



September 21, 2022

Robin Hutcheson  
Deputy Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

**Re: Docket Number: FMCSA-2022-0127-0003; Controlled Substances and Alcohol Use and Testing; Application for Exemption; The Trucking Alliance**

Dear Deputy Administrator Hutcheson,

J.B. Hunt Transport, Inc. thanks the Federal Motor Carrier Administration's (FMCSA) Office of Carrier, Driver, and Vehicle Safety Standards for the opportunity to comment on this "Controlled Substances and Alcohol Use and Testing Application for Exemption" published in the Federal Register on August 24, 2022.

J.B. Hunt Transport, Inc. (J.B. Hunt) provides safe and reliable transportation services to a diverse group of customers throughout the continental United States, Canada, and Mexico. Utilizing an integrated, multimodal approach, we provide capacity-oriented solutions centered on delivering customer value and industry-leading services, with nearly 24,000 tractors and 27,000 drivers.

J.B. Hunt is also a founding member of The Trucking Alliance, a coalition of like-minded, safety-conscious transportation companies that employ more than 82,000 professional drivers and management personnel across North America. J.B. Hunt urges FMCSA to grant the Trucking Alliance's petition for exemption referenced above, for reasons outlined in these comments.

J.B. Hunt is committed to ensuring the safety of the motoring public with whom our commercial drivers share the roadways. An integral part of this commitment is to make sure that our drivers are well trained, well rested and drug free. For example, J.B. Hunt requires that persons hired to perform safety sensitive occupations pass a hair drug test, in addition to the standard Department of Transportation (DOT) testing method (a urinalysis) as required in 49 CFR Part 382.301 – 382.311. The integral relationship between hair drug testing and public safety are explained in these comments.



### **A Hair Drug Test Result Qualifies as an Employer’s Actual Knowledge of a Driver’s Illegal Drug Use, Other than the DOT Drug Test:**

FMCSA acknowledges that an employer may become aware of a driver’s drug use, through means other than the standard DOT drug test. FMCSA states that: *“actual knowledge means, actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer’s direct observation of the employee, information provided by the driver’s previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee’s admission of alcohol or controlled substance use, except as provided in § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307. As used in this section, “traffic citation” means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.”*

A driver’s positive hair drug test result clearly qualifies as an example of an employer’s actual knowledge of a driver’s drug use, other than the standard DOT test. FMCSA should require an employer to submit a positive hair drug test result to the Clearinghouse, under its’ definition of actual knowledge and as “information provided by the driver’s previous employer(s).”

### **FMCSA Has Authority to Grant the Exemption:**

J.B. Hunt believes that FMCSA has the legal authority to grant this exemption request, per 49 CFR 381, Subpart C, Procedures for Applying for Exemptions as 381.300 (c)(2) wherein it states that exemptions can be granted, within Part 382 – Controlled Substances and Alcohol Use and Testing.

### **J.B. Hunt’s 16-Year Experience:**

J.B. Hunt has utilized hair testing since 2006. Our experience clearly shows that a hair drug test is more reliable and accurate at identifying illegal drug users, than is the DOT testing method – a urinalysis. For example, as of March 31, 2022, 191,972 truck driver job applicants have submitted to both the DOT test and a hair substance test.

The hair test identified 7,159 applicants, or 3.7%, for illegal drug use. But had J.B. Hunt only relied on the DOT test, we would have likely hired 6,443 of those drivers because 90% of them passed the DOT urinalysis. We disqualified those truck drivers and avoided a possible tragedy on our highways.

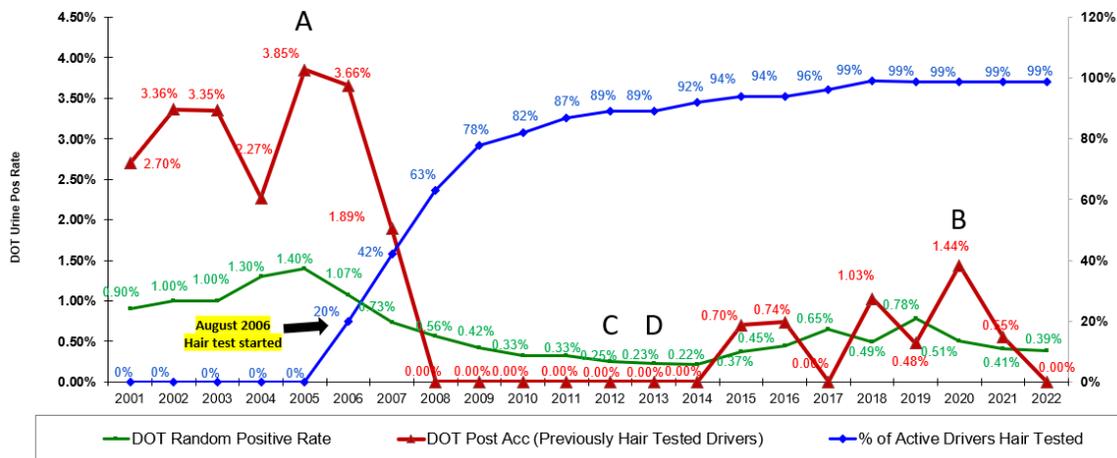


But while J.B. Hunt disqualified those drivers for employment, most of them likely applied for and obtained work at other trucking companies, that rely only on the DOT required pre-employment urine test.

The charts reveal the dramatic effect that JB Hunt’s hair testing program has generated. Below are some key points of this chart.

- **A** - See the elevated DOT random and DOT post-accident positive rates **before** driver hair testing implementation, of August 2006.
- **B** - **After hair testing start date of August 2006**, see the dramatic drop in both DOT random and DOT post-accident positive percentages as the percent of active drivers’ hair tested increased within our fleet.
- **C** - **Zero DOT post-accident positive drug tests for 7 straight years, (2008-2014).**
- **D** - **DOT random positive rate decline after August 2006 hair test implementation.** DOT random positive rates currently remain far below positive rates before hair testing, (2001-2005).

## Driver Hair Tested Compared to DOT Post-Accident & DOT Random Rates: Pre-employment



2022 through March 31<sup>st</sup>

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**J.B. Hunt Drug Testing Positive Rate Comparison Chart:**

- This chart shows the J.B. Hunt DOT post-accident and random positive rates for **A) the 3 years preceding** our hair testing program, (2004-2006), **B) our most recent 3 years**, (2019-2021), **C) the trucking industry average** for DOT post-accident and random positive rate(s) average for the years of 2018-2020.
- See the **3 years preceding** (2004-2006) -vs- **most recent 3 years** (2019-2021) dramatic improvement in the **A2) DOT Post Accident Positive Rate, 437% B2) DOT Random Positive Rate, 221%**, respectively.
- **J.B. Hunt’s most recent 3-year average DOT Post Positive Accident Rate, .82%** and DOT Random Positive Rate, .57% is 378% and 205% lower as compared to the 3-year industry average of 3.10% and 1.17% respectfully.

**Drug Testing Positive Rate Comparisons**

A	J.B. Hunt 3-years preceding hair testing					
	2004	2005	2006	Average		
	DOT Post Accident Positive Rate	2.27%	3.85%	3.66%	3.59%	
DOT Random Positive Rate	1.30%	1.40%	1.07%	1.26%		
B	J.B. Hunt most recent 3-years					% Improvement 3 years preceding –vs- most recent 3-years
	2019	2020	2021	Average		
	DOT Post Accident Positive Rate	0.48%	1.44%	0.55%	.82%	
DOT Random Positive Rate	0.78%	0.51%	0.41%	.57%		B2
C	3-year Industry Average*					J.B. Hunt results below 3-year industry Average
					Average*	
	DOT Post Accident Positive Rate				3.10%	
DOT Random Positive Rate				1.17%	205%	

\*Per FMCSA Analysis Brief “2020 Drug and Alcohol Testing Survey” Covering the years of 2018, 2019, and 2020. (<https://rosap.ntl.bts.gov/view/dot/61388>)



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**Conclusion:**

In December 2015, President Obama signed into law the FAST Act of 2015 which amended the Omnibus Transportation Employee Testing Act of 1991 (OTETA) by adding a requirement that FMCSA's drug and alcohol testing regulations permit the use of hair testing, as an acceptable alternative to urine testing, for pre-employment drug testing and random drug testing.

But seven (7) years later and the Department of Transportation (DOT) and FMCSA have yet to implement this congressional mandate. FMCSA explains that before it can permit employers to utilize a hair drug test, in lieu of a urinalysis, the Department of Health & Human Services (HHS) must provide technical drug testing guidelines, and HHS has yet to provide those guidelines.

This petition does not propose that FMCSA ignore forthcoming hair test guidelines. Neither does the petition propose that employers utilize hair testing in lieu of the current DOT test. But the petition does propose that *FMCSA* amend the definition of actual knowledge to include a positive hair test. A positive hair test from a laboratory certified by the American College of Pathology (CAP) and subject to Medical Review Officer (MRO) verification is a more reliable and accurate confirmation of illegal drug use than the four instances currently included in the meaning given of actual knowledge.

As an example, FMCSA should give the same weight to a recognized and accredited hair test result as it does a DUI traffic citation, regardless of the jurisdiction that issued the citation or whether there was a conviction. If FMCSA denies this petition, the agency is essentially stating that a traffic citation, regardless of conviction, is more valid than a positive hair drug test result. Denying this exemption is contrary to what Congress directed the DOT and FMCSA to do – recognize hair testing in order to improve highway safety.

A positive hair test result clearly qualifies as an employer's "actual knowledge" of a driver's illegal drug use. Granting this petition makes common sense and will help FMCSA meet its' primary mission – to reduce crashes, injuries and fatalities involving large trucks and buses.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Woodruff", written in a cursive style.

Greer Woodruff  
Sr. Vice-President of Safety, Security and Driver Personnel