



A bold voice for transportation workers

February 5, 2014

Ms. Shannon L. Watson
Senior Advisor to the Associate Administrator for Policy
Federal Motor Carrier Safety Administration
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Motor Carrier Safety Advisory Committee Notice of Meeting
Docket No. FMCSA-2006-26367**

Dear Ms. Watson:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), we submit the three topics identified below for consideration by the Motor Carrier Safety Advisory Committee (MCSAC) in the above captioned proceeding. By way of background, TTD consists of 32 transportation unions including those that represent over-the-road, charter and school bus drivers who have a vested interest in MCSAC's work.¹

TTD appreciates MCSAC's initiative to identify motor carrier safety topics the Federal Motor Carrier Safety Administration (FMCSA) should consider as the government begins work on MAP-21 reauthorization legislation. As part of the meeting to identify these issues, we believe MCSAC should discuss and ultimately support the following topics:

Closing the Bus Driver Loophole in the Fair Labor Standards Act

Unlike 85 percent of American workers, intercity bus drivers are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), meaning they are denied time and one-half pay for time worked in excess of 40 hours during a week.²

The labor standards found in this industry, at least partially a byproduct of the FLSA loophole, are reportedly forcing drivers to work up 100 hours a week to make a living. This exemption incentivizes unsafe bus operations when drivers are forced to work grueling hours or to hold second jobs during their alleged rest periods to make ends meet. These conditions force drivers to operate motorcoaches while fatigued, the culprit behind 36 percent of bus crash fatalities according to the National Transportation Safety Board.

¹ Attached is a complete list of TTD's 32 affiliate unions.

² Attached is TTD's Policy Statement on closing the FLSA loophole which was adopted by our Executive Committee in October 2013.

Transportation Trades Department, AFL-CIO

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

Until this loophole is closed, bus drivers will continue to work excessive hours and operate motorcoaches while fatigued, putting the traveling public at risk.

Increasing FMCSA's Budget to Bolster Enforcement Efforts

Transportation labor applauds this Administration's efforts to improve bus safety inspections. In recent years, FMCSA has carried out 'strike force' operations designed to remove unsafe operators from our roadways. These sting-like tactics have proven effective, as FMCSA issued out of service orders to 25 bus companies in the first eight months of 2013 alone, averaging nearly one order every week. In addition, the agency recently promulgated a final rule to implement its authority to revoke or suspend operating authorities of motor carriers that have or try to conceal a history of safety violations.

We support these and FMCSA's other efforts to remove dangerous operators from the roadways, and we believe more resources should be devoted to this cause. Accordingly, we encourage MCSAC to consider the benefits of increasing FMCSA's enforcement budget so that the agency can continue its strike forces and other tools to keep passengers and drivers safe.

Raising the Bar on New Entrant Safety Standards

As the agency continues its work to close down unsafe operators, it can also help prevent these businesses from obtaining operating authority in the first place. By employing its authority to regulate safety, FMCSA can raise the bar on new entrant requirements in order to deter and prevent bad actors and companies incapable of providing safe services from entering the marketplace. Doing so would not only alleviate some of the burden on FMCSA to remove these bad actors, but also improve the safety of passengers and other motorists.

As the expiration date of MAP-21 quickly approaches, Congress has the tall task of addressing numerous pressing issues affecting our transportation system. We appreciate MCSAC's efforts to identify important motor carrier safety issues that should be considered with reauthorizing legislation, and we hope the Committee will take our suggestions into consideration.

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 Government Employees (AFGE)
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, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)*
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
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, Air, Rail and Transportation Workers (SMART)
SMART-Transportation Division
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)*



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ATTACHMENT 2

TIME TO CLOSE INTERCITY BUS DRIVER LOOPHOLE IN FAIR LABOR STANDARDS ACT

Too many intercity bus accidents are occurring across America due to chronically fatigued drivers who are exempted from federal overtime rules that encourage dangerously excessive hours. About 50 people and 1,000 innocent passengers die annually in bus accidents. We must do better by advancing common sense policy reforms that will make bus transportation safer for drivers and passengers.

Transportation unions praise the Obama Administration for its efforts to beef up bus safety inspections. In recent years, the Department of Transportation has carried out sting-like operations designed to remove unsafe operators from our highways. In the first eight months of 2013, FMCSA issued out of service orders to 25 bus companies, averaging nearly one order every week. And in May 2012 alone, the agency ordered 26 curbside bus operators out of service for posing imminent hazards. These efforts have raised the bar on what it means to operate safely in the U.S. intercity bus industry. But the trend line in this industry demands more federal action centered ensuring that bus drivers get compensated fairly for the amount of time they put in over 40 hours per week. Without reforms including changes to how the Fair Labor Standards Act (FLSA) is applied, bus drivers will continue to work excessive hours and the traveling public will be at risk.

The facts are stark:

- When an intercity bus crashes, especially when no other vehicles are involved, there is a high likelihood that the driver was badly fatigued or fell asleep behind the wheel.
- The National Transportation Safety Board (NTSB) finds that driver-related problems account for six in 10 intercity bus crash fatalities with driver fatigue being responsible for 36 percent of the fatalities.
- Unlike 85 percent of American workers, intercity bus drivers are exempt from overtime provisions of the Fair Labor Standards Act (FLSA), meaning they are denied time and half pay when their hours during a week exceed 40 hours. This incentivizes unsafe bus operations.
- The FLSA exemption puts a spotlight on a harsh reality: many bus drivers work grueling hours or hold second jobs during their alleged rest period to make ends meet. This correlation is undeniable as a study has shown that just a 10 percent higher base pay rate leads to a staggering 34 percent lower probability of a crash.

Hundreds of non-union intercity bus companies – typically small operations with only a few buses – are notorious for paying their drivers abysmally low wages. The labor standards found in this industry, at least partially a byproduct of the FLSA loophole, are reportedly forcing drivers to work up to 100 hours a week to make a living. This situation is intolerable and must be changed.

Transportation labor is committed to fixing this loophole and has been successful in doing so for other workers. This challenge is eerily similar to a similar problem in the flight attendant workforce, which for more than four decades was denied the OSHA safety and health protections that the overwhelming majority of Americans enjoy. The Obama Administration recently solved this issue with a formal clarification of policy that adopts certain OSHA protection for these safety professionals. Now it is time to end the grossly unfair FLSA exemption that is similarly leaving intercity bus drivers unprotected by a law that covers close to nine out of 10 American workers.

Senator Charles Schumer (D-NY) is the lead sponsor of S. 487, the Driver Fatigue Prevention Act, which advances a straightforward policy reform: pay intercity bus drivers, who perform safety-sensitive work on our nation's highways, overtime when they work more than 40 hours.

Transportation unions are committed to advancing this policy reform. We will push this legislative fix and also engage the Obama Administration to embrace this policy change as a natural extension of its already extensive crackdown on unsafe bus operators.

We will not stand by idly and allow the nation's bus companies to run sweatshops on wheels that are designed to squeeze every minute of drive time out of their drivers while dodging overtime pay and a living wage for these employees. This business model has proven to be a menace to the traveling public, killing people every year and forcing drivers to work dangerously excessive hours behind the wheel on our highways.

Resolution No. F13-04
Adopted October 29, 2013