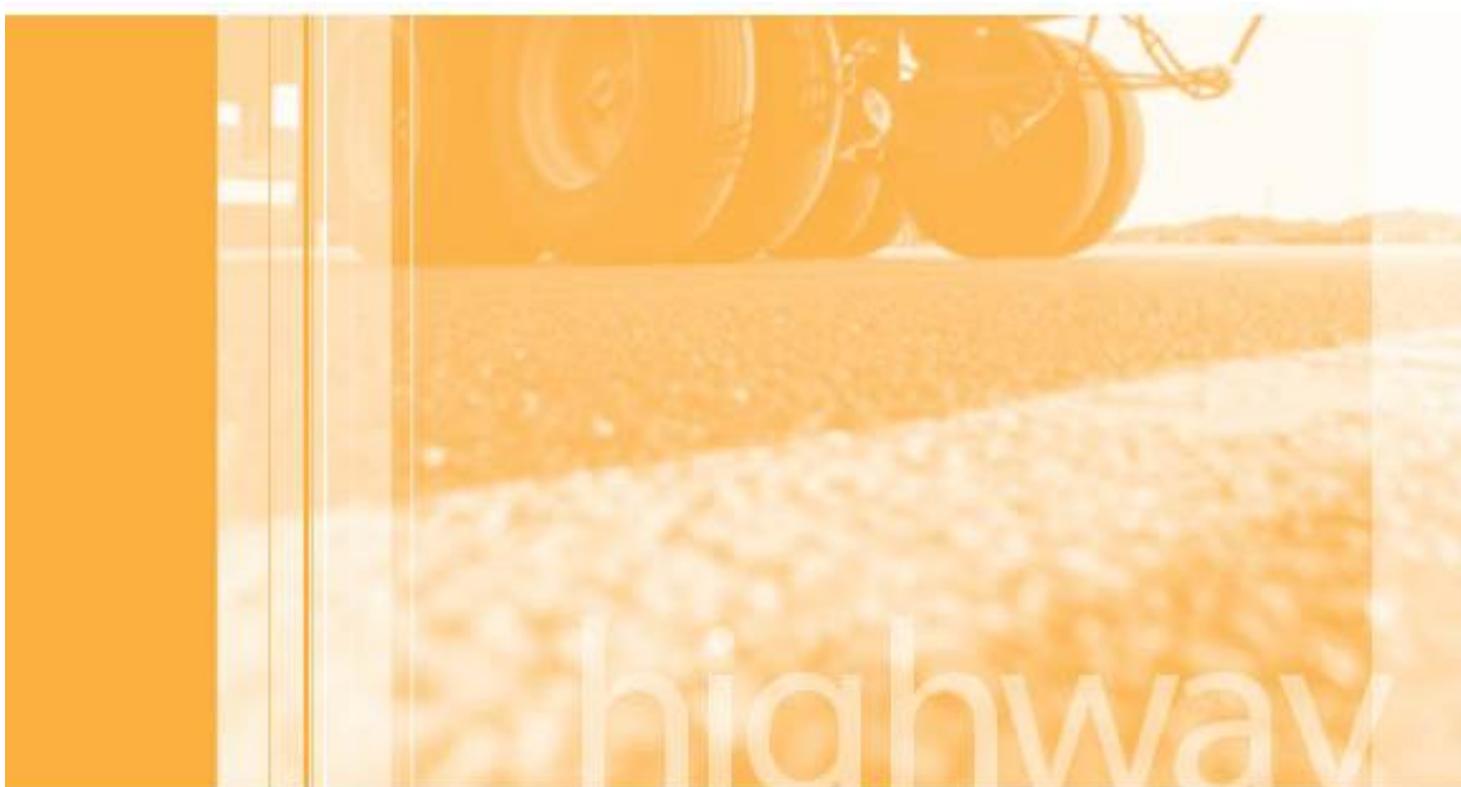


Motorcoach Rollover  
on U.S. Highway 59  
Near Victoria, Texas  
January 2, 2008



**Highway Accident Summary Report**

NTSB/HAR-09/03/SUM  
PB2009-916203



**National  
Transportation  
Safety Board**

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NTSB/HAR-09/03/SUM  
PB2009-916203  
Notation 8023A  
Adopted: December 8, 2009

# Highway Accident Summary Report

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Motorcoach Rollover  
on U.S. Highway 59  
Near Victoria, Texas  
January 2, 2008



**National  
Transportation  
Safety Board**

490 L'Enfant Plaza, S.W.  
Washington, D.C. 20594

**National Transportation Safety Board. 2009. *Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008. Highway Accident Summary Report. NTSB/HAR-09/03/SUM. Washington, DC.***

**Abstract:** On January 2, 2008, about 4:13 a.m., a 2005 Volvo 47-passenger motorcoach carrying 47 passengers was proceeding northbound on U.S. Highway 59 (U.S. 59) about 5 miles south of Victoria, Texas, when the motorcoach driver partially drifted off the right edge of the roadway. As a result of the driver making a series of oversteers in an attempt to stay on the roadway, the motorcoach rotated counterclockwise and overturned onto its right side. The motorcoach's right rear struck a guardrail as the motorcoach slid on its right side approximately 112 feet before coming to rest across the roadway. Within 5 minutes, and before emergency responders arrived on scene, a 2001 Ford Ranger pickup truck also traveling northbound on U.S. 59 struck the underside of the motorcoach forward of the rear axle. As a result of the initial motorcoach rollover, 1 passenger was fatally injured, and 46 passengers and the driver received injuries ranging from minor to serious. The driver of the pickup truck sustained minor injuries when the pickup truck struck the undercarriage of the motorcoach.

The investigation identified the following safety issues: the lack of federal oversight of passenger motor carrier leasing agreements and the registration and use of non-*Federal Motor Vehicle Safety Standard*-compliant, passenger-carrying vehicles in commercial motor carrier operations in the United States. The report also addresses continuing deficiencies in motor carrier operating authority issues, safety rating methodology, and the New Entrant Safety Assurance Program. As a result of its investigation, the National Transportation Safety Board makes recommendations to the U.S. Department of Transportation, the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, the U.S. Customs and Border Protection Agency, the American Association of Motor Vehicle Administrators, the International Registration Plan, Inc., and the Commercial Vehicle Safety Alliance. The NTSB also reiterates two previously issued recommendations to the Federal Motor Carrier Safety Administration.

The National Transportation Safety Board (NTSB) is an independent federal agency dedicated to promoting aviation, railroad, highway, marine, pipeline, and hazardous materials safety. Established in 1967, the agency is mandated by Congress through the Independent Safety Board Act of 1974 to investigate transportation accidents, determine the probable causes of the accidents, issue safety recommendations, study transportation safety issues, and evaluate the safety effectiveness of government agencies involved in transportation. The NTSB makes public its actions and decisions through accident reports, safety studies, special investigation reports, safety recommendations, and statistical reviews.

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## Acronyms and Abbreviations

AAMVA	American Association of Motor Vehicle Administrators
AASHTO	American Association of State Highway and Transportation Officials
Baratta	Baratta Enterprises, LLC
BASIC	Behavior Analysis and Safety Improvement Category
CAPRI	Compliance Analysis and Performance Review Information
Capricorn	Capricorn Bus Lines, Inc.
CBP	U.S. Customs and Border Protection Agency
CDL	commercial driver's license
CFR	<i>Code of Federal Regulations</i>
Chavez	Transportes Chavez, Inc.
CMV	commercial motor vehicle
CVSA	Commercial Vehicle Safety Alliance
CWS	collision warning system
CSA 2010	Comprehensive Safety Analysis 2010
DOT	U.S. Department of Transportation
DVIR	Driver's Vehicle Inspection Reports
ECE	Economic Commission for Europe
EDA	evasion detection algorithm
ECM	electronic control module
Flores	Flores U.S. Bus Lines, Inc.
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSR	Federal Motor Carrier Safety Regulation

FMCSRs	<i>Federal Motor Carrier Safety Regulations</i>
FMVSS	Federal Motor Vehicle Safety Standard
FMVSSs	<i>Federal Motor Vehicle Safety Standards</i>
Form OP-1(P)	Application for Motor Passenger Carrier Authority
Form HS-7	Declaration—Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards
Form MCS-150	Motor Carrier Identification Report (Application for USDOT Number)
GAO	U.S. Government Accountability Office
Global	Global Limo, Inc.
Green River	Green River Buses, LLC
IIT	instrument of international traffic
International	International Charter Services, Inc.
IR	information request
IRP	International Registration Plan [program]
IRP, Inc.	International Registration Plan, Inc. [organization]
ITS	intelligent transportation systems
MC	motor carrier [number]
MCMIS	Motor Carrier Management Information System
MCSIA	Motor Carrier Safety Improvement Act
NHTSA	National Highway Traffic Safety Administration
NPRM	notice of proposed rulemaking
NTSB	National Transportation Safety Board
OIG	U.S. Department of Transportation Office of Inspector General
OOS	out of service
PCVP	Passenger Carrier Vetting Process

SafeStat	Motor Carrier Safety Status Measurement System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SFD	safety fitness determination
TxDOT	Texas Department of Transportation
TxDPS	Texas Department of Public Safety
U.S. 59	U.S. Highway 59
U.S.C.	<i>United States Code</i>
USDOT number	U.S. Department of Transportation number
VI	verification inquiry
VIN	vehicle identification number
Volvo	Volvo de Mexico División Autobuses

## Executive Summary

On January 2, 2008, about 4:13 a.m., a 2005 Volvo 47-passenger motorcoach, operated by a 42-year-old driver and carrying 47 passengers, was proceeding northbound on U.S. Highway 59 (U.S. 59) about 5 miles south of Victoria, Texas, when the motorcoach driver partially drifted off the right edge of the roadway. The driver oversteered to the left to avoid leaving the roadway, resulting in the motorcoach coming back across both lanes, departing the left edge of the roadway, and partially entering an earthen median. The driver oversteered again to the right in an attempt to reenter the roadway and then oversteered to the left a second time upon realizing the motorcoach had gone too far right. As a result of the final oversteer, the motorcoach yawed to the left, rotated counterclockwise, and overturned onto its right side. The motorcoach's right rear struck a guardrail as the motorcoach slid on its right side approximately 112 feet before coming to rest across the roadway. Within 5 minutes, and before emergency responders arrived on scene, a 2001 Ford Ranger pickup truck also traveling northbound on U.S. 59 struck the underside of the motorcoach forward of the rear axle. As a result of the initial motorcoach rollover, 1 passenger was fatally injured, and 46 passengers and the driver received injuries ranging from minor to serious. The driver of the pickup truck sustained minor injuries when the pickup truck struck the undercarriage of the motorcoach.

The National Transportation Safety Board determines that the probable cause of this accident was the driver's falling asleep, which caused him to partially drift off the road, resulting in oversteer corrections when the driver regained awareness, and subsequent vehicle loss of control and overturn. Contributing to the severity of the unrestrained passengers' injuries was their striking objects and other passengers inside the motorcoach, as well as the partial ejections that occurred when the motorcoach overturned during the accident.

The investigation identified safety issues that the NTSB has not previously addressed: the lack of FMCSA oversight of passenger motor carrier leasing agreements and the registration and use of non-*Federal Motor Vehicle Safety Standard*-compliant, passenger-carrying vehicles in commercial motor carrier operations in the United States. The report also addresses continuing deficiencies in motor carrier operating authority issues, safety rating methodology, and the New Entrant Safety Assurance Program. This summary report examines the Victoria accident and its proximate cause and then proceeds to explore, in depth, specific safety issues that were not being adequately addressed by Federal and state oversight authorities due to loopholes in safety processes. As a result of its investigation, the NTSB has made recommendations to the U.S. Department of Transportation, the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, the U.S. Customs and Border Protection Agency, the American Association of Motor Vehicle Administrators, the International Registration Plan, Inc., and the Commercial Vehicle Safety Alliance. The NTSB also reiterated two previously issued recommendations to the Federal Motor Carrier Safety Administration.

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## The Accident

Between 4:10 a.m. and 4:13 a.m.,<sup>1</sup> on January 2, 2008, an accident consisting of two events occurred on U.S. Highway 59 (U.S. 59) near Victoria, Texas. The first event was a single-vehicle rollover of a 2005 Volvo de Mexico División Autobuses (Volvo) 47-passenger motorcoach. About 5 minutes later, a second event occurred when a 2001 Ford Ranger pickup truck collided with the wreckage from the first event.

About 7:30 p.m. on January 1, 2008, the motorcoach, operated by a 42-year-old driver and carrying 47 passengers, departed Monterrey, Mexico, on an approximately 456-mile-long trip to Houston, Texas. (See figure 1.) The motorcoach was operated by a company called Capricorn Bus Lines, Inc. (Capricorn), under the U.S. Department of Transportation (USDOT) number and operating authority of another company called International Charter Services, Inc. (International). By 10:30 p.m., the driver had arrived at the Laredo, Texas, border crossing location and, by 10:45 p.m., had finished U.S. Customs and Border Protection Agency (CBP) crossing processing. Approximately 4:10 a.m., about 9 hours after departing Monterrey, the accident sequence began as the driver was proceeding northbound on U.S. 59, about 5 miles south of Victoria, Texas. While traversing a 1,000-foot, 3.5-degree horizontal curve to the left on a 3-percent downgrade, the motorcoach driver drifted off the right edge of the roadway, oversteered to get back onto the roadway, and then came back across both lanes; the left side of the motorcoach then departed the left edge of the roadway and entered an earthen median. The driver oversteered again to the right and, after the motorcoach reentered the roadway for about 40 feet, oversteered once more. The motorcoach began to yaw to the left in a counterclockwise rotation and then overturned onto its right side. After overturning, the right rear of the motorcoach struck a guardrail on the right side of the roadway. The motorcoach slid on its right side approximately 112 feet, where it came to rest blocking the roadway. (See figure 2.)

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<sup>1</sup> Unless otherwise designated, all times in this report are central standard time.



**Figure 1.** Accident motorcoach's route.<sup>2</sup>

<sup>2</sup> According to PC\*Miler for Windows 2000 (© 1999 by ALK Associates, Inc.), the trip from Monterrey, Mexico, to Houston, Texas, was 456 miles and should have taken 10 hours 28 minutes to travel (with the border open and two stops included).



**Figure 2.** Accident motorcoach at final rest perpendicular to roadway. (Photograph courtesy of Victoria Fire Department)

About 5 minutes after the motorcoach rolled over, and before emergency responders arrived on scene, a 2001 Ford Ranger pickup truck traveling northbound on U.S. 59 struck the underside of the overturned motorcoach forward of the rear axle. This collision resulted in damage to the motorcoach's underside and cargo bay, and heavy damage to the front of the pickup truck. (See figure 3.) The NTSB interviewed the pickup truck driver, who reported that when he rounded the curve south of the overturned motorcoach, he was traveling about 50 mph and was about 50 feet away when he observed the overturned vehicle. He said that he began to brake and believed that his vehicle slid on broken glass from the motorcoach. Both portions of the accident sequence occurred during darkness. Local law enforcement responding to the scene reported unrestricted visibility and dry roadway conditions.



**Figure 3.** Collision damage to pickup truck.

As a result of the motorcoach rollover, one passenger was fatally injured and 46 passengers and the driver received injuries ranging from minor to serious. The driver of the pickup truck sustained minor injuries. The Victoria County Sheriff's Department was notified of the accident via the 911 emergency response system at 4:10 a.m.<sup>3</sup> Emergency responders were dispatched at 4:11 a.m., and the first responding fire department was on scene at 4:21 a.m., followed by ambulances arriving at 4:22 a.m. One medical flight helicopter transported a seriously injured passenger to a trauma facility due to the nature of that passenger's injuries.

The NTSB has investigated another accident similar to the one that occurred in Victoria, in which a truck-tractor semitrailer combination unit rolled over across both lanes of an Osseo, Wisconsin, interstate approximately 1 minute before a motorcoach, traveling in the same direction at nighttime at highway speeds, collided with the underside of the overturned combination unit.<sup>4</sup> In that accident, the NTSB found that it would have been hard for any driver to identify the overturned truck because there was no highway lighting in the vicinity and the truck's retroreflective markings were invisible to approaching traffic. Similar conditions existed in this accident; there was no overhead lighting and no retroreflective marking on the underside of the motorcoach, making the overturned motorcoach not easily visible to approaching traffic. Collision warning systems (CWS) are designed to assist in these types of accidents by warning drivers of slowed or stopped objects in the vehicle's forward path.

<sup>3</sup> This time is as reported by the Victoria County Dispatch log; the time of the accident in this report is based upon the Texas Department of Public Safety (TxDPS) dispatch log. Clocks were not synchronized.

<sup>4</sup> *Truck-Tractor Semitrailer Rollover and Motorcoach Collision With Overturned Truck, Interstate Highway 94, Near Osseo, Wisconsin, October 16, 2005*, Highway Accident Report NTSB/HAR-08/02 (Washington, DC: National Transportation Safety Board, 2008).

This secondary impact to the motorcoach might have been avoided had the pickup truck been equipped with a CWS. The pickup truck driver did not perceive the overturned motorcoach and, as a result, did not apply the brakes in time to slow his vehicle to avoid impacting the motorcoach. The NTSB has long been interested in how CWS and other technologies can prevent rear-end collisions. In 2001, the NTSB published a special investigation on such technologies.<sup>5</sup> In 1999 and 2000, the NTSB investigated nine rear-end collisions in which 20 people died and 181 were injured. Common to all nine accidents was the following driver's degraded perception of traffic conditions ahead. As the NTSB had already reported in a 1995 special investigation,<sup>6</sup> and further discussed in its 1999 public hearing,<sup>7</sup> existing technology in the form of intelligent transportation systems (ITS) can help prevent rear-end collisions. In the nine such accidents investigated by the Board, one (and sometimes more) of the available technologies would have helped alert the drivers to the vehicles ahead and would have prevented or mitigated the circumstances of the collisions. Although the focus of the special investigation was accidents resulting from interference by sun glare, fog, smoke, fatigue, distractions, and work zones, the NTSB believes that developing and installing CWS and other new technologies in passenger vehicles, such as the pickup truck involved in this accident, will substantially reduce these types of accidents. The NTSB has issued recommendations to the National Highway Traffic Safety Administration (NHTSA) to develop and require such technologies in passenger vehicles.<sup>8</sup>

Although the NTSB cannot determine the extent to which the secondary collision from the pickup truck into the motorcoach contributed to the passengers' injuries, the use of CWS to prevent this secondary impact might have prevented and/or mitigated the severity of some additional passenger injuries and might have prevented the pickup truck driver from sustaining his injuries.

## Highway Information

The accident occurred on U.S. 59 northbound at milepost 642A, less than 1 mile from Texas Spur 91. The accident site was about 5 miles south of the city of Victoria in Victoria County, Texas. U.S. 59, a north-south highway that runs from the U.S.-Mexican

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<sup>5</sup> *Vehicle- and Infrastructure-Based Technology for the Prevention of Rear-End Collisions*, Highway Special Investigation Report NTSB/SIR-01/01 (Washington, DC: National Transportation Safety Board, 2001).

<sup>6</sup> *Multiple Vehicle Collision With Fire During Fog Near Milepost 118 on Interstate 40, Menifee, Arkansas, January 9, 1995, Special Investigation of Collision Warning Technology*, Highway Accident Report NTSB/HAR-95/03 (Washington, DC: National Transportation Safety Board, 1995).

<sup>7</sup> National Transportation Safety Board, docket no. DCA-99-SH-002.

<sup>8</sup> Safety Recommendations H-01-6 through -8, which are currently classified "Open—Acceptable Response." Safety Recommendations H-01-7 and -8 were added to the NTSB's Most Wanted List of Transportation Safety Improvements in 2007 in the issue area *Prevent Collisions by Using Enhanced Vehicle Safety Technology*. The NTSB's "Most Wanted" list is a program to increase the public's awareness of and support for action to adopt safety steps that can help prevent accidents and save lives.

border at Laredo, Texas, to the Texas–Arkansas border, was classified as a principal rural arterial road<sup>9</sup> with limited controlled access.

Just south of the accident location, U.S. 59 became an overpass bridge (above Texas Spur 91). The roadway continued descending as a ramp to the left and then became a divided four-lane roadway with a grass and earthen median gore separating it from Texas Spur 91. (See figure 4.)



**Figure 4.** View of U.S. 59 roadway northbound (just before initial roadway departure location).

The two lanes in each direction were 12 feet wide delineated by 10-foot-long dashed white pavement stripes at 30-foot intervals. A solid, white pavement stripe separated the right-hand lane from the 11-foot-wide shoulder. Toward the end of the curve as the roadway straightens, the dual lanes merge to a single 23-foot-wide lane narrowing to approximately 17 feet. The U.S. 59 bridge overpass had a right-side positive barrier (guardrail), which ended where the motorcoach partially departed the roadway onto the shoulder to the right. There was no guardrail on the right for approximately

<sup>9</sup> According to the American Association of State Highway and Transportation Officials (AASHTO), rural principal arterials include the interstate system and most rural freeways. They also include other multilane roadways and some two-lane highways that connect urban centers. Minor rural arterials link urban centers to larger towns and are spaced to provide a relatively high level of service to developed areas of the state.

246 feet in the area where the driver had overcorrected to the left side of the roadway; another guardrail was in place where the vehicle crossed back to the right. (See figure 5.)

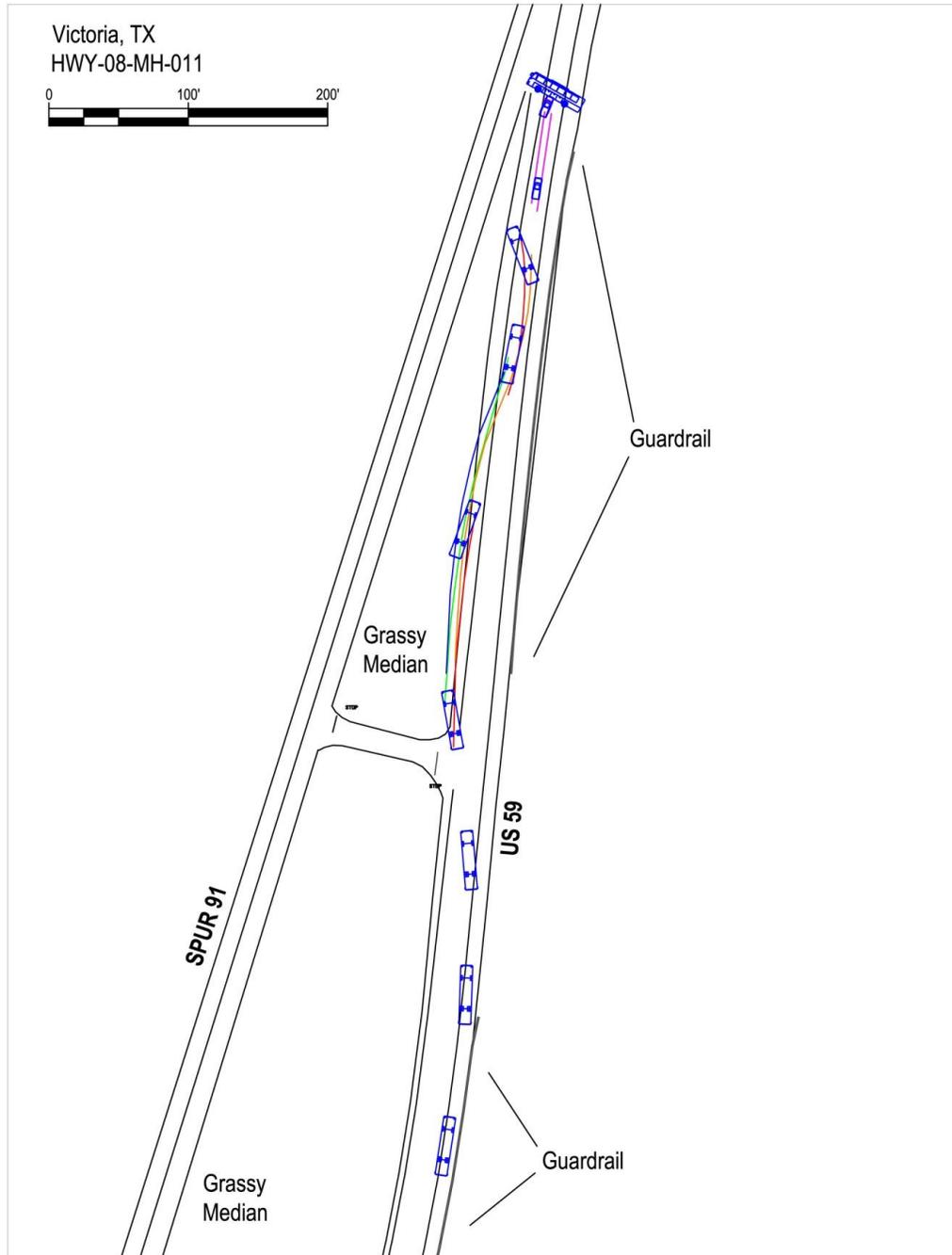


Figure 5. Accident scene diagram.

This guardrail had a section of paint transfer from the accident. The accident location did not have rumble strips.<sup>10</sup> The interchange was not illuminated with artificial safety lighting; safety lighting was not warranted for this location.<sup>11</sup>

The highway had a posted speed of 65 mph<sup>12</sup> during nighttime hours; the accident occurred about 4:13 a.m., in darkness. The Texas Department of Transportation (TxDOT) conducted a speed survey on U.S. 59 on the ramp in the vicinity of the accident, and the 85<sup>th</sup> percentile speed was 72.7 mph. The driver stated that he was traveling about 80 kilometers<sup>13</sup> per hour (47 mph) before the accident. The motorcoach's tire marks measured a total of 262 feet. Based upon the distance the motorcoach skidded on the pavement and the grassy median, in combination with the radius of the tire marks on the roadway, the NTSB's investigation determined that the motorcoach was traveling between 65 and 75 mph when it first skidded into the median.<sup>14</sup> (See appendix B for the computer simulation.)

The NTSB investigation determined that the weather was clear and dry at the time of the accident, pavement markings were visible, and no highway design and construction defects existed in the area of the accident site. Therefore, the NTSB concludes that weather was not a factor in this accident, nor were any highway defects found that would have caused or contributed to the accident.

## Vehicle Information

The accident vehicle was a 2005 Volvo, model 9700, 47-passenger, two-axle, intercity motorcoach. Capricorn's owner traveled to Mexico to purchase the motorcoach, and, according to Volvo, the accident motorcoach was not manufactured for sale in the United States and therefore was not certified to have met U.S. *Federal Motor Vehicle Safety Standards* (FMVSSs).

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<sup>10</sup> *Rumble strips*, also called "alert grooves," are grooved patterns in the pavement that cause a vehicle to vibrate, alerting the driver. There were rumble strips on U.S. 59 north of the accident location. For further information, see J. Hickey, "Shoulder Rumble Strip Effectiveness: Drift-Off-Road Accident Reductions on the Pennsylvania Turnpike," *Transportation Research Record 1573* (Washington, DC: National Research Council, 1997), pp. 105–109.

<sup>11</sup> *Texas Highway Illumination Manual* (2008).

<sup>12</sup> The daytime speed limit was 70 mph. Both daytime and nighttime speeds were posted in advance of the accident curve, but there were no advisory signs limiting the speed at which the curve could be negotiated. In the 5 years preceding the accident date, one accident occurred within 1 mile of the ramp and none on the ramp.

<sup>13</sup> The motorcoach was manufactured with a speedometer that measured kilometers per hour. One kilometer equals 0.62137119 mile.

<sup>14</sup> The TxDPS independently performed an accident reconstruction and determined that the initial braking speed of the motorcoach was 63 mph. The TxDPS determined this braking occurred after the driver had veered to the right, steered back to the left, and then initially applied his brakes at approximately 63 mph, after which the driver traveled into the median. The driver then corrected to the right and traveled onto the road, overcorrected back to the left, and entered a side skid, resulting in a rollover.

According to Federal regulation (49 *Code of Federal Regulations* [CFR] 396.17), all commercial vehicles operating in interstate commerce must receive a safety inspection annually by a qualified inspector (49 CFR 396.19). Additionally, Texas<sup>15</sup> requires an annual inspection of commercial vehicles; vehicles, upon passing the vehicle safety inspection, receive a state decal on the lower left front corner of the windshield with the date of inspection and the inspector's information written on the back. The inspection of motor vehicles, including motorcoaches, in Texas is conducted in state-approved, privately owned and operated inspection facilities, garages, and repair facilities, which are designated by the TxDPS under the Texas Vehicle Inspection Act.<sup>16</sup> The accident vehicle passed the annual Texas vehicle inspection in November 2007.

After the accident, the motorcoach was towed to the Mack Truck dealership facility in Victoria, Texas, where NTSB investigators and personnel from the Volvo de Mexico División Autobuses and Prevost (a subsidiary of Volvo Bus Corporation), along with representatives from Bendix Commercial Vehicle Systems, inspected the vehicle on January 4, 2008. The vehicle's engine was electronically controlled and had an electronic control module (ECM); however, the ECM did not have the ability to record accident-related data such as speed or braking.<sup>17</sup> Postaccident mechanical inspection of the motorcoach did not reveal any mechanical conditions that would have contributed to the accident. The inspection was limited to those systems and components that could have contributed to a loss of vehicle control and caused the motorcoach to run off the road. The NTSB concludes that although the vehicle did not meet the FMVSSs, the mechanical condition of the accident motorcoach was not a factor in this accident.

## Injuries

The motorcoach driver sustained minor injuries along with 29 of the motorcoach passengers. Two passengers sustained serious injuries consisting of severe injuries to their upper extremities, face, and back; 15 passengers sustained serious injuries including thoracic and lumbar spinal fractures. (See table 1 and figure 6.) The fatally injured passenger sustained blunt-force trauma injuries. The pickup truck driver sustained minor injuries.

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<sup>15</sup> *Texas Transportation Code*, "Compulsory Inspection of Vehicles," chapter 548.

<sup>16</sup> A vehicle will meet Federal requirements if inspected under a mandatory state inspection program in Alabama, California, Connecticut, Hawaii, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, or the District of Columbia. Of these states, Alabama, California, Connecticut, Michigan, Minnesota, New Jersey, New York, Ohio, and Wisconsin have inspection programs that do not cover all commercial motor vehicles. In three other states—Arkansas, Illinois, and Oklahoma—the inspection is not mandatory but will satisfy the Federal requirements.

<sup>17</sup> The motorcoach was equipped with an electronic dash-mounted tachograph, capable of recording speed and stops for 7 days. This tachograph receives its input by an electrical pulse from a sensor in the transmission and is recorded on a circular paper card; however, the circular paper-graph recording card had not been installed.

**Table 1.** Injuries.

Injury severity	Pickup truck driver	Motorcoach driver	Motorcoach passengers	Total
Fatal	0	0	1	1
Serious	0	0	17	17
Minor	1	1	29	31
None	0	0	0	0
Total	1	1	47	49

Title 49 CFR 830.2 defines fatal injury as “any injury which results in death within 30 days of the accident” and serious injury as “any injury which (1) requires hospitalization for more than 48 hours, commencing within 7 days from the date the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.”

HWY-08-MH-011  
Victoria, Texas

**Seating Chart Legend**

GENDER  
 AGE  
 INJURY LEVEL\*  
 INDICATES EJECTION\*\*

F - 14 : Serious - E

F = FEMALE · M = MALE

\* International Civil Aviation Organization  
 \*\* Passengers known to have been partially ejected or most likely partially ejected based on medical records

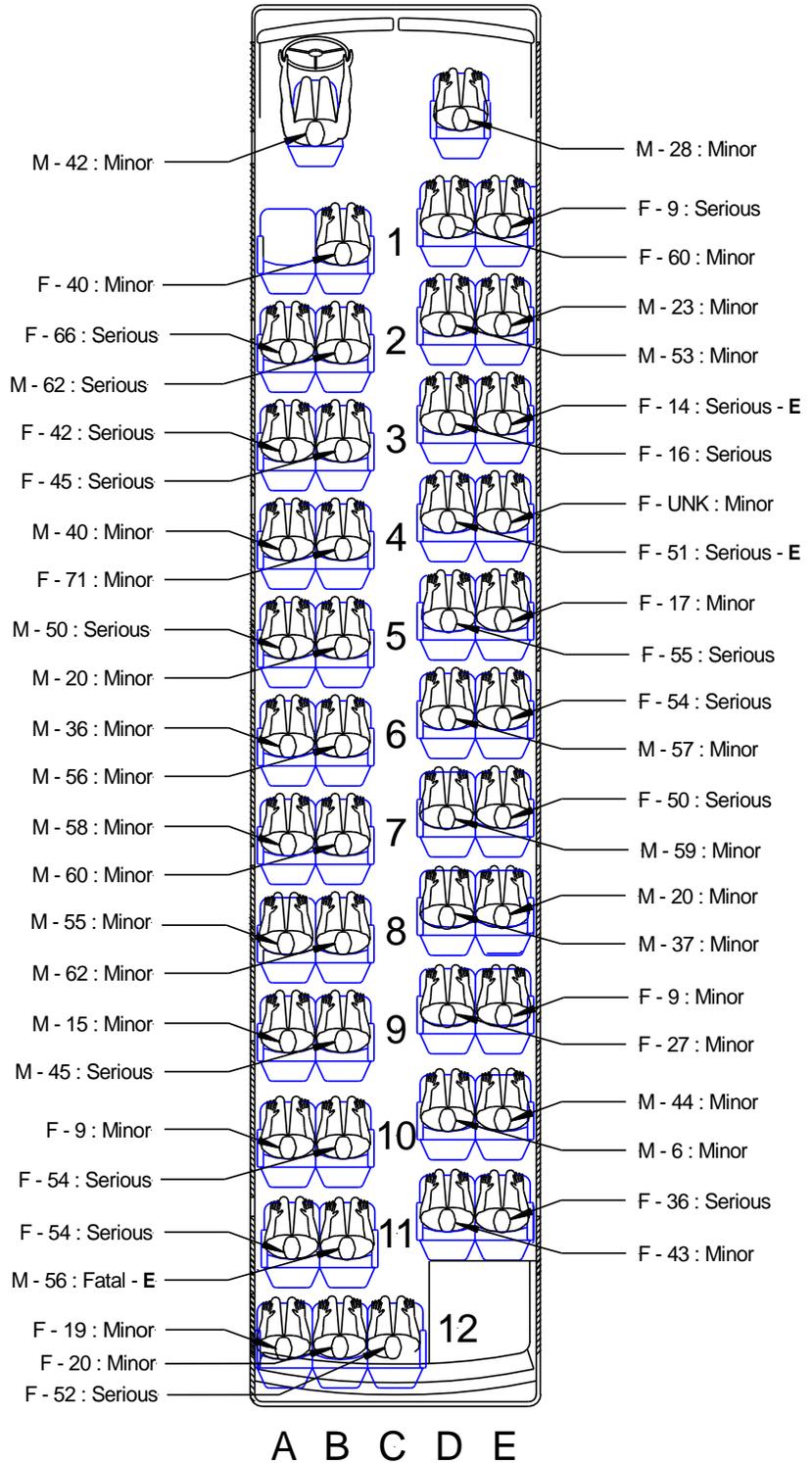


Figure 6. Motorcoach seating chart.

According to passenger interviews and the emergency response incident commander, the fatally injured passenger had been partially ejected and pinned beneath the motorcoach. Passengers who sustained the severe upper extremity injuries stated that they were partially ejected out the right-side windows. The Volvo motorcoach was equipped with a three-point (lap and shoulder) belt for the driver and tour seat; the passenger seats were equipped with two-point (lap) belts.<sup>18</sup> The driver reported to NTSB investigators that his seat belt was unlatched at the time of the accident.

Of the 46 surviving passengers, the NTSB interviewed 24 and sent out questionnaires to the other 22 passengers by mail. Of those interviewed and the four passengers who mailed back their completed questionnaires, most reported not being aware of the lap belts on the motorcoach. A few passengers stated they were aware of the lap belts and a few of those individuals could only find one portion of the belt because the other portion was tucked into the seat cushion. The passenger seated in the retractable tour seat next to the driver was interviewed by the NTSB and stated he was wearing his lap and shoulder belt. After the motorcoach came to rest, the driver helped him unbuckle his seat belt because he was still in his seat, hanging to the right. Only one other passenger (who sustained minor injuries) reported wearing the available lap-only belt at the time of the accident.

The motorcoach rolled 90 degrees onto its right side during the accident sequence. The bus sustained moderate damage to the entire right side from the rollover, and a portion of the undercarriage was damaged due to the impact from the pickup truck. Damage to the right side consisted of scrapes to the sheet metal with approximately 1–2 inches in deformation; the roof received very little deformation from the 90-degree roll. Damage to the undercarriage was more significant, with the sheet metal of the floor supports being pushed upward, causing the interior wooden floor in row seven on the right side to buckle upward. All of the windows on the right side were broken out during the rollover event and a passenger, using the small striker/hammer<sup>19</sup> attached directly above another left-side window, shattered the third window on the left side and climbed out. According to the manufacturer, the windows were double-layered, tempered, thermal glass. Survivable space within the full length of the motorcoach's passenger compartment was available during the rollover. The NTSB concludes that the cause of the unrestrained passengers' injuries was their striking objects and other passengers inside the motorcoach, as well as their partial ejections from the motorcoach windows on the right side, most of which occurred when the motorcoach overturned.

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<sup>18</sup> No Federal regulations require lap or shoulder belts (other than for the driver) on motorcoaches manufactured for sale in the United States.

<sup>19</sup> According to Volvo, the accident motorcoach was manufactured to Economic Commission for Europe (ECE) regulations. ECE regulations allow for an attached striker/hammer to be used to break open windows, whereas the U.S. FMVSS 217 (49 CFR 571.217) requires handles to open windows.

## Driver

The 42-year-old motorcoach driver provided a verbal statement in Spanish to a responding deputy sheriff at the accident scene. The deputy wrote in his accident report that the driver “began to get teary eyed and stated that he was dozing off and finally fell asleep at the wheel. He woke up when he felt the bus running off the road. In a panic, he overcorrected and the bus overturned.” The driver provided a second statement later to police, written in Spanish, on January 4, 2008, which (translated) stated:

When I was driving on a curve, I lost control. The motorcoach went too far to the right side but I reacted quickly and tried to regain control to the left side to re-enter the freeway but could not. My nerves were such that I over-steered the wheel and this was where I could do nothing else.

Law enforcement officials present at the scene did not detect signs of alcohol or illicit drug use by the driver and, absent any reasonable suspicion of drug or alcohol use, the police did not believe that they had probable cause to obtain toxicological specimens.<sup>20</sup> After the accident, the driver was charged by the TxDPS with “Fatigued Driver (Federal Motor Carrier Safety Regulation [FMCSR] 391.11[b][5]).”<sup>21</sup>

The motor carrier collected toxicological specimens from the motorcoach driver 17 hours after the accident; these specimens were tested and found to be negative for drugs of abuse, including alcohol. However, given the length of time that had passed between the accident and alcohol testing and the metabolization rates for alcohol, it is impossible to determine whether the driver had ingested alcohol before the accident. Therefore, the NTSB concludes that although the driver’s toxicological testing results were negative for alcohol and drug use and it was unlikely that the driver was under the influence of alcohol or drugs, the company’s delay in collecting toxicological specimens prevents the NTSB from conclusively ruling out alcohol use as a factor in this accident.

According to 49 CFR 382.303, the employer of a driver operating a commercial motor vehicle on a public road in commerce is required to conduct alcohol and controlled substance testing on that driver if the vehicle is involved in a fatal accident. If the alcohol test required by this section is not administered within 2 hours of the accident, the employer must prepare and maintain a record stating why the test was not promptly administered. If the alcohol test was not administered within 8 hours of the accident, the

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<sup>20</sup> *Texas Transportation Code* 724.012(b) states that “[a] peace officer shall require the taking of a specimen of the person’s breath or blood if: (1) the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft; (2) the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense; (3) at the time of the arrest the officer reasonably believes that as a direct result of the accident: (A) any individual has died or will die; or (B) an individual other than the person has suffered serious bodily injury; and (4) the person refuses the officer’s request to submit to the taking of a specimen voluntarily.”

<sup>21</sup> As of October 22, 2009, the TxDPS reported that the charge of Fatigued Driver is still pending. The driver never answered the charge, and an arrest warrant was issued and is still outstanding.

employer must stop attempts to administer the test but still maintain the same record. These records shall be submitted to the Federal Motor Carrier Safety Administration (FMCSA) upon request.<sup>22</sup> The FMCSA conducted a postaccident compliance review of International, which stated, “the carrier is being cited for not complying with the postaccident testing requirements. The driver did not complete an alcohol test and did not document why the test was not done.” According to the FMCSA, the driver was in the custody of the TxDPS and/or at the hospital for several hours after the accident and, therefore, enforcement action was not taken on this violation.

At the time of the accident, the driver had accumulated 3.5 months of motorcoach driving experience after being hired by the accident motor carrier in September 2007; he did not have any other motorcoach driving experience.<sup>23</sup> The driver possessed a valid Texas Class B commercial driver’s license (CDL) with an expiration date of September 7, 2008, and an intrastate commerce-only restriction, which prohibits the driver from exercising the privileges of the license outside of Texas.<sup>24</sup> After the accident, the driver was charged by the TxDPS with violating the CDL restriction “M” intrastate only.<sup>25</sup> The driver also was cited for duty status not being current (49 CFR 395.8[f][1]) and was found to have no medical certificate card<sup>26</sup> in his possession at the time of the accident (49 CFR 391.41[a]), although he did have a medical certificate issued September 6, 2007, that was valid for 2 years.

## Fatigue

In the days preceding the accident, the driver had been working an overnight shift and had been off duty during daytime hours. (See figure 7.) On December 30, 2007, the driver drove from Monterrey, Mexico, to Freer, Texas, and returned to Monterrey, working an overnight shift beginning at 7:30 p.m. He finished work at 7:00 a.m. on December 31, 2007, and was off duty on January 1, 2008, until he reported to work at 7:30 p.m. that evening for the accident trip.

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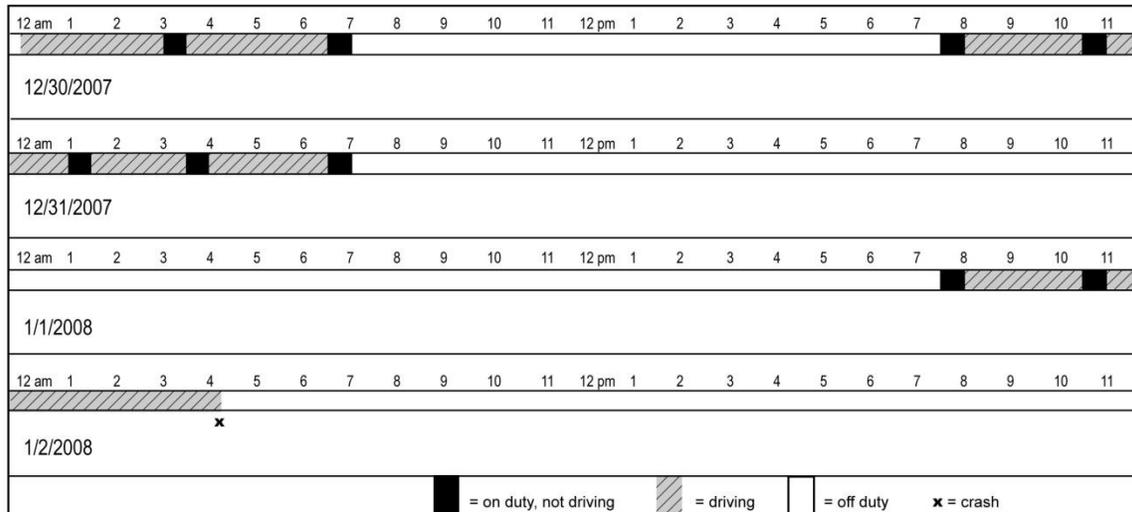
<sup>22</sup> Title 49 CFR 382.303(d)(1).

<sup>23</sup> The accident driver had experience driving large vehicles, including 2 years of experience driving dump trucks from 1997–1998. In early September 2007, the driver personally hired a motorcoach instructor from a private firm for \$250 and obtained 1 hour of instruction in a school bus to prepare for the TxDPS practical examination. Following the training, the private firm’s instructor met the driver at a TxDPS location with a school bus, where the driver passed the driving examination. He was hired by Capricorn on September 16, 2007, and began driving motorcoaches.

<sup>24</sup> The driver first held a Texas CDL (Class A) in 1993. In 1997, he received a Class B CDL, and on August 27, 2007, he applied for a “P” endorsement, which was granted on September 4, 2007.

<sup>25</sup> As of October 22, 2009, the TxDPS charge of violating the CDL restriction “M” is still pending. The driver never answered the charge, and an arrest warrant was issued and is still outstanding.

<sup>26</sup> As of April 1, 2009, this would be considered an out-of-service violation in accordance with the Commercial Vehicle Safety Alliance *North American Standard Out-Of-Service Criteria*.



**Figure 7.** Motorcoach driver’s 72-hour work and activity log.<sup>27</sup>

He then drove from Monterrey, Mexico, arriving at the U.S. border crossing at Laredo, Texas, about 10:30 p.m. After clearing the CBP port-of-entry border crossing checkpoint, the driver and bus passengers stopped for food in Laredo. The driver then continued driving from about 11:00 p.m. on January 1, 2008, until the time of the accident about 4:13 a.m.<sup>28</sup>

The motorcoach driver’s activities during the 3 days before the accident revealed that he had an inverted work/sleep cycle schedule<sup>29</sup> in order to accommodate the carrier’s overnight scheduled line runs (regular routes).<sup>30</sup> Although the driver’s *available* rest period to obtain sleep in those 3 days was close to 30 hours, it is unknown how many hours of sleep the driver actually *obtained*. Although 30 hours seems reasonable, science and medicine have long accepted that human beings are diurnal, biologically hard-wired to be active during the day and sleepy at night. Individuals who perform “shift work” or work outside the normal “day work” hours are therefore operating in an unnatural temporal environment. Surveys show that 60–70 percent of shift workers report difficulty sleeping, sleepiness on the job, or actually falling asleep unintentionally while at work.<sup>31</sup> Even when a shift worker has a consistent schedule and stabilized wake-sleep patterns,

<sup>27</sup> The table was reconstructed using toll and border crossing receipts and passenger lists that included departure times, dates, and locations to indicate approximate times. Table entries are primarily based on information provided by the logbook entries and known driving times.

<sup>28</sup> According to 49 CFR 395.5, a passenger-carrying driver cannot drive more than 10 hours after 8 consecutive hours off duty, after being on-duty for 15 hours after 8 consecutive hours off duty, or after being on-duty 60 hours in 7 consecutive days or 70 hours in 8 consecutive days.

<sup>29</sup> In this context, an inverted schedule is one where the driver’s work/rest cycle is inverted with respect to the day/night cycle; that is, the driver works through the night and sleeps through the day.

<sup>30</sup> According to the driver’s logbook, for the 3 months prior to the accident, he worked only overnight shifts, with the exception of three daytime shifts between October and November.

<sup>31</sup> T. Akerstedt and L. Torsvall, “Shift Work. Shift-Dependent Well-Being and Individual Differences,” *Ergonomics*, vol. 24, no. 4 (1981), pp. 265–273.

the risk of substandard and potentially unsafe performance substantially increases<sup>32</sup> unless the shift worker is able to obtain sufficient restorative sleep on a regular basis. Studies have shown that sleeping during the day results in less overall sleep and reduced quality of sleep because of light, noise, and other aspects of the physical environment.<sup>33,34</sup> Studies of long-haul truck drivers showed that after 13 hours of driving overnight, drivers who had an 8.6-hour off-duty period during the day obtained an average of only 3.8 hours of sleep.<sup>35</sup>

Considerable research suggests there is a higher risk of fatigue-induced single-vehicle accidents at night; about three times as many fatalities occur per 1,000 accidents from midnight to 6:00 a.m.<sup>36</sup> In addition to the problems associated with daytime sleeping, there are additional fatiguing effects associated with circadian disharmony that result from working and being awake at night. Examinations of accident risk relative to the time of day have indicated that accident risk peaks in the early morning from 2:00 a.m.<sup>37</sup> to 4:00 a.m.<sup>38</sup> The highest risk for a drowsy/dozing driver accident is between 4:00 a.m. and 6:00 a.m., and this accident occurred about 4:13 a.m.<sup>39</sup>

The driver initially admitted falling asleep at the wheel and waking up when the vehicle began to leave the roadway, but during a subsequent interview with NTSB investigators on January 5, 2008, the driver denied that he told the officer that he had been tired or had fallen asleep while driving. He also stated that after the motorcoach had drifted to the right, he feared the bus might go over the highway's right side embankment, so his steering input back to the left was immediate and that the motorcoach went out of control and then rolled over into the roadway. There is no indication that the driver was engaged in nondriving tasks, such as text messaging or talking on a citizens band radio, loudspeaker, or cellular telephone, at the time of the accident. Postaccident examination of the roadway and the accident vehicle showed no evidence of braking or steering input by the motorcoach driver prior to departing the right side of the roadway, consistent with the driver's description of the accident sequence

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<sup>32</sup> See <[http://www.fmcsa.dot.gov/spanish/english/science\\_main.htm](http://www.fmcsa.dot.gov/spanish/english/science_main.htm)>, accessed May 7, 2009.

<sup>33</sup> (a) T. Akerstedt, "Adjustment of Physiological Circadian Rhythms and the Sleep-Wake Cycle to Shiftwork," eds., S. Folkard and T. Monk, *Hours of Work: Temporal Factors in Work Scheduling* (New York: Wiley, 1985). (b) T. Akerstedt, "Shift Work and Disturbed Sleep/Wakefulness," *Occupational Medicine*, vol. 53, no. 2 (2003), pp. 89–94.

<sup>34</sup> K.H.E. Kroemer, H.J. Kroemer, and K.E. Kroemer-Elbert, *Engineering Physiology: Bases of Human Factors/Ergonomics*, 2<sup>nd</sup> ed. (New York: Van Nostrand Reinhold, 1990), p. 176.

<sup>35</sup> Compared to daytime shift of driving for 13 hours with an 8.9-hour off-duty period overnight where the average amount of sleep obtained was 5.6 hours. M.M. Mitler, J.C. Miller, J.J. Lipsitz, and others, "The Sleep of Long-Haul Truck Drivers," *New England Journal of Medicine*, vol. 337, no. 11 (1997), pp. 755–761.

<sup>36</sup> See <[http://www.fmcsa.dot.gov/spanish/english/science\\_main.htm](http://www.fmcsa.dot.gov/spanish/english/science_main.htm)>, accessed May 7, 2009.

<sup>37</sup> J.A. Horne and L.A. Reyner, "Sleep Related Vehicle Accidents," *British Medical Journal*, vol. 310, no. 6979 (1995), pp. 565–567.

<sup>38</sup> G. Kecklund and T. Akerstedt, "Time of day and Swedish road accidents," *Shiftwork International Newsletter*, vol. 12, no. 1 (1995), p. 31.

<sup>39</sup> R.R. Mackie and J.C. Miller, *Effects of Hours of Service Regularity of Schedules and Cargo Loading on Truck and Bus Driver Fatigue*, DOT HS 803 799 (Washington, DC: NHTSA, 1978).

itself; however, in NTSB interviews, he did not offer any explanation for his loss of situational awareness or attention to the driving task that resulted in his drifting to the right out of the travel lane. Further, the NTSB interviewed several passengers who had either observed the driver falling asleep or heard others shouting to the driver just prior to the vehicle rolling over. One passenger seated two rows behind the driver reported that just before the driver “over-steered the wheel,” she witnessed him falling asleep. Another passenger reported that after the driver drifted out of the travel lane, she felt the motorcoach swerve and heard a passenger scream for the driver to wake up.

The driver also stated in his interview with NTSB investigators that, upon hearing a passenger yell “watch it” to him in Spanish, his steering input was immediate and rapid. Research has shown that a startled response (whether associated with a redirection of attention or sleep onset) is associated with overcorrection.<sup>40</sup> The driver drifting off the roadway suggests that he had been nodding off and that when a passenger screamed and possibly awakened him, he observed the edge of the roadway. He may have immediately attempted to steer away from it as a reactive measure rather than in a deliberative manner, resulting in an overcorrection. This steering maneuver may have also been part of the wakening response. When individuals awaken from Stage 1 sleep (the first stage people enter as they transition from wakefulness to sleep), they frequently experience some degree of mental confusion and vague or fragmented imagery.<sup>41</sup>

The driver’s own initial on-scene statement, passengers’ reactions, statements regarding the driver’s behavior, and research studies regarding fatigue due to inverted schedules and human sleep cycles all indicate that the driver was most likely fatigued. Because of that fatigue, the driver fell asleep while operating the motorcoach, causing it to depart the roadway, initiating the accident sequence. Consequently, the NTSB concludes that the motorcoach driver fell asleep and partially drifted out of his travel lane. The NTSB further concludes that upon regaining awareness after partially drifting off the roadway, the accident driver overcorrected his steering, causing a loss of control of the motorcoach.

After the accident, Capricorn and International were involved in civil litigation brought by the families of the accident victims. During his civil case deposition,<sup>42</sup> Capricorn’s owner was asked whether the company had policies or procedures in place should a driver become fatigued, sleepy, or overly tired before or during a scheduled trip. Capricorn’s owner stated that the company did not have such a policy but that he believed drivers should know what to do. He added that Capricorn’s “persons in charge”

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<sup>40</sup> L.K. Spainhour and A. Mishra, “Analysis of Fatal Run Off The Road Crashes Involving Overcorrection,” *Proceedings of the 2008 Transportation Research Board Annual Meeting* (Washington, DC: Transportation Research Board, 2008).

<sup>41</sup> M.A. Carskadon and W.C. Dement, “Normal Human Sleep: An Overview,” in M.H. Kryger, T. Roth, and W.C. Dement, eds., *Principles and Practices of Sleep Medicine*, 4<sup>th</sup> ed. (Philadelphia: W.B. Saunders Company, 2005).

<sup>42</sup> Sworn oral deposition taken July 9, 2008. The civil case was settled, and the insurance companies for both International Charter Services, Inc., and Transportes Chavez, Inc., paid a total of \$10 million to the plaintiffs (motor carriers of passengers are required to have \$5 million dollars in insurance in order to operate).

in Monterrey would not let a driver drive if they knew that he or she was tired. He also stated that he thought the accident driver had received plenty of rest because he was off for 2 days before the accident, although he did not know of the accident driver's activities during that time.

However, as described earlier in this section, the very nature of overnight operations increases a driver's level of fatigue and exposes drivers and passengers to increased risk. Moreover, any shift back of even a few hours to daylight activities would have reset the driver's internal clock, undoing an adaptation to an inverted schedule almost immediately. Therefore, although the driver may have taken some steps to diminish fatigue and possibly reduced his risk of a fatigue-induced crash, there are still risks inherent to overnight operations.

The NTSB has long been concerned with commercial driver fatigue. As a result of the NTSB's 1999 special investigation,<sup>43</sup> the Board issued the following recommendation to the U.S. Department of Transportation (DOT):

Require that the Federal Highway Administration [FHWA]<sup>44</sup> fatigue video for motorcoaches include the dangers of inverted duty-sleep periods. (H-99-4A)

On December 7, 2000, this recommendation was classified "Closed—Acceptable Action." During the course of the Victoria, Texas, investigation, the video was reviewed in an effort to determine what has changed in the study of inverted sleep schedules since the video's release. The NTSB concludes that since the FMCSA's fatigue video was created in 2000, scientific understanding of fatigue and fatigue countermeasures has improved, as well as distribution methods available<sup>45</sup> for communicating this type of information, to include the Internet, which has the potential to reach even more commercial drivers. Therefore, the NTSB recommends that the FMCSA update and redistribute its "Driver Fatigue Video" to include current information on fatigue and fatigue countermeasures and make the video available electronically; and implement a plan to regularly update and redistribute the video.

More recently, as a result of the investigation into the Osseo, Wisconsin, crash,<sup>46</sup> the NTSB issued the following recommendations to the FMCSA:

Develop and implement a plan to deploy technologies in commercial vehicles to reduce the occurrence of fatigue-related accidents. (H-08-13)

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<sup>43</sup> *Selective Motorcoach Issues*, Special Investigation Report NTSB/SIR-99/01 (Washington, DC: National Transportation Safety Board, 1999).

<sup>44</sup> Upon creation of the FMCSA, the recommendation was transferred from the FHWA to the FMCSA.

<sup>45</sup> Such as podcasts, webinars, Internet video downloads, and DVDs.

<sup>46</sup> NTSB/HAR-08/02.

Develop and use a methodology that will continually assess the effectiveness of the fatigue management plans implemented by motor carriers, including their ability to improve sleep and alertness, mitigate performance errors, and prevent incidents and accidents. (H-08-14)

On May 11, 2009, the FMCSA responded to these recommendations. In addressing Safety Recommendation H-08-13, the FMCSA indicated that the development of an advanced Drowsy Driver Warning System is underway, moving into principal research and prototype development in 2009. This phase is projected to last 2 years, after which a commercialization decision will be made. The FMCSA also stated that the agency is unaware of any currently available technology that could be used by commercial drivers for both day and night driving. Although the FMCSA is correct that no products are commercially available that could be used both day and night, the agency's recent published review<sup>47</sup> of activities currently underway to develop unobtrusive, in-vehicle, real-time, drowsy driver detection and alertness systems discussed at least five separate systems capable of functioning under a variety of conditions.<sup>48</sup> Such systems would provide a significant safety benefit to the segment of commercial operations at greater risk for fatigue-related accidents, namely those that occur at night.<sup>49</sup> The Board recognizes that a "one size fits all" technology for detecting driver fatigue is not immediately available. Still, in the interim, the FMCSA should move ahead with the implementation of technologies that are ready today despite their time-of-day limitations. Given the increased fatigue risks inherent in nighttime operations, it is reasonable to believe that even a system that functions only at night could provide a substantial safety benefit as a stop-gap measure until a universal system is available.

The NTSB acknowledges the progress that the FMCSA has made toward meeting the intent of Safety Recommendation H-08-13; however, based on concerns that the FMCSA's approach ignores technologies that could be more quickly deployed for nighttime use, a time when the majority of fatigue accidents can be expected to occur, the NTSB reclassified Safety Recommendation H-08-13 "Open—Unacceptable Response" on October 2, 2009. Safety Recommendation H-08-14 remains classified "Open—Acceptable Response," based upon the FMCSA's work with the North American Fatigue Management Program.<sup>50</sup> The NTSB believes the circumstances of this

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<sup>47</sup> L. Barr, S. Popkin, and H. Howarth, *An Evaluation of Emerging Driver Fatigue Detection Measures and Technologies*, Report No. FMCSA-RRR-09-005 (Washington, DC: FMCSA, 2009).

<sup>48</sup> All illumination conditions (from full sunlight to complete darkness), eyeglasses, contact lenses, most sunglasses, and variable subject distances.

<sup>49</sup> (a) M. Mitler, C. Carskadon, C. Czeisler, W. Dement, D. Dinges, and R. Graeber, "Catastrophes, Sleep, and Public Policy: Consensus Report," *Sleep*, vol. 11, no. 1 (1988), pp. 100–109. (b) J. Horne and I. Reyner, "Sleep Related Vehicle Accidents," *British Medical Journal*, vol. 310, no. 6979 (1995), pp. 565–567. (c) G. Kecklund and T. Akerstedt, "Time of Day and Swedish Road Accidents," *Shiftwork International Newsletter*, vol. 12, no. 1 (1995), p. 31.

<sup>50</sup> According to the FMCSA, this program is a collaborative effort aimed at reducing fatigue-related accidents and decreasing the personal and economic costs to drivers, companies, and workers' compensation programs and insurance carriers (NTSB staff communication with FMCSA staff, June 13, 2008).

accident again demonstrate the serious nature of fatigue-related accidents and the need for both in-vehicle technologies and effective fatigue management programs; therefore, the Board urges the FMCSA to continue to work to meet the intent of Safety Recommendations H-08-13 and -14.

## Issues

The primary purpose of this summary report is to explore, in depth, the process by which a U.S.-based passenger motor carrier was permitted to operate in interstate commerce within the United States with a motorcoach that was not manufactured for use in the United States, and it had not been built to meet Federal safety standards, as required to protect motor vehicle occupants and the public. The owner of the motor carrier in this accident, unable to obtain the insurance that would have enabled him to receive authority to transport passengers as a motor carrier, entered into a lease with another authorized motor carrier in order to continue to operate his business under the other carrier's authority. This report explores how this process worked and how the process shielded the accident motor carrier from effective safety oversight. Next, the report discusses how the accident motor carrier was able to improperly import motorcoaches into the United States that did not meet Federal safety standards and how the accident vehicle was registered in the United States and obtained license plates and remained undetected and operating in interstate commerce until discovered during the accident investigation.

### Motor Carrier Operations

International Charter Services, Inc. (International), of Houston, Texas, obtained FMCSA operating authority as a for-hire interstate passenger carrier in June 2005.<sup>51</sup> International was classified as a "new entrant" to interstate passenger-carrying commerce under the FMCSA's New Entrant Safety Assurance Program and underwent a safety audit on November 17, 2005.<sup>52</sup> Upon meeting all of the new entrant requirements, the FMCSA sent International a letter<sup>53</sup> informing the company president that the "new entrant" designation had been changed to "permanent" registration. The letter further stated,

you are reminded that while operating in the United States, you are required to comply with all U.S. *Federal Motor Carrier Safety Regulations* (FMCSRs), *Federal Motor Vehicle Safety Standards* (FMVSSs), and applicable Hazardous Materials Regulations (HMRs). The

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<sup>51</sup> Operating authority is indicated by a motor carrier (MC) number displayed on the vehicle that is distinct from the USDOT number and is separately required in the case of for-hire, interstate motor carriage of nonexempt commodities. The FMCSA grants different categories of operating authority, and the specific operating authority granted limits a company's type of operation, the cargo it may carry, and the geographical area in which it may legally operate. A USDOT number is a unique identifier used to track safety information collected during audits, compliance reviews, accident investigations, and inspections.

<sup>52</sup> When the FMCSA conducted the safety audit, International's owner was the common-law spouse of the company's safety manager, who, in turn, was also listed as owner of another motorcoach company, Transportes Chavez, Inc. Chavez had a separate USDOT number and operated a charter service and a scheduled line run from Houston, Texas, to San Luis Potosi, Mexico. Both companies had leased the accident Volvo motorcoach from Capricorn Bus Lines, Inc.

<sup>53</sup> FMCSA letter (regarding notification of motor carrier's status) to International, November 2, 2006.

FMCSA will continue to evaluate you on the same basis as any other carrier.

Eight of International's motorcoaches<sup>54</sup> were leased from Capricorn Bus Lines, Inc. (Capricorn),<sup>55</sup> a company that did not have intrastate operating authority in Texas or interstate operating authority from the FMCSA. According to the owners of International and Capricorn, the lease was a paper agreement, but no monies were ever paid, though the lease stipulated a period of 1 year with a monthly payment of \$12,500.<sup>56</sup> Capricorn's owner stated in his civil case deposition that "it was just an agreement to get the insurance," noting that he conducted all of his lease agreements in this manner; that is, operators would obtain insurance for Capricorn's buses and Capricorn would operate under their operating authority (in this case, International's) and using their USDOT number.

The FMCSA has a dual path as part of its current registration process: companies are required to obtain a USDOT number by filling out and submitting an MCS-150 form (Motor Carrier Identification Report [Application for USDOT Number]) *and* some companies may be required to additionally obtain interstate operating authority by filing an OP-1(P) form (Application for Motor Passenger Carrier Authority). In general, companies that operate as "for hire" carriers (for a fee or other compensation) and transport passengers or federally regulated commodities or arrange for their transport in interstate commerce are required to register for interstate operating authority. Once the FMCSA has furnished a USDOT number, companies must biennially furnish the FMCSA with updated MCS-150 forms.<sup>57</sup>

Capricorn's owner further explained in his deposition that he had previously owned and operated another interstate passenger carrier called Flores Charters and Tours, Inc., which ceased operations because the company had a fatal accident in Mexico in 2002. Capricorn's owner thought he could obtain insurance again in the United States under the new name of Capricorn Bus Lines, Inc., but he was unable to. He then entered a lease agreement with a company called Transportes Chavez, Inc. (Chavez), from June

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<sup>54</sup> International added several leased motorcoaches to its Texas carrier profile. The lease included a 1997 Van Hool; three model year 2005 Volvos (two were purchased in April 2006 in Mexico); two model year 2004 Scania; and two model year 2008 Volvos, also purchased in Mexico.

<sup>55</sup> Capricorn was incorporated in February 2004; however, in January 2006, the company's intrastate authority was suspended in Texas for "tax forfeiture." In 2007, the company registered with the FMCSA for interstate operating authority; however, in July 2007, the company had withdrawn its request and was listed with the FMCSA as "inactive." The owner of Capricorn had also been listed as the owner of another bus company, Flores Charter and Tours in Houston, Texas (USDOT 827375), from 1999 until 2006, which overlapped the period that he was the owner of Capricorn. Flores Charter and Tours also had its intrastate operating authority suspended twice for "tax forfeiture" in 2006; the company requested that the FMCSA rescind its operating authority due to going out of business. The name "Flores" remained on the buses that were leased from Capricorn to International.

<sup>56</sup> During the civil case deposition, Capricorn's owner stated that he, not Capricorn, owned the accident vehicle because it was a Mexican motorcoach that he was financing in Mexico.

<sup>57</sup> See <http://www.fmcsa.dot.gov/documents/forms/r-1/MCS-150-Instructions-and-Form.pdf>, accessed November 13, 2009.

2005 until June 2006.<sup>58</sup> The FMCSA conducted a roadside inspection (Level 1)<sup>59</sup> of the accident vehicle on February 22, 2006. The USDOT number recorded for this vehicle and driver was for a U.S.-domiciled carrier, Transportes Chavez, Inc. The FMCSA inspection resulted in the driver receiving an out-of-service (OOS) violation for operating a CMV without a CDL (49 CFR Part 383.23[A][2]); the accident vehicle also received an OOS violation for no or defective bus emergency exit windows (49 CFR Part 393.62[C]).

In 2006, Capricorn's owner spoke with International's new Director, who was Chavez's owner's common-law spouse and asked whether she could help him obtain insurance and allow Capricorn to use International's USDOT number. She obtained insurance for Capricorn's vehicles and entered into two separate yearly term leases with him from 2006 until the accident occurred in January 2008.<sup>60</sup> Although Capricorn's lease with International began in June 2006, Capricorn's drivers and the accident vehicle underwent roadside inspections in November 2006 and April 2007, and the FMCSA assigned the roadside inspections to Chavez's USDOT number, not International's.<sup>61</sup>

At the NTSB's public hearing on this accident,<sup>62</sup> a witness representing the TxDOT stated the terms of this "equipment lease" required that International carry and maintain public liability insurance but specified that the insurance costs would be paid by Capricorn. In addition to providing the motorcoaches (equipment), the lease required Capricorn to provide drivers and maintain vehicles (including all costs related to repairs, permits, and taxes). Capricorn was responsible for complying with all DOT regulations, hiring and paying drivers (including the accident driver), maintaining driver qualification files, conducting driver drug and alcohol testing, maintaining driver log books, obtaining DOT inspections, conducting posttrip vehicle inspections, obtaining state license plates, and maintaining passenger manifests. Capricorn was also responsible for paying tickets or fines resulting from vehicle or driver violations.

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<sup>58</sup> There was a documented lease agreement between Capricorn and Transportes Chavez, Inc., dated June 5, 2005; however, it was not signed by Transportes Chavez.

<sup>59</sup> There are seven "levels" (or categories) of roadside inspections. *Level 1* includes the driver and vehicle (including an inspection of the components on the undercarriage, such as brake adjustment); *Level 2* is a driver-and-vehicle walk-around inspection (does not include an inspection of the vehicle's undercarriage components); *Level 3* is the Driver/Credential Inspection only; *Level 4* is a special investigation, typically including a one-time examination of a particular item and normally conducted in support of a study or to verify or to refute a suspected trend; *Level 5* is a vehicle-only inspection; *Level 6* is a Transuranic Waste and Highway Route Controlled Quantities of Radioactive Materials inspection; and *Level 7* is a jurisdictional mandated commercial vehicle inspection.

<sup>60</sup> These leases were reportedly in writing; however, the June 2006 through May 2007 lease could not be produced by Capricorn during the NTSB's investigation. The NTSB was able to obtain a copy of the lease beginning June 2007.

<sup>61</sup> The April 25, 2007, Level 2 roadside inspection resulted in one driver violation (logbook) and one vehicle violation (windshield); the windshield violation was an OOS violation. The November 9, 2006, Level 2 roadside inspection recorded no OOS violations.

<sup>62</sup> The NTSB may hold a public hearing as part of its investigation into an accident to supplement the factual record. Technical experts are called as witnesses to testify, and NTSB investigative staff, designated representatives from the parties to the investigation, and additional parties to the hearing can ask questions to obtain additional factual information (see appendix A). A hearing is not intended to analyze factual information for cause. For more information, refer to NTSB docket no. 67330, files 407014-15, "Public Hearing—Transcript of Hearing Proceedings and Witness Testimony, October 7-8, 2008, Washington, D.C.," <<http://www.nts.gov/Dockets/Highway/HWY08mh011/default.htm>>, accessed January 8, 2010.

Capricorn advertised its motorcoach services and sold one-way and roundtrip tickets to the public under the name Capricorn (a U.S.-domiciled company).<sup>63</sup> All of these line runs were being operated on U.S. roads under the USDOT number and operating authority assigned to International because the vehicles were being leased on paper to International. A line run, also called a regular route, is a regularly scheduled trip from one or more locations and then back to the original location. If a carrier has FMCSA-issued regular route operating authority, this is the only destination(s) to which the company operates under its FMCSA route designation certificate. Table 2 summarizes the working relationship between International and Capricorn.

**Table 2.** International and Capricorn working relationship.

Dates	Event
<b>June 2005</b>	International, of Houston, Texas, obtained FMCSA operating authority as a for-hire interstate passenger carrier.
<b>June 2006</b>	<p>Capricorn entered into two 1-year “leasing” agreements with International. The paperwork agreement (no monies were exchanged) allowed Capricorn to “lease” buses to International. In turn, International obtained insurance (paid for by Capricorn) for the leased buses and allowed Capricorn to operate them using International’s USDOT number and operating authority.</p> <p>While operating under International’s USDOT number, Capricorn exercised total operational control of the business, maintaining buses, hiring and training drivers, directing drivers, arranging transportation, keeping records, obtaining state and USDOT inspections, and paying tickets or fines resulting from violations.</p>
<b>June 2006–January 2008</b>	Using International’s USDOT number, Capricorn made daily line runs between Houston, Texas; Nuevo Laredo, Mexico; and Monterrey, Mexico, and back. However, International only had operating authority for charter and special operations, not regular routes.

<sup>63</sup> Capricorn’s owner also sold tickets to the public under the name Turismo Capricornio (his Mexico-domiciled motor carrier) and Autobuses Flores (a third company that he established for advertising purposes). The three companies were owned by the same person. Tickets sold under the operator name Capricorn were for the portion of the trip made in the United States from Houston, Texas, to the border crossing at Laredo, Texas. Turismo Capricornio tickets were sold (in the United States and at the same time) for the portion of the trip past the border crossing at Laredo, Texas, into Nuevo Laredo, Mexico. The same drivers and vehicles conducted all of the daily line runs (regular routes); only the name of the company on the tickets reportedly changed depending on the portion of the trip.

## Federal Safety Oversight

After the Victoria accident, the FMCSA conducted a compliance review of International. Capricorn, per the lease with International, was responsible for recordkeeping, so the FMCSA reviewed Capricorn's vehicle and driver documentation for International's compliance review rating (recordkeeping is inspected during a compliance review). According to the FMCSA, the agency conducts compliance reviews of the full range of carriers subject to the FMCSRs, including for-hire, exempt for-hire, and private motor carriers; not all motor carriers need operating authority to engage in interstate operations, and the FMCSA routinely conducts compliance reviews of such companies. FMCSA officials also informed the NTSB<sup>64</sup> that it takes into consideration which company has control over the driver and "arranging the transportation" in determining the company that is acting as the motor carrier. Although the motor carrier is determined on a case-by-case basis, to a large extent it is the company with "direction of the driver." However, in the case of International and Capricorn, the FMCSA stated that

In the case of International, the Agency based its decision to conduct the compliance review on International (not Capricorn) on statements made by International's Manager (who was also the owner of Transportes Chavez, Inc.). The Manager stated the bus involved in the crash had been operated by International and he could provide all the documents for the review.

Capricorn was not subjected to a compliance review nor given a safety rating.

Title 49 CFR 390.5 defines a motor carrier as a *for-hire motor carrier or a private motor carrier*, including:

A motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

In addition, the FMCSA defines<sup>65</sup> a company operating with authority as:

Companies that operate as "for hire" carriers (for a fee or other compensation) that transport passengers or federally regulated commodities, or arrange for their transport, in interstate commerce are also required to have interstate operating authority.

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<sup>64</sup> During July 28, 2009, meetings between FMCSA and NTSB staff.

<sup>65</sup> For further information, see <<http://www.fmcsa.dot.gov/registration-licensing/registration-OP.htm>>, accessed November 12, 2009.

Title 49 CFR Part 365 requires an operator to hold an appropriate operating authority certificate to transport passengers for compensation or hire. The terms of International's vehicle "lease" with Capricorn required Capricorn to fulfill all the duties, responsibilities, and operations as defined above of a motor carrier for hire. According to International and Capricorn, Capricorn operated all of its regular route passenger-carrying trips under International's USDOT number and operating authority certificate,<sup>66</sup> for which it agreed to pay International a flat monthly fee (although Capricorn did not actually pay this fee).<sup>67</sup> Under the agreement, International effectively relinquished operational control as Capricorn performed all operations. Of significance is that International provided no oversight role over the safety of Capricorn's operations while Capricorn was operating under International's certificate.

The FMCSA determined the final compliance review, enforcement action, violation, or penalty based upon its decision regarding which company constituted the motor carrier; in this case, the operating authority certificate holder International. (See the "FMCSA Remarks" section in appendix E.) However, the FMCSA had the discretion, which it has used in other accidents, to conduct an additional compliance review of, and assign a safety rating to, Capricorn. The postaccident compliance review of International revealed that the FMCSA was aware of the lease agreement between International and Capricorn and did not object to the details of that agreement concerning not only equipment but also which company had directional control over the drivers and vehicle maintenance, and, effectively, control over regular route operations. Capricorn's lease with International constituted an arrangement enabling Capricorn to operate virtually independently, without operational control from International. Based on information obtained during this investigation, Capricorn was never required to demonstrate to the FMCSA that it was capable of safety fitness as required of a motor carrier; the lease agreement effectively kept Capricorn's operations at arm's length from International and shielded Capricorn from appropriate FMCSA oversight. In examining the FMCSA's definitions of a motor carrier and the companies' roles as outlined in the lease agreement, it is evident Capricorn was operating independently from International as a motor carrier. The owner of International had certified on the application for operating authority it would have in place a system for the safe operation of commercial vehicles, specifically "policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including driver's hours of service and vehicle inspection and repair and maintenance." Multiple critical and acute safety violations were found during International's compliance review when the FMCSA examined Capricorn's vehicles and drivers, showing that International was not ensuring that the FMCSRs were being followed and that International did not have a system in place for making sure Capricorn's operations followed the FMCSRs. The NTSB therefore concludes that International failed to maintain operational control and safety oversight of Capricorn's

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<sup>66</sup> Granted upon submission to the FMCSA of Form OP-1(P), "Application for Motor Passenger Carrier Authority." See <[http://www.fmcsa.dot.gov/documents/forms/r-1/op-1\(p\)-instructions-and-form.pdf](http://www.fmcsa.dot.gov/documents/forms/r-1/op-1(p)-instructions-and-form.pdf)>.

<sup>67</sup> Title 49 CFR Part 365, Subpart D, establishes the transfer rights under 49 *United States Code* (U.S.C.) 10926 that define the procedures to enable motor carriers of passengers to obtain the approval from the FMCSA to merge, transfer, or lease their operating rights in financial transactions not subject to 49 U.S.C. 11343.

operations, including its drivers and vehicles, as required by the safety certification completed by International in its operating authority application (Form OP-1[P], section 4).

International received an “unsatisfactory” rating for the compliance review’s “driver” factor due to Capricorn’s “false, incomplete, and/or missing driver log pages.” International also received a “conditional” rating for the “vehicle” factor due to Capricorn’s incomplete vehicle documentation and failure to document repairs. International paid a settled fine of \$5,840<sup>68</sup> and was issued an overall rating of conditional.<sup>69</sup> (See appendix E.) Further, International was given a Motor Carrier Safety Status Measurement System (SafeStat) category B rating, which is considered an “at-risk” carrier.<sup>70</sup> Although the violations or other enforcement action resulting from a roadside inspection or compliance review may eventually be linked to the person or entity that applied for the USDOT number, this discretionary, case-by-case decision as to which motor carrier should receive a postaccident compliance review (rather than both) does not protect against de facto carriers such as Capricorn that lease a USDOT number to evade detection and enforcement action. Capricorn had clearly defined safety oversight responsibilities in its arrangements to operate under International’s certificate of authority; Capricorn had directional control over the drivers and was responsible for the safety of the vehicles. Therefore, the NTSB concludes that the FMCSA had the authority to conduct a compliance review of Capricorn, but did not, thereby failing to assign the appropriate safety rating for an “at-risk” carrier to a carrier with serious safety violations.

Even *if* an OOS order is issued to a certificated carrier (in this case, International) based on violations caused by a noncertificated carrier’s drivers or vehicles (in this case, Capricorn), the noncertificated carrier can simply sign another lease with a new carrier or apply for its own operating authority without any link to the safety violations or OOS order. This practice negates the enforcement effect of the OOS order or civil penalties for safety-critical violations. It also has little effect on improving the noncertificated carrier’s safety management behavior because it allows the noncertificated carrier’s management and employees in safety-sensitive positions to avoid accountability for safety violations, deficiencies, and poor management practices. The NTSB notes that, although the postaccident compliance review of International made this lease arrangement clear to the FMCSA, the agency’s inaction in addressing this issue indicated its tacit approval of these arrangements. The Federal government has regulated the leasing of motor vehicles

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<sup>68</sup> See the FMCSA Motor Carrier Management Information System (MCMIS) Company Safety Profile Enforcement Data Report, p. 6 (July 28, 2009).

<sup>69</sup> Safety ratings are as follows: A *satisfactory* rating means a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in §385.5. A *conditional* rating means that a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standards that could result in occurrences listed in §385.5 (a) through (k). An *unsatisfactory* rating means that a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard, which has resulted in occurrences listed in §385.5 (a) through (k).

<sup>70</sup> SafeStat is a data-driven analysis system that determines the current relative safety status of individual motor carriers. SafeStat categories are A, B, and C. Carriers identified in these categories by SafeStat scoring have higher crash rates than carriers that are not identified as category A, B, or C rated carriers <[http://ai.fmcsa.dot.gov/SafeStat/SSLonger\\_4-00.pdf](http://ai.fmcsa.dot.gov/SafeStat/SSLonger_4-00.pdf)>, accessed September 29, 2009.

to provide interstate for-hire transportation for more than 50 years.<sup>71</sup> Currently, 49 CFR Part 376 applies only to motor carriers registered with the Secretary of Transportation to transport property. Among the provisions contained in the leasing regulations is the requirement that the authorized carrier “shall assume complete responsibility for the operation of the equipment for the duration of the lease.” Further, the lessee-authorized carrier must control the operation and, since it is functioning as the motor carrier, must comply with the FMCSRs.<sup>72</sup> However, these regulations allow a loophole for leasing oversight between motor carriers of passengers because they apply only to cargo motor carriers.

The NTSB believes that a motor carrier with OP-1(P) operating authority should be required to exercise *documented* full operational control over all drivers, vehicles, and trip operations being conducted under its operating authority. The NTSB is concerned that allowing a noncertificated carrier to receive no enforcement action<sup>73</sup> while clearly running its business outside of the scope of its operating authority does not provide safety oversight of passenger-carrying operators currently on the road. The NTSB concludes that the FMCSA, by its tacit approval of lease agreements for interstate passenger carriers that are broader in scope than the equipment leases regulated for cargo carriers, in effect provides a lower level of safety oversight to motor carriers that transport passengers than to those that transport cargo. To close this leasing regulation loophole and provide the same level of safety for passengers as is already required for cargo, the NTSB recommends that the FMCSA revise 49 CFR Part 376 to require that passenger motor carriers are subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo.

### **Scope of Operating Authority**

To obtain FMCSA interstate operating authority, a passenger carrier must submit a Form OP-1(P) “Application for Motor Passenger Carrier Authority.” Applicants applying for operating authority online must choose the scope of operation for the type of operating authority certificate to be granted:

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<sup>71</sup> See <<http://www.fmcsa.dot.gov/about/news/testimony/tst-050608.pdf>>, accessed September 28, 2009.

<sup>72</sup> See <[http://www.fmcsa.dot.gov/documents/foia/eFOTM-redacted-7-08\\_pg797-866.pdf](http://www.fmcsa.dot.gov/documents/foia/eFOTM-redacted-7-08_pg797-866.pdf)>, accessed September 28, 2009.

<sup>73</sup> Although the FMCSA did not take enforcement action against Capricorn because the agency did not consider Capricorn to be the motor carrier, Texas did. On May 15, 2008, TxDOT informed Capricorn’s owner that the company was being fined a \$65,200 administrative penalty after an audit of Capricorn business records resulted in the determination that Capricorn had, in part: failed to prepare and maintain at its principal place of business in Texas documents supporting fee payments and the original registration receipts issued for an interstate carrier; failed to maintain all records and information required by the department at the motor carrier’s principal office in Texas; failed to maintain all books and records generated by a motor carrier at its principal business address for at least 2 years; and failed to register a vehicle required to be registered.

1. Charter and Special Transportation Operation,
2. Regular Route Transportation, or
3. Both.

“Charter and Special Transportation” means all types of passenger transportation not on fixed routes. “Regular Route Transportation” is service as a common carrier over regular routes, which permits the carrier to operate only on routes designated by the carrier between fixed facilities.<sup>74</sup>

International filed an OP-1(P) form requesting charter and special operations service; on June 16, 2005, the FMCSA issued Certificate MC-519270-C to International stating that the carrier had the authority to “engage in transportation as a common carrier of passengers, in charter and special operations, by motor vehicle in interstate or foreign commerce.” Although International provided approximately five charters per month, the main business being conducted under International’s operating authority was Capricorn’s daily route from Houston, Texas, to Monterrey, Mexico.<sup>75</sup> However, International did *not* request regular route authority separately. Capricorn’s motorcoaches advertised the line run service in large lettering on the side and rear of the motorcoaches, listing cities of service and schedules. (See figure 8.) In addition, Capricorn’s driver’s logs clearly showed the dates and times of service, pickup and drop-off locations, and other documentation for the regular route service being provided.

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<sup>74</sup> Route descriptions are published in the FMCSA Register, and interested parties may file protests to an application within 10 days of publication. The FMCSA must deny the application if a protest or information independently developed by the FMCSA demonstrates that the applicant is not willing or able to comply with safety fitness requirements or with the applicable commercial, safety, or financial responsibility regulations (49 CFR Parts 356 through 396).

<sup>75</sup> Two vehicles were in operation at the same time, one departing from Houston, Texas, at 7:00 p.m. and the other departing from Monterrey, Mexico, also at 7:00 p.m. Both schedules required overnight driving, and the motorcoaches would arrive at their respective opposite destinations in about 9–10.5 hours, including time spent at the CBP port-of-entry checkpoint.



**Figure 8.** Motorcoach with printed regular route schedule.

When the FMCSA conducted its postaccident compliance review of International, it noted specifically that International was operating as both a charter and regular route carrier. However, in the postaccident compliance review, the FMCSA did not cite International for not properly applying for regular route authority nor discuss enforcement action against International for operating outside the scope of its authority. Section 205 of the Motor Carrier Safety Improvement Act (MCSIA), codified at 49 U.S.C. 13902 (e), requires that the FMCSA assess penalties for failure to comply with the motor carrier registration requirements.

Specifically, if a motor carrier operates beyond the scope of its authority, the carrier is subject to certain enforcement penalties.<sup>76</sup> In order to restrict commercial highway transportation to those entities having the appropriate operating authority and possessing adequate insurance, the FMCSA specifically mandates placing out of service any driver and vehicle discovered to be operating beyond the scope of the carrier's authority. Operating outside the scope of a carrier's authority constitutes a violation of operating authority and is subject to a fine or revocation of that authority. The NTSB concludes that because the FMCSA was aware during International's postaccident compliance review that regular route service was being provided regularly without International's having applied for this type of operating certificate, and therefore the carrier was operating beyond its scope of authority, the FMCSA should have taken enforcement action as required by the MCSIA.

<sup>76</sup> *Federal Register*, vol. 71, no. 166 (August 28, 2006), p. 50864.

## New Entrant Safety Assurance Program

As of January 1, 2003, all new motor carriers operating in interstate commerce must apply for registration as a “new entrant.” As a new entrant, the carrier is subject to an 18-month safety-monitoring period during which the carrier receives a safety audit;<sup>77</sup> in addition, roadside crash and inspection data are evaluated. On December 16, 2008, the FMCSA published a final rule addressing the New Entrant Safety Assurance Program,<sup>78</sup> which is intended to improve the FMCSA’s ability to “identify at-risk new entrant motor carriers and ensure deficiencies are corrected before granting them permanent registration. It also ensures that applicants will become knowledgeable about Federal Safety regulations before they commence interstate operations.”

The final rule specifically addresses “reincarnated carriers,” defined by the FMCSA as “a carrier that attempts to register as a new entrant and operate as a different entity under a new USDOT Number in an effort to evade enforcement action and/or out-of-service orders issued against it by the [FMCSA].” The new regulations state that any carrier providing false or misleading information or concealing information is subject to revocation of its new entrant registration and civil/criminal penalties.<sup>79</sup> The FMCSA also provided additional information on how it has improved the new entrant application vetting process.<sup>80</sup> According to the FMCSA, as part of the new entrant screening process, applicants are subjected to a Passenger Carrier Vetting Process (PCVP), an “in depth investigation of passenger carrier applications for authority to determine if the applicant is a reincarnated carrier.”

For each application submitted for passenger carrier authority, the FMCSA completes an entire vetting process, including reviewing applications for completeness, sending applications to Division Offices for review, and contacting state agencies to obtain information. The process also includes using an evasion detection algorithm (EDA) to compare the application with other database information against poorly performing carriers dating to 2003.<sup>81</sup> Between August 13, 2008, and July 15, 2009,

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<sup>77</sup> This audit is to ensure compliance with the FMCSRs and *Hazardous Materials Regulations* and with overall safety management. At a minimum, the safety audit covers driver qualifications, driver duty status, vehicle maintenance, accident register, and controlled substances and alcohol use and testing requirements. During the audit, the carrier is to list any vehicles that it owns, as well as the vehicles leased. For leased vehicles, carriers are to report whether the vehicle is leased “per trip” or “by term.” The carrier must provide evidence to the FMCSA that deficiencies found during the audit are being corrected. A carrier will be granted permanent registration only after the carrier successfully completes an 18-month monitoring period.

<sup>78</sup> *Federal Register*, vol. 73, no. 242 (December 16, 2008), p. 76472.

<sup>79</sup> The FMCSA stated that it was planning to address reincarnated carriers under a separate rulemaking in response to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), section 4113, regarding patterns of safety violations by motor carrier management. The FMCSA also said that it was in the process of revising its registration process to more efficiently track motor carriers.

<sup>80</sup> FMCSA presentation by the Motor Carrier Safety Advisory Committee (December 10, 2008).

<sup>81</sup> FMCSA defines a poorly performing carrier as: a carrier that has lost its authority to operate or that has a pending revocation; a carrier with an overall rating of conditional or unsatisfactory; a carrier that has

873 new entrant passenger carrier applications were received by FMCSA; 92 percent of these applications were incomplete.<sup>82</sup> Of the 873 new entrant applications, 326 were vetted at all levels and are proceeding through the approval process, 101 applications were dismissed for failure to respond to a verification inquiry (VI) or information request (IR), and 17 applications were withdrawn by the applicant. The FMCSA issued a Show Cause Order against one applicant. As of July 15, 2009, 428 applications remained to be vetted.

The NTSB's investigation revealed that the type of arrangement that the PCVP was designed to detect existed between International Charter Services, Inc.; Transportes Chavez, Inc.; and a newly established company called Bus Trips of Texas. International's owner is the common-law spouse of Transportes Chavez's owner; the two companies shared the same terminal, and Chavez's owner was also the manager for International. Ten months after the Victoria accident, a son of Chavez's owner, who was the bus maintenance manager (employee) for Transportes Chavez, Inc., and who was known to have run the charter operations for International, applied for and, by June 2009, was granted interstate operating authority to start a new company called Bus Trips of Texas.<sup>83</sup> On October 22, 2009, the FMCSA conducted a compliance review, and the company received a satisfactory rating.

According to the FMCSA,<sup>84</sup> "staff thoroughly vetted the Bus Trips of Texas application. The agency's investigation did not uncover a legally sufficient relationship between International Charter Services, Inc., and Bus Trips of Texas." According to FMCSA officials, "...International and Bus Trips of Texas have different owners, officers, and managers. For this reason, the FMCSA did not deny Bus Trips of Texas interstate operating authority." The agency further stated, "the FMCSA's investigation did not reveal a basis to question the fitness, willingness, and ability of [Bus Trips of Texas's owner] to comply with the applicable regulations." The FMCSA also stated, "he did not work for those two companies [International and Capricorn]," but then stated "although the son was an employee of the old company [International], that is not enough to deny operating authority"; however, the FMCSA also cited during International's postaccident compliance review that Bus Trips of Texas's owner also ran the charter operation for International. Further, Bus Trips of Texas's applicant is the son of Chavez's and International's owners (Chavez's owner was also the manager of International). However, the FMCSA documented that the "two prior compliance reviews on Transportes Chavez, the company for whom the applicant did work as a bus maintenance manager, resulted in satisfactory ratings." Although Chavez had received a satisfactory compliance review overall, the review cited several vehicle safety regulation violations. The FMCSA documented within International's postaccident compliance review that International's owner had informed FMCSA investigators that his son "runs the charter

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prior enforcement action taken against it; and carriers identified by SafeStat as posing the highest potential risk to highway safety.

<sup>82</sup> Meetings between FMCSA and NTSB staff members on December 18, 2008, and July 28, 2009.

<sup>83</sup> USDOT number 1828782.

<sup>84</sup> Meeting between FMCSA and NTSB staff members, July 28, 2009.

operation” for International; consequently, the FMCSA had sufficient reason to question the new owner of Bus Trips of Texas regarding his company’s ability to comply with applicable regulations based upon his direct impact as bus maintenance manager for Chavez and as the person responsible for running International’s charter operations. The FMCSA currently has the statutory authority to deny operating authority to an applicant who is unwilling or unable to comply with the safety regulations, other applicable DOT regulations, and the safety fitness requirements. In addition, under 49 CFR 385.306, a carrier that furnishes false or misleading information, or conceals material information in connection with the registration process, is subject to revocation or assessment of civil and/or criminal penalties.

However, the FMCSA contends that its scope of authority to deny or revoke the operating authority of suspected reincarnated carriers is limited. According to a U.S. Government Accountability Office (GAO) report, complexities regarding the application of state laws concerning corporate successorship may, in certain instances, affect the FMCSA’s ability to deny operating authority to or to pursue enforcement against unsafe, reincarnated motor carriers.<sup>85</sup> The FMCSA reported that this standard differs between the states, and certain states require very high standards of proof. Even if such a determination is made, the GAO report further notes, the “FMCSA still faces legal hurdles, such as proving corporate successorship, to deny the company operating authority.”

The FMCSA also reported that there are legitimate reasons for motorcoach carriers to transfer ownership, or reincorporate, or both, such as new business opportunities or a change in corporate leadership. However, there is already a process in place for these legitimate transfers, under 49 CFR 365 Subpart D, which governs the transfer and/or lease of interstate operating rights for commercial passenger carrier companies. Consequently, new applicants who are existing carriers but choose not to use this process should be subjected to closer scrutiny regarding why the new entrant process was chosen. According to the GAO, many of these carriers are attempting to reenter interstate passenger commerce to evade an OOS order or to avoid paying fines or taking corrective action for previous safety violations found in roadside inspections or compliance reviews.

In 49 CFR Part 365 Subpart D governing the transfer of operating rights, section 365.409(c), applications for one company to transfer its operating rights to another that contain false or misleading information are considered to be void from the beginning. This approach to the submission of false or misleading information, finding the application void from the beginning, should also apply to false or misleading new entrant application information, such as the failure to disclose a relationship with a prior carrier on section 8 of the OP-1(P) form. If an affiliation with another carrier is not disclosed, the FMCSA should be authorized to deny or revoke the operating authority of the applicant based on the FMCSA’s authority for voiding applications under Part 365, potentially

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<sup>85</sup> *Motor Carrier Safety: Reincarnating Commercial Vehicle Companies Pose Safety Threat to Motoring Public; Federal Safety Agency Has Initiated Efforts to Prevent Future Occurrences*, GAO Report GAO-09-924 (Washington, DC: U.S. Government Accountability Office, July 2009).

preempting the complexities regarding the application of state laws concerning corporate successorship. In essence, along with the “leasing” of operating authority rights, such as occurred between International and Capricorn, reincarnating carriers may attempt to transfer operating rights from their old companies to new ones by circumventing the process in Part 365 Subpart D.

The FMCSA says that it currently must prove that a new carrier is the corporate successor to the old carrier in order to deny or revoke the operating authority of the new carrier. However, the FMCSA does have a process available for those legitimate transfers of operating rights and the remedy of voiding applications and the revocation of registration and assessment of civil and criminal penalties for applications containing false or misleading information (such as leaving blank the question of affiliation with other carriers or having been previously issued a USDOT number) that could be used in conjunction with the new entrant vetting process.

For other carriers who apply for operating authority through the new entrant program and the PCVP process, the FMCSA should have the authority to prevent reincarnated carriers from receiving approval for operating authority in addition to retroactively revoking operating authority from carriers who received this authority before the vetting system was implemented in August 2008. In its report, the GAO stated that “the threat these operators pose to the public has proven deadly,”<sup>86</sup> and the NTSB agrees. The NTSB concludes that some motor carriers are circumventing the legitimate corporate succession processes established in 49 CFR Part 365 by reapplying for FMCSA interstate operating authority through the New Entrant Safety Assurance Process, a loophole that may permit unsafe passenger motor carriers to transfer operating rights to newly established motor carriers that may otherwise be prevented by 49 CFR Part 365. Therefore, the NTSB recommends that to help prevent reincarnated carriers from receiving new operating authority, the FMCSA should seek statutory authority to deny or revoke operating authority for commercial interstate motor carriers found to have applications for operating authority in which the applicant failed to disclose any prior operating relationship *with* another motor carrier, operating *as* another motor carrier, *or* being previously assigned a USDOT number.

### **Compliance Review Process and Safety Ratings**

The NTSB has issued two prior recommendations regarding the importance of driver and vehicle safety violations found during compliance reviews and has stated that such serious violations should result in an unsatisfactory rating. Following a 2005 motorcoach fire in Wilmer, Texas,<sup>87</sup> the FMCSA conducted a postaccident compliance review of Global Limo, Inc. (Global), an authorized interstate for-hire passenger motor carrier. The compliance review stated that Global’s driver and vehicle violations were “so widespread as to demonstrate a continuing and flagrant disregard for compliance” and a

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<sup>86</sup> GAO-09-924.

<sup>87</sup> *Motorcoach Fire on Interstate 45 During Hurricane Rita Evacuation Near Wilmer, Texas, September 23, 2005*, Highway Accident Report NTSB/HAR-07/01 (Washington, DC: National Transportation Safety Board, 2007).

management philosophy “indifferent” to motor carrier safety. The FMCSA determined that the violations detected in the compliance review, both individually and cumulatively, were likely to have resulted in serious injury or death to Global’s drivers and the motoring public. The FMCSA issued the company a safety rating of unsatisfactory, declared that Global’s operations created an “imminent hazard” to public safety, and issued an operations OOS order.

The FMCSA determined that Global failed to comply with Federal regulations on drug and alcohol testing, driver qualifications, and hours of service and that Global’s vehicles that were mechanically unsafe due to lack of vehicle maintenance, inspection, and repair. The compliance review cited Global for not retaining vehicle maintenance and repair records, as required; the FMCSA also reported that without pretrip inspections or the required Driver’s Vehicle Inspection Reports (DVIR), Global could not ensure vehicle safety. The same lack of safety oversight was cited in International’s compliance review due to Capricorn’s insufficient DVIR and maintenance records and the absence of a regular vehicle maintenance schedule. However, the FMCSA rated International “conditional” overall; did not issue an OOS; and did not conduct a compliance review of Capricorn, the entity responsible for driver oversight and vehicle maintenance and repairs.

In fiscal year 2008, the passenger motor carrier vehicle national OOS rate was 7.7 percent. In just over 1 year (December 31, 2006, to January 8, 2008), International received 80 vehicle and 103 driver inspections (including inspections of Capricorn’s drivers and vehicles). As a result, International had a vehicle OOS rate of 11.2 percent,<sup>88</sup> which was above the national average. This accident once again shows that carriers with driver and/or vehicle factor violations are those more likely to be involved in fatal accidents. The Wilmer, Texas, motorcoach fire and the Victoria, Texas, accident are two of the most recent accidents<sup>89</sup> in which the NTSB has focused on the FMCSA’s safety oversight of motor carriers and found inconsistencies based on a safety rating process that fails to ensure the removal of unsafe motor carriers from the nation’s highways.

As expressed in the reports cited earlier, the NTSB has long taken the position that violations of safety regulations are indicative of a motor carrier’s lack of safety management controls. During the Wilmer investigation, the NTSB found that the FMCSA’s safety fitness rating process does not assign numerical value to safety regulation violations that are classified as neither “acute” nor “critical,” thereby allowing potentially unsafe carriers that violate safety regulations to continue operating.

As a result of the Wilmer, Texas, investigation, the NTSB made the following recommendation to the FMCSA:

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<sup>88</sup> Obtained from the Safety and Fitness Electronic Records (SAFER) System website <<http://safer.fmcsa.dot.gov/>>, accessed February 8, 2008.

<sup>89</sup> (a) *Motorcoach Run-off-the-Road and Overturn, Victor, New York, June 23, 2002*, Highway Accident Report NTSB/HAR-04/03 (Washington, DC: National Transportation Safety Board, 2004). (b) *Collision Between Truck-Tractor Semitrailer and School Bus Near Mountainburg, Arkansas, May 31, 2001*, Highway Accident Report NTSB/HAR-02/03 (Washington, DC: National Transportation Safety Board, 2002). (c) NTSB/SIR-99/01.

To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include all *Federal Motor Carrier Safety Regulations* in the current compliance review process so that all violations of regulations are reflected in the calculation of a carrier's final rating. (H-07-3)

In addition, the NTSB reiterated another recommendation to the FMCSA.<sup>90</sup> This recommendation, which has appeared on the Most Wanted List of Transportation Safety Improvements since 2000, is as follows:

Change the safety fitness rating methodology so that adverse vehicle or driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for a carrier. (H-99-6)

At the NTSB's August 2006 public hearing on the Wilmer, Texas, accident, the FMCSA explained that when it originally developed the current safety fitness determination (SFD) process, driver OOS rating information was found to be insufficient to accurately determine a driver's safety performance; the FMCSA has since developed and is pilot testing a data-driven SFD process, which includes items such as vehicle and driver OOS rates, as part of its comprehensive examination of compliance review and enforcement oversight. According to the Comprehensive Safety Analysis 2010 (CSA 2010) initiative website,<sup>91</sup> the FMCSA expects to complete the operational model test by June 2010. The University of Michigan Transportation Research Institute will then evaluate the program's effectiveness (that is, potential for improving safety) and efficiency (that is, impact on scarce resources). The FMCSA expects to fully implement CSA 2010 by the end of 2010. However, until rulemaking has been completed on the new SFD methodology, CSA 2010 implementation will not address the NTSB's recommendations.

Although the FMCSA has stated that the conceptual model for CSA 2010 is significantly different from the current operational model in that safety fitness determinations will be independent of the compliance review, the expected timeframe for full implementation of the new program, including the new SFD process, may be another year or more away. In the interim, deficiencies in the current compliance review system should be remedied to help prevent unsafe carriers from continuing to operate. The FMCSA is responsible for ensuring that motor carriers operate safely, and temporary measures to improve the compliance review process are necessary until the new rules are enacted. The FHWA (FMCSA's predecessor) set a precedent for the issuance of interim rules to improve safety programs when, in 1997, the agency issued an interim final rule to immediately improve the safety rating methodology without prior notice and comment, stating that to have done otherwise would have been contrary to the public interest.

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<sup>90</sup> In a January 9, 2003, letter, the FMCSA informed the NTSB that the Secretary of Transportation had recently reassigned Safety Recommendation H-99-6 to the FMCSA and asked the agency's administrator to respond to the NTSB directly.

<sup>91</sup> For further information, see <<http://csa2010.fmcsa.dot.gov>>, accessed November 13, 2009.

Further, in response to Safety Recommendation H-07-3, the FMCSA acknowledged the need to establish an SFD process that better identifies at-risk carriers than the current process under 49 CFR Part 385. However, the FMCSA replied that it was in the best interest of highway safety to focus its resources on implementing CSA 2010 rather than on diverting resources to an interim final rule to make modifications to the SFD process. The NTSB disagreed and classified Safety Recommendation H-07-3 “Open—Unacceptable Response” on September 4, 2008.

And so, as it has done in several accident investigations over the past 10 years, the NTSB again concludes that the current FMCSA compliance review process does not effectively identify unsafe motor carriers and prevent them from operating. The NTSB recognizes the progress that the FMCSA has made with CSA 2010 and the agency’s expected on-time full implementation. The NTSB believes that, to maintain safety in the interim, the FMCSA should focus resources toward changing the current rating methodology by instituting an interim rule that makes adverse vehicle and driver performance-based data alone sufficient to result in an overall unsatisfactory rating for a carrier, while continuing to incorporate the principles of the NTSB’s recommendations into the agency’s new system being field tested and evaluated in CSA 2010. Therefore, the NTSB reiterates Safety Recommendation H-07-3 and both reiterates and reclassifies Safety Recommendation H-99-6 from “Open—Acceptable Response” to “Open—Unacceptable Response.”

The NTSB is concerned that motor carriers with significant regulatory violations for drivers and vehicles are still receiving satisfactory and conditional ratings; therefore, the NTSB will continue to highlight accidents in which the postaccident compliance review resulted in a conditional or satisfactory overall rating because it did not take into account the critical nature of the vehicle and driver safety violations. (See appendix F.) The importance of this is evident when taking into account the history of these violations, as well as the impact of the compliance review process on the New Entrant Safety Assurance Program and the vetting of potential reincarnated carriers.

Had the FMCSA adopted the NTSB’s recommendations, Transportes Chavez could have received an unsatisfactory rating based on the vehicle violations found during its compliance review and the roadside inspections of Capricorn’s vehicles and drivers. From this enforcement action, the FMCSA may then have had a basis to question whether Bus Trips of Texas’s owner was sufficiently qualified to adhere to the FMCSRs as required, given his direct connection to the vehicle safety issues of one OOS company (Chavez) and his involvement running the operations of another OOS company (International). International and Capricorn could have received unsatisfactory ratings due to Capricorn’s driver and vehicle violations; instead, Capricorn was not rated and International received a conditional rating, even with the scope-of-authority violation.

In addition, Capricorn’s “lease” arrangement with International also potentially circumvents the New Entrant Safety Assurance Program. The NTSB has discovered that Capricorn is now operating as a new passenger motor carrier named Flores U.S. Bus

Lines Inc. (Flores).<sup>92</sup> According to the FMCSA's database, within 6 months of the Victoria, Texas, accident, Capricorn's owner had received a certificate to operate another passenger carrier company<sup>93</sup> and, on July 8, 2008, Flores conducted its first line run under this operating authority. Capricorn's (now Flores's) owner was able to obtain insurance in California and, using two of the same Capricorn drivers and several non-FMVSS-compliant commercial motorcoaches, resumed the same route service from Houston, Texas, to Monterrey, Mexico, that Capricorn had operated.<sup>94,95</sup>

The reincarnation of carriers such as Capricorn into Flores and International and Chavez potentially as Bus Trips of Texas underscores the need and urgency for the FMCSA to move forward more expeditiously on Safety Recommendations H-99-6 and H-07-3, recommendations that could enhance the effectiveness of the New Entrant Safety Assurance Program in removing unsafe carriers from the nation's highways. The NTSB concludes that until the FMCSA consistently enforces OOS orders, the New Entrant Safety Assurance Program will be unsuccessful in screening for and vetting carriers with a history of poor safety management controls that attempt to reenter interstate passenger operations as reincarnated carriers.

As has been discovered since the Victoria accident, Capricorn is now operating as Flores with no negative safety associations from the Victoria accident. Because Flores received its operating authority certificate several weeks before the PCVP began in

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<sup>92</sup> Flores's USDOT number is 1776152 and its MC number is 648083. On April 30, 2009, its vehicle OOS rate was 23 percent from 17 inspections, as compared to the 2005–2006 national average of 23.1 percent. Flores's driver OOS rate was 0 percent from 37 inspections compared to the 2005–2006 national average of 6.8 percent. These statistics cover the 24 months prior to April 30, 2009, yet they applied to the Form MCS-150, Motor Carrier Identification Report (Application for USDOT Number) (MCS-150), date of November 26, 2008. Flores underwent a compliance review on October 7, 2008, and received a satisfactory review on October 27, 2008 (just after the public hearing), and after the vetting process began. Flores has the same owner as Capricorn and Flores Charters and Tours, as well as Turismo Flores LLC.

<sup>93</sup> Of particular relevance to this accident was that Flores's insurance broker stated to NTSB investigators that it again assisted Flores in obtaining registration and license plates for the Volvo vehicles in California.

<sup>94</sup> Oral deposition taken in the Victoria accident victim families' civil suit, July 9, 2009.

<sup>95</sup> On November 26, 2008, Flores informed the FMCSA via its MCS-150 form that its new physical and mailing addresses were in California; however, the carrier currently operates in Texas, not California, and it has six vehicles in operation, four with California-apportioned plates and two with Texas state plates. The NTSB contacted the Flores' insurance company and was informed that it assists carriers with registering their vehicles in California and receives their mail. Neither the mailing nor the physical addresses provided on the Flores OP-1(P) form adhere to the FMCSA's principal place of business definition (49 CFR 390.5). August 2009 regulatory guidance issued by the FMCSA states it has been the agency's position that a motor carrier's principal place of business is a physical location where management reports to work and where the motor carrier conducts a significant portion of its business and maintains company records. A motor carrier may not designate as its principal place of business any location where the motor carrier is not engaged in business operations related to the transportation of persons or property. For example, post office centers or commercial courier service establishments that receive and hold mail or packages for third-party pickup may not be designated as a "principal place of business." A motor carrier may not designate the office of a consultant, service agent, or attorney as the motor carrier's principal place of business, if the motor carrier is not engaged in operations related to the transportation of persons or property at that location. In the event a carrier does not designate a qualifying location as its principal place of business, the FMCSA may initiate enforcement action or take action regarding the carrier's USDOT registration (U.S. Department of Transportation, Federal Motor Carrier Safety Administration; 49 CFR Part 390 *Regulatory Guidance on the Definition of "Principal Place of Business," Federal Register*, vol. 74, no. 144 [July 29, 2009], p. 37653).

August 2008, the company was not subjected to the New Applicant Screening Process. Yet, the FMCSA has stated that “experience has taught the FMCSA that carrier noncompliance with the operating authority requirements correlates with carrier noncompliance with the safety regulations.”<sup>96</sup> Even in light of this experience and Capricorn’s affiliation with the Victoria accident and the vehicle and driver violations found, the FMCSA conducted a compliance review of Flores on October 10, 2008, which resulted in a satisfactory rating. Flores was fined for using a driver before receiving a preemployment drug screening test result, one of the same driver safety violations attributable to Capricorn’s drivers found by the FMCSA during International’s postaccident compliance review. This type of violation is critical enough that when Flores failed to pay the October 2008 compliance review fine, its operating authority was suspended on March 31, 2009, and only after paying the fine on April 7, 2009, was its authority reinstated.

The NTSB believes that had the FMCSA, after the Victoria accident, used its statutory authority<sup>97</sup> to declare both International and Capricorn as “imminent hazards” and placed the carriers out of service, perhaps these safety violations would not be continuing under the same safety management (Capricorn’s owner is Flores’s owner). Capricorn should have been considered an at-risk carrier because of the numerous acute, critical, and other driver and vehicle safety violations found in its affiliate International’s postaccident compliance review. Yet, because Flores was able to obtain an operating certificate before the FMCSA instituted its vetting of new applicants in the New Entrant program, Flores was not flagged as a reincarnated carrier because Capricorn was never assigned any enforcement action for its violations found in the Victoria accident, and Flores is operating today with a satisfactory rating. Many carriers such as Flores have reapplied to the FMCSA and have either withheld their affiliations with other motor carrier companies (including those with OOS orders) or provided misleading or false information, such as omitting their own previous USDOT numbers to obtain new operating authority.<sup>98</sup> This type of omission or false information (including Capricorn’s omission in listing its affiliation with International and Chavez and applying for the Flores operating authority using a nonqualifying principal place of business in California for its same operations out of Texas) is subject to FMCSA enforcement or revocation proceedings, if the FMCSA were to use its PCVP against all carriers currently in the system, not just those who applied for new authority after the screening process was implemented.

The NTSB concludes that there is no effective program or process currently in place to identify reincarnated carriers that reentered interstate passenger operations through the New Entrant Safety Assurance Program before the August 2008

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<sup>96</sup> *Federal Register*, vol. 71, no. 166 (August 28, 2006), p. 50864.

<sup>97</sup> 49 U.S.C. §521(b)(5)(a); Public Law 105-109 §4114; 119 Stat 1144 (Aug. 10, 2005); and 49 CFR 386.72(b)(1).

<sup>98</sup> This assertion is based upon the 101 applicants who, during the PCVP process, were shown to have not provided adequate information when requested by a VI or IR letter that potentially may have linked the carrier to a previous carrier with an OOS order or other enforcement action. These applications were dismissed for failure to respond.

implementation of the FMCSA's New Applicant Screening Process. Therefore, with the FMCSA's current process of applying the EDA algorithm to match new applicant carriers to carriers in the system dating to 2003, EDA data points can be applied to identify "reincarnated" carriers such as Capricorn that were able to obtain certificates *prior* to the start date of the New Applicant Screening Process. Therefore, the NTSB recommends that the FMCSA apply the EDA process against all interstate passenger carriers that obtained FMCSA operating authority, after the New Entrant Safety Assurance Program began in 2003 but before the program began vetting those carriers, to verify that those new entrant carriers do not have a concealed history of poor safety management controls because they were able to reenter interstate commerce undetected as reincarnated carriers.

As was discussed earlier in the report, the FMCSA's New Entrant Safety Assurance Program and compliance review process should also function as a system to evaluate and modify or remove lease arrangements that allow, in effect, an unauthorized entity to operate as a passenger carrier, either in charter or regular route operations. However, the FMCSA would first need to know the extent to which these lease arrangements currently exist. Without such an assessment, the FMCSA is unable to ensure that arrangements permitting unauthorized carriers to operate via paper leases are terminated. By requiring that authorized passenger-carrying operators maintain full operational control of all of their charters and regular route service, the FMCSA will help to ensure that customers who contract with an interstate passenger motor carrier are traveling with a carrier that has exhibited a level of safety approved by the FMCSA. This oversight is not intended to prevent temporary "per charter" or other "leasing" of vehicles or drivers between companies that *both* have operating authority to fulfill specific charter operations or emergency transportation.

The NTSB concludes that without clear and specific guidance on appropriate lease agreements between OP-1(P) certificate holders and companies providing equipment for charters or regular route service, noncertificated companies could still be performing most, if not all, of the functions of an interstate passenger-carrying operator without regulatory oversight. Therefore, the NTSB recommends that the FMCSA establish a requirement to review all passenger carrier lease agreements during new entrant safety audits and compliance reviews to identify and take action against carriers that have lease agreements that result in a loss of operational control by the certificate holder.

## **State Commercial Motor Vehicle Registration Process**

Capricorn's owner purchased the accident vehicle, drove it across the border from Mexico, and operated it in the United States outside of the commercial zone<sup>99</sup> with

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<sup>99</sup> The *commercial zone* is an area in which passengers or property in interstate or foreign commerce may be transported, in interstate or foreign commerce, when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone, that is exempt from all provisions of 49 U.S.C. subtitle IV, part B. Commercial zones generally range from 3–20 miles outside the corporate limits of a municipality, depending upon the municipality's population. For more information on commercial zones, refer to 49 CFR 372.241.

registration and license plates from Mexico. The owner did not obtain U.S. jurisdictional (state-issued) registration or license plates for his vehicle for over a year while operating in the United States. The accident vehicle was subjected to a roadside inspection in Victoria, Texas, by a TxDPS officer on October 20, 2006. A citation was issued to the driver for an “unregistered vehicle” because the coach had “only Mexico plates, no Texas permit or registration.” The accident vehicle was also subject to two Level 2 inspections<sup>100</sup> conducted by the FMCSA<sup>101</sup> in 2007 at the Lincoln-Juarez bridge border crossing facility in Laredo, Texas, on January 24, 2007, and May 8, 2007; no violations were noted. A Level 2 inspection includes a driver and vehicle “walk-around” inspection, but it does not include an inspection of the vehicle’s undercarriage.

At the NTSB’s public hearing on this accident,<sup>102</sup> the witness representing the TxDPS stated that if a TxDPS officer finds there is intent to operate outside the commercial zone, such as a fixed and permanent line run to a destination outside the commercial zone, the vehicle is required to be appropriately registered with Texas plates.<sup>103</sup> In October 2007, Capricorn’s owner utilized the services of the owner of Green River Buses, LLC<sup>104</sup> (Green River), in Dallas, Texas, who represented himself (on paper) as Capricorn’s safety manager. Green River next sent the Capricorn accident Volvo’s and another 2005 Volvo’s registration paperwork to a Long Beach, California, company called Baratta Enterprises, LLC (Baratta), which provides registration assistance services. Baratta subsequently processed the documentation through the California Department of Motor Vehicles under the International Registration Plan (IRP) program. The vehicles were registered using the name “Capricorn” and a California address (a requirement for

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<sup>100</sup> There are seven “levels” (or categories) of roadside inspections. *Level 1* includes the driver and vehicle (including an inspection of the components on the undercarriage, such as brake adjustment); *Level 2* is a driver-and-vehicle walk-around inspection (does not include an inspection of the vehicle’s undercarriage components); *Level 3* is the Driver/Credential Inspection only; *Level 4* is a special investigation, typically including a one-time examination of a particular item and normally conducted in support of a study or to verify or to refute a suspected trend; *Level 5* is a vehicle-only inspection; *Level 6* is a Transuranic Waste and Highway Route Controlled Quantities of Radioactive Materials inspection; and *Level 7* is a jurisdictional mandated commercial vehicle inspection.

<sup>101</sup> Capricorn drivers were also subjected to three FMCSA roadside inspections at the Lincoln-Juarez bridge while driving the accident vehicle: November 20, 2007; April 9, 2007; and February 7, 2007. No OOS violations were noted.

<sup>102</sup> Transcript of Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C. (See day 1, p. 74, TxDOT.)

<sup>103</sup> The TxDPS testified that if a commercial motor vehicle has only Mexican plates and is determined to have a fixed and persistent intent of transportation outside of the commercial zone, it would have to be appropriately registered or the driver would be issued a ticket. The TxDPS would then require the vehicle to obtain appropriate Texas-recognized registration and could order the vehicle “parked” under an OOS order until proper Texas registration was obtained in accordance with Texas Transportation Code 648.101 and 502.002.

<sup>104</sup> Green River was placed OOS in April 2008. In August 2008, Autobuses Rio Verde of Irving, Texas, was issued an OOS order by the FMCSA due to its link to Green River, with vehicles, drivers, and management in common. Autobuses Rio Verde’s owner had previously been the terminal manager for Green River; Green River’s owner was the manager and safety director for Autobuses Rio Verde and Capricorn. Autobuses Rio Verde received operating authority on June 5, 2008, after Green River had been placed OOS in April 2008. The FMCSA investigation into Autobuses Rio Verde was due to a roadside inspection that revealed a connection to Green River.

registration) belonging to another bus company;<sup>105</sup> the license plates and registration were then forwarded to Green River's owner.<sup>106</sup> Once Capricorn obtained the California registration and IRP-apportioned license plates, Green River's owner went to the TxDOT in November and December 2007 and had the 2005 vehicles re-registered in Texas<sup>107</sup> and obtained Texas (intrastate) license plates.<sup>108</sup> The process by which the accident vehicle came to be registered in Texas is summarized in table 3.

**Table 3.** Accident vehicle registration process.

Date(s)	Event
<b>April 2006</b>	Accident motorcoach purchased in Mexico.
<b>April–October 2006</b>	Accident motorcoach operated in the United States with Mexico plates.
<b>October 2006</b>	Accident motorcoach ticketed by the TxDPS for lacking Texas plates.
<b>October 2007</b>	Accident bus obtained California registration using an intermediary company, Green River. Representing himself on paper as Capricorn's safety manager, the owner of Green River registered the vehicle in California via the IRP process. At that time, a California registration loophole did not require confirmation of FMVSS compliance or declaration of import for IRP-registered vehicles.
<b>November–December 2007</b>	Accident motorcoach's registration was transferred to Texas; the vehicle obtained Texas intrastate license plates. Because the vehicle was previously registered in California, Texas did not confirm FMVSS compliance before granting Texas registration.

The IRP is a reciprocal agreement providing for commercial vehicle registration among member jurisdictions (U.S. states, District of Columbia, and Canadian provinces). The IRP permits carriers to register their vehicles in one state and operate in several or all other states or Canadian provinces; Mexico does not participate in the IRP.<sup>109</sup> Carriers estimate the amount of time (or miles) that they will be operating in any state in which their vehicles travel. The registration fee is then "apportioned" to those states through the "base state" completing the registration. The vehicle(s) is then issued the base state's license plate, which is embossed with the word "apportioned," indicating to enforcement

<sup>105</sup> The company was Salcido Tours (USDOT 1505841), and its owner stated he did not know anyone from Capricorn. Two rental receipts were provided for documentation according to Green River's owner.

<sup>106</sup> The Dallas business address given for accident vehicle registration in Texas belonged to neither Capricorn nor International, which operate out of two separate physical addresses in Houston. However, the Dallas address was the registered business address for three other companies: Green River Buses, LLC; Autobuses Zacatecanos; and Century Bus Lines. The owner of Autobuses Zacatecanos stated to NTSB investigators that he also helped as many as 50 other bus companies register their vehicles in California, just as Green River's owner had, before assisting with the transfer of vehicle registrations to other states for interstate (not IRP-apportioned) license plates. In addition, according to documents provided to the NTSB by Baratta, on February 7, 2008 (after the Victoria accident), Transportes Chavez had used a California address and Baratta to register two other vehicles in California through the IRP program.

<sup>107</sup> Through the Dallas County Tax Assessor-Collector.

<sup>108</sup> The two model year 2008 Volvos remain registered in California.

<sup>109</sup> The American Association of Motor Vehicle Administrators (AAMVA) established the IRP in 1973 and recommended it for adoption by all jurisdictions, including Mexico <<http://www.irponline.org>>, accessed September 21, 2009.

personnel that the vehicle has registered in and paid fees owed to the states listed on the registration cab card. At the NTSB public hearing on this accident,<sup>110</sup> a witness representing the IRP explained that the program promotes the most efficient and economical use of the highway system and revenue sharing based upon mileage operations by motor carriers, so that all jurisdictions receive their fair share of the revenue.

NHTSA is the Federal agency that issues the FMVSSs, which establish the minimum performance requirements for motor vehicle safety systems and components. The agency also regulates the manufacture and importation of motor vehicles to assure compliance with these standards. A vehicle is required to have a certification label meeting the requirements of 49 CFR Part 567 that, among other things, identifies the vehicle's manufacturer (that is, the actual assembler of the vehicle), states the vehicle's manufacture date (month and year), and contains the following statement, "This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect on the date of manufacture shown above."<sup>111</sup>

However, the process of vehicle registration and license plate issuance is a state function. States individually determine the requirements for registration and license plate issuance, including state-specific requirements to register vehicles in the IRP program. For example, California's Department of Motor Vehicles reported that requirements for registering vehicles in California under "non-apportioned" intrastate operations differ from those for a vehicle to be operated interstate and thus registered through the IRP. Some states require a manufacturer's certificate of origin or manufacturer's state of origin documents to register a newly imported motor vehicle to verify that it meets the FMVSSs. Texas, along with the other three southern border-crossing states (California, Arizona, and New Mexico), all require proof that a vehicle was manufactured using the appropriate FMVSS before being registered with intrastate-only license plates.<sup>112</sup>

The California Division of Motor Vehicles defines a direct import vehicle as a vehicle that is not manufactured to meet the FMVSSs or California emissions standards and is not intended by the manufacturer to be used or sold in the United States. Currently, an HS-7 form<sup>113</sup> is required to register a foreign import vehicle in California for a vehicle to be titled as intrastate, unless the vehicle is exempt due to age. The HS-7 form confirms compliance with the FMVSSs when the vehicle is presented for import by the owner or

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<sup>110</sup> Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C.

<sup>111</sup> See <[www.nhtsa.dot.gov/cars/rules/import/FAQ%20Site/index.html](http://www.nhtsa.dot.gov/cars/rules/import/FAQ%20Site/index.html)>, accessed on November 13, 2009.

<sup>112</sup> During this investigation, NTSB investigators also asked Arizona and New Mexico officials whether they conduct a physical inspection for FMVSS compliance of commercial vehicles registered in the IRP program. Arizona physically conducts an inspection of Mexican-titled vehicles for an FMVSS-compliant certification prior to permitting registration in Arizona for IRP-apportioned plates, while New Mexico does not.

<sup>113</sup> Form HS-7, "Declaration—Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards," <<http://www.nhtsa.dot.gov/cars/rules/import/hs799short.pdf>> is required by NHTSA (49 CFR Part 591) and the CBP (19 CFR 12.80).

importer to the CBP at the border crossing from Mexico into the United States. However, when the accident vehicle was registered, California did not require vehicles registered in the IRP to be titled in the state and, therefore, did not require the HS-7 form for the accident motorcoach. As a result of California's not requiring the HS-7 form, Capricorn's owner was able to obtain a California-based IRP registration and apportioned IRP license plates<sup>114</sup> without proof that the accident vehicle met FMVSSs, which it did not.

Texas considers a vehicle with a non-U.S. title to be imported; to obtain registration, the owner must also apply for Texas title or apply for a registration-only certificate. The TxDOT website states, "If you purchased a vehicle in another country, you are required to meet all Federal and state importation requirements before you can title and/or register it in the state of Texas." The website specifies that the vehicle must meet the FMVSSs, pass a Texas vehicle safety inspection and visual vehicle identification number (VIN) verification, pass Federal and state inspections, and meet customs requirements before an owner can apply for Texas registration.<sup>115</sup> Both processes require the owner or importer to have the vehicle inspected for FMVSS compliance or to submit an HS-7 form. However, Texas's intrastate registration does not require that the vehicle be physically examined (such as for FMVSS compliance) when the registration is transferred from another state, as when the accident vehicle was transferred from California with apportioned IRP registration and license plates.<sup>116</sup>

The process used to register the accident motorcoach, along with the others discovered in this investigation, bypassed the regular registration process that newly registered nonapportioned vehicles must undergo. Had Capricorn's owner gone directly to the TxDOT to register the Volvo after being ticketed by the TxDPS, he would not have been able to register the vehicle using Texas's IRP process<sup>117</sup> because, unlike California's IRP process, he would have been required to prove that the vehicle had been declared for import to the CBP, had cleared U.S. Customs through the filing of an HS-7 form,<sup>118</sup> and had complied with all applicable FMVSSs. Because the Mexican-manufactured Volvo accident vehicle was not intended for the U.S. market and thus was not manufactured to

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<sup>114</sup> The registration paperwork included estimated miles for apportionment within the United States, not Mexico, based upon the actual mileage accumulated in the states where the vehicle had traveled during the same 6 months of the previous year. However, both International and Capricorn were based in Texas, and Capricorn's regular route, or line run, did not enter California at all—it operated strictly from Texas to Mexico and back.

<sup>115</sup> For further information regarding Texas importation requirements, see <[http://www.txdot.gov/drivers\\_vehicles/consumer\\_protection/importing.htm](http://www.txdot.gov/drivers_vehicles/consumer_protection/importing.htm)>, accessed September 22, 2009.

<sup>116</sup> Texas does require any vehicle that is transferred into the state for operation with Texas registration (interstate or intrastate) to be inspected by a TxDPS licensed inspection facility for basic safety equipment operation, such as lights, horn, windshield wipers, and brakes.

<sup>117</sup> The following documentation is required to obtain nonapportioned vehicle registration and license plates: (1) Proof that the vehicle had cleared U.S. Customs and complied with the FMVSSs as evidenced by the Federal certification label affixed to the vehicle itself or a copy of a letter from the manufacturer certifying the vehicle complies with the FMVSSs; (2) a copy of the DOT bond release letter issued by NHTSA; (3) a Certificate of Conformance issued by the California Air Resources Board; (4) evidence of compliance with U.S. Environmental Protection Agency or California emissions standards; and (5) a smog certificate.

<sup>118</sup> U.S. Customs forms 6059, 3299, or 3311, stamped or endorsed by U.S. Customs.

meet the FMVSSs, it would not have been permitted to receive Texas registration. Therefore, had the vehicles not been registered via the California IRP process, and then transferred to Texas, the four Volvo motorcoaches<sup>119</sup> used in Capricorn's regular line runs would not have been able to obtain Texas license plates and likely would have been subject to repeated tickets by the TxDPS for failure to have Texas registration. To circumvent this issue, Capricorn's owner obtained California IRP plates and transferred them to Texas, bypassing Texas's FMVSS verification process.

Although the state of Texas does inspect IRP vehicles for FMVSS compliance as part of verifying that a vehicle with a foreign title was imported properly, it did not physically inspect the accident motorcoach (or any of the other Capricorn vehicles) for FMVSS compliance because Texas accepted California's registration and IRP license plates. When asked during the public hearing about this policy, Texas officials answered that because the vehicle had already obtained registration and license plates in another U.S. jurisdiction, Texas assumed that the license plates had been issued based upon verification of the vehicle's compliance with the FMVSSs. However, that had not occurred because California does not physically inspect vehicles (as Texas does) for FMVSS compliance when a vehicle is registered for IRP-apportioned plates. Had the vehicle been registered in California for nonapportioned intrastate plates, Texas would have been correct in relying upon California's having verified FMVSS compliance before issuing the registration and license plates.

When the NTSB contacted Green River's owner, he stated that he registered the vehicles in California because that state only requires a few documents for registration and that he knew of an address in California<sup>120</sup> where he could establish a paperwork business "base" for Capricorn. He noted that he had helped about 20 other bus companies<sup>121</sup> initially register their buses in California using the same process to obtain a U.S. jurisdictional license plate, eventually transferring them to Texas. The NTSB concludes that when the owner of Capricorn failed to declare importation of the accident vehicle with the CBP upon entering the United States and subsequently obtained vehicle registration using a loophole in California's IRP program, he intentionally bypassed Federal and state requirements for an imported vehicle to comply with the FMVSSs.

Although California's IRP registration process did not specifically require documentation that the vehicle met the FMVSSs, it did require that the application include a verification of the vehicle's VIN. This "verification" consists of comparing the

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<sup>119</sup> In addition to the accident vehicle and the Volvo registered through the IRP in October 2007, two additional Volvos were registered by Capricorn via the IRP in November and December 2007.

<sup>120</sup> He stated that the company at the address that he used was Luna Tours; however, Luna Tours is listed in the FMCSA SAFER database as being located at a residential address in Victorville, California. An Internet search of Luna Tours brought up two other Los Angeles addresses, one of which was the Green River address used for Capricorn's California registration. The address in the FMCSA database used by the Green River owner was for Salcido Tours. When contacted, Salcido's owner said that he thought that Luna Tours was located in Chicago, Illinois, or Denver, Colorado, and that the address given for Luna Tours was the residential address for a relative of Luna Tours's owner.

<sup>121</sup> Green River's owner further informed the NTSB that he is not a Capricorn employee and had received a set fee for registering the vehicles.

VIN on the registration form to the VIN on the vehicle, using a California database to determine whether there were any “negative” entries regarding theft, collisions, nonpaid fees, and so on. Although the VIN itself is designed to provide certain information regarding the vehicle’s manufacture and country of manufacture, no VIN coding expressly identifies whether a vehicle is FMVSS compliant. A law enforcement or Department of Motor Vehicles representative usually determines this via a dealer’s and/or importer’s submission or required documentation or by a physical inspection for a FMVSS certification “plate” affixed to the vehicle.

At the NTSB’s public hearing, California representatives testified that the loophole in the IRP registration process that existed at the time of the Victoria accident has been closed by use of a software program called “VINA,” which is designed to validate and decode the VIN. When the software determines that the vehicle is a direct import, it alerts the technician processing the transaction. However, according to the public hearing testimony, this system is triggered only for new vehicle applications, permitting those non-FMVSS-compliant vehicles already in the country to remain undetected and in possession of current registration and license plates. Consequently, although the new system has closed the loophole in California for new vehicles, it has not addressed the issue for vehicles already operating on U.S. highways.

Interviews conducted during the Victoria accident investigation with Green and other companies led to the discovery of more than 20 other non-FMVSS-compliant foreign-manufactured motorcoaches being used regularly in the United States that were registered the same way as Capricorn’s buses. Many of these vehicles, such as the accident motorcoach, had been stopped and inspected by both state and FMCSA enforcement officials before the Victoria accident. However, once these vehicles obtained U.S. jurisdictional license plates, enforcement officials relied on the U.S. jurisdictions issuing the license plates to have verified FMVSS compliance. The NTSB concludes that because many non-FMVSS-compliant motorcoaches found during this investigation still display U.S. jurisdictional (state) registrations and license plates, inspectors and law enforcement personnel do not have cause to suspect such vehicles of not conforming with Federal law.

The AAMVA represents U.S. and Canadian state and provincial officials who administer and enforce motor vehicle laws.<sup>122</sup> The AAMVA’s Vehicle Registration and Title Committee conducts projects affecting vehicle titling and registration issues and promotes AAMVA titling and registration policies. The AAMVA’s policy positions and bylaws include the suggestion that all AAMVA member jurisdictions take steps to withhold registration of any vehicle not originally manufactured for U.S. distribution until the owner presents satisfactory evidence, issued by the Federal government, that all requirements for permanent entry into the United States have been met. Although most states’ procedures for registering nonapportioned commercial vehicles include verifying the VIN and FMVSS conformance through either a physical examination or CBP

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<sup>122</sup> The AAMVA is a voluntary, tax-exempt, nonprofit educational organization that develops model programs affecting motor vehicle administration, police traffic services, and highway safety. See <[www.aamva.org](http://www.aamva.org)> for more information.

importation paperwork (HS-7 form), New Mexico's IRP program does not require physical examination for FMVSS compliance and California's program requires physical examination only for newly registered and re-registered vehicles, not for currently registered vehicles.

Some states, such as New Mexico and California, have apportioned (IRP) registration methodologies that lack the necessary processes to detect conformance with the FMVSSs. NHTSA considers the FMVSSs relevant to a vehicle's safety such that when the process of vehicle manufacturing is completed, a motor vehicle must comply with the FMVSSs to be *legally sold* in the United States. In addition, all motor vehicles *operated* in the U.S. must comply with the FMVSSs.<sup>123</sup> Therefore, FMVSS certification is not only important but also required by law. Due to the lack of consistent state verification processes during registration found along the southern border states, non-FMVSS-compliant motorcoaches are being registered and operated in U.S. passenger-carrying service by U.S.-domiciled carriers. The NTSB concludes that some states lack conformity when verifying FMVSS compliance during IRP-apportioned vehicle registrations, permitting U.S.-domiciled companies to operate non-FMVSS-compliant vehicles daily throughout the United States. Therefore, the NTSB recommends that the IRP, Inc., in conjunction with the AAMVA, develop and distribute to the states and the District of Columbia, a model policy, within the IRP registration process, for verifying that newly registered passenger-carrying commercial motor vehicles are certified as having complied with the appropriate FMVSSs in effect at the time of manufacture, as referenced in Title 49 CFR Part 567. Further, the NTSB recommends that the AAMVA assist the IRP, Inc., in developing and distributing this model policy.

## **Non-FMVSS-Compliant Passenger-Carrying Commercial Motor Vehicles**

The FMCSA and NHTSA, although separate agencies, have complementary responsibilities to ensure vehicle safety. The FMCSA prescribes minimum safety standards for commercial vehicles to ensure that they are maintained, equipped, loaded, and operated safely while in interstate and foreign commerce. NHTSA prescribes vehicle manufacturing standards (FMVSSs) under the authority of the Vehicle Safety Act.<sup>124</sup> These systems, under the umbrella of the DOT, are intended to be a combined system of regulations and standards for safety in vehicle operations and manufacturing.

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<sup>123</sup> See <[http://www.fmcsa.dot.gov/spanish/english/pdfs/cb\\_req\\_eng.htm](http://www.fmcsa.dot.gov/spanish/english/pdfs/cb_req_eng.htm)>, accessed November 13, 2009.

<sup>124</sup> The Vehicle Safety Act stipulates that motor vehicles and motor vehicle equipment may not be manufactured, sold, or otherwise introduced into interstate commerce or imported into the United States unless the vehicle or equipment complies with the applicable motor vehicle standard and is covered by a certification issued under section 30115 (49 U.S.C § 30112).

The FMVSSs, which deal with the performance of a vehicle and its safety systems, are considered an important safety protection for the public.<sup>125</sup> (For more information on FMVSSs applicable to motorcoaches, see appendix G.) The Vehicle Safety Act (49 U.S.C. §30112 and 30115)<sup>126</sup> requires that vehicles manufactured for sale in and/or imported into the United States are built to U.S. safety standards (vehicles operating in the United States must be certified by the manufacturer as being built in compliance with the U.S. safety standards). To readily demonstrate compliance with vehicle manufacturing standards, Federal law requires that all vehicles display a certification label permanently affixed to the motor vehicle by the original manufacturer (49 CFR Part 567). Since the introduction of motor vehicle safety regulations, manufacturers have certified compliance with regulatory requirements based on robust design processes and testing protocols and manage production compliance through rigorous manufacturing processes.<sup>127</sup> The Vehicle Safety Act's statutory requirement applies to all vehicles, including passenger-carrying commercial motor vehicles presented for import at border crossings into the United States.

In order to permanently import a vehicle purchased abroad that does not have a certificate label, the vehicle cannot be imported as a conforming vehicle. Importers must contract with a registered importer<sup>128</sup> to modify such vehicles and post a DOT conformance bond in the amount equivalent to one and a half times the vehicle's dutiable value, which is in addition to the normal U.S. Customs entry bond. Under the contract, the registered importer must modify the vehicle and certify that it conforms to all applicable FMVSSs. But before a registered importer can modify a vehicle, NHTSA must have determined that the vehicle is eligible for importation based on its capability of being modified to conform to all applicable FMVSS; NHTSA maintains a database and list of vehicles that have been determined eligible for importation.<sup>129</sup>

Multiple border crossings throughout the southern United States are utilized by passenger-carrying commercial carriers. (See appendix H.) According to the CBP, 36,955 bus crossings occurred in fiscal year 2006 from Mexico into the United States at the Lincoln-Juarez Bridge, where the accident motorcoach crossed. This is in addition to the other ports of entry into Texas,<sup>130</sup> where 55,254 registered bus crossings occurred. In addition, 144,405 bus crossings occurred through California, 17,988 through Arizona,

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<sup>125</sup> NHTSA has authority over the manufacture and importation of motor vehicles to assure compliance with the FMVSSs; however, NHTSA has no authority over in-service operations and does not conduct inspections on vehicles in use.

<sup>126</sup> Originally enacted as part of Section 108, Vehicle Safety Act.

<sup>127</sup> M. Schmidt and R. Havelaar, *Review of Canadian/Mexican Commercial Motor Vehicle Compliance With FMVSS: Final Report*, Texas Transportation Institute, Texas A&M University System submission to the FMCSA (April 30, 2006), p. 71.

<sup>128</sup> See <[http://www.nhtsa.dot.gov/cars/rules/import/web\\_complete\\_RI\\_list062609.pdf](http://www.nhtsa.dot.gov/cars/rules/import/web_complete_RI_list062609.pdf)>, accessed November 13, 2009.

<sup>129</sup> See <<http://www.nhtsa.dot.gov/cars/rules/import/FAQ%20Site/index.html>>, accessed November 13, 2009.

<sup>130</sup> Texas ports of entry are El Paso, Presidio, Del Rio, Eagle Pass, Roma, Rio Grande City, McAllen, Pharr, Progreso, and Brownsville.

and 2,097 through New Mexico's ports of entry, for a total of 256,699 bus crossings occurring in the United States during fiscal year 2006. As of March 31, 2008, staffing levels at these ports of entry totaled 112 Federal inspectors and 26 state inspectors.<sup>131</sup>

At the NTSB's public hearing, the Assistant Inspector General for Surface and Maritime Program Audits, DOT Office of Inspector General (OIG), testified that, in 2005, the OIG conducted an audit of FMCSA's border crossing inspections and determined that insufficient staff prevented the FMCSA and state officials from inspecting passenger buses at certain designated southern border crossings. Further, in 2007, the OIG identified a major crossing in Texas where inspections could not be done during high volume holidays; thus, passenger bus carriers could avoid inspections during these periods.

U.S. Department of Commerce statistics show that a yearly average of 5,500 motorcoaches were declared for import into the United States from 2004–2008. The majority were declared by their importers as vehicles manufactured to comply with all applicable FMVSSs and certified as such by the original manufacturer.<sup>132</sup> NHTSA regulations include a requirement that the importer of a motor vehicle (such as the owner) report the vehicle's FMVSS conformity status on a DOT HS-7 declaration form to be presented to the CBP at the time of importation (49 CFR 591.5).

During the NTSB's public hearing, the CBP reported that the accident motorcoach had entered the United States 28 times between September and December 2007 as part of interstate commercial passenger service (line runs averaging 2 roundtrips per week over 16 weeks) without filing a formal HS-7 declaration form. When asked whether the accident motorcoach had NHTSA approval to operate in the United States, Capricorn's owner stated in his civil case deposition<sup>133</sup> that it did not. He added that he did not make sure that the Volvo met the U.S. requirements, even though he knew that he would be operating the vehicle in the United States. Explaining further, he stated that the vehicle was inspected in Texas and was registered in the United States. He said that the first time the vehicle crossed the bridge from Mexico into the United States, the DOT inspected the vehicle and allowed it to continue its trip into the United States. The owner stated that he did not know why the DOT let the motorcoach pass, but he believed that meant he could operate the vehicle in the United States without the certification. When asked how he was able to operate a motorcoach purchased in Mexico within the United States, Capricorn's owner explained his belief that the lease agreement with International, allowing use of the company's USDOT number, permitted it.

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<sup>131</sup> "U.S. Southern Border Crossings, Truck & Bus Entries from Mexico, FY06 (February 21, 2007)" and "U.S. Southern Border Inspection Staffing (March 31, 2008)," (Bethesda, Maryland: Economic Data Resources, 2007–2008).

<sup>132</sup> In addition, a few vehicles were imported on a temporary basis for purposes such as research, investigations, demonstrations, or training. According to a NHTSA posthearing submission, in the last 6 years, the agency has investigated 1,200 vehicles, resulting in the vehicles (nonspecified vehicle type) being denied entry, ordered delivered to ports of entry for exportation, or seized.

<sup>133</sup> Oral deposition taken in the Victoria accident victim families' civil suit, July 9, 2009.

During the NTSB's public hearing, NHTSA stated it did not know the number of non-FMVSS-compliant commercial motor vehicles operating on U.S. highways, either as part of a charter and tour or regular route operation, from Mexico or Canada. In addition, NHTSA does not have statistics reflecting how many non-FMVSS-compliant vehicles have been brought into the United States by U.S.-domiciled companies after having been purchased in another country, driven across the border, and permanently domiciled (without being declared for import) in the United States for use in interstate commerce. According to posthearing data provided by the FMCSA, 265,162 buses entered the United States at the U.S.–Mexico border (California, Arizona, New Mexico, and Texas ports of entry) in calendar year 2007. Of these 265,162 entries, 24,332 buses were inspected (10,832 by the states and 13,500 by the FMCSA), which accounts for 7.4 percent of the entering buses:

- 1.2 percent inspected at Level 1;
- 4.6 percent inspected at Level 3; and,
- 1.6 percent inspected at Level 5.

The TxDPS testified during the public hearing that motorcoaches and buses enter Texas from Mexico at the passenger car border crossings, not the commercial vehicle crossings. Although there are more than 200 TxDPS personnel dedicated to border enforcement at the eight major ports of entry, all of these personnel are at the commercial vehicle crossing. The TxDPS does partner regularly with the FMCSA at the other crossing locations, but only during set “shift” hours, even though motorcoaches are able to cross the border 24 hours a day, 7 days a week.

During its investigation, NTSB staff traveled to the Lincoln-Juarez Bridge crossing and observed motorcoaches with both Mexico and Texas license plates entering the United States; undergoing an FMCSA inspection in conjunction with the TxDPS; and, upon passing the inspection, continuing to Houston, Texas, which is outside of the commercial zone.<sup>134</sup> None of these motorcoaches had a visible label bearing a statement certifying FMVSS compliance. The FMCSA does not have the statutory authority to prohibit such vehicles (non-FMVSS-compliant) from entering or operating in the United States.

The current FMCSA vehicle inspection program was not developed, nor does it operate with a component part, for determining FMVSS compliance; therefore, a non-FMVSS-compliant vehicle operating outside of the commercial zone in a line run or scheduled service by a U.S.-domiciled motor carrier with state registration and license plates, such as the accident motorcoach, would not be issued an OOS order by the FMCSA.<sup>135</sup> However, the FMVSSs explicitly establish a minimum level of motor vehicle safety in the United States, as explained by 49 CFR Part 571, which states that the

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<sup>134</sup> August 26–29, 2008, at the Laredo, Texas, border crossing, Lincoln-Juarez Bridge facility.

<sup>135</sup> Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C. (FMCSA testimony).

FMVSSs “protect the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and include non-operational safety of a motor vehicle.” Therefore, the NTSB concludes that current Federal safety oversight programs and importation regulations pertaining to passenger commercial motor vehicles are flawed because improperly imported (that is, not declared for importation) non-FMVSS-compliant motorcoaches operated by U.S.-domiciled motor carriers on U.S. highways in commercial passenger service are not being identified, placed out of service, and subjected to current laws by the agencies responsible for the oversight of safety and importation: the FMCSA, NHTSA, and the CBP.

Currently, even if states put in place a process for checking FMVSS compliance, no method exists to perform that verification, short of also requiring a physical examination of each vehicle for a proper certification label (49 CFR Part 567). In addition, no processes are currently performed during roadside vehicle inspections to verify compliance with these rules, absent checking a label. Although the certification label assures 100 percent FMVSS-compliance, there are vehicles permitted to be imported that do not have a certification label. Such vehicles may be imported solely for the purposes of research, investigations, demonstrations, training, or competitive racing events. In addition, some vehicles purchased outside the United States for temporary use in the United States may not have a certification label. For example, the vehicle would be eligible for import if the owner was a member of the armed forces of a foreign country on assignment in the United States and the vehicle was being imported for temporary and personal use only. (See appendix C.) The NTSB concludes that not having an electronic FMVSS verification process available to Federal, state, and local law enforcement personnel to use during roadside vehicle inspections makes it difficult to verify whether passenger-carrying commercial motor vehicles meet the FMVSSs. Therefore, the NTSB recommends that NHTSA develop, in conjunction with the FMCSA, a Web-based database of FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by Federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States and implement a process to periodically update this database; and that the FMCSA assist NHTSA in developing and updating this database. The NTSB further recommends that when the database requested in Safety Recommendation H-09-30 is completed, NHTSA make the database known and accessible to state vehicle registration agencies and to Federal, state, and local enforcement inspection personnel for their use during both roadside inspections and compliance reviews to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles. The NTSB also recommends that the FMCSA require that Federal and state inspectors utilize the database requested in Safety Recommendation H-09-37 during both roadside and compliance review inspections of passenger-carrying commercial motor vehicles to identify and place out of service non-FMVSS-compliant vehicles. In addition, the NTSB recommends that the FMCSA institute a requirement for Federal and state enforcement officials to obtain training on a procedure to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label, and work with the CVSA to

develop and provide this training. The NTSB further recommends that the CVSA assist the FMCSA in developing and providing this training.

## **U.S. Performance Standards and Operational Safety Requirements for Vehicles Operating in the United States**

### **History**

According to the FMCSA,<sup>136</sup> from about 1975 to 2005, the DOT believed that when a motor carrier used a commercial vehicle to transport passengers or freight into the United States, it should be construed as importation. The DOT undertook rulemakings in 2002 to establish a mechanism to ensure that Mexican carriers transporting passengers into the United States complied with importation regulations and to require that these vehicles display an FMVSS certification label. In addition, the DOT sought to introduce a definition for “import” into the regulations. However, both the FMCSA’s and NHTSA’s notices of proposed rulemaking (NPRM) were withdrawn. The withdrawals<sup>137</sup> stated that the DOT, after reviewing the public comments, determined that alternate interpretations of “import” existed and that it no longer considered a foreign carrier’s simply operating a truck or bus in the United States to be “importation.” Part of the justification for this change was that these vehicles would be classified strictly as instruments of international traffic (IIT), as defined by CBP regulations.<sup>138</sup> These regulations permit a vehicle to come into the United States to bring in cargo or passengers, but once the cargo or passengers have been transferred, the vehicle would have to leave the United States and return to its country of origin. The vehicle may also take out cargo or passengers when leaving for its country of origin. Moreover, the FMCSA determined there was no need to impose a requirement for the display of a statement label certifying compliance with the FMVSS as proof. The withdrawal notice indicated that the FMCSA was not focusing on certification labels but on making sure the vehicles complied with the FMCSRs while in the United States.

### **Foreign-Manufactured Vehicles**

The FMCSA’s and NHTSA’s 2005 NPRM withdrawals state that, generally, only commercial motor vehicles (CMVs) manufactured for sale or use in the United States may be registered in the United States. The NPRM withdrawal language continues that the laws and regulations concerning the importation of vehicles for sale or use effectively preclude U.S.-based motor carriers from purchasing or leasing vehicles for use in the United States unless the vehicles were originally manufactured for, or subsequently modified for, such use. Under 49 U.S.C. §30112, §30115, and §30141, and 49 CFR

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<sup>136</sup> Transcript of Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C., p. 94.

<sup>137</sup> For further information, see *Federal Register*, vol. 70, no. 165 (August 26, 2005), pp. 50269–50290, docket nos. FMCSA-01-10886 and NHTSA-2005-22197.

<sup>138</sup> See 19 U.S.C. 1322(a) and 19 CFR 10.41, 123.14, and 123.16.

Parts 567, 591, and 592, a U.S. motor carrier cannot import a vehicle manufactured in a foreign country for use in the United States unless (1) the original manufacturer certified, at the time of manufacture, that the vehicle complied with the applicable FMVSSs, or (2) a registered importer certified that the vehicle was modified to comply with applicable U.S. safety standards.<sup>139</sup> However, as discovered in this accident, foreign-manufactured motorcoaches have been and are still being purchased by U.S.-based carriers and brought into U.S. jurisdictions and registered.

The FMCSA stated that U.S. jurisdictional registration documents could be used by Federal and state inspectors to verify a CMV's model year and VIN and, by extension, the FMVSSs applicable to the particular CMV. However, Volvo did not manufacture the accident vehicle to meet the FMVSSs, as it was not intended for sale in the United States. Though the vehicle had undergone both Federal and state safety inspections in which inspectors had access to the VIN and Texas registration documents, no one recorded that the vehicle was not FMVSS compliant. However, a VIN alone cannot be used for FMVSS certification. This contradicts the FMCSA's statement in its NPRM withdrawal that "Federal and state enforcement officials conducting roadside inspections could rely on a VIN and registration in a U.S. jurisdiction as evidence of FMVSS compliance." This is a loophole that the FMCSA had not addressed in its NPRM withdrawal or since to ensure that U.S. jurisdictions only register vehicles imported properly into the United States.

So, although the accident motorcoach was not presented to the CBP for import, it was purchased by a U.S. carrier as a vehicle manufactured for sale and use in a foreign country—a practice that the DOT was clear is not permitted. The FMCSA also states that motor carriers are responsible for ensuring vehicles introduced into their fleets are maintained to the safety standards of the FMCSRs, including those that cross-reference the FMVSSs. However, vehicles manufactured for sale in a foreign country that are not certified by the manufacturer for FMVSS compliance because the vehicle did not meet the FMVSSs in manufacturing or was not certified by the manufacturer or importer as having met the FMVSSs post-manufacturing, cannot be maintained to the safety standards for systems they do not possess or pass an inspection based upon maintenance of nonexistent systems or manufacturing standards. Because the FMCSA, by virtue of its own statements in the 2005 NPRM withdrawal determination, does not permit a U.S. motor carrier to purchase, import, or operate a non-FMVSS-compliant vehicle in the United States, the NTSB concludes that the accident vehicle and all other non-FMVSS-compliant buses inspected by the FMCSA should be detected during FMCSA roadside inspections and compliance reviews and subsequently reported to the proper Federal and state agencies for enforcement.

The FMCSA's 2005 NPRM withdrawal stressed that if the FMCSA finds, during the preauthority audit<sup>140</sup> or subsequent inspections, that a Mexico-domiciled carrier has

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<sup>139</sup> *Federal Register*, vol. 70, no. 165 (August 26, 2005), p. 50274.

<sup>140</sup> Mexico-domiciled carriers seeking U.S. authority to operate in the United States under the North American Free Trade Agreement cross-border demonstration project were required to receive and pass an FMCSA safety audit before receiving provisional operating authority. The safety audit consisted of a

falsely certified its vehicles as FMVSS compliant, the FMCSA “may use this information to deny, suspend, or revoke the carrier’s operating authority or certification of registration or issue appropriate penalties for the falsification.” Further, the FMCSA was very specific in its NRPM withdrawal that it must rely on a strong verification program to confirm certifications by Mexico-domiciled carriers (on the application form for FMCSA operating authority) so that they will operate only FMVSS-compliant CMVs in the United States beyond the border commercial zones. Currently, U.S.-domiciled motor carriers operating for hire do *not* have to certify on their OP-1(P) forms that they use only FMVSS-compliant vehicles (self-certification). This position would seem to discount the importance of FMVSS compliance, contradicting the FMCSA’s repeated statements during the NTSB’s public hearing that the FMCSRs cross-reference some FMVSSs and, therefore, that the inspections and inspection criteria evaluate the current operational safety status and ensure that motor carriers maintain the safety performance features of the vehicle and equipment. The NTSB concludes that the lack of a requirement for U.S.-domiciled carriers to certify the use of FMVSS-compliant passenger vehicles in interstate commerce has created a gap in safety oversight, allowing non-FMVSS-compliant commercial passenger vehicles to be used by U.S.-domiciled carriers on U.S. highways. This loophole is evidenced by the fact that, during the Victoria accident investigation, even when notified of the non-FMVSS-compliant accident motorcoach, the FMCSA did not pursue FMVSS certification verification. Therefore, the NTSB recommends that the FMCSA require that passenger motor carriers certify on their OP-1(P) forms and initial MCS-150 form (Motor Carrier Identification Report [Application for USDOT Number]) and subsequent required biennial submissions that all vehicles operated, owned, or leased per trip or per term met the FMVSSs in effect at the time of manufacture. The NTSB further recommends that the FMCSA seek statutory authority to suspend, revoke, or withdraw a carrier’s operating authority upon discovering the carrier is operating any non-FMVSS-compliant passenger-carrying commercial motor vehicles, a violation of the FMVSS-compliant certification requested in Safety Recommendation H-09-40.

The Commercial Vehicle Safety Alliance (CVSA)<sup>141</sup> is an international not-for-profit organization comprising local, state, provincial, territorial, and Federal motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. Specially trained inspectors in each state, jurisdiction, and province inspect vehicles based on criteria created by the CVSA. CVSA inspectors are currently verifying a motor carrier’s operating authority during roadside inspections and are taking enforcement action against carriers found to be operating without authority, with inactive authority, or beyond the scope of their authority.

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review of the carrier’s safety data, a review of requested motor carrier documents, vehicle inspections, and an interview session with the motor carrier’s safety official by a trained safety auditor. This demonstration project was terminated effective March 11, 2009, and the FMCSA revoked all registrations issued in connection with it. For further information on this program, see <[http://www.fmcsa.dot.gov/spanish/english/pdfs/cb\\_req\\_eng.htm](http://www.fmcsa.dot.gov/spanish/english/pdfs/cb_req_eng.htm)> and <<http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/notices/Demonstration-Project-on-NAFTA-Trucking-Provisions-3-18-09.pdf>>, accessed November 13, 2009.

<sup>141</sup> See <<http://www.cvsa.org/about/index.aspx>>, accessed September 28, 2009.

Once a U.S.-domiciled passenger motor carrier has attested on its OP-1(P) form and subsequent MCS-150 forms that it will only operate an FMVSS-compliant vehicle, and NHTSA has created an FMVSS-compliance database, the compliance status of a carrier's vehicle can be verified. Thereafter, if during the roadside inspection, a carrier's vehicle is determined to be noncompliant, the vehicle can be placed out of service because it is being operated in violation of its operating authority. The resulting OOS order will then be directed back to the FMCSA, enabling the agency to revoke the carrier's operating authority for operating without or beyond the scope of authority granted under the OP-1(P) and MCS-150 forms. The NTSB recommends that the CVSA revise the *North American Standard Out-of-Service Criteria* to include passenger motor carriers discovered to be violating their operating authority by operating non-FMVSS-compliant passenger-carrying commercial motor vehicles.

### **U.S. Vehicle Performance Standards and Regulations**

Although FMCSA representatives stated during the NTSB's public hearing that the FMCSA could effectively ensure a motor carrier's compliance with applicable FMVSSs through continued vigorous enforcement of the FMCSRs, the NTSB notes that the U.S. Government relies upon the criteria established by the FMVSSs to show that a vehicle meets minimum acceptable safety requirements during crash and other testing. Although proper maintenance helps to ensure that non-FMVSS-compliant components will not malfunction, it cannot be determined, unless independently tested or involved in a real-world crash, whether the components would meet FMVSS criteria for preventing unreasonable risk of injury or death to vehicle occupants.

Without FMVSS certification and vehicle inspections (an unlikely occurrence given the low numbers of roadside passenger commercial motor vehicle inspections performed at border crossings), no consistent or mutually supportive set of regulations or procedures ensures FMVSS compliance, which is incongruent with the intent of the Vehicle Safety Act. The Vehicle Safety Act's language is explicit in stating that preexisting motor carrier safety regulations should not differ in substance or impose any lesser standard of performance than manufacturing standards.<sup>142</sup> In its 2005 NPRM withdrawal, the FMCSA concluded that FMVSS certification labels were not needed and that the enforcement of the FMCSRs would ensure compliance with the FMVSSs with which they were cross-referenced. However, according to NHTSA's public hearing testimony, an inspection cannot determine the dynamic capabilities of certain FMVSSs, and it would be very difficult to determine compliance with certain FMVSSs unless an inspector specifically looked for the certification label found inside the vehicle, which would definitively establish that the vehicle was originally manufactured to meet applicable FMVSS standards. Further, due to regulatory limitations (49 CFR 350.201[y]), unless a serious safety defect is observed, the FMCSA can only perform bus or motorcoach roadside inspections at terminals or destination stops, which include border crossings. In 2007, the FMCSA conducted only 13,500 vehicle inspections of the 265,162 total bus crossings (5.09 percent).

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<sup>142</sup> M. Schmidt and R. Havelaar, p. 80.

Some FMCSRs address the current operational safety of components that wear out over the life and use of the vehicle, while others cross-reference the FMVSSs to ensure that required equipment is in place and maintained. Even though certain FMCSRs cross-reference the FMVSSs during an inspection, there are fundamental problems in relying on this system to verify FMVSS compliance. Some FMVSSs cannot be verified by FMCSRs because a visual inspection cannot detect whether the vehicle meets a performance standard—such as the 60-mph stopping distance (49 CFR 571.121 [S5.31]). Further, other FMVSS items exist that are not cross-referenced with the FMCSRs and, therefore, are not inspected, including flammability of materials, controls, and displays. Finally, although a violation of an FMCSR that happens to cross-reference an FMVSS should result in bringing that FMVSS violation to the minimum safety standard, not all FMCSR violations are serious enough to place the vehicle out of service and therefore there is no guarantee that the item will be brought to the minimum safety standard. Also, for those FMCSR violations that cross-reference the FMVSS and constitute a serious enough safety hazard to cause an OOS order, there is no system to permanently remove the vehicle from service until the problem is remedied, especially if it is a design or manufacturing issue that cannot be resolved and therefore never be made FMVSS compliant.

The statistical likelihood of a Level 1, Level 2, or Level 5 inspection occurring at a border crossing is very low (about 2.8 percent).<sup>143</sup> The FMCSA indicated at the public hearing that its roadside inspectors who check for operational compliance with the FMCSRs are qualified to determine the performance safety of the vehicle and therefore may supersede the requirement for the vehicle to meet the NHTSA performance standards in the FMVSSs. Although the FMCSRs focus upon a company's operating safety and vehicle maintenance, the FMVSSs are integrated into a vehicle's manufacturing and, therefore, are also applicable to a vehicle's everyday level of safety. This cannot be minimized by stating that the FMCSRs are a better barometer of a vehicle's safety. The FMVSSs and FMCSRs are meant to work together; therefore, not requiring safety standards for commercial passenger vehicles defeats the purpose of these regulations. The NTSB disagrees with the FMCSA's policy of not enforcing the requirement for passenger-carrying CMVs to display a label of certification documenting the vehicle's compliance with all applicable motor vehicle safety standards and concludes that the FMCSA's policy of not enforcing the requirement for passenger-carrying commercial motor vehicles to display a label of certification documenting the vehicle's compliance with all applicable motor vehicle safety standards and its failure to help identify and place out of service non-FMVSS-compliant vehicles undermine NHTSA's efforts as a partner safety agency.

By granting a "passing grade" to non-FMVSS-compliant motorcoaches inspected roadside at the border or during annual or periodic inspections when they do not meet the FMVSSs (easily identifiable by the lack of a certification label), such as was the case with the accident bus, the FMCSA is tacitly permitting any non-FMVSS-compliant vehicle to operate on U.S. roads.

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<sup>143</sup> FMCSA bus inspection data provided during public hearing for 2007 calendar year at the U.S. and Mexico borders.

During its investigation, the NTSB discovered numerous passenger-carrying vehicles operating in commercial interstate commerce that were not manufactured to FMVSS criteria; however, they were based, registered, and operated in the United States by domestic carriers, which appears contradictory to 49 U.S.C 30112, which states:

A person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import in to the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification...

Vehicles entering the United States from Mexico present specific difficulties in safety oversight for both the states and the FMCSA. Although the CBP inspects every vehicle for contraband, spending approximately 30 minutes per vehicle, the FMCSA does not conduct a roadside inspection of every vehicle to determine whether it complies with the FMCSRs, which are the regulations that establish safe operating and maintenance requirements for vehicles and their equipment.<sup>144</sup> This practice leaves an enormous gap in a system meant to improve the safety of commercial vehicles and reduce crashes, injuries, and fatalities.

The CBP does not initiate an importation process for vehicles until an owner or importer declares a vehicle for importation.<sup>145</sup> The regulations pertaining to imported vehicles state that they must either be FMVSS compliant or be brought in through the Registered Importer Program. Although some motorcoaches are currently being operated outside of the commercial zone (during cross-border line runs) by foreign-domiciled carriers under the IIT provisions, the IIT exemption has created a regulatory situation that is being exploited by U.S.-domiciled carriers.

NHTSA stated at the NTSB's public hearing<sup>146</sup> that it can work with the CBP, U.S. Immigration and Customs Enforcement, and the U.S. Environmental Protection Agency when it learns of vehicles being brought into the United States permanently without being declared and that do not have labels certifying compliance with applicable FMVSSs affixed by the original manufacturer. In the past, NHTSA's Import and Certification Division has taken action upon learning that imported, noncompliant motorcoaches were being operated in the United States, including seizing noncompliant motorcoaches.

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<sup>144</sup> Only 7.4 percent of motorcoaches entering the United States were stopped in 2007 for inspection, with only 1.2 percent of those motorcoaches receiving an inspection sufficient to detect potential problems with FMCSR items that cross-reference the FMVSSs.

<sup>145</sup> A vehicle owner or importer must declare the vehicle for importation to the CBP within 15 days of the vehicle's being brought into the United States.

<sup>146</sup> Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C.

Well-established law and regulation<sup>147</sup> require that all vehicles, including motorcoaches, operate in the United States only with appropriate certification provided by their original or final-stage manufacturers or by their importers. The NTSB concludes that current DOT policy allowing the FMCSA to cross-reference the FMVSSs during a vehicle's inspection and, if the vehicle is not placed out of service, accept that as evidence of adherence to FMVSS performance standards, is faulty based on the FMCSRs' lack of performance testing during a vehicle inspection. Given the low likelihood of a full vehicle inspection at the U.S.–Mexico border crossings, there is no guarantee of adherence to the FMVSSs or of disincentives for not doing so, such as penalties. The NTSB recommends that the DOT direct NHTSA and the FMCSA to work in conjunction with the CBP to develop and implement a process to detect motor carriers that are currently operating non-FMVSS-compliant motorcoaches or other passenger-carrying commercial motor vehicles, other than exempted vehicles, in the United States (outside of the commercial zone), and when such vehicles are detected, to ensure that the FMCSA has the authority to place such vehicles out of service and require that these motor carriers cease operating those vehicles in commercial interstate passenger service or face revocation of their operating authority. The NTSB also recommends that the CBP assist the DOT in developing a process to detect and report to the DOT information on motor carriers identified during its border crossing inspections of passenger-carrying commercial motor vehicles to be currently operating non-FMVSS-compliant passenger-carrying commercial motor vehicles, other than exempted vehicles, in the United States (outside of the commercial zone), and assist the Department in ensuring such vehicles are placed out of service and requiring these motor carriers cease operating those vehicles in commercial interstate passenger service.

### Federal Importation Definitions

In 1975, NHTSA interpreted 49 U.S.C. 30112 (Vehicle Safety Act) as applying to all vehicles entering the United States. This law prohibits a motor vehicle from being placed into interstate commerce or imported into the United States unless it is certified as complying with the FMVSSs applicable at the time of manufacture. NHTSA also explained that the Vehicle Safety Act's prohibition against noncomplying vehicles entering the United States is similar to laws against contraband.<sup>148</sup>

NHTSA's 2005 NPRM was focused on whether the word "import," as used in the statute, necessarily applied to commercial motor vehicles that are *used temporarily* in the

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<sup>147</sup> Title 49 CFR Parts 591-593, 49 U.S.C 30112A and 30115, and SAFETEA-LU Section 4139(c). NHTSA's 2002 NPRM on FMVSS certification (*Federal Register*, vol. 67, no. 53 [March 19, 2002], pp. 12789–12797) stated: "Neither the statute nor any agency regulation exempts commercial vehicles domiciled in Canada or Mexico from the requirement that the vehicles must have been manufactured to meet the FMVSSs in order to be imported into the United States."

<sup>148</sup> NHTSA's 2002 NPRM on FMVSS labeling (docket no. 02-11593) stated, "In particular, we believe that the Vehicle Safety Act's prohibition on the importation of non-complying vehicles is analogous to contraband laws that prohibit the importation of dangerous items." The CBP website <[http://www.cbp.gov/xp/cgov/trade/basic\\_trade/importing\\_car.xml](http://www.cbp.gov/xp/cgov/trade/basic_trade/importing_car.xml)>, accessed September 29, 2009, states, "Vehicles entering the United States that do not conform with U.S. safety standards must be brought into compliance, exported, or destroyed."

United States and subject to an alternative regulatory program designed to ensure the vehicles operate safely while on U.S. roads. NHTSA pointed to the U.S. Customs classification of such vehicles as “instruments of international commerce,” as there is no NHTSA definition of the term “import.” Therefore, in its 2005 NPRM, NHTSA evaluated three separate issues when reviewing the 1975 interpretation, as follows:

1. The language of the Vehicle Safety Act and Congressional intent;
2. A reevaluation of existing case law relevant to the use of the term “import” outside of the context of tariff law to see whether and how other statutes defined the term; and
3. Additional factors and interpretations not taken into account in 1975.

As a result, NHTSA withdrew its 1975 interpretation altogether and decided against placing a definition of the term “import” in the CFR after concluding that creating a new regulation to define the term serves no regulatory function and was unnecessary for motor vehicle safety. NHTSA also determined that its previous interpretation of the importation restriction on noncertified foreign-domiciled commercial motor carriers may be overly encompassing and place unreasonable restrictions on foreign-based motor carriers.<sup>149</sup> The NPRM explained that since 1926, courts have consistently held that in tariff cases, unless it clearly appears that Congress intended otherwise, the term “importation” means the bringing of goods within the jurisdictional limits of the United States with the intent to unlade. The courts have given deference to a Treasury Department ruling cited in *Estate of Levi H. Pritchard v. United States*,<sup>150</sup> which states,

If coming into this country temporarily as carriers of passengers or merchandise, they (vessels) are not subject to customs entry or the payment of duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.

The court said that the question as to whether a vessel is brought into the United States “permanently” must be determined on the basis of intent.

NHTSA went on to state that when the Vehicle Safety Act was enacted, the U.S. Customs regulations 1963 Tariff Schedule<sup>151</sup> was in effect, which specifically excluded commercial motor vehicles from entry requirements so long as the vehicles did not engage in local traffic in the United States. This exclusion was adopted as part of the implementation of the Tariff Act of 1930, which provided that

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of customs laws to such extent and subject

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<sup>149</sup> NHTSA’s NPRM withdrawal notice did not specifically discuss U.S.-based carriers operating noncompliant vehicles.

<sup>150</sup> *Federal Register*, vol. 67, no. 53 (March 19, 2002), pp. 12782–12787, docket no. FMCSA-01-10886 (p. 50286). Case 43 CCPA 85, 87-88, CAD612 (1956).

<sup>151</sup> *Federal Register*, vol. 28 (December 31, 1963), p. 14663.

to terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury [19 U.S.C 1322(a)].

Using this argument, NHTSA stated that when the Vehicle Safety Act was passed, *foreign-domiciled* commercial motor vehicles were not subject to entry under the existing Tariff Schedule, therefore “prohibition on allowing non-compliant commercial motor vehicles into the United States could not be enforced at the border without significantly amending those regulations in a manner inconsistent with the Tariff Act of 1930.”

However, the Victoria accident vehicle was owned and operated by a *U.S.-domiciled* motor carrier; thus, the vehicle and others brought into the United States by the same method and by U.S.-domiciled motor carriers do not fall under the intent of the Tariff Schedule. Further, U.S. Customs regulations currently provide that buses or motorcoaches in international traffic shall not be treated as imported (19 CFR 10.41[a]), and can be admitted without formal entry of the payment of duty (19 CFR 123.14[a]), but only if the vehicle is owned by a foreign-domiciled carrier.

The operator/owner of a vehicle can be established during inspections by several methods already in place, such as through the U.S. insurance paperwork that must be submitted to the FMCSA and carried in the vehicle, the U.S. jurisdictional registration carried in the vehicle, and the FMCSA’s MC number on the vehicle. In addition, the driver’s logs can establish whether a vehicle is engaged in transporting passengers in interstate commerce outside of a commercial zone. In combination, these factors can establish that the vehicle belongs to a U.S.-domiciled carrier; therefore, a vehicle manufactured outside of the United States should meet the FMVSSs and have been properly imported.

The Victoria accident vehicle was not used on a temporary basis; it was purchased by the owner of a U.S.-based motor carrier to conduct a scheduled regular route (“line run”) weekly between Houston, Texas, and Monterrey, Mexico. The NTSB was unable to interview the owner of the vehicle to ask specifically why he purchased vehicles in Mexico that were not FMVSS compliant, as he was unavailable for medical reasons. However, company documents uncovered during the NTSB’s investigation determined that the accident vehicle was purchased new in Mexico at a cost of \$211,809 (USD) although comparable new motorcoaches for sale in the United States that meet the FMVSSs are typically sold for about \$450,000. The owner took advantage of the administrative loophole in California IRP registration and subsequently obtained Texas registration, avoiding the verification of FMVSS compliance in order to obtain registration, the benefit of which was to avoid alerting inspection and enforcement personnel to the vehicle’s weekly regular route into and out of Mexico and avoiding receiving additional violations and fines, such as the ticket issued by the TxDPS for not having a U.S. license plate outside of the commercial zone in October 2006. As a result of obtaining U.S. jurisdictional license plates and registration, the accident vehicle was not checked for compliance with the FMVSSs, but only inspected for FMCSR operational safety on six occasions, though the vehicle made multiple trips, including at

least 28 trips into and out of Mexico and beyond the commercial zone during the approximately 4 months from September–December 2007.

Complicating the issue of importation is that the CBP considers the terms “import” and “importation” to be as defined in the 1975 NHTSA interpretation, which states that “importation” is “bringing an article into the country from the outside” and “as merchandise that has been brought within the limits of a port of entry from a foreign country.” However, NHTSA eliminated this definition in its 2005 NPRM withdrawal. As a result, and as evidenced by the NTSB’s investigation and the testimony from the FMCSA, NHTSA, and the CBP during the public hearing, no uniform, cohesive definition exists for an imported vehicle between the three Federal agencies charged with the importation oversight of commercial passenger-carrying vehicles.

The CBP initially determined, according to CBP’s regulations,<sup>152</sup> that the motorcoach involved in the January 2, 2008, accident was not “imported” because it qualified as an “instrument of international traffic” under 19 CFR 10.41.<sup>153</sup> The CBP further stated that other possible exceptions to the importation rules may have applied to the accident vehicle because it was considered a vehicle used in “international traffic” and Congress exempted certain vehicles from the application of U.S. Customs laws if such vehicles were engaged in international traffic (19 U.S.C. §1322). This statute, as implemented by 19 CFR 123.14, states that foreign-based vehicles engaged in international traffic may be admitted without formal entry. However, qualifying criteria for the international traffic exception can be found in 49 CFR 123.14(c) and 123.16(b) for vehicles used in “*local traffic*.”<sup>154</sup> The CBP noted that section 12.80 of the FMVSSs provides an exception to importation regulations for “foreign-based” vehicles only, which was established to allow foreign-based carriers to operate in the United States on a

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<sup>152</sup> Numerous other sections of 19 CFR pertain to this vehicle and whether it was considered imported. The CBP determined that the definition of interstate commerce in 19 U.S.C. 1308 would not have been applicable to the accident vehicle. Interstate commerce, as defined in 19 U.S.C. 1308, is only applicable to the prohibition on importation of dog and cat fur products and would not apply to buses being used as instruments of international traffic, as referenced in 19 CFR 10.41(a).

<sup>153</sup> Title 19 CFR 10.41 states: “(a) locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in part 123 of this chapter.”

“*Part 123.16 Entry of returning trucks, buses, or taxicabs in international traffic.* (a) Admission without entry or payment of duty. Trucks, buses and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by state registration cards.”

<sup>154</sup> 49 CFR 123.14(c) and 123.16(b) state: “Foreign based trucks, buses, and taxicabs admitted under this section shall not engage in local traffic in the United States...[However] The vehicle may carry merchandise or passengers between points in the United States if the carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic.

Trucks, buses and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported for and must be regularly entered on return.”

limited or short-term basis and then return to their home country, such as in the case of charter tours or privately owned vehicles not in commerce.<sup>155</sup>

Based on a review of investigative information provided by the NTSB, the CBP has reconsidered its position regarding the accident motorcoach's import status.<sup>156</sup> The CBP states, "Evidence provided to CBP following the investigation by the NTSB shows a clear intent on the part of the owner of the motorcoach to circumvent CBP's laws," further stating that

As long as an operator has demonstrated the intention to establish a vehicle's base of operations and operate out of that location, and presents sufficient evidence to support that intention, CBP will generally point to that location as being the vehicle's base of operations. The preponderance of evidence provided to us in this case clearly indicates an intention on the part of the motorcoach's owner to establish its base of operations in the United States.

Consequently, the provisions found in Title 19 *Code of Federal Regulations*, section 123.14 (19 CFR 123.14) governing the use of foreign-based vehicles as instruments of international traffic (IIT) and their attendant exemption from the customs laws do not apply in this instance. Furthermore, the purchase of the bus, as reflected in documentary evidence provided, would have necessitated the making of a formal entry upon the vehicle's initial arrival in the United States, something which did not occur. The burden of making an entry is placed upon the importer and failure to do so subjects the importer to an assessment of a penalty.

On November 13, 2009, NHTSA informed the NTSB that, based upon CBP's decision that the accident motorcoach owner intended to establish its base of operations within the United States and that the accident motorcoach should have been presented to the CBP for formal entry (import), NHTSA is considering whether enforcement action against the motorcoach owner is warranted. Although the CBP has determined, in this case, that the accident motorcoach should have been declared for import by Capricorn's owner (and thereby the NTSB believes this determination would apply to the other 2005 and two 2008 Volvo motorcoaches that Capricorn operated), such decisions are made on a case-by-case basis. A disconnect exists between the definition of interstate commerce in 49 CFR 390.5 (b), upon which the FMCSA bases its enforcement actions, and the

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<sup>155</sup> Section 12.80 of the CFR states "(b) Requirements for entry and release. (1) Unless the requirement for filing is waived by the port director as provided for in paragraph (f) of this section, each vehicle or equipment item offered for introduction into the Customs territory of the United States shall be denied entry unless the importer or consignee files with the entry a declaration, in duplicate, which declares or affirms one of the following: (f) Waiver of declaration requirements. The requirement that declaration be filed under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(v) of this section as a condition to the introduction of a vehicle or equipment item into the Customs territory of the United States may be waived by the port director for a United States, Canadian, or Mexican registered vehicle arriving via land borders."

<sup>156</sup> CBP letter (regarding import status of accident vehicle) to NTSB, September 4, 2009.

definition of interstate commerce found in 19 CFR 12.80, upon which the CBP bases its enforcement actions, which has led to the loophole currently being taken advantage of by some passenger motor carriers, as was discovered during the Victoria, Texas, accident investigation.

The NTSB believes that if the CBP integrated the definition from 49 CFR 390.5 into the CBP regulations, it could utilize that information when inspecting vehicles at border crossings to determine whether foreign-manufactured vehicles being operated by U.S.-domiciled companies with destinations outside of the commercial zone should be FMVSS compliant and declared for import during entry. A CBP officer, upon determining that a vehicle is not FMVSS compliant and has not yet been through the importation process, could then prevent the vehicle from entering the United States until it is declared.<sup>157</sup> Further, if a vehicle has not entered through the proper importation process before or cannot provide documentation of compliance with the FMVSS standards set forth in Title 49 CFR, the CBP could, with cause, seize the vehicle for failure to declare. The NTSB concludes that the lack of a uniform, coherent definition for what constitutes an imported vehicle, in addition to a definition-of-use loophole in the NHTSA, FMCSA and CBP regulations, has allowed some U.S.-domiciled motor carriers to effectively bypass the importation laws and inspection processes established to verify conformance with the FMVSSs and register their Mexican-manufactured vehicles within the United States. Currently, this is the only class of commercial and private vehicle able to make use of this safety loophole. The NTSB therefore recommends that the CBP incorporate the definition of interstate commerce from 49 CFR 390.5 into 19 CFR 12.80 in order to provide a uniform, coherent definition for what constitutes an imported vehicle.

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<sup>157</sup> If the vehicle owner can provide the documents necessary to indicate the bus has made entry under the importation process, the vehicle can continue.

## Conclusions

### Findings

1. Weather was not a factor in this accident, nor were any highway defects found that would have caused or contributed to the accident.
2. Although the vehicle did not meet the *Federal Motor Vehicle Safety Standards* (FMVSSs), the mechanical condition of the accident motorcoach was not a factor in this accident.
3. The cause of the unrestrained passengers' injuries was their striking objects and other passengers inside the motorcoach, as well as their partial ejections from the motorcoach windows on the right side, most of which occurred when the motorcoach overturned.
4. Although the driver's toxicological testing results were negative for alcohol and drug use and it was unlikely that the driver was under the influence of alcohol or drugs, the company's delay in collecting toxicological specimens prevents the National Transportation Safety Board from conclusively ruling out alcohol use as a factor in this accident.
5. The motorcoach driver fell asleep and partially drifted out of his travel lane.
6. Upon regaining awareness after partially drifting off the roadway, the accident driver overcorrected his steering, causing a loss of control of the motorcoach.
7. Since the Federal Motor Carrier Safety Administration's fatigue video was created in 2000, scientific understanding of fatigue and fatigue countermeasures has improved, as well as distribution methods available for communicating this type of information, to include the Internet, which has the potential to reach even more commercial drivers.
8. International Charter Services, Inc., failed to maintain operational control and safety oversight of Capricorn Bus Lines, Inc.'s, operations, including its drivers and vehicles, as required by the safety certification completed by International Charter Services, Inc., in its operating authority application (Form OP-1[P], Application for Motor Passenger Carrier Authority [section 4]).
9. The Federal Motor Carrier Safety Administration had the authority to conduct a compliance review of Capricorn Bus Lines, Inc., but did not, thereby failing to assign the appropriate safety rating for an "at-risk" carrier to a carrier with serious safety violations.

10. The Federal Motor Carrier Safety Administration, by its tacit approval of lease agreements for interstate passenger carriers that are broader in scope than the equipment leases regulated for cargo carriers, in effect provides a lower level of safety oversight to motor carriers that transport passengers than to those that transport cargo.
11. Because the Federal Motor Carrier Safety Administration was aware during International Charter Services, Inc.'s, postaccident compliance review that regular route service was being provided regularly without International's having applied for this type of operating certificate, and therefore the carrier was operating beyond its scope of authority, the Federal Motor Carrier Safety Administration should have taken enforcement action as required by the Motor Carrier Safety Improvement Act.
12. Some motor carriers are circumventing the legitimate corporate succession processes established in 49 *Code of Federal Regulations* Part 365 by reapplying for Federal Motor Carrier Safety Administration interstate operating authority through the New Entrant Safety Assurance Process, a loophole that may permit unsafe passenger motor carriers to transfer operating rights to newly established motor carriers that may otherwise be prevented by 49 *Code of Federal Regulations* Part 365.
13. The current Federal Motor Carrier Safety Administration compliance review process does not effectively identify unsafe motor carriers and prevent them from operating.
14. Until the Federal Motor Carrier Safety Administration consistently enforces out-of-service orders, the New Entrant Safety Assurance Program will be unsuccessful in screening for and vetting carriers with a history of poor safety management controls that attempt to reenter interstate passenger operations as reincarnated carriers.
15. There is no effective program or process currently in place to identify reincarnated carriers that reentered interstate passenger operations through the New Entrant Safety Assurance Program before the August 2008 implementation of the Federal Motor Carrier Safety Administration's New Applicant Screening Process.
16. Without clear and specific guidance on appropriate lease agreements between OP-1(P) certificate holders and companies providing equipment for charters or regular route service, noncertificated companies could still be performing most, if not all, of the functions of an interstate passenger-carrying operator without regulatory oversight.
17. When the owner of Capricorn Bus Lines, Inc., failed to declare importation of the accident vehicle with the U.S. Customs and Border Protection Agency upon entering the United States and subsequently obtained vehicle registration using a loophole in California's International Registration Plan program, he intentionally bypassed Federal and state requirements for an imported vehicle to comply with the FMVSSs.

18. Because many non-FMVSS-compliant motorcoaches found during this investigation still display U.S. jurisdictional (state) registrations and license plates, inspectors and law enforcement personnel do not have cause to suspect such vehicles of not conforming with Federal law.
19. Some states lack conformity when verifying FMVSS compliance during International Registration Plan-apportioned vehicle registrations, permitting U.S.-domiciled companies to operate non-FMVSS-compliant vehicles daily throughout the United States.
20. Current Federal safety oversight programs and importation regulations pertaining to passenger commercial motor vehicles are flawed because improperly imported (that is, not declared for importation) non-FMVSS-compliant motorcoaches operated by U.S.-domiciled motor carriers on U.S. highways in commercial passenger service are not being identified, placed out of service, and subjected to current laws by the agencies responsible for the oversight of safety and importation: the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration, and the U.S. Customs and Border Protection Agency.
21. Not having an electronic FMVSS verification process available to Federal, state, and local law enforcement personnel to use during roadside vehicle inspections makes it difficult to verify whether passenger-carrying commercial motor vehicles meet the FMVSSs.
22. The accident vehicle and all other non-FMVSS-compliant buses inspected by the Federal Motor Carrier Safety Administration should be detected during Federal Motor Carrier Safety Administration roadside inspections and compliance reviews and subsequently reported to the proper Federal and state agencies for enforcement.
23. The lack of a requirement for U.S.-domiciled carriers to certify the use of FMVSS-compliant passenger vehicles in interstate commerce has created a gap in safety oversight, allowing non-FMVSS-compliant commercial passenger vehicles to be used by U.S.-domiciled carriers on U.S. highways.
24. The Federal Motor Carrier Safety Administration's policy of not enforcing the requirement for passenger-carrying commercial motor vehicles to display a label of certification documenting the vehicle's compliance with all applicable motor vehicle safety standards and its failure to help identify and place out of service non-FMVSS-compliant vehicles undermine the National Highway Traffic Safety Administration's efforts as a partner safety agency.
25. Current U.S. Department of Transportation policy allowing the Federal Motor Carrier Safety Administration to cross-reference the FMVSSs during a vehicle's inspection and, if the vehicle is not placed out of service, accept that as evidence of adherence to FMVSS performance standards, is faulty based on the Federal Motor Carrier Safety Regulations' lack of performance testing during a vehicle inspection.

26. The lack of a uniform, coherent definition for what constitutes an imported vehicle, in addition to a definition-of-use loophole in National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration and U.S. Customs and Border Protection Agency regulations, has allowed some U.S.-domiciled motor carriers to effectively bypass the importation laws and inspection processes established to verify conformance with the FMVSSs and register their Mexican-manufactured vehicles within the United States.

### **Probable Cause**

The National Transportation Safety Board determines that the probable cause of this accident was the driver's falling asleep, which caused him to partially drift off the road, resulting in oversteer corrections when the driver regained awareness, and subsequent vehicle loss of control and overturn. Contributing to the severity of the unrestrained passengers' injuries was their striking objects and other passengers inside the motorcoach, as well as the partial ejections that occurred when the motorcoach overturned during the accident.

# Recommendations

## New Recommendations

As a result of its investigation, the National Transportation Safety Board makes the following safety recommendations:

### **To the Department of Transportation:**

Direct the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration to work in conjunction with the U.S. Customs and Border Protection Agency to develop and implement a process to detect motor carriers that are currently operating non-FMVSS-compliant motorcoaches or other passenger-carrying commercial motor vehicles, other than exempted vehicles, in the United States (outside of the commercial zone), and when such vehicles are detected, to ensure that the Federal Motor Carrier Safety Administration has the authority to place such vehicles out of service and require that these motor carriers cease operating those vehicles in commercial interstate passenger service or face revocation of their operating authority. (H-09-29)

### **To the National Highway Traffic Safety Administration:**

Develop, in conjunction with the Federal Motor Carrier Safety Administration, a Web-based database of FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by Federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States. Implement a process to periodically update this database. (H-09-30)

When the database requested in Safety Recommendation H-09-30 is completed, make the database known and accessible to state vehicle registration agencies and to Federal, state, and local enforcement inspection personnel for their use during roadside inspections and compliance reviews to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles. (H-09-31)

### **To the Federal Motor Carrier Safety Administration:**

Update and redistribute your “Driver Fatigue Video” to include current information on fatigue and fatigue countermeasures and make the video

available electronically. Implement a plan to regularly update and redistribute the video. (H-09-32)

Revise 49 *Code of Federal Regulations* Part 376 to require that passenger motor carriers are subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo. (H-09-33)

Seek statutory authority to deny or revoke operating authority for commercial interstate motor carriers found to have applications for operating authority in which the applicant failed to disclose any prior operating relationship *with* another motor carrier, operating *as* another motor carrier, *or* being previously assigned a U.S. Department of Transportation number. (H-09-34)

Apply the evasion detection algorithm process against all interstate passenger carriers that obtained Federal Motor Carrier Safety Administration operating authority, after the New Entrant Safety Assurance Program began in 2003 but before the program began vetting those carriers, to verify that those new entrant carriers do not have a concealed history of poor safety management controls because they were able to reenter interstate commerce undetected as reincarnated carriers. (H-09-35)

Establish a requirement to review all passenger carrier lease agreements during new entrant safety audits and compliance reviews to identify and take action against carriers that have lease agreements that result in a loss of operational control by the certificate holder. (H-09-36)

Assist the National Highway Traffic Safety Administration in developing a Web-based database of FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by Federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States. Implement a process to periodically update this database. (H-09-37)

Require that Federal and state inspectors utilize the database requested in Safety Recommendation H-09-37 during both roadside and compliance review inspections of passenger-carrying commercial motor vehicles to identify and place out of service non-FMVSS-compliant vehicles. (H-09-38)

Institute a requirement for Federal and state enforcement officials to obtain training on a procedure to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label, and work

with the Commercial Vehicle Safety Alliance to develop and provide this training. (H-09-39)

Require that passenger motor carriers certify on their OP-1(P) forms (Application for Motor Passenger Carrier Authority) and initial MCS-150 form (Motor Carrier Identification Report [Application for USDOT Number]) and subsequent required biennial submissions that all vehicles operated, owned, or leased per trip or per term met the FMVSSs in effect at the time of manufacture. (H-09-40)

Seek statutory authority to suspend, revoke, or withdraw a motor carrier's operating authority upon discovering the carrier is operating any non-FMVSS-compliant passenger-carrying commercial motor vehicles, a violation of the FMVSS-compliant certification requested in Safety Recommendation H-09-40. (H-09-41)

**To the U.S. Customs and Border Protection Agency:**

Assist the U.S. Department of Transportation in developing a process to detect and report to the Department of Transportation information on motor carriers identified during your border crossing inspections of passenger-carrying commercial motor vehicles to be currently operating non-FMVSS-compliant passenger-carrying commercial motor vehicles, other than exempted vehicles, in the United States (outside of the commercial zone), and assist the Department in ensuring such vehicles are placed out of service and requiring these motor carriers cease operating those vehicles in commercial interstate passenger service. (H-09-42)

Incorporate the definition of interstate commerce from 49 *Code of Federal Regulations* 390.5 into 19 *Code of Federal Regulations* 12.80 in order to provide a uniform, coherent definition for what constitutes an imported vehicle. (H-09-43)

**To the American Association of Motor Vehicle Administrators:**

Assist the International Registration Plan, Inc., in developing and distributing to the states and the District of Columbia a model policy for verifying that newly registered passenger-carrying commercial motor vehicles are certified as having complied with the appropriate FMVSSs in effect at the time of manufacture, as referenced in Title 49 *Code of Federal Regulations* Part 567. (H-09-44)

**To International Registration Plan, Inc.:**

In conjunction with the American Association of Motor Vehicle Administrators, develop and distribute to the states and the District of Columbia, a model policy, within the International Registration Plan registration process, for verifying that newly registered passenger-carrying commercial motor vehicles are certified as having complied with the appropriate FMVSSs in effect at the time of manufacture, as referenced in Title 49 *Code of Federal Regulations* Part 567. (H-09-45)

**Commercial Vehicle Safety Alliance:**

Revise the *North American Standard Out-of-Service Criteria* to include passenger motor carriers discovered to be violating their operating authority by operating non-FMVSS-compliant passenger-carrying commercial motor vehicles. (H-09-46)

Work with the Federal Motor Carrier Safety Administration to develop and provide training on a procedure for Federal and state enforcement officials to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label. (H-09-47)

**Previously Issued Recommendation Reiterated in This Report**

As a result of its investigation, the National Transportation Safety Board reiterates the following safety recommendation:

**To the Federal Motor Carrier Safety Administration:**

To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include all *Federal Motor Carrier Safety Regulations* in the current compliance review process so that all violations of regulations are reflected in the calculation of a carrier's final rating. (H-07-3)

## **Previously Issued Recommendation Reiterated and Reclassified in This Report**

As a result of its investigation, the National Transportation Safety Board reiterates and reclassifies Safety Recommendation H-99-6. This recommendation, previously classified “Open—Acceptable Response,” is reclassified “Open—Unacceptable Response.”

### **To the Federal Motor Carrier Safety Administration:**

Change the safety fitness rating methodology so that adverse vehicle or driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for a carrier. (H-99-6)

## **BY THE NATIONAL TRANSPORTATION SAFETY BOARD**

**DEBORAH A.P. HERSMAN**  
Chairman

**ROBERT L. SUMWALT**  
Member

**CHRISTOPHER A. HART**  
Vice Chairman

**Adopted: December 8, 2009**

# Appendix A

## Investigation and Public Hearing

### Investigation

The National Transportation Safety Board (NTSB) was notified of the Victoria, Texas, accident on January 2, 2008. An investigative team was dispatched with members from the Washington, D.C.; Denver, Colorado; Gardena, California; and Arlington, Texas, offices. Groups were established to investigate human performance factors; motor carrier operations; and highway, vehicle, and survival factors.

Participating in the investigation were representatives of the Federal Motor Carrier Safety Administration (FMCSA), the Texas Department of Public Safety (TxDPS), the Texas Department of Transportation (TxDOT), Volvo de Mexico División Autobuses, Prevost (a subsidiary of Volvo Bus Corporation), and Bendix Commercial Vehicle Systems.

### Public Hearing

The NTSB held a public hearing on this accident on October 7–8, 2008, in Washington, D.C. NTSB Chairman Deborah A.P. Hersman presided over the hearing. The issues presented at the hearing included safety concerns related to the accident motorcoach and other similar passenger-carrying commercial motor vehicles not built in compliance with the *Federal Motor Vehicle Safety Standards* (FMVSSs) that enter from Mexico, register and obtain U.S. jurisdictional license plates, and consequently operate permanently in commercial passenger-carrying service in the United States. In addition, the public hearing addressed the processes involved in the registration of non-FMVSS-compliant motorcoaches by two U.S. jurisdictions (states of California and Texas); Federal, state, and local agency policies regarding cross border operations of U.S. motorcoach operators; the International Registration Plan; and the identification, during state and Federal roadside inspections, of non-FMVSS-compliant passenger-carrying vehicles that operate in interstate commercial passenger service by a U.S.-domiciled carrier.

NTSB investigators were members of the technical panel. Parties to the public hearing included the U.S. Department of Transportation Office of Inspector General, Office of Surface and Maritime Program Audits; U.S. Department of Homeland Security Customs and Border Protection Agency (CBP); FMCSA; National Highway Traffic Safety Administration (NHTSA); Prevost/Volvo de Mexico División Autobuses; American Bus Association; United Motorcoach Association; and International Registration Plan, Inc. Witnesses who participated in the hearing included representatives from the following organizations: the U.S. Department of Transportation, Office of

Inspector General, Assistant Inspector General for Surface and Maritime Program Audits; CBP; FMCSA; NHTSA; state of California Department of Motor Vehicles; TxDPS; TxDOT; 5 Star Specialty Programs (a division of Crump Insurance Services); and IRP, Inc.

## Appendix B

### Computer Simulation Study

Although the physical evidence in this case included several feet of tire marks indicating the path of the motorcoach (report figure 1) from where it departed the left side of the roadway to the point of rollover, there was no physical evidence indicating the path of the vehicle before the tire marks began. Further, following the accident, the driver provided several differing statements regarding his actions before the accident. Therefore, to learn more about the motions of the motorcoach prior to its departure from the roadway, NTSB staff conducted a series of simulations using the TruckSim program from Mechanical Simulation.

The primary issues addressed by the simulation data presented in this study concern the motion of the motorcoach and the driver's steering actions before the vehicle departed the roadway. Vehicle parameters used to model the accident motorcoach in the simulations—such as brakes, tires, steering, suspension, and inertia—were based on actual vehicle data received from the manufacturer. Simulation results were compared to the physical evidence gathered on scene during the investigation.

### Motorcoach Modeling Software

Motorcoach dynamics were modeled using TruckSim simulation software. This software is widely used by industry to model three-dimensional tractor-trailer, truck, and motorcoach responses to driver inputs, terrain, and external inputs, such as wind. TruckSim is a robust model that can model a variety of suspension and tire characteristics, including both linear and nonlinear properties. Further, terrain geometry can be entered directly into TruckSim to model the tire/ground interaction more accurately. TruckSim can also provide visualizations of simulation results and of performing hardware-in-the-loop simulations.

### Vehicle Parameters

The following vehicle parameters for the model bus involved in the accident, a 2005 Volvo Model 9700, 47-passenger motorcoach manufactured in Tultitlan, Mexico, were obtained from Volvo and used in the simulations:

- Suspension properties;
- Steering properties;
- Tire force versus slip data (both longitudinal and lateral) for the original equipment manufacturer's tires (Michelin 295/80 XZA1);

- Vehicle weights for both loaded and unloaded configurations;
- Moments of inertia for the unladen vehicle; and
- Approximations of moments of inertia for the accident loading condition.

For the loaded condition, Volvo assumed a 190 pounds-per-passenger load with 47 passengers. The accident bus was modeled using the default two-axle truck from the TruckSim database. The suspension, tire, steering, inertial, and weight properties of the vehicle were modified to more closely approximate the data provided by Volvo.

## **Braking Data**

The motorcoach was equipped with disk brakes controlled by an electronic braking system with integral antilock braking system (ABS) functionality. The ABS was modeled using the default ABS model in TruckSim. Data for the accident vehicle's disk brakes were obtained from Meritor Wabco and used to model brake torques in the simulations.

## **Road Geometry and Physical Data**

The road and terrain geometry used in the simulations was based on survey data gathered at the scene during the investigation (report figure 1). Included in the survey data were approximately 339 feet of tire marks from the bus. The tire marks began just before the point at which the bus departed the roadway and continued up to the point of rollover. The final several feet of these tire marks contained diagonal striation marks, which are characteristic of a vehicle that is rotating or yawing while making the marks.

The physical evidence indicated that, after overturning onto its right side, the bus slid approximately 112 feet before coming to rest and that the radius of the tire marks (yaw marks) immediately preceding the rollover was between 225 and 300 feet. The track of the bus immediately before the accident was a 1,000-foot, 3.5-degree, left-hand curve.

## **Road and Terrain Friction Input**

To account for uncertainties, the tire/ground coefficients of friction for the road surface and grassy median were evaluated over a wide range of values.<sup>1</sup> The range of values used to simulate the road surface friction was from 0.65–0.85. The range of values used to simulate the grassy median was from 0.40–0.65.

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<sup>1</sup> Because braking capability was limited by the available brake torque and cornering during the maneuver, the coefficients of friction did not greatly impact speed estimates over the ranges discussed here.

## Driver Behavior

Driver steering control is represented within the TruckSim model by a closed-loop driver model that mimics basic preview path-following behavior. The model “looks ahead” at the upcoming path and attempts to steer in a manner to cause the vehicle to follow the path. The driver model reacts to any external disturbances (such as crosswinds and road slope) by steering the vehicle in a corrective manner, within its limits.

## Open-Loop Controller

TruckSim also has a built-in open-loop vehicle controller, which allows the user to specify all the normal functions provided by a driver—steering, braking, throttle, automatic transmission mode, gear setting, and clutch control—by entering these values in tables. In this study, the open-loop controller was used to steer the vehicle along the accident vehicle trajectory as indicated by the tire marks.

## Simulation Results

### Criteria Used to Evaluate Simulation Results

In this accident, the motorcoach overturned onto its side and slid for approximately 112 feet before coming to rest. TruckSim software is not designed to model contact between the ground and the body of the vehicle and, therefore, the simulations were stopped at the point of rollover.

Simulation results were considered to be consistent with the physical evidence if the simulated vehicle’s trajectory up to the point of rollover correlated with the physical evidence and any one of the following conditions were met:

- The simulation predicted wheel lift at any single wheel position at the point where the physical evidence indicated that rollover occurred.
- The vehicle was traveling at least 36 mph when it reached the point of rollover.
- The vehicle attained a minimum lateral acceleration greater than 0.46 g just before rollover.<sup>2</sup>

These criteria account for earlier calculations performed by the Office of Highway Safety,<sup>3</sup> which indicated that the static rollover threshold was approximately

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<sup>2</sup> To account for uncertainties, the rollover threshold for lateral acceleration was lowered to 0.46 g.

0.56 g and that the bus was traveling approximately 36 mph when it began sliding on its side.<sup>4</sup>

In general, these broader criteria reduced the lower limit of the speed range below what it would have been using stricter criteria, such as requiring a two-wheel lift. However, simulation results indicated that requiring a two-wheel lift in the simulations might rule out certain situations which, with small changes in steering, would result in two-wheel lift. Using these criteria also helped account for uncertainty in limit behavior of vehicle components by giving the driver the benefit of the doubt.

### **Contribution of Speed to Initial Loss of Control**

The overall results of the simulations indicate that for the motorcoach to have traveled the accident vehicle's trajectory, a large steering input to the left had to precede the departure of the motorcoach from the road. This type of steering maneuver would be consistent with the motorcoach's initially drifting off the roadway onto the right shoulder and the driver's overcorrecting as he attempted to steer back onto the roadway. It is not consistent with a scenario in which the vehicle initially drifted off the left side of the roadway because the driver fell asleep or was incapacitated.

The results of the simulations indicated a speed in the range of 65–73 mph. To study how speed contributed to the initial loss of control, a series of simulations was conducted. In the simulations, a motorcoach (traveling on the right shoulder of the roadway) was subjected to a left steering input similar to the driver's attempt to steer off the right shoulder as calculated to model the driver's overcorrection. Immediately following the steering input, the driver model attempted to steer the vehicle down the middle of the roadway.

Two different speeds were evaluated as part of this study: 65 mph, which was the posted speed limit, and 76 mph, which was the maximum speed calculated from a previous study. Driver steering control in the simulations was represented by a driver preview time of 1.5 seconds, which is commonly used to represent human behavior, and a driver lag time of 0.15 second, which is typically used to represent the neuromuscular delay in human response.<sup>5</sup>

At both 65 and 76 mph, the driver model was able to maintain control of the vehicle on the roadway. The results of the maximum lateral accelerations and lateral movement are shown in table B-1:

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<sup>3</sup> Highway Factors Group Analysis Report of Investigation, Victoria, Texas, January 2, 2008 (HWY-08-MH-011).

<sup>4</sup> This criterion is based on the distance that the motorcoach slid on its side, 112 feet, and a deceleration rate of approximately 0.4 g, which is based on data for a bus sliding on pavement.

<sup>5</sup> See the TruckSim simulation software reference manual.

**Table B-1.** Results of steering maneuver.

	Maximum Lateral	Peak Lateral Accelerations	
Speed (mph)	Movement (feet)	First Peak (g)	Second Peak (g)
65	22	0.45	-0.27
76	24	0.46	-0.30

As indicated by the data in the table, the simulated motorcoach experienced large lateral movements at both speeds as the result of the initial left steer, and the motorcoach moved laterally across almost the entire width of the traveled portion of the roadway as the result of the initial left steering input.<sup>6</sup> The maximum lateral acceleration, which is often used as a metric when gauging the severity of a steering maneuver, exceeded 0.4 g for both speeds. This acceleration is beyond the magnitude that is commonly used in highway design at these speeds (less than 0.08 g)<sup>7</sup> It is also above the driver discomfort threshold<sup>8</sup> of 0.3 g, which is used as a loss-of-control threshold for certain highway design studies, and above the lateral acceleration threshold setting of approximately 0.3 g of many truck stability control systems.<sup>9</sup>

As the data in the table show, reducing the speed of the motorcoach to the posted speed limit of 65 mph would not substantially reduce lateral movement or the peak lateral accelerations. (While it did reduce the lateral movement slightly, the motorcoach still traveled from the right shoulder across the entire width of the traveled portion of the road in the simulation.) These findings suggest that the severity of the situation was largely due to the magnitude of the driver's steering input and that even at the posted speed limit of 65 mph, recovery would have been difficult. This situation would be even more difficult if the driver were unalert or drowsy.

## Findings

The results of the simulations support the following conclusions:

- The range of speeds for the motorcoach indicated by the simulations and earlier studies is 65–75 mph.

<sup>6</sup> The entire width of the travel lanes was approximately 20 feet. The motorcoach was traveling on the right shoulder when the steering maneuver was initiated.

<sup>7</sup> AASHTO *Green Book* criteria limit the unbalanced lateral acceleration to a maximum of 0.175 g at 15 mph, decreasing to a maximum of 0.08 g at 80 mph. For a discussion, see D.W. Harwood, D.J. Torbic, K.R. Richard, W.D. Glauz, and L. Elefteriadou, *A Review of Truck Characteristics as Factors in Roadway Design*, National Cooperative Highway Research Program Report 505 (Washington, DC: Transportation Research Board, National Academy of Sciences, 2003).

<sup>8</sup> J.C. Glennon, T.R. Neuman, R.R. McHenry, and B.G. McHenry, *Highway-Vehicle-Object Simulation Model (HVOSM) Studies of Cross-Slope Breaks on Highway Curves*, contract no. DOT-FH-11-9575 (Washington, DC: Federal Highway Administration, 1982).

<sup>9</sup> This finding is based on a previous meeting with stability control manufacturers.

- The theory that the motorcoach initially drifted off the right side of the roadway and that the driver overcorrected in an attempt to steer back onto the road is consistent with the physical evidence found on the roadway and in the grassy median.
- The results of the simulations indicate that the primary cause of the loss of control was a large steering input to the left that preceded the departure of the vehicle from the left side of the roadway. This steering input resulted in large lateral movements and high lateral accelerations, both of which can contribute to loss of control.

# Appendix C

## Form HS-7

<b>— DECLARATION —</b>		OMB No. 2127-0002 Public Law 100-562, 49 USC Chap. 301	
<b>Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards</b>			
PORT OF ENTRY	CUSTOMS PORT CODE	CUSTOMS ENTRY NO	ENTRY DATE
MAKE OF VEHICLE	MODEL	YEAR	VEHICLE IDENTIFICATION NUMBER (VIN)
REGISTERED IMPORTER NAME AND NHTSA REGISTRATION NUMBER <i>(Required when Box 3 is checked)</i>			VEHICLE ELIGIBILITY NO. (Box 3)
DESCRIPTION OF MERCHANDISE IF MOTOR VEHICLE EQUIPMENT			

- 1. The vehicle is 25 or more years old or the equipment item was manufactured on a date when no applicable Federal Motor Vehicle Safety Standard or Theft Prevention Standard was in effect.  
Date of manufacture: \_\_\_\_\_ [591.5(i)]
- 2A. The vehicle or equipment item conforms to all applicable Federal Motor Vehicle Safety Standards (or the vehicle does not conform solely because readily attachable equipment items that will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and Bumper and Theft Prevention Standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle or affixed by the manufacturer to the equipment item or to its delivery container in accordance with applicable National Highway Traffic Safety Administration (NHTSA) regulations [591.5(b)].
- 2B. The vehicle was certified by its original manufacturer as conforming to all applicable Canadian motor vehicle safety standards and its original manufacturer confirms that the vehicle conforms to all applicable U.S. Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards (or that it conforms to all such standards except for the labeling requirements of Standards Nos. 101 and 110 or 120, and/or the specifications of Standard No. 108 relating to daytime running lamps), and the vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle, and I am importing it for personal use. [591.5(g)]  
**Attachment:** Copy of manufacturer's confirmation letter.
- 3. The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but does conform to applicable Federal Theft Prevention Standards, but I am eligible to import it because U.S. Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards, but I am eligible to import it because U.S. Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards, but I have furnished a bond, which is attached to this declaration, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury. If the Administrator of NHTSA determines that the vehicle has not been brought into conformity with all such standards within 120 days after importation, then I state that I will deliver such vehicle to the Secretary of Homeland Security for export, or abandon it to the United States [591.6], and that:  
a. I have registered with NHTSA pursuant to 49 CFR Part 592 and such registration is not suspended and has not been revoked; or  
b. I have executed a contract or other agreement, which is attached to this declaration, with an importer who has registered with NHTSA and whose registration is not suspended and has not been revoked. [591.5(i)]  
**Attachments:** Copy of DOT Bond, and Copy of Contract with a Registered Importer, if applicable.
- 4. The vehicle or equipment does not conform to all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards, but is intended solely for export and is labeled for export on the vehicle or equipment item, and the outside of any container of the vehicle or equipment item bears a label or tag to that effect. [591.5(c)]
- 5. The vehicle or equipment does not conform to all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards, but I am eligible to import it because all of the following conditions exist:  
a. I am a nonresident of the United States and the vehicle is registered in a country other than the United States;  
b. I am temporarily importing the vehicle for personal use for a period not to exceed 1 year, and will not sell it during that time; and  
c. I will export it not later than the end of 1 year after entry, and the declaration contains my passport number and country of issue. [591.5(d)]  
d. Passport No. \_\_\_\_\_ Country of Issue \_\_\_\_\_
- 6. The vehicle does not conform to all applicable Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards, but I am eligible to import it because all of the following conditions exist:  
a. I am a member of a foreign government on assignment in the United States, or a member of the Secretariat of a public international organization so designated under the International Organizations Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State;  
b. I am importing the vehicle on a temporary basis for my personal use, and will register it through the Office of Foreign Missions of the Department of State;  
c. I will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph;  
d. I will obtain from the Office of Foreign Missions of the State Department, before departing the United States at the conclusion of a tour of duty, an ownership title to the vehicle good for export only; and  
e. I have attached a copy of my official orders. [591.5(h)(1)]  
Name of Embassy: \_\_\_\_\_  
**Attachment:** Copy of Official Orders.
- 7. The vehicle or equipment does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but is being imported solely for the purpose of research, investigations, demonstrations or training, or competitive racing events, and I state that I will comply with the applicable restrictions on importers of such merchandise as specified in 49 CFR 591.7 and I will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States. [591.5(j)]  
**Attachment:**  
a. Copy of NHTSA permission letter if the importer is not an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to conform to all applicable Federal Motor Vehicle Safety Standards (FMVSS). Use on the public roads must be authorized specifically [591.6(X)(1) or (2)].  
b. Importer's statement describing the use to be made of the vehicle or equipment item if the importer is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to conform to all applicable FMVSS. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose that makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported. [591.6(X)(3)].
- 8. The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards or the equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal Motor Vehicle Safety Standards. [591.5(a)]  
**Attachment:** Importer's statement substantiating that the vehicle was not manufactured for use on the public roads, or that the equipment item was not manufactured for use on a motor vehicle or is not an item of motor vehicle equipment. [591.6(a)].
- 9. The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and any part of such vehicle that is required to be marked by the Theft Prevention Standard is marked in accordance with that standard. [591.5(e)]  
**Attachment:** For a vehicle, a copy of the incomplete Vehicle Document, issued by the incomplete vehicle manufacturer, providing guidance on completing the vehicle so that it conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS). For an equipment item, a statement issued by the item's manufacturer identifying the applicable FMVSS to which the item does not conform and describing the further manufacturing required for the item to perform its intended function. [591.6(b)].
- 10. The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards but is being imported solely for the purpose of show and display, and I state that I will comply with all applicable restrictions on importers of such vehicles as specified in 49 CFR 591.7. [591.5(f)]  
**Attachment:** Copy of NHTSA Permission Letter.
- 11. The equipment item is subject to the Theft Prevention Standard and is marked in accordance with the requirements of 49 CFR Part 54.1. [591.5(k)]
- 12. The vehicle does not conform to all applicable Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards, but I am eligible to import it because all of the following conditions exist:  
a. I am a member of the armed forces of a foreign country on assignment in the United States;  
b. I am importing the vehicle on a temporary basis, and for my personal use;  
c. I will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph;  
d. I will export the vehicle upon departing the United States at the conclusion of my tour of duty; and  
e. I have attached a copy of my official orders. [591.5(h)(2)]  
**Attachment:** Copy of Official Orders.
- 13. The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but does conform to applicable Federal Theft Prevention Standards, and I am eligible to import it because I am registered with NHTSA pursuant to 49 CFR Part 592 and such registration is not suspended and has not been revoked; I have informed NHTSA that I intend to petition, or I have petitioned, that agency to decide that the vehicle to be imported is eligible for importation, and NHTSA has granted me permission in writing to import the vehicle for that purpose. If the Administrator of NHTSA dismisses my petition, or decides that the vehicle is not eligible for importation, or if I withdraw my petition or I fail to submit a petition covering the vehicle within 150 days from the date of entry, then I state that I will deliver such vehicle, unless it is destroyed, to the Secretary of Homeland Security for export, or abandon it to the United States, within 30 days from the date of the dismissal, denial, or withdrawal of my petition, as appropriate, or within 210 days from the date of entry if I fail to submit a petition covering the vehicle. If the Administrator of NHTSA grants my petition, then I state that within 15 days from the date that I am notified of that decision, I will furnish a bond, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury, unless the vehicle is destroyed, to ensure that I will bring the vehicle into conformity with all applicable Federal Motor Vehicle Safety and Bumper standards within 120 days from the date the petition is granted, or will deliver the vehicle to the Secretary of Homeland Security for export, or abandon it to the United States. If the vehicle is destroyed, then I state that I will furnish NHTSA with documentary proof of that destruction within 15 days from the date that it occurs.  
**Attachment:** Copy of NHTSA permission letter.

NAME OF IMPORTER <i>(Please type)</i>	IMPORTER'S ADDRESS <i>(Street, City, State, Zip Code)</i>	
NAME OF DECLARANT <i>(Please type)</i>	DECLARANT'S ADDRESS	
DECLARANT'S CAPACITY	DECLARANT'S SIGNATURE	DATE SIGNED

EPA Requirements: Importers of motor vehicles/engines and nonroad vehicles/engines/equipment must also submit EPA form 3520-1 or 3520-21 to U.S. Customs and Border Protection to identify the basis for importation into the United States and U.S. territories under the laws administered by the United States Environmental Protection Agency. For more information, please see [www.epa.gov/otaq/imports/index.htm](http://www.epa.gov/otaq/imports/index.htm).

# Appendix D

## Form OP-1(P)

### INSTRUCTIONS FOR FORM OP-1(P) APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY

These instructions will assist you in preparing accurate and complete application filings. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. The application must be typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

**PAPERWORK BURDEN.** It is estimated that an average of 2 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Federal Motor Carrier Safety Administration (FMCSA), Licensing Team, Suite 8214, 400 7<sup>th</sup> Street, SW, Washington DC 20590. This collection of information is required in order for the FMCSA to obtain data and register for-hire motor carriers of passengers and certain U.S.-based Mexican-owned enterprise passenger carriers. Please note that an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently-valid OMB control number. The OMB control number for this collection is 2126-0016

**SECTION I FMCSA AUTHORITY.** If you now have any former Interstate Commerce Commission (ICC), Federal Highway Administration (FHWA), Office of Motor Carrier Safety (OMCS), or Federal Motor Carrier Safety Administration (FMCSA) authority or have an application for authority being processed now by the FMCSA, check the "YES" box and indicate the docket or the MC number you have been assigned. Example: MC-987654.

**APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME.** The applicant's name should be your full legal business name – the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Transit, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Transit" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about regulated carriers, it is important that you spell, space, and punctuate any name the same way each time you write it. Example: John Jones Transit Co., Inc.; J. Jones Transit Co., Inc.; and John Jones Transit are considered three separate companies.

**BUSINESS ADDRESS/MAILING ADDRESS.** The business address is the physical location of the business. Example: 756 Bounty Street; 15433 State Highway 23. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P.O. Box 3721. NOTE: To receive pertinent FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify the Federal Motor Carrier Safety Administration in writing (Licensing Team, Suite 8214, 400 7<sup>th</sup> Street S.W., Washington, DC 20590) if the business or mailing address changes.

**REPRESENTATIVE.** If someone other than the applicant is preparing this form, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the contact person if there are questions concerning this application.

**USDOT NUMBER.** Applicants subject to the Federal Motor Carrier Safety Regulations are required to register with the U.S. Department of Transportation (U.S. DOT) for a USDOT number before initiating service. Motor carriers that already have been issued a USDOT number should provide it; applicants that have not obtained a USDOT number should refer to the "Additional Assistance" part of these instructions.

**FORM OF BUSINESS.** A business is either a corporation, sole proprietorship or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the owner is the authority applicant. If the business is a partnership, provide the name of each partner.

**INSTRUCTIONS FOR FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY**

- 
- SECTION II**     **TYPE OF AUTHORITY.** Check the appropriate box(es) for the type(s) of authority you are requesting. Note: A separate filing fee is required for each type of authority requested. See "Fee Policy" in the application form.
- 
- SECTION III**     **INSURANCE INFORMATION.** Check the appropriate box that describes the seating capacity of your vehicles. If all the vehicles you operate have a seating capacity of 15 passengers or fewer, you are required to maintain \$1,500,000 minimum liability coverage. If any one of the vehicles you operate has a seating capacity of 16 passengers or more, you are required to maintain \$5,000,000 minimum liability coverage.
- Appropriate insurance forms must be filed within **90 days** after the date the notice of your application is published in the *FMCSA Register*. Form BMC-91 or BMC-91X for bodily injury and property damage.
- The FMCSA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.
- 
- SECTION IV**     **SAFETY CERTIFICATION.** Applicants for motor passenger carrier authority must complete the safety certification. You should check the YES response only if you can attest to the truth of the statements. The "Applicant's Oath" at the end of the application form applies to all certifications, and false certifications are subject to the penalties described in that oath.
- If you are exempt from the U.S. DOT safety fitness regulations, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles.
- You must check only one of the boxes in this section.
- 
- SECTION V**     **FITNESS CERTIFICATION.** You must complete the appropriate fitness certification.
- 
- SECTION VI**     **FUNDING STATUS.** All applicants must disclose their funding status. If you are a public recipient applicant, you must submit the additional evidence indicated. (This evidence should be provided on a separate sheet of paper attached to your application.)
- 
- SECTION VII**     **SCOPE OF OPERATING AUTHORITY.** When developing passenger service descriptions, the following guidelines may be useful:
- Special and charter operations and contract carrier operations generally are conducted over irregular routes (*i.e.*, authority that is not restricted to particular roads or highways), between points in the United States.
- Other passenger carrier operations generally are performed over regular routes (*i.e.*, authority to perform regularly scheduled service between designated points and operating over named roads or highways).
- Intrastate motor passenger applicants -- If you also request intrastate, regular-route authority, you must send a description of the proposed service to the state transportation regulatory body of the State(s) in which the operations described in the application will be performed.
- 
- SECTION VIII**     **AFFILIATIONS.** All applicants must disclose pertinent information concerning their affiliations, if any, with other former ICC, FHWA, or OMCS; now FMCSA-licensed entities.
-

**INSTRUCTIONS FOR FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY**

**SECTION IX**      **APPLICANT'S OATH.** Applications may be prepared by the applicant or an authorized representative. In either case, the oath must be signed by the applicant. In the case of companies, an authorized employee in the ownership structure may sign. An individual with power of attorney to act on behalf of the applicant may sign, provided that proof of the power of attorney is submitted with the application.

**LEGAL  
PROCESS  
AGENTS**      All applicants must designate a process agent in each State where operations are authorized. Process agents who will accept legal filings on applicant's behalf are designated on FMCSA Form BOC-3. Form BOC-3 must be filed within **90 days** after the date the notice of the application is published in the *FMCSA Register*.

**STATE  
NOTIFICATION**      Before beginning new or expanded interstate operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various State rules applicable to interstate authorities. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Begin this process by contacting the transportation regulatory agency for the State in which your business is located.

**MAILING  
INSTRUCTIONS**      To file for authority, you must submit an **original** of this application with the appropriate filing fee to the Federal Motor Carrier Safety Administration.

**NOTE: RETAIN A COPY OF THE COMPLETED APPLICATION FORM AND ANY ATTACHMENTS FOR YOUR OWN RECORDS.**

Mailing address for applications:

**ALL DOCUMENTS WITH FEES ATTACHED:**  
Federal Motor Carrier Safety Administration  
P.O. Box 70935  
Charlotte, NC 28272-0935

**FOR EXPRESS MAIL ONLY**  
QLP Wholesale Lockbox - NC0810  
Lockbox #70935  
1525 West WT Harris Blvd.  
Charlotte, NC 28262

**FOR CREDIT CARD USERS ONLY:**  
Federal Motor Carrier Safety Administration  
Licensing Team – Room 8214  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590

**INSTRUCTIONS FOR FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY**

**ADDITIONAL  
ASSISTANCE**

**FMCSA INFORMATION SOURCES**

Additional information on obtaining operating authority or monitoring the status of your applications is available through the Automated Response Capability (ARC) telephone system. After dialing (202) 358-7000, press 1, then request appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas

<u>Information Application for Operating Authority</u>	<u>Menu Number</u>
<ul style="list-style-type: none"> <li>▪ Status of your application (NOTE: Tracking the Status of your application can be simplified and expedited if you refer to the assigned <u>docket number</u> or MC number when making inquiries. You will be informed of your docket number by letter sent on the date the notice of your application appears in the <i>FMCSA Register</i>.)</li> </ul>	1
<ul style="list-style-type: none"> <li>▪ Assistance in filing your application</li> </ul>	3
<ul style="list-style-type: none"> <li>▪ Status of insurance and process agents filings</li> </ul>	2

If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FMCSA staff member who will be able to assist you in other areas.

**USDOT Number and Safety Ratings**

- To obtain information on obtaining a USDOT number (filing Form MCS-150) or to request a safety fitness review, write to:

Director, Office of Data Analysis and Information Systems  
Federal Motor Carrier Safety Administration  
400 7<sup>th</sup> Street, SW – MC-RIS  
Washington, DC 20590

- To register online go to [https://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_registration.prc\\_option](https://li-public.fmcsa.dot.gov/LIVIEW/pkg_registration.prc_option)
- Or call (800) 832-5600 (Automated Response Systems)
- For information concerning a carrier's assigned safety rating, call: (800) 832-5600 or go to [www.saftersys.org](http://www.saftersys.org)

Federal Motor Carrier Safety Administration  
FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY

This application is for all individuals and businesses requesting authority to operate as motor passenger common or contract carriers.

Docket No. MC- _____
Filed _____
Fee No. _____
CC Approval No. _____

SECTION I  
Applicant Information

Do you now have authority from or an application being processed by the former ICC, FHWA, OMCS, or FMCSA?

No  Yes If yes, identify the lead docket number(s) \_\_\_\_\_

LEGAL BUSINESS NAME \_\_\_\_\_

DOING BUSINESS AS NAME \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

Street Name and Number City State Zip Code Telephone Number ( ) \_\_\_\_\_

MAILING ADDRESS (if different from above)

Street Name and Number City State Zip Code \_\_\_\_\_

REPRESENTATIVE (Person who can respond to inquiries)

Name and title, position, or relationship to applicant \_\_\_\_\_

Street Name and Number City State Zip Code \_\_\_\_\_

( ) Telephone Number ( ) Fax Number \_\_\_\_\_

USDOT Number (if available; if not, see Instructions.) \_\_\_\_\_

FORM OF BUSINESS (Check only one)

- Corporation State of Incorporation \_\_\_\_\_
- Sole Proprietorship Name of Individual \_\_\_\_\_
- Partnership Identify Partners \_\_\_\_\_

**Federal Motor Carrier Safety Administration  
FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY**

**SECTION II**

You must submit a filing fee for each type of authority requested (for each box checked).

**Type of Authority**

- MOTOR PASSENGER COMMON CARRIER
- MOTOR PASSENGER CONTRACT CARRIER

**SECTION III**

**Insurance Information**

All motor passenger carrier applicants must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use vehicle with seating capacities of (check only one box):

- 16 passengers or more (\$5,000,000)
- 15 passengers or fewer only (\$1,500,000)

**SECTION IV**

**Safety Certification**

**APPLICANTS SUBJECT TO FEDERAL MOTOR CARRIER SAFETY REGULATIONS** - If you are subject to pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations at 49 CFR, Chapter 3, Subchapter B (Parts 350-399), you must certify as follows:

Applicant has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

- (1) Has in place a system and an individual responsible for ensuring overall compliance with Federal Motor Carrier Safety Regulations;
- (2) Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;
- (3) Has in place a driver safety training/orientation program;
- (4) Has prepared and maintains an accident register (49 CFR 390.15);
- (5) Is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR Part 391);
- (6) Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395 and 396);
- (7) Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR 382 and 49 CFR Part 40).

YES

**EXEMPT APPLICANTS** - If you are exempt from Federal Motor Carrier Safety Regulations, you must certify as follows:

Applicant is familiar with and will observe general operational safety guidelines, as well as any applicable State and local laws and requirements relating to the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

YES

**Federal Motor Carrier Safety Administration  
FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY**

**SECTION V**  
Compliance  
Certification

**ALL MOTOR PASSENGER CARRIER APPLICANTS** must certify as follows:  
Applicant is fit, willing, and able to provide the proposed operations and to comply with all pertinent statutory and regulatory requirements.

YES

**SECTION VI**  
Government  
Funding  
Status

Specify the nature of governmental financial assistance you receive, if any, by checking the appropriate box below. (Check only one box.)

**Public recipient** - Applicant is any of the following: any state; any municipality or other political subdivision of a state; any public agency or instrumentality of such entities of one or more state(s); an Indian tribe; and any corporation, board or other person owned or controlled by such entities or owned by, controlled by, or under common control with such a corporation, board, or person which is receiving or has ever received governmental financial assistance for the purchase or operation of any bus.

**Private recipient** - Applicant is not a public recipient but is receiving, or has received in the past, governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

**Non-recipient** - Applicant is not receiving, or using equipment acquired with, governmental financial assistance.

***Public Interest Criteria:*** Regular route applicants and private recipient applicants may introduce supplemental evidence describing how the proposed service will respond to existing transportation needs or is otherwise consistent with the public interest. Filing this evidence with the application is optional, but it may be needed later, if the application is protested.

***Public Recipient Applicants:*** All public recipient applicants for charter or special transportation must submit evidence to demonstrate either that:

- 1) No motor common carrier of passengers (other than a motor common carrier of passengers that is a public recipient of governmental assistance) is providing, or is willing and able to provide, the transportation to be authorized by the certificate; or
- 2) The transportation to be authorized by the certificate is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

Supplemental evidence should be provided on a separate sheet of paper attached to this application.

***Fitness Only Criteria:*** No additional evidence is needed from non-recipient applicants for charter and special transportation and applicants for contract carrier operations.

Federal Motor Carrier Safety Administration  
 FORM OP-1(P)  
 APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY

SECTION VII  
 Scope of  
 Operating  
 Authority

(1)  **Charter and special transportation**, in interstate or foreign commerce, between points in the United States.

(2)  **Charter and special transportation**, between points in the United States, provided by United States-based enterprises owned or controlled by persons of Mexico.

(3)  Service as a common carrier over **regular routes**. (Regular route passenger carrier authority to perform regularly scheduled service only over named roads or highways.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

(4)  Service as a common carrier over **regular routes** provided by United States-based enterprises owned or controlled by persons of Mexico.  
Applicants requesting authority to operate over regular routes - On a separate sheet of paper attached to the application, describe the specific routes over which you intend to provide regularly scheduled service. You must also furnish a map clearly identifying each regular route involved in your passenger carrier service description(s).

(5)  **Intrastate authority**

(a) Are you also requesting **intrastate authority** to provide the service described in item 3?  
 YES  NO

(b) Do you already hold **interstate authority** to provide the service described above?  
 YES  NO

(c) If you responded "YES" to 5(b) (*i.e.*, if you already hold interstate authority to provide this service), was the authority issued on or before November 19, 1982?  
 YES  NO

If you responded "YES" to 5(c), you must attach to your application a copy of the interstate authority or authorities issued on before November 19, 1982, authorizing the transportation of passengers on the routes over which you request intrastate authority. You must mark the envelope and the application in the upper right corner of the front page "90-Day Intrastate Passenger Application."

NOTE: The FMCSA has no jurisdiction to grant intrastate authority independently of interstate authority on the same routes. Also, no carrier may conduct operations under a certificate authorizing intrastate regular route service unless it actually is conducting substantial operations in interstate commerce over the same route.

(6)  Service as a **contract carrier** between points in the United States, under continuing contract(s) with persons or organizations requiring passenger transportation service;

OR

Service as a **contract carrier** between points in the United States, under continuing contract(s) with:

\_\_\_\_\_

*Contracting persons or organizations*

As a contract carrier, I will: (Check the box(es) indicating how you will meet the statutory requirements for contract carriage.)

(a)  Furnish the transportation service through the assignment of motor vehicles for a continuing period of time for the exclusive use of each group or organization served;

Federal Motor Carrier Safety Administration  
FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY

SECTION VII  
Scope of  
Operating  
Authority  
(Cont'd)

(b)  Furnish the transportation service designed to meet the distinct needs of each group, organization, or class of groups or organizations. Describe briefly the distinct need(s) below and/or introduce supplemental supporting evidence to identify service needs corresponding to the operations proposed.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(7)  Alternative Service Descriptions

If you request authority that is not covered by items 1-6 above, (*i.e.*, authority to operate in specific territories not identified in the service options previously set forth), describe in the space below.

\_\_\_\_\_

\_\_\_\_\_

This service description takes into account the applicant's operational capacity, is responsive to applicant's present and prospective service interest, is not unduly restrictive, and is consistent with the purposes of the Interstate Commerce Act. Certify by checking:

YES

SECTION VIII  
Affiliations

**AFFILIATION WITH OTHER FORMER ICC, FHWA, OR OMCS; NOW FMCSA-LICENSED ENTITIES.** Disclose any relationship you have or have had with any other former ICC, now FMCSA-licensed entity within the past 3 years. For example, this could be through a percentage of stock ownership, a loan, or a management position. If this requirement applies to you, provide the name of the company, MC-number, DOT number, and that company's latest U.S. DOT safety rating. (If you require more space, attach the information to this application form.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SECTION IX  
Applicant's  
Oath

This oath applies to all supplemental filings to this application. The signature must be that of applicant, not legal representative.

I, \_\_\_\_\_, verify under penalty of perjury, under  
*Name and title*

the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

Federal Motor Carrier Safety Administration  
FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY

SECTION IX  
Applicant's  
Oath  
(Cont'd)

Finally, I certify that applicant is not domiciled in Mexico or owned or controlled by persons of that country. (Note: This portion of the Applicant's Oath does not pertain to Mexican passenger carriers seeking to provide charter and tour bus service across the United States - Mexico international border or U.S.-based enterprises owned or controlled by persons of Mexico seeking to provide bus services between points in the United States.)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Federal Motor Carrier Safety Administration  
FORM OP-1(P)  
APPLICATION FOR MOTOR PASSENGER CARRIER AUTHORITY

Filing Fee Information

All applicants must submit a filing fee for each type of authority requested. The enclosed fee schedule will show the appropriate filing fee. The total amount due is equal to the fee times the number of boxes checked in *Section II*. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in *Section II* \_\_\_\_\_ x filing fee \$ \_\_\_\_\_ = \$ \_\_\_\_\_

INDICATE AMOUNT \$ \_\_\_\_\_ AND METHOD OF PAYMENT

CHECK or  MONEY ORDER, payable to: Federal Motor Carrier Safety Administration

VISA  MASTERCARD

Credit Card Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Fee Policy

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for **each type of authority requested**. If applicant requests multiple types of permanent authority on one application form (for example, common and contract carrier authority) or if applicant submits more than one form in the OP-1 Series in a single filing, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be sent, along with the original of the application, to Federal Motor Carrier Safety Administration, P.O. Box 409934, Atlanta, GA 30384-9934.
- **For express mail only:** Bank of America, Attention: DOT-Motor Carriers, Lockbox #409934, 6000 Feldwood Road, College Park, GA 30349.
- **For credit card only:** FMCSA, Licensing Team, Suite 8214, 400 7<sup>th</sup> Street, SW, Washington, DC 20590.
- After an application is received, the filing fee is not refundable.
- The FMCSA reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. The application will not be processed until the fee is paid in full.

## Appendix E

### **FMCSA Postaccident Compliance Review of International Charter Services, Inc.**

The Federal Motor Carrier Safety Administration (FMCSA) conducted a postaccident compliance review of International Charter Services, Inc. (International), on January 24, 2008, resulting in an overall rating of “conditional.” The following violations, shown in table E-1, were discovered during the review and are keyed to relevant sections of Part 49 *Code of Federal Regulations*.

**Table E–1.** Violations found in January 2008 compliance review.

<b>Acute and Critical Violations<sup>a</sup></b>	
<b>CFR Reference</b>	<b>Deficiency Noted</b>
<b>383.37(a)—Acute</b>	Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license that is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle. (Example given: Accident driver on January 1, 2008, accident trip.)
<b>391.51(b)(2)—Critical</b>	Failing to maintain inquiries into driver's driving record in driver's qualification file.
<b>396.11(a)—Critical</b>	Failing to require driver to prepare driver vehicle inspection report.
<b>Other Violations</b>	
<b>CFR Reference</b>	<b>Deficiency Noted</b>
<b>382.105 (Primary) 40.13(c)/ 40.47(a) (Secondary)</b>	Failing to ensure that alcohol or controlled substances testing complies with the procedures set forth in 49 CFR Part 40.
<b>382.301(a)</b>	Using a driver before the motor carrier has received a negative preemployment controlled substance test result.
<b>382.303(d)(1)</b>	Failing to prepare and maintain on file a record stating the reasons the alcohol postaccident test was not properly administered.
<b>383.35(b)</b>	Failing to request employment history information for the last 10 years preceding the date of the application for employment.
<b>391.21(a)</b>	Using a driver who has not completed and furnished an employment application.
<b>391.23(e)(1)</b>	Failing to investigate the driver's alcohol and controlled substance history for the previous 3 years.
<b>391.25(c)(2)</b>	Failing to maintain a record of annual review in the driver's qualification file.
<b>391.51(b)(1)</b>	Failing to maintain the driver's employment application in driver's qualification file.
<b>391.51(b)(3)</b>	Failing to maintain a road test certificate in the driver's qualification file or a copy of the license or certificate that the motor carrier accepts as equivalent.
<b>391.51(b)(5)</b>	Failing to maintain a note relating to the annual review of the driver's driving record, as required by 49 CFR 391.25(c)(2).
<b>391.51(b)(6)</b>	Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances, as required by 49 CFR 391.27.
<b>392.16</b>	Failing to use seat belt while operating a commercial motor vehicle.
<b>395.8(e)</b>	Maintaining false reports of record-of-duty status.
<b>395.8(f)</b>	Failing to require a driver to prepare a record-of-duty status in the form and manner prescribed.
<b>395.8(i)</b>	Failing to require the driver to forward, within 13 days of completion, the original of the record-of-duty status.
<b>396.3(b)(1)</b>	Failing to keep a maintenance record that identifies the vehicle, including make, serial number, year, and tire size.
<b>396.11(c)</b>	Failing to correct safety-related defects listed on vehicle inspection reports(s).

<sup>a</sup>Recurring violations of the same or related acute or critical regulations that result in three enforcement actions within a 6-year period will trigger the maximum penalties allowed by law to be assessed for the third enforcement action.

## Safety Rating Factors

The FMCSA rated International as follows on the six safety rating factors in the January 2008 postaccident compliance review:

**Table E-2.** FMCSA safety compliance ratings for International.

Factor	Rating	Acute	Critical
1—General	Satisfactory	0	0
2—Driver	Unsatisfactory	1	2
3—Operational	Satisfactory	0	0
4—Vehicle	Conditional	0	1
5—Hazardous materials	N/A	0	0
6—Accident rate	Satisfactory	--	--

## FMCSA Remarks

The FMCSA made the following remarks regarding International's operations in the January 2008 postaccident compliance review:

International Charter Services, Inc. (ICSI) was contacted at approximately 1:00 pm on 01/02/08 via a face to face meeting with [the owner of Transportes Chavez]. [The owner of Chavez] is the Manager of the company. The CR began the next morning at the carrier's PPOB [Principal Place of Business]. Prior to meeting [the Manager], a couple of hours were spent at a terminal being operated by Capricorn Bus Lines, Inc. At this location a CMV bus marked with ICSI name and USDOT # were viewed and a log book indicating ICSI was the carrier was obtained. This info was given to the division and an address for ICSI was obtained. During the initial meeting...[the Manager] stated the crash was the responsibility of ICSI and the bus was being operated by ICSI. He went on to state he was the manager of ICSI and that he would be available to provide any and all records for the review. FMCSA records indicate that [the Manager] has been the subject of two CRs as the President of Transportes Chavez Incorporated. He received a satisfactory rating on both occasions.

The investigation revealed that the carrier has two different types of CMV bus operations going on at the same time. The carrier operates a charter business and a dedicated scheduled bus service. The charter business has been in operation since the beginning and it is where the company originated at. This part of the operation is run from the PPOB on Archer Rd and a terminal shared with Transportes Chavez Incorporated one block away. [The owner of Chavez's] son runs the charter operation. [The owner of Chavez's] common law wife...is the only corporate officer for ICSI. This is a recent change. [The owner of Chavez] was originally listed as a

Director for ICSI. He stated he had his name removed from being a Director. The carrier has one bus dedicated to charters. They do approximately 5 trips a month. Last year the company partnered with Capricorn Bus Lines and began operating 1–2 daily scheduled runs from Houston to Monterrey, MX....This part of the operation is run by [the owner of Capricorn] and his extended family. [The owner of Capricorn] owns 4 buses and leases them to ICSI. [The owner of Capricorn's] 2 sons, a daughter and several other extended family members work in the office selling tickets and managing the day to day operations of the business. At least one bus leaves Houston, TX everyday going to a Capricornio Bus Lines terminal in Monterrey, MX. A bus then returns to Houston from Monterrey everyday.

The carrier estimated the company gross revenue and mileage using this schedule run plus the charters.

## Appendix F

### Compliance Review Process and Safety Ratings

The Federal Motor Carrier Safety Administration (FMCSA) requires a motor carrier to have management controls that comply with applicable safety requirements and uses a rating formula to determine a motor carrier's safety fitness. The FMCSA identifies high-risk carriers through on-site compliance reviews and roadside program inspections of a carrier's vehicles and drivers.

#### Compliance Review Process

The safety fitness rating process begins with a compliance review conducted by the FMCSA, as specified in 49 *Code of Federal Regulations* (CFR) Part 385, appendix A. A carrier may be selected for a compliance review if it is identified as a high-risk carrier because of (1) a Motor Carrier Safety Status Measurement System (SafeStat) score,<sup>1</sup> (2) a complaint against the company, (3) an enforcement followup, (4) involvement in a fatal accident, or (5) involvement in a major hazardous materials accident. In addition, a carrier may be selected as a result of a U.S. Department of Transportation Office of Inspector General request, a congressional inquiry, or a carrier's request.

#### Safety Rating Process

The FMCSA applies six factors (general, driver, operational, vehicle, hazardous materials, and accident rate) to rate a carrier's compliance with the *Federal Motor Carrier Safety Regulations* (FMCSRs), determining the degree to which a carrier complies with the FMCSRs and meets the Federal safety fitness standards. (See table F-1.) Within each factor, the FMCSRs are rated as either acute<sup>2</sup> or critical<sup>3</sup> regulations, in accordance with 49 CFR Part 385, appendix B II(b). Each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the compliance review will be assessed one point.<sup>4</sup> Two points are assessed for noncompliance with a "critical" regulation in 49 CFR Part 395 for hours of service. According to the FMCSA, noncompliance with acute regulations and patterns of noncompliance with critical regulations are quantitatively linked to inadequate safety

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<sup>1</sup> The SafeStat analysis program uses data from Federal and state sources, including roadside inspections, accident data, and enforcement actions to develop a safety fitness assessment for all carriers.

<sup>2</sup> Acute violations of the FMCSRs (or Hazardous Materials Regulations) are defined as those that demand immediate corrective action, such as requiring or permitting the operation of an out-of-service (OOS) vehicle before repairs are made, regardless of the motor carrier's overall safety posture.

<sup>3</sup> Critical violations indicate deficiencies in the motor carrier's management controls, such as requiring or permitting a driver to drive after having been on duty for 15 hours (49 CFR 396.9(c)(2)).

<sup>4</sup> A pattern is more than one violation. When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

management controls and usually higher-than-average accident rates.<sup>5</sup> The FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine a motor carrier's adherence to the safety fitness standard in §385.5.

**Table F-1.** Factors for FMCSA safety compliance.

Factor	Applicable FMCSRs and Other Criteria
1—General	Parts 387 and 390
2—Driver	Parts 382, 383, and 391
3—Operational	Parts 392 and 395
4—Vehicle	Parts 393 and 396 and OOS rate
5—Hazardous materials	Parts 107, 171, 173, 177, 180, and 397
6—Accident rate	Recordable accident rate

The ratings for all six factors are given equal weight and entered into a rating table. Table F-2 summarizes the FMCSA rating process.<sup>6</sup> Once the compliance review is finished and violations or deficiencies (the number of acute or critical regulations not complied with by the carrier) are tallied, a safety rating of satisfactory, conditional, or unsatisfactory is computed for each applicable factor. The Compliance Analysis and Performance Review Information (CAPRI) computer program is used to organize and record compliance information and determine the proposed safety rating.<sup>7</sup>

<sup>5</sup> For further explanation of the safety rating process, see <<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=r49CFR385AppendixB>>, accessed August 25, 2009.

<sup>6</sup> For more detailed information on the safety fitness procedures, see <<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/FmcsrGuideDetails.aspx?menukey=385>>, accessed August 25, 2009.

<sup>7</sup> The compliance review itself is conducted at the carrier's business location; the actual safety rating is determined and issued by FMCSA headquarters in Washington, D.C.

**Table F-2.** Motor carrier safety ratings.

Number of Factors With Unsatisfactory <sup>a</sup> Ratings	Number of Factors With Conditional <sup>b</sup> Ratings	Safety Rating
0	2 or less	Satisfactory <sup>c</sup>
0	More than 2	Conditional
1	2 or less	Conditional
1	More than 2	Unsatisfactory
2 or more	0	Unsatisfactory

<sup>a</sup>An unsatisfactory rating indicates that the carrier has violated two or more acute regulations or has a pattern of noncompliance with two or more critical regulations.

<sup>b</sup>A conditional rating indicates that the carrier has violated one acute regulation or has a pattern of noncompliance with critical regulations.

<sup>c</sup>A satisfactory rating indicates that the carrier has not violated any acute regulations or shown a pattern of noncompliance with critical regulations.

The rating table establishes the motor carrier's overall final safety rating: as satisfactory, conditional, or unsatisfactory. When the FMCSA issues a final unsatisfactory safety rating to an owner or operator of a commercial vehicle that is designed or used to transport passengers, the carrier is deemed unfit to operate and is allowed 45 days to correct the violation. If no proof of correction is submitted within the 45-day timeframe, beginning on the 46th day after the date of the unsatisfactory safety rating, the carrier remains unfit and may not operate in interstate commerce and may not reestablish interstate operations until proving itself fit for such transportation.

Because of their importance to safe motor carrier operations, the NTSB is particularly interested in how the ratings for driver and vehicle factors are calculated. For factor 4, vehicle, the carrier's OOS rate is determined by the number of vehicles placed out of service in relation to the number of vehicles inspected roadside. The number of roadside vehicle inspections depends on the number of vehicles in a carrier's fleet. Only the most recent (the past 12 months in chronological order) roadside inspections are applied toward the OOS calculation.<sup>8</sup> If a carrier's OOS rate exceeds 34 percent, and the carrier has a pattern of critical or acute violations or both, the carrier's rating is "unsatisfactory." If the carrier's OOS rate exceeds 34 percent, but the carrier does not have a pattern of violations, the carrier's rating is "conditional." If the carrier's OOS rate is less than 34 percent, the carrier receives a "satisfactory" rating unless the carrier has a pattern of critical or acute vehicle violations or both, in which case the carrier's rating is still conditional.

Factor 6, accident rate, may be either satisfactory or unsatisfactory; a conditional rating is not given. The recordable accident rate is calculated by multiplying the number of interstate, reportable accidents for the 12 months prior to the compliance review by

<sup>8</sup> For example, a motor carrier with 20 vehicles would require a minimum of 5 vehicle inspections, and the 5 most recent inspections for the past 12 months or since the last compliance review would be used to calculate the carrier's OOS rate. These inspections may have been conducted during a roadside inspection or at the carrier's terminal.

1 million and dividing that number by the fleet's total interstate miles. If a carrier's accident rate exceeds 1 per 1.5 million miles for a company that operates over a 100-mile radius or 1 per 1.7 million miles for a company that operates in less than a 100-mile radius, an unsatisfactory rating is given.<sup>9</sup> The NTSB has investigated numerous accidents where driver and vehicle factors were involved, which will be discussed in more detail in the sections that follow.

## **NTSB Recommendation History on the FMCSA Compliance Review Process**

The FMCSA compliance review uses a computer tabulation program to identify adherence to the FMCSRs for each rating factor, placing weighted numerical value only on violations of acute or critical regulations. Unrated violations—those that are noncritical or nonacute—are not given weight and therefore are not factored<sup>10</sup> into the tabulation; the FMCSA does not consider a motor carrier's violations of many FMCSRs to be an indication of safety management practices. In other words, if a carrier displayed a pattern of 100-percent noncompliance for every nonrated safety regulation violation, its overall safety rating would not be affected. This rating methodology is inconsistent with the FMCSA's stated purpose of the compliance review, which is to make sure that a motor carrier has adequate safety management controls in place to ensure compliance with all applicable Federal safety requirements.

The two most important factors in safe motor carrier operations are the operational status of the vehicles (buses) and the performance of the individuals who drive them. However, the FMCSA compliance review process does not accurately determine a motor carrier's safety fitness because it does not factor in the rate of a carrier's driver OOS orders from roadside inspections, and it includes only a limited amount of vehicle inspection data. Increasing the weight of performance data for driver and vehicle factors in compliance reviews is important because deficiencies in these factors are directly related to accidents.

As was discussed in the Victoria, Texas, accident summary report, the NTSB has investigated a number of accidents and found that several unsafe carriers were permitted to continue operating as a result of a final satisfactory compliance review safety rating regardless of driver- or vehicle-related safety violations. Two key recommendations in

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<sup>9</sup> The FMCSA defines a recordable accident as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce that results in a fatality, a bodily injury, or a vehicle incurring disabling damage that requires it to be towed from the scene (49 CFR 390.5). The accident threshold for a satisfactory rating is 1 per 1.7 per million miles for carriers operating within 100 air miles of their home terminal (49 CFR Part 385, appendix B, [B] accident factor [d]).

<sup>10</sup> When asked during the NTSB's public hearing on the "Motorcoach Accident and Selected Federal Motor Carrier Safety Administration Oversight Issues, Wilmer, Texas," regarding how the FMCSA determines whether an FMCSR violation by a motor carrier is acute, critical, or unrated, an FMCSA field administrator stated that the agency determines certain regulations to be critical or acute depending on the relative risks of an accident (whether violation of those particular regulations would place a carrier at risk for an accident).

this area, which are being reiterated in the Victoria accident report, are further discussed in the sections that follow.

### **Safety Recommendation H-99-6**

In 1995, the NTSB investigated an accident in Indianapolis, Indiana,<sup>11</sup> in which a motorcoach overturned when it entered an exit ramp; 2 passengers were killed, and 13 were seriously injured. The Federal Highway Administration (FHWA) Office of Motor Carriers (now the FMCSA) conducted a postaccident compliance review of the operator, Hammond Yellow Coach Lines, Inc. (Hammond), which resulted in an unsatisfactory rating (10 out of 10 vehicles reviewed were placed out of service). Hammond had had significant safety problems before the accident and yet was still permitted to operate. From 1987–1995, the Office of Motor Carriers had inspected Hammond nine times, and the carrier continued to receive final safety fitness ratings of satisfactory, even though several compliance reviews documented hours-of-service violations and high numbers of vehicles (63 percent) meeting OOS criteria. Following the Indianapolis accident, the NTSB recommended that the U.S. Department of Transportation (DOT):

Change the safety fitness rating methodology so that adverse vehicle or driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for a carrier. (H-99-6)

On December 14, 1999, the FHWA responded that it expected to issue a notice of proposed rulemaking (NPRM) that would establish a more performance-based means of determining carrier fitness to conduct commercial motor vehicle operations. The agency stated that it would take into account the NTSB's recommendation, including any comments received, in developing a new system. On March 17, 2000, based on the expected NPRM, the NTSB classified Safety Recommendation H-99-6 "Open—Acceptable Response." The recommendation has been on the NTSB's Most Wanted List of Transportation Safety Improvements since 2000.<sup>12</sup>

On September 4, 2002, the NTSB reiterated Safety Recommendation H-99-6 to the FMCSA as a result of its investigation into a 2001 accident in Mountainburg, Arkansas,<sup>13</sup> when a commercial truck, operated by Stuart Trucking (Stuart), collided with a school bus and killed three children. The FMCSA's postaccident compliance review of the motor carrier resulted in an overall conditional rating; however, the FMCSA staff did not inspect any vehicles during this review despite the fact that the accident was vehicle related. The FMCSA relied instead on the motor carrier profile report, which listed

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<sup>11</sup> *Selective Motorcoach Issues*, Special Investigation Report NTSB/SIR-99/01 (Washington, DC: National Transportation Safety Board, 1999).

<sup>12</sup> The NTSB's "Most Wanted" list is a program to increase the public's awareness of and support for action to adopt safety steps that can help prevent accidents and save lives.

<sup>13</sup> *Collision Between Truck-Tractor Semitrailer and School Bus Near Mountainburg, Arkansas, May 31, 2001*, Highway Accident Report NTSB/HAR-02/03 (Washington, DC: National Transportation Safety Board, 2002).

29 roadside inspections in the previous 12 months,<sup>14</sup> resulting in 4 OOS vehicles (14 percent). The NTSB asked the Missouri Division of Motor Vehicles and Railroad Safety to conduct an additional review of the carrier and inspect all of its vehicles. Of the 12 vehicles examined, 5 had OOS violations (42 percent). The 2001 conditional rating for Stuart underscores the failure of compliance reviews to identify unsafe carriers. At the time of the accident, Stuart had not been rated in more than 11 years. Despite having unsafe vehicles on the road and numerous driver violations, Stuart received a conditional rating (*not* unsatisfactory) even after the accident.

In June 2002, the NTSB investigated an accident in Victor, New York,<sup>15</sup> in which a motorcoach ran off the road and overturned because the driver fell asleep at the wheel. Five passengers were killed, and the driver and 41 passengers were injured. The FMCSA conducted a postaccident compliance review of the operator, Arrow Line, Inc. (Arrow), which also resulted in a conditional rating (*not* unsatisfactory). Yet the compliance review revealed that Arrow had a 40-percent OOS rate for its vehicles, and the FMCSA noted that Arrow's compliance review revealed noncompliance with the FMCSRs "in almost all applicable parts to Arrow Line, Inc.'s passenger transportation operation."

Following the NTSB's September 2002 reiteration of Safety Recommendation H-99-6 in the Victor, New York, accident report, the FMCSA advised that it intended to issue an NPRM on its safety fitness rating methodology in late 2003. In June 2004, the FMCSA notified the NTSB that it anticipated making a final determination concerning changes to the safety fitness rating methodology by the end of the year. The FMCSA also indicated that it was considering whether to seek additional comments through a supplemental advance NPRM or to proceed directly to an NPRM and that it expected to complete the rulemaking process in 2005. Following another accident investigation in April 2006 involving a carrier that received a conditional rating, though numerous driver and vehicle safety violations were found during its postaccident compliance review and the carrier was operating in violation of its revoked operating authority,<sup>16</sup> the NTSB expressed disappointment that the FMCSA had still not acted on Safety Recommendation H-99-6.

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<sup>14</sup> At the time of issuance of the NTSB report, in 2002, the FMCSA would not conduct a terminal inspection if 3 or more of a company's vehicles had received roadside inspections in the previous 12 months. The NTSB recommended that the FMCSA require that a motor carrier's fleet be inspected during compliance reviews (Safety Recommendation H-02-16).

<sup>15</sup> *Motorcoach Run-off-the-Road and Overturn, Victor, New York, June 23, 2002*, Highway Accident Report NTSB/HAR-04/03 (Washington, DC: National Transportation Safety Board, 2004).

<sup>16</sup> *Multivehicle Collision on Interstate 90, Hampshire-Marengo Toll Plaza Near Hampshire, Illinois, October 1, 2003*, Highway Accident Report NTSB/HAR-06/03 (Washington, DC: National Transportation Safety Board, 2006).

### Safety Recommendation H-07-3

On June 27, 2007, as a result of the NTSB's investigation and public hearing on the Wilmer, Texas, bus fire,<sup>17</sup> another accident involving a passenger motor carrier with numerous driver and vehicle safety violations and insufficient safety oversight of its operations, the NTSB issued the following safety recommendation to the FMCSA:

To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include all *Federal Motor Carrier Safety Regulations* in the current compliance review process so that all violations of regulations are reflected in the calculation of a carrier's final rating. (H-07-3)

The FMCSA's December 3, 2007, response acknowledged the need to establish a safety fitness determination (SFD) process that better identifies at-risk carriers than the current process under 49 CFR Part 385; however, the FMCSA believed that rather than diverting resources to issue an interim final rule on modifying the SFD process, it would be in the best interest of highway safety for the agency to focus its resources on implementing the Comprehensive Safety Analysis 2010 (CSA 2010) initiative. The FMCSA indicated that the implementation of H-07-3 in the SFD process would result in a significant increase in the number of motor carriers rated "conditional" and "unsatisfactory" without regard to crash rates and would demand a substantial increase in resources for administrative reviews to perform compliance reviews to ensure due process for motor carriers. Starting in September 2005, the FMCSA began briefing the NTSB on its plans for evaluating the compliance review process as part of CSA 2010. According to the FMCSA, CSA 2010 is designed to evaluate the effectiveness of current Federal safety compliance and enforcement programs, such as compliance reviews and roadside inspections, and to identify better methods for achieving an accident-free environment. According to the FMCSA, CSA 2010, which would include a complete evaluation of the compliance review process, should lead to the development of a new performance-based operational model for determining motor carrier safety, with an emphasis on preventative measures and early detection of unsafe driver and motor carrier conditions.

The NTSB disagreed with the FMCSA's response. Safety Recommendation H-07-3 was intended to remedy deficiencies in the current compliance review system and to help prevent unsafe motor carriers with significant regulatory violations for drivers and vehicles from continuing to still receive satisfactory ratings. Although the NTSB has been aware that the conceptual model for CSA 2010 is significantly different from the current operational model in that safety fitness ratings will be independent of the compliance review and are intended to take into account safety violations through a weighted rating system still being developed, the expected implementation date, now

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<sup>17</sup> *Motorcoach Fire on Interstate 45 During Hurricane Rita Evacuation, Near Wilmer, Texas, September 23, 2005*, Highway Accident Report NTSB/HAR-07/01 (Washington, DC: National Transportation Safety Board, 2007).

scheduled for the end of December 2010,<sup>18</sup> has allowed unsafe carriers to continue to operate. As the FMCSA is responsible for ensuring that motor carriers operate safely, temporary measures to improve the compliance review process should be put in place to account for implementation delays until new rules are enacted.

### **CSA 2010 Initiative**

The FMCSA recently updated its website with information explaining CSA 2010.<sup>19</sup> According to the posting, “CSA 2010 re-engineers the existing enforcement and compliance business process to provide a better view into how well large commercial motor vehicle (CMV) carriers and drivers are complying with safety rules, and to intervene earlier with those who are not.” The FMCSA acknowledges that the current compliance review program is resource-intensive and reaches only a small percentage of motor carriers<sup>20</sup> and that increased attention needs to be given to CMV drivers.

The FMCSA believes that CSA 2010 will address the issues in Safety Recommendations H-99-6 and H-07-3 through the development of new performance-based systems for determining motor carrier and driver safety that emphasize preventative measures, motor carrier education, and early detection of unsafe driver and carrier conditions. The Safety Measurement System, which will replace SafeStat under CSA 2010, (1) measures safety performance using all roadside inspection safety-based violations, (2) weights time and severity of violations based on relationship to crash risk, and (3) calculates safety performance in seven Behavior Analysis and Safety Improvement Categories (BASICS). These BASICS include unsafe driving, fatigued driving, driver fitness, drugs and alcohol, vehicle maintenance, cargo securement, and crash experience. The Comprehensive Intervention Process provides tools to educate carriers and compel safety compliance before crashes occur. A new safety fitness rating methodology, the SFD, is being developed through the rulemaking process. In February 2008, the FMCSA launched a pilot test of the CSA 2010 operational model in four states: Colorado, Georgia, Missouri, and New Jersey, and more states are being added as the testing continues. Preliminary results indicate that nearly half of the test carriers have logged onto the Comprehensive Safety Information System website to view their violations data, as suggested in a warning letter, and have replied to the FMCSA describing the corrective actions they have taken or are initiating in response to the warning. The FMCSA expects to complete pilot testing of its new operational model by June 2010 and to implement CSA 2010 nationwide during July through December 2010; however, until rulemaking is completed on the SFD, all enforcement action of any discovered violations must be processed through the current safety fitness methodology.

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<sup>18</sup> The implementation date for CSA 2010 was originally announced as January 1, 2010; it has since been extended to December 31, 2010.

<sup>19</sup> See <<http://csa2010.fmcsa.dot.gov/>>, accessed August 25, 2009.

<sup>20</sup> In calendar year 2005, fewer than 1 percent of the 910,866 registered motor carriers underwent compliance reviews (8,097 reviews conducted).

The NTSB is concerned with the FMCSA's continued slow progress in addressing this issue over the past 10 years. The long time between the issuance of the recommendations and final action by the FMCSA jeopardizes the safety of the traveling public through unnecessary exposure to possibly unsafe CMVs. Although the agency has assured the NTSB that it is on schedule to begin implementing the new compliance review program in 2010, until the SFD rulemaking is complete, the FMCSA must rely on the current rating system, which lacks sufficient driver and vehicle qualifications emphasis. The NTSB will continue to monitor the FMCSA's actions to recognize the importance of driver and vehicle factors in addressing motor carrier safety as CSA 2010 pilot testing continues and until the rulemaking is completed.

## Appendix G

### U.S. and European Safety Standards and U.S. Inspection Cross-References

The accident motorcoach was a Volvo manufactured in Mexico. Although the motorcoach did not meet the *Federal Motor Vehicle Safety Standards* (FMVSSs), it did meet the European vehicle manufacturing standards—Economic Commission for Europe (ECE) and European Economic Community (EEC) regulations. Table G-1 shows the FMVSSs applicable to motorcoaches; table G-2 shows European and U.S. manufacturing standard equivalents, along with the applicable Federal Motor Carrier Safety Regulation (FMCSR) inspection cross-reference.

**Table G-1.** FMVSSs applicable to motorcoaches.

Standard	Summary
<b>FMVSS 101—Controls and Displays</b>	Controls must be operable by driver with the seat belt fastened; contains requirements for telltales and indicators.
<b>FMVSS 102—Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect</b>	Vehicles equipped with automatic transmissions must have transmission braking at vehicle speeds below 40 km/h (25 mph).
<b>FMVSS 106—Brake Hoses</b>	Air brake hoses must meet performance requirements.
<b>FMVSS 108—Lamps, Reflective Devices, and Associated Equipment</b>	Lamps, reflective devices, and associated equipment must meet performance and location-on-vehicle requirements.
<b>FMVSS 111—Rearview Mirrors</b>	Rearview mirrors must have unit magnification of specified size and may have additional mirrors (such as convex).
<b>FMVSS 119—New Pneumatic Tires for Vehicles Other Than Passenger Cars</b>	Tires must meet performance and labeling requirements.
<b>FMVSS 120—Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars</b>	Tire sum of load ratings must be equal to or greater than the gross axle weight ratings to prevent vehicle overloading.
<b>FMVSS 121—Air Brake Systems</b>	Air brake systems must meet stopping distance requirements, and vehicles must be equipped with an antilock brake system.
<b>FMVSS 124—Accelerator Control Systems</b>	Removing force on an accelerator requires return to idle within specified time.
<b>FMVSS 205—Glazing Materials</b>	Glazing must meet performance requirements.
<b>FMVSS 207—Seating Systems</b>	Driver's seat must meet performance requirements.
<b>FMVSS 208—Occupant Crash Protection</b>	Driver's seat must be equipped with Type 1 or Type 2 seat belt assembly.
<b>FMVSS 209—Seat Belt Assemblies</b>	Driver's belt must meet performance requirements.
<b>FMVSS 210—Seat Belt Assembly Anchorages</b>	Seat belt assembly anchorages for driver's belt must meet strength requirements.
<b>FMVSS 217—Bus Emergency Exits and Window Retention and Release</b>	Emergency exits must meet size, location, performance, and labeling requirements.
<b>FMVSS 302—Flammability of Interior Materials</b>	Interior materials must meet performance requirements for burn resistance.

**Table G-2.** U.S. and European inspection standard cross-references.

Component	NHTSA	European	FMCSA
Controls and displays	FMVSS 101	EEC 94/53	No
Transmission shift lever sequence	FMVSS 102	None <sup>a</sup>	No
Windshield defrosting and defogging system	FMVSS 103	None	FMCSR 393.79
Windshield wiping and washing systems	FMVSS 104	None <sup>b</sup>	FMCSR 78
Hydraulic brake system	FMVSS 105	--	FMCSR 40
Brake hoses	FMVSS 106	None <sup>c</sup>	FMCSR 45
Lamps, reflective devices, and associated equipment	FMVSS 108	ECE 48-02 <sup>d</sup>	FMCSRs 24-26, 9, 11, 19, 22-23
Rearview mirrors	FMVSS 111	ECE 46-02 <sup>e</sup>	FMCSR 80
Hood latch system	FMVSS 113	--	No
Hydraulic brake fluids	FMVSS 116	--	No
New pneumatic tires for motor vehicles other than passenger cars	FMVSS 119	--	FMCSR 75
Tire selection and rims for motor vehicles other than passenger cars	FMVSS 120	EEC 92/23	FMCSRs partially cover
Air brake system	FMVSS 121	ECE 13 <sup>f</sup>	FMCSR 40-55
Accelerator control systems	FMVSS 124	None <sup>g</sup>	No
Warning devices	FMVSS 125	ECE 27 <sup>h</sup>	--
Steering control rearward displacement	FMVSS 204	--	No
Glazing materials	FMVSS 205	EEC 92/22	FMCSR 60
Seating systems	FMVSS 207	ECE 80-01 <sup>i</sup>	FMCSR 93
Occupant crash protection	FMVSS 208	--	FMCSR 93

<sup>a</sup>According to Volvo, this standard would be met if verified only for its manufactured vehicles.

<sup>b</sup>According to Volvo, this standard would be met if verified only for its manufactured vehicles.

<sup>c</sup>According to Volvo, its brake hoses are made by the same manufacturers as in the United States.

<sup>d</sup>According to Volvo, the number of lamps and locations are similar; however, FMVSS 108 is very specific and some lamps are not U.S. Department of Transportation (DOT) compliant.

<sup>e</sup>Convex mirrors are permitted.

<sup>f</sup>According to Volvo, ECE 13 is at least the equivalent of FMVSS 121; however, tests must be performed to confirm this. The fittings are most likely not DOT marked.

<sup>g</sup>According to Volvo, this standard would be met if verified only for its manufactured vehicles.

<sup>h</sup>According to Volvo, it is unknown whether the accident vehicle was delivered with ECE 27 warning devices.

<sup>i</sup>According to Volvo, ECE-80-01 is the European equivalent standard, although it is not as stringent as FMVSS 207.

Component	NHTSA	European	FMCSA
<b>Seat belt assemblies</b>	FMVSS 209	EEC 77	FMCSR 93
<b>Seat belt assembly anchorage</b>	FMVSS 210	ECE 80-01 <sup>j</sup>	FMCSR 93
<b>Bus emergency exits and window retention</b>	FMVSS 217	ECE 36 <sup>k</sup>	FMCSR 62
<b>Flammability of interior materials</b>	FMVSS 302	ECE 118 <sup>l</sup>	No

<sup>j</sup>According to Volvo, ECE-80-01 is the European equivalent standard, although it is not as stringent as FMVSS 207.

<sup>k</sup>ECE 36 regulation has the option of breakable glazing. The accident motorcoach was altered by an after-market entity to install two roof hatches and modified windows that open in order to meet FMVSS 217.

<sup>l</sup>According to Volvo, while ECE 118 is the European equivalent of FMVSS 302, the accident motorcoach was manufactured in Mexico and it is not known what materials were used to complete the interior and whether the materials would have met either standard or regulation.

## Appendix H

### U.S. and Mexico Border Crossing Data

**Table H-1.** Annual summary of southern border roadside inspections (commercial zone) for passenger-carrying vehicles in 2008.

Inspections	United States		Mexico		Totals	
	Federal	State	Federal	State	United States	Mexico
Driver	13,030	2,936	1,531	330	15,966	1,861
Driver OOS	2.8%	4.1%	11.6%	13.6%	3.0%	12.0%
Vehicle	4,811	5,665	914	272	10,476	1,186
Vehicle OOS	13.4%	21.0%	8.2%	18.8%	17.5%	10.6%

**Table H-2.** Annual summary of roadside inspections (commercial zone) for passenger-carrying vehicles in 2008 by southern border state.

Inspections	United States			Mexico		
	Federal	State	Total	Federal	State	Total
<b>Arizona</b>						
Driver	6,229	425	6,654	20	4	24
Driver OOS	1.0%	9.2%	1.5%	35.0%	0.0%	29.2%
Vehicle	835	1,976	2,811	15	4	19
Vehicle OOS	14.1%	39.9%	32.3%	33.3%	0.0%	26.3%
<b>California</b>						
Driver	232	1,008	1,240	31	132	163
Driver OOS	4.3%	2.2%	2.6%	6.5%	0.8%	1.8%
Vehicle	201	2,248	2,449	5	108	113
Vehicle OOS	24.9%	5.6%	7.1%	0.0%	17.6%	16.8%
<b>New Mexico</b>						
Driver	40	366	406	4	38	42
Driver OOS	5.0%	6.3%	6.2%	0.0%	71.1%	64.3%
Vehicle	38	236	274	3	13	16
Vehicle OOS	13.2%	5.9%	6.9%	0.0%	23.1%	18.8%
<b>Texas</b>						
Driver	6,529	1,137	7,666	1,476	156	1,632
Driver OOS	4.4%	3.2%	4.2%	11.4%	10.9%	11.4%
Vehicle	3,737	1,205	4,942	891	147	1,038
Vehicle OOS	12.6%	21.7%	14.8%	7.9%	19.7%	9.5%

DATA SOURCES: Federal Motor Carrier Safety Administration (FMCSA) Motor Carrier Management Information System (MCMIS) and June 26, 2009, snapshot, and <<http://ai.fmcsa.dot.gov/International/border.asp?redirect=FedStCommZone.asp>>, accessed September 18, 2009.

**Table H-3.** Commercial zone roadside inspections (passenger-carrying vehicles).

Inspection Level	2006	2007	2008	2009 <sup>a</sup>
Level 1: Full	3,892	3,298	3,426	1,862
Level 2: Walk-around	8,893	4,656	4,488	1,984
Level 3: Driver	16,658	12,207	9,921	4,586
Level 4: Special	12	8	3	0
Level 5: Vehicle	3,508	4,216	3,751	795
<b>Total</b>	<b>32,963</b>	<b>24,385</b>	<b>21,589</b>	<b>9,227</b>
<b>Vehicle OOS Rate</b>	<b>13.3%</b>	<b>13.0%</b>	<b>16.8%</b>	<b>12.6%</b>
<b>Driver OOS Rate</b>	<b>2.2%</b>	<b>3.5%</b>	<b>4.0%</b>	<b>3.4%</b>

<sup>a</sup>As of June 26, 2009, <<http://ai.fmcsa.dot.gov/international/border.asp?redirect=FedStInspDom.asp>>, accessed September 19, 2009.

**Table H-4.** U.S. border crossing entries of buses at U.S.–Mexican border.

State	Number of Crossings 2006		Number of Crossings 2007		Number of Crossings 2008 <sup>a</sup>	
	Number	Percent	Number	Percent	Number	Percent
Arizona	18,536	7.1%	16,913	6.4%	15,658	5.9%
California	148,998	56.7	147,367	55.6	138,855	52.1
New Mexico	2,436	0.9	2,885	1.1	2,958	1.1
Texas	92,892	35.3	97,997	36.9	108,916	40.9
<b>Total</b>	<b>262,862</b>		<b>265,162</b>		<b>266,387</b>	

<sup>a</sup>As of April 9, 2009, <<http://www.transtats.bts.gov/BorderCrossing.aspx>>, accessed September 18, 2009.

DATA SOURCES: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, Border Crossing/Entry Data, based on data from U.S. Department of Homeland Security, U.S. Customs and Border Protection Agency, Operations Management Reporting, database and <<http://ai.fmcsa.dot.gov/International/border.asp?dvar=2&cvar=bus&sy=2006&redirect=Crossings.asp>>, accessed September 18, 2009.

**Table H-5.** Annual summary of southern border roadside inspections (commercial zone) for passenger-carrying vehicles in 2009 (January 1–June 26, 2009).

Inspections	United States		Mexico		Totals	
	Federal	State	Federal	State	United States	Mexico
Driver	6,224	1,367	727	133	7,591	838
Driver OOS	2.7%	2.6%	11.8%	1.8%	2.6%	10.5%
Vehicle	2,352	1,673	498	116	4,025	614
Vehicle OOS	12.0%	14.1.0%	8.2%	21.6%	12.9%	10.7%

**Table H-6.** Annual summary of roadside inspections (commercial zone) for passenger-carrying vehicles in 2009 by southern border state (January 1–June 26, 2009).

Inspections	United States			Mexico		
	Federal	State	Total	Federal	State	Total
<b>Arizona</b>						
Driver	2,940	169	3,109	12	0	12
Driver OOS	0.9%	9.5%	1.4%	50.0%	0.0%	50.0%
Vehicle	417	146	563	10	0	10
Vehicle OOS	13.2%	6.8%	11.5%	60.0%	0.0%	60.0%
<b>California</b>						
Driver	234	298	532	15	61	76
Driver OOS	4.3%	0.7%	2.3%	6.7%	0.0%	1.3%
Vehicle	200	593	793	7	45	52
Vehicle OOS	23.5%	6.7%	11.0%	28.6%	8.9%	11.5%
<b>New Mexico</b>						
Driver	8	227	235	1	7	8
Driver OOS	25.0%	4.8%	5.5%	0.0%	28.6%	25.0%
Vehicle	44	169	213	0	6	6
Vehicle OOS	2.3%	3.0%	2.8%	0.0%	0.0%	0.0%
<b>Texas</b>						
Driver	3,042	673	3,715	699	43	742
Driver OOS	4.2%	1.0%	3.6%	11.3%	0.0%	10.6%
Vehicle	1,691	765	2,456	481	65	546
Vehicle OOS	10.6%	23.7%	14.7%	6.9%	32.3%	9.9%

DATA SOURCES: FMCSA MCMIS and June 26, 2009, snapshot, and <http://ai.fmcsa.dot.gov/International/border.asp?redirect=FedStCommZone.asp>, accessed September 18, 2009.