

**FMCSA IS STRENGTHENING MOTOR CARRIER SAFETY OVERSIGHT
BUT FURTHER ACTION AND ATTENTION ARE NEEDED**

Statement for the Record:

**Hearing before the Committee on Commerce, Science and
Transportation, Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety and Security
United States Senate
July 21, 2011**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to submit this statement for the record on the Federal Motor Carrier Safety Administration's (FMCSA) reauthorization. Over the past several years, FMCSA has made progress in improving its motor carrier safety programs, but our completed and ongoing audits and investigations continue to identify weaknesses and challenges FMCSA must overcome to ensure the effective implementation of its programs. This statement discusses (1) challenges in implementing regulations and countering fraud in the Commercial Driver's License (CDL) Program; (2) FMCSA's progress in responding to National Transportation Safety Board (NTSB) bus safety recommendations, including identifying "reincarnated carriers";¹ (3) our audit and investigative work in areas of past and present interest to the committee—including household goods fraud and cross-border trucking—and important actions FMCSA must take to improve internal acquisition and contracting practices.

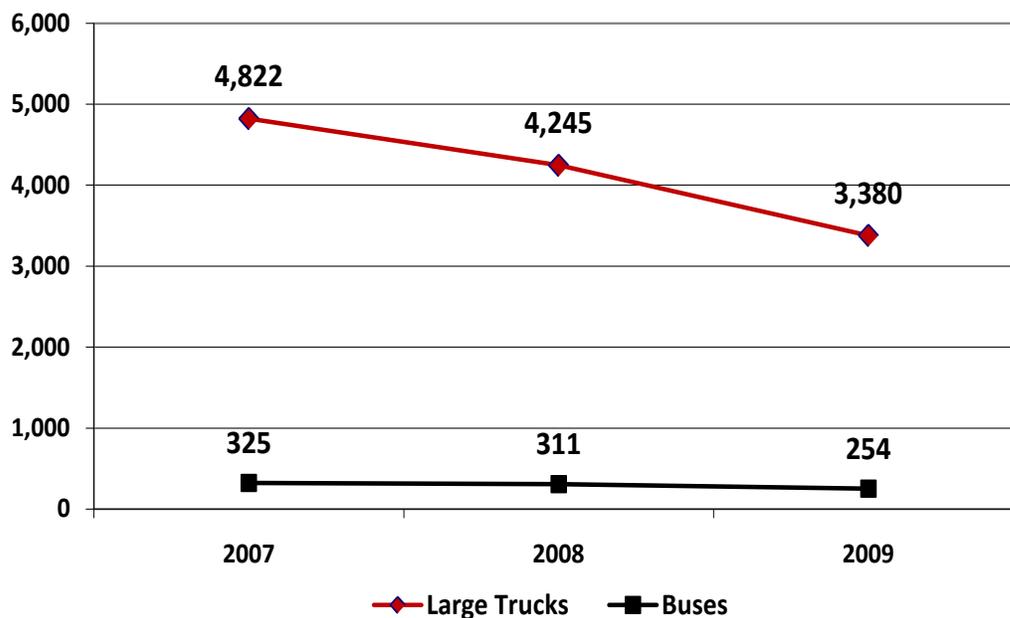
In summary, FMCSA has strengthened the CDL program, but countering CDL fraud and implementing CDL regulations, such as rules to promptly add traffic convictions to a driver's record, remain a challenge. FMCSA also has put measures in place to prevent unsafe passenger carriers from continuing operations under a new identity, but it has yet to fully implement other NTSB recommendations on bus safety. In addition, we continue our work to investigate criminal activity among household goods carriers and fulfill congressional requirements to evaluate FMCSA's implementation of a pilot program to allow Mexican carriers to engage in cross-border operations. Finally, FMCSA has begun to address recommendations we made to improve its acquisition and contracting practices, but it needs to follow through on commitments made in response to our past audit work to ensure the effective execution of contractor-supported safety programs.

¹ Reincarnated carriers are carriers who assume a new identity to continue operations despite enforcement actions.

BACKGROUND

Between 2007 and 2009, the number of fatalities associated with commercial vehicle crashes has steadily declined (see fig. 1). Despite this decrease, the latest yearly fatalities equate to a major airline crash with 200 fatalities nearly every 3 weeks—a sobering correlation.

Figure 1: Fatalities Associated with Commercial Vehicle Crashes, 2007 through 2009



Source: FMCSA Commercial Motor Vehicle Facts reported in April 2011.

Congress created FMCSA in 1999 to save lives and reduce injuries related to crashes involving large trucks. FMCSA conducts a wide range of activities to accomplish its mission, including (1) monitoring State licensing of commercial drivers, (2) enforcing motor carrier rules and regulations, (3) providing grants to the States for conducting roadside inspections, (4) implementing safety provisions for cross-border trucking, and (5) protecting consumers who are victims of fraud associated with household goods carriers. In carrying out its responsibilities, FMCSA uses contractor support for overseeing some of its most critical safety programs.

The Commercial Motor Vehicle Safety Act of 1986 established the CDL program, which mandates minimum Federal standards for testing and licensing commercial drivers and for taking unsafe drivers off the road. The act also put in place a nationwide information system for States to exchange driver-related data. This centralized database—the Commercial Driver's License Information System (CDLIS)—along with the CDL

program, is intended to ensure that the thousands of individuals issued CDLs each year are qualified to drive large trucks and safely transport passengers in motor coaches. CDLIS maintains information on approximately 13 million active and inactive commercial drivers, and directs inquiries of driver histories to the State of record, which should track all convictions for drivers licensed in the State.

FMCSA HAS STRENGTHENED THE CDL PROGRAM BUT FACES CHALLENGES IN IMPLEMENTING CDL REGULATIONS NATIONWIDE AND COUNTERING CDL FRAUD

FMCSA has taken actions to improve the CDL program, including the recent issuance of long-awaited regulations that tighten controls over State CDL testing. Effective implementation of the new regulations—which address vulnerabilities identified in our prior audits and in prior legislation originating with the committee—is important to prevent unqualified drivers from obtaining CDLs as a result of fraud or poor testing procedures. However, if past is prologue, FMCSA will be challenged to obtain swift and effective State implementation. The Agency has had limited success implementing Federal standards set in 2005² for ensuring timely communication of CDL traffic convictions among States. Timely communication of traffic conviction data is critical to ensuring that CDL drivers are taken off the road after committing serious traffic violations.

The new regulations on CDL testing, issued in May 2011, respond to recommendations we made almost 10 years ago when FMCSA agreed to initiate a rulemaking to address fraud vulnerabilities related to residency requirements, the use of interpreters during testing, oversight of third-party testers, and other concerns. However, despite FMCSA's commitment to address our recommendations, the process took nearly a decade—due in part to State concerns regarding unfunded mandates and the need to coordinate with other Federal laws pertaining to State-issued driver's licenses.

In addition, as our investigations have revealed, individuals continue to exploit weaknesses in the CDL system to fraudulently obtain licenses. Thus, tough counter-fraud action is imperative. Since 2006, we have opened 27 CDL fraud investigations in 16 different States, often with coordination and support from other law enforcement agencies and FMCSA. For example:

- From 2007 to 2010, nine individuals allegedly provided hundreds of nonresidents with false Pennsylvania residency documents and foreign language interpreters to fraudulently obtain Pennsylvania CDLs. A Federal grand jury in Philadelphia charged

² Beginning on September 30, 2005, notification to another State of traffic violations was required within 30 days of conviction. States must post a conviction to a driver's history record within 10 days of the conviction if it occurred in the same State (49 C.F.R. §384.225(c)), or within 10 days of receipt of the notice of conviction if it is from another State (49 C.F.R. §384.209(c)).

the nine individuals for their role in a conspiracy that allegedly aided more than 300 unqualified individuals in fraudulently obtaining Pennsylvania CDLs.

- In 2008, a Louisiana Department of Public Safety, Office of Motor Vehicles compliance review revealed that a registered, third-party CDL tester tested a large number of CDL candidates with no failure ratings—a fraud indicator. The third-party tester admitted to falsifying the skills tests for 250 CDL candidates, for which he was paid approximately \$200 per test. In the past, Arkansas and other States have successfully identified third-party fraud of this type through covert testing of examiners. Over a third of the CDL cases that we have opened since 2006 are related to third-party testers.

While States have 3 years to put the new CDL testing regulations in place, we have concerns that many States will not effectively implement these regulations within this time frame. The challenges FMCSA will face in implementing CDL regulations nationwide are illustrated by its struggles to implement other regulations to ensure timely State communication of traffic convictions and the appropriate disqualification of poor drivers. In response to recommendations we made in 2000 and its internal reviews, FMCSA took action to improve systems used to track convictions by conducting operational tests of State information systems and sampling conviction records to identify cases where States did not take appropriate disqualification actions. Despite these actions, our more recent audit work shows that more than a decade later, FMCSA continues to have difficulty ensuring States promptly communicate convictions in order to quickly disqualify commercial drivers who drive under the influence, leave the scene of an accident, or commit other serious traffic violations.

In July 2009,³ we projected that notifications were not sent for 20 percent of the estimated 500,000 active commercial drivers with out-of-state convictions within the 30-day time frame established by FMCSA regulations. FMCSA's reports continue to show poor results: a May 2011 report shows that 25 States were rated poor on the CDLIS timeliness rating and 46 percent of the convictions were not sent within the new 10 day standard. FMCSA has required action plans from States to address untimely posting of convictions. However, issues within the States, such as obtaining timely reports from the courts, persist.

³ OIG Report Number FI-2009-067, "Audit of the Data Integrity of the Commercial Driver's License Information System," July 30, 2009. OIG reports are available on our Web site: <http://www.oig.dot.gov>.

FMCSA TOOK ACTION TO IDENTIFY REINCARNATED PASSENGER CARRIERS BUT HAS NOT IMPLEMENTED OTHER RECENT NTSB RECOMMENDATIONS

In 2009, NTSB made 10 recommendations to address weaknesses in FMCSA's oversight of passenger carriers. Passenger carrier oversight and safety provisions are also included in legislative proposals, such as the Motorcoach Enhanced Safety Act of 2011. While FMCSA is making progress in addressing congressional and NTSB passenger carrier safety concerns—including developing processes to identify and shut down reincarnated carriers—more action is needed.

Our investigative work indicates that reincarnation is a problem among motor carriers. DOT OIG investigators have identified some motor carriers and brokers that have established multiple identities to engage in fraud or evade FMCSA inspection, enforcement, or penalties. For example, one motor carrier established three identities to hide an unsatisfactory FMCSA rating and to evade FMCSA enforcement action. We also have obtained criminal convictions against motor carriers who used commercial mail-receiving addresses to register with FMCSA, which can complicate FMCSA's ability to find carriers' physical locations and conduct regulatory inspections. It also impedes our ability to conduct criminal investigations.

Our audit work to date, which was initiated based on congressional interest, indicates that FMCSA has addressed NTSB's recommendation to vet passenger carriers that applied for operating authority from 2003 through 2008. FMCSA has taken action against 3 reincarnated passenger carriers and has identified approximately 450 passenger carrier applicants who needed further evaluation. FMCSA implemented a more stringent safety assurance process that new entrants must complete before receiving permanent operating authority as well as a new vetting process to identify reincarnated passenger and household goods carriers. However, FMCSA's vetting process is time-consuming and labor-intensive. Before expanding the vetting process to all new motor carrier applicants, as FMCSA plans to do, FMCSA will need to establish a risk-based approach to better target its limited resources. FMCSA faces the additional challenge of revoking the operating authority of reincarnated carriers; and to take action against these carriers, FMCSA must collect evidence to meet State-specific corporate successorship rules.⁴ In addition, FMCSA has expressed concern that it does not have specific authority to shut down carriers that fail to disclose adverse safety records or relationships with former carriers.

⁴ Corporate successorship is the transferability of corporate liability from one entity to another.

FMCSA also initiated or finalized rulemakings to implement priority action items in its November 2009 *Motorcoach Safety Action Plan*—including updating its safety fitness rating methodology,⁵ requiring carriers to have electronic on-board recorders, and limiting the use of wireless communication devices while driving. FMCSA plans to address NTSB's recommendation to establish passenger carrier leasing requirements later this year. Because FMCSA has a history of taking several years to complete rulemakings, particularly those that involve addressing concerns raised by numerous stakeholders, concerted action will be needed to complete the rulemaking process in a timely manner.

FMCSA does not plan to implement several NTSB recommendations, including one that calls for the Agency to assist the National Highway Traffic Safety Administration (NHTSA) in developing a database to identify motorcoaches that do not comply with Federal vehicle manufacturing standards. Specifically, NTSB recommended that FMCSA establish the processes, training, and data sources needed to assess compliance with NHTSA's Federal Motor Vehicle Safety Standards (FMVSS), track noncompliant passenger carriers, and put them out of service. FMCSA does not believe these actions will result in a discernable safety benefit. Instead, FMCSA proposes to continue safety enforcement through its commercial vehicle inspection program and NHTSA's vehicle importation program. We are assessing FMCSA's rationale for rejecting NTSB's recommendations.

FMCSA's efforts to address the oversight weaknesses NTSB identified also are consistent with provisions in proposed motorcoach safety legislation.⁶ Both the Senate and House of Representatives introduced legislation that would:

- require pre-authorization safety audits before approving operating authority,
- allow reincarnated carriers' operating authority to be revoked,
- assign safety ratings to all passenger carriers,
- revise the safety fitness rating methodology, and
- establish minimum curriculum requirements for bus driver training.

These authorities could enhance the application and oversight processes for passenger carriers and drivers.

⁵ The Safety Fitness Rating methodology uses factors prescribed in 49 C.F.R. §385.7 to calculate the safety rating for a carrier.

⁶ Motorcoach Enhanced Safety Act of 2011, S.453 and H.R. 873, 112th Cong., 1st Sess. (2011).

AUDIT AND INVESTIGATIVE ISSUES REGARDING HOUSEHOLD GOODS MOVEMENT, CROSS-BORDER TRUCKING, AND FMCSA ACQUISITION AND CONTRACT MANAGEMENT

FMCSA faces significant challenges in protecting the traveling public and consumers. Fraud among household goods carriers, evaluation and implementation of cross-border trucking pilot program policies, and use of acquisition and contracting tools to ensure effective contractor-supported safety programs are three areas OIG continues to focus on. Congress continues to express interest in halting household goods fraud, evaluating cross-border trucking, and improving FMCSA oversight.

Rogue Household Goods Carriers Remain a Concern

Criminal activity among household goods carriers has been a longstanding concern of the committee, the Department, and OIG. Our investigations have targeted and continue to target household goods carriers that defraud consumers by engaging in extortion, conspiracy, wire fraud, mail fraud, money laundering, and falsification of bills of lading and shipment weight documents.⁷

To defraud consumers, rogue household goods carriers have established a pattern of holding customer goods hostage while demanding significantly larger sums of money than originally quoted. In one recent example, a former general manager and a former foreman of a household goods moving company based in Brooklyn, New York, participated in a scheme where they provided customers with low-ball estimates, only to increase the cost of the move—in some cases doubling or tripling—after the customers' property was loaded on the moving truck. Until customers agreed to pay the artificially inflated rates, the company would not release the property. The general manager and foreman were sentenced for their roles in a scheme to fraudulently inflate the cost of moving customers' property.

Congress Has Required Reviews of Cross-Border Trucking Issues

Since 2001, we have issued 11 audit reports and provided testimony to the committee and others on FMCSA's actions to ensure the safety of Mexican commercial vehicles and drivers as they operate within the commercial border zones⁸ and travel throughout the United States under the cross-border trucking provisions of the North American Free Trade Agreement (NAFTA). Legislation signed into law in 2001⁹ requires the OIG to verify and regularly assess whether FMCSA is meeting safety requirements associated

⁷ Our household goods criminal investigations are often conducted jointly with other law enforcement and with the assistance of FMCSA. In some cases, OIG and other law enforcement agents pose as consumers to catch perpetrators in the act.

⁸ Commercial zones generally extend from 3 miles to 25 miles north of United States border municipalities in California, New Mexico, and Texas (or 75 miles in Arizona).

⁹ Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 107-87, Title I, § 350(a) (2001).

with the NAFTA cross-border trucking provisions. These requirements include establishing inspection facilities at the border, hiring and training staff to conduct inspections, and implementing systems for monitoring Mexican carriers and commercial drivers operating in the United States. These monitoring systems must include databases for checking commercial licenses of Mexican drivers operating in the United States.

Our last NAFTA audit report, issued in August 2009, identified an issue with States inconsistently reporting traffic convictions incurred by Mexican CDL holders to the database maintained by FMCSA because Federal law does not require States to report these convictions.¹⁰ Any conviction information that is delayed or not reported could result in Mexican CDL holders continuing to drive in the United States after incurring a disqualifying traffic offense. We recommended that FMCSA address whether changes to legislation, regulations, or the Mexican Conviction Database were needed to ensure consistent reporting of convictions of Mexican drivers.

Our recent work has focused on assessing FMCSA's efforts to test plans for granting authority to Mexico-domiciled carriers under a pilot program. The first pilot program, initiated in 2007, ended in March 2009, based on a provision in the Omnibus Appropriations Act of 2009. On July 8, 2011, FMCSA published a Federal Register notice detailing a new pilot program authorizing Mexico-domiciled motor carriers to transport cargo throughout the United States under the NAFTA cross-border trucking provisions.¹¹ Before a pilot program can be initiated, the OIG is required by law to verify FMCSA's compliance with the requirements established in 2001.¹²

Our verification efforts are now underway and, as part of the audit, we have observed truck inspections at border crossings in El Paso, Texas; Laredo, Texas; and Otay Mesa, California. We also are assessing FMCSA's planned guidance, training, and oversight to ensure that Mexico-domiciled carriers participating in the pilot comply with U.S. laws and FMCSA safety regulations. After we complete our report, the Secretary is required to submit a report to Congress detailing the actions the Department is taking to address each of the issues raised. If the Secretary elects to grant authority to Mexican companies under the pilot program, after his report to Congress, we are required to monitor and review the pilot program's implementation and submit interim and final reports to the Secretary and Congress.

¹⁰ OIG Report Number MH-2009-068, "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," August 17, 2009.

¹¹ Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions, Docket No. FMCSA-2011-0097, 76 Fed. Reg. 40420 (July 8, 2011).

¹² U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Act, 2007, Pub. L. No. 110-28, § 6901.

FMCSA Acquisition and Contract Management Weaknesses Undermine Opportunities to Enhance Safety Oversight

Efforts to improve oversight of U.S. motor carrier operators depend in part on the strength of FMCSA's acquisition and contract management processes. At the request of the former FMCSA Administrator, we conducted an audit of the Agency's acquisition and contract management function. In August 2010, we reported that weaknesses in FMCSA's acquisition planning and contract administration and oversight can create certain safety as well as financial risks.¹³ For example, FMCSA awarded a \$7 million contract in 2008 for professional services to support its Motor Carrier Safety Assistance Program—a major safety program to reduce the incidence and severity of commercial motor vehicle crashes—to the one contractor that submitted a bid. Solicitation for this contract was 5 days. Had more time been allowed, competition may have increased, putting FMCSA in a better position to select the best value contract.

We found that FMCSA's acquisition planning—at both an Agencywide and individual contract level—is insufficient. For example, DOT policy requires detailed acquisition plans when awarding contracts in excess of \$2 million. However, for 73 percent of the contract universe dollars we reviewed, such plans were not developed. These contracts had a total value of \$150 million. FMCSA's lack of planning contributed to the significant amount of contract dollars it obligated in the last month of fiscal year 2008—44 percent of its obligations were awarded in September.

Poor contract administration and oversight practices further undermine the integrity of FMCSA's day-to-day procurement operations and, ultimately, its efforts to ensure Federal dollars are appropriately spent. For all 27 contracts we reviewed, we identified files with missing or erroneous documentation, or contracts signed by contracting officers after the contract's effective date—contractors began performing work on 4 of these contracts before they were legally executed. Oversight of FMCSA's contracts was similarly lax. For 79 percent of the contract universe dollars we reviewed, FMCSA did not develop a surveillance plan or document completed contractor performance reviews. These contracts were valued at \$162 million.

Weaknesses in FMCSA's organizational alignment, human capital, and acquisition data contribute to the poor contracting practices we found. Although FMCSA relies on its acquisition office to award mission-critical contracts—such as those for reviewing States' CDL compliance operational practices—it has marginalized this office. FMCSA's program offices tend to view the Agency's acquisition staff as an administrative support function, rather than strategic partners to help fulfill their mission needs. At the same

¹³ OIG Report Number ZA-2010-093, "Federal Motor Carrier Safety Administration Lacks Core Elements for a Successful Acquisition Function," August 24, 2010.

time, FMCSA has not determined the appropriate size and skills for its acquisition workforce to be successful. FMCSA's acquisition data, used to help manage overall contract spending, is unreliable and incomplete. For example, FMCSA was unable to identify the contract universe it is responsible for managing, and also lacks controls to ensure its procurement data are reliable.

In response to recommendations we made in August 2010, FMCSA has taken several actions to improve the integrity of its procurement operations, such as issuing new policies and procedures on acquisition planning, quality assurance reviews, and training and certification requirements for oversight officials. We will continue to monitor FMCSA's planned actions to address remaining recommendations, all of which have completion dates in 2011 and 2012:

- Develop policies that clearly identify roles and responsibilities and documentation requirements for market research, independent government cost estimates, legal reviews, and contract type selection and justification (September 2011).
- Revise FMCSA Order 4200.2 to require the use of a systematic monitoring/contract administration plan (October 2011).
- Revise FMCSA Order 4200.2 to require the use of a risk-based approach for monitoring contracts to identify those warranting additional oversight (October 2011).
- Develop and implement verification procedures to ensure data in the Federal Procurement Data System-Next Generation (FPDS-NG) and PRISM are current, accurate, and complete (December 2011).
- Implement strategies identified in FMCSA's April 2009 strategic acquisition workforce succession plan to resolve identified competency gaps (December 2011).
- Complete a contract workload analysis and use it as a basis to perform a workforce analysis (October 2012).

CONCLUSION

FMCSA's actions to date reflect its commitment to remove motor carriers and drivers who do not comply with Federal safety regulations, and to prevent fraudulent behavior. However, following through to fully implement these initiatives is critical to FMCSA fulfilling its primary mission of reducing crashes, injuries, and fatalities involving large trucks and buses. Targeted congressional action could assist FMCSA by clarifying its authority in key areas and strengthening its ability to effectively oversee this important industry. We continue to evaluate FMCSA's efforts to promote motor carrier safety, minimize fraud and protect consumers, and ensure capacity to efficiently and effectively obtain contractor support.