



**Public Hearing**  
**Transcript of Hearing Proceedings and Witness Testimony,**  
**October 7, 2008**  
(182 Pages)

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*  
In the matter of: \*  
\*  
THE PUBLIC HEARING \*  
ON THE FATAL MOTORCOACH \* Docket No. 68754  
ACCIDENT NEAR VICTORIA, TEXAS \*  
JANUARY 2, 2008 \*  
(FOCUSED ON LOOPHOLES THAT \*  
ALLOW REGISTRATION OF NON- \*  
COMPLIANT FOREIGN VEHICLES) \*  
\* \* \* \* \*

National Transportation Safety Board  
Board Room and Conference Center  
429 L'Enfant Plaza East, S.W.  
Washington, D.C. 20694

Tuesday,  
October 7, 2008

The above-entitled matter came on for hearing, pursuant  
to Notice, at 9:00 a.m.

BEFORE: DEBORAH A. P. HERSMAN, Chairman  
MICHELE BECKJORD, Hearing Officer  
DR. VERNON S. ELLINGSTAD  
BRUCE MAGLADRY

## APPEARANCES:

Technical Panel:

PETE KOTOWSKI, Investigator-in-Charge,  
 Office of Highway Safety (PPT)  
 GARY VAN ETTEN, Motor Carrier Group Chairman,  
 Office of Highway Safety  
 JIM LeBERTE, Motor Carrier Investigator,  
 Office of Highway Safety  
 DENNIS COLLINS, Human Performance Investigator,  
 Office of Highway Safety  
 RON KAMINSKI, Survival Factors Investigator,  
 Office of Highway Safety

Panel 1:

JOSEPH COMÉ, U.S. DOT, Office of Inspector General  
 LARRY MINOR, Federal Motor Carrier Safety  
 Administration  
 MIKE ELLIS, TXDOT, Motor Carrier Division  
 CAPT. DAVID PALMER, TXDPS, Highway Patrol Division  
 DARRELL L. RUBEN, Federal Motor Carrier Safety  
 Administration  
 MICHAEL CRAIG, U.S. Customs and Border Protection  
 EUGENIO GARZA, JR., U.S. Customs and Border Protection

Panel 2:

TIM ADAMS, IRP, Inc.  
 BOBBY JOHNSON, State of Texas, Department of  
 Transportation  
 DEBRA HILL, State of California, Department of  
 Motor Vehicles  
 DONALD JOHNSON, 5Star Specialty Programs

## APPEARANCES (cont.):

Parties:

DAVID HUGEL, Federal Motor Carrier Safety  
Administration  
CLAUDE HARRIS, National Highway Traffic  
Safety Administration  
DENNIS BERTRAND, Volvo/Prevost Car, Inc.  
MARRY PAT PARIS, IRP, Inc.  
NORM LITTLER, American Bus Association  
KEN PRESLEY, United Motorcoach Association  
EUGENIO GARZA, JR., United States Customs and  
Border Protection  
JOSEPH W. COMÉ, United States Department of  
Transportation, Office of the Inspector General

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Adjourn	

P R O C E E D I N G S

(9:00 a.m.)

1  
2  
3 CHAIRMAN HERSMAN: Good morning and welcome. I am  
4 Deborah A. P. Hersman, a member of the National Transportation  
5 Safety Board and Chairman of this Board of Inquiry.

6 The National Transportation Safety Board is an  
7 independent federal agency charged by Congress to investigate  
8 accidents in all modes of transportation. We provide independent  
9 oversight of government and private entities involved in  
10 transportation.

11 Today we will begin a one and a half day focused hearing  
12 to examine some of the facts and circumstances surrounding a  
13 motorcoach rollover accident that occurred near Victoria, Texas,  
14 on January 2, 2008. In this accident, one person was killed and  
15 47 others were injured.

16 On behalf of the National Transportation Safety Board,  
17 I'd like to extend our sympathies to those who lost a loved one in  
18 this accident and as well as those who were injured.

19 In the hearing that we begin today, we will examine how  
20 this accident bus came to be operated as a legally registered  
21 motorcoach when, in fact, it should not have been. From the  
22 information uncovered by investigators during our accident  
23 investigation, it appears that the operator of this accident bus  
24 went to some pains to register this bus in two different states  
25 using false or storefront addresses and employing a third party to

1 complete the paperwork.

2           It appears that the complicated steps that the operator  
3 took to register the bus were designed to take advantage of  
4 loopholes in the registration process that would allow him to  
5 obtain a state license plate for a bus that did not meet Federal  
6 Motor Vehicle Safety Standards, or FMVSS.

7           Why is this issue important to the Safety Board? For a  
8 number of reasons that we will explore in this hearing, this  
9 motorcoach operator is probably not unique. There may be others  
10 using the same scheme, or a similar scheme, to accomplish the same  
11 result. It also appears that information systems are inadequate  
12 to assist enforcement and registration authorities in detecting  
13 which passenger-carrying vehicles are non-FMVSS compliant.

14           Furthermore, if such vehicles are appropriately  
15 identified by commercial vehicle inspectors, those inspectors may  
16 not have the authority to place those vehicles out of service.

17           Additionally, the operator apparently maneuvered through  
18 a series of loopholes that allowed him to make his motorcoach  
19 appear to be appropriately licensed to operate so that it could  
20 not be detected. In fact, once the vehicle was registered in the  
21 United States, it was extremely unlikely that any authority would  
22 conduct further inquiry into this vehicle's compliance with the  
23 Federal Motor Vehicle Safety Standards.

24           Finally, the accident motorcoach, and other foreign  
25 manufactured passenger-carrying vehicles like it, do not meet the

1 Federal Motor Vehicle Safety Standards that the Federal Government  
2 has issued and enforces on all vehicles operated in the United  
3 States. This does not mean that foreign made vehicles are unsafe.  
4 However, if the registration process does not detect non-compliant  
5 vehicles, we have no way to determine which vehicles are safe.

6 Members of the traveling public should be assured that  
7 the motorcoach that they are about to board, the one displaying a  
8 license plate from one of our states, is deemed to meet all of the  
9 safety criteria that every other passenger-carrying vehicle on the  
10 highways must meet.

11 The Safety Board is unambiguous about the purpose of our  
12 hearing. We are seeking to establish the facts of how a non-FMVSS  
13 compliant motorcoach came to be registered and operated in the  
14 United States.

15 However, because this hearing is very narrowly focused  
16 on a specific issue, yet touches many other controversial areas,  
17 it may be difficult for those observing not to overstate or to  
18 misstate the reason for the hearing.

19 Therefore, let me further explain to you what this  
20 hearing is not. It is not about the legality of cross-border  
21 operations, although we may learn a lot about these operations in  
22 the course of this hearing. This hearing is not to promote or  
23 critique NAFTA. The accident bus was operated by a registered  
24 carrier, based in Houston that held valid operating authority  
25 issued by the U.S. Department of Transportation. The operation

1 did not arise under the protection or auspices of NAFTA or the  
2 much debated Pilot Program.

3 We are not here to evaluate the Federal Motor Vehicle  
4 Safety Standards, nor are we here to evaluate the safety of  
5 foreign manufactured passenger-carrying vehicles.

6 I caution the participants in this hearing, as well as  
7 the members of the public who are watching on the webcast, to  
8 remain mindful of the specific issue we wish to explore here today  
9 and tomorrow.

10 As Chairman of the Board of Inquiry, I have the duty and  
11 the responsibility to ensure that this hearing stays on course,  
12 and we want to focus on the subject area that we have targeted. I  
13 will exercise my authority as Chairman if stray away from that  
14 course.

15 With that said, let me thank each of you for attending  
16 this important hearing. The traveling public relies on the  
17 Government to keep watchful eye on the safety of our commercial  
18 vehicle transportation system, and today's hearing is a  
19 demonstration of our commitment to do just that.

20 At this point, I would like to introduce other members  
21 of the Safety Board staff, and I also noticed that we have another  
22 Board member who's joined us in the audience today. Member Kitty  
23 Higgins, would you please stand so you can be recognized. Thank  
24 you for coming.

25 Assisting me on the Board of Inquiry will be Mr. Bruce

1 Magladry, who is the Director of our Office of Highway Safety,  
2 Dr. Vern Ellingstad, who is the Director of our Office of Research  
3 and Engineering, and Ms. Michele Beckjord, who is our Hearing  
4 Officer and she is also with the Office of Highway Safety.

5           The Board of Inquiry will be assisted by a Technical  
6 Panel consisting of Board staff from the Offices of Highway Safety  
7 and the Office of Research and Engineering. Members of the  
8 Technical Panel are Mr. Pete Kotowski, our Investigator-in-Charge,  
9 Mr. Gary Van Etten, Motor Carrier Group Chairman, and  
10 Mr. Jim LeBerte, who is our Motor Carrier Factor Specialist.

11           Also serving on Technical Panels that are not seated  
12 there and, staff, if you're here, if you would rise, Mr. Dennis  
13 Collins, Human Performance Specialist, Mr. Ron Kaminski, Survival  
14 Factor Specialist, Mr. Larry Yohe, Vehicle Specialist, and  
15 Dr. Bruce Coury, Safety Study Specialist. Thank you.

16           Other Safety Board staff members assisting with this  
17 hearing are Mr. Gary Halbert, NTSB's general counsel seated behind  
18 me, Ms. Nancy Lewis, my counsel, and Ms. Mary Jones, who is seated  
19 behind the Technical Panel who will be assisting with  
20 administrative matters for this hearing.

21           In accordance with the Safety Board's procedural rules  
22 governing public hearings, the designated parties to a public  
23 hearing include those persons, governmental agencies, companies  
24 and associations whose participation in the hearing is deemed  
25 necessary and in the public interest, and whose special knowledge

1 will contribute to the development of pertinent evidence.

2           There are eight such designated parties in attendance  
3 today, and I will introduce the parties and their spokespersons  
4 for the record. For the Motor Carrier Safety Administration,  
5 Mr. David H. Hugel, Deputy Administrator. Thank you. National  
6 Highway Traffic Safety Administration, Mr. Claude Harris, Director  
7 of the Office of Vehicle Compliance. The U.S. Department of  
8 Transportation, Office of Inspector General, Mr. Joseph Com e,  
9 Assistant Inspector General for Highway Transit and Audits. The  
10 U.S. Department of Homeland Security, Customs and Border  
11 Protection, Mr. Eugenio Garza, Port Director of the Laredo Port-  
12 of-Entry. Mr. Garza, good morning.

13           For Volvo/Prevost, Mr. Denny Bertrand, Regulatory  
14 Compliance Manager. Good morning, Mr. Bertrand. For IRP, Inc.,  
15 Ms. Mary Pat Paris, President and CEO. For the American Bus  
16 Association, Mr. Norm Littler, Vice President of Regulatory and  
17 Industry Affairs and Executive Director for the Bus Industry  
18 Safety Council. And last, but not least, the United Motorcoach  
19 Association, Mr. Ken Presley, Vice President of Industry  
20 Relations. Good morning.

21           A Safety Board public hearing is a fact-gathering  
22 exercise to examine current safety problems and study possible  
23 solutions. The Safety Board will use information from this public  
24 hearing to develop recommendations in our final report.

25           Witnesses have been named who will serve on the panels

1 devoted to specific topic areas. The witnesses testifying at this  
2 hearing will be introduced when they begin their testimony. They  
3 have been selected because of their ability to provide the best  
4 available information on the issues.

5           The Technical Panel will question each of the witnesses  
6 first. I will then call on each party's spokesperson who may  
7 question the witnesses, and then we will conclude with questions  
8 from the Board of Inquiry. Hard copies of the witness and exhibit  
9 list and electronic copies of the items that are already in the  
10 docket are available from Ms. Bridgett Serchak, who is in the  
11 Press Room.

12           I will permit a second round of questions if the record  
13 needs to be clarified or if some new matter has been raised and  
14 requires further explanation. If one of the parties would like a  
15 second round of questions, the designated spokesperson should make  
16 the request and state the reason for the request. I would expect  
17 the second round of questions to be very brief with no repetition  
18 of previously answered questions.

19           A witness who has finished testifying may be subject to  
20 recall should the need arise. Therefore, witnesses should not  
21 leave the hearing without first checking with Mr. Kotowski or  
22 Ms. Beckjord about the likelihood of being recalled.

23           This hearing is not adversarial. There will be no  
24 adverse parties or interests and no formal pleadings or cross-  
25 examination. The Safety Board will not determine liability, and

1 questions directed to the issue of liability will not be  
2 permitted. As Chairman of the Board of Inquiry, I will make all  
3 rulings on admissibility of evidence, and my rulings will be  
4 final.

5 I request that all parties and the technical panel  
6 refrain from asking questions that are narrative type questions.  
7 That is more in the nature of testimony than a question, or beyond  
8 the scope of the issues that have been agreed upon, are repetitive  
9 or are irrelevant, immaterial, or argumentative.

10 We have a lot of ground to cover in the next day and a  
11 half. I ask that the parties make their questions succinct and to  
12 the point, and we'll try to do the same.

13 During this hearing, we will not attempt to determine  
14 the probable cause of the accident. Such analyses and  
15 determinations will be adopted later by the full Safety Board  
16 after all of the evidence gathered from our investigation and  
17 discussed during this public hearing is made part of a public  
18 meeting called our Sunshine Meeting. At that time, the Safety  
19 Board will consider the evidence, review the analyses and  
20 determine the probably cause for our final report.

21 Following the hearing, parties are invited to submit  
22 comments to the Safety Board regarding conclusions that they  
23 believe should be drawn from the evidence and what preventative  
24 measures should be taken. Please submit 15 copies of your  
25 comments to the Safety Board within 30 calendar days after the

1 receipt of the hearing transcript.

2           Please also submit one copy of your comments to each of  
3 the other parties to this hearing as well as to the parties of the  
4 field phase of the investigation. All comments received by the  
5 Safety Board will be made part of our public docket for this  
6 investigation.

7           A transcript of the public hearing and all exhibits  
8 entered into the record will become part of the public record and  
9 are available for inspection at the Safety Board's Office in  
10 Washington, D.C.

11           Anyone wanting to purchase the transcript, including the  
12 parties to this hearing, should contact the Court Reporter,  
13 Mr. Tim Atkinson, directly. In addition, a Safety Board's Highway  
14 Reports are also published on our website, [www.nts.gov](http://www.nts.gov).

15           I would like to use this opportunity to publicly thank  
16 all of the parties for their cooperation and their support and for  
17 their willingness to work with us in the investigation of this  
18 accident.

19           According to industry statistics, over 631 million  
20 passenger trips take place on motorcoaches annually, and the  
21 Safety Board believes it is important to always be vigilant about  
22 the safety of our passenger-carrying vehicles in this country. I  
23 believe this hearing will yield important data and information  
24 that will assist the Safety Board in crafting recommendations that  
25 will help the Federal Government and local agencies as we all

1 strive to improve the safety of our highway system.

2 We will begin this hearing with a statement from our  
3 Investigator-in-Charge, Mr. Pete Kotowski, who will summarize the  
4 facts about the accident and the investigative activities that  
5 have taken place.

6 Mr. Kotowski, will you please begin?

7 MR. KOTOWSKI: Thank you, Member Hersman, Chairman of  
8 the Board of Inquiry, and good morning.

9 The accident trip was a scheduled trip referred to as a  
10 line run from Monterey, Mexico to Houston, Texas, by Capricorn Bus  
11 Lines. The motorcoach was leased to International Charter  
12 Services but utilized by Capricorn Bus Lines under the operating  
13 authority of International Charter Services. Both companies are  
14 U.S. domiciled and are not part of the FMCSA Pilot Program, known  
15 as the Cross Border Demonstration Project.

16 The accident trip originated in Monterey, Mexico, at  
17 about 7:00 p.m. on January 1, 2008. The destination of the trip  
18 was Houston, Texas, at distance of about 456 miles and was  
19 expected to take about 10 1/2 hours. The motorcoach stopped at  
20 the Juarez Lincoln Bridge Number 2 Border Crossing in Laredo,  
21 Texas, from 10:30 p.m. until around midnight. After clearing  
22 Customs, the motorcoach continued at 193 miles to the accident  
23 location.

24 The motorcoach entered the border crossing through the  
25 designated bus lane at the Customs and Border Protection

1 inspection area. Here the passengers and their luggage were  
2 removed from the motorcoach and cleared through Customs. The  
3 Border Patrol agents examined and x-rayed the motorcoach for  
4 contraband. Because there were no FMCSA or Texas DPS inspectors  
5 on duty, no safety inspection was conducted. The motorcoach left  
6 the border crossing at about 12:00 midnight and continued on its  
7 intended route to Houston, a distance of about 321 miles.

8           The accident occurred on January 2, 2008, at 4:13 a.m.  
9 on northbound U.S. Route 59 at Milepost 642A, at the merge with  
10 Spur 91, just south of Victoria, Texas. The accident occurred  
11 when the 2005 Volvo motorcoach, traveling in the left lane of the  
12 two-lane roadway, entered a left-hand curve. The motorcoach  
13 drifted off the right edge of the roadway and the driver steered  
14 to the left.

15           The motorcoach traveled back across both lanes of travel  
16 and the left side of the motorcoach went off the left edge of the  
17 roadway entering an earthen median. While under braking, the  
18 motorcoach continued approximately 220 feet with the left wheels  
19 in the earthen median. The driver over-steered to the right, upon  
20 re-entering the pavement. The driver over-corrected and the  
21 motorcoach began to yaw in a counterclockwise direction and  
22 overturned onto its right side. The motorcoach slid approximately  
23 118 feet to its final resting position.

24           The motorcoach came to rest blocking all of the lanes on  
25 the roadway, and the area was dark with no highway lighting. A

1 2001 Ford pickup truck traveling north on the ramp came upon the  
2 overturned motorcoach and struck the dark underside of the  
3 motorcoach. As a result of this incident, one passenger sustained  
4 fatal injuries and the remaining passengers sustained injuries  
5 ranging from serious to minor. The driver of the motorcoach and  
6 the pickup truck driver sustained minor injuries.

7 Flores Charters and Tours and Capricorn Bus Lines,  
8 Incorporated, are owned by the same family, and did not have  
9 United States Department of Transportation operating authority.  
10 Capricorn leased four buses to International Charter Services that  
11 had U.S. DOT operating authority. International then returned the  
12 buses to Capricorn who operated those buses in their business.

13 Under the lease agreement between Capricorn and  
14 International, Capricorn operated the buses and supplied the  
15 drivers, insurance, maintenance and all operational requirements  
16 under the Federal Code of Safety Regulations and provided  
17 passenger service under International's Department of  
18 Transportation operating authority.

19 The motorcoach in this incident was identified as International.

20 The Federal Motor Vehicle Safety Standards, or FMVSS,  
21 were established in 1966 under the National Traffic and Motor  
22 Vehicle Safety Act of 1966. The purpose of the standards was to  
23 establish the minimum level of motor vehicle safety in the United  
24 States. According to 49 Code of Federal Regulations, Part 571.6,  
25 these standards apply to all vehicles operating in the United

1 States except for military vehicles and vehicles for export.

2 Importers of vehicles must be registered with the  
3 National Highway Traffic Safety Administration, NHTSA.

4 Manufacturers are required to certify compliance with the FMVSS.  
5 The current vehicle identification number, or VIN system, does not  
6 indicate that a vehicle is in compliance with the FMVSS.

7 Vehicles operating in the United States are required to  
8 have a certification label, certifying that the vehicle complies  
9 with the Federal Motor Vehicle Safety Standards. The  
10 certification labels are attached to the vehicle either on or near  
11 the VIN plate. The accident motorcoach VIN plate, as shown here,  
12 did not have a certification label, certifying that the vehicle  
13 was in compliance with the Federal Motor Vehicle Safety Standards,  
14 and according to Volvo, the manufacturer of the motorcoach, the  
15 accident motorcoach did not meet the FMVSS.

16 The accident motorcoach was purchased in Mexico by  
17 Flores/Capricorn, and first registered in Mexico in April of 2005.  
18 The accident motorcoach was stopped in October of 2006 near  
19 Victoria, Texas, for not displaying Texas plates, and in April of  
20 2007, the motorcoach was registered in California through the  
21 International Registration Plan or IRP. And in December of 2007,  
22 was re-registered in Texas for intrastate use only.

23 The accident vehicle was registered in Mexico and the  
24 State of Texas for intrastate operations only at the time of the  
25 accident. The motorcoach displayed both Mexican and Texas license

1 plates.

2 Parties to the investigation are the Federal Motor  
3 Carrier Safety Administration, the Texas Department of Public  
4 Safety, the Texas Department of Transportation, Volvo, the  
5 motorcoach manufacturer, Bendix Commercial Vehicle Systems, a  
6 supplier of some of the brake components.

7 In summary, the accident motorcoach was not manufactured  
8 for use in the United States. The accident motorcoach did not  
9 have a FMVSS certification label certifying compliance with the  
10 FMVSS. The accident motorcoach did not meet the FMVSS and  
11 therefore was prohibited from operating in the United States.  
12 State registration processes allowed the registration of the  
13 accident motorcoach. And that concludes my presentation.

14 CHAIRMAN HERSMAN: Thank you, Mr. Kotowski. Is the  
15 Panel ready to begin their questions? Oh, I'm sorry.  
16 Ms. Beckjord.

17 HEARING OFFICER BECKJORD: Good morning. Will Mr.  
18 Joseph W. Comé, Mr. Eugenio Garza, Mr. Larry W. Minor, Mr. Michael  
19 Craig,  
20 Mr. Darrell L. Ruben, Capt. David Palmer, and Mr. Michael Ellis,  
21 please stand and raise your right hands?

22 (Witnesses sworn.)

23 HEARING OFFICER BECKJORD: Thank you. Please be seated.

24

25 (Whereupon,

1 JOSEPH W. COMÉ  
2 was called as a witness and, after having been previously duly  
3 sworn, was examined and testified as follows:)

4 HEARING OFFICER BECKJORD: Good morning, Mr. Comé.

5 MR. COMÉ: Good morning.

6 HEARING OFFICER BECKJORD: And for the record, would you  
7 please state your full name and business address?

8 MR. COMÉ: Joseph W. Comé. I work at 1200 New Jersey  
9 Avenue in Washington, D.C. with the Department of Transportation.

10 HEARING OFFICER BECKJORD: Okay. And then is your  
11 microphone on, sir?

12 MR. COMÉ: I believe so. The green light's on.

13 HEARING OFFICER BECKJORD: Okay. And what is your  
14 present position?

15 MR. COMÉ: I'm Assistant Inspector General for Highway  
16 and Transit Audits.

17 HEARING OFFICER BECKJORD: And how long have you held  
18 this position?

19 MR. COMÉ: Since May.

20 HEARING OFFICER BECKJORD: And would you please briefly  
21 describe your education, training and/or experience that you  
22 obtained, to qualify you for your current position, or to testify?

23 MR. COMÉ: Since 1999, I have worked as an auditor,  
24 project manager, and program director, with the Office of  
25 Inspector General, doing audits of motor carrier programs. Prior

1 to that, I worked with the Department of Defense for 17 years,  
2 evaluating various Defense activities and programs. I received a  
3 BA from Edinboro State College in Edinboro, Pennsylvania, and a  
4 Master's in Public Administration from the University of  
5 Pittsburgh.

6 HEARING OFFICER BECKJORD: Thank you very much.

7 (Whereupon,

8 EUGENIO GARZA

9 was called as a witness and, after having been previously duly  
10 sworn, was examined and testified as follows:)

11 HEARING OFFICER BECKJORD: Mr. Eugenio Garza, would you  
12 please state your full name and business address.

13 MR. GARZA: My name is Eugenio Garza, Jr., and I work at  
14 the Lincoln Juarez Bridge in Laredo, Texas.

15 HEARING OFFICER BECKJORD: And you're presently employed  
16 by?

17 MR. GARZA: I'm employed by United States Customs and  
18 Border Protection.

19 HEARING OFFICER BECKJORD: Thank you. And your present  
20 position?

21 MR. GARZA: I am the Port Director.

22 HEARING OFFICER BECKJORD: Port Director? And how long  
23 have you held this position?

24 MR. GARZA: Since 1998.

25 HEARING OFFICER BECKJORD: Thank you. And please

1 briefly describe your education, training, and your experience you  
2 obtained, to qualify you for your position, and to testify?

3 MR. GARZA: I have a Bachelor's of Science in Criminal  
4 Justice. I've been a manager for over 20 some years. I came up  
5 through the ranks as a Customs officer. I've been a first line  
6 supervisor. I've been a Chief Inspector. I have held various  
7 positions until being named Port Director in 1998.

8 HEARING OFFICER BECKJORD: Thank you very much.  
9 (Whereupon,

10 LARRY MINOR

11 was called as a witness and, after having been previously duly  
12 sworn, was examined and testified as follows:)

13 HEARING OFFICER BECKJORD: Mr. Minor, please state your  
14 full name and your business address.

15 MR. MINOR: Larry Wayne Minor, 1200 New Jersey Avenue,  
16 Southeast.

17 HEARING OFFICER BECKJORD: Thank you. And will you  
18 please go through the same list of questions that I've just asked  
19 the other gentlemen?

20 MR. MINOR: Yes. I'm employed by the U.S. Department of  
21 Transportation, Federal Motor Carrier Safety Administration. I've  
22 got the position of Associate Administrator for Policy and Program  
23 Development. I've been in this position since July of 2007.

24 Prior to July of 2007, I served as Director of the  
25 Office of Bus and Truck Standards, and prior to that, I served as

1 Chief of the Vehicle and Roadside Operations Division for FMCSA.  
2 As far as educational background, I have a Bachelor's Degree in  
3 Physics from American University and a Master's Degree in  
4 Mechanical Engineering from George Washington University.

5 HEARING OFFICER BECKJORD: Thank you, sir.

6 (Whereupon,

7 MICHAEL CRAIG

8 was called as a witness and, after having been previously duly  
9 sworn, was examined and testified as follows:)

10 HEARING OFFICER BECKJORD: Mr. Michael Craig?

11 MR. CRAIG: Michael Craig, work address is 1400 L  
12 Street, Washington, D.C. Our agency is U.S. Customs and Border  
13 Protection. My position is -- I'm Chief of the Interagency  
14 Requirements Branch in the Office of International Trade for CBP.  
15 I've been in that position since May of 2003.

16 Prior to that, I was a Branch Chief in our Office of  
17 Field Operations for Cargo Release Processing, also in many other  
18 capacities in our Headquarters Office. Prior to that, I was a  
19 field inspector for U.S. Customs in Los Angeles Seaport for 10  
20 years.

21 HEARING OFFICER BECKJORD: Thank you, sir.

22 (Whereupon,

23 DARREL RUBEN

24 was called as a witness and, after having been previously duly  
25 sworn, was examined and testified as follows:)

1 HEARING OFFICER BECKJORD: Mr. Darrell Ruben.

2 MR. RUBEN: Good morning. Darrell L. Ruben. My current  
3 address is 1800 Century Boulevard in Atlanta, Georgia, currently  
4 employed by U.S. Department of Transportation, Federal Motor  
5 Carrier Safety Administration. My current position is Field  
6 Administrator for the Southern Service Center, been in that  
7 position approximately two and a half years.

8 Prior to that, I worked in our Headquarters Office. I  
9 held positions from Commercial Enforcement Chief to Acting Chief  
10 of Enforcement and Compliance, ran our academies for a couple of  
11 years, and started my Government career in New Jersey as an  
12 investigator for approximately 12 years.

13 HEARING OFFICER BECKJORD: Thank you, sir.

14 (Whereupon,

15 CAPT. DAVID PALMER

16 was called as a witness and, after having been previously duly  
17 sworn, was examined and testified as follows:)

18 HEARING OFFICER BECKJORD: Captain David Palmer.

19 CAPT. PALMER: My name is David Palmer. I'm a Captain  
20 with the Texas Department of Public Safety, Highway Patrol  
21 Division. I've been employed with the Department as a captain for  
22 about four years now.

23 Prior to that, I was the -- I've been -- well, I've  
24 moved up through the ranks, but I've got about 24 years of law  
25 enforcement experience. The last nearly 12 years has been

1 specifically related to commercial vehicle enforcement. I've  
2 managed our Motor Carrier Bureau, our Compliance Review Programs,  
3 our commercial vehicle enforcement training for all of our law  
4 enforcement personnel, commissioned and non-commissioned, and I'm  
5 currently the Assistant Statewide Commercial Vehicle Enforcement  
6 Coordinator for Texas.

7 HEARING OFFICER BECKJORD: Thank you, sir.

8 (Whereupon,

9

MIKE ELLIS

10 was called as a witness and, after having been previously duly  
11 sworn, was examined and testified as follows:)

12 HEARING OFFICER BECKJORD: Mr. Mike Ellis?

13 MR. ELLIS: Yes. My name is Mike Ellis. My business  
14 address is 125 East 11th, Austin, Texas. I work for the Texas  
15 Department of Transportation. I'm the Interim Manager of the  
16 Motor Carrier Operations Section. I've been in that position one  
17 month, and prior to that, I was the Supervisor of the Enforcement  
18 Unit within the Motor Carrier Operations Section, been with the  
19 Department approximately 13 years in the motor carrier regulatory  
20 environment for registration and insurance issues.

21 And prior to that I was with the Texas Railroad  
22 Commission at that time when they were doing the Economic  
23 Regulation Enforcement. And I have a Bachelor's Degree from Texas  
24 State University in San Marcus.

25 HEARING OFFICER BECKJORD: Thank you, sir.

1           Ms. Chairman, the witnesses have been qualified, and I  
2 will now turn the witnesses back to you.

3           CHAIRMAN HERSMAN: Thank you. I was trying to jump us a  
4 little bit ahead there. I understand that this panel of witnesses  
5 may have some presentations for us.

6           Mr. Com e, do you have a short presentation or opening  
7 statement that you'd like to offer?

8           MR. COM E: I do.

9           CHAIRMAN HERSMAN: Please proceed.

10          MR. COM E: Thank you. Member Hersman and NTSB staff,  
11 we're pleased to be here today to help you in examining safety  
12 issues related to the January 2008 Victoria, Texas motorcoach  
13 accident.

14          Over the past three years, we've issued nine audit  
15 reports covering highway safety programs. Our most recent  
16 motorcoach related work has focused on issues related to Mexico-  
17 domiciled carriers that are presently operating in the United  
18 States or are planning to do so under the NAFTA cross-border  
19 trucking provisions.

20          Our work has not examined the importation and  
21 registration of foreign passenger buses by United States companies  
22 for use in the United States. So we can't provide any insights  
23 into those issues today. However, our work does allow us to  
24 comment on three areas: safety inspections of buses at the  
25 southern border, FMCSA's guidance on determining Mexican

1 commercial vehicle compliance with Federal Motor Vehicle Safety  
2 Standards, and research on the degree to which Mexican commercial  
3 vehicles operating in the United States comply with FMVSS.

4           First, our prior work identified concerns about whether  
5 sufficient inspections of passenger buses can be conducted at the  
6 southern border. In 2005, we found that insufficient staff  
7 prevented FMCSA and state officials from inspecting passenger  
8 buses at certain designated southern border crossings, and in  
9 2007, we identified a major crossing in Texas where inspections  
10 could not be done during high volume holiday periods. Thus, bus  
11 carriers could avoid inspections during these periods.

12           In response to our recommendations, FMCSA took action to  
13 improve bus inspection plans but some actions are still underway  
14 and our current audit work is reviewing those activities.

15           Second, we identified an issue with implementing  
16 guidance related to FMVSS. In August 2005, FMCSA issued guidance  
17 containing instructions on determining compliance with motor  
18 vehicle safety standards by using vehicle identification numbers  
19 and promised further implementation guidance.

20           We reported, in 2007, that further guidance had not been  
21 provided and might be needed. FMCSA subsequently issued guidance  
22 on the use of software for checking vehicle identification  
23 numbers, and this guidance stated that it applied to Mexico-  
24 domiciled carriers participating in the cross-border demonstration  
25 project. It did not state that it was applicable to U.S.-

1 domiciled carriers. Also, we would note that no bus carriers are  
2 participating in the current demonstration project.

3 Third, we recently completed work assessing FMCSA's  
4 research on the degree to which Mexican commercial vehicles  
5 operating in the United States comply with FMVSS. Of interest to  
6 this hearing, the research assumed that Mexico manufactured buses,  
7 which included buses manufactured in anyplace outside of the  
8 United States and Canada, but those buses operating without an  
9 affixed manufacturing label, it was assumed they did not comply  
10 with FMVSS, and this assumption was based on the lack of industry  
11 information available to determine whether the vehicles were in  
12 compliance when manufactured.

13 The FMCSA sponsored research also provided evidence that  
14 most Mexican-owned commercial vehicles sampled, and over 3,000  
15 vehicles were sampled, by the agency conducting the study, most of  
16 those vehicles sampled entering the United States including buses,  
17 complied with FMVSS, although we did not find that the estimates  
18 based on the sample to be statistically valid.

19 I'll be glad to respond to questions and provide further  
20 details on any of these issues. Thank you.

21 CHAIRMAN HERSMAN: Thank you, Mr. Comé.

22 Mr. Garza, do you have a short presentation or opening  
23 statement?

24 MR. GARZA: Yes, ma'am, I have both.

25 CHAIRMAN HERSMAN: Okay. Please proceed.

1           MR. GARZA: Madam Chairman, members of the Board, I am  
2 pleased to be here today to discuss the Customs and Border  
3 Protection, CBP, role in building a more secure and efficient  
4 border to discuss NTSB's questions related to the processing for  
5 entry and the importation of commercial vehicles into the United  
6 States.

7           The creation of CBP, which established a single agency  
8 -- unified the agency for the United States, is a profound  
9 achievement, and our responsibilities are immense and challenging.  
10 CBP is responsible for protecting more than 5,000 miles of border  
11 with Canada and 1900 miles of border with Mexico and operating 325  
12 ports-of-entry.

13           Each day CBP inspects more than 1.1 million travelers,  
14 cars, conveyances, process more than 70,000 truck, rail and sea  
15 containers, collects more than 84 million in fees, duties and  
16 tariffs, seizes more than 5.5 thousand pounds of illegal narcotics  
17 and seizes more than 4.4 thousand pounds of agricultural items and  
18 pests at our ports-of-entry.

19           Although seven years have passed since September 11,  
20 2001, that day remains a vivid entry to all of us. CBP is keenly  
21 aware of our responsibilities to remain ever vigilant in  
22 protecting the homeland. We understand that the threat is ever  
23 present and the risk ever changing.

24           For this reason, we continually seek better and smarter  
25 means to ensure security of our borders by enhancing all of our

1 operations, including technology and document security  
2 infrastructure, our inspection processes and workforce training.

3           From a strategic and operational standpoint, CBP has  
4 significantly increased our ability to execute our anti-terrorism  
5 and traditional admissions at our nation's borders effectively  
6 more than before, thereby enhancing the security of the United  
7 States, its citizens and the economy.

8           We continue to perform our traditional admissions  
9 including apprehending individuals attempting to enter the United  
10 States illegally, stopping the flow of illegal drugs and the  
11 contraband, protecting our agricultural and economic interests  
12 from harm for pests and diseases, protecting American businesses  
13 from theft of the intellectual property, regulating and  
14 facilitating international trade, collecting import duties and  
15 enforcing United States trade laws.

16           CBP executes its mission at all port-of-entry  
17 environments, air, land, and sea, and inspects travelers arriving  
18 in the United States port-of-entry via the modes of transportation  
19 including those arriving by commercial bus.

20           Commercial bus is defined as a motor vehicle assigned to  
21 carrying more than 16 passengers, usually a fixed route or  
22 according to a pre-determined schedule that meets the requirements  
23 and liability insurance registration under the U.S. Department of  
24 Transportation, DOT, regulations found in Title 49 of the Code of  
25 Federal Regulations, CFR.

1            Customs regulations are found in Title 19 of the CFR.  
2     In most cases, CBP requires the driver, passengers arriving via  
3     commercial bus, to disembark along with personal belongings in  
4     order to present themselves and their belongings for inspection.  
5     CBP requires the conveyance, the driver, the passengers against  
6     its law enforcement data system, determines their admissibility  
7     into the U.S. If employees with federal and state inspection  
8     services have a presence, CBP may refer a bus to them for  
9     inspection if circumstances indicate such a need.

10            CBP is charged with facilitating the orderly, efficient  
11     flow of lawful travel, trade and commerce while stopping  
12     prohibited goods, narcotics and inadmissible persons from entering  
13     the United States.

14            With commercial bus arrivals, the threat of narcotics  
15     and human smuggling is ever present. The CBP officers stationed  
16     at the land border ports-of-entry are trained to conduct effective  
17     inspections and are knowledgeable of roles commonly used by buses  
18     and by potential smugglers.

19            When a commercial vehicle is properly imported into the  
20     United States, a formal entry must be made with CBP. In order for  
21     formal entry to be made, the commercial vehicle must conform with  
22     DOT standards set forth in 49 CFR. The declaration of conformity  
23     is made by the importer on a DOT HS-7 and submitted as part of the  
24     entry packet.

25            CBP has long recognized the need to improve our facility

1 infrastructure more effectively, meet mission requirements.  
2 Modern facilities must address our dramatically changing border  
3 functions, increasing traffic volumes and staffing levels, new and  
4 updated technology and equipment.

5 To that extent, we must also look at co-location of  
6 other regulatory agencies such as Department of State  
7 Transportation, which shares responsibility for security and  
8 safety.

9 To that end, CBP has implemented facility investment  
10 planning process, capital improvement plan for the land border  
11 ports-of-entry. The process ensures a facility and real property  
12 finding is allocated systematically in an objective manner and is  
13 prioritized by the mission critical needs.

14 While CBP operates 162 land border facilities along the  
15 northern and southwest borders, CBP owns only 27 percent of those  
16 facilities. GSA, General Services Administration, owns 58 percent  
17 and leases 15 percent from private states or municipality  
18 entities.

19 Unfortunately, the rapid evolution of CBP's mission  
20 coupled with the years of neglect has left these vital assets in  
21 dire need of modernization and expansion. The average age of our  
22 facilities is 42 years old. They were not designed for our  
23 current operations.

24 Since the terrorists of September 11, 2001, CBP has  
25 given the priority of preventing terrorists and weapons from

1 entering the United States along with maintaining our agency's  
2 mission. These tremendously expanded responsibilities are  
3 stretching our physical resources well beyond what they were  
4 designed to handle. The vast majority of these facilities were  
5 not built to incorporate all of the enhanced security features  
6 that are now present at our ports-of-entry, including non-  
7 intrusive inspection technology, radiation portal monitor vehicle  
8 and carbon inspection systems, x-rays, license plate readers.

9 Our facilities are stretched to their limit and almost,  
10 without exception, cannot accommodate additional functions or  
11 agency presence.

12 I do have a presentation to explain the processes. What  
13 we're looking at here is the Juarez Lincoln Bridge at Laredo,  
14 Texas. For those of you who don't know where Laredo is, it's 150  
15 miles south of San Antonio or 150 miles north of Monterey, Mexico.  
16 It sits on international -- we have four international bridges,  
17 two car garage, a rail bridge and airport, international airport.  
18 It sits on I35, which comes up all the way to Minnesota.

19 The Juarez Lincoln Bridge is the only bridge in Laredo  
20 where we have bus traffic. There are also some buses that come in  
21 at Columbia Bridge, 20 miles west, but it's very minimal,  
22 sometimes one a day and sometimes none a day. The Juarez Lincoln  
23 Bridge has about 100 buses a day. You can see that we have a  
24 dedicated lane for the buses.

25 What you're seeing there is buses coming in. The

1 yellow, what you see on top of the roof, is our radiation portal  
2 monitor. Here, that's what the bus does. It comes into the  
3 radiation portal monitors, and then there's -- it comes right into  
4 our primary lanes. The Juarez Lincoln Bridge has 12 lanes. One  
5 of those lanes is the bus lane, dedicated bus lane. The other is  
6 the essential lane, and the other 10 lanes are regular lanes of  
7 traffic.

8           The bus driver meets the Customs and Border Protection  
9 officer for the first time. The first thing that we do is we  
10 process the driver for documents entering the United States  
11 legally or, in some cases, it maybe a U.S. citizen that's driving  
12 the bus. The buses then go into our systems.

13           As it's coming onto, where the inspector sits, it  
14 automatically goes through our license plate readers and the  
15 radiation portal monitors. The inspector then annotates the bus,  
16 make, model, license plate, on that log that the inspector is  
17 holding there.

18           And then the bus proceeds to -- this is a shot from the  
19 north end of the canopy, and at the north end of the canopy is  
20 where most of the inspections by the FMCSA or DPS take place here.

21           The inspector or the Customs and Border Protection  
22 officer meets the passengers as they're coming off the bus. Our  
23 first priority is to ascertain their citizenship as they're coming  
24 off the bus, and I want to point out that that facility is not a  
25 bus processing facility. That facility is to inspect vehicles and

1 passengers. So what happened with the deregulation of the buses  
2 is we saw an increase of buses to a degree that we had to do  
3 something. It was not an enclosed area. It was not a secure  
4 area. It was a very improvised inspection that we have to inspect  
5 these over 100 buses a day that arrive, and I want to point out  
6 also that they go up on the weekends, probably to 110, 120.

7 July, by far is our biggest traffic month. We've had  
8 days of 157 or 160 some buses a day coming in July. July is our  
9 heaviest when the buses from Mexico are coming in with Mexican  
10 people going on vacations in the United States.

11 The documents are examined by the inspectors. Then the  
12 people take their bags off the buses and we do 100 percent  
13 inspection of all the bags that are coming off the bus. We have  
14 issues with people carrying narcotics on their person, on the  
15 baggage, in the buses themselves. So the buses are very  
16 thoroughly examined.

17 Here you see the inspector -- the Customs and Border  
18 Protection officer. You have to excuse me. I'm previously  
19 Customs, and that was -- they were inspectors but now they're  
20 Customs and Border Protection officers, so I want to address them  
21 as such.

22 This is our data system right here. That's what the  
23 inspector's doing right there, hands the document back to the  
24 passenger. We have automatic readers to make it easy to run those  
25 names of those people there. And then this is the line that they

1 form with their baggage when going to the x-ray. This is part of  
2 an agricultural inspector here, that officer that is inspecting  
3 the baggage that has been x-rayed. They look at the x-ray system  
4 as they're x-raying the bags. They're putting them on the belt.

5           And this is our mobile truck x-ray. All the buses,  
6 while the system is operating -- we image these buses and they're  
7 either imaged with our truck x-ray or are inspected by the K-9  
8 enforcement officers with their canines. And we look at our truck  
9 -- and we do four to five buses at a time with this machine that  
10 we run. Another shot of the x-ray machine.

11           The people that are non-residents and are Mexicans with  
12 Mexican passport and a valid visa, that seek to go beyond the City  
13 of Laredo or the port limits, have to get an I-94. This is the  
14 second canopy there we have at the Lincoln Juarez Bridge. They  
15 come to this canopy here.

16           During the summer, we operate -- or during holidays, or  
17 during Holy Week, or in December and July, we operate the other  
18 side. So they would go get their permit there to travel beyond  
19 the 25 miles of the border. And while they're getting these  
20 permits, FMCSA and DPS are running their safety inspections. This  
21 is another thing that they use as a base, as an office, and as you  
22 notice, there's not much room there at the end of the canopy for  
23 these inspections to occur.

24           These are the buses that are lined up. Most of the  
25 inspections occur at this point or to the left, right there by the

1 bus that's parked there. The people are boarded back up at this  
2 point here, and they're on their way into the United States. That  
3 concludes my presentation.

4 CHAIRMAN HERSMAN: Mr. Garza, thank you very much, for  
5 that excellent presentation, and I had the opportunity to go down  
6 with some of our team to Laredo, and I think that your photos and  
7 the overview provide a very accurate description of the process of  
8 buses crossing the border and the different steps they had to go  
9 through. I'm sure that that was very helpful to the audience.

10 MR. GARZA: Thank you.

11 CHAIRMAN HERSMAN: Thank you. Mr. Minor, do you have a  
12 brief presentation that you'd like to provide?

13 MR. MINOR: Yes, I do. Good morning, Member Hersman,  
14 NTSB senior executives and technical staff. I appreciate the  
15 opportunity to discuss the Federal Motor Carrier Safety  
16 Administration's role in commercial motor vehicle safety in  
17 general, and the agency's responsibility for insuring the safe  
18 operation of trucks and buses used to transport passengers and  
19 freight into the United States.

20 The FMCSA's mission is to save lives and prevent  
21 injuries through education, regulation, enforcement and innovative  
22 research and technology to reduce the number of truck and bus  
23 crashes on the nation's highways. We work towards a safer and  
24 more secure transportation environment through shared  
25 responsibilities with our state partners and stakeholders.

1           Generally, the Federal Motor Carrier Safety Regulations  
2 apply to the operation of trucks and buses in interstate commerce  
3 including the operation of such vehicles by foreign motor carriers  
4 transporting passengers and freight into the United States.

5           All motor carriers operating in the United States,  
6 including Canada and Mexico-based carriers, are required to comply  
7 with all applicable Federal and State Motor Carrier Safety  
8 Regulations concerning the operations of trucks and buses.

9           If, upon inspection by Federal or State Motor Carrier  
10 Safety enforcement personnel, it is determined that a vehicle does  
11 not comply with the Federal Motor Carrier Safety Regulations, or a  
12 serious safety violation that would be likely to cause a crash or  
13 a breakdown, is detected, the vehicle will be placed out of  
14 service and not allowed to proceed on the highway until that  
15 problem is corrected.

16           The roadside inspection procedure is the same for all  
17 commercial motor vehicles operated in the U.S., regardless of the  
18 motor carrier's country of domicile. However, due to statutory  
19 requirements, we only perform bus roadside inspections at border  
20 crossings and destination stops, unless a serious safety defect is  
21 observed.

22           FMCSA and its state partners enforce the Federal Motor  
23 Carrier Safety Regulations which cross reference those provisions  
24 of the Federal Motor Vehicle Safety Standards most closely related  
25 to the safe operation of commercial motor vehicles. Violations of

1 the FMCSRs, including those that cross reference the Motor Vehicle  
2 Safety Standards are cited during roadside inspections. The  
3 references to the Federal Motor Vehicle Safety Standards in our  
4 regulations is intended to ensure that motor carriers maintain the  
5 safety performance features and equipment that the National  
6 Highway Traffic Safety Administration requires vehicle  
7 manufacturers to install if the vehicle is manufactured for sale  
8 and subsequent use in the United States.

9 FMCSA evaluates the current operational safety status of  
10 a vehicle through its inspection criteria, and that is used as an  
11 alternative to relying on a certification label affixed to the  
12 vehicle at the time of manufacture.

13 On March 19, 2002, FMCSA and the National Highway  
14 Traffic Safety Administration, published rulemaking notices  
15 requesting public comment on proposed regulations and policies  
16 directed at enforcement of the statutory prohibition on the  
17 importation of commercial motor vehicles that do not comply with  
18 the applicable Federal Motor Vehicle Safety Standards.

19 After a review and analysis of the public comments  
20 submitted to the 2002 rulemaking notices, we withdrew the  
21 respective rulemaking proposals for certification labels in August  
22 of 2005. FMCSA determined that we could effectively ensure motor  
23 carriers compliance with the applicable Safety Standards through  
24 continued vigorous enforcement of our Motor Carrier Regulations  
25 coupled with enforcement guidance regarding Mexico-domiciled

1 carriers and vehicles.

2           The Department of Transportation is committed to  
3 ensuring the safe operation of trucks and buses on the nation's  
4 highways. We consider the safety benefits and require that all  
5 commercial vehicles operated in the U.S. display a FMVSS  
6 certification label and determine that there are other  
7 alternatives for ensuring highway safety.

8           Thank you for the opportunity to appear before you  
9 today, and we committed to working with the National  
10 Transportation Safety Board to ensure a safe transportation system  
11 for the nation.

12           CHAIRMAN HERSMAN: Thank you, Mr. Minor, for your  
13 presentation. Captain Palmer, do you have a short presentation  
14 for us?

15           CAPT. PALMER: No, ma'am, I do not.

16           CHAIRMAN HERSMAN: Okay. And, Mr. Ellis, how about you?

17           MR. ELLIS: No, I do not, but I'm ready for any  
18 questions.

19           CHAIRMAN HERSMAN: Okay. Super. Then we'll proceed to  
20 the questions from the Technical Panel. Gary, as the Technical  
21 Panel Coordinator, will you please begin questioning for us?

22           MR. VAN ETTEN: Thank you. My first set of questions is  
23 for Customs and Border Protection, and I believe I'd like to  
24 address this first question to Mr. Craig. When is a vehicle  
25 considered to have been imported into the United States under the

1 Customs and Border Protection regulations?

2 MR. CRAIG: A vehicle is considered imported when an  
3 importer or basically an importer arrives the vehicle at one of  
4 our facilities with the intent of entering it into the commerce of  
5 the United States and our, you know, for us that would be  
6 basically a permanent importation.

7 MR. VAN ETTEN: Thank you. And what processes need to  
8 be followed in order to import a vehicle into the United States?

9 MR. CRAIG: Basically, what happens is when a vehicle is  
10 arrived with the intent for being entered into the commerce, a  
11 formal entry is filed, depending on the value of the vehicle.  
12 Anything valued over \$2,000 requires a formal entry. So the  
13 formal entry process is initiated. An importer may file a formal  
14 entry by themselves or they may hire a Customs broker to effect  
15 the entry for them.

16 Part of that process requires classification of the  
17 commodity, in this case a vehicle, using the harmonized tariff  
18 schedules of the United States, which basically is a large book  
19 which identifies, basically, any kind of commodity that shifts  
20 between countries. In this particular case, this would be a bus  
21 capable of carrying more than 16 passengers. So there's a  
22 specific tariff number that's assigned. It's a 10 digit code  
23 that's recognized pretty much internationally, but the 10 digit  
24 code is specific to the United States.

25 The use of that code triggers a number of different

1 things. When the entry information is either transmitted  
2 electronically or presented to us in paper form, on one of our CBP  
3 forms, our officers process it through one of our targeting  
4 systems to look for risk assessment criteria, things of that  
5 nature. That number also triggers an electronic requirement.

6 Because it is a motor vehicle, it would trigger the  
7 requirement for the filing of the data, which is associated with  
8 the NHTSA's HS-7 form. So either the form or the data that  
9 resides on that form would need to be filed electronically. Also  
10 it also triggers the Environmental Protection Agency requirements  
11 under the Clean Air Act.

12 MR. VAN ETTEN: Thank you. And who's responsible for  
13 initiating the process?

14 MR. CRAIG: Generally the importer is responsible.  
15 Whoever the party is that is causing the arrival of the goods at a  
16 U.S. port.

17 MR. VAN ETTEN: And if they don't initiate the process,  
18 is there some method or process in order to detect a vehicle  
19 coming into the United States?

20 MR. CRAIG: Well, if they don't initiate the process, we  
21 generally -- the bus situation is a little different because it's  
22 one of the few forms of our merchandise that can be self-  
23 propelled. It arrives under its own -- it generally arrives under  
24 its own power, and there's a driver with it, and so while it's a  
25 conveyance, it's also merchandise at that point.

1           So, you know, but the entry process -- they don't arrive  
2 without usually having an entry ready, if they're going to be  
3 formally imported.

4           MR. VAN ETTEN: I see. And as part of this process, is  
5 there some sort of -- is there a way to check the vehicle for  
6 Federal Motor Vehicle Safety Standards compliance?

7           MR. CRAIG: Normally, depending on whatever else is  
8 happening, like Mr. Garza mentioned in his opening presentation,  
9 the buses, because of, you know, the size of them, they can be  
10 subject to pretty intensive security inspections because there's  
11 lots of voids, particularly a bus that may be coming for formal  
12 importation because it won't have any passengers at that point.  
13 It usually goes to a separate facility of ours, a cargo processing  
14 facility, and that's generally how we weed out the buses that are  
15 going to be there formal entry and, you know, enter the U.S.  
16 commerce, from those buses that are a part of the -- engaged in  
17 international traffic, that are carrying passengers for hire.

18           So right off the bat, you can kind of tell immediately  
19 what the purpose of the bus is, and where the driver takes it to,  
20 whether they take it to the passenger processing facility or they  
21 take it to the cargo facility.

22           Once our officers are there with it, they may or may not  
23 decide to look for the compliance label. It just depends on the  
24 other factors that they have going on with that particular bus.  
25 They may run a non-intrusive inspection, the x-ray on it. They

1 may run a K-9 on it to make sure there's no contraband in the  
2 voided areas.

3           Generally, it depends on the officer's knowledge and  
4 expertise on whether they may look for the label or not. The fact  
5 that the HS-7 is filed, the data is filed, for the most part  
6 satisfies our requirements for admissibility as long as all other  
7 things on the bus check out.

8           MR. VAN ETTEN: Thank you. The next set of questions  
9 I'd like to address to Mr. Garza. During normal operations at the  
10 border when buses come across, do your officers make a physical  
11 examination of the vehicle for FMVSS compliance? And, if so, how  
12 would they make that determination?

13           MR. GARZA: Each of the bus drivers carries a logbook  
14 with them. In that logbook, they have the registration  
15 certificate. They have the insurance documents. They would do  
16 that. They can also, like Mr. Craig said, look for the label  
17 that's affixed that that bus has been imported.

18           The volume of buses that we have, depending on the bus  
19 line, depending on the make, the majority of the buses that we run  
20 into are U.S. made, with U.S. registrations. We do have the buses  
21 that come in with dual registrations. That would be one reason  
22 why they would look at it. But basically that's how they would  
23 look for it.

24           MR. VAN ETTEN: Is that part of their normal inspection  
25 process to look for FMVSS compliance, evidence of that?

1           MR. GARZA: Yes, that would be part of the job. With  
2 the amount of buses that are coming in, with the responsibilities  
3 that I mentioned, and like I said, I've conducted several  
4 walkthroughs before coming up here, talked to several of the  
5 supervisors and the chiefs, and do they do every bus? No, but  
6 what they tell me is that any bus that is not a regular, that kind  
7 of sticks out, that the bus driver doesn't know the process and  
8 that those buses are looked at, you know, to more degree for  
9 compliance and especially if they're foreign made. And then also,  
10 with the help of FMCSA or DPS to determine whether these buses can  
11 come in or not.

12           MR. VAN ETTEN: Thank you. Just two more real quick  
13 questions. You mentioned just now in your response about a label  
14 that's affixed I believe to the windshield or a window that  
15 indicates that the vehicle has been imported.

16           MR. GARZA: I'm showing my age here, but back when I was  
17 an officer, we would look for a label that would be affixed either  
18 to the door or to the frame underneath the hood of the vehicle.  
19 Normally, on buses, I don't know if that's still done or not, but  
20 certainly something that would really help our officers would be  
21 something that would be affixed to the windshield. That would be,  
22 you know, more than helpful to us, due to the number of buses we  
23 do a day, with the confined spaces that we have, it certainly  
24 would be an aid to our inspections.

25           MR. VAN ETTEN: If I might just, is there a way that we

1 could get an exemplar or picture or that particular label for the  
2 docket?

3 MR. GARZA: I don't have one, and I'm just assuming that  
4 they're still there. Mike, you want to --

5 MR. CRAIG: Are we talking about the compliance label?

6 MR. GARZA: Right, the compliance label.

7 MR. VAN ETTEN: I'm talking about -- well, he made a  
8 reference about a label that's affixed to the vehicle that  
9 indicates the vehicle was imported, unless I've misunderstood the  
10 response.

11 MR. GARZA: I think I mentioned that back when I was an  
12 officer that was one of the things that we would look for on the  
13 vehicles. I don't know whether they're on the buses or not.

14 MR. VAN ETTEN: Okay.

15 MR. GARZA: On the vehicles, they were either underneath  
16 the hood, somewhere on the frame, or on the door itself. I don't  
17 know if they're still doing it or not.

18 MR. VAN ETTEN: And I guess my question is, if it's  
19 still done, would it be possible to get an exemplar of that label,  
20 a picture or --

21 MR. GARZA: If we can get one, sure.

22 MR. VAN ETTEN: Okay. Great. And one last question.  
23 If one of your officers makes a determination that a vehicle is  
24 not FMVSS compliant, what action do they take?

25 MR. GARZA: We hold the bus for entry. If it had not

1 been imported, we would hold it from entering, and if there's  
2 cause, even seize the bus for failure to declare. We look at it  
3 as Mike mentioned, it's merchandise. If it's not been properly  
4 imported and it's operating in the United States, then we would  
5 definitely seize that bus and make them comply before we release  
6 that bus.

7 MR. VAN ETTEN: The question is have you done that  
8 recently? Is that -- do you have a record of any of that  
9 occurring?

10 MR. GARZA: I would have to conduct the research and get  
11 back to you, to see if that has been recently done. I know that  
12 we do it with vehicles, Mexican vehicles. I'm not sure if we've  
13 done that recently with buses.

14 MR. VAN ETTEN: All right. Thank you. I have no more  
15 further questions for this panel or for the Border Patrol folks.  
16 Sorry. Border Protection folks.

17 CHAIRMAN HERSMAN: Other members of the Technical Panel  
18 have questions? Jim, Pete, no questions?

19 (No response.)

20 CHAIRMAN HERSMAN: Okay. We'll move onto the parties.  
21 Department of Transportation, Inspector General, have any  
22 questions?

23 MR. COMÉ: No.

24 CHAIRMAN HERSMAN: No. FMCSA?

25 MR. HUGEL: May I ask for a clarification, Madam Chair.

1 Is this directed at just the witness or all the witnesses? Are  
2 they all going to testify at some point -- respond to questions?

3 CHAIRMAN HERSMAN: Yes, absolutely.

4 MR. HUGEL: Okay.

5 CHAIRMAN HERSMAN: You can direct questions that you  
6 have now to any of the witnesses.

7 MR. HUGEL: All right. I have a question for Mr. Minor.  
8 You heard the Inspector General make reference to several reports  
9 that they have conducted, one including the inadequacy of  
10 facilities at certain border crossings. Could you tell the Board  
11 and the members here what steps, if any, our agency is taking to  
12 address those?

13 MR. MINOR: Yes. The reports that the Office of the  
14 Inspector General referred to pertain FMCSA's compliance with  
15 Section 350 of the 2002 Appropriations Act, and that legislation  
16 put into place various requirements that FMCSA would have to  
17 fulfill prior to opening the U.S./Mexico border to commercial  
18 motor vehicle traffic. And FMCSA has fulfilled all the  
19 requirements of that statute with the exception of the operation  
20 of buses and the agency has not opened the border to unlimited bus  
21 traffic at this time.

22 So those references to the requirements for additional  
23 space, that pertains to, if the agency fully opens the border, and  
24 we are taking steps to increase our bus inspection capacity so  
25 that if indeed at some point in the future the border is opened to

1 unlimited bus traffic, we will have adequate capacity for bus  
2 inspections to fulfill the requirements of Section 350.

3           However, because we have not opened the border at this  
4 time, those Section 350 requirements and the information mentioned  
5 by the OIG really aren't at issue for the agency that we do have  
6 adequate capacity to take care of the business traffic that we are  
7 currently experiencing, and we have adequate safety oversight for  
8 the commercial passenger carriers that are operating currently  
9 within the U.S.

10           MR. HUGEL: Thank you. I have an additional question  
11 related to a statement that was made earlier, and please I'm not  
12 quoting it, I'm paraphrasing it, that vehicles that do not have a  
13 FMVSS certification cannot legally operate in the United States.  
14 To your knowledge, is there any federal law or regulation that  
15 supports this statement?

16           MR. MINOR: Based on my understanding of our Federal  
17 Motor Carrier Safety Regulations, we do not have any requirements  
18 that would prohibit a Canadian or Mexican carrier from operating a  
19 bus into the United States using that bus to transport passengers  
20 into the United States.

21           As long as those carriers comply with our Federal Motor  
22 Carrier Safety Regulations, including those safety regulations  
23 that cross-reference the Federal Motor Carrier Safety Standards,  
24 then those buses can be operated in the U.S. without any violation  
25 of our regulations.

1           And it's important to note that those cross-references  
2 to the FMVSS includes things such as the emergency exits. So we  
3 insure that the emergency exits on the buses are adequate, and if  
4 the emergency exits on those buses are not adequate to ensure the  
5 safe evacuation of the passengers, then we will place the bus out  
6 of service for violation our Federal Motor Carrier Safety  
7 Regulations.

8           MR. HUGEL: Thank you. One additional question for  
9 Mr. Ruben. Comments were made concerning the same issue, the  
10 border crossings and how it's difficult at some of those because  
11 of space limitations to conduct inspections. Could you tell the  
12 Board over the past two years or so, how many inspections of  
13 passenger-carrying vehicles have been conducted at the borders?

14           MR. RUBEN: Yes, sir. In 2007 -- I'm sorry. I'm just  
15 gathering my notes here. In 2007, FMCSA and our state partners  
16 along the southern border performed over 13,500 inspections on  
17 motorcoaches. As of September 2008, we've also performed  
18 approximately 8500 inspections as well to date.

19           MR. HUGEL: Thank you, Mr. Ruben. I have no further  
20 questions, Madam Chair.

21           CHAIRMAN HERSMAN: Thank you, Mr. Hugel. NHTSA.

22           MR. HARRIS: Yes, I have two questions. One for  
23 Mr. Minor and I think one for Mr. Garza.

24           Larry, could you briefly explain to us out-of-service  
25 criteria that deals with detecting certification label on buses or

1 trucks?

2 MR. MINOR: Currently we don't have an out-of-service  
3 item concerning the inspection of the certification label. FMCSA  
4 focuses on enforcing the Federal Motor Carrier Safety Regulations  
5 including those safety regulations that cross-reference the FMVSS.

6 However, we do not specifically inspect for the FMVSS  
7 certification label and the lack of a FMVSS certification label  
8 would not be considered an out-of-service item by FMCSA or the  
9 state inspectors.

10 MR. HARRIS: Thank you.

11 The next question will be for Mr. Garza. You briefly  
12 mentioned earlier that on occasions, you would do bus inspections  
13 and possibly look for labels on the buses. In your detection for  
14 the labels, did you just note the presence of the label or did you  
15 actually look to see what was written on the label itself?

16 MR. GARZA: Like I said, I am testifying from my  
17 experience and previously what we had seen, there was something on  
18 that label there that would be indicate that it was imported, but  
19 I have not seen one recently. Certainly the inspectors would  
20 query their databases to ensure if that bus was imported or not,  
21 and that would be one way of knowing whether that bus had made an  
22 entry or not.

23 MR. HARRIS: But there's no formal process that you use  
24 for determining information on the label?

25 MR. GARZA: No, sir.

1 MR. HARRIS: Okay. Thank you.

2 CHAIRMAN HERSMAN: Thank you. Customs and Border  
3 Protection, any questions?

4 MR. GARZA: No.

5 CHAIRMAN HERSMAN: Okay. And ABA?

6 MR. LITTLER: I have one question. I'm going to I guess  
7 give to Mr. Garza, perhaps Mr. Craig and Mr. Ellis. Under --

8 CHAIRMAN HERSMAN: Mr. Littler, is your mic on?

9 MR. LITTLER: Yes, the green --

10 CHAIRMAN HERSMAN: There you go.

11 MR. LITTLER: There we go. The question, under Tab J in  
12 the first binder, Attachment 23, Customs and Border Protection  
13 Agency and Department of Commerce, vehicle importation  
14 information, on page 6, towards the bottom of the page, it said:

15 "You will not be able to register a non-conforming  
16 vehicle until it is brought into compliance. You will need  
17 Customs and Border Protection Form 7501 to register it with the  
18 Department of Motor Vehicles. CBP will not give you this form  
19 without approval from EPA and DOT."

20 I wonder if you could explain how that works, that  
21 process works and in the statement of not being able to register  
22 it with DMV, what is the connection there? And I mean clearly  
23 with relation to this vehicle, it was registered even though it  
24 was clearly non-compliant, and I'm just wondering how this form  
25 ties into things. If you could, give me an idea.

1           MR. GARZA: My understanding is that the State of Texas,  
2 we have a gentleman here from the State of Texas that might add to  
3 that, is that the County, and I'm speaking to the county where I  
4 reside, that they will not register a foreign vehicle if it does  
5 not have the HS-7 form to go along with whatever registration  
6 documents they have. Why this vehicle was registered? I can only  
7 guess that maybe they supplied the registration for California and  
8 did not -- maybe that's how the bus loss its identity.

9           MR. LITTLER: I guess my question would go back to how  
10 was it registered in California then if it came in? Somehow it  
11 got in and whether the form -- I don't expect that the form was  
12 issued, the 7501 form was issued --

13           MR. CRAIG: Right.

14           MR. LITTLER: -- or if it was, I don't know how it was  
15 issued.

16           MR. CRAIG: I believe the context of that particular  
17 publication you're looking at addresses more of private vehicles  
18 as opposed to commercial vehicles, although it may not have had  
19 that distinction articulated in the document. That sounds very  
20 familiar as far as importation of a private vehicle would be a  
21 passenger car. That process is very well delineated because we  
22 had a similar problem with passenger cars, that our people bring,  
23 you know, for whatever reason, they come across as a tourist and  
24 then for some reason they decide to stay or they have a change in  
25 immigration status which allows them to become a legal resident,

1 and now they have a vehicle here which may or my not be in  
2 compliance with FMVSS or EPA requirements.

3 And now they want to, you know, they want to register it  
4 in their home state or state of domicile, and they need some kind  
5 of documentation from, you know, when they go to register it or to  
6 re-title the vehicle, the DMV officers need something, generally  
7 because from CBP's perspective, we end up dealing with at least 50  
8 different Motor Vehicle Administrations around the country on this  
9 issue.

10 This happens quite frequently, or with some regularity  
11 in the private vehicle sector, but we haven't seen it as much with  
12 commercial vehicles simply because, you know, the volume is a  
13 different mix.

14 CHAIRMAN HERSMAN: And, Mr. Littler, our next panel this  
15 afternoon is going to have someone from, both, California and  
16 Texas, as well as IRP. So maybe your question might be directed  
17 to them.

18 MR. LITTLER: I will redirect it at that time. Thank  
19 you.

20 CHAIRMAN HERSMAN: Do you have any further questions?

21 MR. LITTLER: I have no further questions.

22 CHAIRMAN HERSMAN: Mr. Bertrand?

23 MR. BERTRAND: I have one question maybe to Mr. Minor.  
24 When we're talking about an inspection at the border, for  
25 conformity to FMCSR, were you referring to very fine for the

1 vehicle which will be Part 393 or it will be a safety inspection  
2 based on the CVSA inspections process?

3 MR. MINOR: Our inspection is intended to make sure that  
4 the vehicle complies with Part 393. That's 49 CFR Part 393, and  
5 the Commercial Vehicle Safety Alliance out-of-service criteria,  
6 that references Part 393. So that with the out-of-service  
7 criteria, you're looking to see if the extent of the violation is  
8 so severe that the vehicle's unsafe to proceed any further on the  
9 highway.

10 So you could have minor violations of some of the  
11 requirements in the Part 393 which could be cited during the  
12 inspection, and for the more serious violations, those that are  
13 most likely to contribute to a crash, then the vehicle would be  
14 placed out of service. So the out-of-service criteria is based on  
15 the requirements of Part 393.

16 MR. BERTRAND: Thank you.

17 CHAIRMAN HERSMAN: UMA?

18 MR. PRESLEY: Actually, I have a few questions.

19 Mr. Garza, how long does it take to inspect a bus, the  
20 luggage and screen passengers?

21 MR. GARZA: Under normal operations, it takes generally  
22 about -- I would say about 20 to 30 minutes per bus.

23 MR. PRESLEY: Okay. Captain Palmer, how long does it  
24 take to do a routine inspection, safety inspection on a  
25 motorcoach?

1           CAPT. PALMER: It can vary. It just depends on what,  
2 what they find, but typically anywhere from 30 minutes to an hour.

3           MR. PRESLEY: Mr. Comé, were there inspections taking  
4 place the day that this particular bus came through?

5           MR. COMÉ: I don't know if there were any inspections  
6 taking place the day this bus came through. We didn't do any  
7 audit work related to that. We did some audit work at this  
8 crossing which showed that during high volume periods,  
9 particularly holidays, there were not inspections being conducted  
10 because there wasn't adequate space to conduct bus inspections at  
11 those times. We haven't done any work related to the inspections  
12 conducted of this, of this specific bus.

13          MR. PRESLEY: Mr. Garza, do you inspect every bus that  
14 comes through?

15          MR. GARZA: Every bus is inspected that comes through  
16 with the process as I previously testified.

17          MR. PRESLEY: One more question for Mr. Garza. You  
18 mentioned that the drivers furnish certain documents. In addition  
19 to a logbook, what else would -- what other paperwork would they  
20 be furnishing?

21          MR. GARZA: They'd have the insurance document,  
22 registration documents of the bus. Some of them carry a listing  
23 of all the buses that the company that they drive for on there by  
24 year, make, model, VIN number.

25          MR. PRESLEY: Thank you. I have no further questions.

1 CHAIRMAN HERSMAN: Thank you. And IRP?

2 MS. PARIS: I have no questions. Thank you.

3 CHAIRMAN HERSMAN: Thank you, Ms. Paris. We'll take a  
4 short break, 10 minute break, and we'll come back in at 10:30.  
5 We'll resume. We have some additional questions from the Tech  
6 Panel and the Board of Inquiry. So we'll take a 10 minute break,  
7 and we'll resume at 10:30.

8 (Off the record.)

9 (On the record.)

10 CHAIRMAN HERSMAN: We'll return to the Tech Panel for  
11 completion of the questions for the first panel.

12 MR. VAN ETTEN: The next set of questions are for the  
13 Office of the Inspector General, Mr. Com . In August of 2007, the  
14 Office of the Inspector General issued a report on FMCSA's efforts  
15 on the implementation of the NAFTA Cross-Border Trucking  
16 Provisions. That report number is MH-2007-062. Could you please  
17 briefly describe what the general findings of that report were?  
18 And specifically, what were the findings as it related to non-  
19 FMVSS compliant vehicles crossing the border?

20 MR. COM : Certainly. That report was one of a series  
21 we were required to do related to FMCSA's actions to comply with  
22 Section 350, which is a legislation passed in the FY 2002  
23 Transportation Appropriations Act. And we have to look at certain  
24 criteria to see if they have adequate staff, training and  
25 infrastructure and procedures to carry out the requirements

1 Congress has set up.

2 That report in 2007 followed up on the earlier 2005  
3 report which had found that they were substantially meeting those  
4 requirements but had some areas for improvement, non-specific  
5 ones. In this report, we identified continuing improvement but  
6 touched on four major areas for improvement.

7 In regard to FMVSS, which was not an area that was a  
8 specific Section 350 requirement, we found that in August 2005,  
9 FMCSA had withdrawn its rulemaking, the one that Mr. Minor spoke  
10 to earlier. We didn't comment in the August report on the basis  
11 for that withdrawal, that is the basis being that will be able to  
12 enforce the FMVSS through other means. We didn't draw any  
13 conclusions on that.

14 Rather, we looked at whether they ere implementing the  
15 actions they had agreed to take or had issued new policy in 2005.  
16 Our August 2007 report found that they had issued guidance on  
17 determining compliance with Motor Vehicle Safety Standards by  
18 using vehicle identification numbers in August 2005, and they  
19 promised further implementation guidance.

20 They reported to us in January 2007, that they made  
21 software modifications to prompt the VIN check during roadside  
22 inspections. Our report found that further guidance was needed  
23 since we found that the VINs in the inspection database were only  
24 entered into the inspection database about 37 percent of the time.

25 Subsequently, in September 2007, FMCSA issued guidance

1 of the use of the software for checking vehicle identification  
2 numbers of Mexican-domiciled carriers participating in the Cross-  
3 Border Demonstration Project. That policy guidance was applicable  
4 to that program.

5 MR. VAN ETTEN: Thank you. In that report, you  
6 reiterated a statement made by the Federal Motor Vehicle Safety  
7 Administration that they had determined that most vehicles  
8 produced in Mexico beginning in 1996 have met the applicable FMVSS  
9 manufacturing standards. Did your report do any examination of  
10 that particular statement or claim?

11 MR. COMÉ: That report didn't do any further examination  
12 of that claim. We have done some subsequent work related to that  
13 assumption that I can comment on if you'd like me to.

14 MR. VAN ETTEN: Sure.

15 MR. COMÉ: We recently issued a report that was prompted  
16 by a legislative requirement that we review the scope and  
17 methodology of a study FMCSA sponsored to look at FMVSS  
18 compliance, and in that report, the assumption was, they repeated  
19 that assumption and used the 1996 assumption but we felt it was  
20 important that that report -- we didn't look at the basis for that  
21 assumption but we felt that the report should include more  
22 information on the quantitative impact that that assumption had,  
23 and also for buses, that research report assumed that any bus  
24 examined that did not have a FMVSS or a Canadian certification  
25 label affixed, were non-compliant and the reason stated in that

1 report was because no investigation was available to determine  
2 compliance. So that's as far as we've gone with any work related  
3 to that -- those dates that you're talking about.

4 MR. VAN ETTEN: Now was that report issued in your  
5 September 24th report?

6 MR. COMÉ: Yes.

7 MR. VAN ETTEN: Okay, because that was going to be one  
8 of my questions next.

9 MR. COMÉ: Okay.

10 MR. VAN ETTEN: So maybe you can expound a little bit  
11 about that, explain what that report was about and what your  
12 findings were.

13 MR. COMÉ: Okay. Certainly. That report, as I said,  
14 was required by SAFETEA-LU, and it called on us to look at the  
15 scope and methodology that was used by FMCSA and their sponsor.

16 Our basic finding in the report was that the methodology  
17 used did not allow them to make statistical projections from the  
18 sample. However, we did find that the report provided evidence  
19 that the vehicles that had been sampled by the contractor, and  
20 there were about 3,000 vehicles sampled, I believe there were 387  
21 buses sampled, of which all were deemed by the people doing the  
22 study to be compliant because they had a certification level  
23 except for 8.

24 But we found that the procedures used by the contractor  
25 did not permit a random sample and therefore did not permit a

1 statistical projection with the confidence level stated in the  
2 report.

3 FMCSA responded to the report by recognizing some  
4 validity in our concern about the statistical claims, but stated  
5 that they believed the results would have been largely the same  
6 regardless.

7 MR. VAN ETTEN: And going back to the statement that  
8 FMCSA made earlier about, from the 1996 cutoff time, just for  
9 clarification, and if you know, was the reference to the vehicles  
10 in that particular statement, does that include all vehicles  
11 coming across or only some vehicles, certain vehicles?

12 MR. COMÉ: Well, the reference itself stated that most  
13 of the Mexico-manufactured trucks may have complied. So that  
14 would indicate --

15 MR. VAN ETTEN: The reference you have is to trucks.

16 MR. COMÉ: And that is to trucks, right. There's no --  
17 the reference that was used as the underlying source for that  
18 doesn't mention buses.

19 MR. VAN ETTEN: Okay.

20 MR. COMÉ: And I think that's the basis for the  
21 assumption made by the researchers that they would just assume a  
22 bus was non-compliant if it did not have a certification label.

23 MR. VAN ETTEN: Thank you. And my final question, out  
24 of these studies that we've mentioned here, what were the OIG's  
25 findings and recommendations regarding the FMCSA enforcement

1 policies at the border and have any of those recommendations been  
2 implemented?

3 MR. COMÉ: FMCSA has taken actions to implement all the  
4 recommendations we've made. Some of those recommendations are  
5 still in the process of being completed, and we're doing work  
6 right now to confirm that.

7 For example, in regard to buses, after we reported in  
8 2007 that there were insufficient capacity to conduct safety  
9 inspections at the crossing in Texas, and I just want to clarify,  
10 I'm talking about safety inspections done by FMVSS or the state  
11 officials there, not the Customs and Border Protection checks or  
12 inspections that are done, we found -- they agreed to work with  
13 Texas to address that problem.

14 They also agreed to monitor the business inspection  
15 plan, and they have promised us a report by the end of this month  
16 that relates to that. And we have people recently who have  
17 visited some bus crossings and who will be reporting in our  
18 subsequent reports on the degree to which they've met those  
19 recommendations.

20 In regards to FMVSS, we issued the August report. In  
21 September, they issued the policy that related to mandating the  
22 checks, and we're in the process of determining to what degree  
23 that has led to those checks being done.

24 Now that policy in 2007 doesn't address the issue of  
25 what specific action would be taken if a VIN number indicates

1 noncompliance. The only policy that I'm familiar with where  
2 they've indicated any action is the 2005 guidance where they  
3 discussed the possibility of citing Mexican-domiciled carriers for  
4 false certifications if there was evidence found that their  
5 vehicles were not meeting the FMVSS requirements.

6 But that's the only information, you know, I know about  
7 what authority they would have to take any action at all against a  
8 carrier simply on the basis of not having a certification label.

9 MR. VAN ETTEN: Thank you. That concludes my questions  
10 for Mr. Com e, and I'm going to turn it over to Mr. LeBerte.

11 MR. LeBERTE: Thank you. My questions will be to the  
12 FMCSA, and it'll be to Larry Minor and to Darrell Ruben, and I'll  
13 start with Mr. Ruben.

14 Mr. Ruben, what are the current inspection enforcement  
15 processes at the U.S./Mexican border for trucks and buses?

16 MR. RUBEN: Well, we have FMCSA inspectors that work at  
17 our border crossings along the southern border. The inspection  
18 process is to identify commercial motor vehicles through various  
19 means of conducting North American Standard Inspection. It's the  
20 same type inspection that we would conduct on any commercial motor  
21 vehicle whether it's a Mexico domiciled, Canadian domiciled or  
22 done within the U.S.

23 Based on the inspection, if any violations are  
24 discovered, to what extent the violations would be documented in  
25 our inspection report, uploaded through the data system and if

1 violations warranted, there would be enforcement action taken on  
2 the motor carrier or potentially the driver based on the types of  
3 violations that are discovered.

4 MR. LeBERTE: Okay. Thank you. The next question, when  
5 a commercial vehicle bearing only Mexican plates enters into the  
6 U.S., is it determined that the vehicle will travel beyond the  
7 commercial zone? What, if any, federal enforcement action is  
8 taken?

9 MR. RUBEN: During our inspection of such a case, again  
10 we would follow the North American Standard Inspection. We would  
11 identify any potential violations to the Federal Motor Carrier  
12 Safety Regulations. Within those violations, the same thing I  
13 said, we would document those on the inspection report,  
14 potentially take enforcement.

15 For potential observations, you know, regarding license  
16 plates, we do record license plate data information on our  
17 inspections. However, in your case scenario here, if there was  
18 any reason that the inspector thought that there was a potential  
19 violation for registration or plates, if the opportunity were  
20 there, we would designate that vehicle to go to our state partners  
21 for further investigation as there would be no authority on our  
22 part to pursue that further at that point. So we'd turn it over.

23 MR. LeBERTE: Okay. And the last question, if a FMCSA  
24 inspector wanted to confirm that a vehicle was non-FMVSS  
25 compliant, what process would that person follow to make that

1 determination?

2 MR. RUBEN: Well, I think the easy answer is again  
3 performing the North American Standard Inspection. If that  
4 vehicle passes all of our safety concerns during that inspection,  
5 that vehicle would be allowed to continue to operate. If there  
6 was a reason for concern, that it was non-compliant for FMVSS, and  
7 again I don't know what the scenario would be, but if that case  
8 were to arise, that inspector would document the information that  
9 they have at that point in time, and they would forward it to our  
10 Headquarters Office for further follow up. So on a roadside  
11 inspection, it would be very difficult for them to confirm one way  
12 or another whether that is actually compliant to FMVSS standards  
13 or not.

14 MR. LeBERTE: Okay. Mr. Minor, please explain the  
15 parameters of the motor carrier's operating authority as it  
16 relates to Mexican or Canadian-domiciled carriers operating in the  
17 U.S.

18 MR. MINOR: When you speak of the parameters of their  
19 operating authority, we have certain limits on the operating  
20 authority of Mexico-domiciled carriers coming into the U.S., and  
21 basically with regard to the truck operations, we allow the  
22 commercial zone operations and under our Cross-Border  
23 Demonstration Program, we have a limited number of carriers that  
24 can go beyond the commercial zone, and for the bus operations,  
25 generally they are limited to the charter operations coming across

1 the border. So we do not have a complete opening of the  
2 U.S./Mexico border to commercial traffic at this time.

3 MR. LeBERTE: Okay. All right. My next line of  
4 questions will be to Captain David Palmer.

5 Captain Palmer, what are the current Texas inspection  
6 process at the U.S./Mexican border for trucks and motorcoaches?

7 CAPT. PALMER: It's essentially the same as what Mr.  
8 Ruben mentioned, that what we do is we have, we have over 200  
9 people that are dedicated to border enforcement at our 8 major  
10 ports-of-entry from Mexico. What we do is it's the same process  
11 that we use anywhere else. We follow the North American  
12 Inspection Procedures. We'll inspect those buses as we can.

13 Now general commercial vehicles, we check every day. We  
14 actually inspect those vehicles crossing the border. We have  
15 personnel there whenever Customs and Border Protection is open.  
16 Whenever that facility is open, then we'll have personnel there to  
17 inspect the commercial vehicles.

18 The exception to that is the passenger vehicles, the  
19 buses, because they come through at a different spot. They  
20 generally come through with the passenger vehicles, with the  
21 normal traffic and all of our personnel are focused at the  
22 commercial vehicle crossings.

23 So what we do is in this specific case in Laredo, we on  
24 a pretty regular basis partner up with some of the inspectors from  
25 Federal Motor Carrier Safety Administration, and then we conduct

1 the inspections there as Mr. Garza had mentioned earlier.

2 MR. LeBERTE: Okay. How do Texas State enforcement  
3 personnel enforce the federal regulations?

4 CAPT. PALMER: Basically what we do is the State of  
5 Texas, in the Texas Transportation Code, Chapter 644, it gives the  
6 Director authority to adopt the Federal Motor Carrier Safety  
7 Regulations. And what we did is we adopted pretty much 390  
8 through 391 -- well, actually all the way back to Part 40, Part  
9 380, Parts of 380, 382, drug and alcohol testing, but overall we  
10 adopted the majority of the Federal Motor Carrier Safety  
11 Regulations for inter and intrastate operations with some  
12 exceptions for some intrastate operations.

13 But, once we adopt those by rule, then once a quarter  
14 we'll review those rules and we'll do a revision so that we can  
15 incorporate any additional policy memorandums or interpretations  
16 that FMCSA may have done over that last three-month period. So  
17 that way we stay relatively current in relationship to the  
18 regulations that we have adopted.

19 MR. LeBERTE: Okay. Thank you. Does this authority  
20 extend to enforcing the FMVSS compliance on vehicles not bearing  
21 the required FMVSS compliance certification?

22 CAPT. PALMER: No, it does not. It basically has been  
23 stated before by others that we do not directly enforce the fact  
24 that a vehicle does not have a statement on the plate or whatever,  
25 that says the vehicle FMVSS compliant. What we do is we enforce

1 certain aspects of the FMVSS through the Federal Motor Carrier  
2 Safety Regulations in Part 393, you know, the various aspects such  
3 as brakes, lights, things like that. So as long as it meets the  
4 standards that are set in the Federal Motor Carrier Safety  
5 Regulations, then it would be acceptable to us.

6 MR. LeBERTE: Okay. Could you explain to us what the  
7 commercial zone is and how does it affect a motor carrier's  
8 ability to operate in the U.S.?

9 CAPT. PALMER: Sure. A commercial zone is basically a  
10 designated area that a foreign motor vehicle, in this case a  
11 Mexican commercial vehicle can operate. There are certain  
12 locations that are designated specifically in Part 372 of the  
13 Federal Motor Carrier Safety Regulations and then there's also  
14 some general distances, but bottom line is, is that there are  
15 general distances from the border in which these vehicles can  
16 operate. Basically -- does that answer your question?

17 MR. LeBERTE: Yes. How does that affect the vehicle  
18 registration?

19 CAPT. PALMER: Well, in Texas, it can make a difference  
20 in the fact that if they're operating it within the commercial  
21 zone and from an enforcement standpoint, all they're required to  
22 basically have is -- that commercial vehicle is basically required  
23 to have is a valid Mexican license plate. If their intent is to  
24 operate outside the commercial zone, then they're required to be  
25 appropriately registered and that's either, you know, that's

1 either to have a base Texas plate or an apportioned plate through  
2 International Registration Plan.

3 MR. LeBERTE: Okay. When a commercial vehicle bearing  
4 only Mexican plates enters Texas, and it is determined that the  
5 vehicle will travel beyond the commercial zone, what, if any,  
6 enforcement action can be taken regarding the vehicle's  
7 registration?

8 CAPT. PALMER: Well, if the vehicle has just Mexican  
9 license plates, and we make the determination that basically the  
10 fixed and persistent intent of that transportation is outside the  
11 commercial zone, then what we would do is we're going to require  
12 it to be appropriately registered. So if all the bus has, for  
13 example, is a Mexican license plate, but we determine that their  
14 intent is to go to Dallas, Texas, whatever it might be, then what  
15 we would do is we would determine -- we would basically require  
16 them to obtain appropriate Texas recognized registration and we  
17 would park that vehicle and require them to register and would not  
18 let them operate that vehicle until they obtained the proper Texas  
19 registration.

20 MR. LeBERTE: Okay. Thank you. That's all I have right  
21 now. I think Gary has some questions.

22 MR. VAN ETTEN: The next set of questions is for Mr.  
23 Ellis from the Texas Department of Transportation.

24 Mr. Ellis, what is the function of the Motor Carrier  
25 Division of the Texas Department of Transportation?

1           MR. ELLIS: Okay. The Motor Carrier Division has  
2 several duties. We administer the issuance of motor carrier  
3 credentials which involves that filing of proof of financial  
4 responsibility for motor carriers which would include buses. This  
5 is on an intrastate level. We participate in unified carrier  
6 registration agreement for interstate carriers. We also  
7 administer consumer protection rules and regulations for household  
8 good movers. We're also involved in the routing and permit  
9 issuance of oversized, overweight vehicles and shipments, and then  
10 finally we administer the enforcement of motor carrier  
11 credentialing, financial responsibility, which involves fines and  
12 things like that, for any violations that occur.

13           MR. VAN ETTEN: Now is any part of this process in your  
14 office, does it concern itself with whether or not a vehicle is  
15 FMVSS compliant or is there any sort of inspection that your  
16 agency would do on vehicles in that regard?

17           MR. ELLIS: No, we do not.

18           MR. VAN ETTEN: Thank you. Are you aware of any Texas  
19 State rule, and I think Captain Palmer indicated from the DPS  
20 perspective, that there was this authority but do you know of any  
21 Texas State rule or regulation or policy within your agency that  
22 would prevent a FMVSS non-compliant vehicle from continuing to  
23 operate if found during a roadside inspection?

24           MR. ELLIS: Well, we have none that we enforce within  
25 the Motor Carrier Division. I can't really speak for the Vehicle

1 Titles and Registration Division which I think will be speaking  
2 later today, but as far as our Division enforcing motor carrier  
3 registration requirements, there is none.

4 MR. VAN ETTEN: Thank you. My next set of questions  
5 pertains to the business relationship that was between Capricorn  
6 Bus Lines and International Charter Services and their leasing of  
7 vehicles and then returning those vehicles to Capricorn for use in  
8 their business. Could you please explain that particular -- from  
9 your perspective, that business relationship as it was at the time  
10 of the Victoria accident crash and was that relationship legal?

11 MR. ELLIS: Okay. I'll try and just kind of run down.  
12 There were several factors we obtained during our investigation  
13 which we brought up initially in the opening statements. We did  
14 find I mean that there was in existence -- I'll just run down.  
15 The International Charter Service was incorporated and is on file  
16 with the Texas Secretary of State at the time of the accident.  
17 The President was listed as Maria Rodriguez, and as previously  
18 mentioned, there was a lease agreement that existed between  
19 International Charter Services, Inc. as the lessee, and Jerry  
20 Baltazar Flores Garcia (ph.) which was the lessor, covering a  
21 period from May 20, 2007 through May 20, 2008, and it involved six  
22 buses, one of those buses being the bus that was involved in the  
23 accident.

24 The lease agreement also went on to provide for a  
25 remuneration of 12,000 per month which would be paid by the lessee

1 to the lessor. The lease agreement also stated that maintenance,  
2 repairs, permits, taxes, fines due to violations, would be  
3 provided by Jerry Baltazar Flores Garcia as mutually agreed upon  
4 between the lessee and the lessor. The lease agreement stated  
5 that the lessee would carry and maintain public liability  
6 insurance in amounts of not less than the amounts required by any  
7 applicable licensing and regulatory authorities. And it also had  
8 a provision that all insurance costs would be paid by Jerry  
9 Baltazar Flores Garcia.

10           The lease agreement stated that Jerry Baltazar Flores  
11 Garcia would be responsible to comply with all USDOT, Mexican  
12 authorities regulations such as driver qualification files,  
13 maintenance files, drug test program and DOT inspection, license  
14 plates, recordkeeping, logbook sheets, post-trip inspections,  
15 passenger manifests, et cetera, and background checks for drivers  
16 as well as any person in a sensitive position, dispatch,  
17 mechanics, et cetera.

18           Now the lease agreement stated that any and all fines  
19 due to violations for these coaches or drivers would be the  
20 responsibility of Jerry Baltazar Flores Garcia.

21           And finally, the lease agreement was signed by Jerry  
22 Baltazar Flores Garcia and Maria Rodriguez representing  
23 International Charter Service.

24           In addition to that, we did determine the bus involved  
25 in the accident was owned by Capricorn Bus Lines. The records for

1 the International Charter Service for route service were  
2 maintained by Capricorn Bus Lines in Houston and in Monterey,  
3 Mexico. The tickets for route service indicate Capricorn Bus  
4 Lines and Autobuses Flores, not International Charter Service, a  
5 route passenger list indicate that Capricorn Bus Lines, Inc. and  
6 Autobuses Flores. We did obtain a copy of a check which was  
7 obtained during the investigation for the bus driver, a Robert  
8 Cruz, who was the driver of the bus involved in the accident, and  
9 he was paid -- at that time, he was being paid by Capricorn Bus  
10 Lines. We weren't able to obtain really any information to  
11 indicate what the payment was for, if it was for the movement of  
12 the bus in question on the accident or if it was for charters he  
13 may have been performing or other movements.

14 We were unable to determine any monies actually going  
15 between the companies either from Jerry Baltazar Flores Garcia to  
16 International Charter Service or back and forth or anything like  
17 that. It was more of a lack of us obtaining the information than  
18 at best really. I mean I think there's several things we would  
19 have liked to have obtained from the operator but we had  
20 difficulty doing that at the time. I don't know if that answers  
21 your question, but there was a relationship --

22 MR. VAN ETTEN: Yes.

23 MR. ELLIS: -- between the two entities involved. It  
24 just seemed like it was more of a paper transaction at best.

25 MR. VAN ETTEN: Would you describe that as a legal

1 operation?

2 MR. ELLIS: We have no rule or statute in effect that  
3 would prevent this kind of an arrangement.

4 MR. VAN ETTEN: Uh-huh.

5 MR. ELLIS: Our biggest concern would be whoever is  
6 operating the vehicle which fits our definition in Texas as a  
7 motor carrier, which is the directing operation or controlling, is  
8 property registered with Texas in this case and has insurance on  
9 file. So there's not anything that prevents it but, you know,  
10 whatever day they were operating, whoever is controlling that bus  
11 at the time, we would expect to be in compliance with the rules  
12 and laws of the state.

13 MR. VAN ETTEN: I see. Now how common would you say  
14 this type of business arrangement was and how does the TXDOT  
15 monitor this activity?

16 MR. ELLIS: I don't think we really know how common. My  
17 experience would be, I think it's fairly common that this kind of  
18 arrangement happens between bus companies when, you know, as  
19 business needs arise and things like that, where a company may  
20 lease the equipment to another one for operations during a high  
21 demand period or something like that. So as far as -- and we do  
22 not really monitor that activity. Like I just mentioned a minute  
23 ago, our concern would be who was operating that bus at that time,  
24 that they're properly registered and on file with our agency and  
25 insurance.

1           MR. VAN ETTEN: And assuming that during your normal  
2 course of business when monitoring these companies, there is some  
3 sort of violation found, is there any communication between your  
4 office and say the Texas Department of Public Safety or any other  
5 enforcement agency that you found violations and would you be  
6 aware of what actions they might be able to take under those  
7 circumstances?

8           MR. ELLIS: Yes, we routinely communicate with the Texas  
9 Department of Public Safety. If we obtain any in that is more  
10 adequately handled by their office, the information is forwarded  
11 to the proper parties at the Texas Department of Public Safety.  
12 In addition to that, the Department of Public Safety relays  
13 information to us on, if they stop vehicles, trucks and buses,  
14 that are not properly registered and have insurance on file with  
15 our agency, that's forwarded to us. In addition to that, if they  
16 find severe violations of the Motor Carrier Safety Regulations,  
17 the Department of Public Safety comes to our office requesting  
18 that we revoke a registration.

19           MR. VAN ETTEN: Thank you. I just have a follow up  
20 question for Mr. Minor.

21           It's my understanding that under the Cross-Border  
22 Trucking Initiative, that Mexico-based or Mexico-domiciled  
23 carriers must make a declaration of whether or not their vehicles  
24 meet the FMVSS. Am I correct in that understanding?

25           MR. MINOR: Yes, you are correct. As part of the

1 application process to participate in the Cross-Border  
2 Demonstration Project, they would have to certify that their  
3 vehicles would meet all the FMVSS or Federal Motor Vehicle Safety  
4 Standards, and I'd like to add, that program does not cover the  
5 operation of buses, only trucks.

6 MR. VAN ETTEN: I understand. Thank you. Yes. And  
7 assuming that the answer to that question would be no, what's the  
8 result of that? Assuming that their vehicles do not meet FMVSS,  
9 what would be the result of that negative answer?

10 MR. MINOR: If it turns out that the carrier cannot make  
11 that certification, that their vehicles would meet all the FMVSS,  
12 then that carrier would not be able to participate in the program.

13 MR. VAN ETTEN: Thank you. Mr. Kotowski has follow up  
14 questions now.

15 MR. KOTOWSKI: And how would, how would a carrier  
16 provide proof that he does meet these Federal Motor Vehicle Safety  
17 Standards to participate in the program?

18 MR. MINOR: How would the carrier determine whether its  
19 vehicle actually meets the --

20 MR. KOTOWSKI: How would he provide that information to  
21 the FMCSA that he is compliant in the absence of a label on a VIN?

22 MR. MINOR: In the absence of a label, one of the things  
23 that we would consider is the use of FMVSS policy that we would  
24 look to the date of manufacture of the vehicle to see if it was a  
25 recently manufactured vehicle, and therefore more likely to comply

1 with all the applicable Federal Motor Vehicle Safety Standards  
2 that would have been in effect at the time that it was  
3 manufactured. And for the older trucks, we would assume if it was  
4 manufactured prior to a certain date, prior to 1996, that it is  
5 unlikely to meet all of the Federal Motor Vehicle Safety  
6 Standards.

7 MR. KOTOWSKI: And that's based on this -- I think it  
8 was referred to in the OIG Report, that all vehicles manufactured  
9 -- all commercial vehicles, meaning trucks, that were manufactured  
10 after 1996, were considered to be compliant with the FMVSS?

11 MR. MINOR: That was a policy that was initially  
12 developed as part of the rulemaking when we were doing the  
13 certification labels for trucks and buses. As we were developing  
14 the withdrawal notice to terminate that rulemaking, we considered  
15 the alternative approach. We're trying to ensure that the  
16 vehicles met the appropriate safety standards. So at that time,  
17 when we were withdrawing the rulemaking in 2005, we developed a  
18 policy based on information that we gathered from the truck  
19 manufacturers, we actually visited Mexico City and met with a lot  
20 of the truck manufacturers in Mexico. Many of them are  
21 subsidiaries of U.S. companies that build trucks, and we got the  
22 information from those manufacturers and determined that it was  
23 reliable information to give us some estimate as to which vehicles  
24 are most likely to meet the FMVSS and which ones are least likely  
25 to meet the FMVSS. But again, at the end of it all, we focus on

1 the inspection of the vehicles and making sure that the vehicles  
2 meet all of our Federal Motor Vehicle Safety Regulations including  
3 those Federal Motor Vehicle Safety Regulations that cross-  
4 reference the FMVSS.

5 MR. KOTOWSKI: And this was based on just information  
6 provided by the manufacturers?

7 MR. MINOR: By the truck manufacturers, yes.

8 MR. KOTOWSKI: Was there any follow-up review or  
9 confirmation or any type of oversight conducted between 1996 and  
10 to date that, in fact, those standards have been met by those  
11 manufacturers?

12 MR. MINOR: We have not received any information from  
13 truck manufacturers indicating that the information that they  
14 provided then was inaccurate or needed to be updated but based on  
15 the information from the Truck Manufacturers Association and the  
16 vehicle manufacturers involved, working very closely with the  
17 National Highway Traffic Safety Administration, we continue to  
18 believe the information is accurate.

19 MR. KOTOWSKI: But you did not -- the FMCSA did not  
20 verify or do anything other than rely on the information provided  
21 by the manufacturers?

22 MR. MINOR: Ultimately, whatever the date of manufacture  
23 of the vehicle, we have to rely on the information from the  
24 vehicle manufacturers because they're the only ones that truly  
25 know whether the vehicles they've built in any given year actually

1 meet the standards. So even if we have a vehicle identification  
2 number, we ultimately have to go back to the vehicle manufacturer  
3 to get the status of that particular vehicle.

4 MR. KOTOWSKI: And the -- and I guess this would be for  
5 Mr. Minor as well. I think earlier you said that in the border  
6 crossing, if the motorcoach came across the border and was  
7 involved in charter operations, they're allowed entry into the  
8 U.S. Is that correct?

9 MR. MINOR: That is correct. The charter operations can  
10 go beyond the commercial zone.

11 MR. KOTOWSKI: And what about scheduled route service  
12 that comes across the border?

13 MR. MINOR: I believe that the regular route would be  
14 limited to the commercial zone coming up from Mexico to a certain  
15 point in the commercial zone, transport passengers and then go  
16 right back into Mexico. They cannot go beyond the commercial  
17 zone.

18 MR. KOTOWSKI: And I have one question for Captain  
19 Palmer. The motorcoach, the accident motorcoach, displayed  
20 registrations at the time of the accident, both from Mexico and  
21 for Texas. And I believe it was 2006, October of 2006, the  
22 motorcoach was stopped and issued a citation for not having Texas  
23 plates. And I believe that you said that if it had Mexican  
24 plates, it was limited to, and we just discussed that with Mr.  
25 Minor, to the commercial zone unless it was involved in a charter

1 operation. Does that apply to a U.S. carrier, a U.S.-domiciled  
2 registered carrier that operates a motorcoach with Mexican plates  
3 only on it, that it would be in violation in operating in the  
4 State of Texas?

5 CAPT. PALMER: He's a U.S.-domiciled carrier operating  
6 with a Mexican plate?

7 MR. KOTOWSKI: With a Mexican plate only, that's  
8 correct.

9 CAPT. PALMER: To go out -- no. If I recall correctly,  
10 and I'd have to look that up, but that applies to a U.S. -- that  
11 applies to a Mexican-domiciled carrier. The U.S. carrier would  
12 need to be registered through the United States, through Texas.  
13 It would have to have Texas registration. Quite honestly, Pete, I  
14 don't know that I've ever -- that we've ever encountered that  
15 particular scenario because typically a U.S. carrier is going to  
16 have a U.S. plate. They're not going to operate on a Mexican  
17 plate, or at least that's been my experience. You know, when I  
18 was in my day stationed in El Paso, we didn't -- I don't really  
19 recall that scenario coming up. So that's why it's difficult to  
20 answer.

21 MR. KOTOWSKI: I understand.

22 MR. VAN ETTEN: I believe that concludes the question  
23 from the Tech Panel for this Panel.

24 CHAIRMAN HERSMAN: Okay. We'll move to the Board of  
25 Inquiry and for the Parties, if you all want to request a second

1 round, you can do that after we finish our questions. Okay.

2 Mr. Magladry.

3 MR. MAGLADRY: I have a question for Mr. Garza. Mr.  
4 Garza, you talked quite a bit about the responsibilities of the  
5 Border Patrol for assorted inspections at the crossings. Do you  
6 have any authority to enforce FMVSS?

7 CHAIRMAN HERSMAN: And, Mr. Garza, I know you wanted to  
8 clarify something for the record. It would be a good opportunity  
9 to do that now as well.

10 MR. GARZA: Okay. What I would like to clarify first  
11 before answering your question is on the label that I spoke about,  
12 I think Mr. Van Etten asked me for a picture of the label I was  
13 talking about, the label I was talking about is the EPA label  
14 that's -- it's an enforcement tool that we would use to look  
15 further into the documentation when that vehicle was registered or  
16 manufactured in the U.S. and if there's a question whether it's a  
17 foreign vehicle, that's one of the things that we would look for.  
18 And there's no affixed label when a vehicle is imported, and  
19 that's the clarification that I wanted to make.

20 When a vehicle comes across, as I stated before, the  
21 inspectors, we're concerned with citizenship. That's our first  
22 thing that we look at. We look for declarations not only from the  
23 passengers but from the bus driver as well. If we suspect that  
24 the vehicle is foreign made, then that's when we would look into  
25 it to see if that vehicle has made entry or not. Obviously most

1 of the vehicles that we encounter are U.S. made. There are some  
2 Mexican vehicles that come across. There's some Canadian vehicles  
3 that come in as well that have made entry on the Canadian border.  
4 So that is what we do on the border, if that answers your  
5 question.

6 MR. MAGLADRY: Not exactly. If you have some suspicion  
7 that -- if the bus is a Mexican-manufactured bus, do you make some  
8 effort to determine whether it's FMVSS compliant or would you  
9 contact the FMCSA inspector up the walkway and ask him to take a  
10 look at it?

11 MR. GARZA: Both. We do have the authority to look at,  
12 when we do have a Mexican bus, to see if that bus has been  
13 imported or not. Our inspectors will query our databases and if  
14 we cannot determine that that bus has ever made entry, we can hold  
15 that bus and we can have the owner provide us the documents  
16 necessary to indicate that that bus has made entry. If that bus  
17 has never made entry, then we have the right to seize that bus and  
18 make it comply before we release that bus.

19 MR. KOTOWSKI: When you say make entry, are you talking  
20 about simply coming across the border on some previous occasion?

21 MR. GARZA: No, sir. What I'm talking about is as Mr.  
22 Craig stated, -- the bus go into -- lot, submit a 7501 and make an  
23 entry. If the value is over \$2,000 as Mr. Craig stated, then we  
24 would have them use a Customs broker to make that entry for them  
25 and that would include also meeting the requirements of EPA and

1 DOT standards.

2 MR. KOTOWSKI: I understand. Thank you. I have no  
3 other questions.

4 CHAIRMAN HERSMAN: Dr. Ellingstad?

5 DR. ELLINGSTAD: I'd like to follow up probably starting  
6 with Mr. Garza in terms of this whole process. Now your focus in  
7 terms of looking at these vehicles is basically to determine  
8 importation, right? And you're secondarily interested in MVSS  
9 standards, et cetera. Is that a fair statement?

10 MR. GARZA: Well, I would say that if you see a -- our  
11 officers are not trained safety inspectors, any question to  
12 whether the vehicle can operate or not, let's say that we see an  
13 obvious violation of some kind, we would definitely work with our  
14 partners, FMCSA or DPS which are located, and they're not located  
15 at all the locations on the southern border in the same area, and  
16 whenever we are -- we are in the same location. So, yes, we would  
17 definitely refer them to them.

18 DR. ELLINGSTAD: Okay. If you had a bus with a license  
19 plate from some U.S. state, what kind of scrutiny would it get  
20 with respect to this business of whether it had made entry or was  
21 properly imported? Would you look at any other documents?

22 MR. GARZA: Yes, sir. We would -- we can look at the  
23 registration of the motor vehicle to see where it was registered,  
24 who the owners are. We can then query our data systems to see if  
25 that bus has made entry or not, through our CBP system. If

1 there's no indication of any record of that bus having made entry,  
2 that's when we require the owner to supply us the information to  
3 see if it made entry or not. And if they can't supply that, then  
4 we would hold that bus so they could supply the information that's  
5 required before releasing that bus.

6 DR. ELLINGSTAD: Okay. What proportion of buses coming  
7 across the border go through your system?

8 MR. GARZA: They all come through.

9 DR. ELLINGSTAD: You look at every one.

10 MR. GARZA: We look at every single bus. Every single  
11 bus comes through, if you recall back to my presentation, when  
12 they're coming across and it's the first -- that's the first step,  
13 our system brings the vehicle identification through the license  
14 plate on that bus. So any information that's on that bus, through  
15 the license plate, we would be able to have it right there  
16 instantly at the primary inspector.

17 DR. ELLINGSTAD: Okay. With respect to the FMCSA and  
18 the State of Texas, what proportion of buses coming across are you  
19 looking at?

20 MR. RUBEN: I don't have that information in front of me  
21 to advise. I can say that since buses are allowed to cross with  
22 passenger vehicles and not a truck crossings, that typically buses  
23 can cross 24/7, and we don't have resources stationed at those bus  
24 crossings 24/7. So I'd have to get back to you with the  
25 percentage but --

1 DR. ELLINGSTAD: Okay. I'm looking mainly for a  
2 ballpark, but we've got Customs and Border Protection seeing  
3 everything. I'm assuming that because of the nature of operations  
4 and volume, et cetera, that neither FMCSA or the State of Texas  
5 are, are encountering every single one. Is that the case with  
6 respect to Texas?

7 CAPT. PALMER: Yes, that's correct. I mean obviously  
8 our focus is the commercial vehicle entry points. So we have to  
9 actually shift our resources to the passenger areas when we're  
10 going to look at the motorcoaches. So we do not look at all of  
11 the passenger vehicles that come across.

12 DR. ELLINGSTAD: Okay. They're sort of implicit, and  
13 when Mr. Garza said an interaction between your agencies, and I'd  
14 just like to explore how, how functional and effective is that?  
15 Mr. Garza, how frequently is there a consultation with FMCSA or  
16 the State authorities if there is some question about anything  
17 having to do with the safety of the bus? How often would you send  
18 it over to one of those authorities or what would be the  
19 circumstances if they're not open? You'd hold it until somebody  
20 there could look at it.

21 MR. GARZA: I don't have a way of judging how often we  
22 send them or refer a bus to them. We do on a monthly basis, all  
23 our logs are given to FMCSA at the locations, of that process  
24 area, primary, where the inspector's taking down the information  
25 on the bus. That information is being given to FMCSA on a monthly

1 basis.

2 DR. ELLINGSTAD: Okay. Thank you.

3 CHAIRMAN HERSMAN: Ms. Beckjord, do you have any  
4 questions?

5 HEARING OFFICER BECKJORD: Yes, I do. This is to Mr.  
6 Garza. If you could clarify a point that you made earlier. When  
7 you said that most of the drivers of the buses that you see that  
8 come across, did you say that they were rarely U.S. citizens or  
9 mostly U.S. citizens?

10 MR. GARZA: I would say that we probably have a mix I  
11 would say probably 50/50. I'm just guessing here now. I think  
12 the reference I made was to the buses, that most of the buses that  
13 come across are U.S. made. I think I remember that. To go back,  
14 we would have to look at our logs to see if we could more or less  
15 estimate that.

16 HEARING OFFICER BECKJORD: Okay. Thank you. And this  
17 is to either Mr. Minor or Mr. Ruben. If the CBP stated that they  
18 have the authority to seize a bus if it's non-compliant or they  
19 determine that it has not been imported through their database,  
20 does the FMCSA have that same option if the bus is stopped at the  
21 CBP location, and as part of the cross-referencing, you said you  
22 can deal with the FMCSR through the FMVSS and you find that that  
23 doesn't match up and it's not FMVSS compliant, do you have that  
24 authority?

25 MR. MINOR: Basically the FMCSA would limit its actions

1 to making sure that the motor carrier is operating in compliance  
2 with the FMCSRs. We will leave to the U.S. Customs the business  
3 about whether a vehicle is being imported into the U.S. and leave  
4 the enforcement of the importation regulations to U.S. Customs.  
5 So we would just focus on the motor carrier operation and whether  
6 the carrier had the appropriate authority to be operating and  
7 whether the vehicle actually complies with the Federal Motor  
8 Vehicle Safety Regulations including those safety regulations that  
9 cross-reference the Federal Motor Vehicle Safety Standards.

10 HEARING OFFICER BECKJORD: So what you're telling me  
11 though is that if while you were doing the inspection you found  
12 that it did not -- so if you go one direction saying the FMCSRs  
13 therefore validate the FMVSS, you don't go the reverse and  
14 validate that by handing the FMVSS it automatically also says that  
15 there should be some cross-referencing with the FMCSRs. So you  
16 would look at it from the FMCSR point but you wouldn't  
17 specifically look and say this one is not FMVSS compliant. So  
18 we're going to pull it or we're going to hold onto it.

19 MR. MINOR: Right. We would not be focusing on the  
20 enforcement of the FMVSS. We would focus strictly on the Federal  
21 Motor Vehicle Safety Regulations. So we're not looking for the  
22 FMVSS label. We're looking for compliance with all of the FMCSRs,  
23 and in the case of a bus inspection, we're looking at specific  
24 FMCSRs that cross-reference the FMVSS such as the emergency exits  
25 on the buses, and look at the airbrake system and other important

1 safety features of the vehicle to make sure it meets all of our  
2 Federal Motor Vehicle Safety Regulations and we're not  
3 specifically trying to make a determination whether the vehicle  
4 actually meets all of the FMVSS or whether it has a certification  
5 label. We're just making sure that it's safe for operation in the  
6 U.S.

7 HEARING OFFICER BECKJORD: By the FMCSRs?

8 MR. MINOR: Right.

9 HEARING OFFICER BECKJORD: Okay. Thank you. And this  
10 question is Mr. Palmer's. You said that if you did find a bus  
11 that had Mexican plates but did not have Texas plates and should,  
12 outside of the commercial zone and that bus then received a  
13 ticket, how do you verify that they went ahead, once the ticket is  
14 issued, that they've gone ahead and obtained the proper  
15 registration? And what I'm referring to is the diagram that we  
16 have over which is the back of the Flores bus, the accident bus  
17 received a ticket for \$143 for not having Texas registration.  
18 They only had a Mexican plate, but on the back of the bus it was  
19 pretty clear it was a route from Houston to Monterey and Houston's  
20 outside the commercial zone. How would you then follow up to  
21 verify that anything has been done?

22 CAPT. PALMER: I can't speak for every situation but the  
23 way it's supposed to be done is that if we apprehend a vehicle  
24 that we determine to be unregistered, in essence unregistered in  
25 Texas, then what the standard procedures is that that trooper

1 would detain the vehicle and typically, if, depending on the time  
2 of day or whatever, they would actually take them to either a  
3 TXDOT Office where they could do it or a local tax office and they  
4 would physically register them at that point. So that's the  
5 standard way of doing it. I cannot speak to this particular  
6 ticket that you're talking about here, but that's the standard  
7 process.

8 HEARING OFFICER BECKJORD: Okay. Thank you. So this  
9 question is for the FMCSA, for Mr. Ruben I believe. So if the  
10 Customs and Border Protection, it may also go to Mr. Garza, if  
11 Customs and Border Protection, if you're checking insurance at the  
12 border for a vehicle, and the vehicle has only Mexican plates, but  
13 they've had the opportunity to put a USDOT number on the side, and  
14 you check for their insurance, it only has a Mexican plate but it  
15 has a USDOT number, which insurance are you checking for? Are you  
16 checking for U.S. insurance or are you checking for insurance that  
17 the motorcoach can operate in Mexico because it's got conflicting  
18 information on it?

19 MR. RUBEN: Right. I'm sorry. The first thing we would  
20 is identify who the actual motor carrier is and determine what  
21 level of insurance they need. And if you're talking a foreign-  
22 based motor carrier, they're required to carry a MCS-90 or a MCS-  
23 90B, verification of insurance on the vehicle at the time of the  
24 crossing. So we would determine based on the motor carrier what  
25 level of insurance they need, and that's what we would physically

1 look at, at the time of inspection.

2 HEARING OFFICER BECKJORD: Okay. And Customs and Border  
3 Protection?

4 MR. GARZA: Yeah, we would do the same. Any question  
5 that we have on insurance or anything like that, we just refer it  
6 over FMCSA.

7 HEARING OFFICER BECKJORD: Okay. And just to clarify  
8 because I'm not completely sure I understand this, if the vehicle  
9 is a Mexican-owned but it only comes in through the commercial  
10 zone, do they have to have U.S. insurance the minute they cross  
11 the border? Is that what you were telling me?

12 MR. RUBEN: Yes, again, I'd have to go back and  
13 verify --

14 HEARING OFFICER BECKJORD: Right.

15 MR. RUBEN: -- but I believe every vehicle that enters  
16 the United States, whether it's commercial zone or not, must have  
17 proof of insurance at the required levels.

18 HEARING OFFICER BECKJORD: Okay. And then once the  
19 vehicle, such as a bus with the route determination on the back of  
20 the bus that says Houston to Monterey, and it has only a Mexican  
21 plate, how would you verify it has left the commercial zone?

22 MR. RUBEN: That's a follow-up question for me?

23 HEARING OFFICER BECKJORD: Yes.

24 MR. RUBEN: Well, the first thing, if again you're  
25 referring to this particular example, it is a U.S. carrier.

1 HEARING OFFICER BECKJORD: Right.

2 MR. RUBEN: So the commercial zone doesn't necessarily  
3 play into the authority. The authority is for them to be able to  
4 operate anywhere within the U.S. If a vehicle with only Mexican  
5 registration comes to the border, and again I can't speak for  
6 every time that would potentially occur, but one would hope that  
7 in our collection of this data along the border, that we would  
8 identify that, certainly we're recording that information, and  
9 we'd identify a potential question, and we'd have to still refer  
10 that to our state partners being a registration issue at that  
11 point. But it should raise a red flag, but it's not necessarily a  
12 violation under our regulations at that time.

13 HEARING OFFICER BECKJORD: And then how would you handle  
14 that if you don't have the resources at the border, if the border  
15 is a 24/7 operation?

16 MR. RUBEN: If there's no violation of the Federal Motor  
17 Vehicle Safety Regulations, then it would probably be documented,  
18 passed on, but the vehicle would be released to continue its  
19 operation.

20 HEARING OFFICER BECKJORD: Thank you.

21 CHAIRMAN HERSMAN: I think I'd like to take a step back  
22 and kind of understand kind of why, what the motive was to bring  
23 in a non-compliant bus because I think we're hearing a lot about  
24 kind of the pieces of the puzzle, and each of you have a piece of  
25 that puzzle, and I think we need to step back and try to

1 understand why someone would bring in a non-FMVSS compliant bus  
2 into the U.S. when it seems clear that we have standards for what  
3 vehicles ought to be in the United States, both manufactured and  
4 for sale, and then also imported. And so somehow these vehicles  
5 are not getting captured with respect to not being compliant. Why  
6 would an operator want to bring a non-FMVSS compliant bus? Does  
7 anybody have any thoughts on that?

8 MR. MINOR: I think I can help clarify that for you.  
9 Basically if you have an operation in which you've got a carrier  
10 based in Mexico, and they're operating in the U.S., that's  
11 generally not considered to be importation. So under FMCSA's  
12 regulations and -- regulation, we're just focusing on the FMCSRs  
13 and making sure their vehicle is safe for operation and not  
14 wanting to speak for our friends at Customs, if it's not  
15 considered import, then there's violation there, and once you get  
16 to the Federal Motor Vehicle Safety Standards, I'm not aware of  
17 any regulation that would require that an operation that's simply  
18 transporting passengers or freight into the U.S., I'm not aware of  
19 anything under the National Highway Traffic Safety Administration  
20 regulations that would consider that to be import into the U.S.

21 And one of the important things to point out is that for  
22 the longest time, from about 1975 to about 2005, the Department of  
23 Transportation did operate under an interpretation that when a  
24 motor carrier uses a commercial vehicle to transport passengers or  
25 freight into the United States that would be construed as

1 importation and that's why the Department undertook those  
2 rulemakings in 2002 to try to put into place an mechanism to  
3 ensure that when a Canadian or Mexican carrier transports  
4 passengers or freight into the U.S., that if it is considered an  
5 import, make sure that the importation regulations are complied  
6 with. So that was the premise for the proposal to require that  
7 these vehicles actually display a FMVSS certification label.

8           However, after reviewing all the public comments to the  
9 rulemaking dockets, the Department determined that there were  
10 alternative interpretations and that we should no longer consider  
11 the operation of a truck or bus by a foreign-domicile carrier to  
12 transport passengers and freight into the U.S. to be importation.  
13 Therefore, there's no need to impose a requirement for the display  
14 on a FMVSS certification label, that these vehicles would be used  
15 strictly as instruments of international trade, they're  
16 transporting passengers of freight into the U.S., but those  
17 vehicles would then leave the U.S. So they're considered to be  
18 imported into the U.S. Therefore, we're not really focusing on  
19 the FMVSS at that point. We're only focusing on the Federal Motor  
20 Vehicle Safety Regulations and the basic operating authority  
21 requirements for the carrier, and we're not focusing any  
22 determination on the certification labels.

23           CHAIRMAN HERSMAN: Well, I think you've raised some  
24 really interesting points, but I still don't think we've gotten  
25 back to the why, about why they would, why they would bring -- and

1 you're talking about foreign-domiciled carriers bringing  
2 passengers or goods into the U.S. and leaving, not a U.S.-  
3 domiciled carrier who has in effect imported in a vehicle into the  
4 U.S. that's not FMVSS compliant.

5 Mr. Garza, would you consider a U.S.-domiciled carrier  
6 who operates based out of the U.S. with these buses having  
7 imported them if its base of business is in the U.S. and it's a  
8 U.S.-domiciled carrier, not a foreign carrier, and the buses are  
9 being operated in the U.S.? Have they been imported?

10 MR. GARZA: I would consider that the bus was brought in  
11 without making an entry and we would have to seize that bus. We  
12 could seize that bus. We could hold it to make sure that it made  
13 entry but if it's only domiciled or if it's headquartered in the  
14 U.S., then to me that bus was brought in without making an entry.

15 CHAIRMAN HERSMAN: It should have been declared.

16 MR. GARZA: It had not made an entry. Yes, ma'am.

17 CHAIRMAN HERSMAN: Right. It should have been declared.

18

19 MR. GARZA: It should have been declared.

20 CHAIRMAN HERSMAN: So let's I think kind of and I'm  
21 trying to get back to the why. What is the incentive for an  
22 operator who's domiciled in the U.S. with operating authority to  
23 bring in a non-FMVSS compliant bus? And since I'm not getting the  
24 kind of answer that I'm seeking, I will suggest that potentially  
25 it could be because of the cost of the bus. A FMVSS-compliant bus

1 according to Mr. Parr (ph.) when I asked at the break is about  
2 \$425 purchased in the -- \$425,000 purchased in the U.S. and the  
3 receipt that we have for this bus, what they paid for this bus,  
4 was \$211,000. So it is possible that an incentive to import these  
5 buses without declaration for operation in the U.S. is because of  
6 cost? Is that possible? Why else would they want to bring these  
7 buses in if they're not compliant with the U.S. standard?

8 MR. GARZA: I would say that that's a very good analysis  
9 of that, and even in vehicles, when we would see Mexican vehicles  
10 being brought in without declaring, that was the reason why they  
11 were bringing them in was because of cost. They were cheaper in  
12 Mexico to buy than they were in the United States.

13 CHAIRMAN HERSMAN: And also in Exhibit 1J, I noticed  
14 that they have foreign-made vehicles imported into the U.S. are  
15 dutiable at the following rates: autos at 2.5 percent and trucks  
16 at 25 percent. Does that mean you have to pay 25 percent of the  
17 value of a truck or a bus if it was brought in, imported into the  
18 U.S.? Would that be the duty, Customs duty?

19 MR. MINOR: That's correct.

20 MR. CRAIG: I believe there's a distinction in the duty  
21 rates between trucks and buses but if it is a truck, the rate  
22 would be 25 percent if it was coming from a country where we  
23 assess duties from.

24 CHAIRMAN HERSMAN: And how about for a bus? I saw the  
25 2.5 for autos and 25 percent for trucks but I didn't see anything

1 for buses.

2 MR. CRAIG: I don't recall what the duty rate on a bus  
3 is.

4 CHAIRMAN HERSMAN: Would it be probably closer to that  
5 of trucks?

6 MR. CRAIG: It would be under the bus limit or under the  
7 truck. It would be less than what a truck would be.

8 CHAIRMAN HERSMAN: Less than 25 percent but more than  
9 2.5 percent?

10 MR. CRAIG: Yes.

11 CHAIRMAN HERSMAN: So they have also avoided paying a  
12 Customs duty as well by not declaring.

13 MR. CRAIG: That's true. There may -- I believe under  
14 NAFTA rules, vehicles that are produced in North America would be  
15 duty free.

16 CHAIRMAN HERSMAN: Okay. And then Exhibit 1L, I'm going  
17 back to, this is the press release that came out when the notice  
18 of proposed rulemaking for the FMVSS compliance regulations, the  
19 notices were published by both NHTSA and FMCSA, and it references  
20 that DOT -- the title is DOT Sets Safety Requirements for Mexican  
21 Trucks and Buses in the United States. U.S. Transportation  
22 Secretary Norman Mineta said, "The steps taken today will help  
23 ensure that all trucks, buses and drivers entering the U.S. from  
24 Mexico meet U.S. safety standards and operate safely on U.S. roads  
25 when we implement the truck and bus provisions of NAFTA."

1           And, Mr. Minor, I've heard you say today that the Pilot  
2 Program, they have to sign a declaration and attest that their  
3 vehicles comply with FMVSS. Is that true?

4           MR. MINOR: That is true that the motor carriers of  
5 property operating under the Cross-Border Demonstration Project do  
6 have to certify as part of the application process their vehicles  
7 meet the applicable Federal Motor Vehicle Safety Standards.

8           CHAIRMAN HERSMAN: And why would we ask for them to  
9 attest to that or declare that?

10          MR. MINOR: We would ask that because to a large extent,  
11 the application forms that they are using are the outcome of the  
12 2002 rulemaking and that 2002 rulemaking is still premised on the  
13 theory that when the foreign-domiciled carriers used their  
14 vehicles to transport passengers and freight into the U.S. that  
15 that constitutes importation of the vehicle into the U.S. So that  
16 was part of the previous interpretation dating back to 1975 that  
17 was upheld up until about 2005 when we withdrew the rulemaking.

18          CHAIRMAN HERSMAN: Okay. And it's I think also been  
19 eliminated through questions. Let's just say for the public  
20 trying to understand this, you have a bus coming across at the  
21 Lincoln Juarez Bridge. It's got a Mexican plate. Where is a bus  
22 with only a Mexican plate allowed to operate?

23          MR. MINOR: Well, we would not focus on the license  
24 plates or registration of the vehicle. We focus strictly on the  
25 operating authority of the carrier and we're looking at their

1 compliance with the Federal Motor Carrier Safety Regulations.

2 CHAIRMAN HERSMAN: But I thought that Mr. Ruben had  
3 stated that if registration was identified as a problem because  
4 they didn't have the appropriate registration, they'd turn it over  
5 to state authorities because the Feds don't have the authority to  
6 place them out of service for improper registration.

7 MR. RUBEN: Right. I said if it was discovered by an  
8 inspector, that there could be a potential registration problem --

9 CHAIRMAN HERSMAN: Right.

10 MR. RUBEN: -- that we would turn it over to the state.

11 CHAIRMAN HERSMAN: Okay. But for the public, they see,  
12 they see a bus with a Mexican plate, operating in the commercial  
13 zone in Texas, is that okay?

14 CAPT. PALMER: Yes, that's correct.

15 CHAIRMAN HERSMAN: They see it operating in Victoria or  
16 Houston with only a Mexican plate, is that okay?

17 CAPT. PALMER: Well, passenger vehicles are a little bit  
18 different but typically, no.

19 CHAIRMAN HERSMAN: Okay. And how about Illinois or  
20 Washington, D.C.?

21 CAPT. PALMER: I can't speak outside of Texas.

22 CHAIRMAN HERSMAN: Mr. Minor?

23 MR. MINOR: I can't speak to that issue.

24 CHAIRMAN HERSMAN: Because FMCSA doesn't have any  
25 authority to enforce registration?

1           MR. MINOR: We focus strictly on the enforcement of our  
2 safety regulations, not registration with the vehicle.

3           CHAIRMAN HERSMAN: Okay. So it would be up to the State  
4 authorities to do that.

5           MR. MINOR: Yes.

6           CHAIRMAN HERSMAN: So, you have a bus like this one,  
7 that has a Mexican plate on it, but it has daily trips on the  
8 back, it's advertising on the back that it's going between Houston  
9 and Mexico, and I think Ms. Beckjord raised this question, who is  
10 going to stop that vehicle at what point and identify that it has  
11 improper registration?

12           CAPT. PALMER: I can tell you from a state perspective,  
13 since registration -- since license plates are a basic aspect of  
14 our job, it's most likely going to be somebody that we've got  
15 certified to do commercial weekly enforcement activities because  
16 although in Texas any police officer can enforce the license plate  
17 requirements, and we say registration, and I don't want to confuse  
18 it with anything else, but with the license plate requirements, I  
19 don't know if it's a problem but the issue that comes up is that  
20 not everybody is comfortable with the specific requirements for  
21 those different types of vehicles. If it's a regular car or a  
22 pickup or even a large truck, it's probably pretty simple, and  
23 anybody might run across that but as far as for buses and, you're  
24 talking about commercial zones, you're talking about, oh, 4 or 500  
25 enforcement personnel with DPS that are trained in commercial

1 vehicle enforcement plus we have 30 some odd local agencies that  
2 are certified to do different aspects of inspections. They would  
3 be most likely to have the requisite knowledge to take the  
4 appropriate enforcement action. Beyond that, it's very difficult  
5 to know, you know, whether they're going to have that level of  
6 detailed knowledge about the registration laws on what to do and  
7 how to handle it.

8 I will say that typically, just like Customers and FMCSA  
9 will refer certain state law related issues, from registration to  
10 weight law violations, things like that. We also have local  
11 jurisdictions and even some of our own DPS personnel, the highway  
12 patrol personnel, you know, commercial vehicles are not their  
13 primary function or their primary training. They will inquire of  
14 us to get the answer right. I don't know if that helps any or  
15 not.

16 CHAIRMAN HERSMAN: Well, I think the challenge in this  
17 is this bus was cited I think, was it October of 2006, for  
18 operating without proper registration in Victoria, but it operated  
19 until April 2007 before it got those California plates. And so it  
20 continued to operate on daily trips to and from Houston to  
21 Monterey and no one at the border caught it when it was coming  
22 through and no one on the roadways caught it in between those  
23 times, and the registration wasn't rectified. And so I'm trying  
24 to determine, you know, how likely it is to identify an improperly  
25 registered vehicle.

1           CAPT. PALMER: It may be very difficult because I think  
2 you have to put it in perspective, you know. For starters, Laredo  
3 and I know Customs can attest to this, is, you know, it has  
4 historically led the nation in border crossings. So when you talk  
5 about the sheer volume, you take the State of Texas which has well  
6 over 20, I think it's well over 24 million people, another 50,000  
7 motor carriers and you take the number of enforcement personnel  
8 and I think it makes it very difficult. You know, that's one bus.  
9 You know, I don't want to minimize it because it's very important  
10 to us but it's one bus out of thousands that, you know, that we  
11 have to try to address.

12           So all I know is that probably the biggest problem with  
13 buses coming across is that since they come through with passenger  
14 vehicles and we have to shift our resources to that location  
15 periodically, it makes it more difficult to catch that than if it  
16 were a commercial truck coming across the part of the border  
17 crossing that requires -- that we have our people stationed at.  
18 Whatever hours Customs is open, we have folks there. We're more  
19 likely to catch those types of violations, whether it be  
20 registration or whatever, at that location than we are at the  
21 other location because we don't have our personnel designated  
22 there continually.

23           If there was the infrastructure to build a support, then  
24 that's something we could look at but right now we don't have  
25 those resources nor is there the infrastructure, not by any rate,

1 you know, other than the fact that was alluded to, is the age of  
2 most facilities, they were never envisioned to be used for the  
3 purposes that we use them now.

4           So I think to be able to address the issue that you  
5 bring up would be we would have to be able to focus more resources  
6 to the passenger vehicles rather than otherwise, you know, where  
7 we could have somebody there all the time and check 100 percent of  
8 the buses that come across.

9           CHAIRMAN HERSMAN: And I think that's a great point  
10 because back in that press release, it talked about the safety  
11 requirements for Mexican trucks and buses. It said with the  
12 regulatory action, you know, taken today, Mexican commercial  
13 vehicles will be permitted to enter the United States only at  
14 commercial border crossings and only when a certified motor  
15 carrier safety inspector is on duty. And I think Mr. Comé and  
16 also Dr. Ellingstad in his testimony have illuminated us that this  
17 is not what's occurring and, in fact, that Lincoln Juarez, it's I  
18 think a two-pronged problem, one that there isn't coverage 24  
19 hours a day. Generally it seems like there's two eight hour  
20 shifts that are covered and one that is not. And then on the  
21 issue of the volume, they may only be able to inspect one of every  
22 five of the buses that are coming across when they are on duty  
23 because of space limitations. And so I know that certainly  
24 there's a space challenge here, but I think that kind of what  
25 you're indicating is there's resources and other things that go

1 along with this, too, to be able to detect some of these problems.  
2 Is that accurate?

3 CAPT. PALMER: That's basically correct, yes, ma'am.

4 CHAIRMAN HERSMAN: Okay. I suspect that there are  
5 probably some additional questions that we might offer a second  
6 round. Are there individuals who would like to ask follow up  
7 questions from the Tech Panel? Yes, Mr. Kotowski.

8 MR. KOTOWSKI: Yes, ma'am. This is for the FMCSA. In  
9 earlier testimony we referred to a guidance that was offered, and  
10 oftentimes I think a guidance is offered in the form of a  
11 memorandum to FMCSA personnel or to inspectors in the field  
12 periodically about different topics. Has there ever been a  
13 memorandum or guidance offered to a roadside inspector or one of  
14 your inspectors concerning dealing with the Federal Motor Vehicle  
15 Safety Standards?

16 MR. MINOR: I believe we have two guidance documents  
17 that are out there. One of them was mentioned in our withdrawal  
18 notice back in 2005, mentioning the use of the vehicle  
19 identification number to try to determine whether a vehicle is  
20 likely to meet the FMVSS or unlikely to meet the FMVSS. And we  
21 revised that guidance for the purposes of the Cross-Border  
22 Demonstration Program in 2007. So there will be two guidance  
23 memoranda that we've issued concerning the vehicle identification  
24 numbers.

25 MR. KOTOWSKI: Can you briefly describe what that

1 guidance is?

2 MR. MINOR: Basically the 2005 document that we issued  
3 was based on the information that we obtained from the truck  
4 manufacturers, that the vehicles manufactured since 1996 are more  
5 likely to meet the FMVSS than those manufactured prior to that  
6 date. And that again is based on information that we received  
7 from the truck manufacturers down in Mexico and many of them are  
8 subsidiaries of the U.S. truck manufacturers. So a lot of that  
9 information we determined, if a vehicle does not display a FMVSS  
10 certification label, and we're trying to determine whether that  
11 vehicle meets the FMVSS, then we would use the VIN as some  
12 indicator as to the likelihood of the vehicle meeting the FMVSS.

13 And then with the 2007 guidance, we further clarified  
14 that that information is only being used for the Cross-Border  
15 Demonstration Project, and that it does not apply to buses.

16 MR. KOTOWSKI: Okay. Thank you. That's all I have.

17 CHAIRMAN HERSMAN: No more questions from the Tech Panel  
18 for the first Panel.

19 How about the Parties? Does anybody request a second  
20 round? Mr. Hugel.

21 MR. HUGEL: Thank you, Madam Chair. I just have a  
22 couple of quick questions for Mr. Minor, and it goes back to some  
23 questions that both the Chair and Mr. Kotowski asked about when we  
24 ask the manufacturer about the -- or the motor carrier whether the  
25 truck that's about to enter the program is compliant. That's not

1 all we do, and I'd like Mr. Minor to take just a brief moment to  
2 explain what they have to do, that is the Mexican motor carriers  
3 participating in the Cross-Border Demonstration Project, as far as  
4 the pre-authorization safety audit, what that is comprised of and  
5 what our personnel do.

6 MR. MINOR: Basically for the carriers that are involved  
7 in the Cross-Border Demonstration Project, they start off by  
8 filling out an application and we carefully review that  
9 application and then we conduct a pre-authority safety audit, an  
10 on-site pre-authority safety audit to look at the carrier's safety  
11 management controls, to ensure that they're capable of complying  
12 with all of the terms and conditions of the Cross-Border  
13 Demonstration Project. Then there's also the oversight of those  
14 carriers while they're participating in that project which  
15 includes looking at all the trucks that come across the border,  
16 looking at every truck every time, making sure that they continue  
17 to comply with our Motor Carrier Safety Regulations and making  
18 sure that we keep oversight of what types of crashes they may be  
19 involved in and other follow-up activities. So we have careful  
20 monitoring of all the truck operations that are involved in the  
21 Cross-Border Demonstration Project, and it's not just looking at  
22 the FMVSS issue. It's looking at the total safety management  
23 controls of the carrier involved.

24 MR. HUGEL: And does that include inspection of the  
25 vehicles that will be operating in the program?

1           MR. MINOR: It does include inspection of some of the  
2 commercial vehicles that the carrier does operate.

3           MR. HUGEL: One additional question. It was alluded to  
4 earlier that we don't check for the FMVSS, and I get these terms  
5 in my head, the acronyms a little mixed up. Why would relying on  
6 that alone not be -- not necessarily insure that the vehicle  
7 itself is safe to operate at that moment?

8           MR. MINOR: The FMCSA works very, very closely with the  
9 National Highway Traffic Safety Administration, and we recognize  
10 that the FMVSS certification label, that's affixed by the vehicle  
11 manufacturer at the time of manufacture, and once the vehicle has  
12 been introduced into commerce and is under the maintenance program  
13 of the motor carrier, we have no assurances that the motor carrier  
14 has done everything that they're supposed to do to maintain that  
15 vehicle, so that the certification label, in and of itself, really  
16 doesn't provide any assurance after the vehicle has been  
17 introduced into service and that the only way of making sure that  
18 that vehicle is safe for operation is to subject it to our vehicle  
19 inspection process to make sure that it complies with all the  
20 Federal Motor Vehicle Safety Regulations.

21           MR. HUGEL: Thank you. I have no further questions.  
22 Thank you, Madam Chair.

23           CHAIRMAN HERSMAN: Any other Parties? Mr. Littler.

24           MR. LITTLER: Thank you. I guess this one's going to go  
25 to Mr. Minor, and I've heard a number of times discussing the

1 question of FMVSS compliance and dealing with the certification  
2 made by the Truck Manufacturers Association that vehicles  
3 manufactured in Mexico after 1996 were compliant. I've read that  
4 memo or that letter. I've read the memo that subsequently went  
5 out from FMCSA to the field offices, to the ports, and looking  
6 under Attachment 33, we know that the vehicle that's the subject  
7 of this investigation was not compliant to FMVSS but I'm looking  
8 at the FMVSS Border Check software program that your office uses,  
9 and I'm looking at the vehicle identification number for the  
10 subject bus plugged in here, the check digit coming up valid,  
11 compliance valid and in the box it says the VIN is recorded  
12 accurately indicates FMVSS compliance at the time of manufacture.  
13 Was this program, which I believe was built for you in 2006, was  
14 that program premised on that memo that all vehicles manufactured  
15 in Mexico after 1996 were to be considered compliant?

16 MR. MINOR: That program is based on that memo and it's  
17 intended to be applied to truck inspections. Now the basic VIN  
18 check, just to try to make sure that the inspector has properly  
19 input the VIN, that could be applied to trucks and buses just to  
20 make sure --

21 MR. LITTLER: Right.

22 MR. MINOR: -- it's the proper 17 character VIN and then  
23 from that, we can look at the year of manufacture. So when we  
24 apply that algorithm to a truck inspection, if the vehicle is  
25 manufactured before 1996, that would be an indicator that it is

1 unlikely to meet the FMVSS and if that truck was manufactured  
2 after 1996, then it's an indication that --

3 MR. LITTLER: Right.

4 MR. MINOR: -- it's more likely to meet the FMVSS.

5 MR. LITTLER: Well, clearly it's showing that this bus  
6 is compliant with the FMVSS when it wasn't, and I'm going to take  
7 -- go back to Tab N, and that was Attachment 26, which was  
8 Greyhound Lines and advocates for highway safety comments to the  
9 docket, but Greyhound Lines specifically under page 4 of their  
10 comments and this was in the 2002 rulemaking which was terminated  
11 and subsequently the memo came out, but in the second paragraph of  
12 page 2, it states, "We state unequivocally that the vast majority  
13 of Mexican manufactured buses did not comply with the FMVSS when  
14 they were manufactured and do not comply with FMVSS in the Federal  
15 Motor Vehicle Safety Regulations now."

16 Do we know whether that was considered -- these comments  
17 from this docket were considered during the drafting of that memo?  
18 And the reason I'm going there is I have great deal of knowledge  
19 on the vehicles -- the buses that were built in Mexico and which  
20 ones were compliant because there was only one bus that I'm aware  
21 of that was manufactured in Mexico and imported into the U.S.  
22 legally which was the Dena (ph.) vehicle, and I'm the one who  
23 certified that bus. So I tend to agree with Greyhound's comments  
24 here, and I'm wondering whether they were considered in the  
25 drafting of that memo or whether they would be considered in the

1 future?

2 MR. MINOR: We considered all the comments that we  
3 received to the public docket in making the decision whether to  
4 withdraw the rulemaking and once again, we focused on our primary  
5 mission of safety and determined that the most appropriate course  
6 of action is to try to assure that all the commercial vehicles  
7 operated in the U.S. meet the Federal Motor Vehicle Safety  
8 Regulations including those safety regulations that cross-  
9 reference the Federal Motor Vehicle Safety Standards, that we  
10 didn't want to focus on whether a vehicle did or did not display  
11 an FMVSS certification label, that we just wanted to focus on  
12 ensuring the safety of operation of the vehicle at the time of  
13 inspection.

14 And again pointing the software that you mentioned --

15 MR. LITTLER: Uh-huh.

16 MR. MINOR: -- that when it indicated that this  
17 particular bus in question met the FMVSSs, that was not a correct  
18 readout given, that the software was only intended to make that  
19 determination for trucks, not for buses. And I'll point out that  
20 there is another panel tomorrow morning that will get into greater  
21 detail about the actual operation of that program and all the  
22 programming assumptions that went into it.

23 MR. LITTLER: I will wait for that panel, and I will  
24 question a little further on that then. Thank you very much.  
25 That's all the questions I have.

1           CHAIRMAN HERSMAN: Any other Parties with the second  
2 round? UMA.

3           MR. PRESLEY: My question is for Mr. Garza. Mr. Garza,  
4 can you give an example of what a company owner does when you  
5 discover that a vehicle isn't FMVSS compliant? We're assuming  
6 they still want to bring the vehicle into the country.

7           MR. GARZA: I'm not sure I understand the question. As  
8 far as providing information to us or --

9           MR. PRESLEY: Well, no. I mean assuming the operator  
10 still wants to bring the vehicle into the country, how does he in  
11 theory correct the situation or how does he resubmit or what, what  
12 evidence does he bring to you to demonstrate that he's now  
13 compliant?

14          MR. CRAIG: Just for clarification, are you talking  
15 about if the bus is encountered in the passenger environment or in  
16 the commercial evaluation? There's two different methodologies  
17 there.

18          MR. PRESLEY: Well, I guess the bus is coming in for it  
19 to be imported into --

20          MR. CRAIG: Okay.

21          MR. PRESLEY: -- the United States.

22          MR. CRAIG: If it is determined either by the way -- the  
23 declaration on the HS-7, if they check off that the bus is not  
24 compliant because of manufacturer knowledge or something of that  
25 sort, there is a regulatory process for bringing the bus into

1 compliance. If we determine through our inspection process, where  
2 our officer goes out and the course -- the normal course of doing  
3 a commercial merchandise inspection and this just happens to be a  
4 bus, and they look at it and, you know, as a motor vehicle, they  
5 look for the compliance label, and they determine that that's not  
6 there, that's the other way we can discover that the vehicle is  
7 non-compliant.

8           At that point, the bus is not admissible to the U.S.  
9 There's a couple of choices there. The importer can either  
10 withdraw and re-export the bus out of the country, cancel the  
11 entry, or they can have another entity under the Registered  
12 Importers Program that's administered by NHTSA, that there's two  
13 dozen or so companies that can import the vehicle that are  
14 authorized to retrofit the vehicles.

15           Normally in a passenger car environment, these operate.  
16 I'm not certain whether that would apply to a bus because a lot of  
17 the stuff is structural and it would require some major  
18 reengineering and retrofitting in order to bring the bus into  
19 compliance but that process would probably still be available to  
20 them. So, you know, we would work with NHTSA to allow, you know,  
21 if that's something that would be acceptable under their program,  
22 to allow that bus to come in for proper retrofitting and at the  
23 end of a 120-day period, either the bus is brought into compliance  
24 by the retrofitter or the registered importer, or the bus is re-  
25 delivered to CBP for exportation or destruction. And that's

1 generally how that's handled.

2 MR. PRESLEY: How about under the passenger application?

3 MR. CRAIG: Passenger application?

4 MR. GARZA: Under the passenger application, it would be  
5 the same thing because we would refer it back to the cargo to make  
6 entry

7 MR. PRESLEY: One last question to Captain Palmer.  
8 Captain Palmer, when a bus goes through a safety inspection at the  
9 border, and it passes that inspection, do you put a CVSA sticker  
10 on it?

11 CAPT. PALMER: If it has no -- none of the safety  
12 defects that prevent a CVSA decal, then, yes, that's correct. We  
13 would put a decal on.

14 MR. PRESLEY: So that would, that would actually reduce  
15 the number of buses that you would need to inspect on a regular  
16 basis. Is that correct?

17 CAPT. PALMER: Yes, for that, for that 90 day period  
18 unless there's an obvious safety defect and we would not re-  
19 inspect it.

20 MR. PRESLEY: Thank you. That's all the questions I  
21 have.

22 CHAIRMAN HERSMAN: Mr. Magladry, do you have any  
23 additional questions?

24 MR. MAGLADRY: No.

25 CHAIRMAN HERSMAN: Dr. Ellingstad?

1 DR. ELLINGSTAD: Just a couple of quick clarifications.  
2 First with Mr. Minor with respect to this VIN check software. Is  
3 that applied solely to check the integrity of a given VIN number  
4 that you're entering into the software or does it consult some  
5 sort of a database?

6 MR. MINOR: That is intended to just check for the  
7 proper formatting of the VIN, and it doesn't actually link to a  
8 database.

9 DR. ELLINGSTAD: Okay. So I could counterfeit one and  
10 get it through your software?

11 MR. MINOR: The software folks just -- whether there's a  
12 proper 17-character VIN.

13 DR. ELLINGSTAD: Okay. And, and another quick follow up  
14 for Mr. Garza or perhaps Mr. Craig. You mentioned that your  
15 inspectors will query your Customs and Border Protection database  
16 having to do with the appropriate entries of vehicles. Do they  
17 consult any FMCSA or state registration databases with respect to  
18 verifying either MVSS standards or registration?

19 MR. CRAIG: On the commercial side, no.

20 DR. ELLINGSTAD: Okay. Thank you.

21 CHAIRMAN HERSMAN: Ms. Beckjord, do you have a question  
22 or two?

23 HEARING OFFICER BECKJORD: I have one follow up  
24 question. Because there's the ADA rule in effect for providing  
25 transportation for the disabled, how do the FMCSRs that cross-

1 reference the FMVSS and all the above come into play when you're  
2 trying to verify that these buses are now in the U.S. and you're  
3 saying they're safe for the FMCSRs that cross-reference the FMVSS?

4 Is there anything in there that cross-reference for the ADA  
5 groups that are trying to board these buses that are in route  
6 service? And that would go to Mr. Minor and Mr. Ruben.

7 MR. MINOR: I'm not entirely sure I understand the  
8 question. If the question is whether the FMCSA's safety  
9 regulations currently cross-reference certain regulations  
10 concerning the Americans with Disabilities Act.

11 HEARING OFFICER BECKJORD: Basically what I'm trying to  
12 find out is we now have the ADA requirement that the operators  
13 must provide service, and we're taking a look at that based on the  
14 buses that we know are here and the ones that are FMVSS compliant.

15 And so my concern is we have this group who are now out there,  
16 you know, these groups and they want to have these services  
17 provided to them, but they don't know what buses they're getting  
18 on. And so I just want to make sure that if those laws are in  
19 effect, and you said that the FMCSRs, when you're doing an  
20 inspection of the bus, are qualifying or cross-referencing with  
21 the FMVSS, are there anything in those cross -- is there anything  
22 in that cross-referencing that would make sure that that is, you  
23 know, that the whole bus is FMVSS compliant and safe as we  
24 consider the standards to be, and is there any information that  
25 goes out that if you're saying that this is FMCSR compliant now

1 because it's cross-referencing with the safety standards, you  
2 know, if these groups are going to get line service, where do  
3 these -- you know, if somebody under the ADA has a complaint now  
4 against a group, I don't know, let's say like the accident bus,  
5 because it wasn't built or wasn't under FMVSS, how do we address  
6 those complaints if we don't know those buses here, what's going  
7 on with them?

8 MR. MINOR: Thank you for that clarification. Basically  
9 our enforcement of the safety regulations, the Federal Motor  
10 Vehicle Safety Regulations including any Federal Motor Vehicle  
11 Safety Standards that they cross-reference, that's a separate  
12 activity from the enforcement of the Americans with Disabilities  
13 Act requirements, that the FMCSA does work with the Office of the  
14 Secretary and the Department of Justice on the enforcement of the  
15 Americans with Disabilities Act requirements so that if we have an  
16 over-the-road bus operation that does not provide the appropriate  
17 services for the persons with disabilities, they address that  
18 separately from our enforcement of the Federal Motor Vehicle  
19 Safety Regulations and any FMVSSs that are cross-referenced in  
20 those safety regulations. So they are treated as two separate  
21 activities generally.

22 HEARING OFFICER BECKJORD: Thank you.

23 CHAIRMAN HERSMAN: And this is to the Panel. Are there  
24 different standards for charter versus scheduled operations,  
25 motorcoach operations?

1           MR. RUBEN:  If you're talking in relation to safety  
2 inspections on a roadside, the answer would be no.  The safety  
3 inspection would be conducted the same way.  For a U.S.-based  
4 company, there is no difference.

5           CHAIRMAN HERSMAN:  How about aside from safety  
6 inspections?  Are there any other different requirements or  
7 standards for a charter operator versus a scheduled line run  
8 operation?

9           MR. RUBEN:  I would have to open that up to the rest of  
10 the Panel.  I'm not sure.

11          CHAIRMAN HERSMAN:  Mr. Minor, does the FMCSA  
12 differentiate between operations that are charter operations and  
13 scheduled operations?

14          MR. MINOR:  As far as the safety regulations that apply,  
15 no, we don't make any distinction.

16          CHAIRMAN HERSMAN:  How about as far as anything else?

17          MR. MINOR:  There are some differences under operating  
18 authority rules, but once again, as far as the safety regulations  
19 that we would be enforcing such as driver qualifications and the  
20 vehicle requirements, there is no distinction between those.

21          CHAIRMAN HERSMAN:  Okay.  I think that just to kind of -  
22 - we might be obfuscating things.  What I'm asking for is  
23 differences.  I'm not asking for similarities and so if you all  
24 could answer the question, if there are any differences with  
25 respect to your organizations with respect to charter versus

1 scheduled operations. I'm not looking for similarities. I'm  
2 looking for differences. Are there different standards? Are they  
3 required to hold higher levels of insurance. Can you tell me any  
4 differences that might exist between charter and scheduled  
5 operations? Was this a charter operator or a scheduled operator  
6 by your definitions?

7 MR. RUBEN: Well, in answering your first question, I  
8 don't believe there is any difference. I'd have to do more  
9 research to see if there are any differences. Whether this  
10 particular vehicle in this crash was involved in charter or line  
11 operations would have no bearing on how we handle this particular  
12 company or its operation.

13 CHAIRMAN HERSMAN: Are there any differences with  
14 respect to insurance and carriage amounts?

15 MR. RUBEN: Not based on the operation. It may be based  
16 on the vehicle type, but we're not talking vehicle types. So, no,  
17 there would be no difference.

18 CHAIRMAN HERSMAN: Are there any differences about where  
19 they're allowed to operate if they have Mexican plates?

20 MR. RUBEN: If it's a U.S.-based company, that has  
21 authority to operate in the U.S., then again we would have to  
22 defer any plate issues to the state.

23 CHAIRMAN HERSMAN: Okay. How about from the State  
24 perspective? Were there any differences whether it's considered  
25 charter or scheduled?

1           CAPT. PALMER: No, ma'am, there are not.

2           CHAIRMAN HERSMAN: Okay. Mr. Garza, in your statement  
3 you talked about non-resident bus passengers having to stand in  
4 line to get an I-94 if they're going beyond the commercial zone.  
5 What, what exactly do you need an I-94 for? Is this if your  
6 papers don't permit you to go beyond the commercial zone?

7           CAPT. PALMER: Yes, ma'am. Normally Mexican citizens  
8 with their visa, B-1/B-2s, they're just coming to the border.  
9 They don't need to get any permit from us to proceed beyond the 25  
10 mile limit. If they're going to go to San Antonio or beyond the  
11 25 mile marker, then they need to come into the office and get an  
12 I-94. So that's when we get in line to get that permit to travel  
13 further than 25 miles.

14           CHAIRMAN HERSMAN: So people have to stand in line if  
15 they don't have authority to operate beyond the commercial zones,  
16 but buses who may not have registration don't have to -- are not  
17 subjective to the same kind of treatment. So let's say you have a  
18 Mexican plated bus that should not go beyond the commercial zone,  
19 there is no similar or corollary requirement for the bus to be  
20 appropriately authorized to operate but a person has to be, if  
21 they don't have appropriate papers, they must, they must wait in  
22 line to get those. But there's no similar requirement for the  
23 vehicle. Is that correct?

24           MR. GARZA: That's correct.

25           CHAIRMAN HERSMAN: Okay. And, Mr. Ellis, the last

1 question that I have I'd like to direct to you, and if I use the  
2 term wet lease or dry lease, does that mean anything to you?

3 MR. ELLIS: No, it doesn't.

4 CHAIRMAN HERSMAN: Okay. All right. Sometimes there's  
5 terms that mean something in one industry that don't mean  
6 something to another industry. You described a very complex  
7 leasing, financial kind of arrangement. It was a complex kind of  
8 web of payments and leasing arrangements between some companies  
9 that had operating authority and some companies that didn't have  
10 operating authority, and it seemed, it seemed very challenging to  
11 kind of follow that trail and figure out who was who and whose  
12 buses belonged to whom. Is this something that you see in your  
13 line of work on a rare occasion or do you see it regularly?

14 MR. ELLIS: Well, I think -- I guess in this case we --  
15 here lately, it seems to be more common.

16 CHAIRMAN HERSMAN: Does that make it harder for you to  
17 do your job?

18 MR. ELLIS: Definitely. I mean definitely because  
19 you're -- you have to base everything on the determining like  
20 everybody's discussing who the motor carrier is. Who's the  
21 person, the entity in charge, I mean running the bus on that  
22 particular day and it's pretty much a paper trail. You've got to  
23 determine, you know, who's controlling the driver, telling him  
24 where to go, who's paying the driver where to go, who's paying the  
25 bills for the buses, you know, and we had a difficult time even

1 determining as far as charters and things like that, what buses  
2 were running on a particular day, who was driving them and things  
3 like that. So it is a challenge, and I guess probably always will  
4 be.

5 CHAIRMAN HERSMAN: Yeah. Well, and I raise the wet  
6 versus dry lease because a dry lease could be characterized as  
7 just leasing equipment. You lease someone your bus and they  
8 operate it. They have control over the bus. A wet lease would be  
9 what was described with this operation. The provided the driver.  
10 They provided the fuel. They provided the insurance. They  
11 provided the maintenance. And so really they had operational  
12 control of that, of that bus and that bus' operation.

13 And the Safety Board has looked at this issue in the  
14 aviation industry and I share this with you all because I think  
15 one of our jobs is to hold up the mirror and show people what's  
16 happening, and it's up to you all to ultimately decide how to fix  
17 it. But on the aviation side, the Department of Transportation  
18 has determined that a carrier that does not have operating  
19 authority that doesn't have a valid certificate, cannot piggyback  
20 onto somebody else's operating authority. So you can't, you can't  
21 wet lease your operation and have -- retain operational control if  
22 you don't have a valid authority, and this was highlighted in our  
23 investigation of the Teterboro charter jet accident in New Jersey,  
24 and so I just provide that information for you all just for your  
25 reference. The DOT has been very specific about operational

1 control and that it's important, and I think you've raised some  
2 issues that it's a challenge for you all, and I think we've seen  
3 other accidents where there have been some questions and most  
4 recently in Texas about who was actually operating the vehicle.  
5 And so we have the opportunity to look across modes and see  
6 different things, and I know in the past, brokering has come up  
7 and that was also a part of our work on that accident, and so you  
8 may be interested in taking a look at that to try to give both the  
9 federal authorities some oversight, you know, and to what other  
10 federal agencies but also on the state side as well. That paper  
11 trail is very difficult to unravel sometimes and I know it's a  
12 challenge, and I think if there are standards in place, then  
13 there's the potential that that could help you all do your jobs  
14 and not make it so confusing.

15 MR. ELLIS: Yes. Thank you.

16 CHAIRMAN HERSMAN: One final call, if there are any  
17 other questions from the Tech Panel?

18 (No response.)

19 CHAIRMAN HERSMAN: The Parties?

20 (No response.)

21 CHAIRMAN HERSMAN: The Board of Inquiry?

22 (No response.)

23 CHAIRMAN HERSMAN: Wonderful. I'm very pleased with the  
24 testimony and the responses to questions that have been provided  
25 by the witnesses. You all have been very helpful and very candid.

1 I know this has been a challenging morning with a lot of  
2 different issues area for everyone involved. So thank you for  
3 your patience and also for your focus. We actually are ahead of  
4 schedule.

5 So we will adjourn until 1:30 for lunch, and we will  
6 begin promptly at 1:30 with the second panel. Thank you.

7 (Whereupon, a lunch recess was taken.)

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(1:30 p.m.)

CHAIRMAN HERSMAN: Good afternoon. I hope everybody had a good lunch. We will now bring our Panel 2. Ms. Beckjord, would you please call the witnesses for Panel 2.

HEARING OFFICER BECKJORD: Good afternoon. Will Ms. Debra Hill, Mr. Bobby J. Johnson, Mr. Tim Adams and Mr. Donald Charles Johnson, please stand and raise your right hand?

(Witnesses sworn.)

HEARING OFFICER BECKJORD: Thank you. Please be seated.  
(Whereupon,

DEBRA HILL

was called as a witness and, after having been previously duly sworn, was examined and testified as follows:)

HEARING OFFICER BECKJORD: Ms. Hill, for the record, would you please state your full name and business address?

MS. HILL: Debra Hill, 2415 First Avenue, Sacramento, California.

HEARING OFFICER BECKJORD: Thank you. And with whom are you presently employed?

MS. HILL: The State of California, Department of Motor Vehicles.

HEARING OFFICER BECKJORD: Okay. And what is your present position?

MS. HILL: I'm the Program and Policy Development Branch

1 Chief in the Motor Carrier Division.

2 HEARING OFFICER BECKJORD: Thank you. And how long have  
3 you held this position?

4 MS. HILL: This current position, for three months.  
5 I've been in the division for four years.

6 HEARING OFFICER BECKJORD: Four years. And would you  
7 please briefly describe your education, training or experience  
8 that you've obtained to qualify you for your current position or  
9 to testify here today?

10 MS. HILL: Well, I've worked for the Department for 21  
11 years, 16 of that was with the Registration and Operations  
12 Division, 1 year was in Licensing Operation and the past 4 four  
13 years in Motor Carrier Division.

14 In my position as the Program and Policy Development  
15 Branch Chief, I oversee the development of policy and procedures,  
16 new programs, special projects and customer outreach efforts  
17 related to the Division's motor carrier programs. Those programs  
18 are the International Registration Plan, Permanent Fleet  
19 Registration, Motor Carrier Permit and Unified Carrier  
20 Registration.

21 Prior to that position, I was the IRP Policy Section  
22 Manager where I directed and coordinated the activities of the IRP  
23 Policy Section, developed and implemented process improvement  
24 strategies and changes necessary to continuously upgrade the level  
25 of service provided by the section and served as the Project

1 Manager on various projects related to the motor carrier programs.

2 Prior to that, I was the Motor Carrier Services Branch  
3 Chief where I oversaw the sections performing the processing of  
4 the applications for those same programs.

5 HEARING OFFICER BECKJORD: Thank you very much.

6 MS. HILL: Uh-huh.

7 (Whereupon,

8 BOBBY JOHNSON

9 was called as a witness and, after having been previously duly  
10 sworn, was examined and testified as follows:)

11 HEARING OFFICER BECKJORD: And, Mr. Johnson, would you  
12 please state your full name and business address?

13 MR. JOHNSON: Sure. It's Bobby J. Johnson, 125 East  
14 11th Street, Austin, Texas. I work for the Texas Department of  
15 Transportation, Vehicle Titles and Registration Division. I'm the  
16 Director of Production Management and I am in charge of the IRP  
17 Program. I've been in this position since June of 2002. I have  
18 20 years of experience with Texas Department of Transportation.

19 I, like I said, currently am the Director of the IRP  
20 Program. I've also been provided the direction for policy  
21 development and legislative analysis at TXDOT.

22 HEARING OFFICER BECKJORD: Thank you. And will you  
23 please briefly describe any education or other training you've  
24 obtained to qualify as the witness today?

25 MR. JOHNSON: Well, other than experience, I hold a MBA

1 from the University of Texas and a MS from Texas A&M and BS from  
2 Texas State University.

3 (Whereupon,

4 TIM ADAMS

5 was called as a witness and, after having been previously duly  
6 sworn, was examined and testified as follows:)

7 HEARING OFFICER BECKJORD: Thank you.

8 Mr. Adams?

9 MR. ADAMS: Thank you. Timothy A. Adams. I work for  
10 IRP, Inc. The business address is 4301 Wilson Boulevard in  
11 Arlington, Virginia. I actually have been in this position with  
12 IRP, Inc., only since August 18th, but prior to that, the prior 4  
13 1/2 years I was with the American Association of Motor Vehicle  
14 Administrators, which IRP, Inc. is a subsidiary of.

15 My current position is Program Director for Motor  
16 Carrier Services which deals with all aspects of the motor carrier  
17 community including IRP. Prior to coming to work for AAMVA and  
18 IRP, I was the Manager for the Motor Carrier Services for the  
19 Kentucky Department of Vehicle Regulation for 24 1/2 years and  
20 like I said, I've been in this position currently for 4 1/2 years,  
21 and I have a diploma in business.

22 (Whereupon,

23 DONALD CHARLES JOHNSON

24 was called as a witness and, after having been previously duly  
25 sworn, was examined and testified as follows:)

1 HEARING OFFICER BECKJORD: Thank you.

2 And, Mr. Donald Charles Johnson?

3 MR. D. JOHNSON: Thank you. I work at 158 North Harbor  
4 City Boulevard, Melbourne, Florida, for 5Star Specialty Programs  
5 which is an insurance -- a general agency for insurance companies.

6 HEARING OFFICER BECKJORD: And what is your current  
7 position?

8 MR. D. JOHNSON: My position with them is Vice President  
9 of Loss Control Services. I have been employed with this firm for  
10 22 years.

11 HEARING OFFICER BECKJORD: And would you please briefly  
12 describe your education, training or experience that you've  
13 obtained to qualify you for today's hearing as a witness?

14 MR. D. JOHNSON: Yes. I have a Fire Safety Degree, a  
15 B.S. in Fire Safety Degree from Rolands College. I have worked in  
16 the insurance loss control industry for approximately 30 years. I  
17 am a certified safety professional. I'm a certified occupational  
18 health and safety technologist. I worked for the State of Florida  
19 Highway Patrol and Law Enforcement as a State Trooper for four  
20 years.

21 HEARING OFFICER BECKJORD: Thank you, sir.

22 Ms. Chairman, the witnesses have been qualified and I  
23 will not turn the questioning over to the Technical Panel members.  
24 Mr. Gary Van Etten, will you please begin with the Technical Panel  
25 questions?

1           MR. VAN ETTEN: Our first questioner will be Mr. Dennis  
2 Collins.

3           MR. COLLINS: Thank you, Mr. Van Etten. This group of  
4 questions is for Mr. Adams in dealing with the International  
5 Registration Plan.

6           Mr. Adams, what is the International Registration Plan?  
7 Can you describe how it works, and what is the role of the IRP in  
8 the state vehicle registration process?

9           MR. ADAMS: Okay. Yes, sir. The International  
10 Registration Plan is basically a registration reciprocity  
11 agreement between the 48 continental United States, District of  
12 Columbia and 10 Canadian provinces, for the registration of  
13 commercial vehicles, apportionable vehicles as they're called  
14 which basically is any commercial truck that's 26,000 pounds or  
15 above, with 3 or more axles, regardless of weight or the  
16 combination thereof.

17           The purpose of the IRP which originated back in 1973 was  
18 to promote the most efficient and economic use of the highway  
19 system and sharing of the revenue based upon mileage operations by  
20 motor carriers so that all jurisdictions were getting their fair  
21 share of the revenue.

22           Prior to that, vehicles were operated on reciprocity  
23 agreements where the base state registration was honored in other  
24 states based upon existing reciprocity agreements, but all the  
25 fees were going to the base jurisdiction.

1           So with the establishment of IRP, the fair sharing of  
2 the revenue was established. It started out with five  
3 jurisdictions and has moved to now all jurisdictions with the  
4 exception of Alaska and Hawaii participate in the plan.

5           MR. COLLINS: Can you tell me how the IRP differs from  
6 intrastate vehicle registration?

7           MR. ADAMS: Basically, intrastate vehicle registration  
8 is for intra -- operations within a jurisdiction, not outside or  
9 beyond its borders. Of course, there are some operations where  
10 jurisdictions will issue what is called a base state intrastate  
11 plate where that vehicle can go beyond its borders, dependent upon  
12 the type of registration it is and, for example, a restricted type  
13 registration for hauling just a certain commodity or something  
14 like that may be able to operate beyond the borders, but primarily  
15 an intrastate plate or registration is only for operating within  
16 the borders of a particular jurisdiction, whereas, the IRP  
17 registration is for interstate operations, operating in two or  
18 more jurisdictions.

19           MR. COLLINS: Are there any recommended practices or  
20 practices recommended by the IRP with regard to registering  
21 commercial vehicles that are manufactured outside the U.S. in  
22 order to determine if they are not FMVSS compliant?

23           MR. ADAMS: I don't know that we would have any  
24 recommendations specific to that at this point. Most of those  
25 things are as far as qualifying the vehicle are not handled at the

1 registration process. They're handled prior to the registration  
2 process in the titling process.

3 MR. COLLINS: This concludes my questions for Mr. Adams.

4 MR. VAN ETTEN: I have a question.

5 MR. COLLINS: Oh, I'm sorry. Mr. Van Etten has a follow  
6 up.

7 MR. VAN ETTEN: I just have a follow-up question. Does  
8 the IRP, Inc., do they have best practices or recommended  
9 practices or rules in terms of how states register their vehicles  
10 under IRP?

11 MR. COLLINS: Yes, there are. There are policies and  
12 procedures as to how the guidelines are to be met. There are  
13 certain requirements as a member jurisdiction, that a jurisdiction  
14 or state has to meet in order to stay in compliance with IRP  
15 registration. The IRP does not, however, try to invade any state  
16 laws as to how the practice, the registration practices take place  
17 in their jurisdiction. In other words, we don't try to tell a  
18 state that they can only do registrations in a central office or  
19 something like that.

20 MR. VAN ETTEN: Would these best practice  
21 recommendations, would they include what forms needed to be filled  
22 out or --

23 MR. ADAMS: Yes, sir.

24 MR. VAN ETTEN: -- at a minimum what forms need to be  
25 filled out?

1 MR. ADAMS: Yes, sir.

2 MR. VAN ETTEN: And how it would then be processed?

3 MR. ADAMS: We do have standards, the information that  
4 has to be maintained on the forms that have been decided by the  
5 jurisdictions and voted on but as far as there being a standard  
6 process for how they apply that, whether they, you know, use a  
7 certain computer system or anything like that, there are no  
8 practices like that.

9 MR. VAN ETTEN: And on any of these forms that you are  
10 aware of --

11 MR. ADAMS: Uh-huh.

12 MR. VAN ETTEN: -- is there any need to make a  
13 declaration that a vehicle meets the FMVSS standards?

14 MR. ADAMS: Not at the registration process within the  
15 IRP agreement itself, no, sir, there is not.

16 MR. VAN ETTEN: Thank you, sir. I will turn it over now  
17 to Ron.

18 MR. KAMINSKI: Thank you, Mr. Van Etten. My questions  
19 are going to be directed to Ms. Debra Hill and Mr. Bobby Johnson.  
20 We'll start with questions for Ms. Hill.

21 Ms. Hill, when a vehicle is considered or when is a  
22 vehicle considered imported by California regulations?

23 MS. HILL: Is it okay if I read a statement that I've  
24 been provided?

25 MR. KAMINSKI: Yes.

1 MS. HILL: Okay. The California Vehicle Code and  
2 related regulations do not set forth a specific definition for  
3 imported vehicles.

4 However, Section 39024.6 of the California Health and  
5 Safety Code defines a direct import vehicle as any light duty  
6 motor vehicle manufactured outside of the United States which was  
7 not intended by the manufacturer for sale in the United States and  
8 which was not certified to meet the emission standards for newer  
9 vehicles established by the California State Air Resource Board.

10 Chapter 10, Section 10.005 of the California Vehicle  
11 Registration Manual defines a direct import vehicle as a vehicle  
12 that is not manufactured to meet U.S. Federal Safety requirements  
13 and/or U.S. or California emission standards and not intended by  
14 the manufacturer to be used or sold in the United States. The  
15 California Vehicle Registration Manual is an internal DMV manual  
16 of procedures that the Department follows when processing its  
17 transactions. The general authority for this manual can be found  
18 in the California Vehicle Code, Section 4150(d).

19 MR. KAMINSKI: Okay. Now what process, processes must a  
20 vehicle owner who imports a vehicle manufactured in a foreign  
21 country into California do in order for the State to register that  
22 vehicle in California?

23 MS. HILL: Again, I'm going to read a statement. An  
24 application for interstate registration of an imported vehicle  
25 must include an Application for Registration, DMV Form

1 Registration 343 Registration 1 combined. This form includes  
2 owner information such as the name and mailing address,  
3 titleholder information, if applicable, odometer information, cost  
4 information, date of purchase, purchase price and a signature of  
5 the owner under penalty of perjury.

6 The requirements for this form are based on California  
7 Vehicle Code, Section 4150. Subdivision (d) of Section 4150  
8 authorizes the DMV to require any further information that it  
9 deems is reasonably necessary to complete a vehicle registration.

10 Many of the requirements in the California Registration  
11 Manual derive from the inherent authority granted the Director of  
12 the DMV by Vehicle Code Section 4150(d).

13 A physical inspection of the vehicle completed by  
14 authorized DMV representative, an authorized auto club, a peace  
15 officer who has been trained to perform vehicle verifications or a  
16 licensed vehicle verifier is also required.

17 A vehicle verifier is defined by the California Code,  
18 Vehicle Code Section 675.5 as a person who inspects, records  
19 documents and submits to the Department, which is the DMV, or its  
20 authorized representatives such proof of vehicle identification as  
21 may be required by the Department for registering or transferring  
22 the vehicles, the ownership of vehicles.

23 California Vehicle Code, Section 11300 specifies that a  
24 vehicle verifier must obtain a permit from the DMV while Section  
25 11302, et seq., provide for license discipline if certain

1 misconduct is committed by a licensed verifier. The verifier must  
2 also be bonded. Vehicle Code, Section 11301 explains that.

3           The verification process required for the registration  
4 of an imported vehicle includes inspection and identification of  
5 the vehicle identification number, a description of the type of  
6 vehicle identification number, it could be stamped or a metal  
7 plate, an odometer reading and whether the labeling indicates that  
8 the vehicle complies with the U.S. or California emission  
9 requirements. The dually authorized individual completing the  
10 verification must sign, under penalty of perjury, as to the  
11 accuracy of the information entered onto the verification of  
12 vehicle form, DMV Form Reg 343 Reg 1 combined.

13           The vehicle verification process includes an inspection  
14 to ensure that the vehicle complies with Federal Motor Vehicle  
15 Safety Standards unless the vehicle is 25 or more years old.  
16 Acceptable evidence of compliance with FMVSS standards includes a  
17 federal certification label affixed to the vehicle or a copy of  
18 the letter from the vehicle manufacturer attesting to the fact  
19 that the vehicle complies with FMVSS requirements.

20           California also has the authority, pursuant to  
21 California Vehicle Code, Section 34500, et seq., to regulate the  
22 safe operation of specified motor trucks, truck tractors, school  
23 buses, trailers and semi-trailers and various other large  
24 vehicles. Vehicle Code, Section 34501.12 provides that all  
25 intrastate motor carriers that maintain a base of operation in

1 California, must participate in a terminal inspection program.  
2 Members of the California Highway Patrol inspect the terminals and  
3 vehicles of California-based carriers for safety and related  
4 purposes at least every 25 months. That's a requirement in  
5 Vehicle Code, Section 34501.12, Section (d)(1).

6 The California DMV also requires evidence that an  
7 imported vehicle has cleared U.S. Customs. This requirement is  
8 based on Section 10.110 of the California Vehicle Registration  
9 Manual. Satisfactory evidence that a vehicle has cleared Customs  
10 includes U.S. Customs Forms 7501, 3461, 6059, 3299 or 3311. These  
11 forms must be stamped or otherwise endorsed by the U.S. Customs.

12 A copy of the U.S. Department of Transportation bond  
13 release letter issued by the National Highway Traffic Safety  
14 Administration is another requirement as required in Title 49,  
15 Code of Federal Regulations, Section 591. The bond release letter  
16 ensures that a non-conforming vehicle has been brought into  
17 compliance with the Federal Motor Vehicle Safety Standards by the  
18 registered importer prior to its use on any public road.

19 A certificate of conformance issued by a laboratory  
20 approved by the California Air --

21 CHAIRMAN HERSMAN: Ms. Hill.

22 MS. HILL: Uh-huh.

23 CHAIRMAN HERSMAN: I'm not sure how much more you have  
24 but I know that this information is going to be in our docket.

25 MS. HILL: Okay.

1           CHAIRMAN HERSMAN: Is it possible for you to maybe  
2 paraphrase what some of this is or is it much longer?

3           MS. HILL: It is pretty long.

4           CHAIRMAN HERSMAN: It's pretty long.

5           MS. HILL: Yes.

6           CHAIRMAN HERSMAN: Well, I think that we have this  
7 information in our docket, and so, Mr. Kaminski, were you trying  
8 to seek something specific in this recitation?

9           MR. KAMINSKI: Well, she answered a couple of my  
10 questions --

11          CHAIRMAN HERSMAN: Okay.

12          MR. KAMINSKI: -- through that, and I guess I just have  
13 a couple of other questions I'd like to ask her.

14          CHAIRMAN HERSMAN: Okay. Ms. Hill, I know you've done a  
15 lot of work to prepare for the hearing, but all of this  
16 information is going to be in the docket. So if possible, if you  
17 could maybe paraphrase.

18          MS. HILL: Okay. I'm not an expert in vehicle  
19 registration, of a normal vehicle. So that's why I was just  
20 reading what they prepared.

21          CHAIRMAN HERSMAN: Okay. Okay. Well, I think probably  
22 we'd all appreciate if you have some specific experience that you  
23 could, you know, help us --

24          MS. HILL: Okay.

25          CHAIRMAN HERSMAN: -- with what you know because I think

1 that you do know a lot. So just share what you know with us.

2 MS. HILL: Okay.

3 CHAIRMAN HERSMAN: Thanks.

4 MR. KAMINSKI: Is the California process for registering  
5 a vehicle under IRP any different than what the representative  
6 from the IRP has stated and what are those differences?

7 MS. HILL: Yes. To register a vehicle in IRP in  
8 California, the carrier must submit a Schedule A which is a form  
9 that provides information about the carrier and a Schedule C which  
10 is information that provides -- it's a form that provides  
11 information about the vehicle, such as the weight, the vehicle  
12 information. They have to provide proof of exemption from federal  
13 heavy vehicle use tax. They have to provide an agreement to  
14 prepare and maintain records. They have to do a vehicle  
15 verification because the vehicles in IRP are typically not located  
16 in California at the time that the vehicle is registered in lieu  
17 of the vehicle verification. We will also accept a manufacturer's  
18 certification, a title from either California or another  
19 jurisdiction or a notarized bill of sale. They also have to  
20 provide proof or evidence of international fuel tax registration.

21 MR. KAMINSKI: Okay. I think you answered this, but  
22 what forms -- you've talked about forms, the forms submitted and  
23 what process does the state follow to verify that these -- the  
24 legitimacy of these vehicles?

25 MS. HILL: As I mentioned before, the forms.

1 MR. KAMINSKI: Okay.

2 MS. HILL: Did you want me to say them again?

3 MR. KAMINSKI: Okay.

4 MS. HILL: Okay.

5 MR. KAMINSKI: Let's continue then with Mr. Bobby  
6 Johnson now.

7 When does Texas consider a vehicle imported under Texas  
8 regulations?

9 MR. JOHNSON: Whenever it comes in from a foreign  
10 country.

11 MR. KAMINSKI: And what process must the vehicle owner  
12 who brings or imports a vehicle manufactured in a foreign country  
13 into Texas do in order for the state to register that vehicle in  
14 Texas?

15 MR. JOHNSON: Provide proof of ownership, apply for  
16 either a Texas Title or a registration purposes only certificate,  
17 provide a HS-7 form, a vehicle inspection form that's completed by  
18 DPS, certified inspection station. They have to have completed  
19 Customs documentation and if it's coming in from a foreign  
20 country, it has to have a VTR Form 68A which is a VIN  
21 verification, and that's completed by a law enforcement officer.

22 MR. KAMINSKI: Okay. Now what processes does Texas have  
23 to verify that a vehicle manufactured in a foreign country meets  
24 the FMVSS criteria?

25 MR. JOHNSON: We use HS-7.

1           MR. KAMINSKI: And is the Texas process for registering  
2 a vehicle under IRP any different than what the representative  
3 from the IRP stated and what are those differences?

4           MR. JOHNSON: It's pretty much the same, you know,  
5 states require the same schedules and in Texas, again you have to  
6 -- we won't register it without a Texas title or an application  
7 for registration purposes only. I think other than that, it's  
8 fairly standard across states.

9           MR. KAMINSKI: Okay. That concludes my questions,  
10 Mr. Van Etten.

11           MR. VAN ETTEN: Ms. Hill, hi. We've talked on the  
12 phone. It's nice to meet you at last. I do have a question,  
13 somewhat of a follow up but it also includes some of the things  
14 that I wanted to ask. Under the processes under IRP, you  
15 indicated that many of the vehicles that are registered under IRP  
16 never come to the state, and my question is the physical of the  
17 examination of the vehicle which you mentioned earlier is part of  
18 a process of registering the vehicle. Does that -- how does that  
19 take place in California or does it take place?

20           MS. HILL: First, I wanted to clarify. I didn't mean to  
21 say that the vehicles never come into California. At the time  
22 that the vehicle is registered, it may not be in California.

23           We do -- we've actually changed our process. It's going  
24 to go into effect in January. It's going to go into effect with  
25 the 2009 registration process, and we are going to require that a

1 vehicle verification be done on every single vehicle registered in  
2 IRP.

3 MR. VAN ETTEN: Okay. And how would that vehicle, that  
4 VIN registration, what would that look like?

5 MS. HILL: It's that Reg 343 Reg 1 combined. It's -- on  
6 one side it's an application for registration used in regular  
7 registration and then on the back, it's a vehicle verification  
8 form.

9 MR. VAN ETTEN: And when -- I guess what I'm trying to  
10 get at is what process would the Department of Motor Vehicles go  
11 through in order to determine just by using the VIN number if this  
12 vehicle was FMVSS compliant?

13 MS. HILL: For an IRP vehicle?

14 MR. VAN ETTEN: Yes.

15 MS. HILL: We have a new system in place that uses VINA  
16 software provided by R. L. Polk.

17 MR. VAN ETTEN: Okay. I may want to speak to you about  
18 that after and get a little bit more information on that. You  
19 mentioned a number of forms that needed to be filled out and  
20 included in those forms for vehicles that were manufactured  
21 outside of the United States, there was a Customs form and a  
22 couple of other declarative forms to indicate that the vehicle had  
23 been properly imported into the United States. Are those forms  
24 part of your registration record? Do you keep those forms and are  
25 they accessible?

1 MS. HILL: Yes, whatever forms are submitted with the  
2 application, we retain those.

3 MR. VAN ETTEN: Okay. And do you know right offhand if  
4 the accident vehicle that's part of this investigation, those  
5 forms were in their registration packet?

6 MS. HILL: No, they were not. We didn't require those  
7 at the time that vehicle was registered.

8 MR. VAN ETTEN: Okay. So these are new requirements?

9 MS. HILL: Yes.

10 MR. VAN ETTEN: Okay. Mr. Johnson, Mr. Bobby Johnson.  
11 The same kind of questions. How does the State of Texas under  
12 registration of IRP, are they required to physically examine the  
13 vehicle and, if not, how do they go about determining that vehicle  
14 is FMVSS compliant?

15 MR. JOHNSON: The carrier is required to supply a Form  
16 VI-30 and that is a vehicle inspection form that's performed by  
17 one of DPS' licensed inspection stations. It could be a private  
18 business that's been licensed. That's part of the title  
19 application process and without that, we don't process it.

20 MR. VAN ETTEN: So under IRP, if I'm operating a number  
21 of vehicles that are in Wisconsin, and they never come to Texas,  
22 how do you inspect the vehicles or do you require them to be  
23 brought to Texas to --

24 MR. JOHNSON: We would required them to be brought to  
25 Texas.

1 MR. VAN ETTEN: Thank you.

2 MR. KOTOWSKI: Ms. Hill, in California, is there a  
3 requirement that a vehicle be registered for a given weight or a  
4 specified weight or can that vary depending upon the registration  
5 process?

6 MS. HILL: The carrier tells us the weight of the  
7 vehicle. In IRP, it has to be over I believe it's 10,001 pounds.

8 MR. JOHNSON: 26,000.

9 MS. HILL: 26,000 pounds.

10 MR. KOTOWSKI: And if the vehicle is over 26,000 pounds,  
11 then the applicant then can say that I want to register this  
12 vehicle for a gross vehicle weight of let's say 38,000 pounds or  
13 36,000 pounds?

14 MS. HILL: Right. In California, they can go up to  
15 80,000.

16 MR. KOTOWSKI: And at anytime in this registration  
17 process, when we register a vehicle like that, the applicant wants  
18 to register it at a certain weight, is there any consideration  
19 given to the axle weight ratings or the axle weights that the  
20 vehicle is going to carry?

21 MS. HILL: Yes, there is a requirement it has to be --  
22 I can't remember it right off hand. There's two axles and I don't  
23 have the requirement right in front of me.

24 MR. KOTOWSKI: Okay. Thank you. Mr. Johnson, same  
25 question. Does the State of Texas in their registration allow an

1 applicant to specify what they want their gross vehicle weight  
2 rating to be?

3 MR. JOHNSON: Well, as part of the title application  
4 process, they have to provide a weight certificate. So they would  
5 go to a certified public scale and have that form completed and  
6 bring it in, and that's what their title will show is their gross  
7 vehicle weight. When they come into IRP, you know, different  
8 states, and correct me if I'm wrong, Tim, but different states  
9 have different -- you can operate at different weights in  
10 different jurisdictions. In Texas, the maximum is 80,000 pounds  
11 like California.

12 The -- when a customer comes in to one of our regional  
13 offices to register, if they want to register for a weight that is  
14 beyond the gross vehicle weight, the system won't allow that. We  
15 won't allow it.

16 MR. KOTOWSKI: Okay. And is there a, is there a limit  
17 that you can register a vehicle for, for each individual axle  
18 weight?

19 MR. JOHNSON: No, it's total weight.

20 MR. KOTOWSKI: It's just total weight. And do the same  
21 standards apply to the registration of an intrastate vehicle in  
22 Texas as well?

23 MR. JOHNSON: Yes.

24 MR. KOTOWSKI: Is there any difference as far as  
25 registration between a commercial motor vehicle under IRP or

1 intrastate? Are there any differences in that application process  
2 or requirements?

3 MR. JOHNSON: Well, yeah, there are. I mean there's  
4 physical differences and a couple of procedural. IRP  
5 registrations can only be conducted at TXDOT office, one of our 16  
6 regional offices. Once you're in IRP and supplied the necessary  
7 documentation, you can, you can do supplements and renewals on  
8 line or you can mail them into Headquarters and we can process  
9 them. For a non-IRP truck, all those transactions go through our  
10 county tax assessment offices. There's 254 counties, over 400  
11 locations and about 2200 workstations that can process those.

12 MR. KOTOWSKI: And is there a policy or do you normally  
13 have a conversion factor that you utilize when the vehicle comes  
14 in for registration that is registered in kilogram?

15 MR. JOHNSON: Yeah, we can do that. Yeah. We have a  
16 fairly new IRP application they just developed and it went on line  
17 in November '06, and one of the other things that I do is I'm the  
18 Texas Representative on the Board working group for the  
19 implementation of the Demonstration Project. And, you know, we  
20 provide a conversion for kilometers and kilograms for our distance  
21 charts and for our weights.

22 MR. KOTOWSKI: Thank you.

23 MR. JOHNSON: Uh-huh.

24 MR. VAN ETTEN: Yeah, just a couple of quick follow up  
25 questions. Mr. Johnson, in this incident, our accident vehicle

1 had -- was first registered in California --

2 MR. JOHNSON: Uh-huh.

3 MR. VAN ETTEN: -- under IRP. And then subsequently  
4 reregistered in Texas, and as an intrastate carrier, with an  
5 intrastate plate.

6 MR. JOHNSON: Right.

7 MR. VAN ETTEN: In that case, when you have this  
8 transfer between state registration, is there a physical  
9 examination of the vehicle at that time as you do for other  
10 vehicles?

11 MR. JOSEPH: Yes. When a vehicle comes into Texas for  
12 registration, or titling, because we require titling or a RPO  
13 certificate, the vehicle inspection, VI-30 is required for all the  
14 transactions. It's not a Texas title.

15 MR. VAN ETTEN: Okay. So --

16 MR. JOHNSON: So if you came in from California,  
17 Oklahoma or someplace, you would still have to have a VI-30 done  
18 and take that with your title application, your RPO application.

19 MR. VAN ETTEN: Okay. And this is for both Ms. Hill and  
20 Mr. Johnson. If during your registration process, you were to  
21 determine that a vehicle was non-FMVSS compliant, what actions  
22 would you take?

23 MR. JOHNSON: I'll go first.

24 MS. HILL: Okay.

25 MR. JOHNSON: Well, I guess it kind of depends on where

1 we find out if, and there's -- this gets a little bit dicey. If  
2 it happens -- if a transaction goes through the county, you know,  
3 when -- we do like 6.5 million title transactions a year, and we  
4 do a random sampling on those.

5 If we find out before the title's issued, we will reject  
6 the title application and send it back to the county and refuse to  
7 process it. If we're informed by the Department of Public Safety  
8 that a vehicle, particular vehicle is unsafe, then we can -- we  
9 have the ability to revoke or suspend registration.

10 MR. VAN ETTEN: My question was at the time of  
11 registration.

12 MR. JOHNSON: At the time of registration, again if it's  
13 a new vehicle coming in that has the inspection certificate, we  
14 wouldn't, no. I mean it either has a HS-7 or VI-30 or both. If  
15 those two pieces of documentation are there, there would be no way  
16 that they would know.

17 MR. VAN ETTEN: Okay. And to your knowledge, did this  
18 accident vehicle have such an inspection?

19 MR. JOHNSON: Yes.

20 MR. VAN ETTEN: Thank you. Ms. Hill, what would  
21 California do in a case they found they found out a vehicle was  
22 non-compliant?

23 MS. HILL: At the time of registration?

24 MR. VAN ETTEN: Yes, ma'am.

25 MS. HILL: We would deny the registration.

1 MR. VAN ETTEN: Thank you.

2 MR. KOTOWSKI: Do we have or have you submitted as an  
3 exhibit a copy of the HS-7 that you referred to?

4 MR. JOHNSON: Who? Me?

5 MR. KOTOWSKI: Yes, sir. I'm sorry.

6 MR. JOHNSON: Well, the HS-7 is when a vehicle is  
7 imported from a foreign country. When it came in from California,  
8 we received a VI-30. That's a domestic or U.S. titled vehicle  
9 that comes into the state. It's a vehicle -- just a vehicle  
10 inspection without the HS-7. I may have a copy of that if you  
11 want it.

12 MR. KOTOWSKI: And on that particular form, it goes  
13 through this whole process again within an inspection and so forth  
14 or is it --

15 MR. JOHNSON: Yes.

16 MR. KOTOWSKI: Okay.

17 MR. JOHNSON: Yes. Anytime a non-Texas titled vehicle  
18 comes into the state to be titled in Texas or registered in Texas,  
19 we require the VI-30. If you brought your personal vehicle in, we  
20 would require it.

21 MR. KOTOWSKI: Okay. Thank you.

22 MR. VAN ETTEN: Our next questioner will be Mr. Collins.

23 MR. COLLINS: Thank you. The questions this time are  
24 for Mr. Charlie Johnson. We didn't forget you down there on the  
25 end, sir. He's with 5Star Specialty Programs, a division of Crump

1 Insurance Services, Incorporated, and when I say Mr. Johnson, I'm  
2 going to Mr. Charlie Johnson.

3 Mr. Johnson, what criteria need to be met for a motor  
4 carrier to ensure their vehicle with an insurance company?

5 MR. D. JOHNSON: We accept an accord application. We  
6 operate with insurance companies that follow insurance service  
7 office standards, and I don't know if you're familiar with those  
8 standards, but it's a form that the motor carrier would fill out,  
9 pertinent information about who they are, their authority, what  
10 they operate, where they intend to operate, that kind of  
11 information.

12 MR. COLLINS: Are there any additional criteria or it's  
13 just the form to be completed in order to ensure the vehicle  
14 properly?

15 MR. D. JOHNSON: We want to learn as much as about that  
16 potential carrier as we can possibly learn. We fill out an accord  
17 form and in the case of motorcoach operations or buses, there is  
18 an addendum or an additional questionnaire that the underwriters  
19 require asking more specific questions which you have a copy of.

20 MR. COLLINS: Okay. When a commercial vehicle is  
21 insured, does the industry make any specific checks? For example,  
22 do they verify the make and model of the vehicle? Do they look at  
23 the VIN or make any other checks of that nature?

24 MR. D. JOHNSON: Yes, we would require vehicle  
25 identification information, the VIN number, gross vehicle weight,

1 that pertinent vehicle information, yes, we would require. These  
2 -- I'm not trying to be short with my answer but I'm not an  
3 underwriter. So these are questions that are overview answers for  
4 me. My discipline is in the service side of the business. So  
5 these are typical underwriting questions. I'll try to answer to  
6 the best of my ability, but I wanted to distinguish that  
7 difference.

8 MR. COLLINS: In addition to say receiving the  
9 information about the VIN, are there any checks that the  
10 underwriters would go through or the company would go through to  
11 verify the VIN or make any special checks of it?

12 MR. D. JOHNSON: They -- insurance carriers have  
13 software programs used for rating purposes. When a VIN number is  
14 placed in that rating software so they establish rates, it'll tell  
15 you the vehicle weight. It'll tell you the make and model of that  
16 vehicle.

17 MR. COLLINS: Are there any special processes for  
18 insuring a vehicle that was manufactured outside of the United  
19 States?

20 MR. D. JOHNSON: Not to my knowledge.

21 MR. COLLINS: Okay. And is it normal for a company to  
22 check to see if a vehicle submitted for insurance coverage is, in  
23 fact, FMVSS compliant?

24 MR. D. JOHNSON: I can't answer for insurance companies.  
25 I can answer for our group, 5Star Specialty Programs. We do not

1 specifically ask that question, is it FMVSS certified.

2 MR. COLLINS: Okay. Hypothetically speaking or in the  
3 case of your company, let's say, if you determine that a vehicle,  
4 that you're covering, that is insured, is not FMVSS compliant, if  
5 that were to come to your attention, what actions would you take  
6 and why would you take those actions?

7 MR. D. JOHNSON: We wish to comply with all regulatory  
8 requirements and we're regulated by the insurance industry in the  
9 various states, and certainly if we learned that something was not  
10 in compliance, we would take the appropriate action. I can't  
11 answer to what an insurance company -- I can't answer for our  
12 insurance carriers. I can answer what we would do. We would make  
13 notification to them that we suspect whatever the violation may be  
14 and we'd take that appropriate action.

15 MR. COLLINS: Understanding that you can't speak for the  
16 companies, but could you give me an idea of the gambit of range of  
17 responses that you could expect or would there be -- what sort of  
18 responses do you think that your companies could take or might  
19 want to take?

20 MR. D. JOHNSON: It would be my personal opinion that if  
21 we learned that a vehicle did not meet these safety standards,  
22 that we would make notification to them. It would be my  
23 expectation, my personal expectation that those carriers would not  
24 wish to ensure that vehicle.

25 MR. COLLINS: Mr. Van Etten, that's the end of my

1 questions.

2 MR. VAN ETTEN: That concludes the Tech Panel  
3 questioning.

4 CHAIRMAN HERSMAN: Thank you, Mr. Van Etten. We'll  
5 rotate the beginning of the questions from the parties, Federal  
6 Motor Carrier Safety Administration, you can go first if you have  
7 questions.

8 MR. HUGEL: I have no questions, Madam Chair.

9 CHAIRMAN HERSMAN: NHTSA?

10 MR. HARRIS: I have one question for Ms. Hill. Ms.  
11 Hill, you mentioned in your previous testimony that you have a VIN  
12 verification program that actually determines some information on  
13 the VIN. Can you make a distinction between what this program  
14 entails? Does it look at making a determination of whether it's a  
15 legitimate VIN or does it actually make some determination whether  
16 a vehicle is FMVSS compliant?

17 MS. HILL: It just determines the VIN is appropriate.

18 MR. HARRIS: Okay. Because it wasn't clear in your  
19 previous testimony whether or not what the capabilities of this  
20 software was. And I guess I have the same question for some of  
21 the other Panel members, particularly Mr. Bobby Johnson. You also  
22 use similar software?

23 MR. JOHNSON: Yeah, we have a package called VIN Assist.  
24 I'm not sure who the manufacturer is but it just validates that  
25 it's a -- that the elements in the VIN number are correct and

1 valid for that, you know, that the make, model on it.

2 MR. HARRIS: All right. Thank you.

3 CHAIRMAN HERSMAN: Thank you. Customs and Border  
4 Protection.

5 MR. GARZA: No questions.

6 CHAIRMAN HERSMAN: ADA.

7 MR. LITTLER: No questions.

8 CHAIRMAN HERSMAN: Volvo/Prevost.

9 MR. BERTRAND: No questions.

10 CHAIRMAN HERSMAN: UMA.

11 MR. PRESLEY: Yes, ma'am. I direct my question to Ms.  
12 Hill and Mr. Bobby Johnson. Earlier Chairman Hersman asked the,  
13 asked the previous panel if the -- if they treated scheduled  
14 service operators different from charter operators. Does the IRP  
15 plan treat these two service types differently?

16 MS. HILL: Not in California, no.

17 MR. JOHNSON: No.

18 MR. PRESLEY: Mr. Adams.

19 MR. ADAMS: I'm sorry. With respect to IRP, is that  
20 what --

21 MR. PRESLEY: Yes.

22 MR. ADAMS: Under the definitions of IRP apportionable  
23 vehicle, chartered parties are exempt from IRP registration  
24 requirements. However, some jurisdictions do not exempt them I  
25 believe and they may be registered at the option of the

1 registrant, chartered operations may.

2 MR. JOHNSON: I guess I'm going to have a little -- I  
3 guess need a little clarification. In terms of vehicle  
4 inspections, there's no difference in terms of where they  
5 register, there is, and their ability to travel beyond Texas.  
6 Those are really the only difference.

7 MR. PRESLEY: Thank you. That's all.

8 CHAIRMAN HERSMAN: IRP.

9 MS. PARIS: No questions.

10 CHAIRMAN HERSMAN: DOT OIG.

11 MR. COMÉ: I have a brief question on the federal role  
12 here. Is there any federal role in -- and this is probably for  
13 Mr. Adams. Is there any federal role in establishing the  
14 regulations under which the IRP operates? And if so, could you  
15 explain them?

16 MR. ADAMS: Basically the IRP is a -- between all the  
17 jurisdictions without any federal oversight. The only -- if I  
18 might add, the only oversight of the Federal Government is, and I  
19 believe it was 1991, IST (ph.) required all jurisdictions join IRP  
20 and IFTA which is the International Fuel Tax Agreement. The only  
21 restriction for I guess an issue that would come is if a  
22 jurisdiction chose not to be a part of IRP, the only sanction  
23 against them would be is that they could not require motor  
24 carriers to register in their jurisdiction. They had to grant  
25 reciprocity.

1           MR. COMÉ: And in terms of oversight, is there any  
2 procedure within the IRP to ensure that the members are following  
3 the IRP rules?

4           MR. ADAMS: Yes. The IRP has what is called a peer  
5 review process. It's a compliance review process but we call it a  
6 peer review because it is members reviewing peer members to ensure  
7 that they are in compliance.

8           MR. COMÉ: Thank you.

9           CHAIRMAN HERSMAN: Mr. Magladry.

10          MR. MAGLADRY: Just a couple of quick questions.

11 Mr. Bobby Johnson, when Ms. Hill was talking about the assorted  
12 processes that you need to go through in California, she finished  
13 up by saying some of those processes are new, at least since the  
14 time of registration for this bus.

15                 And you have also gone through some of those kinds of  
16 lists of things that need to be done to register a vehicle under  
17 IRP. Are any of the processes that you had discussed new since  
18 this or were they -- since this bus was registered in Texas or did  
19 they exist at the time that that bus was registered?

20          MR. JOHNSON: Yes, they existed then. They've been  
21 there as long as I've been around. So --

22          MR. MAGLADRY: So just a short time?

23          MR. JOHNSON: Yeah.

24          MR. MAGLADRY: Did I hear you just say that the bus in  
25 this accident did provide all the appropriate inspection forms?

1 Inspection, a physical inspection was done on the bus?

2 MR. JOHNSON: Yeah, we have the form that was submitted  
3 with the title transaction.

4 MR. MAGLADRY: And was that done by a private company or  
5 was it done by DPS?

6 MR. JOHNSON: Well, most of these, I'm not sure the DPS  
7 guy is still here. My understanding is most of these folks are  
8 private entities that are licensed by the Department of Public  
9 Safety. This particular one was done by H&H Truck Repair and it  
10 has a station number and the date it was done and the inspector's  
11 signature. So I have a copy of that if you all would like to have  
12 it.

13 MR. MAGLADRY: I think we would.

14 MR. JOHNSON: Sure.

15 MR. MAGLADRY: Do you have any idea what the training  
16 process for inspectors?

17 MR. JOHNSON: I don't, no.

18 MR. MAGLADRY: Is there anything in the inspection  
19 process that directly addresses meeting the FMVSSs?

20 MR. JOHNSON: I don't know.

21 MR. MAGLADRY: That's all I have. Thank you.

22 CHAIRMAN HERSMAN: Thank you, Mr. Magladry. Dr.  
23 Ellingstad.

24 DR. ELLINGSTAD: Yes. Mr. Bobby Johnson again. You  
25 indicated that the accident bus would not have been required to

1 show any proof of importation because they registration was  
2 transferred from California. Is that correct?

3 MR. JOHNSON: It was titled in California, yes.

4 DR. ELLINGSTAD: Okay. So that there wouldn't have been  
5 a reason to have pursued that information.

6 MR. JOHNSON: Right.

7 DR. ELLINGSTAD: Is there any kind of indication within  
8 your registration of the status of an initial importation of a  
9 foreign-manufactured bus?

10 MR. JOHNSON: No.

11 DR. ELLINGSTAD: So that essentially the first state  
12 that touches it, is the only place that's likely to have that?

13 MR. JOHNSON: Correct.

14 DR. ELLINGSTAD: Is that also the case in California?

15 MS. HILL: Could you repeat the question?

16 DR. ELLINGSTAD: What I'm trying to get at is how the  
17 importation status of a bus is queried during the process of  
18 registration and conformed, and whether that's passed along?

19 MS. HILL: If the vehicle is titled in another state,  
20 we'll accept that title as the verification --

21 DR. ELLINGSTAD: Okay.

22 MS. HILL: -- of compliance.

23 DR. ELLINGSTAD: Whoever titles it first essentially  
24 creates the record that everybody else believes, right?

25 MS. HILL: Correct.

1 DR. ELLINGSTAD: Mr. Adams --

2 MR. JOHNSON: At least believe Texas and California.

3 DR. ELLINGSTAD: Mr. Adams, you indicate that IRP has a  
4 48 state coverage in the continental United States?

5 MR. ADAMS: Yes, sir.

6 DR. ELLINGSTAD: How comprehensive is this, is this  
7 registration database that you have?

8 MR. ADAMS: Well, maybe we need to clarify something.  
9 The IRP doesn't have an international database. Each state has  
10 their own data --

11 DR. ELLINGSTAD: Right.

12 MR. ADAMS: -- their own computer system and structure.  
13 The only thing that IRP has that would come anywhere close to I  
14 guess a central database is we have an IRP -- what's called an IRP  
15 clearing house which is used for transferring of information  
16 between jurisdictions and netting of fees between jurisdictions.

17 DR. ELLINGSTAD: Okay. But there is no common kind of a  
18 compendium of all of the state data?

19 MR. ADAMS: No, some states have their own state built  
20 systems and there are some vendors that supply multiple states  
21 with systems, but there's no one central system.

22 DR. ELLINGSTAD: Okay. So that, so that the access to  
23 any of this information depends upon the practices of the  
24 individual state with respect to their registration processes?

25 MR. ADAMS: Yes, sir.

1 DR. ELLINGSTAD: Okay. Thank you.

2 CHAIRMAN HERSMAN: Thank you, Dr. Ellingstad. Ms.  
3 Beckjord.

4 HEARING OFFICER BECKJORD: I just have two questions for  
5 Ms. Hill. In the information that you did submit to us, you  
6 stated that if California were to determine that a vehicle  
7 applying for registration or one that had already been registered  
8 in California was non-compliant with the FMVSS, what action would  
9 you take? And in the information you did provide that the State  
10 of California could refuse or cancel the registration, but how  
11 exactly would you find out once that vehicle's already registered  
12 that it is non-compliant?

13 MS. HILL: The only way we would find out is if we  
14 received some sort of documentation to indicate that it wasn't  
15 compliant.

16 HEARING OFFICER BECKJORD: Is that documentation from  
17 the vehicle owner or is that documentation that might be generated  
18 inside the State of California government or from law enforcement,  
19 or how would you --

20 MS. HILL: It could be from any source. It could be  
21 from law enforcement if they did an inspection and determined that  
22 it wasn't compliant. They had to provide us something.

23 HEARING OFFICER BECKJORD: Has that ever happened to  
24 your knowledge?

25 MS. HILL: I'm sure it has but I don't know of any

1 specifics.

2 HEARING OFFICER BECKJORD: Okay. Thank you. That's all  
3 I have.

4 CHAIRMAN HERSMAN: I know that everyone here that's  
5 participating as a party has access to the factual report of our  
6 Group Chairman but I thought perhaps for those who don't have that  
7 information in front of them, I'd just run through the U.S.  
8 registration process because I know some of our questions are very  
9 specific and it may not be clear to everyone in the audience, kind  
10 of the different steps that were taken, and I'm going to ask you  
11 all some questions related to kind of these steps and why you  
12 think this operator actually pursued this route to register the  
13 vehicle. So this was determined by our Motor Carrier Group  
14 Chairman, Mr. Van Etten, in his investigation.

15 The vehicle was purchased by the accident carrier, a  
16 U.S.-domiciled company in Mexico in April of 2006 and registered  
17 at an address in Monterey, Neuva Laredo, Mexico. The vehicle  
18 received a Mexican title registration and license plate. The  
19 company then leased the vehicle to International Charters and was  
20 operated under their DOT number. The vehicle was then driven  
21 across the border and was not inspected for FMVSS compliance. The  
22 vehicle operated in a line run Houston to Monterey on a regular  
23 basis.

24 In October 2006, the vehicle was cited by the Texas DPS  
25 for not Texas registration. They had only Mexican registration.

1 The company paid a fine but was not required to register the  
2 vehicle in Texas.

3           Capricorn then enlisted the services of the owner of  
4 Green River Buses in Dallas, Texas. The owner of Green River  
5 obtained the vehicle's documentation necessary for IRP  
6 registration in California. The owner of Green River represented  
7 himself as the safety manager for Capricorn on the documents that  
8 he submitted to California. The owner of Green River then  
9 represented that Capricorn was domiciled in Los Angeles,  
10 California and provided two rent receipts for that address as  
11 verification of Capricorn's business address.

12           He then sent the documents to a private registration  
13 company in Long Beach, California, requesting California IRP  
14 registration. The private registration company processed the  
15 documents through California IRP. The apportioned license plate  
16 and California IRP registration cab card were mailed to the  
17 private registration company in Long Beach. The company in Long  
18 Beach forwarded the license plates and registration to the address  
19 in Los Angeles. The owner of the company in Los Angeles sent the  
20 registration material to the owner of Green River in Dallas. The  
21 owner of Green River after a short period of time re-registered  
22 the vehicle in Texas. Texas accepted the California registration  
23 at face value and registered the vehicle. The Texas registration  
24 is not apportioned, and I'm assuming, Mr. Johnson, it's less  
25 expensive than the apportioned plates, the intrastate plates?

1 MR. JOHNSON: Yes.

2 CHAIRMAN HERSMAN: Okay. So this is a lot of work to go  
3 through. So my question to this Panel is why would the operator  
4 of this bus go to the trouble of sending paperwork through -- he's  
5 in Houston, sending paperwork through Dallas, through Long Beach,  
6 through LA, back to Dallas. What's to be gained? Why didn't he  
7 just come into Texas and register the vehicle and get intrastate  
8 plates? I mean I'm kind of trying to wrap my head around why you  
9 would go through all this trouble and potentially have to pay all  
10 of the hands that processed and touched this? Why? Why did this  
11 operator do that? Does anybody have any insight?

12 MR. JOHNSON: Well, I think we discussed a little bit  
13 earlier that, you know, it could be the vehicles is non-compliant  
14 is a little cheaper, could be change in business. I think there's  
15 quite a few reasons that it could happen. You know, it does kind  
16 of look like it was an intentional, you know, shell game a little  
17 bit. So I think there's a lot of different reasons. What his  
18 particular motivation was, I couldn't tell you.

19 CHAIRMAN HERSMAN: I understand why potentially the  
20 financial benefit of importing the vehicle but why, why not go  
21 straight to Texas and get the intrastate plates? Why do all of  
22 these different steps and have all these different hands have to  
23 touch this? Would you all not have given them intrastate  
24 registration?

25 MR. JOHNSON: Not without a HS-7.

1           CHAIRMAN HERSMAN: Okay. But didn't they have to have  
2 that to go to California?

3           MS. HILL: No.

4           CHAIRMAN HERSMAN: Okay. And did they have to have an  
5 inspection in Texas?

6           MR. JOHNSON: Yes.

7           CHAIRMAN HERSMAN: But they had an inspection, right?  
8 And that was, that was -- they passed that. That was H&H that you  
9 just talked about --

10          MR. JOHNSON: Right.

11          CHAIRMAN HERSMAN: -- and we've got copies of that in  
12 our exhibits as well.

13          MR. JOHNSON: Right.

14          CHAIRMAN HERSMAN: So why do they think that maybe they  
15 wouldn't have passed the inspection in Texas?

16          MR. JOHNSON: Well, again in Texas if you came straight  
17 in, you'd have to have the HS-7 form completed and if it was a  
18 non-compliant bus, they wouldn't have gotten that. So they  
19 wouldn't have been able to register in Texas.

20          CHAIRMAN HERSMAN: And who would they have not gotten  
21 that form from?

22          MR. JOHNSON: That's a NHTSA certification. It's  
23 done --

24          CHAIRMAN HERSMAN: What if they had done IRP in Texas?

25          MR. JOHNSON: They would still have to do that because

1 it would have been an imported vehicle. It was a Mexican vehicle,  
2 non-U.S. titled vehicle. So it would be considered, for our  
3 purposes, as imported.

4 CHAIRMAN HERSMAN: Okay. So explain to me why  
5 California IRP and Texas IRP don't have the same standards? Why  
6 wouldn't they have to have the same form in California?

7 MR. JOHNSON: It's not an IRP requirement per se.

8 CHAIRMAN HERSMAN: Okay.

9 MR. JOHNSON: It's a -- at least in Texas, it's a title  
10 issue. It's not -- we look at things as title or registration and  
11 even though those transactions can occur at the same time, we look  
12 at those as two separate transactions.

13 CHAIRMAN HERSMAN: Okay. Does California not have the  
14 same title rules then?

15 MS. HILL: We have that rule for titling the vehicle.  
16 This vehicle was not titled in California.

17 CHAIRMAN HERSMAN: Where was this vehicle titled?

18 MS. HILL: I don't know.

19 CHAIRMAN HERSMAN: How can you give a registration to a  
20 vehicle if it's not titled?

21 MS. HILL: We register vehicles. In IRP they do not  
22 have to be titled in California to be an IRP.

23 CHAIRMAN HERSMAN: Okay. So the reason perhaps they  
24 went through all these hoops was because they could not get the  
25 vehicle titled in Texas and in order to get registration in Texas,

1 you have to have a title?

2 MR. JOHNSON: Yeah, either a title or a registration  
3 purposes only certificate.

4 CHAIRMAN HERSMAN: But they had figured out that in  
5 California, you could get IRP registration without titling the  
6 vehicle. Is that -- does that make sense why they went to  
7 California?

8 MR. JOHNSON: Yeah. I would -- yeah.

9 CHAIRMAN HERSMAN: How about from California's  
10 perspective?

11 MS. HILL: It's possible.

12 CHAIRMAN HERSMAN: Okay. And I know that you mentioned  
13 in your testimony, in your responses to questions, that there had  
14 been a number of things that California has changed or is  
15 implementing --

16 MS. HILL: Yes.

17 CHAIRMAN HERSMAN: -- to be changed in 2009. Is this an  
18 issue, this failure to kind of title but provide the IRP  
19 registration? Is that going to get closed? Would that loophole  
20 get closed?

21 MS. HILL: It's not something that we're looking at.  
22 We're not required to title a vehicle to register it in IRP.

23 CHAIRMAN HERSMAN: Okay. So what happened in this  
24 accident could continue to happen or what happened with this  
25 accident bus could continue to happen under the current scheme?

1 Is that true?

2 MS. HILL: We are -- we've changed our procedures that  
3 we require that they provide additional documentation that  
4 indicates that the vehicle is FMVSS compliant.

5 CHAIRMAN HERSMAN: And what exactly is it that they have  
6 to provide?

7 MS. HILL: Hold on a second. I promise not to read it.

8 CHAIRMAN HERSMAN: Okay. And you're doing a great job,  
9 Ms. Hill. I didn't mean to scare you off with the paraphrasing.

10 MS. HILL: They have to provide evidence that the  
11 vehicle has cleared U.S. Customs. They have to provide evidence  
12 that they are compliant with FMVSS requirements. They have to  
13 provide evidence that they are compliant with U.S. EPA and  
14 California emission standards. They have to provide their U.S.  
15 DOT number, and they have to do a VIN verification.

16 CHAIRMAN HERSMAN: Okay. And how do they prove that  
17 they're compliant with FMVSS standards? Is that a paperwork  
18 exercise or is that a physical inspection?

19 MS. HILL: They have to -- it would be something that  
20 would come across with the vehicle inspection. They have to  
21 provide proof that there was a federal certification label affixed  
22 to the vehicle or a copy of a letter from the manufacturer  
23 certifying the vehicle complies with FMVSS standards.

24 CHAIRMAN HERSMAN: Okay. And is this something that a  
25 California State employee would do or somebody that's delegated in

1 an inspection facility would do?

2 MS. HILL: A vehicle verification can be done by a DMV  
3 employee, a law enforcement officer or a certified vehicle  
4 verifier.

5 CHAIRMAN HERSMAN: Okay. And a certified vehicle  
6 verifier, is that someone at the inspection facility or is that  
7 someone who does just vehicle verification?

8 MS. HILL: It can be anyone that's been certified to be  
9 a vehicle verifier.

10 CHAIRMAN HERSMAN: Okay. And the reason why I'm trying  
11 to drill down a little bit here is Mr. Johnson had the opportunity  
12 to go to H&H and couple of other inspection facilities in Texas  
13 and just see what they do, and in our exhibits we have some of  
14 these forms where they did inspections, and they have a dropdown  
15 menu that basically says all the buses that they can select from,  
16 the different manufacturers. Well, Volvo doesn't manufacture a  
17 FMVSS-compliant bus, and so Volvo wasn't one of the options on  
18 there, so all they had to do was pick other, and then they just  
19 typed in Volvo bus. And so it's not clear to me who the vehicle  
20 verifier is, if they actually have the expertise and the knowledge  
21 of the underlying issues but what they're doing is verifying the  
22 vehicles are FMVSS compliant. Do you understand what I'm getting  
23 at? If you're delegating this to a facility that may be looking  
24 to see whether the brakes are properly adjusted and other things,  
25 they may not recognize the FMVSS kind of issue, the way we

1 recognize it in this room.

2 MS. HILL: That, that type of inspection is not what a  
3 vehicle verifier would do.

4 CHAIRMAN HERSMAN: Okay.

5 MS. HILL: They're looking for labels to show that the  
6 vehicle was EPA and California emission standards, that they meet  
7 those standards or that they have the label that they were talking  
8 about earlier.

9 CHAIRMAN HERSMAN: FMVSS label. Okay. How about for  
10 Texas though? You all delegate to the inspection facilities to  
11 check the vehicles, right?

12 MR. JOHNSON: Yeah, the Department of Public Safety  
13 does.

14 CHAIRMAN HERSMAN: Yeah. So do we have any confidence  
15 that they're going to find non-compliant, non-FMVSS compliant  
16 vehicles?

17 MR. JOHNSON: I think you'd have to ask DPS that.

18 CHAIRMAN HERSMAN: Okay. So now do you believe in  
19 California, Ms. Hill, that people cannot register vehicles that  
20 are non-FMVSS compliant? Do you believe the changes that you've  
21 implemented would prevent that?

22 MS. HILL: Yes.

23 CHAIRMAN HERSMAN: Do you have a method to determine if  
24 there are currently vehicles that are registered that are non-  
25 FMVSS compliant to be able to go back and collect kind of those

1 vehicles or at least turn the information over to appropriate  
2 entities?

3 MS. HILL: We're looking at the documentation that was  
4 submitted for -- on buses particularly to see what documentation  
5 was provided, and if the required documents weren't provided and  
6 the vehicle was non-compliant, then we would ask for those.

7 CHAIRMAN HERSMAN: Okay. Because the owner of Green  
8 River told our investigators that he had assisted 20 other  
9 companies conducting the same registration efforts, and so there  
10 may indeed be more vehicles out there that are not accounted for.

11 I was curious for you all if you're familiar with the  
12 PRISM Program. There are 35 states that are in the Prism Program  
13 and I know that California and Texas are not listed in that group.  
14 Is there a reason why your states have not joined?

15 MS. HILL: We're actually in the process of implementing  
16 that program.

17 MR. JOHNSON: Yeah, Texas implemented June 1. We're in  
18 our first year of data collection --

19 CHAIRMAN HERSMAN: Okay.

20 MR. JOHNSON: -- right now, and we have the ability, if  
21 we get notified of an out-of-service vehicle, we can revoke or  
22 suspend the registration currently. The only thing we're trying  
23 to work out now is another division is responsible for the CB  
24 portion, the C vision, and they haven't completed that yet. So  
25 we're trying to work with our vendor and, in fact, I talked to him

1 just the other day at the IRP conference, to try to come up with a  
2 way that we can push that data to -- back to PRISM for Texas  
3 vehicles. So we're going through the first year of data  
4 collection right now. We'll be fully implemented by June 1 next  
5 year.

6 CHAIRMAN HERSMAN: Okay. And I know that you said that  
7 you were in the process. When do you believe you'll begin  
8 implementation?

9 MS. HILL: Currently we're working with a vendor to get  
10 the programming into our new database. We expect it to be  
11 operational by the end of the year.

12 CHAIRMAN HERSMAN: Okay. Mr. Adams, do you have any  
13 kind of overall observations with respect to kind of your position  
14 how to ensure that there isn't a patchwork system amongst the  
15 states so that, you know, I think our concern is the weakest link  
16 here. If people realize that there's a place where they can go,  
17 and we've all seen it. If you have cheaper fees for, you know,  
18 one state versus another, we see a whole lot of trailers  
19 registered in certain states. And so with respect to kind of the  
20 safety net here, is there anything that IRP is doing to make sure  
21 that there's a consistent and I guess, you know, fair across all  
22 states so we don't see kind of them poking the weakest one?

23 MR. ADAMS: Yeah. I guess a couple of things have  
24 happened in the past year. As a matter of fact, July 1 of 2008, a  
25 complete rewrite of the IRP Agreement went into place which made

1 some significant changes to pieces of the IRP Agreement, one of  
2 those being the basing requirements and what is a registrant and  
3 took away some of the options that some operators who chose to  
4 operate inappropriately could utilize, and so by tightening up the  
5 basing requirements, I think some of what happened from a  
6 registration standpoint in this situation, might could now be more  
7 easily avoided by some of the jurisdictions because of the  
8 documentation that can be required to approve residency or approve  
9 their base jurisdiction.

10           The issue though is a lot of that happens at the titling  
11 process and not at the registration and IRP doesn't deal with  
12 titling. And so -- but as far as registration goes, there have  
13 been some things that have tightened up. I think more and more  
14 states are looking more strictly at those basing requirements.  
15 They don't want carriers in their state that don't belong there.  
16 You're correct in what you're saying about -- normally the reason  
17 they go, it's an economic reason. They're avoiding something. I  
18 think a program that you asked about, the PRISM Program, is a  
19 great step in identifying these unsafe vehicles and that sort of  
20 thing but, of course, those are looking at the MCSAP inspections,  
21 so more the FMCSA inspection and not the vehicle standards. So --

22           CHAIRMAN HERSMAN: And is there an entity that would  
23 deal with the titling issues that -- I think there's so many  
24 different baskets of kind of how these threads are all connected  
25 together. Is there an entity that helps the states deal with the

1 titling issues so that there's some uniformity there as well?

2 MR. ADAMS: Well, there is, and that would be our parent  
3 corporation, AMVA. We have a specific vehicle group that deals  
4 with title issues. They have a national system called the NMVTA  
5 System which is National Motor Vehicle Title Information System,  
6 that tries to connect and gives jurisdictions a way to check to  
7 see if a vehicle is a branded vehicle, has a branded title for  
8 example, if it's been in a flood or something like that. So  
9 probably I think had AMVA maybe known that we were going to be  
10 dealing more with title issues, we could have had a title expert  
11 here probably more so than myself. But I think that might be  
12 where to reach out. The problem is it's all over the board, what  
13 the different requirements are for titling vehicles. Some of them  
14 the titling is done by the same person that does the registration  
15 and I think in a larger percentage of the cases though, it is a  
16 separate function. They separate the registration from the  
17 titling process.

18 CHAIRMAN HERSMAN: My last question has to do with  
19 something, Ms. Hill, that you mentioned before, that you were  
20 using R. L. Polk for something. Does that go back to what Mr.  
21 Harris was asking about? Is that just determining whether or not  
22 the VIN is a real VIN or is that actually checking a database to  
23 see if it's, if it's FMVSS compliant?

24 MS. HILL: Actually I'm not sure how the program works  
25 but it does -- it decodes the VIN and it will send a message back

1 to the technician processing the application to tell them whether  
2 or not the vehicle is compliant.

3 CHAIRMAN HERSMAN: Okay. And I know that we'll be  
4 addressing what information they might have to determine if  
5 vehicles are compliant in our third panel. So we'll address that.

6 Does the Tech Panel have any additional questions for  
7 the second panel?

8 MR. COLLINS: Yes, ma'am. Thank you. Mr. Adams, in  
9 response to a Party question, you indicated that there's a peer  
10 view process, and I was just curious if someone that's a party to  
11 the agreement, in that peer review process is found to be doing  
12 wrong, or doing things incorrectly, is there a mediation or a  
13 correction or a penalty process associated with that review?

14 MR. ADAMS: Yes, sir. The IRP actually has a dispute  
15 resolution process. The way it works, not to go into too much  
16 detail, but once a jurisdiction is found to be out of compliance  
17 on a particular issue, they're given a certain amount of time a  
18 year, for example, to come into compliance. If after that year  
19 they do not come into compliance, the peer review committee  
20 determines them to still be out of compliance with whatever the  
21 situation may be, they are then automatically deferred to the  
22 dispute resolution process. Just as a note, there have been a  
23 couple of occasions where sanctions were imposed against  
24 jurisdictions. In some cases, voting rights were taken away, so  
25 they could not vote on changes to the plan, that sort of thing,

1 and then one very severe case, I won't mention the particular  
2 jurisdiction, but in one very severe case there were financial  
3 penalties posed in the form of millions of dollars. So --

4 MR. COLLINS: Thank you.

5 MR. ADAMS: Yes.

6 CHAIRMAN HERSMAN: No further questions from the Tech --  
7 oh, Pete? No.

8 How about the Parties? FMVSS

9 MR. HUGEL: Thank you, Madam Chair. One quick question  
10 for Mr. Adams and it may be something that when we testify about  
11 the technical things tomorrow. Are charter buses covered by the  
12 IRP?

13 MR. ADAMS: Charter buses by definition are exempt under  
14 the definition of apportionable vehicle.

15 MR. HUGEL: Okay.

16 CHAIRMAN HERSMAN: NHTSA. Oh, I'm sorry. Does anybody  
17 else have any questions? UMA.

18 MR. PRESLEY: Mr. Adams, just for my own clarification,  
19 is there any part of the IRP requirements or processes or plan  
20 that is designed to screen out non-compliant, and when I say non-  
21 compliant, not in compliance with the Federal Motor Vehicle Safety  
22 Standards, is there any part of your process that's designed to  
23 screen out those vehicles?

24 MR. ADAMS: There is not any official part of the IRP  
25 Agreement that specifically addresses safety. Many, many of our

1 members deal with programs such as the PRISM Program, but IRP  
2 itself does not specifically address it.

3 MR. PRESLEY: Thank you.

4 CHAIRMAN HERSMAN: No -- Mr. Bertrand.

5 MR. BERTRAND: One question, one quick question to Ms.  
6 Hill. You mentioned some new rules to register a vehicle. One of  
7 them is the EPA emission. Is this a new rule or it was also  
8 checked at the time of this vehicle was registered?

9 MS. HILL: It's one of the new procedures that we have.

10 MR. BERTRAND: Thank you.

11 MS. HILL: For a IRP vehicle. We have -- it is a  
12 requirement for regular registration.

13 CHAIRMAN HERSMAN: No additional questions from the  
14 Parties?

15 (No response.)

16 CHAIRMAN HERSMAN: Mr. Magladry.

17 MR. MAGLADRY: One question I think for Mr. Bobby  
18 Johnson. It's a continuation of Dr. Ellingstad's questions from a  
19 little bit earlier. There is -- my understanding of it is that  
20 when a vehicle is already registered, as in this case, in  
21 California and then they come to Texas to register that vehicle,  
22 you don't have any way of knowing if this was a properly imported  
23 vehicle or not.

24 MR. JOHNSON: No.

25 MR. MAGLADRY: Okay. Is it simply the very fact that it

1 got registered somewhere else in the U.S. prima facie evidence  
2 that it's cleared the importation process?

3 MR. JOHNSON: Yes. I talked to one of our regional  
4 managers that does this every day, and his statement was the  
5 assumption is if another state registered it under IRP or another  
6 registration process, that that importation process had been  
7 completed. So when we see it, we see it as a California or  
8 Oklahoma or whatever jurisdiction it's coming from.

9 MR. MAGLADRY: Okay. Thank you.

10 CHAIRMAN HERSMAN: Ms. Beckjord.

11 HEARING OFFICER BECKJORD: My question is to Ms. Hill.  
12 You said that the State of California will be implementing some  
13 different procedures in the future. If somebody already has a  
14 California apportioned plate, what do they need to go through to  
15 update, you know, or re-register? Are they going to have to  
16 supply any additional information to get, you know, if that's an  
17 apportioned plate and there's an expiration coming and they've  
18 already got the plate for their vehicle and it's non-FMVSS, will  
19 your new system have anything in place for those folks who are not  
20 registering newly but are actually updating their registered  
21 vehicles?

22 MS. HILL: I don't -- I'm not sure that it would, it  
23 would identify that. They do have to key in the VIN number from  
24 the vehicle. So it should show that but I'm not really sure.

25 HEARING OFFICER BECKJORD: So if I already had a vehicle

1 that I brought in and I happened to get plates in the State of  
2 California, and it's actually a non-FMVSS compliant, I just am  
3 going to renew my plates with you and I just -- and the VIN didn't  
4 catch this accident vehicle, so it probably wouldn't catch the one  
5 that I have already. Your new system won't catch those folks that  
6 already have their plates?

7 MS. HILL: Well, the new system does check the vehicle  
8 identification number. So it should identify those vehicles.

9 HEARING OFFICER BECKJORD: Okay. Thank you. My other  
10 question is to Mr. Charlie Johnson. Does 5Star Specialty Programs  
11 represent any insurers who have gone back as a result of this  
12 accident and taken a look at their bus companies who are insured  
13 and gone to see or do you have any way of checking if they have  
14 non-FMVSS compliant vehicles and are the insurers doing anything  
15 that you can tell as a result of this accident?

16 MR. D. JOHNSON: To my knowledge, nobody's taken action  
17 to date. One of the purposes I am pleased to be here, thank you,  
18 I'm taking this information back and I'm certain action will  
19 result. Again, I'll restate, we don't want a bus company or  
20 anybody operating a vehicle that's not certified and safe. We do  
21 not wish to ensure that vehicle. So I will provide that  
22 information to our carriers.

23 HEARING OFFICER BECKJORD: Do your companies have the  
24 ability to cancel the insurance policies for these buses that they  
25 find are non-FMVSS compliant?

1           MR. D. JOHNSON: I can't answer that question. They are  
2 regulated by various State Insurance Departments as to how  
3 vehicles can be canceled but I'm sure if it is a safety issue,  
4 there would be -- that would be a reason to cancel a policy.

5           HEARING OFFICER BECKJORD: Thank you.

6           MR. D. JOHNSON: Thank you.

7           HEARING OFFICER BECKJORD: And just to follow up, Mr.  
8 Johnson, Charlie Johnson, did -- does anybody in your -- I know  
9 that you're with 5Star Specialty Programs but is there anybody  
10 under the Crump Division, is it -- I don't know if I'm saying the  
11 title right, but the company that you are a subsidiary of or a  
12 division of, did they represent this accident vehicle or do you  
13 know of anybody in your grouping that did?

14           MR. D. JOHNSON: No one in our group did. This was an  
15 insurance company that we do business with.

16           HEARING OFFICER BECKJORD: Okay. Thank you. That's all  
17 I have.

18           CHAIRMAN HERSMAN: Are there any further questions from  
19 the Technical Panel?

20           (No response.)

21           CHAIRMAN HERSMAN: The Parties?

22           (No response.)

23           CHAIRMAN HERSMAN: Or the Board of Inquiry?

24           (No response.)

25           CHAIRMAN HERSMAN: Seeing no additional questions, we'll

1 be drawing to a close for today. We don't have everyone here  
2 right now for the third panel. Otherwise, we would have moved to  
3 them. They're expecting to be here tomorrow. So we will excuse  
4 these witnesses and thank you to the witnesses on Panel 2 very  
5 much for being here. We know many of you made long trips, and  
6 have provided us with invaluable information. And also for the  
7 witnesses on Panel 1, thank you for being here today, too.

8 I think that even before we complete the hearing, we can  
9 nod to some of the successes that are coming just from the actions  
10 of some of the parties who are represented here because they're  
11 already taking action to rectify some of the concerns that have  
12 been identified, and so this is a good thing even before we come  
13 to any resolution. I think that we would be very pleased as a  
14 Safety Board if when we get to the final adoption for our accident  
15 report, that we can identify some positive actions that have taken  
16 place. And so that will make much of this worthwhile.

17 So thank you all very much for being here. We will  
18 adjourn for today and all of the witnesses on Panel 1 and Panel 2,  
19 if you'd like to see Ms. Beckjord just to check in to see if you  
20 would have a need to be recalled tomorrow, she could release you.  
21 We will see you tomorrow morning at 9:00 a.m. for Panel 3.  
22 Thanks.

23 (Whereupon, at 3:00 p.m., the hearing was adjourned to  
24 reconvene the following day, Wednesday, October 8, 2008, at 9:00  
25 a.m.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:                   THE PUBLIC HEARING ON THE FATAL  
MOTORCOACH ACCIDENT NEAR VICTORIA,  
TEXAS, JANUARY 2, 2008  
(FOCUSED ON LOOPHOLES THAT ALLOW  
REGISTRATION OF NON-COMPLIANT  
FOREIGN VEHICLES)

DOCKET NUMBER:                   68754

PLACE:                               Washington, D.C.

DATE:                                October 7, 2008

was held according to the record, and that this is the original,  
complete, true and accurate transcript which has been compared to  
the recording accomplished at the hearing.

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Timothy J. Atkinson, Jr.  
Official Reporter