



A bold voice for transportation workers

January 14, 2013

Mr. Juan Moya
Transportation Specialist, Enforcement Division
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Patterns of Safety Violations by Motor Carrier Management
Docket No. FMCSA-2011-0321**

Dear Mr. Moya:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to comment on the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) on Patterns of Safety Violations by Motor Carrier Management. By way of background, TTD represents 31 affiliated unions, including several that represent workers who operate over-the-road buses and other commercial motor vehicles and therefore have an interest in this rulemaking.¹

We wish to express support for FMCSA's proposed rule to implement section 4113 of P.L. 109-59 (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) as amended by section 32112 of P.L. 112-141 (Moving Ahead for Progress in the 21st Century Act or MAP-21). TTD and our affiliates have long argued for increasing enforcement of federal safety regulations and cracking down on motor carriers that try to evade compliance. The proposed rule addresses many of these concerns by setting procedures to suspend or revoke the operating authority of motor carriers that demonstrate a pattern of blatant disregard for safety regulations as well as reincarnated carriers, and establishing new and enhanced fines for noncompliance. By strengthening FMCSA's ability to deter violations and removing unlawful carriers from our highways, this proposed rule would help improve the safety of motor carrier drivers, passengers and all those traveling our nation's highways.

¹ A complete list of TTD affiliated unions is attached.

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



Under Administrator Ferro's leadership, FMCSA has been a leader in promoting motorcoach safety, strengthening its standards and enforcement efforts by issuing rulemakings and increasing inspections, compliance reviews, and out-of-service orders. Just this past May, FMCSA ordered 26 curbside bus operators out-of-service for posing "imminent hazards to public safety."² Each carrier had several offenses "including a continuous pattern of" failing to ensure their drivers complied with hours-of-service regulations.³

As FMCSA correctly acknowledged in its enforcement orders, driver fatigue is a critical problem in the over-the-road bus sector. While we understand that hours-of-service updates are beyond the scope of this rulemaking, we do recommend that more must be done to enhance fatigue-related rules. Fatigue can slow drivers' reaction times and cause mistakes that well-rested drivers wouldn't make. Without correcting the issues that lead to driver fatigue, this problem will continue to undermine the safety of our roadways and put passengers and other drivers at risk.

Although the majority of motor carriers run legitimate operations, some demonstrate an egregious disregard for federal regulations intended to keep passengers and drivers safe. Some carriers regularly violate these standards, such as the 26 operations shut down in May.

Equally troubling are "reincarnated" carriers that apply for operating registrations under new identities or use common ownership to establish a 'new' company in order to avoid compliance or escape a history of violations. In 2008, a motorcoach operated by Iguala BusMex, Inc. crashed in Sherman, Texas, killing 17 and injuring 38 of its passengers.⁴ According to the National Transportation Safety Board's (NTSB) Highway Accident Report, the owner of the company also owned Angel Tours, Inc. which was ordered out-of-service a month before the owner applied for a new operating authority under Iguala BusMex. Angel Tours had a poor operating history including an unsatisfactory rating that included three critical violations among its other offenses, operating after being ordered out-of-service, and losing several of its vehicles and drivers to out-of-service orders.⁵

Iguala BusMex, Inc. was a reincarnated carrier operating without authority and with a U.S. Department of Transportation number belonging to another company.⁶ This accident is just one example of the dangerous consequences that may result from such a stark disregard for safety

² Federal Motor Carrier Safety Administration, Press Release, *U.S. Department of Transportation Shuts Down 26 Bus Operations in Unprecedented Sweep*, May 31, 2012. Available at <http://fmcsa.dot.gov/about/news/news-releases/2012/1-95-Bus-Release.aspx>.

³ The carriers' violations also included failing to have their vehicles maintained and inspected regularly, "using drivers without valid commercial driver's licenses (CDLs) and failure to have alcohol and drug testing programs." *Id.*

⁴ National Transportation Safety Board, *Highway Accident Report, Motorcoach Run-Off-the-Bridge and Rollover, Sherman, Texas, August 8, 2008, NTSB/HAR-09/02, PB2009-916102 Notation 8078A* (October 27, 2009) at ii.

⁵ *Id.* at 29, 30.

⁶ *Id.* at 29.

and blatant attempt to circumvent federal regulations. Administrator Ferro stated in her September 2012 testimony that reincarnation is not rare, noting that “[i]t is a common practice...for some motor carriers to establish a new identity once FMCSA shuts the company down...”⁷

The potential for future similar accidents is only exacerbated by the fact that “intercity bus remains America’s fastest growing form of intercity travel” for five years in a row, having grown by 7.5% and adding more than 250 daily scheduled services in 2012.⁸ Thus, FMCSA has a growing challenge to ensure the safety of passengers and drivers. This rulemaking will aid the agency’s efforts by strengthening deterrents and improving efforts to identify and crackdown on carriers that evade responsibility.

Under this rulemaking, FMCSA implements rules to suspend or revoke the operating authority registration of a motor carrier that engages in a practice or pattern of avoiding compliance or masking noncompliance. This also applies to a motor carrier that allows a person who currently or has previously engaged in a pattern or practice of noncompliance to have “controlling influence” over its operations. The motor carrier, or person with controlling influence, engages in noncompliance when it fails to, or conceals failure to, comply with regulations issued under 49 USC Chapter 311, subchapter III, comply with redress orders, pay civil fines or respond to enforcement actions.

We support the establishment of these four infractions as the triggers of a potential suspension order, as such conduct clearly demonstrates a lack of concern for safety regulations. Further, identifying the frequency with which these infractions occur and reviewing the carrier’s previous or ongoing enforcement actions, are important considerations when determining whether the carrier’s violation is an isolated event or just one instance in a pattern of noncompliance. We also support the minimum factors FMCSA will consider when determining if a pattern of noncompliance exists, as identified in proposed section 385.909.

This NPRM also sets standards for revoking or suspending the operating registration of a motor carrier that reincarnates to avoid compliance or conceal noncompliance. Like the accident in Sherman, Texas, the substantial continuity between two or more operations becomes clear when considering certain factors. Iguala BusMex, Inc. was owned by the same individual, operated from the same address with the same equipment and drivers, and serviced the same passenger population as its originator.⁹

⁷ Ferro, Anne. Statement to the Senate, Committee on Commerce, Science, and Transportation. *Taking Consumers for a Ride: Business Practices in the Household Goods Moving Industry*, Hearing, September 20, 2012. Available at: <http://fmcsa.dot.gov/about/news/testimony/tst-12-9-20.htm>. Accessed 1/4/2012.

⁸ Chaddick Institute of Metropolitan Development, DePaul University, *The Motor Coach Metamorphosis, 2012 Year-in-Review of Intercity Bus Service in the United States*. (January 6, 2013) at 2,8.

⁹ National Transportation Safety Board, *Highway Accident Report, Motorcoach Run-Off-the-Bridge and Rollover, Sherman, Texas, August 8, 2008, NTSB/HAR-09/02, PB2009-916102 Notation 8078A* (October 27, 2009) at 31.

Although the carrier didn't have an operating authority to suspend or revoke, FMCSA would have been able to determine that it was a reincarnated company by considering the factors proposed in section 385.911. These include the dates the motor carriers were created and dissolved; the relationships between the carriers' shareholders, officers, or employees; and the continuity and commonality of physical assets, corporate names, and the nature and scope of operations such as the passengers they serve. These factors are good indicators that one carrier is merely the continuation of another, and we support them as well as the others included in section 385.911.

Moreover, we support section 385.915 and its procedures to revoke a motor carrier's operating authority. When FMCSA identifies a pattern of violation or finds evidence of reincarnation and subsequently issues a suspension order, we believe that the motor carrier must comply. If a motor carrier disregards the agency's authority and continues to operate in spite of the order, then its operating authority must be revoked.

Furthermore, we believe that the procedures by which FMCSA could suspend and revoke operating authorities provide motor carriers with adequate time to show good cause and petition for administrative review of an order. The regulation makes clear that an operating authority registration would be suspended only after the agency determines that a pattern or practice of noncompliance or covering noncompliance exists. Thus, carriers operating legitimate businesses would not be adversely affected by this rulemaking, and in fact stand to benefit from safer roads.

Finally, we believe it is appropriate and helpful in deterring carriers from committing violations or concealing them, to subject carriers to civil and criminal penalties under 49 USC 521(b). We therefore support the clarifying language in section 385.921. We also support the amendment to Appendix A to Part 386, which establishes that a motor carrier would be subject to a fine of up to \$11,000 per day that it operates in violation of a suspension or revocation order. This additional fine would act as another deterrent to ignoring the agency's order and safety regulations.

It should also be noted that when motor carriers repeatedly violate federal standards, they establish an unfair advantage over their legitimate competitors. By cutting corners on necessary maintenance, hiring unfit or unlicensed drivers, or by requiring their drivers to work longer hours than federally permitted, unlawful carriers undercut legitimate businesses, forcing them to reduce services and/or cut employee wages and benefits. In fact, a study released in January 2013 found that in the case of FMCSA's actions in May 2012, the unlawful carriers' competitors have since found new market opportunities in light of the vacuum created by the shutdown orders.¹⁰ Thus, lawful carriers would benefit from this rulemaking not only from safer roadways, but also from a leveled playing field.

¹⁰ Chaddick Institute of Metropolitan Development, DePaul University, *The Motor Coach Metamorphosis, 2012 Year-in-Review of Intercity Bus Service in the United States*. (January 6, 2013) at 6.

TTD appreciates FMCSA's efforts to tackle the dangers posed by repeat offenders and reincarnated carriers, and we hope you will take our comments into consideration. As noted above, we also hope you will work with us and our affiliated unions to further address driver fatigue and to move forward on other measures that will enhance the safety of this critical sector of our transportation system.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized flourish at the end.

Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)