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HOW BEST TO IMPROVE BUS SAFETY ON OUR NATION'S HIGHWAYS

(112–35)

HEARING

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JUNE 13, 2011

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June 10, 2011

MEMORANDUM

TO: Members of the Committee on Transportation and Infrastructure
FROM: Committee on Transportation and Infrastructure Staff
SUBJECT: Hearing on "How Best to Improve Bus Safety on Our Nation's Highways"

PURPOSE

The Committee on Transportation and Infrastructure will meet on Monday, June 13, 2011, at 2:30 p.m. in Room 2167 of the Rayburn House Office Building to receive testimony on "How Best to Improve Bus Safety on Our Nation's Highways." According to the Federal Motor Carrier Safety Administration (FMCSA), motorcoaches are one of the safest forms of travel. However, recent high-profile bus accidents have called into question the FMCSA's effectiveness in keeping unsafe "rogue" bus operators off the nation's highways.

BACKGROUND

An over-the-road bus, also known as a motorcoach, is defined in law as a bus that has an elevated passenger deck located over a baggage compartment. Over-the-road bus services generally include bus charter services, bus tour and sightseeing services, and bus passenger transportation over regular routes and on regular schedules, such as airport shuttle services, commuter transportation services, and scheduled intercity and rural transportation services.

According to the Motorcoach Census Update 2010[1], more than 35,000 buses provided 723 million passenger trips and traveled more than 58 billion passenger miles in 2009. The services offered by this industry are diverse. Nearly all motorcoach companies (96 percent) provided charter service in 2007, just over 50 percent provided tour service, 17 percent provided sightseeing, 14 percent provided airport shuttle, 12.5 percent provided scheduled intercity and rural transportation services, 11 percent provided special operations, and 5 percent provided commuter service. Nearly half of motorcoach service mileage was for charter service and about one-quarter was for scheduled intercity and rural transportation services.

[1] The Motorcoach Census Update 2010 is a study commissioned by the American Bus Association to update with 2009 figures key statistics in the Motorcoach Census of 2008. The Motorcoach Census of 2008 measured the size and activity of the motorcoach passenger transportation industry in the United States and Canada.

The over-the-road bus industry has a wide range of companies in terms of size. In 2007, the vast majority – about 95 percent – of motorcoach companies were small companies (operating fewer than 25 motorcoaches) and accounted for about 40 percent of motorcoach mileage. Midsized companies (operating 25 to 99 motorcoaches) had 20 percent of the industry's motorcoach mileage. Large companies (operating over 100 motorcoaches) provided 27 percent of the industry's passenger trips and 39 percent of the industry's motorcoach mileage.

FEDERAL REGULATION OF THE MOTORCOACH INDUSTRY

Federal Motor Carrier Safety Administration

The Federal Motor Carrier Safety Administration, a modal administration within the U.S. Department of Transportation (USDOT), is the Federal agency responsible for commercial truck and bus safety. According to FMCSA, the agency's primary mission is to reduce crashes, injuries, and fatalities involving commercial motor vehicles. FMCSA oversees approximately 4,000 motorcoach companies. FMCSA sets minimum safety standards that motorcoach companies must follow for the buses they operate and the physical qualifications and operating rules for their drivers. These safety regulations include rules to ensure that the motorcoach is in proper working condition and is systematically maintained, the driver is physically qualified and licensed, and the driver maintains accurate logs of hours-of-service.

As part of its Motorcoach Safety Action plan, the FMCSA and its state and local law enforcement partners conducted more than 3,000 surprise passenger carrier safety inspections over a two-week period this May that resulted in 442 unsafe buses or drivers being removed from the nation's highways. The surprise inspections, called the "strike force," issued out-of-service citations to 127 drivers and 315 vehicles during the unannounced inspections. In addition to the strike force inspections, the FMCSA and state safety investigators initiated 38 full safety compliance reviews on commercial passenger bus companies. According to the FMCSA, over the past five years, it has doubled the number of unannounced bus safety inspections and comprehensive safety reviews of the estimated 4,000 over-the-road bus 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.

National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA) is charged with improving safety on our Nation's highways by reducing the number of accidents and the consequences of those accidents that do occur. According to NHTSA's 2009 Traffic Safety Facts FARS/GES Annual Report, 0.6 percent of all traffic crashes involved motorcoaches and according to FARS data, there were less than 50 fatalities involving motorcoaches. Although the agency does not regulate the operation of motorcoaches, NHTSA is responsible for issuing and enforcing Federal Motor Vehicle Safety Standards, which set performance criteria that every new motorcoach must meet. These standards include crash avoidance protection measures and occupant restraint systems.

RECENT MOTORCOACH ACCIDENTS

On May 31, 2011, a bus crash on I-95 30 miles north of Fredericksburg, Virginia, killed 4 passengers and wounded 53 others when the bus rolled over. The bus veered off the interstate, across the shoulder, over rumble strips, then into a cable barrier before over-correcting and causing the bus to turn over and finally come to rest upside down. Sky Express of North Carolina, the company operating the bus, offers transportation from Charlotte to lower Manhattan at low fares. Sky Express had been reported for numerous safety violations: 17 for unsafe driving, and 46 for fatigued drivers. On April 12, 2011, FMCSA issued a proposed unsatisfactory safety rating to Sky Express. Under the law, Sky Express had 45 days to respond to this rating before FMCSA could proceed to put the company out-of-service. Within that time period, Sky Express responded with a corrective action plan that FMCSA did not deem to be satisfactory. FMCSA extended the appeal period for Sky Express in order to inspect the company. The Virginia accident occurred during that 10-day extension. Sky Express was placed out-of-service after the crash, but continued to sell tickets for their bus services under a different name, causing the Department of Transportation to issue a cease-and-desist order on June 3.

On March 14, 2011, a bus crashed on the New Jersey Turnpike killing the driver and one passenger, in addition to injuring many other passengers. The bus was travelling southbound on the Turnpike returning to Philadelphia from the Chinatown area of New York City when it went off the road and into the grassy median before colliding with a concrete overpass support. Super Luxury Tours of Wilkes-Barre, Pennsylvania, the company operating the bus, was placed out-of-service on March 30, prohibiting it from operating in interstate transportation services. Super Luxury was on FMCSA's "high-risk list" due to poor rankings regarding unsafe driving, driver fatigue, and vehicle maintenance.

On March 12, 2011, a bus crashed on I-95 in New York City resulting in 15 passenger fatalities and 18 injuries. The bus was travelling south on the interstate from a casino in Connecticut when the driver crossed over the shoulder and collided with a roadside barrier. The bus then flipped onto its side, causing the windshield to strike a support pole for an overhead bridge sign. The pole ripped through the bus along the base of the passenger windows, tearing the roof off of the bus for nearly its entire length. World Wide Travel, the company operating the bus, had two buses taken out of service by Connecticut inspectors for safety reasons, one in 2005 and another in 2010. World Wide Travel had a "satisfactory" rating in their most recent FMCSA compliance review in 2008.

WITNESS LIST

The Honorable Anne S. Ferro
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Federal Motor Carrier Safety Administration
U.S. Department of Transportation

Major David Palmer
Texas Department of Public Safety
On behalf of Commercial Vehicle Safety Alliance

Mr. Peter Pantuso
President and CEO
American Bus Association

Mr. Victor S. Parra
President and CEO
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Ms. Jacqueline S. Gillan
Vice President
Advocates for Highway and Auto Safety

HOW BEST TO IMPROVE BUS SAFETY ON OUR NATION'S HIGHWAYS

MONDAY, JUNE 13, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
WASHINGTON, DC.

The committee met, pursuant to call, at 2:30 p.m., in Room 2167, Rayburn House Office Building, Hon. John L. Mica (chairman of the committee) presiding.

Mr. MICA. Good afternoon. I would like to call this hearing of the House Transportation and Infrastructure Committee to order. Today's hearing is entitled, "How Best to Improve Bus Safety on Our Nation's Highways."

The order of business today will be opening statements by Members, and then we have a panel of witnesses assembled today that will testify about the subject at hand. The order of business to proceed is I will begin with my opening statement, we will yield to other Members, and then we will try to expedite hearing from our witnesses of which we will hear from all of them and then take questions afterwards.

I am pleased to be with you this afternoon. And I will begin by trying to lay some groundwork with my opening statement.

I welcome our witnesses and Members today. Thank you for coming back, too, I know the House isn't in session until a little bit—well, it is in session but not voting until later tonight. And the reason for this hearing is actually, I think, very important. We will, in a few weeks, we hope to roll out legislation that dramatically reestablishes, sets new policy, for various modes of transportation.

As some of you may know, we plan to roll out the new transportation legislation in two phases. Starting on Wednesday, we will have a rollout of a draft of a passenger rail reform bill. We are going to introduce a separate piece of legislation dealing with that particular provision. We do have some provisions that are rather dramatic and a change in the way things are currently conducted with our major passenger rail provider, and that is Amtrak, and we want a full opportunity for, again, a new direction in passenger rail to be fully aired and also included in a separate bill which we will see if we have adequate support in the House and Senate to move forward as part of the larger measure.

The balance of the multimodal bill will be rolled out a few weeks afterwards. And we are doing it in a little bit different fashion. We started, as you know, hearing testimony from around the United States and started in Mr. Rahall's district in Beckley, West Virginia. We went as far as the Pacific Ocean and probably two or

three dozen hearings around the country, here in Washington, to try to craft and assemble the best ideas for any reforms necessary or that people could provide the committee with. We ended up actually in this room, we had a little libation and pizza with Members and discussed some of the basic parameters for the legislation, and during the past few weeks, our staff have been working on incorporating provisions for both the passenger rail segment and also for the balance of the modes in a legislative vehicle.

We, again, hope to have that rolled out soon. But as they complete that work, we wanted to make certain that we had the very best provisions possible for bus safety.

Mr. DeFazio, I want to thank him; I want to thank Mr. Rahall and others for cooperating and pulling this hearing together. Before we conclude the provisions of that bill, Mr. DeFazio had done a hearings previously on passenger bus safety and I think it is absolutely vitally important that we have the latest, most up-to-date input from some of those involved with this matter before us as we conclude and finalize the drafting of provisions for our larger bill.

This all has been highlighted, unfortunately, by some very tragic, dramatic accidents that have taken place with some of our buses, our passenger buses. We had a horrible accident on March of 2011 on the New Jersey Turnpike, we had another horrendous accident in New York with 15 fatalities, injuries in these incidents. We have had, again, unfortunately, in North Carolina, another horrible accident in the Greensboro, North Carolina, area where four passengers were killed and 53 others injured.

So, the purpose of the hearing is to look at our current laws, our regulations, and the administration, those provisions that we currently have in statute or in rules, and make certain that we have the very best measures in the bill that we are drafting. We have taken ideas from both sides of the aisle in our preliminary work, and hopefully we will have some additional input today because, again, one fatality is far too many.

Now, let me say, too, as I conclude, that the industry overall does have a very excellent safety record. Bus operations transport between 750 million and 800 million passengers a year, and that we have very few fatalities per mile traveled and we have one of the greatest safety records, particularly among the well known and legacy bus passenger companies. Unfortunately, that is not the case with many of the other operators, and we don't have an exact number, I will ask for the number of operators, but that troubles me too that we don't have that data. How can we monitor if we do not have the exact data, the Federal Motor Carrier Safety Administration we will hear from representatives at that agency, responsible for some of the Federal enforcement, administration of the laws, and also our States are vital players, and we need to make certain that they also have in place, again, the very best safety provisions so that any and all accidents can be prevented. It may be impossible, but it should be our goal.

So, unfortunately, we are brought here by a series of bus tragedies that have captured the attention not only of Congress but the Nation, and we want to make certain on the eve of finalizing legislation that will deal with that subject that we have the best possible provisions.

I had noticed that even over the weekend, I am told that Federal Motor Carrier Safety Administration has closed down a couple of operators, marginal at best, operators. I am glad to hear that, but when you have—and I understand that they were actually transporting people under the bus, I don't know if it was in the luggage area or what, but that is not an acceptable means of operation. And if necessary, we will provide in law or, again, working with our State partners, whatever measures are necessary to make certain that people are transported on buses safely throughout the United States.

So that is our goal. That is our reason for this hearing. I appreciate, again, our witnesses, and hopefully, we will come out of this hearing a little bit more knowledgeable and a little bit more prepared to finalize the important legislation we are about to craft and submit.

I will say, too, as we go forward with this process, in closing, whether it is the passenger rail segment or the bill, not only do I want the Democrat minority Members to have a full opportunity for participation, but also other Members of Congress and the public and the industry and others who are affected by the law and any organizations that, again, support safety and good transportation for the United States of America.

So we will have a full opportunity to participate on Wednesday. We will be web casting, I believe, at 11 o'clock and people can go to our Web site and participate in the rollout of a first section of the bill, and then in several weeks, the same procedure will be followed. We will also have a number you can call. You will have the ability as public or interested parties to also ask questions as we roll out these new provisions in law.

So, again, we want full participation. And I am pleased that Members are able to be with us, again, on short notice and our witnesses.

With that, I would like to yield to the ranking member of the subcommittee, Mr. DeFazio. And this is a full committee hearing. I thought it was important that we bring it to the full committee level. And I am so pleased that he would come back and, again, continue his hard work to make certain that bus passenger safety is a priority. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thank you for bringing this important issue forward. I think it is particularly timely before we move forward with authorization because clearly, some new authority is needed; and perhaps some mandates—dare I say that word here in a Republican Congress. But when we deregulated interstate commerce for buses, we had sort of an absurd level of regulation where they had to declare every route by section, by highway, by turn-off, they had to file all of their rates and different rates for different seats or whatever and different schedules. But the intention of deregulation was to bring about competition, not to kill people. And that is where a total deregulatory environment fails us.

We do have the Federal Motor Carrier Safety Administration, and since I last held hearings on this, I am pleased to see that they have stepped up the number of inspections and enforcement. But given—what we are told, and we will get into this in the hearing—

the level of new entrants, it seems impossible to track an ever-changing group of characters.

Only a very, very small percentage are those who would put people in the baggage compartment, have incompetent or exhausted drivers, drive buses with bald tires, failed brakes, causing fires and other problems. It is a very, very small minority in the industry.

But the industry, those who are legitimate in the industry, both the associations and others, should draw together to work with us to figure out a way to get these people out and keep them out. Because when they kill people, people just associate it with the entire industry even though the industry itself is very, very safe. It is a few bad actors.

And that is the key here, and that is what I hope comes out of this hearing, is we figure out a way to keep these people out, if they are in, to get them out, and to vigorously prosecute them when they have committed violations of the law.

I think a number of our State partners have failed us in this. Some States just allow these gypsies or whatever you want to call them, Chinatown buses, these fly-by-night folks to present a certificate saying they have inspected their own buses and their buses are OK and the State says, oh, if you say your buses are OK, your buses are OK. Other States are more rigorous. I think we may need to set a higher bar here in authorization for the States. And we can have a carrot-stick approach, too.

Many States have, I understand, and we have limited funds, have diverted all their money into truck inspection and safety. That is a problem too. So maybe we need to look at the levels of funding. And, of course, the proposed levels of funding under the Ryan budget would be a dramatic reduction in funding for the Federal Government and Federal pass-throughs to the States to enforce safety, which would mean more people would escape scrutiny that they should have so we can find them and put them out of business.

And then there is this whole thing of morphing, which the agency seems to be dealing with or trying to deal with, but it seems like perhaps more authority is needed there where these people are morphing and, in this case, of this bad actor who killed people in Virginia, they morphed very quickly into another company and were continuing to operate. We have got to figure out a way to get at that so they can't morph, they can't continue to operate under any guise, the people who are responsible for these substandard operations and for killing people. That is the bottom line here.

And I think it is something we would all have in common, and I would welcome the industry representatives as well as the safety representatives as well as the regulators to give us a vision on how we are going to get there.

We are not going back to the ICC, we are not going to regulate every route, every fare, every thing, no one is proposing that. But how is it in a deregulated environment we do get the level of safety and security we want, and legitimate operators? So I welcome the testimony from the panel. Thank you, Mr. Chairman.

Mr. MICA. Thank you for your excellent comments and again for your strong advocacy on behalf of bus safety, Mr. DeFazio.

Let me yield to one of my senior Members, the gentleman from North Carolina, Mr. Coble first.

Mr. COBLE. Thank you, Mr. Chairman. I will be very brief. I know of no issue that is more significantly important than promoting safety on our Nation's highways, and that is the purpose of this hearing. I thank you all for being here. Mr. Chairman, I thank you and the ranking members for having scheduled it and I yield back.

Mr. MICA. Thank you. And it is good to see you back. And you are looking pretty good. You have been fighting a little bit of that skin cancer and we are very pleased to see you. You looking fantastic this week.

Mr. COBLE. I have not yet reached the threshold of Hollywood handsome, but I am working on it.

Mr. MICA. Ready to go star in any show.

The gentleman from Pennsylvania, Mr. Shuster, you are recognized.

Mr. SHUSTER. Thank you, Mr. Chairman and thank you for holding this important hearing today.

In this committee and for me, safety is a top priority, across all the modes of transportation we have to strive to make them safer because that is absolutely critical.

First, I just want to say to those folks who have lost their loved ones and their families of those that have been injured, you have our deepest sympathy. But it is important to note that intercity motorcoach industry including schedule service and charter tour operations is an extremely safe mode of transportation. In total, our Nation has approximately 35,000 motorcoaches that provide over 750 million passenger trips annually with a safety record of .03 fatalities per 100 million miles traveled. That is according to the National Safety Council. It is the safest way for passengers to move around this country. So they have had a record that has been safe, we have certainly had some fatalities here recently. And we have got to make sure, as the ranking member said, to get those bad actors off the road. So there is room for us to improve.

As I said, the recent accidents have highlighted the issues regarding enforcement. We have to make sure that the best trained drivers are out there transporting our citizens safely around the country.

I am particularly interested in hearing from our witnesses regarding how we can keep unsafe or rogue bus operators off the Nation's highways. May 31, 2011, a bus crashed near Fredericksburg, Virginia, killed 4 passengers and injured 53 others. Sky Express, the company that has been operating that bus, has had numerous safety violations. And, in fact, they were under an extension when—of their violations to conform to what the FMCSA had laid down for them.

Again, they had that accident, that 10-day extension. But today they are operating under a different name. We have got to figure out a way to, as I said, keep those rogue operators, those people that continually violate or consistently violate safety standards, to make sure that they are off the highways.

I appreciate the steps that Secretary LaHood and the Department of Transportation started in 2009 and in recent weeks have

built upon that to ensure that bus travel is as safe as possible, and we must evaluate the effectiveness of these steps as we go forward. We want to ensure that the U.S. DOT and FMCSA have the appropriate necessary authorities to ensure safety and look forward to the testimony from the FMCSA today.

I also want to point out that our Nation's motorcoach industry is largely a small business, family-owned industry, 95 percent of motorcoach companies operate fewer than 25 motorcoaches. And we must ensure that we take a balanced approach to this. We want to make sure the highest level of safety, we want to protect those people that are using the services by rooting out bad actors. But this is a small business, family-owned industry that we can't take a broad brush and paint them all because they are committed to making—95 percent of them or more, committed to making sure that they are transporting passengers in a safe manner. So we have to focus on that and make sure that we do it in a way that is not going to hurt them in this already weak economy.

I want to briefly mention the legislation that I proposed, H.R. 1390, the Bus Uniform Standards and Enhanced Safety Act. The legislation focuses on increasing oversight and enforcement, ensuring one of the best, most well-trained able drivers transport passengers and improving motorcoach safety standards based on sound scientific research, testing and analysis, not on emotion. We have got to make sure when we are doing these things that it makes sense scientifically. The bottom line is that we must get the bad actors off the road. So I am looking forward to hearing testimony today for your ideas, and again, appreciate the chairman holding this extremely important hearing today.

Thank you, and I yield back.

Mr. MICA. I am pleased to yield to the gentleman from Indiana, Mr. Bucshon.

Dr. BUCSHON. Thank you, Mr. Chairman, and thank you for holding this very important hearing today and I thank the ranking member. I took advantage of the motorcoach system when I was in college riding it too and from my college town to my small town in Illinois. And I know how important it is to the people in Indiana, since I am in a fairly rural State and the people do take advantage of the motorcoach system.

It is, however, also very important to continue to look at the safety, realizing that we do have some bad actors out there that do compromise a system which, for the most part, is an extremely safe way for people to travel, even in light of the recent tragic crashes that have resulted in loss of life.

So thank you for holding this hearing. I am looking forward to hearing the testimony so that we can continue to make this mode of travel very safe for our citizens. And with that, I yield back. Thank you.

Mr. MICA. I thank the gentleman.

Mr. Harris, the gentleman from Maryland is recognized.

Dr. HARRIS. Thank you very much, Mr. Chairman. And I want to echo my colleague from North Carolina who clearly one of the greatest functions we could have is to keep our highways safe, and that includes keeping our bus transportation safe. Representing a

rural district, pretty clearly, my district will depend upon bus transportation. We do want to keep it safe.

I would just ask that we don't do what has been so trendy in the past, which is that when something like this happens, we come up with a whole new series of regulations that punish the good actors almost more than the bad actors. We can't afford, my colleague from Pennsylvania points out correctly that a lot of the bus companies are, in fact, small bus companies. They are the small businesses that can thrive. Two of my daughters took interstate bus trips within the past month. The one that took one over the weekend, the air conditioning ran out, which although it is not a safety issue, it certainly is not comfortable, but it was a safe bus trip. They both felt safe taking that mode of transportation. They trusted the carriers. And we need to continue helping the good actors and certainly regulating against the bad actors, but again avoiding the temptation of creating a set of regulations that paints with a very broad brush an industry that really has a very admirable safety record overall.

And, again, Mr. Chairman, I thank you very much for holding the hearing. And I yield back the balance of my time.

Mr. MICA. If all Members have gained recognition, we will proceed with our panel of witnesses. And again, I thank them for coming in on somewhat short notice, but I believe this will be a very important hearing, again, as we try to craft and finalize provisions in a new 6-year authorization.

Our witnesses today start out with Anne Ferro, who is the administrator of the Federal Motor Carrier Safety Administration; Major David Palmer, Texas Department of Public Safety, on behalf of the Commercial Vehicle Safety Alliance, thank you for being with us; Mr. Peter Pantuso, president and CEO of American Bus Association; Mr. Victor Parra, president and CEO of United Motorcoach Association; and Ms. Jacqueline Gillan, and she is vice president of Advocates for Highway and Auto Safety.

I thank all of the witnesses for being with us.

Normally, what we like you to do is try to limit your testimony to 5 minutes. You could submit, just request through the chair, additional information, documentation or information that you would like to be made part of the record, and we will do that. And we will also withhold questions until we have heard from all of the witnesses, and then we will go through and provide the panel with the questions from Members.

So with those ground rules, again, I welcome you. And let's start off and hear from our Federal administrator, the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

Welcome, and you are recognized.

TESTIMONY OF HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION; MAJOR DAVID L. PALMER, TEXAS DEPARTMENT OF PUBLIC SAFETY, AND VICE PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE; PETER PANTUSO, PRESIDENT AND CEO, AMERICAN BUS ASSOCIATION; VICTOR S. PARRA, PRESIDENT AND CEO, UNITED MOTORCOACH ASSOCIATION; AND JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Ms. FERRO. Chairman Mica, Ranking Member DeFazio, thank you for the opportunity to speak today. This year has been the worst period in recent history for motorcoach safety, with 6 crashes resulting in 25 deaths and numerous injuries just since January.

My deepest condolences go to the families who have lost loved ones in these crashes. And I join the employees of FMCSA and our State enforcement partners in taking these losses to heart. It is exceedingly frustrating that despite tighter safety standards and dramatic increases in the number of inspections and enforcement actions that we are taking that the risks to passengers continues from a few bad actors.

FMCSA's safety mission is our number one priority, and we are fully engaged in an all-out crackdown investigation into illegal passenger carriers. We have a comprehensive investigation underway specifically in the case of the tragic Sky Express crash which occurred May 31st in which four women were killed.

When we found out that Sky Express was attempting to operate and sell tickets even after we had shut them down, we issued a cease and desist order. On the same day, we subpoenaed the records of three Internet Web sites that sell tickets for Sky Express and other bus companies. The informal leasing practices of some motorcoach companies allows them to skirt safety rules moving equipment and drivers among companies with valid DOT numbers. And unregulated Web sites broker and sell tickets with no transparency to the public.

We are shutting down unsafe carriers as quickly as our authority permits. Just since January, we have declared 18 bus companies unsatisfactory, that is, issued an out-of-service order for those 18. We have another 15 pending that are in their appeal period, and that means they must stop operating. And if a carrier or its drivers and vehicles present a severe risk, we don't wait for the 45-day appeal period that is allowed for motorcoach carriers. We declare them an imminent hazard, and we shut them down immediately.

This past week we used our imminent hazard authority to shut down three companies, including one in Michigan that has already been mentioned, that had put passengers in the cargo hold. The behavior by these few is absolutely outrageous, and we have got to stop it.

Transportation Secretary Ray LaHood has had his eye on motorcoach safety since 2009, when he charged FMCSA and NHTSA to develop and implement comprehensive motorcoach safety action plan. The actions within this plan address many NTSB recommendations, including electronic on-board recorders, better use of inspection violation data, a ban on texting and cell phone use,

and stronger oversight of drivers' medical qualifications and drug and alcohol test results.

FMCSA has proposed, or is close to final rule or programs in all of those areas. But we do need additional authority as some have already mentioned. Thus, we have provided technical assistance to the committee with regard to several recommendations that would strengthen our authority over these bad actors. First, is to allow us to conduct en route inspections and our law enforcement partners at the State level, not just restrict us to inspections on motorcoach companies at points of origin and destination. Second is to establish a Federal successor liability standard to enable us to more quickly and surely shut down reincarnated carriers. Third is to require full safety audits before a company can receive its passenger carrier authority.

The fourth is to raise the penalty for violations by bus companies that attempt to operate illegally to $25,000 per violation. It is currently $2,000 with a cap at 11. And lastly, allow us to regulate passenger ticket sellers. We refer to them as brokers. We currently regulate freight brokers. We regulate household goods brokers. We have no authority over passenger carrier brokers.

Mr. Chairman, again, thank you for holding this hearing today. We greatly appreciate the spotlight on bus safety. Our commitment at FMCSA has never been higher. And I look forward to answering any questions you may have.

Mr. MICA. Thank you for your testimony.

And we will hear now from Major David Palmer, and he is with the Texas Department of Public Safety and testifying today on behalf of Commercial Vehicle Safety Alliance.

Welcome, and you are recognized.

Mr. PALMER. Chairman Mica, Ranking Member Rahall, members of the committee, thank you for holding this hearing. Let me say at the outset that on behalf of CVSA and its members, we have pledged a renewed emphasis on bus safety. A step that we can immediately take at no additional cost is to lift the current restriction in the law that prohibits en route roadside bus inspections. SAFETEA–LU enacted this restriction which has removed a critical tool designed to immediately identify driver and mechanical issues, safety issues, hampering enforcement's efforts.

We commit to you if this restriction is lifted, we will immediately encourage all of our State members to put resources towards en route bus inspections and to take aggressive enforcement action when warranted. This step will provide an immediate infusion of enforcement activity to enhance bus and highway safety.

The results of a recent bus safety strike force is ordered by a number of State Governors with encouragement assistance from FMCSA has resulted in a significant number of buses and drivers being placed out of service for mechanical or driver violations. These strike forces generally included safety inspections at origins or destinations.

We are firm believers that many more lives could be saved and injuries avoided if en route inspections were, once again, permitted to allow States to conduct these inspections when and where necessary. Since the so-called curbside operators such as Sky Express do not typically operate out of a fixed place of business or terminal,

the most effective way to inspect them is through random en route inspection program. Just this past Friday, the Maryland State Police stopped four Sky Express buses operating on the Capital Beltway. Although at the time they were being moved because of repossession by the bank and not under Sky Express' authority, since they had been placed out of service, it so happened that two of the drivers did not have commercial drivers licenses, two did not have medical certificates, and all four did not have logbooks, all of which are out of service conditions.

This is just one of many examples of why en route inspections are necessary.

Mr. Chairman, I would ask how many more are out there?

Enforcement is a major component of bus safety, but not the only one. When it is necessary to close down a passenger carrier operating illegally, the full force and authority of FMCSA in conjunction with State enforcement is necessary. When unscrupulous activities are discovered, criminal prosecution must be considered and pursued.

Additionally, State enforcement and oversight is necessary through the inspection and audit processes to uncover potential passenger carrier drivers and equipment problems.

Finally, when it comes to specific safety standards such as crash worthiness, NHTSA must aggressively implement safety belt and other safety systems requirements.

Chameleon carriers are a significant problem that must be dealt with more aggressively. FMCSA's vetting process has been an important tool in helping to identify and take action on carriers who are "changing their stripes." FMCSA, working cooperatively with the States, must be given authority to transfer past safety performance activity from one carrier to another when it is discovered they are substantially the same operation.

FMCSA must also be given more authority over brokers. Companies that purchase transportation for customers need to be held accountable for not conducting the proper due diligence for safety. Brokers discovered not doing so and hiring unsafe operators need to be shut down.

Another significant issue is bus fires. A Volpe transportation study completed in 2009 showed that a bus or motorcoach is lost to a fire every 2 days in the United States. Enforcement can help mitigate this problem by conducting more roadside inspections where we can inspect brakes, tires and wheels, which are the origin of many of these fires.

We support the provisions in both the House and Senate bus safety bills that require a safety audit and compliance review of all interstate passenger carriers and State-based safety inspections for all commercial passenger carrying vehicles. Each State must also have a bus safety and enforcement program that is appropriate for the needs of that State.

As you might expect, by directing more of their efforts towards bus safety, States face the potential need for additional resources and funding. What we don't want to happen is by focusing more on bus safety and enforcement, it comes at the expense of other critical commercial vehicle safety and enforcement programs.

Unlike trucking companies, intercity passenger carriers have been exempt from any hours of service changes in recent years. Since driver fatigue seems to have been a contributing factor in a number of recent bus crashes, we recommend FMCSA study whether the current hours of service rules for bus drivers are adequate and if warranted based on data and analysis, propose necessary changes.

In closing, and to reiterate a previous statement, if Congress chooses to, once again, enable en route bus inspections, the CVSA will commit to assisting the States and FMCSA by immediately conducting en route inspections as well as continuing strike forces and other enforcement activities throughout the country. We believe this is the most appropriate and effective response to immediately impact bus safety.

Mr. Chairman, this concludes my remarks, and I will be happy to answer any questions.

Mr. MICA. Thank you.

And we will hear next from Peter Pantuso, president and CEO of the American Bus Association. Welcome, and you are recognized.

Mr. PANTUSO. Thank you, Mr. Chairman. ABA is the trade association for the over-the-road bus industry and for the tour and travel industry, all of whom have a deep interest in safety. Our motorcoach members operate nearly 60 percent of all the coaches on the road today. ABA shares this committee's concern and their frustrations over unsafe motorcoach companies. And, Mr. Chairman, I cannot overemphasize the concern or the disgust that ABA has over the manner in illegal companies continue to operate.

These companies are not part of the American Bus Association. More importantly, we are also encouraged by the work of Administrator Ferro and her team that they have done to seek out unsafe companies and put them out of service.

Making bus travel safer is at the top of our agenda. The bus industry continues to be one of the safest modes. However, as was pointed out, even one fatality is too many. Today we ask for more effective regulations and for more enforcement.

ABA was an early and enthusiastic supporter of Secretary LaHood's motorcoach safety action plan. We believe in strengthening State bus inspection programs, enforcing medical qualifications for drivers and using technology to enhance motorcoach safety.

The lack of dedicated Federal and State funding for bus inspections leads to inconsistent enforcement, making it too easy for carriers to reopen after they have been put out of business, too easy for financially marginal companies to obtain authority, and still too easy for individuals to obtain a commercial driver's license with a passenger endorsement.

The lack of consistent and adequate enforcement of current Federal regulations must be addressed today.

When Secretary LaHood issued the action plan, he declared, and I quote, "a robust compliance and enforcement program is critical to ensuring motorcoach carriers operate safely."

We certainly applaud the stepped-up enforcement over the last couple of months and a near record number of motorcoach companies being put out of business putting unqualified drivers and their

equipment out of service and declaring some an imminent hazard. Certainly, FMCSA has done an excellent job of vetting new entrants into the system.

We welcome the New York Police Department's effort to inspect, to ticket and to tow unsafe buses in the recent tragic accidents. But one-time programs are too rare and they are certainly too spotty. It is consistent, effective enforcement that is the most vital factor in motorcoach safety.

The data shows that 54 percent of motorcoach fatalities from 1999 to 2009 were accidents caused by either unsafe or by illegal companies.

FMCSA needs additional staffing and money to inspect bus operations. Funding for commercial motor vehicle inspections is largely via the Federal Government's MCSAP program. And we think a certain percentage of MCSAP funds should be specifically allocated for bus inspections.

If States are unwilling or they are incapable of managing vigorous bus inspection programs that meet the Federal standards, then we believe a portion of those MCSAP money should be used to hire third-party inspectors. As it stands now, perhaps 8 or 10 States have very good effective inspection programs. This inequity must end. The bus inspection programs must be uniform so as not to create safe havens for illegal operators.

We must raise the safety bar for passenger carriers. While FMCSA has made gains in vetting and visiting new carriers sooner, we would certainly like to see a query into the fitness of an operator before the first passenger ever boards the bus. We believe that Congress should require an applicant background check for drivers, especially those with a passenger endorsement on their CDL. And when FMCSA has determined that a carrier presents an imminent safety hazard and issues an out-of-service order, they also need congressional authority to not only close the operation, but make sure the facilities are locked up and make sure the vehicles are impounded.

ABA recommends that FMCSA undertake more consumer awareness as was begun on May 5th with the Secretary's consumer checklist. And we also believe a more friendly database, the safer system and the SMS system is appropriate for consumers.

And, finally, regarding seatbelts in coaches, Mr. Chairman, ABA and its members support seatbelts in new buses following the testing that was done by the Department of Transportation that they already undertook to determine what type of belt the seat design and the anchorage that would be appropriate to save lives.

We are also enthusiastic supporters of H.R. 1390, and we thank the members of this committee who have cosponsored that bill.

Our industry continues to grow. We will provide the safest, the most cost effective and environmentally efficient mode of transportation, but we can only do it if current regulations are enforced equally and all carriers.

I thank you, Mr. Chairman, and I will answer any questions you and the committee might have.

Mr. MICA. Thank you, and we will get back to you on that.

Now we will hear from Mr. Victor Parra, president and CEO of United Motorcoach Association. Welcome. You are recognized, sir.

Mr. PARRA. Thank you, Mr. Chairman, Ranking Member DeFazio and members of the committee, I appreciate you calling this hearing today and the opportunity to appear before you. The committee has a long and distinguished record of promoting safety on our roadways. On behalf of the United Motorcoach Association, it is my goal to provide the committee with our perspective on the factors that contribute to our industry's notable safety record, but also our goal of improving on that record.

Founded in 1971, the United Motorcoach Association represents the full spectrum of bus and motorcoach operations, from small family charter and tour to nationwide scheduled and commuter service operations. The United States Small Business Administration, as Mr. Shuster pointed out, estimates that over 90 percent of the motorcoach operators are, in fact, small businesses.

UMA is deeply saddened by the recent motorcoach accidents, and we extend our deepest sympathies to the victims, their families and all those who are affected. And while it is a fact, as Mr. Mica pointed out, that our industry has the safest record, one fatality is one fatality too many. That is why one of our primary objectives is to promote safety and compliance in this industry. We do this through several initiatives. First, we have our Bus and Motorcoach Academy, which is accredited through the College of Southern Maryland. We do training for drivers as well as motorcoach companies to instill a safety culture in their organization. We have safety management seminars that we hold at the NTSB, National Transportation Safety Board's, training center. Of course our annual conference and regional and State meetings are also heavily ladened with safety training programs. UMA is a member and sponsor of the Commercial Vehicle Safety Alliance, an active member in their passenger carrier committee and we routinely volunteer to assist the National Transportation Safety Board in any of their investigations as we did following the accident involving Worldwide Tours.

UMA has long advocated for strong and improved enforcement of existing Federal and State motor carrier safety regulations for our vehicles and drivers. Additionally, UMA has long supported initiatives based on sound science and research that truly improves safety, many of which are included in Mr. Shuster's bill, which is cosponsored by members of this committee, Congresswoman Eddie Bernice Johnson, Congressman Tim Holden and Congresswoman Jean Schmidt, as well as other Members of Congress.

The bill contains reasonable and attainable guidelines that enhance the National Transportation Safety Administration's efforts to promulgate new rules that will improve motorcoach occupant protection.

In addition to Mr. Shuster's bill, in August 2007, NHTSA announced NHTSA's approach to motorcoach safety in a series of evaluations including occupant retention, window glazing, emergency egress, stability control, roof strength and flammability. In December 2007, NHTSA conducted a first-ever motorcoach crash test, and subsequent to that promulgated regulations for three-point seatbelts on all new coaches. And in fact, UMA supports that initiative.

In December 2010, the Federal Motor Carrier Safety Administration, FMCSA, launched its long awaited comprehensive safety anal-

ysis 2010. FMCSA and their State partners now have the capability to more readily identify noncompliant carriers and target problematic carriers with the goal of preventing accidents before they occur.

Just months into implementation, UMA concludes CSA is already altering behaviors and producing results. We are most satisfied that this program will serve the long-term needs of the enforcement community.

UMA has deep reservations regarding legislative efforts that could intentionally harm small entrepreneurs' entry as new carriers. While some often use the term "illegal" and "rogue carriers" and "new entrants" in the same reference, there are no direct parallels UMA is aware that would signify new entrants afford a disproportionate risk to the traveling public, and indeed, anecdotal evidence suggests otherwise.

Having said that, UMA enthusiastically supports the Secretary's efforts to establish minimum knowledge requirements for companies who seeks to transport passengers and have steadfastly recommended classroom and exam requirements followed by compliance audits within 45 days after conditional operating authority is granted.

While UMA continues to support limited driver and vehicle inspections to terminal and destination locations that do not interfere with passenger safety or schedules, we do not and have never supported allowing drivers or vehicles to continue operating unsafely. However, we remain concerned about any random inspections, roadside inspections. Just this past week a 76-year-old woman from Minnesota died when her car in which she was driving hit the backend of a motorcoach that was stopped alongside an I–95 State trooper. The trooper narrowly escaped injuries. Fortunately, no passengers on the coach were seriously injured.

Congress has wisely protected motorcoach passengers from roadside accidents, and those protections should remain.

In conclusion, we appreciate this opportunity to submit testimony regarding these matters and stand ready to contribute to ongoing efforts to enhance safety of bus and motorcoach operations. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

And now we will hear from Jackie Gillan. And she is the vice president of the Advocates for Highway and Auto Safety. Welcome, and you are recognized.

Ms. GILLAN. Thank you and good afternoon. Thank you very much for the opportunity to testify. I first testified before the Subcommittee on Highways and Transit in 2006 about motorcoach safety problems. Again, in 2007, I testified after the Bluffton University baseball team crash in Georgia. Both hearings highlighted the need for Congress to take action to improve Federal oversight of the industry as well as direct DOT to issue overdue safety standards for occupant protection. Five years later, after those hearings, there have been more than 108 crashes resulting in at least 136 deaths and thousands of injuries. It is time for Congress to act and pass the Motorcoach Enhanced Safety Act, H.R. 873, sponsored by Representative John Lewis and others. This overdue legislation

will direct the DOT to implement lifesaving recommendations of the NTSB that have languished for over 40 years.

Those who travel by motorcoach rather than air do not expect to be treated as second class citizens when it comes to safety and they do not expect the motorcoach to be a death trap in the event of a crash. H.R. 873 is supported by Advocates, consumer health and safety groups and the families of those killed and injured in motorcoach crashes.

Why is this legislation needed? Further delays and excuses can no longer be tolerated and have contributed to needless deaths and injuries. This is not just Advocates' opinion, but the opinion of NTSB as well.

Congress must step in now and ensure the safety improvements that NTSB has recommended are implemented.

H.R. 873 will protect consumers before they buy a ticket and board the bus and after they take their seat and the trip begins. For example, there are no substantive training requirements in Federal regulations for entry-level commercial drivers, including motorcoach drivers. Compare that to a recent proposed FAA rule issued at the direction of Congress that requires at least 1,500 hours of flight time before a pilot can operate a commercial flight.

Also, safety ratings for motorcoach companies are incomplete, out of date or simply not available. In my testimony, I reference efforts by Advocates' staff to find out about the safety of Florida motorcoach companies. There are 143 companies headquartered in Florida, 36 companies have no safety ratings at all, 5 companies are operating with conditional ratings indicating there are safety deficiencies. And among the 102 companies with satisfactory safety ratings, only 2 have ratings in all of the categories.

H.R. 873 will require that every motorcoach carrier receives a safety rating within 3 years.

Recent crashes also indicate that driver fatigue and violation of Federal hours of service rules are common. It is time that FMCSA revise the hours of service rule for motorcoach drivers and gets tough on companies that push drivers to exceed driving limits and falsify their logbooks.

The Virginia crash that occurred last week has also revealed a dirty little secret that safety advocates have warned about for years. Giving motorcoach companies with an unsatisfactory safety rating 45 days or longer to continue operating and carrying passengers is simply unacceptable. Passengers boarding Sky Express had absolutely no idea the dangerous risks they faced choosing that carrier. In the 48 days during which Sky Express operated with an unsatisfactory rating, the company may have exposed as many as 100,000 passengers to dangerous and deadly operating conditions.

The NTSB has been loud and clear in the agency's "Most Wanted Recommendations" that motorcoach occupants need better protection in a crash. Motorcoach crashes are violent and cause passengers to be thrown around and frequently ejected. This is why the National Highway Traffic Safety Administration needs to be directed to issue basic safety standards in the next 2 years that will result in occupants having the safety protections that we now have in cars. And I am talking about basic systems like seatbelts, roof

crush protection, anti-ejection window glazing and rollover prevention technology.

The motorcoach industry's gold-plated cost figures circulating around Capitol Hill for safety improvements required in H.R. 873 are wildly inflated, unreliable and undocumented. Actually, the cost of equipping new motorcoaches with the safety improvements required in the Motorcoach Enhanced Safety Act will cost less than a dime per passenger. Who in this hearing room today would not pay an extra dime to protect their child or parent or spouse in a crash?

In closing, I urge you to pass the Motorcoach Enhanced Safety Act, and thank you for the opportunity to testify.

Mr. MICA. Thank you, and I want to thank all of our witnesses for their testimony and recommendations. And we will start questioning. I will begin with a few questions of my own and then we will yield to other Members.

Well, again, I think what we are trying to do here is see what the missing pieces are to making certain that we have the very best legislation in place, best regulation, where we are going to regulate, best cooperation from the States and private industry.

I heard first from our Federal Motor Carrier Safety Administrator a list of recommendations that have been suggested, and we heard other recommendations from other panelists. There are issues with just about all of these and, for example, if we start with the en route inspections, and I think there were restrictions put under the last 6-year authorization that do inhibit some of the en route inspections and I think the thought there was you inspect the bus either before people get on it or at the end and maybe not unless there was a serious indication that there was some problem en route you wouldn't shut down the service.

We probably could tighten that up some.

I think part of the problem starts even before that, Mr. DeFazio spoke about it, others have spoken about it, is getting a hand on these rogue operators, people who don't comply, the changing the name of the operation over the Internet. We have seen that in other industries too, where bad players, you try to build a mousetrap to catch the rats and they find some other way to get to the cheese whether it is in the passenger bus operations or in other endeavors.

I guess I go back to the very basic involvement of Federal Motor Carrier Safety Administration in reviewing these folks in the time also that we have. Now, I guess what is it, 18 months they can actually start operations before they get some of that inspection? Is that correct?

Ms. FERRO. That is correct. It is 18 months for new entrants before they receive their authority, but for motorcoach passengers, we set a standard of an inspection or of a safety review of that carrier within 9 months of their first receiving their authority for motorcoach operators.

Mr. MICA. So your recommendation is that before they start service, they should have that certification?

Ms. FERRO. That is correct.

Mr. MICA. Now, someone else is talking about a review of their capability, if it could be done by, you know, you have what, 1,080

employees with FTEs full-time equivalent employees, and I believe that the division is about 800 in the field, and maybe 200-some in Washington.

That is approximate.

But many of the inspections are done or enforcement is done at the State level, is that also not correct?

Ms. FERRO. That is correct, yes.

Mr. MICA. So, and I know the Administration has recommended additional positions in Washington. Sometimes, though, from a practical standpoint, it is better to empower State folks who are closer, as far as enforcement and regulation. What would you think of—well, obviously you are recommending more Federal employees. Is there any mix or pre-review or audit that could be done do you think that would enhance, again, the performance?

The other thing, too, is the bad actors, I have heard of games and other industries, they go through an inspection and then the good tires come off and they put them on another vehicle, or the drivers that they list aren't the drivers that drive and keeping up with that. How do we get did the best enforcement other than—this is a tough question for you, maybe I should ask others—other than just with the Feds. Are there other things that we can require sort of on the spot that would do a good job, too?

Ms. FERRO. Yes, if I might jump in, I think you have framed the question very well in the context of rogue operators and en route inspections. A very significant challenge in the destination-origination inspection model is that rogue operators don't necessarily have prescheduled sites where we would know where their destination is or where they are originating the trip. So it is very valuable to have the concept of en route inspections.

Most of those carriers will operate on main corridors. Law enforcement would have very clear guidelines on to when and where it is safe to pull a motorcoach carrier aside in an area where passengers have safe disembarkment and an opportunity for another bus to come pick them up.

In other words, multifold, number one, additional inspection activity, as Advocates indicated, creates additional data in our measurement system and identifies the behavior of carriers. Rogue carriers aren't necessarily going to comply with the standard of an origin and a destination that is fixed.

Mr. MICA. Well, again, where you are carrying passengers, though, it is a little bit unique. I mean, we don't inspect the planes en route and pull them over to the side or parachute the passengers out while we do an inspection, FAA inspection. The presumption is that that plane should be inspected before it ever takes off and carries a passenger, same thing with Amtrak and others that don't meet safety standards.

We are not pulling the train over, everybody disembark on the side, the track, and we will do a quick FRA inspection or FTA inspection. Again, you want a practical solution.

Ms. FERRO. That is right.

Mr. MICA. Well, I am trying to stop them, I think with Mr. DeFazio, from getting in business in the first place and staying. When I ask the staff how many operators do we have and they say Federal Motor Carrier Safety Administration can't tell us, because

it is a revolving and evolving number the way things are set up now and people get into business by various means, again, they are circumventing the provisions that we have.

How do we get a handle on that from the very beginning?

Ms. FERRO. Well, again, perhaps the most efficient model is to combine the roadside inspection activity that is already under way where we have 12,000 strong State law enforcement across the country who are trained commercial vehicle, complemented by the new entrant grant program that is in existence today in the context of a pre-authority safety audit by a cadre both of State and Federal inspectors.

And then, lastly, I will say with our fiscal year 2012 budget request, we include an additional $20 million in State grants, again in the context of strengthening the compliance safety accountability component of these programs. So, in terms of what is the most efficient model, really it is taking part of all three of those components, utilizing what we already have and boots on the ground, but utilizing it more effectively.

Mr. MICA. Well, another thing that I usually favor is tough enforcement. The $25,000 fine is a stiff fine compared to $2,000. What does the bus association, American Bus Association feel about that?

Mr. PANTUSO. When it comes to more enforcement, Mr. Chairman, I don't think anything can be second. We are certainly in favor of anything that gets these bad operators off the road. We are also in favor of more inspections. You know, one of the ways to do that, that we have discussed in the past, is giving more resources to FMCSA. Not only increasing their budget, but also taking those companies that are already undergoing Department of Defense inspections, about 400 or 500 of them, and put them off to the side. They are already being inspected. Inspections by DOD almost the same as FMCSA's, some would even say it is more rigorous. But why have them re-inspected again, a month later or a year later by the same State or Federal inspection system when they have already been looked at very, very rigorously?

Mr. MICA. Well, I think I will never forget the testimony we had in one of our field hearings where a small family operator, a husband and wife of, actually, a trucking firm, I think, in this case, and the wife gave testimony—was that in Arkansas—it might have been, we did a number of hearings. But the wife had compiled a list of all the agencies that their little two-person firm, husband and wife, had to comply with. And she read that thing, it must have taken her 5 minutes to read all the agencies and regs she had to deal with. And then after she got through with that, then they cited all the taxes and all the fees that they had to pay. It was quite an eye opener.

And the problem we have in dividing the economic pie in Congress or in any legislative body is how much regulation, taxation, law, impositions do you put on businesses? I know it is easier for a big player maybe that is on the stock exchange to stay in business, and we want everyone to comply as far as safety. But we also have to balance a small operator and give them some shot. And sometimes folks are trying to eliminate some of the competition,

again, through over regulation of an industry. So we do have that balance to keep in mind.

Thank you, again, Jackie Gillan, for your testimony. A number of your recommendations we are considering, and I hope that through better inspections and better defined authority requirements on safety equipment, things of that sort, that we can have safer buses and better passenger bus safety. So, thank you. You don't have to comment. We just appreciate your advocacy.

Let me yield now, if I may, to the ranking member, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Both to Ms. Ferro and Major Palmer. You were both pretty emphatic about en route inspections. How would you solve this problem that people are putting up—danger, safety, inconvenience? How could we solve the en route problem, because it seems to me that is critical for these gypsy operators? I mean, they have no fixed place of business, they have a post office box somewhere, you know. So how would you do it?

Ms. FERRO. Well, I think Major Palmer will provide better detail, but clearly we set guidelines in terms of where and when and what conditions need to exist in order for that bus to be pulled over in a safe place. There is a suggestion to consider something like business continuity insurance requirement for motorcoach operators so they would be required to provide another bus to come to the location in order to move passengers safely away if, in fact, that bus is put out of service.

So there are provisions like that to ensure the safety and safe passage of the passengers. But in terms of process I would defer to Major Palmer.

Mr. DEFAZIO. Major.

Mr. PALMER. Yes, sir, Mr. Ranking Member, that is absolutely correct. I really don't know the numbers but I can tell you in Texas, for example, we have policies and procedures in place already. So even under current regulation, if you stop an en route bus for, you know, a serious safety violation, we have procedures in place that—the utmost importance, when we stop a bus, wherever it is at, is the safety of the passengers and the driver and also our enforcement officer. We don't want to put them in any harm's way any more than we would want to put passengers.

So, for example, depending on where it was and for whatever reason that bus was stopped, if it was deemed, you know, unsafe, then we would escort that bus to a safe location and inspect it there to ensure that the passengers are well taken care of. Typically a very quick screening or even a driver inspection, you know, you are talking maybe 10 or 15 minutes to be able to do that typically, and we would focus on those efforts.

You know, it has been the late nineties since I inspected a bus, but I know that when I would stop a bus roadside back then one of the first things I would do after I made the initial contact with that driver is I would address the passengers, because the passengers are, like, what's going on?

And what I found historically is that the passengers were very appreciative when we did take that time, when you tell them what you are looking for and about the safety aspects, they encourage that.

So we would have specific procedures in place, and that is something that FMCSA could provide leadership on and CVSA specifically would be able to provide that, you know, we have operational policies that all the States agree to through our MOUs and we could also enhance that enforcement that way.

Mr. DEFAZIO. Sure. I mean, if a bus were speeding you can stop them, right?

Mr. PALMER. Yes.

Mr. DEFAZIO. If a truck is speeding, you can stop it. I mean, we did have this elderly person who drove into the back of the bus, clearly not good driving on that person's part. So to say, gee, we shouldn't have any capability of pulling people over because every once in a while someone who is asleep, on their cell phone, or incompetent is going to drive into it, I mean, this is a problem. And in my State, if your patrol car is here and the bus is there, and it is a two-lane or a three-lane highway, you are required to leave the lane empty and move to the left.

Mr. PALMER. Same here.

Mr. DEFAZIO. There are ways to protect the safety of those people for a short stop and then if there is a problem get them off the highway.

But I think having an absolute prohibition only favors the people who do not have a fixed base of operation. There is no way to get them. Where are you going to get them when they stop somewhere in downtown New York, which changes every day wherever they are going to drop people off or wherever they are going. So I think opposing this entirely is not reasonable and would urge the association in saying that there should be no capability, think about how we can get at it again.

How do we get at the bad actors who aren't in your association that we want to get at, and this, I think, is the key. It was from both law enforcement and from the Administrator, it was key. And I think we need to modify that provision of the law.

The other thing would be State inspections. I see here in the ABA testimony that you say State inspection programs must be strengthened. Fewer than a dozen States have effective bus inspection programs and less than half have any program at all.

Mr. PANTUSO. That is correct. Mr. DeFazio, we just don't think there are enough States focusing on bus inspections. They are focusing on trucks, they are doing commercial vehicle inspections, they are doing an admirable job with the resources they have, but there aren't enough that are focused on bus operators.

You know, we saw the accident that happened in New Jersey about 2 months ago. That company was supposedly based in Pennsylvania, but nobody ever saw them in Pennsylvania. The company that had the accident in Virginia was based in North Carolina, but they were based in a housing development. There was no sign of that bus or buses at that facility or at that house whatsoever. So we are concerned, we are concerned about the way some of these companies operate, as you are.

We are also concerned, as you mentioned earlier about en route inspections, about the safety of the passengers. Most of our passengers are seniors or they are children. We also have passengers with disabilities who are on the coach. We just need to make sure

whatever change there is allows for the accommodation of those passengers.

Mr. DEFAZIO. And for those, basically, operating out of a housing development or a post office box, it seems to me that requiring an annual inspection by each State of these, of each vehicle every year, would that be an unreasonable burden?

Mr. PANTUSO. It would not be unreasonable. I think inspectors need to go into those facilities and look at not only the facilities, but those vehicles as well.

Mr. PARRA. I agree.

Mr. DEFAZIO. OK. And that would also get at some of these people. It could be kind of like, you know, this is a little different, but with the Coast Guard—I live on a boat here. And you can get the Coast Guard Auxiliary to certify your boat on an annual basis. And it is very improbable that they will do a random boarding to do a safety inspection if you have a current sticker showing that you were inspected.

So if we did do annual inspections and people had some sort of a decal—although obviously those things can be counterfeited, then that would potentially, I mean that would be someone that the police would be much less likely to look at as someone who needs an en route inspection, it seems to me.

So, I mean, it seems to me some way of getting the States to do this, incenting them to do it and requiring them to do it, and some sort of a process. And then perhaps, and I will take it one step further. What if you had to annually show it. Now you go one time to FMCSA, pay $300, and it is good forever.

Why wouldn't you say, OK, on an annual basis you have to show that your vehicle has been inspected or we will suspend that authority? Mr. Pantuso.

Mr. PANTUSO. Mr. DeFazio, I would just say as we look at the new entrant program, we think that $300 is not enough. It costs $350 to get a hot dog vendor's license on the streets of Washington, DC. Yet we are allowing people to come into the business who are going to be carrying upwards of 50-plus people at a time for only $300.

Mr. MICA. Right.

Mr. PANTUSO. We certainly think there should be a higher bar of entry. And if it is a higher amount, those funds can be used to fund these pre-inspections that we are talking about.

Mr. DEFAZIO. Got a number in mind?

Mr. PANTUSO. It could be a $1,000, it could be $2,000. It has got to be a reasonable number so that it can't create a barrier to entry. It is, as was described earlier, a mom and pop small business.

We want to encourage that, but at the same time we want to make sure people coming in have got the wherewithal to maintain their equipment. And if they don't have more than $300, I question how they can do that down the road.

Mr. DEFAZIO. Mr. Parra, what do you think of that?

Mr. PARRA. We don't have any objection to raising the bar. We just want to make sure that the bar is reasonable. You know, if it is $500 to $1,000, that is reasonable. But we want to make sure, however, that it isn't a barrier because these companies create jobs, they are good for the economic base of wherever they are.

Mr. DEFAZIO. I got that, but I am glad you agree. To the Administrator, then, do you have the authority to do that or is that statutory?

Ms. FERRO. Currently it is statutory, and we would propose, again, in our technical assistance increasing the limit and keep in mind also it is a one-time fee.

Mr. DEFAZIO. Right, OK. So that seems like we have some consensus on that and it is hopefully something we could put in the bill. So a requirement on States for inspections, a higher one-time fee for registration which could help fund some of the safety and doing the pre-inspections.

And then I will see if I can get one step further, you know, the chairman referenced airlines. Well, when we do airlines, we require that the operator actually be certified, and I have been here long enough that I remember when we threw Frank Lorenzo out of the industry. So, the question would be could we require—we talk about background checks and medical certificates and all of that—could we have background checks for operators because that way we could get at this phantom problem because we know this person, they had a company that violated the law, they are not a qualified operator to start another company with a different name and run those buses.

Could we have something like that? Yes?

Ms. FERRO. Yes, indeed, we could, in terms of liability and responsibility for principals who have already been identified as unsafe, as reincarnated that they could be barred in some regard from operating or——

Mr. DEFAZIO. Can you do that administratively or do you need statutory authority?

Ms. FERRO. We cannot do that. We would need statutory.

Mr. DEFAZIO. You need statutory authority. Well, I would hope we could provide that too and obviously it would be used only in extreme cases, but some of these people are bad, repeat offenders and we want to stamp them out here. I mean, what we are going to do is provide more business for the good operators.

With that, thank you, Mr. Chairman, I think there are quite a few things we could do statutorily to help here.

Mr. MICA. Thank you. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Thank you all for your testimony. Ms. Ferro, the private over-the-road bus industry provides approximately 750 million passenger trips annually. How safe is the motorcoach industry compared to other modes of transportation?

Ms. FERRO. Sir, is that question for me?

Mr. COBLE. Yes.

Ms. FERRO. Again, I think we have agreed—we agree with many of the other speakers that it is among the safest. We are somewhat limited in our inspection data on the industry writ large by virtue of this inspection restriction that the enforcement is currently under. But, yes, generally in terms of the number of crashes they are very low.

Mr. COBLE. And I realize accidents are inevitable, they are going to occur. But do you attribute anything specifically, any shortcoming to the recent motorcoach accidents, Ms. Ferro?

Ms. FERRO. Let me just clarify, again, the vast majority of the industry is operating very effectively and these are small operators who have found a way to make safety and profitability go hand in hand and be highly complementary, those individual owner operators, small business owners.

In regard to the recent crash, again, we are in the midst of the investigation, but at the outset we can see that the facility with which some of the bad actors move equipment and drivers among companies with valid DOT numbers is one of the loopholes, in our perspective. We need stronger leasing regulation, which is something that is within FMCSA's authority that we need to proceed with, as well as stronger tools to prohibit reincarnation on a more effective level than we can today.

Mr. COBLE. I thank you for that.

Ms. GILLAN. Mr. Coble, could I just add to that? I just wanted to say that motorcoach crashes have increased dramatically and we have many, many more people taking them. And, unfortunately, our safety systems are not adequate.

So, while, yes, it is a relatively safe mode of transportation, we have this double standard where we have zero tolerance for aviation crashes even though we now have as many people using motorcoaches and we have hundreds of people dying. Already this year, 27 people have been killed and hundreds have been injured in 11 motorcoach crashes.

Mr. COBLE. I thank you for that.

Major Palmer, distinguish for me, if you will, the difference between en route bus inspections and strike force operations. And in terms of time and money, which of the two serve us better?

Mr. PALMER. Well, they are both unique in their own right. They both accomplish, they ultimately accomplish inspections, but they do it in a different way. The en route inspection is something that, it is a surprise. I mean, it is not something that you can prepare for.

I mean, the good carriers out there don't have an issue. The ones that don't, they don't have time to prepare or change out some equipment or make some quick fixes to get by for a day.

The distant—most of the strike forces that are done now are related to they are either going to be some type of imminent hazard violation involved before they are stopped, but mostly they are actually destination inspections, either origin or where they are going to end up.

Mr. COBLE. Well, are strike force inspections given an advance notice; are they surprised?

Mr. PALMER. They can be both. There is surprise at the beginning, but once the first group of buses get there to the location and we start inspecting them, then the surprise is gone. So then, then other folks can find out that, hey, that's where we are at.

But they both have, they both truly have their benefit. It is just that you are isolated to a particular location. You are also at the mercy, so to say, of either a business, whether it be somebody like SeaWorld or Fiesta, Texas, or some other venue or the actual passenger carrier company, whether they would let us come to their facility and do inspections. So that is one of the downsides to the origin and destination.

Mr. COBLE. I got you. Thank you, sir. Thank you all for your testimony.

Mr. MICA. Would the gentleman yield? I just have one quick question for the Administrator.

Mr. COBLE. I yield to the chairman.

Mr. MICA. Now, it is my understanding that you grant the operating authority for all of these buses, and it is my understanding that the DOT gave operating authority to Sky Express, WorldWide Travel and Super Luxury Tours operating authority of DOT, and you get that little number that they put on the side, you gave all of those, right? Those were the ones involved in—but then after the incidents you withdrew that authority.

Ms. FERRO. That is correct. Both, all three of those carriers had passenger carrier authority prior to our vetting program, and all three have been shut down, that is correct.

Mr. MICA. Well, again, that answers my question, but I am concerned that it didn't happen in reverse order.

Mr. COBLE. I reclaim and yield back, Mr. Chairman.

Mr. MICA. Thank you . Let me yield to Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Ms. Ferro, first of all, in your testimony on page 3, you reference a new program Think Safety, Every Trip, Every Time. And you talk about the fact that this is available online. What other process do you have in place for consumers to know about this, because, to be frank with you, this seems a little unrealistic.

I was recently in New York. I bought a ticket for the Loop trip, and I mean, I didn't go online and I am a fairly informed, I think, consumer. So what else are you doing besides this to communicate with people?

Ms. FERRO. We have several strategies. One is to just make sure people know that there is safety information available on our Web site about carriers and some of the trade associations also provide links to individual carriers' safety data so that customers themselves can link in and understand that they can think safety every trip every time.

Ms. RICHARDSON. OK, but other than Web sites, what process do you have for the average consumer? In the testimony today it was spoken about that you are talking about seniors and people who are riding who are not going on the Web site. Do you have any plan, any process, people call a number, is there something available in bus areas that they have to post? What other aggressive things have you done and, if not, it is OK, we just need to know where we are.

Ms. FERRO. Two areas in particular. There are van operators and the whole population of the faith-based community and others who utilize the 16 passenger vans are a core constituency to whom we have actively reached out in the past. With regard to motorcoach operations, again, it is through our Web site, it is through this particular campaign that the Secretary just launched recently.

But I would add, very importantly, it is the proposal through our technical assistance to allow us to regulate brokers of passenger tickets; that is, those who sell tickets online, those who tell tickets through brokerage and travel services.

Ms. RICHARDSON. I don't think you are understanding my question. Maybe it is my fault, maybe I am not clearly stating it. The question I am asking you, if I am an average consumer, I go to buy a ticket for a motorcoach and I walk up to Greyhound Lines or New York Loop trips.

How do I know what to look for in this particular motorcoach to know that it is safe, or you know, that they pass, that they have a decal or, you know, that they are approved by the Department of Transportation? Is there any system that you have in place to communicate to the average consumer who walks up—I am not talking about someone who is using a Web site—who walks up. Do we have any communication in place?

Ms. FERRO. We do not today.

Ms. RICHARDSON. OK, thanks. I have got to keep going, I am sorry. I have only got 2½ minutes.

Mr. Pantuso, you mention in your testimony that you think that there should be some sort of inquiry into the fitness of an operator prior to that individual being able to begin operations. Can you describe more of what you meant by that?

Mr. PANTUSO. Absolutely. Right now, as was pointed out, there is an 18-month window and FMCSA, we agree, has done a great job of shortening that window, I think Administrator Ferro said to 9 months.

But we believe before the first passenger gets on board that somebody needs to go and look at that carrier and ask them where they will be getting the maintenance done when they begin operating, what kind of equipment are they going to operate, what kind of training do they have for their driver. How knowledgeable is the operator? Those kinds of questions that should be asked before the trip ever takes place and before somebody ever gets on board.

Ms. RICHARDSON. If there is no objection, would you mind submitting some of those helpful questions that you think should be considered for the record?

Mr. PANTUSO. I will, absolutely.

Ms. RICHARDSON. Thank you. I am not done yet. I am not done yet.

Mr. MICA. OK.

Ms. RICHARDSON. A couple of other things I wanted to ask a few questions on.

Ms. Administrator, there was talk that States use the same pool of funding for truck inspections as they do for bus inspections. And coming from a port community, I would find that to be very problematic.

Are you opposed to identifying a specific percentage through legislation that was directed, or do you have a suggestion to of when to ensure that more motorcoaches are getting some of these funds to be inspected?

Ms. FERRO. We are pleased to work with the committee on that recommendation. I will tell you today, through the annual commercial safety plan process, we require States to develop and include in their commercial vehicle safety plans, which is part of their annual grant application process, the identification of a region or State appropriate bus safety plan driven by what their bus safety data is saying, by their bus population.

So it is incorporated into every State safety plan. It is less formal in some States, but it is very much a part of their activity. But, again, with regard to your proposal I will be happy to work with you on that.

Ms. RICHARDSON. OK, and my last question and the remainder that I will submit for the record is Mr. Pantuso said in his statement that dozens of States actually don't even have programs at all. How is it, is it your understanding, do you concur with that or did I accurately describe your statement?

Mr. PANTUSO. To clarify it, we don't see good bus inspection programs in a lot of States. We see some States that are very vigorous, Minnesota, Michigan does a great, great job. California does a great job, Massachusetts does a great job, New Jersey, Connecticut do great jobs. There are others that do very, very good jobs that are very, very rigorous. Yet at the same time we see a lot of States that just don't put enough emphasis on bus inspections.

Ms. RICHARDSON. So Ms. Ferro, are you working with the ABA?

Ms. FERRO. We work closely with all of our stakeholders in this regard to identify the best strategies to root out the worst offenders.

Ms. RICHARDSON. So you are familiar with the ones that they feel are not appropriate?

Ms. FERRO. Yes. We are familiar with that concern and it has been part and parcel over the past 4 years why the agency has incorporated an expectation of a bus safety action plan within each commercial safety plan submitted by the States. It is truly an evolving process, but it is part of our expectation for each State, and we work closely with those States on strike forces.

Ms. RICHARDSON. Thank you, Mr. Chairman. I yield back.

Mr. MICA. I thank the gentlelady and I ask to grant unanimous consent that the recommendation made by the gentlelady of California be made part of the record.

Mr. DeFazio asks unanimous consent that the record of today's hearing remain open for a period of 2 weeks for submission of information or response to questions by the committee.

Without objection, so ordered.

Let me now recognize the gentleman from Pennsylvania. I apologize for the delay. I know you wanted to get out by 4 o'clock.

Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman. I am a little confused on the roadside inspection, so I will direct the question to Ms. Ferro and Mr. Pantuso and see what your answers are, maybe you will clarify for me. Are we allowed to do, still allowed, or it is not prohibited to do roadside inspections?

Ms. FERRO. Roadside inspections are authorized for high-risk operator behavior. So if that driver is showing extreme rates of speed, unsafe operating behavior, if the bus is smoking, a wheel rim is on fire, something to that effect, they can certainly take action.

Mr. SHUSTER. What about targeting a bus company that has shown that it has violated operations, safety rules, that wouldn't be imminent or a reason to target them?

Ms. FERRO. That is not currently authored through the current statute, no.

Mr. SHUSTER. Mr. Pantuso, your view on that?

Mr. PANTUSO. Congressman, I think, again, our concern goes back to the safety of the passengers. And if there is a change in the law, as long as the passengers are in some fashion protected, as long as the seniors, the students, those passengers with disabilities are taken care of and are not left on a hot bus or along the side of the road, there are adequate facilities, we are certainly fine with some modification to the existing law.

Mr. SHUSTER. So if in the bill that I propose, if we put in there, allowing those bus operations that don't have a home base, is that something your industry or Mr. Parra would support, being able to inspect them on the road? Because obviously you, most of your operators, not all of your operators, that I know, have a home base and it is easy to get in there and—go ahead.

Mr. PANTUSO. That is a good question. Companies that operate from the curb, if you will, like some of the ones we have seen operating point to point service, or even charter buses, may not have a terminal where people go to get the bus but ultimately they have a home base and pickup points. There is an owner of that company and hopefully they have a garage, they have maintenance facilities or places where they take buses to be maintained, and they have training. So someplace there is a place to examine the paperwork and the buses.

The other thing is that they all take passengers to the same place. They all, good and bad companies, go to the same destinations. If it is a charter or a tour, their passengers are going to the same place that good bus company passengers are traveling to. If it is a scheduled service operation, they are coming to Washington, going to New York, they are doing other point-to-point destinations.

So there is a destination, there is an origin, certainly if there is an opportunity to do inspections en route if the bus or the company is identified as unsafe and take care of the passengers. The passengers are the first and foremost concern.

Mr. SHUSTER. Mr. Parra.

Mr. PARRA. Yes. I would just add to that, and I would hope that if a company does have a marginal safety record that they would be stopped before they even got on the road, whether it would be closing them down. The CSA program, for example, right now, red flags those companies that may not have had an accident but, in fact, because of one of the five categories they are considered a risk. They have an alert listing next to their name.

FMCSA will intercede at that point and hopefully when the carrier, in fact, has enough alerts on their listing that they would be stopped, prevented from operating. That is, to me, the best way to catch them, as opposed to trying to get them on the road.

Mr. SHUSTER. Ms. Ferro.

Ms. FERRO. Yes, I appreciate Mr. Parra's point. The challenge is that these rogue operators are the very ones that never would have been inspected because we don't always know where their origin or destination is. They are stopping at empty strip shopping sort of abandoned sites, large parking lots, areas that may be Map Quested, but are no fixed termini in terms of a tourist destination or a casino of some sort. So, again, it is this very sort of population that we don't have inspection data on so we wouldn't see them as a flag in the SMS.

Mr. SHUSTER. But as Mr. Pantuso said, they start somewhere. I mean, they have got some sort of home base, even if very small. Major, you look like you are ready.

Mr. PALMER. Yes, if I may add, I can give you an example in Texas. In the Houston area, we have some of these operators that literally the only way we can sometimes figure out where they are at or where they are going to pick up or come out of is we go to certain areas and we look for fliers. And the fliers tell them where to pick them up at, and that is what is one of the major challenges, and that is happening in Houston, Texas.

And the other thing is that in relationship to specific legal language about, you know, who the en route inspection would be applied to, it would be very difficult. And to us, from a State perspective, that is more of a policy issue and that could be a policy at the FMCSA level. At the very least you would see the States would implement certain policies to ensure the safety of the passengers, because that is the bottom line. We want them to be safe.

Mr. SHUSTER. Just so I understand, Ms. Ferro. If you can't get them en route but can you at the beginning and at their destination, you can inspect them at both places?

Ms. FERRO. That is correct, that is correct.

Mr. SHUSTER. OK, all right. Thank you very much. I yield back.

Mr. MICA. I thank the gentleman. The gentleman from Indiana, Mr. Bucshon.

Dr. BUCSHON. Thank you, Mr. Chairman. Ms. Ferro, I have a couple of questions related to budgetary process.

Do you know what your budget was in 2008?

Ms. FERRO. I do.

Dr. BUCSHON. Can you tell me?

Ms. FERRO. Yes, sir. We had $300 million in grant authority, State grant authority, and I believe it was $220 or $230 million in operating revenue.

Dr. BUCSHON. So ballpark, $530 million.

Ms. FERRO. $530 million.

Dr. BUCSHON. $530 million. And how about 2010?

Ms. FERRO. 2010 we were at $320 million in grants and $250 million in our—$246 million in our actual, so that is about $556 million.

Dr. BUCSHON. Yes. You can add faster than me.

OK. And then the request for this year, the 2012 budget is, for the total?

Ms. FERRO. Yes, the request for our 2012 budget is $50 million more, $20 million of that for State grants and $30 million for operations, predominantly additional folks in the field and systems investment. So it is about 100 positions and an additional $50 million.

Dr. BUCSHON. Well, my concern is in a time when, you know, we are expanding spending at the Federal level almost exponentially, compared to 2008, you know, and this year, you know, the 2012 budget, I am trying to figure out in my own mind exactly why, if in 2008, you know, it seemed like what you were doing was adequate, but every year it seems like every agency in the Federal Government, not just yours, continues to ask for more money. And we haverecently, I had bus crashes in 2011 which it didn't seem

like the increased amount of money that you had from 2008 to 2010 really made any difference.

So in my own mind I am trying to justify exactly why that would be. And it seems to me that it might be more or a better thing to do to maybe transfer more of the money that you have allocated from the Federal rollover to the States so that we can have a more pointed inspection programming at the States rather than continuing to increase our budget at the Federal level.

Now what do you think about that idea?

Ms. FERRO. Well, sir, I certainly defer to the wisdom of the committee. I will say that the investment in FMCSA, which is a relatively new agency, and the shape of what it means to have the proper regulatory and enforcement structure over the motor carrier industry is, frankly, still being formed. It is an agency that was spun off of Federal Highways a little over 10 years ago.

With regard to the investment that is proposed, again, it is specific to boots on the ground, either through the State grants or our own field system. And one of the challenges that has been identified with the last crash has to do with are we getting to our thorough inspections that we call compliance reviews of the high-risk carriers quickly enough? And that is always a resource issue.

Dr. BUCSHON. Yes, I am just responding somewhat to the unfair characterization of, you know, trying to control the budget and the Ryan budget, and it seems that a lot of folks want to say that if we go back to a spending level that we had just a few years ago that that is—these are draconian, dramatic cuts that are going to significantly impinge on our ability to run your organization and others, and I would argue that that is not true. So I wanted to just clarify exactly what you are planning to do.

How many people do you have working for you, do you know?

Ms. FERRO. We currently have 1,090.

Dr. BUCSHON. And what are all those, what is the breakdown on what those folks do? Are they all here in Washington? What do they do.

Ms. FERRO. No, no, no. 800 of them are in the field. We have division offices in every State. We have both a division administrator, as well as is safety investigators, as well as——

Dr. BUCSHON. Let's break down how many administrators versus investigators?

Ms. FERRO. Well, there is one division administrator for each State. And investigators are driven by the size of the motor carrier population in that State, as well as the magnitude of the crash history and elsewhere. Again, out of that 800, roughly 500 are dedicated to investigation and inspection activity.

We also have four regional service centers which process. Each investigation has the risk of prompting a legal action by a carrier, which may be an appeal, which may be related to the result of the inspection or investigation itself. So there is the, what we call mission critical support associated with our work, which has to do with lawyers as well as, pardon me, you know in some cases attorneys, litigation attorneys as well as our system support.

Let me clarify, I apologize. We have, out of the numbers I cited, 400 investigators and 250 inspectors along our southern border out

of that 800, and then there are additional, again, support personnel and auditors.

Dr. BUCSHON. Thank you. I yield back.

Mr. MICA. I thank the gentleman.

Mr. Duncan, welcome, and you are recognized.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman, and I don't intend to ask any questions, because I just was able to get here a few minutes ago. I have read key portions of the testimony, though, but I just want to say this, I know that Mr. Pantuso's organization has, I think, 800 members and Mr. Parra's organization 1,200 members. And I think what that says to us is that this, fortunately, is an industry still with mostly very small and medium-sized businesses.

I have noticed in almost every industry that becomes very highly regulated or overly regulated it ends up in the hands of a few big giants. And I hope that we don't go overboard in reaction to a couple of bad operators. I don't have any problems with coming down very hard on the rogue or the very bad operators.

But when I was in law practice, I represented a small, one of my clients was a small bus company that had three drivers. The owner of the company had driven, I think, it was over 2 million miles at the time I represented him without an accident and his other two drivers had driven well over a million miles without an accident. As far as I know, they never had any kind of accident that was their fault at all. And that was a good company, and it was a very, as you could tell, a very small business.

So I appreciate the work that these companies do. They provide a very, very important service to the people of this Nation and especially to lower and middle-income people.

So let's be very careful in what we do and let's work to do what we need to do, but be very careful that we don't run out the little guys or make it very hard for new people to come into the business because of two or three companies that have messed up.

Thank you very much.

Mr. MICA. I thank the gentleman from Tennessee. Let's go back now. We have gone through all of the members on the panel, and we will now yield back to Mr. DeFazio for additional questions, our ranking member.

Mr. DEFAZIO. Thank you, Mr. Chairman. I am pleased that Chairman Duncan was able to have an opportunity to review some of the testimony, and I would agree with his sentiments, which is we do not want, we are not proposing to regulate those who are doing a good job in unreasonable ways.

We have had some consensus on the fees that are charged for entry from both the associations, the possibility of raising those fees to a reasonable level, but wouldn't bar entry but would also help better fund the inspection certification program. We had discussion of certifying operators so we can basically, when you get a bad operator, it sticks with them, even though they might come up with a new corporate entity or a new spiffy name on a Web site for their curb-to-curb service.

And, you know, that, I think, could be helpful. We had some discussion, although there isn't agreement, but there is some opening, I think with Mr. Shuster's comments on what you do en route

versus how you could get at carriers who don't have really a fixed place of operations, and then the State inspection problem, which again, we had some consensus on where the States aren't doing their job to certify the buses.

Just one or two other quick questions. I don't understand in Administrator Ferro's testimony, it says, "revise current law to ensure driver's CDL can be suspended or revoked for drug and alcohol-related offenses committed in noncommercial vehicles."

I thought that already was allowed. We were looking at the statute here.

Ms. FERRO. Right now most of those offenses—it is funny, actually I saw that same point I think that is actually a misprint because I agree currently for serious offenses we have the authority to require States to disqualify.

To clarify the particular provision we are looking for, when we issue an out-of-service order on a driver, there is no connection between our action and the State CDL, and we feel there needs to be an action. Otherwise, really, the driver has no, there is no harm, no foul. And the driver may not pay the fine. If there is a fine, another employer might hire that driver because there is no think between that driver and their authority to operate a commercial vehicle.

Mr. DEFAZIO. OK. So right now even though you may suspend or bar them, the States are not required to follow suit?

Ms. FERRO. That is correct.

Mr. DEFAZIO. I think we had talked about this with trucking, where we have people who sort of hop States——

Ms. FERRO. That is correct.

Mr. DEFAZIO. When they have had serious problems and we have talked about having a unified database so we can keep track of people, and is there a requirement on the trucking side that States revoke a CDL?

Ms. FERRO. In terms of—only for State convictions and for—on a commercial operator—let me clarify—for sufficient serious violations a State is required to disqualify that driver from holding their CDL, but a direct link for certain violations or an out-of-service order is not necessarily in that list of serious violations.

Mr. DEFAZIO. OK, I would appreciate seeing some language on that so we can better——

Ms. FERRO. We will. If I can just clarify the drug and alcohol piece, for positive tests on a drug or alcohol test, there is no link to the individual CDL. So that randomized process of drug and alcohol testing for which we are currently advancing a clearinghouse, should a driver test positive today or in the future, there is no link between that and the driver's CDL status.

Mr. DEFAZIO. OK. That is certainly something to think about how you would deal with that.

Ms. FERRO. That is correct.

Mr. DEFAZIO. Yes, we don't want people—and that would be for someone who is actually operating and failed a test while operating?

Ms. FERRO. That is correct.

Mr. DEFAZIO. And there is no way to say isn't that person put out of service at that point if they test positive for alcohol?

Ms. FERRO. The driver may be put out of service but, again, if it is a positive test after a crash, and it is not related directly to the CDL—if I may, let me go ahead and provide language before I dig myself a hole on that one.

Mr. DEFAZIO. Yes, that would be OK. And the one other thing on your penalty that again is statutory for passenger carriers that attempt to operate without U.S. DOT authority. So these are people who didn't even pay the $300 and initially qualify? These are just total rogues? I mean, they are just out there driving around?

Ms. FERRO. It is that population as well as those we might have shut down and resumed operations.

Mr. DEFAZIO. Yes.

Ms. FERRO. In other words, those who we have removed their authority to operate, and they have resumed operations regardless. So it is both populations.

Mr. DEFAZIO. Right, OK. And again I think we had some consensus that perhaps that fine for those kinds of people could be raised from both associations and discussed what would be a reasonable level of fine. But we certainly want to discourage those kinds of people. Again, we want to focus on the people that are good and encourage them to do better, and we want to get these other people out.

Ms. GILLAN. Congressman DeFazio.

Mr. DEFAZIO. Yes.

Ms. GILLAN. Advocates would also recommend that you look at criminal penalties for reincarnated carriers and people that are operating without sufficient operating authority, because clearly the financial penalties are not enough, you know, to persuade these people that, you know, they shouldn't be going back into business. So if you had criminal penalties, I think that really increases the stakes and I think that may get their attention if they thought they might be going to jail by doing something like this, putting so many people at risk.

Mr. DEFAZIO. Yes, I would have to think about that. The key thing about it is if you go criminal, then we get a referral to the Judiciary Committee, and that is kind of bureaucratic. And beyond that the U.S. Attorneys generally, they don't want—I mean, if it involves someone who has actually had serious infractions that led to injury or death or something, then perhaps they would pursue it. But normally they wouldn't be very interested in pursuing it, so we would have to kind of qualify it maybe and think about how we might do that, and then I would be open to suggestions.

Administrator.

Ms. FERRO. If I might mention two other strategies that are core to this and, again, they recognize that small operators, independent business owners who are doing it right have every reason to continue operating correctly. And one is this authority to regulate brokers. As long as passengers who are buying tickets, whether it is through the web or through a site at a curbside, if there is no requirement on those brokers to disclose who they are selling tickets for and conceivably provide some sort of a link to the safety information on that carrier, then passengers can continue to really buy tickets blindly.

Furthermore, they buy tickets thinking that the seller has a connection and some responsibility for the quality of the operations. The passengers we are seeing today who have lost their tickets, by virtue of the companies we shut down, have no recourse other than going through some State consumer protection agency.

So we would recommend, we have authority over the brokers of every other kind of commercial movement, the sale of that. We would encourage the authority to have some level of requirements on brokers of passenger tickets.

Mr. DEFAZIO. So you have, like you have a requirement over freight brokers, for instance.

Ms. FERRO. Yes, household goods brokers.

Mr. DEFAZIO. Moving, storage, those things?

Ms. FERRO. Yes, correct.

Mr. DEFAZIO. OK, so this is the only area where you don't have that authority?

Ms. FERRO. Correct. And we are just asking for full disclosure.

Mr. DEFAZIO. Well, again, I would like to see a suggestion there on how that—and do either of the associations have any insight on that?

Mr. PARRA. Mr. DeFazio, we have had a concern about brokers for a long time. They have no skin in the game and we have fought very hard to ensure that consumers work directly with motorcoach operators and bypass the middlemen, as we call them.

Our concern with any kind of registration would, in effect, give them some level of legitimacy, which we don't believe they should have.

So we are sort of torn. We understand the concern with brokers and share that concern, but we don't want to give them a level of legitimacy that would make someone feel comfortable that they are dealing with somebody that is reputable because they are, quote, unquote, registered by the FMCSA.

Mr. DEFAZIO. OK. Mr. Pantuso.

Mr. PANTUSO. You know, the devil is always in the details, Mr. DeFazio. And certainly as you are talking about brokers, as we sit here, the kind of broker that was selling tickets for the company that had the accident in Virginia, those are the kinds of brokers I think we are talking about.

By the same token, a lot of the industry buy and sell bus services from one another. Companies are leasing buses from each other if their capacity is full and they need to get a bus from someone else. Tour operators hire buses. So how that broker is defined is a key question. But certainly the brokers we are talking about here today, we would certainly be in favor of regulating those brokers.

Mr. DEFAZIO. Well, if we are talking about freight brokerage they are required to have bonding.

Ms. FERRO. That is correct.

Mr. DEFAZIO. I mean, maybe that is something—at least then in this case, there would be some potential recourse for people who bought tickets through a broker, then they would have someplace to go and file a claim against the bond or whatever. Maybe something along those lines would help to some degree.

Any suggestions you have regarding that would be welcome. So thank you. Thank you, Mr. Chairman. I think this has been very

helpful. I think I find substantial grounds for some modest improvements in law here that will get at the bad actors, and I would welcome those actions by the committee. Thank you, Mr. Chairman.

Mr. MICA. I thank the ranking member. He has my assurance, and we have been talking in between the testimony here in looking at the provisions that we intend to put in the next 6-year authorization that will strengthen our ability to deal with the problems that we have heard. One fatality is too many, which I said at the beginning.

I have learned some things here, too, and let me clarify as we close, the Federal Government now gives, as far as motor vehicle safety operations grants, all but two States are recipients of those funds; is that correct?

Ms. FERRO. All States receive motor carrier assistance.

Mr. MICA. They are all now receiving.

Ms. FERRO. All. Two are at—receive half of the full amount.

Mr. MICA. Because they do not meet the Federal standard?

Ms. FERRO. Precisely.

Mr. MICA. I discussed with Mr. DeFazio, Florida some time ago had a limited enforcement operation and we found that, actually, their State law was not compliant with the Federal regs and we were having a rash of truck accidents. So we went back to the State legislators, and they cooperated and upgraded. Now they get the full amount.

But my point here though is we are providing funding, but—and talking about the ticket brokering, by the time somebody is buying a ticket, that is way down the pike from where all this problem and responsibility starts. I mean, if you are arriving, getting on a bus and it has a DOT license number such and such or operator, carrier, whatever number and DOT has initially certified that in some way, the public doesn't know, Members of Congress don't know what that entails. But there should be some responsibility to make certain that you have the very best operators possible, not pulling the certificate after they have killed a host of people.

And even, I mean, even if you control—the American Bus Association may control 60 percent of the buses, but I ask this question, one of the worst accidents occurred with one of your members who was debarred from your membership after the accident, so that is late in the game.

But if we are putting Federal money into State enforcement, the other thing is most of the activities are now around truck and highway safety issues. And we had testimony here today that only 12 States actually are taking active interest, we heard some anecdotal information about the poor level of operations as far as bus passenger safety enforcement. So that has got to change. We are going to have to make a change there. I think Mr. DeFazio and I agree on that. We have to have some better assurances, both from DOT in that initial issuance of a license or operating certification.

And then further down the pike and at each level.

Enforcement is so important, I don't think even if I had gotten 1,080 Federal officials, I am never going to be able to handle what needs to be done in the States and localities on the road. So we have to empower them to do this.

The other thing, too, is stopping the bus on the highway. I just have great concern, maybe some of the provisions we put in law were good, but, we may need a different approach, again, as far as some of these random inspections. But the last thing I want to see is on the interstate, a major highway, is bus passengers unloaded or some kind of inspection.

I believe before a passenger gets on that bus that there has to be some assurance that that is safe. And for heaven's sakes, we know that most of these operators are small operators, many are in the gaming industry, what type of enforcement rocket science is it to inspect the bus before this ever leaves the station, people know where they are leaving from or their departure site or as it arrives.

So I have concerns about how we do this from a practical standpoint, and I don't want to put more people at risk in the process.

Competition is important, and we want to make certain a little carrier has a shot at this too.

This isn't just about preserving the bottom line for major carriers in this, and we will have to look at some innovative ways maybe the proposal with third-party inspections, some way of getting more inspection for less dollars and less bureaucracy. That might be an innovative approach from Washington. But maybe we can do that too.

And then I want to go back and look at NTSB recommendations we really didn't get into in detail. We want to make certain that we don't leave those recommendations on the shelf.

I know in other industries and modes of transportation, we have done that in the past to make certain that there is some follow through and compliance when we have seen a mistake it shouldn't, or a gross error, it shouldn't happen again. So, again, I appreciate your testimony today, your participation. This is a quickly held hearing, but we are looking at all of the provisions that we are trying to incorporate into a 6-year major piece of legislation. We thought it would be fitting that we review this in a bipartisan manner and try to come up with, again, the best possible provisions to ensure that the traveling public, particularly bus passengers, have every element of safety in place and that we responsibly provide for that and by our legislation or by the regulation allow the agency to help do its job better, and also for the States that end up with a lot of the responsibility in this process.

So, again, I thank the witnesses.

We will leave the record open for 2 weeks as the unanimous request by Mr. DeFazio has been passed, and we may be submitting additional questions to the witnesses for response for and to be made part of the official record of proceedings today.

There being no further business to come before the Transportation and Infrastructure Committee of the U.S. House, this meeting is adjourned. Thank you.

[Whereupon, at 4:31 p.m., the committee was adjourned.]

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, www.taketours.com, and 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. 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 31st 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.

Committee on Transportation and Infrastructure
Hearing on How Best to Improve Bus Safety on Our Nation's Highways
June 13, 2011
Questions for the Record

QUESTION 1: What is the Federal Motor Carrier Safety Administration (FMCSA) doing to ensure that a company whose operating authority is revoked does not continue to operate? Does FMCSA need additional authority to stop these carriers from continuing to operate?

Response: FMCSA uses several procedures to prevent carriers whose authority is revoked from continuing to operate.

FMCSA produces reports that identify carriers that continue to operate after having their U.S. DOT registration and operating authority revoked, or that operate prior to having been issued operating authority. The report lists motor carriers, including passenger motor carriers that have shown up in FMCSA systems as having activity, such as a driver/vehicle inspection or having been involved in a reportable accident. The reports are updated daily and provided to all FMCSA Division offices. FMCSA Division offices then take investigative actions as appropriate, including enforcement cases for operating without authority. On May 14, 2008, the FMCSA issued an internal policy guidance on follow-up activities and monitoring of motor carriers placed out-of-service. The policy was updated this year to include guidance on follow-up activities and monitoring of carriers that have had their applications for authority rejected by FMCSA.

FMCSA also notifies State agencies participating in the Performance and Registration Management System (PRISM) on a daily basis of all carriers, including passenger carriers, that have had their U.S. DOT registration and operating authority revoked. As a result, the States revoke the vehicle registrations (license plates) of commercial motor vehicles (CMVs), including passenger motor carriers. Further, the States are able to use systems to "flag" relevant information (vehicle identification numbers are a good example), should a passenger motor carrier attempt to register those vehicles under another company name. Currently the 25 States that are fully implemented participants of the PRISM program (three more States are in a graduated stage of PRISM; verify that a motor carrier's U.S. DOT registration and operating authority are not revoked before issuing the registration). Nearly all the remaining States are in the process of implementing the PRISM process. The Agency believes that requiring all States to participate in the PRISM program would be beneficial to enhance motor carrier safety.

Finally, with respect to passenger carriers, in August 2008, the Agency began a vetting process to review all passenger carrier applications seeking for-hire operating authority. (Most of the passenger carrier industry operates "for-hire.") The vetting process is designed to detect and prevent passenger motor carriers whose operating authority has been revoked from attempting to re-enter the passenger carrier industry as a "new" entity. The vetting process uses systems and investigative techniques to identify commonalities between the information provided on the application by an applicant for passenger carrier operating

authority and information contained in FMCSA systems on previously registered motor carriers with enforcement activity, crashes, or poor safety performance history. When these commonalities are sufficient, the passenger motor carrier application is rejected, since the carrier is considered to be a continuation of the previously revoked motor carrier. When commonalities are detected but are insufficient to verify mere continuation, passenger motor carrier applicants are required to provide more detailed information. If they fail to do so, the operating authority application is rejected on the grounds of being materially incomplete.

Does FMCSA need additional authority to stop these carriers from continuing to operate?

Yes. FMCSA has recently made a number of suggestions to Congress, through technical assistance requests, for addressing carriers that continue to operate after being placed out of service. These include:

- Mandating the PRISM program (for example, making PRISM implementation a prerequisite of receiving Basic Motor Carrier Safety Assistance Program Grant Funds) would be beneficial to safety by making it more difficult for reincarnated carriers to re-register vehicles.

- Providing the Agency authority to deny or revoke operating authority on the grounds of falsification on the application. For example, if FMCSA finds that an applicant has falsely replied to the question of whether it has affiliations with other motor carriers, the Agency should be able to deny the application, or if discovered after the authority has already been granted, revoke the authority.

- Codify the ability of FMCSA to create and use a federal standard for reincarnated carrier using a doctrine of "mere continuance."

- Clarify that FMCSA may hold motor carriers and individual officers responsible for masking or concealing non-compliance with FMCSA regulations, and authorize revocation of operating authority for such motor carriers and temporary or permanent bars from association with any motor carrier for such officers.

- Codify clear and strong criminal penalties for those operating when OOS.

QUESTION 2: You mentioned in your testimony the challenges of inspecting "curb-side" bus companies such as Sky Express, due to their non-fixed departure locations. Would it not be easier to simply require a fixed departure and arrival location to aid in these inspections?

Response: Under current law, FMCSA does not have the authority to set fixed departure and arrival locations. Based on the past performance of non-compliant motorcoach companies, we do not think that adding a new requirement to maintain and/or report fixed departure and arrival locations would improve our ability to locate unsafe operators. If a fixed departure/arrival requirement were imposed, motorcoach companies that operate safely and in compliance with the regulations will be constrained from expanding operations if the

routes have to be filed with and accepted by FMCSA before developing new markets and customers. While the requirement to only file the route with FMCSA before transporting passengers on a new route appears to be less burdensome than having to seek approval, it is an additional paperwork requirement on all motorcoach companies. The companies that comply with the current statutes and regulations will follow the new requirement. The currently unsafe, non-compliant motorcoach companies will violate the new statute the same way they violate statutes and regulations in place today. The FMCSA wants another tool so we can focus our enforcement efforts on unsafe companies. Authority to perform en-route inspections, however, is one option that will assist in our pursuit of individuals and companies that disregard the regulations already in place.

The majority of motorcoach companies are operating safely, complying with statutes and FMCSA regulations, providing a valuable service to the Nation's citizenry, and are adding new routes at a rapid pace to meet the demands of the public. FMCSA's focus is on the motorcoach companies that disregard the safety regulations, refuse to comply with the laws, and endanger the public.

QUESTION 3: In your testimony, you proposed to increase the penalty from "$2,000 a day to $25,000 for passenger carriers that attempt to operate without U.S. DOT authority". Do you believe this will effectively remove bad actors from our highways?

Response: Substantially increasing the penalty to $25,000 would be a deterrent to some of the passenger carriers that are considering acts of non-compliance or occasionally conducting acts of non-compliance by operating without authority, registration under 49 U.S.C. § 13902. Increased penalty authority would provide a more effective tool when taking enforcement action against passenger carriers that continually disregard the regulations and operate unsafely. The proposal to increase the penalty for operating without authority is specifically aimed at passenger carriers attempting to evade compliance, trying to remain undetected because of their history of unsafe activities, by operating without authority. A fine of $2,000 per day is insignificant when compared to the annual revenues of many of the non-compliant motorcoach operators.

This authority would also provide consistency in FMCSA's civil penalty structure by making the penalty for transporting passengers without operating authority equal to the penalty for transporting household goods without operating authority.

Additionally, the question was raised at the hearing as to whether FMCSA had adequate authority for criminal penalties. Does section 521(b)(6) of title 49, United States Code, provide adequate authority for criminal penalties, or is additional authority needed?

Response: Many of the most serious motor carrier and commercial motor vehicle driver offenses, such as those involving fatal crashes and charges of negligent homicide, are brought in State court. As to Federal criminal penalties, Title 49 USC §§ 521(b)(6) and 526 both contain criminal penalties for knowing and willful violations of chapter 311. Section 521(b)(6) states:

(A) In general – Any person who knowingly and willfully violates any provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title, or a regulation issued under any of those provisions shall, upon conviction, be subject for each offense to a fine not to exceed $25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be subject, upon conviction, to a fine not to exceed $2,500.

(B) Violations pertaining to CDLs – Any person who knowingly and willfully violates-

(i) any provision of section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title or a regulation issued under such section, or

(ii) with respect to notification of a serious traffic violation as defined under section 31301 of this title, any provision of section 31303(a) of this title or a regulation issued under section 31303(a), shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.

Section 526 provides a "catch all" criminal penalty with fines between $100 and $500 and no jail time. The § 526 criminal penalties are below the fine amounts set for civil penalties, providing little reason to utilize this authority.

The above Federal criminal penalties are arguably not sufficient to punish or deter knowing and willful criminal conduct. The § 521(b)(6)(A) penalty, which shall not exceed $25,000 or a one year prison sentence, qualifies as a misdemeanor offense. For criminal violations that may have contributed to a serious accident, such a penalty is probably inadequate. Section 521 further provides that an employee will only be subject to a criminal penalty if the criminal activity "led or could have led to death or serious injury, in which case the violator shall be subject, upon conviction, to a fine not to exceed $2,500." Again, this is a *de minimis* penalty for knowing and willful conduct that may have actually resulted in serious injury or death.

U. S. Attorney's offices prosecuting motor carrier offenses often charge individuals with making false statements under 18 USC § 1001. This violation carries a penalty of up to 5 years in prison. The § 1001 violation is sometimes inadequate to address knowing and willful violations of motor carrier safety regulations, where the false statement or records have not been presented or reviewed by a government official. Increasing the § 521 criminal penalties to a level near or equal to the § 1001 penalty would provide the U.S. Attorney's offices with an enhanced ability to prosecute serious motor carrier offenses and would make such cases more likely to be prosecuted.

Increasing the penalty amounts to no more than 5 years imprisonment and a fine not to exceed $250,000, would strengthen the deterrent and punitive effect of these criminal sanctions. Such increased amounts would accommodate more serious offenses that resulted

in serious injury or death without disturbing a court's discretion to impose lesser penalties as warranted by the circumstances of the offense.

FMCSA primarily conducts investigations of regulatory violations that may lead to the imposition of civil penalties. When FMCSA investigators discover violations that rise to the level of criminal conduct, such matters are generally referred to the DOT Office of the Inspector General (OIG), which has criminal enforcement authority and staff with criminal investigative training. Like the U.S. Attorney's offices, the OIG exercises discretion in determining how to best allocate its limited resources to the many matters presented to it. The OIG is more likely to investigate matters that a U.S. Attorney's office will accept for prosecution. The current misdemeanor level penalty amounts in section 521(b)(6) in most cases do not meet the threshold of significance for the OIG. Additionally, prosecution of motor carrier criminal activity would be enhanced if there were a dedicated motor carrier unit, in the form of dedicated personnel or resources, within the OIG.

QUESTION FROM REP. PETER DEFAZIO

QUESTION 1: Administrator Ferro, the U.S. Department of Transportation's *Motor Carrier Safety Action Plan* acknowledges driver fatigue as a significant problem. Fatigue was the leading cause of motorcoach fatalities in 16 crashes investigated by the National Transportation Safety Board (NTSB) between 1998 and 2008. What steps has FMCSA taken to address the problem of driver fatigue in the motorcoach industry?

Response: FMCSA is concerned about driver fatigue whether it is property or passenger carrier operations. A significant portion of FMCSA's research budget goes to driver fatigue research. FMCSA has recently completed four studies on driver fatigue and is currently working on five different driver fatigue research projects. This research includes studies to improve aspects of the HOS provisions, development of advanced driver fatigue monitoring/alerting systems, and development of the North American Fatigue Management Program.

With regard to motorcoach operations, the Agency has come a long way to better understand motorcoach operations, driver practices, and driver fatigue issues. Motorcoach operations can be broadly divided into two categories: fixed route service and demand responsive service. Preliminary research shows two major fatigue concerns with fixed route service operations (excluding commuter-shuttle operations).

First, a majority of drivers in such operations reported working the maximum backwards rotating eighteen-hour schedule. That is, drivers were driving for 10 hours, then off duty for 8 hours, then back driving for 10 hours and off for 8 hours again, etc. This continuous backward rotation is at variance with the body's normal 24-hour circadian rhythm and is a significant contributor to fatigue.

Second, regular route drivers reported the highest frequency of driving between midnight and 6 a.m. when alertness is lowest and fatigue-impaired performance is highest. Preliminary

research identified two major fatigue concerns with demand responsive service operations. First, a majority of drivers in such operations have irregular work schedules. Short notification of upcoming trips was found to increase fatigue risk further. Variation in work schedule led to disruption of the rest cycle which increased fatigue risk. Second, demand responsive drivers commonly have a mid-shift break while passengers are at the trip destination which resulted in an extended work day. Research is required to determine the extent and effects on driver fatigue of prolonged work days and to better understand the level of risk in the final work hours while drivers are making a return trip. Moreover, it is important to investigate the impact of time-of-day on off-duty periods provided to the drivers. There is a continuing need to better understand the circadian influence on recuperative conditions for on-going maintenance of driver health, alertness and fatigue-free driving.

In FMCSA's 2000 Notice of Proposed Rulemaking (NPRM) on trucking Hours-of-Service (HOS), the Agency acknowledged that little was known about the operations of over-the-road buses and motorcoaches. The Conference Report for the 2001 DOT Appropriations Act requested FMCSA to obtain additional research on motorcoach operations, driver practices and driver fatigue issues specific to over-the-road buses and motorcoaches before any revisions to the existing trucking hours-of-service rules were finalized, and encouraged the Secretary to conduct such studies to inform additional regulatory proposals in this area. See H. Conf. Rept. No. 106–940, 106th Cong., 2d Sess., p. 113 (2000). In 2003, when FMCSA published a final HOS rule, the rule only applied to property carrying motor carriers because the Agency determined that it didn't have enough research and data on passenger carriers and drivers. Since that time FMCSA has been carrying out an active research program to gain enough information and data to inform FMCSA's regulatory process. FMCSA through cooperative research with the Transportation Research Board (TRB) conducted the study *Motorcoach Industry Hours of Service and Fatigue Management Techniques* [Brock, J., et al., (2005)]. This study identified and documented the unique features of the extended workday, which typifies motorcoach operations, and it identified techniques that motorcoach managers, front-line employees, and drivers use to reduce fatigue-related incidents resulting from the irregular on-duty conditions facing motorcoach drivers.

FMCSA has also conducted other studies through cooperative research with TRB. TRB examined the ***Operational Differences and Similarities Among the Motorcoach, School Bus, and Trucking Industries*** **[Grenzeback, L., et al., (2005)].** This study was designed as a single resource for information on profiles, safety statistics, and general business operations for these three commercial vehicle industries. TRB has also conducted studies that FMCSA has sponsored on aspects of ***Alternative Bus Inspections Strategies*** **[Bergoffen, G., et al., (2006)].** This study explored the characteristics of the various types of alternative commercial truck and bus inspection strategies currently being used by law enforcement agencies. This study examined how vehicles are selected for inspection; how, when, and where vehicles are inspected; and the consequences of violations. The study also provided information on the effectiveness of the inspection strategies, documenting benefits such as reduced costs and improved resource allocation. Another study was ***Effective Bus Safety Management Techniques*** **[Knipling, R., et al., (2003)].** This study focused on the problems commercial truck and bus fleet managers confront, and the methods that are available to

address problems in the areas of driver and vehicle safety. Another study was ***Security Measures in the Bus industry*** **[Friedman, D., et al (2003)].** This study addressed key security threats to the commercial trucking and bus industries, risk management techniques available to assess potential threats, and employee/driver hiring procedures.

FMCSA completed four additional studies and placed them in the docket for public comment as part of the rulemaking on hours of service for drivers of property carriers. 76 FR 26681 (May 9, 2011). Those four studies were:

- Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., and Guo, F., "The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations," FMCSA, April 2011.

- Jovanis, J.P., Wu, K.F., and Chen, C., "Hours of Service and Driver Fatigue—Driver Characteristics Research," FMCSA, April 2011.

- Sando, T., Angel, M., Mtoi, E., and Moses, R., "Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions," Transportation Research Board of the National Academies' 2011 90th Annual Meeting, Paper No.: 11-4165, November 2010.

- Sando, T., Mtoi, E., and Moses, R., "Potential Causes Of Driver Fatigue: A Study On Transit Bus Operators In Florida," Transportation Research Board of the National Academies' 2011 90th Annual Meeting, Paper No.: 11-3398, November 2010.

FMCSA's latest study, ***Motorcoach Driver Fatigue Study***, is being conducted by Dr. Gregory Belenky, the Director, Sleep and Performance Research Center at Washington State University. Dr. Belenky is gathering empirical data on motorcoach driver schedules. Dr. Belenky will then use that data as input to fatigue models [Sleep, Activity, Fatigue and Task Effectiveness Model and the Fatigue Avoidance Scheduling Tool (SAFTE/FAST Models)] to determine if aspects of the current HOS rules for motorcoach drivers need to be changed to reduce driver fatigue. Dr. Belenky will make recommendations as to changes needed in HOS rules to reduce motorcoach driver fatigue. This study began in April 2008 and will be completed September 2011.

FMCSA and Transport Canada are working on development of the North American Fatigue Management Program (FMP). This project is currently in the last or 4th phase of development, which involves the completion of materials, guidelines, standards and processes necessary for a motor/passenger carrier to implement a comprehensive and effective FMP. The elements of the FMP will address corporate culture, education and training, sleep disorder screening and treatment, scheduling and tools, and fatigue monitoring and management technologies. Phase 4 began in May 2011 and will be completed by November 2012. Virginia Tech Transportation Institute, JJ Keller, Institutes for Behavior Resources, Ronald R. Knipling, Ph.D., Traffic Safety & Human Factors Consultant, and Health Science and Technical Consulting are the contractors for this work.

In FY2012, FMCSA is planning to conduct an ***Expert Panel Review of Hours of Service for Passenger Carrier Operations***. The objective of this effort is to convene an expert panel to review the research and make recommendations regarding changes to passenger carrier hours of service (HOS) regulations. At that point the Agency should have enough information to assess whether changes to HOS rules for passenger carriers are warranted.



STATEMENT OF JACQUELINE GILLAN
VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

ON
"HOW BEST TO IMPROVE BUS SAFETY ON OUR NATION'S HIGHWAYS"

BEFORE
THE HOUSE COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

JUNE 13, 2011

Good afternoon. My name is Jackie Gillan and I am Vice President of Advocates for Highway and Auto Safety (Advocates), a coalition of consumer, health, safety, medical organizations and insurers working together to advance federal and state programs and policies that prevent deaths and injuries on our neighborhood streets and highways. I commend the Committee for holding hearings on the safety of motorcoaches and motorcoach operations.

This hearing today is another in a long series of hearings held because of concern over the quality of motorcoach and motor carrier safety. In March 2006, I testified before the Subcommittee on Highways and Transit about curbside operators and motorcoach safety. A year later, immediately following the Bluffton University baseball team crash which killed seven and injured 21, I testified before the same Subcommittee on motorcoach safety. These hearings highlighted the need for Congress to take action to raise the level of motorcoach company safety and improve the quality of federal and state oversight. Five years later, there have been more than 108 crashes resulting in at least 136 deaths and 1,250 injuries. It is time for Congress to pass H.R. 873, the Motorcoach Enhanced Safety Act (MESA).

The horrific motorcoach crash in Caroline County, Virginia on May 31, 2011 is yet another reminder of the need for improved motorcoach safety. In that crash, four people were killed and over 50 injured when the fatigued driver ran off the side of the road and the motorcoach overturned and landed on its roof. Initial investigations have revealed that the motorcoach operator, Sky Express, had received an "Unsatisfactory" rating from the Federal Motor Carrier Safety Administration (FMCSA) because of dozens of safety violations, but the agency extended its review so that the carrier was still operating on the day of the crash. A fatal motorcoach crash three days earlier on the other side of the country, in Cle Elum, Washington, killed 2 and injured 21, and brought the total number of motorcoach crashes in the first five months of 2011 alone to 12. These crashes have resulted in 28 deaths and over 200 injuries, and are just the most recent in a long list of crashes that have motivated Advocates, other consumer and safety organizations, and families of motorcoach victims and survivors across the country to support the Motorcoach Enhanced Safety Act.

We know the reasons motorcoach crashes occur—tired drivers and poor vehicle maintenance among others. And, we know how passengers are killed—ejection, lack of restraint systems and smoke suppression are leading causes. What we do not know is why the FMCSA and the National Highway Traffic Safety Administration (NHTSA) have failed for decades to implement critical, reasonable and commonsense safety measures recommended by the National Transportation Safety Board (NTSB). What we cannot understand is why the motorcoach industry, which has already witnessed nearly a 50 percent increase in the average annual fatality rate in just the first half of this year alone, still resists legislation setting firm deadlines for federal action to protect its passengers and remove unsafe carriers and unfit drivers off of our roads. Congress needs to pass the Motorcoach Enhanced Safety Act to protect passengers both when they board the bus and when they take their seat.

Older travelers who take motorcoaches to casinos plan on gambling but they do not expect to play Russian roulette with their safety en route. Those who travel by motorcoach rather than by air due to cost know the trip will take longer but they do not expect to be treated as second-class citizens when it comes to safety. Young people who take motorcoaches for

convenience, price and the wifi do not expect the motorcoach to be a deathtrap in the event of a crash.

Motorcoach safety is a serious concern for anyone who relies on and uses this growing and affordable mode of transportation. Unfortunately, when it comes to choosing a safe motorcoach, consumers have been forced to select motorcoach carriers blindly, without adequate information on their safety or the safety of the vehicles and drivers. Many of us in this hearing room have put our excited children on charter buses for out-of-town school field trips and team sporting events, boarded motorcoaches to take part in church and community outings, or waved goodbye to retired parents who traveled by tour coach to vacation destinations. Some have even taken advantage of low cost fares to travel between Washington, D.C., New York or Boston on "curbside" buses that leave from downtown locations rather than bus terminals.

Motorcoaches make 750 million passenger trips a year, and transport hundreds of thousands of passengers each day, often carrying more passengers – 55 to 59 people when fully loaded – than most commuter airline flights. Yet, motorcoach safety is not being held to the same high safety standards as passenger aviation even though motorcoaches operate in a much more dangerous and congested highway environment. Motorcoach drivers are not required to meet the rigorous medical and safety requirements of airline pilots; most of the vehicle safety design and performance standards for passenger vehicles, especially for occupant protection, are not required for motorcoaches; and motorcoach companies are governed by the same weak, ineffectual safety oversight and enforcement regime that is used for trucking freight.

My testimony today will address the safety problems and the documented need to improve motorcoach safety; the means available to provide improved occupant protection in motorcoach crashes and other emergencies, such as fires; enhanced crash avoidance capabilities; and the importance of strengthening federal oversight of motorcoach operations to ensure that unsafe motorcoach companies and drivers are detected and kept off the road before they can do harm.

Motorcoach Crashes Are Frequent and Deadly

Over the past four decades, the National Transportation Safety Board (NTSB) has investigated nearly 70 motorcoach crashes and fires that resulted in several hundred passenger deaths and thousands of injuries. NTSB's motorcoach crash investigations over the decade from 1998-2007, involved the deaths of 255 passengers and more than one thousand injuries.[1] In some of these incidents more than 20 people on board were killed in a single crash or vehicle fire. Not all motorcoach crashes resulting in death and injury are investigated by NTSB or any other agency at the federal level. I have attached to my testimony a list of the motorcoach crashes that Advocates has compiled from the NTSB investigation reports and reliable newspaper and wire service reports found on the Internet. But even this list, containing over 150 motorcoach crashes and fires in the past 20 years, is far from complete.

According to NHTSA data, there were 400 fatal motorcoach crashes from 1994 through 2005 in which 571 people died.[2] 2005 was an especially tragic year – 70 motorcoach occupants died in crashes, the highest total ever recorded. Data covering a much longer period of time,

1975 through 2005, shows 1,107 fatal crashes involving 1,117 motorcoaches and resulting in 1,486 deaths to passengers in motorcoaches, people in other vehicles and pedestrians.[3] While the industry touts the historic safety record of motorcoaches, the string of recent crashes that occurred over the past few months emphasizes that we cannot rely on statistical averages to ensure public safety. The number of deaths in the first five months of this year, 28 that we know of, already exceeds the historic annual fatality average with seven months remaining in the year. Rather than ignore these recurrent and all too predictable crashes, we need to protect the public by building safety into motorcoaches instead of hoping that the inevitable crashes will not occur.

That is why it is crucially important to have a comprehensive, multi-faceted approach to motorcoach safety that emphasizes major safety countermeasures for motorcoach occupant protection, as well as dramatic improvements in motorcoach crash avoidance capabilities that will ensure that these big, heavy vehicles provide crash protection to the motorcoach occupants while also reducing both the number and the severity of collisions with other highway users.

Motorcoach Crashes in Recent Years Illustrate Severe Safety Risks

While detailed investigation of the cashes that have taken place in recent months are not yet available, press reports indicate that the motorcoaches lacked passenger seat belts and that in several cases there are questions about driver fatigue and whether the driver had previous hours of service violations. Advocates is certain that many of the same safety deficiencies previously found by the NTSB in earlier crashes will be found, yet again, in these new incidents. Among the major motorcoach crashes and fires that have taken place in the past few years the following examples are emblematic of the safety perils in motorcoach travel:

- **Caroline County, Virginia:** On May 31, 2011, a motorcoach operated by Sky Express transporting passengers from North Carolina to New York City's Chinatown ran off of I-95, overturned, and landed on its roof. Four people were killed and over 50 were injured in the crash. Media accounts indicate that none of the passenger seats were equipped with seat belts.[4] The driver was the only one wearing (and with access to) a seat belt. He suffered minor injuries. Initial investigations suggest that driver fatigue was a major factor in the crash. Sky Express had 46 violations for fatigued drivers, 17 violations for unsafe driving, and 24 violations for driver fitness in the past two years.[5] The company was among the worst in the industry and FMCSA had proposed an "Unsatisfactory" rating for the company in April 2011. The rating meant that FMCSA could have shut down Sky Express three days before the crash, on May 28, but it chose to extend the carrier's operating time.[6]

- **New York, New York:** On May 7, 2011, a motorcoach driver hit and dragged a pedestrian nearly 30 feet before coming to a stop. The driver was drinking vodka while driving the motorcoach with passengers on board.[7] TraveLynx, the company that owns the motorcoach and is the driver's employer, had its most recent compliance review by FMCSA in May 2007.[8]

- **The Bronx, New York:** On March 12, 2011, a motorcoach operated by World Wide Travel transporting passengers from a Connecticut casino in the early morning rolled on its side on I-95, skidded along a guardrail, and rammed into a support pole, slicing through the upper half of the bus. Fifteen people were killed and 18 were injured in the crash. Initial media reports

indicate that the bus swerved repeatedly before the crash and the driver may have been fatigued. World Wide Tours has been flagged by FMCSA for fatigued drivers four times in the past two years. The operator's most recent compliance review in April 2011 resulted in serious violations for fatigued driving, driver fitness, and vehicle maintenance.[9]

- **Sacaton, Arizona:** On March 5, 2010, a motorcoach owned by Tierra Santa Inc., a California company, en route from Mexico to Los Angeles, rear-ended a pickup truck, swerved, and rolled over on I-10. Nine passengers were ejected from the bus, killing six. An additional 16 were injured. A report by the Arizona Department of Public Safety indicated that the bus company was operating illegally, that driver hours of service were not maintained, and that the vehicle had defective brakes. Reports also suggested that the company's owner had previously owned other motorcoach companies that had been shut down for safety violations.[10]

- **Sherman, Texas:** On August 8, 2008, an Angel Tours, Inc. motorcoach with 54 passengers, restarted its motorcoach business under a different name, Iguala Busmex, only three days after it had been judged an "imminent hazard" by FMCSA and prohibited from providing transportation services. In a catastrophic crash, the Iguala Busmex motorcoach broke through a guardrail in rural Grayson County, Texas and plummeted from an overpass into a dry creek bed in a rollover crash that resulted in 17 people dead and 38 injured. Angel Tours, Inc., had been ordered to stop operating by the FMCSA on June 23, 2008, only six weeks earlier. The reconstituted business, Iguala Busmex, according to preliminary information in media reports, had no insurance and had no federal interstate operating authority.[11]

The new company even used the same business address to restart operations. FMCSA was unaware that Angel Tours had transformed into the rogue motorcoach company, Iguala Busmex. In fact, the company had no legal authority to provide motorcoach transportation services for compensation even within the state of Texas. In far too many cases, motor carriers of both passengers and freight are ordered to stop operations for safety reasons, but then restart their businesses under different company names, leaving law enforcement officials with the task of identifying and proving which companies are conducting illegal operations. Sometimes, as in this case, federal authorities find this out only after a tragic crash, when deaths and severe injuries have already occurred. While FMCSA has improved efforts to screen for reincarnated passenger motor carriers, the agency still lacks authority to revoke registration and impose criminal penalties on persons who commit this type of violation.

The motorcoach in the Sherman, Texas, crash was operated by a driver who had no valid medical certificate. FMCSA had also determined prior to its "cease operations" order that Angel Tours was using a driver without the company having received a pre-employment report, a federal requirement. Angel Tours also failed to require drivers to prepare vehicle inspection reports. In addition, the motorcoach was fitted with retreaded tires on the front steer axle, another federal regulatory violation. It appears that this illegal tire suddenly failed and destabilized the motorcoach, making it difficult to control and facilitating its crash into the overpass guardrail.

- **Tunica, Mississippi:** On August 10, 2008, a casino motorcoach operated by Harrah's Entertainment packed with 43 tourists rolled over in a highway intersection in northwestern

Mississippi. The roof of the motorcoach collapsed and its windows were shattered. Three passengers died and 27 were injured, one in critical condition.[12]

- **Primm, Nevada:** Another casino motorcoach crash occurred the same day on I-15 near Primm, Nevada.. Luckily, no one died in this crash, but 29 people of the 30 people on board were injured, three of them critically. This was the second motorcoach crash involving casino workers that occurred between Las Vegas and Primm. Previously, a crash injured at least 25 people before the motorcoach burst into flames and was destroyed on January 17, 2008. Once again, it appears that there may have been a problem of tire tread separation that could have triggered the rollover crash.[13]

These cases, even without the benefit of a thorough crash investigation, point out two serious safety problems. First, in the Sherman, Texas crash, the illegal operation of the company is an extremely serious issue, especially in light of the company history of safety problems. Unfortunately, FMCSA currently has authority only to impose fines for such conduct. Criminal penalties are not available for such illegal operation but are clearly appropriate where the company owners and officers neglect safety and take such intentional actions in defiance of legal orders.

Second, although there are many safety issues and factors in these crashes, it appears that tire tread separation may have been a major contributing factor in both the Angel Tours and Primm, Nevada, crashes. Although retreaded tires are allowed by FMCSA on the other, non-steering axles of motorcoaches, and on tractor-trailer rigs and straight (single-unit) trucks operated in interstate commerce, there are no federal standards administered by NHTSA specifying the quality and safety performance of retreaded tires on commercial motor vehicles. At the present time, there are only voluntary industry standards. Advocates asked the agency more than a decade ago to adopt such standards to ensure that retreated, recapped, and regrooved commercial motor vehicle tires met the same safety performance requirements as new tires. However, NHTSA has failed to put forward any proposal to adopt a performance standard for retreaded tires on motorcoaches and other commercial vehicles.

- **Bluffton University Motorcoach Crash:** On March 2, 2007, a motorcoach hired to transport the Bluffton University baseball team from Ohio to Georgia vaulted a bridge parapet after taking a left exit ramp that led to a perpendicular entrance to an overpass above I-75 in Atlanta, Georgia. The vehicle struck the bridge parapet at right angles and plunged to the roadway below the ramp. Of the 35 passengers and a driver on board, seven were killed and several others, including the coach of the school's baseball team, were transported to the hospital with severe injuries. Twelve of the motorcoach's occupants were ejected, four through the windshield or left front side windows even before the motorcoach left the roadway, and six passengers were ejected through the left side windows when the vehicle slammed into I-75, the impact that stopped its fall.

None of the occupants on-board had three-point safety belts available to restrain them. Of the 59 seats on board, only the driver's seat, the "jump seat," and the first row of two passenger seats immediately behind the driver had two-point lap belts.

The company that operated the over-the-road bus, Executive Coach, received a Satisfactory safety rating from FMCSA on April 4, 2007, only a month *following* the crash. However, NTSB's findings and recommendations produced by its investigation listed several major deficiencies in motorcoach operating safety.[14] The vehicle issues identified by NTSB included the lack of interior occupant impact protection; the ease with which unrestrained passengers were ejected through large side windows; and FMCSA's inadequate motor carrier driver oversight. The driver issues included the fact that the motorcoach driver's medical certification had expired, the driver's logbook clearly had been falsified, and that the driver had medical conditions and had taken medications that may have impaired his ability to drive. Also, the company that operated the motorcoach had no formal driver training program, no written policies on driver procedures such as an emergency response protocol for evacuation and other passenger safety needs, and the company's alcohol and drug testing program did not comply with federal requirements.[15]

It should be pointed out that motorcoaches in foreign countries equip their vehicles with safety protection features not provided for passengers in the United States. For example, the motorcoach that was involved in the Atlanta, Georgia, crash only had a few lap belts in the front seating positions and was not equipped with three-point lap/shoulder belts. The same motorcoach built in Australia comes equipped with three-point lap/shoulder seat belts at every seating position and with seats and their floor anchors tested for maximum crash resistance.

- **Hurricane Rita Nursing Home Motorcoach Crash:** On September 23, 2005, a motorcoach operated by Global Limo, Inc., carrying assisted living and nursing home residents fleeing the imminent landfall of Hurricane Rita, caught fire and exploded, initially killing 24 of the 44 people on board who were residents and employees of a Dallas-area home for seniors. Most of the residents of the senior living facility had moderate to severe disabilities and were not able to evacuate the motorcoach during the fire without assistance. Evacuation involved concerted efforts by the nursing staff, rescue personnel, and bystanders who were able to help the residents exit the motorcoach.

NTSB found that the motorcoach was operated in an unsafe manner and that FMCSA oversight of motorcoach safety was lax. The major safety issues identified through the NTSB investigation included poor fire reporting information and inconsistent data in federal crash databases; FMCSA's ineffective compliance review program; lack of adequate emergency exits from motorcoaches; lack of fire resistant motorcoach materials and designs; inadequate manufacturer maintenance information on wheel bearing components; transportation of highly flammable, pressurized aluminum cylinders; and poor safety procedures for the emergency transportation of persons with special needs.[16]

While the driver of the Global Tours motorcoach possessed a Mexican commercial driver's license, the Licencia Federal de Conductor (LFC), he had not obtained a Texas-issued commercial driver's license (CDL), even though the driver had been in the U.S. since at least February 2005. Drivers are required to apply for a Texas-issued CDL within 30 days after taking up residence in Texas. This means that the driver had no legal CDL or federally-required commercial driver medical certificate, nor had he complied with requirements to prove his identity, provide a social security number, supply documentation of vehicle registration and

liability insurance, and surrender his LFC. These are legal requirements for drivers that the company should have ensured were being met. Also, the driver was unable to communicate in English, relying on an interpreter for his post-crash interviews, another violation of FMCSA regulations.[17] According to NTSB, the driver may have been fatigued at the time of the motorcoach fire. The driver had violated multiple requirements of the FMCSA hours of service regulations (HOS), including having failed to take a minimum of 8 consecutive hours off-duty before working or driving, and driving for over 15 consecutive hours starting at 3:00 PM on September 22, 2005, until the fire began at about 6:00 AM on September 23, 2005.

FMCSA conducted a compliance review (CR), the agency's method of assessing the safety of a motor carrier,[18] of the company on February 6, 2004, and found seven violations of the Federal Motor Carrier Safety Regulations (FMCSR). Nevertheless, FMCSA issued a Satisfactory safety rating to the motor carrier just six days later, even though the company had multiple Out of Service (OOS) violations prior to the CR and more driver OOS violations prior to the September 23, 2005, motorcoach fire. An "Unsatisfactory" safety rating cannot be triggered unless violations have occurred in both driver and vehicle categories.[19]

According to NTSB in its report, the motorcoach itself was evidently inadequately maintained. Inadequate lubrication of an axle on the vehicle led to "frozen" bearings that generated extreme heat that, in turn, triggered the fire. Fires in motorcoaches are started from various sources, such as engine compartments, electrical wiring and batteries, auxiliary heaters, and underinflated or failed tires. Motorcoach fires consume many of the materials from which the vehicles are manufactured, and are evidently a chronic problem, as admitted by the former Administrator of FMCSA before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit, and Pipelines on March 2, 2006.[20]

Comprehensive Motorcoach Safety Improvements Are Stalled at DOT Despite Urgency

From this brief review of just a few motorcoach crashes and fires, it should be evident that motorcoach safety has not been a primary focus of federal agencies or the bus industry and is in dire need of regulatory action to improve safety. The NTSB has been issuing safety recommendations to the motorcoach industry and the U.S. Department of Transportation (DOT) and its agencies for decades, but those recommendations essentially have been ignored. Unfortunately, very few NTSB recommendations have been implemented by NHTSA and FMCSA, and certainly not in the complete and effective manner that NTSB recommended.

In the Bluffton University Motorcoach Crash Report, NTSB reviewed the 40-year history of its frustrated attempts at achieving agency action in accordance with multiple recommendations for motorcoach drivers, passengers, vehicles, and operations. NTSB asserted that "motorcoaches transport a substantial number of people traveling in a single vehicle with a high exposure to crash risk," with other special safety requirements, and that "[t]hese factors demand that motorcoaches meet the highest level of safety."[21] NTSB also stated in its findings and recommendations that NHTSA had unacceptably delayed defining and acting on regulations for motorcoach occupant protection safety performance standards, emphasizing that the traveling public in motorcoach trips were inadequately protected during collisions, especially in rollovers.[22]

For example, NTSB has repeatedly asked NHTSA to require stronger seats and to mandate seat belt assemblies at every designated seating position in motorcoaches. But NTSB finally had to close out these recommendations with notations of "Unsatisfactory Action" because NHTSA continually deflected NTSB's recommendations on requiring stronger seats and mandating seat belts.[23]

But NTSB did not give up, despite NHTSA's endless inaction. Over and over it beat the drum in support of occupant restraints with successive reports on horrific motorcoach crashes where restraints would have saved many lives. For decades NHTSA deflected every one of those recommendations. There are many other examples of critical motorcoach safety recommendations sent to NHTSA since 1968 that were ignored – and the result was more deaths and injuries that could have been prevented.

Similarly, the Federal Highway Administration (FHWA), and its successor agency, FMCSA, have also rebuffed many NTSB recommendations over the years, despite evidence showing the need for major safety countermeasures for existing passenger motor carriers and for improvements in FMCSA enforcement. NTSB was frustrated with FMCSA's enforcement scheme for motor carrier safety violations because the agency would provide Satisfactory ratings to motor carriers even if they had several serious driver or vehicle violations. FMCSA's policy is that there must be violations in *both* areas to trigger an "Unsatisfactory" rating that could result in a company ordered to stop operations. But NTSB recommended that serious violations in *either* area should be enough to trigger imposition of an "Unsatisfactory" rating.[24] In this regard it must be pointed out that Angel Tours before the Sherman, Texas crash had a Satisfactory rating because although FMCSA had recorded several driver violations, there were no vehicle violations for the company. Accordingly, under that rating system, FMCSA had no basis for threatening the company with an "Unsatisfactory" safety rating. FMCSA has repeatedly avoided acting on this NTSB recommendation, despite several reports from the U.S. DOT Office of the Inspector General and Government Accountability Office demonstrating multiple weaknesses in FMCSA enforcement regimes and actions.[25]

Federal Legislation Is Needed to Direct DOT to Implement Comprehensive Motorcoach Safety Reforms and Comply with NTSB Recommendations, Including the Critical "Most Wanted" List

The delays and excuses by the bus industry and DOT can no longer be tolerated as innocent people die and are badly injured. The Congress must step in and ensure that the safety improvements NTSB has recommended for decades are adopted by the DOT agencies with the authority to issue motor vehicle and motor carrier regulations. Experience has shown that when Congress requires safety action, the agencies find the ways and means to meet the challenge. Several years ago, Congress took a leadership role in addressing deadly rollover crashes and other major motor vehicle safety issues. In the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 – A Legacy for Users (SAFETEA-LU),[26] Congress required NHTSA to issue regulations on safety problems that had languished for years without agency action. NHTSA has taken action to comply with each of those vehicle safety rulemaking requirements. More recently, the Cameron Gulbransen Kids Transportation Safety Act of 2007[27]

required NHTSA to issue rules on safety problems to protect children from dangers in vehicles that the agency had previously refused to address. The agency is in the process of meeting its statutory obligations under that law.

There is absolutely no doubt that when Congress sets the safety agenda, the federal agencies respond quickly by developing action plans, conducting tests, and issuing rules that improve transportation safety. This is the model that Congress should follow for motorcoach safety.

The right vehicle to accomplish this approach has already been introduced in Congress—the Motorcoach Enhanced Safety Act of 2011. This pending legislation, H.R.873, introduced on March 2, 2011 by Representative John Lewis (D-GA), and its companion bill in the Senate, S. 453, introduced by Senators Sherrod Brown (D-OH) and Kay Bailey Hutchinson (R-TX), sets a reasonable and achievable regulatory safety agenda for reforming motorcoach safety. The Motorcoach Enhanced Safety Act deals with each of the major aspects of motorcoach safety: vehicle design and performance, operating safety and inspection, and driver safety, including training and medical certification.

The Motorcoach Enhanced Safety Act addresses NTSB recommendations on the 2011 Most Wanted List[28] and others in a comprehensive manner, including crash protection of occupants, such as seat belts and windows that prevent occupant ejection in crashes; protection against roof crush, especially catastrophic single-vehicle events involving rollovers; improved fire protection and the need to use materials and technology to assist in fire resistance and suppression; better methods to facilitate passenger evacuation in emergency conditions; crash avoidance technology, such as adaptive cruise control and electronic stability control to prevent crashes; vehicle maintenance and inspection needs; and operator qualifications, including driver skills and medical certification. Finally, the Motorcoach Enhanced Safety Act sets very reasonable timelines for DOT, NHTSA and FMCSA to review the safety problems, complete testing, conduct rulemaking and issue safety rules to implement those recommendations so that lives can be saved and injuries prevented as soon as possible.

The Motorcoach Enhanced Safety Act is supported by parents and relatives of victims and survivors of motorcoach crashes. Many family members who lost relatives in motorcoach crashes have traveled to Capitol Hill numerous times since the bill was first introduced in 2007. The bill is also strongly supported by Advocates and safety groups, including Public Citizen, Center for Auto Safety, Citizens for Reliable and Safe Highways (CRASH), Consumers for Auto Reliability and Safety, the Trauma Foundation, the Consumer Federation of America and the Enhanced Protective Glass Automotive Association.

The DOT agencies with responsibility for motorcoach safety, NHTSA and FMCSA, have failed to fulfill their safety missions. Although NHTSA has proposed a rule for 3-point seat belts on motorcoaches, the agency has failed to move quickly to adopt other NTSB recommendations for crash protection and crash avoidance, even though some of those safety improvements were included in a motorcoach safety research and testing program and the DOT motorcoach safety plan. It is evident that, without a Congressional directive to issue safety standards based on the NTSB recommendations, there is no assurance that the agency will address all the safety issues

identified by the NTSB over the years, much less establish stringent safety standards that adopt those recommendations in a timely manner.

While our testimony cannot survey all the safety provisions addressed in these comprehensive bills, the remainder of this testimony highlights the major gaps in motorcoach safety and how key provisions of H.R. 873 and S. 453 will save lives, prevent injuries, and reduce other motorcoach crash losses.

Motorcoach Occupant Protection is Inadequate and Contributes to Deaths and Injuries

There are serious deficiencies with the crashworthiness features of motorcoaches for protecting occupants against severe and fatal injuries. In the 2007 Bluffton University motorcoach crash in Atlanta, GA, and in many others investigated in the last several years by NTSB, occupants were ejected through side windows and the windshield. Serious injuries and deaths in motorcoach rollover crashes are highly predictable when these vehicles do not have three-point seat belts and fail to have the kind of windows that could withstand a crash and prevent ejection. These severe occupant safety defects have been documented time and again in NTSB investigations and reports.

While NHTSA has established 22 separate standards for vehicle crashworthiness as part of the Federal Motor Vehicle Safety Standards (FMVSS) administered by the agency, nearly all of these are for light motor vehicles (mainly light passenger vehicles that weigh less than 10,000 pounds). Most of these standards exempt motorcoaches with gross vehicle weight ratings of over 10,000 pounds. For example, no NHTSA safety regulation requires that motorcoaches in the U.S. have any occupant protection systems of any kind, including seat belts, seat mounting retention, seatback strength, whiplash protection, or upper and lower vehicle interior occupant impact protection. Although motorcoaches are required to comply with requirements specifying motorcoach window retention and release for evacuation (FMVSS No. 217) and governing the flammability of interior materials (FMVSS No. 302), motorcoaches do not have to comply with many safety standards required for other types of buses, including school buses, and for passenger vehicles. As a result, motorcoach passengers are not afforded the same basic safety features and types of protection required for passengers in other vehicles.

Among the important safety shortcomings that need to be improved in motorcoaches, the Motorcoach Enhancement Safety Act would require:

- **Seat Belts:** Three-point lap/shoulder belt systems have been required for passenger vehicles since 1968 and are required on smaller buses and on big passenger vans, yet are not required in motorcoaches. Lap/shoulder belt restraint systems, not just lap belts, are essential for keeping motorcoach occupants in their seats to avoid injuries sustained within the compartment in all crash modes.

- **Rollover and Roof Crush Protection:** Motorcoaches are very top heavy, with high centers of gravity especially when fully laden with passengers, so their rollover propensity is much higher than for smaller passenger vehicles. Crash avoidance technology such as electronic stability control, now required on light passenger vehicles, and adaptive cruise control can help keep motorcoaches out of crashes in the first place. But since rollovers of motorcoaches are inevitable, a strong roof crush resistance safety standard is needed to ensure the structural integrity of the roof that preserves occupant survival space and prevents infliction of severe occupant trauma.

- **Ejection Prevention:** A major safety issue in motorcoaches is preventing occupants from being ejected during a crash, especially in a rollover. According to NHTSA, more than half of the deaths in motorcoach crashes are the result of occupant ejections. More than one-third of all deaths of motorcoach occupants in motorcoach crashes occur in rollovers, and occupant ejection is the reason for 70 percent of occupant deaths in motorcoach rollovers.[29] Three-point lap shoulder belts are the first line of defense against ejection. But in addition, for those who are not wearing seat belts at the time of a crash, advanced window glazing that can survive crash impacts will prevent occupant ejection and save more lives.

The major topics of occupant restraint within the motorcoach passenger compartment and the additional prevention of ejection in catastrophic events have been engaged by both the European Economic Community[30] and Australia.[31] Three-point belts restraining motorcoach occupants became mandatory in Australia 14 years ago, the European Union has just mandated that passengers must wear safety belts in motorcoaches beginning in May 2008, and anyone traveling by motorcoach in Japan must use their safety belts beginning June 2008. It is obvious that keeping motorcoach occupants safely in their seats is desperately needed so that passengers do not impact each other, strike unforgiving interior surfaces and equipment in motorcoaches, and are prevented from being thrown from the vehicle. Three-point lap/shoulder belt restraints initially are the best way to accomplish keeping each passenger in their seat. The rest of the world is moving on to higher levels of crash protection for motorcoach occupants while U.S. safety regulators fail to take action.

The Motorcoach Enhanced Safety Act bill contains the provisions necessary to direct NHTSA to dramatically improve motorcoach crashworthiness in all crash modes, including rollovers, as well as in side and frontal impacts. Without congressional directives requiring the issuance of new and improved safety standards by specific dates, NHTSA will intermittently study the safety issues over many years without addressing the major motorcoach crashworthiness and crash avoidance safety issues that NTSB long ago recommended should be adopted. NHTSA has proven over and over that it will delay major safety standards that can save lives and prevent injuries, not only for years, but also for decades, unless Congress gives it a mandate in no uncertain terms and with firm deadlines for action.

Cost of Lifesaving Technologies in the Motorcoach Enhanced Safety Act are Minimal

The MESA bill proposes to provide motorcoach passengers the same type of life-saving technologies that are already available and standard equipment in passenger vehicles. These

technologies are already being offered and advertised as options by a number of motorcoach manufacturers. The technologies include seatbelts, enhanced protective interiors, collision avoidance devices, electronic stability control systems, tire pressure monitoring systems, crashworthiness protections, and event data recorders. However, the public has no assurance of the performance quality or effectiveness of these systems because they are not required to meet any minimum government safety standards.

The cost of building-in these safety features for new vehicles is minimal compared to the cost in terms of lives lost in just a single major motorcoach crash. For example, the recent March 12, 2011 bus crash in New York resulted in 15 fatalities. Based on the current Department of Transportation (DOT) value of a statistical life, set at $5.8 million, that bus crash alone generated $87 million in costs, just for the fatalities suffered. This figure does not include the costs associated with the numerous injuries to the surviving passengers or the huge emotional toll on the families of those killed and injured. This cost is astronomical even when compared with the motorcoach industry's grossly inflated per vehicle estimated cost of $80,000 to $89,000 for adoption of all of the safety advances required in the MESA bill and some additional improvements not included in the bill. In other terms, the costs associated with the loss of life alone in the New York bus crash could pay for all of the safety advances proposed for a fleet of over 1,000 new motorcoaches; even using the American Bus Association's wild cost estimates. Our research has indicated that the actual costs are well below those quoted by the industry.

A number of the safety technologies included in the MESA bill have already been developed in other vehicles and are being voluntarily installed in motorcoaches by a number of companies. For example, the Bolt Bus (a collaboration between Greyhound and Peter Pan Bus Lines) already has seatbelts installed in many of its vehicles and Greyhound announced in 2009 the purchase of a new 140 bus fleet equipped with seatbelts and advanced seating which provides occupant compartmentalization. In addition, some new buses include electronic stability control (MCI, Prevost, Volvo, Van Hool), advanced glazing (Prevost, MCI), occupant compartmentalization (Prevost), greater roof protection (Volvo, Prevost, Van Hool, Girardin), tire pressure monitoring systems (Prevost, MCI, Van Hool), and some form of fire protection and suppression systems (MCI, Volvo, Prevost, Van Hool). Recent information from suppliers and manufacturers indicates costs per bus of less than $1,400 for electronic stability control, $1,115 or less for advanced window glazing, $600 for electronic on-board recorders, under $3,000 for fire suppression systems and as little as $500 for fire protection. An independent review and analysis of vehicle supplier costs and advertised claims by motorocoach manufacturers finds that this subset of safety technologies could be attained at a cost of about $6,500 per motorcoach, or just over one percent (1%) of the cost of a new motorcoach and far less than the overblown $30,000 cost figure for these same items claimed by the motorcoach industry.

The motorcoach industry carries 743 million passengers each year.[32] The cost of equipping new motorcoaches with the safety improvements included in the Motorcoach Enhanced Safety Act would cost less than 10 cents per passenger. Furthermore, with widespread implementation of these safety technologies, after the first year or two, suppliers and manufacturers will see the significant cost reductions associated with mass production and production experience. With motorcoaches lasting an average of 20 years and carrying about

423,000[33] passengers over the course of that lifespan,[34] safety improvements built-in to new buses keep on protecting passengers and provide public safety year after year.

The Motorcoach Industry Cost Estimates are Exaggerated, Lack Credibility and Include Phantom Mandates

The motorcoach industry cost figures clearly are highly inflated and unreliable. The motorcoach industry has recently circulated their cost figures associated with the adoption of the safety measures included in the MESA bill. The correct term is "opinion" because, for many of the safety features, the industry provides limited or no support for the inflated cost figures and cites no references for the sources of their estimates. The anonymous and undated document disseminated by the motorcoach industry, called the "per-bus estimated cost", estimates that the improvements required in the MESA bill will cost between $80,000 and $89,000 per motorcoach. This ludicrous estimate, nearly 20 percent of the current cost of a new motorcoach, is yet another example of a tactic used by an industry that opposes safety and occupant protection - inflating the real cost of safety technology. Furthermore, the bus trade association which is purposefully throwing around these exaggerated cost figures, has presented no direct data on vehicle safety costs because this is proprietary information known to the suppliers and manufacturers and is information not shared with the trade association that lobbies on behalf of the companies as a whole. It is also not evident whether the numbers represent cost or price information—a big difference. In the past, this very same approach has been used by automobile manufacturers to oppose airbags and electronic stability control systems.

The most poignant example is the regulation of airbags in passenger vehicles. At the time when rulemaking on airbags was being initiated, industry representatives stated that the cost per airbag would be between $1,200 and $1,500. Later, information obtained by a member of Congress who demanded that General Motors supply its true cost figures revealed that the actual cost of manufacturing frontal airbags initially was between $150 and $175. The industry was quoting prices 10 times their actual cost. Today, as a result of mass production and further technological improvements, the per-unit manufacturing cost of far-more sophisticated airbag units is only about $30. Furthermore, despite the adamant opposition of industry to the airbag mandate, which they fought for over twenty years, today it is tough to find even a single contemporary motor vehicle advertisement or sales pitch that does not tout the safety performance of the vehicle's airbag systems.

Another example of this industry tactic of inflating costs occurred in the regulation of electronic stability control systems or ESC. These were required as part of the 2005 Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU).[35] Before that legislation was enacted, manufacturers asserted that the cost of including ESC systems was very high. An earlier Australian government study found that auto manufacturers were charging as much as $2,254 for ESC as a vehicle option. The Australian government study identified the "approximate reasonable cost" of ESC as $649. NHTSA found, in a 2005 teardown analysis, that the estimated incremental per-vehicle cost of ESC was actually only $58.

The examples of airbags and ESC technology costs point out that not only does industry inflate costs of safety technology, but industry cost estimates are also unreliable because they omit any consideration of the fact that with regulation and mass production come reductions in per-unit production costs due to production efficiencies and per-unit savings. Moreover, to be credible, cost estimates from industry need to include details indicating if the costs quoted are retail or production costs, a distinguishing fact not found in many of the motorcoach industry's cost claims. Prices for voluntarily installed systems vary with the number of units manufactured and the level of quality and safety specified by the manufacturer. Manufacturers are not required to guarantee a specified level of safety performance for unregulated, optional equipment, and can reduce costs by lowering the level of safety they provide. The establishment of Federal standards for these devices ensures a minimum performance capability for the safety of passengers and a level playing field for motorcoach companies.

Other examples of the gross overestimation and overstatement of technology and component costs include the following that have been researched with suppliers and manufacturers:

- **Electronic Stability Control:** The motorcoach industry claims that it will cost as much as $3,000 for electronic stability control (ESC) systems even though suppliers of motorcoach ESC systems indicated a retail price to manufacturers of $1,350;

- **Advanced Glazing:** The motorcoach industry cost document cites a cost of $7,000 for laminated glass in all motorcoach windows to protect occupants from ejection and cuts, even though equipping an exemplar motorcoach, the MCI J4500, with advanced glazing was found, at retail, to cost no more than $1,115 more than current standard glass, less than one sixth the cost claimed by industry;

- **Electronic On-Board Recorders:** The motorcoach industry claims a cost of $2,500 for EOBRs, but the FMCSA identified the actual cost for EOBRs to be between $500 and $600;

- **Fire Suppression:** The motorcoach industry cost document includes the cost for an automatic fire suppression system at $6,000, but retailers of these systems indicate that current state-of-the-art factory installed fire suppression systems cost less than $3,000;

- **Fire Protection:** The motorcoach industry claims that it will cost $11,000 to provide enhanced interior fire protection but textile manufacturers state that the addition of a "flame block" to new interiors would add only $2 per yard of material, resulting in a total cost of less than $500 to enhance interior fire protection, thus making the industry cost claim 22 times the actual cost.

What is even more shocking is that the industry supports including better fire suppression and fire protection in motorcoaches while at the same time opposing these requirements in the MESA bill. In November of 2010, a motorcoach industry spokesman stated that there was "absolute agreement by all parties [attendees of the Fire in Vehicles Conference] on the need for

the early detection of high heat conditions that can ignite a fire."[36] Among other things, the motorcoach industry called for using fire resistant materials in bus construction and installation of fire suppression systems, requirements that are covered in the MESA bill. Given the motorcoach industry's past opposition to the MESA bill, the industry's endorsement of quick action on these issues is even more surprising. Yet, the industry cost document designed for its lobbying campaign against the legislation includes grossly inflated costs of up to $17,000 associated with fire protection as evidence of their opposition to the bill, even though the industry has stated its "absolute agreement" regarding the necessity for these safety measures.

In addition to grossly inflating the costs of a number of items that are required in the MESA bill, and ignoring efficiencies that reduce production costs, the motorcoach industry cost document includes the costs of technologies and items that are either not required by the MESA bill or which are subject to future research and agency decision so that any cost estimate is entirely speculative since the ultimate requirement is unknown. For example, the motorcoach industry originally claimed a cost of $4,500 for the inclusion of improved fuel systems, enhanced conspicuity and adaptive cruise control. However, none of these improvements are required in H.R. 873.

The industry also included cost claims for items that would be subject to further agency study, at the behest of the motorcoach industry, so no decision as to specific performance requirements would be made by the agencies until 2 or 3 years later. Nevertheless, without knowing what will eventually be required, if anything, the motorcoach industry has estimated that the per-bus cost for improved exits for evacuation, an automatic fire suppression system, emergency interior lighting, improved compartmentalization, enhanced interior impact protection and collision avoidance systems will cost a minimum total of $19,000 per vehicle. These items are all subject to a further 2-3 years of research and examination before any rulemaking would begin. This makes any assertion of cost by the industry without knowing the specific requirements highly speculative.

In the latest update of their cost claims, the industry continues to claim costs for items which are already the subject of regulatory action, that is, they are very likely to be required in final rules regardless of enactment of the MESA bill. These items include $15,000 for seatbelts, $2,500 for electronic on-board recorders (EOBR), and $600 for upgraded tires. All of these items are currently the subject of notices of proposed rulemaking issued either by NHTSA or FMCSA within the last year, illustrating that DOT has identified these items as important safety features. Even for these essential, long overdue safety improvements, the industry has inflated the cost, for example, while the industry claimed a cost of $2,500 for EOBRs, FMCSA identified the actual cost for EOBRs to be between $500 and $600.

Finally, the industry indicated at several points in their cost claims that retrofit costs for several of the safety enhancements would be triple the already inflated and speculative costs for those same items in new motorcoaches. This claim is made despite the fact that H.R. 873 requires motorcoaches to be retrofitted with safety belts and fire fighting equipment only, and provides the Secretary discretion to allow up to five years for retrofit in the case of hardship. None of the other technological safety improvements required by the MESA bill for new

motorcoaches would be applicable to existing motorcoaches, that is, motorcoaches built prior to the issuance of the final rule.

The industry cost claims related to motorcoach safety are highly inflated, entirely speculative, undocumented, and most are just incorrect. The recent New York bus crash and many others like it over the years illustrate that even based on the industry's suspect cost estimates, providing superior safety for motorcoach occupants can be justified in terms of benefit/cost analysis by avoiding or preventing just one serious crash. Research has shown that motorcoach safety technologies are available and affordable. History illustrates how widespread industry adoption of technology greatly increases the safety of passenger vehicles and the affordability of these technologies.

Effective Motorcoach Operation Safety Oversight and Enforcement is Lacking

According to figures from FMCSA,[37] there are about 3,700 U.S. passenger-carrying companies conducting interstate operations employing 100,000 drivers to operate about 34,000 to perhaps 40,000 motorcoaches.[38] Many of the federal motor carrier safety regulations, FMCSRs, that govern commercial motor carriers, vehicles, and drivers generally, also apply to motor carriers of passengers. Despite the relatively small numbers of motorcoaches and motorcoach companies, FMCSA is failing in its stewardship responsibilities for motorcoaches.

Almost all of NTSB's 40 years of investigated motorcoach crashes have resulted in findings that encompass vehicle performance, maintenance, inspection, driver qualifications, and motor carrier company safety management. The examples of recent motorcoach crashes provided earlier in this testimony confirm that multiple safety problems afflict all aspects of interstate motorcoach operations. Although severe motorcoach crashes often appear at first glance to be the result of an isolated problem, digging deeper almost always reveals multiple problems involving vehicle maintenance, driver qualifications and performance capabilities, and company safety management. NTSB has confirmed this multifactorial nature of motorcoach crashes to be true in numerous crash investigations.

FMCSA has not only failed to adopt NTSB's safety recommendations, the agency has also failed to issue other safety regulations needed to improve motor carrier and motorcoach safety. As a result, major areas of driver training and certification, motorcoach safety inspection, data quality and systems for identifying potentially dangerous motorcoach companies, and agency oversight and enforcement of the FMCSRs are undeniably inadequate as had been documented repeatedly by the U.S. DOT's OIG and by GAO. Key rulemaking actions to address these and other issues languish year after year without action. The Motorcoach Enhanced Safety Act directs FMCSA to address major deficiencies in its regulations governing driver qualifications, vehicle safety condition, and motor carrier safety management.

Motor carrier safety issues that directly impact motorcoach operating safety include:

- **Weak Federal and State Requirements for Motorcoach Driver Training**

Among the many areas in the Motorcoach Enhanced Safety Act aimed at improving motorcoach operational safety are provisions intended to substantially strengthen motorcoach

driver CDL testing and training requirements. Motorcoach drivers are required to have CDLs with a passenger endorsement added on the basis of a separate knowledge and skills test. However, there are no substantive training requirements in federal law and regulation for entry-level commercial motor vehicle drivers, and there are none for the additional endorsements for operating hazardous materials vehicles, school buses, or motorcoaches. In short, there is no specific federal training requirement for an interstate commercial driver transporting passengers.

Federal safety agencies spent over 20 years studying commercial driver training issues, producing a Model Curriculum for training both drivers and instructors and conducting rulemaking pursuant to Section 4007(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).[39] Despite this long background of deep involvement in the needs of commercial driver training, FMCSA did an abrupt about-face in May 2004 and issued a final rule that avoided adopting any basic knowledge and skills training requirements, including behind-the-wheel driving instruction, for entry-level commercial drivers.[40] Instead, the agency published a regulation that only required drivers to gain familiarity with four ancillary areas of CMV operation – driver qualifications, hours of service requirements, driver health issues, and whistleblower protection. Not only did FMCSA not require driver training as a prerequisite for a candidate seeking an entry-level CDL, the agency rule excused almost all novice drivers from even being considered entry-level commercial drivers. This rulemaking outcome was a complete reversal from earlier agency statements that the majority of new commercial drivers were not receiving adequate training.

Since the FMCSA action reversed its own previous findings that basic knowledge and skills entry-level driver training was inadequate and should be required, Advocates and Public Citizen filed suit against the agency. In a unanimous decision, the U.S. Court of Appeals for the District of Columbia found that the final rule was arbitrary, capricious, an abuse of agency discretion, and remanded the rule to FMCSA. *Advocates for Highway and Auto Safety v. FMCSA*[41] (Entry-Level Driver Training Decision). In its opinion, the appellate court stated that the rule "focuses on areas unrelated to the practical demands of operating a commercial motor vehicle" and that the rule was "so at odds with the record assembled by DOT that the action cannot stand."[42]

Incredibly, when FMCSA reopened rulemaking on commercial driver training requirements in response to the adverse court decision on its final rule, the agency did not propose a training curriculum specifically designed for motorcoach operators.[43] The curricula content of the proposed rule is entirely oriented towards the operation of trucks of different weights and configurations. The proposed rule has no specific requirements anywhere just for motorcoach operators.

Further, in the December 2007 FMCSA proposed rule, the *minimum* number of hours of training time for entry-level student drivers of motorcoaches plummets to 120 hours for students wanting to operate motorcoaches and other large commercial motor vehicles with "Class B" CDLs.[44] There is no explanation anywhere in the preamble of the proposed rule or in the appendix of why this specific number of instructional hours was selected, nor why the amount of training was severely abbreviated from the 320 or more hours recommended in the 1985 Model Curriculum. No final rule on entry-level driver training has yet been issued.

Advocates regards FMCSA's entry-level driver training requirements for motorcoach drivers to be unspecific to the special tasks that motorcoach operation imposes, as perfunctory in its requirements and its safety impact, and as falling well short of what is needed. The proposed rule does not fulfill either the Court of Appeals' expectations or the agency's legislated responsibilities. Substantively, the proposed curriculum fails to ensure that motorcoach operators will be properly trained in the multiple, significant safety responsibilities the job demands. To add insult to injury, the proposed rule also would impose a 3-year moratorium on requiring compliance with training requirements for new CDL applicants.[45] This action would exclude tens of thousands of new CDL applicants from badly needed knowledge and skills training requirements.

Thus, twenty years after Congress required the Secretary of Transportation to issue minimum entry-level driver training requirements, and six years after the Court of Appeals upheld Advocates legal challenge to the agency's ineffectual 10-hour classroom rule, because it lacked any actual behind-the-wheel driver training, there are still no requirements for entry-level motorcoach or truck driver training.

- **Compliance Reviews Do Not Stop Dangerous Motorcoach Companies From Operating**

A central problem undermining agency effectiveness in overseeing motor carrier safety and reducing FMCSR violations is the low annual numbers and percentage of both roadside inspections and compliance review (CRs). Based on the results of a CR, a motor carrier is assigned a safety rating of "Satisfactory," "Conditional" or "Unsatisfactory." For example, the Bluffton University motorcoach crash that took seven lives and inflicted severe injuries involved a motorcoach company that had a "Satisfactory" safety rating assigned six years earlier, in January 2001. Similarly, the company that operated the motorcoach that crashed in Sherman, Texas in August, 2008, killing 17 people, was awarded a "Satisfactory" safety rating despite the fact that the company had received repeated driver out of service orders. The truth is that a dated "Satisfactory" safety rating is no assurance of contemporary operating safety fitness, yet companies—both rogue and more responsible—use the "Satisfactory" designation to promote their reputations.

The implementing regulations for conducting CRs specify criteria for assigning one of three safety rating categories to a motor carrier: "Satisfactory," "Conditional," and "Unsatisfactory."[46] FMCSA is required by law to issue a safety rating to all motor carriers.[47] However, the agency basically decided long ago that it would no longer attempt to fulfill the statutory requirement.[48] Even without attempting to assign safety ratings to all motor carriers, FMCSA conducts CRs on only a tiny percentage of carriers. Barely two percent of motor carriers receive a CR each year, and only a tiny part of one percent of all registered motor carriers are given "Unsatisfactory" ratings. In 2010, only 2.5 percent of the nearly 15,000 motor carriers that were rated received an "Unsatisfactory" rating. This small percentage does not express the gravity associated with "Unsatisfactory" ratings and the vast risk it places on passengers and motorists on the nation's roadways. Carriers given an "Unsatisfactory" safety rating are permitted to continue operations, carrying passengers, for as many as 55 days after the rating is issued. Each day, the average motorcoach conducts 58 passenger trips. Over a 55 day

period, each motorcoach operated by a company with an "Unsatisfactory" safety rating will expose approximately 3,186 passengers to bus operations which, left unaddressed, would ultimately lead to revocation of the carriers operating authority. In the case of Sky Express, the company which operated the motorcoach in the recent Virginia crash, over the 48 days during which it operated with an "Unsatisfactory" safety rating, the 34 motorcoach fleet likely exposed nearly 100,000 passengers to unsafe and dangerous operating conditions, in addition to the countless drivers who shared the road with these vehicles.

Other organizations and agencies have for many years called for improvements to the safety rating process. For example, NTSB's current list of the Most Wanted Transportation Safety Improvements – Federal Issues[49] argues that the safety fitness regime operates too leniently with criteria that do not result frequently enough in motor carriers being shut down or drivers having their licenses revoked. Motor carriers with only vehicle or driver violations, but not both, are allowed to continue to operate. In fact, in the past, some motorcoach companies have been awarded "Satisfactory" safety ratings with *no* safety scores in any of the four rating categories under the previous rating system. In addition, high percentages of unrated motorcoaches are still listed for many states on the FMCSA motorcoach web site.[50]

We have yet to determine whether the new Compliance, Safety, Accountability (CSA) program, with the Motor Carrier Safety Measurement System, which has only just been applied nationwide, will make a significant difference in the way FMCSA manages and enforces commercial vehicle safety on our highways.

Although the FMCSA has apparently made progress in rating new entrant passenger motor carriers in nine months or less, the outstanding backlog of unrated carriers or carriers that were last rated more than 3 years ago still dominates the field.

- **Consumers Denied Essential, Lifesaving Information on Motorcoach Safety**

FMCSA's passenger motor carrier web site claims that it provides information on motorcoach companies so that consumers can be confident that they are choosing safe motorcoach companies. How does that claim hold up under close examination?

A review of the current status of safety ratings of motorcoaches registered in Florida is not very encouraging. Consumers in Florida have little to choose from in selecting a motorcoach company with the best safety credentials for long-distance trips. There are 143 companies headquartered in Florida that are registered with FMCSA for interstate transportation of passengers. However, 36 of these businesses – over a quarter – have no safety ratings at all. Five (5) companies are operating with "Conditional" safety ratings. No companies have "Unsatisfactory" ratings.

One hundred and two (102) Florida motorcoach companies carry "Satisfactory" safety ratings. One company received its Satisfactory rating back in 1993. Only 19 companies have received their "Satisfactory" rating within the past year. It is important to recognize that a safety rating, even a "Satisfactory" rating, is just a snapshot of a company. A company's safety practices can quickly deteriorate so that a "Satisfactory" rating can become meaningless in a short amount of time. Many companies can come into compliance to achieve a "Satisfactory"

safety rating only to lapse in its compliance with major motorcoach safety regulatory areas such as driver qualifications and certification, vehicle safety maintenance, and company safety management quality.

Of the 102 Florida motorcoach companies with "Satisfactory" ratings, 7, or 6.9 percent, are in an ALERT status for at least one "Behavioral Analysis and Safety Improvement Category" (BASIC)[51] under the current CSA system and 45 companies have insufficient information on which FMCSA could generate an evaluation for all BASIC Categories. Therefore, if a consumer in Florida wants to apply a high standard for choosing a company, it would be best to use a motorcoach company that has a "Satisfactory" rating in all five BASIC categories. Only 2 companies of the remaining 50 companies with a "Satisfactory" rating had ratings in all 5 BASIC categories; the other 48 companies had at least one BASIC, if not more, in which there was insufficient data on which to calculate a rating. Based on Advocates' sampling of state information on FMCSA's website, this is the case with most states – the listing of active motorcoach companies provided by FMCSA for each state, if rigorously evaluated by a consumer, is dramatically reduced oftentimes to only a handful of companies to choose from. In the case of Florida, one of the two companies with a satisfactory rating and ratings in all BASICS had a rating of 45.40% for the Fatigued Driving Basic, indicating that the company has performed worse than almost half of all carriers in its group, which, depending on the safety consciousness of the consumer, could realistically reduce the population of acceptable carriers to just one company.

When motorcoaches are stopped and inspected, the results are still discouraging. For 2010, 6.7 percent of the vehicle inspections resulted in an out of service (OOS) order. While this figure is an improvement over past years, it still represents a total of nearly 5,500 motorcoaches that failed inspections and had to be placed OOS. Similarly, driver safety is a serious concern – driver inspections in 2010 placed 4.8 percent of U.S. drivers of interstate motor carriers of passengers OOS for various violations, a total of 2,200 driver OOS orders. These aggregate figures are frightening, especially for patrons of interstate motorcoach companies, and they show slow progress in substantially improving motorcoach safety on a nationwide basis.

- **Unknown Status and Effectiveness of State Annual Bus Safety Inspection Programs**

The Secretary of Transportation is required to prescribe standards for annual, or more frequent, inspection of commercial motor vehicles, including motorcoaches, or approve equally effective state inspection programs.[52] In 1998 the Federal Highway Administration (FHWA) issued a notice on the status of state bus inspection programs[53] and subsequently listed 25 of 50 states with approved, equivalent periodic inspection programs.[54]

It should be stressed here that the minimum period for the required vehicle inspection is only once a year.[55] Since it is well known that inspection of CMVs, including motorcoaches, needs to be much more intensive and frequent than for personal or light motor vehicles, a once-a-year inspection regime is clearly no guarantee of safe motorcoaches. Many companies, even in states that have bus inspection programs, can come into compliance just for an annual inspection, only to allow major safety features of their motorcoaches to fall into disrepair or become inoperative soon after passing the annual inspection. Moreover, Advocates could find no information from FMCSA's web site on the effectiveness of state motorcoach inspection

programs to detect safety problems or how well, or for how long state motorcoach inspection programs ensure compliance with all federal motor carrier safety requirements.

Several provisions in the Motorcoach Enhanced Safety Act directly address the issue of timely, accurate motorcoach and bus safety inspections, including both FMCSA and state actions that are necessary, and how FMCSA must administer the state inspection programs in connection with the Motor Carrier Safety Assistance Program (MCSAP).

- **Electronic On-Board Recorders Are Long Overdue on Motorcoaches and All Motor Carriers**

Electronic On-Board Recorders (EOBRs) have been increasingly used on large trucks and motorcoaches for a variety of purposes, including monitoring the drivers' hours of service (HOS) driving, working, and off-duty time of commercial drivers, and ensuring compliance with current HOS regulations. Many countries around the world now require the use of EOBRs to ensure that truck drivers comply with the limits of each nation's HOS. Currently, all European Union countries, along with Turkey, Israel, Japan, South Korea, Brazil, Venezuela, and Singapore, require automated recording devices to monitor driver hours of service compliance.

EOBRs can automatically record the hours that commercial operators drive trucks and motorcoaches in interstate commerce. EOBRs can also link with engines, transmissions, and global positioning system (GPS) devices to record the distance and speed a commercial motor vehicle has traveled and whether it has used an illegal route or traversed a weight-posted bridge. Motor carriers that have voluntarily installed EOBRs are still only a small percentage of commercial motor vehicles, but motor carriers that use EOBRs praise the advantages they provide in terms of safety and efficiency since they eliminate the need for paper logbooks.

Commercial driver fatigue is a major safety problem for both motorcoach operators and truck drivers. EOBRs are especially crucial to raising the level of motorcoach safety by ensuring that well-rested, alert drivers are in charge of the safety and lives of up to 59 occupants on-board. EOBRs can ensure that drivers do not exceed maximum shift driving time and that they take the required off-duty rest time to restore their performance at the wheel. Moreover, EOBRs on interstate motorcoaches permit real-time monitoring of the routing and location of a motorcoach so that, in the event of a serious event such as a crash or fire, expeditious response by emergency medical personnel and enforcement authorities can make a substantial difference in the number of deaths and severe, disabling injuries that result from these serious incidents.

FMCSA should be congratulated for finally, after years of delay, issuing a proposed rule to require EOBRS on some commercial vehicles, namely those driven by truck and bus drivers who are subject to the HOS and records of duty status (RODS) requirements. The proposed rule was recently issued and the public comment period closed at the end of May 2011. Advocates is supportive of the proposed rule because its implementation will improve safety and bring motor carrier enforcement into the modern era. However, we remain concerned that opposition to the proposal could deter the agency from issuing a final rule. For that reason we still believe that there is need to have congressional action to ensure this basic, reasonable and overdue safety improvement is completed without additional delay. At least with regard to motorcoaches, the Motorcoach Enhanced Safety Act includes a provision to ensure this result.

Conclusion and Recommendations

Passenger transportation safety by over-the-road motorcoaches is not held to the high safety standards of commercial passenger aviation. Motorcoach crashes can take many lives in a single event and inflict severe injuries on numerous passengers. NTSB's studies and crash reports document the deadly outcome of a catastrophic motorcoach crash, and its safety recommendations provide solutions that will dramatically improve motorcoach safety. Because DOT and the safety agencies have not implemented recommended safety countermeasures, despite having had ample opportunity to do so and reams of supporting evidence, Congress must take action to increase the level of motorcoach safety and improve the quality of federal and state oversight.

Advocates recommends that the Committee pass the Motorcoach Enhanced Safety Act of 2011, H.R.873. It had bipartisan support in the last Congress and is the only motorcoach safety bill endorsed by the families of motorcoach crash victims and survivors, and consumer, health, and safety groups. It should be a top priority for this Committee and for House floor action. This legislation will ensure that motorcoach safety is put on an equal footing with passenger car and airline safety by requiring basic safety improvements on reasonable timelines for U.S. DOT rulemaking action. The outcome in just several years would be fewer motorcoach crashes with fewer injuries and deaths.

We further recommend, however, that additional provisions be added to H.R.873 to address the need for the imposition of criminal penalties for persons who illegally continue to operate as a motor carrier after having been ordered to cease operations, as well as the current hours of service rule for motorcoach drivers that we believe is contributing to fatigued driving.

Thank you for the opportunity to provide this information to the Committee on a major safety problem. Advocates looks forward to working with the Committee on these issues, and I am prepared to respond to any questions you may have.

Endnotes

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[25] *See, e.g., Commercial Motor Vehicles: Effectiveness of Actions Being Taken to Improve Motor Carrier Safety Is Unknown*. Report to the Chairman, Subcommittee on Transportation and Relative Agencies, Committee on Appropriations, House of Representatives, GAO/RCED-001-89 (July 2000); *Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing*, OIG Report Number MH-2006-046, April 21, 2006; *Improvements Needed in Motor Carrier Safety Status Measurement System*, OIG Report Number MH-2004-034, (Feb. 2004); *A Statistical Approach Will Better Identify Commercial Carriers That Pose*

High Crash Risks Than Does the Current Federal Approach, GAO-07-585 (June 2007); *Motor Carrier Safety: Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law*, GOA-07-584 (Aug. 2007).

[26] Safe, Accountable, Flexible, Efficient Transportation Equity for the Twenty-First Century: A Legacy for Users, Pub. L. 109-59 (Aug. 10, 2005).

[27] Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. 110-189 (Feb. 28, 2008).

[28] "NTSB Most Wanted List of Transportation Safety Improvements," National Transportation Safety Board, November 2010, *available at* http://www.ntsb.gov/recs/brochures/MostWanted_2010_2011.pdf.

[29] *NHTSA's Approach to Motorcoach Safety*, Aug. 6, 2007.

[30] E. Mayrhofer, H. Steffan, H. Hoschopf, *Enhanced Coach and Bus Occupant Safety*, Paper 05-0351, Graz University of Technology Vehicle Safety Institute, Austria, 2005.

[31] M. Griffiths, M. Paine, R. Moore, *Three Point Seat Belts on Coaches – The First Decade in Australia*, Queensland Transport, Australia, Abstract ID –5-0017, 2005. The authors report that, since 1994 when 3-point belts were required in motorcoaches, several serious crashes have occurred, no belted coach occupant has received either fatal or disabling injuries.

[32] Bourquin, P., *"Motorcoach Census Update 2010."* [2010 Motorcoach Census] Nathan Associates, for the American Bus Association, Dec. 8, 2010. The average number of passenger trips per year was 742.5 million in 2008 and 2009.

[33] *Id.* Annual passenger trips (742.5 million), divided by fleet size (35,122), multiplied by vehicle useful life (20 years).

[34] Motorcoach Definition, Notice of Proposed Rulemaking, 75 FR 50958 (Aug. 18, 2010) ("The service life of a motorcoach can be 20 years or longer").

[35] Pub. L. 109-59 (Aug. 10, 2005).

[36] "Preventing bus fires: What must be done?", *BusRide*. Nov. 22, 2010, available at http://busride.com/2010/11/preventing-bus-fires-what-must-be-done/.

[37] http://www.fmcsa.dot.gov/facts-research/facts-figures/analysis-statistics/cmvfacts.htm. There are no separate figures for motorcoaches provided, but the United Motorcoach Association estimates that there are probably about 45,000 to 50,000 commercial over-the-road motorcoaches in the U.S. There is, in addition, an unknown number of "private" motorcoaches such as those used for schools, church groups, and other organizations, some of which are interstate and must conform to most Federal Motor Carrier Safety Regulations. It is difficult to reconcile these figures with those from FMCSA (*see*, the text and footnote below) and the figures provided by the American Bus Association in its *Motorcoach Census 2005: Second Benchmarking Study of the Motorcoach Industry in the United States and Canada*, September 2006, in which it is stated that in 2004 the industry consisted of 3,500 companies operating nearly 40,000 motorcoaches.

[38] *See*, Statement of John Hill, Administrator, Federal Motor Carrier Safety Administration, before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit, and Pipelines, March 20, 2007. Also, *see*, http://ai.fmcsa.dot.gov/International/border.asp?dvar=3&cvar=pass&redirect=HistoricalOverview.asp&p=1. However, there are substantial discrepancies throughout FMCSA's web site on the number of passenger carriers. For example, one page providing figures states that there were 5,211 passenger carriers registered with the agency as of 2006. http://www.fmcsa.dot.gov/facts-research/facts-figures/analysis-statistics/cmvfacts.htm. There is no explanation of what kinds of passenger carriers this includes.

[39] Pub. L. 102-240, 105 Stat. 1914 (Dec. 18, 1991).

[40] 69 FR 29384 *et seq.*, May 21, 2004.

[41] 429 F.3d 1136 (D.C. Cir. 2005).

[42] *Id.* at 3-4.

[43] 72 FR 73226 (Dec. 26, 2007).

[44] 72 FR 73227-73228.

[45] *Id.* at 73231-73232.

[46] The most recent statement of the governing regulations for determining safety fitness is the FMCSA final rule of August 22, 2000 (65 FR 50919), which was a response to the increased stringency of safety fitness requirements enacted in Section 4009 of TEA-21 that amended 49 U.S.C. § 31144, originally enacted by Section 215 of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554). This final rule amended the regulations for safety fitness determinations in 49 CFR Pts. 385 and 386. Pt. 385 contains the controlling criteria for making safety fitness

determinations and Pt. 386 contains the rules of practice for the agency controlling the issuance of CR ratings, petitions, hearings, orders, and other administrative machinery for conducting the oversight and enforcement programs of FMCSA. It should also be noted that FMCSA recognizes that its administrative selection of the three rating categories of safety fitness, "Satisfactory", "Conditional", and "Unsatisfactory", has been legislatively enshrined through explicit mention and use of the three ratings in Section 15(b) of the Motor Carrier Safety Act of 1990. 49 U.S.C. § 31144.

[47] Section 215 of the Motor Carrier Safety Act of 1984 requires the Secretary to maintain, by regulation, a procedure for determining the safety fitness of an owner or operator of commercial motor vehicles. 49 U.S.C. § 31144.

[48] *Motor Carrier Safety Program*, DOT Office of Inspector General, Report Number AS-FH-7-006, March 26, 1997. The goal of assigning safety ratings to all motor carriers by September 30, 1992, was a self-imposed target by FHWA that could not be attained, as pointed out in the GAO report of January 1991, *Truck Safety: Improvements Needed in FHWA's Motor Carrier Safety Program*, Report No. GAO/RCED-91-30. At the time of GAO's preparation of this report, FHWA had not rated about 60 percent of interstate motor carriers. As GAO points out in this report, the agency decided that its safety oversight resources would be better spent than attempting to safety rate all motor carriers in accordance with legislative requirements. On October 1, 1994, FHWA discontinued safety reviews to assess unrated motor carriers.

[49] *See*, http://www.ntsb.gov/Recs/mostwanted/truck_safety.htm. As previously mentioned, NTSB recommends that if a carrier receives an "Unsatisfactory" rating for either the vehicle factor or the driver factor, that alone should trigger a pending "Unsatisfactory" rating. According to NTSB, this recommendation ha been reissued annually since 199, but FMCSA does not plan full implementation of any changes to its safety rating system and other oversight processes until 2010 at the earliest.

[50] http://ai.fmcsa.dot.gov/Passenger/find_carrier.asp.

[51] A BASIC is a "Behavioral Analysis and Safety Improvement Category." Currently there are seven (7) BASICS; Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo-Related, and Crash Indicator. The current Safety Management System (SMS) provides the public with ratings on the first 5 BASICs listed. Results of inspections related to each category are used to calculate the performance of the carrier relative to the performance of the fleet.

[52] Title 49 Code of Federal Regulation (CFR) Part 396; Sec. 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31142)..

[53] 63 FR 8516 *et seq.* (February 19, 1998).

[54] 66 FR 32863 (June 18, 2001).

[55] Section 210, Motor Carrier Safety Act of 1984, *op. cit.*, codified at 49 U.S.C. § 31142.

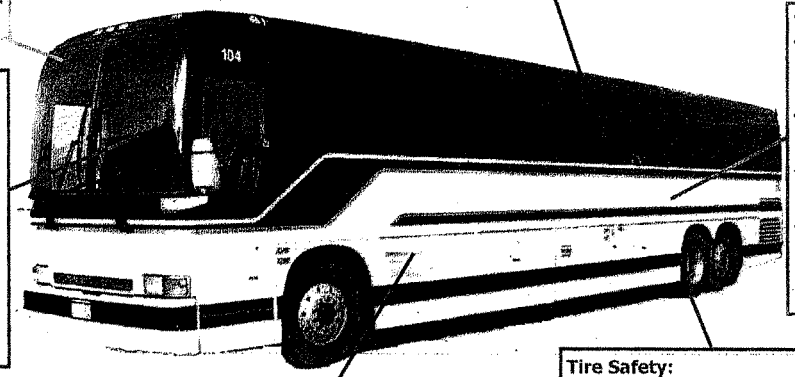
Motorcoach Enhanced Safety Act

S.453 and H.R.873

Requires DOT Action to Implement NTSB Safety Recommendations-
Recommendations That Have Languished for Decades

Occupant Protection:
- Lap/shoulder seat belts at all seating positions to keep passengers in their seats and in the motorcoach
- Advanced window glazing to prevent passenger ejection
- Stronger roof standard to prevent crush and intrusion in a crash
- Better passenger compartmentalization to protect in a crash
- Improved occupant protection to reduce injuries from impacts with surfaces inside the motorcoach

Motor Carrier Oversight:
- Systematic safety reviews, ratings, and audits of motorcoach companies



Safe Drivers:
- Physical fitness oversight and medical certification of motorcoach drivers
- Stricter CDL testing requirement
- Driver training standard
- Cell phones and other distracting devices prohibited

Fire Safety:
- Built-in automatic fire suppression systems to limit spread of fires
- Improvements to suppress fuel-system fires
- Better equipment to fight fires effectively
- Updated emergency exit designs and interior lighting to expedite passenger evacuation

Tire Safety:
- Tire pressure monitoring that performs at all speeds, on all surfaces, and during all weather conditions
- Performance standards for tires

Safety Technology:
- Added stability technology to prevent motorcoach rollover
- On-board recorders to enforce federal driving limits and reduce driver fatigue
- Event data recorders to monitor and record vehicle operations, events and incidents
- Collision avoidance systems

ADVOCATES
for Highway & Auto Safety

ADVOCATES for Highway & Auto Safety

MOTORCOACH CRASHES & FIRES SINCE 1990

154 Motorcoach Crashes & Fires – At Least 330 Deaths, 2,564 Injuries

DATE	LOCATION	CRASH DESCRIPTION
5-31-11	Caroline County, VA	Motorcoach runs off the side of the road, overturns, and lands on its roof—4 killed, 53 injured.
5-28-11	Cle Elum, WA	Motorcoach swerves on I-90, strikes a pickup truck and rolls on its side—2 killed, 21 injured.
5-7-11	New York, NY	Motorcoach driver, who was drinking while driving, hits and drags a pedestrian under a rear wheel—1 killed (pedestrian).
4-10-11	Dooly County, GA	Motorcoach carrying 47 high school students on a chorus trip swerves on I-75 to avoid crashing into a car, goes into an embankment, and hits the side of an overpass before coming to a stop—20 injured.
3-21-11	Littleton, NH	Motorcoach traveling from Quebec to Boston on I-93 rolls onto its side and into the median after the driver loses control in icy conditions—23 injured.
3-14-11	East Brunswick, NJ	Motorcoach traveling on the New Jersey turnpike drives into the median, strikes an overpass, and slams into an embankment on the side of the road—2 killed, 41 injured.
3-12-11	Bronx, NY	Motorcoach swerves, rolls onto its side, and skids along a guardrail before ramming into a support pole—15 killed, 18 injured.
2-28-11	Hagerstown, MD	Pickup truck crosses the median on I-70 and slams into a motorcoach on the shoulder of the interstate—1 killed, 6 injured.
2-27-11	Homosassa, FL	Motorcoach and passenger vehicle collide—1 killed.
2-21-11	San Bernardino, CA	Motorcoach carrying Korean church youth group drifts into opposing lane on California 189 highway, plummets down an embankment, and slams into a tree—1 killed, 23 injured.
1-12-11	Palo Alto, CA	Motorcoach carrying 35 Japanese tourists catches on fire, causing heavy heat damage to the engine area and extensive smoke damage in the passenger area.
1-11-11	Bucyrus, OH	Motorcoach carrying the University of Mount Union wrestling team collides with a snow plow when the motorcoach tries to pass the vehicle on U.S. Highway 30—1 killed, 4 injured.
9-29-10	Bethesda, MD	Motorcoach carrying tourists, including children, near I-270 crashes through guardrail on a skyramp and falls down a 45-foot embankment, rolling over once – 1 killed, 12 injured.
9-29-10	Tucson, AZ	Motorcoach carrying prison inmates rear-ends a construction vehicle on I-10 – 2 injured.
9-28-10	Charlestown, WV	Car crosses centerline and collides head-on with motorcoach, causing the bus to go over an embankment and roll onto its side – 21 injured.
9-26-10	East Ridge, TN	Motorcoach transporting college students is struck by car on I-75 – 16 injured.
9-18-10	Sanger, TX	Motorcoach en route from Dallas to Oklahoma City crashes into a highway barrier, ejecting some passengers through windows that broke from the impact – 18 injured.
9-12-10	Tillamook, OR	Tour bus catches fire on Highway 101– 8 injured.
9-11-10	Syracuse, NY	Motorcoach traveling from Philadelphia to Toronto crashes when the driver, using his own GPS device, attempts to drive under low clearance railway bridge – 4 killed, 20 injured.
8-14-10	Englewood, NJ	A New York-bound motorcoach heading to the Port Authority Bus Terminal and a police cruiser collide – 3 injured.
8-10-10	Pleasantville, PA	A motorcoach heading back to Johnstown from casinos in Harrisburg and a car collide on Route 56 – 1 killed.
8-08-10	Cedar City, UT	Motorcoach carrying Japanese tourists rolls over on I-15 – 3 killed, 11 injured.
8-08-10	Polk County, TN	Motorcoach and a car collide on Highway 64 – 1 killed.
8-04-10	Eau Claire, WI	Motorcoach and moped collide.
7-22-10	Fresno, CA	Motorcoach carrying 36 people from Los Angeles to Sacramento strikes an overturned SUV, slams into concrete center divider, clips another vehicle, travels off the right shoulder of the highway and down a 15-foot embankment before hitting a tree – 6 killed/20 injured.
6-24-10	Atlantic City, NJ	A motorcoach carrying 50 gamblers from New York City's Chinatown to the seaside casino resort crashes into two other vehicles – 24 injured.

6-21-10	Rosemead, CA	Motorcoach is involved in a head-on collision after two passenger cars collide into each other and the impact pushes them into incoming traffic – 23 injured.
6-10-10	Florence, KY	Motorcoach fire breaks out on a bus headed from Detroit to Tennessee – 1 injured.
6-03-10	Middletown, NJ	Motorcoach flips over near I-114 after the driver fell asleep at the wheel.
6-02-10	Lynchburg, VA	Two motorcoaches catch fire due to an engine component problem, causing more than $135,000 in damage, on the Liberty University campus.
5-24-10	Dearborn, MI	Motorcoach fire along eastbound I-94 closes two lanes, backs up traffic for a quarter mile.
5-20-10	High Point, NC	Motorcoach collides with van on N.C. Highway 62 – 2 killed.
4-26-10	Brunswick, GA	Motorcoach carrying high school band students crashes on I-95 – 10 injured.
4-24-10	Rogers, AK	Motorcoach carrying church members returning from a retreat in Little Rock, AK rolls over on I-40 – 2 killed/17 injured.
3-24-10	Orlando, FL	Motorcoach is rear-ended by a Walt Disney World tour bus near the entrance of Epcot theme park – 8 injured
3-16-10	Campbellton, TX	A Mexican motorcoach traveling from San Antonio to Matamoros, Mexico and carrying 40 people overturns along a southern Texas highway – 2 killed/30 injured.
3-05-10	Sacaton, AZ	Motorcoach en route from the central Mexican state of Zacatecas to Los Angeles rolls over on I-10 South – 6 killed/16 injured.
2-19-10	Buford, GA	Several motorcoaches carrying 6th grade students from Greenville, SC to Atlanta, GA are involved in a chain reaction bus crash – 3 injured.
2-13-10	Caddo Parish, LA	A pickup truck drifts into oncoming traffic and crashes head-on into a motorcoach carrying country music star Trace Adkins - 2 killed/at least 5 injured.
1-26-10	Carbondale, IL	Motorcoach crashes into the wall of the University Place Shopping Center - 4 injured.
12-20-09	LeRoy, NY	Motorcoach en route from New York City to Toronto slides off Interstate 90 after the driver nodded off.
12-19-09	Gore Hill, MT	Motorcoach en route from Helena to Great Falls collides with the rear of a pickup truck on Interstate 15 – 3 injured.
12-06-09	Glen, NY	Motorcoach carrying the rock band Weezer slides on ice, hits the median and some reflective posts, crosses over the median, goes over a guardrail and lands in a ditch – 2 injured.
12-05-09	Casper, WY	Motorcoach crashes into an overturned tractor-trailer blocking Interstate 25 in central Wyoming.- 1 killed/at least 40 injured.
12-04-09	Greenville, SC	Motorcoach carrying South Carolina students home from a field trip runs off the road and into trees – 15 injured.
11-24-09	Oakland, CA	Motorcoach catches fire closing several westbound lanes along the eastern span of the Bay Bridge.
11-20-09	Richmond, VA	Motorcoach carrying Miley Cyrus' crew drifts off the road and overturns – 1 killed/9 injured.
11-18-09	Austin, MN	Motorcoach carrying mostly senior citizens swerves off the freeway and rolls into a ditch after the driver suffered an aneurysm – 2 killed/21 injured.
11-13-09	Warrensburg, NY	Motorcoach carrying more than 30 students from a Montreal College crashes through a guard rail and lands on the median on I-87 after the driver fell asleep at the wheel – 8 injured.
11-11-09	Chatham County, GA	Motorcoach fire begins in rear tire axle, engulfing the motorcoach in flames.
10-31-09	Henry County, GA	2 the I-675 merge, flips twice and comes to a rest on its side, injuring over a dozen students.
10-10-09	McCammon, ID	Motorcoach carrying 54 high school band students crashes. Band instructor grabbed the wheel when she saw the driver slumped forward and the motorcoach veering off the road. The band instructor is fatally injured in the crash and dozens are injured.
9-27-09	Tampa, FL	Motorcoach carrying church group from Sarasota to Gatlinburg, Tennessee involved in chain reaction crash– 14 taken to hospital.
9-21-09	Columbus, OH	Motorcoach carrying incoming college students crashes into a dump truck, severing the driver's right leg.
9-21-09	Cranbury, NJ	Motorcoach crashes into tractor-trailer along the New Jersey turnpike – 6 injured.
9-18-09	Plymouth Twp, MI	Motorcoach catches fire while traveling from Toronto to Chicago along westbound M-14.
9-13-09	Pleasantville, NJ	Motorcoach catches fire while driving along the westbound lanes of the Atlantic City Expressway, near exit 5.

9-06-09	Newburyport, MA	Motorcoach catches fire while traveling northbound from New England to Main along I-95. The fire is believed to have been caused by a rear tire blowout.
9-02-09	Houston, TX	Motorcoach driver crashes into a concrete barrier on the N. Freeway HOV lane – 6 injured.
8-17-09	Houston, TX	Motorcoach traveling from Laredo to Houston catches fire. Driver is ticketed for expired license.
8-04-09	Dodge County, WI	Motorcoach carrying Special Olympics athletes crashes into a guardrail and turns over - 8 injured.
7-30-09	Moberly, MO	Motorcoach carrying high school students catches fire after a tires blows out along Highway 63 - 2 injured.
7-16-09	Toledo, OH	Motorcoach pulls over on I-75 south after catching fire. The driver noticed smoke coming from the rear wheel well.
7-13-09	Riley County, KS	Motorcoach carrying job corps students is hit by a semi truck – at least 20 injured.
7-09-09	Lauderdale County, MS	Motorcoach carrying church youth blows tire, flips 3 times and lands on its side – 2 killed/27 injured.
7-05-09	Lake George, NY	Motorcoach rolls on its side and crashes into sledge rock on the left side of the highway – 1 killed/8 injured.
7-03-09	Madison, WI	Motorcoach carrying 80 passengers crashes along Highway 151 – 17 injured.
6-26-09	Toledo, OH	Motorcoach carrying high school youth orchestra strikes the back of a semi and crashes along I-80 – at least 1 injured.
6-21-09	Indianapolis, IN	Motorcoach carrying Canadian semi-pro football team crashes into SUV – 1 killed/11 injured.
6-06-09	South StrabaneTwp, PA	Motorcoach rear-ends a tractor-trailer - 6 injured.
5-19-09	Fairfax, VA	3 motorcoaches carrying staff and students from Harrisonburg, VA elementary school involved in chain reaction crash - 37 injured.
5-14-09	Carbon County, PA	Motorcoach is heavily damaged after fire that began in the engine of the vehicle.
5-03-09	Winona County, MN	2 motorcoaches carrying Winona County DARE students from a Minnesota Twins game involved in chain reaction crash - 2 hospitalized and dozens injured.
5-03-09	Montgomery, AL	Motorcoach carrying 29 passengers, mostly children, catches fire after brake defect.
5-02-09	Perris, CA	Motorcoach carrying 28 people aboard crashes returning from Cinco de Mayo activity sponsored by city of Colton - all 28 injured.
4-27-09	Lincoln, AL	Motorcoach crashes after tire blows out - 21 injured.
4-07-09	Near Franksville, WI	Motorcoach catches fire and causes major back-up along I-94.
4-03-09	Round Rock, TX	Motorcoach carrying 42 high school band students crashes - 2 injured.
3-30-09	Millard County, UT	Motorcoach carrying 52 high school choir students crashes - 4 injured.
3-27-09	Franklin County, GA	Motorcoach carrying 40 University of New Hampshire college students catches fire after tire blows out.
3-05-09	Maysville, NC	3 Motorcoaches carrying 59 U.S. Marines in chain-reaction crash - 14 injured.
2-19-09	Beckett, MA	Motorcoach carrying minor league hockey team crashes - 5 injured.
2-15-09	West Haven, CT	Motorcoach rear-ends another motorcoach - 128 injuries.
2-07-09	Honolulu, HI	Motorcoach strikes and kills pedestrian standing at a marked crosswalk.
2-04-09	Belleplain, NJ	Motorcoach rear-ends box truck.
1-30-09	Dolan Springs, AZ	Motorcoach carrying Chinese tourists crashes near Hoover Dam - 7 killed/10 injured.
1-23-09	Near Donegal, PA	Motorcoach carrying tourists catches fire after tire blows out along PA turnpike.
12-26-08	Corona, NM	Motorcoach crashes in inclement weather - 2 killed/others injured.
12-19-08	Seattle, WA	Motorcoach carrying 80 young adults crashes through guardrail - minor injuries.
10-05-08	Williams, CA	Motorcoach traveling to casino resort crashes - 9 killed/35 injured.
8-10-08	Primm, NV	Motorcoach crashes after tire failure - 29 injured.
8-10-08	Tunica, MS	Motorcoach crashes and roof collapses during rollover - 3 killed.
8-08-08	Sherman, TX	Motorcoach carrying 55 Vietnamese-American pilgrims crashes after blowing a tire, skidding off of highway, and hitting guardrail - 17 killed/40 injured.
5-11-08	Mount Vernon, MO	Motorcoach tour bus carrying gospel singer crashes – 1 killed/7 injured.
4-05-08	Albertville, MN	Motorcoach carrying students and chaperones home from a band trip to Chicago crashes, killing a 16 year-old student and injuring dozens.
1-17-08	Primm, NV	Motorcoach crashes and catches fire - 25 injured.
1-06-08	Mexican Hat, UT	Motorcoach carrying 51 passengers ran off curvy road, rolled several times, roof was split

		open, and tires were stripped off. Passengers were thrown from the bus. A contributing factor was the driver's negotiation of the turn - 9 killed.
1-02-08	Victoria, TX	Motorcoach crashes probably due to driver fatigue - 1 killed.
1-02-08	Henderson, NC	Motorcoach crashes into tractor-trailer - 50 injured.
11-25-07	Forrest City, AR	Motorcoach crashes – 3 killed/15 injured.
6-25-07	Bowling Green, KY	Motorcoach crashes probably do to driver fatigue - 2 killed/66 injured.
3-02-07	Atlanta, GA	Motorcoach carrying Bluffton University baseball team crashes through an overpass bridge wall and fell onto Interstate 75 landing on its side – 7 killed/21 injured.
5-20-07	Clearfield, PA	Motorcoach crashes - 2 killed/25 injured.
9-06-06	Auburn, MA	Motorcoach rollover crash - 34 injured.
8-28-06	Westport, NY	Motorcoach rollover crash - 4 killed/48 injured.
3-30-06	Houston, TX	Motorcoach carrying girls' soccer team crashes and overturns - 2 killed/more injured.
10-25-05	San Antonio, TX	Motorcoach crashes into two 18-wheelers after tire failure - 1 killed/3 injured.
10-16-05	Osseo, WI	Motorcoach crashes - 4 killed/35 injured.
9-23-05	Wilmer, TX	Motorcoach carrying 44 assisted living facility residents and nursing staff as part of the evacuation in anticipation of Hurricane Rita caught fire. 23 killed/of 21 injured.
7-25-05	Baltimore, MD	Motorcoach crashes - 33 killed.
1-29-05	Geneseo, NY	Motorcoach crashes - 3 killed/20 injured.
11-14-04	Alexandria, VA	Motorcoach carrying 27 high school students crashes - 11 injured.
10-09-04	Turrell, AR	Motorcoach crashes - 14 killed/15 injured.
8-06-04	Jackson, TN	Motorcoach crashes - 2 killed/18 injured.
6-24-04	Phoenix, AZ	Motorcoach crashes - 1 killed/38 injured.
5-24-04	Anahuac, TX	Motorcoach crashes - 1 killed.
2-22-04	North Hudson, NY	Motorcoach crashes - 47 injured.
11-12-03	Apache Co., AZ	Motorcoach crashes - 44 injured.
10-13-03	Tallulah, LA	Motorcoach crashes into tractor-trailer - 8 killed/7 injured.
2-14-03	Hewitt, TX	Motorcoach crashes - 5 killed/others injured.
10-01-02	Nephi, UT	Motorcoach crashes - 6 killed/20 injured.
6-23-02	Victor, NY	Motorcoach crashes - 5 killed/41 injured.
6-09-02	Loraine, TX	Motorcoach crashes into tractor-trailer - 3 killed/29 injured.
4-24-02	Kinder, LA	Motorcoach crashes - 4 killed and driver medically incapacitated.
10-03-01	Manchester, TN	Motorcoach crashes - 6 passengers killed/unknown injuries.
8-19-01	Pleasant View, TN	Motorcoach crashes - 1 killed/38 injured.
5-28-01	Bay St. Louis, MS	Motorcoach crashes - 16 injured.
1-20-01	Allamuchy, NJ	Motorcoach crashes - 39 injured.
1-02-01	San Miguel, CA	Motorcoach crashes - 2 killed/3 injured
6-30-01	Fairplay, CO	Motorcoach crashes - 45 injured.
8-27-00	Eureka, MO	Motorcoach crashes - 25 injured.
12-21-99	Canon City, CO	Motorcoach crashes - 3 killed/57 injured.
5-09-99	New Orleans, LA	Motorcoach crashes - 22 killed/21 injured.
4-30-99	Braidwood, IL	Motorcoach crashes - 1 killed/23 injured.
3-02-99	Santa Fe, NM	Motorcoach carrying 34 middle school children crashes - 2 killed/35 injured.
12-24-98	Old Bridge, NJ	Motorcoach crashes - 8 killed/14 injured.
6-20-98	Burnt Cabins, PA	Motorcoach crashes - 7 killed/16 injured.
9-12-97	Jonesboro, AR	Motorcoach crashes - 1 killed/6 injured.
7-29-97	Stony Creek, VA	Motorcoach crashes - 1 killed/32 injured.
6-06-97	Albuquerque, NM	Motorcoach crashes - 1 killed/35 injured.
8-02-96	Roanoke Rapids, NC	Motorcoach crashes due, driver was fatigued - 19 injured.
10-14-95	Indianapolis, IN	Motorcoach crashes - 2 killed/38 injured.
7-23-95	Bolton Landing, NY	Motorcoach crashes - 1 killed/30 injured.
4-24-94	Chestertown, NY	Motorcoach crashes and rolls over - 1 killed/20 injured.
1-29-94	Pueblo, CO	Motorcoach crashes and rolls over - 1 killed/8 injured.
9-17-93	Winslow Twp, NJ	Motorcoach crashes because truck drifted into lane - 6 killed/8 injured.
9-10-93	Phoenix, AZ	Motorcoach crashes and rolls over because of driver fatigue - 33 injured.
6-26-93	Springfield, MO	Motorcoach crashes - 1 killed/46 injured.
7-26-92	Vernon, NJ	Motorcoach crashes - 12 passengers ejected/ 6 killed.

1-24-92	South Bend, IN	Motorcoach crashes - 2 killed/34 injured.
6-26-91	Donegal, PA	Motorcoach crashes - 1 killed/14 injured.
8-03-91	Caroline, NY	Motorcoach crashes - 33 injured.
2-02-91	Joliett, PA	Motorcoach crashes - 2 killed/44 injured.
5-18-90	Big Pine, CA	Motorcoach crashes - 2 killed/43 injured.

What Does the Motorcoach Enhanced Safety Act (MESA) Do?

It Turns Decades of Critical NTSB Recommendations into Action

Provision of MESA (S.453/H.R.873)	Explanation
Overview of Bill	**Issuance of Safety Standards:** Requires issuance of standards based on comprehensive safety recommendations of National Transportation Safety Board (NTSB) for improvements in occupant protection systems, roof crush protection, design standards, crash avoidance, passenger evacuation, fire mitigation, on board recorders (EOBRs), event data recorders (EDRs), tire pressure monitoring, and retreaded tires.
	Content of Safety Standards: A number of specific aspects of safety standards, and NTSB recommendations must be adopted in regulation.
	Research and Testing: Requires application of existing data, current research and completed testing on available technology to address safety problems; allows agency's expertise to conduct additional research and development where necessary.
	Retrofit of Motorcoaches Built Before Standards Issued: Senate version contains a discretionary retrofit provision while the House version contains a compulsory retrofit provision.
Analysis of Specific Safety Provisions	
Safety Belts	DOT to issue a regulation within 1 year of enactment to require new motorcoaches be equipped with seat belts at designated seating positions. *Based on NTSB Recommendations H-99-47 & H-99-48, and on the NTSB Most Wanted List.* *
Firefighting Equipment	DOT to issue a regulation within 1 year of enactment to require the installation of improved firefighting equipment to suppress fires in new motorcoaches.
Roof Strength Standard	DOT to issue a regulation within 1 year (Senate) or 18 months (House) of enactment to require that roofs of motorcoach provide substantial improvement in protection against deformation and intrusion to prevent serious occupant injury. *Based on NTSB Recommendation H-99-50, and on the NTSB Most Wanted List.* *
Anti-Ejection Window Glazing	DOT to issue a regulation within 1 year (Senate) or 18 months (House) of enactment to require advanced window glazing that resists breaking and prevents occupant ejection at all passenger window locations in new motorcoaches. *Based on NTSB Recommendation H-99-49, and on the NTSB Most Wanted List.* *
Reduced Rollover Crashes	DOT to issue a regulation within 1 year (Senate) or 2 years (House) of enactment that requires new motorcoaches be equipped with stability enhancing technologies, such as electronic stability control or torque vectoring, to provide crash avoidance protection and reduce the incidence of rollover crashes. *Based on NTSB Recommendations H-99-47, H-08-15, H-10-05 & H-10-06.*
Tire Pressure Monitoring System (TPMS)	DOT to issue a regulation, within 2 years of enactment, to require motorcoaches to have direct tire pressure monitoring systems that perform at all times, at all speeds, on all road surfaces, and during all weather conditions, after repairs, and on spare tires. *Based on NTSB Recommendation H-03-17.*
Safety Standards for New Tires	Requires upgrade of 1973 standard for safety performance of tires used on motorcoaches, including enhanced endurance and high-speed performance tests.

Provision of MESA (S.453/H.R.873)	Explanation
Retrofit of Motorcoaches	Senate: Secretary has 2 years to assess the feasibility, costs and benefits of retrofitting motorcoaches built prior to the issuance of the safety standards required in the Act. Retrofit of previously built motorcoaches is entirely in the discretion of the Secretary. House: Motorcoaches are required to be retrofitted with safety belts and firefighting equipment 2 years after the regulation is issued, or up to 5 years in the case that the Secretary determines hardship exists.
Fire Safety and Emergency Evacuation	DOT to evaluate, within 18 months, flammability standard for exterior components, smoke suppression, resistance to wheel well fires, passenger evacuation and automatic fire suppression on motorcoaches; DOT to issue new performance requirements for fire safety and passenger evacuation within 3 years of enactment. *Based on NTSB Recommendations H-99-09, H-07-01, H-07-04, H-07-05, H-07-06, H-07-07, H-07-08 & H-07-11, and on the NTSB Most Wanted List.* *
Seating Safety	DOT to complete research within 2 years of enactment on enhanced seat compartmentalization to reduce the risk of passengers being thrown from their seats and injured within the motorcoach; DOT to issue a regulation 4 years after enactment to improve seating area compartmentalization. *Based on NTSB Recommendations H-99-47, H-99-48 & H-99-50, and on the NTSB Most Wanted List.* *
Interior Impact Protection	DOT to complete research within 2 years of enactment and issue a regulation not later than 4 years after enactment to establish requirements for enhanced occupant impact protection for the interiors of new motorcoaches. *Based on NTSB Recommendations H-99-48, H-99-50, H-09-23 & H-09-24.*
Crash Avoidance	Complete research within 2 years of enactment and issue a regulation not later than 4 years after enactment to improve motorcoach crash avoidance. *Based on NTSB Recommendations H-08-15, H-10-05 & H-10-06, and on the NTSB Most Wanted List.* *
New Entrants Requirements	Amends current law to prohibit registration of new entrant motorcoach services providers until DOT: (a) conducts a pre-authorization safety audit within 90 days of receiving an application for operating authority; (b) performs a safety management review; and (c) new entrants pass a written proficiency exam and disclose common relationships with other carriers in past 3 years. *Based on NTSB Recommendation H-03-02.*
Reincarnated Carriers	Amends current law to require new entrant motor carriers to disclose prior ownership relationships with previous motor carriers within past 3 years; and authorizes Secretary to suspend or revoke grant of registration where motor carrier failed to disclose a material fact in registration application.
Oversight of Motorcoach Operators (Motor Carriers)	Amends current law to require DOT to determine the safety fitness of providers of motorcoach services and assign a safety fitness rating to carriers within 3 years; DOT is also required to establish a process for monitoring the safety performance of such providers and to conduct periodic safety reviews to reassess assigned safety ratings every 3 years. *Based on NTSB Recommendations H-81-15, H-87-38 & H-99-06.*
Driver Training	DOT to issue a final rule in the pending minimum training curriculum requirements, Docket No. FMCSA 2007-27748, within 18 months (Senate) and 6 months (House); and, report to Congress within 2 years on feasibility of establishing training program certification system. *Based on NTSB Recommendation H-75-009.*

Provision of MESA (S.453/H.R.873)	Explanation
CDL Testing	DOT to issue a final rule in the pending rulemaking on CDL Testing Standards, Docket No. FMCSA 2007–27659, to require a more stringent test of driver knowledge and driving skills within 6 months.
CDL Report	Senate: DOT to issue a regulation requiring drivers of 9-15 passenger vans to be subject to requirements for CDL and random drug and alcohol testing. House: DOT is required to report to Congress within 18 months with a plan regarding which classes of drivers of 9-15 passenger vans should be subject to current requirements for CDL and random drug and alcohol testing.
CDL Medical Certificate and Physical Fitness Oversight	Requires DOT to develop prerequisites for listing medical examiners on national registry, including courses/materials, passing grade on written exam, certification, ability to comply; Requires DOT to issue rule within 18 months of enactment requiring examiners to submit the medical exam form to the proper state licensing agency; Amends federal law to require that state licensing agencies compare the medical exam forms received from the medical examiner with the information received from the driver in order to reduce fraud; Requires DOT to review the licensing agencies of 10 states to assess the accuracy, validity and timeliness of submission of physical and medical reports. DOT to establish National Registry of Medical Examiners within 6 months of enactment. *Based on NTSB Recommendations H-99-06, H-01-21, H-01-22 & H-01-24, among others, and on the NTSB Most Wanted List.**
Electronic On-Board Recorders (EOBRs)	DOT to issue rule, within 1 year, to require EOBRs on all motorcoaches to enforce hours of service and reduce driver fatigue. *Based on NTSB Recommendations H-90-28 & H-98-23, and on the NTSB Most Wanted List.**
Event Data Recorders (EDRs)	Provides that 1 year after enactment DOT shall prescribe performance requirements for EDRs on motorcoaches, including vehicle operations, events and incidents, and system information to be recorded by EDRs, and issue a rule to implement the performance requirements within 2 years (Senate) or 3 years (House) of enactment. *Based on NTSB Recommendations H-99-53 & H-99-54.*
MCSAP Safety Inspection Programs	DOT to issue a regulation, within 3 years of enactment, that considers requiring states to conduct annual inspections of commercial motor vehicles designed or used to transport passengers. *Based on NTSB Recommendations H-81-15, H-87-38, H-05-07, H-05-08 & Hwy-99-FH102.*
Prohibition of Distracted Driving	Provides that within 1 year of enactment, DOT must issue regulations on the use of electronic or wireless devices by an individual employed as the operator of a motorcoach based on accident analysis, research and other information. *Based on NTSB Recommendation H-06-27, and on the NTSB Most Wanted List.**
Rental and Leasing Companies	Amends current law to include companies that rent and/or lease motorcoaches within the definition of the term "employer" as defined in 49 U.S.C. § 31132.
Registration of Brokers	House Only: Amends current law to include transportation of passengers within the requirement for registration by brokers.

* The National Transportation Safety Board (NTSB)'s Most Wanted Transportation Safety Improvements 2009-2010 identifies critical changes needed to reduce transportation accidents and save lives. Available at http://www3.ntsb.gov/recs/brochures/MostWanted_2010.pdf

ADVOCATES for Highway & Auto Safety

THE COST OF MOTORCOACH SAFETY

Motorcoach Safety Improvements Cost Just Pennies Per Passenger

- **Safety for only 10¢ a ride:** The motorcoach industry carries 743 million passengers each year.[1] The cost of equipping new motorcoaches with the safety improvements included in the Motorcoach Enhanced Safety Act (MESA) of 2011, S. 453 & H.R. 873, would cost less than 10 cents per passenger. At 10 cents per passenger the industry would raise $74.3 million per year, about $37,000 for each of the 2,000 new motorcoaches built annually, more than enough to cover the safety improvements in the MESA bill.

- **Motorcoach safety is a bargain:** Just one serious motorcoach crash, like the World Wide Travel motorcoach crash that took place in the Bronx, New York on March 12, 2011, killing 15 persons cost more than $90 million to society and these tragic crashes occur on a regular basis.

- **Safety is forever:** Motorcoaches last for 20 years and carry about 423,000[2] passengers over the course of that lifespan.[3] Safety improvements built-in to new buses keep on protecting passengers and provide public safety year after year.

- **Industry cost figures are exaggerated:** Without any documentation to support its cost data, the American Bus Association makes exaggerated claims that new safety devices will cost between $75,000 and $100,000.[4] Safety group research shows that the actual cost is far below the industry claims which also are highly speculative since the specific requirements will not be determined until final government rules are issued several years from now. As to the cost of known safety technologies, the industry figures are grossly inflated:

Safety Feature	**Industry Claims[5]**	**Actual Cost**
Electronic Stability Control	$3,000	$1,350
Advanced Glazing	$7,000	$1,115
Electronic On Board Recorders	$2,500	$ 600
Fire Suppression Systems	$6,000	$3,000
Interior Fire Protection	$11,000	$ 500
Total	***$29,500***	***$6,565***

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[1] Bourquin, P., *"Motorcoach Census Update 2010."* [2010 Motorcoach Census] Nathan Associates, for the American Bus Association, Dec. 8, 2010. The average number of passenger trips per year was 742.5 million in 2008 and 2009.

[2] *Id.* Annual passenger trips (742.5 million), divided by fleet size (35,122), multiplied by vehicle useful life (20 years).

[3] Motorcoach Definition, Notice of Proposed Rulemaking, 75 FR 50958 (Aug. 18, 2010) ("The service life of a motorcoach can be 20 years or longer").

[4] Testimony of Peter J. Pantuso, President of the American Bus Association, before the Highway and Transit Subcommittee of the House Transportation and Infrastructure Committee (March 29, 2010).

[5] "PER-BUS ESTIMATED COSTS FOR A NEW BUS OF 18 VEHICLE MANDATES IN S.554", anonymous industry cost sheet circulated in opposition to Motorcoach Enhanced Safety Act.

Safety Features Required by the Motorcoach Enhanced Safety Act Are Already Available and Voluntarily Installed in Some Motorcoaches

Many of the safety measures required under the Motorcoach Enhanced Safety Act (MESA), S. 453 and H.R. 873, are already found on some newly manufactured motorcoaches. A survey of motorcoach manufacturer websites reveals that brochures and marketing materials tout many of the MESA safety measures as features or options on some motorcoach models. Regulatory uniformity is needed to ensure that lifesaving safety systems such as seat belts, stronger roof strength, anti-ejection glazing and tire pressure monitoring systems among others are not merely optional equipment, but are standard features provided for the protection of every passenger on every motorcoach.

Just as there is federal safety oversight of passenger airlines, there needs to be federal safety oversight of motorcoach safety. Each year, over 750 million passenger trips are taken on motorcoaches that carry up to 55 passengers. The results of a crash can be catastrophic. While motorcoach manufacturers currently offer on a voluntary basis certain safety features on specific models, those safety features are not subject to federal standards that establish minimum performance requirements. Passage of MESA would ensure that safety features on motorcoaches would perform effectively in the event of a crash.

MESA Safety Feature	Safety Features Offered on Some Motorcoach Models*
Occupant Protection	
Lap/shoulder seat belts at all seating positions	▪ Volvo and Van Hool buses are equipped with 3-point belts. ▪ Prevost buses are equipped with seat belt anchorages.
Anti-ejection advanced window glazing	▪ Prevost has patented frameless thermopane side windows. ▪ MCI provides laminated glass windows to protect against ejection.
Improved roof crush safety standards	▪ Prevost has fiber composite and stainless steel outer shells. ▪ Volvo models feature enhanced roof crush strength to minimize roof collapsing. ▪ Van Hool models are rollover certified in accordance with European requirements. ▪ Girardin models have reinforced structural beams combined with steel roof bows.
Interior impact protection	▪ Volvo designs interiors that are soft and free from protruding parts or sharp edges.
Safety Technology	
Rollover crash avoidance technology	▪ Prevost, Volvo, and MCI equip their motorcoaches with electronic stability control systems (ESC) and Antilock Braking Systems (ABS). ▪ Van Hool buses are equipped with ABS and have the option for ESC. ▪ Setra Coaches are equipped with ABS but not ESC.
Collision avoidance technologies	▪ Volvo offers Front Impact Protection (FIP). ▪ Van Hool offers an optional lane departure warning system.
Fire Safety	
Fire prevention and smoke suppression	▪ Prevost is equipped with automatic fire suppression. ▪ MCI is equipped with a fire-suppression system and a fully multiplexed solid-state electrical system. ▪ Van Hool offers an optional fire suppression system.
Fire extinguishers and other available fire-fighting equipment	▪ Glaval Bus is equipped with a safety package, including fire extinguisher, First Aid kit, triangles, and backup alarm.
Emergency evacuation features including updated emergency exit designs and interior lighting	▪ Prevost models have escape hatches. ▪ Glaval Bus models have escape hatches and emergency duel pane egress windows.
Tire Safety	
Direct tire pressure monitoring systems	▪ Prevost is equipped with tire pressure monitoring systems. ▪ MCI and Van Hool buses are equipped with integrated tire pressure monitoring systems with always-on sensors.

*Reference to a safety feature included on this chart does not indicate that all motorcoach models of a specific manufacturer are equipped with the same safety feature or technology, but only reflects that the safety feature or technology is available on at least one of the motorcoach models built by that manufacturer either as an option or as standard equipment.



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

STATEMENT OF

MAJOR DAVID L. PALMER

VICE-PRESIDENT

COMMERCIAL VEHICLE SAFETY ALLIANCE

BEFORE THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

ON

"HOW BEST TO IMPROVE BUS SAFETY ON OUR NATION'S HIGHWAYS"

JUNE 13, 2011

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House T&I Committee: CVSA Written Testimony Filed with Committee

Chairman Mica, Ranking Member Rahall, Members of the Committee, thank you for holding this hearing on how best to improve bus safety on our nation's highways. I am Major David L. Palmer from the Texas Department of Public Safety. I am testifying here today in my role as Vice-President of the Commercial Vehicle Safety Alliance (CVSA). CVSA is an organization of state, provincial and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems and save lives. Every state in the United States, all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are CVSA members.

I will address the following in my testimony today:

1. What State enforcement can do about bus safety
2. Putting bus safety into perspective
3. Additional Legislative and Regulatory changes that could improve bus safety

1. What State Enforcement Agencies Can Do

Mr. Chairman, at the outset, let me say that on behalf of CVSA and its members, we have pledged a renewed emphasis on bus safety. A step that we can immediately take is to lift the current restriction in the law that prohibits enroute roadside bus inspections. SAFETEA-LU enacted this restriction, and it has removed a critical tool designed to immediately identify driver and mechanical safety issues, hampering enforcement's efforts. We will commit to you that if this restriction is lifted we will immediately encourage all of our state members to put resources toward enroute bus inspections and to take aggressive enforcement action when warranted.

I want to call your attention to the results of recent bus safety strike forces that were ordered by a number of state Governors, with encouragement and assistance from FMCSA. They have resulted in a significant number of buses and drivers being placed out-of-service due to either mechanical or driver violations of federal motor carrier safety regulations. These strike forces generally included safety inspections at origin or destination locations. They typically do not occur randomly at roadside since that activity is prohibited by SAFETEA-LU. We are firm believers that many more lives could be saved and injuries avoided if enroute roadside inspections were permitted to allow states to conduct roadside inspections wherever and whenever necessary.

Last week CVSA held its annual Roadcheck enforcement blitz across the country, a 72 hour operation that allows us to have a focused effort on truck and bus safety

inspections. Prevention, detection and deterrence of dangerous driving, unsafe vehicles and unscrupulous operators are the three principles of the Roadcheck campaign.

Speaking at the Roadcheck kickoff ceremony in Virginia, Col. Steve Flaherty, head of the Virginia State Police acknowledged that the limitation on the inspection of buses while they are en route prevented enforcement from targeting bus companies such as Sky Express Inc., the Charlotte based carrier operating the bus that crashed May 31 in Caroline County, Virginia north of Richmond. "If one (a passenger bus) drove by right now, there's not much we could do about it," Col. Flaherty said.

Since these so-called "curbside" operators such as Sky Express do not typically operate out of a fixed place of business, or terminal, the most effective way to inspect them is through a random enroute roadside inspection program.

2. Putting Bus Safety into Perspective

Enforcement is a major component of bus safety, but not the only component. We need to put the broader issue of bus safety into perspective. It is our belief that improving bus safety will require the best efforts and cooperation of the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) at the federal level, those of us who work in state enforcement agencies, the passenger bus industry, brokers, community groups, transportation purchasers, educational institutions and the bus manufacturers.

When it is necessary to close down a passenger carrier operating illegally or under an out-of-service order, the full force and authority of FMCSA, in conjunction with state enforcement is necessary. When unscrupulous activities are discovered, criminal prosecution must be considered and pursued. When it comes to uncovering potential problems with passenger carriers — with respect to drivers and equipment, state enforcement and oversight is necessary through the inspection and audit processes. Finally, when it comes to specific safety standards such as crashworthiness, NHTSA must play a more aggressive role to implement safety belt and other safety systems, hopefully with the cooperation of both the passenger carrier industry and bus manufacturers.

Chameleon carriers are a significant problem that must also be dealt with more aggressively. FMCSA's vetting process has been an important tool in helping to identify and take action on those carriers who are "changing their stripes." FMCSA must be given the authority to transfer past safety performance activity from one carrier to another when it is discovered they are substantially the same operation. Also, FMCSA needs to work cooperatively with the states in this effort.

FMCSA must also be given more authority over brokers. Companies that purchase transportation for a customer or customers need to be held accountable for not conducting the proper due diligence for safety. Brokers who are discovered not doing the proper due diligence and are hiring unsafe operators need to be shut down.

Another significant issue is that of bus fires. A Volpe Transportation Study completed in 2009 showed that a bus or motorcoach is lost to a fire every 2 days in the United States. Enforcement can help to mitigate this problem by conducting more roadside inspections, and in particular, having the ability to inspect brakes, tires and wheels where many of these fires are originating. There are other causes of fires such as engine compartment and electrical systems, and those with expertise in this area need to study the problem more carefully and implement countermeasures.

Just a week ago today, in the daily news in addition to many stories about the bus crash on I-95 in Virginia, there were reports of 4 other bus incidents around the country:

- A Bozeman, Montana newspaper reported that two charter bus drivers were charged with DUI while transporting a group of 7th graders to Yellowstone National Park.
- A New York Post news story reported "It looks like the highway to hell" on the Brooklyn-Queens Expressway, but miraculously nobody was hurt when the charter bus burst into flames."
- Iowa Public Radio reported on a charter bus rollover that injured at least 14 in Southwest Iowa.
- An Alabama television station reported that 22 people, mostly Texas students, were injured in an I-10 crash involving a bus and a truck. The students were on their way from Del Rio, Texas to Disneyworld in Orlando, Florida.

We support the provisions in both the Senate and House Safety bills introduced in this session Congress, S. 453 and HR 1390 respectively, that require a safety audit and compliance review of all interstate passenger carriers and the ongoing requirement of (at a minimum) annual state-based safety inspection requirement for all commercial passenger carrying vehicles. Each state must also have a roadside bus inspection program that is appropriate for the needs of that state. FMCSA requires that as a part of a state's Commercial Vehicle Safety Plan (CVSP), a state must specify and identify what activities they are implementing to enhance bus safety.

As you might expect, by directing more of their efforts toward bus safety, states face the potential need for additional resources and funding. What we don't want to happen is by focusing more on bus safety and enforcement; it comes at the expense of other critical commercial vehicle safety and enforcement programs. Having said this, we are very aware of the new budget and fiscal constraints this Committee and Congress are under. While we have not yet seen your complete Reauthorization proposal, we expect

you will be calling for more streamlining and efficiencies in program delivery. We are committed to these efforts as well.

3. Additional Legislative and Regulatory changes that could improve bus safety

Unlike trucking companies, Inter-city passenger carriers have been exempt from any hours-of-service changes that have occurred in recent years. Based on the fact that driver fatigue seems to have been a contributing factor in a number of recent bus crashes, we recommend that FMCSA study whether the current hours of service rules for bus drivers are adequate, and if warranted based on the data and analysis, to propose any necessary changes. Over the last several years the industry had dramatically changed to accommodate new and changing patterns of inter-city bus travel, and the hours of service regulations must be able to ensure for the best regulatory framework to account for these changes while ensuring for an adequate level of safety.

While I have earlier stated that equipment safety standards are to largely be determined by NHTSA working with the bus industry and bus manufacturers, I would like to draw your attention to legislation currently pending in the House, H.R. 1706, the "Commercial Motor Vehicle Advanced Safety Technology Tax Act of 2009." It provides tax incentives for motor carriers to invest in safety technologies such as collision avoidance, lane departure warning, stability control, and brake-stroke monitoring systems. These technologies have been shown to work and can save lives and reduce injuries. We agree with the approach recommended by former National Transportation Safety Board Chairman, Mark Rosenker, that tax incentives be used to help minimize the upfront capital investment for carriers to invest in these technologies. Using this approach can have an immediate impact as carriers could take advantage of this right away, the day the bill is signed into law. Mandates can sometimes take years to finalize and implement.

In closing and to reiterate a previous statement, if Congress chooses to once again enable enroute bus inspections, CVSA will commit to assisting the States and FMCSA by immediately conducting enroute bus inspections, as well as continuing strike forces and other enforcement activities throughout the country. We believe this is the most appropriate and effective response to immediately impact bus safety.

Mr. Chairman, this concludes my remarks and I will be happy to answer any questions.

Committee on Transportation and Infrastructure Hearing on How Best to Improve Bus Safety on Our Nation's Highways, June 13, 2011

Question for the Record: Maj. David Palmer, Vice-President, Commercial Vehicle Safety Alliance

You mentioned in your testimony the challenges of inspecting "curb-side" bus companies such as Sky Express, due to their non-fixed departure locations. Would it not be easier to simply require a fixed departure and arrival location to aid in these inspections?

It is not possible to impose such a requirement on all "curb-side" bus companies, as it would be extremely difficult to communicate this to a certain number of them nor would they comply. As I mentioned in the hearing, sometimes we might be successful in picking up information through printed flyers distributed in the neighborhood(s) announcing pick-up and destination locations. But that is far from a full-proof method of locating them. The bus industry trade associations and some of their member companies admit that they do not have a handle on the number of these fly-by-night curbside operators.

Enforcement has difficulties in many instances of locating them, and fixing their arrival and departure locations would not "fix" this problem. They move their pick-up and delivery locations almost every night and this in many instances would not change. The illegal and unsafe operators are ignoring rules and regulations now, and that will not change by imposing this requirement. Even if you were to impose such a requirement, **AND** (emphasis added) they were to comply with it, most likely these locations would be selected by the operators such that it would be impossible, impractical or unsafe for law enforcement to conduct the inspections. The fix for these operators is simply to enable stronger enforcement tools and mechanisms.

Some curbside operators are subsidiaries of the bigger and well known intercity bus companies. Others are smaller independent operators who may make an effort to abide by the federal motor carrier safety regulations. Unfortunately, the third and most rapidly growing segment of the intercity bus industry are those carriers who are constantly moving their operational locations almost daily and in many instances don't have the corporate infrastructure that has safety as a priority – they simply are trying to fill the seats and to locate drivers and vehicles without much attention being paid to safety or complying with the Federal Motor Carrier Safety Regulations. In 2010, intercity bus service grew by 6%, in an otherwise stagnant economy. Some of this service represents the traditional carriers, but a good part of it reflects the growth of curb-side and low-budget operators.

We would hope that the appropriate agencies of the Federal Government: FMCSA, DOT, the Justice Department and FBI, and Homeland Security Department are investigating the operations of these fly-by-night operators to determine if they are operating for purposes other than just transporting passengers. It would seem that they could not continue to operate without some other source of revenue than that derived from the sale of low cost tickets.

The ability of State motor carrier enforcement agencies to conduct random roadside bus inspections is one significant (and immediate) step toward identifying and curbing the unsafe and illegal operations of the fly-by-night operators. As we pointed out in the June 13 hearing, there are ways to conduct these inspections and provide for the safety and convenience of the passengers.

Again, we appeal to the Committee to lift the restriction against roadside inspections that was included in the SAFETEA-LU legislation that passed Congress in 2005. It should be noted that until 2005, there was no such restriction and bus companies did not complain about disrupted schedules and passenger inconveniences. This restriction was added in the 2005 legislation without consultation with state enforcement agencies and without full discussion of the issue in the hearing process leading up to the development and passage of the 2005 highway bill.



Testimony of Peter Pantuso, President and CEO

American Bus Association

Before the

United States House of Representatives' Committee on Transportation and Infrastructure

Subcommittee on Highways and Transit

"How to Improve Motorcoach and Bus Safety"

2167 Rayburn House Office Building

June 13, 2011 2:30 pm

Mr. Chairman and members of the Committee, my name is Peter Pantuso and I am the President and CEO of the American Bus Association. The ABA is the trade association for the private motorcoach industry. ABA is home to over 800 bus operating companies and 60% of all private motorcoaches on the road, who provide all manner of transportation services to the public. In addition to scheduled service operations provided by companies such as Greyhound Lines, domiciled in Dallas; Peter Pan Bus Lines in Massachusetts, Academy Bus Lines in New Jersey and Jefferson Lines in Minnesota and C & J Lines in New Hampshire. ABA member companies such as Capitol Bus Lines in Columbia, South Carolina; Abbot Trailways in Roanoke, Virginia; and Fullington Trailways in Pennsylvania provide charter and tour, airport shuttle and commuter services throughout the United States and Canada. In total, the private bus industry provides an average of 745 million passenger trips each year. In addition, ABA members also include an additional 3000 member companies and organizations which provide motorcoach passengers with services. These members include tour operators, tourist attractions, destinations, hotels, restaurants, bus manufacturers and those companies that serve bus manufacturers and bus companies.

On behalf of the ABA membership I would like to thank you, Mr. Chairman for having this hearing. The fight to make bus travel safer is one that the ABA has been in the forefront for many years. Over the last several years, I and other ABA staff have testified several times before Congress on this issue and on what is required to make bus travel even safer than it is.

I should note that the bus industry is one of the safest modes of transportation. The National Safety Council in its report "Injury Facts 2011" notes that the intercity bus transportation accident death rates for the years 2006-2008 (the latest year for which statistics are available) was 0.03 per 100 million passenger miles, which is twenty times safer than travel by passenger car. Of course, as you rightly point out, even one death is too many and we all must do everything we can to improve bus travel. ABA and its members, and certainly me, are even mindful that it is not only our customers who ride our buses but our neighbors, family, employees and friends.

Mr. Chairman, as I have indicated, ABA's proposals for increased bus safety are of long standing. A little over six years ago in a published letter to the Editor of the "*Roll Call*" newspaper (April 4, 2005), I noted that "not all bus companies are alike" and that customers had to beware of "...unsafe operators...who do not follow federal and state requirements, have improper registration, insurance and shoddy maintenance and who do not provide lawfully mandated service to disabled people". (A copy of that letter is attached to my testimony). Since 2005, ABA members and staff have testified in various State and Federal forums on the need for more, and more effective bus safety regulation and enforcement.

ABA has testified repeatedly in favor of a more rigorous bus operator entry policy. The current lack of entry standards and inspections allow for illegal operators to fall through the cracks. The industry has called for an end to "chameleon" carriers that evade the loss of operating authority by repainting their buses and reopening one block over. Our calls for change have gone largely ignored by the public and the media. ABA testified in support of enforcing federal bus safety rules and a month later, a Washington Post columnist extolled the virtues of an obviously unsafe operator whose driver cheerfully broke several state and federal laws while driving to New York City. ABA members report rouge buses on the road with no US DOT markings, or buses whose original name has been painted over, or operators who refuse to carry people with disabilities, yet we still see these illegal operations on the highways. Our call for national, uniform and continual inspections has been met with calls for changing the inspection process in ways that endanger drivers, passengers and vehicles. The current inspection regulations when enforced work. As evidence of this we have seen that in just the past two years without the need for roadside or shoulder inspections the number of destination or facility inspections has doubled. However, enforcement is still not uniform as legal and known operators with facilities and strong safety records are being inspected repeatedly to increase the total number of checks while illegal operators are left to fall through the regulatory safety net. We are a safe industry but there are bus operators who will, for a fare, put all ABA and its members have worked for, in jeopardy, while putting the public safety at risk. These are the operators we all need to eliminate from the nation's highways. We know who they are. They are clearly indicated in FMCSA's safety website. There are several steps that can be taken to get these carriers into compliance or get them off the roads and ensure motorcoach safety but these steps require action by federal and state authorities and by the public at large.

First, the ABA was an early and enthusiastic supporter of Transportation Secretary LaHood's Motorcoach Safety Action Plan. ABA believes that State bus inspection programs must be strengthened. ABA has found that fewer than a dozen States have effective bus inspection programs and less than half

the states have any bus inspection program at all. We agree with the Motorcoach Safety Action Plan when it declares that "a robust compliance and enforcement program is critical to ensuring the motorcoach carriers operate safely" (U.S. DOT Motorcoach Safety Action Plan, pg. 26). Certainly, ABA applauds FMCSA's actions in ensuring that the carrier involved in the accident in Virginia cannot operate again and we support FMCSA's actions to investigate the websites that seem to cater and promote unsafe carriers. ABA supports FMCSA's actions because they are aimed at the right target, the unsafe or illegal bus operator. ABA believes enforcement is the key for one reason: A review of the safety data shows that 54% of all motorcoach fatalities in the decade of 1999-2009 were accidents of either unsafe or illegal bus carriers. In other words, over half the fatalities in this period is the result of bus operators who should not have been allowed to operate under current federal regulations or bus drivers who should never have been allowed to operate a vehicle.

ABA is convinced of the centrality of enforcement to our safety efforts. In this regard we believe that FMCSA needs to undertake additional bus inspections. It is noteworthy that a news article after the fatal crash in Virginia highlighted a Virginia State Trooper's assertion admission that prior to the crash that the State "hadn't inspected buses in several years"...and "that it was hard to keep up with these buses". (*Virginian- Pilot Newspaper*, June 5, 2011, pg. 5). Clearly more inspections are needed. And better training for those inspectors would also be of help in light of the minimum time spent inspecting buses. Funding for commercial motor vehicles (CMV) inspections is accomplished via the federal government's Motor Carrier Safety Assistance Program (MCSAP). This program was established by section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) to provide funds for States to inspect commercial motor vehicles (CMVs). While the program prescribes federal standards for annual inspections of CMVs, the states are largely required to complete the inspection or use a State inspection program that is comparable to, or as effective as, the federal inspection requirements. However, most states use the bulk, if not all, of its MCSAP allocation to inspect trucks. ABA's analysis of the relevant data concludes that of all the CMV inspections accomplished between FY 2005 and FY 2009 there have been fewer than 200,000 combined bus vehicle and driver inspections for out-of-service violations, compared with over five million combined truck vehicle and driver inspections. That is to say that only one out of every twenty four inspections involved a motorcoach. To combat this ABA, has in the past, recommended that a certain percentage of MCSAP funds be allocated for bus inspections and that States certify this use of the funds to the U.S. Department of Transportation. We renew that recommendation today (a copy of our statistical analysis and our previous recommendation are appended to my testimony).

In lieu of additional FMCSA staffing for additional bus inspections, ABA recommends that FMCSA hire third party inspectors for the task. ABA has also long recommended this step. The Department of Defense (DOD) has a rigorous bus inspection program which is accomplished by third part inspectors. The DOD program is considered by motorcoach operators to be the most comprehensive of any state or federal agency. In addition, ABA suggests that FMCSA should adopt the results of a DOD inspection. As it is now, many ABA members are approved by both agencies. It appears to ABA that one clearance should be satisfactory, thus freeing inspection resources for other carriers.

Third, and related to the first recommendation, ABA suggests that a portion of the MCSAP fund be withheld from States unwilling or unable to implement a bus inspection program that meets federal program standards. If you agree that bus inspections are critical to enforcement that you must agree that all States should have a bus inspection program. It is necessary that bus inspections be uniform across the country. We have to ensure that unscrupulous bus operators cannot move from a state with a "high" enforcement effort to a state whose enforcement effort is less than desirable to do so would b to compromise safety to a significant degree.

Fourth, we must raise the bar concerning who can become a passenger carrier operator. As it stands now, all one needs for FMCSA operating authority is an application fee of $300.00, proof of an agent for service of process and proof of insurance (currently a minimum of five million dollars) and some showing that you are willing and able to comply with applicable ADA requirements. The applicant is granted authority and at some point within 18 months of that authority being granted FMCSA will visi your facility and determine your fitness to continue operations. I have to say that the FMCSA has made gains here by reducing the time for a bus safety audit to four months, but ABA believes that FMCSA should consider some kind of inquiry into the fitness of an operator prior to that individual can fully begin operations. We also fully support the application of a written test and interview of perspective new entrants so that once the operator purchases equipment and hired drivers federal inspectors can review operations before they have begun in earnest.

Fifth, with respect to the Commercial Drivers' License (CDL) process for passenger carrying drivers, ABA believes that Congress should explore requiring an applicant background check before a state can grant a CDL. Specifically, this background check would verify the information required under the "Background and Character" section of 49 CFR Part 391.21. That section requires verification of tha applicant's identity and any drug and alcohol violations, verification of the applicant's work permit (if any) and history and a review of the applicant's driving history for suspensions or disqualifying conditions.

Sixth, in those cases where the Secretary of Transportation has issued an out-of-service order against a motor carrier of passengers and has determined that the carrier presents an imminent safety hazard, the Secretary should notify the state MCSAP lead agency of that order. After which the State agency should ensure that the carrier has ceased operations and if the state agency finds a violation of that out-of-service order the agency will seize the license plates of the vehicle. Alternatively, FMCSA should be given the authority to shut down a company, pull the plates and impound the vehicle.

Finally, we continue to believe that there is an education process that needs to be undertaken. Too many members of the public seem to believe that price, and specifically the lowest price, is the only requirement that needs to be considered when hiring a motorcoach. Nothing could be further from the truth. ABA recommends that FMCSA and ABA undertake the development of a public awareness campaign that will explain to the public how to pick a motorcoach operator and what factors should inform that decision. This campaign should be comprehensive and include PSAs along with written and electronic material.

I would like to address one other issue that has lately been raised. The idea that somehow the hours of service a motorcoach driver operate must be changed. Less than ten years ago the FMCSA changed the hours of service for truck drivers (actually giving them eleven hours driving time) while leaving motorcoach drivers at a total of ten hours driving time. When FMCSA made the change the then Administrator announced that there was no evidence that changing the hours of service for motorcoach drivers would increase safety. If FMCSA believes that changing the motorcoach drivers' hours of service will increase safety then ABA will support such a change however, we note that as yet there is no research that would support that conclusion and in so far as we are aware, no FMCSA proposal to change our hours of service. The challenge the motorcoach industry faces is the presence of illegal and unsafe operators that do not care about current federal regulations. Simply changing the hours of service rules with adequate research may only serve to hurt good bus operators while leaving the bad to continue their operations.

Mr. Chairman, members of the Committee; ABA is a partner in safe carrier operations with anyone who wants to make bus travel safer. ABA is a supporter of H.R. 1390, a bill introduced by Congressman Bill Shuster and Congresswoman Eddie Bernice Johnson (Congresswoman Laura Richardson, Congresswoman Jean Schmidt, Congressman Larry Bucshon and Congressman Tim Holden are also cosponsors) which attempts to make motorcoaches even safer with the application of new technologies, more bus inspections and more oversight of motorcoach operators. We also have asked Congressman Shuster to consider amending the bill by adding some of the recommendations I mentioned today. We want what you want: safe and legal motorcoach operators moving around the country. We have a responsibility to the traveling public to make this happen and we want to assure you of our willingness to work with you to see that it does.

Thank you, Mr. Chairman; I am happy to answer any questions you or any members of the Committee may have for me.

Respectfully submitted

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The Honorable John L. Mica

Chairman

U.S. House of Representatives Committee on Transportation and Infrastructure

2165 Rayburn House Office Building

Washington, D.C. 20515

Dear Chairman Mica:

Thank you for the opportunity given the American Bus Association to testify at the June 13, 2011 hearing, entitled "How Best to Improve Bus Safety on Our Nation's Highways". In answer to your letter of June 20, 2011 I enclose ABA's responses to your additional questions for the record. I will first repeat each question and then provide ABA's answer immediately after. Thank you again for allowing me to testify and please be assured that ABA is a partner in your efforts to make bus travel safer.

Question 1: World Wide Tours was an ABA member at the time one of the company's buses crashed in New York, killing 15 people. Is World Wide Tours' safety record typical for an ABA member?

Answer 1: No. World Wide Tours safety record is not typical for an ABA member. In fact, World Wide Tour's ABA membership was suspended when the association learned that World Wide Tours FMCSA safety rating was downgraded to "Unsatisfactory". ABA suspends any member whose safety rating is declared "Conditional" or "Unsatisfactory." Of course, we learned of the rating change through the news media, months after the accident. ABA believes that it would be best if FMCSA specifically notified ABA of any change in the safety rating of any motorcoach operator so that ABA could take appropriate action.

Question 2: If, as you believe, the private motorcoach industry is among the safest modes of transportation, what do you believe is the reason for the sudden rash of motorcoach accidents?

Answer 2: ABA believes that there are several reasons for this increase in crashes. Some of these companies are not interested in safe operations but only in revenue. These companies may not

have the resources or experience to operate safely. Indeed, these carriers run without proper safety procedures, unsafe drivers and equipment and even with improper insurance. The lack of bus inspections by the FMCSA and state enforcement personnel its State partners and the lack of oversight on the issue of who is qualified to be given authority to operate a passenger carrier increases the likelihood of crashes by these companies.

Question 3: In your testimony you state that bus inspections are at least a partial answer to the issue of motorcoach accidents. If that is the case, why does ABA oppose the proposal to allow roadside inspection of buses which some claim prevents bus accidents? Are there any other ways for law enforcement to protect the safety of passengers other than through roadside inspections?

Answer 3: ABA opposes roadside inspections, absent the bus or motorcoach presenting an "imminent hazard" to the passengers or other travelers for one overwhelming reason. Such inspections are inherently unsafe and add little to making the industry safer; particularly when there are other inspection venues that accomplish the goal of safety without the dangers of roadside inspections. There is no question but that having fifty-five passengers getting off a motorcoach and milling around the road while a bus inspection is undertaken is dangerous. How do you ensure the safety of the passengers? How do you accommodate passengers with disabilities getting off and on the bus safely? How does the inspecting officer even ensure his or her safety while inspecting all parts of the motorcoach including the undercarriage? What if the weather is inclement or at the extremes of heat and cold? Moreover, the answer is not; as some would have it, to have buses stopped at state weigh stations. First, such stations rarely have any places for passengers to wait, let alone wait in any measure of comfort. Second, assuming the bus or the driver is put "out of service" where can the passengers wait while expecting the relief bus or driver? Third, illegal or unsafe operators are learning to detour around weigh stations, thus avoiding any inspection.

Another reason for prohibiting roadside inspections is the impact these inspections have on the national system of interline schedules of fixed route operators. Roadside inspections invariably cause substantial delays which lead to buses being late at their subsequent stops, causing passengers to miss connections throughout the system. Since buses can be inspected at origins and destinations, there is no reason to cause disruptions throughout the system except for imminent hazards.

There is one way and two places for safe and secure bus inspections: Inspect the operator at the operator's origin or destination points. For fixed route operators, their origin and destinations are readily available on the internet since they have to let their passengers know the boarding and deboarding locations, if that fails, it is simply a matter of identifying locations in other ways. As the CVSA witness, Major Palmer noted at the hearing, in Texas the law enforcement community has focused on following the leaflets in Texas communities announcing motorcoach trips and inspecting the buses before passengers climb on board. Similarly, for charter buses, even if the origin of the trip is not publicly available, everyone knows where the most likely destinations are. At those locations, buses and drivers may be inspected while there is no discomfort to any passengers and where the passengers may wait in comfort and safety while awaiting the relief bus or driver, if either bus or driver is put out of service.

It is important to note that law enforcement is, in fact, using these other ways to increase bus safety inspections. Notwithstanding the existing prohibition against roadside inspection of buses, FMCSA recently announced that the number of bus safety inspections jumped from 12,991 in 2005 to 25,703 in 2010 and in a two week period in May of this year, FMCSA and its state partners conducted over 3000 bus safety inspections. Clearly, the statutory limit on roadside inspections is not preventing law enforcement from dramatically increasing its focus on bus safety.

Question 4: In your testimony you refer to the lack of bus inspections versus the number of truck inspections. Can you shed light on why that disparity exists?

Answer 4: Although we appreciate the renewed focus on bus safety inspections, preventing bus and motorcoach accidents are not deemed to be a high priority in most states. The statistics on accidents confirm this. The National Transportation Safety Board (NTSB) and the National Safety Council (NSC) both consider motorcoach travel to be the safest surface transportation mode. While bus accidents cost the lives of an average of 20 passengers each year, truck accident fatalities are several times that number. This fact apparently encourages most states to use most, if not all, of their MCSAP funds for truck inspections. Furthermore, in several states there is a lack of motorcoach traffic, leading those states to put all their resources on truck inspections. Also, there are fewer trained bus inspectors than truck inspectors (and inspecting motorcoaches does require different training than truck inspections). ABA has recommended that some percentage of MCSAP funds be allocated for bus inspections to at least lessen the disparity in bus inspections. In lieu of states' doing bus inspections, a portion of the MCSAP funds could be used by FMCSA to hire third party inspectors.

Question 5: In the wake of these motorcoach accidents, it is clear that some drivers are not following the hours of service requirements. Do you think this is a problem with the current hours of service requirements, or is this a problem with enforcement? Do you support reexamining these requirements?

Answer 5: ABA does not believe that there has been any evidence that the hours of service requirements are an issue in bus and motorcoach crashes. What is the issue is the lack of enforcement of the hours of service requirements. A bad driver or bad operator will seek to breach the hours of service requirements regardless of how many hours the driver is legally allowed to operate the vehicle. The practice of driving in excess of the hours of service does not mean that the hours of service are wrong. It may mean that drivers do not get sufficient rest during off-duty hours, engaging in strenuous activities prior to driving to driving a commercial vehicle, sleep disrupting conditions like sleep apnea, and drivers not getting proper exercise or maintaining a proper diet.

It should be noted that approximately five years ago, FMCSA concluded that there was no evidence to support a change in the industry's hours of service. The industry's operations, scheduled service and charter and tour, have geared their operations on the basis of that determination. We must point out that changing the industry's hours of service will entail a massive dislocation of the industry and impose great costs on a small business industry. But while the industry is comfortable with the current system ABA does believe that the issue of hours of service should be studied. We note that FMCSA is beginning

a study on the hours of service in motorcoach operations, bringing on board Dr. Greg Belenky, a recognized expert in the field of sleep and fatigue to head the study. Dr. Belenky was a featured speaker at the ABA's Bus Industry Safety Council (BISC) the association's industry safety group a week after the hearing and asked for volunteer operators and drivers to launch the study. ABA supports the study and looks forward to reviewing its conclusions.

Question 6: Administrator Ferro has proposed increasing the penalty for passenger carriers that operate without U.S. DOT authority from $2000 a day to $25,000. Do you believe this will effectively prevent bad actors from operating on our roads? Do you support this penalty increase?

Answer 6: ABA believes that increasing the penalty for operating without authority is one weapon in the war against illegal carriers and we wouldn't have any concern over a $25,000 fine. However, it is not the only weapon available and not the only weapon that should be employed. Congress should also give U.S. DOT the authority to "pull" the license plates on vehicles found to be operating without authority and "boot" buses and secure the facility. It is the only way to prevent carriers from adopting a new name, a new website and operating again within a week of FMCSA's effort to shut them down. In addition, we must ensure that potential operators have the management tools and financial resources to operate in the industry. ABA has recommended that FMCSA adopt a more rigorous application process and indeed institute a safety audit (paid for by the applicant) prior to that carrier's being granted authority and prior to the first person boarding the bus. Finally, we do support Administrator Ferro's proposal to increase the penalty against illegal operators.

Once again, may I express my appreciation for being allowed to testify at the June 13, 2011 hearing.

Sincerely yours,

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STATEMENT OF VICTOR S. PARRA

PRESIDENT & CEO, UNITED MOTORCOACH ASSOCIATION

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 13, 2011

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STATEMENT OF VICTOR S. PARRA
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COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 13, 2011

Chairman Mica, Mr. Rahall, Members of the Committee. I appreciate you calling this hearing today and the opportunity to appear before the committee and represent the bus and motorcoach industry in my testimony. This Committee has a long and distinguished record of promoting safety on our roadways and lies at the center of our nation's discourse on the best practices to achieve safe and efficient travel.

On behalf of the United Motorcoach Association, it is my goal to provide the Committee our perspective on the factors that contribute to our industry's notable safety record and our goal of improving that record. Founded in 1971, the United Motorcoach Association (UMA) is the nation's largest association of bus and motorcoach companies and industry suppliers with over 1,200 members located across North America. Membership represents the full spectrum of bus and motorcoach operations; from small family charter and tour - to nationwide scheduled and commuter service operations The United States Small Business Administration estimates over 90% of all privately owned bus and motorcoach companies meet the definition of small business.

UMA is deeply saddened by the recent motorcoach accidents and we extend our deepest sympathies to the victims, their families and all those affected. While accidents in general are preventable, they are seldom predictable. Safety is defined as the freedom from the occurrence or risk of injury, danger, or loss. The bus and motorcoach industry as a matter of routine is challenged to mitigate the risk of traveling on our nation's roads and highways where over 30,000 fatalities occur annually. It is a fact the motorcoach industry possesses one of the strongest safety records in the passenger transportation industry. According to the National Highway Traffic Safety Administration (NHTSA), over the ten year period between 1999 and 2008, there were 54 fatal motorcoach crashes resulting in 186 fatalities. During this period, on average, 16 fatalities have occurred annually to occupants of motorcoaches in crash and rollover events, with about 2 of these fatalities being drivers and 14 being passengers. While every fatality is one too many, we believe the record is evidence of the industry's absolute commitment to operating safely. Like other modes of commercial passenger transportation service, severe accidents must be a rare occurrence in order to earn and maintain the confidence of the traveling public.

One of UMA's primary objectives is to promote safety and compliance among its membership. We do this through several initiatives, including the Bus & Motorcoach Academy, administered by the College of Southern Maryland, our Safety Management Seminars held at the National Transportation Safety Board Training Center, the annual UMA Motorcoach Expo and various state and

regional association meetings held throughout the nation. UMA is a member and sponsor of the Commercial Vehicle Safety Alliance (CVSA), an active participant on their Passenger Carrier Committee and a longstanding member of the Bus Industry Safety Council. Additionally, we routinely volunteer and assist the National Transportation Safety Board when investigating bus and motorcoach accidents.

With regard to recent accidents, it is incumbent upon safety professionals regarding these specific incidents to await the outcome of the work of state and federal enforcement agencies and the National Transportation Safety Board (NTSB). Motorcoach accidents with fatalities and serious injuries are generally complex; often with primary and secondary causes that are initially less obvious. The findings of thorough accident investigations by trained and skilled professionals are the backbone of future risk mitigation that leads to improved safe operations.

In 2009 the nation's 35,000 plus motorcoaches completed over 723 million passenger trips traveling over 58 billion passenger miles and over 1.7 billion service miles. The nation's motorcoach industry offers safe, dependable and affordable passenger transportation; facilitating travel to jobs, education, healthcare and leisure travel.

Studies show that America's bus and motorcoach industry's combined economic impact is over $112 billion with combined wages over $40 billion, directly and

indirectly employs over 1 million and pays over $16 billion in federal and state taxes. Today's modern motorcoach fleet is the most carbon-efficient mode of transportation averaging 206 passenger miles-per-gallon while removing thousands of private passenger automobiles from the road every day. In December 2008 the Union of Concerned Scientists concluded motorcoaches are simply the greenest form of leisure travel. The motorcoach industry is an essential component in the $700 billion travel and tourism industry and the thousands it employs.

UMA has long advocated for strong and improved enforcement of existing federal and state motor carrier safety regulations for our vehicles and its drivers. Additionally, UMA has long supported initiatives based on sound science and research that will truly improve safety, many of which are included in the common sense bill introduced recently by a Member of this distinguished Committee, Congressman Bill Shuster. HR 1390, the Bus Uniform Standards and Enhanced Safety Act of 2011 (BUSES Act). The bill is cosponsored by three other Members of this Committee, Congresswoman Eddie Bernice Johnson, Congressman Tim Holden and Congresswoman Jean Schmidt, as well as three other Members of Congress. This bill contains reasonable and obtainable timelines that enhance National Highway Traffic Safety Administration's (NHTSA) efforts to promulgate new rules that will truly improve motorcoach occupant protection as well as other provisions such as increased enforcement of regulations and provisions addressing training and testing to improve motorcoach

safety that UMA supports. We thank Congressman Shuster and the cosponsors of his bill for their strong leadership on this issue and developing a rational approach to improving bus and motorocoach safety, and stand ready to work with them and this Committee on this important issue. .

The bill directs the Secretary:

(1) to prescribe federal motor vehicle safety standards for occupant protection systems for new and existing motorcoaches.

(2) monitoring of the safety performance of motorcoach service providers and other commercial motor carriers of passengers; and

(3) progressive interventions to correct unsafe practices, and if they are not corrected, an enforcement action.

(4) Further directs the Secretary to:

(a) prescribe regulations to establish minimum training requirements for motorcoach drivers,

(b) review testing requirements for a commercial driver's license passenger endorsement,

(c) develop requirements for the testing of medical examiners who examine commercial motor vehicle operators for physical fitness and seek to be listed in the national registry,

(d) review annually the implementation of the commercial driver's license requirements of at least 10 states to assess the validity of physical examination reports and medical certificates submitted by certified medical examiners, and

(e) establish the national registry of medical examiners.

(f) requires the Secretary to review and report to Congress on federal commercial motor vehicle safety inspection standards.

(g) revises federal motor carrier registration requirements.

Today, the nation's bus and motorcoach industry, while not immune to the current economic conditions, is vibrant and competitive; offering a broad range of diverse services, schedules and amenities. One bright spot in the past few years has been short-line scheduled intercity passenger service. A study conducted by DePaul University's Chaddick School for Metropolitan Development found that for the third year in a row, the intercity bus service is the fastest growing mode of intercity transportation, outpacing both air and rail transportation. The study reports: "Intercity bus operations expanded by 6.0% in 2010, suggesting that the sector's renaissance is continuing.

The study further stated:

> "Intercity bus service in the United States remained robust through 2010 as a result of rising travel demand, escalating fuel prices, and investments in new routes," DePaul University researchers said in the new study. "These and other factors propelled motorcoach travel to its highest level in years and made the intercity bus the country's fastest growing mode of transportation for the third year in the row."

The rapid rise in scheduled intercity motorcoach service is directly attributable to passenger carriers discovering the traveling public's aversion to bus terminals, a preference for convenient curbside origination and destination locations and an array of onboard amenities. The economy of bus and motorcoach travel in general often results from efficient operating cost and volume of passengers, trips, etc. Occasional reference is made to "low-cost" carriers, theorizing a possible source of unsafe operations. As in the airline industry, there does not have to be, nor should there ever be, any parallels between safety and value pricing in a competitive marketplace. Passengers' expectations of safe transportation should always be the highest priority.

In August 2007, NHTSA announced "NHTSA's Approach to Motorcoach Safety" and a series of evaluations including occupant retention, window glazing, emergency egress, stability control, roof strength, and flammability. In December 2007, NHTSA conducted the first ever motorcoach crash test. NHTSA subsequently issued a Notice of Public Rulemaking (NPRM) requiring three-point seatbelts in newly manufactured motorcoaches no later than three years after the final rule is issued. Other tests are either underway or completed and we are advised subsequent rulemaking is eminent. UMA has monitored NHTSA's crash testing and development of these regulations from the start and is on record as supporting occupant protection standards for new motorcoaches.

Under the leadership of Secretary Ray LaHood, the United States Department of Transportation adopted the Motorcoach Safety Action Plan following an analysis of safety data. USDOT identified seven priority action items that include the following:

1. Rulemaking concerning electronic on-board recording devices to monitor drivers' duty hours and manage fatigue.
2. Rulemaking to prohibit cell phones for drivers.
3. Rulemaking to require seatbelts.
4. Development of roof crush performance requirements.
5. Study stability control systems for motorcoaches.
6. Enhance oversight of carriers.
7. Establish minimum knowledge requirements for companies who seek to transport passengers.

Four of the seven items have either pending or final rules.

In December 2010 the Federal Motor Carrier Safety Administration (FMCSA) launched the long-awaited Comprehensive Safety Analysis 2010. Now referred to as Comprehensive, Safety, and Accountability (CSA), FMCSA and their state partners now have the capability to more readily identify non-compliant carriers and target specific problematic areas. Just months into implementation UMA concludes CSA is already altering behaviors and producing results. We are most satisfied this program will serve the long-term needs of the enforcement community. UMA has consistently supported FMCSA's development of CSA

through consultation with the Agency and promotion and education of our members. These mutual efforts continue.

UMA has deep reservations regarding legislative efforts that could unintentionally harm small entrepreneur's entry as new carriers. While some often use the term "illegal" or "rogue" carriers" and "new entrants" in the same reference; there are no direct parallels UMA is aware of that would signify "new entrants" afford a disproportionate risk to the traveling public and indeed anecdotal evidence suggests otherwise.

According to FMCSA, from 2008 to 2010 there have been 2,426 new entrant passenger carrier applicants of which 1,755 of those were approved (282 were pending). 352 were dismissed with no response and are likely applicants that chose not to enter the business. 35 applicants formally withdrew their application. Only 1 passenger carrier applicant was officially rejected by FMCSA. Despite approval of 1,755 new entrant passenger carriers, FMCSA advises the actual number of interstate passenger carriers remains relatively constant, between 3,600 and 3,800. While I assure you few bus and motorcoach companies welcome more competition, it is clear we need new entrant passenger carriers to expand our markets and create jobs to better serve the passenger transportation community. UMA enthusiastically supports the Secretary's efforts to "establish minimum knowledge requirements for companies who seek to transport passengers" and have steadfastly recommended

classroom and exam requirements followed by compliance audits within 45 days after conditional operating authority is granted.

UMA shares industry concern regarding those few passenger carriers who either lack knowledge of or disregard the Federal Motor Carrier Safety Regulations and support cogent efforts to arrest those motor carriers that compromise the efforts of enforcement agencies and the industry.

Significant rules have been recently developed that apply to motor carrier management and bus and motorcoach manufacturers. Legislators and enforcement agencies must recognize however that despite motor carrier policy and training efforts, drivers for the most part often operate great distances from the direct supervision of their employers. Motor carrier employers are largely dependent on highway enforcement agencies to identify and mitigate unsafe behaviors. While UMA continues to support limiting driver and vehicle inspections to terminal and destination locations that do not interfere with passenger safety or schedules; we do not and have never supported allowing drivers or vehicles to continue operating in an unsafe manner; however we remain concerned about random roadside inspections. Just this past week a 76-year-old Minnesota woman died when the car in which she was riding hit the back of a motorcoach that had been stopped alongside I-94 by a state trooper. The trooper narrowly escapes injury. Fortunately no passengers on the motorcoach were seriously injured; but, a larger vehicle such as a long-haul truck would have surely resulted

in a much worse accident. Congress has wisely protected motorcoach passengers from roadside accidents and those protections should remain.

UMA generally concludes that under USDOT Secretary LaHood's leadership, FMCSA and NHTSA have set in motion renewed enforcement efforts, proposed and final rules and testing based on sound science and practical applications that will serve the traveling public and the nation's bus and motorcoach industry for years to come.

However, UMA has deep reservations regarding imposition of additional mandates that may not improve safety to the traveling public while needlessly jeopardizing the financial stability of an industry with a strong safe operating history. Additional considerations to increasing the cost of motorcoach travel must be afforded those individuals, often with limited financial resources, that depend on access to an affordable means of travel. Congress should consider that the most likely alternative to bus and motorcoach travel is the private passenger automobile, an inherently less safe mode of travel than bus or motorcoach. Mandates result in increases in costs that are ultimately passed along to passengers and groups who use the services of buses and motorcoaches. Can anyone say that safety was improved when a local bus and motorcoach company goes out of business or fare increases compel people to choose a private passenger automobile, the single largest source of highway fatalities?

The United Motorcoach Association appreciates the opportunity to submit testimony regarding these matters and stands ready to contribute to on-going efforts to enhance the safety of bus and motorcoach operations.

Committee on Transportation and Infrastructure
Hearing on How Best to Improve Bus Safety on Our Nation's Highways
June 13, 2011
Victor Parra
Questions for the Record

1. Curbside departure of inter-city bus travel may have increased convenience for passengers, but some companies offering this service have been shown to have sub-par safety and compliance ratings. What can be done to improve the safety performance of these companies?

   I t is very likely the majority of departure points for motor passenger carriers in scheduled, charter and tour service take place at curbside or parking lot locations. Departure locations have no bearing on whether or not a passenger carrier is in compliance with the applicable Federal Motor Carrier Safety Regulations and whether their drivers are adequately and properly trained, well rested and obey traffic and safety laws. Departure locations are also not representative of a carrier's office or maintenance facilities. UMA concludes all motor carriers should be treated equally when they are equal in operation; however, regulators should recognize that on balance all scheduled service carriers typically travel exceptionally more miles and operate considerably more hours than charter and tour operations. A new scheduled service carrier will likely travel significantly more miles and hours than the typical new charter and tour operation. This variation should likely compel regulators and enforcement agencies to recognize the possible need for closer monitoring and more frequent interventions regarding compliance and monitoring. UMA believes FMCSA's Comprehensive, Safety and Analysis Program (CSA) represents the most advanced and best mechanism to improve the safety performance of these companies; however, metrics must be improved to indicate the propensity for crashes and passenger carrier operations must be segregated to optimize the opportunities to mitigate crashes.

   Also, particular note should be made by Congress that despite mandates for multi-modal inclusion of inter-city motor carriers in inner-city transit terminal facilities; these directives are largely ignored; often compelling inter-city motor carriers to seek alternative, curbside locations in cities that often prefer more formal departure locations.

2. Enforcement of regulations while drivers are away from the direct control of their employers is left to law enforcement; however, in your testimony you stated that safety checkpoints and inspections along the route are unsafe. How can law enforcement protect the safety of passengers other than through roadside inspections?

   Since 2005, Congress has wisely mandated a prohibition of random roadside inspections of motor passenger carriers except in the case of an imminent or obvious safety hazard and ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

Considering the obvious hazards of multiple passengers at roadside, as well as passenger comforts and schedules; this prohibition to restrict driver and vehicle inspection activity was not opposed by the enforcement community. In 2005 there were 12, 991 inspections

of motorcoaches. In 2010 enforcement officials conducted 25,703 inspections; an increase of 98 percent. Additionally, FMCSA observed a 19 percent decrease in motorcoach fatalities between 2004 and 2009. The current law prohibiting random*

roadside inspections does not appear to impede inspection activity while protecting passengers from highway roadside hazards; indeed if anything it suggests the change may have increased the number of inspections and subsequently reduced fatalities.

Considerable Federal dollars were invested in the Inspection Selection System (ISS). ISS is supported by FMCSA for use to screen and prioritize commercial motor carrier vehicles for inspection. The ISS inspection value is based on a carrier's Safety Management System values. If sufficient safety evaluation data is not available, the carrier is assigned a value based on past inspection rate relative to size. New Entrant motor carriers are identified in the software and automatically receive a high priority for inspection simply because of the lack of past inspections. UMA believes this very effective tool for prioritizing motor passenger carriers for inspection is underutilized. In as much as this tool is already paid for by Congress, and fully implemented, FMCSA should urge state enforcement officials to prioritize those motor passenger carriers with high inspection value for terminal and destination inspections and interceded appropriately. UMA concludes it is inappropriate to seek additional authority and perhaps scarce federal dollars when existing tools have not been maximized to improve compliance and safety.

In our just- in-time society, motorcoach charter groups and passengers have schedules to keep. Imagine missing the first quarter of an NFL game, the first three innings of a major league baseball game or the first act of a Broadway play because of a roadside inspection? Consider the missed connections if the motorcoach is traveling to the airport. What is the cost of the lost productivity to society? If a motor carrier adjusts for the extra time (approximately one hour) for a Level I inspection and arrives at the destination one-hour early, that is a lost hour of productivity. If they are operating on a just-in-time schedule, the lost time incurred by the group of passengers will likely require reimbursement or compensation. A complete analysis of the cost of random inspections by the Government Accountability Office should be considered prior to any further considerations.

Finally, there appears to be at least anecdotal evidence that traffic enforcement agencies are reluctant to enforce basic safety laws such as speeding. Reluctance to ticket and fine bus and motorcoach drivers is adverse to safe operations and precludes a motor carrier's ability to intervene early and remove a driver from passenger carrier service. Most motor passenger carriers, and their insurers, have a low threshold for accumulative

violations and generally, the earlier these unsafe practices are identified the sooner a motor passenger carrier can intervene with a driver.

3. Administrator Ferro testified that the Federal Motor Carrier Safety Administration is proposing to require new motorcoach companies to undergo a full, pre-authority safety audit before receiving commercial operating authority registration. Does UMA have any concerns with this proposal?

There is no evidence UMA is aware of that suggests new entrants pose a disproportional safety hazard to the traveling public. Please understand UMA wants the traveling public to know they can use a new operator with reasonable assurances the carrier fully understands the safety requirements for interstate motorcoach operators. We believe the best way to achieve this is through a compulsory classroom or equivalent requirement and a federal exam to determine that the new applicant has a satisfactory knowledge of the Federal Motor Carrier Safety Regulations (FMCSRs).

To the casual observer, pre-authority safety audit before receiving commercial operating authority may initially appear very sensible; however, industry and most in the enforcement community are aware that there would be little if anything to audit or inspect. New entrant applicants are compelled by the nature of the industry to apply for operating authority very early in the process of a start-up venture; often well before they have concluded they will actually start a new company offering passenger carrier service. Typically, no equipment and insurance is obtained, no drivers are hired, no facilities exist, before operating authority is granted. A safety audit reviews performance standards. Since a new entrant has not operated and typically will not have any vehicles; any enforcement officials visiting a new entrant applicant will likely be unable to conduct any more than a "conversation." UMA concludes this "conversation" would be subjective and not within the scope of the enforcement community's authority to determine an applicant's safety. Intentions are not measureable. Additionally, discussions have been advanced to ***eliminate*** *the current new-entrant safety audit currently conducted shortly after operating authority has been granted. At this point UMA must conclude the discussion has "progressed" to a point that suggests the rationale is now backwards.*

There have been suggestions that FMCSA could conduct a new-entrant applicant audit with 90 days of an application. UMA suggests Congress should mandate a new-entrant safety audit within 90 days of granting conditional authority (UMA supports a 45 day mandate) and operations begin. UMA also notes that fatal accidents of recent note involved established motor passenger carriers with multiple years of operation. We are somewhat perplexed when the conversation inevitably turns to new entrants when the accident always involves an established carrier; however, this does not mitigate our desire to improve a new-entrant motor passenger carrier's prospects of long-term safety

success. Again, there is no evidence UMA is aware of that suggests new entrants pose a disproportional safety hazard to the traveling public; however, UMA concludes that a compulsory education requirement, followed by an exam pertaining to the Federal Motor Carrier Safety Regulations, in combination with FMCSA's current vetting program to screen "chameleons", followed by a new-entrant safety audit post granting of authority is chronologically logical and will produce a safer motor passenger carrier initially as well as long-term.

4. In the wake of these motorcoach accidents some are calling for the reexamination of the motorcoach drivers' hours of service regulation enforced by the Federal Motor Carrier Safety Administration. Do you support reexamining these regulations?

UMA supports the current FMCSA Motorcoach Driver Fatigue Study currently being conducted by Dr. Greg Belenky, MD of Washington State University. The study is consistent with UMA's policy that legislation and regulatory changes should be drive by sound research and science.

UMA looks forward to reviewing the findings to determine if changes may be indicated. , and if so, what specific changes should be considered.

5. What other steps do you believe would be helpful in reducing motorcoach accidents?

The current CSA program appears to be the most thorough and comprehensive mechanism to reduce motorcoach accidents. Its alert system permits enforcement agencies to detect carriers that are incurring safety violations and intervene much earlier. For this program to realize its potential, however, will require a complete commitment by FMCSA's state agency and law enforcement partners to follow up with carriers once they receive an intervention notice from FMCSA. Continued analysis and improved application of the acquired data will only serve to improve FMCSA's ability to intervene with carriers to prevent crashes.

It is a long-standing industry request that FMCSA require states to improve their bus and motorcoach inspection programs as a condition of receiving Motor Carrier Safety Assistance Program funds.

6. Administrator Ferro has proposed increasing the penalty for passenger carriers that operate without U.S. DOT authority from $2,000 a day to $25,000. Do you believe this will effectively prevent bad actors from operating on our roads? Do you support this penalty increase?

UMA does not believe there is a widespread problem and potential violators are likely unaware of the current fines and would likely be just as "unaware" of a $25,000 fine.

As an example, UMA is aware that occasionally operators receive notice of revocation, usually as a result of an insurance filing not filed by the insurer. Too frequently and

unknown to the carrier, the insurance filing is received after a date that requires an application for reinstatement. The carrier may operate in interstate commerce believing he is in compliance; often only to discover later through inspection he is not. A $25,000 fine for a "paperwork" snafu seems excessively punitive and misapplied.
UMA could likely support a substantial fine for motor passenger carriers that violate a cease and desist operations order and would recommend that conditions and amounts of these penalties be disclosed to the motor passenger carrier. UMA also suggests that FMCSA remain in contact with an out-of-service carrier, directly and/or through state enforcement agencies, to monitor how that carrier manages their prior commitments to groups and passengers and business runoff.

In general, UMA believes existing laws and regulations are adequate to maintain safe and efficient operations; but, require a more consistent level of enforcement that is often lacking for a myriad of reasons.

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