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

OVERSIGHT HEARING ON BUS SAFETY

BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY

SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

WASHINGTON, DC

SEPTEMBER 18, 2008

750 First Street, NE, Suite 901, Washington, DC 20002 • 202-408-1711

Good afternoon. 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 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 Subcommittee for holding hearings on the safety of motorcoach operations.

This hearing today is another in a long series of oversight hearings held by the Subcommittee because of its concern over the quality of motor carrier safety. The Subcommittee held a hearing in May 1, 2007, to receive testimony on the value of Electronic On-Board Recorders (EOBRs) and their important contribution to reducing commercial driver fatigue. That hearing was extraordinarily important because it showed how members of the motor carrier community have found that EOBRs are not only valuable for keeping commercial drivers within the limits of federal hours of service regulations, but also help to expedite freight delivery and conserve fuel, keep big trucks from using illegal routes, and track motorcoaches in real-time to help ensure passenger safety.

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 travel wearing a blindfold. 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 630 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 on much more congested and less safe highways. 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.

Despite the widespread use of motorcoach transportation in our everyday lives, the public is almost completely in the dark about the safety of motorcoach transportation 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 the same basic safety improvements required for smaller passenger vehicles to ensure the crash avoidance and crashworthiness of buses and motorcoaches.[1] These failures have contributed to numerous tragic motorcoach crashes in just the last few years, including several just last month, in August 2008.

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 before they can do harm and are kept off the road.

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 many hundreds of severe injuries. NTSB's motorcoach crash investigations over just the last decade, 1998-2007, involved the deaths of 255 passengers and more than one thousand injuries.[2] In some of these incidents more than 20 people on board were killed in a single crash or 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 100 motorcoach crashes and fires in the past 40 years, is far from complete.

According to NHTSA data, there were 400 fatal motorcoach crashes from 1994 through 2005 in which 571 people died.[3] Of that total of fatal crashes and associated deaths, 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.[4]

Motorcoach crashes kill and injure occupants inside the motorcoaches and people outside as well. 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.

Recent Motorcoach Crashes Illustrate Severe Safety Risks

In just the past three years there have been constant reminders of the safety perils in motorcoach travel. Moreover, three severe motorcoach crashes occurred over a span of less than three days only a few weeks ago.

- **Sherman, Texas:**

On August 8, 2008, a motorcoach with 54 passengers, operated by a company, Angel Tours, Inc. 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 stopped by FMCSA from operating only six weeks earlier, on June 23, 2008. The new business named Iguala Busmex, according to preliminary information in media reports, had no insurance and had no federal interstate operating authority.

By the time the crash occurred, the owner of Angel Tours had changed the company name to Iguala Busmex and continued to operate illegally. The new company even used the same business address to restart operations. FMCSA was unaware that Angel Tours, Inc., 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 both of passengers and of 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 the Sherman, Texas crash, federal authorities find this out only after a tragic crash, when deaths and severe injuries have already occurred.

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.

- **Primm, Nevada:**

Another casino motorcoach crash occurred on I-15 near Primm, Nevada, on August 10, 2008, the same day that the Harrah motorcoach rolled over. 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 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.

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 that will be investigated, it appears that tire tread separation may have been a major contributing factor to 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 driver and his wife, both of whom had fastened their lap belts, died.

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 crash. However, NTSB's findings and recommendations produced by its investigation listed several major deficiencies in motorcoach operating safety.[5] 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.[6]

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.[7]

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.[8] 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,[9] 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.

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 on 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.[10] In fact, motorcoach floors are usually made of sheets of plywood.

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 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."[11] 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.[12]

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.[13]

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. (Note that Angel Tours before the Sherman, Texas crash had a Satisfactory rating because FMCSA had recorded several driver violations, but no vehicle violations for the company. Accordingly, FMCSA had no basis for threatening the company with an Unsatisfactory safety rating.)

FMCSA has repeatedly avoided acting on this recommendation, even after several U.S. DOT Office of the Inspector General and Government Accountability Office reports demonstrating multiple weaknesses in FMCSA enforcement regimes and actions.[14]

Since FMCSA itself has admitted that its current safety rating system, and the safety scoring system used to support it, is inadequate, the question arises of what the agency intends to do in the interim to ensure that dangerous motor carriers are detected and stopped from operating before more lives are lost. The agency cannot wait until its new safety rating system, Comprehensive Safety Analysis 2010, is complete and ready for action. In the meantime, unsafe motorcoach companies will receive ratings that do not represent a valid safety profile, and the public will be left in the dark on how to choose a safety motorcoach business for personal transportation.

Federal Legislation Is Needed to Direct DOT to Implement Comprehensive Motorcoach Safety Reforms and Comply with NTSB Recommendations

It is time for Congress to step in and ensure that the safety improvements NTSB has recommended for decades are adopted by the 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, the Senate Commerce Committee 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),[15] Congress required NHTSA to issue regulations on safety problems that had languished for years without agency action. NHTSA is in the process of complying with those vehicle safety rulemaking requirements. More recently, the Cameron Gulbransen Kids Transportation Safety Act of 2007,[16] requires NHTSA to issue rules on safety problems to protect children from dangers in vehicles that the agency had previously refused to address.

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 2007. This pending legislation, S. 2326, introduced on November 8, 2007, by Senators Sherrod Brown (D-OH) and Kay Bailey Hutchinson (R-TX), and

its companion bill in the House, H.R. 6747, introduced by Representative John Lewis (D-GA) and co-sponsored by Representative Ted Poe (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 bills respond to virtually every major safety recommendation made over the past 40 years by the NTSB. The Motorcoach Enhanced Safety Act addresses almost all NTSB safety issues 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 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.

S. 2326, the Senate-introduced version of 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 for today's hearing. S. 2326 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 not moved quickly to adopt NTSB recommendations for crash protection and crash avoidance, the agency has in recent years developed a motorcoach safety research and testing program and has begun to examine many of the safety issues raised by NTSB and safety organizations. However, without a Congressional directive to actually issue safety standards, there is no assurance that the agency will address all the safety issues in the NTSB recommendations, much less establish stringent safety standards that adopt those recommendations in a timely manner.

FMCSA, in contrast, has been entirely delinquent in its role as the federal administrator of safe motorcoach operations. As with its duties to improve general motor carrier safety, FMCSA has failed to issue or properly enforce even the most basic safety requirements and has shown no inclination to be proactive regarding the adoption of safety standards and regulations to improve public safety on motorcoaches. FMCSA only acts when compelled by explicit Congressional legislation, and even then it fails frequently to comply with either the clear letter of the law or to meet legislated deadlines. The safety community has had to repeatedly sue FMCSA to compel the agency to comply with Congressional mandates and issue effective regulations to improve key areas of motor carrier safety.

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 S. 2326 and H.R. 6747 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 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 FMVSS No. 217 specifying motorcoach window retention and release for evacuation, and FMVSS No. 302 governing the flammability of interior materials, 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 for decades 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:** 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 passenger vehicles. Crash avoidance technology such as electronic stability control and adaptive cruise control can also help to keep motorcoaches out of crashes in the first place. But when rollovers still occur, a strong roof crush resistance safety standard needs to be adopted to ensure the structural integrity of the roof in a rollover crash that preserves occupant survival space and prevents infliction of severe occupant trauma.

- **Ejection:** 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.[17] Advanced window glazing that can survive crash impacts will prevent occupant ejection and save lives. There are other possible countermeasures, which, in combination with three-point seat belts and advanced glazing, can further reduce the chances of passenger ejection.

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[18] and Australia.[19] 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 firm deadlines for action.

Effective Motorcoach Operation Safety Oversight and Enforcement is Lacking

According to figures from FMCSA,[20] 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.[21] 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 relative small numbers of motorcoaches and motorcoach companies, FMCSA is failing in its stewardship responsibilities for motorcoaches as badly as it is for large trucks.

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, in fact 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 and have 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 another 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).[22] 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.[23] 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 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*[24] (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."[25]

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.[26] 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.[27] 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.

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.[28] This action would exclude tens of thousands of new CDL applicants from badly needed knowledge and skills training requirements.

- **Tougher Enforcement Needed: Compliance Reviews and Roadside Inspections Do Not Remove Dangerous Motorcoach Companies From the Road**

A central problem undermining agency effectiveness in overseeing motor carrier safety and reducing FMCSR violations is the annually low numbers and percentage of both roadside inspections and CRs. 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 last month killing 17 people, was awarded a Satisfactory safety rating despite the fact that the company had received repeated driver OOS orders. The truth is that a Satisfactory safety rating is no assurance of contemporary operating safety fitness.

The implementing regulations for conducting CRs specify criteria for assigning one of three safety rating categories to a motor carrier: Satisfactory, Conditional, Unsatisfactory.[29] FMCSA is required by law to issue a safety rating to all motor carriers.[30] However, the agency basically decided long ago that it would no longer attempt to fulfill the statutory requirement.[31] Even without attempting to assign safety ratings to all motor carriers, FMCSA conducts CRs on only a tiny percentage of carriers. Barely one 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. On its face, it is improbable that assigning Unsatisfactory safety ratings to so few registered interstate carriers has any deterrent effect.

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[32] 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.

In testimony delivered before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit, and Pipelines, March 20, 2007, the FMCSA Administrator boasted that FMCSA had dramatically increased the number of motorcoach CRs over the preceding two years. However, based on Advocates' sampling of states on FMCSA's web site, many of the motorcoach companies receiving recent CRs are provided Satisfactory safety ratings even though they lack any safety rating scores in one or more of the four Safety Evaluation Areas (SEAs) that form part of the arcane system the agency uses to identify high safety risk motor carriers. In fact, some motorcoach companies in the past have been awarded Satisfactory safety ratings with *no* safety scores for any of the four categories. In addition, high percentages of unrated motorcoaches are still listed for many states on FMCSA motorcoach web site.[33]

- **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 Texas is not very encouraging. There are 197 motorcoach companies with FMCSA interstate operating numbers. Of those, 117, or 59 percent, have Satisfactory ratings. All the rest of the companies have either Conditional ratings, are Unrated (64), or, in one instance, one company has an Unsatisfactory rating (Angel Tours/Iguala Busmex). But one company's Satisfactory rating was awarded back in 1988 – 20 years ago. Furthermore, of the 117 Satisfactory companies, only 17, or 14.5 percent, have safety scores in all four major areas of safety. And it should be stressed that a Satisfactory rating for FMCSA only means that a motorcoach company minimally complies with the federal safety standards for motor carriers – it is not a mark of superior safety.

Similarly, consumers in New Jersey have little to choose from in selecting a motorcoach company with the best safety credentials for long-distance trips. There are 167 companies headquartered in New Jersey that are registered with FMCSA for interstate transportation of passengers. However, 57 of these businesses – 34 percent or fully one-third – have no safety

ratings at all. Eight companies are operating with Conditional safety ratings. No companies have Unsatisfactory ratings.

One hundred and one (101) New Jersey motorcoach companies carry Satisfactory safety ratings. But one company received its Satisfactory rating back in 1988, two got theirs in 1991, and there are several others with Satisfactory ratings assigned during the 1990s. 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 101 New Jersey motorcoach companies with Satisfactory ratings, only 11 have scores in all four major safety scoring areas (driver, vehicle, crash, safety management). Therefore, if a consumer in New Jersey 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 four safety scoring categories. But only 11 companies – or a little over 6.5 percent – of motorcoach operations in the state qualify. Based on Advocates' sampling of states 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.

When motorcoaches are stopped and inspected, the results are equally discouraging. For 2005, 12 percent of the motor carriers of passengers were placed OOS, a figure that has not changed over 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 day logbook showing the driver's record of duty. In the same vein, 20 percent of those drivers – one in five – were found to have *no* record of duty status logbook. These aggregate figures are frightening, especially for patrons of interstate motorcoach companies, and they show essentially no 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.[34] Nine years ago last month, the Federal Highway Administration (FHWA) issued a notice on the status of state bus inspection programs[35] and subsequently listed 25 of 50 states with approved, equivalent periodic inspection programs.[36]

It should be stressed here that the minimum period for the required vehicle inspection is only once a year.[37] 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) or Automatic On-Board Recording Devices (AOBRDs) 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. This was stressed by a motor carrier industry witness in last year's hearing on EOBRs conducted by this Subcommittee.[38]

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 58 passengers onboard. 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.

However, despite widespread, chronic violation of HOS limits by commercial drivers, FMCSA in early 2007 proposed a very weak regulation that will require virtually no motor carriers to install EOBRs on big trucks and buses.[39] The proposed rule would use EOBRs as a punishment for motor carriers that fail two consecutive CRs. In fact, only a minute number of companies – less than *one-tenth of one percent* – would be required to install EOBRs if that proposal is adopted. It is clear that FMCSA is openly avoiding the need to ensure that

commercial drivers adhere to current HOS regulations limiting driving and working time, and ensuring minimum off-duty rest periods.

The Motorcoach Enhanced Safety Act includes a provision to require EOBRs. Without a specific direction from Congress to FMCSA, the agency will not require EOBRs on all interstate commercial motor vehicles, to the detriment of safety.

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 Subcommittee embrace the Motorcoach Enhanced Safety Act of 2007, S. 2326. This legislation will jumpstart motorcoach safety by putting numerous 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 S. 2326 to address the need for the imposition of criminal penalties for persons who illegally continue to operate a motor carrier after having been ordered to cease operations, to establish a performance standard for retreaded tires used on commercial motor vehicles, and to require event data recorders (EDRs) on motorcoaches to assist crash investigators in reconstructing how and why each motorcoach crash occurs. NTSB has repeatedly called for EDRs as critically important to passenger transportation safety.[41]

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

Endnotes

[1] 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.
[2] *Motorcoach Override of Elevated Exit Ramp Interstate 75, Atlanta, Georgia, March 2, 2007,* Appendix C, National Transportation Safety Board Accident Report HTSB/HAR-08/01, July 8, 2008 (Bluffton University Motorcoach Crash Report).
[3] Data supplied in special data run performed by the National Highway Traffic Safety Administration's (NHTSA) National Center for Statistics and Analysis (NCSA).
[4] *Id.*
[5] Bluffton University Motorcoach Crash Report.
[6] Title 49 CFR § 382.305.

[7] *Motorcoach Fire On Interstate 45 During Hurricane Rita Evacuation Near Wilmer Texas*, September 23, 2005.
[8] Title 49 CFR § 391.11(b)(2).
[9] *See*, 49 CFR Pt. 385 for a description of FMCSA's safety rating process.
[10] http://testimony.ost.dot.gov/test/Sandberg1.htm, May 2, 2006.
[11] Bluffton University Motorcoach Crash Report at 52.
[12] *Id.* at 54.
[13] For example, s*ee* NTSB's recommendation H-71-35 that was closed out on October 29, 1975.
[14] *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).
[15] Safe, Accountable, Flexible, Efficient Transportation Equity for the Twenty-First Century: A Legacy for Users, Pub. L. 109-59 (Aug. 10, 2005).
[16] Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. 110-189 (Feb. 28, 2008).
[17] *NHTSA's Approach to Motorcoach Safety*, Aug. 6, 2007.
[18] E. Mayrhofer, H. Steffan, H. Hoschopf, *Enhanced Coach and Bus Occupant Safety*, Paper 05-0351, Graz University of Technology Vehicle Safety Institute, Austria, 2005.
[19] 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.
[20] 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.
[21] *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.
[22] Pub. L. 102-240, 105 Stat. 1914 (Dec. 18, 1991).
[23] 69 FR 29384 *et seq.*, May 21, 2004.
[24] 429 F.3d 1136 (D.C. Cir. 2005).
[25] *Id.* at 3-4.
[26] 72 FR 73226 (Dec. 26, 2007).
[27] 72 FR 73227-73228.
[28] *Id.* at 73231-73232.
[29] 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.

[30] 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.

[31] *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.

[32] *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.

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

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

[35] 63 FR 8516 *et seq.*, February 19, 1998.

[36] 66 FR 32863 (June 18, 2001).

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

[38] "Electronic On-Board Recorders (EOBRs) and Truck Driver Fatigue Reduction," Committee on Transportation and Infrastructure, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security, U.S. Senate, May 1, 2007.

[39] 72 FR 2340 (Jan. 18, 2007).

[40] Section 4008(a)(2), Transportation Equity Act for the Twenty-First Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (June 9, 1998).

[41] *See*, NTSB Recommendation H-99-53, reissued as one of the NTSB recommendations in the recently published report on the motorcoach crash of the Bluffton University baseball team, "Motorcoach Override of Elevated Exit Ramp Interstate 75, Atlanta, Georgia, March 2, 2007," *op. cit.*