DOT FACES SIGNIFICANT GAPS IN OUTDATED DRUG TESTING PROGRAM



Prepared for
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Ranking Member
Committee on Transportation and Infrastructure

By the Committee on Transportation and Infrastructure Democratic Staff

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EXECUTIVE SUMMARY

Following a fatal 2016 Amtrak accident in Chester, Pennsylvania, and a series of news articles about the increase in drug use across the United States and in the transportation sector, Democratic staff of the Committee on Transportation and Infrastructure, U.S. House of Representatives, ("T&I Committee Democratic staff") began a review of the U.S. Department of Transportation's (DOT) drug and alcohol testing program to evaluate patterns of increased usage across the modes of transportation and to determine whether DOT's program is effective or in need of improvement.

In conducting the audit, T&I Committee Democratic staff conducted interviews with staff of DOT's Office of Drug and Alcohol Policy, each of the Department's modal administrations, and the United States Coast Guard (USCG), which is subject to DOT's drug and alcohol testing rules and is under the jurisdiction of the Committee on Transportation and Infrastructure. In addition, T&I Committee Democratic staff interviewed staff of the National Transportation Safety Board (NTSB), the Amtrak Inspector General, the DOT's Inspector General, the Government Accountability Office (GAO), a sampling of regulated entities across the modes of transportation, associations that represent such regulated entities, labor unions whose workers are tested for drug and alcohol use, and transportation safety groups.

As a result of these interviews, T&I Committee Democratic staff found that while DOT is effectively carrying out drug and alcohol testing requirements, policies, and goals, there are significant gaps in its drug and alcohol testing program. Based on this review, T&I Committee Democratic staff developed 15 recommendations for improving the program. If adopted, these recommendations will provide the Federal Government and the traveling public better information regarding the risk to our transportation system from drug and alcohol abuse and improve the safety of our navigable waters, pipelines, railways, roads, and skies.

Recommendations

1. DOT should revise its regulations to ensure alcohol and controlled substances testing programs encompass all employees and agents performing safety-sensitive functions, addressing any gaps that currently exist in employees and agents who are tested.

2. The Pipeline and Hazardous Materials Safety Administration (PHMSA) should renew discussions with Canada and Mexico to ensure pipeline companies that operate pipelines from Canada or Mexico into the United States are able to conduct the same drug and alcohol tests on safety-sensitive personnel located outside of the United States that are required of personnel in the United States.

3. The Federal Aviation Administration (FAA) should issue a final rule ensuring that all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft are subject to an alcohol and controlled substances testing program determined acceptable by the FAA Administrator.

4. Congress should enact H.R. 4102, the "Commercial Balloon Pilot Safety Act of 2017", to require operators of air balloons to obtain certain medical certificates.

5. DOT should provide, at a minimum, drug and alcohol positive rates[1] for each of the modes of transportation annually in an easily accessible format that allows the public to assess drug and alcohol use among safety-sensitive personnel in each mode of transportation since enactment of the Omnibus Transportation Employee Testing Act of 1991 (P.L. 102-143) or implementing regulations.

6. DOT should routinely evaluate drug and alcohol positive rates by employee category, in addition to the overall rates for each of the modes of transportation, to help the modal administrations, regulated entities, and labor unions focus on the categories of employees where the violation rates are the highest.

7. DOT should continue to base its standards on U.S. Department of Health and Human Services (HHS) Mandatory Guidelines in compliance with the Omnibus Act; however, the Administration should evaluate the process HHS uses for adding or removing categories of drugs to/from the testing requirements, while ensuring accuracy and fairness in the testing process.

8. DOT and HHS should prioritize research that could lead to a scientifically valid and legally defensible testing standard for marijuana impairment.

9. DOT should evaluate Federal Railroad Administration (FRA) regulations for post-accident testing, and consider expanding post-accident testing in the other modes of transportation to additional categories of drugs.

10. DOT should routinely review exemptions from reporting requirements for drug and alcohol testing, and consider conducting a review that compares the results of DOT-mandated tests with the results of tests conducted under company authority to help better inform regulators of drug and alcohol abuse among transportation workers.

11. HHS should develop scientifically-based standards for alternate testing methods for the use of controlled substances before DOT authorizes carriers and operators to utilize such methods.

12. DOT should require recurrent training for rank-and-file workers on drug and alcohol use, and Congress and DOT should consider establishing a competitive grant program to expand workforce training opportunities.

13. DOT should review the training resources provided by the Office of Drug and Alcohol Policy and each of the modal administrations to see if they can be used cross-modally and determine whether there are any gaps in such resources, such as requiring issuance of a Do Not Fly/Operate list in all modes of transportation.

[1] Rates are the number of positive test results and the number of refusals to test divided by the total number of tests reported to DOT by selected employers.

14. DOT must ensure that regulated entities have in place adequate programs and policies for a drug- and alcohol-free workplace.

15. The Federal Motor Carrier Safety Administration (FMCSA) should swiftly implement the national clearinghouse of commercial motor vehicle operators' violations of the FMCSA's drug and alcohol testing program.

BACKGROUND

The history of DOT's drug and alcohol testing program dates back to 1985 when the FRA, following a series of fatal train accidents involving the use of illegal drugs and misuse of alcohol, issued a final rule requiring pre-employment, reasonable suspicion, and post-accident testing.[2] In the preamble to the 1985 final rule, the FRA stated that over a 10-year period from 1975 through 1984, drug or alcohol impairment was responsible for 48 train accidents, resulting in 37 fatalities and 80 injuries, but warned that many drug- and alcohol-related accidents and injuries were not detected or reported at that time.[3]

Despite efforts to reduce such tragedies through regulation, in 1987, an accident in Chase, Maryland, between an Amtrak train and a Conrail freight train, killing 16 people and injuring 174 others, gained national attention. This led to a series of congressional hearings and legislation aimed at combating the use of drugs and alcohol in transportation.[4] The Conrail train's engineer and brakeman testified to smoking marijuana in the cab of the Conrail locomotive prior to the fatal accident. In addition, post-accident testing indicated the brakeman had traces of a hallucinogenic drug, phencyclidine (PCP), in his urine.

A month later, a Metro-North commuter train was struck head-on by an empty Metro-North commuter train at an interlocking in the Bronx, New York, injuring 30 people; one of the engineers tested positive for illegal drugs. A year later, another Metro-North commuter train crashed into a stationary train in Mount Vernon, New York. All five employees involved in the accident tested positive for drugs, including morphine, marijuana, and butalbital, a sedating barbiturate. Around the same time, similar tragedies involving drugs occurred in the other modes of transportation: in 1987, a bus struck a bridge on the George Washington Parkway in Alexandria, Virginia, killing one passenger and injuring 32 others. The driver tested positive for cocaine, valium, and marijuana. In 1988, a commuter plane crashed near Durango, Colorado, killing nine people. The NTSB ruled that the pilot's use of cocaine was a contributing cause.

The series of tragedies led Congress in 1991 to pass the Omnibus Transportation Employee Testing Act (Omnibus Act) (P.L. 102-143), directing DOT to establish a program that requires testing of all personnel responsible for safety-sensitive functions for use of alcohol or a controlled substance. The Omnibus Act continues to serve as the foundation of DOT's drug and alcohol testing program.[5]

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[2] The Federal Highway Administration and Federal Aviation Administration were already administering provisions governing the prohibited use of alcohol and drugs while on duty as well as medical certification programs that provided for the disqualification of flight crews and truck drivers who suffer from drug or alcohol dependencies.

[3] Federal Railroad Administration, *Control of Alcohol and Drug Use in Railroad Operations*, August 2, 1985, 50 FR 31508.

[4] National Transportation Safety Board, *Rear End Collision of Amtrak Passenger Train 94, The Colonial and Consolidated Rail Corporation Freight Train ENS-121, on the Northeast Corridor, Chase, Maryland,* January 4, 1987, Accident Report NTSB/RAR-88/01.

[5] In 1988, the FRA and five other DOT modal administrations—the FAA, Federal Highway Administration, USCG, Urban Mass Transportation Administration (the predecessor agency to the Federal Transit Administration, and the Research and Special Programs Administration (the predecessor agency to PHMSA)—issued final rules requiring or enhancing drug testing in the aviation, maritime, public transit, motor carrier, pipeline, and railroad industries, three of which were challenged in court. The rules were revised and expanded following enactment of the Omnibus Act.

Since that time, the NTSB and DOT have investigated numerous transportation accidents involving drugs or alcohol. The NTSB investigates every civil aviation accident in the United States and significant accidents in the other modes of transportation. The NTSB reports that, from 2000 through 2016, drugs (medication or other substances) or alcohol were involved in 381 fatal accidents that the NTSB investigated.

While transportation accidents involving the use of drugs or alcohol are generally low compared to the total number of accidents in the United States, the numbers are rising. For example, according to the NTSB, "About 8 percent of workers involved in rail accidents so far in 2016 have tested positive for drug use, including marijuana, cocaine, ecstasy, benzodiazepine, oxycontin, and morphine. That number is the highest since the [Federal Railroad Administration] began keeping records in 1987, and three times greater than it was 10 years ago."[6] PHMSA is also experiencing higher drug and alcohol testing rates, prompting the agency to increase testing rates from 25 percent to 50 percent of the regulated workforce for calendar year 2018. The concern for T&I Committee Democratic staff is whether a national drug epidemic is affecting transportation safety and whether any gaps exist in current law or regulations that, if left unaddressed, would have serious safety consequences.

ILLICIT DRUG USE: A NATIONAL EPIDEMIC

Illicit drug use is a national epidemic. More than 26 million Americans aged 18 or older[7] are current illicit drug users, an increase from annual 2002 through 2015 levels.[8] The drugs with the biggest increases in use and misuse are marijuana and prescription pain relievers, including opioids.[9]

In 2016, an estimated 10.9 million Americans aged 18 or older misused opioids in the past year, including 10.7 million prescription pain reliever misusers and 935,000 heroin users, making non-medical use of opioids one of the Nation's most prevalent illicit drug problem.[10]

Drug overdoses are now a leading cause of injury death in the United States. From 2000 to 2016, more than 600,000 people died from drug overdoses, according to the Centers for Disease Control and Prevention (CDC).[11]

Opioids are primarily responsible for the rapid expansion of this large and growing public health crisis. In 2016, the number of overdose deaths involving opioids was five times higher than in 1999, with 42,000 deaths in 2016 alone, more than any year on record.[12] Heroin deaths have increased six-fold, from 2,089 deaths in 2002 to a staggering 13,219 deaths in 2016, a 533 percent

[6] National Transportation Safety Board, *2017-2018 Most Wanted List of Transportation Safety Improvements, End Alcohol and Other Drug Impairment – Rail.*

[7] Estimated numbers of people refer to people aged 18 or older in the civilian, noninstitutionalized population in the United States. The numbers do not include people with no fixed household address, active-duty military personnel, and residents of institutional group quarters. The estimated numbers of current users of different illicit drugs are not mutually exclusive because people could have used more than one type of illicit drug, as reflected in the Table.

[8] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health*, September 2017, at 14.

[9] *Id.*, at Tables A.9B and A.10B.

[10] *Id.*

[11] Centers for Disease Control and Prevention, Opioid Overdose: Understanding the Epidemic.

[12] Centers for Disease Control and Prevention, Drug Overdose Death Data.

increase.[13] The number of people fatally overdosing on fentanyl and other synthetic opiates more than doubled in just one year, from 9,580 in 2015 to 19,413 in 2016. Deaths from other opiate painkillers, such as hydrocodone and oxycodone, rose 14 percent over that period.[14]

Preliminary data suggests the United States is on track to continue that heartbreaking trend in 2017.

Between 1999 and 2015, the drug overdose epidemic spread from a few concentrated pockets in Appalachia, California, and northern New Mexico to nearly every corner of the United States.[15] The 10 States with the highest rates of overdose deaths in 2015 (latest information available) were West Virginia, New Hampshire, Kentucky, Ohio, Rhode Island, Pennsylvania, Massachusetts, New Mexico, Utah, and Tennessee.[16]

DRUG USE AMONG ADULTS 18 AND OVER IN THE UNITED STATES

MARIJUANA	*22.4 MILLION*
PRESCRIPTION	*5.8 MILLION*
COCAINE	*2.9 MILLION*
HALLUCINOGENS	*1.3 MILLION*
METH	*659,000*
HEROIN	*471,000*
INHALANTS	*450,000*

ALCOHOL ABUSE REMAINS A CONCERN

While this report focuses on the rise in drug use among transportation workers, alcohol use remains a concern: 134.5 million adults aged 18 or older are current alcohol users, of which more than 64.2 million are binge drinkers.[17] Although T&I Committee Democratic staff did not evaluate alcohol positive rates across the modes of transportation, data provided by the FRA shows a doubling in the random alcohol positive rate for railroad workers from 0.09 in 2013 to 0.19 in 2016.[18] The number of Amtrak workers (not rates) that tested positive for alcohol also doubled from 2015 to 2016.[19]

[13] Substance Abuse and Mental Health Services Administration, slides from the 2016 National Survey on Drug Use and Health, America's Behavioral Health Changes & Challenges.
[14] Centers for Disease Control and Prevention, Drug Overdose Death Data.
[15] *Id.*
[16] *Id.*
[17] The Substance Abuse and Mental Health Services Administration defines binge drinking for males as drinking five or more drinks on the same occasion on at least 1 day in the past 30 days, and for females, drinking four or more drinks on the same occasion on at least 1 day in the past 30 days. Substance Abuse and Mental Health Services Administration, Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health, September 2017, at 12.
[18] FRA Part 219 Drug & Alcohol Program, T&I Committee Briefing, August 1, 2017.
[19] U.S. Department of Transportation Drug and Alcohol Testing MIS Data Collection Forms, 2006-2016, obtained from Amtrak on November 6, 2017.

DRUG USE CONTINUES TO PLAY A ROLE IN TRANSPORTATION ACCIDENTS

Illicit drug use and licit drug misuse touch all segments of our society, including the transportation industry. The Substance Abuse and Mental Health Services Administration (SAMHSA) of HHS reports that drug and alcohol use affects U.S. industry through workplace accidents and injuries, lost productivity, employee absenteeism, low morale, and increased illness.[20] In the transportation sector, the costs of drug and alcohol use are far greater, potentially leading to catastrophic disaster and significant loss of life.

The NTSB, the Federal agency charged with determining the probable cause of transportation accidents, lists "Ending Alcohol and Other Drug Impairment in Transportation" as one of its most wanted safety improvements.[21] Since 2000, the NTSB has investigated 381 fatal accidents involving drugs or alcohol.[22] These accidents include:

- February 13, 2000: A light rail train failed to stop and struck a bumping post at the Baltimore-Washington International Airport Light Rail Station, injuring 18 people, five of them seriously. The NTSB determined that the probable cause of the accident was the train operator's "impairment by illicit and/or prescription drugs", which included prescription oxycodone, codeine, and cocaine.[23]

- November 7, 2007: A Hong Kong-registered containership, *M/V Cosco Busan*, allided with the San Francisco–Oakland Bay Bridge. Contact with the bridge tower created a 212-foot-long by 10-foot-high by 8-foot-deep gash in the forward port side of the ship and breached two port fuel tanks and one port ballast tank. As a result of the breached fuel tanks, about 53,500 gallons of fuel oil were released into San Francisco Bay. No injuries or fatalities resulted from the accident, but the fuel spill contaminated about 26 miles of shoreline, killed more than 2,500 birds of about 50 different species, temporarily closed a fishery on the Bay, and delayed the start of the crab-fishing season.

  The NTSB found the harbor pilot, who was in charge of the vessel at the time, was using a variety of medications including three opioids (hydrocodone, pentazocine, and propoxyphene), each in high doses, as well as two benzodiazepines and multiple other psychoactive and sedating medications. The NTSB determined the probable cause of the accident was "the failure to safely navigate the vessel in restricted visibility as a result of (1) the pilot's degraded cognitive performance from his use of impairing prescription medications."[24]

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[20] The Substance Abuse and Mental Health Services Administration, Substance Use and Substance Use Disorder by Industry, April 16, 2015.
[21] See https://www.ntsb.gov/safety/mwl/Pages/mwl9-2017-18.aspx.
[22] This number is not representative of all fatal transportation accidents involving drugs or alcohol as the NTSB investigates all civil aviation accidents but only significant accidents in the other modes of transportation.
[23] National Transportation Safety Board, *Maryland Transit Administration Light Rail Vehicle Accidents at the Baltimore-Washington International Airport Transit Station Near Baltimore, Maryland*, February 13 and August 15, 2000, Accident Report NTSB/SIR-01/02.
[24] National Transportation Safety Board, *Allision of Hong Kong-Registered Containership* M/V Cosco Busan *with the Delta Tower of the San Francisco-Oakland Bay Bridge, San Francisco, California*, November 7, 2007, Accident Report NTSB/MAR-09/01.

- September 26, 2014: A driver of a tractor-trailer struck a medium-size bus in Davis, Oklahoma, killing four members of the North Central Texas College softball team; five others were seriously injured. Six additional bus passengers and both drivers sustained minor injuries. The NTSB found that the driver "lost control of his vehicle due to incapacitation stemming from his likely use of a synthetic cannabinoid."[25]

- June 25, 2015: A driver of a tractor-trailer struck eight vehicles in Chattanooga, Tennessee, killing six occupants and injuring four others. The driver's blood tested positive for methamphetamine and for its primary active metabolite amphetamine. According to the NTSB, the driver had a known history of drug use with several positive drug tests in the weeks leading up to the crash.[26]

- July 30, 2016: A hot air balloon operated by Heart of Texas Hot Air Balloon Rides struck power lines and crashed in a field near Lockhart, Texas. The pilot and 15 passengers died. Post-accident forensic toxicology analysis detected both prescription and over-the-counter medications in the pilot's blood, including a sedating prescription muscle relaxant, diazepam, commonly marketed under the name Valium, oxycodone, a prescription synthetic narcotic pain medication, a sedating antihistamine, and a sedating cough suppressant.[27]

- April 3, 2016: An Amtrak train carrying seven crewmembers and 337 passengers, struck a backhoe in Chester, Pennsylvania, killing the backhoe operator and a supervisor. Forty-one people on the train were transported to local hospitals. According to the NTSB's Medical Factual Report,[28] the engineer of the Amtrak train tested positive for marijuana.

  The backhoe equipment operator, who at the time was not subject to random drug testing, tested positive for cocaine and its metabolites, and Levamisole, a veterinary medicine used as a cutting agent in over one-half of all cocaine entering the United States. The maintenance supervisor tested positive for morphine and codeine, an indicator of heroin use, and Oxycodone.[29]

[25] National Transportation Safety Board, *Truck-Tractor Semitrailer Median Crossover Collision With Medium-Size Bus on Interstate 35, Davis, Oklahoma,* September 26, 2014, Accident Report NTSB/HAR-15/03.
[26] National Transportation Safety Board, *Multivehicle Work Zone Crash on Interstate 75 Chattanooga, Tennessee,* June 25, 2015, Accident Report NTSB/HAR-16/01.
[27] National Transportation Safety Board, *Impact with Power Lines Heart of Texas Hot Air Balloon Rides, Balony Kubicek BB85Z, N2469L, Lockhart, Texas*, July 30, 2016, Accident Report NTSB/AAR-17/03.
[28] National Transportation Safety Board, Medical Factual Report, Accident ID: DCA16FR007, January 26, 2017.
[29] *Id.*

DRUG USE AMONG TRANSPORTATION WORKERS IS RISING

Just a few short months following the 2016 Amtrak accident in Chester, Pennsylvania, the Washington Post published an article, "Number of U.S. railroad workers testing positive for drug use skyrockets", highlighting railroad drug-related incidents identified by the FRA in a presentation to the Rail Safety Advisory Committee (RSAC) on September 15, 2016.[30] These included the deaths of two workers at the same commuter railroad: one found dead in a work parking lot of a fatal overdose of heroin, oxycodone, oxymorphone, and fentanyl, and another found dead in a restroom at the work site after the start of his shift of a fatal overdose of illegal prescription drugs.

According to the NTSB, "About 8 percent of workers involved in rail accidents so far in 2016 have tested positive for drug use, including marijuana, cocaine, ecstasy, benzodiazepine, oxycontin, and morphine. That number is the highest since the [Federal Railroad Administration] began keeping records in 1987, and three times greater than it was 10 years ago."[31] The FRA reports that random drug testing violation rates jumped significantly in 2015, by more than 35 percent, but then dropped slightly in 2016. Post-accident positive rates also jumped from 0.0 percent in mid-2014 to 4.2 percent in 2016, the FRA's highest positive rate since 1988.[32]

The growing drug crisis is not limited to rail workers. Across-the-board, in every mode of transportation, positive drug and alcohol violations among transportation workers are on the rise, and DOT modal administration staff interviewed by T&I Committee Democratic staff stated they anticipate that rates will increase again in 2017. [33] For example, on December 8, 2017, PHMSA raised minimum random testing rates for pipeline operators and contractors from 25 to 50 percent of the workforce for calendar year 2018 because positive drug violations exceeded the 1.0 percent DOT-established threshold in 2016. The rate of positive drug violations among pipeline operators and contractors has increased from a low of 0.638 percent in 2008 to 1.104 percent in 2016.[34]

As shown in the chart below, the number of positive test results and refusals by personnel to be tested has increased significantly since 2006.[35] While these are raw numbers that do not reflect increases in the pools of employees that are tested or the addition of drugs to the DOT testing panel, the sharp increase—a doubling of the number of positives over the past decade—should raise concerns for DOT.[36]

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[30] See https://rsac.fra.dot.gov/meetings/20160915.php.

[31] National Transportation Safety Board, *2017-2018 Most Wanted List of Transportation Safety Improvements, Ending Alcohol and Other Drug Impairment in Transportation.*

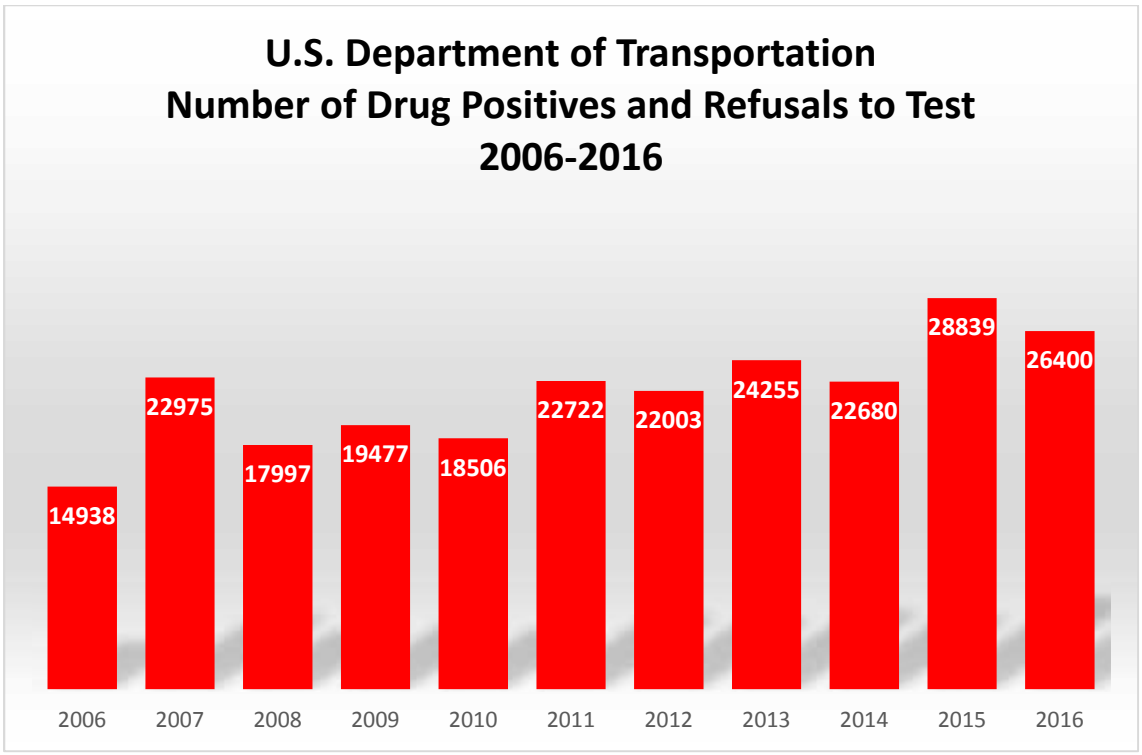
[32] FRA Part 219 Drug & Alcohol Program, T&I Committee Democratic Staff Briefing, August 1, 2017.

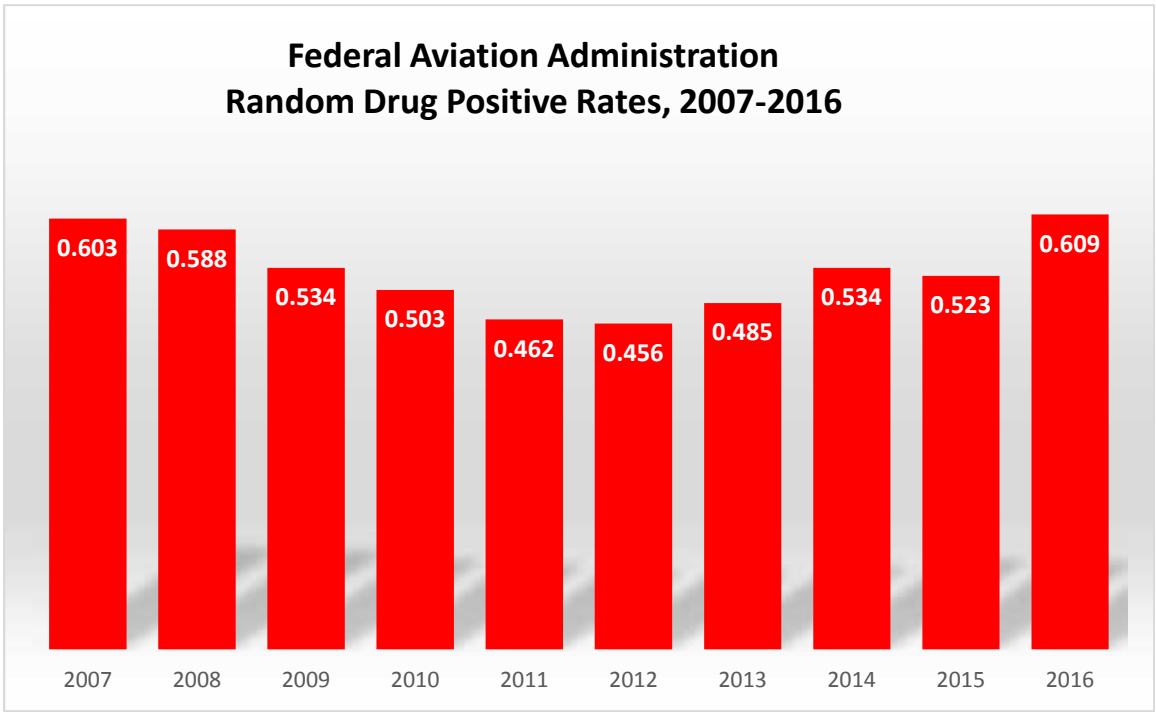
[33] Data obtained from DOT; charts represent random drug positive rates in each mode, and do not include results from pre-employment, reasonable suspicion/cause, return-to-duty, follow-up, or post-accident testing results.

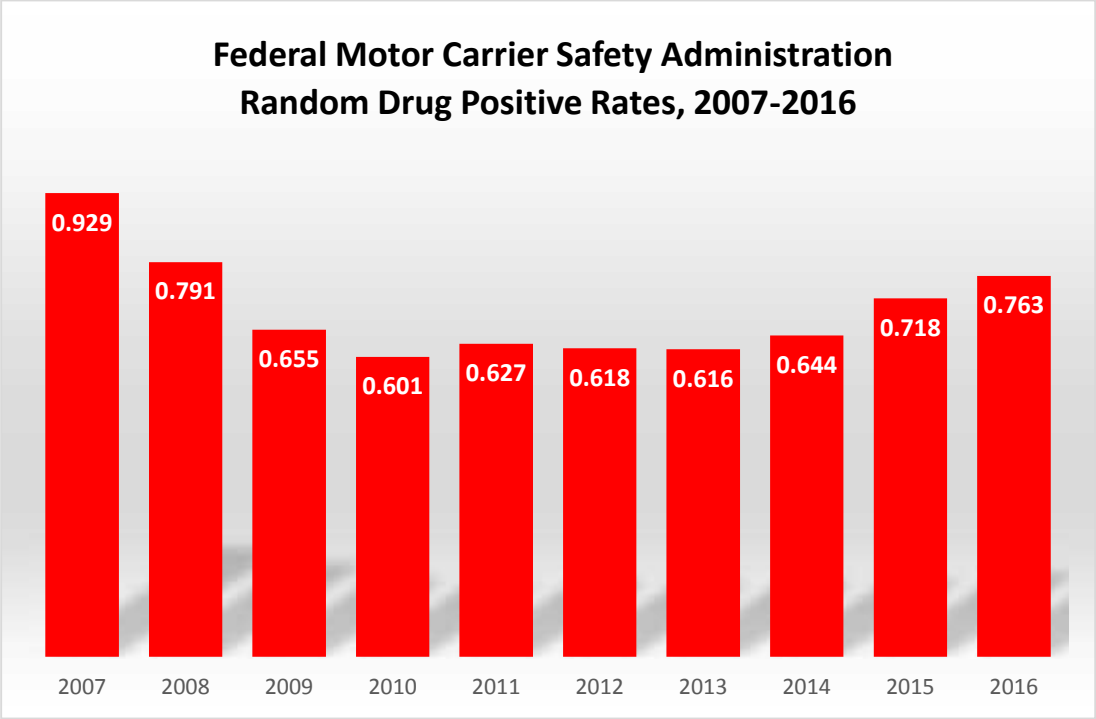
[34] Pipeline and Hazardous Materials Safety Administration, *Notice of Calendar Year 2018 Minimum Annual Percentage Rate for Random Drug Testing*, December 8, 2017.

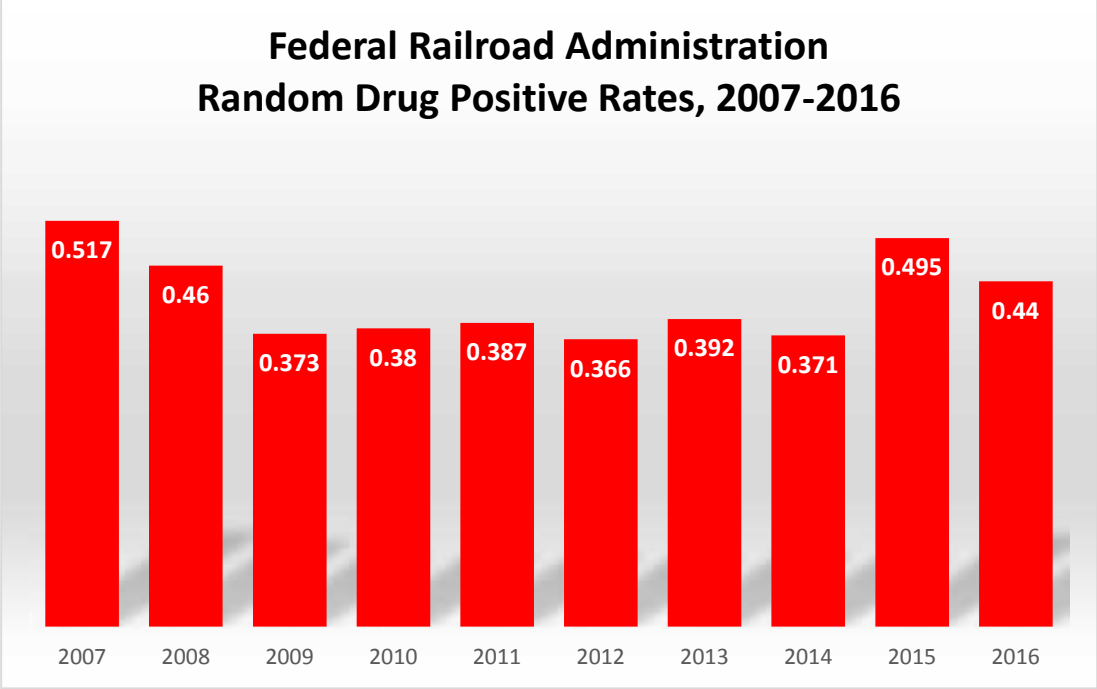
[35] The NTSB reports that, in aviation, most fatal accidents involving drug use occur in general aviation (GA) aircraft; however, GA pilots are exempt from DOT drug and alcohol testing and reporting requirements.

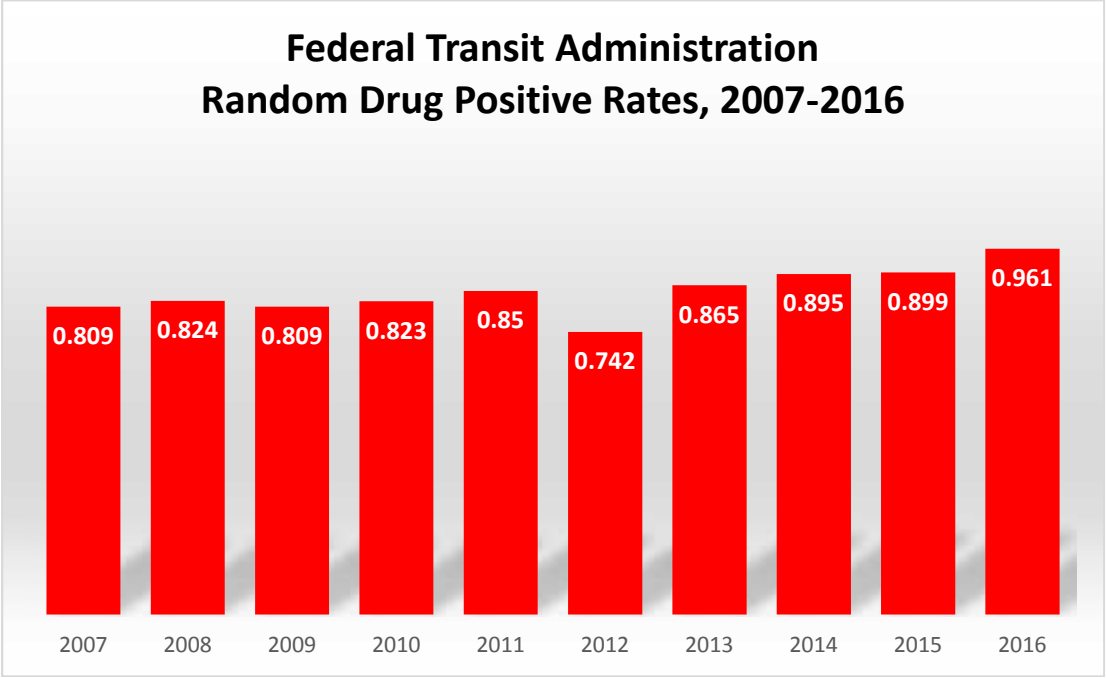
[36] The number of test results increased from 984,655 in 2006 to 1,916,934 in 2016; however, rates were not provided by DOT to T&I Committee Democratic staff.

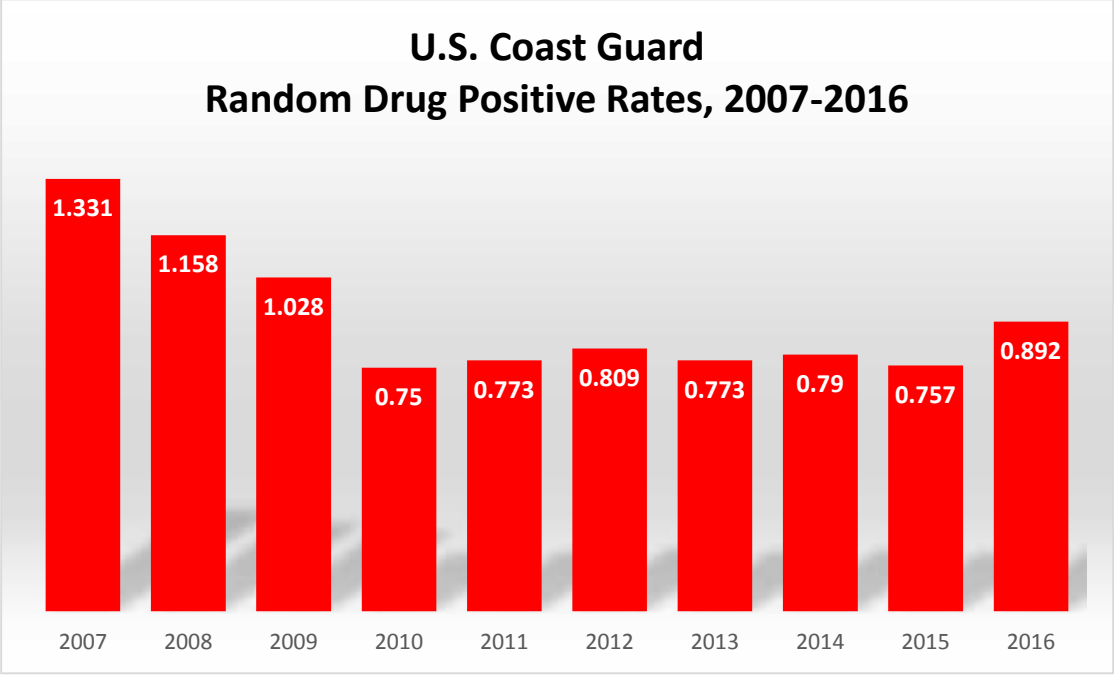

U.S. Department of Transportation
Number of Drug Positives and Refusals to Test
2006-2016
14938
22975
17997
19477
18506
22722
22003
24255
22680
28839
26400
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016

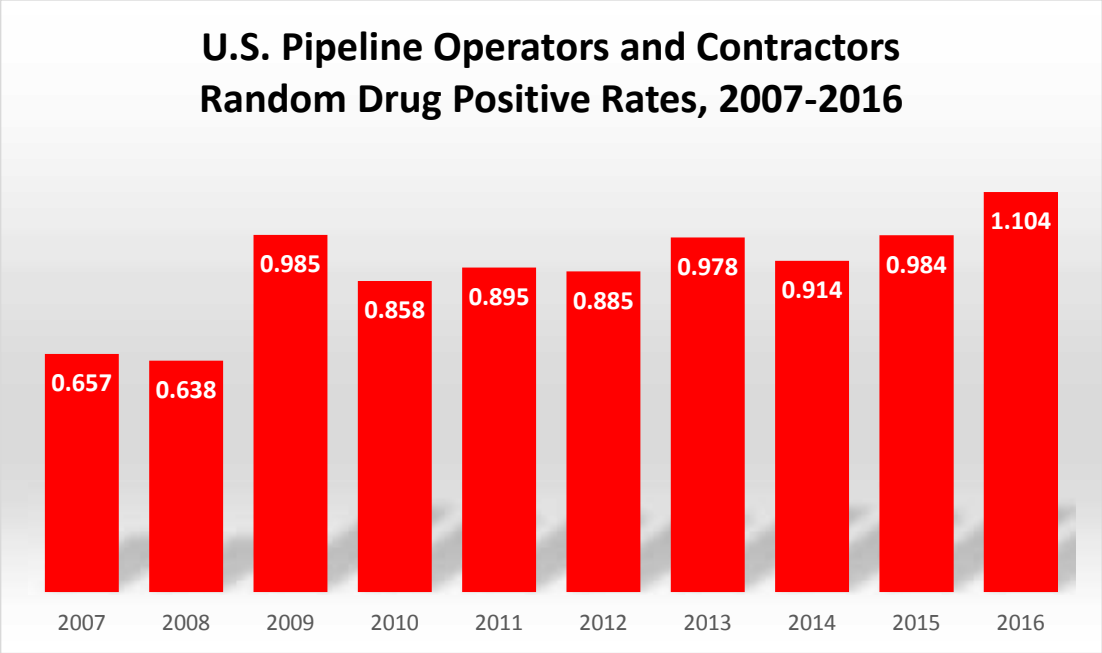

Federal Aviation Administration
Random Drug Positive Rates, 2007-2016
0.603
0.588
0.534
0.503
0.462
0.456
0.485
0.534
0.523
0.609
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016


Federal Motor Carrier Safety Administration
Random Drug Positive Rates, 2007-2016
0.929
0.791
0.655
0.601
0.627
0.618
0.616
0.644
0.718
0.763
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016


Federal Railroad Administration
Random Drug Positive Rates, 2007-2016
0.517
0.46
0.373
0.38
0.387
0.366
0.392
0.371
0.495
0.44
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016


Federal Transit Administration
Random Drug Positive Rates, 2007-2016
0.809
0.824
0.809
0.823
0.85
0.742
0.865
0.895
0.899
0.961
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016


U.S. Coast Guard
Random Drug Positive Rates, 2007-2016
1.331
1.158
1.028
0.75
0.773
0.809
0.773
0.79
0.757
0.892
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016



[37]

[37] Pipeline contractors were added to the reporting numbers starting in 2009.

INFORMATION REGARDING DRUG AND ALCOHOL POSITIVES IS NOT READILY AVAILABLE

Employers subject to DOT drug and alcohol testing requirements are required to submit their drug and alcohol testing data through the DOT Drug and Alcohol Management Information System.[38] The forms include, among other things:

- the number of tests, separated by type of employee;
- the type of test (pre-employment, random, post-accident, reasonable suspicion/cause, return-to-duty, and follow-up);[39]
- the number of negative test results;
- the number of positive test results by type of drug; and
- the number of employees who refused to take a test.[40]

DOT uses this data to determine minimum random drug testing rates on an annual basis. In general, if the industry's drug positive rate remains below 1.0 percent, regulated entities must test 25 percent of their regulated workforce.[41] If it rises above 1.0 percent, testing increases to 50 percent of the regulated workforce. Those decisions are made by DOT annually and are published in the *Federal Register* each December.

For example, until recently, pipeline operators and contractors were required to conduct random drug tests on 25 percent of their regulated workforce, and random alcohol tests on 10 percent of their regulated workforce. In 2016, the random positive rate for pipeline operators and contractors exceeded the 1.0 percent threshold, which PHMSA attributes to high positive rates among pipeline contractors. From 2012 through 2016, the random positive rate for pipeline operators increased from 0.50 to 0.58 percent. Positive rates among pipeline contractors increased from 1.04 percent to 1.30 percent during that same period. This triggered an increase in the minimum random drug testing rate for pipeline operators and contractors from 25 to 50 percent for calendar year 2018.[42]

Information regarding positive drug tests of transportation workers is not readily available to the public. To evaluate trends in drug use among transportation workers, T&I Committee Democratic staff requested drug positive rates for each of the modal administrations. In response, DOT directed staff to the annual *Federal Register* notices. However, the information provided in these notices is inconsistent. Some annual notices contain the positive rates for drugs and alcohol; others do not.

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[38] See https://www.transportation.gov/odapc/MISreporting.

[39] Post-accident tests are also required but are handled through a different process.

[40] *Id.*

[41] The minimum random drug testing rate for maintenance of way (MOW) employees is 50 percent for calendar year 2018.

[42] Pipeline and Hazardous Materials Safety Administration, *Pipeline Safety: Random Drug Testing Rate; Contractor Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information*, December 8, 2017.

T&I Committee Democratic staff sent two data requests via electronic mail to DOT: one for all drug and alcohol positive testing rates for 2006 through 2016 for each of the Class I railroads[43] and Amtrak, and another for:

- all drug testing positives compared to the total number of people tested from 2006 through 2016;
- all marijuana positives from 2010 through 2016 by State;
- all Amtrak drug testing positives from 2006 through 2016 compared to the total number of people tested; and
- drug testing positive rates from 2006 through 2016 for each of the modal administrations.

DOT responded that the information was not readily available and it would result in significant costs for DOT to compile the information. Subsequently, after repeated requests and significant delay, DOT sent T&I Committee Democratic staff the random drug positive rates for all the Class I railroads combined. DOT also did not provide the marijuana positives by State, since the Department does not track the data by State. DOT ultimately provided random drug positive rates for each of the modal administrations.

It is troubling that DOT did not provide this information more quickly, and even more troubling that this data is not readily available within the Department. In contrast, when T&I Committee Democratic staff contacted Amtrak directly to request the information, Amtrak provided the requested data within a matter of days.

It should not be difficult for Congress or the public to get this information. Whenever an individual boards a plane, train, vessel, or motor vehicle, they put their life into the hands of carriers and operators and their employees to ensure safe passage. This trust relies upon the vigilance of those entities to ensure a safe and drug- and alcohol-free workplace, and on trained employees to remain alert to any possible occurrence that might endanger the safety of the traveling public. Members of the public should therefore be able to review critical safety information that will help better inform them as they choose their preferred method of transportation.

Recommendation: DOT should provide, at a minimum, drug and alcohol positive rates for each of the modes of transportation annually in an easily accessible format that allows the public to assess drug and alcohol use among safety-sensitive personnel in each mode of transportation since enactment of the Omnibus Act or implementing regulations.

Recommendation: DOT should routinely evaluate drug and alcohol positive rates by employee category, in addition to the overall rates for each mode of transportation, to help the modal administrations, regulated entities, and labor unions focus on the categories of employees where the violation rates are the highest.

[43] The Class I railroads are BNSF, CSX, Norfolk Southern, Union Pacific, Canadian National, Canadian Pacific, and Kansas City Southern.

Who is tested?

FAA
Flight Crew
Flight Attendants
Air Traffic Controllers
Flight Instructors
Aircraft Dispatchers
Certain Aircraft Maintenance
Aviation Screeners
Ground Security Coordinators
Operations Control Specialists

FMCSA
CDL holders

FRA
Locomotive Engineers
Trainmen
Conductors
Carmen/Hostlers
Signalmen
Dispatchers
Roadway Workers

FTA
Operators/Controllers
Dispatchers
Revenue-service vehicle mechanics
Security

PHMSA
Operations personnel
Maintenance
Emergency responders

USCG
Commercial vessel crewmembers

DOT Regulations Do Not Cover All Employees Performing Safety-Sensitive Functions

The Omnibus Act required drug and alcohol screening of transportation workers in safety-sensitive positions, which is estimated to include about eight million people.[44] Each modal administration defined "safety-sensitive" differently by regulation. With the exception of the FRA, those definitions have not been updated in years, and even then, Congress had to intervene to require the FRA to take action.

Rail

On January 9, 2007, a Massachusetts Bay Transportation Authority (MBTA) passenger train struck a maintenance vehicle that was on the track near Woburn, Massachusetts, not unlike the circumstances surrounding the April 2016 Amtrak accident in Chester, Pennsylvania. Two of the six maintenance-of-way (MOW) employees working near the track maintenance vehicle were killed; two others were seriously injured. According to the NTSB, of the seven MOW employees tested following the accident, four employees tested positive for marijuana, and one employee submitted a diluted specimen that may have masked a positive test result.[45]

FRA regulations, at the time of the accident, exempted MOW employees from drug and alcohol testing, even though the FRA had long acknowledged that "program and carrier testing programs have yielded significant evidence that maintenance of way employees, in particular, are affected by drug-use problems."[46]

In the accident report, the NTSB noted at length the number times since 1988 it had recommended that the FRA revise Federal regulations to require testing of MOW and other rail workers for drug and alcohol use, stating that "all employees who potentially may be involved in an accident" should be screened. The FRA's response: "We will study this recommendation and mine data, where possible."[47]

[44] U.S. Department of Transportation, Office of the Secretary, Office of Drug and Alcohol Policy and Compliance, Fact Sheet: The World's Largest Drug & Alcohol Workplace Testing Program.
[45] National Transportation Safety Board, *Collision of Massachusetts Bay Transportation Authority Train 322 and Track Maintenance Equipment near Woburn, Massachusetts,* January 9, 2007, Accident Report NTSB/RAR-08/01.
[46] See https://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-08-007.
[47] *Id.*

It was not until Congress mandated testing for MOW employees in the Rail Safety Improvement Act of 2008 (RSIA) (P.L. 110-432, Division A) that the FRA finally took action. Section 412 of RSIA directed the Secretary of Transportation to complete a rulemaking to revise drug and alcohol testing requirements to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform MOW activities. A final rule was issued eight years later and took effect in June 2017, far too late for the MOW employees that were killed in the April 2016 Amtrak accident in Chester, Pennsylvania.

In August 10, 2017, the FRA's former Deputy Administrator, Heath Hall, sent a letter to the NTSB asking the Board to close its longstanding recommendation[48] but the recommendation remains labeled "open-unacceptable response" because the FRA has not fully implemented it. In fact, a chart accompanying the NTSB's Most Wanted List of Safety Improvements details 43 safety recommendations related to drugs or alcohol, 25 of which DOT, States and local agencies, and outside organizations have failed to implement.[49] Some of the recommendations are well over 20 years old, but remain just as relevant today as our Nation faces a growing drug crisis.

The NTSB recommendation bears repeating: "Congressionally mandated alcohol and controlled substances testing programs should encompass all employees and agents performing safety-sensitive functions." However, there is no consistent definition of safety-sensitive and the modal administrations within DOT have classified similar workers differently.

For example, FRA regulations define safety-sensitive employees, for purposes of drug and alcohol testing, as those who are covered under the hours of service laws (HOS) and, effective June 12, 2017, MOW employees. All other employees are exempt from drug and alcohol testing. For example, the FRA stated in a RSAC meeting on September 15, 2017, that the FRA's drug and alcohol testing program does not cover mechanical workers.[50] In contrast, FAA's and FTA's drug and alcohol testing programs require testing of mechanics. The FRA reported to RSAC and T&I Committee Democratic staff that it conducted a pilot program evaluating post-mortem toxicological tests of mechanical personnel, which showed significantly higher violation rates than regulated employees, with a 33 percent positive rate over the last 13 years. The FRA stated that it intends to issue a rulemaking in the future to cover mechanical personnel.

Several Class I railroad carriers also raised concerns that FRA's drug and alcohol testing requirements do not apply to yardmasters, who are also exempt from HOS, unless the yardmaster performs a dual function; for example, a yardmaster who is also a bridge tender would be subject to drug and alcohol testing. Yardmasters are individuals that are responsible for supervising and coordinating the movement of trains and engines operating within a rail yard, which is seemingly safety-critical. FRA maintains that a "vast majority of yardmasters would be subject to testing" because many of them perform these dual functions which subject them to such testing. However, one railroad carrier stated that they have 36 yardmasters, but only six of them are tested under FRA's drug and alcohol testing requirements because they perform other functions that subject them to testing, leaving 30 yardmasters out of the random testing pool. Another railroad carrier has

[48] *Id.*

[49] *Id.*

[50] FRA regulations define safety-sensitive employees, for purposes of drug and alcohol testing, as those who are covered under the hours of service laws and, effective June 12, 2017, MOW employees.

an estimated 400 yardmasters but only 46 of them are tested under FRA's drug and alcohol testing requirements.

Certain railroads (and thus their workers) are also exempt from drug and alcohol testing, including short-line railroads that have 15 or fewer employees; plant railroads[51]; and tourist, scenic, historic, or excursion railroads.

In addition, while Canadian National and Canadian Pacific have large U.S. workforces that are subject to DOT drug and alcohol testing requirements, DOT regulations allow foreign railroad workers who are based outside of the United States to perform signal service in the United States or operate within 10 route miles from the rail line that crosses into the United States from Canada or Mexico without being tested. Three Class I railroads have proposed changes to Federal regulations that would allow train crew members from Mexican rail carriers (Ferrocarril Mexicano and KCS de México) to operate trains in the United States. Rail labor unions oppose the proposals and have raised concerns about the adequacy of drug and alcohol testing and laboratories in Mexico.

Exemptions from drug and alcohol requirements for foreign workers are a greater concern in pipeline operations and aviation.

Pipelines

PHMSA regulations require pipeline operators to conduct drug and alcohol testing only on employees located within the United States, including those employees located within the limits of the "Outer Continental Shelf" as defined in the Outer Continental Shelf Lands Act.[52]

Workers performing safety-sensitive functions on master meter systems and pipeline systems that transport only petroleum gas or petroleum gas/air mixtures are exempt. Pipeline operators based in Canada or Mexico who maintain and control hundreds of miles of pipeline in the United States are also exempt. In fact, Canadian pipeline operators are prohibited from conducting DOT-mandated drug and alcohol testing on their workers. According to the Canadian Human Rights Commission, drug and alcohol testing is seen in Canada as a form of medical examination, constituting a significant invasion of privacy and may be discriminatory within the meaning of the Canadian Human Rights Act.[53]

T&I Committee Democratic staff interviewed two major Canadian pipeline operators with significant pipeline mileage in the United States. Both stated they are prohibited from conducting random drug and alcohol testing of their Canadian workers, including those workers who control and manage the flow of gas and hazardous liquid into the United States.

Random testing is the core of every drug and alcohol testing program and a focus of Congress in the Omnibus Act. The report of the Senate Committee on Commerce, Science, and Transportation that accompanied the Act stated, "While several types of testing are needed to

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[51] Railroads whose entire operations are confined to an industrial installation.

[52] The Outer Continental Shelf Lands Act defines the Outer Continental Shelf as all submerged lands lying seaward of state coastal waters (3 miles offshore) which are under U.S. jurisdiction. See section 1331 of title 43, United States Code.

[53] *Impaired at Work: A Guide to Accommodating Substance Dependence*, Canadian Human Rights Commission, provided T&I Committee Democratic staff by the Embassy of Canada.

address specific situations, the key to deterrence is random testing. Under random testing, transportation employees in safety-sensitive positions will have no advance warning of when they might be tested. With an increased likelihood of detection, they will consider carefully using illegal drugs or drinking on the job."[54]

One of the Canadian pipeline operators stated that random testing is a key component to a drug- and alcohol-free workplace, and they wanted DOT to work with the Canadian pipeline operators and the Government of Canada to help them obtain the authority to conduct such testing, an effort that DOT began in 1988 but abandoned in 1997, stating,

> RSPA has revisited the issue of requiring foreign operators to drug test persons located outside of the United States who are performing covered functions. Due to the complexity of the legal issues, RSPA has determined that it would be a better use of agency resources to concentrate its enforcement efforts on operators whose employees are located within U.S. territory including the outer continental shelf.[55]

RSPA maintained at the time that only 50 workers operating in Canada would be subject to the regulations, if implemented, and therefore deemed the proposal "not cost effective".[56] Given the significant changes in the oil and gas industry since 1997, and the construction, operation, and maintenance of new pipelines that extend nearly 2,000 miles from Canada into the United States, PHMSA should re-consider its position. Reconsideration is particularly timely given the Trump Administration has entered into discussions with Canada and Mexico to re-negotiate the North American Free Trade Agreement (NAFTA), and Canada has announced it will legalize marijuana by July 2018, a concern expressed by both Canadian pipeline operators that were interviewed.

Aviation

Aviation is in a similar position where companies and individuals who perform safety-sensitive functions outside of the United States, including aircraft and preventive maintenance, are exempt from Federal drug and alcohol testing requirements. Additionally, in a presentation to T&I Committee Democratic staff on October 17, 2017, entitled *Industry Drug and Alcohol Testing Program*, under "Program Gaps", the FAA recommends expanding "the list of safety-sensitive employees [subject to testing] to include other employees who may affect the safe operation of the aircraft e.g., aircraft fuelers, de-icers, cargo/baggage handlers." One major commercial airline echoed the FAA's recommendation.

With respect to foreign aircraft repair stations, the FAA's original drug testing rule, published in 1988, required drug testing of safety-sensitive aviation personnel, including some who performed safety-sensitive functions outside of the United States. However, the effective date of the rule was deferred with respect to testing outside of the territory of the United States on a number of

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[54] Report of the Senate Committee on Commerce, Science, and Transportation on S. 676, the Omnibus Transportation Employee Testing Act of 1991, May 2, 1991.
[55] Research and Special Programs Administration, *Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations*, December 24, 1997.
[56] *Id.*

occasions to continue negotiations with governments and international organizations, and that part of the rule was never finalized.

In 1994, the FAA published two final rules related to drug and alcohol testing. The first rule, *Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities*,[57] established the FAA's alcohol testing requirements. The alcohol-testing rule was not extended to employees located outside of the United States "due to significant logistical issues and possible conflicts with local laws." The second rule, *Anti-Drug Program for Personnel Engaged in Specified Aviation Activities*,[58] amended certain provisions of the existing FAA drug testing rules to comply with the requirements of the Omnibus Act. The drug testing requirements were not extended to employees located outside of the United States due to similar concerns. Rather, the rule specifically stated that no employee located outside of the United States would be tested for drugs. Additionally, in 1994, the FAA published a notice of proposed rulemaking (NPRM), *Antidrug Program and Alcohol Misuse Prevention for Employees of Foreign Air Carriers Engaged in Specified Aviation Activities*,[59] to address requirements in the Omnibus Act. The NPRM required foreign air carriers operating in the United States to implement testing programs like those required of U.S. air carriers unless "multilateral action was taken to support an international aviation environment free of substance abuse." However, in 2000, the FAA withdrew the NPRM stating, "[f]or the foregoing reasons, the FAA is withdrawing the rulemaking proposed on February 15, 1994, and is leaving within the purview of each government the method chosen to respond to the ICAO (International Civil Aviation Organization) initiatives."

The FAA Modernization and Reform Act of 2012 (P.L. 112-095) directed the FAA to issue a proposed rule requiring some foreign aviation personnel to be subject to drug and alcohol testing, specifically employees of repair stations certificated (and thus overseen) by the FAA (part 145 repair stations) who are responsible for safety-sensitive maintenance functions on scheduled U.S.-flagged commercial aircraft (part 121 air carrier aircraft). Congress did not address employees of maintenance providers located outside of the United States that are not certificated by the FAA but in its proposed rule the FAA extended drug and alcohol testing to them as well. An advanced notice of proposed rulemaking (ANPRM) was issued on March 17, 2014.[60] Comments were due on May 16, 2014, and the deadline for comments was extended until July 17, 2014. No further action was taken.

In the FAA Extension, Safety, and Security Act of 2016 (P.L. 114-190), in response to the FAA's inaction, Congress directed the FAA to issue a final rule by October 2017 on drug and alcohol testing for workers at all part 145 repair stations outside of the United States. However, to date, the FAA has issued neither a NPRM nor a final rule, and the proposal is nowhere to be found on DOT's regulatory plan.

Another gap in drug and alcohol testing of safety-sensitive aviation personnel is that commercial balloon pilots and pilots flying gliders and other light-sport aircraft are exempt from having to obtain a medical certificate, which provides regular opportunities for medical professionals

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[57] Federal Aviation Administration, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities, February 15, 1994.
[58] Federal Aviation Administration, Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities, October 21, 1994.
[59] See https://www.gpo.gov/fdsys/pkg/FR-1994-02-15/html/94-2035.htm.
[60] Federal Aviation Administration, Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States, March 17, 2014.

to conduct drug and alcohol screening of such pilots. In 2016, a commercial balloon pilot struck power lines and crashed in a field near Lockhart, Texas. The pilot and 15 passengers died. Post-accident forensic toxicology analysis detected both prescription and over-the-counter medications in the pilot's blood, including a sedating prescription muscle relaxant, diazepam, commonly marketed under the name Valium, oxycodone, a prescription synthetic narcotic pain medication, a sedating antihistamine, and a sedating cough suppressant.

According to the NTSB, the accident pilot had been diagnosed with medical conditions known to cause cognitive deficiencies that may affect decision-making and, ultimately, safety of flight. These conditions would likely have led an FAA-approved medical examiner (AME) to either defer or deny a medical certificate, thereby prohibiting him from flying. In addition, medications were found in the pilot's system that are known to cause impairment and are listed on the FAA's "Do Not Issue" and "Do Not Fly" lists.[61] A medical examiner would likely have deferred or denied a medical certificate to a pilot reporting use of these medications, but no such medical exam or certificate is required of commercial balloon pilots.

In response to the accident in Lockhart, Congressman Lloyd Doggett (D-TX) introduced H.R. 4102, the "Commercial Balloon Pilot Safety Act of 2017", in the 115th Congress, which directs the FAA to require operators of an air balloon to obtain a second-class medical certificate.

Recommendation: DOT should revise its regulations to ensure alcohol and controlled substances testing programs encompass all employees and agents performing safety-sensitive functions, addressing any gaps that currently exist in employees and agents who are tested.

Recommendation: PHMSA should renew discussions with Canada and Mexico to ensure pipeline companies that operate pipelines from Canada or Mexico into the United States are able to conduct the same drug and alcohol tests on safety-sensitive personnel located outside of the United States that are required of personnel in the United States.

Recommendation: The FAA should issue a final rule ensuring that all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft are subject to an alcohol and controlled substances testing program determined acceptable by the FAA Administrator.

Recommendation: Congress should enact H.R. 4102, the "Commercial Balloon Pilot Safety Act of 2017", to require operators of air balloons to obtain certain medical certificates.

[61] If a pilot-applicant is using a medication included on the FAA's "Do Not Issue" list, an FAA AME should not issue a medical certificate to the applicant. The FAA's "Do Not Fly" list contains a series of medications that may impair cognitive function; the FAA recommends that pilots using these medications should not fly an aircraft until an acceptable wait time has passed since his or her last dose. See FAA, *Guide for Aviation Medical Examiners*.

DOT REQUIRES TESTING FOR ONLY CERTAIN CATEGORIES OF DRUGS, BUT THERE ARE MANY DRUGS FOR WHICH DOT DOES NOT REQUIRE TESTING

Until recently, DOT drug testing was limited to five categories of drugs, generally known as the DOT 5: marijuana, cocaine, amphetamines, opiates (not opioids), and PCP.[62] These are the same drugs DOT required testing for in 1989. Over the past 30 years, DOT has made only two revisions to harmonize its regulations with HHS Mandatory Guidelines. The first revision, in 2010, required testing for Methylenedioxymethamphetamine (MDMA), confirmatory testing for Methylenedioxyamphetamine (MDA) and Methylenedioxyethylamphetamine (MDEA), and initial testing for 6-acetylmorphine (6-AM), a marker for heroin.

The second revision began on January 23, 2017, when HHS revised its Mandatory Guidelines to require testing for four opioids: hydrocodone, hydromorphone, oxymorphone, and oxycodone.[63] DOT published an NPRM[64] to adopt the new HHS guidelines on the same day, but did not finalize the rule until November 13, 2017, after a letter from T&I Committee Ranking Member Peter DeFazio urged the Secretary of Transportation to take swift action.[65] The rule became effective on January 1, 2018.[66]

As stated in Ranking Member DeFazio's October 10, 2017 letter, the addition of the four opioids is a good first step, but there are a host of drugs that DOT and HHS do not require random testing for, including meperidine (Demerol), fentanyl, Xanax, Darvocet, Valium, Ativan, Ambien, and Tramadol. Fentanyl, in particular, is a growing concern among the regulated entities that T&I Committee Democratic staff interviewed. Fentanyl is a powerful synthetic opioid analgesic that is similar to morphine but is 50 to 100 times more potent.[67] On June 6, 2017, the New York City Health Department reported that, in 2016, 37 percent of overdose deaths involved fentanyl, up from 11 percent in 2015. Last year, more than 1,300 New Yorkers died of a drug overdose, and nearly one-half (44 percent) of those deaths involved fentanyl.[68] New York is not alone; fentanyl use has spread rapidly throughout the United States but it is unclear when, if at all, HHS will authorize testing for it.

DOT does not have the authority to add new categories of drugs to the testing panels. The Omnibus Act requires DOT to adopt scientific and technical guidelines, including Mandatory Guidelines, issued by HHS for the categories of drugs for which DOT requires testing. The legislative history indicates this process was established to ensure accuracy, fairness, and constitutionality of drug testing. The report of the Senate Committee on Commerce, Science, and

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[62] The five categories include metabolites of 11 substances: marijuana, amphetamine, methamphetamine, cocaine, codeine, morphine, heroin, phencyclidine, methylenedioxymethamphetamine, methylenedioxyamphetamine, and methylenedioxyethylamphetamine.

[63] Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Mandatory Guidelines for Federal Workplace Drug Testing Programs*, January 23, 2017.

[64] Department of Transportation, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments*, January 23, 2017.

[65] See attached letter.

[66] Department of Transportation, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments*, November 13, 2017

[67] National Institute on Drug Abuse, Fentanyl.

[68] National Institute on Drug Abuse, NIDA's National Drug Early Warning System.

Transportation that accompanied the Omnibus Act stated, "In any drug and alcohol testing program, accuracy is essential. This is necessary both to ensure that individuals do not escape detection, and most importantly, to ensure against erroneous positive results…By incorporating laboratory certification and testing procedures developed by HHS and DOT…the Committee has taken affirmative steps to ensure accuracy."[69]

In a 2010 rulemaking, DOT stated,

> In reviewing the Omnibus Act, its legislative history, and the regulatory history of the Department's testing program, it remains clear that, since the inception of our program, the Department has been tied to HHS for the scientific methodology, for identification of the drugs for which we will require testing; the certified laboratories we are to use; and the technical expertise for certifying and decertifying laboratories. These are the core scientific laboratory functions necessary for the Department's program.[70]

Federal regulations do, however, allow employers to go above and beyond the minimum drug and alcohol testing standards: According to DOT,

> Employers can expand upon the Department's regulatory requirements, as long as they do not represent the test as being required by DOT. Under their non-DOT testing programs, DOT regulated companies may test for other drugs of their choosing. Therefore, companies are not prohibited by DOT from testing for additional drugs that may be of concern within their communities and companies.[71]

Most carriers and operators that T&I Committee Democratic staff interviewed stick to the DOT-approved panel, largely to eliminate confusion and ensure proper chain of custody, while some reported that they conduct more expansive 10-panel drug tests.[72] One railroad carrier reported testing for K2, synthetic marijuana. However, there are limitations to non-DOT testing. For example, according to DOT, there are no Federal consequences when a commercial motor vehicle driver tests positive on a non-DOT drug test because the test is not authorized by Federal regulation.[73] Additionally, the results of those tests are not reported to DOT (see page 25 for further information).

With respect to marijuana, legalization in a number of States means more focus needs to be placed on the potential transportation safety impacts of marijuana use as it becomes more prevalent in the United States. DOT has issued guidance, which states,

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[69] Report of the Senate Committee on Commerce, Science, and Transportation on S. 676, the Omnibus Transportation Employee Testing Act of 1991, May 2, 1991.
[70] Department of Transportation, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*, August 16, 2010.
[71] See https://www.gpo.gov/fdsys/pkg/FR-2010-08-16/pdf/2010-20095.pdf.
[72] A standard 10 panel drug test typically looks for marijuana, cocaine, amphetamines, opiates, PCP, benzodiazepines, barbiturates, methadone, propoxyphene, and Quaaludes.
[73]See https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/drug-and-alcohol-faqs

> We want to make it perfectly clear that the State initiatives will have no bearing on the Department of Transportation's regulated drug testing program. The Department of Transportation's Drug and Alcohol Testing Regulation—49 CFR Part 40—does not authorize the use of Schedule I drugs, including marijuana, for any reason.[74]

Since DOT mandated drug testing is focused on Schedule I of the Controlled Substances Act, removing marijuana from Schedule I would necessitate changes to the Omnibus Act and DOT regulations to ensure a safe and drug-free workplace.

One of the biggest challenges is identifying an impairment standard for marijuana— in other words, developing a test that detects impairment from the use of marijuana, which poses a safety problem, as opposed to simply identifying that an individual may have used marijuana sometime in the past few weeks.

The FAST Act required the Secretary of Transportation to issue a report to Congress on several outstanding challenges of marijuana-impaired driving, including methods to detect marijuana-impaired driving; impairment standard feasibility; methods to differentiate the cause of driving impairment between alcohol and marijuana; and the role and extent of marijuana impairment in motor vehicle accidents.[75]

Unlike the current 0.08 percent Blood Alcohol Content impairment standard for drunk driving, there is currently no impairment standard for marijuana. Research shows that detection of delta-9-tetrahydrocannabinal (THC), the primary psychoactive substance in marijuana, in blood or oral fluid does not correlate to driver impairment. Marijuana also has a larger variation in how it affects people than alcohol, making it more difficult to establish a uniform impairment standard. Setting a scientifically valid impairment level for marijuana use and establishing a low-cost, accurate test for that impairment level will not be an easy task.

Recommendation: DOT should continue to base its standards on HHS Mandatory Guidelines in compliance with the Omnibus Act; however, the Administration should evaluate the process HHS uses for adding or removing categories of drugs to/from the testing requirements, while ensuring accuracy and fairness in the testing process.

Recommendation: DOT and HHS should prioritize research that could lead to a scientifically valid and legally defensible testing standard for marijuana impairment.

[74] See https://www.transportation.gov/odapc/dot-recreational-marijuana-notice
[75] See https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf

POST-ACCIDENT TESTING LIMITS DOT'S ABILITY TO EVALUATE ACCIDENT CAUSES

Pursuant to the Omnibus Act and implementing regulations, DOT requires pre-employment, reasonable suspicion/cause, random, return-to-duty, follow-up, and post-accident testing of employees performing safety-sensitive functions. All tests, except post-accident tests for covered railroad workers, must be conducted through urinalysis.

The FRA is the only mode of transportation that requires post-accident toxicological (PAT) testing utilizing blood specimens. The FRA is responsible for maintaining and providing railroad carriers with the toxicology kits and covering costs for the tests. The 1985 final rule requiring such testing stated, "FRA believes the concept of post-accident toxicological testing is critical to a national program intended to prevent alcohol and drug-related accidents and injuries on the railroads."[76] The FRA listed five independent bases for mandating testing:

1. Provide the FRA with more accurate and complete data on individual accidents;
2. Determine the true causes of major human factor accidents to help guide future regulatory efforts;
3. Permit the NTSB and the FRA to determine with greater precision the causes of major accidents of interest to the public;
4. Deter employees from using alcohol or drugs on the job; and
5. Keep the alcohol and drug problem squarely before the railroad industry.[77]

Most railroad carriers agree that PAT testing has enabled the FRA to examine more fully the cause of a particular accident. FRA regulations on post-accident testing requires testing for up to 50 drugs: marijuana, cocaine, amphetamines, opiates, PCP, 11 different opioids (7 more than the other modes of transportation test for post-accident, including fentanyl), barbiturates, benzodiazepines, and sedating antihistamines. In contrast, the other modes of transportation (FAA, FTA, FMCSA, PHMSA, and USCG) only test for five categories of drugs (plus the four newly added opioids) following an accident.

The NTSB also conducts PAT testing following civil aviation accidents and significant accidents in the other modes of transportation using the FAA's Bioaeronautical Sciences Research Laboratory at the Civil Aerospace Medical Institute (CAMI) in Oklahoma City, Oklahoma. Testing includes more than 1,300 substances.[78]

According to the NTSB, PAT testing enabled investigators following the Woburn, Massachusetts, rail accident[79] to determine that one of the fatally injured MOW employees had likely used marijuana within three hours of his death.[80] At the time, MOW employees were not subject to drug and alcohol testing; they were only tested post-mortem following an accident. According to the

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[76] Federal Railroad Administration, *Control of Alcohol and Drug Use in Railroad Operations*, August 2, 1985, 50 FR 31508.
[77] *Id.*
[78] See http://jag.cami.jccbi.gov/toxicology/default.asp?offset=0.
[79] National Transportation Safety Board, *Collision of Massachusetts Bay Transportation Authority Train 322 and Track Maintenance Equipment near Woburn, Massachusetts,* January 9, 2007, Accident Report NTSB/RAR-08/01.
[80] National Transportation Safety Board letter to the Federal Railroad Administration, September 26, 2014. See https://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-08-007.

FRA, such post-mortem testing results of MOW fatalities revealed a rate of positive test results three times that of those employees currently covered by the FRA's drug testing regulations.[81] Without PAT testing, the FRA may never have known about the prevalence of drug use among MOW employees. The toxicological tests performed by the NTSB following the April 2016 accident in Chester, Pennsylvania, is another example of where PAT testing revealed use of oxycodone by the maintenance supervisor, a drug that DOT will now test for under new rules.[82]

On September 15, 2017, the FRA stated in a RSAC meeting that post-mortem PAT testing of mechanical workers, who are not covered under current regulations, has shown significant increases in positive rates from 1987 through 2016, leading the FRA to call for expanding drug and alcohol testing to such employees.

Recommendation: DOT should evaluate FRA regulations for post-accident testing, and consider expanding post-accident testing in the other modes of transportation to additional categories of drugs.

[81] *Id.*

[82] Department of Transportation, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments*, November 13, 2017.

SOME ENTITIES ARE EXEMPT FROM REPORTING DRUG AND ALCOHOL VIOLATIONS TO DOT, LIMITING DOT'S ABILITY TO THOROUGHLY EVALUATE DRUG AND ALCOHOL USE AMONG TRANSPORTATION WORKERS

Employers subject to DOT or USCG drug and alcohol testing requirements must submit drug and alcohol testing data, including the number of negative and positive tests, to DOT through the Drug and Alcohol Management Information System.[83] Reporting, however, varies among modes of transportation based on Federal regulations.

According to the FRA, all of the Class I railroads and most of the commuter railroads are required to report testing data to DOT. About 650 shortline and regional railroads (Class II and Class III railroads) are not required to report such information to DOT. Many of those fall under the "small railroad exception" under FRA rules and are exempt from random drug testing. In total, about 35 railroads submit drug and alcohol reports to the FRA, representing 90 percent of the results from rail safety-sensitive personnel subject to testing.

FAA regulations require reporting from only part 121 scheduled commercial air carriers and any other entities conducting drug and alcohol testing with 50 or more employees performing a safety-sensitive function on January 1 of any calendar year. However, the FAA has the right to require **all** employers subject to the regulations to report their drug and alcohol testing results and has done so for the past two years. FAA staff stated, "[We] plan to continue this practice because we believe it gives us the most accurate statistics for our regulated industry."

The FMCSA only requires reporting by motor carriers upon request via an "annual survey of drug and alcohol testing results." In 2016, 3,250 carriers (out of a total of about 500,000) were selected to report their 2015 testing results. This includes all companies with 1,000 or more drivers and a random sample of companies with fewer than 1,000 drivers.

Under FTA rules, each covered entity must prepare an annual report and submit it upon request from the FTA. PHMSA requires each pipeline operator and contractor with 50 or more employees performing safety-sensitive functions to submit annual reports, and pipeline operators and contractors with 50 or fewer employees to submit such information only upon request by PHMSA. The USCG requires annual reporting of all entities subject to its drug and alcohol regulations, including marine employers who operate vessels for hire and/or have personnel that perform safety-sensitive duties.

The carriers and operators that are required to report drug testing information to DOT provide results from only federally approved testing. They do not report results from testing conducted under company authority. While there are limits to when company tests can be conducted and how the results are used, such results could be used by DOT and the modal administrations to more fully evaluate drug and alcohol abuse among transportation workers.

For example, Amtrak provided T&I Committee Democratic staff with the number and rates of drug positives which included both DOT-mandated and company-sponsored testing. Amtrak separately provided staff with the annual forms submitted to DOT through the Drug and Alcohol

[83] See https://www.transportation.gov/odapc/MISreporting.

Management Information System, which provided the relevant figures for DOT-mandated testing only.

A comparison of the information showed that, through company testing, Amtrak was able to identify higher numbers and rates of drug positives than were being identified through DOT-mandated testing alone.

Recommendation: DOT should routinely review exemptions from reporting requirements for drug and alcohol testing, and consider conducting a review that compares the results of DOT-mandated tests with the results of tests conducted under company authority to help better inform regulators of drug and alcohol abuse among transportation workers.

HHS SHOULD DEVELOP SCIENTIFICALLY-BASED STANDARDS FOR ALTERNATE TESTING METHODS BEFORE DOT ADOPTS NEW STANDARDS

The Omnibus Act requires DOT to adopt HHS standards for "all aspects of laboratory controlled substances testing and laboratory procedures, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests." DOT cannot diverge from HHS standards when it comes to methods for drug and alcohol testing. The only method for testing authorized under HHS standards is urine testing (note: FRA requirements for blood testing post-accident pre-date HHS standards; they were grandfathered in the Omnibus Act). There are no HHS-confirmed scientifically based standards for hair testing, oral fluids testing, or fingernail testing. Some carriers have begun using hair testing under their company authority for pre-employment, which does not satisfy Federal regulations, while numerous studies show that hair testing can produce false results, and may have an inherent racial bias.

On May 29, 2015, HHS published a notice in the *Federal Register* soliciting written comments and statements from the general public and industry stakeholders regarding a variety of issues related to hair specimen drug testing.[84] On June 18, 2015, HHS published a second notice requesting additional information on hair testing.[85] No further action has been taken; however, the FAST Act required HHS to issue scientific and technical guidelines for hair testing as a method of detecting the use of controlled substances within one year of the date of enactment (December 4, 2016).

With respect to oral fluid testing, on May 15, 2015, HHS issued an NPRM proposing to allow oral fluids testing as a permissible methodology for Federal employee's drug testing, in addition to the existing long-used methodology of urine testing.[86] According to DOT, HHS has submitted a final rule to OMB for review.[87] DOT submitted comments to OMB, stating, "Although the DOT welcomes the use of alternate specimen in its drug testing program, staff has some concerns about passive contamination issues and split specimen testing for oral fluids."[88] Those concerns were reiterated by one labor union representative interviewed by T&I Committee Democratic staff. However, carriers universally agreed that oral fluids testing would be beneficial when dealing with shy bladder and shy lung cases. HHS has taken no further action on the final rule.

Recommendation: HHS should develop scientifically-based standards for alternate testing methods for the use of controlled substances before DOT authorizes carriers and operators to utilize such methods.

[redacted]

[84] Department of Health and Human Services, *Mandatory Guidelines for Federal Workplace Drug Testing Programs; Request for Information Regarding Specific Issues Related to the Use of the Hair Specimen for Drug Testing*, May 29, 2015.
[85] Department of Health and Human Services, Mandatory Guidelines for Federal Workplace Drug Testing Programs; Request for Information Regarding Specific Issues Related to the Use of the Hair Specimen for Drug Testing, June 18, 2015.
[86] Department of Health and Human Services, Mandatory Guidelines for Federal Workplace Drug Testing Programs, May 15, 2015.
[87] See Rulemaking – Oral Fluid Testing; https://www.transportation.gov/transition/odapc-top-policy-issues.
[88] See https://www.transportation.gov/transition/odapc-top-policy-issues.

ADDITIONAL TRAINING AND RESOURCES FOR EMPLOYEES AND EMPLOYERS ARE NEEDED

Federal regulations require drug and alcohol training for employees when they are hired, move into a safety-sensitive position, or following a positive test result, as part of an employee assistance program. Training is also required for supervisors to recognize the signs, symptoms, and indicators of substance abuse in the workplace and to identify, document, and manage reasonable suspicion training.

Training requirements vary among the modes of transportation.[89] All the carriers that T&I Committee Democratic staff interviewed provide recurrent reasonable suspicion training for supervisors in accordance with the regulations, but only two provide recurrent training for rank-and-file workers. Many carriers rely on daily safety briefings and company publications circulated to employees or posted to websites to communicate the dangers of drug and alcohol use on the job. Some of the unions, including the maritime unions, offer drug and alcohol training through their training centers and recommended that Congress and DOT consider establishing a grant program to provide continuing education for the workforce.

In addition, although some modal administrations, such as the FAA and the FTA, have outstanding training resources for employees on the dangers of drug and alcohol use, it is unclear whether those resources are utilized by employers or their employees. Other modal administrations have few training resources for employers and employees and should review the information that the FAA and the FTA, for example, have developed and are circulating to aid their efforts in reducing drug and alcohol abuse among workers.

The fact is that transportation workers are hard workers and remain in their jobs for years, often decades. Work can be grueling, sometimes painful, and often sedentary, all of which, coupled with age, can lead to injuries and health problems requiring an employee to use medications, which may impair their performance at work. At the same time, the landscape on licit and illicit drugs is ever-changing. It is therefore crucial that workers receive training at regular intervals throughout their career on drug and alcohol abuse, which should, at a minimum, include discussions on:

- the effects of licit and illicit drugs, including sedating antihistamines, and alcohol on safety and job duties;
- Federal requirements and employer policies and how they differ from State regulations which may authorize, for example, marijuana use;
- when and how to seek help;
- the types of drugs that should be avoided prior to and when on duty;
- the employee assistance resources that are available.

Training for rank-and-file employees should also be required when Federal regulations or employer programs or policies change.

T&I Committee Democratic staff also recommend that DOT consider requiring carriers and operators to disseminate a document similar to the FAA's Do Not Fly List, which provides airmen

[89] See https://www.transportation.gov/odapc/dot-agencyuscg-drug-and-alcohol-program-facts

with a list of classes of medications that they should not use while flying. This list of medications is not meant to be all-inclusive or comprehensive, but rather address the most common concerns.

T&I Committee Democratic staff interviewed one large Class I railroad that produces such a list of restricted prescription drugs, including brand examples of long-acting opioids, short-acting opioids, benzodiazepines, barbiturates, muscle relaxants, and hypnotic drugs (such as Ambien).[90] Other railroads are developing similar lists. This approach could be helpful in educating employees on the dangers of common prescriptions. Such lists should include sedating antihistamines, which the NTSB has identified as a serious concern following accident investigations.

In addition to training, DOT must ensure that regulated entities have in place adequate programs and policies for a drug- and alcohol-free workplace. Over the past decade, the Amtrak Inspector General has found numerous deficiencies with Amtrak's drug and alcohol program, including Operation RedBlock, a labor-developed, Amtrak-adopted drug identification and education program that was designed to improve safety by encouraging employees under the influence of drugs or alcohol to remove themselves from the workplace voluntarily, without being subject to discipline. Other railroads have similar programs; they are unique to the railroad industry, largely due to the workforce's unscheduled work environment.

Amtrak reports that its "random testing rates for employees historically exceeded the FRA established minimum levels" and that, as a result, it developed new policies and introduced a new drug and alcohol prevention program in October 2017, called the Prevention, Intervention, Education, Resources (P.I.E.R.) program, which replaces Operation RedBlock and focuses on substance use and abuse prevention. The Amtrak Inspector General is undergoing a review of Amtrak's new policies and the P.I.E.R. program. T&I Committee Democratic staff reviewed Amtrak's new policy, which raises some safety concerns. For example, it states,

> Employees taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication could potentially interfere with the safe performance of his or her job duties. An employee who performs safety-sensitive duties must fully disclose the nature of those job duties to his/her healthcare provider. The employee and his or her healthcare provider must complete an Authorization to Work with Medication(s) form (NRPC 3133), and return to Amtrak Medical Services for review.
>
> Amtrak Medical Services will review the completed NPRC 3133 as expeditiously as possible. Should Medical Services not review and contact the employee with regard to the ability to work with the medication before the employee's next assigned work shift, the employee should proceed with his/her work duties if able to do so, unless advised otherwise by the prescribing healthcare provider.

Instructing personnel to report for duty when taking prescription or over-the-counter medications in situations where Amtrak Medical Services is not able to review or contact the

[90] Union Pacific Health and Medical Services, Restricted Prescription Drugs.

employee could lead to a serious safety hazard. While Federal regulations require employees to inform their physician of their job duties when prescribing medication, it is ultimately Amtrak's responsibility to ensure that communication has occurred and that the physician's assessment of the employee's job duties is consistent with the safe performance of those duties. T&I Committee Democratic staff urged Amtrak to re-consider this policy.

With respect to employers, commercial motor carriers and the associations representing carriers and independent owner-operators stated in interviews that implementing the Commercial Driver's License Drug and Alcohol Clearinghouse would address one of the biggest gaps in the FMCSA's drug and alcohol testing program, which allows for drivers to "job-hop" from one trucking company to another without their drug history following them.

In 2012, in section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141), Congress directed the Secretary of Transportation to establish a national clearinghouse containing commercial motor vehicle (CMV) operators' violations of the FMCSA's drug and alcohol testing program.

On December 5, 2016, DOT issued a final rule that established the national drug and alcohol clearinghouse for commercial truck and bus drivers. The final rule requires motor carriers, medical review officers, third-party administrators, and substance abuse professionals to report information about drivers who: test positive for drugs or alcohol; refuse drug and alcohol testing; and undergo the return-to-duty drug and alcohol rehabilitation process.

In addition, motor carriers will be required to annually search the clearinghouse for current employees, and during the pre-employment process for prospective employees, to determine whether a driver violated drug or alcohol testing requirements with a different employer that would prohibit them from operating a CMV.

The clearinghouse, however, is not anticipated to become fully operational until 2020. Until that time, gaps exist in the ability of commercial motor carriers and the FMCSA to obtain accurate drug and alcohol information on drivers.

Recommendation: DOT should require recurrent training for rank-and-file workers on drug and alcohol use, and Congress and DOT should consider establishing a competitive grant program to expand workforce training opportunities.

Recommendation: DOT should review the training resources provided by the Office of Drug and Alcohol Policy and modal administrations to see if they can be used cross-modally and determine whether there are any gaps in such resources, such as requiring issuance of a Do Not Fly/Operate list in all modes of transportation.

Recommendation: DOT must ensure that regulated entities have in place adequate programs and policies for a drug- and alcohol-free workplace.

Recommendation: FMCSA should swiftly implement the national clearinghouse containing commercial motor vehicle operators' violations of FMCSA's drug and alcohol testing program.

FINDINGS

- Illicit drug use and licit drug misuse among transportation workers are on the rise. Since 2000, the NTSB has investigated 381 fatal accidents involving drugs or alcohol.

- Information regarding drug and alcohol positive rates among transportation workers is not readily available to the public.

- DOT drug and alcohol regulations do not cover all employees performing safety-sensitive functions, such as employees of foreign aircraft repair stations.

- DOT drug testing is currently limited to certain categories of drugs, but there are many drugs for which DOT does not require testing.

- The legalization of marijuana in a number of States means more focus needs to be placed on the potential transportation safety impacts of marijuana use as it becomes more prevalent in the United States.

- Post-accident testing limits DOT's ability to obtain more accurate and complete data on individual accidents; determine the true causes of human factor accidents to help guide future regulatory efforts; and permit DOT to determine with greater precision the causes of accidents.

- Some entities are exempt from reporting drug and alcohol violations to DOT, limiting DOT's ability to thoroughly evaluate drug and alcohol use among transportation workers.

- HHS needs to develop scientifically-based standards for alternate testing methods, such as hair and oral fluid testing.

- Gaps exist in training and resources provided to employers and employees. For example, only one carriers reported providing recurrent training for rank-and-file workers.

Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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October 10, 2017

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Chao:

We write to urge you to take immediate action to harmonize U.S. Department of Transportation (DOT) drug testing regulations with the revised U.S. Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Urine, published on January 23, 2017, and effective October 1, 2017. These guidelines would allow DOT to add four prescription opioids to its decades-old drug-testing panel: hydrocodone, hydromorphone, oxymorphone, and oxycodone.

Currently, DOT **does not** require drug testing of safety-sensitive transportation workers for opioid use. DOT only requires a five-panel test to include drugs that HHS authorized and published in a final rule in 1989, almost 30 years ago, such as marijuana, cocaine, and PCP. Yet, we are in the midst of a prescription opioid crisis in America.

The U.S. Centers for Disease Control and Prevention (CDC) report that drug overdose is the leading cause of accidental death in the U.S. The CDC estimates that more than 52,000 Americans died of drug overdose in 2016, and it predicts that over 71,000 Americans will die from overdose in 2017. In 2016 alone, it is estimated that 11.8 million Americans engaged in opioid misuse.

Transportation workers are not immune to this crisis, as evidenced by the National Transportation Safety Board's (NTSB) investigation of a 2016 passenger train accident near Chester, Pennsylvania. On April 3, 2016, Amtrak train 89 struck a backhoe used by a maintenance crew performing scheduled track work near Chester. Two maintenance workers were killed and 41 persons aboard the train were treated for injuries. According to the Medical Factual Report prepared for the NTSB, the engineer of Amtrak train 89 tested positive post-accident for cannabinoids, indicating the use of marijuana, and the maintenance workers tested positive for a variety of prescription and non-prescription drugs, including cocaine and oxycodone. The cause of the accident is still under investigation.

We understand that DOT issued a Notice of Proposed Rulemaking (NPRM) on January 23, 2017, to adopt the HHS guidelines on opioids. Comments were due more than six months ago, and the NPRM has since languished in this Administration. We strongly urge you to take action now to finalize this rulemaking as a first step toward addressing the opioid crisis.

If you have any questions, please contact me or have your staff contact Ms. Jennifer Homendy of the Committee on Transportation and Infrastructure Democratic staff at (202) 225-3274.

Sincerely,

PETER DeFAZIO
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