



March 4, 2022

The Honorable Jennifer Homendy
Chair
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594

Dear Chair Homendy:

This letter follows a meeting between staff members of the National Transportation Safety Board (NTSB) and the National Highway Traffic Safety Administration (NHTSA) on December 15, 2021. At that meeting, six safety recommendations related to drug and alcohol related impairment were discussed, including: H-12-33; H-12-43; H-13-01; H-18-35; H-18-56; and H-18-57.

We appreciate the willingness of NTSB staff to meet with NHTSA to have a thoughtful and productive discussion of these topics.

Below are NHTSA's current actions and requested classifications for each recommendation.

NTSB Recommendation and Requested Designation:

H-12-33

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.

OPEN—ACCECPTABLE RESPONSE

NHTSA Action:

Existing drug data in NHTSA's Fatality Analysis Reporting System (FARS) are limited by inconsistent laws across States and within States as well as by inconsistent collection processes and testing protocols across laboratories. There is also different reporting of results, differing formats, incomplete data with respect to impairment versus presence of drugs, and difficulty of imputation. Less than 40 percent of the catalogued drivers in FARS have drug data elements reported. This makes FARS drug data comparisons nationwide and statewide extremely difficult. However, NHTSA is taking steps to address these limitations in the FARS data to include expanding the number of drugs per case that analysts may input. Similar to the scope of this recommendation, Section 25025 of the Bipartisan Infrastructure Law (BIL) requires a Report to Congress on the National Safety Council (NSC) committee recommendations titled "Recommendations for Toxicological Investigations of Drug-Impaired Driving and Motor Vehicle Fatalities—2017 Update". To address the recommendations in the Report to Congress

and NTSB recommendation, NHTSA plans to gather input on barriers that States experience in reporting to FARS, to develop recommendations on addressing those barriers and to assist States in improving toxicology testing and reporting in accordance with the 2021 Update¹ of the NSC committee recommendations. This report, specifically, will include standards for drug toxicology testing, when to test, the minimum set of drugs to test, and cut-off values for reporting results. This report is due to Congress in November 2023.

NHTSA requests this recommendation remain classified as **Open, Acceptable Response**.

NTSB Recommendation and Requested Designation:

H-12-43

Work with Automotive Coalition for Traffic Safety, Inc., to accelerate widespread implementation of Driver Alcohol Detection System for Safety (DADSS) technology by (1) defining usability testing that will guide driver interface design and (2) implementing a communication program that will direct driver education and promote public acceptance.

OPEN—UNACCEPTABLE RESPONSE

NHTSA Action:

NHTSA’s May 2013 response to NTSB on this topic described the multi-year agreement with the Automotive Coalition for Traffic Safety (ACTS) which began in 2008 and the phased approach research being conducted on the DADSS technology. Since then, substantial progress has been realized in all areas of development in both the breath-based system and the touch-based technologies. This includes improvements in sensor development, calibration materials, processes and measurement procedures, and human subjects testing both in the laboratory and in a vehicle. For more information and detailed descriptions of each system, please visit dadss.org and dadss.org/discovery-hub.

ACTS continue to perform the necessary testing and analyses to make a data-driven, science-based decision regarding the readiness of the technology. This testing includes:

1. Verification and Validation (V&V). The goal of performing the V&V testing is to understand the performance of the DADSS sensors under tightly controlled laboratory conditions such as the impact of temperature and other environment factors (e.g., humidity) using a well-defined artificial alcohol sample.
2. Human Subjects Testing (HST). The goal of the HST is to understand the performance of the DADSS sensors in a controlled setting with blood alcohol samples obtained from human subjects via venipuncture – the reference “gold” standard for blood alcohol concentration (BAC) measurements.
3. Human Subject Driving (HSD). HSD is often controlled, but may also include naturalistic, on-road trials conducted to understand the performance of the DADSS sensors in a real-world driving environment. HSD testing adds variability due to human breath or touch sample, operator-sensor interface interactions, and vehicle and environmental factors.

¹ D’Orazio, A., Mohr, A., Chan-Hosokawa, A., Harper, C., Huestis, M., Limoges, J., Miles, A., Scarno, C., Kerrigan, S., Liddicoat, L., Scott, K., Logan, B. Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2021 Update. *Journal of Analytical Toxicology*. July 2021. 45(6):529-536. <https://pubmed.ncbi.nlm.nih.gov/34086916/>

The Generation 3.3 zero-tolerance (.02 BAC) directed breath sensor – for fleet/commercial operators – is now available for license by qualified manufacturers. A zero-tolerance (.02 BAC) touch fleet sensor is scheduled to be available by 2023. By 2024, the breath sensor will be available and by 2025, both touch and breath sensors are scheduled to be available for consumer vehicle integration (at .08 BAC).

ACTS have an active, robust communication program. This includes (a) an interactive educational [website](#), (b) an active [schedule](#) of public engagement events (impacted by COVID-19), and (c) a public private partnership between DADSS and individual State governments ([Driven to Protect](#)). To gain a better understanding of public acceptance of in-vehicle alcohol detection devices, ACTS has conducted two National surveys (2015 & 2020) to record the public’s perception of the DADSS technology. The 2020 National survey found that 7 in 10 drivers have a favorable opinion of DADSS technology and prefer the passive touch system over both breath systems (directed, passive).

NHTSA requests this recommendation be classified as **Closed, Acceptable Response**.

NTSB Recommendation and Requested Designation:

H-13-01

Seek legislative authority to award incentive grants for States to establish a per se Blood Alcohol Concentration (BAC) limit of 0.05 or lower for all drivers who are not already required to adhere to lower BAC limits.

OPEN—ACCEPTABLE RESPONSE

NHTSA Action:

The BIL does not include authority for NHTSA to award incentive grants of the type described in this recommendation. However, NHTSA remains committed to reducing impaired driving crashes through the application of proven countermeasures.

To accomplish this, NHTSA conducted an evaluation of Utah’s change in the per se BAC limit from .08 percent to .05 percent. In this study, NHTSA found that Utah’s fatal crash rate dropped by 19.8 percent in the first year under the lower legal limit, and the fatality rate decreased by 18.3 percent. The study indicates that none of the potential negative effects of the law change on the State’s economy came to fruition. In fact, alcohol sales and per capita consumption appeared to continue their increasing trends under the new law as did tourism and tax revenues. Similarly, DUI arrests for alcohol did not climb sharply after the law went into effect, as some had feared. Available in the National Transportation Library is the full report (<https://rosap.nhtl.bts.gov/view/dot/60428>) and the two-page Traffic Tech (<https://rosap.nhtl.bts.gov/view/dot/60427>). NHTSA will actively promote these findings to State Highway Safety Offices and will provide technical assistance as needed.

NHTSA requests this recommendation be classified as **Closed, Acceptable Alternative**.

NTSB Recommendation and Requested Designation:

H-18-35: Examine the influence of alcohol and other drug use on motorcycle rider crash risk compared to that of passenger vehicle drivers, and develop guidelines to assist States in implementing evidence-based strategies and countermeasures to more effectively address substance-impaired motorcycle rider crashes.

OPEN—ACCEPTABLE RESPONSE

NHTSA Action:

In addition to data on alcohol reported in FARS, data were collected from injured motorcyclists in NHTSA's ongoing study of the prevalence of drugs and alcohol among seriously and fatally injured road users. Preliminary data were reported in *Update to Special Reports on Traffic Safety During the COVID-19 Public Health Emergency: Fourth Quarter Data* (available at <https://rosap.nhtsa.gov/view/dot/56125>). Although the number of motorcyclists was relatively small, the prevalence of at least one category of drugs (including alcohol) ranged from a low of 44.3 percent in the last quarter of 2019 to a high of 63.4 percent in the third quarter of 2020. NHTSA anticipates release of the full report and research data set from the prevalence study in early 2023. NHTSA will use these findings to inform any needed updates to guidance for State implementation of strategies and countermeasures to address substance-involved motorcyclist crashes.

NHTSA requests this recommendation remain classified as **Open, Acceptable Response**.

NTSB Recommendation and Requested Designation:**H-18-56**

Develop and disseminate best practices, identify model specifications, and create a conforming products list for oral fluid drug screening devices.

OPEN—ACCEPTABLE RESPONSE

NHTSA Action:

NHTSA continues to assert that oral fluid drug screening devices can assist law enforcement in establishing probable cause for a quantitative blood drug test. In 2021, NHTSA released a related technical report, *Evaluation of On-Site Oral Fluid Drug Screening Technology* (available at <https://rosap.nhtsa.gov/view/dot/54911>). Our research showed variability in performance across devices on measures of sensitivity, specificity, and accuracy among devices that were commonly marketed to law enforcement professionals at the time of testing. It is important that any screening device be reasonably accurate and reliable to establish probable cause for a more accurate confirmatory test. Since the expertise for oral fluid drug screening devices better lies with the National Institute of Standards and Technology (NIST), NHTSA is working with NIST to establish a working group of government, academic, and industry experts to develop performance standards and testing procedures for oral fluid screening devices. These standards would be approved and monitored through the Institute of Electrical and Electronics Engineers.

Further, NHTSA is supporting a Small Business Innovative Research (SBIR) project to develop evidentiary-level devices using oral fluid. A similar SBIR project aims to develop a device that uses breath-based screening.

NHTSA requests this recommendation remain classified as **Open, Acceptable Response**.

NTSB Recommendation and Requested Designation:

H-18-57

Evaluate best practices and countermeasures found to be the most effective in reducing fatalities, injuries, and crashes involving drug-impaired drivers and provide additional guidance to the States on drug-impaired driving in *Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices*.

OPEN—ACCEPTABLE RESPONSE

NHTSA Action:

NHTSA continues to evaluate countermeasures related to drug-impaired drivers, with a focus on providing actionable information to States. To facilitate dissemination of approaches included in the 10th Edition of *Countermeasures that Work*, which was released in August 2021, the Agency published *Countermeasures that Work – Drug-Impaired Driving* (<https://rosap.nhtsa.gov/view/dot/58600>) in November 2021 to enable State program managers to quickly access key information about proven safety countermeasures. NHTSA continues to conduct research to understand the nature and extent of impairment caused by drugs. Further, NHTSA's Drug-Impaired Driving Criminal Justice Evaluation Tool, available at www.nhtsa.gov/DUIDtool, allows users to self-evaluate programs to reduce drug-impaired driving through a systematic review of activities, policies and procedures. The tool allows State, local, territorial, and tribal governments to identify gaps in drug-impaired driving programs, inform strategies to strengthen programs, and track progress over time against baseline results. A newly awarded two-year task order will promote the availability of the tool, provide financial and technical assistance to States and localities to demonstrate the value of using the tool and the recommended strategies, and evaluate the tool for completeness and ease of use.

NHTSA requests this recommendation be classified as **Closed, Acceptable Response**.

If you have any questions, or require additional information, please contact me or Darren Hall, Governmental Affairs, Policy and Strategic Planning, at 202-650-7620.

Sincerely,



Steven S. Cliff, Ph.D.
Deputy Administrator