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 SENATOR, 25TH DISTRICT

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 JUDICIARY  
 TRANSPORTATION

**Testimony of State Senator Daniel Squadron Regarding Intercity Buses  
 New York City Council Committee on Transportation  
 October 6, 2011**

My name is Daniel Squadron and I represent the 25th District in the New York State Senate. My district includes the Manhattan neighborhoods of Tribeca, Battery Park City, the Lower East Side, Chinatown, the Financial District, Little Italy, SoHo and the East Village and the Brooklyn neighborhoods of Greenpoint, Williamsburg, Vinegar Hill, DUMBO, Fulton Ferry, Brooklyn Heights, Cobble Hill, Carroll Gardens and Gowanus. Thank you for the opportunity to testify at this hearing.

This hearing comes at an important moment in the national dialogue about the management and regulation of intercity buses. A series of fatal bus crashes around the country, as well as the need to manage the hundreds of intercity and charter buses coming into our neighborhoods here at home, have exposed what many of us have known for years: the existing regulations are a tangled web with complex oversight by dozens of agencies in the federal, state, and city governments. I commend the chair for continuing the dialogue about an issue that is important to the health and quality of life in neighborhoods throughout the city, as well as the safety of thousands of people that travel to and from New York City.

This City Council committee is looking at two pieces of federal legislation that seek to increase the safety of intercity buses. The Motor Coach Enhanced Safety Act of 2011 (H.R. 873/S. 453) and the Bus Uniform Standards and Enhanced Safety Act of 2001 (H.R. 1390) both lay out steps to accomplish many of the same goals, but there are differences between the two bills that the Council should consider. Both bills would increase driver training and require disclosure of business relationships, thereby preventing bad operators from running multiple companies in order to avoid compliance. But where the Motor Coach Enhanced Safety Act requires safety modifications to motor coaches, including the addition of seat belts, stronger glazing, crush-resistant roofs, and fire safety mechanisms within two years, the Bus Uniform Standards and Enhanced Safety Act simply tasks the Secretary of Transportation with research on the best methods and standards and the prescription of new industry requirements after three years.

In an effort to protect bus operators — many of which are important small businesses — the Bus Uniform Standards and Enhanced Safety Act provides financial assistance and requires compliance in two phases, with 100% compliance in 12 years. While I appreciate that we must support small businesses that provide a service upon which millions rely, I join Senators

Schumer and Gillibrand in their support of the Motor Coach Enhanced Safety Act of 2011 (H.R. 873/S. 453). We must institute strong industry reforms *as quickly as possible*.

The third piece of legislation you are considering, New York State bill A8133/S5171B, would strengthen the requirements for bus drivers, including a mandatory background check. I voted for this bill in the Senate, and I encourage the Assembly and Governor to support it.

However, none of these pieces of legislation alone will provide all the necessary industry reforms to protect New York City riders. Toward that end, I urge the Council to also support a bill that I introduced with Assembly Speaker Sheldon Silver, with the support of Council Member Margaret Chin (S2977-2011). The proposed legislation would authorize New York City to pass a local law to regulate intercity passenger buses through a permit system, which would include assigning pick-up/drop-off locations, providing for community board and MTA input, and regulating enforcement. Permits could be issued for up to three years, and holders would pay the city an annual fee. By providing the city with key information about bus companies, problems will be identified before they become tragic.

With this legislation, we have the opportunity now to implement coordinated, systemic changes that can both enhance quality of life and also ensure the safety of bus passengers.

I represent Manhattan's Chinatown, one of the hubs for intercity buses in New York City. With no rules to regulate buses, the streets of Chinatown are like the wild west. The permit system would replace today's chaotic lack of rules, which has caused myriad problems for communities and bus companies — including congestion, pollution and inefficiency. The permit system is intended to improve the health, safety and welfare of the public and neighborhood residents — addressing challenges that have arisen with the rapid expansion of the affordable bus industry in the last 15 years — but will also be a big step toward increased safety.

The bus permit system would require buses that enter and leave New York City to provide information about their company, which will be easily accessible and organized in one central database. Companies that want to serve New York City, regardless of the location of their headquarters, will be unable to avoid providing crucial information, allowing the city to track whether they are meeting safety requirements. New York City will be able to cross-reference data with the Federal Motor Carrier Safety Administration (FMCSA) and the United States Department of Transportation (USDOT) to identify problematic operators before tragedy strikes.

On their own, the proposed federal and state reforms will not give the city and the state the tools to protect against venue shopping. If bus companies' principal owners and drivers must register *to operate* in New York City, and that information is captured and cross-referenced with the federal database, the city and state will be better able to force operators to comply.

Currently, as we recently learned of World Wide Travel, the company responsible for the fatal crash in the Bronx, a fleet of buses could be registered by a company under one name in one state, but they may operate under another name in several surrounding states. The New York City permitting system will require the principals of bus companies to disclose their information, which will allow the city, state and federal governments to coordinate enforcement and prevent future accidents.

The Motor Coach Enhanced Safety Act of 2011 and New York State bill A8133/S5171B in the Council's resolution go a long way to give agencies the tools they need to regulate the bus industry. However, only my bus-permitting legislation, S2977-2011, gives us the opportunity to ensure that those with hazardous safety records will be prevented from doing business on our streets. Any overhaul of bus regulations must happen at a federal, state, and city level, and I look forward to working with you and our colleagues in government toward positive solutions for our constituents and bus passengers, in New York and throughout the country.

Thank you for the opportunity to testify today.

**New York State Department of Transportation  
Before the New York City Council  
Committee on Transportation**

**Ensuring the Safety of Intercity Buses  
Thursday, October 6, 2011**

Chairman Vacca and members of the New York City Council Committee on Transportation, thank you for inviting the New York State Department of Transportation to provide testimony on this important matter. On behalf of Governor Andrew M. Cuomo, we are pleased to have the opportunity to communicate our Department's efforts to keep intercity motorcoach passengers and the traveling public safe.

To be clear, NYSDOT's comments today are specific to the intercity motorcoach industry. This industry consists of private organizations that lease/own and operate motorcoach transportation services to the public, including private sector organizations on a contract basis. This industry is primarily engaged in providing charter, tour, and sightseeing services. It does not include "open-to-the-public" transportation services. Nationwide, approximately 723 million passenger trips are made on motorcoaches, with a significant percentage of these trips having either an origin or destination in New York State.

New York companies that provide motorcoach services to intercity travelers and group tours are a critical part of the State's economy. Motorcoach operators, along with the companies that supply services and materials to them, provide well-paying jobs in New York, and contribute significant tax revenue to local, state, and federal governments. Not only does the motorcoach travel industry create good jobs in New York, but the industry also contributes to the economy as a whole. According to the American Bus Association (ABA), approximately 7,000 New Yorkers were employed by firms that supplied goods and services to companies working with motorcoach passengers. These include a wide range of companies, from wholesalers to accountants to fueling stations. All told, nearly \$6.9 billion in total economic activity in New York can be attributed to the motorcoach tour and travel industry.

Motorcoach safety is a responsibility that New York State takes very seriously. New York State DOT has a robust motorcoach safety program, which we recently enhanced to make even stronger. We have diligently and conscientiously worked with our partners at the Federal Motor Carrier Safety Administration (FMCSA), the New York State Department of Motor Vehicles, the New York State Police, the New York City Police Department, and the industry to deliver and enforce this important safety program.

## New York State Department of Transportation – Ensuring the Safety of Intercity Buses

The role of the New York State Department of Transportation (NYSDOT) as it relates to for-hire passenger service is to:

- License intrastate operators
- Inspect and monitor the safety performance of motor carrier operations
- Ensure compliance with state and federal rules and regulations.

### Compliance Programs

In carrying out this mission, the Department has four primary compliance programs:

- *The Mandatory Semi-Annual Bus Inspection Program*

The Department performs a comprehensive safety inspection twice a year of all motorcoaches, school buses, ambulettes (transit disabled service), and large passenger vans/limousines domiciled in New York. More than 160,000 safety inspections were performed in the past year. Roughly 60% of those were conducted in the greater New York City metropolitan area.

With the help of our industry partners, we have made consistent strides in improving vehicle safety by promoting the benefits of preventive vehicle maintenance. This partnership, along with stepped-up enforcement, has resulted in significant reductions in vehicle out-of-service rates. The current rate of 6.8% is a result of those efforts, which began more than a decade ago when rates exceeded 20%

Motorcoach operators are included in this progress. Their out-of-service rate has been cut in half — to 8.6% — during the past seven years. We will continue to work with our industry partners, including the Bus Association of New York, to further improve vehicle safety.

- *The Motor Carrier Safety Assistance Program (MCSAP)*

The MCSAP is a federally funded motor carrier safety program whereby federal grants are awarded to states by the Federal Motor Carrier Safety Administration (FMCSA) to implement a number of commercial vehicle safety initiatives. The MCSAP originated in 1983 when Governor Mario Cuomo designated NYSDOT as lead MCSAP agency for New York, including the oversight and coordination of New York's overall motor carrier safety efforts.

The roadside inspection program is performed by staff from NYSDOT and State Police under the MCSAP, resulting in approximately 120,000 roadside commercial vehicle safety inspections being conducted annually (truck and bus). As a result of the violations discovered during the roadside inspections, a driver and/or carrier may receive traffic summons or civil penalties. Additionally, the results of these inspections are uploaded to

the national Motor Carrier Management Information System (MCMIS) database, which measures both motor carrier and driver performance.

- *The New Entrant Safety Assurance Program*

In 2003 Congress passed legislation requiring that all new passenger motor carriers involved in interstate commerce receive a mandatory safety audit within the first nine months of their operation (eighteen months for trucking companies).

In New York, this national motor carrier safety initiative is performed by NYSDOT investigative staff, who conduct more than 1,200 new entrant safety reviews annually. Investigators review driver credentialing requirements (license class with appropriate endorsements and medical certification); log books; drug and alcohol testing requirements; vehicle maintenance records; and hazardous material requirements, when applicable. Motor carriers deficient in any of these areas may fail the safety review resulting in the carrier being placed Out-of-Service by FMCSA. Under the Out-of-Service Order, the motor carrier is not allowed to operate in interstate commerce until the noted deficiencies are remedied.

- *The Compliance Review Program*

NYSDOT systematically monitors motor carrier performance through comprehensive safety reviews of motor carriers under its jurisdiction. NYSDOT investigators perform more than 200 compliance reviews annually. These reviews can be triggered by poor roadside inspection results (both frequency and severity); crashes; safety complaints filed with the Department; and motor carriers found operating without the proper intrastate operating authority required by the Department.

### **Increased Compliance Strategies**

This year, under the direction of Governor Cuomo, New York State DOT, the Department of Motor Vehicles (DMV), and the State Police have amplified our enforcement strategies to improve motor carrier safety in the State of New York.

New York State DOT, in partnership with the State Police and the New York Police Department (NYPD), has significantly increased the number of motorcoach operators undergoing roadside safety inspections. The data obtained from these roadside inspections has been uploaded to the federal MCMIS database to be used to identify poor performing drivers and motor carriers. Between March 17 and October 5 this year, for example, approximately 4,600 roadside bus inspections were performed, resulting in 850 drivers and/or vehicles being placed Out-of-Service (OOS). This compares with 615 buses inspected roadside during all of 2010, a more than 600% increase in the number of inspections performed.

Motor carriers with OOS violations must remedy the deficiencies before the affected bus and/or driver can return to service. These carriers may receive Notices of Violation issued by NYSDOT, as well as Unified Traffic Tickets issued by law enforcement. In addition, any license or registration actions imposed by DMV will affect the carriers' future "rating," triggering heightened interventions that include compliance reviews and progressively higher civil penalties.

Additionally, the Department identified and took action against eight motor carriers that had poor safety performance. Five of these carriers are taking appropriate corrective actions and three of these carriers had their intrastate operating authority revoked.

By following these enforcement strategies and working with our partners in both government and the industry, we are improving motor carrier safety for all New Yorkers.

Under the leadership of Governor Cuomo, the New York State Department of Transportation is committed to keeping our highways safe and reducing the number of motor-carrier crashes. Safety remains our top priority. The loss of even one life is one too many. We are dedicated to raising the bar in terms of safety and compliance. To do this, we are continuing to work hard to:

- Ensure new passenger carriers entering the business are safe
- Make certain that existing carriers meet state and federal safety standards
- Remove from the road carriers who are unsafe and unwilling to comply with safety regulations.

On behalf of the Governor, thank you again for your interest in bus safety and the opportunity to speak with you today about our programs. Working together, we can accomplish our goal of protecting New Yorkers and assuring the public that the motor carriers operating and licensed in New York State are indeed safe.

October 5, 2011

Hon Members of the Transportation Committee  
New York City Council  
250 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007

Testimony AGAINST proposed Resolutions 892, 981 and A 8193

CHEKPEDS, a coalition of citizen business and institutions for pedestrian safety on the West side of Manhattan, is grateful to this committee for organizing a hearing on the safety of buses.

While we support the provisions included in those bills, we cannot support these bills as written because they are not addressing the majority of safety issues caused by the bus industry. We ask that the balance of the safety issues be addressed, by the laws explicitly giving cities the right to regulate where stops, loading and unloading takes place, what routes the buses can use in the city, and how much the private bus companies should be charged to compensate the city for the use of public space by private enterprises.

In midtown on the west side, there are over 1,000 daily departures and arrivals of long distance buses in or around the 34<sup>th</sup> Street corridor. There are 360 charter and tour buses parked in the 40's with 1,080 trips through our residential neighborhood at peak periods (seven months of the year twice a week). And indeed there are 6,000 bus trips to and from New Jersey every day, with many of these buses using residential streets for parking and idling.

These buses cause significant safety issues to the residents and businesses at the bus loading and unloading locations. These safety issues are statistically large since they occur 365 days, 24 hours a day, and often affect the same persons repeatedly.

- Loading and unloading of passengers that crowd the sidewalks by the hundreds with luggage routinely force pedestrians to step in the traffic and risk their lives.
- Buses idle for hours in place while loading and unloading, as well as lining up for departure. Although each bus typically idles during the loading, loading a bus with 50 passenger and luggage takes more than 3 minutes. Indeed in locations (33<sup>rd</sup> Street and 9<sup>th</sup> Avenue) near a school, three minutes is three times the authorized time. Even with each bus idling for three minutes only, with a continuum of buses at the same location, this is equivalent to idling 24 hours a day. Residents have to close their windows and the harmful emissions get retail employees sick.
- Buses double-park, while waiting for the loading station to free up, obstructing traffic and pedestrian crossings. Taxis deliver and pick up passengers with luggage and drop them in the street, in the traffic.
- Buses cruise around residential streets, or idle in residential streets, waiting for their stops or to avoid traffic.

These safety issues are present daily, 365 days of the year and they affect large groups of residents, businesses, workers going to work, ladies going to Church, Children going to school. These people deserve the same attention to their safety as those travellers who do not want to pay more than \$1 to go to Boston.

Please make sure the laws explicitly give cities the right to regulate where stops, loading and unloading takes place, what routes the buses can use in the city, and how much the private bus companies should be charged to compensate the city for the use of public space by private enterprises.

C. Berthet, co-founder

CHEKPEDS

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October 6, 2011

Ellen Peterson-Lewis.  
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Transportation Chair of Our Streets Our Lives  
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Our Streets Our Lives (OSOL) advocates for City Jurisdiction and Community input on tour buses, charter buses, commuter buses and hop-on hop-off double decker buses. We have been working in Manhattan with the Westside Clean Air campaign, West Side Neighborhood Association, Checkped, and in Brooklyn, with Dumbo and The Fulton Landing groups on new opportunities to influence issues of bus traffic, routing, parking, noise and emissions.

I would like to bring to the attention of the Transportation Committee, who also have members who are or were members on the Consumer Affairs committee that in July of this year, 10 percent of the Hop On and Hop off buses were to be equipped with self contained sound systems. Local law 2010/015

The Department of Consumer Affairs is the enforcement agency.

It appears that there is no enforcement by the Department of Consumer Affairs.

During a five hour stretch,(10AM to 3PM) I personally counted more than 100 double decker tour buses and other tour buses on Bleecker St. in Greenwich Village. The passengers on the double decker hop on hop off tour buses where not wearing ear buds and I could hear the guide speaking to the passengers.

Bleecker street has become a major tourist thoroughfare from West to East. Like many streets in residential neighborhoods, its single lane for moving traffic and a bike lane was never intended to absorb this commercial overload

To this day, Community Boards have issues with lack of enforcement of existing NY City laws concerning: Buses double parking and blocking traffic, Buses taking 3 parking spots and not feeding the meter, thus denying much needed revenue to the city, and Layovers with idling motors.

Community Boards do not have the ability to designates routes for charter buses, tour buses and hop-on - hop-off buses in their communities as well as to designate pick up and drop off areas for intercity destination passenger buses.

The rapid increase of inter-state, intra-state, chartered, tour, and sightseeing buses is, still, largely unregulated. While a key component is the growth of NYC's tourism industry, the increased traffic, safety and environmental impacts on residential neighborhoods and congestion on major commercial crossroads still needs serious and thoughtful attention by the City Council .

While Reso No. 892 ,981 and the Reso by Council Member Gennaro does not address the above, it is a beginning and Our Streets Our Lives supports the three Resolutions.

**STATEMENT OF ANNE S. FERRO  
ADMINISTRATOR  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**BEFORE THE  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT  
MARINE, INFRASTRUCTURE, SAFETY, AND SECURITY  
UNITED STATES SENATE**

**CHALLENGES IN MOTORCOACH SAFETY**

**March 30, 2011**

Chairman Lautenberg, Ranking Member Thune, and Members of the Subcommittee, thank you for inviting me to testify today regarding the very serious issue of motorcoach safety.

As we know all too well, March has been the worst month in recent years for motorcoach safety, with two horrific crashes within a three-day period causing 17 fatalities and numerous injuries. The first crash occurred in New York on March 12 with 15 fatalities, and the second occurred in New Jersey on March 14 with 2 fatalities.

Please allow me to begin my testimony by extending my deepest sympathy to the families who lost loved ones in these crashes and to assure them that we at the Federal Motor Carrier Safety Administration (FMCSA) are committed to doing everything we can to prevent tragedies like this from happening again. We have significantly increased our regulatory and enforcement actions over the past several years to improve passenger safety. However, the tragic events this month indicate that we have more to do at the Federal level, and in working with our State and local enforcement partners.

**MOTORCOACH SAFETY ACTION PLAN (THE PLAN)**

Safety is the U.S. Department of Transportation's number one priority across all modes of transportation. In 2009, Secretary LaHood sought to make significant improvements to motorcoach safety by tasking all of the appropriate DOT agencies to work together to establish a unified Motorcoach Safety Action Plan (Plan). The Department released the Plan in November 2009. It lays out concrete steps for addressing the driver-related cause of crashes, fatalities, and injuries and enhancing motorcoach: driver performance; vehicle safety and maintenance; operator safety oversight; crash avoidance; and occupant protection. The Plan also focuses on the Department's strategy for improving data collection and analysis for motorcoach operations.

Based upon our review of motorcoach crash data we determined that driver fatigue, driver behavior, vehicle rollover, occupant ejection, and operator maintenance

issues contribute to the majority of motorcoach crashes, fatalities, and injuries. As a result, FMCSA had responsibility for four priority safety-related action items in the Plan. FMCSA's priority action items are:

1. Initiate rulemaking to require electronic on-board recording devices on all motorcoaches to better monitor drivers' duty hours and manage fatigue.
2. Initiate rulemaking to propose prohibiting texting and limiting the use of cellular telephones and other devices by motorcoach drivers.
3. Enhance oversight of carriers attempting to evade sanctions.
4. Establish minimum knowledge requirements for applicants seeking FMCSA authority to transport passengers.

We made substantial progress in each of these areas and I would like to take a few minutes to provide you with an update.

## **ELECTRONIC ON-BOARD RECORDERS**

On April 5, 2010, the Agency took a significant step toward reducing the number of fatigue related crashes by publishing a final rule mandating the use of electronic on-board recorders (EOBRs) by motor carriers that transport passengers or property and that demonstrate serious non-compliance with the hours of service (HOS) rules. This action will reduce the likelihood of falsified or incomplete records of duty status. The final rule establishes: 1) new performance-oriented standards for EOBR technology; 2) a mandate for certain motor carriers to use EOBRs to remediate regulatory noncompliance (a remedial directive); and 3) incentives to promote voluntary EOBR use by all carriers. It is expected that approximately 5,700 motor carriers each year will be required to use EOBRs.

On February 1, 2011, the Agency published a Notice of Proposed Rulemaking (NPRM) to expand the requirement for motor carriers to use EOBRs and to require nearly all motor carriers to systematically monitor their drivers' compliance with HOS requirements. Specifically, FMCSA proposed mandatory installation and use of EOBRs in interstate commercial motor vehicles currently required to complete records of duty status, including passenger carrier operations. Additionally, the preamble to the rulemaking requests data and information about the safety of short-haul passenger carriers that currently are not required to maintain records of duty status.

The proposed rule would also establish specific requirements for supporting documents that motor carriers are required to obtain and keep, as required by section 113(a) of the Hazardous Materials Transportation Authorization Act (HMTAA). Comments on the NPRM are due May 23, 2011.

## **DISTRACTED DRIVING**

Driver distraction is a serious safety problem that must be addressed to continue improving commercial motor vehicle (CMV) safety. FMCSA developed an approach that involves Federal rulemaking, outreach, and enforcement.

On September 27, 2010, FMCSA published a Final Rule prohibiting texting by all CMV drivers while operating in interstate commerce and imposing civil penalties on drivers and motor carriers that violate the prohibition. The final rule also provides for commercial driver's license (CDL) holders' disqualification when they have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that prohibits texting. We are working closely with the National Highway Traffic Safety Administration and with our State and local safety partners in developing enforcement strategies for those who violate this rule.

On December 21, 2010, FMCSA published an NPRM that would restrict the use of hand-held mobile telephones. The Agency proposed new driver disqualification sanctions for interstate drivers of CMVs who fail to comply with this Federal restriction and for CDL holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that restricts the use of hand-held mobile telephones. The comment period for the NPRM recently closed, and the Agency plans to issue a final rule later this year.

## **ENHANCED OVERSIGHT OF MOTORCOACH OPERATIONS**

FMCSA launched several initiatives to enhance its oversight of motorcoach companies, the drivers they employ and the vehicles they operate. These efforts include strict enforcement of the current safety regulations, more rigorous scrutiny of all passenger carrier applications for operating authority, implementation of the Safety Measurement System (SMS) to identify at-risk carriers for targeted enforcement as part of our new Compliance, Safety and Accountability program, or "CSA," and improved oversight of the medical certification process for drivers.

### ***FMCSA Motorcoach Strike Forces and Oversight***

FMCSA routinely conducts strike force activities at national, regional and local levels to enhance our overall motorcoach enforcement program.

For instance, in October 2010 we conducted a two-day strike force at the Bands of America/Super Regional Championship at the Alamodome in San Antonio, Texas. We inspected motorcoaches from 12 different companies. The inspectors found 45 violations and placed 4 vehicles out-of-service. Although this is a small event, we conducted the strike force because more than 50 high school bands from across Texas use motorcoaches to attend the competition. We want to be sure these types of trips end safely.

Also last year FMCSA conducted the national passenger carrier strike force from August 23 to September 3. During that time period FMCSA, along with our State and local safety partners, conducted 5,679 passenger vehicle inspections, 324 compliance reviews, 31 new entrant safety audits, and 35 Americans with Disabilities Act (ADA) reviews. We discovered over 900 driver violations that required over 200 drivers to be placed out-of-service and more than 350 drivers were cited for hours of service violations. We also discovered over 5,600 vehicle violations and placed over 900 vehicles out-of-service. As a result of these compliance reviews, 9 percent of the passenger carriers received safety ratings of "Conditional" and 2 percent received proposed "Unsatisfactory" safety rating.

In 2009 FMCSA conducted our national passenger carrier strike force for two weeks in May. Again, FMCSA worked in conjunction with our State and local safety partners to conduct 8,699 passenger vehicle inspections, 548 compliance reviews, and 53 new entrant safety audits. We discovered over 1,700 driver violations that required over 275 drivers to be placed out-of-service and more than 500 drivers were cited for hours of service violations. We also discovered over 7,000 vehicle violations and placed over 900 vehicles out-of-service. As a result of these compliance reviews, 9 percent of the passenger carriers received "Conditional" safety ratings, and 3 percent received a proposed "Unsatisfactory" safety rating.

In 2009, we also conducted multiple strike force events in many National Parks including Yellowstone, Glacier, Mount Rushmore, Mesa Verde, Yosemite, and Grand Teton to name a few. During these events FMCSA and our safety partners inspected 146 motorcoaches, and placed 4 drivers and 8 vehicles out-of-service. We are planning similar events this summer.

FMCSA has robustly expanded our enforcement activities focused on motorcoach companies by holding company officials and consultants accountable. One example occurred in July 2010 when the FMCSA issued a Notice of Claim to Ernesto Segura Silva for a civil penalty of \$78,170. The Notice of Claim charged Mr. Segura, and the two motor carrier company names he had used, with 36 violations of 6 separate motor carrier safety requirements. A separate Notice of Claim for \$55,270 was issued to Mario A. Garcia, a consultant, for his actions in aiding and abetting Mr. Segura and his unfit motor carrier operation to evade Federal regulations, and continue transportation of passengers after a final unsatisfactory safety rating, without operating authority and in violation of FMCSA Orders to Cease.

The Notice of Claim issued to Mr. Garcia charged him with 34 violations of Federal requirements, including making false statements and providing false or misleading information in the new entrant registration process. This was the first time FMCSA had charged a safety consultant for the consultant's actions in aiding a carrier in violating Federal regulations and in assisting the carrier to reincarnate and apply for new authority to evade Federal regulations and avoid its safety, performance and compliance history and continue operating after being declared unfit and ordered to cease. FMCSA entered into a Settlement Agreement with Mr. Garcia which requires him to, among other

things, cease aiding and abetting motor carriers evading regulation, provide FMCSA with a current list of his consulting clients on a regular basis, and obtain training on the Federal Motor Carrier Safety Regulations.

FMCSA also sought an injunction in Federal District Court against Garcia and a passenger motor carrier operation he started by using Segura's motorcoach and driver after rejecting his application for operating authority. On November 30, 2010 the Court entered an order approving a Consent Decree permanently enjoining Garcia and this passenger carrier from operating any commercial motor vehicle in interstate or foreign commerce and Garcia is enjoined from aiding any motor carrier in evading FMCSA regulations, operating without authority or operating in violation of an FMCSA order.

FMCSA obtained another Federal District Court order last month [Feb. 16] entering a Consent Decree against RLT Tours, an passenger carrier transporting daily commuters between Tobyhanna, Pennsylvania and New York City without necessary operating authority. Following a compliance review, FMCSA had issued RLT Tours an unsatisfactory safety rating, revoked its operating authority and ordered it to cease operations effective November 5, 2010. Yet RLT continued to operate. Under last month's favorable court order, RLT Tours and a related company were dissolved and prohibited from operating in interstate commerce. The Court similarly barred the individual owners from operating in interstate commerce without proper operating authority, and it expressly enjoined them -- and any persons with whom they were acting in concert -- from applying for FMCSA operating authority without accurately disclosing their relationship to RLT Tours.

One of the hurdles to effective passenger carrier oversight is the informality with which motor coaches are leased from company to company and the difficulty of determining in some situations which company is responsible for safety of the vehicle and its operation. Unlike property carriers, under current regulations passenger carriers are not required to execute written leases specifying the party responsible for safety. FMCSA is committed to initiating a rulemaking on this issue.

To combat the recent rash of crashes among motorcoaches in the New York and New Jersey areas, FMCSA also joined with State and local CMV enforcement officials to conduct strike forces designed to identify and remove unsafe drivers and vehicles from service. These efforts were very effective and I would like to share with the Committee some of the results.

On March 17, FMCSA began an enforcement strategy with the New York State Department of Transportation (NYSDOT), the New York State Police, and the New York City Police Department (NYPD) to conduct a motorcoach strike force. This combined effort resulted in approximately 87 inspections. The strike force deployed at multiple locations across the state. Locations ranged from Buffalo bridge crossings with Canada to popular motor coach destinations including Turning Stone Casino in Verona near Syracuse, the southern tier of the NY State Thruway, and New York City's Chinatown. NYSDOT will continue its statewide effort over the next week with a heavy focus in New York City.

Governor Cuomo's office has asked the New York State Department of Motor Vehicles to conduct an audit of all motorcoach operators to determine if drivers are properly licensed and qualified to drive. FMCSA is supporting this effort by sharing information from our Motor Carrier Management Information System (MCMIS) data. There are more than 2000 passenger carriers in NY State. The audits will focus upon approximately 304 passenger carriers that operate at least one bus with seating for more than 40 passengers.

These strike forces are tools that we have at our disposal to quickly assess the state of safety on our roads. We thank our State and local law enforcement officials, as well as our safety stakeholders, for their efforts to support these projects to improve safety nationwide.

I call upon all States to follow in the footsteps of Governor Cuomo. If State licensing agencies perform a top to bottom review of the CDL holders with a passenger endorsement that are based in their State, together we will begin to root out individuals that received a CDL under false pretenses or through fraudulent practices. Only by working together can we solve this important safety issue.

In addition we must not be complacent in the enforcement of safety regulations on motorcoach companies or other CMVs. FMCSA, the States and local agencies must sustain an aggressive approach to increase the number of inspections and reviews. The risk is too great not to take action.

FMCSA has 3,681 motorcoach carriers registered with active operating authority. We as an Agency increased the compliance reviews conducted on motorcoaches by 128 percent, from 457 in 2005 to 1,042 in 2010. Inspections of motorcoaches increased 98 percent during the same period, from 12,991 in 2005 to 25,703 in 2010. Motorcoach related fatalities have decreased from 57 in 2004 to 46 in 2009; a reduction of 19 percent. Passenger carrier enforcement cases rose from 36 in 2008 to 44 in 2010, a 22 percent increase. Between Fiscal Years 2007-2010, FMCSA placed 75 passenger carriers out-of-service for being unfit to operate, after receiving an unsatisfactory rating.

As previously stated, there are 3,681 FMCSA-registered motorcoach companies. On average we conduct an on-site compliance review on a motorcoach company every 3-4 years. This 3-4 year average reflects a more than 100 percent increase over where we were in 2005, when the average was more than 8 years between compliance reviews.

#### ***Operating Authority Vetting Program***

In August 2008, FMCSA implemented a more robust investigation of applications for passenger carrier operating authority. This was a necessary step toward preventing the reincarnation of unsafe passenger carriers that choose to evade FMCSA sanctions rather than operate in compliance with the regulations.

Through the vetting program, FMCSA conducts an investigation of the application information to determine whether the applicant is fit, willing, and able to comply with the safety and other applicable regulations, or if the applicant is attempting to evade enforcement actions for violations committed under another business name.

We believe the program is effective, and I assure you that we will maintain a high level of effort in this area. Since FMCSA started the program in 2008, the Agency has applied the vetting process to 2,666 applications for passenger carrier operating authority. We granted operating authority to 1,995 applicants, 669 carriers failed to successfully complete the application and either withdrew their applications or simply failed to respond to inquiries from the Agency, and 2 were rejected because the Agency determined the applicant was a reincarnation of another unsafe motor carrier. To date, 24 percent of applicants have had their applications for operating authority rejected.

The Vetting Program is one of our early success stories in raising the safety bar to enter the passenger carrier industry.

#### ***New Entrant Safety Audit Program***

One of the concerns that came to light during the development of the Motorcoach Safety Action Plan was the perception that new motorcoach operators did not have the knowledge or ability to properly maintain their vehicles. To aid in determining the validity of this perception, FMCSA modified the new entrant safety audit to ascertain the maintenance capabilities of new motorcoach companies. Questions were added asking if the motorcoach company owns or leases a facility for the inspection, repair, and maintenance of its vehicles or if the company has an arrangement or contract for the systematic inspection, repair, and maintenance of its vehicles.

We also modified the new entrant safety audit to include a component on compliance with the ADA regulations for over-the-road bus (OTRB) companies. We ask if the carrier has the means to provide accessible service on a 48-hour advance notice basis by its owned or leased OTRBs. If the carrier does not have the means, then does the carrier have an arrangement with another carrier that operates accessible OTRBs to provide the service for the first carrier?

FMCSA established an internal goal to complete the new entrant safety audits for passenger carriers within 9 months, rather than the 18 months required by statute. In FY 2010, FMCSA completed 77 percent of the passenger carrier safety audits within 9 months and 90 percent in 18 months. For FY 2011, to date, the percentages are 77 percent and 94 percent, respectively. On average, a safety audit is conducted on a new motorcoach company in less than 6 months.



### *Compliance, Safety, and Accountability (CSA)*

For the passenger carriers that are currently conducting operations in interstate commerce, FMCSA's CSA program enables the Agency to ensure that these companies have effective safety management controls in place in order to continue operating.

CSA is a major FMCSA initiative for the comprehensive review, analysis, and restructuring of the Agency's current safety monitoring system, as well as our compliance and enforcement programs. CSA will provide a more effective operational model so that the Agency can have a greater impact on large truck and bus safety while optimizing the resources of FMCSA and its State partners.

To this end, the Agency developed a new operational model, and implementation of that model is in process. Full deployment is to be completed by the end of 2011. The model includes four major elements: (1) measurement; (2) intervention; (3) safety fitness determination; and (4) information technology. The new measurement system pinpoints the specific safety problems involved, while the broader array of CSA interventions, including warning letters sent at the first indication of safety performance problems and various types of investigations for carriers with more severe safety performance problems, enables FMCSA to match the most appropriate intervention to seriousness of the carrier's specific safety problems.

In December 2010, FMCSA released to the public the new CSA Safety Measurement System SMS and began using the system for prioritizing carriers for enforcement interventions. Earlier this month, the Agency began sending warning letters to motor carriers nationwide. The warning letters are used to formally notify company executives about safety problems observed in our inspection and crash database so that appropriate corrective actions can be taken. FMCSA will closely monitor the safety records of these carriers for the next 12 months to assure that corrective action has indeed occurred. Failure of the carrier to address the safety performance problems may result in tougher enforcement actions, including a Federal notice of violation, a notice of claim through which the Agency assesses civil penalties, or an off-site or on-site investigation. The investigations may also result in civil penalties for discovered violations.

FMCSA has implemented components to its CSA program which monitor the compliance and safety of motorcoach companies separately from trucking companies. For example, unauthorized for-hire motorcoach companies that have operational activity are made a top priority for an on-site investigation. In addition, motorcoach companies with below industry median performance in a safety evaluation area, operating more than 2 years without an on-site investigation, or operating more than 5 years since the previous on-site investigation are a priority.

Later this year, FMCSA plans on issuing an NPRM that will propose changes to our current Safety Fitness Rating Methodology for commercial bus and truck companies. Through this rulemaking proposal, FMCSA would determine a carrier's safety fitness based on CSA data consisting of crashes, road inspection results and violation history

rather than exclusively data from the standard compliance review. This proposal would enable FMCSA to assess the safety performance of a greater segment of the commercial motor carrier industry with the goal of further reducing large truck and bus crashes and fatalities.

### *Enhanced Oversight of the Medical Certification Process*

A critical part of ensuring the safe operation of all CMVs is medical certification of drivers. Currently, FMCSA and its State partners check regularly during compliance reviews, new entrant safety audits, and roadside inspections to ensure that drivers have a valid medical card. When it is discovered that a driver does not have a medical card or a company is employing drivers without valid medical cards, the driver and carrier are subject to enforcement action, generally in the form of civil penalties. In addition, if during an inspection a driver is found to be operating a passenger carrying vehicle without possessing a valid medical card, the driver is placed out-of-service.

On December 1, 2008, FMCSA published a final rule merging the medical certification and CDL issuance and renewal processes. The rule improves the Agency's and the States' ability to monitor the medical certification status of interstate CDL holders. The final rule requires CDL holders to provide a copy of their medical certificate to the State driver licensing agency in order to be granted a CDL or to maintain their existing interstate driving privileges. If a driver fails to renew the medical certificate, or if the driver fails the physical examination, the CDL will be downgraded automatically to prohibit the operation of CMVs in interstate commerce.

The final rule became effective on January 30, 2009. States must implement the information technology system changes necessary to comply with the rule by January 30, 2012. All CDL holders must comply with the requirements to submit the medical certification information to the States by January 30, 2014.

The final rule required States to make the CDL driver's medical certification status available electronically to motor carrier safety enforcement personnel. FMCSA and State enforcement personnel would then be able to determine during a roadside inspection whether a driver is medically qualified by reviewing the electronic record maintained by the State licensing agency. Federal, State, and local government enforcement officials would query the Commercial Driver's License Information System (CDLIS) or the National Law Enforcement Telecommunication System to determine whether the driver had the required medical certification – something they cannot now accomplish.

In addition to the medical certification rule, FMCSA is developing a National Registry of Certified Medical Examiners. Later this year, FMCSA plans to issue a final rule requiring that all healthcare professionals who issue medical certificates for interstate truck and bus drivers complete training on the Federal physical qualifications regulations and pass a test to verify they understand the requirements. Once this program is implemented, only medical certificates issued by examiners listed on the National

Registry will be accepted. Medical examiners will be required to submit to FMCSA reports providing the name and a unique numerical identifier for each person who applies for a medical certificate. Certain other information will also be submitted to enable the Agency to monitor medical examiners' performance and to identify potential instances of "doctor shopping" – medically unqualified drivers making multiple attempts to obtain a medical certificate.

## **KNOWLEDGE REQUIREMENTS FOR NEW CARRIERS**

The FMCSA acknowledges that many of the new motorcoach operators that enter the industry each year do not have the knowledge needed to put into place effective safety management controls for their company. The Agency initiated a rulemaking to address this issue.

On August 29, 2010, FMCSA published an Advance Notice of Proposed Rulemaking requesting public comment on the methods the Agency should consider implementing to provide further assurance that a new applicant carrier is knowledgeable about the applicable safety regulations before being granted new entrant authority. The Agency announced that it was considering whether to implement a proficiency examination as part of our revised New Entrant Safety Assurance Process and sought information concerning issues that should be considered in the development and use of such an examination.

In addition, the Agency requested comments on other alternatives to a proficiency examination to complement the processes already in place to demonstrate that new entrant carriers are knowledgeable about applicable safety requirements.

The FMCSA also tasked its Motor Carrier Safety Advisory Committee (MCSAC) to provide suggestions or recommendations on approaches that could be implemented to improve the existing new entrant safety assurance processes, procedures, and requirements for ensuring that new entrant motor carriers are knowledgeable about Federal motor carrier safety mandates prior to beginning operations in interstate commerce. The MCSAC provided its letter report in September 2010 which included recommendations for mandatory testing of certain company officials responsible for ensuring compliance with the safety regulations and putting into place safeguards for ensuring that the individual taking the test would actually be responsible for implementing or maintaining the carrier's safety management controls.

In addition to the rulemaking, FMCSA is conducting a study to evaluate the effectiveness of some of the recommendations. The phased research is progressing on analysis of safety performance cost effectiveness for fostering a safety culture in new entrants via training and testing their knowledgeability. The initial report is a detailed analysis of changes in safety performance that resulted from a predecessor simplistic new entrant training effort. Preliminary results of that simplistic training effort are encouraging in regard to the effectiveness.

The Agency is currently reviewing the comments to the ANPRM and the MCSAC report in preparation for developing an NPRM to request public comment on a regulatory approach for ensuring new entrant carriers have the knowledge needed to comply with the Federal safety regulations.

## CONCLUSION

FMCSA's efforts to improve motorcoach safety could not be accomplished without the assistance of our State and local safety partners. We are working closely with the International Association of Chiefs of Police, the Governors Highway Safety Association, the Commercial Vehicle Safety Alliance, and others enlisting their support for promotion of sustained traffic enforcement against those CDL operators who drive unsafely. In addition, we also rely on our partnerships with safety advocacy groups and the many safety-conscious professionals in the industry to make our highways safer. With almost 4,000 active interstate motorcoach operations, the industry has demonstrated that we can achieve much higher levels of safety performance than we witnessed earlier this month. This month's crashes are tragic reminders that we have much more to do.

To that end, I want to assure you that everyone at FMCSA is committed to three core principles: First is to raise the safety bar to enter the motor carrier industry; second, is to maintain high safety standards to remain in the industry. And our third core principle is to remove high risk drivers and carriers from operating. Everything we do is linked to one or more of these principles.

Mr. Chairman, we at FMCSA applaud you and your colleagues on the Committee and in the Congress for your leadership in the area of motor carrier safety. During these investigations into the recent motorcoach accidents, we have been in constant communication with many of you and your staff. We appreciate your support and your holding us to that high standard that we know must be achieved to avoid future crashes. As we go forward with efforts to reauthorize our highway safety program, we look forward to working with you to develop a plan that will help achieve great strides in the coming years.

I would be happy to answer any questions you may have.

**STATEMENT OF ANNE S. FERRO  
ADMINISTRATOR  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**BEFORE THE  
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES  
"HOW TO BEST IMPROVE BUS SAFETY ON OUR NATION'S HIGHWAYS"**

**June 13, 2011**

Chairman Mica, Ranking Member Rahall, and Members of the Committee, thank you for inviting me to testify today regarding the very serious issue of motorcoach safety.

As we know all too well, the past 3 months have marked the worst period in recent years for motorcoach safety, with tragic crashes causing 23 fatalities and numerous injuries. On March 12, a crash occurred in New York that resulted in 15 fatalities. On March 14, another crash occurred in New Jersey with 2 fatalities. On May 28, a crash in the State of Washington resulted in 2 fatalities, while on May 31, another crash in Virginia led to 4 fatalities.

Please allow me to begin my testimony by extending my deepest sympathy to the families who lost loved ones in these crashes, as well as the many additional individuals who were injured, and to assure them that we at the Federal Motor Carrier Safety Administration (FMCSA) are committed to doing everything we can to prevent tragedies like this from happening again. Safety is our number one priority at FMCSA. We have significantly increased our regulatory and enforcement actions over the past several years to improve passenger safety. However, the recent tragic events indicate that we have more to do, both at the Federal level and in working with our State and local enforcement partners.

FMCSA is committed to identifying all at-risk passenger carrier operations and taking appropriate enforcement actions to force company owners to improve their safety management practices, or shut down their operations. We are continually pursuing aggressive legal strategies against unsafe carriers. We have revised our enforcement policies to eliminate 10-day extensions on out of service orders and are putting carriers out of service as quickly as our authority permits. We have made a request to the Office of the Inspector General for immediate engagement.

On Tuesday, May 31, 2011, FMCSA issued an unsatisfactory safety rating and placed North Carolina-based bus company, Sky Express, Inc., out of service for violating multiple Federal safety regulations. Sky Express was the passenger carrier involved in a crash on I-95 near Fredericksburg, Va. that killed four people on Tuesday, May 31, 2011. Under the out-of-service order, Sky Express is prohibited from operating in interstate and intrastate commerce.

On Friday, June 3, 2011, FMCSA issued a cease and desist order against Sky Express after learning that this unsafe, illegal bus company was attempting to operate and sell tickets under different company names. The order was effective immediately.

As part of FMCSA's investigation of Sky Express and its commitment to pursue enforcement actions against unsafe "reincarnated" bus companies, the Agency has also subpoenaed the records of three internet web sites that have sold or may have sold tickets for Sky Express and other bus companies. Those web sites are [www.gotobus.com](http://www.gotobus.com), [www.taketours.com](http://www.taketours.com), and [www.2001bus.com](http://www.2001bus.com).

The use of web sites to sell tickets to consumers is another challenge to effective passenger carrier safety enforcement. A single web site may sell tickets for multiple companies that share ownership, vehicles and drivers. As soon as one company is placed out-of-service the web site simply directs all of the passengers to one of the other bus companies. Then the out-of-service bus company leases or sells its buses to other bus companies serviced by the same web site, which then operate the same buses with the same drivers over the same routes. The web site owners are not regulated by FMCSA and in many instances appear unconcerned about the safety fitness of the bus companies they are representing.

U.S. Transportation Secretary Ray LaHood recently announced several new measures that FMCSA is taking to help ensure that passenger bus travel is as safe as possible. FMCSA recently announced a commercial driver's license learner's permit rule that will require more rigorous testing standards. FMCSA is also seeking new authority to strengthen passenger carrier and driver compliance with Federal safety regulations. And, through consumer outreach and information tools, it is empowering consumers to review safety records of bus companies before booking a trip. FMCSA has teamed up with State and local law enforcement to conduct unannounced motorcoach inspections at popular travel destinations throughout the spring and summer peak travel season. And we are reaching out to our State and local law enforcement partners, asking them to increase traffic enforcement on all commercial motor vehicles, especially motorcoaches.

First, on May 5, 2011, FMCSA issued a new final rule requiring anyone applying for a commercial driver's license (CDL) to first obtain a commercial driver's learner's permit (CLP). The rule also requires all State licensing agencies to use a CDL testing system that meets the American Association of Motor Vehicle Administrators' CDL knowledge and skill standards, and prohibits the use of foreign language interpreters to reduce the potential for testing fraud. Prior to this new rule, CDL applicants were not required to first obtain a learner's permit, and CDL testing systems were in some ways inconsistent from State to State. We believe this rule will strengthen the CDL testing programs and enhance national uniformity.

Second, the U.S. Department of Transportation has put forth several new policy proposals designed to raise the bar for passenger carrier safety. One is a provision that would give the U.S. DOT greater authority to pursue enforcement action against unsafe

“reincarnated” passenger carriers by establishing a uniform, Federal standard to help determine if a new carrier is simply a reincarnation of an old, unsafe carrier. FMCSA is also proposing to require new motorcoach companies to undergo a full pre-authority safety audit before receiving commercial operating authority registration, revise current law to ensure a driver’s CDL can be suspended or revoked for drug- and alcohol-related offenses committed in non-commercial vehicles, eliminate the en route inspection prohibition, and raise the penalty from \$2,000 a day to \$25,000 for passenger carriers that attempt to operate without U.S. DOT authority. The public enjoys access to affordable and efficient passenger carrier services but this access in no way should be allowed to diminish the safety of these passenger carrier services. The measures the U.S. DOT is proposing will help us to better identify and swiftly weed out unsafe and irresponsible operators. Our Agency is committed to using every available resource to improve passenger carrier and driver safety.

Third, the public deserves transparent and ready access to safety information on passenger carriers so they can make the best choices for safe travel. Accordingly, last month, FMCSA unveiled a “Think Safety: Every Trip, Every Time” pre-trip safety checklist to help consumers review a bus company’s safety record, safety rating, and USDOT operating authority before buying a ticket or hiring a bus company for group travel. The checklist is now available online at FMCSA’s Passenger Carrier Safety web site <http://www.fmcsa.dot.gov/safety-security/pcs/Index.aspx>. FMCSA is also encouraging consumers to report any unsafe bus company, vehicle or driver to the agency through a toll free hotline at 1-888-DOT-SAFT (1-888-368-7238) or through FMCSA’s consumer complaint web site at [http://nccdb.fmcsa.dot.gov/sv\\_disclaimer.asp](http://nccdb.fmcsa.dot.gov/sv_disclaimer.asp). These new, free tools will empower consumers to select the safest bus companies and report any safety violation to Federal authorities. By placing bus safety resources at the public’s fingertips, we will help make motorcoach travel as safe as possible.

Fourth, FMCSA and its State and local enforcement partners are supporting improved passenger carrier safety with an increasing number of unannounced bus safety inspections across the country. Starting in March and lasting throughout the summer travel season, the enforcement campaign will target popular destinations such as amusement parks, national parks, casinos, and sports event venues.

Over the past five years, FMCSA has doubled the number of unannounced bus safety inspections and comprehensive safety reviews of the nation’s estimated 4,000 motorcoach companies. Roadside safety inspections of motorcoaches jumped from 12,991 in 2005 to 25,703 in 2010, while compliance reviews rose from 457 in 2005 to 1,042 in 2010. As an example of how we are continuing to emphasize safety enforcement, FMCSA and its State and local law enforcement partners conducted more than 3,000 surprise passenger carrier safety inspections resulting in 442 unsafe buses or drivers being removed from the nation’s roadways. The strike force issued out-of-service citations to 127 drivers and 315 vehicles during the unannounced inspections that took place from May 1-15, 2011.

FMCSA has taken a number of additional actions over the past several years to further improve passenger safety:

## **MOTORCOACH SAFETY ACTION PLAN**

Safety is the U.S. Department of Transportation's number one priority across all modes of transportation. In 2009, Secretary LaHood sought to make significant improvements to motorcoach safety by tasking all of the appropriate DOT agencies to work together to establish a unified Motorcoach Safety Action Plan. The Department released the Plan in November 2009. It lays out concrete steps for addressing the driver-related cause of crashes, fatalities, and injuries, and enhancing motorcoach driver performance; , vehicle safety and maintenance, operator safety oversight, crash avoidance, and occupant protection. The Plan also focuses on the Department's strategy for improving data collection and analysis for motorcoach operations.

Based upon our review of motorcoach crash data we determined that driver fatigue, driver behavior, vehicle rollover, occupant ejection, and operator maintenance issues contribute to the majority of motorcoach crashes, fatalities, and injuries. As a result, FMCSA had responsibility for four priority safety-related action items in the Plan. These action items are:

1. Initiate rulemaking to require electronic on-board recording devices on all motorcoaches to better monitor drivers' duty hours and manage fatigue.
2. Initiate rulemaking to propose prohibiting texting and limiting the use of cellular telephones and other devices by motorcoach drivers.
3. Enhance oversight of carriers attempting to evade sanctions.
4. Establish minimum knowledge requirements for applicants seeking FMCSA authority to transport passengers.

We made substantial progress in each of these areas and I would like to take a few minutes to provide you with an update.

## **ELECTRONIC ON-BOARD RECORDERS**

On April 5, 2010, the Agency took a significant step toward improving compliance with the hours of service regulations by reducing the number of fatigue-related crashes by publishing a final rule mandating the use of electronic on-board recorders (EOBRs) by motor carriers that transport passengers or property and that demonstrate serious non-compliance with the hours of service (HOS) rules. This action will reduce the likelihood of falsified or incomplete records of duty status by those carriers. The Final Rule establishes: 1) new performance-oriented standards for EOBR technology; 2) a mandate for certain motor carriers to use EOBRs to remediate regulatory noncompliance (a remedial directive); and 3) incentives to promote voluntary EOBR use



by all carriers. It is expected that approximately 5,700 motor carriers each year will be required to use EOBRs.

In addition, on February 1, 2011, the Agency published a Notice of Proposed Rulemaking (NPRM) that would broaden the first EOBR rule by requiring nearly all motor carriers to use EOBRs to monitor their drivers' compliance with HOS requirements. Specifically, FMCSA proposed mandatory installation and use of EOBRs in interstate commercial motor vehicles operated by motor carriers currently required to complete records of duty status, including passenger carrier operations. Additionally, the preamble to the rulemaking requests data and information about the safety of short-haul passenger carriers that currently are not required to maintain records of duty status.

The proposed rule would also establish specific requirements for supporting documents that motor carriers are required to obtain and keep, as required by section 113(b) of the Hazardous Materials Transportation Authorization Act (HMTAA) of 1994. Comments on the NPRM closed on May 23, 2011. We are currently reviewing the comments and anticipate publishing a final rule in early 2012.

## **DISTRACTED DRIVING**

Driver distraction is a serious safety problem that poses an increasing threat to commercial motor vehicle (CMV) safety. To address this issue, FMCSA developed an approach that involves Federal rulemaking, outreach, and enforcement.

On September 27, 2010, FMCSA published a Final Rule prohibiting texting by all CMV drivers while operating in interstate commerce and imposing civil penalties on drivers and motor carriers that violate the prohibition. The final rule also provides the disqualification of CDL holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that prohibits texting. We are working closely with the National Highway Traffic Safety Administration and with our State and local safety partners in developing enforcement strategies for those who violate this rule.

On December 21, 2010, FMCSA published an NPRM that would restrict the use of hand-held mobile telephones by CMV drivers. The Agency proposed new driver disqualification sanctions for interstate drivers of CMVs who fail to comply with this Federal restriction and for CDL holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that restricts the use of hand-held mobile telephones. The comment period for the NPRM is closed, and the Agency plans to issue a final rule later this year.

## **ENHANCED OVERSIGHT OF MOTORCOACH OPERATIONS**

FMCSA launched several initiatives to enhance its oversight of motorcoach companies, the drivers they employ and the vehicles they operate. These efforts include strict enforcement of the current safety regulations, more rigorous scrutiny of all

passenger carrier applications for operating authority, implementation of the Safety Measurement System to identify at-risk carriers for targeted enforcement as part of our new Compliance, Safety and Accountability program, or "CSA," and improved oversight of the medical certification process for drivers.

### *FMCSA Motorcoach Strike Forces and Oversight*

FMCSA routinely conducts strike force activities at national, regional and local levels to enhance our overall motorcoach enforcement program.

For instance, in October 2010, we conducted a two-day strike force at the Bands of America/Super Regional Championship at the Alamodome in San Antonio, Texas. We inspected motorcoaches from 12 different companies, found 45 violations and placed 4 vehicles out-of-service. Although this is a small event, we conducted the strike force because more than 50 high school bands from across Texas use motorcoaches to attend the competition. We wanted to be sure these trips ended safely.

Recently, as a direct result of one of FMCSA's priority investigations and our safety partnerships with State and local enforcement agencies, we protected 250 eighth-graders from Tomlinson Middle School who were surprised while on a field trip to Washington, D.C., when police impounded their chartered buses at Arlington National Cemetery. The five motorcoaches transporting these students were operating without insurance or registration, and one had a pair of bald tires. Affordable Bus Charters Inc., based in Connecticut, had sent the buses out on the field trip even though the vehicles' registrations and insurance had lapsed. The buses were placed out of service and the students and their luggage were safely transferred to new compliant buses.

Over the past several months, we have conducted strike force activities in Atlantic City and Six Flags in New Jersey; Rocket Space Center and the 31<sup>st</sup> Annual NAIA Softball National Championship in Alabama; at the Foxwoods and Mohegan Sun Casinos in Connecticut; at the Red Hawk Casino and Yosemite National Park in California; at casinos in Tunica and Biloxi, Mississippi; at the Lincoln/Juarez Bridge in Laredo, Texas; and at the Bryce Canyon National Park in southern Utah.

In the next 3 months, we plan to have strike force activities at Yellowstone National Park and Grand Teton National Park in Wyoming; at the cruise ship terminals in Bar Harbor and Portland, Maine; at Yellowstone National Park in Idaho; and at the Grand Canyon in Arizona, just to name a few.

Last year, between August 23 and September 3, FMCSA conducted a national passenger carrier strike force. During that time period, FMCSA along with our State and local safety partners, conducted 5,679 passenger vehicle inspections, 324 compliance reviews, 31 new entrant safety audits, and 35 Americans with Disabilities Act (ADA) reviews. We discovered more than 900 driver violations that required over 200 drivers to be placed out-of-service, and more than 350 drivers were cited for hours of service violations. We also discovered more than 5,600 vehicle violations and placed over 900

vehicles out-of-service. As a result of these compliance reviews, 9 percent of the passenger carriers received safety ratings of "Conditional" and 2 percent received proposed "Unsatisfactory" safety ratings.

In 2009, FMCSA conducted a national passenger carrier strike force for two weeks in May. Again, FMCSA worked in conjunction with our State and local safety partners to conduct 8,699 passenger vehicle inspections, 548 compliance reviews, and 53 new entrant safety audits. We discovered over 1,700 driver violations that required over 275 drivers to be placed out-of-service. We cited more than 500 drivers for hours of service violations, and we discovered over 7,000 vehicle violations and over 900 vehicle out-of-service violations cited. As a result of these compliance reviews, 9 percent of the passenger carriers received "Conditional" safety ratings, and 3 percent received a proposed "Unsatisfactory" safety rating.

We thank our State and local law enforcement officials for their efforts to support these activities to improve passenger carrier safety nationwide.

### ***Aggressive Enforcement and Legal Actions***

FMCSA has expanded our enforcement activities in innovative ways, within the limits of our current authorities, from being focused only on motorcoach companies to holding company officials and consultants accountable. One example occurred in July 2010 when FMCSA issued a Notice of Claim to Ernesto Segura Silva for a civil penalty of \$78,170 charging him, and the two motor carrier company names he had used, with 36 violations of 6 separate motor carrier safety requirements. A separate Claim for \$55,270 was issued to Mario A. Garcia, a consultant, for his actions in aiding and abetting Mr. Segura and his unfit motor carrier operation to evade Federal regulations and continuing to transport passengers after a final unsatisfactory safety rating, without operating authority and in violation of FMCSA Orders to Cease.

The Notice of Claim issued to Mr. Garcia charged him with 34 violations of Federal requirements, including making false statements and providing false or misleading information in the new entrant registration process. This was the first time FMCSA had charged a safety consultant for the consultant's actions in aiding a carrier in violating Federal regulations. Mr. Garcia had also started his own passenger motor carrier by taking a motorcoach and driver from Mr. Segura after FMCSA rejected Mr. Segura's application for operating authority. FMCSA immediately sought an injunction in Federal District Court against Mr. Garcia and his passenger motor carrier company. On November 30, 2010, the Court entered an order approving a Consent Decree that permanently enjoined Mr. Garcia and this passenger carrier from operating any commercial motor vehicle in interstate or foreign commerce. The Consent Decree also enjoins, Mr. Garcia from aiding any motor carrier in evading FMCSA regulations, operating without authority or operating in violation of an FMCSA order.

In February 2011, FMCSA successfully asked another Federal District Court to enter a Consent Decree against RLT Tours, a passenger carrier transporting daily commuters between Tobyhanna, Pennsylvania and New York City without necessary

operating authority. Following a compliance review, FMCSA had issued RLT Tours an unsatisfactory safety rating, revoked its operating authority and ordered it to cease operations. RLT ignored these orders and continued to operate. In response to FMCSA's request, the court order dissolved RLT Tours and a related company and prohibited them from operating in interstate commerce. The Court similarly barred the individual owners from operating in interstate commerce without proper operating authority, and it expressly enjoined them – and any persons with whom they were acting in concert – from applying for FMCSA operating authority without accurately disclosing their relationship to RLT Tours.

Even with all FMCSA has done, the tragic crashes over the last few months remind us that we must continue to push hard not to be complacent in enforcing our safety regulations on motorcoach companies and other CMV operators. FMCSA, the States and local agencies must sustain an aggressive approach to increase the number of inspections, reviews and enforcement actions.

#### ***Operating Authority Vetting Program***

One of the most serious problems in the motorcoach industry is “reincarnated” carriers – unsafe carriers that FMCSA has shut down, but which “reincarnate” and seek operating authority disguised as a “new” company. To combat this problem, in August 2008, FMCSA implemented a more robust investigation of applications for passenger carrier operating authority, known as the vetting program.

Through the vetting program, FMCSA investigates the applicant's information to determine whether the applicant is fit, willing, and able to comply with the safety and other applicable regulations and to assess whether the applicant is attempting to evade enforcement actions for violations committed under another business name.

We believe the program is effective, and I assure you that we will maintain a high level of effort in this area. Since FMCSA started the program in 2008, the Agency has applied the vetting process to 2,929 applications for passenger carrier operating authority. We granted operating authority to 2,105 applicants, 717 carriers failed to successfully complete the application and either withdrew their applications or simply failed to respond to inquiries from the Agency, and 3 were rejected because the Agency determined the applicant was not fit, willing and able to comply with the safety and other applicable regulations.

The Vetting Program is one of our early success stories in raising the safety bar to enter the passenger carrier industry and we continue to seek ways to improve and strengthen this critical tool.

#### ***New Entrant Safety Audit Program***

One of the concerns that came to light during the development of the Motorcoach Safety Action Plan was the perception that new motorcoach operators did not have the

knowledge or ability to properly maintain their vehicles. To aid in determining the validity of this perception, FMCSA modified the new entrant safety audit to ascertain the maintenance capabilities of new motorcoach companies. FMCSA added questions on whether the motorcoach company owns or leases a facility for the inspection, repair, and maintenance of its vehicles and on whether the company has an arrangement or contract for the systematic inspection, repair, and maintenance of its vehicles.

FMCSA also modified the new entrant safety audit to include a component on compliance with the ADA regulations for over-the-road bus (OTRB) companies. We now ask whether the carrier has the means to provide accessible service on a 48-hour advance notice basis by its owned or leased OTRBs. If the carrier does not have the means, we seek information on whether the carrier has an arrangement with another carrier that operates accessible OTRBs to provide accessible service for the first carrier.

FMCSA established an internal goal to complete the new entrant safety audits for passenger carriers within 9 months, rather than the 18 months required by statute. In FY 2010, FMCSA completed 77 percent of the passenger carrier safety audits within 9 months and 90 percent in 18 months. For FY 2011, to date, the percentages are 77 percent and 94 percent, respectively. On average, FMCSA conducts a safety audit on a new motorcoach company in less than 6 months.

#### ***Compliance, Safety, Accountability (CSA)***

FMCSA's CSA program is an essential new tool that will allow the Agency to monitor and take appropriate enforcement action against a far greater number of passenger carriers and other motor carriers. This major initiative provides a more effective operational model so that the Agency can have a greater impact on large truck and bus safety while optimizing the resources of FMCSA and its State partners.

The Agency is well into the implementation of the CSA model which includes four major elements: (1) measurement; (2) intervention; (3) safety fitness determination; and (4) information technology. The measurement system pinpoints the specific safety problems involved, while the broader array of CSA interventions, including warning letters sent at the first indication of safety performance problems and various types of investigations for carriers with more severe safety performance problems, enables FMCSA to match the most appropriate intervention to seriousness of the carrier's specific safety problems.

In December 2010, FMCSA released to the public the new CSA Safety Measurement System (SMS) and began using the system for prioritizing carriers for enforcement interventions. Earlier this month, the Agency began sending warning letters to certain motor carriers nationwide. The warning letters are used to formally notify company executives about safety problems observed in our inspection and crash database so that appropriate corrective actions can be taken. FMCSA will closely monitor the safety records of these carriers for the next 12 months to assure that corrective action has indeed occurred. Failure of the carrier to address the safety performance problems may

result in tougher enforcement actions, including a Federal notice of violation, a notice of claim through which the Agency assesses civil penalties, or an off-site or on-site investigation. The investigations may also result in civil penalties for discovered violations.

FMCSA has implemented components to its CSA program to monitor the compliance and safety of motorcoach companies separately from trucking companies. For example, unauthorized for-hire motorcoach companies that have operational activity are made a top priority for an on-site investigation. In addition, FMCSA prioritizes motorcoach companies with below industry median performance in a safety evaluation area, companies that have operated for more than 2 years without an on-site investigation, or those that have operated more than 5 years since the previous on-site investigation.

Later this year, FMCSA will be issuing an NPRM that will propose changes to our current Safety Fitness Rating Methodology for commercial bus and truck companies. Through this rulemaking proposal, FMCSA would determine a carrier's safety fitness based on CSA data consisting of crashes, road inspection results and violation history rather than exclusively data from the standard compliance review. This proposal would enable FMCSA to assess the safety performance of a greater segment of the commercial motor carrier industry with the goal of further reducing large truck and bus crashes and fatalities and will speed up the process of shutting down carriers.

#### *Enhanced Oversight of the Medical Certification Process*

A critical part of ensuring the safe operation of all CMVs is the medical certification of drivers. Currently, FMCSA and its State partners check regularly during compliance reviews, new entrant safety audits, and roadside inspections to ensure that drivers have a valid medical card. When we discover that a driver does not have a medical card or a company is employing drivers without valid medical cards, the driver and carrier are subject to enforcement action, generally in the form of civil penalties. In addition, if during an inspection a driver is found to be operating a passenger carrying vehicle without a valid medical card, the driver is placed out-of-service.

On December 1, 2008, FMCSA published a final rule that merged the medical certification and CDL issuance and renewal processes. The rule improves the Agency's and the States' ability to monitor the medical certification status of interstate CDL holders. The final rule requires CDL holders to provide a copy of their medical certificate to the State driver licensing agency in order to be granted a CDL or to maintain their existing interstate driving privileges. If a driver fails to renew the medical certificate, or if the driver fails the physical examination, the CDL will be downgraded automatically to prohibit the operation of CMVs in interstate commerce.

The final rule became effective on January 30, 2009. States must implement the information technology system changes necessary to comply with the rule by January 30, 2012. All CDL holders must comply with the requirements to submit the medical certification information to the States by January 30, 2014.

The final rule requires States to make the CDL driver's medical certification status available electronically to motor carrier safety enforcement personnel. This will enable FMCSA and State enforcement personnel to determine during a roadside inspection whether a driver is medically qualified by reviewing the electronic record maintained by the State licensing agency. Federal, State, and local government enforcement officials would query the Commercial Driver's License Information System or the National Law Enforcement Telecommunication System to determine whether the driver had the required medical certification – something they cannot now accomplish.

In addition to the medical certification rule, FMCSA is developing a National Registry of Certified Medical Examiners. Later this year, FMCSA plans to issue a final rule requiring that all healthcare professionals who issue medical certificates for interstate truck and bus drivers complete training on the Federal physical qualifications regulations and pass a test to verify they understand the requirements. Once this program is implemented, only medical certificates issued by examiners listed on the National Registry will be accepted. Medical examiners will be required to submit to FMCSA reports providing the name and a unique numerical identifier for each person who applies for a medical certificate. Certain other information will also be submitted to enable the Agency to monitor medical examiners' performance and to identify potential instances of "doctor shopping" – medically unqualified drivers making multiple attempts to obtain a medical certificate.

## **KNOWLEDGE REQUIREMENTS FOR NEW CARRIERS**

FMCSA acknowledges that many of the new motorcoach operators that enter the industry each year do not have sufficient knowledge to put into place effective safety management controls for their company. The Agency initiated a rulemaking to address this issue.

On August 29, 2010, FMCSA published an Advance Notice of Proposed Rulemaking requesting public comment on the methods the Agency should consider implementing to provide further assurance that a new applicant carrier is knowledgeable about the applicable safety regulations before being granted new entrant authority. The Agency announced that it was considering whether to implement a proficiency examination as part of our revised New Entrant Safety Assurance Process and sought information concerning issues that should be considered in the development and use of such an examination.

In addition, the Agency requested comments on alternatives to a proficiency examination to complement the processes already in place to demonstrate that new entrant carriers are knowledgeable about applicable safety requirements.

FMCSA also tasked its Motor Carrier Safety Advisory Committee (MCSAC) to provide suggestions or recommendations on approaches that could be implemented to improve the existing new entrant safety assurance processes, procedures, and

requirements for ensuring that new entrant motor carriers are knowledgeable about Federal motor carrier safety mandates prior to beginning operations in interstate commerce. The MCSAC provided its letter report in September 2010, which included recommendations for mandatory testing of certain company officials responsible for ensuring compliance with the safety regulations and putting into place safeguards for ensuring that the individual taking the test would actually be responsible for implementing or maintaining the carrier's safety management controls.

The Agency is currently reviewing the comments to the ANPRM and the MCSAC report in preparation for developing an NPRM to request public comment on a regulatory approach for ensuring new entrant carriers have the knowledge needed to comply with the Federal safety regulations.

In addition to the rulemaking, FMCSA is conducting a study to evaluate the effectiveness of various types of training programs to provide a practical means of implementing a rulemaking concerning knowledge and understanding of the Federal Motor Carrier Safety Regulations. Preliminary results of that simplistic training effort are encouraging in regard to the effectiveness.

## **CONCLUSION**

FMCSA's efforts to improve motorcoach safety could not be accomplished without the assistance of our State and local safety partners. We are working closely with the International Association of Chiefs of Police, the Governors Highway Safety Association, the Commercial Vehicle Safety Alliance, and others in promoting sustained traffic enforcement against unsafe CDL operators. In addition, we rely on our partnerships with safety advocacy groups and the many safety-conscious professionals in the industry to make our highways safer. With approximately 4,000 active interstate motorcoach operations, the industry has demonstrated that we can achieve much higher levels of safety performance than we witnessed in the past months. Recent crashes are tragic reminders that we have much more to do.

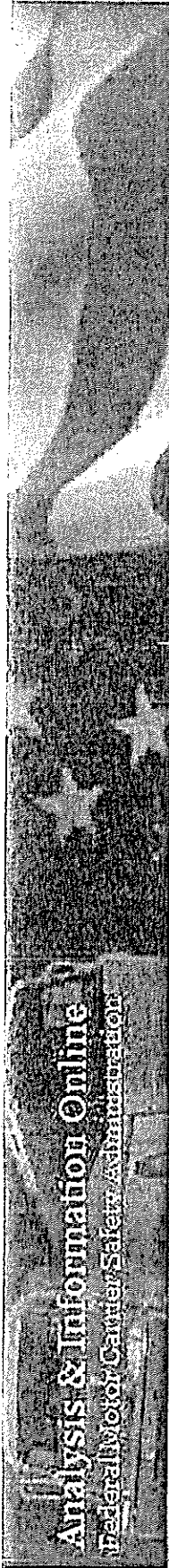
Going back to my testimony earlier this year, I again call upon all States to follow in the footsteps of Governor Cuomo. If State licensing agencies perform a top to bottom review of the CDL holders with a passenger endorsement that are based in their State, together we will begin to root out individuals that received a CDL under false pretenses or through fraudulent practices. Ensuring the integrity of the CDL and its holder is a key component to improving overall passenger carrier safety operations.

To that end, I want to assure you that everyone at FMCSA is committed to three core principles: The first is to raise the safety bar to enter the motor carrier industry; the second is to maintain high safety standards to remain in the industry. And our third core principle is to remove high risk drivers and carriers from operating. Everything we do is linked to one or more of these principles.



Mr. Chairman, we at FMCSA applaud you and your colleagues on the Committee and in the Congress for your leadership in the area of motor carrier safety. During these investigations into the recent motorcoach crashes, we have been in constant communication with many of you and your staff. We appreciate your support and your holding us to that high standard that we know must be achieved to avoid future crashes. As we go forward with efforts to reauthorize our highway safety program, we look forward to working with you to develop a plan that will help achieve great strides in the coming years.

I would be happy to answer any questions you may have.



**Passenger Carrier - Roadside Insp. in FY All**

**Report Filters:** Domicile: ALL  
 Time Period: FY All  
 State: New York

Data Source: FMCSA Motor Carrier Management Information System (MCMIS) 9/23/2011 data Snapshot.

Summary of Roadside Inspections on Passenger Vehicles by New York Division

Vehicle Type	FY2007				FY2008				FY2009				FY2010				FY2011			
	Fed	State	Total	% of Total	Fed	State	Total	% of Total	Fed	State	Total	% of Total	Fed	State	Total	% of Total	Fed	State	Total	% of Total
Motorcoaches	48	607	555	52.71%	18	450	468	49.52%	15	401	416	43.65%	29	368	395	44.04%	74	2142	2216	52.60%
School Buses	0	41	41	3.89%	3	55	53	6.67%	3	50	53	5.56%	2	23	25	2.78%	1	9	10	0.24%
Vans	3	44	47	4.46%	3	57	60	6.35%	1	69	90	9.44%	0	64	64	7.13%	6	99	105	2.49%
Limousines	0	1	1	0.09%	3	4	7	0.74%	3	3	9	0.94%	3	8	11	1.23%	2	30	32	0.76%
Buses	102	307	409	38.64%	6	241	347	36.72%	23	362	385	40.40%	18	384	402	44.82%	49	1801	1850	43.91%
Total	153	900	1053	100.00%	38	907	945	100.00%	48	905	953	100.00%	52	845	897	100.00%	192	4081	4273	100.00%

Roadside inspections were conducted by Federal and State personnel on passenger vehicles (motor coaches, school buses, vans, limousines, and buses) by New York Division in the last 5 fiscal years. Roadside inspections occurred when a Motor Carrier Safety Assistance Program (MCSAP) inspector conducted an examination on individual commercial motor vehicles and drivers to determine if they were safe to operate by determining if they were in violation of the Federal Motor Carrier Safety Regulations (FMCSR) and Hazardous Materials Regulations (HMR).

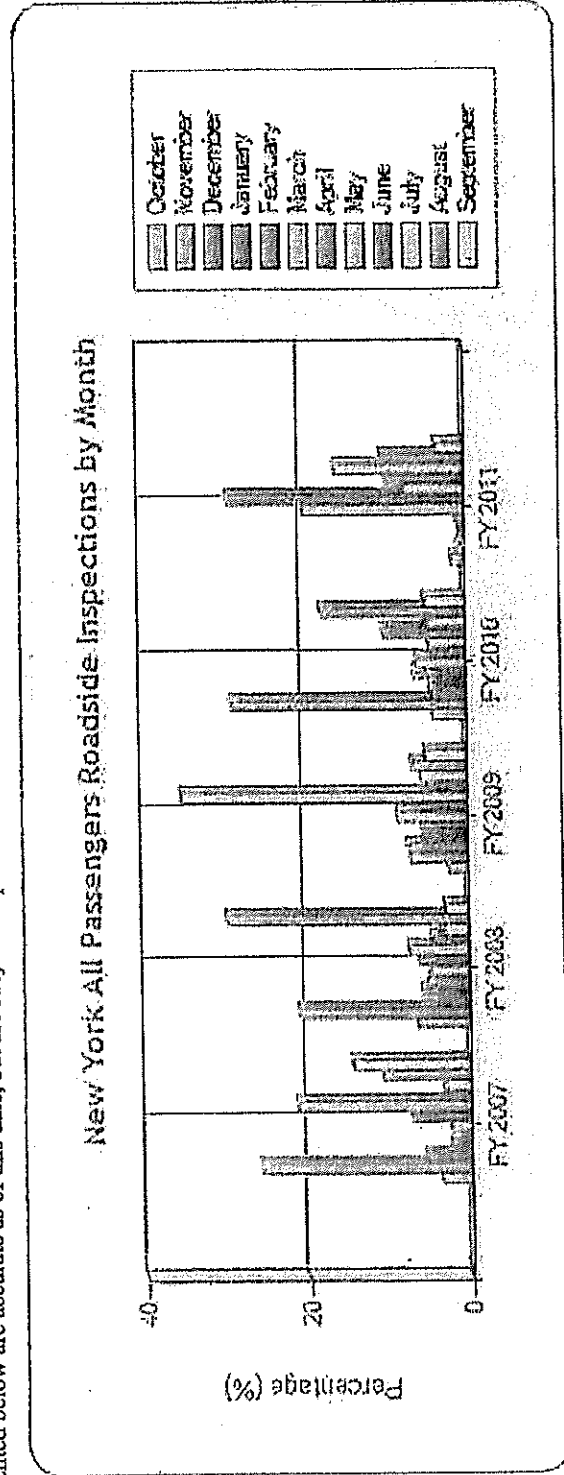
# Analysis & Information Online

Patrol Motor Carrier Safety Administration

## New York All Passengers Roadside Inspections by Month

Domicile: All Domiciles  
 Vehicle Type: All Passengers

Data Source: FMCSA Motor Carrier Management Information System (MCMIS) data snapshot as of 9/23/2011, including current year-to-date information for 2011. The data presented below are accurate as of this date, but are subject to update as new or additional information may be reported to MCMIS following the snapshot date.



**Analysis & Information Online**  
 Federal Motor Carrier Safety Administration

*New York All Passengers Roadside Inspections by Month*

Domicile: All Domiciles  
 Vehicle Type: All Passengers

Data Source: FMCSA Motor Carrier Management Information System (MCMIS) data snapshot as of 9/23/2011, including current year-to-date information for 2011. The data presented below are accurate as of this date, but are subject to update as new or additional information may be reported to MCMIS following the snapshot date.

Month	FY 2007			FY 2008			FY 2009			FY 2010			FY 2011		
	Fed	State	Total	Fed	State	Total	Fed	State	Total	Fed	State	Total	Fed	State	Total
October	0	38	38	0	60	60	0	22	22	2	35	37	15	52	67
November	59	212	271	33	155	188	0	67	67	20	239	259	0	38	38
December	13	44	57	0	35	35	3	66	69	2	37	39	0	23	23
January	1	23	24	0	55	55	0	51	51	3	29	32	0	11	11
February	0	7	7	0	45	45	0	53	53	6	51	57	2	36	38
March	0	26	26	0	45	45	14	68	82	0	55	55	37	900	937
April	8	68	76	0	58	58	1	59	59	2	37	39	4	1,228	1,280
May	30	194	224	0	69	69	12	324	336	4	37	41	18	295	315
June	7	27	34	0	43	43	10	37	47	0	191	191	55	353	404
July	4	28	32	3	25	28	2	52	54	0	43	43	1	671	672
August	5	107	112	2	279	281	3	61	64	9	150	159	0	427	427
September	26	126	152	0	27	27	3	45	48	4	41	45	0	149	149
<b>Total</b>	<b>153</b>	<b>900</b>	<b>1,053</b>	<b>38</b>	<b>907</b>	<b>945</b>	<b>48</b>	<b>905</b>	<b>933</b>	<b>52</b>	<b>845</b>	<b>897</b>	<b>132</b>	<b>4,031</b>	<b>4,213</b>

# Bloomberg



## Unsafe Buses Run Until Crashes; U.S. Fails to Act

By Jeff Plungis - Oct 4, 2011

When executives of Sky Express Inc. met with U.S. bus-safety regulators for an audit in March, the problems were clear even in the rough English of records translated from Chinese.

One driver worked 11 consecutive days without a rest period, according to audit documents obtained under the Freedom of Information Act. Four of 10 drivers couldn't understand enough English to identify their employer. An insulin-dependent driver made a 938-mile run without medical clearance. All those infractions violated U.S. law.

Inspectors rated the carrier "unsatisfactory," meaning it had to close in 45 days unless it could prove it fixed the problems. It didn't, the documents show. Fifty-four days later, on May 31, one of its buses crashed outside Doswell, Virginia. Four people were killed.

The Federal Motor Carrier Safety Administration's failure to close Sky Express has been repeated throughout its 12-year history and is linked to a growing number of crashes, some of them fatal, Deborah Hersman, chairman of the National Transportation Safety Board, said in an interview.

"We've seen it in too many accidents," Hersman said. "They have a fatal accident that's very public, and ka-boom, they go in within a week and they put them out of service. If they were bad before, that's when they need to be caught."

When the FMCSA, which regulates all intercity bus services, ordered Sky Express off the road after the accident, the agency cited the same violations behind the "unsatisfactory" rating that let the company stay in business, documents show.

Asked whether the agency should have shut down Sky Express immediately after the inspection, FMCSA Administrator Anne Ferro said in an interview, "I wish we had."

### Rapid Growth

Fatal crashes have surged as intercity bus travel becomes the fastest-growing U.S. mode of commercial transportation. In 2011, 28 people have died in eight fatal crashes, including three in an 11-week period involving carriers operating out of, or carrying passengers between, Chinatown neighborhoods in East Coast cities.

Led by Firstgroup Plc (FGP)'s Bolt Bus and Stagecoach Group Plc (SGC)'s Megabus, as well as so-called Chinatown lines such as Sky Express, U.S. bus departures increased 24 percent last year, according to Joseph Schwieterman, professor of public service at DePaul University in Chicago. There were 723 million trips on U.S. motor coaches, including intercity, commuter and charter buses, in 2009, the most recent full year for which information is available, according to the American Bus Association.

### Cutting Costs

While Sky Express's official address in FMCSA records was a Charlotte, North Carolina, home owned by Jenny Han, its corporate secretary, most operations were run out of an office on Chrystie Street in Manhattan's Chinatown, according to the FMCSA's compliance review. Han

also owned Fusion 108, a Chinese restaurant in Huntersville, North Carolina, where Sky Express's safety audit was conducted, according to audit records.

With some companies, the lowest fares are possible only by cutting costs to a degree that it becomes difficult to operate safely, said Jackie Gillan, president of Washington-based Advocates for Highway and Auto Safety.

"Whether they were paying a lot of money for the ticket or a little money for the ticket, whether they boarded the bus at a bus terminal or in front of a store, it doesn't matter," Gillan said. "The public deserves more."

U.S. Transportation Secretary Ray LaHood said the day after the Sky Express crash he was "extremely disappointed" the company hadn't been shut down. He said in a speech Sept. 23 that he will push Congress for more authority to shut down unsafe carriers immediately.

## **Imminent Hazard**

The FMCSA, however, can already declare a company an "imminent hazard" and close it, Hersman said. That power can be invoked when the agency finds a company's method of operating "substantially increases the likelihood of serious injury or death if not discontinued immediately," according to FMCSA rules.

FMCSA safety audits too often focus on paperwork and don't examine buses or maintenance facilities, said Peter Pantuso, chief executive officer of the American Bus Association, a Washington-based trade group whose members include Firstgroup and Stagecoach.

Sky Express had received special attention from regulators before. The company received an "unsatisfactory" rating in 2009, agency records show. The company satisfied the agency that it had corrected the issues and was allowed to stay in business. A 2010 audit resulted in a "satisfactory" rating.

## **Sky Express**

In this year's follow-up, regulators discovered the company had expanded from 10 drivers and 11 coaches to 53 drivers and 31 coaches in less than a year.

Sky Express charged customers \$30 for a one-way trip between Durham, North Carolina, and New York, compared with \$55 to \$126 for a Greyhound ticket. The company stayed profitable by keeping expenses low. A driver on the nine-hour trip would make \$75, according to audit documents.

Inspectors began probing more deeply after it took the company three attempts over eight days to produce a correct driver roster, audit records show. Regulators tallied 26 violations, including six deemed critical and one deemed acute.

U.S. law requires commercial drivers to be conversant enough in English to communicate with passengers and read traffic signs. When an inspector asked a driver heading from Charlotte to New York on March 31 how long he'd been driving or whether he had done a pre-trip inspection of the bus, he couldn't answer, the safety inspector wrote. The only English words the driver recognized were "log book," according to an interview summary by agent Timothy Switzer.

## **Good Faith**

Agency officials reviewed a Sky Express appeal that arrived May 11. They rejected it within a day,

meaning the carrier should have been closed on May 28, pending a follow-up review. Still, regulators granted Sky Express 10 extra days to come into compliance based on a “good-faith effort,” according to a May 12 memo by Chris Hartley of the agency’s North Carolina division and a May 13 letter to Sky Express by Darrell Ruban, an agency field administrator.

The agency indicated Sky Express was close to receiving a rating upgrade on May 26 that would have kept the company on the road indefinitely, according to George Gray, a former North Carolina highway patrol official who was working for Sky Express as a consultant.

Sky Express’s problems were “70 percent to 80 percent” paperwork, Gray said in an interview. Executives were making rapid progress coming into compliance, he said.

## No Different

The week before the crash, Sky Express spent four days with FMCSA officials in Charlotte to go over changes the carrier had made. Regulators using a computer program to score the company’s safety practices indicated they would upgrade the unsatisfactory rating, Gray said.

“Had that crash not occurred, they would be operating today,” Gray said. “They were no different than a lot of companies out there right now operating under a conditional rating.”

The FMCSA sent a settlement agreement to Sky Express on May 31, the day of the accident, the records show. It was confined to how much the company would pay to settle proposed fines, Ferro said. The agency had agreed to a lower amount based on progress Sky Express was making, Gray said.

“These claims are false,” Ferro said in an e-mail. “Sky Express was not on the verge of receiving an upgraded safety rating or a reduced fine for safety violations.”

## Reincarnated Carriers

A company that had as many violations as Sky Express and wasn’t operating from its registered address should have raised more urgent concerns than it did, as people familiar with the bus industry can distinguish a company making an honest mistake from one trying to skirt the rules, Pantuso said.

“Instead of negotiating to keep them open, why wasn’t the negotiation to quickly shut them down?” Pantuso said.

A woman who identified herself as Han, the Sky Express corporate secretary, declined to answer questions. “We have already closed the business,” she said in a phone interview.

The FMCSA used the 10-day extension, in part, to make sure its case against Sky Express would hold up in court, Ferro said.

Preventing rogue carriers from restarting has been a struggle for the agency for years. In a June 3 order shutting down Sky Express, the FMCSA accused the carrier of repainting buses and selling tickets online to operate under a new name.

The agency has been pushing for changes to U.S. law since May, seeking greater powers to catch so-called reincarnated carriers and raise the fine for operating without authority to \$25,000 per violation from \$2,000 a day.

## Similar Problems

Still, the agency's current rules required it to shut down Sky Express three days before the accident, under a Government Accountability Office interpretation discussed with agency officials in 2007. LaHood ordered the agency after the accident to stop extending 45-day shutdown periods.

"We agree with GAO's assessment that extending the appeals period for bus companies undergoing compliance reviews is not in the best interest of safety," Ferro said in an e-mail. "That practice has been permanently ended."

The GAO, the Transportation Department's inspector general and the NTSB have noted a pattern in reports and testimony of the agency not using all its powers.

## **Hurricane Rita Accident**

Since 2002, there have been at least five fatal accidents involving intercity bus companies that had accumulated enough safety violations to be shut down, according to separate NTSB crash investigations. The board has faulted the way FMCSA identifies audit targets, how it inspects new companies and lack of follow-through with companies prior to fatal crashes.

"When there are serious safety violations, this agency typically tries to accommodate the motor carrier and not the safety of the motoring public," Gillan said.

A company involved in a 2005 crash in Wilmer, Texas, that killed 23 nursing-home residents evacuating Hurricane Rita had been cited by state authorities in 2002 for having unqualified buses, poor maintenance and a bus that wasn't registered to operate in the U.S.

In February 2004, FMCSA gave company a "satisfactory" rating even as it recorded similar violations. The agency shut down the company after the crash as an imminent hazard, citing many of the same practices it deemed acceptable a year earlier, the NTSB said.

## **'Plenty of Indicators'**

"They had plenty of indicators that they needed to look more deeply at this carrier," Hersman said. "We were certainly frustrated and disappointed that over 20 people lost their lives. We felt like they should have identified the issues earlier."

The GAO, in a 2007 report, said the agency rarely imposed the maximum fines called for by U.S. law because companies with serious safety violations weren't judged to meet the regulator's threshold of having a "pattern of violations."

FMCSA's enforcement wasn't "as effective as possible in deterring unsafe practices and, as a result, additional accidents could occur," said the GAO, which acts as Congress's investigative arm.

The bus agency has stepped up oversight of passenger coaches through roadside inspections nationwide, shutting down more carriers and increasingly shutting down unsafe operators, Ferro said in an interview. It doesn't take a crash to close down a company, she said.

## **Cracking Down**

Eight companies have been shut down this year as imminent hazards, compared with one last year, Ferro said. Another 30 companies have been shut down for unsatisfactory ratings following a 45-day waiting period, and eight more are pending. That compares with 12 for all of last year, Ferro said. Only four of the companies shut down this year were closed after fatal crashes, she



said.

Congress is considering proposals made after this spring's accidents to beef up the FMCSA's authority to shut down unsafe companies and make it harder for companies to reincarnate under new names after being closed.

Besides greater power to close down unsafe carriers immediately, LaHood is seeking tougher screening of new companies before they're given permission to operate and making it easier to revoke commercial drivers' licenses for drug and alcohol offenses.

### **'Very Tough Lesson'**

The department also has asked Congress to overturn restrictions imposed in 2005 that prevent it from carrying out inspections while buses are en route.

Upgrading the agency's computerized screening system later this year will enable the FMCSA to better target problem carriers and get them off the road more quickly, Ferro said. Bus companies with unsatisfactory ratings will have to meet higher safety standards to be allowed to operate, she said.

"Our team lives these tragedies," Ferro said. "The Sky Express crash has been a very tough lesson for us. We have gone back and will continue to go back, to analyze the policies, procedures and systems that have been in place to see what it is that is driving an outcome like the one on Sky Express."

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Appearance Card

I intend to appear and speak on Int. No. 892 Res. No. \_\_\_\_\_

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Ernest (PLEASE PRINT)

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I represent: Self

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. all

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Address: 622 Greenwich St #3D NY 10014

I represent: Our street our lives

Address: 622 Greenwich St #3D NY 10014

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Name: Joel Azumah

Address: 146 East 55 Street, Brooklyn, New York 11203

I represent: TransportAzumah

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/6/11

(PLEASE PRINT)

Name: Senator Squadron

Address: 250 Broadway

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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