National Transportation Safety Board

Washington, DC 20594

Safety Recommendation

Date: November 21, 2012

In reply refer to: H-12-34 through -36

45 states, Commonwealth of Puerto Rico,
and the District of Columbia
(See attached distribution list)

The National Transportation Safety Board (NTSB) is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation—railroad, highway, marine, and pipeline. The NTSB determines the probable cause of the accidents and issues safety recommendations aimed at preventing future accidents. In addition, the NTSB carries out special studies concerning transportation safety and coordinates the resources of the federal government and other organizations to provide assistance to victims and their family members affected by major transportation disasters. We are providing the following information to urge your organization to take action on the safety recommendations in this letter.

The NTSB has long been concerned about alcohol-impaired driving, which accounts for approximately one-third of all US highway fatalities. Between 1982 and 1994, the percentage of fatally injured drivers with a blood alcohol concentration (BAC) greater than or equal to 0.08 decreased from 49 to 33 percent.[1] However, since that time, there has been no further decline in the percentage, and efforts are needed to address this lack of progress. The NTSB has issued more than 120 safety recommendations on impaired driving since 1968, and "Addressing Alcohol-Impaired Driving" is on the NTSB's Most Wanted List. The National Highway Traffic Safety Administration (NHTSA) estimates that alcohol-impaired driving in the United States continues to kill over 10,000 people yearly and to injure many more despite numerous federal, state, and local efforts.

The NTSB is also concerned about the growing problem of drug use by drivers. According to NHTSA, from 2005 to 2009, the proportion of fatally injured drivers who tested positive for drugs (illicit, prescription, and over-the-counter) rose from 13 to 18 percent.[2]

[1] See http://www.iihs.org/research/fatality.aspx?topicName=Alcohol-impaireddriving, accessed September 12, 2012.

[2] *Drug Involvement of Fatally Injured Drivers,* DOT HS 811 415 (Washington, D.C.: National Highway Traffic Safety Administration, 2010). The 3,952 fatally injured drivers who tested positive for drugs in 2009 represent

According to NHTSA's *2007 National Roadside Survey*, 16.3 percent of weekend nighttime drivers tested positive for drugs.[3] The growing prevalence of drugged driving has also captured the attention of the White House Office of National Drug Control Policy, which cites the following principle in its 2011 *National Drug Control Strategy*: "Preventing drugged driving must become a national priority on par with preventing drunk driving."[4]

In May 2012, the NTSB held a forum to identify the most effective, scientifically based actions needed to "reach zero" accidents resulting from substance-impaired driving.[5] Numerous impaired driving countermeasures were discussed at the forum, including laws, enforcement strategies, adjudication programs, substance treatment programs, ignition interlocks, passive alcohol detection systems, and educational campaigns. Presenters discussed the merits and drawbacks of various countermeasures, as well as the challenges to reduce impaired driving. Reductions in accidents and injuries attributable to impaired driving are the ultimate measures of success. However, inadequate data collection and reporting in many states continue to limit our ability to understand and address the problem of impaired driving and to measure the effectiveness of countermeasures.

Postaccident Drug and Alcohol Data

Postaccident 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. Postaccident data concerning drug and alcohol use among drivers can be collected and tracked in a variety of ways. For example, a law enforcement officer may record whether impairing substances were found in the vehicle, whether he or she suspected impairment, where the driver reported having last consumed alcohol, or the results of a roadside breath alcohol test. If the officer determines that additional drug or alcohol tests are merited, those tests may be conducted at a hospital, clinic, or laboratory. For fatally injured drivers, coroners or medical examiners may conduct toxicological tests. Testing requirements vary from state to state: certain states require BAC testing of all drivers involved in fatal accidents or all fatally injured drivers; and many states allow for testing of accident-involved drivers when additional criteria are met, such as evidence that the driver was impaired at the time of the accident.

Law enforcement officers use Police Accident Reports (PAR) to document the accident, including information about alcohol and drug testing. PAR data are used to populate state and national crash databases such as the NHTSA Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System General Estimates System (NASS GES). FARS is a nationwide census of fatal traffic crashes and fatalities, whereas NASS GES is a nationally representative set of motor vehicle crashes of all types, ranging from minor to fatal. The resulting aggregate data sets are used to track the number and rates of impaired driving accidents, to

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one-third of the fatally injured drivers tested and for whom results were known and 18 percent of all fatally injured drivers.

[3] J. H. Lacey and others, *2007 National Roadside Survey of Alcohol and Drug Use by Drivers: Drug Results*, DOT HS 811 249 (Washington, D.C.: National Highway Traffic Safety Administration, 2009).

[4] See http://www.whitehouse.gov/sites/default/files/ondcp/ndcs2011.pdf, accessed July 14, 2012.

[5] See http://www.ntsb.gov/reachingzero, accessed June 29, 2012.

allocate funding and resources to the problem, and to study the effectiveness of state-level programs in addressing impaired driving.

Data should be valid, reliable, and sufficient to facilitate meaningful analysis. Discussions at the forum and followup work by NTSB staff suggest that, in general, the methods used to gather and analyze BAC data are valid and reliable; however, reporting rates for some states and some subgroups, such as surviving drivers in fatal crashes, continue to be unacceptably low. For drug data, more fundamental problems exist, such as a lack of standardization in testing and reporting.

Poor BAC Reporting Rates

In 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" (Safety Recommendation H-85-47) and to urge those states with deficient measurement and reporting 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" (Safety Recommendation H-85-48).[6] When the 1985 recommendations were issued, NHTSA reported national BAC data for 47 percent of fatally injured drivers and 18 percent of drivers who survived fatal crashes; at the time, only 13 states were reporting BAC data for more than 80 percent of fatally injured drivers.

In its letter closing these recommendations,[7] the NTSB noted that in 1990, 28 states tested over 80 percent of fatally injured drivers, which signified a marked improvement over the 1985 reporting rates. However, a recent NHTSA report reveals that some of the gains made in the 1980s have not been maintained. In 2010, only 23 states reported BAC test results for more than 80 percent of fatally injured drivers; in two states (Alabama and Iowa), reporting rates were under 25 percent.[8] Additionally, the national reporting rate for drivers who survived fatal crashes—30 percent in 2010—remains low. Encouragingly, a few states had reporting rates higher than 80 percent for fatally injured drivers and 60 percent for surviving drivers.[9]

At the NTSB forum, participants discussed several issues that account for the shortcomings in drug and alcohol data in state and national crash databases, including that state postaccident BAC testing laws and reporting protocols vary considerably and that testing of drivers involved in nonfatal-injury crashes is minimal.

A review of state laws reveals that although nearly every state has a provision allowing for postaccident drug and alcohol testing, most states have additional standards of proof that must be met beyond involvement in a fatal or serious injury accident. Additional standards of proof may include demonstrating that the driver is impaired, caused the accident, or committed a

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[6] NTSB safety recommendation letter to the NHTSA Administrator, December 6, 1985.

[7] NTSB safety recommendation response letter to the NHTSA Administrator, June 7, 1993.

[8] *Traffic Safety Facts: 2010 Data, State Alcohol-Impaired Driving Estimates,* DOT HS 811 612 (Washington, D.C.: National Highway Traffic Safety Administration, 2012).

[9] Alaska, Maine, Montana, Nebraska, and New Mexico.

traffic violation. Additionally, in most states, surviving drivers have a right to refuse postaccident drug and alcohol testing.

A NHTSA-sponsored review of state BAC testing and reporting laws and practices found that states with mandatory testing laws had higher median BAC reporting rates than states with additional standards of proof or discretionary testing.[10] However the authors also noted that, "Testing policies can achieve high rates without a law, while a mandatory testing law will not produce high rates without strong policies to implement it." The report describes case studies conducted in nine states and recommends numerous best practices for improving BAC testing and reporting rates. Examples of best practices include establishing standard practices for coroners and medical examiners to follow in testing fatally injured drivers, establishing good communication protocols with medical facilities and hospitals that provide tests on surviving drivers, and using electronic data transfer methods when possible to reduce data transmission delays or errors.

BAC data will play a significant role in the federal funding that states receive to address impaired driving. The Moving Ahead for Progress in the 21st Century Act (MAP–21), enacted in 2012, includes language that will modify the way states receive federal grant money to fund impaired driving countermeasures. Eligibility for the grants will be based partly on the state's average impaired driving fatality rate, defined as the number of fatalities in motor vehicle accidents involving a driver with a BAC of at least 0.08 for every 100 million vehicle miles traveled, based on the most recently reported three calendar years. Accurate average impaired driving fatality rate estimates will depend largely on whether a state has a comprehensive program for testing and reporting postaccident driver BAC levels.

Improving postaccident BAC testing and reporting rates requires commitment, communication, and coordination among several stakeholders, including law enforcement agencies, coroners/medical examiners, hospitals, toxicology laboratories, state accident database managers, and FARS analysts. A 2004 NHTSA-sponsored report recommended establishing national guidelines for testing and reporting rates and suggested 80 percent BAC reporting for fatally injured drivers and 60 percent reporting for drivers who survived fatal accidents.[11] Those reporting goals were again mentioned in a 2012 report.[12] Several states have achieved these levels, but many others have not. The NTSB believes that, without adequate levels of BAC testing and reporting, states will not have the necessary tools to determine whether impaired driving programs and other countermeasures are meeting their goals.

Therefore, the NTSB recommends that NHTSA develop and disseminate to the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia BAC testing and reporting guidelines based on the 2012 report *State Blood Alcohol Concentration Testing and Reporting*

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[10] T. Casanova, J. H. Hedlund, and J. Tison, *State Blood Alcohol Concentration (BAC) Testing and Reporting for Drivers Involved in Fatal Crashes: Current Practices, Results, and Strategies*, *1997–2009*, DOT HS 811-661 (Washington, DC: National Highway Traffic Safety Administration, 2012).

[11] 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, D.C.: National Highway Traffic Safety Administration, 2004).

[12] *Blood Alcohol Concentration Testing and Reporting by the States*, DOT HS 811 662 (Washington, D.C.: National Highway Traffic Safety Administration, 2012).

for Drivers Involved in Fatal Crashes: Current Practices, Results, and Strategies, 1997–2009. The NTSB also recommends that the 45 states with low reporting rates for BAC,[13] the Commonwealth of Puerto Rico, and the District of Columbia increase their collection, documentation, and reporting of BAC test results by taking the following actions, as needed, to improve testing and reporting rates: (1) enact legislation, (2) issue regulations, and (3) improve procedures used by law enforcement or testing facilities. Additionally, the NTSB recommends that once NHTSA has developed the guidelines recommended above, these states, the Commonwealth of Puerto Rico, and the District of Columbia incorporate the guidelines into a statewide action plan to achieve BAC reporting rates of at least 80 percent of fatally injured drivers and at least 60 percent of drivers who survived fatal crashes. These reporting rates represent realistic, achievable goals for the states, which will allow meaningful assessment of their progress on impaired driving efforts. These levels should be seen as minimum acceptable reporting rates rather than as final goals.

Lack of Standard Practices for Drug Toxicology Testing

As a result of a 1990 NTSB safety study[14] that examined drug and alcohol use among fatally injured drivers of heavy trucks, the NTSB made several recommendations to the US Department of Transportation (DOT) and the states on standardizing postaccident toxicological specimen collection, testing, and reporting, as well as on increasing the toxicological data in national databases by enacting legislation to require testing of all drivers in fatal commercial truck accidents.[15]

Two of the 1990 recommendations to the DOT (or its modal administrations) have been classified "Closed—Acceptable Action." Safety Recommendation H-90-13, which called for the standardization of procedures for toxicological specimen collection, testing, and reporting, was closed due to regulatory changes made in 2001 that require employers to conduct postaccident alcohol and drug testing on surviving commercial motor vehicle drivers in fatal accidents or those accidents involving both bodily injury or disabling vehicle damage and a traffic citation.[16] The regulations state that tests must be conducted for alcohol within 8 hours of the accident and for drugs within 32 hours.[17] Safety Recommendation H-90-16, which called for the revision of the FARS database to include drug toxicology data, was also classified "Closed—Acceptable

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[13] This recommendation excludes Alaska, Maine, Montana, Nebraska, and New Mexico because, as noted earlier, these states have BAC test result reporting rates that exceed NHTSA's suggested target of 80 percent for fatally injured drivers and 60 percent for surviving drivers in fatal accidents.

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

[15] Safety Recommendations H-90-11, -13, -14, and -15 to the DOT; H-90-16 to NHTSA; and H-90-43 to the states.

[16] Final rule by the Federal Motor Carrier Safety Administration codified at 49 *Code of Federal Regulations* Part 382, "Controlled Substances and Alcohol Use and Testing" (66 *Federal Register* 43097, August 17, 2001).

[17] Laboratories must test for the following five drugs or classes of drugs in a DOT drug test: (1) marijuana metabolites, (2) cocaine metabolites, (3) amphetamines, (4) opiate metabolites, and (5) phencyclidine. In 2010, the DOT modified its tested drugs and drug cutoff concentrations to harmonize with drug testing requirements set by the US Department of Health and Human Services, which included adding additional tests for MDMA, MDA, and MDEA to the amphetamine drug group.

Action" as a result of numerous changes that NHTSA made to the FARS database to facilitate coding of drug tests and test results.

The remaining recommendations to the DOT, which called on the agency to establish a postaccident drug and alcohol test plan, improve reporting of toxicological data, and give incentives to states to provide postaccident toxicological reports, were all classified "Closed—Unacceptable Action" in 2005 due to a lack of progress. Safety recommendations directing the states to collect blood samples for alcohol and other drug toxicological testing from all vehicle operators in fatal commercial truck accidents (Safety Recommendation H-90-42) and to report those data to NHTSA (Safety Recommendation H-90-43) were ultimately classified "Closed—Unacceptable Action" for the large majority of states. State testing rates still vary widely; the proportion of fatally injured drivers for whom drug toxicology data were available in 2010 ranged from 0 to 100 percent.[18]

With respect to drug testing and reporting, both FARS and NASS GES include a "Drug Test" variable that has three linked elements: Test Status, Test Type, and Test Result. Test Status refers to whether the person was tested for drugs. Test Type refers to the type of test (blood, urine, both, or other), if a test was given. Test Result reports the specific drug that was found; up to three tests and associated types of drugs can be recorded for an individual. Drug types are classified as narcotics, depressants, stimulants, hallucinogens, cannabinoids, PCP, anabolic steroids, and inhalants; within each classification, numerous specific drugs may be coded. However, the cutoff levels that are used to determine whether a non-DOT-mandated drug test result is "positive" or reportable vary among states and testing laboratories.

In a 2009 report to Congress, NHTSA stated, "The development of a method of measuring driver impairment due to the use of drugs would greatly enhance the ability of law enforcement to investigate suspected drug-impaired driving cases."[19] There are numerous challenges in developing a methodology to measure *impairment* due to drugs, many of which concern the ways that various drugs affect and are metabolized by individual users.[20] At a more fundamental level, no standard guidance currently exists for states regarding a minimum set of drugs that should be evaluated, recommended methods for drug testing, or reporting thresholds for accident databases. Therefore, establishing standards for postaccident drug testing and reporting is a needed first step toward improving our understanding of the problem of drugged driving. Although collecting consistent postaccident drug data alone will not solve the problem, it will give researchers and policymakers a better understanding of the prevalence of drug use among drivers, as well as provide tools with which to assess the risks associated with various substances. And, importantly, it will provide a reliable and valid marker of the effectiveness of laws, enforcement, education, and other countermeasures to address drugged driving.

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[18] DOT HS 811 415.

[19] R. Compton, M. Vegega, and D. Smither, *Drug-Impaired Driving: Understanding the Problem and Ways to Reduce It: A Report to Congress*, DOT HS 811 268 (Washington, D.C.: National Highway Traffic Safety Administration, 2009).

[20] G. M. Reisfield and others, "The Mirage of Impairing Drug Concentration Thresholds: A Rationale for Zero Tolerance Per Se Driving Under the Influence Drug Laws," *Journal of Analytical Toxicology*, vol. 36 (2012), pp. 353–356.

Some groups have made recommendations to guide toxicological research investigations, but those recommendations have not been widely adopted by the states. For example, in 2006, a group of experts meeting under the auspices of the International Council on Alcohol, Drugs and Traffic Safety's working group on illegal drugs and driving reached consensus on 136 recommendations concerning the behavioral, epidemiological, and toxicological aspects of drugged driving research.[21] The group's recommendations address biological specimens, optimal collection procedures, drugs/drug classes to be included in toxicological test panels, and cutoff limits for those drugs. In 2007, the *Journal of Forensic Science* published a similar set of expert recommendations describing standard practices for forensic toxicology laboratories in the investigation of drugged driving cases.[22]

Unfortunately, in spite of the need for consistent drug toxicological data, little has been done to establish and promote a set of standards for the states. Therefore, the NTSB recommends 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.

Place of Last Drink Data

Several panelists at the NTSB forum discussed the importance of responsible beverage service with respect to both commercial servers of alcohol and social hosts.[23] Currently, 43 states and the District of Columbia have laws ("dram shop liability laws") or case law that imposes civil liability on those individuals, licensed establishments, or retailers that sell alcohol to minors or obviously intoxicated adults when the consumer is subsequently involved in an alcohol-related accident resulting in death or injury to third parties. These laws provide an incentive for owners of alcohol-serving establishments to train their employees in responsible beverage service. Dram shop liability laws, which allow individuals to sue establishments for the drunken behavior of their patrons, have been shown to reduce alcohol-related accidents.[24]

Social host liability laws are an extension of dram shop laws and impose civil liability on social hosts who provide alcohol to minors or obviously intoxicated adults in a noncommercial

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[21] J. M. Walsh and others, "Guidelines for Research on Drugged Driving," *Addiction*, vol. 103, no. 8 (2008), pp. 1258–1268.

[22] L. J. Farrell, S. Kerrigan, and B. K. Logan, "Recommendations for Toxicological Investigation of Drug Impaired Driving," *Journal of Forensic Science*, vol. 52, no. 5 (2007), pp. 1214–1218.

[23] Among adults who self-report binge drinking, about 54 percent of all binge drinking episodes take place at a bar, club, or restaurant, compared to 36 percent at homes and 10 percent elsewhere. (T.S. Naimi, D. E. Nelson, and R. D. Brewer, "Driving After Binge Drinking," *American Journal of Preventive Medicine*, vol. 37, no. 4 (2009), pp. 314–320.)

[24] (a) A. C. Wagenaar and H. D. Holder, "Effects of Alcoholic Beverage Server Liability on Traffic Crash Injuries," *Alcoholism: Clinical and Experimental Research*, vol. 15, no. 6 (1991), pp. 942–947. (b) D. Eisenberg, *Evaluating the Effectiveness of a 0.08 Percent BAC Limit and Other Policies Related to Drunk Driving*, Discussion Paper No. 00-23 (Stanford, California: Stanford Institute for Economic Policy Research, January 2001). (c) K. Whetten-Goldstein and others, "Civil Liability, Criminal Law, and Other Policies and Alcohol-Related Motor Vehicle Fatalities in the United States: 1984–1995," *Accident Analysis and Prevention,* vol. 32, no. 6 (2000), pp. 723–733.

setting and the individual is then involved in an alcohol-related accident resulting in death or injury to a third party.

Effective enforcement of criminal and civil provisions of both dram shop and social host liability laws requires good data collection. An essential part of any arrest or accident investigation involving an alcohol-impaired driver should include an assertive effort by law enforcement officers to determine the location where the impaired driver had been served alcohol. This information is useful to state alcohol regulatory and law enforcement authorities conducting enforcement actions to deter future violations.

At the NTSB forum, it was noted that place of last drink (POLD) data have been used to focus training and enforcement actions on establishments that may be serving alcohol to underage or intoxicated patrons. Massachusetts data from 2008 indicated that using POLD data to guide compliance and enforcement actions led to a reduction in driving under the influence arrests associated with establishments that were targeted for intervention.[25]

Increasing the collection of POLD data will provide states and law enforcement agencies with the information needed to target individuals and establishments that contribute to the problem of alcohol-impaired driving and is likely to serve as a deterrent to serving minors and those who are intoxicated. Therefore, the NTSB recommends that the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia require law enforcement agencies to collect POLD data as part of any arrest or accident investigation involving an alcohol-impaired driver. Additionally, the NTSB recommends that the International Association of Chiefs of Police and the National Sheriffs' Association inform their members of the value of collecting POLD data as part of any arrest or accident investigation involving an alcohol-impaired driver.

As a result of the May 2012 forum on "reaching zero" accidents from substance-impaired driving, the National Transportation Safety Board makes the following recommendations:

To the 45 states, the Commonwealth of Puerto Rico, and the District of Columbia, which have low reporting rates for BAC testing:

Increase your collection, documentation, and reporting of blood alcohol concentration (BAC) test results by taking the following actions, as needed, to improve testing and reporting rates: (1) enact legislation, (2) issue regulations, and (3) improve procedures used by law enforcement agencies or testing facilities. (H-12-34)

[25] F. Mahoney, "Alcoholic Beverage Control Regulation and Enforcement: Overview and Strategies for Preventing Impaired Driving," presentation at the NTSB forum, "Reaching Zero: Actions to Eliminate Substance-Impaired Driving," May 15–16, 2012, Washington, D.C.

Once the National Highway Traffic Safety Administration has developed the blood alcohol concentration (BAC) testing and reporting guidelines recommended in Safety Recommendation H-12-32, incorporate the guidelines into a statewide action plan to achieve BAC reporting rates of at least 80 percent of fatally injured drivers and at least 60 percent of surviving drivers involved in fatal crashes. (H-12-35)

Require law enforcement agencies to collect place of last drink (POLD) data as part of any arrest or accident investigation involving an alcohol-impaired driver. (H-12-36)

The NTSB also issued three other recommendations, including two to NHTSA and one to the International Association of Chiefs of Police and the National Sheriffs' Association.

These safety recommendations are derived from the NTSB's investigation and are consistent with the evidence we found and the analysis we performed. Chairman HERSMAN, Vice Chairman HART, and Members SUMWALT, ROSEKIND, and WEENER concurred in these recommendations.

The NTSB is vitally interested in these recommendations because they are designed to prevent accidents and save lives. We would appreciate receiving a response from you within 90 days detailing the actions you have taken or intend to take to implement these recommendations. When responding, please refer to the safety recommendations by their recommendation number. We encourage you to submit your response electronically to correspondence@ntsb.gov. If it exceeds 10 megabytes, please e-mail us at the same address for instructions. To avoid confusion, please do not submit both an electronic copy and a hard copy of the same response.

[Original Signed]

By: Deborah A.P. Hersman
Chairman

The Honorable Robert Bentley
Governor of Alabama
State Capitol
600 Dexter Avenue
Montgomery, AL 36130-2751

The Honorable Mike Beebe
Governor of Arkansas
250 State Capitol
Little Rock, AR 72201-3405

The Honorable Janice K. Brewer
Governor of Arizona
Executive Tower
1700 West Washington Street
Phoenix, AZ 85007-2812

The Honorable John Hickenlooper
Governor of Colorado
136 State Capitol
Denver, CO 80203-1792

The Honorable Edmund G. Brown, Jr.
Governor of California
1173 State Capitol
1303 10th Street
Sacramento, CA 95814-4910

The Honorable Jack Markell
Governor of Delaware
Tatnall Building, Second Floor
William Penn Street
Dover, DE 19901-3637

The Honorable Dannel P. Malloy
Governor of Connecticut
210 Capitol Avenue
Hartford, CT 06106-1535

The Honorable Nathan Deal
Governor of Georgia
203State Capitol SW
Atlanta, GA 30334-1600

The Honorable Rick Scott
Governor of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001

The Honorable C. L. “Butch” Otter
Governor of Idaho
PO Box 83720
Boise, ID 83720-0003

The Honorable Neil Abercrombie
Governor of Hawaii
Executive Chambers
State Capitol
Honolulu, HI 96813-2425

The Honorable Mitch Daniels
Governor of Indiana
206 State House
Indianapolis, IN 46204-2797

The Honorable Pat Quinn
Governor of Illinois
207 State House
Springfield, IL 62706-9998

The Honorable Terry E. Branstad
Governor of Iowa
1007 East Grand Avenue
Des Moines, IA 50319-0001

The Honorable Sam Brownback
Governor of Kansas
2415 State Capitol
300 SW 10th Avenue
Topeka, KS 66612-1590

The Honorable Steven Beshear
Governor of Kentucky
700 Capitol Avenue
Frankfort, KY 40601-3454

The Honorable Bobby Jindal
Governor of Louisiana
PO Box 94004
Baton Rouge, LA 70804-9004

The Honorable Deval Patrick
Governor of Massachusetts
280 State House
Boston, MA 02133-1002

The Honorable Martin O'Malley
Governor of Maryland
100 State Circle
Annapolis, MD 21401-1925

The Honorable Mark Dayton
Governor of Minnesota
130 State Capitol
75 Martin Luther King, Jr., Boulevard
St. Paul, MN 55155-1601

The Honorable Rick Snyder
Governor of Michigan
PO Box 30013
Lansing, MI 48909-7513

The Honorable Jay Nixon
Governor of Missouri
PO Box 720
Jefferson City, MO 65102-0720

The Honorable Phil Bryant
Governor of Mississippi
PO Box 139
Jackson, MS 39205-0139

The Honorable Brian Sandoval
Governor of Nevada
State Capitol
101 North Carson Street
Carson City, NV 89701-5336

The Honorable John Lynch
Governor of New Hampshire
State House
107 North Main Street
Concord, NH 03301-4951

The Honorable Chris Christie
Governor of New Jersey
PO Box 001
Trenton, NJ 08625-0001

The Honorable Bev Perdue
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

The Honorable Andrew M. Cuomo
Governor of New York
State Capitol
Albany, NY 12224-0343

The Honorable John R. Kasich
Governor of Ohio
Riffe Center, 30th Floor
77 South High Street
Columbus, OH43215-6117

The Honorable Jack Dalrymple
Governor of North Dakota
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0001

The Honorable John Kitzhaber
Governor of Oregon
160 State Capitol
900 Court Street North
Salem, OR 97301-4047

The Honorable Mary Fallin
Governor of Oklahoma
212 State Capitol
2300 North Lincoln Boulevard
Oklahoma City, OK 73105-4801

The Honorable Lincoln Chafee
Governor of Rhode Island
222 State House
Providence, RI 02903-1196

The Honorable Tom Corbett
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120-0062

The Honorable Dennis M. Daugaard
Governor of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5001

The Honorable Nikki R. Haley
Governorof South Carolina
1205 Pendleton Street
Columbia, SC 29201-3756

The Honorable Bill Haslam
Governor of Tennessee
State Capitol
Nashville, TN 37243-0001

The Honorable Rick Perry
Governor of Texas
PO Box 12428
Austin, TX 78711-2428

The Honorable Gary R. Herbert
Governor of Utah
350 North State Street
PO Box 142220
Salt Lake City, UT 84114-2220

The Honorable Peter Shumlin
Governor of Vermont
Pavilion Building
109 State Street
Montpelier, VT 05609-0101

The Honorable Bob McDonnell
Governor of Virginia
PO Box 1475
Richmond, VA 23218-1475

The Honorable Chris Gregoire
Governor of Washington
416 Sid Snyder Avenue SW
PO Box 40002
Olympia, WA 95804-0002

The Honorable Earl Ray Tomblin
Governor of West Virginia
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305-0009

The Honorable Scott Walker
Governor of Wisconsin
115 East Capitol
Madison, WI 53702-0100

The Honorable Matthew H. Mead
Governor of Wyoming
124 State Capitol
200 West 24th Street
Cheyenne, WY 82002-0100

The Honorable Vincent C. Gray
Mayor of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 316
Washington, DC 20004-3003

The Honorable Luis G.Fortuño
Governor of Puerto Rico
La Fortaleza
PO Box 9020082
San Juan, PR 00902-0082