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SAFETY

For carriers, growing use of marijuana challenges driver retention ☆

Growing institutional and cultural acceptance of marijuana makes the substance more available than ever. This challenges carriers to retain drivers and keep them informed within a changing regulatory landscape.

Jeremy Wolfe

Laws around marijuana are relaxing. Buying marijuana is becoming easier. But federal standards for drivers using marijuana remain the same.

Drivers are still subject to Department of Transportation regulations and testing. This brings some confusion for drivers and retention challenges for carriers.

On top of all this, the Drug Enforcement Administration may soon relax the federal classification of marijuana.

"It's just another pressure point for the recruiters and HR departments of these carriers trying to compete for those eligible drivers," Michael Precia, president and CSO of **Fleetworthy**, told FleetOwner.

See also: *[What to do after a cargo theft incident](#)*

While marijuana testing doesn't measure impairment, it is still necessary to ensure fleets have the safest drivers—and is particularly important under the threat of nuclear verdicts. In response, fleets may have to improve their recruiting, retention, and education practices.

Growing acceptance of marijuana

Legal and cultural acceptance of marijuana is rising across the U.S. This challenges drivers to make sense of shifting regulations, and that confusion may get worse as the DEA considers rescheduling marijuana.

More accessible than ever

Sweeping legalization of medical and recreational marijuana brings easier access to the substance than ever before. Marijuana is becoming much more accessible at a rapid pace.

According to the [National Conference of State Legislatures](#), 23 of the contiguous 48 states allow recreational marijuana, and another 13 states allow medical marijuana. Over half of the 23 recreational states legalized marijuana since 2020.

“In 2023, 41% of drivers in the United States lived in a state where recreational marijuana was legal,” Jeffrey Short, VP of the [American Transportation Research Institute](#), told FleetOwner. “In 2019, it was half that number. It’s quite a big jump to all of a sudden happen.”

ATRI’s 2023 study, “[Impacts of Marijuana Legalization on the Trucking Industry](#),” reviews recent demographic trends and research on the relationship between marijuana and trucking.

“With it being legal, it’s more accessible to more drivers,” Short said. “It’s not like you have to go into the underworld to get it; it’s right there.”

According to the [National Institute on Drug Abuse](#), overall marijuana use in the U.S. continues to rise. Among surveyed adults aged 19 to 30, an all-time high of 44% of respondents in 2022 reported using marijuana within the last year. That is nearly double 2012’s reported use rate of 28%.

Marijuana can be as accessible as alcohol in many places. To illustrate this, Short mentioned that he visits Cape Cod in the summer in Massachusetts—where a marijuana

dispensary sits right next to a Dunkin' Donuts.

"It's just that simple," Short said.

Regulatory confusion for drivers

As marijuana legalization grows, many drivers are unclear on the rules.

"Legalization of both medical and recreational marijuana has caused a lot of confusion in the industry with drivers about what's allowed and what isn't allowed. You might have a driver who's told by a medical professional that they should be using marijuana for pain or other symptoms, and then they're hearing the same thing basically reinforced in the news," Brenna Lyles, director of safety policy for the [American Trucking Associations](#), told FleetOwner. "But at the end of the day, those drivers are still subject to the federal DOT drug testing standards, and so marijuana is still not permitted for them to use."

The shifting marijuana landscape has brought regulatory confusion for a significant number of truck drivers.

"While the rules are clear, drivers don't necessarily always know what the rules are," Short said.

ATRI's 2023 study included a survey of more than 3,000 drivers. One question asked whether CDL drivers can use marijuana while both off-duty and in a legal state. Among the responses, 19.1% of drivers said they were uncertain about the rules, and 6.6% of drivers incorrectly believed that they could use marijuana at that time.

"That's a number in the range of a quarter of drivers out there were unclear on what the rules are," Short said. "That's the kind of confusion that has come out with this rollout of legal recreational marijuana while at the same time keeping it a very serious offense—as it should be—for drivers as far as testing is concerned."

A driver can even refrain from using THC and still fail a drug test. Some cannabidiol (CBD) manufacturers allow small quantities of THC in their products, triggering positive tests for

users simply seeking pain relief and not a high.

The **U.S. Supreme Court will hear a case in October on this issue**. In *Medical Marijuana v. Horn*, OTR hazmat driver Douglas Horn is suing Medical Marijuana Inc. The suit alleges that the company's CBD product, advertised as containing "0% THC," contained detectable quantities of THC and caused Horn to fail a DOT urine test, costing the driver his job.

Federal rescheduling down the line

To add to accessibility and driver confusion, the federal legal status of marijuana might soon change.

The **DEA issued a proposed rulemaking** to move marijuana from Schedule I to the less-restrictive Schedule III. The rescheduling would take marijuana out of a federal category for hardcore drugs and into **a category alongside Tylenol with codeine**.

"I think it's just going to continue to add to the noise, the confusion, and potentially the frustration around what's legal and 'OK' versus what the DOT is saying needs to be tested for," Lyles said.

DEA's comment period for the proposed rulemaking ended on July 22. The next steps for the rulemaking would be reviewed by an administrative judge before issuing a final rule. However, 2024's presidential election makes DEA's rescheduling less predictable. A change in administration could slow the rulemaking timeline or halt it altogether.

Adding to the driver shortage

Drivers found to commit drug violations **must immediately cease operating any commercial motor vehicle** on public roadways. CDL holders and others considering a job in trucking might be turned off when they discover DOT's stance on marijuana. As marijuana becomes more popular, culturally accepted, and accessible, these factors could limit the pool of available, qualified drivers.

"This definitely impacts the driving workforce and contributes to the driving shortage," Lyles said.

See also: Road to retention: Custom apps and transparency in trucking

The driver shortage continues to be one of the top issues facing industry professionals. The marijuana problem could aggravate that issue.

"I think all the carriers are looking for qualified drivers," Precia said. "It's still a highly competitive situation to get the right drivers into your seats, and this complicates the process."

Interestingly, ATRI's 2023 study found that carriers might be warming up to drivers with past drug use. The institute's survey of carriers found that more than half of respondents (56.3%) might hire a driver candidate with a past positive marijuana test.

"I guarantee you, if we had done that survey in 2002 instead of 2022, it would have been a different story," Short said. "There's clearly far more acceptance [of drivers who previously failed a test], and there's clearly also a driver shortage."

A large number of drivers tested positive for marijuana through Clearinghouse since 2020—more than 150,000, as of the June 2024 report. Though it reduces the number of available drivers, it also probably reduces the likelihood of marijuana-impaired drivers.

"I think, if you talk to a carrier, most of them—hopefully all of them—would say they'd rather have an empty truck compared to a driver who could potentially be high," Lyles said. "We want to retain those good people who are qualified and to make sure that they know what the rules are."

Carriers do seem deeply concerned about the risk of impaired drivers. ATRI's survey asked carriers how concerned they were that drivers would be more likely to drive impaired as a result of legalization. About 40% of respondents were "extremely concerned," 33% were "somewhat concerned," and 26% were "not concerned."

What can fleets do?

The shifting marijuana landscape challenges fleets to step up their messaging, education, recruiting, and retention practices. **DOT regulations will not change any time soon**, so it is up to fleets to adjust their workforce.

“The testing is going to continue,” Lyles said. “Until we have a proven standard measure for detecting drivers’ marijuana impairment while they’re driving and keeping those people off the roads, those drug testing rules really need to stay in place as they’re written now.”

Fleets will want to look at their safety policies and onboarding practices to continue efficiently hiring the safest drivers. “It is making sure you have a very good safety policy in place, and then a process to drive that onboarding as quickly and efficiently as possible,” Precia emphasized.

Carriers already have a lot of paperwork and regulatory diligence to keep their arms around. Partnering with a service provider might ease the burden of onboarding diligence. By doing so, this can assist in determining quickly whether a prospective driver is prohibited in order to avoid wasting time on invalid applicants.

“A lot of carriers are partnering with companies like Fleetworthy to get more bench strength, both from the people side and technology side so that they can do this quickly and efficiently—and so they’re not spending too much time with those applicants that are ineligible,” Precia told FleetOwner.

Messaging and education are also crucial to ensure drivers know the rules.

“The regs require employers to give their drivers, when they’re hired, a handbook on the DOT testing rules, but that might be the last time that they ever get any kind of training or information about what they are allowed and not allowed to be doing,” Lyles said. “And those rules do change. If they don’t know how they’re changing, that’s concerning.”

With clear, consistent communication, fleets can keep drivers informed.

“That’s where ongoing education, messaging, and incorporating those things into daily practices, regular safety meetings, and required ongoing training of drivers are critical,” Lyles said.

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Marijuana testing bottlenecks commercial driver availability

The rise in positive marijuana tests among commercial drivers is impacting the industry, with nearly 70% of positive Clearinghouse drug tests detecting marijuana use. Growing popularity and a lack of impairment testing contribute to the issue.

Jeremy Wolfe

Positive marijuana tests push many drivers out of the industry, aggravating an existing recruiting and retention challenge.

Education and messaging can help keep drivers up-to-date on DOT rules—but how significant is the rate of positive marijuana tests among drivers?

Since 2020, the Federal Motor Carrier Safety

Administration's Drug & Alcohol Clearinghouse has logged 233,910 positive drug tests. Of those positive tests, 159,550—nearly 70%—found evidence of marijuana use.

That is a large number of drivers forced to immediately cease operation of any commercial vehicle on public roads. Some of this is due to a national trend toward cultural and legal acceptance of the substance, causing confusion for drivers. Another major contributor is the massive detection window for marijuana in drug tests.

More marijuana coverage from FleetOwner

- For carriers, growing use of marijuana challenges driver retention
- Heller: Don't let safety go up in smoke
- Cannabis competition creates carrier conundrum

“A lot of folks are testing positive for marijuana because marijuana stays in your system for 30 days,” Michael Precia, president and CSO of **Fleetworthy**, said. “That doesn’t necessarily mean those drivers were driving stoned at all; they weren’t necessarily using while driving. But it stays with you for such a length of time that you’re going to get positive for a test even if you’re casually using in your off-duty time.”

See also: 4 steps to incentivize safe driving

Not only is marijuana one of the most popular illicit substances subject to **Department of Transportation** testing, but it also has the largest detection window by a significant margin.

Impairment testing is tricky

The legal acceptance of off-time alcohol use is a common analogy for arguments that defend marijuana use. If an employee can have a couple of beers on the weekend and return to work sober, it seems unjust that any marijuana use—at any time—should cost the employee their livelihood.

Similar to alcohol use, marijuana use makes unsafe drivers. Marijuana impairment limits executive function and motor control, and marijuana use increases the risk of causing a fatal accident.

However, marijuana impairment works a bit differently from alcohol.

Marijuana impacts the brain in different ways than alcohol, bringing different impairments to mood, memory, and cognitive performance that last for different lengths of time. And, while alcohol has breathalyzers to measure intoxication, marijuana has no functional equivalent.

“The whole idea is to keep the industry safe, and if you’re not using while driving, in theory that would be safe,” Jeffrey Short, VP of the **American Transportation Research Institute**, said. “Here’s the problem, of course: Marijuana impairment tests are very elusive. There is not an accepted marijuana impairment test. It just doesn’t exist. Whoever invents it is

going to be a billionaire. It's very much needed for our industry, for other industries, and for the general public."

With no impairment test, the only available tests for marijuana look for metabolites in urine. Marijuana has some of the **longest detection windows of any illicit substance** subject to urine testing. Its metabolite, Δ^9 -THCA, can be found in urine for as long as seven to 30 days after use. This is a large timeframe and hardly indicative of impaired driving.

However, there is no better federally-accepted alternative to tell whether a driver might operate under the influence of marijuana. And, in **today's challenging legal landscape for the trucking industry**, any evidence of a driver's marijuana use can be very harmful to carriers.

"Clearly, plaintiffs' attorneys will hone in on just about anything they can find if a driver screens positive for marijuana in a post-crash, regardless of whether it was a factor," Short said.

Metabolite testing for a history of marijuana use is the best available option in determining whether a driver is at risk of driving impaired. Precia compares this testing to hours-of-service regulations.

"The whole goal of hours of service is just to make sure that a driver is not fatigued and not impaired," Precia explained. "Fatigue in itself is not illegal, right? It's really trying to figure out ways to ensure that the driver is not impaired."

"There is no impairment standard," Brenna Lyles, director of safety policy for the **American Trucking Associations**, said. "Until that exists, the test for marijuana is critical because use is the only thing that we can use right now to indicate safety."

Marijuana test results in recent years

Marijuana use nearly doubled since 2012. Motor carriers have found an increase in drivers' positive pre-employment tests and walk-outs. However, the Federal Motor Safety Administration's count of positive marijuana tests decreased over the last two years.

According to the National Institute on Drug Abuse, overall marijuana use in the U.S. continues to rise. Among surveyed adults aged 19 to 30, an all-time high of 44% of respondents in 2022 reported using marijuana within the last year. That is nearly double 2012's reported use rate of 28%.



Marijuana use by adults nearly doubled since 2012 but drug violations over the last two years declined.

FMCSA's **Drug & Alcohol Clearinghouse**, first implemented in 2020, is now a working federal database for drivers who have violated federal drug and alcohol testing requirements. Clearinghouse data is limited to only a few years, heavily disrupted by an unusual freight cycle since the pandemic. However, positive tests in recent years are declining.

Overall drug violations are trending down over the last two years. The number of **drug violations in the Drug & Alcohol Clearinghouse** fell since 2022, when drug violations peaked at 57,508. In 2023, violations dipped to 54,159.

As of the Clearinghouse's June 2024 report, violations to date reached 25,434—well below 2023's midyear report total of 28,145 and 2022's midyear total of 29,065.

Clearinghouse's findings specifically for tests detecting marijuana metabolites shows a similar trend. Positive marijuana tests through Clearinghouse are down roughly 10% year over year.

The 2022 June report found 20,896 positive tests for marijuana, 2023's midyear report found 19,378 positive tests for marijuana, and 2024's report fell to 17,390. However, Clearinghouse in 2024 still found more positive marijuana tests than in 2021, which encountered 15,800 positive marijuana tests from January to June.

On the other hand, ATRI's 2023 survey of 238 motor carriers suggests that positive pre-employment tests and walk-outs have risen. When asked if respondents noticed an increase in positive pre-employment tests or walk-outs in the past five years, 60.1% said 'yes.'