

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

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

CHALLENGES IN MOTORCOACH SAFETY

March 30, 2011

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

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

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

MOTORCOACH SAFETY ACTION PLAN (THE PLAN)

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

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

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

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

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

ELECTRONIC ON-BOARD RECORDERS

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

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

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

DISTRACTED DRIVING

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

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

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

ENHANCED OVERSIGHT OF MOTORCOACH OPERATIONS

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

FMCSA Motorcoach Strike Forces and Oversight

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Operating Authority Vetting Program

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

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

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

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

New Entrant Safety Audit Program

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

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

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

Compliance, Safety, and Accountability (CSA)

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

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

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

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

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

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

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

Enhanced Oversight of the Medical Certification Process

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

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

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

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

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

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

KNOWLEDGE REQUIREMENTS FOR NEW CARRIERS

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

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

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

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

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

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

CONCLUSION

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

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

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

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