



**MOTOR CARRIER FACTORS GROUP CHAIRMAN'S
FACTUAL REPORT**

Oxnard, California

HWY15MH006

(36 pages)

**NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF HIGHWAY SAFETY
WASHINGTON, D.C.**

**MOTOR CARRIER FACTORS GROUP CHAIRMAN'S
FACTUAL REPORT**

A. CRASH INFORMATION

Location: Oxnard, Ventura County, California
Vehicle #1: 2005 Ford F450 Pick-up towing a 2000 Tandem Axle Utility Trailer
Operator #1: Harvest Management LLC
Vehicle #2: Metrolink Commuter Train
Date: February 24, 2015
Time: 5:44 a.m. PST
NTSB #: **HWY15MH006**

B. MOTOR CARRIER FACTORS GROUP

Michael Fox, Motor Carrier Factors Investigator, Group Chairman
NTSB Office of Highway Safety
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FMCSA Arizona Division
San Luis Field Office

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Oxnard Police Department
Oxnard, California

C. CRASH SUMMARY

For a summary of the crash, refer to the *Crash Summary Report* in the docket for this investigation.

D. DETAILS OF THE MOTOR CARRIER FACTORS INVESTIGATION

This investigative report addresses the motor carrier history and operations of Vehicle 1 involved in this accident, a 2005 Ford F450 Pick-up truck towing a Wells Cargo tandem axle utility trailer. Both the Ford F450 Pick-up truck and the Wells Cargo utility trailer were owned by Harvest Management LLC. The driver of the Vehicle 1 however, was employed by The Growers Company Inc. This report addresses the applicability and compliance to the Federal Motor Carrier Safety Regulations (FMCSRs) with regard to both motor carrier operations. This report will also review the driver qualification process, drug and alcohol testing requirements, hours of service, and the maintenance history of Vehicle 1. Both the Federal and State oversight will also be reviewed.

1.0 Motor Carrier History and Operations

1.1 Joe L Rodriguez Trucking

The motor carrier began operations in 1950 and operated under the trade name of Joe L. Rodriguez Trucking. In the 1960's the carrier had a name change and became "The Growers Company Inc." In 2000 the Growers Company entered into a joint venture and created "Harvest Management LLC." Both carriers share the same ownership and the same principal place of business located in Somerton, Arizona.

1.2 The Growers Company

The Growers Company was the motor carrier that employed the accident driver at the time of the crash. According to the FMCSA Motor Carrier Information Management System (MCMIS) website, the carrier obtained its USDOT number 718118 on December 8, 1997.¹ The carrier is classified as an "Exempt" carrier and was never issued or requested a Motor Carrier (MC) number.² The carrier registration predates the New Entrant Program and did not receive a Safety Audit.³

The Growers Company is responsible for transporting migrant workers from the Mexican border to various farms managed by Harvest Management. The Growers Company is also responsible for managing all field labor, production and local transportation. Additionally, the

¹ The Growers Company MCS-150, see Motor Carrier Attachment 1.

² Exempt operations do not require operating authority or an MC number. Title 49 CFR 392.9(a) and 49 CFR 365 outline requirements for operating authority to transport regulated commodities in interstate commerce.

³ Section 210(a) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106-159, 113 Stat. 1748, December 9, 1999] (MCSIA), mandated that the Secretary of Transportation establish regulations to require each motor carrier owner and operator granted new operating authority registration to undergo a safety review within 18 months of starting interstate operations. [49 U.S.C. 31144(g)]. In issuing these regulations, the Secretary was required to: (1) Establish the elements of the safety review, including basic safety management controls; (2) consider their effects on small businesses; and, (3) consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses. In response to the statutory mandate in MCSIA, the FMCSA published an interim final rule titled, "New Entrant Safety Assurance Process" on May 13, 2002 (67 FR 31978), which became effective **January 1, 2003**.

company supplies field laborers, mechanics, and truck drivers. Lastly, the Growers Company provides administrative services, payroll, human resource support, safety management and overall oversight to both Harvest Management and The Growers Company.

At the time of the accident, The Growers Company consisted of the following elements:

Drivers

- 87 drivers total (seasonal)
- 71 CDL drivers
- 16 non-CDL drivers
- 1400 field workers (seasonal)

Equipment

- 29- straight truck – non CDL
- 3 – Truck-tractors
- 38 –semi-trailers
- 63- buses (to transport the farm workers)

1.3 Harvest Management LLC

According to the Federal Motor Carrier Safety Administration (FMCSA), the carrier received a USDOT number 1076796 on date December 2, 2002.⁴ The carrier is classified as an “Exempt” carrier and never received or requested a MC number. According to the MCMIS carrier profile, the carrier registration predates the New Entrant program and did not receive a New Entrant Safety Audit. According to the carrier President, the purpose of the Harvest Management is to provide management to the crops that have been contracted and to coordinate sales.

At the time of the crash the carrier consisted of the following elements:

Drivers

- 28 CDL drivers
- 19 Non-CDL drivers

Equipment

- 24 Non-CDL straight trucks
- 12 Truck tractors
- 58 Semi-trailers

⁴ Harvest Management MCS-150, see Motor Carrier Attachment 2.

1.4 Company Business Model

The carrier's business model consists of a complex structure managing agriculture, trucks, equipment, and labor. The scope of the carrier's business is to manage all aspects of crops that have been contracted in Arizona and California. This includes production from seed to market. On a daily basis, the carrier transports migrant workers from the Mexican Border to various job sites in Arizona or California. See **Figure 1** for more details.



Figure 1. A sample bus used by The Growers Company for migrant worker transport

During the harvest season, the carrier manages all the farm labor and work crews consisting of approximately 1400 workers stationed at various job sites throughout Arizona and California. In **Figure 2** for example, field workers are cutting cauliflower and placing on a conveyer belt. The cauliflower is inspected for blights or bugs and then sprayed. The cauliflower is then boxed and placed on flatbed trailers.

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Figure 2. Field workers are picking cauliflower and placing on conveyor belts.

After crops are harvested and inspected. Workers then transfer the boxes of cauliflower to the flatbed trailers. Once completed, farm tractors pull the flatbed trailers out of the fields. See **Figure 3** for further details.



Figure 3. Field workers transfer the boxed cauliflower to flatbed trailers.

The flatbed trailers of boxed cauliflower are then pulled from the fields and then taken to refrigerated warehouses. The crops are then transported throughout the US and the world. See **Figure 4** for further details.



Figure 4. Harvest Management Trucks transport boxed cauliflower to market.

All of the work stations in Arizona and California are staffed by a company mechanic. Mechanics assigned to a job site are responsible for all of the machinery involved in the field operation. This would include repairs to the tractor-trailers, straight trucks, farm tractors, conveyor belts and all related production equipment. **Figure 5** depicts a Ford F450 that was similar to the one operated by the accident driver at the time of crash. The accident driver had similar duties and responsibilities as the mechanic depicted in this photo.



Figure 5. Exemplar mechanic truck and mechanic on-call for all repairs.

1.5 Labor Agreement

At the time of the accident, Vehicle 1 which was owned by Harvest Management Company had contracted services from The Growers Company to provide maintenance services for a farming operation in Oxnard, California. According to the labor contract between Harvest Management and The Growers Company:

“Harvest Management LLC engages Contractor as an independent contractor to provide administrative and maintenance services from the date set forth. The contractor acknowledges that from time to time, Harvest Management may retain other to perform these tasks that are not subject to this agreement.” 2.2 “The contractor agrees to provide all labor, tools, and equipment necessary to repair, maintain, and inspect the vehicles and equipment as identified in Attachment 1, as amended from time to time, in compliance with all applicable rules and regulations, including but not limited to those established by the Arizona Department of Transportation and the California Public Utilities Commission, and any rules and regulations regarding licensing.”⁵

1.6 Company Hiring Process

The carrier stated that the company does not have a recruitment program, website or outside vendor to attract potential applicants. Although the business experiences seasonality, the carrier retains approximately 80 percent of its workforce year round. Vacancies for driver or mechanic positions are selected from previous employment with the company or by word of mouth. The carrier also relied on referrals from another trucking company which performed contract work for the carrier.

1.6.1 Mechanic Hiring Process

According to carrier officials, the accident driver was hired as a shop mechanic and was never classified as a driver and did not participate in the same training requirements or oversight as other company DOT classified drivers. The accident driver was hired approximately 10 years prior to the accident by a maintenance supervisor who was no longer employed by the company. Documents relating to the accident driver’s interview process or previous employment inquiries were not retained by the carrier. According to the carrier, new hiring procedures were implemented four years ago. Since then, all interviews for driver and mechanic positions were now conducted by the carrier’s Assistant Controller. The carrier’s shop manager, shop foreman and field mechanic also participate in the interview process. The carrier stated that a minimum of two or three formal interviews are conducted before a tentative job offer is made.⁶

⁵ Extension of labor Agreement, page 10, see Attachment 3.

⁶ The Grower’s Driver Handbook, see Attachment 4.

1.6.2. Minimum Driver Qualifications

At the time of the accident, the carrier had implemented minimum standards for driver positions. These standards included the following:

- Minimum of two years of verifiable driving experience with the type of vehicle being driven on the job
- An acceptable Motor Vehicle Record Grading Score, as outlined in the Motor Vehicle Policy⁷
- A valid driver's license issued in the state of current residence, appropriate for the type of vehicle to be driven.
- A clean driving record, with no recent prior convictions or citations for reckless driving, or driving under the influence of drugs/alcohol.
- A driver's ability to meet all physical health qualifications of the Federal Motor Carrier Safety Regulations (if applicable)
- A mandatory internally administered road test is required

1.6.3. Motor Vehicle Record Policy

According to carrier driver handbook, motor vehicle records (MVRs) are reviewed during the hiring process and annually thereafter. Established driver standards included: a valid driver's license in place for least 2 years; minimum age of 19 for operation for non-CDL required vehicles; minimum age of 21 for all commercial motor vehicle operators; minimum age of 23 for semi-tractor trailer operations.

For all new and existing drivers, MVRs are required to be reviewed based on the company's "Motor Vehicle Grading Criteria."⁸ Driving records must retain an "acceptable" rating as defined by the MVR Grading Criteria for continued employment in positions with driving duties.⁹ According to company policy, drivers that incur any of the violations that are classified as "major" may be excluded from driving privileges. Major violations include such infractions as: excessive speeding; driving under the influence (DUI); failure to stop/report an accident; vehicular homicide; attempting to elude a police officer; any suspension or revocation in the last 3 years; 3 or more moving violations in the last 3 years and 2 or more moving violations in the last year.

1.6.4. Motor Vehicle Record Grading Criteria

Drivers with the following violations in their MVR will be excluded from their driving privilege. Speeding – 15 mph or more over the posted speed. Any conviction in the last five

⁷ Motor Vehicle Policy, described in section 1.2.3

⁸ Motor Vehicle Grading Criteria described in section 1.2.4

⁹ The Growers Company Driver Handbook, page 5; see Attachment 4.

years, whether, DUI, DWI, BAC, controlled substances and/or open container. Failure to stop or report an accident. Racing or exhibitionism. Reckless, careless, hasty driving. Filing a false accident report. Assault, vehicular manslaughter resulting from vehicle relating to incident. Trying to avoid a police officer. Any suspensions or withdrawals in the past three years. 3 or more traffic violations in the last 3 years. 2 or more traffic violations in the past year.

2.0 Carrier Policies

The carrier had established policies that provided guidance and standardized practices for hiring, safety procedures, customer service, and quality control. Most of these policies were outlined in the company employee handbook or in other policy mandates. Non-drivers received policy and procedure updates during formal and informal training sessions throughout the calendar year.

2.1 Driver Handbook

By policy, all company classified drivers were trained and received a copy of the company's driver handbook. The driver handbook provided policies and procedures concerning the operations of the company. The handbook highlighted the carrier's carrier mission statement which states: "Our statements reflect our commitment to safety:

- The safety and well-being of all company employees is important for both humanitarian and economic reasons
- Safety will always take precedence over expediency or economic considerations
- Prevention of accidents controls dollar costs"¹⁰

According to the driver handbook, operating a company vehicle is both a privilege and a responsibility. All drivers were required and expected to cooperate in carrying out their individual responsibilities as outlined in the accident prevention program. All drivers must comply with all applicable federal, state, and local laws and ordinances. All drivers will comply with the safety policies and procedures outlined in the safety handbook. Failure to comply with these safety policies and procedures may result in disciplinary action or job termination. The accident driver was classified as a mechanic and did not receive a copy of the driver's handbook.

2.2 Carrier Cell Phone Policy

The carrier did not issue company cell phones to drivers or mechanics, but had a cell phone policy. The carrier prohibited cell phone use or texting while driving. Drivers were also informed that California law does not permit the use of cell phones in a moving vehicle. It was determined that the accident driver operated his personal cell phone during the accident trip. For additional details concerning the usage of the driver's cell phone during the accident trip, see the *Human Performance Group Chairman Report*.

¹⁰ The Grower's Company Driver Handbook, page 5, see Attachment 4.

2.3 Driving Company Vehicles

Company policy stated seatbelt usage was mandatory when operating all company vehicles. Failure to meet any of these responsibilities would result in disciplinary action, up to and including termination. All drivers were required to operate company vehicles in a safe manner; prevent abuse, neglect or equipment carelessness. Drivers were also required to comply with all traffic laws and avoid distractions using safe driving techniques. Furthermore, company drivers were required to report any traffic violation and report any accident, incident or theft of a company vehicle.

2.4 Illness or Fatigue

The carrier had an illness/fatigue policy. The fatigue policy stated: “never operate a motor vehicle when your ability and or alertness are impaired by fatigue, illness, or any other cause. Doing so violates company policy.”¹¹ Jobs may require driving beyond a typical eight-hour shift. When driving task requires long hours, be sensitive to your need to rest. This may require an overnight hotel stay with prior authorization by management.

2.4.1 Factors in Driver Fatigue

The carrier had a driver fatigue policy. Elements and causes of driver fatigue were outlined in the driver’s handbook. The carrier stated that circumstances such as: sleep apnea, lack of exercise, alcohol use, age, work schedules, shift work and smoking can all contribute to driver fatigue. The carrier provided guidelines to minimize elements of fatigue. These directives and guidelines include:

1. Get the best possible sleep you can before a road trip.
2. Make up sleep deprivation as soon as you can. Don’t allow sleep loss to accumulate. It usually takes two good nights of sleep to recover from sleep deprivation.
3. Eat healthy.
4. Work out problems at work and home.
5. When you need to work overtime hours, especially during the harvest season, make sure that your off-time is very relaxing and that you get plenty of sleep to make up for extra work.
6. Sleep as much as needed to feel refreshed and healthy but no more.
7. Try to get at least 20 minutes of exercise at least 3 times per week.
8. Communicate openly and directly without anger. Seek professional help if needed.

¹¹ The Grower’s Driver Handbook, page 10, See Attachment 4.

9. Get the best possible sleep at home.
10. Get a physical checkup once per year.
11. Sleep in a room that is neither too hot nor too cold.
12. Never come to work under stress from personal problems which may affect your driving.

2.5 Commitment to Safety

The carrier defined “safety” as a message that was communicated throughout the entire company. The company safety mission stated that the responsibilities of safety are shared by each employee in maintaining that commitment. The following actions are recommended to demonstrate management commitment to the health and safety of the carrier’s workers:

- State our safety policies to the entire staff so they understand its importance for the success of the company.
- Establish clearly defined objectives for all employees so they understand the company’s safety goals.
- Provide visible support to show that management is fully committed to employees’ safety.
- Assigning responsibilities at all levels including managers, supervisors and workers.
- Ensure employees fulfill their responsibilities towards safety.

The communication of safety commitment was instructed to all levels of management and each staff member was required to sign acknowledgement of policy. The accident driver was not a classified as member of management and did not sign a copy of the company safety commitment. The carrier also had an extensive library of various compliance help aids consisting of manuals, DVD and other resources to assist the carrier with compliance with the FMCSRs.¹²

2.6 Disciplinary Policies

The carrier had a written disciplinary policy. Employees who violated company policy would be subject to progressive disciplinary actions that may include one of the following actions: 1) Verbal warning, 2) suspension, 3) layoff, 4) voluntary Quit, 5) leave of Absence, 6) discharge and 7) other.

¹² The Motor Carrier’s compliance help aids, see photos 1-2.

2.7 Driver Training

Company DOT drivers received initial and recurrent training on various safety topics throughout the calendar year. The company held frequent safety training sessions on load securement, driver awareness, communication, and attitude. DOT drivers also received OSHA training on work site safety issues as well. The carrier was recognized in their participation in the California “Golden Gate Partnership” a California sponsored OSHA safety program.¹³ The carrier helped establish the OSHA safety standards in the California agriculture program. This program promoted workplace safety and health management system for all agricultural worksites for the state of California. All of the carrier’s training was documented with a training roster maintained on file.¹⁴ Additionally, company drivers also received annual training on railroad grade crossing.¹⁵ The accident driver did not receive any of these blocks of training.

2.8 Random Drug and Alcohol Testing

At the time of the accident, the carrier had implemented a random drug and alcohol testing program. The carrier had random testing which met or exceeded Federal requirements for calendar year 2014.¹⁶ Because the accident driver was not classified as a DOT driver he was not included in the carrier’s random drug or alcohol testing program and was not in the carrier’s random testing pool.

2.9 Company Safety Culture

The carrier had instituted a corporate safety culture program. This program included all phases of the carrier’s operation to include: crop management, production management, labor management and transportation management. The company had a safety culture program and a standardized manual entitled “How to improve safety culture.” This manual consisted of standard operating procedures for the company various job site functions. The safety manual addressed such requirements to include: 1). Attend and spot check tailgate meetings. 2). Spend time with problem foreman and observe their daily operations. Teach them while you are there. 3). Hazard assessments. Overwhelm the office with paperwork. 4). Teach, teach, teach! 5) Lead through example. 6) Utilize the office. 7) Think of yourself as the president of safety whenever you are walking. 8) If you need something to help you make your area safety, call the office and they will do whatever you need them to do. 9) Ask foreman (daily) when you see them if they have any new hires? 10) Additionally were they trained, and how they were trained.

Safety culture policy had additional safety topics that include: 1). People that want to make safety a priority. 2) The ability / opportunity to talk with the employees. 3) Supervisor training for workers comp discussion and 4) Individual attention to the supervision. 5) Take time to meet and explain. 6) Compare those who are good examples of what needs to be done with the poor performers.¹⁷

¹³ Golden Gate Partnership Recognition Certificate, see Attachment 5.

¹⁴ Accident driver training history, see Attachment 6.

¹⁵ Driver Training objectives, see Attachment 7.

¹⁶ Annual random drug testing 2014, see Attachment 8.

¹⁷ How to improve Safety Culture Document, see Attachment 9.

2.10 Hours of Service

All DOT classified driver's hours-of-service (HOS) were reviewed and audited by local supervisors. Supervisors were stationed at all the company job sites and were required for all safety requirements including the HOS under the FMCSRs. Over the road or long distance travel was the exception rather than the norm for the carrier. Most trips with CMV equipment were conducted under the 100 air-radius exemption and those drivers maintained a 100 air-radius log book.¹⁸ Carrier trips that exceeded the 100 air-radius exemption were documented on traditional paper logs. The carrier produced appropriate controls and appeared to have a system of accountability for the HOS for their DOT classified drivers as required under Part 395.

At the time of the crash, the accident driver was not classified as a DOT driver did not/and was not required by the motor carrier to fill out a driver's log book. No log book was maintained by the accident driver at the time of the crash. The accident driver had never filled out a log book and did not have any logs on file with the motor carrier. The carrier maintained the accident driver's hours by a time card system. According to the accident driver time cards he averaged approximately 12 hours per day and worked Monday through Saturday.¹⁹ The accident driver worked the day shift from approximately 6:00 a.m. to 6:00 p.m. and a half day (6:00 a.m. to noon) on Saturday. The accident driver was paid weekly.

3.0 California State Oversight

3.1 California Public Utilities Commission (PUC)

State oversight of companies or motor carriers who operate commercial vehicles in intrastate commerce falls under the jurisdiction of the Public Utilities Commission (PUC). The PUC grants the certificate or authority for motor carriers to operate in intrastate commerce. Carriers that transport passengers in California are also required to obtain a certificate or specific

¹⁸ 100 Air Radius Log book exemption states:) *Short-haul operations* —(1) *100 air-mile radius driver* . A driver is exempt from the requirements of § 395.8 if:

- (i) The driver operates within a 100 air-mile radius of the normal work reporting location;
- (ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;
- (iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty;
- (B) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;
- (iv)(A) A property-carrying commercial motor vehicle driver does not exceed the maximum driving time specified in § 395.3(a)(3) following 10 consecutive hours off duty; or
- (B) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and
- (v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:
 - (A) The time the driver reports for duty each day;
 - (B) The total number of hours the driver is on duty each day;
 - (C) The time the driver is released from duty each day; and
 - (D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently. Retrieved from: <http://www.fmcsa.dot.gov/regulations/title49/section/395.1>

¹⁹ Accident driver's time cards see 10.

registration process²⁰. The application process to obtain intrastate authority specifically outlines the requirements for applicants which mandate compliance with other allied agencies like the California Highway Patrol (CHP) and the Department of Motor Vehicles (DMV). The application explains that motor carriers must comply with all applicable laws and failure to do so may result in suspension or revocation of their authority. The PUC outlines specific requirements for passenger carriers which include compliance to the following conditions: CHP inspections, DMV pull notices, controlled substance testing and terminal inspections. Additionally, if the carrier operates a “bus” (defined as a vehicle with a seating capacity of 11 or more including the driver”) then the company must undergo and pass a CHP bus inspection before the authority is issued and every year thereafter²¹.

3.2 California Highway Patrol (CHP)

The authority to regulate certain vehicles falls under California Vehicle Code (CVC) Division 14.8. Regulated vehicles also referred to as “commercial motor vehicles” are defined in subdivision (b) of Section 15210. The CVC authorizes the California Highway Patrol and designated inspectors to inspect vehicles, maintenance facilities, carriers, and terminals for CVC violations.²²

The CHP is the designated law enforcement agency responsible for compliance of the California Vehicle Code (CVC) relating to the safe operation of commercial motor vehicles. The Motor Carrier Safety Operations (MCSO) Program is part of the CHP’s Commercial Enforcement Program. The objectives of the MCSO consist of the following elements:

- (1) Adequacy of carrier safety programs
- (2) Vehicle /equipment and condition, mandatory inspection intervals.
- (3) Compliance with regulations relating to drivers’ timekeeping records
- (4) Compliance with the DMV Pull Notice program
- (5) Compliance with the HM regulations if applicable
- (6) Compliance with HM transportation and inspection and maintenance Station licensees, transportation of charter party, and passenger stage carriers.

3.3 CHP- BIT Program

CVC requires the CHP to inspect every designated maintenance facility, or terminal, or any person who operates any regulated²³ truck or trailer every 25 months. Carriers must

²⁰ There are three types of passenger carriers. 1. Passenger Stage Corporation (PSC) requires a certificate of public convenience and necessity certificate.2. A charter party carrier of passengers (TCP) Charter party certificate. A private carrier must register with the CPUC. Page 3 of CHP manual.

²¹ CVC 34505.1

²² CVC sections 34501, 34520, and 34520.5.

²³ Regulated Vehicles designed under CVC Section 34501.12(a)

designate those terminals which will be subject to the Biennial Terminal Inspection program (BIT).

3.4 DMV Pull Notice Program

Vehicle Code section 1808.1 requires all drivers who possess a Class A or Class B CDL to be enrolled in the DMV Pull Notice Program. The Pull Notice Program provides notice to employers, including self-employed drivers, when a driver is convicted of a violation of CVC, has an accident posted to his or her driving record, is classified as a negligent operator, or has his or her license suspended or revoked. Employers must obtain reports periodically on all their Class A or B drivers and must review the reports. Employers must maintain the report on file and keep a record stating the report was reviewed and must be signed and dated and kept on file for inspection by the CHP.

3.5 Terminal Inspections

Division 14.8 of the California Vehicle Code outlines the CHP's authority and mandate to conduct terminal inspections and describes the vehicles and records that are subject to CHP inspection. Terminal inspections are similar to the Safety Audits and Compliance Reviews conducted by the FMCSA however the CHPs inspection emphasis is more on vehicle oriented and compliance with California laws.²⁴ During Terminal Inspections CHP are required to inspect a portion or all of the carrier's fleet. California Vehicle Code Section 34501.12 requires the Department to inspect every designated maintenance facility, or terminal, of any person who operates any truck or trailer described in CVC Section 34501.12(a), at least once every 25 months

3.6 Terminal Definition

According to the CVC a motor carrier terminal does not have to be a yard or building dedicated for that purpose. A terminal is simply a base from which a regulated vehicle is operated. A terminal can be anything from a "break bulk" warehouse and loading dock facility occupying acres of land to the private residence of an owner-operator.²⁵

CVC 34515 (a) As used in this division, and in regulations adopted pursuant thereto, "maintenance facility or terminal" means any place or places where a vehicle of a type listed in 34500 is regularly garaged or maintained or from which it is operated or dispatched. Maintenance facility or terminal may include a private residence. (b) For the purpose of inspections required by subdivision c of Section 34501.12 "terminal" means the location or locations in this state which are designated by the motor carrier, where subject vehicles may be inspected by the department and where vehicle maintenance and inspection records and driver's records will be made available for inspection.

²⁴ CHP Manual 84.6, Chapter 7, p. 7-1. (OUO)

²⁵ Ibid.

3.7 Inspection Process and Rating

Four categories of a motor carrier's operation are inspected for purposes of establishing a safety rating. These categories include inspection of the following:

1. The carrier's preventive maintenance program.
2. The condition of the carriers regulated vehicles.
3. The carrier's hours of service or time records.
4. If applicable, compliance of the Hazardous Material Regulations.

Completion of the Terminal Inspection will result in either a "satisfactory"(S) or "unsatisfactory" (U) rating in each category and an overall rating for the terminal. A rating of "satisfactory" ("S" rating) means that the carrier was found in compliance with all the applicable laws and regulations and all inspection categories were found satisfactory. If any inspection category is found unsatisfactory, then the terminal will receive an "unsatisfactory "U" rating. Unsatisfactory means that the carrier was found to be out of compliance in several areas or violations of a serious nature. Serious violations are of three types:

- Those which, in the opinion of the CHP, represent imminent danger to the public
- Those which, whether imminently dangerous or not, represent consistent failure on the part of the motor carrier to comply with applicable requirements.
- Failure to enroll all drivers in Pull Notice Program.

The CHP has a third rating "Conditional" (C), that is used to indicate that a formally "U" rated terminal has made some progress toward an "S" rating but due to lack of time for the motor carrier to show improvement is established and will continue to be effective, the terminal cannot yet be declared satisfactory.

3.8 CHP Inspection of Maintenance Program and Records

According to the CHP, every motor carrier must have a systematic inspection and maintenance program to ensure that all vehicles and equipment are in safe and proper operating condition at all times. The motor carrier specialist conducting the inspection will look at of the inspection, maintenance, lubrication, and repair records to see if the motor carrier has a systematic program for maintaining its vehicles. The inspector will analyze the records to see if they are current, the vehicles are being serviced on time, and the services are being recorded properly. The effectiveness of the program will be determined on whether or not it is doing its job as it should is judged by evaluating the overall condition of the vehicles and other equipment subject to California safety regulations.

3.9 Objectives of Preventive Maintenance for the Motor Carrier

According to the CHP, the objective of a true preventive maintenance program is to minimize equipment failure by maintaining a constant awareness of the current condition of the vehicle, and by correcting developing defects before they become serious. Maintaining that awareness requires frequently scheduled inspections performed by the motor carrier's personnel or by a commercial shop. The carrier's inspections should be thorough, and if properly performed, will not be easy work. Therefore, the inspection task should be assigned to a conscientious and careful mechanic. The investment in time for careful inspection usually costs less than the outlay of money for late corrective action²⁶.

A second important objective of preventive maintenance is to ensure that all maintenance takes place *by intent*, and to eliminate all unscheduled maintenance to the maximum extent possible. Each time a vehicle in the fleet of a motor carrier breaks down, the motor carrier should analyze whether the failure could have been anticipated and avoided by scheduled in-house inspections²⁷.

A third objective of preventive maintenance is to control when and where the maintenance activity is to take place. Inspection, maintenance, lubrication, and repair activities are easier, more cost-effective, and generally more efficiently performed in a regular maintenance shop than at roadside in a remote area in the middle of the night. Repair efforts also disrupt the transportation business far less when performed according to plan than when hurriedly performed in response to a breakdown.

3.10 Additional Inspection Requirements

In addition to the general requirements for all motor carriers operators of tour buses must meet the requirements of 34505 CVC, which reads:

34505. (a) Tour bus operators shall, in addition to the systematic inspection, maintenance, and lubrication services required of all motor carriers, require each tour bus to be inspected at least every 45 days, or more often if necessary to ensure safe operation. This inspection shall include, but not be limited to, all of the following:

- (1) Brake adjustment.
- (2) Brake system components and leaks.
- (3) Steering and suspension systems.
- (4) Tires and wheels.

(b) A tour bus shall not be used to transport passengers until all defects listed during the inspection conducted pursuant to subdivision (a) have been corrected and attested to by the signature of the operator's authorized representative.

²⁶ Ibid.

²⁷ Ibid.

(c) Records of inspections conducted pursuant to subdivision (a) shall be kept at the operator's maintenance facility or terminal where the tour bus is regularly garaged. The records shall be retained by the operator for one year, and shall be made available for inspection upon request by any authorized employee of the department. Each record shall include, but not be limited to, all of the following:

(1) Identification of the vehicle, including make, model, license number or other means of positive identification.

(2) Date and nature of each inspection and any repair performed.

(3) Signature of operator's authorized representative attesting to the inspection and to the completion of all required repairs.

(4) Company vehicle number.

Section 34505 CVC imposes requirements on tour bus operators that are very similar to those that apply to operators of school buses, school pupil activity buses, and general public Para transit vehicles in 13 CCR 1232 (b). See Chapter 4 of this guide for discussion of 13 CCR 1232 (b). This statute specifies a minimum safety inspection checklist of four vehicle component systems and a maximum inspection interval of 45 days for each tour bus.

3.11 Driver's Hours of Service Records

This category consists of four basic elements: (1) drivers' hours of service, (2) records of those hours of service, (3) Pull Notice Program participation, and (4) driving proficiency records. Drivers' hours of service and Pull Notice Program participation are *critically important areas* in which all motor carriers must be in compliance. A terminal can receive a "U" rating solely on the basis of excessive hours of service. A terminal will receive a "U" rating if all drivers of regulated vehicles are not currently enrolled in the Pull Notice Program. For new drivers, if the company has not obtained the current public record of those drivers before placing them behind the wheel of a truck or bus, a "U" rating will also result.

According to the carrier records, The Growers Company had 2 BIT Inspections. Both resulted in a "Satisfactory" safety rating.²⁸ As a result of this accident, the CHP did not conduct a post-accident inspection or investigation.

4 FMCSA Oversight

4.1 General Applicability

Because Vehicle 1 in this accident is classified as a "pickup truck" some questions arose during the on-scene investigation concerning the applicability of the accident vehicle and the accident driver with regard to the Federal Motor Carrier Safety Regulations (FMCSRs). To clarify these concerns, the General Applicability of the FMCSRs outlined under §390.3 are detailed below:

²⁸ Carrier BIT Inspections, see Attachment 11.

- (a) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.
- (b) The rules in part 383, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.
- (c) The rules in part 387, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in § 387.3 or § 387.27 of this subchapter.
- (d) Additional requirements. Nothing in subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.
- (e) Knowledge of and compliance with the regulations. (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.
- (2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.
- (3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.²⁹

4.2 Accident Vehicle Applicability

Drivers must follow the Regulations if they drive a commercial motor vehicle, or CMV. In general, a CMV is a vehicle that is used as part of a business and is involved in interstate commerce and fits *any* of these descriptions:

- Weighs 10,001 pounds or more
- Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 10,001 pounds (lbs.) or more
- Is designed or used to transport 16 or more passengers (including the driver) not for compensation
- Is designed or used to transport 9 or more passengers (including the driver) for compensation
- Is transporting hazardous materials in a quantity requiring placards

According to the vehicle registration the accident truck had a GVWR of 16,000 lbs.³⁰ The carrier owned another Ford F450 representing the same make, model, year, and identical configuration as the accident vehicle. According to the aftermarket data plate of this second Ford F450 or “exemplar” vehicle, it also had a GVWR of 16,000 lbs.³¹ The NTSB Research and

²⁹ 49 CFR 390.3

³⁰ Accident Vehicle Registration, see Attachment 12.

³¹ See Motor Carrier Photo 1.

Engineering Department documented the exemplar vehicle using a 3D laser scanner to measure and document the exemplar vehicle that was used for various applications throughout this investigation.

Because the GVWR of Vehicle 1 exceeded 10,001 lbs., and was in interstate commerce at the time of the crash; both the accident driver and the accident vehicle were subject to the FMCRs. Under this scenario, Harvest Management and The Growers Company would be responsible for compliance of the FMCSRs. Both carriers would be subject to the following regulations: Part 390 (General), Part 391- (Driver Qualification), Part 395- (Hours of Service) and Part 396- (Vehicle Maintenance). Additionally, the carrier transports migrant workers, and must also comply with Part 398 Transportation of Migrant Workers.

4.3 CSA and SMS

In 2010 FMCSA introduced the Compliance, Safety, Accountability (CSA) system as an initiative to improve large truck and bus safety and ultimately reduce crashes, injuries, and fatalities that are related to commercial motor vehicles. It introduced a new enforcement and compliance model that allows FMCSA and its state partners to contact a larger number of carriers earlier in order to address safety problems before crashes occur. Along with CSA, the FMCSA also rolled out a new operational model called the Safety Measurement System (SMS) which replaced its predecessor, known as the SAFESTAT model. SMS uses a motor carrier's data from roadside inspections, (including all safety-based violations), state-reported crashes, and the Federal Motor Carrier Census to quantify performance in the following Behavior Analysis and Safety Improvement Categories (BASICS).

4.4 CSA BASICS³²

- **Unsafe Driving** — Operation of commercial motor vehicles (CMVs) by drivers in a dangerous or careless manner. *Example violations:* Speeding, reckless driving, improper lane change, and inattention. (FMCSR Parts 392 and 397)
- **Hours-of-Service (HOS) Compliance** — Operation of CMVs by drivers who are ill, fatigued, or in non-compliance with the HOS regulations. This BASIC includes violations of regulations pertaining to records of duty status (RODS) as they relate to HOS requirements and the management of CMV driver fatigue. *Example violations:* false HOS RODS, and operating a CMV while ill or fatigued. (FMCSR Parts 392 and 395)
- **Driver Fitness** — Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications. *Example violations:* Failure to have a valid and appropriate commercial driver's license (CDL) and being medically unqualified to operate a CMV. (FMCSR Parts 383 and 391)
- **Controlled Substances and Alcohol** — Operation of CMVs by drivers who are impaired due to alcohol, illegal drugs, and misuse of prescription or over-the-

³² CSA Methodology retrieved from www.fmcsa.dot.gov

counter medications. *Example violations:* Use or possession of controlled substances/alcohol. (FMCSR Parts 382 and 392)

- **Vehicle Maintenance** — Failure to properly maintain a CMV and/or properly prevent shifting loads. *Example violations:* Brakes, lights, and other mechanical defects, failure to make required repairs, and improper load securement. (FMCSR Parts 392,393 and396)
- **Hazardous Materials (HM) Compliance** — Unsafe handling of HM on a CMV. *Example violations:* Release of HM from package, no shipping papers (carrier), and no placards/markings when required. (FMCSR Part 397 and Hazardous Materials Regulations Parts 171, 172, 173, 177, 178, 179, and 180)
- **Crash Indicator** — Histories or patterns of high crash involvement, including frequency and severity based on information from state-reported crashes

A carrier’s measurement for each BASIC depends on the following:

- The number of adverse safety events (related to BASIC or crashes)
- The severity of violations or crashes
- When the adverse safety events occurred (more recent events are weighted more heavily).

After a measurement is determined, the carrier is then placed in a peer group (i.e., other carriers with similar numbers of inspections). Percentiles from 0 to 100 are then determined by comparing the BASIC measurements of the carrier to the measurements of other carriers in the peer group. A percentile ‘100’ indicates the worst performance.


FMCSA established threshold levels which would require agency action. Unsafe Driving, HOS, and Crash BASICs were set at lower thresholds because of their inherent risk. Additionally, passenger and hazmat carriers have lower thresholds than all other carriers because of their inherent risk. **Table 1** represents the thresholds set by FMCSA which help prioritize agency intervention and resource management.³³ Harvest Management is classified in the “all other motor carrier” category.

Table 1. BASIC Thresholds³⁴

BASIC	Passenger Carriers	HM Carriers	All Other Motor Carriers
Unsafe Driving, HOS, Crash	50%	60%	65%
Driver Fitness, Drug/Alcohol, Maintenance	65%	75%	80%
Haz Mat	80%	80%	80%

³³ Retrieved from www.fmcsa.dot.gov .

³⁴ Retrieved from <http://csa.fmcsa.dot.gov/FAQs.aspx>.

On a carrier's SMS profile which is publicly available on the Safer website³⁵, a symbol  is displayed in any designated BASIC where the carrier has exceeded the corresponding threshold. This is also referred to as having an "alert" in a BASIC. At the time of the crash, The Growers Company and Harvest Management displayed zero (0) alerts in all of the BASICs.

4.5 SMS and Compliance Review History

At the time of the accident, the carrier profile did not show any BASICs in alert status. The following reflects the carrier's BASIC scores at the time of the crash.

- Unsafe Driving – 4 percent
- Hours of Service – 0 percent
- Driver Fitness – 0 percent
- Controlled Substances and Alcohol- 0 percent
- Vehicle Maintenance – 16 percent
- Hazardous Materials – 0 percent
- Crash Indicator – 5 percent

The Growers Company and Harvest Management registration pre-dated the New Entrant Program. The Growers had received two previous compliance reviews (CR) with the FMCSA since obtaining its USDOT number. The first CR was on April, 2005 and the second was September, 2010.³⁶ Both CRs resulted in a "Satisfactory" Safety Rating.³⁷ As a result of this crash, the FMCSA initiated a post-accident CR. Because the CR was a "Focused" CR, no safety rating was issued.³⁸ The post-accident CR was initiated on Harvest Management and resulted in a Non-rated CR. No critical or acute violations were determined in the CR and FMCSA did not

³⁵ Safer website : <http://safer.fmcsa.dot.gov/CompanySnapshot.aspx>

³⁶ The Growers Compliance Reviews, see Motor Carrier Attachment 13.

³⁷ **Safety rating** means a rating of "satisfactory", "conditional" or "unsatisfactory" using the factors prescribed in 49 CFR 385.7 as computed under the Safety Fitness Methodology. **Safety ratings:** (1) **Satisfactory** safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in 49 CFR 385.5. (2) **Conditional** safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in §385.5 (a) through (k). (3) **Unsatisfactory** safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in §385.5 (a) through (k). (4) **Un-rated** carrier means that a safety rating has not been assigned to the motor carrier by the FMCSA.

in 49 CFR 385.7 as computed under the Safety Fitness Methodology. **Safety ratings:** (1) **Satisfactory** safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in 49 CFR 385.5. (2) **Conditional** safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in §385.5 (a) through (k). (3) **Unsatisfactory** safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in §385.5 (a) through (k). (4) **Un-rated** carrier means that a safety rating has not been assigned to the motor carrier by the FMCSA.

³⁸ Harvest Management Post-Accident CR, see Attachment 14.

issue a Notice of Claim for any of the violations noted on the CR. The CR identified the following discrepancies:

1. §382.105- Using a DOT custody and control form to perform non-DOT test
2. §382.601(a) - Failing to provide educational materials explaining requirements of part 382 and employer's drug and alcohol program policies.
3. §382.601(b) - Failing to provide a written policy of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11.
4. §391.11(b) (6) –Failing to require driver to furnish list of motor vehicle traffic offices each 12 months.
5. §391.21(a) - Using a driver who has not completed and furnished an employment application.
6. §391.25(b) - Failing to review the driving record of each driver to determine whether that driver meets the minimum requirements for safe driving or is disqualified to drive.
7. §391.25(c) (2) – Failing to maintain record of annual review in driver's qualification file.
8. §391.45(a) -Using a driver not medically examined and certified.
9. §391.53(b) (2) – Failure to maintain driver history file a copy of the responses required by paragraphs (d) and (e) of 391.23 from each previous employer, or documentation of good faith efforts to contact them.

4.6 Roadside Inspections

From Feb 26, 2014 to February 26, 2015 the carrier has had 55 driver and 50 vehicle inspections.^{39 40}The driver inspections showed 1.81 percent out of service (OOS) and the vehicle inspections showed 18 percent.⁴¹ This is in comparison to a national average of 5.51 percent for drivers and an average of 20.27 percent for vehicle OOS.

³⁹ Harvest Management MCMIS Carrier Profile, see Motor Carrier Attachment 15.

⁴⁰ Roadside Inspections: Level 1 full inspection, driver inspection and full vehicle inspection to include under carriage of the vehicle and brake measurements, level 2 – walk-around inspection of the vehicle and driver inspection, level 3 –driver only, level 4 – special studies, and level 5-terminal inspection- conducted at the carrier's terminal and without a driver.

⁴¹ Out of Service (OOS) - **Out of Service** criteria established by the Commercial Vehicle Safety Alliance (CVSA). CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. Their mission is to promote commercial motor vehicle safety and security by providing leadership to enforcement,

4.7 Accident Truck Maintenance Files

The carrier owns an extensive fleet of straight trucks, buses, tractor-trailers, and farm equipment.⁴² All of the carrier's equipment is stored and maintained with their own maintenance staff. The carrier has a large maintenance shop has 3 covered work bays and is staffed 24 hours per day with 5 mechanics.⁴³ The maintenance shop has its own parts department and inventory of tires, spare parts and other materials.⁴⁴ The maintenance shop had the ability to handle all levels of repairs and services to their own equipment, including body shop repairs and vehicle painting.

Vehicle 1 involved in this accident was a 2005 Ford F450 Pick-up truck towing a 2000 Wells Cargo tandem axle utility trailer. Both the Ford F450 and the utility trailer are owned and registered by Harvest Management LLC. The Wells Cargo Trailer had a GVWR of 7,700 lbs. and was not subject to the FMCSRs. The carrier provided the maintenance file for the accident truck and trailer. Missing from the Ford F450 maintenance file was a records showing the company number, make, serial number, year and tire size as required under §396.3. Also missing from the Ford F450 truck maintenance file was a copy of the periodic inspection as required under §396.17. The carrier did not have any driver vehicle inspection reports (DVIRs) for the Ford F450. A review of the maintenance files did not indicate any significant repairs or services for either unit. The maintenance file indicated only routine preventative maintenance i.e. oil changes, tire rotations.⁴⁵

A review of the maintenance file did not indicate any significant repairs or services for the Ford F450. The carrier did provide receipts, work orders and a computerized report which detailed the various preventative maintenance services (i.e. oil changes, tire rotation, etc.) performed on the accident vehicle. The carrier's maintenance shop had wipe off boards which showed when repairs and services were due.⁴⁶ Additionally the carrier was missing inspector qualifications as required under §396.19. For additional information concerning the mechanical operation of the accident vehicle, see the *Vehicle Factors Group Chairman's Factual Report*.

5.0 Accident Driver

The accident driver started employment with The Growers Company on November 15, 2004. According to carrier officials, the accident driver was classified as a mechanic and was never considered to be subject to the same qualification standards or requirements as other

industry and policy makers. CVSA establishes uniform and reciprocal application of North American inspection procedures and out-of-service criteria s utilized in the United States, Canada and Mexico. Retrieved from: <http://www.cvsa.org/about/strategic.php>

⁴² See Motor Carrier Photos 3-8.

⁴³ See Motor Carrier Photo 9.

⁴⁴ See Motor Carrier Photo 10.

⁴⁵ Accident vehicle maintenance file, see *Vehicle Factors Group Chairman Attachment 4*.

⁴⁶ See shop photos 3-4

CMV/CDL drivers in their operation. The carrier acknowledged this was an oversight on their part.⁴⁷

5.1 Accident Driver Qualification File

Contained in the driver qualification (DQ) file was a copy of the driver's CDL, Permanent Resident Card, and social security card.⁴⁸ Per §391.51 the DQ file was missing the following documents: application for employment, medical certificate, road test, previous employer background check, copy of driver transcript or motor vehicle report (MVR).

The NTSB obtained a copy the accident driver's medical long form and medical certificate from the issuing physician. According to the medical long form the accident driver was issued the medical certificate on August 2014 and had an expiration date on August 2015.⁴⁹ The driver was restricted to a one year medical certificate due to hypertension. For further information concerning the accident driver's medical history see the *Human Performance Group Chairman Factual Report*.

5.2 Accident Driver Training History

Since the date of hire, the accident driver had received 20 safety training classes.⁵⁰ All of these training classes would be classified as meeting the standards for the Occupational Safety and Health Administration (OSHA) training requirements.⁵¹ 49 CFR 390.3 states "the rules in this subchapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce." Motor carriers are required to make sure their employees and driver are familiar with the applicable sections of the Federal Motor Carrier Safety Regulations (FMCSRs). For example, safety requirements for a commercial driver operating in interstate commerce would require knowledge for the following parts: 390, (general) 391 (driver qualification), 383 (CDL requirements), 382 (drug and alcohol testing) 395 (hours of service) and 396 (vehicle maintenance). According to the training history of the accident driver, the motor carrier did not provide any applicable training relating to the FMCSRs. See **Table 2** for further details.

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⁴⁷ Motor Carrier Interview Transcript, see Attachment 16.

⁴⁸ Accident driver DQ file, see Attachment 17.

⁴⁹ Accident driver medical certificate long form, see Attachment 18.

⁵⁰ Accident Driver's Company Training Records, see attachment 6.

⁵¹ Regulation standards 29 CFR 1910 Occupational Safety and Health Standards, retrieved from: <https://www.osha.gov/>

Table 2. Accident Driver Company Training History

Training Topic	Date	Regulatory Training Requirement
Food Safety	2/20/15	OSHA
Safety attitude, stretching program	9/19/14	OSHA
Injury reporting procedure, hazard assessment	9/10/13	OSHA
Golden Rule Policy, shop Chain of Command, communication process, suggestion box, open door policy	8/5/13	OSHA
Heat Illness Prevention Training	3/18/13	OSHA
Injury reporting procedures, hazard assessment safety program	9/10/13	OSHA
Heat Illness Prevention Training	4/16/13	OSHA
Shop Safety Communication	3/18/13	OSHA
Shop Monthly Safety Meeting	10/17/12	OSHA
First Aid and CPR Training	10/10/12	OSHA
Clean work stations, working in other areas	9/14/12	OSHA
Shop Safety Tailgate meeting	8/31/12	OSHA
Shop Safety New Safety Culture	7.13.12	OSHA

Communication food Safety	12/03/11	OSHA
Quarterly Shop Safety Training	9/21/11	OSHA
Fire Extinguisher Training	9/11/11	OSHA
Heat Illness Prevention	5/27/11	OSHA
Shop Safety	5/23/11	OSHA
Fork Truck Safety	4/21/11	OSHA
Shop Safety, trips and falls, Hand safety	4/14/11	OSHA

5.3 Accident Driver's Driving History

At the time of the crash, the accident driver held an Arizona Class A CDL. The Arizona CDL was issued on September 2013 and had an expiration date of April 2018.⁵² The CDL had no endorsements and showed 1 restriction of corrective lens. According to the CDLIS report the accident driver had been previously cited for the following violations:⁵³

- September 5, 1997 - Refuse to submit to test-implied consent Law
- September 5, 1997- DUI of Alcohol
- November 15, 1998 - Administrative Per Se for .10 BAC

5.4 Accident Driver Roadside Inspection History

According to the FMCSA driver inspection detail report, the accident driver had 4 roadside inspections on file.^{54 55} All of the roadside inspections were conducted in California. None of the roadside inspections resulted in any OOS. The accident driver had operated CDL required equipment during each of these inspections. The inspection history indicates the accident driver drove equipment for both The Growers Company as well as for Harvest Management. A summary of those inspections is contained in **Table 3**.

⁵² Accident driver CDL transcript, see Attachment 18

⁵³ Accident driver's CDLIS report, see Attachment 19.

⁵⁴ Accident driver's DIR report and copy of roadside inspections, see Attachment 20.

⁵⁵ Accident driver Roadside Inspection Reports, see Motor Carrier Attachment 21.

Table 3. Summary of Accident Driver Roadside Inspection History

Date	Carrier	Level	Violations
11/5/2014	The Growers	3	0
10/28/2013	Harvest Management	1	1 (Non-OOS)
5/20/2013	Harvest Management	1	0
5/17/2013	Harvest Management	1	1 (Non-OOS)

5.5 Accident Driver's Drug and Alcohol Testing

Although the accident driver held a Class A CDL, the subject vehicle in this accident had a GVWR under 26,001 lbs. and did not require a CDL. Because the accident driver was not subject to the requirements of a CDL at the time of the crash, the motor carrier did not and was not required to conduct a post-accident drug or alcohol test. Immediately following the crash, the accident driver submitted to a blood test performed by the Oxnard Police Department. The test results were still pending as of the writing of this report. According to carrier officials, the accident driver was never requested to submit to any drug or alcohol test as required under Part 382. The carrier further stated that none of their mechanics had submitted to any drug or alcohol test under Part 382. Furthermore, carrier officials stated that the either the accident driver or any of their mechanics had ever placed in a carrier's random drug /alcohol testing pool.

49 CFR 382 details the requirements of controlled substances, alcohol use and testing requirements. Under this Part, carriers who employ drivers who operate CDL required commercial motor vehicles (CMVs) are subject to six testing procedures. These tests include: Pre-employment drug testing (§382.301); Random drug and alcohol testing (§382.305); Post-accident drug and alcohol testing (§382.303); and Reasonable suspicion testing (§382.307). Additional requirements are also outlined in Part 40 of the FMCSRs which include Subpart B-Employer responsibilities, and Subpart O-Return to duty. These additional testing requirements include: Return-to-Duty testing (§382.309) and Follow-up testing (§382.311).

According to the accident driver's roadside inspection history, the accident driver was inspected 3 of the 4 roadside inspections operating CDL required equipment. Per the requirements of Part 382, the accident driver had been subject to drug and alcohol testing requirements since May 2013. According to the carrier's records, the accident driver did not

receive a pre-employment drug test and was never in the carrier's random drug or alcohol testing pool.

The carrier provided the annual random drug and alcohol testing results for calendar year 2014. The summary report indicated that the carrier met or exceeded the random testing requirements as outlined under §382.305.⁵⁶

5.6 Accident Driver's Hours of Service (HOS)

Several times a year, the motor carrier sent maintenance support to farming operations in California. This maintenance support would represent a mechanic using a truck and trailer combination, equipped with tools, parts and other equipment to make immediate repairs in the field. This is the scenario that was represented by the accident driver in this crash.

According to the carrier, the accident driver was normally working locally and would utilize time cards as records of duty status. The distance from the carrier's terminal in Somerton, Arizona to Oxnard, California is 345 miles (approximately 6 hours 18 minutes). Because this distance is beyond the 100 air-radius rule, the driver would have been required to fill out a paper log as required under §395.8(i)-(k). According to the motor carrier officials however, they did not provide nor require the accident driver to complete a log book for the accident trip. As mentioned, the carrier never realized the mechanic was subject to the FMCSRs.

5.7 The Accident Trip

On February 23, the day of the accident trip, the accident driver arrived at the carrier's terminal at 6:51 a.m.⁵⁷ From the time of his arrival until departure; the accident driver prepared his truck and trailer for the trip from the carrier's terminal in Somerton, Arizona to Oxnard, California. The carrier provided the accident driver with a cash advance of \$300 for incidentals.⁵⁸ The carrier also provided the accident driver with a **Google Map** in Spanish detailing the route the driver was directed to follow.⁵⁹ The intended route the accident driver was directed to travel was Route I -8 West, to CA 111 North, CA -78 W/ CA 86 North, to I 10 West 101, to Oxnard, California. The carrier's route highlighted in blue in figure 1. The accident driver however deviated from the predetermined route and headed west on I-8 to San Diego and then north along Route 5 towards Long Beach and then towards Los Angeles and then Route 101 into Oxnard. The drivers route is highlighted in grey in **Figure 6**. The carrier stated that they preferred their route because it flatter and did not have the steep grades that were represented in the accident driver's route.

⁵⁶ Random Drug and Alcohol Testing Results for 2014, see Motor Carrier Attachment 8.

⁵⁷ Accident driver's time records, see Motor Carrier Attachment 10.

⁵⁸ Accident driver cash advance, see Attachment 22.

⁵⁹ Accident Driver's map and driving directions see Attachment 23.

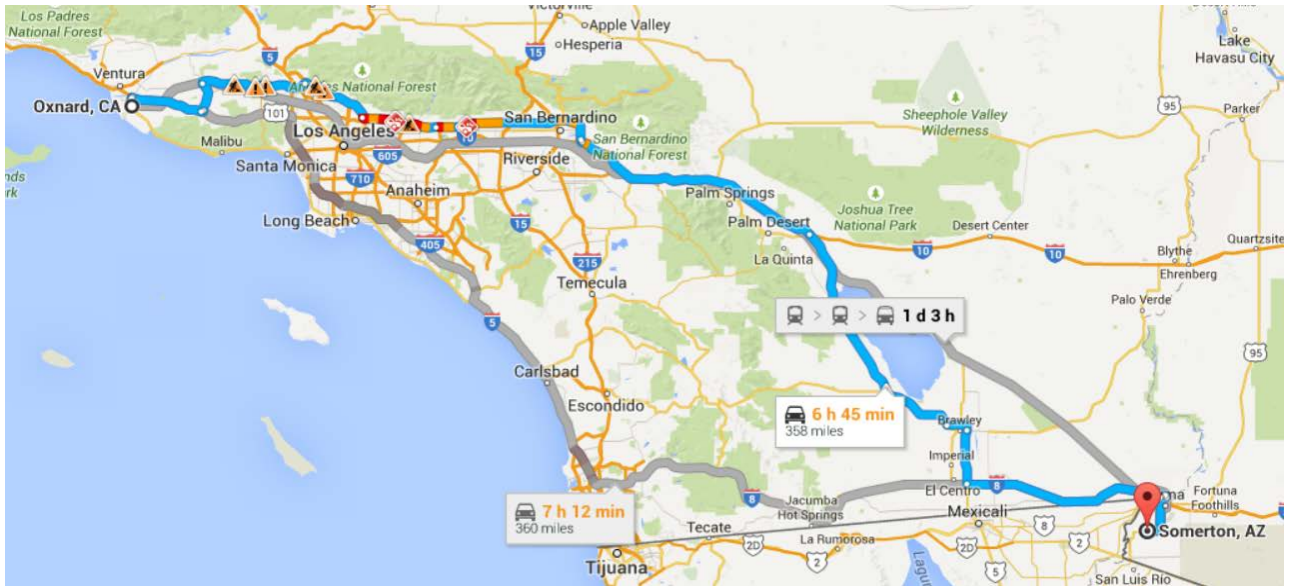


Figure 6. Carrier's route in blue, accident driver's route in grey (Source: Google Maps)

According to carrier officials once the driver arrived in Oxnard, he was supposed to go to a Motel 6 in the nearby town of Ventura, California approximately 7 miles from Oxnard. The carrier had prearranged a hotel reservation for the driver.⁶⁰ The driver however never made it to the hotel. According to carrier's records, the driver departed with truck T625 at 2:00 p.m.⁶¹ At 5:30 p.m. the accident driver called the shop foreman and notified him that he had broken down because of a radiator problem. At 6:00 p.m. the carrier sent a replacement vehicle (T624). At 8:00 p.m. the replacement truck arrived at the accident driver's location in Jacumba, California. At that time, all the tools and parts were transferred over from truck T625 to T624. At 10:00 p.m. the accident driver resumed his trip to Oxnard. At 3:10 a.m. on February 24, 2015 the accident driver called and notified his supervisor that he had been in a minor accident (sideswipe) in Los Angeles. At 3:15 a.m. the accident driver's supervisor instructed him to call the police. At 3:19 a.m. the driver called 911 to report his accident. The carrier's last known activity of the driver was when he reported to his supervisor that T625 was struck by a train at 6:55 a.m. Documents obtained from the motor carrier, interviews with motor carrier staff and transcripts from the accident driver's cell phone records were used to reconstruct the accident driver's 72 history leading up to the crash. According to the evidence reviewed, the accident driver had been On-duty a total of **23:53** hours leading up to the crash. **Table 4** represents a summary of the 72 hour history of the accident driver. For additional information concerning the driver's 72 hour history, see *Human Performance Group Chairman's Factual Report*.

⁶⁰ Hotel reservation for Accident Driver, see Attachment 24.

⁶¹ Carriers recap of accident driver's hours. See Attachment 25.

Table 4. Accident Driver's HOS

Saturday – February 21, 2015				
Time (MST)	Event	Location	Source	Total Hours
4:57 am	On-duty	Somerton, AZ	Time card	
2:09 p.m.	Off duty	Somerton, AZ	Time card	9:12 hours
Sunday – February 22, 2015				
Off Duty 24 hours				0 hours
Monday - February 23, 2015				
Time (MST) ⁶²	Event	Location	Source	Total Hours
6:51 am	Driver reports to work	Somerton, AZ	Driver's time card	
2:00 pm	Driver begins trip to Oxnard	Somerton, AZ	Carrier	
5:30 pm	T-625 breaks down	Jacumba, CA	Carrier	
6:00 pm	T-624 leaves shop	Jacumba, CA	Carrier	
8:00 pm	T-624 arrives	Jacumba, CA	Carrier	
10:00 pm	Accident Driver departs	Jacumba, CA	Carrier	15:09 hours
Tuesday – February 24, 2015				
Time	Event	Location	Source	
3:10 am	Accident Driver reports of sideswipe	Los Angeles, CA	Carrier	
3:15 am	Supervisor calls accident driver to call police	Los Angeles, CA	Carrier	
3:19 am	Accident driver calls 911	Los Angeles, CA	Driver Cell records	
6:44 am	Accident occurs	Oxnard, CA	Oxnard PD	23:53 hours

5.8 Accident Driver's HOS Issues

The accident vehicle involved in this crash had a GVWR of 16,000 lbs. and was operating in interstate commerce at the time of the accident. Under these conditions, the accident

⁶² All times in table are recorded in Mountain Standard Time. (Crash occurred at 5:44 PST)

driver was subject to the HOS regulations. Because the vehicle was non-CDL required CMV, the driver could qualify for the 150 air-radius rule if the following conditions were met:

2) ***Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license.*** Except as provided in this paragraph, a driver is exempt from the requirements of § 395.3(a)(2) and § 395.8 and ineligible to use the provisions of § 395.1(e)(1), (g), and (o) if:

- (i) The driver operates a property-carrying commercial motor vehicle for which a commercial driver's license is not required under part 383 of this subchapter;
- (ii) The driver operates within a 150 air-mile radius of the location where the driver reports to and is released from work, *i.e.*, the normal work reporting location;
- (iii) The driver returns to the normal work reporting location at the end of each duty tour;
- (iv) The driver does not drive:
 - (A) After the 14th hour after coming on duty on 5 days of any period of 7 consecutive days; and
 - (B) After the 16th hour after coming on duty on 2 days of any period of 7 consecutive days;
- (v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:
 - (A) The time the driver reports for duty each day;
 - (B) The total number of hours the driver is on duty each day;
 - (C) The time the driver is released from duty each day;
 - (D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

The accident trip from Somerton, Arizona to Oxnard, California was however 346 miles and disqualified the driver from the 150 air radius exemption.⁶³ Consequently, the driver was required to maintain a log-book as required under §395.8. Under the HOS rules, the accident driver was authorized to have been on-duty a total of 14 hours and allowed to drive a total of 11 hours. The accident driver would then be required to take 10 consecutive hours off-duty before he could resume any additional driving / on-duty hours. At 8:51 p.m. on February 23, 2015 the driver reach the maximum 14 hours rule and was required to take his 10 hour DOT break. The accident driver however continued with the trip and remained on-duty driving until the next morning at 6:44 a.m. Reconstruction of the driver's 72 hour history indicated the accident driver was on-duty a total of 23:53 hours at the time of the accident. At the time of the crash, the accident driver was in violation of the 14 hour rule (§395.3(2)). Additionally, the accident driver would be in violation of failing to retain a copy of each record of duty status for the previous

⁶³ Google Maps, retrieved from : <https://www.google.com/maps/dir/Oxnard,+CA/Somerton,+AZ/@33.4393444,-118.0780336,8z/am=t/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x80e84de61325679f:0x598049c0fa5eb645!2m2!1d-119.1770516!2d34.1975048!1m5!1m1!1s0x80d659918eda28b1:0x6fd43436943656da!2m2!1d-114.709677!2d32.5964404>

consecutive 7 days which should have been in retained in his possession and available for inspection at the time of the accident as required under §395.8(k)(2).

6. Safety Issues Identified by the NTSB investigation.

During this investigation the NTSB identified several deficient safety areas with the carrier's operation. These deficiencies included:

1. The carrier failed to recognize their mechanics were regulated drivers and subject to the FMCSRs.
2. The carrier failed to qualify the accident driver or the other mechanics drivers under the requirements under part 391.
3. The carrier failed to require their mechanics who operated CDL required equipment have properly endorsed CDLs as required under part 383.
4. The carrier failed to pre-employment drug test the accident driver and failed to include the driver in their random testing pool as required under part 382.
5. The carrier failed to pre-employment drug test additional mechanics that were subject to random drug and alcohol testing as required under part 382.
6. The carrier failed to require the accident driver or other mechanics maintain hours of service requirements as required under part 395.
7. The carrier failed to make sure their mechanics held mechanic inspector qualifications as required under part 396.
8. The carrier failed to make sure that their vehicles that exceed 10,001 GVWR receive annual or periodic inspections as required under §396.17.

As a result of this investigation, a follow-up with the motor carrier has concluded the following corrective actions have been taken by the carrier:

- Company mechanics are now required to be knowledgeable of the FMCSRs
- The mechanics are now qualified as drivers and are subject to the driver qualification process as required under part 391.
- All the mechanics adhere to the hours of service requirements. Mechanics are trained and required to adhere to part 395 HOS regulations, maintaining compliance of their log book and 100 air radius time sheets.
- Currently 3 mechanics on staff have obtained their CDLs. Two additional mechanics were enrolled in CDL driver education school and would be

completing their training at the writing of this report. A total of 5 mechanics will hold Class A and Class B CDL with school bus endorsement.

- All the CDL mechanics are now in the random drug and alcohol testing program. All the mechanics holding CDLs are now required to adhere to the drug and alcohol testing requirements of part 382.

E. DOCKET MATERIAL

The following attachments and photographs are included in the docket for this investigation:

LIST OF ATTACHMENTS

Motor Carrier Attachment 1- The Growers Company MCS-150

Motor Carrier Attachment 2- Harvest Management MCS-150

Motor Carrier Attachment 3 – The Grower’s Labor Agreement

Motor Carrier Attachment 4 – The Grower’s Company Driver Handbook

Motor Carrier Attachment 5- Golden Gate Partnership Recognition Certificate

Motor Carrier Attachment 6- Accident Driver’s Training Records

Motor Carrier Attachment 7 – Driver Training Objectives

Motor Carrier Attachment 8- Annual Random Drug and Alcohol Testing Summary

Motor Carrier Attachment 9 – How to Improve Safety Culture

Motor Carrier Attachment 10- Accident Driver’s Time Records

Motor Carrier Attachment 11 – Carrier BIT Inspections

Motor Carrier Attachment 12- Accident Vehicle Manufacturer Data Plate

Motor Carrier Attachment 13- The Grower’s CRs

Motor Carrier Attachment 14- Post-accident CR Harvest Management

Motor Carrier Attachment 15- Harvest Management MCMIS Profile

Motor Carrier Attachment 16- Transcript of NTSB Motor Carrier Interview

Motor Carrier Attachment 17- Accident Driver DQ File

Motor Carrier Attachment 18 - Accident Driver' DOT Medical Examination Report

Motor Carrier Attachment 19- Accident Driver CDLIS Report

Motor Carrier Attachment 20- Accident Driver FMCSA DIR Report

Motor Carrier Attachment 21– Accident Driver Roadside Inspections

Motor Carrier Attachment 22 – Cash Advance for Accident Driver

Motor Carrier Attachment 23 – Accident Driver's Driving Instructions per Motor Carrier

Motor Carrier Attachment 24 – Hotel Reservation for Accident Driver

Motor Carrier Attachment 25 – Motor Carrier Account of Accident Driver's 24 Hour History

LIST OF PHOTOGRAPHS

Motor Carrier Photo 1 – Carrier Help Aids

Motor Carrier Photo 2 – Exemplar Vehicle

Motor Carrier Photos 3- 8 – Examples of Various Equipment Owned by the Carrier

Motor Carrier Photo 9 – Carrier Maintenance Shop

Motor Carrier Photo 10 – Carrier Parts Supply Shop

Motor Carrier Photo 11 - Carrier's Scheduled Maintenance Board

END OF REPORT

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