FMCSA	724,000 carriers; 5 million CDL holders.	1,357 total auditors, including 50 federal auditors, 277 federal investigators, 51 federal border investigators, 440 state safety auditors, 513 state investigators, and 26 contractors. The majority of the 953 state personnel do not conduct oversight on a fulltime basis.	Small portion of the industry is covered by compliance reviews; new carriers since 2003 have received a safety audit.  Conducted about 15,000 compliance reviews and 37,000 safety audits in 2007.	Safety audits of new entrants and compliance reviews include drug testing program review.	Audits service agents after complaints. FMCSA is currently testing a service agent-specific review.	Enforcement authority over carriers but not service agents; can initiate public interest exclusions against service agents.

**Appendix II: Oversight of Drug Testing Programs by Selected DOT Administrations**

<b>DOT administration</b>	<b>Size of industry</b>	<b>Number of inspectors</b>	<b>Portion of industry covered</b>	<b>Oversight of industry drug testing programs</b>	<b>Oversight of service agents</b>	<b>Enforcement authority</b>
FRA	650 railroad companies; 150,000 safety-sensitive employees.	150 (2 full time, 148 who spend only a portion of their time in this function).	Audits all large and medium carriers every 3 years. Audits small carriers once every 4 years. <sup>a</sup>  Conducts about 150 audits per year.	Drug testing program reviews.	Service agents used by the carrier are audited as part of the carriers' audit.	Enforcement authority over carriers and service agents; can initiate public interest exclusions against service agents and has warned carriers that continued noncompliance can result in civil penalties.
FTA	2,100 grantees and subrecipients; 270,000 safety-sensitive employees.	30. <sup>b</sup>	Audits all grantees through triennial reviews.  Conducted about 24 drug testing-specific audit events in 2007, covering 99 grantees.	Triennial reviews that include drug testing program review, as well as drug testing-specific audits.	Service agents used by grantees are audited as part of drug testing-specific audits; service agent-specific audits occasionally conducted.	Ability to suspend funds to grantees, but not service agents; can initiate public interest exclusions against service agents.

Source: GAO analysis of DOT administration information.

<sup>a</sup>Some small carriers may only be subject to certain parts of FRA's drug testing regulations.

<sup>b</sup>FTA uses a combination of contractors and some federal representatives from FTA and DOT's Research and Innovative Technology Administration's Volpe Center to conduct oversight of the drug and alcohol testing regulations. Participation by these entities varies widely.

# Appendix III: States That Require Reporting of DOT Drug Test Information

Several states already have a reporting requirement in place for positive drug tests, and a few states also take action to suspend a commercial driver's license (CDL) in the event of a positive or refusal-to-test result on a drug test. States have chosen different ways to address reporting issues, access issues, and length of time information is maintained. Table 7 shows information for the states that have created databases or make notations on the motor vehicle record. Table 8 shows information for states that have implemented a CDL suspension.

**Table 7: States That Have Created Databases or Note the Motor Vehicle Record**

State	Database	Who reports	Access to information	Removal from database	Cost	Status	Experiences
Arkansas	Collects drug and alcohol test positives and refusals-to-test in database.	Medical review officers and carriers.	Employers can search database, and are required to have written consent from the driver.	Remains in database for 3 years.	\$75,000 for database. There is a \$75 annual registration fee for access to request searches electronically, and an additional \$2.50 per electronic record search. Records requested by paper are \$1 per record search and do not require registration.	Between January 2008 and March 2008, 83 positive drug tests, and 5 refusals-to-test for drugs have been reported. In that same time frame, there have been 1,890 requests for information, 25 of which revealed that the driver had a positive result. In Arkansas, there are 135,990 CDL holders.	Reporting became effective in January 2008.
New Mexico	Once a code is created, will record drug test positives on motor vehicle record.	Medical review officers; future plans will require carrier reporting positives and refusals.	Once implemented, employers have access to this information through motor vehicle records.	No process for removing from motor vehicle record.	Undetermined, but minimal costs may be incurred.	No positive tests reported. In New Mexico, there are 60,000-70,000 CDL holders.	Reporting became effective in June 2007. New Mexico does not currently have method for informing medical review officers of requirement to report.

**Appendix III: States That Require Reporting  
of DOT Drug Test Information**

<b>State</b>	<b>Database</b>	<b>Who reports</b>	<b>Access to information</b>	<b>Removal from database</b>	<b>Cost</b>	<b>Status</b>	<b>Experiences</b>
Oregon	Records drug test positives on motor vehicle record; future plans include adding drug test refusals.	Medical review officers; future plans include changing reporter to carrier.	Employers can request drug test information through motor vehicle record request.	Remains on driver's record for 5 years.	One-quarter of a full-time employee's time; no database development costs since they are using an existing database.	1,472 positive tests posted to motor vehicle record between 2002-2007, 52 positive tests in first 3 months of 2008. 100-300 carriers request drug test results each year.  In Oregon, there are 141,000 CDL holders.	Reporting became effective in 1999. Nonreporting by medical review officers is common because they may not be aware of requirement, or if out of state, do not believe it applies to them. Employers may not query the database because program has not been well publicized and querying is not required.
Texas	Collects drug and alcohol test positives and refusals-to-test in database.	Carrier required to report; medical review officers and third-party administrators may also report.	Employers can search database.	Remain in database indefinitely.	4-5 employees.	Over 11,000 CDL holders in database. In 2006, there were 21,337 requests for information; in 2007, there were 27,863; and in January -April 2008, there were 12,921.	Reporting became effective in 2001. Low reporting from carriers.

Source: GAO analysis of state information.

Note: In states that require the reporting of positive alcohol tests and refusals-to-test for alcohol, the carrier is required to report this information.

**Appendix III: States That Require Reporting  
of DOT Drug Test Information**

**Table 8: States That Take Action Against Drivers Who Test Positive or Refuse to Test**

<b>State</b>	<b>CDL suspension</b>	<b>Who reports</b>	<b>Access to information</b>	<b>CDL reinstatement</b>	<b>Cost</b>	<b>Effectiveness</b>	<b>Experiences</b>
California	No effect on CDL; revokes special driver certificate for school bus drivers, para-transit drivers, etc., for positive drug tests or refusals-to-test.	Carrier.	Employers have access to CDL information through motor vehicle records—but personal drug test information not connected to CDL.	Certificate revoked for 3 years or until driver completes return-to-duty process.	\$443 for handling 32 cases.	No effect on CDL, only certificate. In 2007, 32 special driver certificates revoked.	Reporting became effective in 2005. Since 1995, third-party administrators have been required to submit summary reports to Highway Patrol on positive results, but action is not taken based on these reports.
North Carolina	Disqualifies CDL for drug or alcohol test positive or refusal-to-test.	Carrier; there are plans to have both carriers and medical review officers report. <sup>a</sup>	Employers have access to CDL information through motor vehicle records.	To end CDL disqualification DMV must receive letter of completion from a substance abuse professional. Disqualification history stays in record for 2 years from date of substance abuse professional letter. Plans to increase to 3 years.	Estimation of \$50,000 in one-time costs, about half of a full-time employee's time. Future upgrades include \$153,000 in one-time costs.	As of April 2008 there were 735 positive tests reported; 512 current active CDL disqualifications. In North Carolina, there were 325,158 CDL holders, as of October 2007.	Reporting became effective in 2005. Since all carriers may not be reporting, there are plans to include medical review officer reporting in the future. Plan to increase education about requirement to report. Carrier and substance abuse professional submissions are not verified, though personal information and drug test results contained in the report helps to ensure accuracy and legitimacy.

**Appendix III: States That Require Reporting  
of DOT Drug Test Information**

<b>State</b>	<b>CDL suspension</b>	<b>Who reports</b>	<b>Access to information</b>	<b>CDL reinstatement</b>	<b>Cost</b>	<b>Effectiveness</b>	<b>Experiences</b>
Washington	Disqualifies CDL for drug or alcohol test positive or refusal-to-test.	Carrier and medical review officer. <sup>b</sup>	Employers have access to CDL information through motor vehicle records.	CDL can be reinstated after substance abuse professional provides information that the driver has begun education or treatment, but record of suspension remains on motor vehicle record for 15 years.	More than 2-3 part-time employees.	Between 2002-2007, 4,100 CDLs were disqualified.  In Washington, there are approximately 357,000 CDL holders.	Reporting became effective in 2002. Medical review officer and substance abuse professional submissions are not verified, though medical review officers and substance abuse professionals are required to affirm compliance with Part 40. There is underreporting by medical review officers and carriers.

Source: GAO analysis of state information.

<sup>a</sup>North Carolina officials told us that they are considering requiring both carriers and medical review officers to report positives and refusals, but they may have to deal with duplicate reports.

<sup>b</sup>In Washington, breath alcohol technicians are required to report positive alcohol tests, and refusals-to-test for alcohol.

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# Appendix IV: Issues to Consider in Creating a National Database and Commercial Driver's License Suspension Requirement

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## National Database

Issues to consider in developing a national database include (1) reporting issues such as determining who reports, what they report, how they report, and how reporters are verified as legitimate; (2) access issues such as determining who can access the information, what information they can obtain, how they can access the information, and how those who access the information are verified as legitimate; (3) the length of time information is maintained; and (4) how inaccurate information is corrected.

## Reporting to a National Database

Information that would be reported to the database includes, at a minimum, positive drug and alcohol test results, refusals-to-test for both drug and alcohol tests, and information regarding whether a driver has gone through a return-to-duty process, along with identifying information on the drivers and their employers. No single entity involved in the drug testing process has access to all of this information in all cases, and, therefore, a number of entities may need to be involved in reporting information to the database for it to be comprehensive.

For positive drug tests and some refusals-to-test, medical review officers appear to be in the best position to report, for several reasons. First, they are responsible for medically verifying positive drug test results and the refusals-to-test that have been confirmed by a laboratory as adulterated or substituted and, therefore, are closest to drug test results and would have information on positive drug test results for all drivers, including self-employed owner-operators. While designated employer representatives would also have this information for drivers employed by their carriers, self-employed owner-operators would not be likely to report their own positive drug test results. Furthermore, potential underreporting problems exist with carriers resulting from noncompliance issues. In some states that have required carriers to report, state officials reported underreporting from carriers, and as previously discussed in this report, carriers are often out of compliance in conducting background checks and with drug testing regulations in general. There is little indication that medical review officers have the same issues regarding compliance with DOT regulations as carriers, and, therefore, reporting is likely to be more complete with medical review officers as opposed to designated employer representatives. FMCSA currently has little or no civil penalty authority over medical review officers and does not conduct regular oversight over them. This will impact its ability to enforce database reporting by these service agents.

While medical review officers have knowledge about some refusals-to-test, they do not have knowledge of others, such as when an employee fails to

show up at a collection site for a random test. These types of refusals would be known only to the designated employer representative, or in the case of self-employed owner-operators, these refusals would only be known to the consortia/third-party administrators. Furthermore, medical review officers do not verify positive alcohol tests, and, similarly, this information would only be known to designated employer representatives or third-party administrators. Therefore, for these refusals-to-test for drug tests, and alcohol positives and refusals,<sup>1</sup> the designated employer representatives would need to report this information for drivers employed by their carriers, and third-party administrators would need to report for self-employed owner-operators. Including both positives and refusals is an important component to the database since refusals-to-test are treated the same as positive tests in the drug testing regulations.

Once a driver has tested positive or refused to test, a substance abuse professional is required to guide the driver through the return-to-duty process. As such, substance abuse professionals would have information regarding when a driver has completed the recommended course of education or treatment the substance abuse professional prescribed, which indicates that the driver is eligible to drive following a negative return-to-duty/pre-employment drug test. Similar to medical review officers in reporting testing information, FMCSA currently has little or no civil penalty authority over substance abuse professionals and does not conduct regular oversight over them. This will impact its ability to enforce database reporting by these service agents.

Carriers often terminate an employee after a positive drug test result. If another carrier wishes to hire that employee after a negative return-to-duty test, that employer would be responsible for ensuring that all follow-up tests required by the substance abuse professional are completed. The new employer could be required to report a negative return-to-duty test in order for that notation to be made in the database, so that the database indicates the driver is eligible to drive. While medical review officers are required to review all laboratory drug test results, including positives, negatives, and other nonnegatives, requiring medical review officers to report information on the results of the return-to-duty process may not be a viable option because they may not be aware that a return-to-duty test is being taken and would not be aware of the number of follow-up tests

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<sup>1</sup>The reporting of alcohol positives and refusals is outside the scope of our work; however, FMCSA plans to have carriers report alcohol positives and refusals to the database.



prescribed. Current regulations do not require substance abuse professionals to verify and report successful completion of a negative return-to-duty test or completion of all required follow-up tests.

Another issue that would need to be carefully considered is whether non-DOT tests would be appropriate to report to the database. For example, some carriers conduct hair testing in addition to DOT-mandated urine tests, which results in a higher number of positive drug tests. Moreover, drug tests may be required by courts for other purposes, but carriers may not be privy to that information. Some have argued that any positive drug test is an indication that a driver should not be allowed to operate in safety-sensitive duties and that carriers should have access to this information. However, under current regulations, this would not appear to be appropriate for several reasons. For results of hair or other types of tests, there are no SAMHSA guidelines on testing protocols or on cutoff levels for what constitutes a positive test, as there are for urine tests, and therefore these tests are not a valid basis for removing a driver from service under federal regulations. Drug tests required by courts or for other purposes may not include procedures comparable to DOT's collection, laboratory analysis, and medical review procedures and, therefore, would also not be valid under the regulations for removing a driver from service.

As with any database, consideration would need to be given to how the information would be reported, what type of documentation would be required, and how entities reporting information to the database would be verified as legitimate.

- Reporting of drug test information could occur through a Web portal directly from reporters but could also be entered manually from fax and mail submissions. In order to maintain timely records, decisions would need to be made regarding the time frames within which reporters would be required to submit information (e.g., within 3 days of confirmed laboratory results or completion of the prescribed treatment).
- Documentation required to support the information entered into the database—such as the Federal Drug Testing Custody and Control Form (CCF),<sup>2</sup> which includes identifying information on the driver, test

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<sup>2</sup>The CCF is an HHS form used for federal drug testing that accompanies the urine specimen to verify the identity of the donor and document the custody path of the urine specimen and test results from collector to laboratory to medical review officer.

information, and verified test results,<sup>3</sup> or information from substance abuse professionals on drivers' completion of prescribed treatment—could be submitted electronically, could be mailed or faxed to FMCSA, or could be retained by the reporting entities as is currently required under DOT regulations. FMCSA could review documentation for all submitted information before it is released into the database or could conduct regular audits of entities reporting information to the database to ensure compliance with documentation requirements.

- Prior to gaining access to the database, entities would need to be verified as legitimate submitters of drug test results.<sup>4</sup> To do so, basic identification information would need to be required from all potential reporting entities, which could include practitioner license numbers for medical review officers and substance abuse professionals, DOT numbers for carriers, and affirmations that reporting entities meet the requirements of the drug testing regulations.

In order for drivers to be fully aware that their drug test results are in a database and what measures are available to them to challenge information or be removed, consideration may need to be given to whether reporters should be required to (1) notify drivers that their information is being reported to the database and (2) provide drivers with information on how they can challenge the accuracy of the information or specific steps they need to take to have their status in the database changed or their name removed from the database.

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<sup>3</sup>A change to the CCF to include the driver's state of CDL licensure and CDL number would effectively identify the driver when a query is received. Inclusion of the DOT number of the carrier on the CCF would also allow FMCSA to follow up with carriers who have high incidences of positive drivers. FMCSA has indicated that it would prefer the CCF to be updated to include the DOT number. Any change would require action by HHS to amend its form. If these changes are not possible, an accompanying cover sheet to the CCF with this information could be used. This cover sheet could include identifying information for the driver, including name, CDL number, CDL state, name of employer, employer's address, and employer's DOT number.

<sup>4</sup>In Washington, state licensing officials told us that while reporting forms are not verified—and there is a possibility that someone who is not qualified could be sending the forms—the form asks for the reporter to affirm compliance with 49 CFR Part 40. In North Carolina, officials reported that, although they do not verify the legitimacy of carriers for reporting information, the personal information and drug test results contained in the report help to ensure accuracy and legitimacy.

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Accessing Information from a  
National Database

The primary purpose of the database is for carriers to query to find out whether an applicant had previously tested positive for drugs or refused to take a DOT drug test and whether the applicant is eligible to participate in safety-sensitive duties, given the difficulties in getting this information through current background-check requirements and driver disclosure. To accomplish this, carriers would need to be required to query the database prior to hiring a new driver, which would require a rule-making process to change the regulations. This would then obviate the requirement for carriers to conduct background checks related to drug testing through inquiries to previous employers; however, the database would need to be in place for a minimum of 3 years before the change could be made, in order for the same extent of information to be made available to carriers.<sup>5</sup> Since some carriers outsource their background checks, some third-party administrators may potentially also need access to query the database to fulfill this requirement. Similar to verifying and registering the reporters of drug test information, carriers and third-party administrators would also need to register with FMCSA to verify their legitimacy to access the database and affirm legitimate use of the database.<sup>6</sup> Carriers and third-party administrators would then query the database before hiring a new employee, using identifying information, such as a driver's CDL number and state of licensure. The automated query response to the carrier would include information such as past positive and refusal test information, information on completion of prescribed treatment, and information on completion of return-to-duty and follow-up testing, if that information is maintained in the database.

To ensure that drivers have given their permission to search the database for their drug test history, carriers would need to obtain permission from a driver to query the database for a driver's drug test history, similar to current background-check requirements. Since it is not practical for FMCSA to review documentation on release of information prior to every query, with each query, carriers and third-party administrators would need to affirm they have obtained permission from the driver and would need to retain a signed, written release of information in their files. This release

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<sup>5</sup>Currently, carriers are required to check with a prospective employee's previous DOT-regulated employers regarding past drug test history, covering the previous 3 years. The database would not have this historical information until it was in place for 3 years.

<sup>6</sup>An example of legitimate use by a carrier would be querying drug testing histories only on drivers for whom they have a release of information on file.

could be subject to audit during compliance reviews or as part of specific audits of database usage.

Careful consideration may also need to be given to whether any additional entities should have access to the database, either now or in the future. Some have proposed that drivers have access to their own records, in order to be aware of information that may be used against them in hiring decisions. However, verification and registration of potentially millions of individual drivers, and ensuring that their access is restricted to their own records, may be difficult to achieve. In order to address concerns about drivers' access to their own information in the database, when a driver is reported to the database, the reporter could be required to inform the driver, and when a driver is denied employment because of information in the database, the carrier could be required to inform the driver.

Other access issues that may need consideration include whether law enforcement officials should be able to query the database and how they may use the information in the database. FMCSA plans to make the database available to law enforcement officials during roadside inspections in order to target carriers that may employ drivers that have tested positive and have not gone through the return-to-duty process. However, it is not clear what actions an officer can take during a roadside inspection against a driver who is in the database and has not gone through a return-to-duty process—for example, whether an officer can or should take the driver out of service for not complying with DOT regulations, even if the driver is not currently impaired.

#### **Length of Time Drivers Remain in the Database**

The length of time a driver's record is in the database merits consideration. In reality, a positive drug test generally results in carriers firing the driver. Few carriers will send a driver through a return-to-duty process. Further, some employers will not hire a driver with a past positive test, even if the driver has completed the return-to-duty process, since they may not wish to hire individuals with a history of positive drug tests, regardless of what treatment they have undergone. At least one large carrier we interviewed indicated that this is their policy. Therefore, while a driver's name is in the database, obtaining employment will be more difficult, regardless of whether the driver has completed the return-to-duty process.

A number of options exist for how long records may be retained in the database:

- Records could remain in the database for a period of 3 years, corresponding to the length of employment history that carriers are required to check for prospective drivers.
- Records could remain in the database for up to 5 years, corresponding to the length of time required for record retention of positive drug tests.
- Records could remain indefinitely for drivers who do not complete the return-to-duty process, since regulations prohibit those drivers from returning to safety-sensitive positions until that process is complete.
- Records could also remain indefinitely for drivers that complete treatment, and return-to-duty and follow-up tests, with a notation in the database that they have completed the return-to-duty process. However, this option may impede future hiring for drivers who have completed the return-to-duty process since some carriers may still be unwilling to hire them.

How a driver may be removed from the database prior to the expiration of a retention period also warrants consideration. One option would be for potential removal from the database once a substance abuse professional reports that a driver has completed prescribed treatment and is eligible for a return-to-duty test. However, because the driver's next employers are responsible for conducting return-to-duty and follow-up tests in accordance with the substance abuse professional's recommendations, it may not be appropriate to remove a driver from the database at this point and rely on the driver to convey this information to prospective employers. Another option would be to remove a driver from the database once all follow-up tests prescribed by the substance abuse professional are completed (specifically, a minimum of six follow-up tests in a 12-month period, according to DOT regulations). This information, under current regulations, would need to be reported by a driver's current employer. However, consideration could be given to whether substance abuse professionals should conduct an additional evaluation to determine that their follow-up testing plan and any other prescribed education or treatment program have been successfully completed before the driver may be removed from the database; this would require changes to the regulations, since currently only a driver's current employer would be aware of completion of the substance abuse professional's follow-up testing plan and any other prescribed education or treatment program.

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Refuting Inaccurate  
Information in the Database

In order to ensure that drivers' rights are protected, consideration would need to be given to a process for drivers to refute inaccurate information in the database regarding names and CDL numbers. Amending the CCF to include CDL number, CDL state, and DOT number, and using the CDL number as an identifier, as opposed to a driver's name, would minimize inaccuracies in reporting, but administrative mistakes may still occur. Since drug testing regulations include a medical officer review verification process for all positives and some refusals, it would seem to be redundant to allow a process for refuting whether a driver tested positive or refused to test.

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CDL Suspension

Issues to consider for a CDL suspension are similar to those for a national database but also include determining how drivers are able to have their CDLs reinstated.

Reporting to State Licensing  
Agencies

Issues surrounding the reporters of information, the types of information reported for a CDL suspension, and methods for verifying reporters as legitimate are the same as for a national database. However, there are several options for how information could be reported by medical review officers, carriers, third-party administrators, and substance abuse professionals to state licensing agencies:

- Entities could report directly to the state licensing agency in the state in which they are located. The state licensing agency could then send out-of-state CDL information to other states through CDLIS, using a procedure similar to current reporting of out-of-state convictions to the state in which the driver is licensed.
- Entities could report directly to the states where a driver holds a CDL. Although this option would reduce the delay in suspending a driver's CDL that would exist with the first option since information would go directly to the state of issuance, it may require reporters to report to many different states.
- Entities could report directly to FMCSA through a national database. FMCSA would verify the information and then transfer it to the state of licensure through CDLIS. This option builds on the national database that FMCSA is planning and allows FMCSA to review and verify information before state licensing agencies suspend the CDL.

Accessing Information from  
State Licensing Agencies

After receiving information on positives and refusals, the state licensing agency of the CDL holder, using the CDL number and CDL state to identify

the driver, would suspend the driver's CDL until the driver goes through a return-to-duty process in accordance with drug testing regulations. Additional querying by carriers or third-party administrators and the associated registration and verification may not be necessary since carriers are already required to pull the motor vehicle record (MVR) of a prospective driver prior to hiring and periodically thereafter. Use of the information in the MVR by other entities would be subject to current state laws regarding access to MVRs.

**Length of Time Driver's CDL Is  
Suspended**

States that currently have CDL suspensions have different policies about reinstating licenses and removing records after a certain period of time, as shown in appendix III. In Washington state, a substance abuse professional must present information that drivers have begun treatment or education for drivers to have their license reinstated. Reinstatement of the CDL does not indicate that drivers are necessarily eligible to return to duty. Washington sends a reinstatement letter to drivers stating that reinstatement does not release the drivers to return to duty and that the drivers must check with their employer. After licenses are reinstated in Washington, the motor vehicle record retains the license suspension information and the reason for the suspension for as long as information is retained by the licensing agency. In North Carolina, as part of getting their license reinstated, drivers need to present a letter from a substance abuse professional stating that initial treatment is complete and they are eligible for a return-to-duty test. After the licensing agency receives the letter in North Carolina, the motor vehicle record retains the information that the license was disqualified and the reason for its disqualification for 2 years.

Consideration may be warranted for whether there should be a single standard for how a CDL is reinstated and the length of time a driver's motor vehicle record retains information of a positive drug test. The issues are similar to those discussed previously regarding record retention and removal from a national database. However, although CDLs should not be reinstated prior to completion of the prescribed education or treatment program when a driver is eligible to take a return-to-duty or pre-employment test, drivers will need a valid CDL to seek new employment if they have been fired. CDLs should therefore be able to be reinstated prior to completion of return-to-duty and follow-up tests with notations in the motor vehicle record that inform employers of the need to consult with the driver's substance abuse professional for further information on follow-up testing. If a driver does not go through a return-to-duty process, suspension could remain in effect and on the motor vehicle record for a period of 3 years, 5 years, or indefinitely.

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**Appendix IV: Issues to Consider in Creating a  
National Database and Commercial Driver's  
License Suspension Requirement**

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**Refuting Inaccurate  
Information Leading to a CDL  
Suspension**

Considerations for a process to refute inaccurate information are similar to those for a national database. Consideration may be warranted for whether the establishment of a consistent petition process across states would be necessary.



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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Katherine A. Siggerud, (202) 512-2834 or [siggerudk@gao.gov](mailto:siggerudk@gao.gov)

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## Staff Acknowledgments

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