National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation Log I-95

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In reply to: I-89-4 through -12

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Investigations of transportation accidents conducted by the National Transportation Safety Board provide concern about the prevalence of drug and alcohol use and its effect on the safety of the traveling public. Substance abuse has been particularly evident in rail and highway accidents and, to a lesser extent, has also been evident in aviation and marine accidents. The Safety Board believes that the problems of drug and alcohol use in transportation should receive the highest level of attention by the U.S. Department of Transportation (DOT), specifically in regard to DOT's drug and alcohol testing regulations. The Safety Board commends the efforts by DOT to develop regulations to eliminate drug and alcohol use in transportation.

The Safety Board does, however, take exception to the inconsistent approach taken by the DOT in the formulation of those regulations that pertain to the drug and alcohol testing of persons involved in accidents or incidents. Substantial differences exist among the postaccident/incident sampling and testing requirements for the transportation modes and between the drug testing policies for DOT employees in safety sensitive positions and private sector employees. Furthermore, the testing requirements of many pertinent regulations are not sufficient to permit the Safety Board or the modal agencies to identify the extent to which drug and alcohol abuse contributes to transportation accidents.

Under the Federal Aviation Administration's (FAA) regulations for postaccident/incident testing of aviation personnel, Safety Board investigators may not be able to determine whether surviving air carrier crewmembers or FAA air traffic controllers caused or contributed to an accident because of drug or alcohol impairment. The DOT regulations for postaccident testing incorporate the guidelines developed by the Department of Health and Human Services (DHHS). The Safety Board has several concerns regarding the incorporation of these guidelines in postaccident/incident testing regulations. First, the guidelines specify the collection of urine only. Second, the guidelines specify the analysis for only five drugs or drug classes. These five drugs do not include alcohol, the substance of most frequent abuse, prescription medications, and other illicit drugs. Third, the presence of drugs or alcohol (if tests were required) cannot be related to a

level of performance impairment without the analysis on a blood sample; such a test is not required. Fourth, the drug level in the urine may be below the measurement threshold cutoffs specified in the DHHS guidelines due to the high thresholds in these guidelines and due to delays in collection of urine following an accident. Even though drugs may have been present at a level sufficient to cause performance impairment when an accident occurred, the level could decline below the high measurement threshold cutoff by the time of sampling; the presence of a drug and its contribution to an accident would thus go undetected. Finally, the DHHS guidelines were never intended to be used for forensic purposes--that is, to determine the causal relationship of drugs (or alcohol) to a transportation accident--yet the guidelines are being made to serve that purpose by their incorporation in postaccident/incident testing regulations.

In contrast to FAA requirements, the Federal Railroad Administration (FRA) requires the collection of both blood and urine as soon as practical after an accident involving railroad employees. The investigations of railroad accidents have shown the benefits of the FRA regulations. The extent of substance use and abuse includes illicit drugs, prescription medications, and alcohol, all of which can cause sufficient performance impairment to produce a serious or catastrophic accident. The Safety Board has advocated adoption of common rules similar to those used by the FRA in the Board's comments on notices of proposed rulemaking for drug testing regulations by various DOT agencies, even though the Safety Board considers the drugs identified in the FRA program as being minimal requirements. The Safety Board's comments were unheeded.

Investigation of the grounding of the EXXON VALDEZ in Prince William Sound on March 24, 1989, disclosed that the captain of the vessel had alcohol in his blood and urine some 10 hours after the grounding. However, because of the delay in obtaining specimens, there is an increased uncertainty regarding his condition at the time of the accident. In addition, a U.S. Coast Guard Vessel Traffic Service (VTS) employee (a DOT civilian in a safety sensitive position) on duty at the time of the grounding had gone off duty before being asked to provide blood and urine specimens for drug and alcohol testing. His blood and urine specimens were positive for alcohol, which he claimed was due to drinking after going off duty. The DOT determined that the VTS employee was not sampled and tested according to the DOT employee testing procedures, which call for urine testing only and do not provide for alcohol analysis. In addition, a Coast Guard employee collected the specimen, which was not in accordance with policy. The DOT employee testing policy calls for a contractor to collect the specimen; because the contractor could not get to Alaska within a reasonable time, a second urine sample of the VTS employee was obtained about 90 hours after the qualifying accident. The DOT policy establishes a guideline of 32 hours in which to collect a specimen from an employee after an accident or incident has occurred; this length of time is unreasonable. Certainly 90 hours far exceeds any reasonable time period for collection of specimens.

The manner in which DOT regulations do not address alcohol are of concern to the Safety Board. In addition to the regulatory confusion regarding whether or not alcohol determinations are to be made and in what body fluid, a number of the modal agencies (FAA, FHWA, FRA, and the Coast Guard) within DOT have set a threshold limit for blood alcohol (0.04 percent and above is prohibited) within the regulations even though a test for alcohol may or may not be required. Other agencies (UMTA, and Research and Special Programs Administration) have not defined a limit. The Safety Board addressed the concern of what blood alcohol content (BAC) constitutes impairment in Safety Recommendation A-84-45 in 1984 to the Federal Aviation Administration when the FAA first used the 0.04-percent BAC cutoff. The Safety Board classified this recommendation as "Closed--Unacceptable Action" on September 16, 1985, when the FAA established the 0.04-percent BAC as the impairment level.

On December 10, 1987, the Safety Board wrote to Secretary Burnley, encouraging him to reconsider the Department's position on the BAC definition of "under the influence" and to implement rules that would penalize any BAC greater than zero. On February 3, 1988, Assistant Secretary Matthew V. Scocozza responded to the Safety Board:

> I agree that we should reevaluate our position on what, if any, blood alcohol level is acceptable for those commercial operators within our purview.
>
> I have directed my staff to work with the modal administrations to develop a department wide definition of "under the influence." You may be assured that I place a high priority on this issue and we will move expeditiously.

The Safety Board has not heard further from the Secretary's office regarding this issue. On October 4, 1988, the Federal Highway Administration (FHWA) published its final rule on permissible blood alcohol levels for operators of commercial motor vehicles. Drivers having any positive alcohol concentration are subject to 24-hour out-of-service sanctions; however, 0.04 percent was again established as the level at or above which a person operating a commercial motor vehicle would be subject to commercial driver license disqualification. This level was established in spite of a National Academy of Science conclusion that at any BAC level above zero, the driving performance of most commercial drivers would be degraded sufficiently to increase the risk of a crash.

In addition to the FAA and FHWA, the FRA and the Coast Guard have previously adopted policies prohibiting the operation of vehicles at a BAC of 0.04 percent and above. Other agencies, such as the Research and Special Programs Administration and the Urban Mass Transportation Administration (UMTA), have no policy at all. Defining "under the influence" as having a BAC of 0.04 percent or greater leaves the impression among transportation workers and the public that drinking is allowable so long as the BAC tests below 0.04 percent. The Safety Board does not believe this is the message the DOT wishes to send. It should be absolutely clear that no alcohol is acceptable in commercial transportation because research has demonstrated that low blood alcohol levels can produce impairment.

The recent drug and alcohol regulations of the various DOT administrations treat Federal employees and employees in the private sector differently. According to Public Law 101-71 (101 Stat. 471, July 11, 1987), disclosure of toxicological results obtained on Federal employees pursuant to Executive Order 12564 (September 15, 1989) can be released only (1) to the employee's medical review official, (2) the administrator of any employee assistance program in which the employee is receiving counseling, or (3) to any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee, or (4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse action. Release of test results to anyone else requires the written consent from the employee. Thus, during an accident investigation, information on drug abuse by a government employee in a safety sensitive position will not be made available to the investigators unless the employee gives written authorization. In contrast, drug and alcohol testing results from individuals in the private sector is released without written consent.

One of the most (if not the most) important objectives of postaccident drug and alcohol testing is to determine whether such substances caused or contributed to the cause of an accident. The use of the results of such testing by the Safety Board has led and will continue to lead to the development and implementation of recommendations and procedures to prevent accidents. If DOT employees in safety sensitive positions are free to withhold the results of postaccident toxicological test results from the Safety Board, crucial factual information pertaining to the accident will be kept secret, and the Safety Board's mandate to determine the facts, circumstances, and probable cause of the accident and to develop safety recommendations will be defeated. Therefore, DOT must eliminate the double standard between the disclosure of toxicological test results on private persons who have a direct responsibility for transportation safety and DOT employees who occupy safety sensitive positions.

At the present time, blood and urine specimens collected during investigation of rail accidents and incidents are under the control of the FRA. The FRA contracts with and pays for a private laboratory to carry out the drug analysis of blood and urine specimens. Similarly, the FAA has an interagency agreement with the Armed Forces Institute of Pathology (AFIP) for testing fatally injured crewmembers in aviation accidents. In selected cases, a surviving pilot or crewmember has been tested under this program. However, postaccident testing under new regulations for the modal agencies (except the FRA) places the responsibility for analysis of urine specimens for drugs with the employer. Furthermore, the reporting of toxicological testing (including postaccident testing) results to the appropriate DOT regulatory agency--such as the FAA, FHWA, and the Coast Guard--is done on a 6-month basis. Thus, a DOT agency may not know the results of postaccident testing until months after an accident investigation has been completed.

With the exception of railroad and perhaps marine employees, alcohol- and drug-impaired persons involved in accidents may not be identified as a result of the current modal regulations and DOT's Drug-Free Departmental Workplace Drug Testing Guide for DOT employees in safety sensitive positions. The drug and alcohol regulations for the various transportation modes are inconsistent, confusing, and, in some modes, inappropriate.

Therefore, the National Transportation Safety Board recommends that the U.S. Department of Transportation:

Develop postaccident and postincident testing regulations that are separate from the pre-employment, random, and reasonable suspicion testing regulations in all modal agencies. (Class II, Priority Action) (I-89-4)

Adopt uniform regulations for all drug and alcohol testing, other than postaccident and postincident testing, in all transportation modes, including U.S. Department of Transportation employees who are in safety sensitive positions. (Class II, Priority Action) (I-89-5)

Adopt uniform regulations on postaccident and postincident testing of private sector employees for alcohol and drugs in all transportation modes. Use the Federal Railroad Administration's (FRA) current regulation as a model regulation for all transportation modes except for the permissible blood alcohol level of less that 0.04 percent. Using the FRA regulation as a model for other transportation modes refers only to the collection of blood and urine and the screening and confirmation of positives in blood. As a minimum, the drugs identified in FRA screen should be used in the other modes. Reference to the FRA model does not refer to the administration or implementation of the regulation. The Safety Board recognizes that the implementation of the regulation may be different in the various transportation modes. The regulations for all modes should provide:

- for the collection of blood and urine within 4 hours following a qualifying incident or accident. When collection within 4 hours is not accomplished, blood and urine specimens should be collected as soon as possible and an explanation for such delay shall be submitted in writing to the administrator. (Class II, Priority Action) (I-89-6);

- testing requirements that include alcohol and drugs beyond the five drugs or classes specified in the Department of Health and Human Services (DHHS) guidelines and that are not limited to the cutoff thresholds specified in the DHHS guidelines. Provisions should be made to test for illicit and licit drugs as information becomes available during an accident investigation (Class II, Priority Action) (I-89-7).

Adopt uniform regulations in postaccident and postincident testing of U.S. Department of Transportation employees in safety sensitive positions. The regulations should provide:

- for the collection of blood and urine within 4 hours following a qualifying incident or accident. When collection within 4 hours is not accomplished, blood and urine should be collected as soon as possible and an explanation for such delay shall be submitted in writing to the administrator by the local official making the decision to test. (Class II, Priority Action) (I-89-8);

- testing requirements that include alcohol and drugs beyond the five drugs or classes specified in the Department of Health and Human Services (DHHS) guidelines and that are not limited to the cutoff thresholds specified in the DHHS guidelines. Provisions should be made to test for illicit and licit drugs as information becomes available during an accident investigation (Class II, Priority Action) I-89-9);

- that toxicological results from Federal employees be made available to investigators of the National Transportation Safety Board (Class II, Priority Action) (I-89-10);

- procedures by which Federal employees are sent to the nearest hospital or medical facility for obtaining blood and urine specimens for toxicological testing following a qualifying incident or accident (Class II, Priority Action) (I-89-11);

Issue rules specifying zero (no alcohol) as the blood alcohol concentration for private sector employees in safety sensitive positions in all transportation modes and for Federal employees in safety sensitive positions. (Class II, Priority Action) (I-89-12)

KOLSTAD, Acting Chairman, BURNETT, LAUBER, NALL, and DICKINSON, Members, concurred in these recommendations.

By: James L. Kolstad
Acting Chairman