



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Administrator

May 26, 2010

1200 New Jersey Avenue, SE
Washington, DC 20590

Refer to: MC-PRS

The Honorable Deborah A.P. Hersman
Chairman
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594

Dear Chairman Hersman:

I am pleased to provide the Federal Motor Carrier Safety Administration's (FMCSA) response to the National Transportation Safety Board's (NTSB) letter dated November 19, 2009, regarding safety recommendations H-09-18 through H-09-21. The Agency appreciates the research and evaluation that resulted in the identification of these specific safety issues by NTSB, as a result of its investigation involving the August 8, 2008, motorcoach crash in Sherman, Texas. The FMCSA shares your commitment to transportation safety, and continues to develop and enforce regulations in order to reduce the incidence of crashes, injuries, and fatalities involving large trucks and buses. The Agency believes that the initiatives outlined in our response address the safety recommendations issued by NTSB.

H-09-18: Establish a regulatory requirement within 49 Code of Federal Regulations 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 testing requirements.

H-09-19: Require that tire pressure be checked with a tire pressure gauge during pretrip inspections, vehicle inspections, and roadside inspections of motor vehicles.

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.

H-09-21: Develop an evaluation component to determine the effectiveness of your New Applicant Screening Program.

H-09-18: Establish a regulatory requirement within 49 Code of Federal Regulations 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 testing requirements.

The FMCSA will consider the NTSB recommendation as the Agency develops its Notice of Proposed Rulemaking (NPRM) to establish a commercial driver's license (CDL) controlled substances and alcohol test results database. The regulatory initiative is currently included on the Agency's rulemaking agenda under regulatory identification number (RIN) 2126-AB18 with an anticipated publication date of November 2010.

This rulemaking would create a central database of verified positive controlled substances and alcohol test results for CDL holders and refusals by such drivers to submit to testing. This rulemaking would also require service agents and employers of CDL holders to record positive test results and, refusals to test, into the database. Prospective employers, acting on an application for a CDL driver position and the applicant's written consent to access the database, would query the database regarding the applicant before allowing the applicant to be hired and to drive commercial motor vehicles (CMV).

In the interim, while the rulemaking process proceeds, FMCSA will continue to provide NTSB staff with the testing information it needs to determine the probable cause of CMV crashes under NTSB investigation. The FMCSA requests that the recommendation be classified as "Open – Acceptable Response," pending the completion of the rulemaking.

H-09-19: Require that tire pressure be checked with a tire pressure gauge during pretrip inspections, vehicle inspections, and roadside inspections of motor vehicles.

The FMCSA acknowledges and shares the NTSB's interest in reducing the risk of CMVs being operated on underinflated tires. However, the Agency believes that education and outreach should be considered as an alternative to a Federal rulemaking to mandate tire pressure checks. The FMCSA believes that an alternative approach that involves working with the motorcoach and trucking industries, and tire manufacturers, to develop and distribute educational and outreach materials to heighten carriers' awareness of the importance of maintaining proper tire pressure, would achieve greater safety results than a rulemaking.

The minimum and maximum recommended air pressure for a given commercial vehicle tire may vary with the actual load the carrier intends to transport on the vehicle. Because drivers may not be fully aware of the proper air pressure for the tires on the power unit and the trailer, the Agency does not believe a Federal rulemaking to require drivers to measure tire pressure before each trip would enhance safety generally, information about the recommended inflation pressure under various conditions is not readily available to drivers. Also, drivers would need to be properly trained to measure the tire pressure to provide accurate readings and to refrain from attempting to measure the air pressure under inappropriate weather conditions. For example, attempting to measure the tire pressure during cold weather could result in the valve stem freezing, in the open position, because of moisture in the air condensing onto the valve. This would result in significant air loss, ultimately contributing to an underinflated tire or a flat tire, depending on the time it takes the driver to close the valve.

With regard to vehicle inspections, FMCSA's regulations concerning the inspection, repair and maintenance of CMVs hold motor carriers accountable for proper tire maintenance, including maintaining proper air pressure. Each interstate motor carrier, subject to the Agency's safety regulations, must have in place an inspection, repair and maintenance program with accompanying documentation. Motor carriers are required by regulation to ensure that all equipment, including the tires, are in safe and proper operating condition at all times. A motor carrier's systematic inspection, repair and maintenance records must include information about (1) the nature and due date of the various inspection and maintenance operations to be performed; (2) inspections, repairs, and maintenance actually conducted indicating date and nature; (3) tests conducted on emergency exits on passenger-carrying vehicles. Therefore, the current Federal requirements concerning the inspection, repair, and maintenance of commercial vehicles provide sufficient detail to enable the FMCSA and its State partners to determine, during an investigation or other enforcement intervention, whether the carrier routinely inspects the tires on its commercial motor vehicles.

As far as roadside inspections, the Agency does not believe it is appropriate for State enforcement personnel to check tire air pressure. The above addressed concerns about drivers checking air pressure would also apply to State personnel checking the air pressure. In addition, tire manufacturers generally recommend that the air pressure be measured when the tire is at ambient temperature, prior to the vehicle being operated. Once the vehicle has been in operation, the tire temperature will increase, which in turn will result in the air pressure increasing by some amount. This means that roadside inspectors checking a vehicle that has been in operation over a significant distance would not be able to make a proper determination of whether a tire is underinflated.

In consideration of the information presented above, FMCSA will begin discussions with representatives of the motorcoach and trucking industries, and tire manufacturers to explore options for developing and distributing education and outreach materials on checking and maintaining proper tire pressure. The Agency will update NTSB staff on its work no later than August 2010.

Based on the above, FMCSA requests that Safety Recommendation H-09-19 be classified as "Closed-Acceptable 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 FMCSA does not believe it is in the best interest of highway safety to divert limited Agency rulemaking resources away from higher safety value rules and onto a rulemaking to require the States to implement quality assurance and oversight programs, for private garages, that conduct periodic or annual inspections in their respective jurisdictions.

The Agency emphasizes that periodic or annual inspection programs are important but should not be considered a substitute for a motor carrier's responsibilities to ensure that all of its CMVs are in safe and proper operating condition at all times. Motor carriers are currently required to have systematic inspection, repair and maintenance programs, and to maintain records

documenting their programs. Motor carriers' systematic inspection, repair and maintenance records must include information about (1) the nature and due date of the various inspection and maintenance operations to be performed; (2) inspections, repairs, and maintenance actually conducted indicating their date and nature; (3) tests conducted on emergency exits on passenger-carrying vehicles. While a periodic or annual inspection provides for at least one comprehensive inspection every 12 months, the existing regulations explicitly require regular inspections and maintenance as part of the overall safety management program.

In addition, FMCSA's regulations require drivers to ensure that their vehicles are in safe and proper condition prior to driving them on public roads and to report to the carrier at the end of each workday any vehicle defects or deficiencies they observe or that are reported to them. Motor carriers are then required to certify that the problem identified by the driver has been corrected before the vehicle is dispatched again, or that repairs were not necessary because the item would not have an adverse impact on safety.

Given the regulatory requirements imposed upon motor carriers that hold them fully accountable for the condition of their CMVs, FMCSA does not believe that there would be quantifiable safety benefits associated with a quality assurance and oversight program for inspections conducted at private garages. This is especially true because less than half of the States currently have a mandatory periodic or annual inspection program and some of those programs are applicable to only a subset of the CMVs that FMCSA regulates. Therefore, at this time, any quality assurance effort would only be implemented on a limited basis, and would not provide meaningful information on the quality of periodic or annual CMV inspections performed by private garages across most of the Nation.

FMCSA requests that Safety Recommendation H-09-20 be classified "Closed-Acceptable response."

H-09-21: Develop an evaluation component to determine the effectiveness of your New Applicant Screening Program.

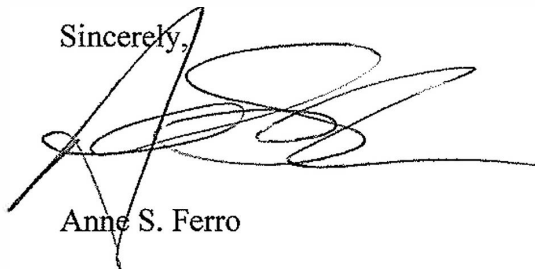
The FMCSA agrees with the NTSB recommendation. The Agency will consider developing a process for reviewing the data from the New Applicant Screening (NAS) program to determine the effectiveness of the enhanced screening or vetting process for all carriers applying for operating authority. Under the NAS program, motor carrier applicants are not granted operating authority until FMCSA has completed a comprehensive investigation to determine, on a preliminary basis, whether the carrier is willing and able to comply with the applicable safety statutes, Americans with Disabilities Act rules (for passenger carriers), and Household goods regulations, and that the carrier is not re-registering to avoid a previous history of unsafe or non-compliant operations.

In fiscal year 2011, the Agency plans to implement an automated verification and information request system and to coordinate the background investigations on applicants with State agencies. The FMCSA will also enhance its capability for reviewing questionable applicants, issuing dismissal letters to carriers that fail to respond to requests for information, and issuing rejection letters to carriers FMCSA determine are not fit and willing and able to comply. The Agency will also assign safety investigators to its Service Centers to coordinate the background investigation and vetting process with State partners and to maintain and refine the NAS program.

The FMCSA requests that this recommendation be classified "Open – Acceptable Response."

The FMCSA looks forward to working with NTSB to address the issues identified during the investigation and respectfully requests that NTSB classify safety recommendations H-09-18 and H-09-21 as "Open—Acceptable Response" and H-09-19 and H-09-20 as "Closed—Acceptable Response." We share the NTSB's goal of improving motor carrier safety in order to make our roads and highways safer for everyone and believe the actions described above are responsive to the safety recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne S. Ferro", with a large, stylized flourish extending to the right.

Anne S. Ferro