

**Calendar No. 419**

111TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
111-202 }

MOTORCOACH ENHANCED SAFETY ACT OF  
2009

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 554



JUNE 8, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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### MOTORCOACH ENHANCED SAFETY ACT OF 2009

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

### REPORT

[To accompany S. 554]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 554) to improve the safety of motorcoaches, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

S. 554, the Motorcoach Enhanced Safety Act of 2009, is a bill to improve the safety of commercial over-the-road motorcoach operations by addressing the predominant factors impacting safety: the condition of the vehicle, the qualifications and physical condition of the driver, and the safety practices of the motorcoach company. To accomplish its objectives, the bill would require the installation of enhanced safety devices, including safety belts and electronic on-board recorders (EOBRs); raise standards for driver training and testing; establish additional requirements for new motorcoach operators; increase oversight of existing motorcoach operators; and require the Federal Motor Carrier Safety Administration (FMCSA) to issue a regulation on the use of cell phones and other distracting devices by motorcoach operators.

#### BACKGROUND AND NEEDS

A motorcoach is a bus designed for intercity transportation of passengers and has an elevated deck located over a baggage com-

partment. According to the American Bus Association's Motorcoach Census, 3,400 companies operated 33,540 motorcoaches in 2007.<sup>1</sup>

The motorcoach industry provided about 750 million passenger trips over 1.9 billion miles in 2007. Slightly over half of all mileage consisted of charter and tour buses, and about one-quarter consisted of scheduled services (e.g. Greyhound). The balance involved commuter motorcoach service, special operations, and airport shuttles.

Over the past 10 years, motorcoach crashes have resulted in an average of only 19 motorcoach occupant fatalities per year. However, over the past five years, a number of serious accidents resulting in multiple fatalities has called into question both the safety of motorcoach vehicles and the safety of motorcoach companies and their drivers. Among the most serious accidents have been the following:

- Williams, CA: Nine passengers were killed and 34 injured when the driver of a charter bus bound for a casino in rural Northern California lost control of the vehicle. The motorcoach veered into the oncoming lane of traffic and rolled over, ejecting a number of passengers. The driver did not have a commercial driver's license (CDL) endorsement to transport passengers and had a history of moving violations and substance abuse. According to news reports, the bus had an invalid license and invalid registration serial numbers. (October 5, 2008)

- Sherman, TX: An improperly inflated tire on the right steer axle burst, causing a motorcoach carrying 55 passengers to run off a bridge and roll over, killing 17 passengers and injuring all of the other passengers and the bus driver. The motorcoach was transporting members of a Vietnamese-American church group from Houston, TX, to Carthage, MO. During the accident investigation, the motorcoach company was found to be related to another operator that had been taken out of service for failure to address an unsatisfactory safety rating. Additionally, the right steer axle, in violation of Federal law, was equipped with a retread tire, and the driver tested positive for alcohol and cocaine. (August 8, 2008)

- Mexican Hat, UT: A charter bus carrying 52 passengers to Phoenix, AZ, after a ski trip in Telluride, CO, ran off the road and rolled 360 degrees, landing on its wheels. During the rollover, the roof of the bus separated from the body. Fifty of the 53 occupants were ejected during the rollover, killing nine passengers and injuring 43 passengers and the bus driver. The cause of the accident was deemed to be driver fatigue. (January 6, 2008)

- Atlanta, GA: A motorcoach carrying 33 members of the Bluffton University baseball team from Toledo, OH, to Sarasota, FL, overrode an elevated exit ramp and fell 19 feet onto the southbound lanes of Interstate 75, killing the driver, his wife, and five passengers and seriously injuring three others. According to the National Transportation Safety Board

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<sup>1</sup>Nathan Associates Inc., *Motorcoach Survey 2008*, developed for the American Bus Association, December 18, 2008. Statistics include operations in the United States and Canada; Canadian operators comprise less than 10% of all motorcoach operators.

(NTSB), the driver mistook the left-lane exit ramp for the through HOV (high occupancy vehicle) lane. The NTSB also noted that the driver was not properly rested. (March 2, 2007)

- Wilmer, TX: A fire caused by an overheated wheel resulted in the deaths of 23 and injuring two of the motorcoach's 44 passengers. The motorcoach was evacuating patients and staff from a Houston assisted living center in advance of Hurricane Rita. Many of the passengers were not ambulatory, preventing them from exiting the bus. The accident was caused by failure to properly lubricate the wheel well. In its investigation, the NTSB also found that the driver did not have a valid CDL, did not have a medical certificate, could not speak English, and was in violation of hours of service regulations. (September 23, 2005)

Jurisdiction over motorcoach safety is shared between the National Highway Traffic Safety Administration (NHTSA) and the FMCSA. NHTSA has responsibility for issuing and enforcing Federal Motor Vehicle Safety Standards (FMVSSs) to which manufacturers of motor vehicles and equipment items must conform and certify compliance. FMVSSs fall into two primary categories: crash avoidance (e.g., brake systems, hood latch systems, tires) and crashworthiness (e.g., occupant protection, seat belt assemblies, and roof crush resistance). Motorcoaches are exempt from most crashworthiness standards.

FMCSA's primary mission is to prevent commercial motor vehicle-related crashes, fatalities, and injuries and to promote the safety of trucks and buses through oversight of truck and bus companies, commercial drivers, and commercial vehicles. Among other responsibilities, FMCSA manages the Motor Carrier Safety Assistance Program, which provides grants to states for enforcing commercial motor vehicle (CMV) and bus safety regulations, primarily through roadside inspections and in-depth safety compliance reviews (CRs). In 2008, the Agency completed 1,399 motorcoach CRs, up from 457 in Fiscal Year (FY) 2005, and nearly 150,000 motorcoach roadside inspections, up from 56,000 inspections in FY 2005.

FMCSA also develops, maintains, and enforces Federal Motor Carrier Safety Regulations (FMCSRs) that promote carrier safety, industry productivity, and new technologies. FMCSRs include rules to ensure that the motorcoach is in proper working condition and is systematically maintained; that the driver is physically qualified and licensed; and that the driver complies with the Agency's hours-of-service regulations.

In addition to the roles of NHTSA and FMCSA, the NTSB investigates serious motorcoach accidents, determines their probable causes, and issues safety recommendations to various entities, including the U.S. Department of Transportation (DOT) and its agencies, States, and the motorcoach industry. There are currently 79 NTSB open safety recommendations for motorcoach safety (many of which are addressed by the bill). Several are on the "most wanted" list, including prohibiting the use of cellular phones by motorcoach drivers except in emergencies; requiring EOBRs for interstate operators; redesigning motorcoach window emergency exits so that they can be easily opened; issuing standards for stronger bus roofs; devising new standards to protect motorcoach passengers from being

ejected in an accident; and improving medical oversight of commercial drivers.

In reaction to criticism in April 2009 from the NTSB about NHTSA's slowness to address critical motorcoach safety issues following the Mexican Hat accident, DOT Secretary Ray LaHood ordered a full departmental review of motorcoach safety. The DOT's resulting Motorcoach Safety Action Plan, issued November 16, 2009, is aimed at addressing the issues that contribute to the majority of motorcoach crashes: driver fatigue, vehicle rollover, occupant ejection, and operator maintenance issues. The safety plan establishes the following priority action items:

- Initiate rulemakings to (1) require EOBRs on all motorcoaches to better monitor drivers' duty hours and manage fatigue, (2) prohibit use of cellular telephones and other distracting devices by motorcoach drivers, and (3) require the installation of safety belts on motorcoaches to improve occupant protection;
- Develop roof crush performance requirements to enhance structural integrity, and performance requirements for stability control systems on motorcoaches to reduce rollover events;
- Enhance oversight of carriers attempting to evade sanctions and of other unsafe motorcoach companies; and
- Establish minimum knowledge requirements for "new entrants" applying for authority to transport passengers.

While the safety plan is a step in the right direction, legislation is needed to make statutory changes to improve motorcoach safety; to address issues not covered by the plan or to address them more thoroughly; and to establish firm deadlines for the implementation of new technologies and operating rules for FMCSA and NHTSA. Further, the Committee is concerned about the lack of progress being made by DOT in implementing the Motorcoach Safety Plan. Even though the plan was issued six months ago, FMCSA and NHTSA are falling behind on a number of important initiatives, including a delay in issuing a Notice of Proposed Rulemaking to require safety belts on motorcoaches.

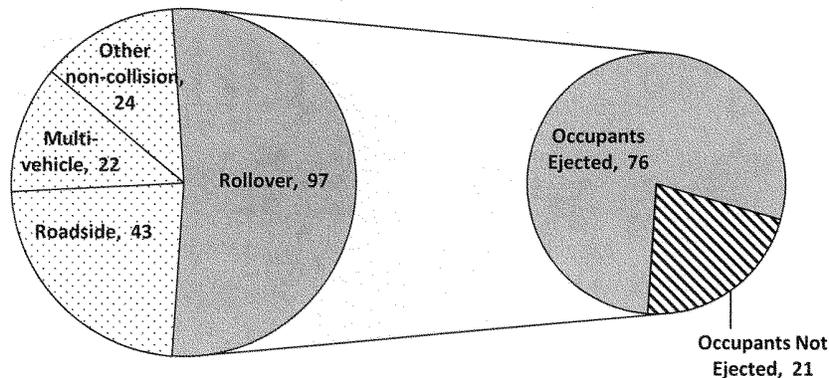
#### VEHICLE-RELATED SAFETY ISSUES

According to Fatality Analysis Reporting System (FARS) data published by DOT, approximately half of all motorcoach fatalities over the past 10 years have occurred as the result of rollovers, and 70% of the individuals killed in rollover accidents were ejected from the motorcoach.<sup>2</sup>

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<sup>2</sup>U.S. Department of Transportation, *Motorcoach Safety Action Plan*, November 2009, p. 13.

**Motorcoach Fatalities by Most Harmful Event**  
(FARS 1999-2008) (54 crashes; 186 fatalities)



Under chapter 301 of title 49, United States Code, NHTSA is required to issue minimum FMVSSs to which manufacturers of motor vehicles and motor vehicle equipment must conform and certify compliance. FMVSSs are intended to protect the public against an unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles, and against an unreasonable risk of death or injury in the event of a crash. There are currently more than 60 FMVSSs, including standards for safety belt assemblies, school bus crash protection, brake systems, and other vehicle systems and components. Of the total FMVSSs, 22 relate to crashworthiness standards. Today, only two of NHTSA's 22 crashworthiness standards apply to motorcoaches: FMVSS 217, which establishes minimum requirements for motorcoach emergency exits and window retention and release, and FMVSS 302, which establishes standards for the flammability of interior materials.<sup>3</sup>

Enhanced protection of motorcoach passengers has been on the NTSB's "most wanted" list since 2000. Specifically, NTSB has called upon NHTSA to redesign motorcoach window emergency exits so they can be easily opened; issue standards for stronger bus roofs and require them in new motorcoaches; and devise new standards to protect motorcoach passengers from being thrown out of their seats or ejected when a bus sustains an impact or rolls over.<sup>4</sup>

Today, only the driver's seat on a motorcoach must be equipped with a safety belt. For many years, NHTSA believed that safety belts were not needed for motorcoach passengers because the space they occupy is adequately "compartmentalized" by other seats and the sides of the bus to provide adequate protection in the event of a crash. Other countries have not shared this view. In 1994, Australia mandated lap and shoulder belts on motorcoaches, and in 1998, a lap belt or lap/shoulder belt was mandated in European Union members. By 2007, NHTSA had concluded that "[i]ninstalling

<sup>3</sup> FMVSS 208, "Occupant crash protection," FMVSS 209, "Seat belt assemblies," and FMVSS 210, "Seat belt assembly anchorages," apply to the driver's seat only.

<sup>4</sup> National Transportation Safety Board, *NTSB Most Wanted List, 2009*.

seat belts would be the most direct method of retaining passengers within the seating compartment,”<sup>5</sup> and as part of the new DOT motorcoach safety plan, the Agency committed to issuing a Notice of Proposed Rulemaking to require safety belts on motorcoaches in the first quarter of 2010. However, publication of a proposed rule has, as of this writing, been pushed back to the third quarter of 2010.

Roof strength impacts the amount of survival space in the event of a crash and may reduce the effectiveness of the vehicle’s windows in preventing ejection. In 2008, NHTSA performed a crash test on two motorcoaches to assess the vehicles’ roof strength in comparison to NHTSA’s standard for school buses and the European standard. Both buses, which were tipped over from a standing position, failed to meet either standard. NTSB has called on NHTSA to develop performance standards for motorcoach roof strength that “provide maximum survival space for all seating positions.”

Advanced window glazing, by holding shattered windows together, can reduce injuries and prevent ejection in an accident. In 2003, NHTSA and Transport Canada initiated a joint research program focusing on advanced glazing and window retention for motorcoaches. NHTSA believes additional research is needed, and that the benefits of advanced glazing depend upon improvements in roof strength and the structural integrity of motorcoach windows.

NHTSA is studying the use of electronic stability control (ESC) systems to prevent motorcoaches from rolling over. After completing these studies, NHTSA will determine whether to require ESC on motorcoaches. In 2007, NHTSA mandated ESC on passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight of 10,000 pounds or less.

Another major area of concern with respect to motorcoaches is fire safety. In the past 10 years, 24 occupants have died as a result of fires, 23 of whom were killed in the Wilmer, TX, accident in 2005. Currently, the only fire safety requirement is FMVSS No. 302, which sets flammability standards for interior materials. A recent study of motorcoach fires by the Volpe National Transportation Systems Center found that the ignition point for 36% of motorcoach fires is either a tire or wheel hub/bearing. As mentioned earlier, the Wilmer, TX, accident originated in a wheel well that had not been properly lubricated.

In conjunction with the National Institutes for Standards and Technology, NHTSA is analyzing the feasibility of requiring more fire resistant exterior components as well as ways to prevent fire and smoke inhalation injuries if a fire occurs. However, the Committee believes a comprehensive assessment of fire safety is needed, followed by issuance of new performance requirements based on the results of that assessment.

The legislation also would address vehicle inspections. Today, CMVs, including motorcoaches, are required to be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State inspection program determined by the

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<sup>5</sup>National Highway Traffic Safety Administration, *NHTSA’s Approach to Motorcycle Safety*, August 2007.

Federal Highway Administration (FHWA) to be comparable to, or as effective as, the Federal standards. If a State does not have a program, the motor carrier may self-inspect and certify that its vehicles comply with annual inspection requirements, provided the inspector is qualified and certified. Less than half of the States (23 States and the District of Columbia) have inspection programs approved by FMCSA as comparable to Federal inspection standards.

The NTSB found that poor vehicle maintenance was the probable cause of the Wilmer, TX, accident. The wheel well in the third axle on the right side of the motorcoach was not properly lubricated, causing the wheel to overheat and ignite a fire. In addition, the vehicle had not been inspected or properly registered. To avoid being stopped by the police, the driver attached a valid license plate from another vehicle. The Wilmer, TX, accident also exemplifies these vehicle inspection issues.

#### CARRIER-RELATED SAFETY ISSUES

As reported, S. 554 would address four significant safety problems associated with motorcoach companies: new entrants, “chameleon” carriers, safety fitness ratings, and bus rental/leasing companies.

A new entrant program was created by the Motor Carrier Safety Improvement Act of 1999 (MCSIA, P.L. 106–159), following a study conducted by the Volpe National Transportation Systems Center finding that the rate of critical violations of safety regulations was 206.3 per 1,000 drivers for new entrants compared to 11.8 for experienced carriers. The current new entrant program requires new truck and bus operators to undergo a safety audit within their first 18 months of operation, but does not require any demonstration of knowledge of Federal requirements before a carrier begins operating. MCSIA directed DOT to consider establishing a proficiency exam to ensure new operators understand applicable safety regulations. Instead, FMCSA created a form by which a new entrant could self-certify that it has a system in place to ensure compliance with safety regulations.

The NTSB’s investigation of the Sherman, TX, bus crash revealed that the motorcoach operator, Iguala BusMex, was a “chameleon” or reincarnated carrier. Its predecessor, Angel Tours, had been taken out of service on June 23, 2008, after the company failed to submit a plan of action to address a compliance review in which the carrier received an unsatisfactory rating. Iguala BusMex filed for operating authority with FMCSA on July 27, 2008. At the time of the Sherman accident, on August 8, 2008, Iguala BusMex’s application for operating authority was still pending.

Following the Sherman, TX, crash, the Government Accountability Office (GAO) analyzed FMCSA motorcoach data for fiscal years 2007 and 2008, and identified 20 motorcoach companies that likely reincarnated from out-of-service carriers.<sup>6</sup> These companies represented about 9% of the approximately 220 motorcoach carriers FMCSA placed out of service during the two year period. FMCSA has since instituted a process for vetting new entrants to ensure

<sup>6</sup>U.S. Government Accountability Office, *Motor Carrier Safety: Reincarnating Commercial Vehicle Companies Pose Safety Threat to Motoring Public; Federal Safety Agency Has Initiated Efforts to Prevent Future Occurrences*. July 2009, GAO–09–924.

that the carrier is not a chameleon carrier. However, technical changes are needed to allow FMCSA to revoke the operating authority of reincarnated carriers already in operation, and to make motorcoach companies responsible for reporting prior relationships with other companies.

FMCSA is required to determine the safety fitness of CMVs, including motorcoaches. Safety fitness determinations are currently tied to CRs, which are labor intensive and cover only a fraction of all motor carrier operators (although coverage has been significantly greater in the past few years for motorcoach companies). FMCSA is in the implementation phase of testing a new approach to safety fitness called Comprehensive Safety Analysis 2010 (CSA 2010). The Agency's new program will rate carriers on seven behavioral categories, including unsafe and fatigued driving, driver fitness, vehicle maintenance, and crash involvement, based on safety data obtained in roadside inspections as well as CRs. All carriers will receive safety ratings, and their ratings will be updated more frequently. Many motorcoach companies, however, still do not have a safety rating, and there is no guarantee that CSA 2010 will ensure that the safety ratings of all companies are updated on a regular basis.

In discussions with FMCSA about S. 554, the Agency noted that it has encountered large motorcoach rental companies that perform operations similar to bus charter companies. These rental operations may provide rental customers—often colleges, church groups, and similar organizations—with names and contact information of drivers who are purportedly independent of the company. The customer often assumes that the rental company is responsible for safety matters. Under current law, however, the rental customer is actually responsible for vehicle safety as a private motor carrier of passengers, including the safe operation of the vehicle, driver qualifications, and other requirements, which has led to non-compliance with Federal requirements.

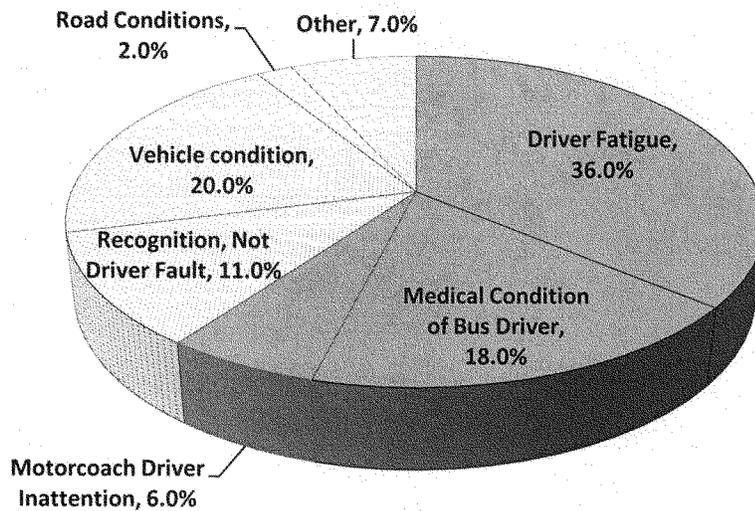
#### DRIVER-RELATED SAFETY ISSUES

Between June 1998 and January 2008, the NTSB investigated 16 fatal motorcoach accidents, concluding that 60% of the fatalities were the result of accidents caused by problems related to the driver. 36% of fatalities occurred in crashes in which the driver was fatigued, and 18% involved the medical condition of the driver.<sup>7</sup>

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<sup>7</sup>U.S. Department of Transportation, p. 12.

## Root Cause of NTSB-Investigated Motorcoach Fatalities



FMCSA is responsible for regulating and enforcing the maximum hours of service truck and motorcoach drivers may be behind the wheel and on duty. For motorcoaches, the hours-of-service regulations provide that an operator may drive a maximum of 10 hours and be on duty for 15 hours, following eight consecutive hours off duty. In addition to driver fatigue being the single largest root cause of motorcoach fatalities, improper or false records of duty status are currently the most frequent violations found by FMCSA in conducting motorcoach CRs, accounting for 16% of all violations. To address the problem, the Motorcoach Safety Plan calls for FMCSA to issue a Notice of Proposed Rulemaking in the third quarter of 2010 to require the installation of EOBRs on all motorcoaches, as well as a broader application of EOBRs to motor carriers. The Committee is disappointed that the schedule for issuing the proposed rule has slipped to the fourth quarter of 2010.

For more than 20 years, Congress has pressed for the development of driver training and testing standards for commercial drivers. In 1986, the Commercial Motor Vehicle Safety Act (P.L. 99-570) created the CDL program and directed FMCSA's predecessor agency, FHWA, to develop minimum Federal standards the States must meet when testing and licensing CMV drivers. In 1991, the Intermodal Surface Transportation Efficiency Act (ISTEA, P.L. 102-240) directed DOT to initiate a rulemaking on the need to require training of all entry-level commercial drivers. FMCSA initiated the rulemaking in 1993 and issued a final rule in 2004. The rule was challenged in court as failing to address key safety issues, including adequate "behind-the-wheel" training, and disregarding the recommendations of DOT's own comprehensive report on driver training completed in 1995. The United States Court of Appeals, District of Columbia Circuit, agreed, concluding, "The agency, without coherent explanation, has promulgated a rule that is so at odds

with the record assembled by DOT that the action cannot stand.”<sup>8</sup> The final rule was remanded to the agency for reconsideration. On December 26, 2007, FMCSA issued a new proposed rule, which remains pending.

FMCSA is also in the process of establishing minimum standards for CDL testing and learner’s permit standards. The proposed rule, issued in April 2008, would update and strengthen the minimum knowledge and skills test standards. The Committee supports the Agency’s approach in developing minimum standards.

All drivers of CMVs in interstate commerce that have a gross vehicle weight of at least 10,001 pounds must be medically certified every two years as physically qualified to operate the vehicle. In 2005, SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, P.L. 109–59) established a new medical program to establish medical standards for commercial drivers, requirements for physical examinations of drivers, standards for medical examiners, and a national registry of medical examiners.

Distracted driving is a growing problem for all drivers, including drivers of commercial vehicles. A 2009 study conducted by the Virginia Tech Transportation Institute found that a driver of a heavy vehicle/truck text messaging while driving is 23.2 times more at risk of a crash or near crash event. Drivers texting were found to take their eyes off the wheel for an average of 4.6 seconds, equating to a driver traveling the length of a football field at 55 miles per hour. On October 27, 2009, Chairman Rockefeller, Ranking Member Hutchison, Surface Transportation Subcommittee Chairman Lautenberg, Subcommittee Ranking Member Thune, and Senators Schumer and Klobuchar introduced S. 1938, the Distracted Driving Prevention Act of 2009. The bill’s provision with respect to motorcoach companies has been incorporated in S. 554.

#### SUMMARY OF PROVISIONS

S. 554, as reported, would give occupant protection in rollover accidents the highest priority, and direct NHTSA to issue regulations within one year of enactment requiring (1) the installation of safety belts in all motorcoach seats; (2) improved roof strength and crush resistance standards; (3) the installation of advanced window glazing to prevent passenger ejection, and; (4) the installation of electronic stability control technology. In addition, to address a major source of roadside, or run-off-the-road, accidents, the bill would require the issuance of regulations within two years of enactment to upgrade tire performance standards, and to require motorcoaches to be equipped with tire pressure monitoring systems that notify the driver when tire pressure is low. The requirements would apply to all new motorcoaches manufactured more than two years following the issuance of a final rule; retrofitting of existing motorcoaches could be required by NHTSA based on an assessment of the feasibility, benefits, and costs of retrofits.

The legislation also would require NHTSA to issue regulations requiring the installation of improved firefighting equipment in motorcoaches within one year following enactment. The Committee

<sup>8</sup>*Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, 429 F. 3d 1136 (2005).

intends that this requirement be limited to improved fire extinguishers or other “off the shelf” equipment that can be installed without retrofitting of the motorcoach. Within 18 months following enactment, NHTSA would be required to evaluate flammability standards for exterior components; flammability standards for interior materials; resistance to wheel well fires; automatic fire suppression technology; and improved bus design to speed passenger evacuations in the event of an emergency. Any performance requirements called for based on the results of the research would be issued within three years following enactment. Finally, the bill would direct NHTSA to conduct research on occupant protection and collision avoidance and, within two years of the completion of each initiative, issue a regulation or standard based on its research findings.

While research and analysis on many of the above issues has been underway for some time, the Committee is concerned about the lack of progress and is therefore setting aggressive deadlines for the completion of this important work. However, the Committee wishes to proceed with regulations and standards on the basis of careful and thorough research and testing. Where the legislation provides for the issuance of performance requirements, regulations, or standards based on the results of an evaluation or research, the Committee expects NHTSA may issue strong regulations on some issues, but may conclude no action is needed on others, depending on the results of its work.

The Committee supports the existing requirement under 49 USC § 30103(b) that new equipment standards be uniform nationwide: “When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.” Motorcoach operations are predominantly interstate in nature, and a patchwork of different and potentially conflicting state regulations would be very problematic. Despite this protection, there is concern that States could adopt different requirements before NHTSA standards under section 3 of the bill become applicable. The Committee intends that the current provision for uniformity should also apply until NHTSA’s new standards become applicable.

The reported legislation would require FMCSA to complete a rulemaking within three years after enactment to consider requiring all States to conduct annual inspections of CMVs used to transport passengers. The rulemaking would include an assessment of the risks associated with inadequately maintained vehicles, and the costs and benefits of a mandatory State inspection program.

With the support of the Advocates for Highway and Auto Safety and the motorcoach industry, the bill as reported would require each new motorcoach company, as a condition of receiving operating authority, to undergo a pre-authorization safety audit (PASA). The audit would verify that the carrier has in place drug and alcohol testing, vehicle maintenance and safety management programs, and a system to comply with hours-of-service regulations. The audit would also verify that its drivers are properly licensed and that its vehicles have been properly inspected. New entrants also would be required to successfully complete a written ex-

amination developed by FMCSA. Further, the current safety audit would be required to be completed for new motorcoach company within nine months after the carrier begins operating, rather than the current 18-month timetable for a safety audit.

The Committee is aware that this will be a demanding new requirement for FMCSA. While no new authorization of appropriations is provided to fund the PASA program, the Committee intends to address the resource issue when a firm cost estimate is developed. Further, the Committee recognizes that a PASA may not be practical for other commercial transportation operations. A PASA is a realistic approach for the motorcoach industry because the universe of new entrants is relatively small, at less than 1,000 annually.

S. 554 also would give FMCSA the authority to revoke operating authority already granted to chameleon carriers. Further, new motorcoach operators would be required, as a condition of receiving operating authority, to disclose all relationships with other motor carriers over the past three years. Noncompliance with the new requirements also would be taken into consideration for purposes of assessing civil penalties.

The bill would require FMCSA to determine the safety fitness and assign a safety rating to each motorcoach operator within three years of enactment. The amendment would support the CSA 2010 initiative by directing FMCSA to establish a process for periodic review of each motorcoach operator after it has received an initial rating, with progressive intervention as needed. The Agency would be required, however, to update each carrier's fitness rating no less than every three years. S. 554 also would expand FMCSA's safety jurisdiction to include certain bus rental and leasing operations.

S. 554, in recognition of the contributions EOBRs can make to enforcement of the hours-of-service rules by automatically recording the amount of time a vehicle is driven, would direct the Agency to prescribe regulations requiring EOBRs on motorcoaches within one year after enactment. FMCSA also would be required to complete an evaluation of event data recorders, and issue regulations based on the results of its evaluation.

As reported, S. 554 supports FMCSA's ongoing efforts on driver training and testing by directing the Agency to establish minimum curricular requirements for schools that train motorcoach operators. Driver training schools would issue a certificate to the driver upon completion of the training curriculum, and the CDL applicant would be required to present the certificate to the state licensing authority as a condition of taking the CDL exam. To avoid fraud, the certificate also would be sent by the school to the state licensing authority to be compared with the document presented by the CDL applicant. Finally, the bill would direct FMCSA to determine whether it would be feasible to establish a system for certifying motorcoach driver training schools.

With respect to improved testing, the legislation would direct FMCSA to issue a final rule in its ongoing proceeding within six months after enactment. The amendment also would expand the requirement for a CDL and drug and alcohol testing to commercial vans transporting nine to 15 passengers. This requirement, how-

ever, would only apply to such vehicles operating in interstate commerce.

The legislation would require that medical examiners pass a rigorous written examination in order to be listed in the national registry, and demonstrate a willingness to comply with FMCSA reporting requirements. The amendment also would require that medical certificates be issued to both the driver and the appropriate State licensing authority. As a condition of receiving MCSAP funds, States would be required to compare the medical certificate received from the medical examiner with the certificate supplied by the driver to ensure the accuracy and validity of the certificate. Each year, FMCSA would be required to review the licensing authorities of 20 States to assess the accuracy, validity, and timeliness of physical examination reports and medical certificates submitted to the state, as well as the processing of the submissions by the licensing authority.

Finally, the bill would direct FMCSA to issue a regulation to prohibit the use of distracting electronic or wireless devices by motorcoach drivers within one year of the date of enactment.

#### LEGISLATIVE HISTORY

S. 554 was introduced by Senator Sherrod Brown and Ranking Member Hutchison on March 9, 2009, and was referred to the Senate Committee on Commerce, Science, and Transportation. Senator Boxer joined as a cosponsor on May 13, 2009. An oversight hearing on bus safety was held by the Commerce Committee's Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security on September 18, 2008. On December 17, 2009, the Committee met in open executive session and, by voice vote, ordered S. 554 reported favorable, as amended, with an amendment in the nature of a substitute.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

MAY 11, 2010.

Hon. JOHN D. ROCKEFELLER IV,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 554, the Motorcoach Enhanced Safety Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*S. 554—Motorcoach Enhanced Safety Act of 2009*

Summary: S. 554 would require two agencies within the Department of Transportation (DOT) to establish new safety standards

and regulations for most interstate buses, complete research on bus safety, and create a new training curriculum for operators of interstate buses. Based on information from DOT, CBO estimates that implementing the bill would cost \$34 million over the 2010–2015 period, assuming appropriation of the necessary amounts.

Pay-as-you-go procedures apply because enacting the legislation would affect revenues. However, CBO estimates that the expansion of civil penalties authorized by the bill would not result in a significant increase in revenues in any year.

S. 554 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on state transportation agencies, motorcoach owners, and medical examiners. CBO estimates that the costs to comply with the intergovernmental mandates would fall below the annual threshold for such mandates (\$70 million in 2010, adjusted annually for inflation). Based on information from DOT and industry sources, CBO estimates that the costs to comply with the private-sector mandates could range from tens of millions of dollars to hundreds of millions of dollars annually, depending on the enhanced safety standards that DOT would require. Thus, CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

CBO has not reviewed section 6(a) of the bill for mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce statutory rights prohibiting discrimination. CBO has determined the provisions of section 6(a) fall within that exclusion because they involve compliance with the Americans with Disabilities Act of 1990.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 554 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—						
	2010	2011	2012	2013	2014	2015	2010–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level .....	3	9	6	6	6	6	36
Estimated Outlays .....	1	7	7	7	6	6	34

Basis of estimate: For this estimate, CBO assumes that S. 554 will be enacted in fiscal year 2010 and that the amounts estimated to be necessary will be appropriated each year, including a supplemental appropriation for 2010.

*Spending subject to appropriation*

S. 554 would require the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) to establish new safety standards and regulations for most interstate buses, complete research on bus safety, and create a new training curriculum for operators of interstate busses.

Under the provisions in the bill, FMCSA would be required to provide safety checks for new motor coach carriers before the carriers were authorized to provide transportation services, assess the possibility of conducting a mandatory state inspection program for

motor coach carriers, and increase oversight of the medical exams given to operators of motor coaches. The agency also would be required to establish a safety training curriculum for operators of motor coaches. NHTSA would be required to speed up current research and regulatory proceedings concerning the safety and structural features of motorcoaches as well as conduct research into new areas, including fire safety on motorcoaches. Based on information from FMCSA and NHTSA, CBO estimates that implementing the bill would cost \$34 million over the 2010–2015 period.

*Revenues*

S. 554 would expand violations of certain safety and registration requirements that are subject to civil penalties. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as revenues and deposited in the Treasury; however, based on information from FMCSA and the level of current collections, CBO expects that any increase in revenues related to those penalties would not be significant.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 554, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON DECEMBER 17, 2009

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	0	0	0	0	0	0	0	0	0	0	0	0	0

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

*Mandates that apply to public entities only*

S. 554 would impose intergovernmental mandates, as defined in UMRA, on state transportation agencies. CBO estimates that the aggregate cost of complying with the mandates would fall below the annual threshold for intergovernmental mandates (\$70 million in 2010, adjusted annually for inflation).

Commercial Motor Vehicle Inspections. S. 554 would direct the Secretary of Transportation to consider requiring states to conduct annual inspections of commercial motor vehicles used to transport passengers. If the rulemaking proceeding were to result in a requirement that states conduct such inspections, that requirement would be a mandate as defined in UMRA.

Almost half of all states currently inspect motorcoaches, and more than two-thirds of covered vehicles are subject to those inspections. The remaining states would have to implement an inspection program in the event the Secretary issued a new rule. CBO assumes that states would conduct on-site inspections of vehicles and estimates that additional personnel, equipment, and travel expenses would total about \$10 million annually.

Driver Training Certificates. The bill would require state agencies that issue commercial drivers licenses (CDLs) to compare training certificates received from applicants and from training schools to ensure they are identical. If such certificates are not the same, states would be required to refuse to administer any tests for that applicant. States receive about 5,000 entry-level applications for CDLs annually. Given the relatively small additional effort involved in manually comparing training certificates for those applications, CBO estimates that the cost of this mandate would be small.

*Mandates that apply to private entities only*

S. 554 would impose private-sector mandates, as defined in UMRA, on motorcoach owners, and medical examiners. Based on information from DOT and industry sources, CBO estimates that the cost to comply with the mandates could range from tens of millions of dollars to hundreds of millions of dollars per year, depending on the enhanced safety standards that NHTSA would require. Thus, CBO cannot determine whether the aggregate cost of mandates in the bill would exceed the annual threshold for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

Safety Standards. The bill would direct NHTSA to establish standards for such things as safety belts, stability-enhancing technology, and the level of resistance of motorcoach roofs. The regulations would apply to all motorcoaches manufactured more than two years after the rule is made final. NHTSA also could require existing motorcoaches to comply with any of the safety standards established under the bill. According to industry sources, approximately 500 to 2,000 new motorcoaches are sold each year in the United States, and more than 33,000 motorcoaches are currently in operation. Based on information from NHTSA and industry sources about the incremental cost of potential requirements, CBO estimates that the costs to comply with the new standards could be significant. Because the types of safety requirements implemented and the number of entities affected by those requirements would be determined by future regulations, CBO cannot estimate the cost of those mandates.

Training Requirements. The bill would establish new requirements for entities that train entry-level drivers of motorcoaches. According to FMCSA, there are approximately 5,000 new motorcoach drivers per year. Based on information from FMCSA and industry sources on current industry practices and the cost of incremental changes, CBO estimates that the cost of the mandate would be small, relative to the annual threshold.

Electronic On-Board Recorders. The bill would require all motorcoaches to install electronic on-board recorders (EOBRs). According to information from industry sources and FMCSA, a minimally compliant EOBR would cost about \$30 per month to lease. Motorcarriers that violate hours-of-service rules at least 10 percent of the time are already required to install EOBRs on all of their motorcoaches by June 2012. Based on information from FMCSA on the additional number of motorcarriers that would have to comply with the requirement, and assuming motorcarriers use the min-

imum-cost lease option, the mandate would cost about \$10 million per year.

**FMCSA Registration.** S. 554 would require owners of companies that rent or lease motorcoaches to register with FMCSA. The cost of the mandate would be the amount of money spent to meet the requirements to qualify for registration. Based on information from FMCSA on the number of companies that could be affected and from industry sources on the costs of meeting the requirements for registration, CBO estimates that the cost of the mandate would total less than \$5 million per year.

**Other Mandates.** CBO estimates that the costs of several private-sector mandates imposed by the bill would be minimal. For example, the legislation would:

- Require new motorcoach carriers to undergo audits;
- Expand the number of motorcoach carriers that have to submit to safety reviews;
- Depending on the outcome of a rulemaking procedure, require motorcoach carriers to submit to annual state inspections;
- Require medical examiners, who certify the medical fitness of applicants to be commercial drivers, to file paperwork with state licensing agencies; and
- Prohibit motorcoach operators from using distracting electronic devices such as cell phones.

*Provisions excluded under UMRA*

CBO has not reviewed section 6(a) of the bill for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce statutory rights that prohibit discrimination. CBO has determined that the provisions of section 6(a) fall within that exclusion because they involve compliance with the Americans with Disabilities Act of 1990.

Estimate prepared by: Federal costs: Sarah Puro; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill's provisions, with limited exceptions, apply to the motorcoach industry, which consists of approximately 3,400 companies, employing 118,000 people in 2007, 62,000 full-time and 56,000 part-time.<sup>7</sup> The bill's requirement that passenger vans transporting 9 to 15 passengers have a CDL would affect approximately 28,000 drivers operating in interstate commerce. The bill's driver license

<sup>7</sup>Nathan Associates et al, p. IV.

testing provision would apply to all truck and bus CDL holders, a population estimated at 4.5 million.

#### ECONOMIC IMPACT

S. 554 is not expected to have an adverse impact on the U.S. economy. While certain provisions of the bill would require the installation of new safety equipment on motorcoaches, it is anticipated that these costs will be offset, at least in part, by reductions in costs associated with insurance premiums, motorcoach accidents, injuries, and fatalities.

#### PRIVACY

S. 554 would have a minimal effect on the privacy rights of individuals. While the bill would establish new requirements for the disclosure of information about a company's prior relationships with other motorcoach companies, the Committee considers this information to be in the interest of safety and should not be allowed to shield motorcoach operators from illegal behavior.

#### PAPERWORK

S. 554 would impose new requirements on "new entrant" motorcoach companies. Section 6 of the bill would require that each new entrant successfully pass a pre-authorization safety audit to ensure the carrier is ready and able to comply with Federal safety laws and regulations. The bill also would require NHTSA and FMCSA to complete a number of safety assessments and rulemakings. Section 12 of the bill would reduce paperwork for motorcoach operators by replacing handwritten logbooks for recording hours-of-service with EOBRs.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no items contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title; Table of Contents.*

This section would provide that the legislation may be cited as the Motorcoach Enhanced Safety Act of 2009. It would also provide a table of contents.

##### *Section 2. Definitions.*

This section would define terms for purposes of the legislation, including "Motorcoach," defined as an over-the-road bus characterized by an elevated passenger deck located over a baggage compartment, and "Secretary," defined as the Secretary of Transportation.

##### *Section 3. Regulations for Improved Occupant Protection and Motorcoach Crash Avoidance.*

This section would direct the Secretary, within one year of enactment, to prescribe regulations with respect to the following:

- Installation of safety belts in motorcoaches at each designated seating position;
- Roof standards for motorcoaches that improve the resistance of motorcoach roofs to deformation and intrusion;
- Advanced glazing to be installed in each motorcoach portal to prevent ejection of passengers;
- Installation of electronic stability control to reduce the number and frequency of motorcoach rollover crashes; and
- Installation of improved fire extinguishers or other readily available firefighting equipment in motorcoaches.

The section would require the Secretary, within two years of enactment, to prescribe regulations requiring motorcoaches to be equipped with direct tire pressure monitoring systems meeting performance requirements established by the Secretary. The Secretary also would be directed to upgrade performance standards for tires used on motorcoaches, including an enhanced endurance test and a new high-speed performance test.

Regulations prescribed under this section would apply to all motorcoaches manufactured more than two years after the date on which the regulation is published as a final rule. The section would allow the Secretary to require the retrofitting of existing motorcoaches based on an assessment of the feasibility, benefits, and costs of retrofitting motorcoaches already in operation.

*Section 4. Standards for Improved Fire Safety.*

This section would require the Secretary, within 18 months of enactment, to conduct the following:

- A study of the feasibility of establishing flammability standards for motorcoach exterior components;
- A review of Federal motor vehicle safety standard 302 (49 CFR 571.302), relating to flammability of interior materials;
- An assessment of technologies to prevent and mitigate the propagation of wheel well fires and reduce occupant deaths and injuries from such fires;
- An evaluation of requirements for motorcoaches to be equipped with improved emergency evacuation designs and emergency interior lighting systems; and
- An evaluation of requirements for motorcoaches to be equipped with automatic fire suppression systems.

Within three years of enactment, the Secretary would be required to issue standards and regulations for improved fire safety based on the result of these evaluations.

*Section 5. Occupant Protection and Collision Avoidance Research.*

This section would require the Secretary, within two years of enactment, to complete research on the following:

- Enhanced compartmentalization safety countermeasures for motorcoaches, including enhanced seating designs, to reduce the risk of passengers being thrown from seats;
- Enhanced occupant impact protection standards; and
- Forward and lateral crash warning systems applications for motorcoaches.

Within two years of the completion of each research initiative, the Secretary would be required to issue a standard or regulation based on the results of that research.

*Section 6. New Entrants.*

This section would amend section 13902(b) of title 49, United States Code, by stating that the Secretary may only register a motorcoach operator after that person undergoes a pre-authorization safety audit that includes verification of: a drug and alcohol program consistent with the provisions of part 40 of title 49 CFR; the carrier's system of compliance with hours-of-service rules; the ability to obtain required insurance; driver qualifications, including the validity of each driver's CDL; disclosure of common ownership or other relationship with another motor carrier or applicant over the past three years; records of State inspections or Commercial Vehicle Safety Alliance Inspections for all vehicles; safety management programs, including vehicle maintenance and repair programs; and the ability to comply with the Americans with Disabilities Act and Over-The-Road Bus Transportation Accessibility Act of 2007. The pre-authorization safety audit would be required to be completed on-site no later than 90 days following the submission of an application for operating authority.

The applicant also would be required to complete an interview to review safety management controls and demonstrate proficiency in federal safety rules and regulations through the successful completion of a written examination developed by the Secretary.

The section contains a provision that would require the Secretary to perform a safety audit of motorcoach operators within nine months of when the operator begins operations.

The amendments made by this section would take effect one year following the date of enactment.

*Section 7. Reincarnated Carriers.*

This section would allow the Secretary to deny, suspend, amend, or revoke part or all of a motor carrier's authority if the Secretary finds that the applicant failed to disclose a material fact in its application for registration.

The section would prohibit two or more employers from using common ownership, common control, common management, or common familial relationship to avoid compliance or from concealing non-compliance with Federal CMV safety regulations. The Secretary would be required to deny, suspend, amend, or revoke the carrier's authority if such occurs. Noncompliance would be taken into account in assessing civil penalties.

*Section 8. Improved Oversight of Providers of Motorcoach Services and Other Motorcoach Carriers of Passengers.*

This section would require that the Secretary, within three years of enactment, determine the safety fitness of each provider of motorcoach services registered with FMCSA and assign a safety fitness rating to each such provider. The Secretary would be required to establish a process for monitoring the safety performance of motorcoach operators on a periodic basis, and to reassess each such rating no less frequently than every three years.

The section would require the Secretary, within one year of enactment, to revise FMCSA's safety fitness rating methodology, to meet the goals of the NTSB's recommendation H-99-6.

*Section 9. Motorcoach Driver Training.*

Within 18 months following enactment, the Secretary would be required to establish minimum curricular requirements for entry level drivers and drivers upgrading from one class of commercial license to another, to be adopted by schools and carriers that provide training. Such requirements would include both classroom and behind-the-wheel-training and instruction and knowledge and skills necessary to suppress motorcoach fires and safely evacuate passengers.

The section would require that each motorcoach driver seeking a passenger endorsement undergo a training program including this curriculum before taking a test for a passenger endorsement. Trainers would issue a certificate to the trainee and the appropriate state licensing authority that the driver has completed a training course meeting the minimum curriculum requirements. The State licensing authority would be required to refuse to administer the driver's test if the certificate presented by the driver does not match the certificate provided by the driver training school.

Within two years of enactment, the Secretary would be required to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee on the feasibility of establishing a certification system for driving schools that provide motor carrier and/or motorcoach driver training.

*Section 10. Improved Testing for the Commercial Driver's License Passenger Endorsement.*

Within six months of enactment, the Secretary would be required to complete its ongoing rulemaking and issue a final rule that would improve the quality and stringency of the examination for the CDL passenger-carrying endorsement. The Secretary would be required to consult with the American Association of Motor Vehicle Administrators in carrying out these requirements.

This section would require the Secretary to establish by regulation a requirement that a driver shall have a CDL passenger-carrying endorsement in order to operate a CMV and transport not less than nine and not more than 15 passengers (including a driver) in interstate commerce. Drivers of such vehicles also would be required to undergo drug and alcohol testing.

*Section 11. Improved Physical Fitness Oversight and Commercial Driver Medical Certificates.*

Within six months of enactment, the Secretary would be required to establish a national registry of medical examiners as required by section 31149(d)(1) of title 49, United States Code. In addition, this section would require the DOT's Medical Review Board to provide FMCSA with criteria for evaluating medical examiners for the national registry of medical examiners.

The section would add to existing requirements for medical examiners to require that medical examiners performing physical examinations of motor carriers pass a rigorous written test to be list-

ed in the national registry, and demonstrate a willingness to comply with DOT reporting requirements.

Within 18 months following enactment, the Secretary would be directed to require, by regulation, that each medical examiner submit the form for such examination to the appropriate State licensing agency, and that the State licensing agency verify the accuracy and validity of the information contained in the form and medical examiner's certificate by comparing it to the forms provided to the driver and the driver's employer.

The section also would require that the Secretary annually review the licensing authorities of at least 10 States to assess the accuracy, validity, and timeliness of physical examination reports and medical certificates submitted to the States. The Secretary would be required to develop an internal oversight policy for purposes of carrying out these annual reviews.

*Section 12. Safety and Enforcement Technology for Motorcoaches.*

This section would require the Secretary, within one year of enactment, to prescribe regulations requiring that all motorcoaches used by a motor carrier in interstate commerce be equipped with an EOBR that can accurately record commercial driver hours of service and allow tracking of driver and vehicle location. The regulations would become effective two years after the date on which the regulation is published as a final rule.

The section would require the Secretary to complete an evaluation of event data recorders, within one year of enactment. Within two years after completing its evaluation, the Secretary would be required to issue standards and regulations based on the results of that evaluation.

*Section 13. Safety Inspection Program for Commercial Motor Vehicles of Passengers.*

This section would require the Secretary, within three years of enactment, to complete a rulemaking proceeding to consider requiring States to conduct annual inspections of CMVs designed or used to transport passengers.

*Section 14. Distracted Driving.*

Within one year of enactment, the Secretary would be required to prescribe regulations that prohibit the use of electronic or wireless devices by motorcoach operators in circumstances in which the Secretary determines that the use of such devices interferes with the driver's safe operation of a motorcoach. Use of prohibited devices could be permitted in emergency circumstances if the Secretary determines that such use is necessary for the safety of the driver or the public.

*Section 15. Motorcoach Rental or Leasing Companies.*

The section would expand FMCSA's safety jurisdiction to include companies that rent or lease motor vehicles designed to transport more than 15 passengers, including the driver, and as part of the business operation; provide names and contact information of drivers; or hold themselves out to the public as a charter bus company.

*Section 16. Regulations.*

This section would provide that any standard or regulation prescribed or modified pursuant to this Act shall be prescribed or modified in accordance with section 553 of title 5, United States Code, which addresses the rulemaking process.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

### TITLE 49. TRANSPORTATION

#### SUBTITLE IV. INTERSTATE TRANSPORTATION

##### CHAPTER 139. REGISTRATION

#### § 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) this part and the applicable regulations of the Secretary and the Board;

(B)

(i) any safety regulations imposed by the Secretary;

(ii) the duties of employers and employees established by the Secretary under section 31135; and

(iii) the safety fitness requirements established by the Secretary under section 31144;

(C) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus; and

(D) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.—In addition to meeting the requirements of paragraph (1), the Secretary may register a person to provide transportation of household goods as a household goods motor carrier only after that person—

(A) provides evidence of participation in an arbitration program and provides a copy of the notice of the arbitration program as required by section 14708(b)(2);

(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c);

(C) provides evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

(4) WITHHOLDING.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.

(5) LIMITATION ON COMPLAINTS.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection. In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.

(b) MOTOR CARRIERS OF PASSENGERS.—

*(1) ADDITIONAL REGISTRATION REQUIREMENTS FOR PROVIDERS OR MOTORCOACH SERVICES—In addition to meeting the requirements of subsection (a)(1), the Secretary may register a person to provide motorcoach services only after that person—*

*(A) undergoes a pre-authorization safety audit, including verification, in a manner sufficient to demonstrate the ability to comply with Federal rules and regulations, of—*

*(i) a drug and alcohol testing program consistent with part 40 of title 49, Code of Federal Regulations;*

*(ii) the carrier's system of compliance with hours-of-service rules, including hours-of-service records;*

*(iii) the ability to obtain required insurance;*

*(iv) driver qualifications, including the validity of the commercial driver's license of each driver who will be operating under such authority;*

(v) disclosure of common ownership, common control, common management, common familial relationship, or other corporate relationship with another motor carrier or applicant for motor carrier authority over the past 3 years;

(vi) records of the State inspections, or of a Level I or V Commercial Vehicle Safety Alliance Inspection, for all vehicles that will be operated by the carrier;

(vii) safety management programs, including vehicle maintenance and repair programs; and

(viii) the ability to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Over-the-Road Bus Transportation Accessibility Act of 2007 (49 U.S.C. 10101 note);

(B) has been interviewed to review safety management controls and the carrier's written safety oversight policies and practices; and

(C) has demonstrated, through the successful completion of a written examination developed by the Secretary, proficiency to comply with and carry out the requirements and regulations described in subsection (a)(1).

**[(1)] (2) REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.**—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

**[(2)] (3) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.**—

(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

(i) the recipient meets the requirements of subsection (a)(1); and

(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection

(a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

[(3)] (4) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

[(4)] (5) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

[(5)] (6) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

[(6)] (7) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

[(7)] (8) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

[(8)] (9) DEFINITIONS.—In this subsection, the following definitions apply:

(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term “public recipient of governmental assistance” means—

- (i) any State,

(ii) any municipality or other political subdivision of a State,

(iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,

(iv) any Indian tribe, and

(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv), which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—

The term “private recipient of government assistance” means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or

owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the United States-Mexico border as such zones were defined on December 31, 1995; or

(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rule-making required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms “motor common carrier” and “motor contract carrier” have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.

(e) PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by

this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) **OUT-OF-SERVICE ORDERS.**—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

(2) **PERMISSION FOR OPERATIONS.**—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and providing transportation for which registration is required under this section shall maintain evidence of such registration in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section.

(f) **MODIFICATION OF CARRIER REGISTRATION.**—

(1) **IN GENERAL.**—On and after the transition termination date, the Secretary—

(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

(B) shall register applicants under this section as motor carriers; and

(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

(2) **PRE-EXISTING CERTIFICATES AND PERMITS.**—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B)) and transportation under terms and conditions meeting the requirements of section 13710(a)(1). The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

(B) any other provision of this title that was in effect before the transition termination date.

(3) **TRANSITION TERMINATION DATE DEFINED.**—In this section, the term “transition termination date” means the first day of

January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

(g) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term “motor carrier” includes foreign motor private carriers.

## TITLE 49. TRANSPORTATION

### SUBTITLE IV. INTERSTATE TRANSPORTATION

#### CHAPTER 139. REGISTRATION

#### § 13905. Effective periods of registration

(a) PERSON HOLDING ICC AUTHORITY.—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on December 31, 1995, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

(b) PERSON REGISTERED WITH SECRETARY.—

(1) IN GENERAL.—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a), shall be treated, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a.

(2) EXCLUSIVELY INTRASTATE OPERATORS.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.

(c) IN GENERAL.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

(d) SUSPENSION, AMENDMENTS, AND REVOCATIONS.—

(1) IN GENERAL.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary’s own initiative and after notice and an opportunity for a proceeding, the Secretary may (A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), or a condition of its [registration; and] *registration*; (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title; or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such [penalty.] *pen-*

*alty; and (C) deny, suspend, amend, or revoke all or part of a registration of a motor carrier following a determination by the Secretary that the motor carrier failed to disclose in its application for registration a material fact relevant to its willingness and ability to comply with—*

- (i) this part;
- (ii) an applicable regulation or order of the Secretary or the Board; or
- (iii) a condition of its registration.

Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(2) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a registration under this part for failure to pay a civil penalty as provided in paragraph (1)(B).

(e) PROCEDURE.—Except on application of the registrant, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—

(1) the Secretary has issued an order to the [registrant] *registrant, or if the Secretary determines that the registrant has failed to disclose a material fact in its application for registration in accordance with subsection (d)(1)(C), under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and*

(2) the registrant willfully does not comply with the order for a period of 30 days.

(f) EXPEDITED PROCEDURE.—

(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 or an order or regulation of the Secretary prescribed under those sections; and

(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144.

(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Without regard to subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.

## TITLE 49. TRANSPORTATION

## SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

## CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

## SUBCHAPTER I. GENERAL AUTHORITY AND STATE GRANTS

**§ 31102. Grants to States**

(a) GENERAL AUTHORITY.—Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for improving motor carrier safety and the enforcement of regulations, standards, and orders of the United States Government on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders.

(b) STATE PLAN PROCEDURES AND CONTENTS.—

(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to assume responsibility for improving motor carrier safety and to adopt and enforce regulations, standards, and orders of the Government on commercial motor vehicle safety, hazardous materials transportation safety, or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

(A) implements performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs;

(B) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

(C) contains satisfactory assurances the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

(D) contains satisfactory assurances the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

(E) provides that the total expenditure of amounts of the State and its political subdivisions (not including amounts of the Government) for commercial motor vehicle safety programs for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.

(F) provides a right of entry and inspection to carry out the plan;

(G) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

(H) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations the Secretary prescribes;

(I) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State;

(J) provides that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standard through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

(K) ensures that activities described in subsection (c)(1) of this section, if financed with grants under subsection (a) of this section, will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs described in subsection (a);

(L) ensures that the State agency will coordinate the plan, data collection, and information systems with State highway safety programs under title 23;

(M) ensures participation in SAFETYNET and other information systems by all appropriate jurisdictions receiving funding under this section;

(N) ensures that information is exchanged among the States in a timely manner;

(O) provides satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

(P) provides satisfactory assurances that the State will promote activities in support of national priorities and performance goals, including—

(i) activities aimed at removing impaired commercial motor vehicle drivers from the highways of the United States through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) activities aimed at providing an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances; and

(iii) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities;

(Q) provides that the State has established a program to ensure that—

(i) accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary; and

(ii) the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;

(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 and financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;

(S) ensures consistent, effective, and reasonable sanctions;

(T) ensures that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel;

(U) provides that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;

(V) provides that the State will enforce the registration requirements of section 13902 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under such section or to operate beyond the scope of such registration;

(W) provides that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors; **[and]**

(X) except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned **[stop.] stop**; and

*(Y) requires State licensing authorities to compare the forms they receive pursuant to section 11(c) of the Motorcoach Enhanced Safety Act of 2009 with the medical examiner's certificate required by section 391.43(g) of title 49, Code of Federal Regulations (as in effect on the day before the date of enactment of that Act), to determine the accuracy and validity of the information contained in such forms and certificates.*

(2) If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.

(3) In estimating the average level of State expenditure under paragraph (1)(E) of this subsection, the Secretary—

(A) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

(B) shall require the State to exclude Government amounts and State matching amounts used to receive Government financing under subsection (a) of this section.

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a)—

(1) for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

(2) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005; except that the State may not use more than 5 percent of the basic amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles described in this paragraph unless the Secretary determines a higher percentage will result in significant increases in commercial motor vehicle safety.

(d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

(e) ANNUAL REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate an annual report that—

(1) analyzes commercial motor vehicle safety trends among the States and documents the most effective commercial motor vehicle safety programs implemented with grants under this section; and

(2) describes the effect of activities carried out with grants made under this section on commercial motor vehicle safety.

## TITLE 49. TRANSPORTATION

## SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

## CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

## SUBCHAPTER III. SAFETY REGULATION

**§ 31132. Definitions**

In this subchapter—

(1) “commercial motor vehicle” means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) “employee” means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State.

[(3) “employer”—

[(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but

[(B) does not include the Government, a State, or a political subdivision of a State.]

(3) “employer”—

(A) means a person engaged in a business affecting interstate commerce that—

(i) owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; or

(ii) offers for rent or lease motor vehicles designed or used to transport more than 15 passengers, including the driver, and from the same location or as part of the same business provides names or contact information of drivers, or holds itself out to the public as a charter bus company; but

*(B) does not include an individual who is an employee of the United States Government, a State, or a political subdivision of a State acting in the course of that individual's employment as such an employee.*

(4) "interstate commerce" means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States.

(5) "intrastate commerce" means trade, traffic, or transportation in a State that is not interstate commerce.

(6) "medical examiner" means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.

(7) "regulation" includes a standard or order.

(8) "State" means a State of the United States, the District of Columbia, and, in sections 31136 and 31140-31142 of this title, a political subdivision of a State.

(9) "State law" includes a law enacted by a political subdivision of a State.

(10) "State regulation" includes a regulation prescribed by a political subdivision of a State.

(11) "United States" means the States of the United States and the District of Columbia.

## TITLE 49. TRANSPORTATION

### SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

#### CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

##### SUBCHAPTER III. SAFETY REGULATION

### § 31135. Duties of employers and employees

(a) IN GENERAL.—Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer's or employee's conduct.

(b) PATTERN OF NONCOMPLIANCE.—If the Secretary finds that an officer of a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, while serving as an officer of any motor carrier, the Secretary may suspend, amend, or revoke any part of the motor carrier's registration under section 13905.

(c) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall by regulation establish standards to implement subsection (b).

(d) AVOIDING COMPLIANCE.—*Two or more employers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such employers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of noncompliance, with commercial motor vehicle safety*

*regulations issued under this subchapter, chapter 315, or an order of the Secretary issued under this subchapter, chapter 315, or such regulations. If the Secretary determines that actions described in the preceding sentence have occurred, the Secretary shall deny, suspend, amend, or revoke all or part of any such employer's registration under section 13905, and shall take into account such noncompliance for purposes of determining civil penalty amount under section 521(b)(2)(D).*

**[(d)]** (e) DEFINITIONS.—In this section, the following definitions apply:

- (1) MOTOR CARRIER.—The term “motor carrier” has the meaning such term has under section 13102.
- (2) OFFICER.—The term “officer” means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

## TITLE 49. TRANSPORTATION

### SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

#### CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

##### SUBCHAPTER III. SAFETY REGULATION

### § 31144. Safety fitness of owners and operators

(a) IN GENERAL.—The Secretary shall—

(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator—

(A) in operations that affect interstate commerce within the United States; and

(B) in operations in Canada and Mexico if the owner or operator also conducts operations within the United States;

(2) periodically update such safety fitness determinations;

(3) make such final safety fitness determinations readily available to the public; and

(4) prescribe by regulation penalties for violations of this section consistent with section 521.

(b) PROCEDURE.—The Secretary shall maintain by regulation a procedure for determining the safety fitness of an owner or operator. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit.

(c) PROHIBITED TRANSPORTATION.—

(1) IN GENERAL.—Except as provided in section 521(b)(5)(A) and this subsection, an owner or operator who the Secretary determines is not fit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—With regard to owners or operators of commercial motor vehicles designed or used to transport passengers, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—With regard to owners or operators of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit. A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124.

(4) SECRETARY'S DISCRETION.—Except for owners or operators described in paragraphs (2) and (3), the Secretary may allow an owner or operator who is not fit to continue operating for an additional 60 days after the 61st day after the date of the Secretary's fitness determination, if the Secretary determines that such owner or operator is making a good faith effort to become fit.

(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.

(d) DETERMINATION OF UNFITNESS BY STATE.—If a State that receives motor carrier safety assistance program funds under section 31102 determines, by applying the standards prescribed by the Secretary under subsection (b), that an owner or operator of a commercial motor vehicle that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicle in the State, the Secretary shall prohibit the owner or operator from operating such vehicle in interstate commerce until the State determines that the owner or operator is fit.

(e) REVIEW OF FITNESS DETERMINATIONS.—

(1) IN GENERAL.—Not later than 45 days after an unfit owner or operator requests a review, the Secretary shall review such

owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport passengers requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(f) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use to provide any transportation service an owner or operator who the Secretary has determined is not fit until the Secretary determines such owner or operator is fit.

(g) SAFETY REVIEWS OF NEW OPERATORS.—

【(1) IN GENERAL.—The Secretary shall require, by regulation, each owner and each operator granted new operating authority, after the date on which section 31148(b) is first implemented, to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such authority.

【(2) ELEMENTS.—In the regulations issued pursuant to paragraph (1), the Secretary shall establish the elements of the safety review, including basic safety management controls. In establishing such elements, the Secretary shall consider their effects on small businesses and shall consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.】

(1) SAFETY REVIEW.—

(A) IN GENERAL.—*The Secretary shall require, by regulation, each owner and each operator granted new registration under section 13902 to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such registration.*

(B) PROVIDERS OF MOTORCOACH SERVICES.—*Safety reviews of owners and operators registered as providers of motorcoach services shall be conducted within the first 9 months after the owner or operator, as the case may be, begins operations under such registration.*

(2) PRE-AUTHORIZATION SAFETY AUDIT.—*The pre-authorization safety audit required by paragraph (1)(A) shall be completed on-site no later than 90 days following the submission of an application for operating authority.”*

(3) PHASE-IN OF REQUIREMENT.—The Secretary shall phase in the requirements of paragraph (1) in a manner that takes into account the availability of certified motor carrier safety auditors.

(4) NEW ENTRANT AUTHORITY.—Notwithstanding any other provision of this title, any new operating authority granted after the date on which section 31148(b) is first implemented shall be designated as new entrant authority until the safety review required by paragraph (1) is completed.

(5) NEW ENTRANT AUDITS.—

(A) GRANTS.—The Secretary may make grants to States and local governments for new entrant motor carrier audits under this subsection without requiring a matching contribution from such States and local governments.

(B) SET ASIDE.—The Secretary shall set aside from amounts made available by section 31104(a) up to \$29,000,000 per fiscal year for audits of new entrant motor carriers conducted pursuant to this paragraph.

(C) DETERMINATION.—If the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier audits, the Secretary may use the funds set aside under this paragraph to conduct audits for such States or local governments.]

(h) PERIODIC SAFETY REVIEWS OF PROVIDERS OF MOTORCOACH SERVICES.—

(1) SAFETY REVIEW.—*Not later than 3 years after the date of the enactment of the Motorcoach Enhanced Safety Act of 2009, the Secretary shall determine the safety fitness of each provider of motorcoach services registered with the Federal Motor Carrier Safety Administration and assign a safety fitness rating to each such provider.*

(2) PERIODIC REVIEW.—*The Secretary shall establish a process, by regulation, for monitoring the safety performance of each provider of motorcoach services on a regular basis following the assignment of a safety fitness rating, including progressive intervention to correct unsafe practices.*

(3) ENFORCEMENT STRIKE FORCES.—*In addition to the enhanced monitoring and enforcement actions required under paragraph (2), the Secretary may organize special enforcement strike forces targeting providers of motorcoach services, when and where the Secretary considers appropriate.*

(4) PERIODIC UPDATE OF SAFETY FITNESS RATING.—*As part of the safety review required by this subsection, the Secretary shall reassess such rating no less frequently than every 3 years.*

(5) MOTORCOACH SERVICES DEFINED.—*In this subsection, the term “provider of motorcoach services” has the meaning provided such term in section 2 of the Motorcoach Enhanced Safety Act of 2009.*

## TITLE 49. TRANSPORTATION

## SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

## CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

## SUBCHAPTER III. SAFETY REGULATION

**§ 31149. Medical program**

## (a) MEDICAL REVIEW BOARD.—

(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on (A) medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical **[research.]** *research and (B) advice and recommendations concerning the criteria to be used for evaluating medical examiners for admission to the national registry established under this section.*

(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of medical specialties relevant to the driver fitness requirements of the Federal Motor Carrier Safety Administration.

(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner who shall be an employee of the Federal Motor Carrier Safety Administration and who shall hold a position under section 3104 of title 5, United States Code, relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, United States Code, relating to pay for certain senior-level positions.

## (c) MEDICAL STANDARDS AND REQUIREMENTS.—

(1) IN GENERAL.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

## (A) establish, review, and revise—

(i) medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(ii) requirements for periodic physical examinations of such operators performed by medical examiners who have, at a minimum, self-certified that they have completed training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation;

(B) require each such operator to have a current valid medical certificate;

(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of such operators are being conducted;

[(D) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to, at a minimum, self-certify that they have completed specific training, including refresher courses, to be listed in the registry;]

*(D) develop requirements applicable to a medical examiner seeking to be listed in the national registry, including—*

*(i) specific courses and materials that must be completed to be listed in the national registry;*

*(ii) a rigorous written examination for which a passing grade must be achieved to be listed in the national registry;*

*(iii) certification (including self-certification), as appropriate, to verify that the medical examiner has completed training, including refresher courses, that the Secretary determines are necessary to be listed in the national registry; and*

*(iv) demonstration of the willingness and ability of a medical examiner to comply with any reporting requirements established by the Secretary;*

(E) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator of the Federal Motor Carrier Safety Administration, for any completed medical examination report required under section 391.43 of title 49, Code of Federal Regulations, electronically to the chief medical examiner on monthly [basis; and] *basis*;

(F) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper [certification.] *certification; and*

*(G) each year, review the licensing authorities of 10 States to assess the accuracy, validity, and timeliness of physical examination reports and medical certificates submitted by certified medical examiners to such State licensing agencies and the processing of such submissions by the licensing authorities.”.*

(2) MONITORING PERFORMANCE.—The Secretary shall investigate patterns of errors or improper certification by a medical examiner. If the Secretary finds that a medical examiner has issued a medical certificate to an operator of a commercial motor vehicle who fails to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove such medical examiner from the registry and may void the medical certificate of the applicant or holder.

(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, acting through the Federal Motor Carrier Safety Administration—

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

(2) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued under this section;

(3) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners; and

(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of operators of commercial motor vehicles.

(e) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

## TITLE 49. TRANSPORTATION

### SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

#### CHAPTER 311. COMMERCIAL MOTOR VEHICLE SAFETY

##### SUBCHAPTER III. SAFETY REGULATION

#### **§31152. Regulation of the use of distracting devices in motorcoaches**

(a) *IN GENERAL.*—No later than 1 year after the enactment of the Motorcoach Enhanced Safety Act of 2009, the Secretary of Transportation shall prescribe regulations on the use of electronic or wireless devices, including cell phones and other distracting devices, by an individual employed as the operator of a motorcoach (as defined in section 2(8) of that Act).

(b) *BASIS FOR REGULATIONS.*—The Secretary shall base the regulations required by subsection (a) on accident data analysis, the results of ongoing research, and other information, as appropriate.

(c) *PROHIBITED USE.*—The Secretary shall prohibit the use of such devices in circumstances in which the Secretary determines that their use interferes with the driver's safe operation of a motorcoach (as so defined).

(d) *PERMITTED USE.*—Under the regulations, the Secretary may permit the use of a device, the use of which is prohibited under subsection (c), if the Secretary determines that such use is necessary for the safety of the driver or the public in emergency circumstances.

## PUBLIC LAW 109–59

### **SEC. 4138. HIGH RISK CARRIER COMPLIANCE REVIEWS.**

From the funds authorized by section 31104(i) of title 49, United States Code, the Secretary shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a compliance review shall be conducted whenever a motor carrier **[is rated as category A or B for 2 consecutive months.]**

*meets the Safety Measurement System criteria for being a high risk motor carrier for 2 consecutive months.*

