

National Transportation Safety Board

Office of the Chair

Washington, DC 20594



June 24, 2022

Docket Management Facility, M-30
US Department of Transportation
1200 New Jersey Avenue SE
Room W12-140
West Building Ground Floor
Washington, DC 20590

Re: Docket Number NHTSA-2022-0007

Dear Sir or Madam:

The National Transportation Safety Board (NTSB) has reviewed the National Highway Traffic Safety Administration's (NHTSA) request for comments titled "Barriers and Solutions for Submitting Toxicology Data to the Fatality Analysis Reporting System [FARS] Pursuant to Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities," published at *87 Federal Register* 24390 on April 25, 2022. The request for comments references section 25025 of the Infrastructure Investment and Jobs Act, which states the following:

Not later than 2 years after the date of enactment of this act, the Secretary [of Transportation], in consultation with the heads of appropriate federal agencies, state highway safety offices, state toxicologists, traffic safety advocates, and other interested parties, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that, in accordance with the document entitled "Recommendations for Toxicological Investigations of Drug-Impaired Driving and Motor Vehicle Fatalities–2017 Update" (and subsequent updates to that document)–

- (1) identifies any barriers that states encounter in submitting alcohol and drug toxicology results to [FARS];
- (2) provides recommendations on how to address the barriers identified pursuant to paragraph (1); and
- (3) describes steps that the Secretary, acting through the Administrator of the National Highway Traffic Safety Administration [NHTSA], will take to assist states in improving–

- (A) toxicology testing in cases of motor vehicle crashes; and
- (B) the reporting of alcohol and drug toxicology results in cases of motor vehicle crashes.¹

The NTSB supports this congressional requirement because accurate data provide law enforcement agencies, researchers, and policymakers with the information they need to determine the scope of safety issues, track changes over time, and assess the effectiveness of countermeasures. Over the past three decades, the NTSB has made several recommendations to NHTSA and others to improve alcohol and other drug data, and "Prevent Alcohol- and Other Drug-Impaired Driving" is an issue area on the NTSB's 2021-2022 [Most Wanted List of Transportation Safety Improvements](#). We offer the following comments to help NHTSA in its current effort to identify and address barriers that states may encounter when collecting toxicology data and providing alcohol and drug toxicology results to FARS.

Blood Alcohol Concentration Reporting

As early as 1985, the NTSB made two recommendations to NHTSA to "undertake a more extensive and aggressive program to provide direct technical support to states to improve alcohol testing and reporting of all drivers in fatal highway crashes" ([H-85-47](#)), and to urge those "states with deficient programs to increase the allocation of highway safety grant program funds and state matching funds to improve the measurement and reporting of alcohol involvement in fatal highway crashes" ([H-85-48](#)).² At that time, NHTSA reported national blood alcohol concentration (BAC) data for 47 percent of fatally injured drivers and 18 percent of drivers who survived fatal crashes. In its 1993 letter closing those recommendations, the NTSB noted that 28 states had achieved reporting BAC for more than 80 percent of fatally injured drivers, which signified a marked improvement over the 13 states that did so in 1985. The NTSB encouraged NHTSA to continue to assist the states, particularly those with low testing rates.

By 2002, the national reporting rates for fatally injured and surviving drivers in fatal crashes had increased to 65 percent and 25 percent, respectively, and a 2004 NHTSA-sponsored report recommended establishing national guidelines to achieve testing and reporting rates of 80 percent BAC reporting for fatally injured drivers and 60 percent reporting for surviving drivers in fatal crashes.³ At the time of the report, six states had achieved those levels.⁴ However, in the years that followed, little

¹ Infrastructure Investment and Jobs Act, [Public Law 117-58](#), 135 Stat. 429 (2021).

² Safety Recommendations [H-85-47](#) and [H-85-48](#) are both classified "Closed–Acceptable Action." Use the [CAROL Query](#) for more information about NTSB safety recommendations.

³ J. H. Hedlund, R. G. Ulmer, and V. S. Northrup, *State Laws and Practices for BAC Testing and Reporting Drivers Involved in Fatal Crashes*, DOT HS 809 756 (Washington, DC: National Highway Traffic Safety Administration, 2004).

⁴ The six states were Maine, Minnesota, Montana, Nebraska, New Hampshire, and South Dakota.

progress was made. In 2012, the NTSB held a forum, "Reaching Zero: Actions to Eliminate Substance-Impaired Driving," with the goal of identifying the most effective data-driven, science-based actions needed to eliminate crashes resulting from substance-impaired driving.⁵ As part of that forum, the NTSB determined that as of 2009, fewer states (only five) met the 2004 recommended BAC reporting rates.⁶ Consequently, the NTSB recommended that NHTSA disseminate BAC testing and reporting guidelines to the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia ([H-12-32](#)).⁷ The NTSB further recommended that the 45 states with low reporting rates, the Commonwealth of Puerto Rico, and the District of Columbia, take steps to increase their BAC reporting rates ([H-12-34](#) and [H-12-35](#)).⁸ Since those recommendations were issued, some states have improved their reporting rates, but on the national level, little has changed. In 2019, the most recent year for which state reporting statistics are published, the BAC reporting rates for fatally injured and surviving drivers in fatal crashes were 65 percent and 24 percent, respectively. Only three states provided BAC data for more than 80 percent of fatally injured drivers and more than 60 percent of surviving drivers in 2019.⁹

Over the past two decades, national BAC reporting rates in fatal crashes have not improved. In fact, as of 2019, fewer states met NHTSA's reporting guidelines than in 2009. The NTSB continues to believe that, without adequate rates of BAC testing and reporting, states will not be well equipped to determine whether impaired driving programs and other countermeasures are meeting their goals. Improving postcrash BAC testing and reporting rates requires commitment, communication, and coordination among stakeholders, including law enforcement agencies, coroners, medical examiners, hospitals, toxicology laboratories, state crash database managers, and FARS analysts. Reaching out to states and other stakeholders about the barriers they face in testing and reporting BAC results may shed light on solutions to the problem. The NTSB strongly encourages NHTSA to use the information gathered through this request for comments to take steps to improve BAC reporting for all drivers in fatal crashes.

⁵ See the NTSB's "[Reaching Zero: Actions to Eliminate Substance-Impaired Driving: Forum Summary](#)," dated November 9, 2012, for more information.

⁶ The five states were Alaska, Maine, Montana, Nebraska, and New Mexico.

⁷ Safety Recommendation [H-12-32](#) is classified "Closed–Acceptable Action."

⁸ Safety Recommendation [H-12-34](#) is classified "Closed–Acceptable Action" for 2 recipients that have completed the recommended action, "Open–Acceptable Response" for 30 recipients, "Open–Acceptable Alternate Response" for 3 recipients, and "Open–Unacceptable Response" for 12 recipients. Safety Recommendation [H-12-35](#) is classified "Closed–Acceptable Action" for 2 recipients that have completed the recommended action, "Open–Acceptable Response" for 25 recipients, and "Open–Unacceptable Response" for 20 recipients.

⁹ The three states were Louisiana, Maine, and Montana.

Other Drug Reporting

As a result of a 1990 NTSB safety study that examined alcohol and other drug use among fatally injured drivers of heavy trucks, the NTSB made several recommendations to the US Department of Transportation (DOT), NHTSA, and to the states concerning standardizing postcrash toxicological specimen collection, testing, and reporting.¹⁰ Among those recommendations was Safety Recommendation [H-90-16](#) to NHTSA to “revise [FARS] to include standardized drug toxicological tests requested in each fatal accident and results, both single and multiple drug, which would include an estimating system similar to that now used to estimate national alcohol involvement in fatal crashes.” The NTSB also made a recommendation to the DOT to work with the US Department of Health and Human Services and other organizations to establish “a postaccident alcohol and other drug analytic test plan for tests to be conducted on a wide range of impairing drugs with results reported at state-of-the-art sensitivity levels” ([H-90-14](#)). In 1998, the NTSB classified Safety Recommendation [H-90-16](#) “Closed—Acceptable Action” in response to NHTSA’s revisions to FARS, which included the addition of drug-related elements and a drug coding system. However, Safety Recommendation [H-90-14](#) was ultimately classified “Closed—Unacceptable Action” in 2005 due to a lack of progress.

In 2012, as a result of its forum, “Reaching Zero: Actions to Eliminate Substance-Impaired Driving,” the NTSB observed that no standard guidance existed for states regarding (1) a minimum set of drugs that should be evaluated, (2) recommended methods for drug testing, or (3) reporting thresholds for crash databases. Because establishing standards for postcrash drug testing and reporting is a necessary first step toward improving our understanding of the problem of drugged driving, the NTSB recommended that NHTSA “develop and disseminate to appropriate state officials a common standard of practice for drug toxicology testing, including (1) the circumstances under which tests should be conducted, (2) a minimum set of drugs for which to test, and (3) cutoff values for reporting the results” ([H-12-33](#)). In its letter to NHTSA concerning that recommendation, the NTSB acknowledged the efforts of the International Council on Alcohol, Drugs and Traffic Safety and of the National Safety Council’s Alcohol, Drugs and Impairment Division (NSC-ADID) as examples of sources for standard practices.¹¹

¹⁰ National Transportation Safety Board, *Fatigue, Alcohol, Other Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes (Volume 1)*, [SS-90/01](#) (Washington, DC: National Transportation Safety Board, 1990).

¹¹ (a) Deborah A.P. Hersman, Chairman, NTSB, letter to David L. Strickland, Administrator, NHTSA, dated November 21, 2012, issuing Safety Recommendations [H-12-32](#) and [H-12-33](#). (b) Safety Recommendation [H-12-33](#) is classified “Open—Acceptable Response.”

In response, NHTSA informed the NTSB that it was developing a recommended standard of practice for drug toxicology testing. In 2016, NHTSA provided support for an effort to review and update the NSC-ADID recommendations for the toxicological investigation of drug-impaired driving cases and motor vehicle fatalities. The resulting NSC-ADID report, which was part of a regularly produced survey of forensic toxicology laboratories in the United States and Canada, provided a set of recommendations concerning which drugs should be tested for, as well as screening and confirmation cutoffs for analyses in blood, urine, and oral fluid.¹²

In 2018, NHTSA established an expert working group on toxicology data collection to improve overall understanding of the national scope and prevalence of drug-impaired driving. The working group drafted guidance for the forensic toxicology community; however, the draft guidance was never shared with the public, and the working group stopped meeting in 2019. Most recently, in March 2022, NHTSA published a report providing a detailed exploration of the challenges involved in driver drug testing and reporting in the United States to "lay the groundwork for improving the data collection and reporting."¹³ The report describes numerous problems and challenges at all stages of the current process. It also describes some of the measures that NHTSA has taken or plans to take to address those problems. For example, it has expanded the number of drugs that can be entered into FARS from a maximum of three drugs per person to an unlimited number. The agency also is working to make other improvements to FARS and has engaged with several forensic toxicology experts to serve as liaisons to "increase communication among state and local labs, provide training for toxicologists and prosecutors on court room testimony, and work towards standardizing testing and reporting procedures."¹⁴

The NTSB encourages NHTSA to continue implementing the strategies described in its 2022 report. The NTSB also urges NHTSA to reengage its efforts to address Safety Recommendation [H-12-33](#) to develop and disseminate to appropriate state officials a common standard of practice for drug toxicology testing.

¹² A. D'Orazio, A. Mohr, A. Chan-Hosokawa, C. Harper, M. Huestis, J. Limoges, A. Miles, C. Scarneo, S. Kerrigan, L. Liddicoat, K. Scott, and B. Logan. "Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities—2021 Update." *Journal of Analytical Toxicology*, 00 (2021): 1–8.

¹³ A. Berning, R. C. Smith, M. Drexler, and K. Wochinger, [*Drug Testing and Traffic Safety: What You Need to Know*](#), DOT HS 813 264 (Washington, DC: National Highway Traffic Safety Administration, 2022).

¹⁴ Berning and others, [*Drug Testing and Traffic Safety: What You Need to Know*](#).

In conclusion, the NTSB is pleased to see NHTSA taking steps to improve testing and reporting of alcohol and other drug use by drivers by seeking information from stakeholders about barriers to doing so and by developing a strategy to address those barriers.

Thank you for the opportunity to provide comments.

Sincerely,

Jennifer Homendy
Chair