



*Ray H-518*

# National Transportation Safety Board

Washington, D. C. 20594

## Safety Recommendation

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Date: June 15, 1988  
In reply refer to: H-88-24

Honorable Robert E. Farris  
Administrator  
Federal Highway Administration  
Washington, D.C. 20590

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On September 6, 1987, about 5 a.m., an intercity bus operated by Academy Lines, Inc., (ALI) ran off the northbound local lane of the New Jersey Garden State Parkway at milepost 111 near Middletown, New Jersey, struck a guardrail and bridge rail, and overturned onto its right side. The busdriver and one passenger sustained fatal injuries, and 32 of the remaining 33 bus passengers sustained minor to moderate injuries. <sup>1/</sup>

Because he operated his bus across State lines, the busdriver was required by U.S. Department of Transportation (DOT) regulations to have a valid medical examiner's certificate showing that he was physically qualified to operate commercial vehicles in interstate commerce. The National Transportation Safety Board was unable to locate the physician who allegedly performed the March 1987 physical examination of the busdriver. The physician's address given on the certificate on file with ALI was reported by the Clearwater (Florida) Police Department to be the site of a furniture store that had been in business at that location for several years. The Safety Board concludes that the medical examiner's certificate the busdriver gave to ALI when he was re-employed in July 1987 was a forgery.

Available records indicate that in January 1982, December 1984, and July 1987, the busdriver completed DOT-required written examinations for drivers and correctly answered questions concerning disqualifying medical conditions for interstate commercial vehicle drivers. It is likely that the busdriver took additional similar examinations as a condition for his employment on other occasions before or after 1982 when the busdriver was employed by other trucking companies that could not be contacted by Safety Board investigators.

The busdriver was, therefore, familiar with the Federal Motor Carrier Safety Regulations (FMCSR) Title 49 Code of Federal Regulations (CFR) Parts 350 - 399 and was almost certainly aware that certain types of diabetic conditions would disqualify a driver from driving. Although the FMCSR prohibition against driving does not apply to diabetics who can control their condition by oral medication or diet, it is possible that the

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<sup>1/</sup> For more detailed information, read Highway Accident Report--"Academy Lines, Inc., Intercity Bus Run-Off Roadway and Overturn, Middletown, New Jersey, September 6, 1987" (NTSB/HAR-88/03).

busdriver may have believed that the type of diabetes he was diagnosed as having would disqualify him from operating commercial vehicles in interstate commerce. The Safety Board believes that the busdriver presented a false medical examiner's certificate to ALI when he was re-employed in July 1987 in an attempt to conceal his diabetic condition from ALI. ALI did not verify the authenticity of the medical examiner's certificate, and there is no Federal requirement that it attempt to do so.

The existence of a rule that prohibits the falsification or omission of medical information may deter some driver applicants from this practice, but it is unrealistic to expect that all drivers will act against their own perceived self-interest and volunteer medical information that may disqualify them from further driving.

However, unlike medical conditions which can be concealed, it is a relatively simple procedure to verify that a medical certificate presented by a driver applicant to a potential employer is authentic. The medical examiner's certificate form for interstate commercial drivers presently specified in 49 CFR 391.43 has a space for the examining physician's name (to be printed), the physician's address, and signature. If this information is supplied on the certificate, a potential employer can in most cases contact the examining physician and verify the authenticity of the certificate.

The Safety Board is aware that some motor carriers, as a part of their own internal screening procedures, will not accept a medical examiner's certificate unless the examination is performed by a carrier-selected (and usually carrier-compensated) physician. Some carriers may also require that the original certificate be mailed directly from the physician to the carrier to preclude the driver's making any alterations to the certificate. In addition, although the present rule permits the acceptance of a legible copy, some carriers require that the driver submit an original certificate for the driver qualification file.

The Safety Board believes that verification of the authenticity of the medical examiner's certificate is at least as important as the presently-required inquiries into a driver applicant's driving conviction and past employment records which must be completed within 30 days of the driver's employment.

In cases where a driver applicant presents a medical examiner's certificate prepared by a physician who has not been selected by the motor carrier, the Safety Board believes that the existence of a Federal rule requiring that an employer verify the authenticity of such a certificate will, in itself, discourage forgeries, and enable motor carriers to better identify driver applicants with potential disqualifying medical conditions during any employment screening process.

A strict interpretation of the Federal rules defining "on-duty" time and what constitutes a sleeper berth leads the Safety Board to believe that the time the busdriver probably spent resting on the bed he placed in his bus would have to be counted as "on-duty" time because the bed did not meet the minimum dimensional requirements to be classified as a sleeper berth.

If the time spent resting on this bed was included in the busdriver's total on-duty time, the available evidence indicates that the busdriver had been on duty about 11 1/2 hours since his last 8 or more hours off duty, about 5 hours of which had been driving. Although it is possible that the busdriver may have obtained part-time employment which may have placed him in violation of the Hours of Service rules, the Safety Board was unable to find any evidence of another job. The available evidence, therefore, indicates that at the time the accident occurred, the busdriver was not driving in violation of Federal rules which limit the number of hours a driver may drive.

However, because ALI did not have duty status records on file for the accident busdriver even though it was ALI's stated policy that such records be submitted daily, the Safety Board concludes that ALI was lax in following its own procedures and was not adequately monitoring the busdriver's hours of service.

The facts and circumstances of this accident point out the difficulties that may be encountered by motor carriers in monitoring their drivers' fitness to accept driving assignments when the amount and quality of rest obtained during "off-duty" periods is unknown. Motor carrier oversight of drivers' current hours of service has been a concern of the Safety Board, and the Safety Board believes that the Federal Highway Administration (FHWA) should reinstitute recently-eliminated regulatory controls to better define motor carrier responsibilities to monitor drivers' current hours of service.

Between 1938 and 1977, interstate commercial drivers were required by Federal regulation to record and report their hours of service to their employers on a driver daily log. Drivers were required either to turn in their log for the previous 24 hours when they reported for duty at their employer's facility the next day or to mail it to the employing carrier immediately after the 24-hour period was completed if they were not to return to the employer's facility within the time required for a normal mail delivery. This regulatory scheme, in effect, required motor carriers to be aware of their drivers' hours of service.

In 1976, the Congressional Commission on Federal Paperwork (CFP) determined that the driver daily log was an excessively burdensome Federal paperwork requirement and recommended that it be discontinued and an alternate monitoring system be devised to ensure compliance with the Federal Hours of Service regulations. When the CFP was dissolved, the implementation of its recommendations was assigned to the Office of Management and Budget.

As a result of a Federal rule change in 1977, drivers were allowed to use either a single-day log or a form covering 8 days. The stated purpose of the rule change was to reduce paperwork. The rule pertaining to filing of either the single-day or the multiday logs stated:

The driver shall deliver the original log sheet immediately upon completion of the last log to his home terminal or to the carrier's principal place of business. Log sheets must be mailed to the carrier when the driver will not return within 5 days of the completed log page.

As a result of this rule change, drivers using the 8-day log had an additional 5 days--a total of 13 days from the first date on the log sheet--to forward the log sheet to the employing motor carrier.

A rule amendment effective January 1, 1983, revoked the requirement for recording driver on-duty time on prescribed single or multiday log forms and permitted the incorporation of a time grid into any other document maintained or used by the employing motor carrier. Also, Section 395.8(i) of the FMCSR was amended to allow a driver to submit or forward by mail the original driver's duty status record to the employing motor carrier within 13 days of the completion of the form.

The rulemaking which took place from 1977 to 1983 affected only the requirements governing when the driver was required to forward the duty status record to the employing motor carrier. The requirement that the duty status record was to be maintained currently to the time of the last duty status change remained the same

(see 49 CFR 395.8(f)(1)). Thus as of January 1, 1983, the FMCSR required that, although a duty status record had to be maintained currently, it was not required to be turned in to the employing motor carrier for up to 13 days after it had been completed. In effect, motor carriers were no longer required by any Federal rule to be aware of their drivers' current hours of service.

On July 18, 1984, an intercity bus struck the rear of a tractor flatbed-semitrailer on Interstate 25 about 3 miles south of Cheyenne, Wyoming. <sup>2/</sup> The estimated vehicle speeds were 65 to 75 mph for the bus and 55 mph for the truck at the time of the collision. Of the 11 bus passengers, 1 passenger was killed, 1 passenger sustained moderate injuries, and 9 passengers received minor injuries. The busdriver sustained serious injuries.

The Safety Board determined that, in addition to his work for the bus company where he was employed as a part-time driver, the busdriver was also employed full-time as a firefighter by the Air National Guard (ANG), and worked as a part-time driver/helper for an interstate moving and storage company in the Denver, Colorado, area. Since the ANG was not a motor carrier, the rule in effect at the time of the accident defining "on-duty" time did not include time spent working for the ANG.

At the time of the accident, the busdriver involved in the Cheyenne accident had been "on duty," as was then defined in the FMCSR, for both the moving and storage company and the bus company for 19 hours since his last 8 or more hours off duty. He had obtained a maximum of 3 1/2 hours sleep during the 27 hours 35 minutes before the accident.

The last entry in the busdriver's record of duty status was on July 9, 1984, 9 days before the accident. When he reported for duty the evening before the accident, bus company officials did not ask him for a statement of his previous hours of service or for current daily logs before he started the accident trip.

Local bus company personnel advised the Safety Board and FHWA investigators that, as a result of the January 1983 FHWA rule change, the local company had instituted a policy not to request daily logs from drivers until 13 days had passed from the date logs were required to be prepared. There was, therefore, no documentation available to either the bus company or to Federal investigators which could be used to determine the busdriver's hours of service on the days immediately preceding the accident.

The Safety Board concluded that the bus company failed to monitor the busdriver sufficiently to prevent the operation of a vehicle while the busdriver was fatigued, and that "motor carriers also should review their internal procedures for determining and controlling the hours of service of full-time and part-time drivers to ensure that fatigued drivers are not permitted to drive."

The Safety Board also concluded that the rule that permits a driver to retain custody of the duty status record for up to 13 days after it is prepared, not only does not reduce any paperwork burden, but it has weakened the capability of the DOT to promptly investigate and detect hours of service violations. Since a driver may retain custody of the original duty status record for up to 13 days, the record can be changed to conceal a

<sup>2/</sup> Highway Accident Report--"Fatigue-Related Commercial Vehicle Accidents: Cheyenne, Wyoming, July 18, 1984, and Junction City, Arkansas, October 19, 1984" (NTSB/HAR-85/04).

driver's true activities and a driver may "backtrack" and spread out the amount of work performed over a longer period and insert fictional rest breaks when none in fact were taken.

The Safety Board determined that the probable cause of the Cheyenne accident was the busdriver's inattention due to lack of sleep and acute fatigue, which resulted in his failure to recognize that he was overtaking a slower-moving vehicle. As a result of its investigation, the Safety Board issued a safety recommendation to the FHWA:

H-85-20

Revise Section 395.8(i) of Title 49, Code of Federal Regulations, to require that drivers forward each duty status record to the employing motor carrier immediately upon completion.

In its initial July 29, 1986, response to Safety Recommendation H-85-20, the FHWA advised the Safety Board that it would consider this recommendation in the next rulemaking action covering Part 395 of the FMCSR. As a result of this notification, Safety Recommendation H-85-20 was classified "Open--Acceptable Action" on September 16, 1986.

On November 24, 1987, the FHWA notified the Safety Board that it felt that the Safety Board's conclusion that the 13-day rule has weakened the capability of the FHWA to promptly investigate and detect hours of service violations was unsubstantiated. The Safety Board disagrees with the FHWA's position and believes that recent proposed FHWA rulemaking necessitates the adoption of Safety Recommendation H-85-20.

On April 17, 1985, the FHWA published a notice in the Federal Register reporting that it had granted an exemption from the record of duty status recordkeeping requirement to permit a motor carrier to use an on-board computer in lieu of the hand-prepared record of duty status. The FHWA, between 1985 and October 1987, published subsequent notices which either requested comments on similar requests from other motor carriers or which provided notice that such exemptions had been granted.

On October 1, 1986, the Insurance Institute for Highway Safety (IIHS) petitioned the FHWA to make the use of such recorders mandatory. This petition was denied by the FHWA on December 22, 1986. In response to an IIHS petition for reconsideration, on July 13, 1987, the FHWA published an advance notice of proposed rulemaking requesting comments about the use of on-board recording devices in motor vehicles operating in interstate commerce.

On March 14, 1988, the FHWA published a notice requesting comments on proposed changes to the driver's record of duty status requirements which would permit the use of on-board recorders to document driver's hours of service as an alternative to the present hand-prepared record. In the preamble to the proposed rule, the FHWA stated "that hours of service of drivers is an important element to safety and that monitoring the hours of service of drivers should be a high priority for motor carriers. . . ."

In the preamble, the FHWA also stated that the proposed rule would:

. . . contain the requirements for use of the on-board devices and support systems. These include the requirement for the device to immediately generate information needed by enforcement personnel and for home terminal support systems to generate summaries of the hours of service information.

However, Section 395.15(h)(2) of the proposed rule still permits up to 13 days for the transmittal, either electronically or by mail, of the record of duty status. The Safety Board believes that the proposed rule permits expansion of the number of available methods for motor carriers to obtain recent driver hours of service data, and the Safety Board supports this concept. Timely driver hours of service data would enhance a motor carrier's ability to make prudent decisions concerning the dispatching of drivers, particularly those with irregular work schedules and those who have other employment.

However, permitting up to a 13-day lag from the time a duty status record is required to be prepared to the time it is required to be turned in will hamper a carrier's ability to monitor a driver's recent hours of service if the carrier chooses to adopt this practice. In an extreme case, such as a serious accident, the existence of the 13-day rule permits a carrier to state that it did not know, and is not required by any Federal regulation to know, that a driver was operating in violation of hours of service rules. Not all carriers will be using newly-available technology innovations, and hand-written duty status records will probably continue to be the method of choice for recording driver hours of service by most carriers in the near future.

Based on the November 1987 FHWA response to Safety Recommendation H-85-20 and on the contents of the March 1988 Federal Register publication concerning duty status records, the Safety Board reiterates Safety Recommendation H-85-20 to the FHWA and classifies it "Open--Unacceptable Action."

Therefore, the National Transportation Safety Board reiterates Safety Recommendation H-85-20 to the Federal Highway Administration:

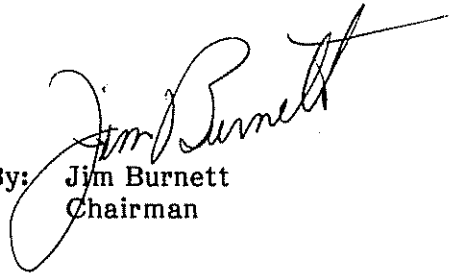
Revise Section 395.8(i) of Title 49, Code of Federal Regulations, to require that drivers forward each duty status record to the employing motor carrier immediately upon completion.

In addition, the Safety Board recommends that the Federal Highway Administration:

Revise Title 49 Code of Federal Regulations Part 391 (Federal Motor Carrier Safety Regulations) to require a motor carrier to verify the authenticity of a medical examiner's certificate if the certificate has been prepared by a physician who has not been selected by the motor carrier to perform the examination. Information concerning the fact that verification was made should be retained as part of the driver's qualification file. (Class II, Priority Action) (H-88-24)

Also, as a result of its investigation, the Safety Board issued Safety Recommendation H-88-25 to the New Jersey Highway Authority.

BURNETT, Chairman, KOLSTAD, Vice Chairman, and LAUBER and NALL, Members, concurred in this recommendation.

By:   
Jim Burnett  
Chairman