

Log 2396C



National Transportation Safety Board

Washington, D.C. 20594
Safety Recommendation

Date: December 17, 1992

In reply refer to: A-92-113

To the Governors and Legislative Leaders
of the States
(See mailing list attached)

The Safety Board recently completed a study on alcohol and other drug involvement in fatal general aviation accidents that occurred from 1983 through 1988.¹ Despite a downward trend in alcohol-involved fatal general aviation accidents, about 6 percent of the fatally injured pilots in the study were flying while impaired. The mean blood alcohol concentration (BAC) of the alcohol-positive pilots was 0.15 percent, nearly four times the 0.04-percent BAC offense level established by current Federal Aviation Administration (FAA) regulations. More than 95 percent of the alcohol-positive pilots had a BAC that exceeded the 0.04-percent BAC offense level, more than 74 percent had a BAC that exceeded the 0.10-percent level established as illegal for drivers by most of the driving-while-intoxicated laws enacted by States, and more than 47 percent had a BAC that exceeded 0.15 percent.²

The high BAC levels found in this study are similar to the high BAC levels found in a 1984 Safety Board study.³ The Board is concerned about alcohol involvement in general aviation accidents because of its adverse

¹ National Transportation Safety Board. 1992. Alcohol and other drug involvement in fatal general aviation accidents, 1983 through 1988. Safety study NTSB/SS-92/03. Washington, DC.

² State laws use various terms to describe alcohol-impaired operation: driving while impaired, driving while intoxicated, or operating under the influence of alcohol. Similar variations in terminology are found in State laws describing alcohol-impaired flying. As used in this letter, driving while intoxicated (DWI) and flying while intoxicated (FWI) refer to any of these terms.

³ National Transportation Safety Board. 1984. Statistical review of alcohol-involved aviation accidents. Safety Study NTSB/SS-84/03. Washington, DC.

effect on performance. Research has demonstrated that BACs below 0.04 percent can produce impairment.

Although the recent study provides information about fatal general aviation accidents for the 1983 through 1988 period, little is known about nonfatal general aviation accidents because the number of toxicological tests performed after these accidents has been small (about 1.0 percent of the 13,677 accidents that occurred from 1983 through 1988) and some test results may not be reported to the FAA.

The low rate of testing pilots involved in nonfatal general aviation accidents is the result of the absence of an implied consent provision (requiring a pilot to submit to toxicological testing) in many existing State flying-while-intoxicated (FWI) laws, and the absence of FWI laws in some States.

Under the Federal regulations pertaining to alcohol and drug testing in civil aviation (Title 14 Code of Federal Regulations Part 91.17), which include general aviation pilots, pilots must submit to toxicological testing for alcohol only if a test is requested by a law enforcement officer under the provisions of State law. Under most State laws, an officer may not request a test unless an offense has been committed in the presence of the officer or the officer has cause to believe (based on the odor of alcohol on the pilot or other evidence at an accident) that an offense has been committed. The authority to request such a test is dependent on the existence of a State law pertaining to flying while intoxicated.

Although 44 States have some form of law related to flying while intoxicated, the provisions of the laws vary from State to State. Only 16 States with FWI laws have an implied consent provision (for chemical testing) and establish a BAC level at which a pilot is presumed to be impaired: Arizona, California, Colorado, Georgia, Idaho, Michigan, Minnesota, Montana, New Hampshire, Oklahoma, and South Carolina establish a BAC of 0.04 percent; Nebraska 0.05 percent; Alaska, Kansas, Louisiana, and Massachusetts 0.10 percent.⁴

It is important to note that a State law requiring a person to submit to a chemical test (for alcohol) may not require a toxicological test. The term "chemical test" means that the law enforcement officer is legally permitted to request a test, usually breath, for alcohol. A toxicological test involves laboratory testing of biological specimens. State law defines the

⁴ (a) Information on all States except Kansas was obtained from an analysis of State flying-while-intoxicated laws by the Illinois General Assembly. (Huang, Wen. 1992. Laws against flying under the influence. Legislative Research Unit File 10-376. Springfield, IL: Illinois General Assembly.) (b) Information on the Kansas law was provided to the Safety Board in July 1992 by the Kansas Department of Transportation.

specimen(s) that can be obtained--such as breath, blood, urine, and/or other bodily substance--and whether multiple tests (for alcohol and for other drugs) may be performed.⁵

If a toxicological (or a chemical) test for alcohol is requested from a pilot by a law enforcement officer, the pilot is required by Federal regulation to report the results to the FAA, whether the results are positive or negative. Of the 16 States with FWI laws that include an implied consent provision and establish a BAC offense level, 15 also require reporting of test results to the FAA; the Kansas FWI law does not require reporting of test results to the FAA.⁶ Thus, the law enforcement officer may or may not report test results to the FAA, depending on the provisions of the State law. The FAA may also request test results if it is aware of the aviation accident. If the pilot refuses the test or fails to provide a specimen for testing, the pilot is required to notify the FAA. In either case, the FAA may then take action against the pilot's airman certificate. Refusal to submit to a lawfully requested test may result in sanctions by the FAA and, in States with implied consent laws that apply to aviation, the State may impose a sanction provided by State law.

Although a State with an FWI law may take some type of action, it may not take any action against the pilot's Federally issued airman certificate. For example, conviction under the Minnesota FWI law may result in prohibiting the pilot from flying in Minnesota airspace but would not prohibit the pilot from flying in the airspace of other States. Conviction under California law may result in a prison sentence (30 days to 6 months) and a fine (\$250 to \$1,000). Conviction in Alaska, a State with a comprehensive law on operating under the influence, may result in suspension or revocation of the pilot's drivers license; Alaska's law is comprehensive in the sense that it pertains to the operation of all motorized vehicles, aircraft, and watercraft while intoxicated or impaired.

States cannot adequately identify pilots who fly under the influence of an impairing substance and corrective actions cannot be taken without comprehensive laws that establish a specific BAC offense level, have an implied consent provision to obtain biological specimen(s) for toxicological tests for alcohol and other drugs, define the specimen(s) that may be obtained, and require reporting of toxicological test results and refusals to submit to testing to appropriate authorities. Most State driving-while-intoxicated (DWI) laws include these provisions. The Safety Board believes that State FWI laws should include similar provisions.

⁵ A blood test is likely to be requested in States with an implied consent law and when the pilot is unconscious or unable to give consent.

⁶ This information is according to the Illinois analysis of FWI laws and the Kansas Department of Transportation.

Therefore, as a result of its safety study, the National Transportation Safety Board recommends that each State:

Enact comprehensive laws pertaining to alcohol and drug use in aviation, or amend existing laws as appropriate, to include: (a) an implied consent provision to obtain biological specimen(s) for toxicological tests, for alcohol and other drugs, of pilots involved in accidents that result in death, serious injury, or substantial aircraft damage; (b) definition of the specimen(s) that may be obtained--such as breath, blood, urine, and/or other bodily substance; (c) a blood alcohol concentration that defines the offense; and (d) a requirement to report to the Federal Aviation Administration toxicological test results and refusals to submit to testing. (Class II, Priority Action) (A-92-113)

As a result of its safety study, the Safety Board issued recommendations to the Governors and Legislative Leaders of the States, the Federal Aviation Administration, the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the National Agricultural Aviation Association, the National Air Transportation Association, the National Association of Flight Instructors, and the National Association of State Aviation Officials.

The National Transportation Safety Board is an independent Federal agency with the statutory responsibility "...to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations" (Public Law 93-633). The Safety Board is vitally interested in any actions taken as a result of its safety recommendations and would appreciate a response from you regarding action taken or contemplated with respect to the recommendation in this letter. Please refer to Safety Recommendation A-92-113 in your reply.

Chairman VOGT, Vice Chairman COUGHLIN, and Members LAUBER, HART, and HAMMERSCHMIDT concurred in this recommendation.



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