



OFFICE *of* INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

SAFETY AND SECURITY:

Opportunities to Improve the Effectiveness of Controls for
Detecting Drug- and Alcohol-Related Issues of Employees in
Safety-Sensitive Positions

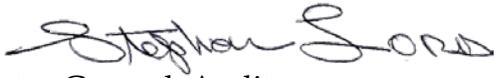
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Memorandum

To: DJ Stadtler
Executive Vice President / Chief Administration Officer

From: Stephen Lord 
Assistant Inspector General, Audits

Date: March 13, 2019

Subject: *Safety and Security: Opportunities to Improve the Effectiveness of Controls for Detecting Drug- and Alcohol-Related Issues of Employees in Safety-Sensitive Positions (OIG-A-2019-005)*

Amtrak (the company) has identified safety as its top priority, and our recent report on management challenges¹ gives credit to the company for taking steps to improve its safety culture and performance. However, we also noted, and our prior work showed that maintaining an effective drug and alcohol program has been a longstanding challenge for the company.²

This report assesses the effectiveness of company efforts to detect drug and alcohol issues among employees in safety-sensitive positions.³ In 2017, the National Transportation Safety Board (NTSB) reported on this topic following the collision of Amtrak train 89 with a backhoe near Chester, Pennsylvania. The accident resulted in fatalities of two company employees and injuries to 39 passengers and train crew. Both deceased employees had drugs in their system (cocaine for the backhoe operator; codeine and morphine for his supervisor), as did the engineer operating the locomotive (marijuana). NTSB reported that the company was not effectively ensuring that employees in safety-sensitive positions were drug-free while working.⁴

¹ AMTRAK: *Top Management and Performance Challenges—Fiscal Years 2019 and 2020* (OIG-SP-2018-011), September 28, 2018.

² *Railroad Safety: Amtrak Is Not Adequately Addressing Rising Drug and Alcohol Use by Employees in Safety-Sensitive Positions* (OIG-E-2012-023), September 27, 2012.

³ Safety-sensitive positions include engineers, conductors, signalmen, electricians, and train dispatchers.

⁴ National Transportation Safety Board, *Amtrak Train Collision with Maintenance of Way Equipment: Chester, PA April 3, 2016* (NTSB/RAR-17/02), November 14, 2017. The two fatalities were maintenance-of-way employees, who were not subject to federal regulations for drug testing at that time. In 2017, the federal regulations were updated to require testing of maintenance-of-way employees.

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Federal regulations establish prohibitions and restrictions on drug and alcohol use for safety-sensitive railway employees and require rail carriers to test these employees to ensure that they are not impaired while working.⁵ The company has established controls to implement these requirements.⁶ Also, in response to our prior work, the company increased its random testing rate and established the Drug and Alcohol Executive Oversight Steering Committee to improve its ability to detect and deter drug and alcohol use.

Our analysis of the company's drug and alcohol detection controls included comparisons with federal standards and industry practices. We used "de-identified" company data that did not include employee identities.⁷ Our analysis of de-identified data sets included data such as workplace safety incidents and medical claims for about 6,200 employees working in safety-sensitive positions from calendar year (CY) 2014 through CY 2016. We also evaluated CY 2017 data related to supervisory training, as well as actions taken by the company in CY 2017 and CY 2018 related to the issues we identified. For more information on our scope and methodology, see Appendix A.

SUMMARY OF RESULTS

The company has opportunities to improve the effectiveness of its controls for detecting drug- and alcohol-related issues among employees in safety-sensitive positions. For example, our work found significantly more drug- and alcohol-related issues than were identified through the company's detection programs. Specifically, the company identified 153 of about 6,200 employees in safety-sensitive positions who had drug- or alcohol-related issues from CY 2014 through CY 2016. However, according to our analysis, medical claims were submitted for an additional 169 employees in safety-sensitive positions for using, abusing, or being dependent on drugs or alcohol during this same three-year period; therefore, the company could not take the appropriate actions to mitigate the risk of their potential impact on safety.⁸

⁵ 49 CFR Parts 40 and 219.

⁶ *Drug and Alcohol Free Workplace Program*, P/I 7.3.4, June 12, 2017.

⁷ Under the U.S. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, "de-identified data" is not considered to be individually identifiable health information and is not bound by the HIPAA regulations and restrictions under 45 C.F.R. 164.502(d). Medical and prescription claims data were de-identified under 45 C.F.R. § 164.514(a) and (b). As a result, the audit team did not use, possess, or analyze any protected health information at any time.

⁸ Because we used de-identified data, we do not know their identities.

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To the extent these employees were misusing drugs or alcohol, they were not identified by the company's testing and voluntary counseling program. Nevertheless, our work identified weaknesses in the company's drug and alcohol controls that, if corrected, could help detect some of these additional 169 employees and ensure safer railroad operations. The company has taken steps to address some of these weaknesses, but the following remain:

- **Testing requirements were not consistently followed.** We found that the company's oversight of its drug and alcohol testing program was weak. For example, of the 783 locomotive engineers employed from CY 2014 through CY 2016, 33 did not have a single annual drug test (4 percent), and 448 had fewer than the three required annual drug tests (57 percent).⁹ This occurred, at least in part, because the company did not have an effective procedure for tracking and monitoring these employees' drug tests to ensure that they were meeting their annual testing requirements.
- **Testing data were not efficiently collected.** We found that the company has historically used a paper form to record data on employee drug and alcohol tests—a key document in the drug testing process—instead of collecting and maintaining these data in a digital format. Some of the data entered on these forms were illegible, and some were missing entirely. In some cases, the company had to retest employees to address these weaknesses. The company is considering moving from the paper form to a digital format, but it had not done so as of December 2018.
- **Testing databases were missing records.** Of the 4,943 employees in safety-sensitive positions as of April 2017, we identified 107 who were not included in the database the company uses to select individuals for random testing. This occurred because of a technical error in the software that transfers information from the company's employee master database to the testing database. As a result, these employees were working, and continue to work, without being subject to random testing.

⁹ These employees performed safety-sensitive work over the entire three-year period. They also may have been subject to other types of drug testing such as random tests, as discussed later in the report.

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- **Not all supervisors were trained on how to detect impairment.** Of the 196 supervisors of employees in safety-sensitive positions in CY 2017, only 45 completed the required training on how to detect drug and alcohol use. This occurred partly because the company does not have effective follow-up procedures to ensure that supervisors complete this training.
- **Oversight of prescription drug use was limited.** We identified weaknesses in company oversight over employees' use of prescription drugs, which relies on employees self-reporting their use of prescription medication to the Human Resources (HR) department, which then assesses whether the medication is compatible with the duties of each employee. Using de-identified prescription claims data, we found that 1,416 employees in safety-sensitive positions filled prescriptions for potentially addictive drugs from CY 2014 through CY 2016. However, our analysis of self-reported prescription drug data suggests a significantly low level of reporting by employees. An HR official acknowledged that because self-reporting is an inherently weak control, the company has no way of ensuring that all employees reported their prescription drug use. To help strengthen these controls, the company is exploring measures to better ensure that employees are aware of and adhere to the reporting requirement, such as requiring prescription benefits administrators to send letters reminding employees of the reporting requirement when they fill certain prescription drugs. However, as of December 2018, the company had not implemented any of these measures.

The employees who were found as having drug- or alcohol-related issues posed greater safety and financial risks to the company than employees who were not. Our data analysis found that employees with drug- or alcohol-related issues had higher rates of safety incidents¹⁰ and workplace injuries than those who did not. In addition, the median medical and injury claims the company paid for these employees were about three times higher than for other employees in safety-sensitive positions.

To help improve the company's ability to detect employee drug and alcohol use, we recommend that the company take several steps to improve its controls. First, the company should establish a reliable procedure to track and monitor required drug and alcohol testing of employees in safety-sensitive positions. For improved data collection,

¹⁰ Such incidents could include accidents and major operating rule violations, such as speeding and signal violations.

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the company should convert from a paper form to a digital format to help eliminate errors. In addition, we recommend the company should ensure that the database it uses to select employees for random testing includes *all* employees in safety-sensitive positions. Further, the company should establish a process to ensure that supervisors have the requisite training on how to identify employees who are potentially impaired. Finally, we recommend implementing new measures to encourage employees in safety-sensitive positions to self-report their prescription drug use, as required by company policy.

In commenting on a draft of this report, the Executive Vice President / Chief Administration Officer agreed with our recommendations and identified specific actions the company plans to complete by December 2019 to implement them. For management's complete response, see Appendix C.

BACKGROUND

Two departments have key responsibilities for implementing the company's drug and alcohol control program: HR and Operations.

The HR department, led by the Vice President, is responsible for establishing and implementing policies and procedures related to the company's drug and alcohol controls. The department also administers the drug and alcohol testing process, which involves coordinating with four contractors that provide testing services, assisting supervisors in the Operations department with ordering tests, and acting to remove impaired employees from safety-sensitive duties. Under this process, employees in safety-sensitive positions are subject to the following seven types of drug and alcohol tests:

- **Pre-employment.** Job applicants undergo drug testing before being hired.
- **Periodic.** Employees are tested for drugs during periodic physical exams, which occur every year for locomotive engineers and every three years for other employees in safety-sensitive positions—such as conductors, signalmen, electricians, and train dispatchers.
- **Random.** A computer program randomly selects some employees for drug- and alcohol-testing each month and ensures that they have an equal chance of being selected, even if they were tested recently.

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- **Reasonable suspicion.** Employees are subject to testing when trained supervisors suspect that an employee is under the influence of drugs or alcohol based on specific, articulable observations.
- **Safety incidents.** Employees may be tested for drugs and alcohol after a safety incident such as an accident or major operating rule violation.
- **Return-to-duty.** Employees are drug-tested after absences of 30 days or more, excluding vacation or jury duty.
- **Follow-up.** Employees who return to work after a positive drug or alcohol test result are retested at least 6 times during the next 12 months.

In addition, company policy requires employees to use a prescription authorization form to report their use of certain prescriptions and over-the-counter medications that could impair their job performance. The HR department manages the process for assessing whether employees can continue to work while taking these medications.

Federal regulations require companies to give employees an opportunity to voluntarily seek drug or alcohol counseling or treatment. The HR department provides these opportunities through the Employee Assistance Program, and counselors in that program can recommend follow-up testing as needed. Federal regulations also require that employees who test positive for drug or alcohol use receive counseling before they can continue working.

The Operations department manages employees who work in safety-sensitive positions and supports the HR department in implementing the company's drug and alcohol policies and procedures. Supervisors in this department determine when reasonable suspicion and safety incident testing are warranted. The department also hears cases involving employees who are charged with violating federal regulations and company policy for drug or alcohol use.

CONTROLS TO DETECT DRUG AND ALCOHOL USE HAD WEAKNESSES

Weaknesses in the company's drug and alcohol controls limited its ability to detect drug and alcohol misuse among employees in safety-sensitive positions, exposing the company to safety and financial risks. As described below, we found that the extent of workplace drug and alcohol misuse by its safety-sensitive employees was greater than what the company detected through its principal controls (testing and counseling).

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We identified several opportunities for the company to improve its efforts to detect workplace drug and alcohol use in these positions.

Drug and Alcohol Use Was More Prevalent than Identified Through Company Testing and Employee Assistance Programs

Drug and alcohol use by employees in safety-sensitive positions was more prevalent than the company detected through its testing and counseling programs. Of about 6,200 employees in safety-sensitive positions from CY 2014 through CY 2016, the company identified 153 who had drug- or alcohol-related issues. Of these employees, 84 tested positive for drug or alcohol misuse, and 69 received counseling through the Employee Assistance Program.¹¹

However, our review of de-identified medical claims data found that medical claims were submitted during this period for an additional 169 employees in safety-sensitive positions for drug or alcohol use, abuse, or dependence without the company's knowledge. Because these 169 employees were unknown to the company, it was unable to remove them from safety-sensitive duties, if warranted.

The number of employees in safety-sensitive positions who had drug- or alcohol-related issues that were known to the company versus the number who had issues that were unknown is shown in Figure 1.

¹¹ The HR department does not disclose the identity of employees who seek counseling through the Employee Assistance Program for drug- or alcohol-related issues to anyone to help ensure that employees feel comfortable seeking counseling, according to HR department officials.

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Figure 1. Drug and Alcohol Use by Employees in Safety-Sensitive Positions, CY 2014–CY 2016



Source: OIG analysis of Amtrak data

Testing Requirements Were Not Consistently Followed

The company's efforts to detect employee drug and alcohol misuse were hindered in part because the HR and Operations departments did not have a reliable procedure for tracking and monitoring employee drug and alcohol tests to ensure that employees met testing requirements.

Periodic testing. The HR and Operations departments did not have an effective procedure to ensure that all employees in safety-sensitive positions completed required drug testing during their periodic physical exams, as company policy requires.¹²

Specifically, we found the following gaps:

- **Annual tests.** Locomotive engineers are required to undergo drug tests during the annual physical exams, but company data show that 33 of the 783 engineers who performed safety-sensitive work over the entire three-year period did not have a single drug test (4 percent), and 448 of them had fewer than the three

¹² Company policy calls only for drug tests—and not alcohol tests—during annual physical exams (P/I Number 7.3.4).

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required annual drug tests from CY 2014 through CY 2016 (57 percent). Medical claims for 21 of these engineers were submitted for drug or alcohol use.

- **Three-year tests.** Other employees in safety-sensitive positions—such as conductors, signalmen, electricians, and train dispatchers—are required to undergo periodic drug tests every three years as part of their physical exams. However, company data show that 755 of the 1,995 other employees who performed safety-sensitive work over the entire three-year period did not have a single periodic drug test (38 percent).

Officials in the HR and Operations departments told us that employees are responsible for scheduling their own physical exams, and supervisors are responsible for tracking and ensuring that employees complete their physical exams, including the drug tests. However, neither department had an effective procedure to track and monitor employee tests to ensure that they met testing requirements. This is inconsistent with management control standards that call for assigning overall responsibilities to a specific unit and for establishing monitoring activities to ensure that results are achieved.

Return-to-duty testing. The Operations department did not always test employees who were returning to safety-sensitive duties after extended absences, as company policy requires.¹³ Our analysis of de-identified company data showed that up to 110 of the 858 employees who returned to duty after extended absences during the review period were not drug-tested.¹⁴ Officials in the HR department told us that, historically, supervisors in the Operations department scheduled the drug tests after extended absences; however, this responsibility was distributed across about 200 supervisors and was not centrally monitored. In January 2018, the company centralized the responsibility for scheduling return-to-duty tests with the drug-testing group in the HR department, which is intended to help ensure that these tests are done more consistently.

Follow-up testing. According to federal regulations, employees in safety-sensitive positions who return to duty after previously testing positive for drugs or alcohol must

¹³ Company policy defines extended absences as 30 days or more, excluding vacation or jury duty (P/I Number 7.3.4).

¹⁴ Some employees may also be tested for alcohol before they return to duty when appropriate, but the company's data on alcohol tests were incomplete; therefore, the audit team did not include them in its analysis.

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undergo 6 or more unscheduled follow-up tests within the first 12 months of returning to work. The Employee Assistance Program counselor can also recommend additional tests in the first or subsequent years for more effective monitoring. In CY 2014 and CY 2015, however, 40 employees tested positive for drugs or alcohol and returned to work, but 16 of these employees did not receive all their required follow-up tests during the period. For example, the company required one locomotive engineer to undergo 12 follow-up tests in the first year after returning to duty after testing positive for drugs, but we found that this engineer was tested only once. In the second year, the company required the same locomotive engineer to undergo 11 follow-up tests, but again the engineer was tested only once—and tested positive. HR officials told us they now track and schedule monthly follow-up tests, and if employees fail to take them, HR informs the responsible supervisor in the Operations department. However, the officials told us they did not know why this engineer was not tested as required.

Random testing. Federal regulations require that the company randomly test at least 25 percent of its employees in safety-sensitive positions annually for 5 types of drugs—marijuana, cocaine, amphetamines, opioids, and phencyclidine (known as PCP). In response to our September 2012 report¹⁵ examining employee drug and alcohol use, the company met the federal requirement each year, and increased its random drug testing from an average of 33 percent of employees in safety-sensitive positions from CY 2006 through CY 2011 to an average of 57 percent from CY 2014 through CY 2016.¹⁶ A senior company official told us the company further increased testing to about 75 percent in 2018. However, from CY 2014 through CY 2016, the company’s ability to detect drug use through random testing was limited to the five types of drugs specified in federal regulations, and included only three types of commonly abused opioids: codeine, morphine, and heroin. Effective January 1, 2018, the Department of Transportation added four other commonly used opioids—hydrocodone, oxycodone, hydromorphone, and oxymorphone—to the screening panel, which enhances the company’s ability to detect potentially dangerous drug use.¹⁷

¹⁵ OIG-E-2012-023.

¹⁶ Appendix B shows how the company compared with peer railroads in detecting drug and alcohol misuse among employees in safety-sensitive positions when randomly tested from CY 2014 through CY 2016.

¹⁷ *Department of Transportation 5 Panel Notice*, effective January 1, 2018.

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Method of Collecting Drug and Alcohol Testing Data was not Efficient

The HR department did not use an efficient method to collect data on employee drug and alcohol tests, which it reports to the Federal Railroad Administration. To collect these data, the company uses a paper form. In April 2015, the Department of Transportation authorized the use of a digital format to collect these data. A digital format is a more efficient and accurate way to collect and process these data, according to the company's clinical laboratory services contractor.

In the absence of a digital format, some of the testing data the company collected were illegible, and some data were missing entirely. As a result, an HR department official told us some drug tests had to be discarded, and some had to be repeated; this cost the company \$15 to \$20 per test, depending on where the test was performed. HR officials told us the department did not track how many retests were performed or the associated costs, but any retesting would mean that some of the \$3.3 million the company spent on employee drug tests from CY 2014 through CY 2016 was wasted. HR officials told us they were examining the feasibility of using a digital format, but they had not decided whether to pursue this capability, as of December 2018.

Testing Databases Were Missing Records

Another weakness in the company's drug and alcohol controls is that the database the company uses to select employees for random testing was missing records. Of the 4,943 employees who held safety-sensitive positions as of April 2017, we found 107 who were not included in this database because of a technical error in the software that transfers information between the company's employee master database and the testing database. Having an accurate account of employees who are subject to drug testing requirements is important for maintaining the integrity of an organization's drug-testing process, consistent with management control standards. As a result of this weakness, some employees performing safety-sensitive duties were excluded from the pool of employees subject to random drug or alcohol testing. In December 2018, company officials agreed that a more accurate employee count is needed but were still considering how to address this issue.

Not All Supervisors Were Trained to Detect Potential Impairment

Supervisors can order drug and alcohol tests when they have a reasonable suspicion that an employee is impaired, but the company did not ensure that supervisors consistently completed the required training on how to detect potential impairment.

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The HR department offers classroom-based training to help new supervisors learn to detect potentially impaired employees and offers computer-based training to all other supervisors, but it does not have a process in place to ensure that all supervisors take this training annually, as company policy requires. In addition, Operations department officials told us they do not have a process to ensure that supervisors complete this training, which is inconsistent with management control standards.

Of the 196 supervisors of employees in safety-sensitive positions in CY 2017, we found that 45 completed the required training (23 percent). Further, we found that supervisors ordered six drug tests and zero alcohol tests for reasonable suspicion of drug and alcohol use in CY 2017. In September 2012, we reported that the absence of training may have contributed to the limited number of reasonable suspicion tests.¹⁸

Oversight of Prescription Drug Use was Limited

Company policy requires all employees to report their use of all prescription and over-the-counter drugs so the HR department can assess whether the employees can safely perform their job duties. But company employees do not always self-report prescription and over-the-counter drug use, as company policy requires. An HR official told us that the department received 699 authorization forms for prescription and over-the-counter drugs from all employees company-wide in CY 2016;¹⁹ however, our analysis of de-identified prescription claims data shows that 8,841 employees had more than 75,000 prescription claims in the same period, demonstrating significant underreporting on a company-wide basis.²⁰

Furthermore, using de-identified prescription claims data from CY 2014 through CY 2016, we found at least 2,077 employees in safety-sensitive positions who submitted claims for filled prescriptions. Of these, 1,416 employees had claims for prescriptions that have high potential for psychological or physical dependence and abuse, such as opioids, according to the U.S. Drug Enforcement Administration. One employee submitted claims for 46 such prescriptions from September 2014 to December 2016. An HR official acknowledged that these employees should have submitted prescription

¹⁸ OIG-E-2012-023.

¹⁹ The 699 forms included single or multiple prescriptions, as permitted under the policy.

²⁰ Our analysis was based on employees who were active as of December 31, 2016 and filled prescription drug claims during CY 2016. It excludes claims by employees who retired or were terminated during CY 2016.

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authorization forms, but because self-reporting is an inherently weak control—and an employee’s identifiable prescription claims data cannot be used to check if a form was submitted²¹—the company has no way of ensuring that all employees reported their prescription drug use.

To improve the company’s oversight of prescription drug use, the HR department has taken steps to increase awareness of the company’s self-reporting policy. From November 2016 to January 2018, the company sent three email notifications to all employees reminding them to comply with the policy. However, not all company employees have company email addresses, and HR department officials told us they did not know whether these notifications reached all the employees working in safety-sensitive positions. Management control standards require companies to periodically evaluate the effectiveness of their methods of communication. By not ensuring that all employees received the company’s notifications, employees in safety-sensitive positions may have used prescription and over-the-counter drugs without reporting their use because they were unaware of the company’s policy.

HR officials also identified other opportunities to improve employee awareness of the reporting requirement, such as the following:

- publishing a restricted drug list that clearly communicates to employees that they cannot work while using certain prescription drugs, which is a common industry practice that three other railroads have adopted
- having the prescription benefits administrator send letters reminding employees of the policy when they fill certain prescription drugs

As of December 2018, the company had not taken these steps, but if implemented, they could help ensure better compliance with the policy.

Some Drug and Alcohol Data Were Not Reported to the Company but Are Now Available

The company may have also been unaware of the extent of employee drug and alcohol use because, historically, it did not have access to certain data. Specifically, Operation RedBlock—in effect from 1987 until October 1, 2017—was a union-led peer prevention

²¹ Based on the restrictions under the HIPAA Privacy Rule, a covered entity may not use or disclose protected health information, such as identifiable prescription claims data, except as permitted or required under the regulations (45 C.F.R. § 164.502(a)).

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program that allowed employees in safety-sensitive positions to take unlimited excused leave from work when they were impaired. Because of the confidential nature of the program, the company did not have access to data on the number of times employees took excused leave under this program, limiting the company's understanding of the nature and extent of drug and alcohol use by employees in safety-sensitive positions. In 2008 and 2011, we recommended that the company develop and distribute reports on the extent of this type of excused leave to gauge drug and alcohol use and identify where to focus education and referral efforts.²²

On October 1, 2017, the company replaced Operation RedBlock with the Prevention Intervention Education Resources (PIER) program. This HR-managed program allows employees to take excused leave from work when impaired but limits them to three times during their employment with the company. This program also enhances the HR department's ability to identify employees in need of early intervention for addiction because each time an employee takes this type of excused leave, the employee must complete a questionnaire to assess their need for intervention, education, or resources. The PIER program helped the company identify 11 employees in safety-sensitive positions in need of early intervention when they took excused leave for drug- or alcohol-related issues from October 1, 2017, through July 31, 2018. This information is shared with the Federal Railroad Administration and the company's executives.²³ It provides these executives more insight into the scope of employees' use of drugs and alcohol than was previously available.

Drug and Alcohol Use Pose Safety and Financial Risks

Employees in safety-sensitive positions who were found to have used drugs or alcohol posed greater safety and financial risks to the company than those who did not. These included employees who tested positive, sought counseling under the company's drug and alcohol control program, or had medical claims for drug or alcohol use, abuse or dependency. Our analysis shows that employees in safety-sensitive positions from CY 2014 through CY 2016 who were identified as using drugs or alcohol were more likely to violate major operating rules. They were also more likely to get injured at work, such as slipping, tripping, falling, or injuring themselves while operating a hand

²² *Operation RedBlock* (Report No. E-08-01), March 4, 2008 and *Operation RedBlock: Actions Needed to Improve Program Effectiveness* (Report No. E-11-01), March 15, 2011.

²³ The information shared does not include employees' identities.

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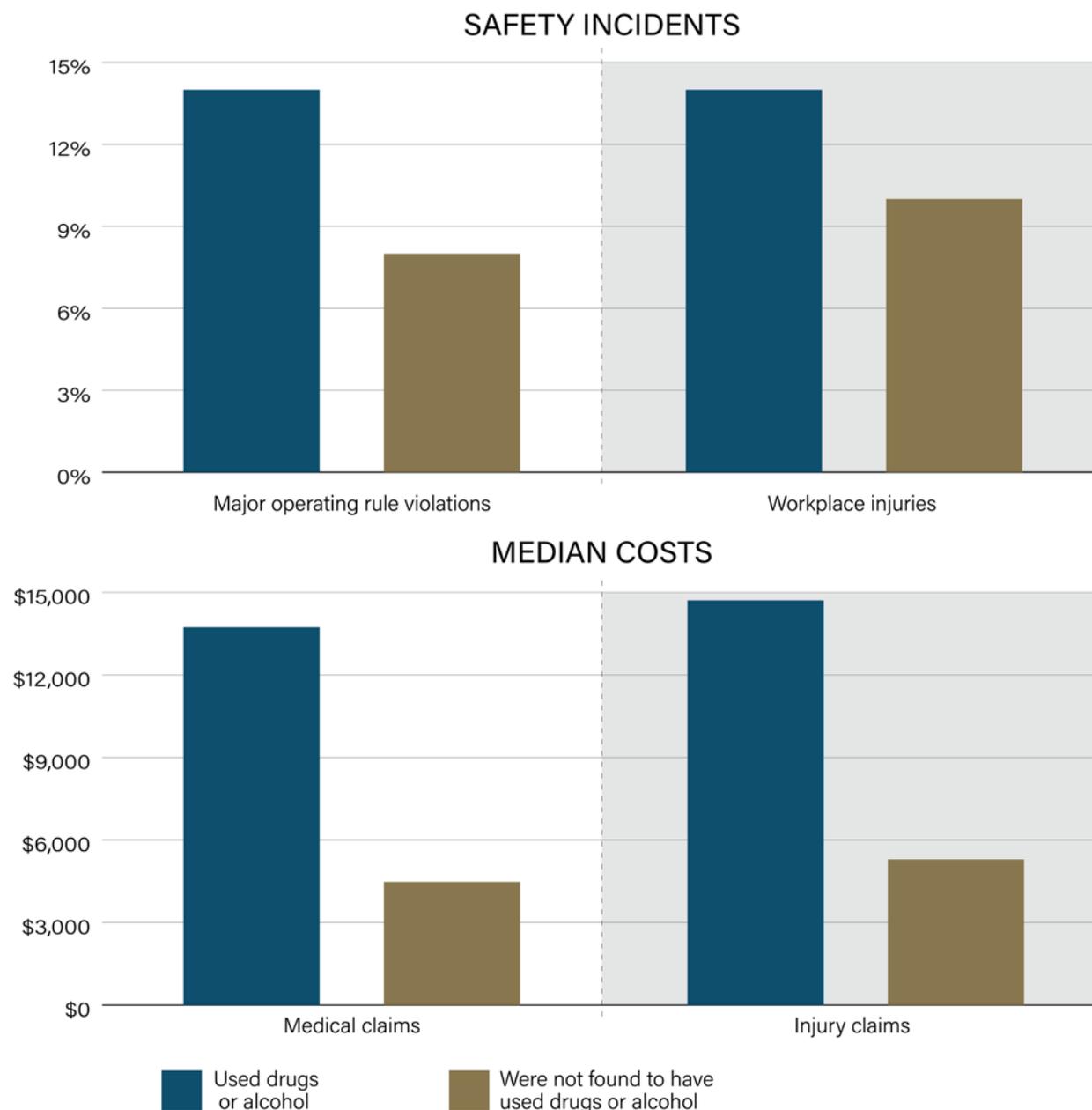
tool or shop machinery. In total, from CY 2014 through CY 2016, employees in safety-sensitive positions who used drugs or alcohol cost the company \$12.8 million in medical claims and an additional \$2.2 million in injury claims.²⁴ Figure 2 shows that the safety and financial risk to the company is greater for employees using drugs or alcohol.

²⁴ These costs do not include other expenses such as claims by passengers and damage to company property resulting from accidents or incidents.

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Figure 2. Drug and Alcohol Use by Employees in Safety-Sensitive Positions and Safety and Financial Risks, CY 2014–CY 2016



Source: OIG analysis of Amtrak data

The increased safety risks resulting from employees in safety-sensitive positions who had a positive drug or alcohol test result, who received counseling from the Employee Assistance Program, or for whom medical claims were submitted for drug or alcohol

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use, abuse, or dependence spanned all position types but with varying magnitude, as shown in the following examples:

- 12.3 percent of all conductors who used drugs or alcohol violated a major operating rule, whereas 5.7 percent of all conductors who were not found to have used drugs or alcohol violated a major operating rule.
- 23.8 percent of all heavy-equipment operators who used drugs or alcohol had a workplace injury, whereas 12.0 percent of all heavy-equipment operators who were not found to have used drugs or alcohol had a workplace injury.

Similarly, the financial risks from employees using drug or alcohol was higher within the same position types. For example, the group with the highest median cost of injuries was electricians who used drugs or alcohol. The median cost for these employees was about \$19,000, which was more than six times the median cost for electricians who were not found to have used drugs or alcohol— about \$3,000.

CONCLUSIONS

The company has opportunities to improve the effectiveness of its controls for detecting drug- and alcohol-related issues among employees in safety-sensitive positions. Although the company took important steps in CY 2017 and CY 2018 to address some of these weaknesses, several remain. Without more effective controls over drug and alcohol detection, training, and reporting, the company will miss opportunities to identify potentially impaired employees and mitigate the safety and financial risks these employees pose.

RECOMMENDATIONS

To improve the company's ability to detect drug and alcohol use among employees in the safety-sensitive positions, we recommend that the Executive Vice President / Chief Administration Officer take the following actions:

1. Establish an effective procedure to track and monitor these employees' drug and alcohol testing, including during periodic physical exams, before returning to duty after extended absences, and as required when returning to duty after a positive drug or alcohol test.
2. Implement the use of digital technology to improve the collection of drug and alcohol testing data.

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3. Ensure that the database of employees in safety-sensitive positions subject to random testing is complete.
4. Establish a process to ensure that supervisors of employees in safety-sensitive positions take the required annual reasonable suspicion training on how to detect drug and alcohol impairment.
5. Implement appropriate measures to improve employee awareness of and compliance with the company's policy for self-reporting prescription drug use.

MANAGEMENT COMMENTS AND OIG ANALYSIS

In commenting on a draft of this report, the company's Executive Vice President / Chief Administration Officer agreed with our recommendations and identified actions the company is taking, or plans to take, to address them, as well as planned completion dates for these actions. The company's planned actions are summarized below:

- **Recommendation 1:** Management agreed with our recommendation to establish an effective procedure to track and monitor drug and alcohol testing for employees in safety-sensitive positions. Management stated that the HR; Operations; and the Safety, Compliance & Training departments will create a cross-functional team to devise an appropriate process to achieve this result. The target completion date for this action is December 2019.
- **Recommendation 2:** Management agreed with our recommendation to implement the use of digital technology for improving the collection of drug and alcohol testing data. Management stated that the HR department is finalizing a request for proposal to replace one of its drug and alcohol sample collectors, which will result in more efficient drug and alcohol collection, reporting, and tracking processes, including the use of digital chain of custody forms. The HR department will also work to award a contract to a third-party vendor who will manage multiple clinic vendors who perform physical examination and drug tests. However, management noted that some small or rural clinics do not have digital technology; and therefore, their options for such services are limited. The target completion date for these actions is October 1, 2019.
- **Recommendation 3:** Management agreed with our recommendation to ensure that its database of employees in safety-sensitive positions subject to random testing is complete. Management stated that the HR, Operations, and

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Information Technology departments will create a cross-functional team to devise an appropriate process. The target completion date for this action is December 2019.

- **Recommendation 4:** Management agreed with our recommendation to establish a process to ensure that supervisors of employees in safety-sensitive positions take the required annual reasonable suspicion training on how to detect drug and alcohol impairment. Management stated that the HR department will remind supervisors that this training is mandatory, track compliance annually, and provide supervisors with more information on how to detect drug and alcohol use. The target completion date for these actions is September 30, 2019.
- **Recommendation 5:** Management agreed with our recommendation to improve employee awareness of and compliance with the company's policy for self-reporting prescription drug use but decided to discontinue its policy for self-reporting prescription drug use. Instead, it will revise its current Drug and Alcohol-Free Workplace policy to require employees to adhere to a restricted medication list. The revised policy will contain measures for dealing with the use of impairing medications by employees in safety sensitive positions. In addition, management reported that enhanced medication reviews will occur during periodic examinations. If fully implemented, these actions will meet the intent of our recommendation. The target completion date for this action is October 1, 2019.

For management's complete response, see Appendix C.

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APPENDIX A**Objective, Scope, and Methodology**

This report provides the results of our audit of the company's drug and alcohol control efforts. Our objective was to assess the effectiveness of the company's efforts to detect drug and alcohol issues among employees in safety-sensitive positions. The scope of our work focused on evaluating the company's controls and analyzing data related to drug and alcohol use and safety-related incident data from CY 2014 through CY 2016. We also evaluated CY 2017 data related to supervisory training and actions taken by the company in CY 2017 and CY 2018 related to the issues we identified. We performed our work from November 2016 through February 2019 in Chicago, Illinois, and Washington, D.C.

Our methodology included looking at how the company's efforts to detect drug and alcohol use among employees in safety-sensitive positions compared with federal regulations, company requirements, management control standards, and industry practices.

To assess the design of the company's controls over drug and alcohol use detection, training, and reporting, we examined federal regulations and company requirements that apply to employees in safety-sensitive positions. We also reviewed management control standards described in the Committee of Sponsoring Organizations of the Treadway Commission's *Internal Control-Integrated Framework* and GAO's *Standards for Internal Control in the Federal Government*.

To identify and understand other industry practices in detecting drug and alcohol use, we interviewed officials from the Federal Railroad Administration and two other large railroads. We then interviewed officials in the company's HR and Operations departments to understand their processes and compare the company's controls to federal regulations, company policies, and other industry practices. We also examined the company's relevant Federal Railroad Administration reports, Drug and Alcohol Executive Oversight Steering Committee meeting records, and an internal evaluation of the company's drug and alcohol program.

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For our audit, we only used “de-identified” data as defined by the U.S. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.²⁵ Under the Privacy Rule, de-identified data that meet the standard and implementation specifications under 45 C.F.R. § 164.514(a) and (b) are not considered to be individually identifiable health information; and therefore these data are not bound by the HIPAA regulations and restrictions under 45 C.F.R. § 164.502(d). The Privacy Rule permits this standard to be met by either an expert determination or through the Safe Harbor method. The data that was used in our audit was de-identified through the Safe Harbor method under 45 C.F.R. § 164.514(b)(2). Medical and prescription claims data were de-identified by removing any of the specified 18 types of identifiers, such as name, social security number, and date of birth.

Through this process, we used de-identified medical and prescription claims data from CY 2014 through CY 2016. This data included employee health care information—such as health diagnoses related to use, abuse, or dependence on drugs or alcohol, and employee use of prescription drugs—while masking the identity of the individual to the audit team. The records were assigned a randomized numerical value to allow the medical and prescription claims data to be analyzed along with other data to identify trends and ascertain the potential effect of drug and alcohol misuse on company operations. Finally, we implemented safeguards and procedures to ensure that our audit team could not re-identify the data in accordance with 45 C.F.R. § 164.514(c). As a result, the audit team did not use, possess, or analyze protected health information during our audit.

In addition to the medical and prescription claims data, we also used de-identified company data on drug and alcohol testing and safety incidents—such as accidents, injuries and rule violations—for about 6,200 employees who worked in safety-sensitive positions from CY 2014 through CY 2016. We also used other company records, such as employee injury claims data and employee prescription disclosures in a de-identified

²⁵ The Amtrak Office of Inspector General is not a “covered entity” under HIPAA and is not subject to HIPAA requirements, but we complied with the de-identification standards under HIPAA. 45 C.F.R. § 164.502(a). Although we did not use or analyze any protected health information during this audit, we may receive access to protected health information through our status as a “health oversight agency.” Specifically, 45 C.F.R. § 164.502(d) permits a health oversight agency such as OIG to have access to protected health information for activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure and disciplinary actions; and civil, administrative, and criminal proceedings and actions; and other activities necessary for the appropriate oversight of the health care system.

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format. Although these data were not protected health information under HIPAA, it was de-identified under the same process that was used for the medical and prescription claims data before it was used or analyzed. We established a process with company officials in the Law and HR departments and gave them a “cross-walk” file to remove personally identifiable information from data—such as employee names, identification numbers, and social security numbers—and replace it with randomly generated identification numbers. The cross-walk file was handled by (1) a unit of the Amtrak Office of Inspector General that was independent from the audit team and (2) an Amtrak Information Technology department official who was independent from the HR and Law department officials. The cross-walk file was not provided to the audit team at any time. As a result, none of the data on their own, or in combination, could be used to identify individual employees. Further, in conducting this work, we did not re-identify employees or visit employees’ supervisors or medical providers. We also did not seek to identify or take punitive actions against individual employees.

To assess the effectiveness of the company’s controls, we used specialized data analytics software to analyze the data we collected. Specifically, we combined and analyzed employee personnel actions and organizational assignments, medical and prescription claims, drug and alcohol use, and safety incident-related data from CY 2014 through CY 2016 in a de-identified format to test for the controls detailed below. In addition, we evaluated CY 2017 data related to the training provided to supervisors, and April 2017 data for evaluating the completeness of the database the company uses to select individuals for random testing.

- **The extent to which the company was aware of drug and alcohol misuse by employees in safety-sensitive positions.** To do this, we summarized the number of employees the company found to have tested positive for drug or alcohol use and received drug or alcohol counseling through the company’s Employee Assistance Program. We then compared the company’s number against the number of employees for whom medical claims were submitted for drug- or alcohol-related issues through the company’s health insurance program.
- **The extent to which employees in safety-sensitive positions were drug-tested at scheduled times in accordance with company policy,** such as during periodic physical exams and after returning to duty, for follow-up testing as part of the counseling and rehabilitation process, and after safety incidents such as accidents and major operating rule violations. To do this, we identified the population of

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employees who should have received each type of test and compared them with the populations who had relevant drug test records.

- **The completeness of the database the company uses to select employees for drug and alcohol testing.** To do this, we compared records from this database to the company's employee master database as of April 2017.
- **The extent to which supervisors took training on how to detect possible impairment in employees.** To do this, we found the population of supervisors who oversaw employees in safety-sensitive positions as of December 31, 2016, and compared it to the population of supervisors who completed either in-person or computer-based training courses in CY 2017.
- **The extent to which employees in safety-sensitive positions filled prescriptions that company policy requires them to report,** including prescriptions that have high potential for psychological dependence and abuse, such as opioids. To do this, we identified the population of employees who enrolled in company health benefits and analyzed their prescription drug claims records from CY 2014 through CY 2016.
- **The effects of drug and alcohol use on company operations.** To do this, we compared key safety outcomes (such as major operating rule violations and workplace injuries) and financial outcomes (such as medical and injury claims costs) for employees in safety-sensitive positions who used drugs or alcohol and those who were not found to have used drugs or alcohol.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

To assess the company's internal controls, we compared its practices with federal regulations, company policies and procedures, other industry practices, and the standards used in the private and public sectors described above. Specifically,

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we reviewed company controls for drug and alcohol testing and counseling, supervisory training, employee self-reporting of prescription drug use, and data collection.

We discussed any changes the company made in 2017 and 2018 in our report for contextual purposes and to the extent that they affected the control environment we examined. The results of assessing these controls are presented in the report. We did not review other controls in the company's drug and alcohol control efforts, such as the sample collection process for drug and alcohol testing or the Employee Assistance Program's assessment of employees' needs.

Computer-Processed Data

We obtained computer-processed data from various sources and analyzed them using our data analytics tool. For this audit, as discussed above, we obtained the following employee-level data:

- relevant data from the company's employee master system, SAP, such as the employee position, hire date, and time-period for which the employee held a safety-sensitive position
- medical and prescription claims and costs from the company's health care claims administrators
- employee injury claims and costs from the company's claims database
- employees who enrolled in the company's health care benefits
- company data on major operating rule violations
- employees who were drug- and alcohol-tested—including the test date, test reason, and test result
- employees who sought drug- or alcohol-related counseling from the Employee Assistance Program
- supervisors who took training to help them identify potentially impaired employees on the job

We also performed steps to ensure that the data were sufficiently reliable to achieve our audit objective. Because of the sensitive nature of these data, we did not have direct access to the system to verify their completeness and accuracy. Therefore, we performed multiple alternative steps to ensure that the above data were complete and

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accurate. For example, we compared the totals with the company's general ledger when applicable, relied on our interviews with responsible company officials, and compared record counts with company-issued management reports. Also, to test the reliability of drug and alcohol test results data, we selected a sample of records and relied on company officials to verify them against the source systems. Based on these tests, we concluded that the data were sufficiently reliable to be used in meeting our objective.

Prior Reports

The following reports were relevant to our work:

Amtrak OIG:

- *AMTRAK: Top Management and Performance Challenges—Fiscal Years 2019 and 2020* (OIG-SP-2018-011), September 28, 2018
- *Railroad Safety: Amtrak Is Not Adequately Addressing Rising Drug and Alcohol Use by Employees in Safety-Sensitive Positions* (OIG-E-2012-023), September 27, 2012
- *Operation RedBlock: Actions Needed to Improve Program Effectiveness* (Report No. E-11-01), March 15, 2011
- *Operation RedBlock* (Report No. E-0801), March 4, 2008

National Transportation Safety Board:

- National Transportation Safety Board, *Amtrak Train Collision with Maintenance of Way Equipment: Chester, PA April 3, 2016* (NTSB/RAR-17/02), November 14, 2017

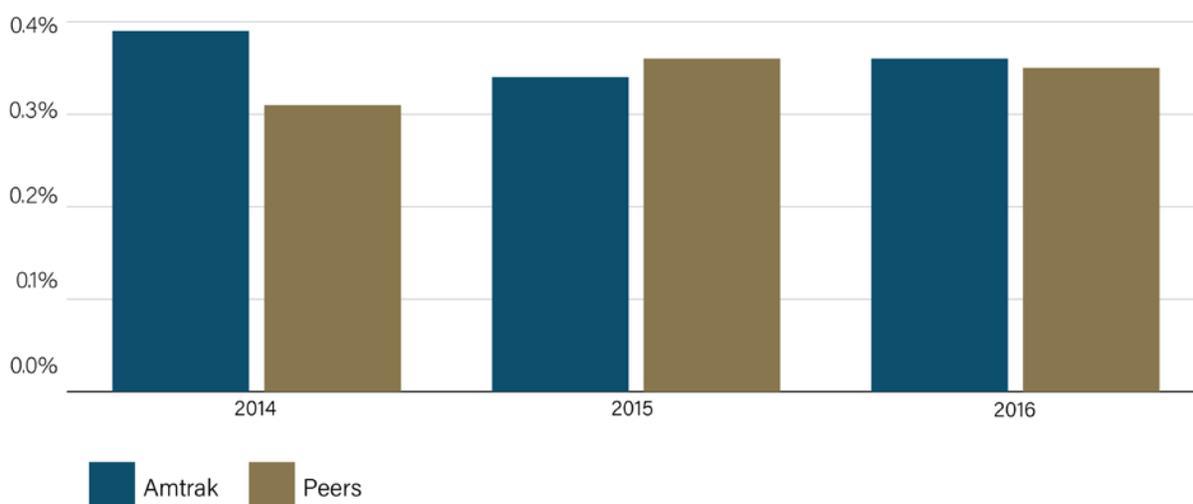
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APPENDIX B

Comparison of Company's Random Drug and Alcohol Testing Results with Peer Railroads

We obtained and analyzed drug and alcohol random testing data that the company provided to the Federal Railroad Administration for CY 2014 through CY 2016, and we compared them with the similar data that the company's peer railroads provided to the Federal Railroad Administration for the same time period. However, we did not identify a discernible trend between the company's positive rate of detection compared with the peer railroads' rate of detection from random drug and alcohol tests.

Figure 3: Positive Rate for Random Drug and Alcohol Tests of Employees in Safety-Sensitive Positions, CY 2014–CY 2016



Source: OIG analysis of Amtrak and Federal Railroad Administration data

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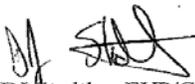
APPENDIX C

Management Comments

NATIONAL RAILROAD PASSENGER CORPORATION

Memo



Date	March 6, 2019	From	 DJ Stadler, EVP/CAO
To	Stephen Lord, Assistant Inspector General, Audits	Department	Administration
cc		cc	Eleanor Acheson, EVP General Counsel Jeanne Cantu, AVP Network Support Stephen Gardner, SEVP Commercial, Marketing & Strategy Tim Griffin, EVP Chief Commercial & Marketing Officer Carol Hanna, VP Controller Kenneth Hylander, EVP CSO Justin Meko, VP Safety, Compliance & Training Robin McDonough, VP HR Scot Naparstek, EVP COO Denyse Nelson-Burney, AVP Total Rewards & HR Compliance Mark Richards, Sr Director Amtrak Risk & Controls Swati Sharma, Acting CFO Christian Zacariassen, EVP CIO

Subject **Management Response to *SAFETY AND SECURITY: Opportunities to Improve the Effectiveness of Controls for Detecting Drug- and Alcohol-Related Issues of Employees in Safety-Sensitive Positions* (Draft Audit Report for Project No. 004-2017)**

Thank you for your work on this draft report entitled, "*SAFETY AND SECURITY: Opportunities to Improve the Effectiveness of Controls for Detecting Drug- and Alcohol-Related Issues of Employees in Safety-Sensitive Positions*". We appreciate the OIG's analysis and the opportunity to respond to the recommendations.

Recommendation 1:

To improve the company's ability to detect drug and alcohol use among employees in the safety-sensitive positions, we recommend that the Executive Vice President/Chief Administration Officer establish an effective procedure to track and monitor these employees' drug and alcohol testing, including during periodic physical exams, before returning to duty after extended absences, and as required when returning to duty after a positive drug or alcohol test.

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Management Response/Action Plan:

Management agrees with this recommendation.

Human Resources, Operations and Safety, Compliance & Training will create a cross-functional team to devise a process that ensures appropriate drug and alcohol testing, monitoring and auditing of employees in safety-sensitive positions.

Responsible Amtrak Official(s):

Denyse Nelson-Burney, AVP, Total Rewards & HR Compliance, Corporate Medical Director Dr. Ann Kuhnen, and Justin Meko, VP Safety, Compliance & Training, Jeanne Cantu, AVP Network Support

Target Completion Date:

December 2019

Recommendation 2:

To improve the company's ability to detect drug and alcohol use among employees in the safety-sensitive positions, we recommend that the Executive Vice President/Chief Administration Officer implement the use of digital technology to improve the collection of drug and alcohol testing data.

Management Response/Action Plan:

Management agrees with this recommendation, to the extent electronic chain of custody form (eCCF) capability exists. Human Resources is currently finalizing an RFP to replace one of its drug and alcohol collectors which will result in more efficient drug and alcohol collection, reporting and tracking processes. Digital chain of custody forms are anticipated with the selected vendor as well as the existing collector. Human Resources is also in the final stages of an RFP for a third-party provider who will manage the multiple clinic vendors who perform physical examinations and drug tests. However, some small or rural clinics do not have eCCF capability and, in some locations, our options for alternate services are limited.

Responsible Amtrak Official:

Denyse Nelson-Burney, AVP, Total Rewards & HR Compliance, Corporate Medical Director Dr. Ann Kuhnen, and Adria Boetig, Director HR Compliance

Target Completion Date:

October 1, 2019

Amtrak Office of Inspector General

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Recommendation 3:

To improve the company's ability to detect drug and alcohol use among employees in the safety-sensitive positions, we recommend that the Executive Vice President/Chief Administration Officer ensure the database of employees in safety-sensitive positions subject to random testing is complete.

Management Response/Action Plan:

Management agrees with this recommendation.

Human Resources, Operations and Information Technology will create a cross-functional team to devise a process that ensures employees in safety-sensitive positions are appropriately assigned to the random testing pool.

Responsible Amtrak Official:

Scot Naparstek, EVP/Chief Operating Officer, Jeanne Cantu, AVP Network Support, Denyse Nelson-Burney, AVP, Total Rewards & HR Compliance, Joyce Cruickshank, AVP IT Employee & Train Operations

Target Completion Date:

December 2019

Recommendation 4:

To improve the company's ability to detect drug and alcohol use among employees in the safety-sensitive positions, we recommend that the Executive Vice President/Chief Administration Officer establish a process to ensure that supervisors of employees in safety-sensitive positions take the required annual reasonable suspicion training on how to detect drug and alcohol impairment.

Management Response/Action Plan:

Management agrees with this recommendation. Human Resources will:

- communicate a reminder to all supervisors of safety-sensitive employees that reasonable suspicion training is mandatory
- track compliance annually and report non-compliance to Executive Vice Presidents
- create a SharePoint site to assist managers with day-to-day drug and alcohol protocols. The site will include information on reasonable suspicion factors.

Responsible Amtrak Official:

Denyse Nelson-Burney, AVP, Total Rewards & HR Compliance and Adria Boetig, Director HR Compliance

Target Completion Date:

September 30, 2019

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Recommendation 5:

To improve the company's ability to detect drug and alcohol use among employees in the safety-sensitive positions, we recommend that the Executive Vice President/Chief Administration Officer implement appropriate measures to improve employees' awareness of and compliance with the company's policy for self-reporting prescription drug use.

Management Response/Action Plan:

Management agrees with this recommendation. The company will discontinue its policy that requires employees to self-report impairing prescription drugs. Instead, it will revise its current Drug and Alcohol-Free Workplace policy to require employees to adhere to a restricted medication list. The revised policy will contain measures for dealing with the use of impairing medications by employees in safety-sensitive positions. This approach would arm the employee and provider with important information at the treatment stage. In addition, enhanced medication reviews will occur at each periodic examination.

Responsible Amtrak Official:

Denyse Nelson-Burney, AVP, Total Rewards & HR Compliance, Corporate Medical Director Dr. Ann Kuhn

Target Completion Date:

October 1, 2019

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APPENDIX D**Acronyms and Abbreviations**

CY	calendar year
HIPAA	Health Insurance Portability and Accountability Act of 1996
HR	Human Resources
NTSB	National Transportation Safety Board
PCP	phencyclidine
PIER	Prevention Intervention Education Resources
the company	Amtrak

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APPENDIX E**OIG Team Members**

Jason Venner, Deputy Assistant Inspector General, Audits

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David Grossman, Audit Manager

Ashish Tendulkar, Audit Manager

Raymond Zhang, Senior Auditor, Lead

Ramesh Raghavan, Contractor

Juan Morales, Contractor

Drew Woodall, Contractor

Alison O'Neill, Communications Analyst

OIG MISSION AND CONTACT INFORMATION

Mission

The Amtrak OIG's mission is to provide independent, objective oversight of Amtrak's programs and operations through audits and investigations focused on recommending improvements to Amtrak's economy, efficiency, and effectiveness; preventing and detecting fraud, waste, and abuse; and providing Congress, Amtrak management, and Amtrak's Board of Directors with timely information about problems and deficiencies relating to Amtrak's programs and operations.

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or

800-468-5469

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