



National Transportation Safety Board

Washington, D.C. 20594

SEP 09 2011

Office of the Chairman

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
Washington, DC 20590

Dear Administrator Ferro:

Thank you for your February 4, 2011, letter and the May 9, 2011, e-mail from Ms. Dee Williams, Division Chief, Strategic Planning and Program Evaluation, to the National Transportation Safety Board (NTSB) regarding Safety Recommendations H-09-32 through -41, stated below. These recommendations were issued to the Federal Motor Carrier Safety Administration (FMCSA) on December 29, 2009, as a result of our investigation of the January 2, 2008, motorcoach rollover on U.S. Highway 59 near Victoria, Texas. We also appreciate your staff's attendance at meetings held on February 16, 2011, and August 17, 2011, to further discuss the implementation of these recommendations.

H-09-32

Update and redistribute your "Driver Fatigue Video" to include current information on fatigue and fatigue countermeasures and make the video available electronically. Implement a plan to regularly update and redistribute the video.

The NTSB notes that the FMCSA anticipates completion of its research on motorcoach operator fatigue by late 2011, after which it will incorporate the findings in an update of the "Driver Fatigue Video." Pending the publication of the updated video in summer 2012 and development of a plan to regularly update and redistribute the video, Safety Recommendation H-09-32 is classified "Open—Acceptable Response."

H-09-33

Revise 49 *Code of Federal Regulations* Part 376 to require that passenger motor carriers are subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo.

The NTSB notes that the FMCSA plans to initiate rulemaking in 2011 to require written agreements for passenger carrier vehicle leases. Pending publication of a final rule that addresses the intent of this recommendation, Safety Recommendation H-09-33 is classified "Open—Acceptable Response."

H-09-34

Seek statutory authority to deny or revoke operating authority for commercial interstate motor carriers found to have applications for operating authority in which the applicant failed to disclose any prior operating relationship with another motor carrier, operating as another motor carrier, or being previously assigned a U.S. Department of Transportation number.

The NTSB notes that, pending a grant of expanded authority, the FMCSA is using its new applicant screening (NAS) tool, as well as manual research, to identify passenger carriers that may be trying to use the new entrant process to evade outstanding enforcement orders. We look forward to learning whether the reauthorization legislation currently being considered by Congress will allow the FMCSA to deny or revoke operating authority for commercial interstate motor carriers that have submitted fraudulent applications. In the interim, Safety Recommendation H-09-34 is classified “Open—Acceptable Response.”

H-09-35

Apply the evasion detection algorithm process against all interstate passenger carriers that obtained Federal Motor Carrier Safety Administration operating authority after the New Entrant Safety Assurance Program began in 2003 but before the program began vetting those carriers to verify that those new entrant carriers do not have a concealed history of poor safety management controls because they were able to reenter interstate commerce undetected as reincarnated carriers.

The NTSB notes that the FMCSA applied its NAS tool (formerly referred to as the “evasion detection algorithm”) to all passenger carriers that were granted operating authority since 2003. Four carriers were identified as possible reincarnated carriers, which the FMCSA pursued with compliance reviews and further enforcement action. As these actions satisfy the intent of this recommendation, Safety Recommendation H-09-35 is classified “Closed—Acceptable Action.”

H-09-36

Establish a requirement to review all passenger carrier lease agreements during new entrant safety audits and compliance reviews to identify and take action against carriers that have lease agreements that result in a loss of operational control by the certificate holder.

The NTSB notes that the FMCSA will use the rulemaking that it plans to initiate in 2011 in response to Safety Recommendation H-09-33 as a basis for modifying the new entrant safety audit and compliance review processes to require review of lease agreements, once that rulemaking has been completed. Pending the establishment of the recommended requirement, Safety Recommendation H-09-36 is classified “Open—Acceptable Response.”

H-09-37

Assist the National Highway Traffic Safety Administration in developing a Web-based database of [Federal Motor Vehicle Safety Standards] FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by Federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States. Implement a process to periodically update this database.

H-09-38

Require that Federal and state inspectors utilize the database requested in Safety Recommendation H-09-37 during both roadside and compliance review inspections of passenger-carrying commercial motor vehicles to identify and place out-of-service non-FMVSS-compliant vehicles.

H-09-39

Institute a requirement for Federal and state enforcement officials to obtain training on a procedure to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label, and work with the Commercial Vehicle Safety Alliance to develop and provide this training.

H-09-40

Require that passenger motor carriers certify on their OP-1(P) forms (Application for Motor Passenger Carrier Authority) and initial MCS-150 form (Motor Carrier Identification Report [Application for USDOT Number]) and subsequent required biennial submissions that all vehicles operated, owned, or leased per trip or per term met the FMVSSs in effect at the time of manufacture.

H-09-41

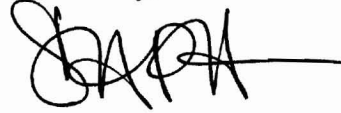
Seek statutory authority to suspend, revoke, or withdraw a motor carrier's operating authority upon discovering the carrier is operating any non-FMVSS-compliant passenger-carrying commercial motor vehicles, a violation of the FMVSS-compliant certification requested in Safety Recommendation H-09-40.

The discussions and responses received to date regarding Safety Recommendations H-09-37 through -41 have not addressed the intent of these recommendations. On August 17, 2011, staff from the FMCSA; the National Highway Traffic Safety Administration; the Department of Transportation, Office of the Secretary; the United States Customs and Border Protection; and the NTSB met to further discuss responses to these recommendations and the companion recommendations that were made to these other agencies. A representative from the Department of Transportation, Office of the Inspector General, also attended the meeting. Although our agencies

appear to have a fundamental disagreement regarding the need for a database to track FMVSS compliance, there was a positive discussion of possible alternate methods for detecting and verifying conformance with the FMVSSs for passenger-carrying commercial motor vehicles. Until we receive the updated information, based on the official responses we have received from your agency, Safety Recommendations H-09-37 through -41 are classified "Open—Unacceptable Response." The NTSB looks forward to receiving the FMCSA's revised plans and timetables so that we can reevaluate your efforts to implement these recommendations.

If you would like to submit your response electronically rather than in hard copy, you may send it to the following e-mail address: correspondence@ntsb.gov. If your response includes attachments that exceed 5 megabytes, please e-mail us at the same address for instructions on how to use our secure mailbox. To avoid confusion, please use only one method of submission (that is, do not submit both an electronic copy and a hard copy of the same response).

Sincerely,

A handwritten signature in black ink, appearing to read 'DAPH', with a long horizontal line extending to the right.

Deborah A.P. Hersman
Chairman

cc: Ms. Linda Lawson, Director
Office of Safety, Energy, and Environment
Office of Transportation Policy