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

ON

"MAKING OUR ROADS SAFER: REAUTHORIZATION OF THE MOTOR CARRIER SAFETY PROGRAMS"

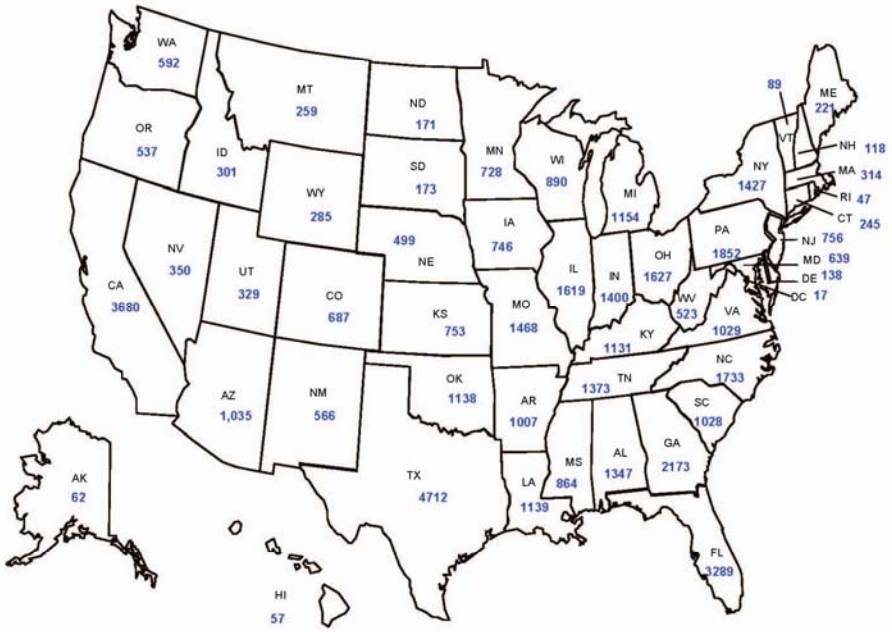
BEFORE THE

SENATE COMMERCE, SCIENCE, and TRANSPORTATION

SUBCOMMITTE on SURFACE TRANSPORTATION and MERCHANT MARINE INFRASTRUCTURE, SAFETY, and SECURITY

JULY 21, 2011

FATALITIES IN CRASHES INVOLVING LARGE TRUCKS
48,317 total fatalities from 2000-2009

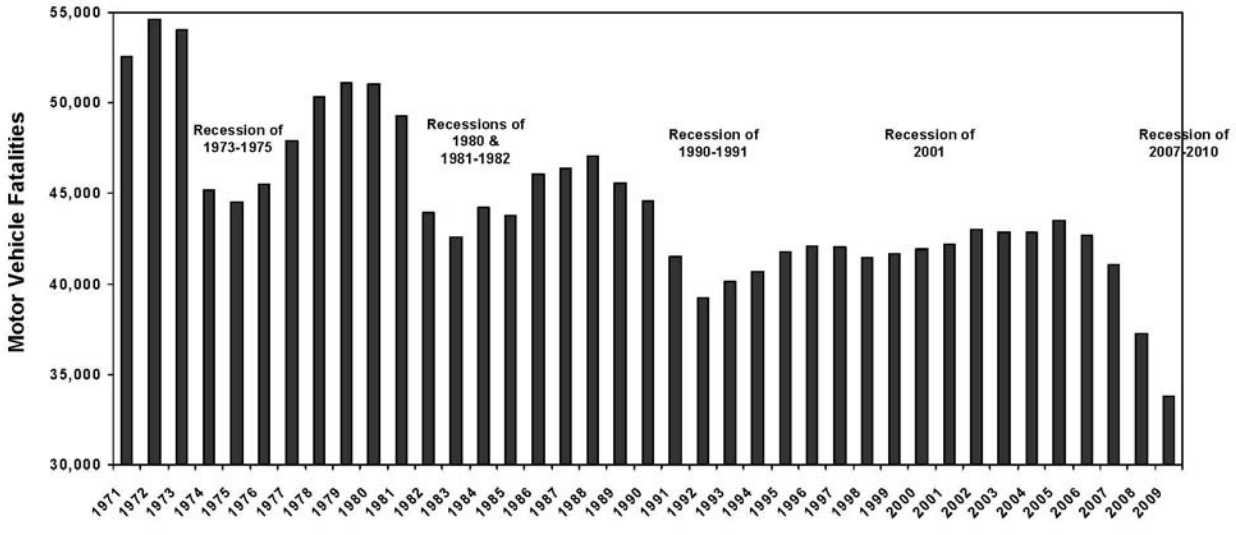


Sources: Advocates for Highway and Auto Safety;
National Highway Traffic Safety Administration

July 2011

U.S. Recession Periods and Motor Vehicle Fatalities

Chart shows correlation between U.S. recessions and
motor vehicle fatalities, 1971-2009.



Sources: The National Bureau of Economic Research,
http://www.nber.org/cycles/cyclesmain.html;
Fatality Analysis Reporting System (FARS), National
Highway Traffic Safety Administration

Introduction

Good morning Chairman Lautenberg, Ranking Member Wicker, and members of the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. I am Jacqueline Gillan, Vice President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, and insurers and insurer agents that promotes highway safety through the adoption of safety policies and regulations, and the enactment of state and federal traffic safety laws. Advocates is a unique coalition dedicated to improving traffic safety by addressing motor vehicle crashes as a public health issue.

This Subcommittee has been responsible for many important motor carrier safety improvements that have been accomplished over the years, including establishment of a uniform commercial driver license (CDL) program, mandates for U.S. Department of Transportation (DOT) action on numerous safety rulemakings, strong oversight of the Federal Motor Carrier Safety Administration (FMCSA) plans and programs and recently, full Committee approval of the Motorcoach Enhanced Safety Act, S. 453, a bipartisan bill that has now received the endorsement of safety groups, crash victims and their families, as well as Greyhound Lines, a leading national motorcoach operator.

I welcome this opportunity to appear before you today to emphasize that there is still an unfinished safety agenda that needs your attention and your leadership.

This Subcommittee and Congress will play a critical role in leading our nation to a safer, more rational use of its transportation resources. It will take leadership by Congress to implement a national, uniform approach to truck size and weights on our federally-assisted National Highway System (NHS) in order to enhance safety and protect highway infrastructure; to stop enactment of piecemeal special interest exemptions from crucially important federal safety requirements; and to ensure that the federal regulatory safety agency, the FMCSA, which has rededicated its efforts to making safety its highest priority, issues regulations that improve motor carrier safety and implements strong enforcement policies.

The Annual Death Toll from Large Truck Crashes Remains Unacceptable

Over the decade from 2000 through 2009, there were 48,317 people killed in truck-involved crashes, averaging 4,832 fatalities each year.[1] At the beginning of my testimony is a national map that indicates the fatalities in the last decade by state. In 2009, one of every 10 people killed in a traffic crash was a victim of a large truck crash.[2] Annual deaths in large truck crashes are disproportionately represented in our annual traffic fatality data, with large truck deaths still accounting for about 11 percent of all annual highway fatalities, although large trucks are only about four percent of registered motor vehicles.[3]

Large, heavy trucks are dramatically overrepresented each year in severe crashes, especially fatal crashes. Although truck crash fatalities have declined in 2008 and 2009, this reduced death toll is strongly linked with a major decrease in truck freight demand, including substantially reduced truck tonnage starting in the latter part of 2007 and

continuing through 2009.[4] Industry data verifies this decline in freight tonnage. According to published reports, for-hire tonnage fell in June 2009 by 13.6 percent over the freight transported in 2008, and freight analysts did not believe that the decline would stop until the second half of 2010 at the earliest.[5] This is consistent with previous tonnage declines associated with economic recessions. Recent data indicating that freight tonnage increased by 5.7% in 2010[6] as compared with 2009 may well be a harbinger of future increases in truck crash fatalities and injuries.

In terms of annual fatalities, I have included a chart at the beginning of my testimony that shows the strong relationship between economic recessions and declines in total highway deaths since 1971.[7] As pointed out by several authorities, including the Honorable David Strickland, Administrator of the National Highway Traffic Safety Administration (NHTSA), which collects and analyzes national fatality data, the unprecedented decline in deaths and injuries among all types of motor vehicles over the last few years is strongly linked to the recent downturn in the economy.[8] Just as personal travel will likely increase as the economy continues to improve, freight traffic will also resume its upward trend, which means more truck miles of travel each year that will likely translate into an increase in truck fatalities.

While the safety community welcomes the news of recent declines in truck crash fatalities it is not a reason to delay, defer or discard pressing forward with a strong, life-saving motor carrier safety agenda.

The Safe Highways and Infrastructure Protection Act (SHIPA) Will Improve Safety, Protect Infrastructure, Conserve the Environment, Enhance Intermodalism

It is up to Congress to take action now that will improve safety, protect the long-term national investment in our crumbling highway and bridge infrastructure while also protecting the environment and providing a more level playing field for intermodal freight transportation. We are at a crucial juncture in highway and motor carrier safety in this Congress. The debate over future funding for road and bridge construction and repair make conservation and preservation of the existing highway infrastructure an essential part of any plan to protect taxpayer investment in continued surface transportation mobility and safety.

A pending Senate bill, S. 876, the *Safe Highways and Infrastructure Preservation Act*, or SHIPA, sponsored by Chairman Lautenberg, has the potential, if enacted, to dramatically improve the safety landscape for all motorists, including truck drivers, and to protect our economic investment in highway and bridge infrastructure. SHIPA will stop the relentless cycle of demands and pressure imposed on the states by the trucking interests for increased tractor-trailer lengths. If truck lengths are increased again beyond the industry "standard" of 53 feet, it would trigger a cascading effect of negative outcomes for safety, environmental protection, infrastructure preservation, fuel use, the Highway Trust Fund, and a balanced national transportation freight strategy.[9]

SHIPA is crucial for curtailing the growth of large trucks and their expansion to more and more highway miles off the nation's Interstate system, on the NHS. One of the two main

objectives of the legislation is to freeze the length of truck trailers at a maximum of 53 feet. Promoters of much bigger, heavier trucks, such as supporters of current H.R. 763,[10] would allow trucks weighing up to 97,000 pounds and more throughout the country and melt the 1991 freeze on longer combination vehicles (LCVs).[11] The bill buys into the specious argument that trucking will become safer because bigger, heavier trucks will mean fewer trucks on the road. But increases in truck size and weights have never resulted in fewer trucks. In fact, allowing super-sized heavy trucks on more highways will make our roads and bridges more dangerous, not safer, and inevitably there will be more, not fewer, trucks than ever before.

Since the enactment of the 1982 Surface Transportation Assistance Act (STAA)[12] federal law mandates certain minimum truck sizes, weights, and configurations but, unfortunately, does not restrict the length of trailers and semi-trailers in truck combinations.[13] This has had two particularly pernicious consequences.

First, the states are pressured endlessly by the special interests to increase the length of the semi-trailers used in tractor-trailer combinations. This situation has resulted in repeated increases in the length of the standard semi-trailer from 45 feet in the 1960s and 1970s, to 48 feet by the time the 1982 STAA was enacted, to 53 feet by the end of the 1990s, with many states now allowing trailers that are 57 feet long and a few states even permitting 59- and 60-foot long trailers.

Second, increasing trailer length and, therefore, volume leads to special interest demands for higher state and federal weight limits in order to take advantage of the increased size of bigger, longer trailers. Since fully loaded trailers may not always exceed the federal axle and gross weight limits on the Interstate highway system,[14] or the even higher maximum weight limits allowed in many states on their non-Interstate highways, the trucking industry has persistently sought higher truck weight limits. This incessant drum beat to raise truck weight limits has been part of the strategy to simultaneously pressure lawmakers at both state and federal levels raise weight limits. Truck weight increases adopted in one state put pressure on neighboring states to do likewise, and eventually special interests besiege Congress seeking higher, uniform national weight limits. This strategy to continually "ratchet" upwards legal truck weight limits has been successfully practiced by special interests for decades.

The main argument used by proponents of longer, heavier trucks is that it will result in fewer trucks. Nothing is further from the truth. Since 1974, every time truck sizes and weights have been increased by state or by federal mandate, *the result has been more trucks than before*.[15] In fact, from 1972 to 1987 alone, the number of for-hire trucks *increased by nearly 100 percent*.[16] During this era an increasing number of states adopted longer, wider, heavier trucks and trailers on their state highways and also interpreted their Interstate grandfather rights broadly in order to grant more overweight permits to extra-heavy trucks.[17]

The result was predictable: trucks were bigger and heavier than ever before, and there were *more of them* than ever before. The total increase in the number of trucks by 1992

was 128 percent over the number of registered trucks on our highways in 1972.[18] Longer, larger, heavier trucks have kept multiplying. By 1997, the number of large trucks had grown to 174 percent more than 1972, and by 2002, the number of for-hire trucks had increased by 228 percent over the 1972 figure.[19] According to the Federal Highway Administration (FHWA) the number of trucks on the road today is at least 250 percent higher than the comparable 1972 figure.[20]

Evidence of the negative effects of raising Interstate highway weight limits can be found in the data from the Maine pilot program that allowed trucks weighing up to 100,000 pounds to operate on the northern portion of I-95 that is normally subject to the federal 80,000 pound limit for Interstate highways. Congress permitted the weight limit increase for a one-year period from late 2009 through late 2010.[21] About 600 six-axle trucks used the I-95 corridor in Maine each week before the higher weight limits were permitted, 400 of these trucks used I-95 (presumably loaded only to the 80,000 pound legal limit), and 200 trucks used a parallel state route (on which loads up to 100,000 pounds were legal). However, once the weight limit was raised on I-95 the increase in the number of trucks entering I-95 after the pilot program began was startling. More than 1,000 six-axle trucks used that route most weeks with more than 1,200 trucks using I-95 in some weeks.[22] Thus, the number of heavy trucks using the Interstate route *tripled* from 400 to 1,200 and the total number of these heavy trucks using the corridor *doubled* from 600 to 1,200 during the experiment with increased truck weight limits. This clearly shows that raising federal weight limits increases the heavy truck traffic on Interstate highways. Moreover, assuming these trucks were loaded to 100,000 pounds, the gross weight loads on the highway also increased dramatically, placing greater stress on highway bridges and degrading roadway pavement at an even faster rate.

The two actions of limiting truck lengths and freezing existing state weight practices for the entire NHS are complementary and both are crucial to achieving SHIPA's goal. In order to protect the national investment in our highways and bridges, SHIPA extends the current state and federal weight limits on the Interstate system to the non-Interstate highways on the NHS and prohibits any further increases. This not only puts a ceiling on truck weights at their current levels, but it also recognizes and protects the states' existing grandfathered rights to allow certain differences in truck axle and gross weights from the maximum weight figure in federal law. SHIPA restores FHWA to its traditional position as steward of federal size and weight limits for public safety and infrastructure protection.

Recommendation:

- ***Congress should enact S. 876, the SHIPA bill.***

Special Interest Exemptions Jeopardize Safety and Compromise Enforcement

Over the years, Congress has granted numerous statutory special interest exemptions from federal safety regulations including exemptions from the maximum driving and on-duty limits, as well as the logbook requirements, for motor carriers under the hours of service regulations, and from commercial driver physical and medical qualifications.[23] These exemptions pose safety issues because they are untested and unproven deviations from established federal safety requirements. Enactment of exemptions on a piecemeal basis bypasses careful investigation and findings on the impact of these exemptions on

safety. In addition, it creates a patchwork quilt of disparate regulatory exemptions that makes it nearly impossible for enforcement authorities to determine the status of exempt drivers and vehicles and to effectively enforce federal safety requirements.

Advocates is gravely concerned that these exemptions, which deviate from established safety requirements, are not based on research and scientific analysis, and pose increased safety risks for commercial operators and the public. The FMCSA openly decried the exemptions practice concluding that the multiple existing exemptions were not compatible with reform of the drivers' hours of service rule.[24] These exemptions are also opposed by the Commercial Vehicle Safety Alliance (CVSA) which represents state law enforcement officials who are charged with ensuring compliance with federal motor carrier safety rules. Because the exemptions were established by statute, rather than regulation, there has been no thorough examination of the safety consequences of these exemptions. It is time for the U.S. DOT to conduct a comprehensive evaluation of each statutory exemption from safety rules.

Even U.S. DOT severely criticized the statutory adoption of exemptions only a few years ago because of the harm it does both to highway safety and infrastructure protection. In a massive 2004 study of the effects of overweight and extra-long tractor-trailer trucks, DOT determined that LCVs damage bridges more severely than "18-wheelers" and could have substantially more serious safety consequences. U.S. DOT concluded that a patchwork quilt of size and weight exemptions for specific states undermined a coherent, national policy of size and weight limits.[25]

Congress has also granted similar special interest exemptions for truck size and weight limits. Most recently, Maine and Vermont were granted special legislative exemptions which, as already discussed, allowed the operation of 100,000-pound trucks on the northern section of Maine's I-95 to the Canadian border, and of 99,000-pound trucks on all of Vermont's Interstate highways.[26] These exemptions were adopted despite reams of reliable evidence concerning the adverse safety effects and increased infrastructure damage that such excessively heavy combination trucks inflict on roads and bridges.

Safety organizations opposed these and other motor carrier safety exemptions. Granting special interest requests for specific exemptions from the federal axle, and both gross weight and bridge formula weight limits in federal law, as well as special interest exemptions to exceed limits on maximum driving and working hours, undermines national uniformity and constitutes a serious and unacceptable threat to the traveling public who must operate their small passenger cars next to these unstable, overweight combination trucks that are, in some cases, operated by tired truckers.

Fortunately, the mechanism for review of these types of exemptions already exists in federal law. In 1998, Congress required U.S. DOT to review regulatory exemptions from safety requirements using reasonable, recognized screening criteria.[27] Under this provision, many special interest exemption requests addressing motor carrier safety regulations are reviewed using the expertise of DOT and FMCSA, rather than the lobbying clout of special interests. The process enacted by Congress allows the agency to

carefully consider the safety requirements and implications of a proposed exemption and to determine if the exemption poses a problem for law enforcement.

Recommendations:

- ***U.S. DOT and FMCSA should be required to review all existing statutory exemptions from the federal motor carrier safety regulations to determine whether they are safe and enforceable, have contributed to increased risk of deaths and injuries, and to make recommendations to Congress about exemptions that pose an increased public safety risk; and,***
- ***Congress should pass legislation similar to Section 49 U.S.C. § 31315 but that requires U.S. DOT to review requests for truck size and weight exemptions on an ongoing basis.***

Congressional Oversight and Direction Is Essential to Ensure Effective Safety Rules

Let me turn now to an analysis of FMCSA's performance and an appraisal of its first decade as a federal agency. The agency was established in 2000 with motor carrier safety as its primary mission and highest priority.[28] Over its first 10 years the agency compiled a poor track record that was at odds with its safety mission. Until recently, the FMCSA exhibited a stark failure of leadership and oversight of the motor carrier industry, an inability to issue effective safety regulations, and an inadequate enforcement policy.

While we see clear signs that the current FMCSA leadership is finally taking truck safety regulation and enforcement more seriously, Advocates is closely watching for evidence that the initiatives and final rules it adopts will fulfill the agency's mission to make safety its number one priority. While Secretary LaHood and the agency leadership team are headed in the right direction, Congressional oversight and guidance will continue to be needed in order to ensure that the performance of the agency remains on course.

FMCSA Safety Oversight Issues

Failure to Implement NTSB Safety Recommendations

One strong indication of FMCSA's job performance is whether the agency has implemented the numerous motor carrier safety recommendations issued by the National Transportation Safety Board (NTSB). Since it began issuing recommendations in 1968, NTSB has repeatedly called for commonsense and urgent safety actions by FMCSA and its predecessor agency, FHWA. NTSB has issued dozens of recommendations that address vehicle operating systems, equipment, commercial drivers, and motor carrier company safety administration and oversight. However, many of the recommendations remain unfulfilled and others have been closed out in exasperation by NTSB because there was no agency response or the agency response was inadequate or unsatisfactory.

The NTSB's current list of "Most Wanted Transportation Safety Improvements" includes a number of safety recommendations for commercial motor vehicles.[29] FMCSA's failure to implement some recommendations has led the NTSB to formally categorize the agency's actions as "Unacceptable Response". For example, in 1977, NTSB first issued its recommendation on the use of on-board recording devices for commercial vehicle

hours of service compliance. NTSB then urged FHWA to mandate the use of on-board recorders in a 1990 safety study, after concluding that on-board recording devices could provide a tamper-proof mechanism to enforce the HOS regulations.[30] That request for a mandate has been re-issued periodically by NTSB and the recommendation is currently listed as open but with an "Unacceptable Response" from FMCSA.[31] The safety recommendation to require all interstate commercial vehicle carriers to use electronic on-board recorders is included on the NTSB's 2011 list of Most Wanted safety improvements. Only this year has FMCSA proposed a general EOBR requirement.

Recommendation:

- ***Congress should direct FMCSA to fulfill major NTSB safety recommendations on the current Most Wanted List and review and adopt previously issued NTSB motor carrier safety recommendations that have not yet been implemented.***

FMCSA Has Not Required Adequate State Vehicle Inspection Programs

The Secretary of Transportation is required to prescribe standards for annual inspection of motorcoaches and of trucks greater than 10,000 pounds gross vehicle weight in interstate commerce, or approve state inspection programs that are equally effective.[32] FMCSA last publicly addressed the state inspection system in a 2008 *Federal Register* notice indicating that 23 states and the District of Columbia have approved periodic inspection programs for trucks.[33]

FMCSA has not issued reports that evaluate how comprehensive the commercial motor vehicle inspection programs are in each of the 23 states and the District of Columbia that have approved inspection programs. Audits of the state programs have not been performed and timely information on state truck and motorcoach inspection programs is not available to the public on FMCSA's web site.

Furthermore, while FMCSA allows motor carriers to "self-inspect" and annually certify that the mechanical inspection has been performed, the agency does not conduct routine audits to evaluate a representative sample of these state self-inspection programs.

It should be stressed that the minimum period for the required inspection is only once a year.[34] Since it is well known that inspection of commercial motor vehicles 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 trucks and motorcoaches. While reputable carriers may conduct more frequent inspections, others do not. Many companies, even in states that have inspection programs, can come into compliance just for an annual inspection, only to allow major mechanical and safety features of their vehicles to fall into dangerous disrepair soon after passing the annual inspection.

Although commercial motor vehicles are subject to random roadside inspections, trucks and motorcoaches can go for long periods of time without being stopped for inspection. Relying on roadside inspections to detect mechanical defects that pose threats to public safety and then place them out of service is simply too late – it allows vehicles that should never have been on the road from the start to operate on our highways.

One example of the serious consequences that can occur as a result of weak oversight of state-run, state-approved, company self-inspection programs is the deadly 2008 Sherman, Texas motorcoach crash in which 17 people died and 39 were injured. The motorcoach was operated by Angel Tours, Inc., which had been stopped from operating by FMCSA just weeks earlier, but continued to operate under anther name, Iguala Busmex.

The NTSB's investigation of the crash found, among other federal violations, that the proximate cause of the crash was a failure of one of the retreaded tires on the front steering axle of the motorcoach. The retreaded tire failed, destabilizing the motorcoach, making it difficult to control, and facilitating its crash into the overpass guardrail. NTSB speculated that either the tire was not inspected properly by an extremely perfunctory pre-trip inspection, or that the tire was punctured during the trip prior to the crash. NTSB found that the motorcoach had been inspected by a Texas state government-certified private inspection company called "Five-Minute Inspection, Inc".[35] The private inspection cost $62.00, but failed to detect a number of mechanical defects including the retreaded tires on the steer axle, under-inflated tag-axle tires, wrong tag-axle wheels mounted, and a grossly contaminated brake assembly.

The Texas commercial motor vehicle state inspection program was approved federally in 1994. NTSB concluded that there was no quality control evaluations of agency-approved state programs, and no state oversight of the certified inspection companies.

We commend the Senate Commerce, Science and Transportation Committee for approving S. 453, the "Motorcoach Enhanced Safety Act of 2011," introduced by Senators Brown (D-OH) and Hutchison (R-TX). This legislation, when enacted, will address some of the inspection oversight concerns with respect to motorcoaches. Similar action is needed regarding state inspection programs for trucks.

Recommendations:

- ***Congress should direct FMCSA to:***
  - ***establish specific standards for state-authorized, state-operated inspection programs to determine how well they meet the requirements of the Federal Motor Carrier Safety Regulations;***
  - ***conduct annual inspections of a sample of state-authorized or state-operated truck inspection programs to determine their effectiveness; and***
  - ***audit motor carrier self-inspection programs in each state to determine how well trucks are being inspected and maintained for safe mechanical condition.***

En-Route Inspections of Motorcoaches

Under current law, aside from imminent or obvious safety hazards, inter-city buses and motorcoaches cannot be regularly inspected except at planned stops and terminals along the bus route.[36] This affords highly favorable treatment to motor carriers of passengers and insulates motorcoaches from routine roadside inspections required by law for other commercial motor vehicles. Recently, U.S. DOT conducted 3,000 "surprise" passenger carrier safety inspections and placed 442 unsafe buses and drivers out-of-service.[37] This represents 15 percent of the motorcoaches subject to the "surprise" inspections. This shows that motorcoaches need to be subject to more frequent and routine random

roadside inspections at convenient locations but not just at bus terminals and planned stops along the scheduled route.

Recommendation:

- ***Congress should amend federal law, Title 49 U.S.C. § 31102(b)(X), to allow roadside safety inspections of motorcoaches at more times and additional locations.***

FMCSA Regulatory Issues

Electronic On-Board Recorders Are Needed To Reduce Fatigue and Fraud

It has been more than 15 years since Congress in 1995 directed the Secretary of Transportation to address the issue of Electronic On-Board Recorders (EOBRs).[38] After all this time, FMCSA has produced only a weak and ineffective remedial final rule that requires carriers that fail two consecutive compliance reviews (CR) to install EOBRs, a measure the agency itself admits will apply to less than one percent of motor carriers.[39]

The FMCSA has, however, earlier this year proposed a much broader requirement that would apply to all motor carriers of drivers that are required to maintain records of duty status (RODS), that is, driver logbooks.[40] The pending proposed rule responds to numerous calls for an EOBR mandate. At a hearing before this Subcommittee held May 1, 2007, on the topic of EOBRs,[41] Chairman Lautenberg said in his opening statement: "We need electronic on-board recorders in every truck on the road to ensure the safety of our truck drivers and our families who travel on the highways."[42] Similar sentiments were expressed by the President of CVSA.[43] The current Chair of NTSB, Deborah Hersman, has also repeatedly emphasized the need for a U.S. DOT requirement for EOBRs on all commercial motor vehicles.[44] As noted above, NTSB is resolute in continuing to list an EOBR mandate on its Most Wanted list and still classifies the agency's previous responses as "Unacceptable."

Moreover, pending legislation, the Commercial Driver Compliance Improvement Act, S. 695, introduced and cosponsored by Senators Pryor (D-AR) and Alexander (R-TN), would require the completion of the pending rulemaking within 18 months of enactment. Passage of this bill would ensure that the 16-year-long effort by Congress to adopt modern technology for truck safety enforcement would reach closure in the near future. Advocates supports S. 695 as do many safety organizations, law enforcement groups and leading segments of the trucking industry.

It is time for Congress to act. As mentioned before, this Committee has approved the MESA safety bill that includes a mandatory requirement for EOBRs on all motorcoaches.[45] Congress should mandate EOBRs for all interstate commercial vehicles operated by drivers who are required to maintain logbooks to ensure the FMCSA final rule is an effective rule.

Recommendations:

- ***Congress should pass:***
  - ***S. 695*, the *Commercial Driver Compliance Improvement Act, to direct the FMCSA to issue a universal EOBR requirement for all commercial motor vehicles operated in interstate commerce by drivers who maintain records of duty status logbooks; and,***

- ***the Motorcoach Enhanced Safety Act of 2011 mandating EOBRs on all passenger-carrying commercial motor vehicles under FMCSA jurisdiction.***

Truck Driver Hours of Service and Fatigue

A revised Hours of Service (HOS) rule is nearing completion. The FMCSA has committed to issuing a new HOS rule by the end of October, 2011. While Advocates is hopeful that the agency will finally issue a safer rule, returning to the traditional limit of 10 consecutive hours of driving and restricting the use of the 34-hour restart, we await the final decision this fall.

There are important reasons for the agency to revise the HOS rule. The current, unsafe HOS rule adopted in 2003 substantially increased maximum daily and weekly driving and working hours for truckers.[46] Driving time for each shift was increased from 10 to 11 consecutive hours. Driver fatigue from this excessively long driving shift is increased further by allowing an additional three or more hours in each shift for other work including the loading and unloading of trucks.

The danger posed by these provisions to the health and safety of truck drivers and the motoring public are made even worse by the weekly "restart" provision. The restart undermines what previously was a "hard number" 60-hour weekly driving cap (or 70 hours for drivers on an 8-day schedule). Instead, the rule permits drivers to reset their accumulated weekly driving hours to zero at any point during the work week after taking only a 34-hour off–duty break, and then start a new tour of duty. This permits drivers who use the restart provision to cram an extra 17 hours of driving into a 7-day schedule, actually operating their trucks for a total of 77 hours in seven calendar days instead of the limit of 60 hours. Drivers operating on an 8-day schedule can drive an extra 18 hours in 8 days for a total of 88 driving hours instead of the limit of 70-hours.

The restart permits companies to squeeze these excessive "bonus" driving hours out of drivers. Instead of having a full weekend of 48 to 72 hours off duty for rest and recovery, which was required under the previous HOS rule, the restart permits motor carriers to compel drivers to cash in their rest time for extra driving hours. This dramatically increases truck driver crash risk exposure, yet FMCSA rationalized this dramatic increase in daily and weekly driving and work hours as being just as safe as the previous HOS rules, even though drivers had more end-of-week rest time under the previous rule.

The current HOS rule was issued by FMCSA despite the findings of fact by the agency, and its predecessors, that crash risk significantly increases after eight consecutive hours of driving, and that long driving and work hours promote driver fatigue. FMCSA also failed to properly take into account driver health impacts and scientific findings showing that more driving and working hours are dangerous and lead to an increased risk of crashes, especially among workers in industries with long hours of shiftwork who have little opportunity for rest and recovery. Advocates meticulously documented the science showing that long periods of work and cumulative fatigue drastically effect driver performance. The agency's selective use of research findings was designed to justify a

predetermined regulatory outcome, and the agency cherry-picked research data in order to justify its expansion of driver working and driving hours.

These concerns were echoed by the U.S. Court of Appeals in two separate, unanimous decisions that vacated the current HOS rule and remanded the rule to the agency for changes. In each case, the Court questioned the basis for the agency's decision-making in allowing longer driving hours despite the safety threat, adverse health effects and the increased crash risk posed by the rule, indicating that the current HOS rule was not based on sound reasoning.[47] Despite back-to-back judicial decisions overturning the rule in each case, FMCSA refused to make changes to the maximum daily and weekly driving and work hours allowed by the rule.

On December 19, 2007, this Subcommittee held a hearing on the HOS rule. The record of that hearing documents the safety concerns about the HOS rule and its precarious legal status. In 2008, the FMCSA nevertheless defiantly reissued the same flawed HOS rule for a third time and, in 2009, Advocates, Public Citizen, the Truck Safety Coalition and the International Brotherhood of Teamsters filed a third lawsuit challenging the rule.[48]

In an effort to expedite the issuance of what safety advocates hope will be a new, safer HOS rule, and to allow the new Administration to determine the right course on this issue, safety and labor organizations agreed to hold the lawsuit in abeyance while FMCSA develops a revised HOS rule. Under the terms of the settlement[49] the agency has committed to issuing a final rule by October 31, 2011.[50]

Recommendation:

- ***The Committee should continue rigorous oversight of the HOS rulemaking activity and efforts of FMCSA to comply with the HOS legal settlement and to issue a new rule that enhances the health and safety of truck drivers and the traveling public.***

FMCSA's New Entrant Motor Carrier Program Lacks Critical Safeguards

In the Motor Carrier Safety Improvement Act of 1999 (MCSIA),[51] the law that established the FMCSA, Congress directed the new agency to establish minimum requirements to ensure that new motor carriers are knowledgeable about the federal motor carrier safety standards (FMCSRs).[52] It also required consideration of the need to implement a proficiency examination.[53] National safety organizations called on the agency to require, prior to making a grant of temporary operating authority, a proficiency examination to determine how well new entrant motor carriers understand and are capable of complying with the FMCSRs and Hazardous Materials Regulations (HMRs), and whether they can exercise sound safety management of their fleet, drivers, and operations.

FMCSA's new entrant final rule lacked many important aspects of appropriate agency oversight of new truck and motorcoach companies, especially the need to mandate an initial pre-authorization safety audit of new carriers before awarding them temporary operating authority, and performing a compliance review (CR) at the end of the 18 month probationary period of temporary operating authority along with assigning the carrier a

safety fitness rating.[54] Advocates and other safety organizations strongly urged FMCSA to adopt these and other stringent oversight and enforcement mechanisms as part of the new entrant program, but these suggestions were largely ignored or rejected.

The pre-authorization safety audit and proficiency exam are intended to screen out carriers that are obviously not fit to start operating on our nation's highways. The CR inspection after 18 months is essential to evaluate whether actual carrier operations are unsafe in practice. Both types of inspections are needed to ensure public safety.

Because the agency rule did not implement the statutory directives in the MCSIA, and rejected other reasonable safeguards for new entrants, Advocates filed a petition for reconsideration with the agency on January 14, 2008.[55] The petition emphasized that the final rule contains no data or other information demonstrating that the new entrant review procedure adopted by FMCSA will improve the operating safety of new entrants through their knowledge about and compliance with the FMCSRs and HMRs. The petition also pointed out that the rule did not include an evaluation of the merits of a proficiency examination for new entrants, even though the MCSIA required the agency to consider the need for such an examination.

FMCSA granted Advocates' petition and issued an advance notice of proposed rulemaking (ANPRM) asking for preliminary data, views, and arguments on the need for a new entrant proficiency examination.[56] While this is a positive step, FMCSA continues to insist that its efforts to determine the capabilities of new entrants are adequate, and that the agency has fulfilled the statutory direction to ensure that applicants for the new entrant program are "knowledgeable about applicable safety requirements *before* being granted New Entrant authority."[57] In fact, the agency has no verification of a new entrant's knowledge of or capability to comply with the FMCSR and HMR because it doesn't ask for any demonstration by the applicant prior to starting operation. The only way to ensure that high-risk carriers are not allowed to start operating is to test their knowledge and check their equipment and drivers to prevent them from threatening public safety.

In addition, careful safety evaluation of new entrant applicant motor carriers before the start of operations and prior to an award of temporary operating authority will help the agency screen for "chameleon" or "reincarnated" motor carriers. These are companies that, as discussed below, went out of business or were forced to cease operations, but return under the guise of being "new entrants." These carriers conceal the fact that they are continuing operations with the same officers and equipment under a false identity.

Recommendations:

- ***Congress should:***
  - ***explicitly require the FMCSA to adopt a proficiency examination to determine how well a new entrant knows the FMCSRs and HMRs, and how capable it is to conduct safe operations; and***
  - ***mandate that FMCSA conduct a pre-authorization safety audit of new entrant motor carriers to determine the quality of their safety management, drivers, and equipment before awarding temporary operating authority.***

FMCSA Still Needs to Issue A Strong Entry-Level Driver Training Standard

Congress originally directed the FHWA to establish training standards for entry-level drivers in 1991.[58] There followed a long and tortured history of intermittent rulemaking and two lawsuits, the first for failing to issue a rule,[59] and the second for issuing an entirely inadequate, illegal final rule in 2004.[60] In the second case, the U.S. Court of Appeals rendered a judgment against the FMCSA, taking the agency to task for issuing a training standard that did not include any on-the-road, behind-the-wheel training.[61]

FMCSA reopened rulemaking with a new proposed rule published on December 26, 2007,[62] 16 years after the original deadline for agency action. While the proposed rule represents a minimal improvement over the unacceptable final rule, it is seriously flawed and fails to improve the knowledge and operating skills of entry-level commercial motor vehicle drivers in several respects.

First, without explanation the FMCSA reduced the minimum number of hours of instruction recommended in the 1985 Model Curriculum,[63] developed for the FHWA, from the 320 hours or more of instruction to only 120 hours. Second, the agency provides no justification in the proposal of the content of the curriculum or the minimum number of hours of instruction that would be required by the proposed curriculum. Third, the agency requires the same curriculum for drivers of motorcoaches as for drivers of straight trucks. The mounting number of motorcoach crashes emphasizes the need for special training requirements for these buses which operate and handle differently than trucks. Moreover, all curriculum content is indexed to truck driving, with no specific training and skills for motorcoach operators such as responsibilities for passenger safety management including emergency evacuation and combating fires.

Finally, FMCSA's proposal impermissibly restricts the scope of the entry-level driver training in two ways. First, it restricts the mandatory training requirement only to operators of interstate trucks, buses, and motorcoaches that have commercial driver licenses (CDL). Nothing in the law itself or the legislative history indicates any intent by Congress to exempt entry-level CDL holders who operate exclusively in intrastate commerce from driver training.[64] Second, the proposed rule applies only to entry-level CDL holders. Again, there is nothing in the law itself, or the statutory history, permitting FMCSA to exclude entry-level drivers of commercial vehicles who do not have or need a CDL from the training required for other commercial drivers.[65]

Recommendation:

- ***Congress should direct FMCSA to issue a final rule on driver training that requires a more comprehensive training curriculum and includes all entry-level commercial motor vehicle drivers regardless of whether they have CDLs or operate in interstate or intrastate commerce.***

Other Regulatory Issues

Establish a Clearinghouse for Positive Controlled Substance and Alcohol Tests

Establishment of a mandatory national clearinghouse for records relating to alcohol and controlled substance testing of commercial drivers is critical to ensuring highway safety. Today, drivers who have tested positive for drugs and alcohol are on the road operating commercial motor vehicles. Many applicants for CDLs fail to disclose previous drug or alcohol violations and motor carriers may conduct only partial background checks on new employees. This allows applicants with positive drug and alcohol tests in their background to be licensed and hired to operate commercial vehicles.

Legislation introduced by Senators Mark Pryor (D-AR) and John Boozman (R-AR), the Safe Roads Act of 2011, S.754, would require the Secretary to establish a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators within two years of the date of enactment. The bill would prohibit employers from hiring individuals who have tested positive, unless they have subsequently completed the return-to-duty process. The Government Accountability Office (GAO) supported the creation of a national database for positive alcohol and drug test results and test refusals in a 2008 recommendation to Congress.[66] The establishment of a national clearinghouse will make it easier for employers to ensure that they hire safe drivers and will prevent unsafe drivers from operating commercial motor vehicles on our nation's highways. Advocates supports the enactment of the Safe Roads Act of 2011.

Recommendation:

- ***Congress should enact S.754, the Safe Roads Act of 2011.***

The Need to Require Speed Limiters on Commercial Motor Vehicles

Another action that will help reduce the severity and frequency of commercial motor vehicle crashes is requiring speed limiters on all class 7 and 8 trucks. In 2006, Road Safe America and nine motor carriers petitioned the FMCSA and NHTSA to require devices to limit the speed of heavy trucks.[67] Although this issue is in the jurisdiction of the NHTSA, the outcome will have a direct impact on the safety of motor carriers. Early this year the NHTSA granted the petition but a proposed rule is not expected before 2012 at the earliest.[68] Advocates wants the Subcommittee to be aware of the fact that the petition has been granted and that action is expected on an issue that is closely related to the safety initiatives that are part of the Subcommittee's jurisdiction.

Event Data Recorders (EDRs)

Likewise, the installation of Event Data Recorders (EDRs) on all commercial motor vehicles will provide long-term safety benefits for commercial motor vehicles. EDRs are devices that record several seconds of valuable vehicle information in the moments before and during a crash. In addition to the potential use of this date to provide immediate, accurate crash information to emergency medical responders through Automatic Crash Notification (ACN) systems, the objective data collected in EDRs is invaluable to ensure accurate crash reconstruction and provide research data that can be used to improve crash avoidance and crashworthiness countermeasures for commercial vehicles. Although this is also an issue within the jurisdiction of the NHTSA, the Subcommittee should be aware that progress on requiring EDRs on trucks is being

pursued. I would also point out that the MESA bill on motorcoach safety includes an EDR mandate to improve the safety of motorcoaches and their passengers.

Pilot Program on NAFTA Long-Haul Trucking Provisions

The Safety of Mexican Trucks Entering the U.S. Must Be Assured

Despite the fact that the FMCSA has provided additional information and has made the new version of the NAFTA Long-Haul Trucking Provisions Pilot Program[69] more transparent, a number of serious safety concerns remain. For example, it is not at all clear whether all appropriate and pertinent violations data needed in the license database used by enforcement authorities will be available when the pilot program begins. The most recent report of the Department of Transportation (DOT) Office of Inspector General (OIG) cited the need to improve the monitoring of drivers with Mexican federal licenses operating in the U.S., especially timely reporting and data inconsistencies among U.S. states, and the reporting and matching of different categories of traffic convictions, including convictions in non-commercial vehicles and convictions using various types of Mexican licenses by Mexican authorities.[70] Under U.S. law, states are not currently required to report convictions of Mexican or Canadian drivers, so even FMCSA has noted that reporting of convictions by foreign drivers has been voluntary and inconsistent. Such reporting needs to be made mandatory before the pilot program begins.

In addition, FMCSA has indicated that in order to document the prior violation records of Mexican drivers that participate in the pilot program to determine whether they have disqualifying violations in personal vehicles on their personal licenses, the drivers will be asked to voluntarily provide their personal licenses to FMCSA officials. This leads to several additional problems. First, each driver is asked to voluntarily provide their personal license or driving history, but it is not a mandatory part of the pilot program so drivers can refuse to cooperate. Second, drivers may have multiple personal licenses from one or more states in Mexico. The voluntary submission of a single or even several state licenses does not ensure that all personal licenses have been handed over. Third, the license databases of the 31 Mexican states have never previously been reviewed for accuracy and data quality. Only the database of the Mexican Federal license has been subject to scrutiny. Without a review and audit of these new databases there can be no certainty that the licenses voluntarily provided by drivers participating in the pilot program, or the resulting driving histories, are accurate and complete.

Another as yet unresolved issue is the fact that federal agencies in the U.S. do not have the authority to disqualify a driver licensed by a foreign jurisdiction. Currently, a foreign driver who commits violations in the U.S. can be placed out-of-service (OOS) but cannot be disqualified from driving by U.S. authorities. The driver can be disqualified by the foreign state or foreign federal authority. But, if, the foreign jurisdiction refuses to disqualify the driver the U.S. has no power to disqualify the driver. This should be changed by statutory amendment to allow the FMCSA to disqualify a foreign driver before the commencement of the pilot program.

One more issue has been raised by the FMCSA in terms of data collection in the pilot program. The agency states that "violation rates based on inspection data will be used to assess the safety performance of each participating motor carrier."[71] This statement, however, does not indicate whether the agency will properly and fairly use the same type of inspection data for comparison purposes. First, there are three levels of commercial vehicle inspection intensity, Level 1 being the most intense and Level 3 being least intense. If the pilot program data is drawn largely from low-intensity level 3 inspections, that would not present a fair basis for comparison with trucks operated in the U.S. While the agency asserts that it "anticipates that inspections performed on the program participants' trucks will be, on average, as thorough and rigorous as those performed on U.S. motor carriers[,]"[72] this is not the same as a commitment to using the same percentages of each level of inspection for comparison purposes between pilot program and U.S. trucks.

Likewise, the location of the inspection matters a great deal in terms of credibility of the comparison between truck fleets. Pilot program trucks are expecting to be inspected at the U.S. border so the inclusion of port-of-entry border inspections should be eliminated from the data pool. Equally critical, inspection data should not be drawn from inspections conducted within the commercial border zones because the pilot program vehicles in the border zones may have driven relatively few miles from their home base to get to the border zone. Inspections conducted in the border zones may be far less indicative of long-haul operating conditions than inspections conducted at locations throughout the 48 contiguous states and Alaska. Moreover, if the pilot program is truly a test of whether Mexican carriers can operate safely on long-haul trips throughout the U.S., then the inspection data must be drawn from roadside inspections conducted outside of the commercial border zones and, preferably, from inspections conducted in non-border states. Inspections conducted at a distance from the U.S.-Mexican border will provide the most accurate measure of the safety of drivers, vehicles and motor carrier operations on long-haul trips within the U.S. Since the overwhelming majority of trips taken by participating motor carriers in the previous cross-border pilot program were completed in the border zones (85 percent),[73] reliance on similar data collected from border zone inspections in the proposed pilot program would not provide a valid basis for comparison. In addition, a large percentage of the trips beyond the border zone by participating carriers were completed in the four (4) border states. In order to obtain data that accurately compares long-haul operations of pilot program participants with long-haul operations in the U.S., only inspections conducted beyond the border zones, and typically after a trip of at least 250 miles, should be considered for inclusion in the data collection from the subject pilot program vehicles.

<u>Recommendations</u>:

- ***Congress should amend federal law to:***
  - ***require states to report violations by foreign commercial motor vehicle drivers to the Secretary of Transportation, and***
  - ***include foreign commercial motor vehicle drivers among the listed disqualifications provided under 49 U.S.C. § 31310;***
- ***FMCSA should evaluate the NAFTA long-haul pilot program based on inspections:***

- ***which compare violations determined based on similar percentages of Level 1,2 and 3 inspections as are conducted on U.S. trucks; and***
- ***that are conducted outside the U.S. commercial border zones and do not include inspections conducted at ports of entry at the U.S. border.***

FMCSA Enforcement Issues

Compliance, Safety, Accountability – Results Are Uncertain, Evaluation Is Needed

FMCSA has argued that enforcement rigor will be substantially increased as the new enforcement methodology, Compliance, Safety, Accountability (CSA), is fully implemented. Because CSA for the first time will include roadside inspection data as part of the monitoring and oversight of motor carrier enforcement, there is reason to believe that this may improve the agency's previously limited, bureaucratic approach to motor carrier enforcement interventions.

However, since CSA was only implemented at the beginning of this year, the information needed to assess the effectiveness of the CSA program is incomplete and not available to the public. CSA is supposed to provide more data from roadside inspections and the new Safety Measurement System (SMS) uses crash reports and violations grouped into seven (7) safety-related categories, called BASICs (Behavior Analysis Safety Improvement Categories), to conduct its safety analysis.[74] While more data is being collected and made available to the public in some of the seven safety categories of interest under CSA, many carriers have little or no data in some or a majority of these critical areas at this time. So the CSA program remains a potentially positive initiative but there is insufficient information available at this time to permit either the public to make reliable decisions based on the incomplete motor carrier safety information data, or for Advocates and other organizations to assess the impact of the CSA program on motor carrier safety.

It is important to note, however, there are several safety concerns regarding a bias that is built into the agency's new methodology on which CSA relies that will skew the resulting enforcement efforts. The new system will still not ensure that mechanical problems will have parity with driver violations for stopping dangerous carriers from operating unsafe trucks or motorcoaches. FMCSA's decision to place heavy emphasis on driver behavior as the core principle behind CSA[75] ignores the fact that mechanical defects are dramatically under-reported. Even though in 2010 the OOS rate for vehicles (large trucks) was 20.3 percent, and the OOS rate for drivers (large trucks) was just 5.2 percent,[76] the CSA BASICs includes four driver-related violation categories but only one category for vehicle maintenance violations.[77]

Studies[78] show that of the nearly 1,000 truck crashes investigated by FMCSA, fully 55 percent of them had one or more mechanical problems, and almost 30 percent had at least one condition that would trigger an OOS order, that is, a directive to the truck and driver to stop operating. It was also found that just a brake OOS violation increased the odds of a truck being assigned the critical reason for precipitating the crash by 1.8 times. For this reason, Advocates has criticized FMCSA's policy of only issuing an OOS order when both driver and vehicle violations exceeded the required levels under the previous Safety

Management System (SafeStat). Advocates believes that either driver or vehicle violations, if serious enough, should require the issuance of an OOS order. The NTSB likewise issued a safety recommendation calling for the same treatment of driver or vehicle safety violations.[79] The implications are clear: FMCSA's new approach under CSA, which includes four driver BASICs but only a single BASIC related to vehicle maintenance may well result in the same unbalanced, excessive emphasis on driver as opposed to vehicle violations.

The over-emphasis on driver behavior over mechanical defects has another collateral consequence when it comes to hours of service enforcement. Because of the current necessity to rely on the use of driver logbooks that are so often falsified that they are known as "comic" books, violations of HOS rules are often missed in roadside inspections. A high percentage of drivers are able to repeatedly conceal hours of service violations by manipulating the entries in their logbooks. Even with supplementary documents available to law enforcement, such as toll and fuel receipts, truck drivers can still make their logbook entries appear to be valid. If the CSA BASICs are overly reliant on driver violations, and enforcement personnel remain unable to accurately detect this major source of violations, then the data and accuracy of CSA will be questionable, and its capability to adequately address ongoing driver and carrier violations suspect.

For this reason, Advocates reiterates the need for Congressional action to direct FMCSA adoption of a universal EOBR regulatory requirement. Only the use of EOBRs can address this potential problem in the CSA approach.

Recommendations:

- ***FMCSA should be directed to:***
  - ***re-evaluate the imbalanced approach to motor carrier violations in CSA that relies too heavily on driver violations as part of the BASICs; and,***
  - ***implement NTSB safety recommendation H-99-6 so that either driver or vehicle violations alone can trigger issuance of an out-of-service order.***
- ***Congress should direct the GAO to assess:***
  - ***the accuracy and deterrent value of safety performance findings from the SMS;***
  - ***the progress of CSA and whether the effort is proceeding in the right direction;***
  - ***whether safety performance will be evaluated in a more timely and meaningful manner than the previous compliance review-oriented regime; and***
  - ***whether the system will detect a significantly higher percentage of dangerous motor carriers that either need major, immediate reforms to their safety management or must stop operating.***

FMCSA Should Impose the Maximum Penalties Allowed by Law on Violators

FMCSA has a history of avoiding the imposition of maximum penalties on serious motor carrier violators but we hope there will be a change under the new agency leadership. There has been no recent update on whether the agency has increased average penalties and is imposing sufficiently tough penalties in order to send a message to all truck and motorcoach companies that the agency means business. Congress indicated in the agency's authorizing law that civil penalties had not been sufficiently used to deter

violations.[80] Stiffer penalties levied against offending motor carriers would provide a strong deterrence to prevent other companies from committing serious violations.

FMCSA administers civil penalties allowed under the civil penalties section of the transportation code.[81] Despite the fact that this section has been amended a number of times in an effort to strengthen the legally allowed penalties, the statute affords the agency considerable discretion in setting the amount of penalties to be imposed and the maximum penalties are set too low. Motor carriers – the trucking, motorcoach, and bus companies – are liable for a maximum penalty of $10,000 for each offense, while the motor carrier employees who are actually responsible for committing the violations are subject to no more than a fine of $2,500 per offense.[82]

In the past, the agency has through its policies and interpretations limited the penalties it has imposed. For example, Congress made it clear in the agency's enabling legislation that FMCSA was supposed to assess maximum financial penalties for commission of certain acute or chronic motor carrier safety regulatory violations after the commission of two offenses or a pattern of violations.[83] However, the GAO found that the agency did not assess maximum fines for a pattern of violations.[84] The same GAO report also found that the agency misinterpreted the statutory basis for imposing maximum fines, assessing maximum fines only after a third violation rather than following a second violation.

FMCSA has conceded that it cannot determine whether the changed penalty structure and amounts of fines have a beneficial effect on motor carrier violation rates and on motor carrier safety.[85] Part of the problem is that the agency has imposed substantially different amounts of fines from year to year. Even after the maximum penalty amount was increased, average non-recordkeeping penalties plummeted from $5,066 in 2000 to $2,938 in 2006.[86] The latter figure is only a little more than 29 percent of the maximum permitted by law. It is clear that raising penalty ceilings in federal legislation while allowing broad agency discretion in the amounts of penalties actually imposed does not ensure that violations trigger stiff penalties or promote deterrence.

While FMCSA has recently announced the issuance of OOS orders to several motor carriers, prior recent failures by the FMCSA to impose stiff penalties has had deadly consequences. Just two months ago, on May 11, 2011, a horrific motorcoach crash occurred in Caroline County, Virginia in which four people were killed and over 50 injured when the fatigued driver ran off the side of the road and the motorcoach overturned and landed on its roof. The motorcoach operator, Sky Express, had 46 violations for fatigued drivers, 17 violations for unsafe driving, and 24 violations for driver fitness in the past two years.[87] The company was among the worst in the industry and FMCSA had proposed an "Unsatisfactory" safety rating for the company in April 2011. The rating meant that FMCSA could have shut down Sky Express after 30 days,[88] three days before the crash occurred on May 28, but the agency chose to extend the carrier's response and operating time for an additional 10 days.[89] Had FMCSA cracked down on Sky Express for its dozens of violations and poor fitness rating and shut the operator down, the crash could have been prevented. Secretary LaHood has stated that the practice of allowing additional time would not occur again.[90] Advocates questions

whether any motor carrier, especially a passenger-carrying operation, should be allowed to continue operations on public highways once the determination has been made that its operations are unsafe.

Recommendations:

- ***Congress should request a GAO study of FMCSA's imposition of penalties for motor carrier safety violations to determine:***
  - ***whether the current maximum penalty amounts are actually deterring motor carriers from committing violations;***
  - ***the extent to which FMCSA has reduced or compromised penalty amounts in a manner that results in lower penalties per violation and per motor carrier;***
  - ***the extent to which motor carriers regard current levels of imposed penalties as acceptable costs of doing business rather than as a deterrent;***
  - ***whether setting statutory minimum required penalties is necessary and appropriate, and to recommend such minimum amounts;***
  - ***whether motor carriers given "Unsatisfactory" safety ratings by FMCSA should be allowed to continue operations while challenging or trying to improve the safety fitness determination .***

FMCSA Lacks A Reliable Method to Detect "Reincarnated" Motor Carriers

At present, it is simply unknown what is the number of illegally operating carriers that have restarted their trucking and motorcoach companies as new entrants to mask prior operations, and to avoid paying large fines and complying with OOS orders.

It has become increasingly apparent that FMCSA's methods of detecting whether a motor carrier is legitimately registered with the agency and has legal operating authority are unreliable and unsafe. Thousands of motor carriers subject to heavy fines from repeated, past violations and even given stop operation orders sink out of sight and then re-appear as new entrants seeking registration and initial operating authority from FMCSA.

In 2008, the horrific crash of a motorcoach in Sherman, Texas, resulted in the deaths of 17 passengers and injuries to the driver and the other 38 passengers. As referenced previously in this testimony, the motorcoach was operated by Angel Tours, which had been stopped from operating by FMCSA just weeks prior to the crash but continued to operate under the new name Iguala Busmex. Angel Tours had an extremely poor safety record and had been ordered by the agency to cease operations.[91]

The NTSB investigation found that the numerous safety violations of the motorcoach and its drivers were a continuation of the company's exceptionally poor safety record when it registered with FMCSA as a new company. NTSB determined that FMCSA processes for vetting new entrant carriers through the use of its New Applicant Screening Program were inadequate for identifying the motorcoach company as an operation that had deceptively re-incorporated – a "reincarnated" or "chameleon" carrier – to evade agency enforcement actions. That failed screening process had allowed hundreds of motorcoach and trucking companies to escape detection as illegal, new motor carriers.

In a separate study, GAO tried to determine the number of motorcoach carriers registered with FMCSA as new entrants in FY2007 and FY2008 that are substantially related to previous companies or are, in fact, the same companies that have "reincarnated" themselves as new operations. GAO found 20 motorcoach companies that had re-appeared as new companies from old companies, representing about nine percent of 220 interstate motorcoach companies that FMCSA placed out of service during those two fiscal years. (These 220 companies are part of the approximately 4,000 motorcoach companies registered with FMCSA in FY 2008.) According to GAO, this percentage is probably an underestimation of the number of "chameleon" carriers in operation that have disguised their prior, unsafe operations to hide their reincarnation from the agency.

FMCSA officials admitted to GAO that until the 2008 motorcoach crash in Sherman, Texas, reincarnating was easy to do and hard to detect. In fact, five of the 20 carriers identified by GAO were still operating in May 2009, and GAO referred them to the agency for investigation. GAO also found another 1,073 trucking companies that appeared to be reincarnated "chameleon" carriers, which FMCSA had not detected.[92] FMCSA's new process for detecting such carriers has not been evaluated by GAO.

A follow-up study is needed to determine whether FMCSA's new procedures for detecting "reincarnated" carriers has made substantial inroads on the number of illicit trucking and motorcoach companies currently operating as new companies.

Recommendations:

- ***Congress should direct:***
  - ***FMCSA to require the principal officers of each new entrant motor carrier to declare, on the new entrant application, under penalties for perjury, that the new entrant is not a reincarnated or previously operating motor carrier with a different DOT registration number; and,***
  - ***GAO to conduct a follow up investigation to assess whether the FMCSA's new process for detecting "reincarnated" carriers is effective.***

Conclusion

Creation of a new federal agency to oversee motor carrier and motorcoach safety has not yet resulted in the rigorous oversight and enforcement that Congress directed and the public expected. In the past, safety goals had not been met but merely changed, rulemakings were routinely overturned in legal challenges because of faulty reasoning and illegal underpinnings, enforcement was sporadic and weak, and unsafe carriers and drivers operated with near impunity. Every year thousands are killed and over 100,000 injured in truck crashes, every month on average there is a serious motorcoach crash, and every day tough safety regulations to combat driver fatigue, improve enforcement and train new commercial drivers still go uncompleted. While the new leadership team at DOT has addressed some of these issues, and shows signs of revitalizing the FMCSA's safety mission, it is still necessary for Congress to conduct constant oversight and provide clear direction to this agency if we expect any strong and sustained progress in reducing deaths and injuries. Advocates thanks you for your leadership and looks forward to working with you on advancing motor carrier safety.

End notes

[1] *Large Truck and Bus Crash Facts 2009*, FMCSA-RRA-10-060, Federal Motor Carrier Safety Administration (FMCSA) (Oct. 2010).

[2] *Traffic Safety Facts 2009*, DOT HS 811 402, National Highway Traffic Safety Administration (NHTSA) (2010), available at http://www-nrd.nhtsa.dot.gov/pubs/811402ee.pdf.

[3] *Large Truck Fatality Facts 2009*, Insurance Institute for Highway Safety (IIHS), http://www.iihs.org/research/fatality_facts_2009/largetrucks.html.

[4] *See, e.g.*, *http://www.glgroup.com/News/Leading-Indicator---2008-North-America-Freight-Market--Truck-Build-Numbers-Down---2009-Predicted-To-Be-Worse-With-2010-30689.html*, demonstrating 7 consecutive quarterly declines in truck freight tonnage through the third quarter of 2009. Also *see*, http://www.ttnews.com/articles/basetemplate.aspx?storyid=22609, " ATA's Costello Hopeful Freight Levels Have Bottomed Out," *Transport Topics*, Aug. 27, 2009, and a similar, earlier report in *Transport Topics*, March 2, 2009.

[5] *Freight Tonnage Continues to Decline*, Martin's Logistics Blog, Aug. 3, 2009. http://logistics.about.com/b/2009/08/03/freight-tonnage-continues-to-decline.htm. Also *See, e.g.*, *http://www.glgroup.com/News/Leading-Indicator---2008-North-America-Freight-Market--Truck-Build-Numbers-Down---2009-Predicted-To-Be-Worse-With-2010-30689.html*, demonstrating 7 consecutive quarterly declines in truck freight tonnage through the third quarter of 2009. Also *see*, http://www.ttnews.com/articles/basetemplate.aspx?storyid=22609, " ATA's Costello Hopeful Freight Levels Have Bottomed Out," *Transport Topics*, Aug. 27, 2009, and a similar, earlier report in *Transport Topics*, March 2, 2009.

[6] "January Truck Tonnage Hits 3-Year High," *Transport Topics*., Feb. 23, 2011, available at http://www.ttnews.com/articles/basetemplate.aspx?storyid=26177.

[7] *U.S. Recession Periods and Motor Vehicle Fatalities, 1971-2009*, Advocates for Highway and Auto Safety (2010).

[8] "While these latest trends are encouraging, we do not expect them to continue once the country rebounds from its current economic hardships." Administrator Strickland emphasized that with an improving economy, more driving will result with high crash risk exposure. *Budget Estimates Fiscal Year 2011*, Statement from the Administrator, at 1-2, National Highway Traffic Safety Administration (Jan. 2010).

[9] Companion bill in the House of Representatives is H.R. 1619, introduced by Rep. James McGovern (D-MA).

[10] *Safe and Efficient Transportation Act of 2011*, introduced by Rep. Michaud (D-ME).

[11] Title 23 U.S.C. § 127(d).

[12] P. L. No. 110-53

[13] Title 23 U.S.C. § 127.

[14] *Id.*

[15] For example, the states began to allow bigger, heavier trucks on their non-Interstate highways in the early 1970s. The Federal-Aid Highway Act in 1978, Pub. L. 95-599 (Nov. 6, 1978), authorized the states to allow substantial increases in truck weights on Interstate highways and bridges. Subsequently, the Surface Transportation Assistance Act of 1982 (1982 STAA), Pub. L. 97-424 (Jan. 6, 1983), pre-empted state size and weight restrictions both on and off the Interstate systems by enacting new, higher federal size and weight limits. Those new limits applied to a designated National Network consisting of several hundred thousand miles of interconnected, primary highways, most of which had never had any federal control on truck size and weight. Many states gave up fighting after this sweeping act of federal pre-emption and simply extended the new, higher weight and size limits to all or most of their highways. Many other exemptions from the Interstate weight restrictions were enacted in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17 (April 2, 1987); the Truck and Bus Safety and Regulatory Reform Act of 1988, Pub. L. 100-690 (Nov. 18, 1988); and the the Motor

Carrier Safety Act of 1990, § 15, Sanitary Food Transportation Act of 1990, Pub. L. 101-500 (Nov. 3, 1990); and the Motor Carrier Safety Act of 1991, Title IV, Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 (Dec. 18, 1991).

[16] *Truck Inventory and Use Survey*, U.S. Bureau of the Census, 1974, 1982, 1987.

[17] This increasingly liberal interpretation of grandfather rights in many states was the result of a major amendment in the 1982 STAA that excluded the Federal Highway Administration from overseeing and enforcing state weight limits on the Interstate highway system. The amendment allowed the states to determine for themselves the force and effect of their grandfather rights to vary axle and gross weights, and bridge load formulas, from the requirements of 23 U.S.C. § 127.

[18] *Truck Inventory and Use Survey, op. cit.*, 1992.

[19] *Vehicle Inventory and Use Survey* (formerly the *Truck Inventory and Use Survey*), U.S. Bureau of the Census (1997).

[20] *Highway Statistics 2008*, Federal Highway Administration (FHWA) (Jan. 5, 2010).

[21] Sections 194(a) and 194(d), Fiscal Year 2010 Transportation, Housing, and Urban Development Consolidated Appropriations Act of 2009, P.L. 111-117 (Dec. 16, 2009).

[22] Maine and Vermont Heavy Truck Interstate Pilot Program, 6 Month Report, p. 10 (FHWA). *See also* subsequent chart "Impacts to Sidney I-95 NB, Vassalboro Rte. 201 NB & So. China Rte 3/9/202 EB (Year 2010)" (FHWA).

[23] *See, e.g.*, Transportation Efficiency Act for the 21st Century (TEA-21), P.L. 105–178 (June 9, 1998) (eliminated major federal safety regulations governing drivers of utility service vehicles); National Highway System Designation Act of 1995, P. L. 104–5 (Nov. 28, 1995) (exempted drivers transporting agricultural commodities and farm supplies from maximum driving time, maximum duty time, and minimum off-duty time hours of service requirements, and allowed drivers of ground water well drilling rigs, of construction materials and equipment, and of utility service vehicles to use a 24-hour restart for each new work week rather than the minimum required layover time after a tour of duty).

[24] 65 FR 22540 (May 2, 2000). *See, e.g.*: "The FMCSA has found no sleep or fatigue research that supports any of the current exceptions or exemptions, including the 24-hour restart provisions authorized by the NHS Act." *Id.* at 25559.

[25] *Western Uniformity Scenario Analysis*, U. S. Department of Transportation (April 2004).

> In recent years a number of *ad hoc*, State-specific exemptions from federal truck size and weight laws have been enacted. For instance, TEA-21 contained special exemptions from federal size and weight limits in four States, Colorado, Louisiana, Maine, and New Hampshire. The Department does not support this kind of piecemeal approach to truck size and weight policy. It makes enforcement and compliance with truck size and weight laws more difficult, it often contributes little to overall productivity, it may have unintended consequences for safety and highway infrastructure, and it reduces the willingness to work for more comprehensive solutions that would have much greater benefits.

Id. at XI-3.

[26] Sections 194(a) and 194(d), Fiscal Year 2010 Transportation, Housing, and Urban Development Consolidated Appropriations Act of 2009, P.L. 111-117 (Dec. 16, 2009).

[27] TEA-21, § 407, *codified* at 49 U.S.C. § 31315(b).

[28] The Motor Carrier Safety Improvement Act of 1999 (MCSIA), P. L. 106-159 (Dec. 9, 1999), *codified at* 49 U.S.C. § 113(b).

[29] Available at http://www.ntsb.gov/safety/mwl.html. The current, 2011 Most Wanted Transportation Safety Improvements for motor carriers include the following issues:

- Addressing Human Fatigue
- Bus Occupant Safety

- Electronic Onboard Recorders
- Addressing Alcohol-Impaired Driving for Commercial Motor Vehicles.

[30] *Fatigue, Alcohol, Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes*, NTSB (1990).

[31] National Transportation Safety Board Recommendation H-07-041 issued Dec. 2007. http://www.ntsb.gov/safetyrecs/private/QueryPage.aspx.

[32] 49 C.F.R. Part 396; MCSIA, § 210, *codified at* 49 U.S.C. § 31142.

[33] 73 FR 63040 (Oct. 22, 2008). *See also*, 66 FR 32863 (June 18, 2001); 63 FR 8516 (Feb. 19, 1998).

[34] 49 U.S.C. § 31142.

[35] R. Accetta, *Motorcoach Run Off Bridge and Rollover Sherman, Texas, August 8, 2008,* Power Point Presentation, Office of Highway Safety, NTSB, Oct. 30, 2009, available at *http://www.ntsb.gov/events/2009/sherman-tx/introduction.pdf*.

[36] 49 U.S.C. § 31102(b)(X).

[37] Obama Administration Has Stepped Up Action Against Unsafe Motorcoach, Trucking Companies, News Release, DOT 90-11, July 19, 2011, available at http://www.fmcsa.dot.gov/about/news/news-releases/2011/Obama-Administration-Action-Against-Unsafe-Motorcoach-Trucking-Companies.aspx.

[38] Sec. 408 of the Interstate Commerce Commission Termination Act of 1995, P.L. 104–88 (Dec. 29, 1995).

[39] Electronic On-Board Recorders for Hours-of-Service Compliance, Final Rule, 64 FR 17208 (Apr. 5, 2010). FMCSA's remedial final rule will take effect in 2012 and will require only about 5,700 motor carriers to install and use EOBRs – but only after an hours of service (HOS) violation is discovered in the course of a Compliance Review (CR). Because FMCSA annually conducts CRs on only two percent of motor carriers registered with the agency, the chances of being caught violating HOS requirements are very remote, and the detection of violations will be based on examination of logbooks recording duty status, which are widely known to be regularly falsified by a large percentage of commercial drivers to conceal violations.

In addition, the remedial rule has numerous other shortcomings including the following:

- The EOBR Global Positioning System (GPS) function will record only at 60 minute intervals rather than at one minute intervals – a serious problem that allows carriers to evade fixed weigh stations, use illegal hazardous materials routes, and traverse bridges posted for reduced loads, without detection.
- Carriers required to install and use EOBRS will not have to provide certain supporting record of duty status (RODS) documents – which reduces the documentation that enforcement personnel need to determine whether drivers using sleeper berths complied with minimum off-duty time.
- The EOBRs default to "on-duty not driving status" when a commercial vehicle has been stationary for only five minutes. This allows time during intermittent vehicle movement in traffic congestion or while waiting in loading dock lines, to be recorded as non-driving time. As a result it will extend the drivers' shift beyond the maximum 11 consecutive hours allowed by regulation.
- EOBRs will not collect speed data thereby reducing the deterrent effect on speeding by commercial drivers and undermining the effectiveness of speed limit enforcement by public authorities.[39]
- FMCSA thoroughly fails to address the need for specific fail-safe controls to ensure that EOBRs are tamper-proof, and are protected with adequate, security control measures to limit access only to appropriate users.

[40] Electronic On-Board Recorders and Hours of Service Supporting Documents, 76 FR 5537 (Feb. 1, 2011).

[41] U.S. Senate Committee on Commerce, Science and Transportation. Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. Electronic On-Board Recorders (EOBR's) and Truck Driver Fatigue Reduction. 110th Cong. Washington: May 1, 2007.

[42] Sen. Lautenberg, Frank. Statement to the U.S. Senate Committee on Commerce, Science and Transportation. Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety,

and Security. Electronic On-Board Recorders (EOBR's) and Truck Driver Fatigue Reduction. 110th Cong. Washington: May 1, 2007.

[43] "EOBR technology is proven. More than 50 countries have mandated Electronic Data Recorders for driving and standby time recording and/or speed and distance recording." Captain John E. Harrison. Statement to the U.S. Senate Committee on Commerce, Science and Transportation, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. Electronic On-Board Recorders (EOBR's) and Truck Driver Fatigue Reduction. 110th Cong. Washington: May 1, 2007.

[44] Chairman Deborah Hersman, statement to the Transportation and Infrastructure Committee, Subcommittee on Highways and Transit, Motor Carrier Safety: The Federal Motor Carrier Safety Administration's Oversight of High Risk Carriers, 110th Cong. Washington: July 11, 2007.

[45] S. 453, § 12(a).

[46] Hours of Service of Drivers; Drivers Rest and Sleep for Safe Operations; Final Rule, 68 FR 22455 (Apr. 28, 2003).

[47] *Owner-Operator Independent Drivers Ass'n v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007); *Public Citizen v. FMCSA*, 374 F.3d 1209 (D.C. Cir. 2004).

[48] Petition for Review, filed March 2009, *Public Citizen et al., v. FMCSA*, No. 09-1094 (D.C. Cir.)

[49] *Id., see* Settlement Agreement dated Oct. 26, 2009 and Order dated March 3, 2010.

[50] 76 FR 26681 (May 9, 2011).

[51] P. L 106–159 (Dec. 9, 1999).

[52] Section 210 of MCSIA added 49 U.S.C. § 31144(g) which directed the establishment of regulations requiring each owner or operator with new operating authority to undergo a safety review within 18 months of starting operations.

[53] MCSIA, § 210(b).

[54] 73 FR 76472 (Dec. 16, 2008).

[55] Advocates for Highway and Auto Safety, Jan. 14, 2008, "Petition for Reconsideration Filed with the Federal Motor Carrier Safety Administration Regarding the Order Issued on New Entrant Motor Carriers Safety Assurance Process, 49 CFR Parts 365, 385, 386, and 390, 73 Federal Register 76472 *et seq.*, December 16, 2008."

[56] New Entrant Safety Assurance Process; Implementation of Section 210(b) of the Motor Carrier Safety Improvement Act of 1999, advance notice of proposed rulemaking, 74 FR 42833 (Aug. 25, 2009).

[57] *Id.* at 42834 (emphasis supplied).

[58] ISTEA, § 4007(a).

[59] *See* settlement agreement dated February, 2003, *In Re Citizens for Reliable and Safe Highways v. Minetta*, No. 02-1363 (D.C. Cir. 2003).

[60] *Advocates v. FMCSA*, 429 F.3d 1136 (D.C. Cir. 2005).

[61] *Id*.

[62] 73 FR 73226 (Dec. 26, 2008).

[63] *Model Curriculum for Training Tractor-Trailer Drivers*, FHWA 1985.

[64] The original legislation creating the commercial driver license (CDL) explicitly required that CDLs must be issued to both interstate and intrastate commercial drivers. FMCSA has no statutory basis for the unilateral exclusion of intrastate CDL holders from required entry-level driver training. In addition, Congress has specifically emphasized the need for *greater* uniformity in motor carrier safety regulation in Sec. 203 of the Motor Carrier Safety Act of 1984.

[65] The provision in the Intermodal Transportation Efficiency Act of 1991 and accompanying legislative history cannot be construed to abbreviate the scope of required entry-level training only to drivers of commercial motor vehicles who also have CDLs.

[66] *"Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them Off the Road,"* Government Accountability Office Report to Congressional Requesters. GAO-08-600. May 2008. http://www.gao.gov/new.items/d08600.pdf

[67] Road Safe America Petition dated Sept. 8, 2006. A similar petition was later filed by the American Trucking Association dated Oct. 20, 2006. *See* 72 FR 3904 (Jan. 26, 2007).

[68] 76 FR 78 (Jan. 3, 2011).

[69] 76 FR 40420 (July 8, 2011); 76 FR 20807 (Apr. 13, 2011).

[70] Follow-Up Audit on the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions, p. 31, FMCSA, MH-2009-068, Office of the Inspector General, U.S. DOT (Aug. 17, 2009).

[71] 76 FR 40436.

[72] *Id*.

[73] U.S.-Mexico Cross-Border Trucking Demonstration Project, Independent Evaluation Panel Report to the U.S. Secretary of Transportation, p. 12 (Oct. 31, 2008).

[74] CSA relies on the Safety Measurement System (SMS) which quantifies the on-road safety performance of carriers and drivers to identify candidates for interventions, determine the specific safety problems the a carrier or driver exhibits, and to monitor whether safety problems are improving or worsening. The SMS weighs the violation data collected in seven areas called the Behavior Analysis Safety Improvement Categories, or BASICs: unsafe driving; fatigued driving (hours of service); driver fitness; controlled substance/alcohol; vehicle maintenance; cargo-related; and crash indicators.

[75] *See*, 71 FR 61131 (Oct. 17, 2006). Also *see*, www.csa2010.fmcsa.dot.gov. Primary data sources available to researchers and enforcement authorities contain very little information on vehicle mechanical condition, but lots of detailed information about driver condition and behavior. In addition, available crash data systems are not designed to support any analysis of how mechanical defects played a role in CMV crashes. All well-known crash data sets, such as the Fatality Analysis Reporting System (FARS), the General Estimates System (GES), and state crash files maintained and sent to FMCSA as part of each state's requirements under its State Enforcement Plan to qualify for Motor Carrier Safety Improvement Program (MCSAP) funds, are based on police reports. These data sets, unsurprisingly, contain very low percentages of various mechanical defects as contributing to reported crashes.

Officers on crash scenes do not engage in forensic work to detect mechanical failures. Police crash reports concentrate overwhelmingly on supposed driver errors or violations as the proximate reasons for the crash occurrences. If a report does contain mechanical or equipment failure information, it probably will involve an obvious, catastrophic failure and not deterioration of performance in key vehicle operating systems that cannot be detected at the crash scene. This disregard of mechanical defect involvement in CMV crashes is even more likely in injury or property-damage-only crashes.

Empirical data highlights the paradox of the radical under-reporting of CMV mechanical defects: roadside inspections, such as the annual Commercial Vehicle Safety Alliance (CVSA) Roadcheck repeatedly and consistently show high rates of mechanical defects and out-of-service (OOS) orders issued for such defects. For example, CVSA's Roadcheck 2009 found an average of 1.12 vehicle violations in every roadside inspection, and 26.1 inspected trucks were placed OOS for mechanical/equipment violations. http://www.cvsa.org/news/2009_press.aspx. Severe under-reporting of mechanical defects that contribute to crashes has been borne out by several investigations. (Massie and Campbell 1996). Without special, in-depth studies keying on mechanical defects, crash data sets available for research cannot accurately gauge the role of mechanical problems in large truck crashes.

[76] Roadside Inspections and Out-of-Service (OOS) Rates for Commercial Motor Vehicles, Commercial Motor Vehicle Facts, FMCSA (April, 2011) available at http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf.

[77] *See* CSA BASICs website available at http://csa.fmcsa.dot.gov/about/basics.aspx.

[78] A. McCartt, *et al.*, "Use of LTCCS Data in Large Truck Underride Study," Insurance Institute for Highway Safety, Society of Automotive Engineers 2010 Government/Industry Meeting, Washington, D.C., Jan. 26-29, 2010.

[79] NTSB Rec. H-99-6, issued Feb. 26, 1999. to FMCSA ("Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier").

[80] MCSIA, § 3(2).

[81] 49 U.S.C. § 521(b).

[82] *Id.* at § 521(b)(2)(A).

[83] MCSIA, § 222 states:

> *(b) ESTABLISHMENT.—The Secretary— * * **
>
> > *(2) shall assess the maximum civil penalty for each violation of a law referred to in subsection (a) by any person who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or a related violation of critical or acute regulations issued to carry out such a law.*

[84] *Motor Carrier Safety: Federal Agency Identifies Many High-risk Carriers but Does not Assess Maximum Fines as often as Required by Law*, GAO-07-584, Aug. 2007.

[85] FMCSA states in its study of civil penalties:

> [I]t was determined during the original analysis that it is not possible to isolate the effects of the revisions to the civil penalty schedule on carrier behavior from other elements of the CR program or other FMCSA programs (e.g., the roadside inspection program). Other actions that could be taken against a carrier as a result of a CR include: placing a carrier OOS for reasons other than nonpayment of fines, and determining that a carrier is unfit to operate. Also, it is not possible to isolate the effects of TEA-21 penalty revisions from other civil penalty revisions that follow in later years. Therefore, the 2004 study focused primarily on the impact of the changes in the revised civil penalty schedule on the dollar amount of the fines assessed to the carrier and on the number of violations assessed.

Analysis of FMCSA's Revised Civil Penalties (1995–2006): A Follow-up Study, FMCSA, U.S. Department of Transportation, Aug. 2009, at v.

[86] *Id.*, Table 4, at 11.

[87] Federal Motor Carrier Safety Administration Safety Measurement System for Sky Express, USDOT# 1361588.

[88] 49 U.S.C. § 31144(e)(2).

[89] *Safety Agency Rebuked in Deadly Bus Crash*, USA Today, June 2, 2011, *available at* http://www.usatoday.com/news/nation/2011-06-01-bus-crash-lahood_n.htm?loc=interstitialskip#.

[90] *"LaHood Ends Extended Appeals After Fatal Bus Crash,"* AP/NBC. 1 Jun 2011. http://www.nbcwashington.com/news/local/DC-Fed-Agency-Was-Set-to-Suspend-Bus-Company-Before-Crash-122972973.html.

[91] *Highway Accident Report – Motorcoach Run-Off-The-Bridge and Rollover, Sherman Texas, Aug. 8, 2008*, NTSB/HAR-09/02, http://www.ntsb.gov/publictn/2009/har0902.htm.

[92] *Motor Carrier Safety: Reincarnating Commercial Vehicle Companies Pose Safety Threat to Motoring Public – Federal Safety Agency Has Initiated Efforts to Prevent Future Occurrences*, GAO-09-924 (July 2009).