



ADVOCATES
for Highway & Auto Safety

**STATEMENT OF JACQUELINE GILLAN
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**ON
“HOW BEST TO IMPROVE BUS SAFETY ON OUR NATION’S HIGHWAYS”**

**BEFORE
THE HOUSE COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE**

UNITED STATES HOUSE OF REPRESENTATIVES

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Good afternoon. My name is Jackie Gillan and I am Vice President of Advocates for Highway and Auto Safety (Advocates), a coalition of consumer, health, safety, medical organizations and insurers working together to advance federal and state programs and policies that prevent deaths and injuries on our neighborhood streets and highways. I commend the Committee for holding hearings on the safety of motorcoaches and motorcoach operations.

This hearing today is another in a long series of hearings held because of concern over the quality of motorcoach and motor carrier safety. In March 2006, I testified before the Subcommittee on Highways and Transit about curbside operators and motorcoach safety. A year later, immediately following the Bluffton University baseball team crash which killed seven and injured 21, I testified before the same Subcommittee on motorcoach safety. These hearings highlighted the need for Congress to take action to raise the level of motorcoach company safety and improve the quality of federal and state oversight. Five years later, there have been more than 108 crashes resulting in at least 136 deaths and 1,250 injuries. It is time for Congress to pass H.R. 873, the Motorcoach Enhanced Safety Act (MESA).

The horrific motorcoach crash in Caroline County, Virginia on May 31, 2011 is yet another reminder of the need for improved motorcoach safety. In that crash, four people were killed and over 50 injured when the fatigued driver ran off the side of the road and the motorcoach overturned and landed on its roof. Initial investigations have revealed that the motorcoach operator, Sky Express, had received an “Unsatisfactory” rating from the Federal Motor Carrier Safety Administration (FMCSA) because of dozens of safety violations, but the agency extended its review so that the carrier was still operating on the day of the crash. A fatal motorcoach crash three days earlier on the other side of the country, in Cle Elum, Washington, killed 2 and injured 21, and brought the total number of motorcoach crashes in the first five months of 2011 alone to 12. These crashes have resulted in 28 deaths and over 200 injuries, and are just the most recent in a long list of crashes that have motivated Advocates, other consumer and safety organizations, and families of motorcoach victims and survivors across the country to support the Motorcoach Enhanced Safety Act.

We know the reasons motorcoach crashes occur—tired drivers and poor vehicle maintenance among others. And, we know how passengers are killed—ejection, lack of restraint systems and smoke suppression are leading causes. What we do not know is why the FMCSA and the National Highway Traffic Safety Administration (NHTSA) have failed for decades to implement critical, reasonable and commonsense safety measures recommended by the National Transportation Safety Board (NTSB). What we cannot understand is why the motorcoach industry, which has already witnessed nearly a 50 percent increase in the average annual fatality rate in just the first half of this year alone, still resists legislation setting firm deadlines for federal action to protect its passengers and remove unsafe carriers and unfit drivers off of our roads. Congress needs to pass the Motorcoach Enhanced Safety Act to protect passengers both when they board the bus and when they take their seat.

Older travelers who take motorcoaches to casinos plan on gambling but they do not expect to play Russian roulette with their safety en route. Those who travel by motorcoach rather than by air due to cost know the trip will take longer but they do not expect to be treated as second-class citizens when it comes to safety. Young people who take motorcoaches for

convenience, price and the wifi do not expect the motorcoach to be a deathtrap in the event of a crash.

Motorcoach safety is a serious concern for anyone who relies on and uses this growing and affordable mode of transportation. Unfortunately, when it comes to choosing a safe motorcoach, consumers have been forced to select motorcoach carriers blindly, without adequate information on their safety or the safety of the vehicles and drivers. Many of us in this hearing room have put our excited children on charter buses for out-of-town school field trips and team sporting events, boarded motorcoaches to take part in church and community outings, or waved goodbye to retired parents who traveled by tour coach to vacation destinations. Some have even taken advantage of low cost fares to travel between Washington, D.C., New York or Boston on “curbside” buses that leave from downtown locations rather than bus terminals.

Motorcoaches make 750 million passenger trips a year, and transport hundreds of thousands of passengers each day, often carrying more passengers – 55 to 59 people when fully loaded – than most commuter airline flights. Yet, motorcoach safety is not being held to the same high safety standards as passenger aviation even though motorcoaches operate in a much more dangerous and congested highway environment. Motorcoach drivers are not required to meet the rigorous medical and safety requirements of airline pilots; most of the vehicle safety design and performance standards for passenger vehicles, especially for occupant protection, are not required for motorcoaches; and motorcoach companies are governed by the same weak, ineffectual safety oversight and enforcement regime that is used for trucking freight.

My testimony today will address the safety problems and the documented need to improve motorcoach safety; the means available to provide improved occupant protection in motorcoach crashes and other emergencies, such as fires; enhanced crash avoidance capabilities; and the importance of strengthening federal oversight of motorcoach operations to ensure that unsafe motorcoach companies and drivers are detected and kept off the road before they can do harm.

Motorcoach Crashes Are Frequent and Deadly

Over the past four decades, the National Transportation Safety Board (NTSB) has investigated nearly 70 motorcoach crashes and fires that resulted in several hundred passenger deaths and thousands of injuries. NTSB’s motorcoach crash investigations over the decade from 1998-2007, involved the deaths of 255 passengers and more than one thousand injuries.¹ In some of these incidents more than 20 people on board were killed in a single crash or vehicle fire. Not all motorcoach crashes resulting in death and injury are investigated by NTSB or any other agency at the federal level. I have attached to my testimony a list of the motorcoach crashes that Advocates has compiled from the NTSB investigation reports and reliable newspaper and wire service reports found on the Internet. But even this list, containing over 150 motorcoach crashes and fires in the past 20 years, is far from complete.

According to NHTSA data, there were 400 fatal motorcoach crashes from 1994 through 2005 in which 571 people died.² 2005 was an especially tragic year – 70 motorcoach occupants died in crashes, the highest total ever recorded. Data covering a much longer period of time,

1975 through 2005, shows 1,107 fatal crashes involving 1,117 motorcoaches and resulting in 1,486 deaths to passengers in motorcoaches, people in other vehicles and pedestrians.³ While the industry touts the historic safety record of motorcoaches, the string of recent crashes that occurred over the past few months emphasizes that we cannot rely on statistical averages to ensure public safety. The number of deaths in the first five months of this year, 28 that we know of, already exceeds the historic annual fatality average with seven months remaining in the year. Rather than ignore these recurrent and all too predictable crashes, we need to protect the public by building safety into motorcoaches instead of hoping that the inevitable crashes will not occur.

That is why it is crucially important to have a comprehensive, multi-faceted approach to motorcoach safety that emphasizes major safety countermeasures for motorcoach occupant protection, as well as dramatic improvements in motorcoach crash avoidance capabilities that will ensure that these big, heavy vehicles provide crash protection to the motorcoach occupants while also reducing both the number and the severity of collisions with other highway users.

Motorcoach Crashes in Recent Years Illustrate Severe Safety Risks

While detailed investigation of the crashes that have taken place in recent months are not yet available, press reports indicate that the motorcoaches lacked passenger seat belts and that in several cases there are questions about driver fatigue and whether the driver had previous hours of service violations. Advocates is certain that many of the same safety deficiencies previously found by the NTSB in earlier crashes will be found, yet again, in these new incidents. Among the major motorcoach crashes and fires that have taken place in the past few years the following examples are emblematic of the safety perils in motorcoach travel:

- **Caroline County, Virginia:** On May 31, 2011, a motorcoach operated by Sky Express transporting passengers from North Carolina to New York City's Chinatown ran off of I-95, overturned, and landed on its roof. Four people were killed and over 50 were injured in the crash. Media accounts indicate that none of the passenger seats were equipped with seat belts.⁴ The driver was the only one wearing (and with access to) a seat belt. He suffered minor injuries. Initial investigations suggest that driver fatigue was a major factor in the crash. Sky Express had 46 violations for fatigued drivers, 17 violations for unsafe driving, and 24 violations for driver fitness in the past two years.⁵ The company was among the worst in the industry and FMCSA had proposed an "Unsatisfactory" rating for the company in April 2011. The rating meant that FMCSA could have shut down Sky Express three days before the crash, on May 28, but it chose to extend the carrier's operating time.⁶

- **New York, New York:** On May 7, 2011, a motorcoach driver hit and dragged a pedestrian nearly 30 feet before coming to a stop. The driver was drinking vodka while driving the motorcoach with passengers on board.⁷ TravelLynx, the company that owns the motorcoach and is the driver's employer, had its most recent compliance review by FMCSA in May 2007.⁸

- **The Bronx, New York:** On March 12, 2011, a motorcoach operated by World Wide Travel transporting passengers from a Connecticut casino in the early morning rolled on its side on I-95, skidded along a guardrail, and rammed into a support pole, slicing through the upper half of the bus. Fifteen people were killed and 18 were injured in the crash. Initial media reports

indicate that the bus swerved repeatedly before the crash and the driver may have been fatigued. World Wide Tours has been flagged by FMCSA for fatigued drivers four times in the past two years. The operator's most recent compliance review in April 2011 resulted in serious violations for fatigued driving, driver fitness, and vehicle maintenance.⁹

- **Sacaton, Arizona:** On March 5, 2010, a motorcoach owned by Tierra Santa Inc., a California company, en route from Mexico to Los Angeles, rear-ended a pickup truck, swerved, and rolled over on I-10. Nine passengers were ejected from the bus, killing six. An additional 16 were injured. A report by the Arizona Department of Public Safety indicated that the bus company was operating illegally, that driver hours of service were not maintained, and that the vehicle had defective brakes. Reports also suggested that the company's owner had previously owned other motorcoach companies that had been shut down for safety violations.¹⁰

- **Sherman, Texas:** On August 8, 2008, an Angel Tours, Inc. motorcoach with 54 passengers, restarted its motorcoach business under a different name, Iguala Busmex, only three days after it had been judged an "imminent hazard" by FMCSA and prohibited from providing transportation services. In a catastrophic crash, the Iguala Busmex motorcoach broke through a guardrail in rural Grayson County, Texas and plummeted from an overpass into a dry creek bed in a rollover crash that resulted in 17 people dead and 38 injured. Angel Tours, Inc., had been ordered to stop operating by the FMCSA on June 23, 2008, only six weeks earlier. The reconstituted business, Iguala Busmex, according to preliminary information in media reports, had no insurance and had no federal interstate operating authority.¹¹

The new company even used the same business address to restart operations. FMCSA was unaware that Angel Tours had transformed into the rogue motorcoach company, Iguala Busmex. In fact, the company had no legal authority to provide motorcoach transportation services for compensation even within the state of Texas. In far too many cases, motor carriers of both passengers and freight are ordered to stop operations for safety reasons, but then restart their businesses under different company names, leaving law enforcement officials with the task of identifying and proving which companies are conducting illegal operations. Sometimes, as in this case, federal authorities find this out only after a tragic crash, when deaths and severe injuries have already occurred. While FMCSA has improved efforts to screen for reincarnated passenger motor carriers, the agency still lacks authority to revoke registration and impose criminal penalties on persons who commit this type of violation.

The motorcoach in the Sherman, Texas, crash was operated by a driver who had no valid medical certificate. FMCSA had also determined prior to its "cease operations" order that Angel Tours was using a driver without the company having received a pre-employment report, a federal requirement. Angel Tours also failed to require drivers to prepare vehicle inspection reports. In addition, the motorcoach was fitted with retreaded tires on the front steer axle, another federal regulatory violation. It appears that this illegal tire suddenly failed and destabilized the motorcoach, making it difficult to control and facilitating its crash into the overpass guardrail.

- **Tunica, Mississippi:** On August 10, 2008, a casino motorcoach operated by Harrah's Entertainment packed with 43 tourists rolled over in a highway intersection in northwestern

Mississippi. The roof of the motorcoach collapsed and its windows were shattered. Three passengers died and 27 were injured, one in critical condition.¹²

- **Primm, Nevada:** Another casino motorcoach crash occurred the same day on I-15 near Primm, Nevada.. Luckily, no one died in this crash, but 29 people of the 30 people on board were injured, three of them critically. This was the second motorcoach crash involving casino workers that occurred between Las Vegas and Primm. Previously, a crash injured at least 25 people before the motorcoach burst into flames and was destroyed on January 17, 2008. Once again, it appears that there may have been a problem of tire tread separation that could have triggered the rollover crash.¹³

These cases, even without the benefit of a thorough crash investigation, point out two serious safety problems. First, in the Sherman, Texas crash, the illegal operation of the company is an extremely serious issue, especially in light of the company history of safety problems. Unfortunately, FMCSA currently has authority only to impose fines for such conduct. Criminal penalties are not available for such illegal operation but are clearly appropriate where the company owners and officers neglect safety and take such intentional actions in defiance of legal orders.

Second, although there are many safety issues and factors in these crashes, it appears that tire tread separation may have been a major contributing factor in both the Angel Tours and Primm, Nevada, crashes. Although retreaded tires are allowed by FMCSA on the other, non-steering axles of motorcoaches, and on tractor-trailer rigs and straight (single-unit) trucks operated in interstate commerce, there are no federal standards administered by NHTSA specifying the quality and safety performance of retreaded tires on commercial motor vehicles. At the present time, there are only voluntary industry standards. Advocates asked the agency more than a decade ago to adopt such standards to ensure that retreaded, recapped, and regrooved commercial motor vehicle tires met the same safety performance requirements as new tires. However, NHTSA has failed to put forward any proposal to adopt a performance standard for retreaded tires on motorcoaches and other commercial vehicles.

- **Bluffton University Motorcoach Crash:** On March 2, 2007, a motorcoach hired to transport the Bluffton University baseball team from Ohio to Georgia vaulted a bridge parapet after taking a left exit ramp that led to a perpendicular entrance to an overpass above I-75 in Atlanta, Georgia. The vehicle struck the bridge parapet at right angles and plunged to the roadway below the ramp. Of the 35 passengers and a driver on board, seven were killed and several others, including the coach of the school's baseball team, were transported to the hospital with severe injuries. Twelve of the motorcoach's occupants were ejected, four through the windshield or left front side windows even before the motorcoach left the roadway, and six passengers were ejected through the left side windows when the vehicle slammed into I-75, the impact that stopped its fall.

None of the occupants on-board had three-point safety belts available to restrain them. Of the 59 seats on board, only the driver's seat, the "jump seat," and the first row of two passenger seats immediately behind the driver had two-point lap belts.

The company that operated the over-the-road bus, Executive Coach, received a Satisfactory safety rating from FMCSA on April 4, 2007, only a month *following* the crash. However, NTSB's findings and recommendations produced by its investigation listed several major deficiencies in motorcoach operating safety.¹⁴ The vehicle issues identified by NTSB included the lack of interior occupant impact protection; the ease with which unrestrained passengers were ejected through large side windows; and FMCSA's inadequate motor carrier driver oversight. The driver issues included the fact that the motorcoach driver's medical certification had expired, the driver's logbook clearly had been falsified, and that the driver had medical conditions and had taken medications that may have impaired his ability to drive. Also, the company that operated the motorcoach had no formal driver training program, no written policies on driver procedures such as an emergency response protocol for evacuation and other passenger safety needs, and the company's alcohol and drug testing program did not comply with federal requirements.¹⁵

It should be pointed out that motorcoaches in foreign countries equip their vehicles with safety protection features not provided for passengers in the United States. For example, the motorcoach that was involved in the Atlanta, Georgia, crash only had a few lap belts in the front seating positions and was not equipped with three-point lap/shoulder belts. The same motorcoach built in Australia comes equipped with three-point lap/shoulder seat belts at every seating position and with seats and their floor anchors tested for maximum crash resistance.

- **Hurricane Rita Nursing Home Motorcoach Crash:** On September 23, 2005, a motorcoach operated by Global Limo, Inc., carrying assisted living and nursing home residents fleeing the imminent landfall of Hurricane Rita, caught fire and exploded, initially killing 24 of the 44 people on board who were residents and employees of a Dallas-area home for seniors. Most of the residents of the senior living facility had moderate to severe disabilities and were not able to evacuate the motorcoach during the fire without assistance. Evacuation involved concerted efforts by the nursing staff, rescue personnel, and bystanders who were able to help the residents exit the motorcoach.

NTSB found that the motorcoach was operated in an unsafe manner and that FMCSA oversight of motorcoach safety was lax. The major safety issues identified through the NTSB investigation included poor fire reporting information and inconsistent data in federal crash databases; FMCSA's ineffective compliance review program; lack of adequate emergency exits from motorcoaches; lack of fire resistant motorcoach materials and designs; inadequate manufacturer maintenance information on wheel bearing components; transportation of highly flammable, pressurized aluminum cylinders; and poor safety procedures for the emergency transportation of persons with special needs.¹⁶

While the driver of the Global Tours motorcoach possessed a Mexican commercial driver's license, the Licencia Federal de Conductor (LFC), he had not obtained a Texas-issued commercial driver's license (CDL), even though the driver had been in the U.S. since at least February 2005. Drivers are required to apply for a Texas-issued CDL within 30 days after taking up residence in Texas. This means that the driver had no legal CDL or federally-required commercial driver medical certificate, nor had he complied with requirements to prove his identity, provide a social security number, supply documentation of vehicle registration and

liability insurance, and surrender his LFC. These are legal requirements for drivers that the company should have ensured were being met. Also, the driver was unable to communicate in English, relying on an interpreter for his post-crash interviews, another violation of FMCSA regulations.¹⁷ According to NTSB, the driver may have been fatigued at the time of the motorcoach fire. The driver had violated multiple requirements of the FMCSA hours of service regulations (HOS), including having failed to take a minimum of 8 consecutive hours off-duty before working or driving, and driving for over 15 consecutive hours starting at 3:00 PM on September 22, 2005, until the fire began at about 6:00 AM on September 23, 2005.

FMCSA conducted a compliance review (CR), the agency's method of assessing the safety of a motor carrier,¹⁸ of the company on February 6, 2004, and found seven violations of the Federal Motor Carrier Safety Regulations (FMCSR). Nevertheless, FMCSA issued a Satisfactory safety rating to the motor carrier just six days later, even though the company had multiple Out of Service (OOS) violations prior to the CR and more driver OOS violations prior to the September 23, 2005, motorcoach fire. An "Unsatisfactory" safety rating cannot be triggered unless violations have occurred in both driver and vehicle categories.¹⁹

According to NTSB in its report, the motorcoach itself was evidently inadequately maintained. Inadequate lubrication of an axle on the vehicle led to "frozen" bearings that generated extreme heat that, in turn, triggered the fire. Fires in motorcoaches are started from various sources, such as engine compartments, electrical wiring and batteries, auxiliary heaters, and underinflated or failed tires. Motorcoach fires consume many of the materials from which the vehicles are manufactured, and are evidently a chronic problem, as admitted by the former Administrator of FMCSA before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit, and Pipelines on March 2, 2006.²⁰

Comprehensive Motorcoach Safety Improvements Are Stalled at DOT Despite Urgency

From this brief review of just a few motorcoach crashes and fires, it should be evident that motorcoach safety has not been a primary focus of federal agencies or the bus industry and is in dire need of regulatory action to improve safety. The NTSB has been issuing safety recommendations to the motorcoach industry and the U.S. Department of Transportation (DOT) and its agencies for decades, but those recommendations essentially have been ignored. Unfortunately, very few NTSB recommendations have been implemented by NHTSA and FMCSA, and certainly not in the complete and effective manner that NTSB recommended.

In the Bluffton University Motorcoach Crash Report, NTSB reviewed the 40-year history of its frustrated attempts at achieving agency action in accordance with multiple recommendations for motorcoach drivers, passengers, vehicles, and operations. NTSB asserted that "motorcoaches transport a substantial number of people traveling in a single vehicle with a high exposure to crash risk," with other special safety requirements, and that "[t]hese factors demand that motorcoaches meet the highest level of safety."²¹ NTSB also stated in its findings and recommendations that NHTSA had unacceptably delayed defining and acting on regulations for motorcoach occupant protection safety performance standards, emphasizing that the traveling public in motorcoach trips were inadequately protected during collisions, especially in rollovers.²²

For example, NTSB has repeatedly asked NHTSA to require stronger seats and to mandate seat belt assemblies at every designated seating position in motorcoaches. But NTSB finally had to close out these recommendations with notations of “Unsatisfactory Action” because NHTSA continually deflected NTSB’s recommendations on requiring stronger seats and mandating seat belts.²³

But NTSB did not give up, despite NHTSA’s endless inaction. Over and over it beat the drum in support of occupant restraints with successive reports on horrific motorcoach crashes where restraints would have saved many lives. For decades NHTSA deflected every one of those recommendations. There are many other examples of critical motorcoach safety recommendations sent to NHTSA since 1968 that were ignored – and the result was more deaths and injuries that could have been prevented.

Similarly, the Federal Highway Administration (FHWA), and its successor agency, FMCSA, have also rebuffed many NTSB recommendations over the years, despite evidence showing the need for major safety countermeasures for existing passenger motor carriers and for improvements in FMCSA enforcement. NTSB was frustrated with FMCSA’s enforcement scheme for motor carrier safety violations because the agency would provide Satisfactory ratings to motor carriers even if they had several serious driver or vehicle violations. FMCSA’s policy is that there must be violations in *both* areas to trigger an “Unsatisfactory” rating that could result in a company ordered to stop operations. But NTSB recommended that serious violations in *either* area should be enough to trigger imposition of an “Unsatisfactory” rating.²⁴ In this regard it must be pointed out that Angel Tours before the Sherman, Texas crash had a Satisfactory rating because although FMCSA had recorded several driver violations, there were no vehicle violations for the company. Accordingly, under that rating system, FMCSA had no basis for threatening the company with an “Unsatisfactory” safety rating. FMCSA has repeatedly avoided acting on this NTSB recommendation, despite several reports from the U.S. DOT Office of the Inspector General and Government Accountability Office demonstrating multiple weaknesses in FMCSA enforcement regimes and actions.²⁵

Federal Legislation Is Needed to Direct DOT to Implement Comprehensive Motorcoach Safety Reforms and Comply with NTSB Recommendations, Including the Critical “Most Wanted” List

The delays and excuses by the bus industry and DOT can no longer be tolerated as innocent people die and are badly injured. The Congress must step in and ensure that the safety improvements NTSB has recommended for decades are adopted by the DOT agencies with the authority to issue motor vehicle and motor carrier regulations. Experience has shown that when Congress requires safety action, the agencies find the ways and means to meet the challenge. Several years ago, Congress took a leadership role in addressing deadly rollover crashes and other major motor vehicle safety issues. In the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 – A Legacy for Users (SAFETEA-LU),²⁶ Congress required NHTSA to issue regulations on safety problems that had languished for years without agency action. NHTSA has taken action to comply with each of those vehicle safety rulemaking requirements. More recently, the Cameron Gulbransen Kids Transportation Safety Act of 2007²⁷

required NHTSA to issue rules on safety problems to protect children from dangers in vehicles that the agency had previously refused to address. The agency is in the process of meeting its statutory obligations under that law.

There is absolutely no doubt that when Congress sets the safety agenda, the federal agencies respond quickly by developing action plans, conducting tests, and issuing rules that improve transportation safety. This is the model that Congress should follow for motorcoach safety.

The right vehicle to accomplish this approach has already been introduced in Congress—the Motorcoach Enhanced Safety Act of 2011. This pending legislation, H.R.873, introduced on March 2, 2011 by Representative John Lewis (D-GA), and its companion bill in the Senate, S. 453, introduced by Senators Sherrod Brown (D-OH) and Kay Bailey Hutchinson (R-TX), sets a reasonable and achievable regulatory safety agenda for reforming motorcoach safety. The Motorcoach Enhanced Safety Act deals with each of the major aspects of motorcoach safety: vehicle design and performance, operating safety and inspection, and driver safety, including training and medical certification.

The Motorcoach Enhanced Safety Act addresses NTSB recommendations on the 2011 Most Wanted List²⁸ and others in a comprehensive manner, including crash protection of occupants, such as seat belts and windows that prevent occupant ejection in crashes; protection against roof crush, especially catastrophic single-vehicle events involving rollovers; improved fire protection and the need to use materials and technology to assist in fire resistance and suppression; better methods to facilitate passenger evacuation in emergency conditions; crash avoidance technology, such as adaptive cruise control and electronic stability control to prevent crashes; vehicle maintenance and inspection needs; and operator qualifications, including driver skills and medical certification. Finally, the Motorcoach Enhanced Safety Act sets very reasonable timelines for DOT, NHTSA and FMCSA to review the safety problems, complete testing, conduct rulemaking and issue safety rules to implement those recommendations so that lives can be saved and injuries prevented as soon as possible.

The Motorcoach Enhanced Safety Act is supported by parents and relatives of victims and survivors of motorcoach crashes. Many family members who lost relatives in motorcoach crashes have traveled to Capitol Hill numerous times since the bill was first introduced in 2007. The bill is also strongly supported by Advocates and safety groups, including Public Citizen, Center for Auto Safety, Citizens for Reliable and Safe Highways (CRASH), Consumers for Auto Reliability and Safety, the Trauma Foundation, the Consumer Federation of America and the Enhanced Protective Glass Automotive Association.

The DOT agencies with responsibility for motorcoach safety, NHTSA and FMCSA, have failed to fulfill their safety missions. Although NHTSA has proposed a rule for 3-point seat belts on motorcoaches, the agency has failed to move quickly to adopt other NTSB recommendations for crash protection and crash avoidance, even though some of those safety improvements were included in a motorcoach safety research and testing program and the DOT motorcoach safety plan. It is evident that, without a Congressional directive to issue safety standards based on the NTSB recommendations, there is no assurance that the agency will address all the safety issues

identified by the NTSB over the years, much less establish stringent safety standards that adopt those recommendations in a timely manner.

While our testimony cannot survey all the safety provisions addressed in these comprehensive bills, the remainder of this testimony highlights the major gaps in motorcoach safety and how key provisions of H.R. 873 and S. 453 will save lives, prevent injuries, and reduce other motorcoach crash losses.

Motorcoach Occupant Protection is Inadequate and Contributes to Deaths and Injuries

There are serious deficiencies with the crashworthiness features of motorcoaches for protecting occupants against severe and fatal injuries. In the 2007 Bluffton University motorcoach crash in Atlanta, GA, and in many others investigated in the last several years by NTSB, occupants were ejected through side windows and the windshield. Serious injuries and deaths in motorcoach rollover crashes are highly predictable when these vehicles do not have three-point seat belts and fail to have the kind of windows that could withstand a crash and prevent ejection. These severe occupant safety defects have been documented time and again in NTSB investigations and reports.

While NHTSA has established 22 separate standards for vehicle crashworthiness as part of the Federal Motor Vehicle Safety Standards (FMVSS) administered by the agency, nearly all of these are for light motor vehicles (mainly light passenger vehicles that weigh less than 10,000 pounds). Most of these standards exempt motorcoaches with gross vehicle weight ratings of over 10,000 pounds. For example, no NHTSA safety regulation requires that motorcoaches in the U.S. have any occupant protection systems of any kind, including seat belts, seat mounting retention, seatback strength, whiplash protection, or upper and lower vehicle interior occupant impact protection. Although motorcoaches are required to comply with requirements specifying motorcoach window retention and release for evacuation (FMVSS No. 217) and governing the flammability of interior materials (FMVSS No. 302), motorcoaches do not have to comply with many safety standards required for other types of buses, including school buses, and for passenger vehicles. As a result, motorcoach passengers are not afforded the same basic safety features and types of protection required for passengers in other vehicles.

Among the important safety shortcomings that need to be improved in motorcoaches, the Motorcoach Enhancement Safety Act would require:

- **Seat Belts:** Three-point lap/shoulder belt systems have been required for passenger vehicles since 1968 and are required on smaller buses and on big passenger vans, yet are not required in motorcoaches. Lap/shoulder belt restraint systems, not just lap belts, are essential for keeping motorcoach occupants in their seats to avoid injuries sustained within the compartment in all crash modes.

- **Rollover and Roof Crush Protection:** Motorcoaches are very top heavy, with high centers of gravity especially when fully laden with passengers, so their rollover propensity is much higher than for smaller passenger vehicles. Crash avoidance technology such as electronic stability control, now required on light passenger vehicles, and adaptive cruise control can help keep motorcoaches out of crashes in the first place. But since rollovers of motorcoaches are inevitable, a strong roof crush resistance safety standard is needed to ensure the structural integrity of the roof that preserves occupant survival space and prevents infliction of severe occupant trauma.
- **Ejection Prevention:** A major safety issue in motorcoaches is preventing occupants from being ejected during a crash, especially in a rollover. According to NHTSA, more than half of the deaths in motorcoach crashes are the result of occupant ejections. More than one-third of all deaths of motorcoach occupants in motorcoach crashes occur in rollovers, and occupant ejection is the reason for 70 percent of occupant deaths in motorcoach rollovers.²⁹ Three-point lap shoulder belts are the first line of defense against ejection. But in addition, for those who are not wearing seat belts at the time of a crash, advanced window glazing that can survive crash impacts will prevent occupant ejection and save more lives.

The major topics of occupant restraint within the motorcoach passenger compartment and the additional prevention of ejection in catastrophic events have been engaged by both the European Economic Community³⁰ and Australia.³¹ Three-point belts restraining motorcoach occupants became mandatory in Australia 14 years ago, the European Union has just mandated that passengers must wear safety belts in motorcoaches beginning in May 2008, and anyone traveling by motorcoach in Japan must use their safety belts beginning June 2008. It is obvious that keeping motorcoach occupants safely in their seats is desperately needed so that passengers do not impact each other, strike unforgiving interior surfaces and equipment in motorcoaches, and are prevented from being thrown from the vehicle. Three-point lap/shoulder belt restraints initially are the best way to accomplish keeping each passenger in their seat. The rest of the world is moving on to higher levels of crash protection for motorcoach occupants while U.S. safety regulators fail to take action.

The Motorcoach Enhanced Safety Act bill contains the provisions necessary to direct NHTSA to dramatically improve motorcoach crashworthiness in all crash modes, including rollovers, as well as in side and frontal impacts. Without congressional directives requiring the issuance of new and improved safety standards by specific dates, NHTSA will intermittently study the safety issues over many years without addressing the major motorcoach crashworthiness and crash avoidance safety issues that NTSB long ago recommended should be adopted. NHTSA has proven over and over that it will delay major safety standards that can save lives and prevent injuries, not only for years, but also for decades, unless Congress gives it a mandate in no uncertain terms and with firm deadlines for action.

Cost of Lifesaving Technologies in the Motorcoach Enhanced Safety Act are Minimal

The MESA bill proposes to provide motorcoach passengers the same type of life-saving technologies that are already available and standard equipment in passenger vehicles. These

technologies are already being offered and advertised as options by a number of motorcoach manufacturers. The technologies include seatbelts, enhanced protective interiors, collision avoidance devices, electronic stability control systems, tire pressure monitoring systems, crashworthiness protections, and event data recorders. However, the public has no assurance of the performance quality or effectiveness of these systems because they are not required to meet any minimum government safety standards.

The cost of building-in these safety features for new vehicles is minimal compared to the cost in terms of lives lost in just a single major motorcoach crash. For example, the recent March 12, 2011 bus crash in New York resulted in 15 fatalities. Based on the current Department of Transportation (DOT) value of a statistical life, set at \$5.8 million, that bus crash alone generated \$87 million in costs, just for the fatalities suffered. This figure does not include the costs associated with the numerous injuries to the surviving passengers or the huge emotional toll on the families of those killed and injured. This cost is astronomical even when compared with the motorcoach industry's grossly inflated per vehicle estimated cost of \$80,000 to \$89,000 for adoption of all of the safety advances required in the MESA bill and some additional improvements not included in the bill. In other terms, the costs associated with the loss of life alone in the New York bus crash could pay for all of the safety advances proposed for a fleet of over 1,000 new motorcoaches; even using the American Bus Association's wild cost estimates. Our research has indicated that the actual costs are well below those quoted by the industry.

A number of the safety technologies included in the MESA bill have already been developed in other vehicles and are being voluntarily installed in motorcoaches by a number of companies. For example, the Bolt Bus (a collaboration between Greyhound and Peter Pan Bus Lines) already has seatbelts installed in many of its vehicles and Greyhound announced in 2009 the purchase of a new 140 bus fleet equipped with seatbelts and advanced seating which provides occupant compartmentalization. In addition, some new buses include electronic stability control (MCI, Prevost, Volvo, Van Hool), advanced glazing (Prevost, MCI), occupant compartmentalization (Prevost), greater roof protection (Volvo, Prevost, Van Hool, Girardin), tire pressure monitoring systems (Prevost, MCI, Van Hool), and some form of fire protection and suppression systems (MCI, Volvo, Prevost, Van Hool). Recent information from suppliers and manufacturers indicates costs per bus of less than \$1,400 for electronic stability control, \$1,115 or less for advanced window glazing, \$600 for electronic on-board recorders, under \$3,000 for fire suppression systems and as little as \$500 for fire protection. An independent review and analysis of vehicle supplier costs and advertised claims by motorcoach manufacturers finds that this subset of safety technologies could be attained at a cost of about \$6,500 per motorcoach, or just over one percent (1%) of the cost of a new motorcoach and far less than the overblown \$30,000 cost figure for these same items claimed by the motorcoach industry.

The motorcoach industry carries 743 million passengers each year.³² The cost of equipping new motorcoaches with the safety improvements included in the Motorcoach Enhanced Safety Act would cost less than 10 cents per passenger. Furthermore, with widespread implementation of these safety technologies, after the first year or two, suppliers and manufacturers will see the significant cost reductions associated with mass production and production experience. With motorcoaches lasting an average of 20 years and carrying about

423,000³³ passengers over the course of that lifespan,³⁴ safety improvements built-in to new buses keep on protecting passengers and provide public safety year after year.

The Motorcoach Industry Cost Estimates are Exaggerated, Lack Credibility and Include Phantom Mandates

The motorcoach industry cost figures clearly are highly inflated and unreliable. The motorcoach industry has recently circulated their cost figures associated with the adoption of the safety measures included in the MESA bill. The correct term is “opinion” because, for many of the safety features, the industry provides limited or no support for the inflated cost figures and cites no references for the sources of their estimates. The anonymous and undated document disseminated by the motorcoach industry, called the “per-bus estimated cost”, estimates that the improvements required in the MESA bill will cost between \$80,000 and \$89,000 per motorcoach. This ludicrous estimate, nearly 20 percent of the current cost of a new motorcoach, is yet another example of a tactic used by an industry that opposes safety and occupant protection - inflating the real cost of safety technology. Furthermore, the bus trade association which is purposefully throwing around these exaggerated cost figures, has presented no direct data on vehicle safety costs because this is proprietary information known to the suppliers and manufacturers and is information not shared with the trade association that lobbies on behalf of the companies as a whole. It is also not evident whether the numbers represent cost or price information—a big difference. In the past, this very same approach has been used by automobile manufacturers to oppose airbags and electronic stability control systems.

The most poignant example is the regulation of airbags in passenger vehicles. At the time when rulemaking on airbags was being initiated, industry representatives stated that the cost per airbag would be between \$1,200 and \$1,500. Later, information obtained by a member of Congress who demanded that General Motors supply its true cost figures revealed that the actual cost of manufacturing frontal airbags initially was between \$150 and \$175. The industry was quoting prices 10 times their actual cost. Today, as a result of mass production and further technological improvements, the per-unit manufacturing cost of far-more sophisticated airbag units is only about \$30. Furthermore, despite the adamant opposition of industry to the airbag mandate, which they fought for over twenty years, today it is tough to find even a single contemporary motor vehicle advertisement or sales pitch that does not tout the safety performance of the vehicle’s airbag systems.

Another example of this industry tactic of inflating costs occurred in the regulation of electronic stability control systems or ESC. These were required as part of the 2005 Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU).³⁵ Before that legislation was enacted, manufacturers asserted that the cost of including ESC systems was very high. An earlier Australian government study found that auto manufacturers were charging as much as \$2,254 for ESC as a vehicle option. The Australian government study identified the “approximate reasonable cost” of ESC as \$649. NHTSA found, in a 2005 teardown analysis, that the estimated incremental per-vehicle cost of ESC was actually only \$58.

The examples of airbags and ESC technology costs point out that not only does industry inflate costs of safety technology, but industry cost estimates are also unreliable because they omit any consideration of the fact that with regulation and mass production come reductions in per-unit production costs due to production efficiencies and per-unit savings. Moreover, to be credible, cost estimates from industry need to include details indicating if the costs quoted are retail or production costs, a distinguishing fact not found in many of the motorcoach industry's cost claims. Prices for voluntarily installed systems vary with the number of units manufactured and the level of quality and safety specified by the manufacturer. Manufacturers are not required to guarantee a specified level of safety performance for unregulated, optional equipment, and can reduce costs by lowering the level of safety they provide. The establishment of Federal standards for these devices ensures a minimum performance capability for the safety of passengers and a level playing field for motorcoach companies.

Other examples of the gross overestimation and overstatement of technology and component costs include the following that have been researched with suppliers and manufacturers:

- **Electronic Stability Control:** The motorcoach industry claims that it will cost as much as \$3,000 for electronic stability control (ESC) systems even though suppliers of motorcoach ESC systems indicated a retail price to manufacturers of \$1,350;
- **Advanced Glazing:** The motorcoach industry cost document cites a cost of \$7,000 for laminated glass in all motorcoach windows to protect occupants from ejection and cuts, even though equipping an exemplar motorcoach, the MCI J4500, with advanced glazing was found, at retail, to cost no more than \$1,115 more than current standard glass, less than one sixth the cost claimed by industry;
- **Electronic On-Board Recorders:** The motorcoach industry claims a cost of \$2,500 for EOBRs, but the FMCSA identified the actual cost for EOBRs to be between \$500 and \$600;
- **Fire Suppression:** The motorcoach industry cost document includes the cost for an automatic fire suppression system at \$6,000, but retailers of these systems indicate that current state-of-the-art factory installed fire suppression systems cost less than \$3,000;
- **Fire Protection:** The motorcoach industry claims that it will cost \$11,000 to provide enhanced interior fire protection but textile manufacturers state that the addition of a "flame block" to new interiors would add only \$2 per yard of material, resulting in a total cost of less than \$500 to enhance interior fire protection, thus making the industry cost claim 22 times the actual cost.

What is even more shocking is that the industry supports including better fire suppression and fire protection in motorcoaches while at the same time opposing these requirements in the MESA bill. In November of 2010, a motorcoach industry spokesman stated that there was "absolute agreement by all parties [attendees of the Fire in Vehicles Conference] on the need for

the early detection of high heat conditions that can ignite a fire.”³⁶ Among other things, the motorcoach industry called for using fire resistant materials in bus construction and installation of fire suppression systems, requirements that are covered in the MESA bill. Given the motorcoach industry’s past opposition to the MESA bill, the industry’s endorsement of quick action on these issues is even more surprising. Yet, the industry cost document designed for its lobbying campaign against the legislation includes grossly inflated costs of up to \$17,000 associated with fire protection as evidence of their opposition to the bill, even though the industry has stated its “absolute agreement” regarding the necessity for these safety measures.

In addition to grossly inflating the costs of a number of items that are required in the MESA bill, and ignoring efficiencies that reduce production costs, the motorcoach industry cost document includes the costs of technologies and items that are either not required by the MESA bill or which are subject to future research and agency decision so that any cost estimate is entirely speculative since the ultimate requirement is unknown. For example, the motorcoach industry originally claimed a cost of \$4,500 for the inclusion of improved fuel systems, enhanced conspicuity and adaptive cruise control. However, none of these improvements are required in H.R. 873.

The industry also included cost claims for items that would be subject to further agency study, at the behest of the motorcoach industry, so no decision as to specific performance requirements would be made by the agencies until 2 or 3 years later. Nevertheless, without knowing what will eventually be required, if anything, the motorcoach industry has estimated that the per-bus cost for improved exits for evacuation, an automatic fire suppression system, emergency interior lighting, improved compartmentalization, enhanced interior impact protection and collision avoidance systems will cost a minimum total of \$19,000 per vehicle. These items are all subject to a further 2-3 years of research and examination before any rulemaking would begin. This makes any assertion of cost by the industry without knowing the specific requirements highly speculative.

In the latest update of their cost claims, the industry continues to claim costs for items which are already the subject of regulatory action, that is, they are very likely to be required in final rules regardless of enactment of the MESA bill. These items include \$15,000 for seatbelts, \$2,500 for electronic on-board recorders (EOBR), and \$600 for upgraded tires. All of these items are currently the subject of notices of proposed rulemaking issued either by NHTSA or FMCSA within the last year, illustrating that DOT has identified these items as important safety features. Even for these essential, long overdue safety improvements, the industry has inflated the cost, for example, while the industry claimed a cost of \$2,500 for EOBRs, FMCSA identified the actual cost for EOBRs to be between \$500 and \$600.

Finally, the industry indicated at several points in their cost claims that retrofit costs for several of the safety enhancements would be triple the already inflated and speculative costs for those same items in new motorcoaches. This claim is made despite the fact that H.R. 873 requires motorcoaches to be retrofitted with safety belts and fire fighting equipment only, and provides the Secretary discretion to allow up to five years for retrofit in the case of hardship. None of the other technological safety improvements required by the MESA bill for new

motorcoaches would be applicable to existing motorcoaches, that is, motorcoaches built prior to the issuance of the final rule.

The industry cost claims related to motorcoach safety are highly inflated, entirely speculative, undocumented, and most are just incorrect. The recent New York bus crash and many others like it over the years illustrate that even based on the industry's suspect cost estimates, providing superior safety for motorcoach occupants can be justified in terms of benefit/cost analysis by avoiding or preventing just one serious crash. Research has shown that motorcoach safety technologies are available and affordable. History illustrates how widespread industry adoption of technology greatly increases the safety of passenger vehicles and the affordability of these technologies.

Effective Motorcoach Operation Safety Oversight and Enforcement is Lacking

According to figures from FMCSA,³⁷ there are about 3,700 U.S. passenger-carrying companies conducting interstate operations employing 100,000 drivers to operate about 34,000 to perhaps 40,000 motorcoaches.³⁸ Many of the federal motor carrier safety regulations, FMCSRs, that govern commercial motor carriers, vehicles, and drivers generally, also apply to motor carriers of passengers. Despite the relatively small numbers of motorcoaches and motorcoach companies, FMCSA is failing in its stewardship responsibilities for motorcoaches.

Almost all of NTSB's 40 years of investigated motorcoach crashes have resulted in findings that encompass vehicle performance, maintenance, inspection, driver qualifications, and motor carrier company safety management. The examples of recent motorcoach crashes provided earlier in this testimony confirm that multiple safety problems afflict all aspects of interstate motorcoach operations. Although severe motorcoach crashes often appear at first glance to be the result of an isolated problem, digging deeper almost always reveals multiple problems involving vehicle maintenance, driver qualifications and performance capabilities, and company safety management. NTSB has confirmed this multifactorial nature of motorcoach crashes to be true in numerous crash investigations.

FMCSA has not only failed to adopt NTSB's safety recommendations, the agency has also failed to issue other safety regulations needed to improve motor carrier and motorcoach safety. As a result, major areas of driver training and certification, motorcoach safety inspection, data quality and systems for identifying potentially dangerous motorcoach companies, and agency oversight and enforcement of the FMCSRs are undeniably inadequate as had been documented repeatedly by the U.S. DOT's OIG and by GAO. Key rulemaking actions to address these and other issues languish year after year without action. The Motorcoach Enhanced Safety Act directs FMCSA to address major deficiencies in its regulations governing driver qualifications, vehicle safety condition, and motor carrier safety management.

Motor carrier safety issues that directly impact motorcoach operating safety include:

- **Weak Federal and State Requirements for Motorcoach Driver Training**

Among the many areas in the Motorcoach Enhanced Safety Act aimed at improving motorcoach operational safety are provisions intended to substantially strengthen motorcoach

driver CDL testing and training requirements. Motorcoach drivers are required to have CDLs with a passenger endorsement added on the basis of a separate knowledge and skills test. However, there are no substantive training requirements in federal law and regulation for entry-level commercial motor vehicle drivers, and there are none for the additional endorsements for operating hazardous materials vehicles, school buses, or motorcoaches. In short, there is no specific federal training requirement for an interstate commercial driver transporting passengers.

Federal safety agencies spent over 20 years studying commercial driver training issues, producing a Model Curriculum for training both drivers and instructors and conducting rulemaking pursuant to Section 4007(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).³⁹ Despite this long background of deep involvement in the needs of commercial driver training, FMCSA did an abrupt about-face in May 2004 and issued a final rule that avoided adopting any basic knowledge and skills training requirements, including behind-the-wheel driving instruction, for entry-level commercial drivers.⁴⁰ Instead, the agency published a regulation that only required drivers to gain familiarity with four ancillary areas of CMV operation – driver qualifications, hours of service requirements, driver health issues, and whistleblower protection. Not only did FMCSA not require driver training as a prerequisite for a candidate seeking an entry-level CDL, the agency rule excused almost all novice drivers from even being considered entry-level commercial drivers. This rulemaking outcome was a complete reversal from earlier agency statements that the majority of new commercial drivers were not receiving adequate training.

Since the FMCSA action reversed its own previous findings that basic knowledge and skills entry-level driver training was inadequate and should be required, Advocates and Public Citizen filed suit against the agency. In a unanimous decision, the U.S. Court of Appeals for the District of Columbia found that the final rule was arbitrary, capricious, an abuse of agency discretion, and remanded the rule to FMCSA. *Advocates for Highway and Auto Safety v. FMCSA*⁴¹ (Entry-Level Driver Training Decision). In its opinion, the appellate court stated that the rule “focuses on areas unrelated to the practical demands of operating a commercial motor vehicle” and that the rule was “so at odds with the record assembled by DOT that the action cannot stand.”⁴²

Incredibly, when FMCSA reopened rulemaking on commercial driver training requirements in response to the adverse court decision on its final rule, the agency did not propose a training curriculum specifically designed for motorcoach operators.⁴³ The curricula content of the proposed rule is entirely oriented towards the operation of trucks of different weights and configurations. The proposed rule has no specific requirements anywhere just for motorcoach operators.

Further, in the December 2007 FMCSA proposed rule, the *minimum* number of hours of training time for entry-level student drivers of motorcoaches plummets to 120 hours for students wanting to operate motorcoaches and other large commercial motor vehicles with “Class B” CDLs.⁴⁴ There is no explanation anywhere in the preamble of the proposed rule or in the appendix of why this specific number of instructional hours was selected, nor why the amount of training was severely abbreviated from the 320 or more hours recommended in the 1985 Model Curriculum. No final rule on entry-level driver training has yet been issued.

Advocates regards FMCSA's entry-level driver training requirements for motorcoach drivers to be unspecific to the special tasks that motorcoach operation imposes, as perfunctory in its requirements and its safety impact, and as falling well short of what is needed. The proposed rule does not fulfill either the Court of Appeals' expectations or the agency's legislated responsibilities. Substantively, the proposed curriculum fails to ensure that motorcoach operators will be properly trained in the multiple, significant safety responsibilities the job demands. To add insult to injury, the proposed rule also would impose a 3-year moratorium on requiring compliance with training requirements for new CDL applicants.⁴⁵ This action would exclude tens of thousands of new CDL applicants from badly needed knowledge and skills training requirements.

Thus, twenty years after Congress required the Secretary of Transportation to issue minimum entry-level driver training requirements, and six years after the Court of Appeals upheld Advocates legal challenge to the agency's ineffectual 10-hour classroom rule, because it lacked any actual behind-the-wheel driver training, there are still no requirements for entry-level motorcoach or truck driver training.

- **Compliance Reviews Do Not Stop Dangerous Motorcoach Companies From Operating**

A central problem undermining agency effectiveness in overseeing motor carrier safety and reducing FMCSR violations is the low annual numbers and percentage of both roadside inspections and compliance review (CRs). Based on the results of a CR, a motor carrier is assigned a safety rating of "Satisfactory," "Conditional" or "Unsatisfactory." For example, the Bluffton University motorcoach crash that took seven lives and inflicted severe injuries involved a motorcoach company that had a "Satisfactory" safety rating assigned six years earlier, in January 2001. Similarly, the company that operated the motorcoach that crashed in Sherman, Texas in August, 2008, killing 17 people, was awarded a "Satisfactory" safety rating despite the fact that the company had received repeated driver out of service orders. The truth is that a dated "Satisfactory" safety rating is no assurance of contemporary operating safety fitness, yet companies—both rogue and more responsible—use the "Satisfactory" designation to promote their reputations.

The implementing regulations for conducting CRs specify criteria for assigning one of three safety rating categories to a motor carrier: "Satisfactory," "Conditional," and "Unsatisfactory."⁴⁶ FMCSA is required by law to issue a safety rating to all motor carriers.⁴⁷ However, the agency basically decided long ago that it would no longer attempt to fulfill the statutory requirement.⁴⁸ Even without attempting to assign safety ratings to all motor carriers, FMCSA conducts CRs on only a tiny percentage of carriers. Barely two percent of motor carriers receive a CR each year, and only a tiny part of one percent of all registered motor carriers are given "Unsatisfactory" ratings. In 2010, only 2.5 percent of the nearly 15,000 motor carriers that were rated received an "Unsatisfactory" rating. This small percentage does not express the gravity associated with "Unsatisfactory" ratings and the vast risk it places on passengers and motorists on the nation's roadways. Carriers given an "Unsatisfactory" safety rating are permitted to continue operations, carrying passengers, for as many as 55 days after the rating is issued. Each day, the average motorcoach conducts 58 passenger trips. Over a 55 day

period, each motorcoach operated by a company with an “Unsatisfactory” safety rating will expose approximately 3,186 passengers to bus operations which, left unaddressed, would ultimately lead to revocation of the carriers operating authority. In the case of Sky Express, the company which operated the motorcoach in the recent Virginia crash, over the 48 days during which it operated with an “Unsatisfactory” safety rating, the 34 motorcoach fleet likely exposed nearly 100,000 passengers to unsafe and dangerous operating conditions, in addition to the countless drivers who shared the road with these vehicles.

Other organizations and agencies have for many years called for improvements to the safety rating process. For example, NTSB’s current list of the Most Wanted Transportation Safety Improvements – Federal Issues⁴⁹ argues that the safety fitness regime operates too leniently with criteria that do not result frequently enough in motor carriers being shut down or drivers having their licenses revoked. Motor carriers with only vehicle or driver violations, but not both, are allowed to continue to operate. In fact, in the past, some motorcoach companies have been awarded “Satisfactory” safety ratings with *no* safety scores in any of the four rating categories under the previous rating system. In addition, high percentages of unrated motorcoaches are still listed for many states on the FMCSA motorcoach web site.⁵⁰

We have yet to determine whether the new Compliance, Safety, Accountability (CSA) program, with the Motor Carrier Safety Measurement System, which has only just been applied nationwide, will make a significant difference in the way FMCSA manages and enforces commercial vehicle safety on our highways.

Although the FMCSA has apparently made progress in rating new entrant passenger motor carriers in nine months or less, the outstanding backlog of unrated carriers or carriers that were last rated more than 3 years ago still dominates the field.

- **Consumers Denied Essential, Lifesaving Information on Motorcoach Safety**

FMCSA’s passenger motor carrier web site claims that it provides information on motorcoach companies so that consumers can be confident that they are choosing safe motorcoach companies. How does that claim hold up under close examination?

A review of the current status of safety ratings of motorcoaches registered in Florida is not very encouraging. Consumers in Florida have little to choose from in selecting a motorcoach company with the best safety credentials for long-distance trips. There are 143 companies headquartered in Florida that are registered with FMCSA for interstate transportation of passengers. However, 36 of these businesses – over a quarter – have no safety ratings at all. Five (5) companies are operating with “Conditional” safety ratings. No companies have “Unsatisfactory” ratings.

One hundred and two (102) Florida motorcoach companies carry “Satisfactory” safety ratings. One company received its Satisfactory rating back in 1993. Only 19 companies have received their “Satisfactory” rating within the past year. It is important to recognize that a safety rating, even a “Satisfactory” rating, is just a snapshot of a company. A company’s safety practices can quickly deteriorate so that a “Satisfactory” rating can become meaningless in a short amount of time. Many companies can come into compliance to achieve a “Satisfactory”

safety rating only to lapse in its compliance with major motorcoach safety regulatory areas such as driver qualifications and certification, vehicle safety maintenance, and company safety management quality.

Of the 102 Florida motorcoach companies with “Satisfactory” ratings, 7, or 6.9 percent, are in an ALERT status for at least one “Behavioral Analysis and Safety Improvement Category” (BASIC)⁵¹ under the current CSA system and 45 companies have insufficient information on which FMCSA could generate an evaluation for all BASIC Categories. Therefore, if a consumer in Florida wants to apply a high standard for choosing a company, it would be best to use a motorcoach company that has a “Satisfactory” rating in all five BASIC categories. Only 2 companies of the remaining 50 companies with a “Satisfactory” rating had ratings in all 5 BASIC categories; the other 48 companies had at least one BASIC, if not more, in which there was insufficient data on which to calculate a rating. Based on Advocates’ sampling of state information on FMCSA’s website, this is the case with most states – the listing of active motorcoach companies provided by FMCSA for each state, if rigorously evaluated by a consumer, is dramatically reduced oftentimes to only a handful of companies to choose from. In the case of Florida, one of the two companies with a satisfactory rating and ratings in all BASICS had a rating of 45.40% for the Fatigued Driving Basic, indicating that the company has performed worse than almost half of all carriers in its group, which, depending on the safety consciousness of the consumer, could realistically reduce the population of acceptable carriers to just one company.

When motorcoaches are stopped and inspected, the results are still discouraging. For 2010, 6.7 percent of the vehicle inspections resulted in an out of service (OOS) order. While this figure is an improvement over past years, it still represents a total of nearly 5,500 motorcoaches that failed inspections and had to be placed OOS. Similarly, driver safety is a serious concern – driver inspections in 2010 placed 4.8 percent of U.S. drivers of interstate motor carriers of passengers OOS for various violations, a total of 2,200 driver OOS orders. These aggregate figures are frightening, especially for patrons of interstate motorcoach companies, and they show slow progress in substantially improving motorcoach safety on a nationwide basis.

- **Unknown Status and Effectiveness of State Annual Bus Safety Inspection Programs**

The Secretary of Transportation is required to prescribe standards for annual, or more frequent, inspection of commercial motor vehicles, including motorcoaches, or approve equally effective state inspection programs.⁵² In 1998 the Federal Highway Administration (FHWA) issued a notice on the status of state bus inspection programs⁵³ and subsequently listed 25 of 50 states with approved, equivalent periodic inspection programs.⁵⁴

It should be stressed here that the minimum period for the required vehicle inspection is only once a year.⁵⁵ Since it is well known that inspection of CMVs, including motorcoaches, needs to be much more intensive and frequent than for personal or light motor vehicles, a once-a-year inspection regime is clearly no guarantee of safe motorcoaches. Many companies, even in states that have bus inspection programs, can come into compliance just for an annual inspection, only to allow major safety features of their motorcoaches to fall into disrepair or become inoperative soon after passing the annual inspection. Moreover, Advocates could find no information from FMCSA’s web site on the effectiveness of state motorcoach inspection

programs to detect safety problems or how well, or for how long state motorcoach inspection programs ensure compliance with all federal motor carrier safety requirements.

Several provisions in the Motorcoach Enhanced Safety Act directly address the issue of timely, accurate motorcoach and bus safety inspections, including both FMCSA and state actions that are necessary, and how FMCSA must administer the state inspection programs in connection with the Motor Carrier Safety Assistance Program (MCSAP).

- **Electronic On-Board Recorders Are Long Overdue on Motorcoaches and All Motor Carriers**

Electronic On-Board Recorders (EOBRs) have been increasingly used on large trucks and motorcoaches for a variety of purposes, including monitoring the drivers' hours of service (HOS) driving, working, and off-duty time of commercial drivers, and ensuring compliance with current HOS regulations. Many countries around the world now require the use of EOBRs to ensure that truck drivers comply with the limits of each nation's HOS. Currently, all European Union countries, along with Turkey, Israel, Japan, South Korea, Brazil, Venezuela, and Singapore, require automated recording devices to monitor driver hours of service compliance.

EOBRs can automatically record the hours that commercial operators drive trucks and motorcoaches in interstate commerce. EOBRs can also link with engines, transmissions, and global positioning system (GPS) devices to record the distance and speed a commercial motor vehicle has traveled and whether it has used an illegal route or traversed a weight-posted bridge. Motor carriers that have voluntarily installed EOBRs are still only a small percentage of commercial motor vehicles, but motor carriers that use EOBRs praise the advantages they provide in terms of safety and efficiency since they eliminate the need for paper logbooks.

Commercial driver fatigue is a major safety problem for both motorcoach operators and truck drivers. EOBRs are especially crucial to raising the level of motorcoach safety by ensuring that well-rested, alert drivers are in charge of the safety and lives of up to 59 occupants on-board. EOBRs can ensure that drivers do not exceed maximum shift driving time and that they take the required off-duty rest time to restore their performance at the wheel. Moreover, EOBRs on interstate motorcoaches permit real-time monitoring of the routing and location of a motorcoach so that, in the event of a serious event such as a crash or fire, expeditious response by emergency medical personnel and enforcement authorities can make a substantial difference in the number of deaths and severe, disabling injuries that result from these serious incidents.

FMCSA should be congratulated for finally, after years of delay, issuing a proposed rule to require EOBRs on some commercial vehicles, namely those driven by truck and bus drivers who are subject to the HOS and records of duty status (RODS) requirements. The proposed rule was recently issued and the public comment period closed at the end of May 2011. Advocates is supportive of the proposed rule because its implementation will improve safety and bring motor carrier enforcement into the modern era. However, we remain concerned that opposition to the proposal could deter the agency from issuing a final rule. For that reason we still believe that there is need to have congressional action to ensure this basic, reasonable and overdue safety improvement is completed without additional delay. At least with regard to motorcoaches, the Motorcoach Enhanced Safety Act includes a provision to ensure this result.

Conclusion and Recommendations

Passenger transportation safety by over-the-road motorcoaches is not held to the high safety standards of commercial passenger aviation. Motorcoach crashes can take many lives in a single event and inflict severe injuries on numerous passengers. NTSB's studies and crash reports document the deadly outcome of a catastrophic motorcoach crash, and its safety recommendations provide solutions that will dramatically improve motorcoach safety. Because DOT and the safety agencies have not implemented recommended safety countermeasures, despite having had ample opportunity to do so and reams of supporting evidence, Congress must take action to increase the level of motorcoach safety and improve the quality of federal and state oversight.

Advocates recommends that the Committee pass the Motorcoach Enhanced Safety Act of 2011, H.R.873. It had bipartisan support in the last Congress and is the only motorcoach safety bill endorsed by the families of motorcoach crash victims and survivors, and consumer, health, and safety groups. It should be a top priority for this Committee and for House floor action. This legislation will ensure that motorcoach safety is put on an equal footing with passenger car and airline safety by requiring basic safety improvements on reasonable timelines for U.S. DOT rulemaking action. The outcome in just several years would be fewer motorcoach crashes with fewer injuries and deaths.

We further recommend, however, that additional provisions be added to H.R.873 to address the need for the imposition of criminal penalties for persons who illegally continue to operate as a motor carrier after having been ordered to cease operations, as well as the current hours of service rule for motorcoach drivers that we believe is contributing to fatigued driving.

Thank you for the opportunity to provide this information to the Committee on a major safety problem. Advocates looks forward to working with the Committee on these issues, and I am prepared to respond to any questions you may have.

Endnotes

- ¹ *Motorcoach Override of Elevated Exit Ramp Interstate 75, Atlanta, Georgia, March 2, 2007*, Appendix C, National Transportation Safety Board Accident Report HTSB/HAR-08/01, July 8, 2008 (Bluffton University Motorcoach Crash Report).
- ² Data supplied by the NHTSA.
- ³ *Id.*
- ⁴ *4 Killed When NY-Bound Bus Flips on I-95 in Va*, Associated press, May 31, 2011, available at <http://washingtonexaminer.com/news/2011/05/4-killed-when-ny-bound-bus-flips-i-95-va>.
- ⁵ Federal Motor Carrier Safety Administration Safety Measurement System for Sky Express, USDOT# 1361588.
- ⁶ *Safety Agency Rebuked in Deadly Bus Crash*, USA Today, June 2, 2011, available at http://www.usatoday.com/news/nation/2011-06-01-bus-crash-laood_n.htm?loc=interstitialskip#
- ⁷ *Drunk Tour Bus Driver Kills Pedestrian in Manhattan*, New York Injury News, May 12, 2011, available at http://www.newyorkinjurynews.com/2011/05/12/Drunk-Tour-Bus-Driver-Kills-Pedestrian-in-Manhattan_201105126407.html and, *Drunk Tour Bus Driver Strikes And Kills A Man In Midtown*, AP, May 8, 2011, available at http://www.usbusstation.com/article535789/drunk_tour_bus_driver_strikes_and_kills_a_man_in_midtown.htm.
- ⁸ Federal Motor Carrier Safety Administration Safety Measurement System for TraveLynx, Inc., USDOT# 326876.
- ⁹ *Bus Swerved Repeatedly Before Crash, Riders Say*, NY Times, March 13, 2011, available at <http://www.nytimes.com/2011/03/14/nyregion/14bus.html> and, *Carnage on I-95 After Crash Rips Bus Apart*, NY Times, Mar 12, 2011, available at <http://www.nytimes.com/2011/03/13/nyregion/13crash.html?pagewanted=1&r=1&ref=nyregion> and, Federal Motor Carrier Safety Administration Safety Measurement System for World Wide Travel, USDOT# 782392.
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- ¹¹ *Motorcoach Run-Off-the-Bridge and Rollover, Sherman, Texas, August 8, 2008*, National Transportation Safety Board. 2009, Highway Accident Report NTSB/HAR-09/02, available at <http://www3.nts.gov/publicctn/2009/HAR0902.pdf>.
- ¹² *Three Killed, Several Injured in Mississippi Bus Crash*, Associated Press, Aug 10, 2008, available at http://www.nydailynews.com/news/national/2008/08/10/2008-08-10_three_killed_several_injured_in_mississippi.html.
- ¹³ *Third Bus Crash in Three Days Injures 20*, CNN, Aug 11, 2008, available at http://articles.cnn.com/2008-08-11/us/nevada.bus_1_bus-nevada-highway-patrol-church-trip?_s=PM:US.
- ¹⁴ Bluffton University Motorcoach Crash Report.
- ¹⁵ Title 49 CFR § 382.305.
- ¹⁶ *Motorcoach Fire on Interstate 45 During Hurricane Rita Evacuation Near Wilmer, Texas, September 23, 2005*, National Transportation Safety Board, 2007, Highway Accident Report NTSB/HAR-07/01, available at <http://www3.nts.gov/publicctn/2007/HAR0701.pdf>.
- ¹⁷ Title 49 CFR § 391.11(b)(2).
- ¹⁸ See, 49 CFR Pt. 385 for a description of FMCSA's safety rating process.
- ¹⁹ NTSB Safety Recommendation H-99-6, "Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier", issued February 26, 1999, added to NTSB Most Wanted List: 2000, "Selective Motorcoach Issues," NTSB/SIR-99/01, p. 37. Available at <http://www3.nts.gov/publicctn/1999/SIR9901.pdf>.
- ²⁰ <http://testimony.ost.dot.gov/test/Sandberg1.htm>, May 2, 2006.
- ²¹ Bluffton University Motorcoach Crash Report at 52.
- ²² *Id.* at 54.
- ²³ For example, see NTSB's recommendation H-71-35 that was closed out on October 29, 1975.
- ²⁴ NTSB Safety Recommendation H-99-6, see note 19 *supra*.
- ²⁵ See, e.g., *Commercial Motor Vehicles: Effectiveness of Actions Being Taken to Improve Motor Carrier Safety Is Unknown*. Report to the Chairman, Subcommittee on Transportation and Relative Agencies, Committee on Appropriations, House of Representatives, GAO/RCED-001-89 (July 2000); *Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing*, OIG Report Number MH-2006-046, April 21, 2006; *Improvements Needed in Motor Carrier Safety Status Measurement System*, OIG Report Number MH-2004-034, (Feb. 2004); *A Statistical Approach Will Better Identify Commercial Carriers That Pose*

High Crash Risks Than Does the Current Federal Approach, GAO-07-585 (June 2007); *Motor Carrier Safety: Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law*, GOA-07-584 (Aug. 2007).

²⁶ Safe, Accountable, Flexible, Efficient Transportation Equity for the Twenty-First Century: A Legacy for Users, Pub. L. 109-59 (Aug. 10, 2005).

²⁷ Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. 110-189 (Feb. 28, 2008).

²⁸ “NTSB Most Wanted List of Transportation Safety Improvements,” National Transportation Safety Board, November 2010, available at http://www.nts.gov/recs/brochures/MostWanted_2010_2011.pdf.

²⁹ *NHTSA’s Approach to Motorcoach Safety*, Aug. 6, 2007.

³⁰ E. Mayrhofer, H. Steffan, H. Hoschopf, *Enhanced Coach and Bus Occupant Safety*, Paper 05-0351, Graz University of Technology Vehicle Safety Institute, Austria, 2005.

³¹ M. Griffiths, M. Paine, R. Moore, *Three Point Seat Belts on Coaches – The First Decade in Australia*, Queensland Transport, Australia, Abstract ID –5-0017, 2005. The authors report that, since 1994 when 3-point belts were required in motorcoaches, several serious crashes have occurred, no belted coach occupant has received either fatal or disabling injuries.

³² Bourquin, P., “*Motorcoach Census Update 2010*.” [2010 Motorcoach Census] Nathan Associates, for the American Bus Association, Dec. 8, 2010. The average number of passenger trips per year was 742.5 million in 2008 and 2009.

³³ *Id.* Annual passenger trips (742.5 million), divided by fleet size (35,122), multiplied by vehicle useful life (20 years).

³⁴ Motorcoach Definition, Notice of Proposed Rulemaking, 75 FR 50958 (Aug. 18, 2010) (“The service life of a motorcoach can be 20 years or longer”).

³⁵ Pub. L. 109-59 (Aug. 10, 2005).

³⁶ “Preventing bus fires: What must be done?,” *BusRide*. Nov. 22, 2010, available at <http://busride.com/2010/11/preventing-bus-fires-what-must-be-done/>.

³⁷ <http://www.fmcsa.dot.gov/facts-research/facts-figures/analysis-statistics/cmvmfacts.htm>. There are no separate figures for motorcoaches provided, but the United Motorcoach Association estimates that there are probably about 45,000 to 50,000 commercial over-the-road motorcoaches in the U.S. There is, in addition, an unknown number of “private” motorcoaches such as those used for schools, church groups, and other organizations, some of which are interstate and must conform to most Federal Motor Carrier Safety Regulations. It is difficult to reconcile these figures with those from FMCSA (*see*, the text and footnote below) and the figures provided by the American Bus Association in its *Motorcoach Census 2005: Second Benchmarking Study of the Motorcoach Industry in the United States and Canada*, September 2006, in which it is stated that in 2004 the industry consisted of 3,500 companies operating nearly 40,000 motorcoaches.

³⁸ *See*, Statement of John Hill, Administrator, Federal Motor Carrier Safety Administration, before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit, and Pipelines, March 20, 2007. Also, *see*, <http://ai.fmcsa.dot.gov/International/border.asp?dvar+3&cvar=pass&redirect=HistoricalOverview.asp&p=1>. However, there are substantial discrepancies throughout FMCSA’s web site on the number of passenger carriers. For example, one page providing figures states that there were 5,211 passenger carriers registered with the agency as of 2006. <http://www.fmcsa.dot.gov/facts-research/facts-figures/analysis-statistics/cmvmfacts.htm>. There is no explanation of what kinds of passenger carriers this includes.

³⁹ Pub. L. 102-240, 105 Stat. 1914 (Dec. 18, 1991).

⁴⁰ 69 FR 29384 *et seq.*, May 21, 2004.

⁴¹ 429 F.3d 1136 (D.C. Cir. 2005).

⁴² *Id.* at 3-4.

⁴³ 72 FR 73226 (Dec. 26, 2007).

⁴⁴ 72 FR 73227-73228.

⁴⁵ *Id.* at 73231-73232.

⁴⁶ The most recent statement of the governing regulations for determining safety fitness is the FMCSA final rule of August 22, 2000 (65 FR 50919), which was a response to the increased stringency of safety fitness requirements enacted in Section 4009 of TEA-21 that amended 49 U.S.C. § 31144, originally enacted by Section 215 of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554). This final rule amended the regulations for safety fitness determinations in 49 CFR Pts. 385 and 386. Pt. 385 contains the controlling criteria for making safety fitness

determinations and Pt. 386 contains the rules of practice for the agency controlling the issuance of CR ratings, petitions, hearings, orders, and other administrative machinery for conducting the oversight and enforcement programs of FMCSA. It should also be noted that FMCSA recognizes that its administrative selection of the three rating categories of safety fitness, “Satisfactory”, “Conditional”, and “Unsatisfactory”, has been legislatively enshrined through explicit mention and use of the three ratings in Section 15(b) of the Motor Carrier Safety Act of 1990. 49 U.S.C. § 31144.

⁴⁷ Section 215 of the Motor Carrier Safety Act of 1984 requires the Secretary to maintain, by regulation, a procedure for determining the safety fitness of an owner or operator of commercial motor vehicles. 49 U.S.C. § 31144.

⁴⁸ *Motor Carrier Safety Program*, DOT Office of Inspector General, Report Number AS-FH-7-006, March 26, 1997. The goal of assigning safety ratings to all motor carriers by September 30, 1992, was a self-imposed target by FHWA that could not be attained, as pointed out in the GAO report of January 1991, *Truck Safety: Improvements Needed in FHWA’s Motor Carrier Safety Program*, Report No. GAO/RCED-91-30. At the time of GAO’s preparation of this report, FHWA had not rated about 60 percent of interstate motor carriers. As GAO points out in this report, the agency decided that its safety oversight resources would be better spent than attempting to safety rate all motor carriers in accordance with legislative requirements. On October 1, 1994, FHWA discontinued safety reviews to assess unrated motor carriers.

⁴⁹ See, http://www.nts.gov/Recs/mostwanted/truck_safety.htm. As previously mentioned, NTSB recommends that if a carrier receives an “Unsatisfactory” rating for either the vehicle factor or the driver factor, that alone should trigger a pending “Unsatisfactory” rating. According to NTSB, this recommendation has been reissued annually since 199, but FMCSA does not plan full implementation of any changes to its safety rating system and other oversight processes until 2010 at the earliest.

⁵⁰ http://ai.fmcsa.dot.gov/Passenger/find_carrier.asp.

⁵¹ A BASIC is a “Behavioral Analysis and Safety improvement Category.” Currently there are seven (7) BASICS; Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo-Related, and Crash Indicator. The current Safety Management System (SMS) provides the public with ratings on the first 5 BASICS listed. Results of inspections related to each category are used to calculate the performance of the carrier relative to the performance of the fleet.

⁵² Title 49 Code of Federal Regulation (CFR) Part 396; Sec. 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31142).

⁵³ 63 FR 8516 *et seq.* (February 19, 1998).

⁵⁴ 66 FR 32863 (June 18, 2001).

⁵⁵ Section 210, Motor Carrier Safety Act of 1984, *op. cit.*, codified at 49 U.S.C. § 31142.