

STATE OF NEW YORK



**OFFICE OF THE INSPECTOR GENERAL
METROPOLITAN TRANSPORTATION
AUTHORITY**

**Selected Fitness for Duty Issues
in NYC Transit**

MTA/IG 99-10

December 1999

**Roland M. Malan
INSPECTOR GENERAL**

State of New York



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Office of the Inspector General

METROPOLITAN TRANSPORTATION AUTHORITY

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December 15, 1999

Mr. Lawrence G. Reuter
President
MTA New York City Transit
370 Jay Street, 13th Floor
Brooklyn, NY 11201

Dear  Reuter:

This transmits our report on NYC Transit's compliance with selected policies designed to assure mass transit operators' fitness for duty. This audit was performed pursuant to the MTA Inspector General's authority as set forth in Section 1279 of the Public Authorities Law. It follows up on issues raised in prior reports by this Office.

The report indicates that NYC Transit has improved performance in some fitness for duty areas. In those areas the audit identified as needing attention, you indicated general agreement with our recommendations, and we are pleased to know that steps have already been taken to address the issues raised in the report. I believe this audit demonstrates the commitment of both NYC Transit and the MTA Inspector General's Office to ensuring and continually improving public safety.

Sincerely,

A handwritten signature in cursive script that reads "Roland M. Malan".

Roland M. Malan
Inspector General



EXECUTIVE SUMMARY

Selected Fitness for Duty Issues in NYC Transit

OVERVIEW

This report focuses on areas where safety policies seek to ensure the fitness of New York City Transit (NYC Transit) mass transit operators to perform their duties including: limiting long work hours; testing employees for drugs and alcohol after an accident; and complying with required medical examinations. These issues were raised in a 1997 Metropolitan Transportation Authority Office of the Inspector General audit as topics that require additional review and are combined with the issue of NYC Transit employees holding two jobs.

The results of this audit indicate that NYC Transit can demonstrate compliance with rest policies and medical examination requirements while problems exist in areas of dual employment and testing employees after an accident. However, in all areas we had concerns as to how local managers interpret, implement, and monitor safety policies thereby weakening NYC Transit's protections.

PURPOSE AND SCOPE OF REVIEW

Our overall objective was to determine whether there are adequate measures within NYC Transit, the Department of Buses (DOB) and the Department of Subways (DOS) to ensure that selected safety concerns are addressed. The specific objectives were to determine whether:

- DOB ensures that bus operators receive required rest time between driving tours as specified in policy.
- NYC Transit can identify which employees in safety sensitive positions (such as bus operators, train operators, and conductors) hold second jobs and can monitor their work schedules for adequate rest time.
- NYC Transit administers post-accident drug and alcohol tests within two hours and documents reasons for delays in testing as required by federal regulations.
- NYC Transit ensures medical follow-ups for diabetic bus operators on a 6-month schedule as required by state regulations.

SUMMARY OF FINDINGS

DOB Rest Rules Not Consistently Applied Or Enforced

Our review of 242 weekly schedules of bus operators showed that most have at least eight hours off before and after their shift. The number of times an operator's schedule in our sample may have violated the department's rule for adequate rest is between 5 and 22, depending on how the rule is interpreted. Despite the relatively low level of violation, we found that there are few practices and safeguards to ensure consistent interpretation and enforcement of the rest rule.

**NYC Transit Dual
Employment Policies and
Practices Ineffective**

Existing policies, regulations and practices are not effective at identifying and monitoring for potential schedule conflicts when people in safety sensitive positions are dually employed at NYC Transit and another endeavor. While employees must get approval before working a second job, we found this doesn't always happen nor do employees always abide by their managers' decisions. Although controlling the activities of employees outside of work hours is a sensitive issue, there are steps that can be taken to strengthen the policies and level of review over dual employment matters.

**NYC Transit Post-Accident
Testing is Not Happening
Soon Enough**

Although federal regulations suggest that post-accident alcohol testing of bus operators should occur within two hours after an accident, our analysis found that 80 percent of NYC Transit employees involved in accidents in 1997 were tested later than two hours. Since alcohol metabolizes quickly, NYC Transit is missing the opportunity to identify the presence of alcohol as a contributing or causal factor in an accident in all but cases of significant intoxication. There are also questions as to whether the departments' documentation of the reason for delayed testing would meet federal requirements.

Oversight of the timeliness of post-accident testing has been absent. As a result, we found problems at NYC Transit related to post-accident testing that include: policies not totally consistent with federal guidelines; confusion about responsibility for monitoring testing timeliness; and lack of analysis on why post-accident tests are not meeting timeliness goals.

**DOB Generally Meeting
Medical Follow-Ups
Required by State**

Our inquiry into the timeliness of medical follow-ups for bus operators with diabetes showed DOB is generally in compliance with New York State regulations. However varying interpretation and implementation of departmental policy by local managers, a lack of management oversight, and inadequate communications between essential divisions within NYC Transit, raise questions about DOB's ability to assure compliance.

RECOMMENDATIONS

Twenty-one recommendations are made in this report to address the concerns we note. The recommendations focus on clarifying policies, establishing lines of accountability, and implementing controls that will detect violations of policy.

COMMENTS

NYC Transit accepted nineteen recommendations, partially accepted two, and noted in their written response that many steps have already been taken in response to the audit findings. As for NYC Transit's partial acceptance of two recommendations, the Inspector General's office is pleased to note the agency plans to aggressively address the concerns, albeit through different means. NYC Transit's full comments on the preliminary draft are included in Appendix A of the report. We have incorporated some of their comments, as appropriate, into this report.

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INTRODUCTION

This audit follows up on three New York City Transit (NYC Transit) safety-related issues¹ that have been subjects in past reports by the Metropolitan Transportation Authority's Office of the Inspector General (OIG) or the New York State Public Transportation Safety Board. We examined policies and practices to assure fitness for duty of key bus and subway employees. Specifically, we examined limitations on hours of work, post-accident drug and alcohol testing and completion of regular medical examinations for diabetic bus operators.

We also explored a fourth and related issue: whether NYC Transit is aware of and able to monitor the schedules of employees in safety sensitive positions who hold additional jobs outside of their employment with NYC Transit.

BACKGROUND

Safety of operations is a constant concern of NYC Transit. Carrying an average of 5 million paying passengers per week in the 5 boroughs of New York City, it operated 3,867 buses traveling over 227 bus routes and 5,799 rail cars running along 25 rail lines in 1997. Assuring the fitness of bus and subway operating personnel is a key element in ensuring the safety of both the public and NYC Transit employees.

Within NYC Transit, three organizational entities have critical responsibility over the fitness for duty issues discussed in this report: Occupational Health Services (OHS), Department of Buses (DOB), and Department of Subways (DOS). OHS is a medical service center which conducts medical assessment examinations and administers drug and alcohol testing to all NYC Transit employees. DOB manages and conducts NYC Transit bus operations; DOS manages and conducts NYC Transit subway operations. Both departments are responsible for the safe operation of vehicles by their operators. DOB has an additional responsibility to assure compliance with state motor vehicle laws as its buses are operated on New York City streets.

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of this audit were to determine whether:

- DOB ensures that bus operators receive required rest time between driving tours as specified in policy.
- NYC Transit can identify which employees in safety sensitive positions (such as bus operators, train operators, and conductors) hold

¹ This report follows up on issues identified in OIG's report MTA/IG 97-20, Review of NYC Transit's Implementation of Safety Recommendations, issued March 30, 1998. The review itself was an effort to assure that corrective action has been taken by NYC Transit on safety problems that were identified in the past.

second jobs and can monitor their work schedules for adequate rest time.

- NYC Transit administers post-accident drug and alcohol tests within two hours and documents reasons for delays in testing as required by federal regulations.
- NYC Transit ensures medical follow-ups for diabetic bus operators on a 6-month schedule as required by state regulations.

The question of sufficiency of rest for bus operators arose from a 1990 OIG report on long work hours,² which found NYC Transit not enforcing its rules limiting work hours for tower operators, train operators, and bus operators. We recommended that NYC Transit improve its controls over employees' work hours and urged that supervisors be held responsible for monitoring work schedules. Our prior follow-up audit assured us that DOS had made recommended improvements. This audit assesses the adequacy of current DOB controls to ensure that bus operators get rest. We reviewed policies and procedures, met with DOB officials and staff, and analyzed a sample of bus operator schedules for select periods in 1997 and 1998.

The issue of employees who are responsible for bus and train operations and who are also employed in full or part-time jobs outside of NYC Transit, was included in the audit because of its close association with fatigue and hours-of-service limitations. Our focus concerning the "dual employment" issue was on NYC Transit's success in assuring responsibilities associated with the second job do not adversely affect the safety of subway or bus operations. We reviewed NYC Transit policies and procedures; examined documentation on a sample of employees believed to be employed both with NYC Transit and the City of New York; and discussed the policies and documentation requirements with NYC Transit officials.

A third area of inquiry involved post-accident drug and alcohol testing of bus operators, train operators and conductors – all safety sensitive positions. We found in a 1992 report on compliance with drug testing requirements³ that not all employees involved in accidents were tested for drugs and alcohol and that NYC Transit policies, although requiring post-accident testing, did not specify an appropriate timeframe for testing. OIG recommended that all employees involved in collisions and derailments be tested for alcohol soon enough for the presence of alcohol to be detected, and urged NYC Transit to specify an appropriate timeframe for testing in its policies. For this audit, we calculated how quickly employees are being tested. We also reviewed state and federal requirements regarding post-accident testing; examined NYC Transit policies and procedures;

² MTA/IG 89-27, The Impact of Long Work Hours on the Safety of NYCTA Bus and Subway Service, issued February 15, 1990.

³ MTA/IG 92-2, A Review of Transit Authority Compliance with Non-Random Drug Testing Requirements, issued February 6, 1992.

consulted with a state official on alcohol testing protocol; and discussed implementation of procedures with NYC Transit officials.

The final issue focused on medical examinations of bus operators diagnosed with diabetes. A 1990 OIG report on bus operator training⁴ found that NYC Transit had not conducted required medical certifications every six months and recommended that they comply with state law. This audit focused on DOB's compliance with state law by examining NYC Transit policies and procedures; interviewing NYC Transit officials and managers; and examining computerized medical examination records.

This audit was conducted in accordance with generally accepted government auditing standards⁵. As part of our audit protocol, we requested letters from the three operating departments involved in this audit, assuring us that they fully and accurately disclosed information necessary to the scope of our work. Letters were received from two departments: the Department of Buses and the Office of Human Resources; the Department of Subways did not provide one. We consider this a potential impairment to our audit and note that as a result, there may be limitations to the completeness and accuracy of our work when information or data is used pertaining to the Department of Subways.

⁴ MTA/IG 90-23, Assessment of NYCTA Surface Transit Bus Operator Training Program, issued October 1, 1990.

⁵ Government auditing standards require an external quality control review of organizations conducting audits under these standards, every 3 years; arrangements for such a review are underway.

DOB REST RULE: MOST SCHEDULES ARE IN COMPLIANCE, BUT RULE NEEDS CLARIFICATION AND OVERSIGHT

Analysis of selected bus operator schedules between April 1997 and April 1998 shows general compliance with rest policies. However, depending on the interpretation of policy concerning rest, there were 5 to 22 occasions out of 242 weeks of bus operator work records when a schedule did not provide required rest time. Our inquiries surfaced problems with interpretation of the rest policy as well as inadequate oversight of its implementation. While most bus operators are not working schedules that would violate DOB policy, these problems increase the risk that some bus operators could be working without adequate rest.

Hours-of-Service: A Long-Time Concern

Limitations on the hours that mass transit operators work (hours-of-service limitations) exist as a safety precaution against accidents that may occur due to driver fatigue. We were told that the American Public Transit Association has included the issue of fatigue in all its conferences to increase awareness since 1998. The Transportation Safety Institute, U.S. Department of Transportation, has also developed a training program on fatigue awareness for its permanent curriculum.

Whether NYC Transit has adequate hours-of-service restrictions to address the potential for employee fatigue has been a question raised over the last decade by the New York State Public Transportation Safety Board, NYC Transit's Office of System Safety and the OIG. The following are instances where concerns with NYC Transit hours-of-service limitations were raised:

- In 1990, an OIG report on long hours worked by NYC Transit employees made several recommendations to NYC Transit to create stricter hours-of-service limitations.
- In 1994, the Public Transportation Safety Board investigated the collision of two NYC Transit work trains. They reported⁶ that one train operator worked extensive overtime within 30 days prior to the accident. Subsequently, OIG investigated train operators' compliance with DOS hours-of-service limitations.⁷ Both agencies recommended NYC Transit more strictly enforce hours-of-service limitations.
- In 1993, NYC Transit's Office of System Safety concluded (based on its review of literature concerning fatigue), that "empirical evidence supports the contention that cumulative sleep deprivation leads to deteriorating work performance." The Office of System Safety report in 1995⁸ noted that "in order to alleviate the negative influence of

⁶ New York State Public Transportation Safety Board case #2952, Investigation of Collision Involving the MTA New York City Transit North of Prospect Avenue Station, issued January 25, 1995.

⁷ MTA/OIG 95-13L, Violations of NYCT's Hours of Work Provisions, issued December 18, 1995.

⁸ NYC Transit Office of System Safety report, Expanded Fatigue Study, issued August 3, 1995.

sleep deprivation, experts agree that individuals must have a minimum of 6-8 hours of uninterrupted sleep between work shifts.” Although their own study of NYC Transit data did not discover a relationship between hours worked at NYC Transit and accidents, the Office of System Safety nevertheless recommended that NYC Transit provide workers at least eight hours off duty between shifts.

**Department of Buses’
“8-Hour Rule”**

A bus operator’s shift is approximately eight to nine hours long but additional hours of overtime or “extra” work may be added. DOB restrictions on hours of service focus on ensuring rest time when additional hours are assigned to someone already working a shift the same day.⁹

On August 15, 1995, DOB issued a Permanent Bulletin, commonly referred to as the “8-hour rule.” This DOB bulletin officially establishes and implements rest practices that had been in place at DOB in prior years. The “8-hour rule” states:

No employee may work an overtime assignment that will cause him or her to have less than 8 hours off before or after his or her next day’s assignment.

Whenever a crew dispatcher assigns overtime, he or she must check to see if an overtime piece would cause the employee to have less than 8 hours off before or after his or her work assignment on the next day. Only if the employee has 8 hour [sic] off, will he or she be allowed to work the overtime.

**Schedules Can Be
Changed at Multiple
Points**

DOB’s system for scheduling work affects implementation of the “8-hour rule.” DOB consists of two groups of depots: NYC Transit (TA) and its subsidiary, the Manhattan and Bronx Surface Transit Operating Authority (OA). The OA is comprised of the Manhattan and Bronx division depots. The TA is comprised of the Brooklyn, Queens, and Staten Island division depots and includes one Manhattan depot.

Bus operators select their work schedule at their depots approximately four times a year during a process called a “pick.” There is one “general” or “system” pick every year. At the general picks, bus operators can move between permitted depots, select work schedules for approximately the next three months, and select their vacation time for the year.

Overtime is assigned in a variety of ways. Consistent with its collective bargaining agreement, the OA allows its bus operators to select permanent “extra pieces” in addition to their regular shifts at the pick. Extra pieces are several hours of work but less than eight hours. In the TA, extra pieces are less common.

⁹ Work hours are also limited by an overtime cap set at 72 pay hours a week or an annual salary of \$72,250 that includes overtime earned.

Overtime is also assigned at the depot level in both the OA and TA based on daily need as determined by crew dispatchers. The crew dispatcher at the depot will assign overtime foreseen for the next day and any unforeseen overtime that needs to be covered while he/she is on duty.

COMPLIANCE WITH REST RULE

A Few Schedules Are Out of Compliance – Most Are Not

To determine the level of compliance with the “8-hour rule,” we reviewed selected work records between April 1997 and April 1998 for 98 bus operators. Two-week periods of work records were reviewed for 75 randomly selected bus operators. A four-week period of work records were reviewed for 23 additional bus operators from two depots who were high overtime recipients during four weeks in 1998. In all, we reviewed a total of 242 weeks of operator schedules.

According to the records, most of the 98 bus operators’ schedules provided for at least eight hours of rest time. How many times schedules violated the “8-hour rule” from our sample of 242 work-weeks depends upon one’s interpretation of the rule. Depending on interpretation, the number ranges from 5 to 22 times, with occurrences in both the randomly selected and the focused sample of high overtime recipients. As discussed in more detail in the next section, the rule has been interpreted variously as requiring rest both before *and* after a shift, or as requiring rest just on one end of a shift, i.e., before *or* after a shift.

OIG CONCERNS

Language of Bulletin Problematic

The wording of the “8-hour rule” is unclear to the managers and employees who have to apply and enforce it. At issue is the language used in the bulletin, specifically the terms “before or after,” “overtime piece” and “crew dispatcher.”

Differing interpretations exist of the rule that requires dispatchers, when assigning overtime, to “check to see if an overtime piece would cause the employee to have less than 8 hours off before or after his or her work assignment on the next day.” Four depots in the OA, eight depots in the TA, and DOB management have interpreted this sentence as requiring eight hours of rest both before and after the next day’s work when assigning overtime. However, at four depots, management interpreted the rule as requiring eight hours of rest either before or after the next day’s work when overtime is involved. Figure 1 explores the implications of the differences through a hypothetical example.

FIGURE 1: Application of the 8-Hour Rule

In 4 of 16 bus depots, the overtime assignment below, made on Sunday for Monday coverage, would be acceptable. In the other 12 depots, it would be considered a violation of the “8-hour rule.”

Bus Operator’s Schedule

<u>Sunday</u>	<u>Monday</u>	<u>Tuesday</u>
<i>Off work before 10:00 P.M.; dispatcher assigns the operator overtime for Monday</i>	<i>Works 6:00 A.M. to 2:00 P.M. and an overtime piece 6:00 P.M. to 11:00 P.M.</i>	<i>Works 6:00 A.M. to 2:00 P.M.</i>

Some Overtime Not Considered Under Rest Rule

Further confusion arises from the language that the “8-hour rule” applies to situations when the “crew dispatcher” assigns overtime. The crew dispatcher assigns overtime based on daily need. The bulletin does not address other positions that assign overtime such as the “superintendent” or “systems manager” who make assignments during the general and local picks.

Additional ambiguities exist at OA depots because the bulletin only refers to situations when the dispatcher “assigns overtime.” Two depot managers in the OA told us they consider extra pieces selected at the pick to be regular work, not overtime assignments, and thus not subject to the “8-hour rule.” However two division officials (who conduct and oversee the OA general picks and maintain the OA work schedules) viewed the extra pieces as overtime and thus subject to the rule.

Oversight of Rest Rule Lacking

Supervisors vary in the extent they check for schedules that violate the “8-hour rule.” We found that some depot managers rely on their crew dispatchers to assure compliance with the “8-hour rule” without additional oversight; some depot managers check crew assignments on a daily basis; still other depot managers check crew assignments intermittently.

Our review of how the rule is implemented at 16 out of 18 DOB depots indicates that no formal monitoring exists. In contrast, DOS has rigorous hours-of-service requirements¹⁰ and an automated monitoring system. In response to previous recommendations from the New York State Public Transportation Safety Board, DOS also reports hours-of-service violations on a monthly basis to the Office of System Safety. The Office then sends

¹⁰ DOS has a number of ways to limit the hours worked by train operators, tower operators, and conductors. These include: a daily maximum on elapsed time worked, a daily minimum of rest, a maximum number of consecutive days of work allowed in a week, and at least one day off during a calendar week.

the information to the Public Transportation Safety Board for monitoring. DOB senior management does not monitor and report to a similar extent on depot compliance with the “8-hour rule.”

CONCLUSION

NYC Transit rest rules have been the subject of scrutiny many times during this decade and such oversight continues to be justified since operator fatigue is a public safety issue. While bus operator work records show that most operators receive at least eight hours off between shifts, violations of the “8-hour rule” still occur. Ambiguities in the language of DOB’s rest rule and weak monitoring of overtime practices make it possible for a bus operator to violate the rest rule without it being noticed. A lack of management oversight has also resulted in depot managers setting inconsistent parameters for compliance with the “8-hour rule.” If ambiguities in the rule, inconsistent practices, and little oversight of rest rules continue, the ability of DOB’s rest rule to address operator fatigue--a public safety issue--will be weakened.

RECOMMENDATIONS

The Department of Buses should:

1. Clarify its policy on its 8-hour rest requirement. The policy should:
 - a) Specify whether the rule requires eight hours of rest before and after each shift when overtime is assigned.
 - b) Clearly define terminology relating to the “8-hour rule” such as “overtime” and “extra pieces.”
 - c) Institute controls to assure compliance with the “8-hour rule” when bus operators select overtime schedules or extra pieces at picks.
 - d) Institute uniform procedures throughout DOB requiring supervisors of crew dispatchers to review overtime assignments.
2. Assign management responsibilities for instructing DOB personnel on the policy and for monitoring its implementation.

Recent NYC Transit Department of Buses’ Actions

In January 1999, OIG auditors shared with DOB our preliminary findings on how well the department’s rest rule is defined and where internal controls are adequately ensuring that the rule is complied with. In a written response to our preliminary findings, the Senior Vice President advised us that DOB reissued an updated rest rule in March 1999. The revised bulletin clarifies that the rule requires eight hours of rest in that “all employees are required to have 8 continuous hours off, at some point, between the earliest report time of the current day’s assignment and the

earliest report time of the following day's assignment." This language in effect means 8 hours off before and after each workday. The new rule also clarifies that it applies to "extra pieces" that are selected through the pick process.

According to the Senior Vice President, a process for conducting monthly audits on random overtime assignments is now required at each depot under the direction of the Assistant General Manager or his designee. The results of the monthly audits are to be forwarded to a central location, the Quality Performance Division, for review. A training guide is also under development to "promote uniformity in the application of the 8-hour rule."

Regarding the recommendation that controls be instituted during the pick process to assure compliance with the "8-hour rule", DOB plans to build controls into two new computer programs that will detect violations.

DUAL EMPLOYMENT: NYC TRANSIT POLICIES, REGULATIONS AND PRACTICES NOT EFFECTIVE

The NYC Transit’s existing policies, regulations and practices regarding dually employed personnel do not effectively monitor and identify potential schedule conflicts and inadequate rest time. Policies require employees to obtain approval before beginning a second job; however there are weaknesses in the approval process and no regular means for monitoring. These factors result in little oversight of those employed in second jobs outside of NYC Transit. In addition, NYC Transit is not always aware of all cases where employees in sensitive positions are dually employed.

NYC Transit Policies on Dual Employment

NYC Transit has the authority to prohibit employees from outside activities that interfere with the proper discharge of their duties. Thus NYC Transit requires disclosure and supervisor approval of dual employment. Policy Instruction (P/I) Number 6.41 “Dual Employment”, issued in March 1995,¹¹ includes the following statements:

An employee may not engage in dual employment if such dual employment interferes with the proper and effective discharge of the employee’s duties with the Authority or otherwise would render the employee unfit for duty.

The P/I states that employees must obtain the NYC Transit’s approval before engaging in outside employment. If there is any change in their outside employment status, the P/I specifies that employees are required to advise Division/Department Heads by completing a new Dual Employment Approval Request Form.

In determining whether to grant a dual employment request, the Dual Employment P/I specifies that the Division and Department Head should consider: 1) if work hours overlap or could potentially overlap if travel time was considered; 2) if the other employment might prevent the employee from being fit to work, i.e., alert and capable of safely operating a vehicle or equipment; 3) if the other work hours might interfere with on-call emergency Authority work or otherwise interfere with the Authority work hours; and 4) if the other employment would cause impropriety for an employee that awards or administers contracts. The P/I suggests that a supervisor should consider the potential for fatigue to affect performance, however the P/I allows the approver to make subjective assessment, e.g., determining an employee’s level of alertness.

¹¹ Dual employment is also discussed in NYC Transit P/I Number 5.6.3 “Ethics”, issued in January 1995.

Unclear Whether Rest Rules Apply

The application of rest rules to dual employment situations was unclear during the time period studied for this report. Both DOS and DOB have rules regarding the amount of rest time employees in safety-sensitive and other positions must have in their work schedule.

DOS and DOB Rest Rules

The DOS bulletin¹² applies to conductors, train operators, and tower operators and specifies:

Except in an emergency, no employee may work more than sixteen consecutive hours of clock time (including regular time, continuous time and overtime), nor may an employee have less than eight hours off between each day's work.

DOB has a Permanent Bulletin (discussed in the previous section) that specifies that eight hours of rest time is required when overtime is assigned to bus operators. Neither rest bulletin discusses instances of outside employment; nor does the dual employment P/I address the application of the departments' rest rules.

COMPLIANCE WITH DUAL EMPLOYMENT POLICY

Controls Are Not Working

OIG staff reviewed documentation on 24 employees in safety-sensitive positions¹³ with NYC Transit and believed to be holding outside employment with a New York City agency, (e.g., New York Police Department, Board of Education, Off-Track Betting, Department of Transportation, Department of Sanitation, Human Resources Administration.) In the course of reviewing work records for the 24 individuals, the OIG, DOB and DOS learned that for the 1997 period under review:

- In two cases, employees who were already working second jobs requested approval of dual employment; when denied approval, they continued to work their second jobs.
- Dual employment approval forms could not always be located in department files.
- Dual employment approval forms in department files were not always signed by a supervisor.
- Dual employment approval forms were on file and signed by a supervisor, but the approval or disapproval was not dated.
- A dual employment form may be approved, but the employee's outside schedule can change without NYC Transit knowing.

To determine if adequate rest could be an area of concern with dual employment, we applied the standards set by the department rest rules in

¹² Rapid Transit Operations Bulletin on Hours of Work (73-95)

¹³ These positions included bus operators, train operators, conductors, dispatchers, and maintainers.

effect in 1997 to the schedules of those employees in our sample. Of 24 employees, OIG staff found that between their NYC Transit schedule and their outside employment schedule, seven DOB employees and one DOS employee would likely be in violation of the applicable rest rule for their department.

OIG CONCERNS

NYC Transit Policy is Limited

Policies and requirements within NYC Transit directed at dual employment are limited. A NYC Transit official explained that managers need a written basis for determining when dual employment should be denied on the basis that the outside employment could prevent a NYC Transit employee from being fit for work. Managers are directed to consider fitness for duty concerns when approving dual employment requests, but there are no criteria to make such assessment.

In addition, the policy is directed at one point, that of initial approval. Outside of their general responsibility to monitor all employees, management is not required to track changes in schedules, follow up on denied requests, or specially monitor dually employed workers for fatigue.

Dual Employment Not Flagged When Schedules Change

Since the approval process for dual employment is done at one point in time, employees can change one work schedule without their other employment schedule being considered. There is no expiration of the NYC Transit approval and no requirement to renew. Dual employment is not considered by the departments during the pick process for bus or train operator schedules or when overtime assignments are made. In general, the onus is on the employee to bring any conflict to the attention of their manager. No periodic disclosure requirements prompt declarations of changes in outside employment schedules.

Approval Forms Lack Dates

Although the NYC Transit Rules and Regulations Book, Rule 4, requires employees to submit an approval form before beginning a second job, OIG could not determine if employees had management approval before starting employment because dates were not included on the approval form. The approval form does not capture the date when the request was made or the date when the supervisor approved the request.

CONCLUSION

Safety is one of the primary concerns prompting NYC Transit's dual employment regulations. However, as currently written and implemented, the regulation is ineffective at mitigating the potential for fatigue in safety-sensitive employees holding two jobs, thus putting the public at increased risk. Current policies and practices are not identifying all dually employed personnel nor are they ensuring that safety-sensitive employees are provided with adequate rest time before working their NYC Transit shift. The P/I prohibits outside employment that could interfere with the proper discharge of NYC Transit duties, but the P/I does not provide direction on how to assess potential interference related to lengthy work hours and issues of fatigue. It is not clear as to whether existing rest rules apply to situations where employees have second jobs.

We recognize that NYC Transit cannot monitor all the outside activities of its employees nor does this office expect such monitoring. However steps need to be taken to better assure initial disclosure of outside employment; to strengthen the review process for dual employment requests; and to consider outside employment when there is any change in assignment.

In preparing this report, OIG auditors shared with NYC Transit officials our preliminary findings regarding dual employment. In response to our preliminary findings, NYC Transit explained that a Board has been formed, called the Safety Sensitive Position Review Board with representation from the operating departments. According to NYC Transit, this committee is discussing the problems identified in the OIG's review and is considering improvements to the dual employment policy and form.

RECOMMENDATIONS

NYC Transit should direct the Safety Sensitive Position Review Board to consider strengthening the policies and practices that apply to safety-sensitive positions by:

3. Clarifying that dual employment schedules are subject to departmental rest rules.
4. Specifying criteria that must be considered by a manager for approving or renewing approval of dual employment requests that will focus on the issue of fatigue. Criteria should include reviewing the employee's performance and safety record, sick leave usage, and current work schedule.
5. Obtaining a baseline of dual employment situations by immediately requiring all employees in safety sensitive positions to disclose their current status as either employed solely by NYC Transit, or also employed elsewhere.
6. After obtaining a baseline, requiring that employees disclose whether they are dually employed and if so, the nature and timing of the employment, or affirm that they are not dually employed, when their work schedules change with NYC Transit.
7. Implementing a control during the pick process to evaluate the new schedules of employees who have been approved for dual employment to ensure that their newly selected schedule, coupled with their outside employment, will not result in a conflict with rest rules.
8. Including expiration dates on approval forms so that those with approval for dual employment must reapply and be reviewed after a select period of time that could coincide with routine changes of work schedule.
9. Identifying disciplinary steps for employees who violate the policy requirements.

RECOMMENDATIONS

10. Amending the Dual Employment Approval Request Form to include the date of signature in each of the following occurrences:
 - a) When the employee fills out the request form.
 - b) When a NYC Transit manager approves or disapproves the request.

Recent NYC Transit Actions

In preparing this report, OIG auditors shared with DOB our findings on dual employment. In a written response to our preliminary findings, the chair of the Safety Sensitive Position Review Board indicated that changes underway with the dual employment policy and NYC Transit procedures will be responsive to many of the OIG recommendations. Additional detail on the new policy is provided by the President of NYC Transit in his formal response to our report which is included as Appendix A to this document.

POST-ACCIDENT DRUG AND ALCOHOL TESTING: UNTIMELY AND LACKING DOCUMENTATION

DOB and DOS are meeting federal guidelines for drug testing employees within 32 hours after an accident; however these agencies are not meeting department and federally recommended timeframes for administration of post-accident alcohol tests. Although drug testing time requirements are being met, approximately eighty percent of alcohol breathalyzer tests conducted on employees involved in accidents are administered later than the recommended 2-hour timeframe. Questions arise as to whether the departments' documentation of the reasons for delayed testing would meet federal requirements. Circumstances at the accident scene may cause delays, but these factors are rarely documented as contributing to testing delays.

Some of these issues may be attributed to problems with policies and procedures related to post-accident testing and a lack of oversight in regard to timeliness.

Post-Accident Response and Testing

The immediate response to an accident is provided by the department involved, e.g., DOB personnel respond to bus accidents, DOS personnel to subway accidents. There are also two other NYC Transit departments, the Occupational Health Services (OHS) and the Office of System Safety, that provide medical services and have an investigative role, respectively, when accidents occur with either buses or subways.

Within DOB, an accident response is triggered when a call reporting an accident comes into the DOB command center. The command center generally dispatches a supervisor from the Road Operations Division to the scene. If it is a severe accident, multiple supervisors may be called to the scene. The supervisor on site then investigates and records the accident information. If post-accident testing is required¹⁴, a supervisor also escorts bus operators to a Medical Assessment Center (MAC) with a Request For Medical Examination Of Employee Form (G-46) and ensures that the tests are administered.

Within DOS, calls about accidents come into the DOS command center. The command center then dispatches the appropriate supervisor(s) to the scene. Radio communication is on-going between the command center and the crew members involved in the accident and the supervisor who responds. Command center dispatchers are responsible for recording information regarding the accident response and investigation as dictated by the supervisor. The DOS supervisor also escorts the train operator to a MAC for post-accident testing, submits a G-46 form, and waits until the tests are administered.

¹⁴ Federal regulations require post-accident alcohol and drug testing when an individual involved dies or suffers injury or when there is an interruption in service and the employee's performance cannot be discounted as contributing cause.

There are four MACs operated by OHS that administer post-accident drug and alcohol tests; priority is given to employees waiting for post-accident testing. They serve both DOS and DOB employees. Staff at the MACs test employees for alcohol by using an alcohol breathalyzer machine. Breathalyzer test results are noted on the G-46 form. Immediately following the breathalyzer test, a urine sample is collected for the drug test.

Federal Regulations for Post-Accident Testing

Federal regulations require operators of mass transit vehicles involved in accidents to be tested for drugs and alcohol. The Federal Transit Administration (FTA) identifies an “accident” as an incident involving a mass transit vehicle that results in an interruption in revenue service (carrying passengers). According to the FTA, an operator involved in a mass transit accident should be tested unless the individual can be discounted from having contributed to the accident. Each year, OHS must report to the FTA the number of such tests administered and the number of drug and alcohol tests with positive results.

Federal regulations also specify a preferable timeframe and documentation requirement for both alcohol and drug testing. Title 49 of the Code of Federal Regulations (CFR) §654.33 (b) (1) Post-accident testing addresses **alcohol** testing stating:

If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this paragraph is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall maintain the same record.

The Director of the Office of Safety and Security,¹⁵ FTA, explained that if the required testing is not completed within two hours, the reason should be clearly documented. Her comments indicate that the files should not require the reader to make assumptions based on comments in the accident report as to why delays may have occurred; explanations for delays should be identified as such.

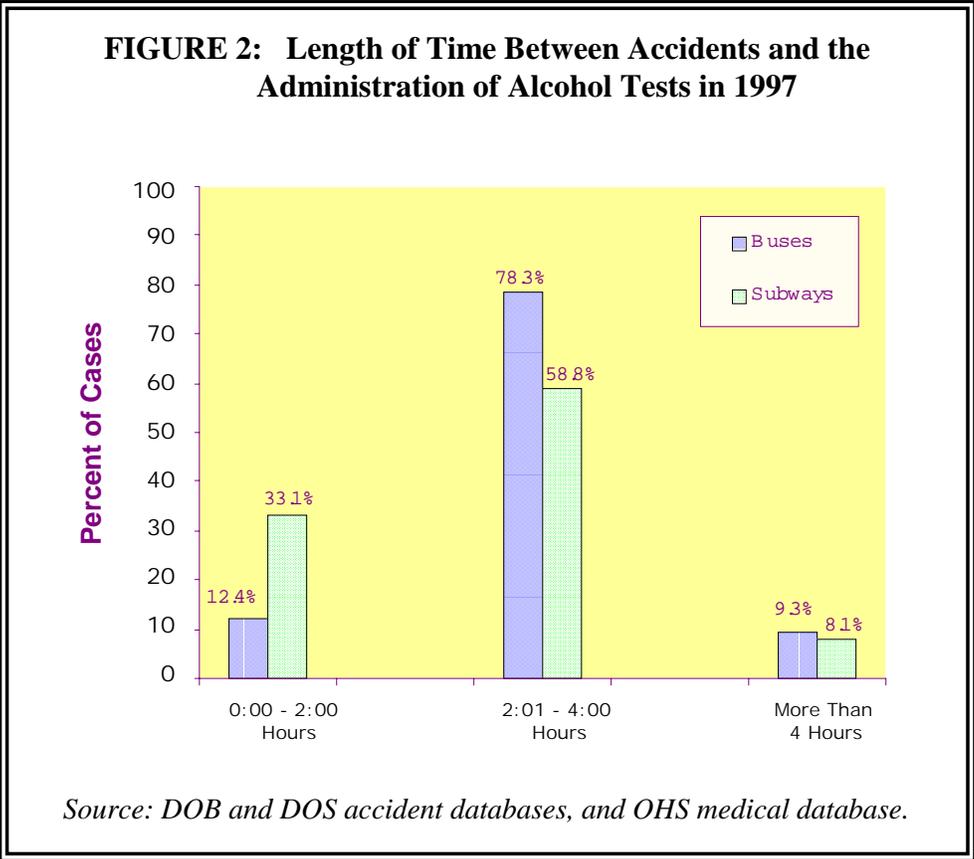
The federal timeframe for testing for the presence of drugs in an operator’s system is more lenient allowing for the test to occur within 32 hours of the accident (CFR §653.45(b)). Drugs can be detected in the blood stream for a longer period than alcohol. A short timeframe is more critical with alcohol testing because alcohol metabolizes quickly.

¹⁵ The FTA conducts compliance audits of transportation agencies receiving federal funding. Its Office of Safety and Security tests for compliance with federal regulations regarding alcohol testing.

COMPLIANCE WITH TESTING REQUIREMENTS

Testing Often Delayed

To gauge NYC Transit’s performance in completing required testing within two hours, we calculated the time elapsed from when an accident occurred to when the breathalyzer test for alcohol consumption was administered for 899 cases.¹⁶ We found that only 19 percent were tested for alcohol within two hours after the incident as recommended by federal regulators and as suggested by NYC Transit policy (see Page 18). Seventy-two percent of the cases were tested for alcohol between two and four hours, and 9 percent were tested over four hours after the accident.



Our review also showed that drug tests were being administered within the federally required test period of 32 hours after an accident. Since both drug and alcohol tests are administered one right after the other, the distribution of times is similar for both tests. Thus all drug tests¹⁷ were administered within 32 hours of the accident, as required by federal regulations.

¹⁶ The 899 cases represent all post-accident alcohol tests conducted in 1997 for which we could obtain complete information. The breakdown between departments was 308 cases in DOS and 591 cases in DOB. One hundred and seven records were excluded from our analysis due to incomplete or inaccurate data. The problems of incomplete and inaccurate data were conveyed to OHS in a letter report “Data Reliability Assessment of Information Contained in Occupational Health Services’ Post-Incident Database”, MTA/OIG 99-11L, October 4, 1999.

¹⁷ A total of 904 test cases were identified to us by OHS and represent all post-accident drug tests conducted in 1997 for which we could obtain complete information. The breakdown between departments was 306 DOS and 598 DOB cases. One hundred and two records were not included due to incomplete or inaccurate data.

**Timeliness is Important
Since Alcohol Dissipates
Quickly**

NYC Transit is missing the chance to identify the presence of alcohol as a contributing or causal factor in an accident in all but cases of significant intoxication. According to the experts we spoke with from the New York City Medical Examiner's Office and the State Police Academy, the dissipation rate for alcohol in a person's system is a complex subject. They estimate dissipation by using an average of .015 or a range from .01 to .02 grams/deciliter (gm/dl) per hour in their calculations.¹⁸ Therefore the lower the threshold for a positive result, the faster an individual must be tested after an accident in order for low levels to be captured.

Due to the rapid alcohol dissipation rate, the fact that approximately 80 percent of employees involved in accidents are being tested more than two hours after an accident is a concern. A breathalyzer test result of .05 gm/dl or greater is considered positive and is grounds for disciplinary action. However given the dissipation range, a transit operator who might register a .05 gm/dl at the time of an accident, could register .03 gm/dl to .01 gm/dl when tested two hours after the incident, and after three hours, the alcohol may be undetectable.

**NYC Transit is Not
Regularly Documenting
Reasons for Delay**

Since 81 percent (724 cases) did not meet the federal target of being tested within two hours after an accident, federal regulations and DOB policy require that the reasons for the delay in alcohol testing must be documented in each of those instances. However our review of 214 cases¹⁹ showed that approximately 3 percent of the cases (7 cases) had clear documentation on the cause of delay. Almost 37 percent (79 cases), had no documentation of the cause of delay. For the remaining approximately 60 percent (128 cases), there was some documentation that emergency response parties, such as emergency medical services, were present at the accident scene. While one could assume that their involvement caused the delay, there was no explicit statement of such.

OIG CONCERNS

**Department Policies Not
Always Consistent With
Federal Regulations**

While DOB's directive provides for compliance with the federal alcohol and drug testing requirements, DOS's memoranda and NYC Transit's P/I on the subject are not as consistent. DOB's directive includes the federal target to test individuals within two hours of an accident and document reasons for delays in testing after two hours. DOS and NYC Transit policy documents are not as complete.

DOB's policy is defined by an April 1996, DOB Directive, "Fitness for Duty Testing." The directive covering drug and alcohol testing states, "every effort must be made to have the test administered within two hours of the time of occurrence." The Directive further says, "When it is not possible for the employee to arrive at the Medical Assistance Center [*sic*] within the 2 hour limit an explanation must be given."

¹⁸ Actual rates with vary between individuals and depend on a person's metabolism rate.

¹⁹ The selection of 214 cases consisted of 77 cases in which alcohol testing occurred more than four hours after the incident and which had complete files, and a random sample of 137 cases from the 644 cases in which testing occurred between two to four hours after the accident. The resulting sample consisted of 72 subway cases and 142 bus cases.

Direction on post-accident testing in DOS is derived from two memoranda, dated March 8, 1993 and September 3, 1993, from the Assistant Chief Transportation Officer and a later memorandum from the Chief Transportation Officer. These memoranda convey the importance of achieving the 2-hour goal for alcohol and drug testing.

However, the most recent memoranda defines the 2-hour period as being from the time of the accident to the time the employee arrives at the MAC instead of the period ending when the test is administered. DOS memoranda are silent on the federal documentation requirement for cases where alcohol tests are not administered within two hours.

The NYC Transit Safety P/I for bus accident investigation (8.17) is consistent with federal regulations in that it specifies that every effort should be made to conduct post-accident drug and alcohol tests within two hours after a bus accident. However, it is silent about the need to document reasons for not completing alcohol testing within two hours of the accident when applicable.

Confusion About Who Should Record Reasons for Delayed Testing

The accident files we sampled provided insufficient information for us to draw conclusions about why the majority of employees involved in accidents are tested after two hours. The lack of documentation that would explain delays may stem from operating managers' confusion about who is responsible for documenting delays in administering tests and what constitutes proper documentation.

DOB supervisors dispatched to accident sites are not recording delays on the G-46 form as they are required to do by department policy. Our interviews with DOB depot managers revealed that two were not aware of the goal to test within two hours of an accident. Even those who were aware of the requirements thought tracking the time period was the responsibility of Road Operations. However, two Road Operations supervisors told us that while they were aware of the 2-hour timeframe, their focus is on gathering all the facts regarding the accident and restoring service.

DOS Command Center personnel who record accident information are aware of a 2-hour target for post-accident drug and alcohol testing, but they told us they do not monitor the timeframe while recording accident information given to them by investigators. DOS Command Center personnel explained that they have not been instructed to record delay factors or circumstances that do not allow an individual to be tested within two hours.

No One Entity Has Data to Calculate Timeliness

The data necessary to analyze post-accident testing timeframes is not readily accessible. Neither the operating departments nor OHS maintain records showing both the time when the accident occurred and the time when the alcohol and drug tests were administered. DOB and DOS maintain reports and files on their department's accidents, but these files do not record the time when the post-accident tests are administered. OHS records the time when tests are administered, but OHS does not record accident time. Since none of the organizational units could readily provide statistics on elapsed time between accidents and testing, we matched information provided by three departments to conduct our analysis of post-accident drug and alcohol tests.

Accident Files Could Be Used to Isolate Problems

Our review of the 214 accident files (these are the same 214 cases cited previously), indicated areas that NYC Transit could focus on for improving timeliness, but our analysis was restricted by limited record keeping. In 203 of the 214 records reviewed, there was sufficient data to calculate how long it took employees involved in an accident to get to the MAC for testing. The data indicated that 46.8 percent of the employees took an hour or longer to get to the MAC. In 136 of the 214 records reviewed, there was sufficient data to determine when the supervisor arrived at the accident site. The data indicated that in 16 percent of the accidents, it took an hour or more for the supervisor to arrive. However our analysis was limited to these two intervals because the supporting documents that we reviewed were not designed to capture time and event sequences leading up to post-accident drug and alcohol testing. These elapsed times are important in that they may identify areas for review and analysis to find ways to improve performance.

No One Currently Tracks and Analyzes Data

None of the managers at DOB, DOS, or OHS believe it is their responsibility to track the time it takes to test employees after an accident. DOB and DOS managers told us that they have not tracked the time it takes to test an individual for post-accident drug and alcohol testing because they are not informed by OHS personnel of when the tests are administered. An OHS and safety official told us that the operating departments have the responsibility to track and comply with the federal 2-hour post-accident alcohol testing guideline. OHS only tracks and reports to the federal government which cases had positive tests and which individuals are not tested until after eight hours. OHS does not report on how well it is meeting the 2-hour goal. Currently no one calculates, monitors or analyzes the time it takes to administer post-accident tests.

CONCLUSION

Federal regulations are established for the purpose of assuring mass transit safety. Thus policies that fail to assure compliance with these regulations are a matter of concern not only because they create the potential for admonishment by FTA, but because they permit a weakness in NYC Transit's controls to assure the safety of its system. Current procedures could easily result in failure to detect the presence of alcohol in an operator of a bus or train involved in an accident.

Lack of management focus on the area of post-accident drug and alcohol testing is denying NYC Transit potentially valuable information. NYC Transit does not track and analyze timing information on post-accident testing to detect patterns in delayed testing. If the data was accessible, NYC Transit could then proactively analyze for patterns and address systematic problems causing delays.

RECOMMENDATIONS

New York City Transit should:

11. Issue a Policy Instruction focused on post-accident drug and alcohol testing consistent with federal regulations, that emphasizes the importance of alcohol testing within two hours of an accident and that makes departments accountable for their performance.

The Policy Instruction should include:

- a) An expectation that post-accident tests for alcohol be conducted within two hours of the accident, if at all possible.
- b) A clarification that the two-hour timeframe for alcohol testing is calculated from the accident time to the time the breathalyzer test is administered.
- c) A requirement that for cases tested after two hours, clear documentation be made in the accident file as to the cause of delay.
- d) The designation of a responsible party to oversee implementation and compliance with the new policy instruction.

The Department of Buses and the Department of Subways should:

12. Revise their accident report forms and accident reporting procedures to better capture the times and causes of delays for various stages of the post-accident drug and alcohol testing process.
13. Identify managers who will be responsible for tracking and ensuring that adequate documentation of elapsed time and reasons for delays is kept.
14. Better define the responsibilities of supervisors who respond to accidents and transport employees to the Medical Assistance Centers. New supervisors should be trained and continuing education should be given to existing supervisors on the federal and department post-accident testing requirements.

RECOMMENDATIONS

15. Increase the number of post-accident alcohol tests conducted within two hours. To assist with this objective, the departments need to:
 - a) Track key post-accident events and establish a process for analyzing the events for ways to improve the timeliness of testing.
 - b) Adjust policies and procedures when appropriate, if they are causing delays in testing.
 - c) Explore alternative ways to conduct testing in order to expedite the post-accident alcohol testing process (e.g., training supervisors to administer breathalyzer tests with mobile testing equipment, local hospital or law enforcement assistance).

NYC Transit Recent Actions

In preparing this report, OIG auditors shared preliminary findings on post-accident testing with NYC Transit. As a result, the agency has committed to issuing a new Policy/Instruction on post-accident drug and alcohol testing during the second quarter of 2000. NYC Transit has also revised its form and established responsibilities for tracking and addressing “correctable” conditions causing delays. More detail is provided in their response to this report, included as Appendix A to this document.

MEDICAL EXAMINATIONS OF DIABETIC BUS OPERATORS: TIMELY, BUT CONCERNS EXIST

The Department of Buses is generally in compliance with the timetable for medical follow-ups of diabetic operators required by New York State regulations. This condition represents considerable improvement since this office conducted a survey on the same issue in September 1995. Despite improvements, however, we found problems with procedures and with communications between critical parties as well as a general lack of management oversight that mars this much improved picture. Since the state plans to expand the number of bus operator medical conditions that NYC Transit must monitor, the need for a coordinated system with adequate checks and safeguards becomes increasingly important.

Requirements for Examinations

NYC Transit is required to comply with New York State Vehicle and Traffic Law Article 19-A (Article 19-A) that mandates bus operator standards in the areas of qualifications and general fitness for duty. Article 19-A requires that bus operators must pass a biennial medical examination to remain qualified to drive. An additional requirement is placed on bus operators with diabetes in Article 19-A. Regulations require follow-ups every six months to ensure that their diabetic condition is stable.

In March 1997, DOB's Chief Transportation Officer issued Permanent Bulletin 02.07.01²⁰ which discourages operators from missing Article 19-A examinations. The bulletin states:

When an operator fails to report for work on the day he/she is scheduled for a 19A medical examination, the operator will not be able to work until the 19A medical examination has been completed. This also applies when the operator does not complete the entire examination.

While Article 19-A regulations name other medical conditions that require surveillance and which may lead to disqualification as a bus operator if not stabilized, diabetes is the only condition at present for which a timetable for re-certification is given.²¹ However the State Department of Motor Vehicles has proposed revising Article 19-A regulations, and it is anticipated that additional health conditions, such as hypertension and seizure disorders, will soon be categorized as requiring interim certifications.

²⁰ The full title of the bulletin is "Failure to Report For/Or Complete Scheduled Article 19-A Medicals."

²¹ New York State Department of Motor Vehicle requirements for Article 19-A require that if a person has an established diagnosis of diabetes, it must be stabilized by insulin therapy to the degree that his personal physician can certify that such person has not had an incident of hypoglycemic shock since the last certification.

Responsibilities for 19-A Compliance

There are three main units within DOB involved in overseeing medical examinations for bus operators: the Transportation Division, the Training Division, and the Division of Labor Relations. DOB Depot Transportation officers track when operators are due for medical follow-up examinations, schedule them and notify the operators of their appointment. DOB's Chief Training Officer maintains the necessary records to certify to the state that bus operators are in compliance with Article 19-A requirements. DOB's Division of Labor Relations follows up on operators who miss their examinations by contacting the depots.

Bus operators report to a MAC for their examinations. An OHS medical evaluator fills out and signs a G-46 form after every examination and makes a conclusion as to whether the bus operator is qualified for full-work status. The G-46 form is used as a control document to indicate the bus operator's attendance at, and completion of, the examination and to establish future re-examination dates.

Scheduling and Oversight Procedures

At DOB depots, the tracking of Article 19-A medical examinations begins when the General Dispatcher generates a report showing bus operators due for either a biennial or 6-month examination during the upcoming month. The General Dispatcher will then schedule each indicated bus operator for an appointment at the nearest MAC. Bus operators are then notified of their appointments.

After a medical examination, a medically fit bus operator returns to the depot with a signed G-46 form, which serves as proof of completion of the examination. The G-46 form only indicates the operator is qualified for work. The operator's condition is kept confidential at the MAC.

COMPLIANCE WITH EXAMINATION FOR DIABETICS

In recent years, DOB and OHS have implemented operational controls that place greater emphasis on monitoring medical examination attendance. If an employee misses or fails to complete a scheduled examination, their name will appear on a list²² generated by OHS approximately every two weeks. OHS sends the list to each depot as well as to the Chief Training Officer and DOB's Director of Labor Relations.

OHS and DOB's Training Division have also increased scrutiny and oversight for bus operators designated "operators under surveillance." These "surveil operators" have been identified by OHS for regular monitoring due to their medical conditions. Bus operators diagnosed with diabetes are on the surveil list, but the list can include bus operators with problems such as high blood pressure or seizure disorders although there is no special timetable for re-examination for these operators. This may soon change; these operators are currently included as a NYC Transit practice, but may be included for monitoring under a proposed version of Article 19-A regulations.

²² "Listing of Scheduled Periodics Which Were Not Kept"

DOB has increased its scrutiny of medical examination attendance by putting in place the following steps:

- OHS sends each depot a list of all bus operators who have missed or failed to complete medical examinations and requires depots to provide OHS with the reason.
- DOB Director of Labor Relations follows up on bus operators under surveillance who miss or fail to complete their examinations by asking depots why the surveil list bus operators did not complete their examinations.
- The Training Division is trying to be proactive about confirming that diabetic bus operators have attended their scheduled examinations by contacting depots.

As a result, if a bus operator misses or fails to complete any examination, his/her depot manager must explain why the appointment was missed at least once. If a bus operator known to have diabetes misses an examination, depot managers must account for the bus operator's whereabouts to various NYC Transit managers up to three times.

**Most "Surveil"
Operators Attending
Examinations When
Scheduled**

A review of lists identifying bus operators that missed examinations showed that for bus operators who were under surveillance from June to December 1997, and July to September 1998, most attended their required Article 19-A follow-up examinations either on time or within two weeks of the scheduled appointment. We found that there were 290 examinations missed by surveil operators but almost all rescheduled and completed their exams within 37 days. From these examinations, seven bus operators continued to appear on subsequent missed examination listings one to two weeks later. A review of records shows these seven bus operators had actually attended an examination but did not complete it because they did not have the required medical information for OHS assessment, (e.g., certification from the bus operator's personal physician that the bus operator's medical condition is stable). Each eventually produced the required documentation within a few weeks.

**Attendance Improved
Since Last OIG Survey**

As compared to the previous OIG review, this represents considerable improvement in the timeliness of examination attendance. During a 1995 review, OIG found that between January 1, 1994 and June 30, 1995, 125 of 505 (25 percent) surveil list operators had missed their scheduled follow-up examinations. The average number of days from when a bus operator missed an appointment to when he/she and was finally seen, was 151.

OIG CONCERNS

While we found that attendance rates have improved, we also found weaknesses that could threaten the improved compliance rate and which allow bus operators who miss exams to continue driving against DOB policy.

Varying Enforcement Practices

Depot practices vary in the enforcement of DOB's Permanent Bulletin provision which forbids a bus operator from working if he/she misses or fails to complete a scheduled Article 19-A examination. We interviewed depot managers about their practices for ensuring Article 19-A attendance. Nine of the managers told us that when a bus operator fails to complete an Article 19-A examination as initially scheduled, the depot managers would allow the bus operator to continue to drive (with pay) while awaiting their re-scheduled examination. At four depots, bus operators who fail to complete their Article 19-A examinations are not allowed to drive a bus and are not paid until they complete their examinations. This situation exists even though some depot managers indicated that they are aware of the Permanent Bulletin.

Why managers at nine depots disregarded the bulletin is not entirely clear. At two of the nine depots where bus operators are allowed to drive while awaiting examinations, managers told us they make exceptions to the Article 19-A Permanent Bulletin only for bus operators they considered to have legitimate excuses, such as unforeseen circumstances or sickness. However, there is no policy that provides for or defines "legitimate" excuses. OHS officials told us that the most common reason for bus operators not attending their follow-up examinations is a scheduling conflict with the bus operator's vacation days or day off.

Verification of Attendance Inconsistent

Verifying examination attendance is also handled differently by depot managers. Three of 13 depot managers we interviewed rely upon the list generated by OHS to let them know which of their employees missed examinations. This practice means there can be up to a two-week lag while this list is produced, before those depots act on a missed examination. The other ten depot managers stated that they require a bus operator to submit a signed G-46 form before going back to work.

The 19-A Permanent Bulletin does not specify how managers should verify bus operator examination attendance. Our examination of DOB internal control documents from depots found that none provided guidance for assuring compliance with the Article 19-A examination attendance policy. Thus, depot managers have made their own decisions about how to confirm medical examination attendance.

Management Oversight Lacking

Uneven implementation of DOB policy may exist because DOB senior management has not reviewed and followed up on implementation of the March 1997 Permanent Bulletin. While several different DOB officials have responsibilities for various aspects of Article 19-A examination attendance, there is no one official designated responsible to ensure that the Permanent Bulletin is followed. Until we conveyed our preliminary findings, senior management was not aware that some depot managers have allowed bus operators to drive while awaiting Article 19-A examination in violation of the Permanent Bulletin. Nor did DOB senior management know of the differing methods employed by depot managers to verify that the bus operators attended their scheduled examinations.

Communications are Inadequate

In our 1997 follow-up audit and again in this audit, we found inadequate coordination between groups within NYC Transit that share responsibility for Article 19-A compliance with medical requirements. Communication difficulties exist between OHS and DOB's Training Division that senior NYC Transit management has not attempted to resolve. Examples of communication difficulties include:

- DOB's Training Division, in carrying out its responsibility to certify to the state that Article 19-A requirements have been met, requested a list of diabetic bus operators numerous times from OHS, but has not received the requested information;
- OHS stated that the Training Division's information needs were not clearly conveyed so they have not provided the information in a useful form;
- OHS has not informed the Training Division of what information it can provide (e.g., queries by topic and reports); and
- DOB's Training Division was unaware (because OHS did not tell them), that Training could get the information on diabetic bus operators by using their remote access capabilities to OHS' database.

The Assistant Vice President of Human Resources and a Director of OHS have cited patient confidentiality as the reason why OHS has not given DOB's Training Division the information. However, according to our discussion with an official of NYC Transit's Law Department, patient confidentiality should not prevent OHS from providing DOB's Training Division with information on diabetic bus operators. This problem with sharing data means that DOB's Training Division would not have a complete list of diabetic bus operators until September 1999, two years after it first started collecting the data.

CONCLUSION

DOB has greatly improved its attendance record for Article 19-A examinations since the OIG last reviewed this issue in 1995. However, we are concerned about the lack of management oversight resulting in varying practices by depots enforcing DOB policy. Depots have made their own assessments as to what circumstances would permit a bus operator to operate a bus without the medical examination attendance prescribed by NYC Transit policy. In some cases, enforcement of departmental policy was overridden and the operators were allowed to drive in violation of policy. Until responsibility for oversight of DOB policy is clearly assigned, the situation will likely continue.

We also have concern about NYC Transit's ability to comply with future Article 19-A requirements. Since proposed changes to Article 19-A will increase the number of medical conditions requiring follow-up examinations, DOB and OHS need to resolve their communication issues promptly. If DOB's Training Division is required to certify to the state the currency of medical clearances for bus operators with conditions other than diabetes, it will need to work closely and effectively with OHS in

order to identify affected bus operators quickly. It should not take DOB's Training Division another two years to develop lists of operators about whom they are making certification. Medical examinations should be conducted timely to ensure that medically-qualified bus operators are driving buses.

RECOMMENDATIONS

The Department of Buses should:

16. Designate a responsible official to ensure proper instruction and implementation of the Permanent Bulletin, and to monitor compliance.
17. Ensure that depot management cease their misapplication of DOB policy and hold managers accountable in the future for allowing bus operators to work when they have not completed their Article 19-A medical examinations as set forth in the 19-A Permanent Bulletin.
18. Clarify that depot management should use the G-46 forms to verify examination completion prior to permitting a bus operator to resume driving.
19. Assure that Training Division staff is trained on the proper and effective use of their remote access to the OHS Scheduling Database.

Occupational Health Services should:

20. Re-examine, with the assistance of the MTA Law Department, its understanding of the issue of confidentiality of its records in regards to its obligation to supply a list of diabetic bus operators to the Training Division.

The Department of Buses and the Occupational Health Services should:

21. Establish protocols to allow for future sharing of confidential medical information in order for the Training Division to effectively carry out its responsibility to monitor and certify compliance with state regulations.

NYC Transit Recent Actions

In preparing this report, OIG auditors shared with DOB our preliminary findings on Article 19-A compliance. As a result, a revised bulletin on attendance at 19-A Medical Appointments was issued in May 1999, clarifying the policy and identifying Assistant General Managers as responsible for ensuring compliance. NYC Transit's response (see Appendix A) also commits to resolving confidentiality concerns over the sharing of medical information.

APPENDICES

APPENDIX A: NYC TRANSIT RESPONSE

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Lawrence G. Reuter
President



New York City Transit

November 23, 1999

Mr. Roland M. Malan
Inspector General
Metropolitan Transportation Authority
111 West 40th Street, 5th Floor
New York, NY 10018

Re: MTA/IG 99-10

Dear Mr. Malan:

This is in response to the above captioned draft report that examined selected fitness for duty issues. While we generally agree with the recommendations, we take strong exception to the tenor and implications of your report. For example, the report concluded that continued scrutiny over Bus Operator rest rules continues to be justified despite the fact that your staff's analysis demonstrated only negligible non-compliance in this area. We believe the tone and content of this report is overly harsh in presenting minor issues, while minimizing our accomplishments in other areas. Let me assure you that New York City Transit does have comprehensive programs to address fitness for duty issues. Accordingly, before addressing the recommendations, we want to delineate the following points and request that you reword those areas of the report that convey such a false interpretation.

- The draft report indicated that the Department of Buses was in "*general compliance*" with rest policies. This comment is apparently based on your staff's analysis that identified "*5 to 22 occasions out of 242 weeks*" during which a bus operator's work schedule did not provide the required rest time. Since there are at least five workdays in a week, the total sample size was 1,210 workdays. The 5 to 22 exceptions identified by your staff translates to a compliance rate of 98.2 to 99.6 percent. Therefore, the term "*general compliance*" dramatically and unfairly distorts our efforts and performance in this area.
- The draft report's conclusion further exacerbated the foregoing deficiency by unfairly stating that "*NYC Transit rest rules have been the subject of scrutiny many times during this decade and scrutiny*

MTA New York City Transit is an agency of the Metropolitan Transportation Authority, State of New York
E. Virgil Conway, Chairman

continues to be justified" (emphasis added). This is not supported by your staff's analysis that reflected a compliance rate of 98.2 to 99.6 percent. The conclusion goes on to further inappropriately state "*If ambiguities in the rule, inconsistent practices, and little oversight of rest rules continue, the ability of DOB's rest rule to address operator fatigue will be lessened, increasing the risk to public safety*" (emphasis added). While we intend to further improve our performance in this area, the aforementioned statement incorrectly concluded that there would be increased risk to public safety if we continue our current practices.

- Notwithstanding the above comments, we are equally concerned with the methodology used to analyze our records. The draft report indicated that two-week periods of work records were reviewed for 75 randomly selected bus operators. Footnote 9 also reflected that this sample was statistically valid at a 95 percent confidence rate. However, the sample also included four-week periods of work records for 23 other bus operators who were "*high overtime recipients*". Since this second subset already possessed unique characteristics that set it apart from the rest of the population (i.e., high overtime earners), there would be a higher probability that rest rule violations would occur more frequently than the rest of the sample. This is further compounded by the draft report's presentation of the 5 to 22 exceptions without any differentiation between the two subsets and sampling techniques. This could and probably will cause a reader to mistakenly believe that the non-compliance rates presented in your report, albeit extremely small, are based exclusively on a statistically valid sampling methodology and, therefore representative of our overall performance.
- The report incorrectly attributed some of the aforementioned rest rule violations to "*DOB's organizational structure*." This is simply not the case. The ability of MaBSTOA bus operators to select extras at the time of the pick is based on collective bargaining provisions.
- The draft report section pertaining to dual employment unfairly stated that "*OIG was hampered in its efforts to determine if employees had management approval before starting employment because dates were not included on the approval form*" (emphasis added). The term 'hampered' is inappropriate since it may suggest that New York City Transit intentionally failed to disclose this information. The report should simply indicate that your staff was unable to evaluate this condition since the approval form did not capture this information.

The following are our responses to the recommendations.

Recommendation 1: *"Clarify its policy on its 8-hour rest requirement.*

The policy should:

- a) *Specify whether the rule requires eight hours of rest before and after each shift when overtime is assigned.*
- b) *Clearly define terminology relating to the "8-hour rule" such as "overtime" and "extra pieces."*
- c) *Institute controls to assure compliance with the "8-hour rule" when bus operators select overtime schedules or extra pieces at picks.*
- d) *Institute uniform procedures throughout DOB requiring supervisors of crew dispatchers to review overtime assignments."*

Response: Agree. The Department of Buses issued Permanent Bulletin #01.33.02, entitled Eight Hour Rule – Employee Work Hours on March 11, 1999. This Bulletin requires all employees to have at least eight continuous hours off, at some point, between the earliest report time of the current day's assignment and the earliest report time of the following day's assignment. Supervision is required to ensure that employees have the required rest when assigning overtime. The Bulletin also indicates that this rule applies to picked extras. Dispatchers and managers assigned to supervising the pick are responsible for ensuring that employees do not select extras that violate the 8-Hour Rule. Operations Planning is developing a computer program (HASTUS5) that will ensure that Bus Operators' weekly work assignments will be scheduled in a manner that will not violate rest rules. Additionally, a new pick program will be implemented in conjunction with the Unified Timekeeping System that will automatically detect rest rule violations.

Recommendation 2: *"Assign management responsibilities for instructing DOB personnel on the policy and for monitoring its implementation."*

Response: Agree. Bulletin #01.33.02 requires that depot management conduct random monthly audits of the depot's work assignments to ensure strict compliance. The results of these audits are forwarded to the Quality Performance Division on a monthly basis to ensure compliance. Additionally, formal training on the application of the 8-Hour Rule commenced in July 1999.

Recommendation 3: *"Clarifying that dual employment schedules are subject to departmental rest rules."*

Response: Agree. New York City Transit is drafting a revised Policy/Instruction (#6.41.2) that will delineate minimum standards regulating outside employment. This Policy/Instruction is currently being reviewed.

Recommendation 4: *"Specifying criteria that must be considered by a manager for approving or renewing approval of dual employment requests that will focus on the issue of fatigue. Criteria should include reviewing the employee's performance and safety record, sick leave usage, and current work schedule."*

Response: Agree. Policy/Instruction #6.41.2 will delineate specific and general criteria that management should consider when reviewing dual employment requests. These guidelines will include factors such as rest requirements, work schedules, conflicts of interest, and employee's attendance and performance history.

Recommendation 5: *"Obtaining a baseline of dual employment situations by immediately requiring all employees in safety sensitive positions to disclose their current status as either employed solely by NYC Transit, or also employed elsewhere."*

Response: Partially agree. In July 1999, Department of Buses and Rapid Transit Operations employees were advised that all previous dual employment approvals would expire by September 1999. Employees who were engaged in outside employment were required to submit new dual employment requests for review and consideration. However, we believe it would be too cumbersome and ineffective to require all safety sensitive employees to submit dual employment status reports, regardless of whether they have outside employment.

Recommendation 6: *"After obtaining a baseline, requiring that employees disclose whether they are dually employed and if so, the nature and timing of the employment, or affirm that they are not dually employed, when their work schedules change with NYC Transit."*

Response: Partially agree. Policy/Instruction #6.41.2 will specify that approved dual employment requests will be null and void when there are changes to an employee's work schedule or assignment.

Recommendation 7: *"Implementing a control during the pick process to evaluate the new schedules of employees who have been approved for dual employment to ensure that their newly selected schedule, coupled with their outside employment, will not result in a conflict with rest rules."*

Response: Agree. See comments to Recommendation 6.

Recommendation 8: *"Including expiration dates on approval forms so that those with approval for dual employment must reapply and be reviewed after a select period of time that could coincide with routine changes of work schedule."*

Response: Agree. Policy/Instruction #6.41.2 will mandate that dual employment requests for employees in public-safety-sensitive positions may be approved for a maximum of one year. Employees will be required to resubmit requests for review and approval on an annual basis or when there are changes to their schedules or assignments.

Recommendation 9: *"Identifying disciplinary steps for employees who violate the policy requirements."*

Response: Agree. Policy/Instruction #6.41.2 will indicate that employees who violate these procedures may be subject to discipline, up to and including termination.

Recommendation 10: *"Amending the Dual Employment Approval Request Form to include the date of signature in each of the following occurrences:*

- a) *When the employee fills out the request form.*
- b) *When a NYC Transit manager approves or disapproves the request."*

Response: Agree. Policy/Instruction #6.41.2 will include a new dual employment application form (Dual Employment/Outside Activity form). This form will capture the dates of submission and approval or disapproval.

Recommendation 11: *"Issue a Policy Instruction focused on post-accident drug and alcohol testing consistent with federal regulations, that emphasizes the importance of alcohol testing within two hours of an accident and that makes departments accountable for their performance."*

The Policy Instruction should include:

- a) *An expectation that post-accident tests for alcohol be conducted within two hours of the accident, if at all possible.*
- b) *A clarification that the two-hour timeframe for alcohol testing is calculated from the accident time to the time the breathalyzer test is administered.*
- c) *A requirement that for cases tested after two hours, clear documentation be made in the accident file as to the cause of delay.*

- d) *The designation of a responsible party to oversee implementation and compliance with the new policy instruction.*"

Response: Agree. The Law Department will prepare a Policy/Instruction addressing post-accident drug and alcohol testing requirements, consistent with Federal regulations. It is anticipated that this Policy/Instruction will be issued by the end of the second quarter of 2000.

Recommendation 12: *"Revise their accident report forms and accident reporting procedures to better capture the times and causes of delays for various stages of the post-accident drug and alcohol testing process."*

Response: Agree. A new form (Accident Description Report) was developed to better identify and track delays in conducting alcohol testing. Occupational Health Services has established a database which captures the name of the employee, social security number, pass number, and time of the test for FTA covered accidents. Occupational Health Services will provide a printout of this data to the Departments of Buses and Subways for review and appropriate action. Occupational Health Services will work with the Departments of Buses and Subways to develop appropriate procedures. Management will be responsible for identifying and addressing correctable conditions that cause delays in testing employees.

Recommendation 13: *"Identify managers who will be responsible for tracking and ensuring that adequate documentation of elapsed time and reasons for delays is kept."*

Response: Agree. See comments to Recommendation 12.

Recommendation 14: *"Better define the responsibilities of supervisors who respond to accidents and transport employees to the Medical Assistance Centers. New supervisors should be trained and continuing education should be given to existing supervisors on the federal and department post-accident testing requirements."*

Response: Agree. See comments to Recommendation 11.

Recommendation 15: *"Increase the number of post-accident alcohol tests conducted within two hours. To assist with this objective, the departments need to:*

- a) *Track key post-accident events and establish a process for analyzing the events for ways to improve the timeliness of testing.*
- b) *Adjust policies and procedures when appropriate, if they are causing delays in testing.*
- c) *Explore alternative ways to conduct testing in order to expedite the post-accident alcohol testing process (e.g., training supervisors to*

administer breathalyzer tests with mobile testing equipment, local hospital or law enforcement assistance)."

Response: Agree. As indicated in our response to Recommendation 12, Occupational Health Services is recording test times. Occupational Health Services will provide a printout of this data to the Departments of Buses and Subways for review and appropriate action. Management will be responsible for identifying and addressing correctable conditions that cause delays in testing employees. Additionally, Occupational Health Services will explore various alternative methods to conduct testing in order to expedite the post-accident alcohol testing process. Management will document those instances where testing could not be accomplished within the prescribed time.

Recommendation 16: *"Designate a responsible official to ensure proper instruction and implementation of the Permanent Bulletin, and to monitor compliance."*

Response: Agree. A revised Permanent Bulletin (#02.07.03), entitled 19A Medicals – Failure to Complete as Scheduled was issued on May 13, 1999. This Bulletin prohibits Bus Operators who miss scheduled 19A medicals from operating a bus until a rescheduled examination has been completed. Assistant General Managers are responsible for ensuring compliance with the bulletin.

Recommendation 17: *"Ensure that depot management cease their misapplication of DOB policy and hold managers accountable in the future for allowing bus operators to work when they have not completed their Article 19-A medical examinations as set forth in the 19-A Permanent Bulletin."*

Response: Agree. See comments to Recommendation 16.

Recommendation 18: *"Clarify that depot management should use the G-46 forms to verify examination completion prior to permitting a bus operator to resume driving."*

Response: Agree. Bulletin #02.07.03 requires Bus Operators to submit a signed G46 medical form to supervision following a 19A medical examination. Supervision will rely upon the work status delineated in the completed G46 medical form.

Mr. Roland M. Malan
November 23, 1999
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Recommendation 19: *"Assure that Training Division staff is trained on the proper and effective use of their remote access to the OHS Scheduling Database."*

Response: Agree. The Department of Buses Training Division staff has been trained on using the remote system log-on to access the Occupational Health Services Scheduling database.

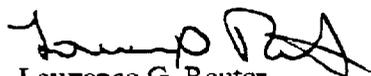
Recommendation 20: *"Re-examine, with the assistance of the MTA Law Department, its understanding of the issue of confidentiality of its records in regards to its obligation to supply a list of diabetic bus operators to the Training Division."*

Response: Agree. The Department of Buses Training Division receives copies of all 19A medical examination forms, which include information on Bus Operators requiring six-month certifications that diabetic status has remained stable and under control. The Department of Buses Training Division records and tracks this information to ensure that certifications are submitted. The Department of Buses Training Division reconciles all discrepancies with Occupational Health Services at the end of each month. Nevertheless, Occupational Health Services will meet with other appropriate departments to resolve issues of confidentiality with respect to supplying a list of diabetic Bus Operators to the Department of Buses Training Division.

Recommendation 21: *"Establish protocols to allow for future sharing of confidential medical information in order for the Training Division to effectively carry out its responsibility to monitor and certify compliance with state regulations."*

Response: Agree. This will be implemented where appropriate after resolving the issues identified in our response to Recommendation 20.

Sincerely,



Lawrence G. Reuter
President

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