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# *Office of Inspector General*

# *Audit Report*

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**TIMELY AND TARGETED FMCSA ACTION IS  
NEEDED TO FULLY ADDRESS NATIONAL  
TRANSPORTATION SAFETY BOARD  
RECOMMENDATIONS FOR IMPROVING  
PASSENGER CARRIER OVERSIGHT**

*Federal Motor Carrier Safety Administration*

*Report Number: MH-2012-087*

*Date Issued: April 17, 2012*





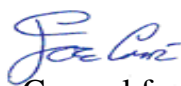
# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** Timely and Targeted FMCSA Action  
Is Needed To Fully Address National  
Transportation Safety Board Recommendations for  
Improving Passenger Carrier Oversight  
Federal Motor Carrier Safety Administration  
Report No. MH-2012-087

Date: April 17, 2012

From: Joseph W. Comé   
Assistant Inspector General for  
Highway and Transit Audits

Reply to  
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

In recent years, several fatal motorcoach accidents focused national attention on passenger carrier safety and the Federal Motor Carrier Safety Administration's (FMCSA) oversight of more than 3,000 passenger carrier companies that operate millions of trips per year. Following a January 2008, motorcoach accident near Victoria, Texas, in which 1 passenger was killed and 47 others were injured, the National Transportation Safety Board (NTSB) identified weaknesses in Federal oversight of passenger carriers.<sup>1</sup> NTSB cited concerns with FMCSA's process for vetting passenger carriers and detecting reincarnating carriers—carriers that attempt to operate as a different entity in an effort to evade enforcement action, out-of-service orders, or both. NTSB also highlighted issues with how the National Highway Traffic Safety Administration (NHTSA) and FMCSA oversee passenger carrier compliance with Federal Motor Vehicle Safety Standards (FMVSS). In its final report on the Victoria crash, NTSB made a series<sup>2</sup> of recommendations to improve Federal oversight of passenger carriers. In particular, NTSB recommended that FMCSA review multiple years of applications for Federal operating authority to identify reincarnated carriers, issue new rules to strengthen its capabilities to oversee the passenger carrier industry, and enhance its oversight efforts related to enforcing FMVSS.

<sup>1</sup> *Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008*, Highway Accident Report NTSB/HAR-09/03/SUM (Washington, DC: National Transportation Safety Board, 2009), which is available on the NTSB Web site at <http://www.nts.gov/doclib/reports/2009/HAR0903.pdf>.

<sup>2</sup> NTSB made 10 recommendations to FMCSA, 2 to NHTSA, and 1 to the Department of Transportation.

Based on congressional concerns about the actions FMCSA has taken to address NTSB's recommendations,<sup>3</sup> we initiated this audit to assess FMCSA's efforts to (1) detect and deter reincarnated motor carriers; (2) revise regulations, implement new rulemakings, or obtain increased statutory authority to strengthen passenger carrier safety; and (3) better identify and track passenger carriers whose vehicles do not comply with FMVSS.

We conducted this review between December 2010 and February 2012 in accordance with Government auditing standards. Exhibit A provides more details on our scope and methodology, and exhibit B provides a brief overview of FMCSA's response to each of NTSB's recommendations.

## **BACKGROUND**

A summary of the recommendations that Congress asked us to review is listed in table 1 on the next page, and the recommendations are provided in full with FMCSA's responses in exhibit B.

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<sup>3</sup> The House of Representatives Committee Report 111-564, accompanying H.R. 5850, the Departments of Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill, 2011, included language requesting that the Department of Transportation Office of Inspector General assess FMCSA's actions to implement selected NTSB recommendations related to the Texas crash.

**Table 1. Summary of NTSB Recommendations That Congress Asked Us To Review**

NTSB Recommendation Type	Description
Detect and deter reincarnated motor carriers. (1 recommendation)	<ul style="list-style-type: none"> <li>• Vet passenger carriers that obtained operating authority since 2003.</li> </ul>
Revise regulations, implement new rulemakings, or seek additional statutory authority. (3 recommendations)	<ul style="list-style-type: none"> <li>• Revise regulations to make passenger carriers subject to the same equipment leasing limitations as property carriers.</li> <li>• Seek statutory authority to deny or revoke operating authority for reincarnated carriers</li> <li>• Require reviews of passenger carrier lease agreements.</li> </ul>
Better identify and track passenger carriers whose vehicles do not comply with FMVSS. (5 recommendations)	<ul style="list-style-type: none"> <li>• Assist NHTSA in developing a database of FMVSS-compliant passenger carrying commercial motor vehicles that may be used by enforcement officials to identify and put noncompliant vehicles out of service.</li> <li>• Require inspectors to use the database.</li> <li>• Require training for enforcement officials on physically inspecting passenger carrying commercial motor vehicles for FMVSS compliance labels.</li> <li>• Require passenger carriers to certify that all vehicles they use met FMVSS when manufactured.</li> <li>• Seek statutory authority to suspend, revoke, or withdraw the operating authority of motor carriers operating non-FMVSS-compliant vehicles.</li> </ul>

Source: OIG generated table

FMCSA's primary mission is to reduce commercial motor vehicle related fatalities and injuries through regulatory enforcement, risk mitigation, technological advancements, and safety awareness. One FMCSA program intended to improve passenger carrier oversight is the New Entrant Safety Assurance Program, which

focuses on newly registered<sup>4</sup> motor carriers. According to the Volpe National Transportation Systems Center, the crash rate for new entrant motor carriers is 25 percent higher than the rate for experienced carriers.<sup>5</sup> Through the New Entrant Safety Assurance Program, FMCSA provides information to newly registered carriers, including passenger carriers, on motor carrier safety standards and regulations. Additionally, through safety audits, FMCSA evaluates the operational safety of all new carriers by determining whether they are complying with Federal Motor Carrier Safety Regulations (FMCSR). The safety audits include questions designed to help auditors identify reincarnated carriers. If a new carrier demonstrates compliance with the regulations, FMCSA allows the carrier to leave the New Entrant Safety Assurance Program. FMCSA continues to monitor carriers after they complete the New Entrant Safety Assurance Program for as long as the carriers are in operation.

The passenger carrier vetting process, which includes efforts to detect reincarnated carriers, is not a part of the New Entrant Safety Assurance Program. The vetting process is carried out under a separate section of FMCSA's authority (see exhibit C for a diagram of the vetting process and the separate New Entrant Safety Assurance Program activities). Nonexempt motor carriers<sup>6</sup> engaging in interstate operations must also apply for operating authority. The operating authority application process for passenger carriers includes vetting applicants to identify potential reincarnated carriers using the passenger carrier vetting process. In fiscal year 2010, FMCSA granted operating authority to 745 of 1,153 passenger carrier applicants. If, after receiving operating authority, a carrier does not demonstrate compliance with FMCSR, FMCSA takes enforcement action against the carrier, which can include placing the carrier out of service.

## RESULTS IN BRIEF

Even before NTSB made its recommendations related to the Victoria crash, FMCSA had a vetting process in place to detect reincarnating passenger carriers by reviewing applicants for operating authority. FMCSA responded to NTSB's recommendations by applying this vetting process to all passenger carriers that obtained operating authority since 2003. However, FMCSA still does not have an efficient screening tool as part of the vetting process to help it focus limited investigative resources on the highest risk applicants—instead of reviewing all applications as it does now. Specifically, FMCSA discovered that a key element of

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<sup>4</sup> Motor carriers register with the U.S. Department of Transportation by completing the MCS-150 form and meeting associated requirements. Upon meeting those requirements, the new carriers are assigned a U.S. Department of Transportation registration number.

<sup>5</sup> "New Entrant Safety Assurance Process, Final Rule." *Federal Register* Vol. 73, No. 242 (December 16, 2008) p.76483.

<sup>6</sup> Nonexempt motor carriers refer to for-hire motor carriers that are not exempt from the Secretary's jurisdiction. All nonexempt motor carriers are required to obtain FMCSA operating authority.

the process—a screening tool that compares data FMCSA collects from carriers—did not efficiently identify the highest risk carriers because it produced unreliable scores. The screening tool has at times assigned lower scores<sup>7</sup> to carriers who were more likely to be reincarnations than those with high scores because they shared company officers or other essential characteristics. When FMCSA found it could not rely on the scores to efficiently identify the highest risk applicants, it began to manually review all applicants with matches to preexisting carriers to ensure that no possible reincarnations were overlooked. To date, FMCSA has not implemented a revised screening tool to focus its limited investigative resources on the highest risk applicants. As a result, if FMCSA expands the vetting process beyond passenger carriers to all motor carriers and does not develop a more risk-based approach, its existing backlog of applications waiting to be reviewed will likely increase significantly.

FMCSA has begun work on two new rules to address the oversight concerns on passenger carrier leases and revocation of reincarnated carrier operating authority. In November 2011, FMCSA published a schedule for developing a leasing rule for passenger carriers, but does not expect to release it as a proposed rule as NTSB recommended, until June 2012. Until this rule is finalized, passenger carriers, such as the one involved in the Victoria crash, may be able to circumvent FMCSA oversight by establishing a lease agreement with another carrier and conducting business using the other carrier's operating authority.<sup>8</sup> In addition, FMCSA has not issued a final rule that will fully address NTSB's recommendation to revoke the operating authority of reincarnated carriers. Currently, FMCSA uses a process to revoke the operating authority of reincarnated carriers through investigation and administrative prosecution of those carriers, based on the laws of individual States. However, the process is cumbersome because of the time involved in collecting evidence to meet State specific rules on corporate successorship.<sup>9</sup> To establish a more efficient process, FMCSA published a notice of proposed rulemaking in December 2011 that will allow it to put reincarnated carriers out of service and establish a single Federal standard for determining whether a carrier is a reincarnation of a preexisting entity. While FMCSA successfully issued other regulations in the past year to improve both truck and bus safety, one of these rules was under development for more than 10 years and another was based on technical

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<sup>7</sup> During the first phase of the vetting process, the new applicant screening tool generates a score based on identifying matches between data from applicants and suspect carriers (e.g., company officers having the same name). As originally designed, a high score indicates a closer match between an applicant and a suspect carrier, indicating these applications warrant further review by FMCSA staff.

<sup>8</sup> FMCSA requires property carriers to have written leases outlining the responsibility for vehicles, duration of lease, and compensation. Copies of this documentation must be maintained with the authorized carrier and the lessor or owner and in the vehicle.

<sup>9</sup> Corporate successorship is the transferability of corporate liability from one entity to another.

specifications that the courts subsequently overturned,<sup>10</sup> illustrating the importance of sustained management attention in the rulemaking arena.

FMCSA and NHTSA have not implemented NTSB's recommendations on developing the capability to better identify and track passenger carriers whose vehicles do not comply with FMVSS.<sup>11</sup> NTSB recommended a series of actions to close a safety oversight gap that allows a vehicle, such as the motorcoach in the Victoria accident, to pass a roadside or periodic inspection focused on compliance with FMCSA's operational regulations<sup>12</sup> even if the vehicle does not comply with the manufacturing standards in the FMVSS. NTSB recommended that FMCSA track vehicles' compliance with FMVSS using a database developed with NHTSA, and put vehicles out of service that are noncompliant with FMVSS. In response, FMCSA cited concerns that any safety benefits from such action would be minimal, and instead proposes to continue its enforcement of existing safety regulations including those related to FMVSS through its commercial vehicle inspection program. FMCSA is also working with NHTSA and NTSB, U.S. Customs and Border Protection (CBP), and the Office of the Secretary of Transportation to develop alternative approaches. For example, FMCSA is considering the integration of the training that NHTSA offers on visual detection of FMVSS compliance into training offered to FMCSA staff. While we recognize that NHTSA and FMCSA have legitimate concerns, their proposed actions do not address the safety oversight gap NTSB identified or focus enforcement on the highest risk locations. FMCSA could act now to target high risk locations or carriers using its inspection data. For example, we found that only six carriers geographically concentrated in Texas and other southern States were responsible for more than 500 FMVSS-related violations each, which suggests a need for a more risk-based approach to targeting FMVSS enforcement.

We are making a series of recommendations to improve FMCSA's passenger carrier vetting process and oversight of passenger carriers.

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<sup>10</sup> FMCSA issued a final rule in May 2011 requiring a learner's permit as part of the commercial driver's license process and a notice of proposed rulemaking in February 2011 expanding the electronic on-board recorder rule. The electronic on-board recorder rule was based on technical specifications from another rule that was subsequently rejected, but in February 2012 FMCSA published a notice of intent to work with stakeholders to proceed with the rulemaking process in this area.

<sup>11</sup> The FMVSS are manufacturing standards written in terms of minimum safety performance requirements for commercial motor vehicles and equipment.

<sup>12</sup> Federal Motor Carrier Safety Regulations contain requirements carriers, drivers, and commercial motor vehicles must meet while in operation.

## **FMCSA'S VETTING PROCESS DOES NOT EFFICIENTLY IDENTIFY THE HIGHEST RISK APPLICANTS**

FMCSA's passenger carrier vetting process, implemented prior to NTSB's final report on the Victoria crash, identifies passenger carriers attempting to reincarnate, but does not have an efficient screening tool that would help FMCSA focus investigative resources on the highest risk applicants. In response to an NTSB recommendation to apply the vetting process to all passenger carriers that applied for operating authority, FMCSA went back and vetted passenger carriers that applied for operating authority after the New Entrant Safety Assurance Program began in 2003. However, after FMCSA applied the vetting process, as originally designed, to this older group of applicants, it found it could not rely on the scores generated by the screening tool to efficiently flag those applicants most likely to be reincarnated carriers. Therefore, FMCSA's vetting process now involves conducting time-consuming, labor-intensive reviews of all applicant matches. An enhanced screening tool could permit targeting of investigative resources to high-risk applicants.

### **FMCSA Vetted Passenger Carrier Applicants as NTSB Recommended**

FMCSA implemented a vetting process in 2008. As originally designed, FMCSA's vetting process included a screening tool that generated scores to identify potential reincarnated carriers. All passenger carriers applying for interstate operating authority are vetted and those that pass obtain operating authority. A component of the vetting process, the new applicant screening tool, compares the carrier's application data to suspect carrier data and generates a score of 0 to 100 for each applicant, based on the number and type of matches found between the new applicant and the suspect carrier. FMCSA used these scores to determine which applicants with matches it would review.

In its 2009 report, NTSB recommended that FMCSA apply its vetting process to passenger carriers who submitted applications for operating authority before 2008. In 2010, FMCSA responded to this recommendation by vetting passenger carriers who applied for operating authority from January 2003 through August 2009. FMCSA limited the number of matches examined during this review to those with a score above 89, which restricted its review to 237 of 2,690 applicants, or 9 percent of the applicants. Of the 237 potential reincarnated carriers, FMCSA identified 4 applicants that warranted an investigation—with 1 resulting in enforcement action. Based on FMCSA's actions, NTSB closed its recommendation.<sup>13</sup>

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<sup>13</sup> NTSB classified this recommendation as Safety Recommendation H-09-35, "Closed—Acceptable Action."



## **FMCSA Modified Its Use of the Vetting Process Because It Does Not Target High-Risk Applicants**

FMCSA continues to use its vetting process, but recognized the limitations of the scores generated by the screening tool after it conducted the review NTSB recommended of old applicants. Consequently, FMCSA no longer uses the scores when vetting new applicants because the scores do not adequately identify high-risk applicants. Since 2010, FMCSA implemented the labor-intensive approach of reviewing all new passenger carrier applicants with matches, regardless of their scores, and is considering further modifications to the passenger carrier vetting process.

Reviewing all new applicants with matches to suspect carriers to ensure no reincarnations are overlooked is a labor-intensive process that does not maximize limited investigative resources by targeting high-risk applicants. The screening tool generates a large volume of matches by comparing 11 categories of applicant data<sup>14</sup> with data from the suspect carriers. The majority of matches are to one of four data categories—driver's name, driver's license number, license plate number, and vehicle identification number (VIN). FMCSA recognized this and deemphasized these four categories in the matching algorithm. In addition, some of these categories, such as VIN, often produce faulty matches. Despite devaluing the categories with common information, the screening tool still produces a lengthy list of carrier suspect matches. For example, based on the analysis FMCSA conducted of old applicants from January 2003 through August 2009, the vetting process produced over 31,000 suspect matches for the 2,690 passenger carrier applicants. Because of the small number of passenger carriers currently applying for operating authority, FMCSA is able to employ this labor-intensive approach, which could become unsustainable if the vetting process is expanded to the entire—larger—population of all motor carriers seeking operating authority (e.g., both passenger and property carriers).

This labor-intensive screening of all passenger carriers with matches has already resulted in a small backlog of pending applications. However, FMCSA continues to vet all new passenger carrier applicants for operating authority without using a revised screening tool. From August 2008 through September 2011, FMCSA received 3,256 applications for passenger carrier operating authority and rejected 693. FMCSA stated that it rejected two of the applications based on evidence that the carriers were attempting to evade enforcement and the others because the applicants failed to meet the safety fitness standard and were not willing and able to comply with all applicable statutes and regulations. Of the 3,256 applicants,

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<sup>14</sup> The 11 categories are: address, person's name, company name, telephone number, driver's license number, social security number, e-mail address, vehicle identification number, insurance policy number, driver's name, and vehicle license plate number.

286 remain to be vetted. A report by the U.S. Government Accountability Office in March 2012 detailed a methodology that could be used to enhance the current screening tool.<sup>15</sup>

## **FMCSA TOOK ACTION ON RULES NTSB RECOMMENDED TO IMPROVE PASSENGER CARRIER OVERSIGHT, BUT THEY HAVE YET TO BE IMPLEMENTED**

FMCSA began the rulemaking process in September and December 2011 for two rules to address the two oversight areas NTSB highlighted in its recommendations—establishing passenger carrier leasing requirements and revoking reincarnated carriers’ operating authority. However, given past delays on rulemakings, these new rules may not be fully implemented for years without timely and sustained management attention.

### **FMCSA Is Developing a Rule on Leasing Regulations for Passenger Carriers**

FMCSA does not have leasing regulations in place for passenger carriers, making it difficult for enforcement officials to determine who is responsible for motorcoach operation. FMCSA is developing a rule on leasing regulations for passenger carriers, as NTSB recommended, although it does not plan to issue a proposed rule until at least June 2012. A little over a third of the vehicles reported by passenger carriers during recent FMCSA compliance reviews were leased. FMCSA does, however, regulate lease agreements between interstate property carriers<sup>16</sup> that require written documentation citing, among other things, the names of the leasing agreement participants, duration of the lease, and who has control and use of the equipment during the lease if the lessee has exclusive possession. The lessee also assumes complete responsibility for the equipment. Further, a Mexico-domiciled motor carrier may not lease its equipment to a U.S. carrier for operations beyond the commercial zones near the U.S.-Mexico border.

In contrast to these rules for property carriers, FMCSA does not require passenger carriers to create or maintain any documentation of lease arrangements that could be checked by enforcement officials. This lack of documentation requirements makes it difficult for enforcement officials to determine who is responsible for the motorcoach or its operation. According to NTSB, the motorcoach company involved in the Victoria, Texas, crash was effectively shielded from appropriate FMCSA oversight because of a lease agreement with another company. NTSB

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<sup>15</sup> “New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection.” *U.S. Government Accountability Office*. GAO-12-364 (March 2012).

<sup>16</sup> Property carriers must record lease agreements in writing and keep copies of lease-related documents with leased equipment. The regulations also specify insurance coverage requirements.

determined that the lessor was operating independently from the lessee as a motor carrier. Although the lessee had certified on its operating authority application that it would have a system in place for safe operation of its commercial vehicles, it failed to maintain operational control and oversight of the leased vehicles and drivers.

FMCSA plans to initiate a rulemaking to establish passenger carrier leasing requirements similar to those in place for property carriers. NTSB considers FMCSA's plan an acceptable response to its recommendation.<sup>17</sup> In November 2011, FMCSA included the rulemaking in the Report on DOT Significant Rulemakings with an estimated June 12, 2012, notice of proposed rulemaking publication date. However, given FMCSA's past delays on other rulemakings, we are concerned that the passenger carrier leasing rulemaking will not be completed in a timely manner. For example, FMCSA missed the original target dates for 83 percent of the significant rulemakings listed in its rules report.<sup>18</sup> Seven of these are at least 1 year overdue.

### **FMCSA Has Issued a Proposed Rule To Establish a Process for Putting Reincarnated Carriers Out of Service**

NTSB recommended that FMCSA seek statutory authority to deny or revoke operating authority for commercial interstate motor carriers identified as reincarnated carriers. Instead, in a December 2011 notice of proposed rulemaking, FMCSA proposed a new process for putting reincarnated carriers out of service, using its existing statutory authority. The proposed rule includes new procedures to put reincarnated carriers out of service who demonstrate unwillingness or inability to comply with safety regulations and consolidate FMCSA records on both the reincarnated carrier and its previous incarnation, but it will not be implemented until the often-lengthy rulemaking process is complete.

Under current rules and precedents, FMCSA can deny operating authority to reincarnated carriers. However, to revoke the existing operating authority of a reincarnated carrier, FMCSA must first prove that the carrier is a reincarnation of a previous corporate entity by applying State-specific corporate successorship rules. A July 2010 ruling<sup>19</sup> from the agency required FMCSA to defer to State successorship laws when determining whether a trucking entity is a reincarnation of an unsafe entity. This means that FMCSA must build its cases by collecting evidence and making arguments tailored to the specific corporate successorship standards in each of the 50 States and the District of Columbia. However, this

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<sup>17</sup> NTSB classified this recommendation as Safety Recommendation H-09-33, "Open—Acceptable Response."

<sup>18</sup> U.S. Department of Transportation, Report on DOT Significant Rulemakings, November 2011.  
<http://regs.dot.gov/rulemakings/201111/report.htm>

<sup>19</sup> The leading case on the issue of corporate successorship is FMCSA Docket Number: FMCSA-2004-17247 at 25, Order Denying Reconsideration in the Matter of Williamson Transport Co., Inc., July 20, 2010.

requirement may change. The new procedures for taking enforcement action against reincarnated carriers that FMCSA proposed in the December notice include a new Federal standard based on substantial continuity<sup>20</sup> for determining whether a carrier is a reincarnation of an earlier entity. FMCSA must continue to use this State-based process until its proposed rule is finalized and fully implemented.

FMCSA stated that it expends significant investigative resources to prove successorship for each reincarnated carrier according to the laws of the State in which a carrier resides. While State laws vary significantly, FMCSA has brought cases against reincarnated carriers using State corporate successorship standards, and has developed guidance for prosecuting these cases. However, establishing an agencywide standard, as proposed in the notice of proposed rulemaking, would enable FMCSA to more efficiently and effectively stop reincarnated carriers from operating.

## **FMCSA HAS NOT IMPLEMENTED NTSB'S RECOMMENDATIONS ON FMVSS COMPLIANCE**

FMCSA has not implemented NTSB's recommendations to work with NHTSA to improve compliance with FMVSS. Instead, it continues to enforce motor carrier safety regulations, including those related to the FMVSS. NTSB highlighted an oversight gap between FMCSA and NHTSA—vehicles can pass roadside or periodic safety inspections that FMCSA or State officials conduct even if the vehicles are not FMVSS-compliant.<sup>21</sup> For example, a vehicle that was not manufactured in compliance with the standards for flame-retardant materials established in the FMVSS, and thus did not carry an appropriate FMVSS label, would not be cited during a roadside inspection. While NTSB did not quantify the safety impact of this gap, it recommended that FMCSA and NHTSA close the gap by changing or improving their respective processes to identify or track passenger vehicles that do not comply with FMVSS.<sup>22</sup> FMCSA and NHTSA proposed alternative actions to address the intent of these recommendations. FMCSA continues its current practice of matching and cross listing selected FMVSS to motor carrier safety regulations it enforced during roadside inspections—an approach that is not designed to specifically identify or track passenger carriers

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<sup>20</sup> The proposed rule includes factors (e.g., consideration exchanged for assets purchased or transferred, commonality of ownership, same physical address, commonality of nature or scope of operations) FMCSA officials may use to determine whether there is substantial continuity between a motor carrier and a preexisting entity such that one is merely a continuation of the other.

<sup>21</sup> NHTSA is responsible for enforcing the FMVSS, which are manufacturing standards. FMCSA is responsible for enforcing the Federal Motor Carrier Safety Regulations, which are operational standards, including those that incorporate FMVSS that can be tested during roadside inspections.

<sup>22</sup> FMVSS consist of standards for various types of commercial motor vehicles, but NTSB's recommendation language and this audit focused on commercial passenger vehicles' compliance with FMVSS.

that fail to comply with FMVSS that are not cross listed to motor carrier safety regulations. It is also considering whether to incorporate the same training that NHTSA offers on visual detection of FMVSS compliance into training it offers through the National Training Center.

### **NTSB Identified Issues Related to FMCSA’s Approach for Enforcing Compliance with FMVSS**

The motorcoach involved in the Victoria, Texas, crash passed a roadside inspection for compliance with the FMCSR, although it had no FMVSS certification label. NTSB concluded that the Federal Government does not have an effective way to enforce FMVSS for passenger carriers in the absence of ensuring that all vehicles have FMVSS certification labels or conducting inspections that check vehicles’ compliance with all manufacturing standards. FMCSA maintains that it may meet the intent of the National Traffic and Motor Vehicle Safety Act of 1966 regarding consistency between motor carrier safety regulations and manufacturing standards by cross listing the FMVSS to the FMCSR. However, according to NTSB, this does not meet the intent of the Act.

FMCSA does not evaluate, record, or track the FMVSS<sup>23</sup> compliance status of commercial motor vehicles during roadside inspections. Instead, FMCSA has identified the FMVSS that are critical to operational safety and can be checked during roadside inspections—and incorporated them into the FMCSR.<sup>24</sup> FMCSA has determined that cross listing the operational standards in the FMCSR with the manufacturing standards in the FMVSS is the most effective means to ensure motor carriers operate safe vehicles, rather than checking FMVSS certification labels. For example, the FMCSR incorporate FMVSS on the number, type, and configuration of exterior lights on a commercial motor vehicle, as shown in table 2 on the next page.

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<sup>23</sup> FMVSS are manufacturing standards that prescribe minimum safety performance requirements for commercial motor vehicles and equipment.

<sup>24</sup> “Quick Reference Guide (2010 version) to Federal Motor Vehicle Safety Standards and Regulations,” National Highway Traffic Safety Administration. (February 2011) <http://www.nhtsa.gov/staticfiles/rulemaking/pdf/FMVSS-QuickRefGuide-HS811439.pdf>.

**Table 2. Examples of FMCSR Cross Listed to FMVSS**

<b>FMCSR</b>	<b>Title</b>	<b>FMVSS</b>	<b>Title</b>
393.11	Lamps and Reflectors	108	Lamps, Reflective Devices, and Associated Equipment
393.4	Required Brake Systems	105	Hydraulic Brake Systems
393.41	Parking Brakes (being revised to cover entire air brake system)	121	Air Brake Systems

Source: OIG Analysis of FMCSR and FMVSS

NTSB asserted that there are fundamental problems in relying on cross listing the FMVSS to the FMCSR. It stated that not all FMVSS can be tested roadside and not all FMCSR violations are serious enough to place a vehicle out of service—both of which decrease the likelihood that the vehicle in question will be brought to the minimum safety standard. To close this gap in safety oversight, NTSB recommended that FMCSA and NHTSA develop a Web-based database of FMVSS compliant vehicles, establish requirements for using the database, conduct training by physically inspecting vehicles in-use for FMVSS certification, and require each passenger carrier to certify FMVSS compliance on its initial operating authority application. Because NTSB did not consider FMCSA’s actions responsive to its recommendations, its recommendations on FMVSS enforcement remain open.<sup>25</sup>

### **Opportunities Exist for FMCSA To Better Target FMVSS-Related Violations and Expand Training**

In April 2010, the Deputy Secretary of Transportation directed FMCSA and NHTSA to respond to NTSB’s recommendations by determining, in coordination with CBP, the feasibility and cost-effectiveness of developing and implementing a process to detect in-use vehicles that do not comply with FMVSS. In their responses to NTSB, FMCSA and NHTSA did not support developing a Web-based FMVSS database, stating that such a database would not improve safety. FMCSA noted that a certification label indicates only a vehicle’s compliance with FMVSS at the time of manufacture, not after it is in operation. FMCSA acknowledged that the FMVSS cross listed to the FMCSR are limited to those that can be tested or checked during a visual inspection of the vehicle. According to FMCSA, specific manufacturing standards that require performance testing, such as vehicle braking performance requirements for stopping distance, involve facilities and expertise that are not available at the roadside inspections. Consequently, vehicles that do not meet these types of FMVSS would not be

<sup>25</sup> NTSB classified these recommendations as Safety Recommendations H-09-37 through -41, “Open—Unacceptable Response.”

detected during roadside inspections. While we recognize that FMCSA has legitimate concerns about the feasibility of enforcing FMVSS during roadside inspections, we identified opportunities for enhancing current enforcement efforts by targeting areas and entities that are at a higher risk of containing or operating non-FMVSS compliant vehicles.

Through their routine inspection activities, FMCSA and the States currently enforce FMVSS that are cross listed to the FMCSR. These inspections have led to citations for FMVSS-related violations. For example, our analysis of FMCSA's Motor Carrier Management Information System inspection data showed that in 2009, inspections of passenger carriers identified 19,039 FMCSR violations that are cross listed to FMVSS. In 2010, 18,698 similar violations were reported. The consistency in violations from 1 year to the next indicates that FMCSA has not increased enforcement of FMVSS since NTSB issued its recommendations in late 2009.

We identified geographic patterns in the FMCSR violations cross listed to FMVSS that could assist FMCSA and the States in targeting their enforcement actions and oversight. For example, five of the six motor carriers with more than 500 violations of cross listed FMCSR in either calendar year 2009 or calendar year 2010 were domiciled in the southern United States, with the remaining carrier domiciled in Mexico. Of the six carriers, three were domiciled in Louisiana and the majority of their violations were identified in inspections enforcement officials conducted in Texas. Notably, 36.7 percent of all violations in 2009 and 2010 were identified during inspections conducted by Texas enforcement officials. The State with the second largest number of these types of violations, California, had only 4.4 percent of the total. The concentration of violation activity in one State and one region of the country could present FMCSA with an opportunity to target inspection and training resources in those geographic areas.

NHTSA also did not support NTSB's recommendations on developing and using a database of FMVSS-compliant vehicles. As an alternative, NHTSA proposed expanding the training it now provides to CBP officials at various ports of entry on how to visually check FMVSS certification labels on vehicles imported for sale in the United States. NHTSA proposed expanding this importation training to FMCSA staff rather than building a database of FMVSS-compliant vehicles, as NTSB recommended, because NHTSA does not require motor coach manufacturers to inform it of the identity of vehicles manufactured to meet FMVSS. FMCSA is considering incorporating this expanded importation training into training already provided to FMCSA staff through its National Training Center. This action could serve to help close the safety oversight gap NTSB identified.

## **CONCLUSION**

Motorcoach safety has received increased scrutiny from Congress and the NTSB and focused attention on FMCSA's oversight of this dynamic industry. FMCSA is taking action to improve oversight of passenger carriers, including steps that address NTSB's recommendations stemming from the fatal 2008 crash in Victoria, Texas. However, FMCSA must follow through on the actions it has proposed and continue seeking an acceptable approach to addressing the safety oversight gap NTSB identified. Given that passenger carriers make up a small part of the 600,000 companies regulated by FMCSA, this is a significant challenge. Targeted and risk-based actions will help FMCSA more efficiently identify and take enforcement action against passenger carriers that pose safety risks.

## **RECOMMENDATIONS**

We recommend that the Federal Motor Carrier Safety Administrator:

1. Strengthen the Federal Motor Carrier Safety Administration's ability to identify and take action against reincarnated carriers by refining the new applicant screening tool to provide risk-based targeting of operating authority applicants that are likely to be reincarnations of suspect passenger carriers.
2. Publish a final rule on passenger carrier leasing with requirements similar to those for property carriers.
3. Publish a final rule establishing Federal procedures for addressing reincarnated carriers including placing them out of service.
4. Work with the National Highway Traffic Safety Administration and U.S. Customs and Border Protection to develop and implement a risk-based solution, in compliance with the National Traffic and Motor Vehicle Safety Act of 1966, to target enforcement against U.S.-domiciled passenger carriers whose vehicles do not meet Federal Motor Vehicle Safety Standards.
5. Incorporate National Highway Traffic Safety Administration training modules on visually identifying vehicles' compliance with Federal Motor Vehicle Safety Standards into training provided to Federal Motor Carrier Safety Administration enforcement officials through the National Training Center.

## **AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

We provided FMCSA a draft of this report for review and comment on February 24, 2012. We received its technical comments on March 29, 2012, and a



formal response from the agency on April 12, 2012. FMCSA concurred with all of our recommendations, and its complete formal response is included as an appendix to this report.

## **ACTIONS REQUIRED**

FMCSA's planned actions for all five recommendations are responsive, and its target action dates are appropriate. In accordance with follow-up provisions in Department of Transportation Order 8000.1C, we request that FMCSA provide our office, within 30 days of this report, documentation of the New Applicant Screening tool enhancements FMCSA reports implementing in December 2011. We also request that FMCSA provide information demonstrating completion of its planned actions within 10 days after the action was taken. All five recommendations will remain open pending receipt of this information.

We appreciate the courtesies and cooperation of the Federal Motor Carrier Safety Administration during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Wendy Harris, Program Director, at (202) 366-2794.

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cc: Audit Liaison, FMCSA  
Audit Liaison, NHTSA  
Audit Liaison, OST  
National Transportation Safety Board

## **EXHIBIT A. SCOPE AND METHODOLOGY**

We conducted our work between December 2010 and February 2012 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To assess FMCSA's efforts to detect and deter reincarnated motor carriers, we reviewed proprietary documentation of FMCSA's new applicant screening tool, observed a demonstration of the tool, and used a statistical sample of 100 of 2,690 carriers to test the data reliability of the new applicant screening tool as well as its effectiveness in identifying potential reincarnated carriers among new applicants. In addition, we reviewed the results of FMCSA's vetting of passenger carriers that applied for operating authority between January 2003 and August 2009, particularly regarding the use of the scoring mechanism of the new applicant screening tool. We also used the new applicant screening tool and FMCSA's Motor Carrier Management Information System (MCMIS) database to investigate possible reincarnations of individual carriers.

To assess FMCSA's efforts to revise regulations, implement new rulemakings, or obtain increased statutory authority to strengthen passenger carrier safety, we interviewed FMCSA officials, gathered available documentation, and reviewed public testimony on FMCSA's efforts in these areas. We focused specifically on how FMCSA administered passenger carrier leasing requirements and the efficiency with which it revoked the operating authority of reincarnated carriers. We also coordinated with OIG counsel to develop a legal opinion on FMCSA's existing statutory authority in these two areas and reviewed FMCSA's rulemaking history and the Report on DOT Significant Rulemakings to assess FMCSA's past rulemaking efficiency and history of relevant rulemakings.

To assess FMCSA's ability to better identify and track those commercial passenger vehicles that do not comply with Federal vehicle safety requirements, we interviewed FMCSA, NHTSA, and Customs and Border Protection officials regarding any training their personnel received or administered to identify non-Federal Motor Vehicle Safety Standard (FMVSS) compliant passenger carrier vehicles. We reviewed FMCSA documentation along with the Code of Federal Regulations to determine which Federal Motor Carrier Safety Regulations (FMCSR) were cross-listed with FMVSS. In addition, we used MCMIS data to analyze commercial passenger vehicle inspections to determine whether violations of FMCSR cross-listed to FMVSS were being detected during roadside vehicle

inspections. Some carriers using the vehicles inspected have been identified as non-passenger carriers. We used the data to determine the geographic distribution of FMVSS cross listed violations of the FMCSR. We also used the company profiles in MCMIS and FMCSA's Compliance Safety Accountability 2010 Safety Management System database to establish the identity of the carriers with the most violations.

## EXHIBIT B. OVERVIEW OF FMCSA'S IMPLEMENTATION OF NTSB RECOMMENDATIONS AS OF DECEMBER 2011

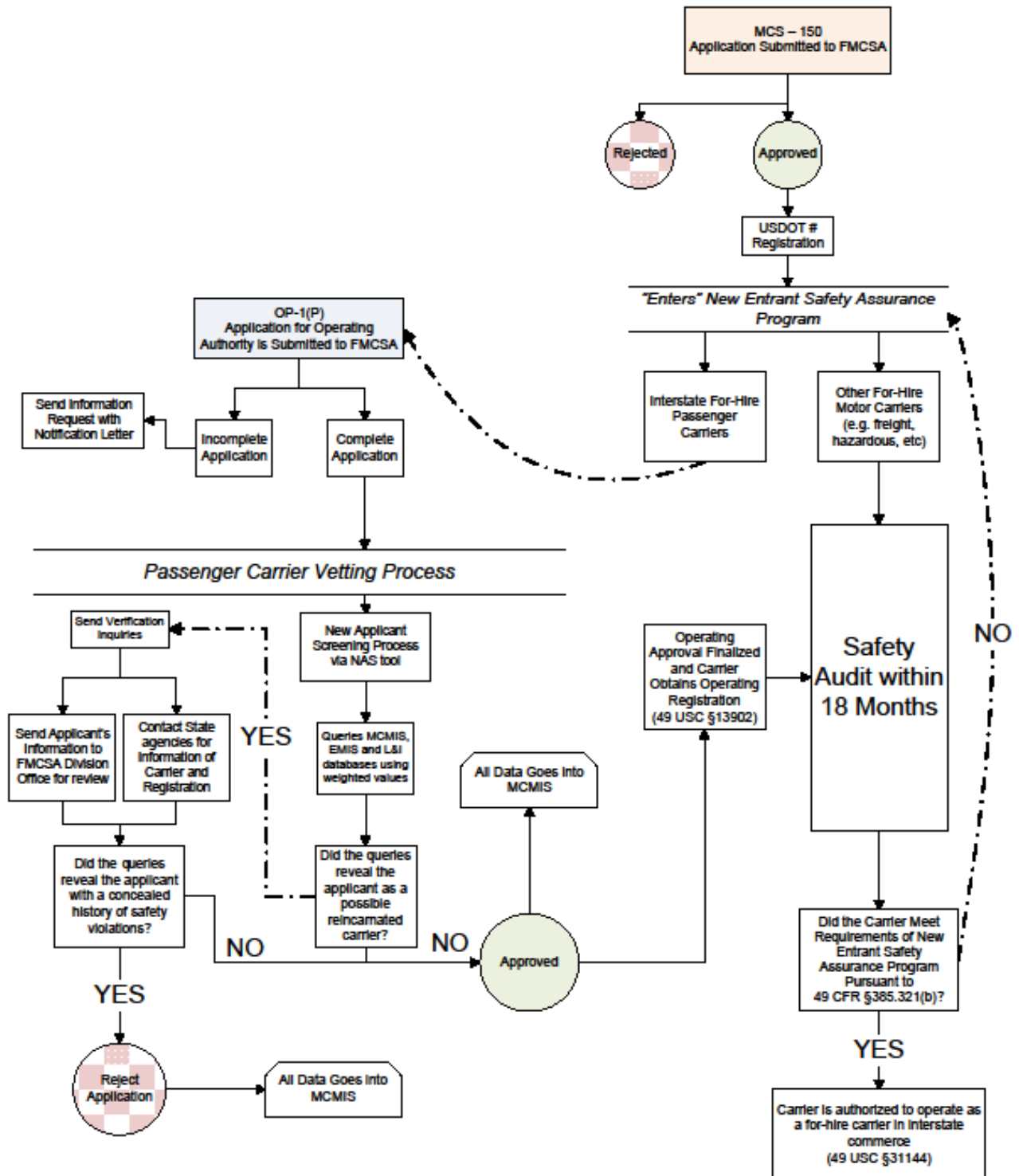
NTSB Recommendation	FMCSA Implementation Actions
<p><b>H-09-032:</b> Update and redistribute FMCSA's "Driver Fatigue Video" to include current information on fatigue and fatigue countermeasures and make the video available electronically. Implement a plan to regularly update and redistribute the video. (NTSB Classified as: Open - Acceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA plans to complete the research on motor coach operator fatigue by the end of calendar year 2011 and update the video by summer 2012.</li> <li>• This recommendation was not included in the recommendation responses Congress asked OIG to review.</li> </ul>
<p><b>H-09-033:</b> Revise 49 C.F.R. 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. (NTSB Classified as: Open - Acceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA initiated a rulemaking in September 2011 to seek comment on leasing regulations for passenger carriers.</li> </ul>
<p><b>H-09-034:</b> Seek statutory authority to deny or revoke operating authority for commercial interstate motor carriers found to have applications for operating authority (OA) in which 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. (NTSB Classified as: Open - Acceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA published a notice of proposed rulemaking in December 2011 that proposed new regulations for putting reincarnated carriers out of service and a Federal standard for using substantial continuity to determine whether a carrier is a reincarnation of a prior entity.</li> </ul>
<p><b>H-09-035:</b> Apply the evasion detection algorithm process against all interstate passenger carriers that obtained FMCSA 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. (NTSB Classified as: <b>Closed</b> - Acceptable Action)</p>	<ul style="list-style-type: none"> <li>• FMCSA applied its passenger carrier vetting process, including the New Applicant Screening tool, to passenger carriers that applied for operating authority after 2003 but before the New Entrant Safety Assurance Program began in 2008.</li> <li>• FMCSA further evaluated the 2003 to 2008 applicants with scores of 90 and above—less than 9 percent of the suspect matches. Of these, four were investigated and one was prosecuted as a reincarnated carrier.</li> <li>• FMCSA no longer uses the scoring mechanism that was used to vet the 2003 to 2008 population of passenger carrier applicants, because it determined the scores were unreliable.</li> <li>• FMCSA currently applies the passenger carrier vetting process, including the scoring tool, to all applicants but evaluates every carrier with a match, regardless of score.</li> </ul>

<b>NTSB Recommendation</b>	<b>FMCSA Implementation Actions</b>
<p><b>H-09-036:</b> 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. (NTSB Classified as: Open - Acceptable Response)</p>	<ul style="list-style-type: none"> <li>• No action until H-09-033 rule is in place.</li> </ul>
<p><b>H-09-037:</b> Assist NHTSA in developing a Web-based database of 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. (NTSB Classified as: Open - Unacceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA has not implemented or developed a Web-based database of FMVSS-compliant passenger carrying commercial motor vehicles.</li> <li>• FMCSA determined that the FMVSS critical to the operational safety of commercial motor vehicles and can be checked at the roadside are cross-referenced in the Federal Motor Carrier Safety Regulations, which are enforced through the inspection program.</li> <li>• FMCSA believes that the absence of a FMVSS label does not necessarily suggest that a vehicle is unsafe.</li> <li>• The meeting FMCSA requested was held with all respective parties (NTSB, NHTSA, and CBP) to clarify the intent and to outline alternatives to this recommendation.</li> </ul>
<p><b>H-09-038:</b> Require that Federal and State inspectors utilize the database requested in 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. (NTSB Classified as: Open - Unacceptable Response)</p>	<ul style="list-style-type: none"> <li>• No action due to alternative action proposed by FMCSA for H-09-037.</li> </ul>
<p><b>H-09-039:</b> Institute a requirement for Federal and State enforcement officials to obtain training on a procedure to physically inspect passenger-carrying commercial motor vehicles for a FMVSS compliance label, and work with the Commercial Vehicle Safety Alliance to develop and provide this training. (NTSB Classified as: Open - Unacceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA believes there are no discernible safety benefits associated with a requirement to obtain FMVSS training on a procedure for physical inspections of passenger commercial vehicles.</li> <li>• FMCSA has not implemented any additional training or been trained by NHTSA's importation officials.</li> </ul>

<b>NTSB Recommendation</b>	<b>FMCSA Implementation Actions</b>
<p><b>H-09-040:</b> 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 U.S.DOT Number]) and subsequent required biennial submissions that all vehicles operated, owned, or leased per trip or per term met the FMVSS in effect at the time of manufacture. (NTSB Classified as: Open - Unacceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA does not intend to include this certification on its forms for U.S.-domiciled motor carriers.</li> <li>• Motor carriers domiciled in the United States or Canada must meet FMVSS at the time of manufacture and have compliance labels.</li> <li>• Mexican and non-North American-domiciled carriers have forms to ensure that all vehicles operating in the United States were manufactured or have been retrofitted in compliance with FMVSS.</li> </ul>
<p><b>H-09-041:</b> 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 Recommendation H-09-40. (NTSB Classified as: Open - Unacceptable Response)</p>	<ul style="list-style-type: none"> <li>• FMCSA currently has statutory authority to take action against motor carriers operating unsafe vehicles.</li> <li>• FMCSA believes a FMVSS certification label requirement does not ensure the safe operation of a commercial motor carrier.</li> </ul>

Source: OIG generated table

# EXHIBIT C. FMCSA'S PASSENGER CARRIER VETTING PROCESS



Source: OIG generated flow chart

Exhibit C. FMCSA's Passenger Carrier Vetting Process

**EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT**

<b><u>Name</u></b>	<b><u>Title</u></b>
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Harriet Lambert	Writer-Editor



## APPENDIX. AGENCY COMMENTS




U.S. Department of  
Transportation

**Federal Motor Carrier  
Safety Administration**

# Memorandum

**Subject:** **INFORMATION:** Response to OIG Draft Report on FMCSA Actions To Improve Passenger Carrier Oversight **Date:** April 12, 2012

**From:** Anne S. Ferro  Administrator **Reply to Attn: of** MC-P

**To:** Joseph W. Comé  
Acting Assistant Inspector General for  
Highway and Transit Audits

The motorcoach industry provides an estimated 750 million passenger trips each year and is among the safest modes of transportation. However, recent tragic crashes further emphasize the importance of protecting the public through robust regulations, effective oversight, and zero tolerance motor carrier safety enforcement policies. The Federal Motor Carrier Safety Administration (FMCSA) is committed to providing effective oversight of the motor carrier industry and has taken strong actions in an effort to further improve safety. Specifically, the Agency has raised the bar to entry, has cracked down on unsafe passenger carriers through surprise destination inspections, has initiated widespread compliance reviews and enforcement actions against passenger carriers, and has sought enhanced regulatory and enforcement authorities from Congress through its reauthorization technical assistance.

### **FMCSA Is Taking Strong Action to Address Motorcoach Safety**

Over the past 5 years, FMCSA has doubled the number of passenger carrier inspections and compliance reviews of the Nation's approximate 4,000 interstate motorcoach companies. Motorcoach inspections have increased nearly 100 percent, from 12,991 in 2005 to 25,705 in 2010, while compliance reviews are up 128 percent, from 457 in 2005 to 1,042 in 2010. The FMCSA has also initiated a greater number of enforcement cases against unsafe passenger carriers under the current administration. Between 2000 and 2009, FMCSA issued a total of 14 imminent hazard orders, placing unsafe carriers out of service. In comparison, during the last 2 years alone, FMCSA has already issued another 14 imminent hazard orders to put carriers that pose an immediate safety risk to passengers out of service.

The Agency and our State and local law enforcement partners carry out passenger carrier safety strike forces throughout the country, specifically in Texas, California, Delaware, New Jersey, Pennsylvania, North Carolina, and Washington State, to name a few. These strike forces have

taken place at destinations like ball parks, theme parks, and National parks; and they will continue in years to come. The FMCSA also banned texting by drivers of commercial vehicles, including motorcoach drivers, and issued a rule that prohibits commercial drivers from reaching for, holding or dialing a cell phone while operating a commercial motor vehicle. Drivers who violate these restrictions face federal civil penalties of up to \$2,750 for each offense and disqualification of their commercial driver's license for multiple offenses.

### **FMCSA Provides Consumers with Extensive Safety Information**

Using multiple types of media, FMCSA is taking extensive action to provide the public with information on the safety of passenger carriers. Recently, FMCSA made new information resources available to the public called "Think Safety: Every Trip, Every Time." This information includes a new consumer checklist to help passengers and trip organizers assess a bus company's safety record, safety rating, and U.S. DOT operating authority and insurance before buying an individual ticket or hiring a bus company for group travel. The Agency also offers safety information about individual passenger carriers on its Web site. In addition, FMCSA recently launched a SaferBus iPhone/iPad application that empowers consumers with quick and easy access to a motorcoach company's safety record. Finally, FMCSA encourages consumers to report any unsafe motorcoach company, vehicle, or driver to the Agency through a toll free hotline or on-line through FMCSA's National Consumer Complaint Database.

### **FMCSA Seeking Additional Safety Authority**

To further strengthen passenger carrier safety, the Department has asked Congress to provide FMCSA with greater authority to pursue unsafe "reincarnated" passenger carriers by establishing a uniform Federal standard to help determine whether a new carrier is a reincarnation of an old, unsafe carrier. As discussed in the OIG report, the practice of unsafe carriers reincarnating, or transforming into "chameleon carriers," to continue operations is unacceptable. The Agency is doing everything within its existing legal authority to keep one step ahead of these illegal actors through our vetting program. The Agency has initiated rulemakings to create bus leasing regulations and establish a process for putting reincarnated carriers out of service. The Department is also seeking statutory authority to implement new procedures that would allow FMCSA to conduct passenger carrier safety inspections at additional en route locations and to require new motorcoach companies to undergo a pre-authority safety audit before receiving operating authority. Further, the Department is seeking strong enforcement authority by raising the penalty for operating illegally or without authority from \$2,000 to \$25,000 per violation.

The FMCSA continues to make improvements to passenger carrier safety. Working with Congress, the bus industry, oversight organizations, and an empowered and informed American public, we are using all available avenues to make passenger carrier travel as safe as possible.

## **RECOMMENDATIONS AND RESPONSES**

**Recommendation 1:** Strengthen the Federal Motor Carrier Safety Administration's ability to identify and take action against reincarnated carriers by refining the new applicant screening tool to provide risk-based targeting of operating authority applicants that are likely to be reincarnations of suspect passenger carriers.

## **Appendix. Agency Comments**

**Response:** Concur. The New Applicant Screening (NAS) tool is used to match information in operating authority applications against information related to carriers across the entire population of motor carriers currently or previously registered with the Agency. The FMCSA expanded the NAS tool to include a check against the Agency's entire past and present carrier population. The updated NAS now provides the ability to search for specific carriers and identify relationships to other past and present carriers. These enhancements were implemented in December 2011.

Furthermore, FMCSA is currently developing a plan to enhance its ability to identify carriers that try to re-enter the industry as a new entrant carrier seeking a USDOT identification number and operating authority, and to prevent those that are a continuation of unsafe motor carriers from establishing operations under a new name and USDOT number. One element of the plan includes developing a risk-based algorithm to enhance the vetting process. The FMCSA expects to complete the development of the risk-based algorithm by February 2013. While FMCSA is working to enhance the vetting process, the Agency will continue reviewing all passenger and household goods carriers seeking operating authority. Further, in order to take meaningful and effective action against reincarnated carriers as described above, FMCSA is also seeking through its reauthorization technical assistance enhanced statutory authority to enable the Agency to detect, deter, and implement vigorous enforcement actions against carriers that seek to reincarnate.

**Recommendation 2:** Publish a final rule on passenger carrier leasing with requirements similar to those for property carriers.

**Response:** Concur. In September 2011, the Agency initiated a rulemaking that would create vehicle lease and interchange regulations for passenger-carrying vehicles subject to the Agency's safety oversight. The Agency has discovered through its passenger bus crash investigations and roadside inspections a need for better documentation of bus lease and interchange arrangement or agreements. Further, the National Transportation Safety Board has recommended that FMCSA require documentation of bus leases and interchanges based on a crash investigation in 2008 near Victoria, Texas. The Agency anticipates issuing a proposed rule in 2012 and a final rule in 2013.

**Recommendation 3:** Publish a final rule establishing Federal procedures for addressing reincarnated carriers including placing them out of service.

**Response:** Concur. In December 2011, the Agency published a Notice of Proposed Rulemaking in the Federal Register to amend the Agency's Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings in three respects. Through the rulemaking process, the Agency proposes to clarify that paying the full proposed civil penalty in an enforcement proceeding, either in response to a Notice of Claim or later in the proceeding, would not allow respondents to unilaterally avoid an admission of liability for the violations charged. The FMCSA also proposes to establish procedures for issuing out of service orders to motor carriers, intermodal equipment providers, brokers, and freight forwarders it determines are reincarnations of other entities with a history of failing to comply with statutory or regulatory requirements. These procedures would provide for administrative review before the out of service order takes effect. Further, the Agency proposes

## **Appendix. Agency Comments**

procedures for consolidating Agency records of reincarnated companies with their predecessor entities. The Agency anticipates issuing the final rule by June 2012.

**Recommendation 4:** Work with the National Highway Traffic Safety Administration and U.S. Customs and Border Protection to develop and implement a risk-based solution, in compliance with the National Traffic and Motor Vehicle Safety Act of 1966, to target enforcement against U.S.-domiciled passenger carriers whose vehicles do not meet Federal Motor Vehicle Safety Standards.

**Response:** Concur. The Agency will begin checking vehicles operated by U.S.-domiciled carriers during roadside inspections to identify carriers operating commercial vehicles that do not display a Federal Motor Vehicle Safety Standards (FMVSS) certification label affixed by the vehicle manufacturer. The Agency would then share this information with the National Highway Traffic Safety Administration (NHTSA) and U.S. Customs and Border Protection, for appropriate action concerning the potential improper importation into the U.S. of vehicles that may not comply with the FMVSSs in effect on the date of manufacture. By December 2012, the Agency will develop an enforcement policy that will request that FMCSA enforcement officials inspect passenger carrying commercial motor vehicles operated by U.S.-domiciled motor carriers for FMVSS certification labels. The Agency's long-term goal, depending on the results of the inspections, would be to consider a notice-and-comment rulemaking proceeding to require that U.S.-domiciled motor carriers be required to ensure their vehicles display an FMVSS certification label. This would help to ensure that only vehicles certified to comply with all applicable FMVSS by their original manufacturer, or brought into compliance with those standards under NHTSA's Registered Importer program, are used by U.S.-domiciled carriers.

**Recommendation 5:** Incorporate National Highway Traffic Safety Administration training modules on visually identifying vehicles' compliance with Federal Motor Vehicle Safety Standards into training provided to Federal Motor Carrier Safety Administration enforcement officials through the National Training Center.

**Response:** Concur. The Agency will incorporate the NHTSA training modules on inspecting vehicles for the FMVSS certification label in the inspector training program to support implementation of the enforcement policy (mentioned in the response to recommendation 4) concerning the inspection of vehicles operated by U.S.-domiciled carriers by December 2012. The Agency's National Training Center will provide the training to FMCSA and State enforcement personnel.