



National Transportation Safety Board

Washington, D.C. 20594

MAR 29 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 the May 26, 2010, letter to the National Transportation Safety Board (NTSB) regarding Safety Recommendations H-09-18 through H-09-21, stated below. These recommendations were issued to the Federal Motor Carrier Administration (FMCSA) on November 19, 2009, as a result of a single-vehicle, multiple-fatality motorcoach accident in Sherman, Texas, on August 8, 2008.

H-09-18

Establish a regulatory requirement within 49 *Code of Federal Regulations* [CFR] 382.405 that provides the National Transportation Safety Board, in the exercise of its statutory authority, access to all positive drug and alcohol test results and refusal determinations that are conducted under the U.S. Department of Transportation [USDOT] testing requirements.

The NTSB is encouraged that the FMCSA is developing a notice of proposed rulemaking (NPRM) to establish a commercial driver's license (CDL) database for controlled substances and alcohol test results, which was scheduled to be published in November 2010 and that, pending the rulemaking, the FMCSA will continue to provide the NTSB access to testing information to determine the probable cause of commercial motor vehicle (CMV) crashes under NTSB investigation. However, we ask the FMCSA to clarify that the proposed rule will stipulate that the NTSB must be given access not only to postaccident test results, but also to *all* positive drug and alcohol test results, to include random testing results, whether documented in the central database or pending entry.

Such information concerning the toxicological and medical conditions of vehicle operators is vital to successful accident investigation and appropriate inquiry into involved drivers' professional history, as well as to the effectiveness of motorcarriers' random testing programs and state oversight in identifying drivers with a history of illegal drug use and/or a refusal to submit to testing, as required. Currently, 49 CFR 382.405 provides that the NTSB has access only to the results of postaccident alcohol and/or controlled substance tests administered following the accident under investigation. The intent of this recommendation is to allow the NTSB access to *all* positive drug and alcohol test results and refusal determinations that are

under the authority of the USDOT. As concluded in the Sherman, Texas, accident,¹ the difficulty in obtaining state records in connection with controlled substance tests results for the driver of the accident only highlights the NTSB's need for investigative access to a national database of all positive drug test results. Further, there is a need for employers to release the information to the NTSB even before its entry in the database in the event of an accident. Accordingly, pending clarification that the rulemaking will provide the NTSB the access requested, and completion of such rulemaking, Safety Recommendation H-09-18 is classified "Open—Acceptable Response." Also, as the NPRM was not issued on the FMCSA's anticipated schedule, we would appreciate being informed as to when it will be issued.

H-09-19

Require that tire pressure be checked with a tire pressure gauge during pre-trip inspections, vehicle inspections, and roadside inspections of motor vehicles.

The NTSB agrees with the FMCSA that education and outreach may be beneficial as an adjunct to rulemaking in addressing this issue. However, the use of a tire pressure gauge is the only reliable means for checking tire pressure; existing guidance that permits the use of a mallet or similar device to check for proper inflation is wholly inadequate. Therefore, we urge the FMCSA to reconsider its position and include rulemaking as part of its planned efforts to address tire underinflation on commercial vehicles. Accordingly, pending the FMCSA's issuance of a requirement that tire pressure be checked with a tire pressure gauge, Safety Recommendation H-09-19 is classified "Open—Unacceptable Response."

H-09-20

Require those states that allow private garages to conduct Federal Motor Carrier Safety Administration inspections of commercial motor vehicles to have a quality assurance and oversight program that evaluates the effectiveness and thoroughness of those inspections.

The NTSB disagrees that the FMCSA's resources should be focused on issues other than requiring the states to implement quality assurance and oversight programs for private garages. Periodic inspections conducted under 49 CFR 396.17 constitute an important mechanism for ensuring that motor carriers are held accountable for the safe condition of their vehicles. Nevertheless, most states do not provide sufficient oversight of state inspections conducted by private garages. Absent a requirement by the FMCSA that states have a means for ensuring the effectiveness and thoroughness of inspections conducted by private garages, the NTSB does not believe that such inspection programs will provide the necessary assurance of the safe operating condition of commercial vehicles. Accordingly, Safety Recommendation H-09-20 is classified

¹ See the *Motorcoach Run-Off-the Bridge and Rollover, Sherman, Texas, August, 2008*, Highway Accident Report NTSB/HAR-09/02 (Washington, DC: National Transportation Safety Board, 2009), available on the NTSB website at <http://www.nts.gov/publictn/2009/HAR0902.pdf>.

“Open—Unacceptable Response” pending the FMCSA’s implementation of the recommended program.

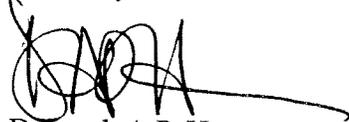
H-09-21

Develop an evaluation component to determine the effectiveness of your New Applicant Screening Program.

The NTSB notes that the FMCSA will implement an automated verification and information system in FY 2011 to coordinate with state agencies regarding background investigations on applicants. Although this new system will address needed requirements not already in place for states and will enhance current requirements, we would like to emphasize the importance of including an evaluation component to determine the effectiveness of the new applicant screening process for *all* carriers applying for operating authority. Accordingly, pending implementation of a system for background investigations on applicants by state agencies and the effective screening of new applicants, Safety Recommendation H-09-21 is classified “Open—Acceptable Response.”

We look forward to receiving periodic updates on your progress in implementing Safety Recommendations H-09-18 through -21. 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 letter).

Sincerely,



Deborah A.P. Hersman
Chairman

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