

GENERAL SESSION

# DEVELOPING FLEET POLICIES THAT ADDRESS THE STATE OF LEGALIZATION OF MARIJUANA ON IMPAIRED DRIVING

**Presenter:**

Tom Bray

J.J. Keller

*Sponsored by*

**LO**  **JACK**®

# IT'S ALL ABOUT SAFETY.



Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# History

- 1989: DOT institutes drug testing for “large carriers” (50 drivers or more)
- 1990: Small carriers required to comply as well
- Similar push by DOL for “drug-free workplace,” however, not regulatory

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Prohibited by DOT

- ALL Schedule I drugs
  - High potential for abuse
  - No currently accepted medical treatment use
  - No prescriptions may be written for Schedule I substances
- Some Schedule II drugs
  - High potential for abuse
  - Has a currently accepted medical use
  - Required prescription written by provider with a DEA number

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# DOT Regulation

- Schedule I references:
  - “Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug.” Part 391
  - “No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I” Part 382

# Prohibited by DOT

- Schedule I, which includes (examples):
  - PEPAP (opioid)
  - Heroin (diacetylmorphine)
  - LSD (lysergic acid diethylamide)
  - Marijuana (cannabis, THC)
  - Mescaline (Peyote)
  - Psilocybin
  - Phencyclidine
  - GHB (gamma-hydroxybutyric acid)
  - Methaqualone (Quaalude)
  - Khat (Cathinone)
  - MDMA (3,4-methylenedioxymethamphetamine or “ecstasy”)
  - Bath Salts (3,4-methylenedioxypropylone or MDPV)

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# DOT Regulation

- Schedule II
  - “Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 except when the use is prescribed by a licensed medical practitioner...who is familiar with the driver’s medical history and has advised the driver that the substance will not adversely affect the driver’s ability to safely operate a commercial motor vehicle.” Parts 391 and 382

# Prohibited by DOT

- Some Schedule II, including (examples):
  - Amphetamines and methamphetamines
  - Cocaine derivatives
- Other Schedule II drugs that can create problems:
  - Hydrocodone
  - Methadone
  - Morphine
  - Nabilone
  - Pentobarbital

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Schedule II Issues

- You have the right to know!
  - “An employer may require a driver to inform the employer of any therapeutic drug use” (§382.213)

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association





# DOT Required Drug Tests

- Pre-employment
- Random
  - 50 percent annually
- Post-accident
  - Only for certain accidents...see §382.303
- Return-to-duty
- Follow-up

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Consequences for Failing DOT Test

- Company policy dictates employment status
- Employee must complete return-to-duty process
  - SAP referral, evaluation, and treatment plan
  - Return-to-duty test
  - Follow-up tests

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Consequences for Failing DOT Test

- State consequences
  - AR, CA, NC, NM, OR, SC, TX and WA the positive drug test results reported to the state licensing agency
    - Future employers must verify that the driver has completed the return-to-duty process when hiring the driver
  - NC and WA take action against the driver's CDL
    - Driver must provide state with documentation verifying completion of the return-to-duty process to get CDL back

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Future Consequences

- The positive drug test results reported to the National Drug and Alcohol Clearinghouse
  - Progress through return-to-duty process tracked
  - Carriers will have to check clearinghouse at hire and annually

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# The Problems

- Tests can be “beaten”
  - Substitution (collection procedures in place to prevent)
  - Time metabolite is in system/testing thresholds
- Only certain drugs are tested for
- Confusion on “legal marijuana”
- Being impaired by ANY controlled substance (even prescribed Schedule II or III) can lead to “under the influence” violation

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Tested for During DOT Test

- “DOT five-panel”
  - Marijuana metabolites
  - Cocaine metabolites
  - Amphetamines
    - Amphetamines/Methamphetamine
    - MDMA
  - Opiate metabolites
    - Morphine
    - 6–Acetylmorphine
  - Phencyclidine (PCP)

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Drug Testing Issues

- Schedule I synthetic drugs not found on drug tests
  - Synthetic marijuana (Spice, K2, etc.)
  - Liquid synthetic marijuana
  - Bath salts (CNS stimulant)
- Reminder: All Schedule I drugs are prohibited

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# “Legal Marijuana”

- 23 states now have “medical marijuana” laws
  - One (CA) does not have specific diagnosis requirement
- 2 states have legalized recreational adult use
- 2 additional states and D.C. are working on legalized recreational adult use
- 29 states have “decriminalized” or made possession of “personal amount” into minor misdemeanor

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association





# “Legal Marijuana”

- DOT’s view of marijuana has not changed!
  - Marijuana still a Schedule I drug
  - DOT does not recognize the use of medical or recreational marijuana as a legitimate reason for failing a drug test (“testing positive”)

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# “Legal Marijuana”

- DOT’s released policy and compliance memos!
  - Medical marijuana: 10/2/2009 — “40.151(e) does not authorize ‘medical marijuana’...”
    - MRO MUST verify positive lab results as positive
  - Recreational adult use: 12/3/2012 — “MROs will not verify a drug test as negative based upon learning that the employee used ‘recreational marijuana’ when states have passed ‘recreational marijuana’ initiatives.”

# “Legal Marijuana”

- Bottom line: If a commercial driver fails a drug test, whether it is administered by law enforcement or by the driver’s company as part of the company’s DOT required testing program, the driver will lose his/her ability to operate a commercial vehicle

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# The Solutions

- Polices and procedures
  - “Zero tolerance” drug policy that is trained on
  - Clear expectations when it comes to “legal” Schedule I drugs
  - “Reasonable suspicion training” modeled after fact-based DRE training

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Drug Policies and Procedures

- Safety takes precedence
- Model drug policy
  - No Schedule I drug use
  - No Schedule II drug use, unless prescribed by a provider that knows the employee's job and responsibilities and company has knowledge
  - No being under the influence of any drug while on duty
  - No use of any drug while on duty

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Drug Policies and Procedures

- Model drug policy
  - Must pass drug test at any time
  - Consider use of wider “non-DOT” drug tests
    - Understanding the difference is critical
  - “No breaks” when it comes to random tests
  - Consequences of non-compliance **MUST** be known to employees
    - Problems have developed with “non-safety related” employees

# Drug Policies and Procedures

- First line of Defense: Well-trained supervisors
  - Specifically, trained in “reasonable suspicion” processes
  - DOT requirement involves MINIMUM of one hour training each on:
    - Signs of alcohol misuse
    - Signs of drug use
  - Know the company policies and regulations on reasonable suspicion
  - No “refresher” or “continuing ed” requirement, however...

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Well Trained Supervisors

- Supervisors trained in reasonable suspicion can spot impairment
  - “Nystagmus” (jerky movement of eye when moved horizontally or vertically)
  - Eye focus and convergence (or lack of)
  - PERL
    - Pupil size
    - Pupil reaction to light



# Well Trained Supervisors

- Supervisors trained in reasonable suspicion can spot impairment
  - Vital signs (pulse/respirations)
  - Body temperature
  - Muscle tone/movement
  - Speech
  - Gait

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Well Trained Supervisors

Physical Finding	CNS Depressants	CNS Stimulants	Hallucinogens	Dissociative Anesthetics	Narcotic Analgesics	Inhalants	Cannabis
Horizontal Gaze Nystagmus	<b>PRESENT</b>	<b>None</b>	<b>None</b>	<b>PRESENT</b>	<b>None</b>	<b>PRESENT</b>	<b>None</b>
Vertical Nystagmus	<b>(High Dose) Present</b>	<b>None</b>	<b>None</b>	<b>PRESENT</b>	<b>None</b>	<b>PRESENT</b>	<b>None</b>
Lack of Convergence	<b>PRESENT</b>	<b>None</b>	<b>None</b>	<b>PRESENT</b>	<b>None</b>	<b>PRESENT</b>	<b>PRESENT</b>
Pupil Size	<b>(1) NORMAL</b>	<b>DILATED</b>	<b>DILATED</b>	<b>NORMAL</b>	<b>CONTRICTED</b>	<b>(4) NORMAL</b>	<b>(6) DILATED</b>
Reaction to Light	<b>SLOW</b>	<b>SLOW</b>	<b>(3) NORMAL</b>	<b>NORMAL</b>	<b>LITTLE OR NONE VISIBLE</b>	<b>SLOW</b>	<b>NORMAL</b>
Pulse	<b>(2) DOWN</b>	<b>UP</b>	<b>UP</b>	<b>UP</b>	<b>DOWN</b>	<b>UP</b>	<b>UP</b>
Blood Pressure	<b>DOWN</b>	<b>UP</b>	<b>UP</b>	<b>UP</b>	<b>DOWN</b>	<b>(5) UP/DOWN</b>	<b>UP</b>
Body Temperature	<b>NORMAL</b>	<b>UP</b>	<b>UP</b>	<b>UP</b>	<b>DOWN</b>	<b>UP/DOWN NORMAL</b>	<b>NORMAL</b>
Muscle Tone	<b>FLACID</b>	<b>RIGID</b>	<b>RIGID</b>	<b>RIGID</b>	<b>FLACID</b>	<b>FLACID</b>	<b>NORMAL</b>

**(1) Soma & Quaaludes usually dilate  
(2) Quaaludes & alcohol may elevate**

**(3) Certain psychedelic amphetamines cause slowing  
(4) Normal but may be dilated**

**(5) Down with anesthetic gases-  
up with volatile solvents & aerosols  
(6) Possibly normal**

# Policies and Procedures

- Model policy for dealing with reasonable suspicion situations:
  - Observation required by trained supervisor
  - Second opinion
  - Discuss situation with individual (no secrets)
  - Document situation and signs

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Policies and Procedures

- Model policy for dealing with reasonable suspicion situations:
  - Do not allow person to drive self to test, take home after
  - No safety-sensitive work until results come in
  - Mandatory EAP referral unless reason for suspicious activity discovered
    - Remember issues?

# Summary

- DOT regulations are clear on Schedule I and II drug use, even if testing is not
- Positive lab results verified as positive, even if driver has prescription or claims use was in “legal state”
- Have a solid drug policy, and train on it
- Do not rely totally on testing and policy: Have supervisors that are well-trained on reasonable suspicion signs and processes

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association



# Questions?

- Think of any later:
  - [transporteditors@jjkeller.com](mailto:transporteditors@jjkeller.com)

---

IT'S ALL  
ABOUT  
SAFETY.

Brought to you by  
automotive  
**FLEET**  
**HDT**

Award in conjunction with  
  
American Automotive  
Leasing Association

