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**STATEMENT OF JACQUELINE S. GILLAN**

**VICE PRESIDENT**

**ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

**BEFORE THE SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**

**HOUSE COMMITTEE ON  
TRANSPORTATION AND INFRASTRUCTURE**

**U.S. HOUSE OF REPRESENTATIVES**

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Good morning. My name is Jacqueline Gillan and I am Vice President of Advocates for Highway and Auto Safety (Advocates), a coalition of consumer, health, safety, medical 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 Subcommittee for holding hearings on the safety of motorcoach operations.

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 motorcoach safety, consumers are forced to travel wearing a blindfold. Many of us in this hearing room have put our excited child on a bus for an out-of town school field trip, waved goodbye to our retired parents as they took off for a vacation, or participated in a church trip with family and friends that relied on hired bus transportation. Some have even taken advantage of low cost fares to travel between Washington, DC and New York or Boston on buses boarded at street corners in downtown locations. Despite the widespread use of motorcoach transportation in our everyday lives, the public is almost completely in the dark about the safety of motorcoach companies because of chronic and continuing failures by the Federal Motor Carrier Safety Administration (FMCSA) to exercise its legal authority to regulate the safety of this industry and the failure of the National Highway Traffic Safety Administration (NHTSA) to require basic safety improvements to ensure the crash avoidance and crashworthiness of buses and motorcoaches.<sup>1</sup> My testimony this morning will highlight the government studies conducted over many years that have identified and substantiated lax federal oversight, the inability of FMCSA to keep unsafe motorcoach companies and drivers off the road, the inexcusable lack of easily-accessed public information to provide consumers with critical safety information, and recommendations for congressional and agency actions.

### **Motorcoach Crashes Are Serious and Deadly**

Less than three weeks ago, a motorcoach hired to transport college students from Ohio to Georgia, plunged over a bridge parapet on March 2, 2007, at a T-intersection terminating a left-hand exit lane on I-75. 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, six were killed and six others, including the coach of the school's baseball team, were transported to the hospital with severe injuries. There are major issues involving highway design in this crash, including a left-hand exit lane with inadequate signing that is indicated as advisable in the Manual on Uniform Traffic Control Devices, the federal standard governing traffic engineering devices and practices for all U.S. streets and highways, and a bridge parapet that was incapable of restraining a heavy commercial vehicle, topics that will undoubtedly be addressed by the National Transportation Safety Board (NTSB) which is investigating the crash.

On September 23, 2005, less than two years ago, a motorcoach carrying 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 nursing home. The National Transportation Safety Board (NTSB) is still in the process of investigating that horrific crash. A hearing held by NTSB just last month, on February 21, 2007, archived on NTSB's web site,<sup>2</sup> concluded that there were multiple failures of major proportions in almost every area of motorcoach operation in this tragic crash, including poor evaluation of the

company by the contracting party, an assisted living business that has facilities nationwide; poor maintenance by the motorcoach company that was directly linked to this catastrophic crash; and chronic failures of FMCSA oversight and enforcement that allow motorcoaches like this company and others, such as curbside operators, to conduct unsafe operations with impunity.

Nearly eight years ago, on May 9, 1999, a motorcoach traveling on I-610 in the heart of New Orleans, Louisiana, with 43 passengers aboard, ran off the road, struck a guardrail that was powerless to stop it or change its deadly trajectory, broke through a chainlink fence, collided with a raised earth embankment, and finally slid to a halt. Twenty-two passengers were killed, and the bus driver and 15 passengers received serious injuries. Only 6 passengers escaped with minor injuries.

Every one of these catastrophes and many others reflect an unrigorous and undemanding approach to safety. There are thousands of small commuter airline flights every day in the U.S., yet in most cases each aircraft is carrying fewer passengers than an over-the-road motorcoach that, filled to capacity, is transporting 55 to 58 people. The issues and concerns of motorcoach safety are in many ways much more akin to passenger aviation safety than they are to large truck safety.

Despite the millions of passengers and billions of air miles flown each year, passenger aviation often concludes a year without a single crash fatality. Unfortunately, public authorities have chronically overlooked motorcoach safety despite the far higher risk of traveling by highway. Motorcoach safety is not being held to the same high standards as aviation safety both for operators and for vehicle safety oversight. This failure to ensure strict oversight and safety compliance is systemic in nature and exists at both the federal and state levels. Both FMCSA and state commercial motor vehicle (CMV) authorities are not adequately inspecting motorcoaches and safety auditing motorcoach companies to ensure that dangerous companies are prevented from continuing to operate. Safety information on motorcoach companies is being compiled by FMCSA that is inaccurate and late. In addition, the method that FMCSA uses to score motorcoach safety, the Safety Status Measurement System or SafeStat, and the system of evaluation, Compliance Reviews, that is used to assign safety fitness ratings, have been shown repeatedly to be unreliable and unequal to the important task of identifying the motor carriers at high risk of crashes. In addition, even the basic, once-a-year bus safety inspection required by federal regulation is apparently not being carried out by half the states.

There also are obvious problems with the crashworthiness of motorcoaches for protecting occupants against severe and fatal injuries. In the most recent crash in Georgia, and in many others investigated in the last several years by NTSB, occupants were ejected through side windows and, in the case of the horrific crash in Georgia that just occurred, apparently ejected through the windshield. These deficiencies, mostly due to a lack of leadership and willingness to make safety regulation and oversight the highest priority at all levels of government, can and must be corrected.

### **Motorcoach Crashworthiness**

Because motorcoaches carry up to 58 passengers, when a crash does occur it can be both catastrophic and deadly. Since 1999 alone, NTSB has investigated and reported on nine major motorcoach crashes. Those nine NTSB-investigated crashes took scores of lives and inflicted

injuries on hundreds of people. In many cases, those severe injuries represented a lifetime of disability for the victims.

Motorcoaches and buses currently are very top heavy, with high centers of gravity especially when fully laden with passengers. Rollover propensity is much higher than for passenger vehicles. So the first order of business is to reduce the tendency of motorcoaches and buses to roll over in severe crash conditions. Second, apart from the issue of how to keep passengers in their seats to avoid injuries sustained within the compartment when crashes do occur, there is the major issue of preventing occupants from being ejected from the crash-involved bus or motorcoach. Advanced glazing and as well as side window and windshield bonding strength must be specified in improved federal standards so that when side windows are fixed or deployed in a closed position, the glazing cannot be dislodged or penetrated by occupant impacts permitting ejection. Advanced glazing of various designs is currently available to prevent occupant ejection.<sup>7</sup> However, NHTSA to date has taken an on-again, off-again attitude towards this important countermeasure, and then only with regard to passenger vehicles. Little interest has been shown at the agency in anti-ejection, advanced glazing for motorcoaches and buses. In fact, a search of NHTSA's web site returned very few entries on even the topic of bus and motorcoach occupant ejection. However, NHTSA and Transport Canada released a study just two weeks ago that is optimistic about the value of advanced glazing as a safety countermeasure in bus and motorcoach windows to prevent occupant ejections, especially in rollover crashes.<sup>8</sup>

Advocates cannot find any overall data from NHTSA's National Center for Statistics and Analysis about the percentage of ejections that occur in buses of all kinds and in motorcoaches. However, ejection figures even for passenger vehicles are very frightening and, given the ability of a motorcoach to transport up to 58 passengers plus a driver, the issue of occupant ejection is a very real one that needs attention by NHTSA. The major topic 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<sup>9</sup> and Australia.<sup>10</sup> While Three-point belts restraining motorcoach occupants became mandatory in Australia 13 years ago. It seems obvious that some method of keeping motorcoach occupants in each of their seats is badly needed so that they do not impact both unforgiving interior surfaces and equipment in motorcoaches, as well as to prevent their ejection from the vehicle.

### **FMCSA's Bus/Motorcoach Safety Program Suffers From Multiple, Chronic Failures**

Motorcoaches in interstate commerce are motor carriers regulated by FMCSA along with trucks in interstate freight operations that exceed 100,000 pounds gross vehicle weight.

According to figures from FMCSA, there are just under eight million large trucks on our highways and streets today, but less than 800,000 buses of all kinds.<sup>11</sup> This 10-to-1 proportion already balances the scales heavily in favor of concentrating on large truck safety. Even as the FMCSA is failing in its stewardship of large truck safety, it is also failing to focus on the comparatively smaller number of motorcoach companies that carry millions of passengers daily in the U.S. FMCSA estimates that, in 2005, the latest data available, there are about 20,000 passenger-carrying companies conducting interstate operations with more than a quarter million vehicles operated by more than 436,000 drivers.<sup>12</sup> Nevertheless, the agency has not been able to fulfill its obligation to ensure public safety on buses and motorcoaches.

## **FMCSA Lacks Reliable Information on State Annual Bus Safety Inspections**

The Secretary of Transportation is required to prescribe standards for annual, or more frequent, inspection of CMVs, including motorcoaches, or approve an existing state inspection program that the Secretary finds is equally effective.<sup>14</sup> Nine years ago last month, the Federal Highway Administration (FHWA), which had jurisdiction of truck and bus safety prior to the establishment of the FMCSA in 2000, issued a notice on that status of state bus inspection programs.<sup>15</sup> A subsequent notice in 2001 added a final state, Ohio, which the agency had deemed to have a periodic inspection program that met the requirements of a program in the CFR, at least with respect to church buses. In that notice, FHWA listed 25 of 50 states with approved, equivalent periodic inspection programs.<sup>16</sup>

Although Advocates' staff performed a search of FMCSA's current web site for state bus inspection programs, we could not find any entries on the current status of state compliance with the requirements of 49 CFR Part 396, including any updated listing of states that may have instituted periodic bus inspection programs in the intervening six years since the last notice that accompanied the closing of the relevant docket for adding new states. We also do not know how comprehensive each bus inspection program may be in each of the 25 listed states. It may be the case that some of the other states listed currently do not inspect all buses or do not inspect over-the-road motorcoaches.

Timely information on state bus inspection programs – whether they are still current and how well and often they inspect motorcoaches, as well as any other types of buses, for safety compliance – is not available to the public on FMCSA's web site. It should be stressed here that the minimum period for the required inspection is only once a year.<sup>17</sup> 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. 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.

## **FMCSA Suffers from Major Data Deficiencies for Identifying Motor Carriers That Are High Safety Risks**

Chronic problems of data adequacy, including accuracy, completeness, and timeliness, have compromised both the FHWA's Office of Motor Carriers and FMCSA's effectiveness for many years in conducting their compliance and enforcement programs. These defects continue today, as pointed out below, and have been documented by federal government oversight investigations that stretch back into the middle and late 1990s.

For example, the U.S. Department of Transportation (DOT) Office of the Inspector General (OIG) issued a report in early 1997 showing that database problems used to prioritize all motor carriers for compliance reviews were endemic at FHWA OMC, the agency of jurisdiction that preceded FMCSA.<sup>18</sup> The data deficiencies found included inadequate numbers of carriers covered in the agency's database, failure to include state and local records of crashes and

violations of local traffic laws, and inaccurate and delayed data submissions by the states. These severe data problems covered trucks, buses, and motorcoaches alike.

A follow-up OIG study was conducted two years later, in 1999, and found the same defects as the 1997 study, as well as a failure of FHWA to ensure that local enforcement agencies accurately and completely report crashes, traffic violations, and roadside inspection results.<sup>19</sup> Those data problems were found by the OIG to undermine any effectiveness of the Safety Status Measurement System (SafeStat) to identify and target motor carriers with high-risk safety records by, for example, targeting compliance reviews for the worst companies. SafeStat problems will be discussed below in a separate section of my testimony.

These criticisms of the serious defects in FHWA's data system were extended by the OIG in early 2000 to the newly created FMCSA's use of the Commercial Driver Licensing Information System (CDLIS).<sup>20</sup> The OIG found that both FMCSA and the states were failing to collect information on driver disqualifying violations and also failing to disqualify drivers even though a state's CDLIS data bank showed that drivers who should be disqualified were still operating their vehicles.

These findings of data inadequacies were mirrored in findings and testimony from the U.S. General Accounting Office (now the Government Accountability Office) (GAO) that began before the creation of FMCSA and have continued until the present.<sup>21</sup> Sadly, the careful evaluation of severe data problems at FMCSA and specific recommendations for improvement have gone unheeded at the agency. In November 2005 the GAO issued yet another report on the failures of FMCSA to correct these deficiencies.<sup>22</sup> In general, GAO found that CMV crash data still do not meet general data quality standards of completeness, timeliness, accuracy, and consistency. One-third of CMV crashes that the states are required to report to FMCSA were not reported and those crashes that were reported were not always accurate, timely, or consistent. GAO also found that FMCSA had no formal guidelines for awarding grants to the states for their data improvement efforts. Moreover, even the agency's ratings of how well or badly states were performing in their data collection and transmission efforts were flawed because of the methodology used by FMCSA to develop the state rating system.

Timely, accurate, complete data are crucial to FMCSA's mission to identify dangerous motor carriers and to stop them from operating until appropriate safety corrections are made. We should never forget that this might be even more crucial for motorcoaches because of the large number of passengers that are simultaneously placed at risk of death or injury if they are patrons of a motorcoach company that fails to meet minimum safety standards.

### **Systemic Defects in SafeStat Undermine the Agency's Ability to Identify Motor Carriers with the Highest Safety Risks**

SafeStat is a complex algorithm used by FMCSA to identify which motor carriers present the highest risk of having crashes and of committing motor carrier safety regulatory violations. Recent evaluations of SafeStat by the U.S. DOT OIG and by the Oak Ridge National Laboratory have both come to the same conclusions: SafeStat is not objective, many motor carriers are improperly identified as high safety risks, many motor carriers fail to be identified as high safety risks, and the data used to calculate SafeStat are unreliable for the reasons listed in the previous section of this agency review.<sup>23</sup>

The 2004 OIG report found that the usefulness of SafeStat was undermined by substantial weaknesses in the data reported to FMCSA by the states and motor carriers. Specifically, there was a lack of updated census data for 42 percent of the active registered motor carriers that had failed to meet the congressionally mandated requirement to update their registration every two years, and only 31 percent of these carriers had SafeStat scores for one or more safety evaluation areas. The OIG Report also found that about one-third of large CMVs involved in crashes each year had no reports in the database, six states did not report any crashes during a six-month period that was reviewed, and that 20 percent of the crashes in fiscal year 2002 were reported six or more months late. There also were high levels of underreporting of moving traffic violations that had been identified during roadside inspections, as well as failures to identify carriers associated with violations or misidentification of carriers with violations. Finally, the OIG Report found that 71,000, or 11 percent, of the active interstate motor carriers were on record as having no power units and 98,000, or 15 percent, of registered carriers were on record as having no drivers.

The OIG Report also determined that these severe data deficiencies were not being corrected by FMCSA through the use of existing sanctions and incentives to promote better data reporting by states and motor carriers. FMCSA had not imposed sanctions on any states, including withholding basic Motor Carrier Safety Assistance Program (MCSAP) grant funds from states for failing to correct data quality problems. Even MCSAP incentive grant formulas are not adequate because the agency only uses timeliness of data submitted to make incentive calculations while data accuracy and completeness – which are crucial – are ignored.

As a result of these severe data defects, the OIG report recommended that the use of these defective data continue for internal agency purposes, but that they were not reliable enough for public use. As a result, FMCSA suspended posting these crash and safety data about motor carriers on its web site shortly after receiving the OIG report until these data met higher standards for completeness, accuracy, and timeliness. Those data are still not available on FMCSA's web site location called Analysis and Information Online. As discussed in the previous section, the latest GAO report issued November 2005<sup>24</sup> shows that little progress has been made by FMCSA in nearly two years to correct these system defects in its data system for determining the safety of motor carrier management and operations.

One of the OIG's recommendations in this report was for FMCSA to hire a contractor to conduct a new study for revalidating SafeStat. Oak Ridge National Laboratory performed this review, and its study was sent to the agency dated October 2004.<sup>25</sup> Unfortunately, this evaluation uncovered fundamental defects in SafeStat that the prior OIG evaluation had not detected:

- **SafeStat Is not Objective:** The basis of SafeStat ultimately is subjective, based upon expert consensus opinion or judgment, and therefore has no meaningful statistical relationship to the data used to operate the system's algorithm for detecting high safety risk motor carriers.
- **Most Motor Carriers Are improperly Identified as High Safety Risks:** The identification of nine of every 10 motor carriers as high safety risks is mistaken and only an artifact of the data and the use of those data in the SafeStat algorithm.

- **The Data Used in SafeStat Are often Unreliable:** As was also found both by the OIG and GAO, the data used in SafeStat are defective. About half the states either report CMV crash data late, underreport the number of CMV crashes, or overreport the number of CMV crashes. Also, the data sufficiency criteria are unrealistic, do not support a sound statistical use of the data gathered by FMCSA, and often result in many motor carriers not receiving a safety ranking.

With regard to this last point, although the Oak Ridge Report does not specifically address the implications of the data sufficiency issue in detail, the criteria for being ranked strongly favor larger carriers with more power units, drivers, and higher annual vehicle-miles-traveled. Many small carriers with few power units and drivers cannot achieve the exposure necessary to be safety ranked, yet many small motor carriers are apparently at high risk of safety violations. This is particularly true of motorcoach companies, which often have few buses in each fleet. Because they are not identified by SafeStat, these small motor carriers “fly under the radar” of detection by FMCSA for oversight and enforcement.

We do not know exactly what steps FMCSA is taking to correct these baseline defects of SafeStat, the system the agency relies on to make its calculations for tagging motor carriers as high safety risks and subjecting them to CRs and more roadside inspections. Although Congress directed that motor carrier data systems be ensured for accuracy, reliability, and timeliness both in the Transportation Equity Act for the Twenty-First Century<sup>26</sup> and in the ensuing legislation creating FMCSA, the Motor Carrier Safety Improvement Act of 1999,<sup>27</sup> these mandates have still not been fulfilled.

Because many interstate motorcoach companies have relatively few power units and drivers, we are concerned that both the data on motorcoaches sent from the states and the calculations of SafeStat are not identifying at-risk motorcoach companies.

### **FMCSA Performs Few Compliance Reviews and Fails To Assign Timely Safety Ratings**

A central problem compromising agency effectiveness in overseeing motor carrier safety and reducing FMCSR violations is the annually low numbers and percentage of both roadside inspections and compliance reviews (CRs). For example, the recent, tragic motorcoach crash in Georgia at the beginning of March of this year that took several lives and inflicted severe injuries involved a motorcoach company, Executive Coach Luxury Travel, Inc., of Ottawa, Ohio. That motorcoach has one of the more recent CR safety fitness ratings: Satisfactory, assigned on January 31, 2001. As we point out below, this is not an assurance of contemporary operating safety fitness. The rule of thumb we use at Advocates is a safety fitness rating assigned more than five calendar years ago is no longer a reliable guide to a motor carrier’s safety quality; and using a five-year timeframe for safety fitness relevance is very indulgent. On this basis, the safety fitness rating of Executive Coach Luxury Travel, Inc., is out of date and no longer a reliable indicator of safety fitness. I might also point out here that the safety fitness rating of the company is fairly typical even when a Satisfactory rating is assigned: one of the four Safety Evaluation scoring areas is blank. Unfortunately, the blank area is the overall Safety Management score for the motor carrier.

FMCSA has a mandate inherited from FHWA OMC to safety rate all motor carriers.<sup>28</sup> However, as pointed out in the OIG report of March 26, 1997, FHWA in 1992 basically decided that it would no longer attempt to fulfill the statutory requirement to safety rate all registered interstate motor carriers.<sup>29</sup> As Advocates will show below in a sample of a few states, only a small portion of registered motorcoaches have been assigned timely, reliable safety ratings.

The implementing regulations for conducting CRs specify criteria for assigning one of three safety rating categories to a motor carrier: Satisfactory, Conditional, Unsatisfactory.<sup>30</sup> The well-known 1999 OIG report cited earlier in Advocates' testimony found that FHWA's OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations and that the enforcement program did not deter noncompliance.<sup>31</sup> One of the primary reasons found by the OIG for this ineffective enforcement outcome was the paucity of CRs performed along with the low number and percentage of motor carriers receiving either Conditional or Unsatisfactory ratings.

At the time the OIG report was released it was estimated that there were about 480,000 registered motor carriers of all kinds,<sup>32</sup> so the figure of 6,473 CRs performed in 1998, the most recent year for which the OIG had data, represents only 1.3 percent of all registered motor carriers. This figure, in turn, includes only a tiny number of safety rated motorcoaches. Moreover, the OIG report found that of the carriers receiving CRs with safety ratings, only 1,870 – or only about 0.4 percent – had received less-than-Satisfactory ratings. Of this number, only 971 received a rating of Unsatisfactory. This means that only about 0.2 percent of all registered motor carriers were given Unsatisfactory safety ratings.

On its face, it is improbable that assigning Unsatisfactory safety ratings to only 0.2 percent of registered interstate carriers has a deterrent effect on what in 1998 was about 480,000 registered motor carriers, including several hundred motorcoach companies. Indeed, the OIG found that a deterrent effect was not even evident for the carriers that received either Conditional or Unsatisfactory safety ratings. For example, the OIG report pointed out that of the 1,870 carriers that received either Conditional or Unsatisfactory ratings, 650 had over 2,500 crashes from October 1, 1994, through September 30, 1998, resulting in 132 fatalities and 2,288 injuries.

Other organizations have called for improvements to the safety rating process. For example, NTSB's current list of the Most Wanted Transportation Safety Improvements – Federal Issues<sup>33</sup> argues that the entire 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. NTSB points out that a pending Unsatisfactory rating occurs if two of six factors are found unacceptable, after which a general freight carrier has 60 days to correct the deficiencies or receive an Out-of-Service Order (OOS) that prohibits further operations. For hazardous materials (hazmat) and passenger motor carriers, the company has 45 days to correct the deficiencies or receive an OOS Order.

However, NTSB regards this system as simply permitting identified unsafe carriers and drivers to continue to operate. NTSB instead recommends that if a carrier receives an Unsatisfactory rating for either the vehicle or the driver factor, the bad rating alone should trigger a pending Unsatisfactory rating. According to NTSB, this recommendation has been reissued

annually since 1999, but FMCSA does not plan full implementation of any changes to its safety rating and other safety oversight processes until 2010.<sup>34</sup>

In its 1999 major report on motor carrier safety oversight and enforcement, the OIG found that the number of CRs performed by FHWA's OMC had declined by 30 percent since fiscal year 1995 even though there had been a 36 percent increase in the number of motor carriers over this period.

FMCSA's web site contains a National Summary for the most recent available year, 2005, for which data are available.<sup>35</sup> If one were to calculate the percentage of CRs performed in 2005 out of the total number of motor carriers listed for 2005 as registered with FMCSA, this amounts to about 1.4 percent of registered carriers receiving CRs. This figure represents no significant difference from the poor showing of FHWA OMC shown earlier in our review that was documented in the 1999 OIG report.

Recall that the 1999 OIG report indicated that 971 carriers out of approximately 480,000 registered companies received an Unsatisfactory rating. This means that current efforts to take dangerous carriers out of operation have resulted in even fewer assigned ratings of Unsatisfactory out of a much larger population of registered motor carriers (677,249), nearly one-third larger than in 1998. We also have been told that the number of registered motor carriers with FMCSA now exceeds 702,000 as of last year.

If the figures on CRs posted on FMCSA's web site are to be relied upon, it is clear that not only has there been no improvement in conducting CRs and assigning Conditional and Unsatisfactory ratings since the figures provided in the 1999 OIG report, the agency on a percentage basis appears to be even further in arrears in using this powerful safety oversight and compliance tool. However, this condition appears to be irremediable given the decision of FHWA OMC documented in the earlier 1997 OIG report no longer to attempt to perform CRs and assign safety ratings to all registered motor carriers.<sup>36</sup> This was borne out by the July 2001 testimony of the IG who stated that more than three-quarters of registered motor carriers in the U.S. had not been subjected to a CR and were operating without any safety ratings.<sup>37</sup>

Motor carrier safety oversight of passenger-carrying interstate companies as a part of overall motor carrier safety monitoring is also suffering poor attention at FMCSA. The figures for 2005 from the agency's Analysis & Information portion of its web site show only 547 CRs of the nearly 20,000 passenger transportation motor carriers registered with the agency.<sup>38</sup> This represents 2.7 percent CRs conducted that year of all registered passenger transporting interstate motor carriers.

When U.S. motorcoaches are stopped and inspected, the results are equally discouraging. For 2005, 12 percent of the motor carriers of passengers were placed out of service (OOS), a figure that has not changed over the last several years. Similarly, driver safety is a serious concern – driver inspections in 2005 placed 21 percent of U.S. drivers of interstate motor carriers of passengers OOS for failing to retain the driver's previous seven days logbook showing the driver's record of duty. In the same vein, 20 percent of these drivers – one in five – were found in 2005 to have no record of duty status logbook. These aggregate figures are not reassuring,

especially for patrons of interstate motorcoach companies, and they show essentially no progress in substantially improving motorcoach safety on a nationwide basis.

### **There Are Unresolved, Major Safety Problems with Bus and Motorcoach Oversight and Enforcement for Passenger Motor Carriers Operating in the U.S. under NAFTA and CAFTA.**

#### **North American Free Trade Agreement (NAFTA)**

The safety enforcement figures for passenger carrying vehicle and drivers domiciled in Mexico are even more startling. It is clear that FMCSA is paying little attention to bus and motorcoach safety at our southern border. This is apparent from the agency's effort to mount a "demonstration program" for long-haul Mexico-domiciled motor carriers that openly dodges the ongoing safety problems of motorcoach and bus safety at our southern border. The IG's last report in January 2005,<sup>39</sup> and his testimony on March 6, 2007, before the Subcommittee on Transportation, HUD, and Related Agencies of the Senate Committee on Appropriations,<sup>40</sup> document the ongoing poor safety oversight of buses and motorcoaches crossing into the U.S. from Mexico. After years of opportunities to correct the safety problems and comply with the direction of Congress in Section 350 of the fiscal year 2002 appropriations legislation for the U.S. Department of Transportation,<sup>41</sup> FMCSA still does not have an adequate inspection and enforcement presence at the designated U.S.-Mexico bus crossing points. FMCSA figures on the Analysis & Information web pages show 84 active Mexico-domiciled motor carriers of passengers operating about 434 vehicles that are permitted to enter the U.S. and travel within the commercial zones of the four border states. However, traffic violations for these operations jumped from only four violations in 2004 to 49 violations in 2005. There is no explanation for this enormous increase in a single year.

Similarly, FMCSA only conducted two (2) CRs on the 84 active Mexico-domiciled motor carriers in 2005, which amounts to 2.4 percent of these motor carriers of passengers. Even when there are few motor carriers under the agency's safety stewardship, its most intensive safety evaluation, the CR, is scarcely used.

The sad tale of nominal agency safety oversight of Mexico-domiciled passenger-transporting motor carriers continues. Almost one-third (31.43 percent) of the drivers of these passenger-carrying companies from Mexico had no commercial driver licenses when they were inspected and put OOS in 2005. One-fifth – 20 percent – have no record of duty status, that is, paper logbooks showing their compliance with federal commercial driver hours of service requirements. And over 17 percent were conducting passenger transportation without the vehicles registered with FMCSA for legal operating authority. One-fifth of the vehicles inspected were placed OOS (19.4 percent).<sup>42</sup>

It is clear that there remain unresolved safety problems with those buses and motorcoaches that are now permitted to enter and operate only within the U.S. commercial zones along the border. Since the bus-related safety issues that Congress required to be resolved under Section 350 before the border is opened have not been completed, the NAFTA "pilot program" surgically removes buses and motorcoaches from the proposed "pilot program." What will happen, Mr. Chairman, after the "pilot program" is completed and the U.S. border is open to commercial traffic? Will buses and motorcoaches carrying passengers from Mexico be

permitted free reign on U.S. highways even though they were not monitored under the “demonstration program”? Will buses and motorcoaches from Mexico be able to drop and/or pick up passengers in the U.S? Who will regulate, oversee and enforce violations? We have grave concerns about the road that the FMCSA and DOT are driving down in pell-mell fashion.

### **Central American Free Trade Agreement (CAFTA)**

Aside from the unresolved issues of motorcoach and hazardous materials transportation across the U.S. border under NAFTA, another looming problem of long-haul non-U.S. motor carrier operations in the U.S. is the growing presence of non-North American (non-U.S. and non-Mexico) bus and trucking companies in the U.S. conducting long-haul operations. This issue has been addressed under the Central American Free Trade Agreement (CAFTA) that was ratified by Congress and signed on August 5, 2004.<sup>43</sup>

Unlike Mexico-domiciled long-haul trucking in the U.S., Central American long-haul truck and bus companies are not subject to any of the restrictions and requirements of Section 350. In fact, FMCSA plans on determining whether they comply with all of the U.S. safety standards, regulations, and law by simply asking each company to sign off on a certification statement.<sup>44</sup> There will be no pre-authorization safety audits as are required in Section 350 for awarding probationary operating authority to long-haul motor carriers from Mexico, for example. The agency will only perform a paper review for awarding operating authority, although FMCSA promises that it will conduct a compliance review within 6-12 months of registering each new CAFTA motor carrier and awarding operating authority, and within three months of any existing CAFTA motor carrier already operating in the U.S. This proposal implies, of course, not only that Central American motor carriers will, in the future, be allowed to traverse U.S. highways legally for months before a definitive safety examination takes place, but that the carriers already operating throughout the U.S. have never had compliance reviews. It should be stressed that one of the companies already conducting interstate operations in the U.S. from Central America is a motor carrier of passengers.<sup>45</sup>

In essence, Mr. Chairman, FMCSA will largely be relying on the authorities in Mexico to ensure the safety of commercial vehicles from Central America seeking entry into Mexico on their way to the U.S. We think the irony of this circumstance is apparent.

Another issue concerning non-North American motor carriers operating nationwide in the U.S. is FMCSA's statement that it will require them to only use drivers with valid commercial driver licenses and to have those drivers subjected to U.S. drug and alcohol testing. This appears to imply that, to date, these drivers have not necessarily had valid commercial licenses or drug and alcohol testing. It also begs the question of what is meant by a “valid commercial driver's license.” There is a Memorandum of Understanding (MOU) between the U.S. and Mexico adopted 15 years ago that recognizes the Licencia Federal de Conductor (LFC) as equivalent to the U.S. CDL. One of the many objections to the original U.S.-Mexico MOU was its after-the-fact publication even though many safety organizations did not agree that the LFC is equivalent in quality to the U.S. CDL. We are not aware of any separate agreements formally recognizing the commercial license of each individual CAFTA signatory.

In the preamble of the cited rulemaking action, FMCSA also points out that there are already many illegal motor carrier operations conducted in the U.S. by citizens of Central

American nations who drive or fly into the U.S., buy a commercial motor vehicle, and then drive it through the U.S., down across our southern border, through Mexico, and into one of the Central American countries. These vehicles and their drivers have no legal operating authority, no valid commercial driver licenses, no insurance, and their vehicles may not comply with U.S. safety standards. To address this problem, FMCSA states that it will “educate” southbound non-North American motor carriers and later conduct “periodic strike forces” at the southern border to target non-registered southbound non-North American commercial motor vehicles. The vehicles and their drivers/owners will receive roadside inspection citations and sometimes will be placed OOS.<sup>46</sup>

This is an irresponsible stance that threatens safety because it turns a blind eye towards the operation of commercial motor vehicles and drivers who are illegally operating trucks and buses in interstate movement and violating numerous federal laws and regulations. Why aren't these illegal vehicles and drivers being stopped from operating in the states before they impact highway safety with crashes, deaths, and injuries? Why is FMCSA allowing these vehicles to travel hundreds, perhaps thousands, of miles before they are intercepted at the southern border? Why is the primary response an inspection and only *sometimes* putting them out of service? If the vehicle and driver are operating dangerously, why would FMCSA send them into Mexico to reach a Central American country, thereby endangering citizens in other countries to the south of the U.S.? Isn't this the agency just washing its hands of illegal, perhaps dangerous vehicles and drivers operating in the U.S.?

These and other questions about CAFTA commercial motor vehicle long-haul operations in the U.S. need to be carefully examined and answered before the southern border is fully open to all commercial motor vehicles coming through Mexico. There also needs to be a careful evaluation of whether the measures that FMCSA has proposed – and not yet adopted -- in its December 21, 2007, Federal Register notice are sufficient to ensure the quality of operating safety for long-haul motor carriers entering the U.S. from Central America.

### **State Examples Illustrate Chronic Deficiencies in FMCSA and State Motorcoach Safety Oversight**

The following examples illustrate the chronic deficiencies in FMCSA's administration of Compliance Reviews (CRs) for motorcoaches by showing the results of Advocates' investigation into several states to provide a snapshot of the current status of interstate motorcoach safety. Advocates evaluated four states in early 2006 whose motorcoach CRs are currently listed on FMCSA's web site, Analysis and Information Online. Advocates reviewed Maryland in the mid-Atlantic area, Texas in the southern middle of the U.S., Wisconsin in the upper midwest, and Oregon in the far northwest. The motorcoach CRs for each state are arranged on FMCSA's website with the final safety rating – including entries that the carriers are unrated – following the four Safety Evaluation Areas of Accident, Driver, Vehicle, and Safety Management. In each instance, the states reviewed have only a patchwork quilt of CRs that, in most cases, are outdated or incomplete for scoring in all four Safety Evaluation Areas, or the carriers, in a few instances, have been assigned Conditional or Unsatisfactory ratings. Finally, a very large percentage of motorcoach companies are unrated – FMCSA has not performed CRs and the companies have no safety fitness ratings.

**Maryland:** Advocates found 100 Safety Rated motorcoaches in Maryland in our 2006 review.<sup>47</sup> Of these, 55 were unrated, five bore Conditional ratings, and 39 had Satisfactory ratings. None was rated Unsatisfactory.

However, of the 39 Satisfactory ratings, 27 were more than five years old and had been awarded in 2000 or earlier. Many of the Satisfactory ratings had been given in the 1990s, and one Satisfactory rating had been assigned in 1988. If we regard Satisfactory safety ratings more than five years old as essentially no longer an accurate or relevant indicator of contemporary operating safety, and add the unrated and Conditional rated carriers to these outdated Satisfactory ratings, then 87 of 100 listed passenger carriers do not have timely safety ratings.

But the story gets even worse. In many instances, even motorcoaches with Satisfactory safety ratings were not rated in all four (4) Safety Evaluation Areas. In fact, of the 39 passenger carriers out of 100 listed that carry Satisfactory safety ratings, only five had been reviewed for all four Safety Evaluation Areas. The most frequent missing evaluation area is the overarching finding of company Safety Management adequacy. Only the four motorcoaches assigned Satisfactory ratings in 2005 had been evaluated for Safety Management.

If a reasonable standard is assumed for the Maryland safety ratings of motorcoaches for both timeliness and completeness, as described above, then of the 100 companies listed on the FMCSA web site, only four carriers had Satisfactory ratings, were rated recently (within the last five years), and were reviewed for all four Safety Evaluation Areas. Although FMCSA provides this web site with state-by-state CR rating information as a consumer guide to selecting a good motorcoach for transporting a wide variety of people such as children, clubs, church groups, tour groups, and the disabled, there are almost no motor carriers in Maryland to choose from that have recent Satisfactory ratings that are also the result of findings for all four Safety Evaluation Areas.

We updated our review of the state after another calendar year had passed, and found that Maryland now has 124 registered motorcoach companies. Constraints of time for this testimony did not permit us to parse the numbers as finely as we did last year. Overwhelmingly, however, most carriers still have either no ratings assigned, ratings that are provided are mostly outdated, and even recently rated carriers assigned Satisfactory ratings have one or more of the four safety evaluation areas missing. However, there has been some progress: as compared with our earlier review, four carriers had CRs performed in 2007 with resulting safety ratings. Every one of these new additions to the state's CR list is rated Satisfactory. However, the top rating of Satisfactory even for these four CRs performed in 2007 have one or more missing Safety Evaluation Areas.

**Texas:** Texas fared a little better than Maryland in 2006 in our review, but not by much.<sup>48</sup> The Texas list from FMCSA for 2006 contained 193 active motorcoaches. Of these, 75 were rated Satisfactory, nine carry Conditional ratings, and 109 were unrated. None was rated Unsatisfactory.

Of the 75 Texas motorcoaches rated Satisfactory, 20 were assigned the highest rating more than five years ago. One carrier had its Satisfactory rating assigned in 1986. A high percentage of the Satisfactory ratings were assigned in 2005 and even in 2006.

However, on closer inspection this somewhat rosier picture is not so impressive. Two of the three 2006 Satisfactory ratings alone, for example, were missing three of four Safety Evaluation Areas and one was missing two of four Areas. Of all 75 Satisfactory rated motorcoaches in Texas, 64 were not rated in all four Safety Evaluation Areas. In many cases, two or even three of the four Areas had no findings. This even includes Satisfactory ratings that were just assigned in 2005 or 2006.

Performing the same, contemporary exercise for Texas as we did just now for Maryland, of the 193 motorcoaches listed by FMCSA for the state last year, only nine are rated Satisfactory, had that rating assigned in the last five years, and were rated in all four Safety Evaluation Areas. Again, not much to choose from for a consumer trying to find the safest motorcoaches in Texas, a big state where perhaps none of those nine carriers with the best, most complete, and most recent rating is close to the location where your group needs passenger transportation service.

We again did a quick review of Texas in early 2007 to find if any major changes had occurred. The state still has the same number of motorcoach companies, 283, that it had in 2006. However, there clearly has been substantial CR action taking place in Texas since one year ago. The number of CRs conducted has substantially increased, and the number of Satisfactory rated carriers has commensurately increased. Again using our rule of thumb that a safety rating should not be more than five (5) years old, Texas now has 92 acceptable Satisfactory ratings, and the agency has shown an increased willingness to assign Conditional ratings to motorcoach companies as compared with our review last year. We do not know why this flurry of CR activity took place recently in Texas, especially when other states have not experienced much change for the better.

**Wisconsin:** Wisconsin last year had 55 registered motorcoach companies currently listed on the Analysis and Information web site. Of these, 34 were rated Satisfactory, two were Conditional, and 19 were unrated. No carrier was rated Unsatisfactory. However, 28 of those 34 Satisfactory ratings were more than five years old. Three of the Satisfactory rated carriers were awarded this highest safety fitness rating in 1987. Only one motorcoach company of the 34 rated Satisfactory had all four Safety Evaluation Areas covered for the rating. Most motorcoaches rated Satisfactory had one or more of the four Evaluation Areas unchecked. Most carriers rated Satisfactory were not rated for overall safety management. One Satisfactory rating assigned in 2000 had none of the four Safety Evaluation Areas covered, so one wonders what the highest rating of Satisfactory could have been based on.

A year later, Wisconsin now has 58 registered motorcoach companies. Of these 38 have Satisfactory ratings gained in the last five years. So just a cursory look at Wisconsin shows some improvement in recent CRs for the state. Again, we do not know why FMCSA concentrated its efforts on substantially increasing the number of CRs in Wisconsin.

**Oregon:** For Oregon, only 17 motorcoach companies were listed as having received CRs when we looked at the state in March 2006. Of these, 11 were rated Satisfactory, with none rated in all four Safety Evaluation Areas. One motorcoach company was rated Conditional and five have no ratings. Seven of the 11 carriers rated Satisfactory were assigned this rating more than five years ago. One Satisfactory rated carrier was given its rating in 1986.

A year later Oregon now has 12 companies rated Satisfactory within the last five years. However, not one of those ratings have all four Safety Evaluation Area scores. Oregon also still has safety ratings stretching back to 1986 and, of the 23 motorcoach companies registered in the state, five are still unrated.

### **New States Reviewed in 2007 Reveal Ongoing FMCSA Safety Oversight Deficiencies**

**Florida:** We looked at Florida, a very populous state, as a good example of a bigger state that should have lots of motorcoach companies. This expectation was borne out. The current FMCSA online tally for Florida shows 134 companies. Ninety-six (96) are unrated – 72 percent of registered carriers – so when Floridians are looking for a motorcoach company, almost three out of four choices have no safety fitness ratings. Of the remainder, only 19 with Satisfactory ratings had their CRs performed in the last five years, a really slim pool of candidates for Florida motorcoach patrons.

**Tennessee:** We reviewed Tennessee as a mid-sized state both in size and in population. We found 78 registered motorcoach companies. Twenty-seven (27) of the companies have no safety fitness ratings, more than one-third. Of the rest, 42 companies have Satisfactory ratings assigned in the last five years. However, only four of these have safety scores for all four Safety Evaluation areas.

**Alaska:** Next, we evaluated Alaska, a very large state that is only thinly populated. Alaska has three registered interstate motorcoaches. Two of the three have no ratings, and the third received its Satisfactory rating in 1986. Alaskan citizens and visitors essentially have no reliable safety choices for motorcoach transportation.

**Michigan:** Michigan is a large state that also has a large population, so it should have many motorcoach companies providing interstate transportation. There are 84 registered companies in the state. Forty-six (46) have Satisfactory ratings assigned in the last five years, about 55 percent. The remaining companies are non-starters for motorcoach patrons – either unrated, rated Conditional, or rated Satisfactory more than five years ago. We found only four the Satisfactory rated carriers within our five-years cutoff that had safety scores for all four Safety Evaluation Areas.

**Louisiana:** Finally, we reviewed Louisiana, a state that has suffered real heartbreaking losses in the last two years. Unfortunately, the state's long-suffering citizens also have to put up with sub par motorcoach safety rating efforts by FMCSA. Of the 41 registered companies in Louisiana, 22 – more than half – are either unrated, have Conditional ratings, or have Satisfactory ratings more than five years ago. The pool of plausible candidates for Louisiana residents and visitors is less than half the number of motorcoach companies with interstate operating authority.

One more fact needs to be emphasized here at this end of this brief review of just a few states: a Satisfactory rating for a motor carrier is not FMCSA's "Good Housekeeping" seal of approval. A Satisfactory rating from the agency does not mean superior or excellent safety operations and safety management. In fact, FHWA back in the 1990s at one point proposed defining the Satisfactory safety rating as "Not Unsatisfactory," a characterization that does not

exactly inspire confidence in a consumer seeking transportation services.<sup>49</sup> This is borne out by FMCSA latest juggling act on the safety rating process: in its new Comprehensive Safety Analysis 2010 (CSA2010) initiative, the agency has tentatively proposed the possibility of having just a two basket system for safety ratings – Continue to Operate and Unfit.<sup>50</sup> The Satisfactory, Conditional, and Unsatisfactory rating scheme would be eliminated and replaced with a “pass/fail” rating system. In the current system, even a Satisfactory rating simply means that a carrier receiving a safety audit could have just gotten across the threshold. In school terms, a carrier receiving a Satisfactory rating could have gotten a “D-“ in the safety areas that were evaluated. Moreover, the Satisfactory rating grade was inflated by FHWA in the 1990s, essentially doubling the bad safety score that could still result in a Satisfactory rating.<sup>51</sup> However, absent serious safety problems with crashes, driver and vehicle safety oversight by the company, and overall safety management deficiencies, the Satisfactory rating can and will be awarded even to companies with mediocre safety records. We are also concerned that FMCSA will practice “grade inflation” so that many carriers that formerly would be assigned a Conditional rating will be moved up to the Continue to Operate category.

In the end, if you are a consumer looking for the safest passenger motor carrier in your state, you probably are left to your own devices to try to determine where to put your money and have the best chance of safe management, safe vehicles, and safe drivers to ensure that you and the others sharing the motorcoach safely reach your destination. You certainly will get little help from FMCSA’s safety rating efforts.

### **Motorcoach Driver Qualifications Have Inadequate Federal and State Requirements**

Current requirements for motorcoach drivers at both the state and federal levels are woefully inadequate. The driver for the horrendous 1999 Mother Day’s motorcoach crash in New Orleans had slipped through several safety nets by the time he lost control of the vehicle and left the roadway into a dangerous roadside environment.<sup>52</sup> Although he had a current commercial driver license (CDL) with the additional bus endorsement and a medical certificate, he was suffering from several life-threatening medical conditions, including severe heart problems and partial kidney failure. He also had verified use of marijuana and of a sedating antihistamine. The medical certification process both at the state and federal levels should have pulled this driver from the road long before the crash. No commercial pilot with these severely impairing medical conditions could have continued to operate an aircraft with up to 55 people aboard. FMCSA, however, regularly grants two-year exemptions to commercial drivers who do not meet the federal vision standard or who are required to take intravenous medication for diabetes mellitus. These specially exempted drivers are permitted to operate buses and motorcoaches.

Motorcoach drivers are required to have CDLs with the additional bus endorsement. However, there are no training requirements in federal law and regulation for entry-level CMV drivers, and there are none for the additional endorsements for operating multi-trailer large trucks, hazardous materials vehicles, school buses, or motorcoaches. Moreover, motorcoach drivers only have to pass an additional, short knowledge test to gain the additional bus endorsement. Once again, there is no specific federal training requirement for an interstate commercial driver transporting passengers.

Although FHWA and FMCSA together have spent over 20 years studying CMV operator training issues, producing their own Model Curriculum for training both drivers and the trainers of those drivers, and conducting rulemaking pursuant to Section 4007(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA),<sup>53</sup> 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.<sup>54</sup> 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. FMCSA did not require any specific curriculum to be used for these areas of familiarity and no minimum amount of instruction was specified. Moreover, even though FMCSA determined that drivers in their first five years of CMV operation could benefit from basic entry-level training, the agency further reduced the meaning of ‘entry-level driver’ to the point where it was defined to include only drivers with less than one year of driving experience with a CDL. Note that the agency did not require driver training as a prerequisite for a candidate seeking an entry-level CDL.

This rulemaking outcome was a complete reversal from earlier agency statements that the majority of new commercial drivers were not receiving adequate training. The agency had repeatedly asserted that the CDL itself was only a licensing standard, not a training standard, and therefore could not be expected to do the job of training commercial drivers in both the knowledge and technical skills to comply with numerous federal and state motor carrier regulations as well as to safely pilot their big commercial vehicles on public highways.<sup>55</sup> Moreover, FHWA stated that the actions of the private sector alone on a voluntary basis were unlikely to improve the inadequate level of driver training that its contractor had found in an in-depth report completed in July 1995.<sup>56</sup> FMCSA restated this finding in its 2003 proposed rule, that entry-level drivers are in general not receiving adequate basic training in the knowledge and skills necessary to operate a large commercial vehicle.<sup>57</sup>

Nevertheless, FMCSA in its final rule contradicted its stance on the need for basic entry-level knowledge and skills training that it had consistently assumed throughout the protracted history of consideration and rulemaking on this crucial safety issue, including its support for entry-level training in its own 2003 proposed rule. Instead, the agency issued a final rule that excused almost all novice drivers from even being considered entry-level commercial drivers and required them to receive only perfunctory instruction in corollary areas of CMV operation.

Because FMCSA in its final regulation reversed its own findings that basic knowledge and skills entry-level driver training was inadequate and should be required, Advocates filed suit against FMCSA. Last year, in a unanimous decision, the U.S. Court of Appeals for the District of Columbia found that the final rule was arbitrary, capricious, and an abuse of agency discretion, and remanded the rule to FMCSA. *Advocates for Highway and Auto Safety v. FMCSA*.<sup>58</sup> 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.”<sup>59</sup>

Although an excellent bus driver training curriculum was forged by FHWA 20 years ago, there are no training requirements for the operator who is responsible for the lives of 55 people on board an over-the-road motorcoach, no certification is needed to apply for an entry-level

CDL, and no instruction is needed to seek and gain the additional, special endorsement to operate motorcoaches in interstate commerce.

As already shown above, when FMCSA's laissez-faire stance on the training, certification, and licensing of motorcoach drivers is matched with the extraordinarily weak and incomplete CRs of motorcoaches, as well as to the unreliable data used by the agency to assign safety scores to these carriers, there is only one, inevitable conclusion – both FMCSA and the states are failing to properly oversee and evaluate motor coach safety at every level of analysis – company, driver, and vehicle:

- ▶ The safety data from the states relied upon by the agency are inadequate and no longer available for public use.
- ▶ The SafeStat system cannot reliably discover which carriers are at high risk of safety failures in management and operations.
- ▶ The safety audit system of CRs is a patchwork quilt of largely unrated carriers or carriers with incomplete or outdated safety ratings.
- ▶ The training of motorcoach drivers is left to the vagaries of private sector efforts with no federal benchmarks for measuring what constitutes a safe operator.

It is unimaginable that this kind of government dereliction of public safety assurance and oversight would be tolerated for commercial airline travel.

### **Conclusion and Recommendations**

It is clear that passenger transportation safety by over-the-road motorcoaches is not held to the high standards of commercial passenger aviation. Severe motorcoach crashes can take many lives in a single event and inflict severe injuries on numerous passengers. NTSB's studies and accident reports over just the past decade are testimony to the almost unimaginable tragedies that have occurred in catastrophic motorcoach crashes. Congress needs to take action to raise the level of motorcoach company safety and improve the quality of federal and state oversight.

- **Require Stringent State Bus Inspection Programs:** Bus inspection programs in the past have been incomplete or non-existent in many states. Congress should require all states to have intensive bus safety inspection programs that, at a bare minimum, require at least a once-a-year safety inspection with more frequent inspection intervals being highly desirable. Fulfillment of this requirement should be linked with each state qualifying for annual allocations of Motor Carrier Safety Assistance Program (MCSAP) funds.
- **Accelerate Basic Reform of Safety Data Reporting, SafeStat, and Compliance Reviews:** State safety data must be dramatically improved; SafeStat, including its algorithm, must be reformed from the ground up to reliably detect high-risk motor carriers; and the Compliance Review system must be reformed and dramatically expanded to keep safety ratings up to date. In particular, we are convinced that, given the very high risk exposure of up to 58 passengers being transported by interstate motorcoaches, Congress should direct FMCSA that no Satisfactory rating shall be awarded to any registered motor carrier of passengers unless all four Safety Evaluation Areas have been completed.

- **Upgrade the Testing Requirements for both Entry-Level CDLs and Special Endorsements:** Congress needs to direct FMCSA to ensure that both the Commercial Driver License entry-level examination and the additional, special endorsements are substantially improved as an adequate test of both knowledge and skills to operate a Commercial Motor Vehicle. It is especially important that there be improved testing of the special knowledge and skills needed to operate an interstate motorcoach.
- **Require Entry-Level Commercial Motor Vehicle and Advanced Motorcoach Driver Training:** Motorcoach professional drivers should be required to undergo both entry-level and special motorcoach operator training. A certification that a basic, federally-approved Commercial Motor Vehicle driving curriculum was administered and that the candidate successfully passed or graduated should be required to take the Commercial Driver License entry-level test. Similarly, advanced training education through a certified motorcoach driver training curriculum should be required as a condition for being tested for the additional, special bus endorsement.
- **Require in Legislation that All Interstate Passenger-Carrying Motor Carrier Drivers Be Required to Submit the Medical Examination Long Form to Each State Licensing Agency That Awards Commercial Driver Licenses:** In current rulemaking to integrate the commercial driver medical certification with the Commercial Driver License, FMCSA proposes that each commercial driver submit the medical certificate “short form” to state licensing authorities so that a national repository of timely information on the physical fitness status of commercial drivers can be electronically maintained and information on specific drivers quickly retrieved.<sup>60</sup> However, the agency is not requiring that the actual medical examination form be submitted to each state, despite the fact that several states filed comments with the docket pointing out that submitted fraudulent or unwarranted medical certificates to the states is a rampant practice that can only be curtailed by each state actually receiving the medical examiner’s “long form” showing the specific results of the physical fitness exam, along with the “short form,” the one-page medical certificate. Congress should require that, at a minimum, motor carriers of passengers in interstate commerce must have their drivers submit the long form to state licensing agencies, although it would be even more desirable for Congress to mandate that every commercial driver do so.
- **Federal Standards for Bus and Motorcoach Crash Avoidance and Crashworthiness Need to Be Improved:** Finally, improvements to the handling, rollover resistance, braking distance, crash avoidance capabilities of large buses and motorcoaches need to be proposed and adopted by NHTSA simultaneous with improved crashworthiness of these big vehicles when they are in crashes. A key action in this regard should be NHTSA addressing the major issue of occupant ejection prevention through a variety of countermeasures. We also need barrier systems throughout the U.S. required by Congress and the Federal Highway Administration that can withstand a large commercial motor vehicle impact and restrain and redirect the vehicle so it does not enter hostile roadside environments littered with fixed object hazards and is prevented from crossing over into opposing streams of traffic.

- Require CAFTA Motor Carriers Entering the U.S. Comply with Section 350 Requirements for Mexico-Domiciled Motor Carriers:** FMCSA is currently in rulemaking to establish amended new entrant motor carrier requirements that, for the first time, recognize the safety issue of CAFTA motor carriers operating throughout the U.S. However, the agency will not conduct pre-authorization Safety Audits of CAFTA motor carriers prior to allowing them to be awarded temporary operating authority, as is required for NAFTA Mexico-domiciled long-haul motor carriers by Section 350 of the FY2002 U.S. DOT appropriations legislation. Both property-carrying and passenger-carrying motor carriers can gain operating authority to carry freight or passengers throughout the U.S. by only filing a paper application with FMCSA. Congress should amend Section 350 and make it applicable to both trade agreements' motor carriers, NAFTA and CAFTA. This includes extending the requirements for Office of the Inspector General verification requirements and audit reports in Section 350 to CAFTA motor carriers, and directing that no CAFTA motor carrier shall be awarded permanent operating authority unless a full CR is conducted and a safety fitness rating of Satisfactory assigned. We are recommending that Congress direct that no passenger motor carrier from south of the U.S. southern border should be allowed to operate with a Conditional rating, a common circumstance for U.S. passenger-carrying motor carriers.

Thank for this opportunity to provide this information to the Committee through our testimony. We are ready to respond to any questions you might have or to supply more information for the Committee's use.

## Endnotes

<sup>1</sup> Although Advocates' testimony centers on over-the-road motorcoaches, much of our critique of motorcoach safety design, operating safety, and agency oversight also applies to other types of buses and to some passenger-carrying vans that fall under the jurisdiction of both FMCSA and NHTSA.

<sup>2</sup> <http://www.nts.gov>.

<sup>3</sup> <http://www.nts.gov>.

<sup>4</sup> *Traffic Safety Facts*, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 2005.

<sup>5</sup> E. Mayrhofer, H. Steffan, H. Hoschopf, *Enhanced Coach and Bus Occupant Safety*, Paper 05-0351, Graz University of Technology Vehicle Safety Institute, Austria, 2005.

<sup>6</sup> 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.

<sup>7</sup> Transport Canada and the National Highway Traffic Safety Administration (NHTSA) have jointly issued a report close to the date of the catastrophic motorcoach crash that occurred in Georgia on March 2, 2007. However, the report has not yet been posted on either Transport Canada's or NHTSA's web sites.

<sup>8</sup> *Motor Coach Glazing Retention Test Development for Occupant Impact During a Rollover*, Martec Tech. Rpt. #TR-06-16, Rev. 4, Transport Canada, August 2006.

<sup>9</sup> E. Mayrhofer, H. Steffan, H. Hoschopf, *Enhanced Coach and Bus Occupant Safety*, Paper 05-0351, Graz University of Technology Vehicle Safety Institute, Austria, 2005.

<sup>10</sup> 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.

<sup>11</sup> <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

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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 10 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.

<sup>12</sup> <http://ai.fmcsa.dot.gov/International/border.asp?dvar+3&cvar=pass&redirect=HistoricalOverview.asp&p=1>.

However, other FMCSA documents portray a very different interstate passenger carrier population, as few as 40,000 motorcoach companies. It is difficult to reconcile all the conflicting figures the agency provided in different document in different locations on its web site. See, e.g., <http://www.fmcsa.dot.gov/facts-research/research-technology/conference/rt-forum-2005-ppt1.pps> - 2005-12-3. These figures are perplexing because they contrast sharply with the figures for the preceding year. In 2005, FMCSA lists 436,877 drivers of 255,223 passenger-carrying motor vehicles for 19,980 registered interstate motor carriers. However, in 2004 the number of vehicles is given as 209,515. Similarly, the number of drivers for 2004 is dramatically less – 295,049 – than the number for 2005. It is difficult to believe that the number of interstate motorcoach vehicles soared by about 45,000 in a single year, with a complementary, amazing increase of over 145,000 professional drivers in just one year. FMCSA needs to explain why there are such wide variations in the data sheets on its web site for the number of passenger-carrying vehicles and drivers for two adjacent years.

<sup>13</sup> Section 4008(a)(2), Transportation Equity Act for the Twenty-First Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (June 9, 1998).

<sup>14</sup> Title 49 Code of Federal Regulation (CFR) Part 396; Sec. 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31142).

<sup>15</sup> 63 FR 8516 *et seq.*, February 19, 1998.

<sup>16</sup> 66 FR 32863 (June 18, 2001).

<sup>17</sup> Section 210, Motor Carrier Safety Act of 1984, \*\*\*need citation\*\*\*, codified at 49 U.S.C. § 31142.

<sup>18</sup> *Motor Carrier Safety Program – Federal Highway Administration*, Report Number AS-FH-7-006, March 26, 1997.

<sup>19</sup> *Motor Carrier Safety Program – Federal Highway Administration*, Report Number TR-1999-091, April 26, 1999. That report had been preceded by testimony delivered by the OIG before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives, February 23, 1999, in which he emphasized that FHWA could not identify which motor carriers were the highest safety risks because of the agency’s poor data system, and stressed that action needed to be taken because the number of truck-crash fatalities was increasing each year. *Surface Transportation Safety: Motor Carrier Safety and Related Matters*, Report Number TR-1999-055.

<sup>20</sup> *Motor Carrier Safety*, Statement of the Honorable Kenneth M. Mead before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives, Report Number TR-2000-059, March 2, 2000; this was followed by a full audit report on the inadequacies of the disqualification programs of FMCSA and the states: *Disqualifying Commercial Drivers: Federal Motor Carrier Safety Administration*, Report Number MH-2000-106, June 30, 2000.

<sup>21</sup> See, Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, *Truck Safety: Effectiveness of Motor Carriers Office Hampered by Data Problems and Slow Progress on Implementing Safety Initiatives*, GAO/RCED-99-122, March 17, 1999; Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, *Commercial Motor Vehicles: Significant Actions Remain to Improve Truck Safety*, before the Subcommittee on Transportation and Related Agencies, Committee on Appropriations, United States House of Representatives, GAO.T-RCED-00-102, March 2, 2000.

<sup>22</sup> *Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles*, GAO-06-102, November 18, 2005, transmitted to the Subcommittee on Transportation, Treasury, the Judiciary, House and Urban Development, and Related Agencies, Committee on Appropriations, United States Senate; and to the Subcommittee on Transportation, Treasury, and Housing and Urban Development, the Judiciary, and District of Columbia, Committee on Appropriations, United States House of Representatives. This report unfortunately duplicates many of the same criticisms of agency data system failures that GAO pointed out back in 1999. See, *Truck Safety: Motor Carriers Office Hampered by Limited Information on Causes of Crashes and Other Data Problems*, GAO/RCED-99-182, June 29, 1999.

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<sup>23</sup> See, *Improvements Needed in the Motor Carrier Safety Status Measurement System: Federal Motor Carrier Safety Administration*, U.S. DOT OIG, Report Number MH-2004-034, February 13, 2004; K. Campbell, R. Schmoyer, H. Hwang, *Review of the Motor Carrier Safety Status Measurement System*, Final Report, Prepared for the Federal Motor Carrier Safety Administration, Oak Ridge National Laboratory, October 2004.

<sup>24</sup> “Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles,” *op. cit.*

<sup>25</sup> K. Campbell, R. Schmoyer, H. Hwang, “Review of the Motor Carrier Safety Status Measurement System,” *op. cit.* The Oak Ridge SafeStat review was preceded by two evaluations conducted by the Volpe National Transportation Systems Center, which also found systemic deficiencies in SafeStat that prevented the algorithm from identifying high safety risk motor carriers. See, *Improvements Needed in the Motor Carrier Safety Status Measurement System*, February 2004; *SafeStat Effectiveness Study Update*, Volpe National Transportation Systems Center, March 2004.

<sup>26</sup> Pub.L. 109-59, 119 Stat. 1144 (Aug. 10, 2005).

<sup>27</sup> Pub.L. 106-159, 113 Stat. 1748 (Dec. 9, 1999).

<sup>28</sup> 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.

<sup>29</sup> *Motor Carrier Safety Program*, 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.

<sup>30</sup> The most recent statement of the governing regulations for determining safety fitness is the FMCSA final rule of August 22, 2000 (65 FR 50919 *et seq.*), 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 (P.L. 98-554, 98 Stat. 2832). This final rule amended the regulations for safety fitness determinations in 49 CFR Pts. 385 and 386. Pt. 386 contains the controlling criteria for making safety fitness determinations and Pt. 387 contains the rule 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, have 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.

<sup>31</sup> “Motor Carrier Safety Program: Federal Highway Administration,” *op. cit.*

<sup>32</sup> Census data from the Motor Carrier Management Information System (MCMIS) found at <http://www.fmcsa.dot.gov>. Also see, the December 15, 2005, GAO report, “Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement,” *op. cit.*

<sup>33</sup> [http://www.nts.gov/Recs/mostwanted/truck\\_safety.htm](http://www.nts.gov/Recs/mostwanted/truck_safety.htm).

<sup>34</sup> *Id.*

<sup>35</sup> <http://ai.fmcsa.dot.gov/ProgramMeasures>. However, another location on the agency’s web site lists 2004 CRs at a total of 10,104.

<sup>36</sup> See, “Motor Carrier Safety Program: Federal Highway Administration,” *op. cit.*

<sup>37</sup> *Motor Carrier Safety at the U.S.-Mexico Border*, Statement of the Honorable Kenneth M. Mead, Inspector General of the U.S. Department of Transportation, before the Committee on Commerce, Science, and Transportation, United States Senate, July 18, 2001.

<sup>38</sup> All figures in the ensuing paragraphs on Mexico-domiciled passenger-transportation motor carriers are taken from the Analysis & Information part of FMCSA’s web site that, in turn, are derived by the agency from its Motor Carrier Management Information System March 31, 2006, snapshot.

<sup>39</sup> *Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross Border Trucking Provisions: Federal Motor Carrier Safety Administration*, Report Number: MH-2005-032, Office of the Inspector General of the U.S. Department of Transportation, January 3, 2005.

<sup>40</sup> *Status of Safety Requirements for Cross-Border Trucking With Mexico Under NAFTA*, Statement of Calvin L. Scovell III, Inspector General, U.S. Department of Transportation, before the Committee on Appropriations,

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Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, United States Senate, CC-2007-026, March 8, 2007.

<sup>41</sup> <http://ai.fmcsa.dot.gov/International/border.asp?redirect=TopTenD.asp&p=1>.

<sup>42</sup> Once again, this figure conflicts badly with another figure also located in the same part of FMCSA's web site, where the agency lists the Mexico-domiciled motor carrier vehicle OOS as 12.6 percent for 2005. There is no way to determine which figure is accurate.

<sup>43</sup> Dominican Republic-Central American – United States Free Trade Agreement Implementation Act (Pub. L. 109-53, 199 Stat. 499, Aug. 5, 2004).

<sup>44</sup> 71 FR 76730 (Dec. 21, 2007).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> <http://www.fmcsa.dot.gov/Passenger>.

<sup>48</sup> *Id.*

<sup>49</sup> *See*, 61 FR 18866 *et seq.* (Apr. 29, 1996).

<sup>50</sup> Lest there be any doubt that any "passing grade" is not a sign of superiority or excellence in safety, this tentative safety rating system was characterized at the agency's November 16, 2006, Listening Session held in Washington, D.C., as Continue to Operate = Not Unfit.

[www.fmcsa.dot.gov/safety-security/safety-initiatives/csa2010/csa2010-20061126.htm](http://www.fmcsa.dot.gov/safety-security/safety-initiatives/csa2010/csa2010-20061126.htm).

<sup>51</sup> This grade inflation for the Satisfactory rating was adopted in 1993-1994. In revisions to the Safety Fitness Rating Methodology done without public notice and comment, FHWA raised the passing score for a Satisfactory rating from the former range of zero percent to 16 percent for the Out of Service (OOS) rate, to a range of zero percent to 33 percent. Similarly, while the Conditional rating was formerly assigned to a motor carrier only if the vehicle OOS rate fell between 17 percent and 33 percent, a Conditional rating in the revised rating scheme was assigned only if the OOS rate was 34 percent or higher. These and other maneuvers essentially eliminated any Unsatisfactory rating for bad OOS ratings alone. Theoretically, it meant that a carrier could have a 100 percent OOS rating but still be assigned a Conditional rating. *See*, the agency's documentation of these changes at 59 FR 47204, September 7, 1993.

<sup>52</sup> *See*, NTSB Highway Accident Report HAR-01/01, *Motorcoach Run-Off-The-Road Accident, New Orleans, Louisiana, May 9, 1999*, adopted August 28, 2001.

<sup>53</sup> Pub.L. 102-240, 105 Stat. 1914 (Dec. 18, 1991).

<sup>54</sup> 69 FR 29384 *et seq.*, May 21, 2004.

<sup>55</sup> *See*, 61 FR 18355 *et seq.*, September 30, 1996.

<sup>56</sup> *Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report*, 3 vols, Applied Science Associates, Inc., for the Federal Highway Administration, Office of Motor Carriers, July 1995.

<sup>57</sup> *See*, 68 FR 48863, 48865 (Aug. 15, 2003).

<sup>58</sup> 429 F.3d 1136 (D.C. Cir. 2005).

<sup>59</sup> *Id.* at 3-4.

<sup>60</sup> 71 FR 66723 (Nov. 16, 2006).