



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: December 29, 2009

In reply refer to: H-09-32 through -41
H-07-3 (Reiteration)
H-99-6 (Reiteration)

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Suite W60-300
Washington, D.C. 20590

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,¹ 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 (NTSB) 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

¹ See *Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008*, Highway Accident Report NTSB/HAR-09/03/SUM (Washington, DC: National Transportation Safety Board, 2009), which is available on the NTSB website at <http://www.nts.gov/pubictn/2009/HAR0903.pdf>.

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.

Driver Fatigue

The motorcoach driver's activities during the 3 days before the accident revealed that he had an inverted work/sleep cycle schedule² in order to accommodate the carrier's overnight scheduled line runs (regular routes).³ 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.⁴ Even when a shift worker has a consistent schedule and stabilized wake-sleep patterns, the risk of substandard and potentially unsafe performance substantially increases⁵ 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.^{6,7} 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.⁸

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.⁹ 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

² 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.

³ 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.

⁴ T. Akerstedt and L. Torsvall, "Shift Work. Shift-Dependent Well-Being and Individual Differences," *Ergonomics*, vol. 24, no. 4 (1981), pp. 265–273.

⁵ See <http://www.fmcsa.dot.gov/spanish/english/science_main.htm>, accessed May 7, 2009.

⁶ (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.

⁷ K.H.E. Kroemer, H.J. Kroemer, and K.E. Kroemer-Elbert, *Engineering Physiology: Bases of Human Factors/Ergonomics*, 2nd ed. (New York: Van Nostrand Reinhold, 1990), p. 176.

⁸ 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.

⁹ See <http://www.fmcsa.dot.gov/spanish/english/science_main.htm>, accessed May 7, 2009.

risk peaks in the early morning from 2:00¹⁰ to 4:00 a.m.¹¹ 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.¹²

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 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.¹³ 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 waking 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.¹⁴

¹⁰ J.A. Horne and L.A. Reyner, "Sleep Related Vehicle Accidents," *British Medical Journal*, vol. 310, no. 6979 (1995), pp. 565-567.

¹¹ G. Kecklund and T. Akerstedt, "Time of Day and Swedish Road Accidents," *Shiftwork International Newsletter*, vol. 12, no. 1 (1995), p. 31.

¹² 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).

¹³ 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).

¹⁴ 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*, 4th ed. (Philadelphia: W.B. Saunders Company, 2005).

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.

The NTSB has long been concerned with commercial driver fatigue. As a result of the NTSB's 1999 special investigation,¹⁵ the Board issued the following recommendation to the U.S. Department of Transportation (DOT):

Require that the Federal Highway Administration [FHWA]¹⁶ 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 Federal Motor Carrier Safety Administration (FMCSA) created its fatigue video in 2000, scientific understanding of fatigue and fatigue countermeasures has improved, as well as distribution methods available¹⁷ 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. Implement a plan to regularly update and redistribute the video.

Leasing Agreement Oversight

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). Eight of International's motorcoaches¹⁸ were leased from Capricorn,¹⁹ a company that did not have

¹⁵ *Selective Motorcoach Issues*, Special Investigation Report NTSB/SIR-99/01 (Washington, DC: National Transportation Safety Board, 1999).

¹⁶ Upon creation of the FMCSA, the recommendation was transferred from the FHWA to the FMCSA.

¹⁷ Such as podcasts, webinars, Internet video download, and DVDs.

¹⁸ 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.

¹⁹ 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.

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 \$12,500.²⁰ 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 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 *Federal Motor Carrier Safety Regulations* (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 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 \$5,840²¹ and was issued an overall rating of conditional. (See appendix E of the accident report²² for information on specific violations.) Further, International was given a Motor Carrier Safety Status Measurement System (SafeStat) category B rating, which is considered an "at-risk" carrier. 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

²⁰ 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.

²¹ See the FMCSA Motor Carrier Management Information System (MCMIS) Company Safety Profile Enforcement Data Report, p. 6 (July 28, 2009).

²² See NTSB/HAR-09/03/SUM on the NTSB website <<http://www.nts.gov/pubictn/2009/HAR0903.pdf>>.

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 out-of-service (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 to provide interstate for-hire transportation for more than 50 years.²³ Currently, Title 49 *Code of Federal Regulations* (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.²⁴ 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 action²⁵ while clearly running its business outside of the scope of its operating authority does not provide safety oversight of

²³ See <<http://www.fmcsa.dot.gov/about/news/testimony/tst-050608.pdf>>, accessed September 28, 2009.

²⁴ See <http://www.fmcsa.dot.gov/documents/foia/eFOTM-redacted-7-08_pg797-866.pdf>, accessed September 28, 2009.

²⁵ 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, the Texas Department of Transportation 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.

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. The NTSB further 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.

New Entrant 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 it receives a safety audit;²⁶ 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,²⁷ 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.²⁸ The FMCSA also provided additional information on how it has improved the new entrant application vetting process.²⁹ According to the FMCSA, as

²⁶ 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 it successfully completes an 18-month monitoring period.

²⁷ *Federal Register*, vol. 73, no. 242 (December 16, 2008), p. 76472.

²⁸ 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.

²⁹ FMCSA presentation by the Motor Carrier Safety Advisory Committee (December 10, 2008).

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.

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 Chavez, 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.³⁰ On October 22, 2009, the FMCSA conducted a compliance review, and the company received a satisfactory rating.

The FMCSA currently has the statutory authority to deny operating authority to an applicant who furnishes false or misleading information or conceals material information in connection with the registration process; such applicants are 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.³¹ 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

³⁰ USDOT number 1828782.

³¹ *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).

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 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 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, which could be used in conjunction with the new entrant vetting process, that includes the remedies of voiding applications, revoking registrations, and assessing 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).

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,"³² 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 Program, 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. Further, because the FMCSA's vetting process covers only new entrants, 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 implementation of the FMCSA's New Applicant Screening Process. Therefore, with the FMCSA's current process of applying the EDA algorithm to match

³² GAO-09-924.

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.

Safety Rating Methodology

The NTSB is concerned that motor carriers with significant regulatory violations for drivers and vehicles are still receiving satisfactory and conditional ratings, as was the case with the motor carrier involved in the Victoria accident; 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.

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, Texas, accident investigation,³³ 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 investigation, the NTSB made the following 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)

In addition, the NTSB reiterated another recommendation to the FMCSA.³⁴ This recommendation, which has appeared on the NTSB 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)

³³ *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).

³⁴ 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.

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,³⁵ 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. 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."

³⁵ For further information, see <<http://csa2010.fmcsa.dot.gov>>, accessed November 13, 2009.

Non-FMVSS-Compliant Passenger-Carrying Commercial Motor Vehicles

During the course of the Victoria investigation and public hearing,³⁶ the NTSB discovered that the FMCSA does not currently enforce 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. Although FMCSA representatives stated during the NTSB's public hearing that the FMCSA could effectively ensure a motor carrier's compliance with applicable *Federal Motor Vehicle Safety Standards* (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),³⁷ 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.³⁸ In its 2005 notice of proposed rulemaking (NPRM) withdrawal,³⁹ 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 the National Highway Traffic Safety Administration (NHTSA) in its 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 FMVSSs. The NTSB therefore 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.

³⁶ Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C.

³⁷ 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.

³⁸ 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.

³⁹ 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.

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. 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 *United States Code* 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...

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 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.

Vehicles entering the United States from Mexico present specific difficulties in safety oversight for both the states and the FMCSA. Although the U.S. Customs and Border Protection Agency (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. 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. 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 instrument of international traffic (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 that it can work with the CBP, U.S. Immigration and Customs Enforcement, and 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.

Well-established law and regulation⁴⁰ 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. 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 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. 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.

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.⁴¹ 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, 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 a 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.

⁴⁰ 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."

⁴¹ 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.

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. Further, during its investigation, NTSB staff traveled to the Lincoln-Juarez Bridge crossing and saw motorcoaches with no visible label bearing a statement certifying FMVSS compliance entering the United States. These motorcoaches, which had both Mexico and Texas license plates, were observed undergoing an FMCSA inspection in conjunction with the Texas Department of Public Safety, and, upon passing the inspection, continuing to Houston, Texas, which is outside of the commercial zone.⁴² 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.⁴³ 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 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, and would not have a certification label. 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. 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

⁴² August 26–29, 2008, at the Laredo, Texas, border crossing, Lincoln-Juarez Bridge facility.

⁴³ Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C. (FMCSA testimony).

whether passenger-carrying commercial motor vehicles meet the FMVSSs. Therefore, the NTSB recommends that the FMCSA assist NHTSA 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. The NTSB further recommends that the FMCSA work with NHTSA to implement a process to periodically update this database. The NTSB also recommends that the FMCSA require federal and state inspectors to 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. The NTSB further 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 Commercial Vehicle Safety Alliance to develop and provide this training.

As a result of the investigation, the NTSB makes the following recommendations 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)

Further, the NTSB reiterates Safety Recommendation H-07-3 and both reiterates and reclassifies Safety Recommendation H-99-6 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)

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)

Safety Recommendation H-99-6 is reclassified from "Open—Acceptable Response" to "Open—Unacceptable Response."

The NTSB also issued safety recommendations to the DOT, NHTSA, the CBP, the American Association of Motor Vehicle Administrators, the International Registration Plan, Inc., and the Commercial Vehicle Safety Alliance.

In response to the recommendations in this letter, please refer to Safety Recommendations H-09-32 through -41 and Safety Recommendations H-07-3 and H-99-6. If you would like to submit your response electronically rather than in hard copy, you may send it to the following e-mail address: correspondence@ntsb.gov. If your response includes attachments that exceed 5 megabytes, please e-mail us asking for instructions on how to use our secure mailbox. To avoid confusion, please use only one method of submission (that is, do not submit both an electronic copy and a hard copy of the same response letter).

Chairman HERSMAN, Vice Chairman HART, and Member SUMWALT concurred in these recommendations.

[Original Signed]

By: Deborah A.P. Hersman
Chairman