

**Operation RedBlock:
Actions Needed to Improve Program Effectiveness**

Report No. E-11-01

March 15, 2011



Evaluation Report Issued By

**OFFICE OF INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION
10 G STREET, N.E.
WASHINGTON, DC 20002**

Amtrak Office of Inspector General
Operation RedBlock: Actions Needed to Improve Program Effectiveness
Report No. E-11-01, March 15, 2011

Memo



Date: March 15, 2011

To: Joseph Boardman, President and
Chief Executive Officer

From: Ted Alves, Inspector General

Department: Office of Inspector General

Subject: ORB Follow-up Evaluation

cc: Lorraine Green, VP, Human
Resources, Labor
Administration, and Diversity
Initiatives

Jessica Scritchfield, Internal
Controls Officer

Attached is the final report on our recently completed follow-up evaluation of Amtrak's Operation RedBlock Program. Our objectives were to determine the progress made by the company in implementing the recommendations made in our March 2008 evaluation report and to see whether concerns raised in that report have been addressed.

This report documents our findings and makes five recommendations to further improve the Operation RedBlock Program. Your response to our draft report is included as Appendix I.

We appreciate the courtesies and cooperation of Amtrak representatives during this evaluation. If you have any questions, please contact me at (202) 906-4499 (Ted.Alves@amtrakoig.gov); Calvin Evans, Assistant Inspector General for Inspections and Evaluations, at (202) 906-4507 (Calvin.Evans@amtrakoig.gov); or Ed Vogel, Jr., Chief, Inspections and Evaluations, at (202) 906-4568 (Edward.Vogel@amtrakoig.gov).

Attachment

EXECUTIVE SUMMARY

**WHY WE
CONDUCTED THIS
FOLLOW-UP
EVALUATION**

This follow-up evaluation was conducted to determine the progress made in implementing our previous recommendations, and to determine whether concerns raised have been addressed.

Initiated in 1987, Operation RedBlock (also called the ORB program) is a labor-developed, Amtrak-adopted drug identification and education program. Our March 2008 report¹ identified significant deficiencies in program leadership and oversight, performance goals to measure program effectiveness, financial controls, and other areas. In addition, we questioned whether the program should continue performing other counseling services that go beyond the scope of its charter. In response, Amtrak management disagreed with many of our recommendations, asserting that the program was operating effectively.

The Federal Railroad Administration (FRA) has also repeatedly expressed concerns that Amtrak's ORB program is not operating effectively and that employees are not receiving proper support to deal with substance abuse problems. This follow-up evaluation found that some progress has been made—in management's expressed commitment to the program, its willingness to consider additional changes to improve operations, and in financial controls. Nevertheless, significant issues remain to ensure that Amtrak, its employees, passengers, and the public are protected from accidents due to alcohol or drug use.

ORB Initiated to Supplement Amtrak Safety Program, but Problems Persist

Utilizing union-led volunteer-prevention committees, the program seeks to change attitudes, reduce the tolerance of nonusers to job-related drug and alcohol use, and encourage users to seek assistance. It is an important program, designed to improve safety by encouraging employees under the influence of drugs or alcohol to remove themselves from the workplace voluntarily, without being subject to discipline. Thus, it is used to supplement the approach of Amtrak's overall safety program to employee and passenger safety by helping prevent accidents involving the use of drugs or alcohol.

Despite this laudable goal and the use of union-led volunteers, our 2008 report found problems. Management's response did not, however, provide additional information to rebut the report's findings, and in some cases contained inaccuracies. Of particular concern was management's statement that Amtrak had not had any accidents involving drug or alcohol use in 20 years, demonstrating the program's effectiveness. In actuality, during this time period, according to FRA, four post-accident alcohol and/or drug tests have been positive.

In 2009, an FRA report reinforced several concerns identified in our 2008 evaluation. FRA cited the low number of employee self-referrals and coworker-reported cases, compared with other railroads, and limited Amtrak information about the treatment and rehabilitation of covered-

¹ *Operation RedBlock*, Report Number E-08-01, March 4, 2008.

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service (hours-of-service) employees (engineers). FRA also found that few covered-service employees identified as having drug or alcohol problems were receiving treatment and follow-up through Amtrak's Employee Assistance Program (EAP), which is staffed with substance abuse professional (SAP)-certified counselors qualified to diagnose and support appropriate treatment for employees with substance abuse problems. In summary, FRA has continued to express significant concerns that covered-service employees processed through the ORB program are failing to receive proper evaluation, treatment, and follow-up before and after they return to their safety-sensitive positions. According to FRA's drug and alcohol program manager, FRA is very concerned that ORB management was using the program to bypass the drug and alcohol requirements and standards established by federal regulations.

This follow-up report identified the following issues:

- The program's governing body—the Executive Steering Committee (ESC)—which consists of senior Amtrak management and labor union representatives, had not met for over a year. In response to our initial evaluation, Amtrak committed to ensuring that this important group would meet at least twice each year.
- The ESC has still not established meaningful goals to measure program performance. Our initial evaluation pointed out that program goals should be outcome-related, not activity-related. We provided examples of potentially more useful measures. Although the program goals have changed somewhat, they are all still focused on activities, not outcomes.
- Our initial evaluation found that little information was being reported to the ESC about the number of employees who mark off,² including the number who mark off multiple times—a strong indicator of an active substance abuse problem. Although Amtrak recently provided significantly more information to FRA about the numbers of employees who marked off, FRA questioned the reliability of the data provided by the ORB program. Our review of the data also found it imperfect for use in analyzing trends and identifying issues. For example, according to ORB officials, previous mark-offs are expunged at the end of each calendar year. As a result, if an employee marked off in December and again in January, the second mark-off would not be tracked and reported as a repeat mark-off. We also again found that detailed useful data are not shared with the ESC.
- ORB referral practices may not fully support the long-term rehabilitative interests of employees and may not satisfy FRA requirements that Amtrak exercise due diligence to ensure that employees with substance abuse problems are identified and treated. Our initial evaluation found that the ORB program did not consistently refer employees with a potential substance abuse problem to Amtrak's EAP. This is still the case. Responding to FRA, Amtrak was unclear about ORB referral practices. One part of the response indicates that employees are referred to EAP when appropriate, but another part states that ORB provides several referral options, and that the program purposely does not keep track of employee

² As used in Operation RedBlock, a mark-off is a one-day excused absence from work understood to be taken when an employee recognizes that he or she is unfit for duty due to the use of drugs or alcohol or after being confronted by a coworker while under the influence.

referrals for reasons of confidentiality. An underlying issue related to the lack of proper referrals is that the program does not have guidelines to define how and when mark-offs, especially multiple mark-offs, will lead to interventions by employee volunteers (peer counselors) and, when appropriate, referrals to the more qualified EAP. Without such guidelines and records, neither the ESC nor FRA can have confidence that appropriate referrals are being made or treatment provided.

- The ORB program continues to house important employee counseling-type programs that may not be organizationally aligned to provide the appropriate resources and support to employees. Our initial evaluation identified three other programs that provide “counseling” to employees, and recommended that they be moved to the Office of Health Services under the Vice President for Human Resources—two programs to the EAP and the third to the Health Services unit.³ Management has not yet addressed this issue, and the programs remain part of ORB.

An underlying problem that may have inhibited ORB managers from maintaining or sharing appropriate information to evaluate the effectiveness of the program is a concern that employee confidentiality and privacy be protected. Because the program relies heavily on employee volunteers to promote identification, awareness, and education, it is critical that the volunteers and impaired employees have confidence that interactions with the program will remain confidential. It is also critical that employees who have serious substance abuse problems be identified and properly treated by qualified, credentialed rehabilitation professionals.

We believe both of these objectives can and must be achieved. The key is to reach a clear understanding between management and labor about (1) the information needed to ensure that the program operates effectively; and (2) the process to be used to strip identifying information when accumulating data for analysis. Our evaluations, the FRA audit, and subsequent data requests demonstrate that oversight groups are sensitive to the need to maintain privacy and confidentiality. Neither we nor FRA has requested information that would identify individuals.

The drug and alcohol landscape will also be changing in 2011. FRA is promulgating certification for conductors, similar to what is currently in place for engineers. Further, the track maintenance workforce will be subject to random drug and alcohol testing, similar to what is currently in place for “hours of service” personnel.⁴ These upcoming regulations will add increasing challenges to drug and alcohol testing and peer prevention efforts. In view of the current

³ The programs are (1) the Union Member Assistance Coordinator (UMAC) Program, which provides relapse support to employees returning to work from drug and alcohol treatment; (2) the Peer Counseling Program, which provides a point of contact for employees in crisis and guides them to needed professional support services; and (3) the Critical Assistance and Response for Employees (CARE) Program, which assists employees involved in critical incidents that involve serious bodily injury or death of employees, passengers, or trespassers.

⁴ Hours of service personnel are employees who are employed by a railroad or a contractor or subcontractor to a railroad and whose time on duty is limited to 12 total hours at a time and who (1) is actually engaged in or connected with the movement of any train; (2) dispatches, reports, transmits, receives, or delivers an order pertaining to a train movement by the use of a telegraph, telephone, radio, or any other electrical or mechanical device; or (3) is engaged in installing, repairing, or maintaining a signal system.

deficiencies with Amtrak's ORB Program, it is even more critical that established processes and guidelines be in place to help the current and future employees in crisis.

During our evaluation, FRA succeeded in obtaining a significant amount of data that previously had not been made available and in getting Amtrak to clarify how the program actually operates. In responding to FRA, Amtrak management also expressed a new willingness to consider further program changes in coordination with labor and FRA. Management indicated that it would review the results of our follow-up evaluation report and FRA's recommendations to determine if changes should be made to strengthen the program.

Finally, at the conclusion of our review, we presented the results to the ESC. Labor members expressed strong support for the ORB programs, particularly the need to maintain privacy and confidentiality. They also questioned our finding that counseling programs should not be organizationally aligned with ORB. After further analysis and discussions with management, we continue to believe that those programs should be moved from under the ORB Program to Amtrak's EAP.

Recommendations

We recommend that the President and CEO direct the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to work with management and the involved labor unions to make changes to the ORB program. Specifically, they should ensure that

1. the ORB Executive Steering Committee convenes on a regularly scheduled basis, at least semiannually, to review program performance and provide oversight and direction to improve program operations;
2. the ORB Executive Steering Committee establishes a process and timeline for the development of meaningful performance goals that can be used to measure the effectiveness of the program and compliance with federal regulations;
3. the ORB Executive Steering Committee implements processes to report reliable and detailed information related to ORB activities, including mark-offs and multiple mark-offs, by craft, time period, and location, while also ensuring that personal or confidential information is protected from release;
4. the ORB Executive Steering Committee establishes mark-off guidelines and consequences, tracks peer-counselor interactions with and referrals of employees, and ensures that employees are appropriately referred to and properly evaluated by a certified SAP-credentialed counselor within the EAP department. Further, employees with multiple ORB mark-offs should be required to contact Amtrak's EAP, and not the UMAC; and that

5. the Critical Assistance and Response for Employees (CARE), the Peer Counselor, and the UMAC programs are reassigned to the EAP department.

Management Comments and OIG Analysis

In response to our report, Amtrak's President and CEO stated that management agreed with all of our recommendations and that they will meet with the RedBlock Executive Steering Committee to discuss our recommendations prior to May 31, 2011. Further, they committed to a firm deadline for implementing two of the recommendations and providing a timeline for full implementation of the other three recommendations (by June 7, 2011). The full response of the President and CEO can be found in Appendix I.

OIG concurs with management's plan to work with the Executive Steering Committee, as this approach meets the spirit and intent of our recommendations. We also note and commend Amtrak for taking additional actions beyond our recommendations to further improve the program. In addition, OIG would like to recognize the President and CEO's personal commitment to the program and his proactive engagement with the labor members of the ORB ESC to work through these important and sensitive issues.

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INTRODUCTION

The ORB Program began at Amtrak in 1987 as a labor-developed, management-supported program to promote awareness and education of drug and alcohol use in the workplace through union-led volunteer-prevention committees. The goal of the program is the elimination of substance abuse in the workplace by providing programs and services intended to promote awareness, education, and the prevention of drug and alcohol abuse through peer-prevention committees. Identification, intervention, and education are the hallmarks of the ORB Program.

One of the primary benefits to the employee is that it provides the ability to mark-off from work when he or she is under the influence of drugs and/or alcohol. The employee can mark-off prior to his or her scheduled assignment or during the workday.⁵ This mark-off privilege allows employees to remove themselves from the work environment so as not to endanger themselves, a fellow employee, or the traveling public. This confidential mark-off is a nonjudgmental privilege extended by the ORB Program to all employees in order that the employee may be excused from work without putting his or her job at risk. The purpose is to allow the employee's irresponsible behavior of misusing drugs and/or alcohol to be counteracted by his/her responsible act of marking off from work and then honestly discussing with ORB staff and/or volunteers why the behavior occurred. If needed, professional counseling assistance should be available through Amtrak's Employee Assistance Program (EAP).

In March 2008, we issued Evaluation Report E-08-01, *Operation RedBlock*, which identified a number of problems that limited the program's effectiveness and made recommendations to improve the program's operations. As part of that evaluation, we benchmarked Amtrak's ORB Program to similar peer-prevention programs at the other Class 1 railroads.⁶ Although we found significant program deficiencies, we also noted the value of Amtrak's having a drug and alcohol peer-prevention, referral, and education program such as ORB.

Our 2008 report discussed how the program did not measure itself against performance goals or develop meaningful reports and statistics to allow for the timely identification of emerging issues and trends, that it received only minimal oversight at the corporate level, and that it lacked adequate financial oversight at the committee level. In addition, neither the ORB organizational structure nor some of its practices optimally supported the long-term rehabilitative interests of the individual employees who may be at risk, as well as the interests of the company, in ensuring employee and passenger safety.

⁵ Originally, the ORB mark-off privilege was set up primarily for those employees who may have been drinking on their off-duty hours and were subsequently called to work unexpectedly. This ORB mark-off privilege allowed the employees to mark-off from work with permission so as not to require them to come to work under the influence of alcohol and/or drugs.

⁶ According to the American Association of Railroads, Class 1 railroads are the largest operating freight railroads in terms of route miles, freight tonnage, and operating revenues, having revenues exceeding \$319 million annually. The United States has five Class 1 freight railroads in addition to Amtrak: Burlington Northern Santa Fe Railway, CSX Transportation, Kansas City Southern, Norfolk Southern Corporation, and Union Pacific Railroad. Class 1s also include two Canadian railroads: Canadian National Railway and Canadian Pacific Railway.

When we issued the report, we requested a written response from the Vice President for Labor Relations within 45 days on any actions taken or planned to address the recommendations made. We did not receive the company's official response until over a year later, in a memorandum dated April 29, 2009 (see Appendix I). In that response, both management and labor representatives disagreed with most of the recommendations and asserted that the program was operating effectively. However, management's response did not provide additional information to rebut the report's findings, contained inaccurate facts in some cases, and overall failed to address the report's findings and recommendations. For example, the Vice President for Labor Relations' response stated that there had been no drug- or alcohol-related accidents at Amtrak since the ORB Program was started. However, according to the manager of FRA's Alcohol and Drug Program, Amtrak had 57 events that required post-accident testing, with eight positive test results, between 1989 and 2007. Four of these eight positive test events were later downgraded to negative because they involved the use of prescription medications.

Objectives, Scope, and Methodology

To determine what progress Amtrak has made correcting the deficiencies we identified in our March 2008 report, we decided to conduct a follow-up review of our previous ORB evaluation. We limited the scope of this evaluation to the areas we commented on in our previous evaluation report and the response we received from the Vice President for Labor Relations in April 2009. To evaluate the actions taken and progress made in implementing our recommendations, we reviewed internal ORB documentation and reports, selected EAP and drug and alcohol testing reports, and recent FRA correspondence and audits related to the ORB Program. We also interviewed selected members of the ORB staff and Amtrak management, as well as certain FRA and union officials.

RESULTS OF EVALUATION

Amtrak's ORB Program Continues to Receive Only Minimal Oversight from Amtrak Senior Management and Union Leadership through the ORB ESC

The Executive Steering Committee does not meet regularly to carry out its required ORB program oversight and leadership responsibilities. Although the company committed to meeting at least twice per year, the ESC had not met for over a year, having last met in July 2009 and most recently in December 2010, at our request. We reviewed the meeting minutes from the three meetings held in the 2½ years since our initial evaluation, and there is little indication that the meetings consisted of meaningful discussion among the attendees or that an interactive review of meaningful data and information provided by the ORB staff took place.

The ESC consists of both Amtrak management and union representatives and has the duties of determining ORB policy and procedures, reviewing the program's progress, and intervening on Divisional Steering Committee issues, when necessary. We found during our previous evaluation that the ESC had not met as an oversight committee in over four years—from 2004 to 2008—and that the meetings held prior to 2004 did not include sharing of measurable data and/or performance goals. ESC members were generally given ad-hoc pieces of data by the ORB staff and then asked to return the information before the end of the meeting. There did not appear to be any consistent format for the information and data delivered, and it was unclear how the ESC determined what information it wanted to see as an oversight group. Meeting minutes were not always taken and it was unclear how follow-up issues or concerns were handled or tracked.

Our prior report recommended that senior management decide whether they still wanted an ORB program and, if so, to openly endorse it and reconvene the ESC. We also emphasized that the ESC's role is to provide meaningful oversight of the ORB Program, which includes regularly scheduled meetings, setting goals and objectives, and measuring program performance. In response, management did endorse the importance of the ORB Program. The ESC convened on May 7, 2008, after not having met for 4 years, to recertify its commitment to ORB. In addition, management's response to our report stated that "Executive Steering Committee meetings are to be scheduled for twice each year." The Amtrak President issued an employee advisory dated May 19, 2008, that reaffirmed Amtrak's commitment and support for the ORB.

Despite management's stated intent, however, the ESC did not meet again for 10 months—on March 30, 2009. The ESC then met again on July 9, 2009, but did not meet after that for over a year, until December 2010, after we requested a meeting at the conclusion of our current evaluation. Unless the ESC meets on a regular basis, exercises leadership, and is provided with meaningful information and data to review, it cannot fulfill its oversight and leadership responsibilities. As the oversight arm of the ORB, the ESC should drive the requests for data that are meaningful to the ORB mission. Going forward, if the ESC is going to steer the program and

provide effective oversight, it is only logical that the committee should meet regularly. Only in this way will it be able to provide oversight and give direction to the ORB Program, which should be in the best interests of the employees, the unions, and Amtrak as a whole.

Recommendation

The President and CEO should direct the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to work with the ESC to ensure that it convenes on a regularly scheduled basis, at least semiannually, to review program performance and provide oversight and direction to improve program operations.

Management Comments and OIG Analysis

Management agreed with the recommendation for the ESC to convene on a regularly scheduled basis, at least semiannually, to review program performance and provide oversight and direction to improve program operations. An ESC meeting is to be held prior to May 31, 2011, to develop a schedule for future meetings. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives is to forward the meeting schedule to OIG by June 7, 2011.

We consider management's comments to be responsive to our recommendation.

ESC Has Not Developed Meaningful Performance Goals or Metrics

Management generally disagreed with our prior recommendation that the ESC develop performance goals and measure progress against those goals; further, management did not clearly commit to taking any action. The ORB program has still not developed meaningful performance goals or measures to improve operations and results. The program's goals continue to be activity-based and not performance- or results-based. Performance-based goals are needed to measure performance and drive improvements. Since the ESC is the oversight arm of the ORB Program, Amtrak management should require the ESC to establish performance goals and monitor how well those goals are being met by the program.

During our previous evaluation we noted that the ORB Program listed nine "performance goals" for FY 2008, which were basically activity goals. We questioned this approach, as these activity-based goals do not indicate any striving for program self-evaluation and measurement through either employee or management feedback. As part of this evaluation, we asked for the performance goals and metrics for FY 2009. There were five FY 2009 goals and, again, they were all activity-based and did not, therefore, measure ORB Program effectiveness and efficiency in preventing and reducing drug and alcohol behavior in the workplace. For example, the ORB FY 2009 goals involved working with captains and Division Steering Committees each quarter, increasing ORB training classes, increasing the number of referrals to peer counselors, identifying new peer counselor candidates, and implementing a Youth in Workplace Program. While these activities can be meaningful for employees involved as ORB volunteers, they are simply output measures, not performance goals that can be used by the ESC for self-measurement of the program.

Some examples of more meaningful performance goals that the ORB could use are *reductions* in:

- Multiple ORB employee mark-offs, especially for hours-of-service employees;
- Accidents/injuries related to drug and/or alcohol use;
- Positive results of random drug and alcohol tests;
- Rule G violations;⁷

⁷ A Rule G violation occurs when an employee is subject to duty, reporting for duty, or on duty and is caught possessing, using, or being under the influence of alcoholic beverages, other intoxicants, narcotics, or other mood-changing substances, including medication whose use may cause drowsiness or impair the employee's responsiveness.

- Rule G waivers;⁸ and
- Positive Rule G follow-up tests.

Outcome-based performance goals, such as these, would help the ORB Program measure its effectiveness in identifying and educating employees about workplace drug and alcohol use. While we recognize that there are additional contributing factors associated with the use of drugs and alcohol in the workplace, the program should strive to measure itself against meaningful performance goals.

Recommendation

The President and CEO should direct the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to work with the ESC to establish a process and timeline for the development of meaningful performance goals that can be used to measure the effectiveness of the program and compliance with federal regulations.

Management Comments and OIG Analysis

Management agreed with the recommendation to establish a process and timeline for the development of meaningful performance goals that can be used to measure the effectiveness of the program and compliance with federal regulations. An ESC meeting is to be held prior to May 31, 2011, to discuss the process and timeline for the implementation of the performance goals, with the understanding that the Vice President for Human Resources, Labor Administration, and Diversity Initiatives will prepare a white paper on the types of performance goals to be considered by the ESC. Any suggested performance goals will take into consideration the OIG recommendations, Federal Railroad Administration/Department of Transportation regulations, and Amtrak policy. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives is to forward the performance goal development timeline to the OIG by June 7, 2011.

We consider management's comments to be responsive to our recommendation.

⁸ A Rule G waiver is a signed agreement between an employee and the company to allow an employee charged with a Rule G violation to contact Amtrak EAP within 5 days and then comply with the counselor's treatment plan requirements in lieu of being dismissed.

ESC Does Not Receive Complete and Timely Mark-off Data

Our 2008 report also found that Amtrak's ORB Program provided little meaningful data to either management or union officials. We benchmarked the data presented by Amtrak's ORB against the CSX Corporation's ORB program and found that CSX provided significantly more detailed and useful information. For example, mark-off data by craft, date, and location, including the numbers of multiple mark-offs by the same employee (an indication that the employee may have a drug or alcohol abuse problem) provides valuable information to the CSX ORB program. Mark-off data for FRA-regulated hours-of-service employees (covered employees) is critically important because they are in safety-sensitive positions like engineers, and FRA has repeatedly requested better information about hours-of-service employee mark-offs.

Our current evaluation found that the ORB Program provided more detailed mark-off data to the ESC; however, the data still did not track the hours-of-service mark-offs according to our recommendation or the FRA request. At an ESC meeting held in December 2010 at our request, the ORB Director provided additional detailed information, but its reliability is questionable.

ORB Mark-off Data

Our 2008 evaluation reported that Amtrak's ORB Program provided little meaningful data to either management or union officials. For example, the ORB Director provided an End of Year Mark-off Report. The information was general in nature, as it compared the total number of mark-offs for the past 5 years, and reported the number of first-time mark-off users compared with the number during the previous 5 years. He also listed the mark-offs by groups of crafts, by lumping all crafts into three general categories: Operating/On-Board, Mechanical/Track/Signal, and Station/RSA⁹/Clerical. However, the mark-off data were not reported by individual craft, date, and location. Overall, then, the data were not useful for identifying trends and issues. This was also end-of-year data, so individual mark-offs were already 12 months old. The ESC members were not allowed to keep the information and the ORB Director collected all data at the end of each meeting.

Amtrak ORB data contrasted sharply with data maintained by the CSX ORB program, which is generally acknowledged to be the most effective peer-prevention program in the industry. At the invitation of CSX management, we benchmarked its peer-prevention program to see the types of reports that they issued concerning employee mark-offs. We attended a captain's meeting during which year-end ORB system statistical data were distributed and discussed. These data tracked and reported employee mark-offs by region, craft, location, and day of week. The data pinpointed problem areas and compared prior-year numbers to identify trends, providing a snapshot of mark-off activity on a weekly, monthly, and annual basis, which allowed attendees to gauge whether the captain's work involving information and education was succeeding. This

⁹ Reservation Sales Agent.

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information had also been shared between local management and union officials throughout the year on a weekly and monthly basis.

In addition, CSX separately tracks and reports on its hours-of-service employees' mark-offs. Hours-of-service employees within the railroad industry are discussed in Federal Regulation 219, Subpart E—Identification of Troubled Employees. These employees' work positions are considered "safety-sensitive." Under FRA's Random Alcohol and Drug Testing Program, these employees are subject to random testing program regulations and guidelines. CSX's reporting of hours-of-service mark-offs complies with the federal regulation. In contrast, FRA has repeatedly—but unsuccessfully—tried to obtain similar data from Amtrak. Amtrak's failure to provide this information has led FRA to question whether Amtrak is in compliance with this important federal safety regulation.

In 2008 we recommended that the ORB Director develop reports showing employee ORB mark-offs, including multiple mark-offs, by craft, date, and location. We also recommended that these types of reports delineate between hours-of-service and non-hours-of-service employees, and that they be distributed on a biweekly, monthly, and quarterly basis to senior management on a need-to-know basis.

The Vice President for Labor Relations' response to our report stated,

“When the ORB Program was assigned to Labor Relations, the ORB Director and I went through the statistical analysis that should be collected and reported. These reports include the data that has been recommended by the Inspector General and provides even more information.... This recommendation has been adopted and implemented.”

On the contrary, our current evaluation found that the recommendation has *not* been adopted and implemented. We asked for and were provided all information that was distributed at the March 30, 2009, and July 9, 2009, ESC meetings concerning employee mark-offs. At the March meeting, the ORB Director handed out mark-off and Rule G data by union and location for Calendar Years (CY) 2007 and 2008. He attempted to show the relationship between craft mark-offs and Rule G violations and work locations. While this new form of data are more useful, it still falls short of presenting mark-offs by craft, date, and location, as we recommended and FRA requested. Attempting to compare Rule G violations with employee mark-offs by craft and location is useful, and we acknowledge the effort. However, the data were not presented in a format that could easily lend itself to analysis by the reader. Further, our review of the March meeting's minutes found no meaningful discussion by the ESC about these data. Once again, the data presented to the ESC by the ORB Director were over a year old and the data again were collected at the end of the meeting.

At the July meeting, the ORB Director again handed out employee mark-off and Rule G data. This data differed from the March data, however, in that it covered multiple time periods. Some

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of the data covered 2005 through 2009, while other data covered only the first six months of 2007 through 2009; finally, there was also a capsule study from 2002 alone. The lack of a consistent format in the presentation of the data also contributed to a lack of clarity as to what message the data were trying to send. It was not possible for a reader to understand the potential relationship between an employee mark-off and a Rule G violation. Again, the meeting's minutes disclosed no meaningful discussion of the data, and the data were once again collected at the meeting's conclusion.

As an illustration of how data could be interpreted, Table 1 displays our construction of the information presented at the July meeting.

Table 1. ORB 6-Month Mark-off Data, 2007–2009

Period	Mark-offs	Percentage increase
January–June 2007	119	
January–June 2008	128	7.5%
January–June 2009	142	11.0%
January–June 2010	197	38.7%

Source: ORB

This data show mark-offs increasing at an accelerating rate during the first 6 months of each subsequent year. The data were not presented in a format that highlighted this trend. Had it been, it should have triggered a discussion about why mark-offs were increasing.

So that we could conduct our own analysis, we obtained the total number of employee mark-offs for CYs 2007, 2008, 2009, and 2010, as well as the number of employee multiple mark-offs for the same periods. We also asked the labor coordinator to break out mark-offs for the hours-of-service vs. non-hours-of-service employees, as well as the employee multiple mark-offs for these same periods of time.¹⁰

¹⁰ The ORB labor coordinator did not provide the requested breakout of data; rather, this came from a response to an FRA request for data contained in a letter dated July 15, 2010, from the Amtrak Vice President, Human Resources and Business Initiatives.

Table 2 shows the breakout of these data.

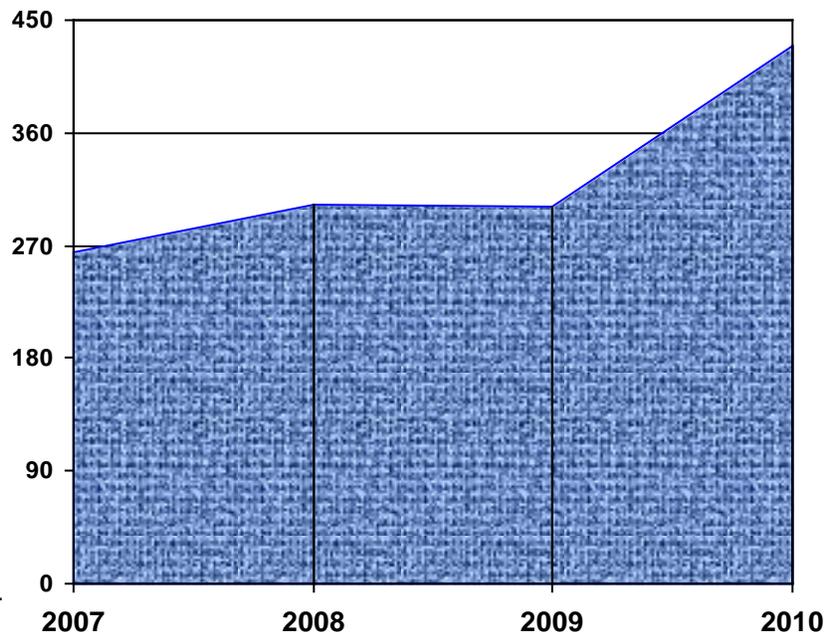
Table 2. ORB Mark-off Data for Hours-of-Service and Non-Hours-of-Service Employees

Year	Total ORB Mark-offs	Total ORB Multiple Mark-offs	Percentage Multiple Mark-offs	Hours-of-Service Mark-offs	Hours-of-Service Multiple Mark-offs	Percentage Hours-of-Service Multiple Mark-offs
2007	265	44	16.6%	30	5	16.6%
2008	303	50	16.5%	50	7	14.0%
2009	301	44	14.6%	46	6	13.0%
2010	430	70	16.3%	76	9	11.8%

Source: ORB data.

As shown, the ORB Program reported an annual average of 290 employee mark-offs during the three year period 2007–2009. The annual average reported for the period 2002–2006 in our prior evaluation was 347. While the yearly average declined, the trend clearly moved upward for 2010. End-of-year mark-offs jumped 43 percent between 2009 and 2010. (In contrast, mark-offs jumped only 14 percent from 2007 to 2008, and declined slightly—0.67 percent—from 2008 to 2009.) The data show that the totals for all categories at the end of 2010 are well beyond the previous 3-year average (see Figure 1).

Figure 1. Changes in Yearly Mark-Offs, 2007–2010



Source: ORB data.

ORB Multiple Mark-offs Not Fully Reported

The number of instances in which an employee marks off multiple times is important because multiple mark-offs could indicate an active substance abuse problem. However, the ORB Program has, until recently, provided little information about multiple mark-offs. In addition, we found that the data reported in Table 2 may under-report the true number of multiple mark-offs. This is because, according to the ORB Director, mark-offs that occurred in prior calendar years are excluded from the reports provided to the ESC. Based on this, it appears that the ORB is not properly reporting employees' multiple mark-offs from one year to the next. To illustrate, if an employee marked off twice in December and again the following January, the January mark-off would not be reported as a multiple mark-off since no prior mark-off had occurred in the new calendar year.

Recommendation

The President and CEO should direct the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to work with the ESC to implement processes to report reliable and detailed information related to ORB activities, including mark-offs and multiple mark-offs, by craft, time period, and location, while also ensuring that personal or confidential information is protected from release.

Management Comments and OIG Analysis

Management agreed with our recommendation for the ESC to implement processes to report reliable and detailed information related to ORB activities, including mark-offs and multiple mark-offs, by craft, time period, and location, while also ensuring that personal or confidential information is protected from release. An ESC meeting is to be held prior to May 31, 2011, to discuss the recommendation and establish a timeline to develop the report criteria for reliable and detailed information related to the ORB activities, with the understanding that the Vice President for Human Resources, Labor Administration, and Diversity will prepare a white paper on the types of data that should be reported. The data types will be discussed at the ESC meeting and the Vice President for Human Resources, Labor Administration, and Diversity Initiatives is to forward the data elements and the timeline established to develop the reports to the OIG by June 7, 2011.

We consider management's comments to be responsive to our recommendation.

ORB Referral Practices Do Not Support Long-Term Rehabilitative Interests of Employees and May Not Comply With FRA Regulations

Referral practices may not fully support the long-term rehabilitative interests of employees. Our prior evaluation found that the ORB Program did not consistently refer employees with a potential substance abuse problem to Amtrak's EAP, which is staffed with certified Substance Abuse Professionals (SAP) who are qualified to diagnose and provide appropriate treatment for employees with substance abuse problems. Two FRA reviews of Amtrak's drug and alcohol programs, in 2006 and 2009, expressed similar concerns. FRA recently expressed additional concerns that Amtrak may not satisfy FRA's drug- and alcohol-prevention requirements because ORB does not assure that employees with substance abuse problems are identified and treated.¹¹ Amtrak's response to the FRA concerns contained contradictory statements about employee referrals. One part of the response stated that employees are referred to EAP when appropriate, while another stated that ORB does not maintain data on employee referrals. In fact, according to the ORB Program Director, employees with multiple mark-offs are being referred to the Union Member Assistance Coordinator (UMAC) Program counselor, who is part of the ORB Program and is not SAP-certified.

A fundamental issue related to these referrals is that ORB lacks standards or guidelines to define how and when team captains and/or peer counselors should intervene with employees and refer them to EAP, especially when multiple mark-offs and safety-sensitive hours-of-service employees are involved. This contrasts with the CSX ORB program, which has guidelines about how each mark-off will be treated and limits the number of mark-offs to three, although an employee can be referred to EAP at any time. Without such standards or guidelines, neither the ESC nor FRA can have confidence that appropriate referrals are being made or that employees with substance abuse problems are receiving proper treatment.

ORB Program Does Not Actively Refer Employees to Amtrak's EAP Program

Our prior report noted that the ORB Program was not consistently referring employees to the EAP so that they can be appropriately assessed and, if necessary, treated by a SAP-certified professional. Although the ORB Director asserted that Amtrak's EAP is the referral of choice for ORB, referral statistics provided by ORB do not support this.

In response to that report, Amtrak committed to improving the working relationship between ORB and the EAP. During this evaluation, we obtained statistics from ORB showing an increase

¹¹ Title 49 CFR § 219.105(b) requires Amtrak to exercise "due diligence" to ensure that covered employees are complying with the alcohol and drug prohibitions of 49 CFR §§ 219.101—Alcohol and Drug Use Prohibited; 219.102—Prohibition on Abuse of Controlled Substances; and 49 CFR § 240.119(b)—Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol/Drug Rules Compliance (see Appendix II).

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in referrals to EAP from the prior review; however, the data turned out to be unreliable. In fact, when Amtrak responded to a request from FRA for information about referrals, Amtrak stated that the ORB Program does not maintain information on referrals.

Although ORB referral data are not reliable, EAP does maintain data on employees seen by EAP counselors. Comparing the number of employees who marked-off with the number of employees who were actually seen by a licensed EAP counselor shows an increase between 2008 and 2009; overall, however, less than 10 percent of employees who mark-off were seen by an EAP counselor in 2009. Table 3 shows the mark-off and referral activity for 2008 and 2009.

Table 3. ORB Mark-off Data

Year	Mark-offs ^a	Referrals Seen by EAP ^b	Percentage
2008	303	16	5.3%
2009	301	28	9.3%

^aSource: ORB.

^bSource: EAP.

FRA, in its 2006 and 2009 drug and alcohol audits, also questioned the working relationship between Amtrak's ORB Program and EAP. Both FRA reports concluded that this ineffective relationship appears to be contributing to unusually low numbers of self-referrals by hours-of-service employees to Amtrak's EAP Program. FRA has also repeatedly questioned the reliability of referral data provided by ORB and the low number of employee referrals to EAP. FRA's 2006 report stated:

*"FRA remains concerned that Amtrak's fractured ORB program is adversely affecting the effectiveness of these required programs. The apparent confusion between the borders of the three programs appears to be contributing to the low utilizations of all three programs.... FRA remains very concerned that employees utilizing this component [ORB] may not be receiving adequate EAP/SAP assistance."*¹²

In recent correspondence with Amtrak, FRA also suggested that deficiencies in ORB may be undermining Amtrak's compliance with federal safety regulations related to preventing drug and alcohol abuse. According to the FRA correspondence, if Amtrak cannot provide assurance that covered-service employees who mark-off are properly evaluated and referred to an SAP-certified counselor when appropriate, then Amtrak may not be in compliance with the two required drug and alcohol programs.

¹² The two other programs referenced by FRA are required by federal regulations: the Voluntary Referral and Co-Worker Report policies (CFR Section 219.403 and 219.405, respectively). Amtrak's ORB is not a required program under FRA guidelines, so it is considered an alternate program.

The FRA concerns support both our previous and current findings about ORB employee-referral practices. ORB is still not properly tracking and reporting employee referrals, which is particularly important for hours-of-service employees and when multiple mark-offs have occurred. When we asked the ORB Director why he is not tracking and reporting employee referrals following mark-offs, we were told that the lack of documentation by ORB ensures employee confidentiality, and that employees continue to use the mark-off privilege because there are **no consequences** when utilized (emphasis added).

The ORB Director also confirmed that a new approach was being taken with employees who mark-off. He said that his staff and volunteers are now offering employees four referral options: The employee can choose to (1) see Amtrak's EAP, (2) an ORB peer counselor, (3) the ORB UMAC counselor, or (4) use the Mental Health Network (MHN).¹³ This new approach by his office differs from what we were told during our evaluation work that preceded the 2008 report. At that time, the director said that the employee was referred to either Amtrak's EAP or the MHN providers.

We discovered another inconsistency during this evaluation, which centered on how to handle an employee multiple ORB mark-off. The March ESC meeting agenda included a proposal to refer employees with multiple mark-offs to the UMAC counselor. Although the meeting minutes did not mention the issue, the ORB Director said that ESC agreed that employees with multiple mark-offs would be referred to the UMAC counselor. The ORB Director also said that he did not think it mattered who saw the employee. However, because the UMAC counselor is not SAP-certified, this action further raises concerns that employees may not receive appropriate diagnosis and treatment.

In our view, the employee referral and follow-up process is a critical component to ensuring the long-term rehabilitative interests of the employee who may be at risk due to a substance abuse addiction problem. While the program provides assurance to employees that there will be no adverse job consequences for marking-off, it also has a responsibility to provide Amtrak, FRA, and the traveling public with assurance that employees are properly referred, when appropriate, to qualified counselors, and treated if they have a substance abuse problem. This is particularly important for safety-sensitive hours-of-service employees and employees who repeatedly mark-off. Because the ORB Program has not been able to provide that assurance, Amtrak has not been able to satisfy FRA that it is exercising the required due diligence in identifying and treating substance abuse problems.

¹³ The Amtrak EAP counselor is a certified SAP counselor licensed to evaluate and treat substance abuse. The peer counselor is an Amtrak volunteer employee who has received minimal counselor training and is not EAP-licensed or SAP-certified. The one UMAC counselor is likewise not EAP-licensed or SAP-certified. The MHN is the country-wide network of certified treatment abuse facilities for use by Amtrak employees. Effective January 1, 2009, United Behavioral Health replaced MHN.

ORB Does Not Have Standards or Guidelines to Determine If and When an Employee Is Referred for Counseling

An underlying problem that also limits assurance that the program is appropriately referring employees for treatment is that the Amtrak ORB Program has not established guidelines regarding what level of intervention and assistance will be provided when employees mark-off, especially hours-of-service employees and employees who mark-off multiple times. The CSX Railroad's ORB mark-off policy defines the appropriate intervention by ORB and union officials for each mark-off, and allows for a maximum of three ORB mark-offs during a 12-month period, with each one having a 1-year period of time before it can be expunged from the employee's record.

CSX First Mark-off. In a first mark-off, the ORB team captain immediately contacts the individual and discusses the facts surrounding the mark-off. The captain offers whatever assistance that may be necessary. The employee discussion normally involves a combination of the ORB team captain, an ORB system coordinator, and the employee's local union official.

CSX Second Mark-off. In a second mark-off, the team captain and the local union chairman contact the employee, discuss the facts of the mark-off, and review the guidelines for the ORB program. The team captain and union chairman use their judgment to determine whether to refer the employee to the EAP. The employee is also told that a third mark-off will definitely lead to a referral to the EAP counselor, in accordance with the Co-Worker By-Pass Agreement.¹⁴

CSX Third Mark-off. In a third mark-off, the team captain, local chairman, ORB system coordinator, and general chairman contact the employee and discuss the mark-off. The team captain consults with the ORB system coordinator and the employee's general chairman. The employee is removed from service and instructed to contact the EAP counselor within 5 days, per the Co-Worker By-Pass Agreement. The ORB system coordinator then contacts local management (also per the agreement). The employee's ORB mark-off privilege is suspended for 1 year. After that year, the third mark-off is removed and the employee reverts back to a two-mark-off status.¹⁵ An employee's ORB mark-off privilege can also be rescinded at any time if the ORB system coordinator has evidence of employee abuse of this privilege.¹⁶

We asked FRA what assured them that CSX employees in crisis were receiving the help they needed. FRA responded that it had confidence that CSX employees were properly assessed and,

¹⁴ The Co-Worker By-Pass Agreement is a signed agreement between the unions and management that permits a fellow employee to notify management of an unsafe employee who is under the influence of drugs or alcohol. Management removes the unsafe employee from service and that employee is required to contact Amtrak's EAP for an evaluation. If EAP determines the employee requires substance abuse counseling, the employee is required to follow EAP's guidance and follow-up supervision for a 2-year period.

¹⁵ An employee's third mark-off is erased after one year from the date of the mark-off. The employee will then remain at a level of two-mark-offs.

¹⁶ An employee can be referred to EAP at any time after a mark-off if it is decided that this is necessary. The third mark-off requires an EAP referral automatically through the Co-Worker By-Pass Agreement.

when needed, treated. Labor officials and volunteers (captains) led the program at the day-to-day level. They involved the system coordinators as needed, and all parties worked closely with the EAP department to ensure that employees who needed to be referred got the help they required. They noted that this level of transparency and cooperation, as well as the focus on ensuring that employees are properly diagnosed and treated, does not exist in the Amtrak ORB Program.

The Amtrak program lacks similarly defined levels of intervention or consequences for employee multiple mark-offs. (See Appendix III for a detailed comparison of the CSX and Amtrak ORB mark-off approaches.) Instead of having defined interventions and consequences for multiple mark-offs, we were told during our initial evaluation, the Amtrak ORB staff deals individually with each employee and each mark-off; each volunteer determines the degree of intervention needed to help an employee in each individual circumstance. During this review, the ORB Director said that he does not agree with the CSX mark-off policy model that limits the number of mark-offs an employee can use. He said that he and his staff prefer to deal with each employee mark-off individually and then determine the level of help the employee needs. He previously told us that a key feature of Amtrak's ORB Program is that there are no consequences when employees mark-off.

We believe that it is reasonable that a defined set of steps with consequences be established for employees who mark-off multiple times, because multiple mark-offs are a strong indication that the employee may have an active substance abuse problem. Like the CSX model, it should be naturally understood that an employee may be referred to EAP if the mark-off situation warrants, regardless of the number of mark-offs.

Recommendation

The President and CEO should direct the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to work with the ESC to establish mark-off guidelines and consequences, track peer-counselor interactions with and referrals of employees, and ensure that employees are appropriately referred to and properly evaluated by a certified SAP-credentialed counselor within the EAP department. Further, employees with multiple ORB mark-offs should be required to contact Amtrak's EAP, and not the UMAC.

Management Comments and OIG Analysis

Management agreed with our recommendation for the ESC to establish mark-off guidelines and consequences, track peer-counselor interactions with and referrals of employees, and ensure that employees are appropriately referred to and properly evaluated by a certified SAP- credentialed counselor within the EAP department. Further, employees with multiple ORB mark-offs are to be required to contact Amtrak's EAP, and not the UMAC. An ESC meeting is to be held prior to May 31, 2011, to discuss the recommendation and develop the guidelines to be instituted by the ESC. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives is to formalize and distribute the guidelines in writing by June 30, 2011.

We consider management's comments to be responsive to our recommendation.

Amtrak's UMAC, Peer Counselor, and Care Programs Should Report to EAP

Amtrak's ORB continues to oversee important employee counseling-type programs that would be better served by reporting to Amtrak's EAP. Our initial evaluation identified three other programs that provide "counseling" to employees, and recommended that they be moved from ORB to the Office of Health Services under the Vice President for Human Resources—two programs to EAP and the third to the Health Services unit. The programs are (1) the Union Member Assistance Coordinator (UMAC) Program, which provides relapse support to employees returning to work from drug and alcohol treatment; (2) the Peer Counseling Program, which helps as a point of contact for employees in crisis and guides them to needed professional support services; and (3) the Critical Assistance and Response for Employees (CARE) Program, which assists employees involved in critical incidents in which there is serious bodily injury or death of employees, passengers, or trespassers.

In management's 2009 response to our initial report, the VP for Labor Relations discounted this recommendation, saying that the separation of these programs from under ORB could lead to a potential rift with labor. The objection was purely on the basis that the labor organizations may object because of their strong support for continuing these satellite programs as part of the ORB Program. His response did not address the risks associated with current practices or the benefits of ensuring proper supervision by staff with SAP certifications and professional counseling credentials. Specifically regarding the CARE program, he said that since it was "a negotiated labor/management agreement, even if such a recommendation were considered appropriate, labor and management would need to collectively agree." This is not true. The company and the unions negotiated the Trauma Team guidelines for CARE. There is no organizational component that stipulates who the program reports to in the company.

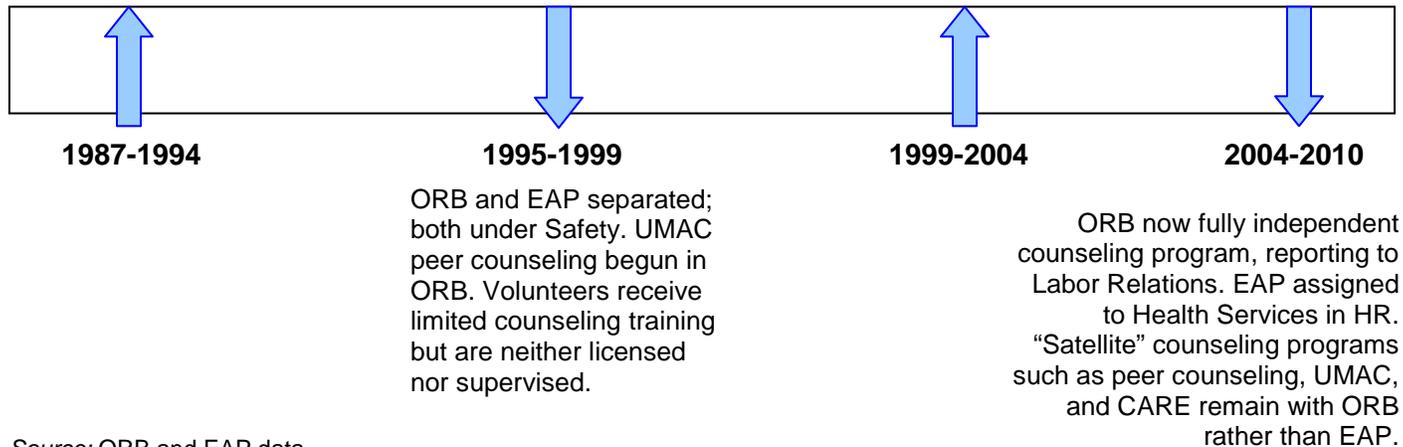
ORB's Counseling Role Evolved and Expanded over the Years

When formed in 1987, the ORB program consisted of two labor coordinators and one management employee to lead the grass roots effort of peer awareness, education, and prevention. The program's founding goal, which is still reflected in Amtrak's ORB Program mission statement, was to have a simple organization using union-led labor coordinators and volunteers: "Operation RedBlock [ORB] is a Union-developed, Company-adopted drug and alcohol peer prevention/intervention program. It emphasizes awareness, education, and prevention of drug use through union-led prevention committees. The program aims to change attitudes, to reduce the tolerance of nonusers to job-related drug and alcohol use, and to encourage users to seek assistance." However, the program has evolved over the years to incorporate other volunteer counseling services that in most cases compete with services provided by Amtrak EAP. While trained volunteers may be a useful resource to help employees, they should be supervised by SAP-certified counselors, who are located in EAP, not ORB. Figure 2 summarizes these changes.

Figure 2. ORB's Counseling Role, 1987–2010

ORB reports to EAP, which also houses CARE. EAP also initiates relapse prevention for those returning from inpatient drug or alcohol treatment.

EAP placed under ORB director (not licensed/certified); ORB expands at EAP expense.



Source: ORB and EAP data.

1987–1994. Between 1987 and 1994, ORB was located in Human Resources and reported directly to Amtrak's EAP Director, who was a licensed and SAP-credentialed counselor. For example, the CARE Program was started in 1988 under EAP. CARE's policy covers all Amtrak Train and Engine Service employees. The goal is to have a trained Critical Incident Response Team (CIRT) employee initially contact the affected employee for a personal intervention. Depending on the type of accident, the employee would be called by the EAP counselor for an assessment to determine if the employee is in need of time off under CARE. An EAP assessment is required for any employee involved in an incident that involves a fatality or serious injury.

Similarly, EAP started to use relapse prevention specialists in 1988 to work with employees returning from inpatient alcohol and/or drug treatment. These employees, while not SAP-certified, were trained and managed by the EAP counselors to be a point of contact for employees while in treatment under EAP supervision.

1995–1999. However, in 1995, the company separated the EAP and ORB programs and located both within the Safety Department. It was during this time that ORB began to shift its focus from solely peer awareness, education, and prevention efforts by launching the two new programs using employee volunteers who worked with other employees returning from inpatient alcohol and/or drug treatment. The UMAC and Peer Counselor programs were similar to the Relapse

Prevention Specialist Program managed by EAP, but none of the members of these volunteer groups were supervised by an SAP- certified counselor. Instead, they received limited training in “psychology and counseling” concepts so that they could recognize relapse behaviors in the workplace. Under ORB, peer counselors provided similar services as the relapse prevention specialists, but without professional and licensed supervision.

1999–2004. Between 1999 and 2004, the company placed the EAP program under the ORB Director, who was not a licensed or SAP-certified counselor. During this time, ORB continued to expand its counseling services at the expense of EAP certified counselors. For example, in 2001, ORB created two new uncertified UMAC positions.

2004–2010. The ORB’s evolution from a volunteer alcohol awareness, education, and prevention program to an independent counseling program was completed when the company again separated the two departments in 2004. ORB was assigned to Amtrak’s Labor Relations Department and EAP was assigned to the Health Services unit in the Human Resources Department. However, rather than placing the satellite counseling programs within EAP, ORB was allowed to continue to manage the peer counselor, UMAC, and CARE programs.

Since that time, the UMAC and peer counselor programs have essentially operated as an unofficial, de-facto EAP. These satellite programs no longer act solely as a point of support for an employee who has returned to the workplace after having gone through an inpatient program for alcohol and/or drug use. Rather, employees who mark-off are encouraged to access one of these satellite programs to either discuss further their drug and/or alcohol use or receive “counseling-type” advice. This shift to volunteer “counselors” under the ORB Director is of concern because it may discourage employees who are in crisis from contacting Amtrak’s EAP and getting professional help. Also, none of the three ORB managers who oversee these satellite groups are SAP-certified or have a master’s degree in social work (MSW)¹⁷ or a master’s degree in psychology.

To illustrate, the UMAC program currently consists of only one counselor, who is not SAP-certified or a credentialed EAP counselor. He is now handling employee multiple mark-off referrals in addition to maintaining an active case load of 22 employees who completed drug and alcohol treatment, plus 52 employees for follow-up care. The UMAC counselor is part of the ORB staff and reports to an ORB manager, who is also non-SAP-certified. Conversely, Amtrak’s EAP counselors are both SAP-certified and licensed counselors with the required degree, which allows them to provide employees with professional drug and alcohol evaluation and counseling services under the FRA regulations. Recent Amtrak correspondence with FRA suggests that the UMAC program is also now maintaining employee documentation regarding the communication and counseling/intervention work that it performs with individual employees. The advantages of

¹⁷ An MSW must be received from a graduate school approved by the Council on Social Work Education (CSWE). It requires 2 years of graduate study in combination with 2 years (900 hours) of internship, also called field experience.

having the UMAC and peer counseling programs under EAP supervision are that the counseling-type activities offered within these programs will be performed under the supervision of licensed, degreed counseling professionals.

The current Peer Counselor Program consists of 43 union and management peer counselors and eight peer support officers from the Amtrak Police Department. The peer counselors receive limited training—2-3 days of introductory psychology and counseling principles. They are unpaid volunteers, who are now supposed to be the first point of contact for an employee in crisis so that they can provide information about Amtrak’s support services and/or guide the employee to needed treatment. Like the UMAC counselor, the peer counselor is also asked to maintain close contact with employees returning from drug and/or alcohol treatment to identify signs of possible relapse.

The CARE program does not have anything to do with drug and alcohol identification and education. There is nothing in the ORB mission statement that aligns with the referral principles of the CARE program. Since CARE works closely with EAP already, it makes sense to align it there organizationally as well.

Other Railroads Use EAP Programs to Provide Counseling Services

The benchmark data we compiled in our 2008 evaluation showed that Amtrak’s ORB is the only one within the railroad industry that attempts to roll in employee “counseling-type” activities and aftercare elements into its ORB peer-prevention and education program’s mission. The Class 1 railroad benchmarking data showed that when these “counseling-type” services existed, they were placed under the EAP department, and the CARE programs were placed under the health services/medical services departments.

Recommendation

We recommend that the President/CEO direct the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to take the lead in reassigning the Critical Assistance and Response for Employees (CARE), Peer Counselor, and UMAC programs to the EAP department.

Management Comments and OIG Analysis

Management agreed with our recommendation for the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to take the lead in reassigning the Critical Assistance and Response for Employees (CARE), Peer Counselor, and UMAC programs to the EAP department. An ESC meeting is to be held prior to May 31, 2011, at which time the ESC will discuss whether any non-counseling functions should remain within ORB. All counseling functions are to be reassigned to the EAP department by October 1, 2011.

We consider management's comments to be responsive to our recommendation.

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Appendix I

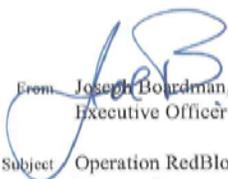
COMMENTS FROM AMTRAK'S PRESIDENT AND CEO

NATIONAL RAILROAD PASSENGER CORPORATION
30th Street Station, 5th Floor Southeast, Philadelphia, PA 19104

Memo



Date March 3, 2011

From  Joseph Boardman, President and Chief Executive Officer

To Ted Alves, Inspector General

Subject Operation RedBlock: Actions Needed to Improve Program Effectiveness Report E-11-01

cc Lorraine Green, VP, Human Resources, Labor Administration, and Diversity Initiatives
Jessica Scritchfield, Principal Audit / Controls Officer

This letter is in response to Office of Inspector General ("OIG") evaluation report number E-11-01 "Operation RedBlock: Actions Needed to Improve Program Effectiveness", dated February 3, 2011.

The Office of Inspector General (OIG) draft evaluation report provides useful information on which Amtrak management can take action. Management agrees with the recommendation to make changes to the Operation RedBlock (ORB) program. However, we believe these recommendations and our commitment to implementation do need to be placed in the context of Amtrak's December 7, 2010 meeting with labor leaders during which the OIG presented their findings and recommendations, the FRA reviewed applicable regulations and concerns with ORB, and Amtrak proposed fundamental changes to ORB. In response to Amtrak's position, certain labor leaders requested Amtrak postpone implementation of its proposal until management and labor leaders could meet to discuss potential concerns with the proposal. We have agreed to withholding decisions for a 60-day period to allow a full discussion with labor on most of the program issues. These discussions have begun and are on going. We have, however, proceeded with one change, which is the removal of the Manager over ORB effective March 1, 2011.

Management's response to each of the recommendations is detailed below.

Recommendation 1:

Ensure that the ORB Executive Steering Committee convenes on a regularly scheduled basis, at least semiannually, to review program performance and provide oversight and direction to improve program operations.

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Management Response:

Management agrees with the recommendation for the ORB Executive Steering Committee to convene on a regularly scheduled basis, at least semi-annually, to review program performance and provide oversight and direction to improve program operations. Prior to May 31, 2011, an Executive Steering committee meeting will be held at which time a schedule for future periodic meetings, at least semi-annually, will be developed. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives will forward this schedule to the OIG by June 7, 2011.

Recommendation 2:

Ensure that the ORB Executive Steering Committee establishes a process and timeline for the development of meaningful performance goals that can be used to measure the effectiveness of the program and compliance with federal regulations.

Management Response:

Management agrees with the recommendation for the ORB Executive Steering Committee to establish a process and timeline for the development of meaningful performance goals that can be used to measure the effectiveness of the program and compliance with federal regulations. Prior to May 31, 2011, an Executive Steering Committee meeting will be held at which time these recommendations will be discussed and a timeline established to develop and implement meaningful performance goals. In advance of the meeting, the Vice President for Human Resources, Labor Administration, and Diversity Initiatives will prepare a white paper of the types of performance goals that would be useful in measuring the program's effectiveness, taking into consideration the OIG's recommendations, FRA/DOT regulations, and Amtrak policy. This will be presented to the ORB Executive Steering Committee as a starting point for the discussion. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives will forward the timeline established to develop and implement meaningful performance goals to the OIG by June 7, 2011.

Recommendation 3:

Ensure that the ORB Executive Steering Committee implements processes to report reliable and detailed information related to ORB activities, including mark-offs and multiple markoffs, by craft, time period, and location, while also ensuring that personal or confidential information is protected from release.

Management Response:

Management agrees with the recommendation for the ORB Executive Steering Committee to implement processes to report reliable and detailed information related to ORB activities, including mark-offs and multiple mark-offs, by craft, time period, and location, while also ensuring that personal or confidential information is protected from release. Prior to May 31, 2011, an Executive Steering Committee meeting will be held at which time these recommendations will be discussed and a timeline established to develop the criteria to report reliable and detailed information related to ORB activities. In advance of the meeting, the Vice President for Human Resources, Labor Administration, and Diversity Initiatives will prepare a white paper of the types of data that should be reported.

This will be presented to the ORB Executive Steering Committee as a starting point for the

discussion. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives will forward the data elements of the reports to be developed and the timeline established to develop the reports to the OIG by June 7, 2011.

Recommendation 4:

Ensure that the ORB Executive Steering Committee establishes mark-off guidelines and consequences, tracks peer-counselor interactions with and referrals of employees, and ensures that employees are appropriately referred to and properly evaluated by a certified SAP-credentialed counselor within the EAP department. Further, employees with multiple ORB mark-offs should be required to contact Amtrak's EAP, and not the UMAC.

Management Response:

Management agrees with the recommendation for the ORB Executive Steering Committee to establish mark-off guidelines and consequences, track peer-counselor interactions with and referrals of employees, and ensure that employees are appropriately referred to and properly evaluated by a certified SAP-credentialed counselor within the EAP department. Further, employees with multiple ORB mark-offs should be required to contact Amtrak's EAP, and not the UMAC. Prior to May 31, 2011, an Executive Steering Committee meeting will be held at which time these recommendations will be discussed and guidelines will be developed and instituted by the Steering Committee. The Vice President for Human Resources, Labor Administration, and Diversity Initiatives will formalize and distribute the guidelines in writing by June 30, 2011.

Recommendation 5:

Ensure that the Vice President for Human Resources, Labor Administration, and Diversity Initiatives takes the lead in reassigning the Critical Assistance and Response for Employees (CARE), the Peer Counselor, and the UMAC programs to the EAP department.

Management Response:

Management agrees with the recommendation for the Vice President for Human Resources, Labor Administration, and Diversity Initiatives to take the lead in reassigning the Critical Assistance and Response for Employees (CARE), the Peer Counselor, and the UMAC programs to the EAP department. Prior to May 31, 2011, an Executive Steering Committee meeting will be held at which time the committee will discuss whether there are any non-counseling functions that should remain within ORB. All counseling functions will be reassigned to the EAP department by October 1, 2011.

Appendix II

THE ORB PROGRAM AND FRA REGULATIONS

FRA cited Title 49 CFR § 219.105(b), which requires Amtrak to exercise “due diligence” to ensure that covered employees are complying with the alcohol and drug prohibitions of 49 CFR §§ 219.101—Alcohol and Drug Use Prohibited, 219.102—Prohibition on Abuse of Controlled Substances, and 49 CFR § 240.119(b)—Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol/Drug Rule Compliance.

The Amtrak ORB Program falls under federal regulation 219, Subpart E—Identification of Troubled Employees, which requires that each railroad adopt, publish, and implement policies “to prevent the use of alcohol and drugs in connection with covered service.”¹⁸ Specifically, each railroad is required to adopt, publish, and implement “a policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part” (Voluntary Referral Policy, Section 219-403) and “a policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part” (Co-Worker Report Policy, Section 219-405). Amtrak has published and implemented policies that satisfy these two FRA requirements and looks to its EAP department to provide the counseling or treatment required by the FRA regulations.

In lieu of these two policies, “a railroad may adopt, publish, and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies have the written concurrence of the recognized representatives of such employees” (Alternate Policies, Section 219.407). Since Amtrak fully complies with the two policies mentioned in the preceding paragraph, there is no federal regulation that requires Amtrak to maintain an Operation RedBlock Program under Section 219-407, Alternate Policies. However, it does not prohibit a railroad from establishing a program that has as its policy the prevention of alcohol or drug use in railroad operations.

With this as its goal, Amtrak established its ORB Program under the above Alternate Policies and obtained the required written concurrence from union representatives for its employees to participate in an ORB Program. It is important to point out that as an alternate policy, the ORB Program is neither certified nor required to provide counseling and treatment services for employees. Amtrak’s EAP department is designated to perform these services under sections 219-403 and 405 outlined above.

¹⁸ A covered-service employee is the same as an hours-of-service employee.

Further, recent FRA correspondence with Amtrak suggests that Amtrak, through its ORB Program, may not be in compliance with Title 49 CFR § 219.105(b), which requires Amtrak to exercise “due diligence” to ensure that covered employees are complying with the alcohol and drug prohibitions of 49 CFR §§ 219.101—Alcohol and Drug Use Prohibited, 219.102—Prohibition on Abuse of Controlled Substances, and 49 CFR § 240.119(b)—Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol/Drug Rules Compliance.

Appendix III

COMPARISON OF CSX AND AMTRAK ORB MARK-OFF PRACTICES

First mark-off: CSX. In a first-time mark-off, the RedBlock team captain immediately contacts the individual and discusses the facts surrounding the mark-off and offers whatever assistance that may be necessary. The employee discussion may involve a combination of the RedBlock team captain, an ORB system coordinator, and the employee's local union official.

First mark-off: Amtrak. The Amtrak ORB approach is similar to what is used by the CSX program.

Second mark-off: CSX. In a second-time mark-off, the team captain and the local union chairman contact the employee, discuss the facts of the mark-off with him or her and the guidelines for the Operation RedBlock program. The employee is told that if a third mark-off happens, the employee will be referred to the EAP counselor, in accordance with the Co-Worker By-Pass Agreement.

Second mark-off: Amtrak. There is no similar consequence with Amtrak's ORB program when an employee uses a second ORB mark-off. Rather, the employee is encouraged to see the UMAC counselor, who is not a certified substance abuse professional (SAP).

Third mark-off: CSX. In a third-time mark-off, the team captain, local chairman, ORB system coordinator, and general chairman contact the employee and discuss the mark-off. The team captain consults with the ORB system coordinator and the employee's general chairman. If all agree, the employee is removed from service and is instructed to contact the EAP counselor within 5 days per the Co-Worker By-Pass Agreement. The ORB system coordinator then contacts local management per the agreement. In addition, the employee's ORB mark-off privilege is suspended for 1 year. After that year, the third mark-off is removed and the employee reverts back to a two-.¹⁹ An employee's ORB mark-off privilege can be rescinded at any time if the ORB system coordinator has evidence of employee abuse of this privilege.

Third mark-off: Amtrak. The Amtrak ORB program does not have a similar consequence for a third mark-off. At Amtrak, the employee is again encouraged to see the UMAC counselor. Employees are not taken out of service, required to contact EAP, or required to be evaluated by a certified substance abuse professional (SAP).

¹⁹ An employee's third mark-off is erased after one year from the date of the mark-off. The employee will then remain at a level of two-mark-offs, in case a future third mark-off is ever needed.