

**May 20, 2008**

WASHINGTON—At a Capitol Hill news conference today, the Chairmen of the House Committee on Transportation and the Subcommittee on Highways and Transit released a report finding major loopholes in drug and alcohol testing for commercial motor carrier drivers.

Full Committee Chairman James L. Oberstar (Minn.), and Subcommittee Chairman Peter A. DeFazio (Ore.) called upon the U.S. Department of Transportation to toughen its regulations and increase its oversight of the collection and testing system. They further pledged to pursue legislation to create a national registry of test results to prevent drivers who test positive from hopping from state to state to obtain a commercial drivers license.

Statement of

The Honorable Peter A. DeFazio, Chairman

Subcommittee on Highways and Transit

Press conference on

Findings of GAO Motor Carrier Report: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them off the Road

May 21, 2008

The results of this GAO study and investigation are shocking. I held a hearing on this issue and the interim results of the GAO report last November. What we heard then was discouraging and the final results of the report are no less troubling.

No one wants drugged or drunk commercial drivers operating on our nation's highways. Unfortunately, what is so clearly laid out in this report is that we have a loophole-ridden system when it comes to drug and alcohol testing in the motor carrier industry that allows an unknown number of truck drivers to abuse drugs and operate large trucks.

As detailed in this report, there are problems with the drug tests themselves and how they are administered. There is virtually no oversight of drug testing collection sites. GAO undercover investigators found that 22 out of 24 times collection sites failed to adequately follow DOT-required protocols. They found multiple opportunities to cheat on a drug test at nearly every collection facility they investigated and the investigators had no problem smuggling in synthetic urine that fooled the labs running the tests.

The report also outlines the significant problem of "job-hopping" truckers that hop from job-to-job without their past drug-use history hopping along with them. They simply don't list jobs where they failed a drug test on their employment history. GAO found that if a driver fails a drug test with one employer he just needs to stay clean long enough to get a negative test before applying to work for another carrier. There is no real accountability.

Finally, one of the most surprising findings in the report is that many drivers are not even being tested for drugs. Since 2001, FMCSA's compliance reviews indicate that over nine percent of the carriers had no drug testing programs at all. Furthermore, a carrier can still pass a safety audit without having a drug testing program. That's astonishing.

These are significant problems. I unfortunately have very little confidence in our current system to prevent drugged and drunk truck drivers from driving on our highways. While industry reports a positive drug test rate of between 1.6 and 2 percent, a 2007 Oregon State Police operation found that out of 500 anonymous tests of commercial drivers, 9.65 percent tested positive. That's a far cry from 2 percent. We don't know how broken the system is, but it's very clear that it is indeed broken.

We must close loopholes in testing procedures and we need to ensure that drug abusers aren't driving big trucks on the road. If a driver fails a drug test there must be a system in place that ensures they receive adequate treatment before being allowed to return to duty.

I commend GAO for the thorough work they did in compiling this report. We clearly have our work cut out for us and I intend to introduce legislation to address these pressing issues. My legislation will:

- Establish a national clearinghouse of positive drug test results, and require employers to check the system as part of the hiring process;
- Increase oversight over collection facilities to ensure they comply with DOT regulations for testing of commercial drivers; and
- Strengthen enforcement over motor carriers without a drug testing program, including new entrants.

Separately, I also want to look at banning products that are marketed for the sole purpose of subverting a drug test. There are no legitimate uses for these products and they should be taken off the market.

Our highways are no place for commercial drivers who abuse drugs or alcohol. When drugged drivers are behind the wheel, the lives and welfare of the traveling public are at risk. I look forward to working with Chairman Oberstar and the rest of the Committee to enact legislation to close these loopholes and keep our highways safe.

Statement of

The Honorable James L. Oberstar

Release of GAO Report, "Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them Off the Road"

May 21, 2008

Advancing safety on our nation's transportation systems is among the most important responsibilities of this Committee. Today, we will unveil striking results from an investigation, conducted by the Government Accountability Office (GAO), finding substantial loopholes in the system of drug and alcohol testing of commercial drivers. Inadequate drug and alcohol testing undermines safety on our nation's highways.

In 2006, according to the National Highway Safety Administration (NHTSA), nearly 5,000 people were killed in crashes involving large trucks, and an additional 106,000 were injured. Every one of these lives lost is a tragic reminder that we can, and must, do more to enhance safety on our roads.

While illegal drug use accounts for only a small percentage of these crashes, it is well documented how severely drugs such as cocaine, marijuana, and amphetamines impair driving ability. Operating a motor vehicle under the influence of drugs or alcohol – or both – can increase crash risk anywhere from two- to six-fold

In March, 2007, a local Fox news station in Minneapolis aired a story revealing serious violations of Department of Transportation (DOT) drug and alcohol testing rules at facilities performing drug tests on commercial drivers. As a result of this report, I, along with Subcommittee Chairman DeFazio, asked GAO to investigate these conditions and their underlying causes.

Last November, the Highways and Transit Subcommittee held a hearing to probe the problems with the implementation of drug and alcohol testing programs by motor carriers. From the testimony received at this hearing, including the preliminary observations from GAO, we perceived that there were serious deficiencies with the current drug and alcohol testing requirements, and that they do not successfully ensure that drivers using drugs are kept off the road.

Today, our fears have been confirmed. GAO has completed its work, and what they have reported to the Committee is disturbing.

One of the most surprising findings in GAO's report is that many drivers are not even being tested for drugs . Since 2001, FMCSA's compliance reviews indicate that over nine percent of carriers had no drug testing programs in place at all. In FMCSA's safety audits of new carriers, 30 percent had no drug testing programs. Even more stunning is the fact that FMCSA *allows a carrier to pass* a safety audit without having a drug testing program in place.

A second challenge is that we are not preventing drivers from subverting a drug test. When collection facilities do not follow protocols or meet Federal requirements, an opportunity exists for drug users to escape detection . GAO found serious rule violations in drug testing facilities. For example:

- In 22 of 24 facilities that GAO's undercover investigators visited, DOT did not adequately follow protocols designed to prevent a driver from cheating on a test.
- At almost one-half of the facilities, the investigators taking the test were not required to

empty their pockets, which allowed them to bring in adulterants and synthetic urine.

- At 75 percent of the facilities, soap, cleaning products, and other substances were available, which could be used to adulterate a test.

GAO estimates that there are more than 400 products and gadgets - such as "whizzies," "UrineLuck" and "Stealth" - designed for the sole purpose of beating a drug test. They are sold on websites such as [www.pass-your-drug-test.com](http://www.pass-your-drug-test.com) and, unfortunately, they work. As part of their undercover work, GAO investigators substituted or adulterated eight urine samples, and not a single one was caught by the labs. There are simply no legitimate uses for these products other than to subvert a drug test and they should be banned.

A third challenge is keeping drivers who use drugs off the road once they have tested positive for drug use. A driver must self-report 3 years of employment history when he or she applies for a new job, and whether he or she has had a positive pre-employment drug test or a refusal to test in that time period. If an employee admits to having had a positive test or a refusal to test, the new employer must ensure that the driver has completed a rigorous return-to-duty process, which includes evaluation by a Substance Abuse Professional and frequent testing before allowing him to drive. A driver can easily omit references to a job where the driver failed a drug test and by doing so, hide his or her drug use from a prospective new employer and skirt the return to duty process. This process is called "job-hopping."

To determine whether drivers were in fact job-hopping, the Committee subpoenaed 5 years of drug test results from one medium-sized drug testing company in Texas. During that time period, the records reveal that 698 individual drivers failed a drug test with one employer, but then passed a pre-employment test for a new employer – in many cases, just weeks after failing the first test. In a briefing to Committee Members this afternoon, GAO confirmed that many of these individuals were ultimately hired by the second employer, who admitted having no knowledge of the prior failed test.

It is clear from GAO's findings that we are just beginning to scratch the surface. These are pervasive problems which need to be fixed, and the Committee plans to introduce legislation in this pursuit.

Elements of the legislative proposal will include:

- Establish a national clearinghouse of positive, refused, and adulterated drug and alcohol test results, and require employers to query the clearinghouse as part of the hiring process;
- Increase oversight of collection facilities to ensure they comply with DOT regulations for testing of safety-sensitive transportation employees; and
- Strengthen enforcement over motor carriers without a drug testing program, including an emphasis on new entrants.

The Committee on Transportation and Infrastructure has a long-standing interest in DOT's drug and alcohol testing rules. In fact, we were instrumental in creating those rules in the late 1980s. We know that they have worked, as evidenced by the declining number of commercial drivers found to be using drugs, but we also know that they could work better. We cannot afford to stand idly by. We must move forward aggressively to ensure the safety of the traveling public.