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U.S. Department of Transportation
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Room W12-140
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Agency Information Collection Activities; Notice and Request for Comment; Examine Issues With Prosecuting Driving Under the Influence of Drugs (DUID) Cases: # DOT-NHTSA-2023-0011

This comment is filed by the Truck Safety Coalition (TSC), Citizens for Reliable and Safe Highways (CRASH), and Parents Against Tired Truckers (P.A.T.T.). The Truck Safety Coalition is a partnership between CRASH and P.A.T.T. TSC is dedicated to reducing the number of deaths and injuries caused by truck-related crashes, providing compassionate support to truck crash survivors and families of truck crash victims, and educating the public, policymakers, and the media about truck safety issues.

The National Highway Traffic Safety Administration (NHTSA) reports that in 2021 over 5,700 lost their lives in truck crashes¹, an increase of 71% since 2009. Another 155,000 people were injured, causing estimated economic losses of \$166 billion, adjusted for inflation.^{2 3} Large trucks pose a severe risk to passenger vehicles on our roads. They typically outweigh passenger vehicles by 20-30 times and are capable of striking them with devastating force. Driving a large truck is a safety-sensitive occupation and the failure to adhere to safety requirements can be the difference in life and death on our roads.

The Federal Motor Carrier Safety Administration (FMCSA) consistently reports that 6.5% of large truck drivers test positive for drugs following a fatal crash, however, this figure is highly misleading.⁴ Nearly 60% of drivers are never tested following a fatal crash. This leaves an incredibly large degree of uncertainty as to how pervasive the problem of drugged driving is in

¹ Overview of Motor Vehicle Traffic Crashes in 2021, NHTSA, Apr. 2023, DOT HS 813 435.

² 2022 Pocket Guide to Large Truck and Bus Statistics, FMCSA, Dec. 2022, RRA-22-007.

³ CPI Inflation Calculator, BLS, Jan. 2020 to Jan. 2023, available at <https://www.bls.gov/data/inflation_calculator.htm>

⁴ Large Truck and Bus Crash Facts 2020, FMCSA Analysis Division, September 2022, FMCSA-RRA-22-005 <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2022-10/LTBCF%202020-v5_FINAL-09-20-2022%20508%2010-3.pdf>

fatal truck crashes.⁵ It is unclear why so many truck drivers involved in fatal crashes are not being required to be subject to a drug and alcohol test by state and local law enforcement on the scene.

High drug and alcohol use among truck drivers is a widely acknowledged and studied phenomenon. American Addiction Centers writes, “To fight boredom, fatigue, and loneliness, some truck drivers turn to drugs and alcohol to keep going. Not too many people would connect professional truck drivers with a substance use disorder, the medical term for addiction, but it is one that industry and government regulators struggle to control.”⁶ A 2013 study found that US truck drivers had the highest alcohol use rate in the world at 12.5%.⁷ A comparable study found up to 82.5% of drivers abuse amphetamines.⁸ More data points are no less disturbing. Reporting in 2023 demonstrated that DOT Drug and Alcohol Clearinghouse positive drug tests increased 18% in 2022, doubling over the previous year and marijuana violations skyrocketed 31%.⁹ Marijuana violations continued to increase in the first quarter of 2023, rising another 91.2%.¹⁰ Perhaps more troubling, some industry employers who utilize hair drug testing methods report drug 23 times more cocaine use, and 65% more ecstasy use than the Drug and Alcohol Clearinghouse.¹¹ In summary, it is not a secret or a surprise that truck drivers are at an elevated risk for drugged driving, **and yet a majority of the time**, drivers are not tested following fatal crashes.

Failure to test truck drivers for drugs or alcohol following fatal crashes on such a large scale is highly disturbing. One might think it is not required, but it is a statutory requirement expected of all motor carriers (49 CFR § 382.303). Section (a), it reads motor carriers “shall test” for alcohol and controlled substances performed for drivers in fatal and serious injury crashes (bodily injury that requires immediate attention away from the scene of the incident” “as soon as practicable” (with 2 hours for alcohol and 32 hours for substance abuse) by statute under 49 CFR § 382.303.¹² It goes on to require employers to obtain copies of the test results to keep on file. Curiously, it then contradicts the directive language in Section (a) with section (d). Section d effectively makes the previous directive in section (a) null and void: “If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.” There is no mandatory fine for the carrier or driver for failing to test. There is no mandatory penalty to a carrier’s Compliance, Safety, and Accountability score for failing to test. In fact, part (e) **allows the employer to retain the discretion** to deem the driver in question to

⁵ Large Truck and Bus Crash Facts 2020, FMCSA Analysis Division, September 2022, FMCSA-RRA-22-005 <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2022-10/LTBCF%202020-v5_FINAL-09-20-2022%20508%2010-3.pdf>

⁶ <https://americanaddictioncenters.org/rehab-guide/truck-drivers>

⁷ Giroto E, Mesas AE, de Andrade SM, et al. Psychoactive substance use by truck drivers: a systematic review Occupational and Environmental Medicine 2014;71:71-76.

⁸ Dini G, Bragazzi NL, Montecucco A, Rahmani A, Durando P. Psychoactive drug consumption among truck-drivers: a systematic review of the literature with meta-analysis and meta-regression. J Prev Med Hyg. 2019 Jun 28

⁹ <https://www.freightwaves.com/news/truckers-positive-drug-tests-up-18-in-2022>

¹⁰ <https://www.ttnews.com/articles/truck-driver-marijuana>

¹¹ Trucking Alliance. A Longitudinal and Statistical Assessment of Hair vs. Urine Testing Efficacy, June 2023.

¹² 49 CFR § 382.303 <<https://www.ecfr.gov/current/title-49/subtitle-B/chapter-III/subchapter-B/part-382/subpart-C/section-382.303>>

have refused to submit to testing. Both owner-operators (has an owner-operator ever determined that he/she refused to submit to testing?) and larger carriers may have compelling conflicts of interest that encourage them to avoid testing without consequence, which allows a potentially drugged driver to return to the road without consequence. Anecdotally, one frequent excuse carriers are said to provide if they do not have an alcohol or drug test on file for a driver involved in a fatal crash is that they “*thought police were taking care of that.*” Federal law is clear that the carrier is responsible to ensure the testing occurs, whether it is conducted by police or required by the carrier. It is the responsibility of the carrier to ensure and verify the testing occurs “as soon as practicable.” At minimum, any carrier that fails to conduct the required drug and alcohol testing should be subject to a DOT compliance review or audit. If the issue was simply, “there were no licensed labs in a nearby vicinity” to conduct the alcohol portion of the screening, this would be verified in the compliance review or audit. However, it severely seems to stretch the limits of imagination that a substance abuse screen could not be completed in any scenario for 32 hours, even if the lab or hospital is many hours away.

Comparable illogical issues also exist in crashes that cause severe injuries (i.e. injury that must be immediately treated off-scene). 49 CFR § 382.303 only required the drug and alcohol screening to occur if law enforcement happens to issue a citation to the truck driver within 8 hours.¹³ It is quite common for citations (if they ever get issued) to be issued multiple months following the crash. This is frequently true in instances where the crash required careful reconstruction by an expert to identify to whom the citation should be issued. CFR § 382.303 should be updated to reflect that serious injury crashes require truck driver testing on the same timetable as fatal crashes.

There are several ways to improve the data quality, utility, and clarity as requested. TSC offers the following suggestions:

- **Expand the targeted stakeholder engagement.** Victims who have survived or lost loved ones in DUID or alleged DUID crashes, both passenger vehicle and large truck crashes, should be included. The pain, suffering, and distress victims feel when a suspected DUID case cannot be prosecuted criminally or through civil means is tremendous. Surviving loved ones often watch as a truck driver who skipped their drug test pays a nominal fine, conducts community service, and is back on the road with a punishment that does not match a suspected crime. Victim voices can humanize the traumatic weight of the subject matter involved and spur actors to seek solutions with greater urgency. The Truck Safety Coalition (TSC) and Mothers Against Drunk Driving (MADD) could be very helpful in this regard. It is also curious that trial lawyers are not included in the planned outreach. These professionals are also exposed to the same problematic constraints in civil cases involving suspected drug and alcohol use as prosecutors have in criminal cases.

Request data from FMCSA. NHTSA should request that FMCSA furnish all data motor carriers are expected to “keep on file” from fatal large truck crashes in 2022. This would help provide clarity as to how frequently this federal requirement is being followed or ignored. In theory, every single fatal crash will have a drug and alcohol screening on file,

¹³ 49 CFR § 382.303 <<https://www.ecfr.gov/current/title-49/subtitle-B/chapter-III/subchapter-B/part-382/subpart-C/section-382.303>>

or a memo prepared no later than 32-48 hours following the crash detailing why the tests could not otherwise be performed. With less than 6,000 crashes (some with multiple fatalities) this is not an onerous task to be performed, especially if one assumes carriers are consistently at an acceptable standard keeping such paperwork up-to-date and easily able to provide to FMCSA upon request. If all 6,000 is too difficult for FMCSA, a random representative sample should be pursued to ensure this important information is learned. If this is not done, this massive data and understanding gap will remain and unsafe carriers and drivers will continue to evade accountability for drugged driving.

- **Ask survey participants how to improve existing 49 CFR § 382.303 language.** The cross-section of intended survey recipients will have valuable insight in how FMCSA should approach strengthening its language in a manner that will substantially close the data gap. FMCSA's records consistently demonstrate 60% of truck drivers are not tested after fatal crashes. Something clearly is not working and NHTSA should take advantage of the collective wisdom of the survey respondents to improve this flawed statute.

The Truck Safety Coalition applauds and recognizes NHTSA for undertaking this important research. TSC appreciates DOT's consideration of these comments intended to drastically reduce the potential for drug-related crashes involving large trucks.

Sincerely,



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Tami Friedrich
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Tami's sister, Kris, brother-in-law, Alan, and two of their children, Brandie and Anthony, were killed in 1989 when a tanker truck overturned in front of them and exploded.