



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: August 3, 1987

In reply refer to: H-87-36
and H-87-37

Honorable Ray A. Barnhart
Administrator
Federal Highway Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

About 10:10 a.m. Pacific daylight time on May 30, 1986, a southbound intercity charter bus operated by Starline Sightseeing Tours, Inc., went out of control while negotiating an S-curve on U.S. Route 395, about 11 miles south of Walker, California. The two-way, two-lane, mountainous roadway was clear and dry. The bus initially crossed the centerline to the left and then veered back across the roadway onto the right shoulder. The bus then swerved left and right again, and its rear struck a rock retaining fence on the right shoulder. Continuing forward, the bus crossed into the northbound lane, overturned and slid on its left side, rolled over onto its roof, and came to rest upright in the West Walker River. As a result of the accident, 21 passengers died and 19 passengers and the driver were injured. 1/

The primary safety issue in this accident concerned commercial busdriver preemployment screening and postemployment supervision by motor carriers and oversight of the carrier by the State of California, and the Federal Highway Administration (FHWA) Office of Motor Carrier Safety (OMCS). Another safety issue was the adequacy of the systems available for the exchange of data on the driver's accident and driving violation records.

At the time of this accident, the tour busdriver held a valid, unrestricted class 2 driver's license from the State of California. There was no evidence that the driver had, at the time of the accident, additional licenses in other States. The State of California requires an applicant for a class 2 license to meet the Federal requirements. The Federal regulations (49 CFR 391.11) set forth the conditions under which a person is qualified to drive a motor vehicle in interstate commerce. Among the conditions that must be met are that he have a currently valid motor vehicle operator's license or permit, has prepared

1/ For more information, read Highway Accident Report--"Intercity Tour Bus Loss of Control and Rollover into the West Walker River, Walker, California, May 30, 1986" (NTSB/HAR-87/04).

and given to the motor carrier a list of traffic violations, has not been disqualified under 49 CFR 391.15, has successfully completed a road test and has taken a written examination, has completed and provided the carrier a proper application for employment, and is physically qualified to drive. Physical qualification is proved by the possession of a medical examiner's certificate, which must be renewed every 24 months.

Primary responsibility for determining if an applicant meets the requirements to qualify for a position as a busdriver rests with the employing carrier. The carrier is required by Federal regulations to obtain and keep on file an application form completed by the driver applicant. Federal regulations define the information to be recorded on the application form. The carrier is also required by Federal regulation to obtain and check the applicant's history of employment, history of violation of motor vehicle laws, and history of accidents--all for the 3 years before the date of the application. The driver's files, which Federal regulations require that the carrier maintain, must contain records of this information and a record of the carrier's check with the applicant's previous employers. The driver's files must also contain documentation of the completion of a road test and a written examination.

The tour busdriver had completed and provided to the employing carrier, Starline, an application form. He had also provided a list of violations of motor vehicle laws and of accidents; however, the list he provided was incomplete. Certain violations were not on the list. The driver had successfully completed a road test but apparently had not been administered a written test by Starline. (There was no record of such in Starline's files.) The driver had provided a copy of a medical examiner's certificate, dated April 1985, but the physician claimed the signature purported to be his was not his. The physician stated that he had not examined the driver in 1985. During the course of the investigation, the Safety Board was unable to find any evidence that the driver had received a valid medical examination within the 2 years prior to the accident. (The Safety Board has no evidence that the driver would not have been medically qualified to drive had he taken a physical examination.)

The driver had had a license in the State of Washington that had been suspended because the driver failed to pay a fine in 1976. However, the license expired in 1979, and although the suspension remained in the record, it should have been removed in 1981. Thus, this suspension would not have affected his qualification to be hired by Starline (nor his qualification at the time of the accident). The driver also had several violations of motor vehicle laws in Nevada, including a warrant against him issued by Nevada for failing to pay a fine. However, because the driver was not licensed in Nevada, Nevada could not

suspend his license and therefore his record in Nevada (which included a speeding violation) would not have affected the validity of his California license at the time of his employment by Starline or at the time of the accident.

The driver also had, at the time he was hired by Starline, a number of convictions for violations of motor vehicle laws within California during the preceding 3-year period, including four speeding violations while driving buses, two speeding violations while driving passenger cars, at least four failures to appear, and one citation for driving while his license was suspended. The driver had also been involved in at least five accidents in California, four while driving a bus and one while driving a passenger car, during the same 3-year period. However, under the system in place in California at the time of his employment with Starline, the driver's violation record would not have precluded his holding a valid motor vehicle license within California or his driving in interstate commerce under the Federal regulations. However, the Safety Board believes that the record of violations (and accidents) accumulated prior to his employment by Starline should have disqualified him to drive passenger buses in interstate commerce.

In fact, because at the time of his employment with Starline the driver had apparently not been administered a written test, had not fully and accurately completed the list of violations, and had not had a valid medical examination, he was not qualified to drive a motor vehicle in interstate commerce in accordance with 49 CFR 391.11.

The driver's files maintained by Starline contained a Division of Motor Vehicles (DMV) printout that it had requested and received shortly after Starline hired the driver. However, this printout, which was in numerical code, did not contain the driver's out-of-State violations (later discovered during the investigation of this accident) of motor vehicle laws within California or the violations he had received outside of California. Although the driver's history of accidents and violations of motor vehicle laws would not have prohibited him from driving a motor vehicle in interstate commerce, it did not meet the criteria set forth in Starline's policies and procedures manual. Starline's policy specified that in order for an applicant to be qualified, the applicant:

Must have no more than two (2) moving violations and/or accidents in the last three (3) years, and no suspension or revocation in the last three (3) years. Also, no more than four (4) moving violations and/or accidents in the last four (4) years, or one suspension or revocation within the last five (5) years.

Although the November 1985 DMV printout that Starline had in its files did not contain out-of-State conviction information, it did reveal that, from March 1983 until July 1985, the driver had

accumulated seven speeding violations, two violations for failure to appear in court, and one citation for driving with a suspended license. These violations alone should have precluded the hiring of the driver by Starline because of its written policy.

Starline's file on the driver also did not contain a certificate of written examination as required by Federal regulations. These omissions are not only a violation of the regulations, but also of Starline's written policy.

Further, Federal regulations require that the carrier contact each of the driver's past employers of the preceding 3 years and put a written record of this in the driver's files. The record should include the name, address, and comments of each employer or representative and the date of the contact. Starline's quality control manager stated that he made one phone call in an attempt to contact one of the previous employers (Lounge Car Tours). However, the driver's qualification file contained no written documentation of even this purported attempt to contact a previous employer. Lounge Car stated that it never received a written or oral request from Starline concerning the driver. Starline provided no evidence that it had contacted the driver's other previous employers.

Had Starline diligently conducted the proper preemployment checks, its management would have had more information to use in deciding whether to hire the driver involved in this accident. Inquiries with the driver's previous employers would have disclosed that the driver had been fired and that he had been arrested by the California Highway Patrol (CHP) on March 10, 1985, near Independence, California, while operating a commercial bus with a suspended license. Starline violated Federal regulations and did not adhere to its own hiring policies and procedures in failing to contact the driver's previous employers and to put a record of such contacts in his file.

A Safety Board report on commercial drivers issued in 1980 2/ addressed the importance of a motor carrier contacting an employee's previous employers for a background check. The report noted that although the Federal regulations require the hiring carrier to contact (and document in its files) all the applicant's employers for the 3 years prior to his hiring, the regulations do not specify the information that the hiring carrier should obtain. In 1980, the Safety Board recommended that the FHWA:

2/ "Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations," February 15, 1980" (NTSB/SEE-80/01).

H-80-20

Define fully, in the Federal Motor Carrier Safety Regulations, the information that a motor carrier must request from an applicant driver's former employer(s) when making the investigations and inquiries required by the regulations.

The FHWA, after a number of communications with the Safety Board, has included this issue in the regulatory general review of the Federal Motor Carrier Safety Regulations (FMCSR) now underway. The establishment of Docket MC-114 was a first step in this process. The Safety Board believes that the action it requested in Safety Recommendation H-80-20 still needs to be accomplished.

Oversight of the commercial driver licensing process is a primary responsibility of the DMV. It is apparent that although class 2 commercial driver applicants were required to furnish the carrier information on their past accidents and traffic convictions, there was no system in place to verify that the information was correct. The DMV in California had a computerized driver record file on the busdriver involved in the Walker accident that included accident and violation data within California but none of the data on violations outside California. Further, the information in the DMV printout was identified by vehicle code number and not by "user friendly" language. Since the accident, DMV printouts have been modified to include plain language explanations of conviction information.

The DMVs (and thus the motor carriers) in many other States would have the same difficulties obtaining driver violation and accident data as the California DMV. In addition, National Driver Register (NDR) data is not available to the law enforcement community, except through the DMV. Therefore, State DMVs and law enforcement officials need an efficient method to rapidly retrieve (and make available to the motor carrier) the driving violation record of an applicant for a position as a commercial driver. This is certainly needed for the carriers who conduct interstate bus operations. Many of the drivers working for these carriers spend a major portion of their driving time in more than one State and may be involved in accidents or be convicted of traffic violations in other States.

Furthermore, the data base of the NDR is not complete since the records put into the NDR are based on voluntary submission of conviction information for revocations and suspensions. Safety Board investigators submitted the name of the busdriver in this accident to the NDR. Because a suspension or the revocation order that results from a failure to appear does not meet the NDR criteria for mandatory inclusion into its data base, there was no record of the accident busdriver in the system.

The exchange of accident and driver license information by States has been facilitated by the Uniform Violators Compact and the Driver License Compact. However, these systems are limited because neither has the full participation of all 50 States and the District of Columbia.

The Safety Board has long been concerned about the difficulties in obtaining complete and accurate records on the violations of motor vehicle laws by commercial drivers. The Board has previously concluded that one of the major reasons, in addition to those cited above, for the difficulties in securing such data is the multiple licenses, and thus the multiple records of violations, held by many commercial drivers.

In its 1986 safety study, "Training, Licensing, and Qualification Standards for Drivers of Heavy Trucks," ^{3/} the Safety Board said:

One of the most important reasons for establishing the National Truck Driver License is to promote the one-license/one-record concept....The situation must be avoided in which a driver would maintain one license for driving a truck and another for driving a private automobile. That would run counter to the principle of one-license/one-record.

The Safety Board also stated:

...a formula can and should be developed with which a driver would be disqualified for committing a specified number of violations within a specified period of time. The total should include all moving violations, but the system should be able to differentiate between offenses of greater and lesser severity.

Even earlier, however, in its 1980 report on commercial drivers, the Safety Board discussed the difficulties presented by multiple licenses and multiple records in determining the extent of the unsafe driving records of many commercial drivers. The report discussed the extensive number of violations accumulated by some drivers without their being disqualified from driving commercial vehicles under Federal regulations. On March 5, 1980, the Safety Board recommended that the FHWA:

^{3/} Safety Study -- "Training, Licensing, and Qualification Standards for Drivers of Heavy Trucks," April 17, 1986, (NTSB/SS-86/02).

H-80-17

Evaluate the need for, and feasibility of, specifying in the Federal Motor Carrier Safety Regulations a level of traffic violations, based upon the total number and relative seriousness of the violations, above which a driver is disqualified to operate a commercial vehicle, and within one year publish the findings of the evaluation in the Federal Register for public comment or initiate appropriate rulemaking.

On November 20, 1981, the FHWA responded that following a 1970 rulemaking action, in which it proposed that disqualification be based on three moving violations in 3 years, it determined that the proposed basis was too discriminatory because of disparities in enforcement from State to State and in the definition of moving violations. However, the FHWA said it would publish an advance notice of proposed rulemaking (ANPRM) on ways to disqualify persons who repeatedly violate traffic laws. Although the Safety Board did not comment on the ANPRM, the FHWA did advise the Board that, based on comments to the ANPRM, it had initiated a study to correlate a driver's driving record while operating a commercial vehicle in an on-duty status with his record while driving a personal vehicle. The FHWA stated the study would be completed in 1986. A final report of the study, which was conducted by the Highway Safety Research Center of the University of North Carolina, was completed in June 1986. 4/

Although the need to establish a threshold level of violations of motor vehicle laws which would automatically result in disqualification to drive a commercial vehicle was not the focus of the study done for the FHWA, it did address the issue. The study concluded that the driving record is the best predictor of future driving records (of all the predictors considered by the study). It further concluded that "there is no clear cutoff point at which drivers become much worse." The study report discussed the difficulties in thus establishing a threshold level for automatic disqualification. However, the study continued:

This does not mean that a point system [for automatic disqualification] should not be invoked. Drivers with more prior convictions have more subsequent violations and crashes, but the increase in probability of future violations and crashes becomes smaller as the prior record becomes worse.

4/ "The Relationship Between a Truck Driver's Performance in a Personal Vehicle and in a Large Truck," June 1986, Federal Highway Administration Contract Number DTFH61-84-C00084.

The Safety Board was notified in September 1985 that the FHWA was reviewing driver qualifications as a part of a regulatory review under Docket MC:114 as a first step in the reissuance of its FMCSR.

The Safety Board believes that the action taken by the FHWA has been responsive to the intent of Safety Recommendation H-80-17 and has classified it as "Closed--Acceptable Action--Superseded." Based on its past experience on the record of the driver involved in the Walker accident, and based on this recent study performed for the FHWA, the Safety Board continues to believe that the FHWA should revise 49 CFR 391.11 and 391.15 to specify the number and type of violations of motor vehicle laws and the time interval in which they are committed that would result in qualification or disqualification of a driver to drive in interstate commerce.

Another deficiency in Part 391.15 is that even the narrow list of violations specified for disqualification will apply only if the violations are committed while operating a commercial vehicle while on duty. As the Safety Board pointed out in its 1986 study:

For example, if a truck driver were convicted of drunk driving while operating a company vehicle on the job, he or she would be disqualified; but if the driver were operating a private vehicle, under otherwise identical circumstances, his or her status under the FMCSR would be unaffected. The driver could even escape disqualification if convicted of driving a truck while intoxicated, as long as it could be demonstrated that the purpose of the trip was personal, rather than commercial.

Earlier in its 1980 report on commercial drivers, the Safety Board had made the point that "a driver who cannot operate a private car safely should not be allowed behind the wheel of an 80,000-pound tractor-semitrailer." As a result, the Safety Board recommended that the FHWA:

H-80-16

Revise the commercial driver disqualification provisions of the Federal Motor Carrier Safety Regulations to provide that the specified disqualifying driving offenses shall be disqualifying without regard to the type of highway vehicle at the time of the offense or whether the driver was on or off duty.

After communications between the FHWA and the Safety Board, the FHWA notified the Safety Board that it was commencing a study that would evaluate the intent of Safety Recommendation H-80-16. The study, completed in June 1986, 5/ concluded that,

There is a relationship between the record in the private vehicle and that incurred in employment related driving. However, the prior record in the commercial vehicle is a better predictor than either the record in the private vehicle or the total record including both private and commercial driving. It should be recalled that the relationships show, for example, that as the drivers' private vehicle driving record gets worse the corresponding employment related driving records also get worse....

The Safety Board found further evidence that all violations of motor vehicle laws should be included when considering a driver's fitness to drive a commercial vehicle during its investigation in 1985 of an accident in which a cattle truck struck the rear of a stopped schoolbus near Tuba City, Arizona. 6/ Two persons died and 28 were injured in the accident. During the 5 years preceding the accident, the driver had been convicted five times for speeding violations and once for undue acceleration. He had also been involved in two other accidents. All of the violations and accidents had occurred while he was driving his personal vehicle. In the Walker accident, the driver had a record of violations and accidents in passenger cars including violations of speed limits. The Safety Board continues to believe that all violations committed while driving any motor vehicle should be considered when evaluating a driver's qualifications to drive a commercial vehicle.

The FHWA has notified the Safety Board that revisions to the regulations on the qualification for and disqualification from driving a commercial vehicle has been made a part of the review of Docket MC-114, as a part of its current efforts to revise the Federal Motor Carrier Safety Regulations.

5/ Ibid.

6/ Highway Accident Report--"Collision of Tuba City Unified School District Schoolbus and Bell Creek, Inc., Tractor-Semitrailer on U.S. 160, Tuba City, Arizona" (NTSB/HAR-85/06).

The Safety Board believes that 49 CFR 391.11 and 391.15 should not differentiate between violations committed while driving a commercial vehicle and those committed while driving a private passenger vehicle. Therefore, the Safety Board reiterates Safety Recommendation H-80-16.

On October 27, 1986, Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (PL 99-570). The new legislation addresses many of the safety issues currently confronting commercial vehicle transportation, including a number of issues involved in the Walker accident. The legislation addresses the responsibility of employers to verify driver qualifications, driver licensing and testing criteria, a system to communicate commercial driver record information nationwide, truck brake regulations, as well as funding and implementation regulations. Briefly, the act:

- . Prohibits commercial drivers from holding more than one license.
- . Prohibits employers from allowing employees to operate commercial vehicles with suspended or revoked licenses.
- . Requires that all commercial drivers be tested under minimum testing standards developed by the U.S. Department of Transportation (DOT).
- . Requires that the DOT establish minimum uniform standards by which the States issue licenses.
- . Creates a license information system that will serve as a clearinghouse of information on the licensing of commercial drivers.

The Commercial Motor Vehicle Safety Act makes the motor carrier responsible for compliance with driver qualification screening requirements. Periods of previous employment are required to be verified by the employing motor carrier.

The new law requires the implementation of a commercial license information system by no later than January 1, 1989. The system will provide a useful tool for the States and the motor carriers in obtaining driver license information for preemployment and inservice screening. However, the information should include the traffic violation and accident history for drivers while operating both commercial and private vehicles. Otherwise, driver information pertinent to the hiring decision may be omitted. The Safety Board also believes that the proposed

system should supplement the NDR in its present form and should be operated so that State DMVs, the law enforcement community, the courts, and motor carriers have direct access to the data. The system now used by Nevada may provide a model for the new commercial license information system. Also, current efforts in this area by the American Association of Motor Vehicle Administrators may be helpful in the development of the new system.

In addition, adequate guidelines and standards must be developed and then rigorously enforced if the intent of the new law is to be carried out. Further, successful implementation of the intent of the new law will depend, substantially, on the efforts of the individual States. The States must establish or improve the infrastructure needed to support the program, especially the commercial license information system. All States will have to participate actively in the system, providing complete and accurate information on driver's records. The Safety Board believes that this program is one which, if properly supported by the States, can significantly enhance the safety of the nation's highways.

As a result of its investigation, the National Transportation Safety Board recommends that the Federal Highway Administration:

Amend 49 CFR 391.11 and 391.15 to specify the number and type of violations of motor vehicle laws and the time interval in which they are committed that would result in qualification for or disqualification from driving a motor vehicle in interstate commerce. (Class II, Priority Action) (H-87-36)

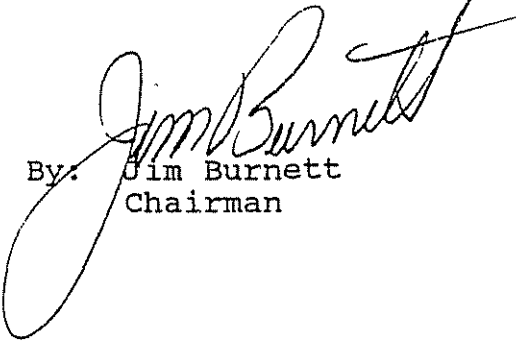
Provide access for the law enforcement community, the courts, and the motor carriers to the clearinghouse of license information on commercial drivers that will be established under the Commercial Motor Vehicle Safety Act of 1986. (Class II, Priority Action) (H-87-37)

Also, the Safety Board reiterates Safety Recommendation H-80-16 to the Federal Highway Administration:

Revise the commercial driver disqualification provisions of the Federal Motor Carrier Safety Regulations to provide that the specified disqualifying driving offenses shall be disqualifying without regard to the type of highway vehicle at the time of the offense or whether the driver was on or off duty.

Also as a result of its investigation, the Safety Board issued Safety Recommendation H-87-38 to the U.S. Department of Transportation.

BURNETT, Chairman, GOLDMAN, Vice Chairman, and LAUBER, NALL, and KOLSTAD, Members, concurred in these recommendations.

By: 
Jim Burnett
Chairman