

National Transportation Safety Board

Office of Highway Safety

Washington, DC 20594



HWY23FH005

MOTOR CARRIER GROUP

Group Chair's Factual Report

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A. CRASH

Location: Louisville, St. Lawrence County, New York
Date: January 28, 2023
Time: 6:00 a.m. Eastern Standard Time

B. MOTOR CARRIER GROUP

Group Chair / IIC	Michael S. Fox NTSB- Office of Highway Safety 490 L'Enfant Plaza Washington, DC 20954
Group Member	Brian Temperine, Division Administrator FMCSA Clinton & Pearl St., Albany, New York 12205
Group Member	Michael Cerasa, Special Agent FMCSA 130 S. Elmwood Ave, Suite 524, Buffalo, New York 14212
Group Member	Craig Feister, Division Administrator (Retired) FMCSA 400 N. 8th St. Suite 780, Richmond, VA 23219
Group Member	Donald Orye, Special Agent FMCSA 400 N. 8th St. Suite 780, Richmond, VA 23219
Group Member	Lt. Zach Eppler New York State Police 1097 State Route 83, Ray Brook, New York 12977
Group Member	Lt. Daniel Bates New York State Police 1220 Washington Ave, Albany, New York 12226
Group Member	Erik Burnett, Senior Investigator New York State Police Massena, New York 13662
Group Member	Investigator Anthony Bissonette New York State Police, Collision Reconstruction Unit B 1097 State Route 83, Ray Brook, New York 12977

Group Member Jonathan Nicastro, Director
New York State Department of Transportation
50 Wolf Rd, Pod 53, Albany, New York 12232

C. CRASH SUMMARY

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

D. DETAILS OF THE INVESTIGATION

This investigative report addresses the motor carrier operations of Vehicle 1, the striking vehicle, a 2021 Freightliner M2 box truck involved in this crash, identified as Aero Global Logistics, LLC (AGL). This report documents the company history, hiring practices, driver qualification, hours of service, drug and alcohol testing and maintenance procedures of AGL. Additionally, this report will also review the operations of Vehicle 2, a 2013 Chevrolet Express with Micro Bird school bus body, owned and operated by LBNFY. This report will also address the Federal and State oversight of both motor carriers involved in this crash.

1.0 Motor Carrier Operations

The motor carrier of Vehicle 1 was identified as AGL. The carrier's principal place of business (PPOB) was located at: 2983 South Pleasant Valley Road, Winchester, VA 22601. The carrier has a mailing address located at 80 Morristown Road Unit 3B, Bernardsville, NJ 07924. On February 6-7, 2023, NTSB and Federal Motor Carrier Safety Administration (FMCSA) investigators interviewed the Vice President (VP) of Operations, the terminal manager of the Foxboro, MA terminal, and the AGL Regional Manager.¹ AGL obtained legal counsel who was present via phone and Microsoft Teams calls during some of the interviews. Also present was an outside safety consultant for AGL. The carrier stated they had a safety director, but that person was not present during the site visit due to medical issues.

1.1 Carrier History and Structure

According to the AGL VP the company originated from a previous company called Chopper DDS, Inc. USDOT 1214884 which performed similar operations that AGL currently performs.² On October 2013, Chopper DDS (Chopper) went bankrupt, and the president of Chopper started up AGL. The president of AGL bid on the routes

¹ See Motor Carrier Attachment: AGL Carrier Officials Interview February 6, 2023.

² See Motor Carrier Attachment: Chopper DDS MCS-150.

that were abandoned by Chopper and AGL began operations.³ At the time, these accounts involved servicing Ford and Chrysler dealerships. The carrier's business model included delivery of original equipment manufacturer (OEM) auto parts to unattended automobile dealerships at night. The carrier currently services approximately 500 dealerships in the mid-Atlantic region. The carrier owns three distribution warehouses that are located at the following locations: 1). 2983 South Pleasant Valley Road, Winchester, VA; 2). 220 Admiral Byrd Drive, Winchester, VA; and 3). 35 Panas Road, Foxboro, MA. The carrier also stated that the company was in the process of adding a new terminal in Memphis, TN, that would be operational in late June 2023. The Memphis terminal would function under the same operational model as the Winchester, VA (Winchester) and Foxboro, MA (Foxboro) terminals. The carrier stated to maximize fleet efficiency they also made daytime retail deliveries to stores that included: Barnes and Nobles, H&M, and a company called "Madrax" that manufactured bicycle racks.

According to carrier officials, the company transported auto parts in the mid-Atlantic for Ford and Chrysler dealerships. The carrier used three distribution centers which one driver deliver a truck loaded with parts from the distribution center and a second driver would take over (slip-seat) the truck and run a route to local dealerships. The carrier also conducted line-haul operations transporting parts from Ford and Chrysler distribution centers to their warehouses.⁴

1.2 AGL Fleet and Drivers

According to the VP of Operations, the carrier's fleet consisted of the following equipment:

- 28 truck-tractors
- 64 semi-trailers
- 58 straight-trucks with a 26,000-pound gross vehicle weight rating (GVWR).

All of the AGL straight-trucks were long-term leases from Penske and had a GVWR of 26,000 lbs. and were classified as non-Commercial Driver License (CDL) required.⁵ At the time of the crash, the carrier employed 69 CDL drivers and 60 non-CDL drivers.

³ See Motor Carrier Attachment: AGL Letters of Incorporation.

⁴ Line haul transportation refers to the shipment of goods between logistics hubs.

⁵ For additional information see: [eCFR: 49 CFR Part 383 Subpart A -- General](#)

1.3 Carrier Safety Culture

AGL's safety culture was framed by a 64-page safety manual that was last updated in 2014.⁶ The table of contents reflected the following elements: introduction, safety mission statement, driver pre-qualification, drug and alcohol policy, safety rules, quarterly safety meetings, vehicle accidents, injuries, driver duties and responsibilities, equipment and inspections, decision driving, passing, backing, braking, following distance, night driving, extreme conditions, seat belts, cell phones, truck fires, warehouse and office safety.

The safety manual had the following mission statement:

"The Company has an important responsibility to operate in a manner that minimizes the possibility of accidents and injuries. This mission statement reflects the importance we place on an accident-free environment.

All employees must do their share to ensure the success of our safety program. Managers must develop and follow-up all programs and procedures in order to ensure that safe working conditions and practices exist and that all safety expectations or regulations are met.

Every employee must work and act in a safe manner. That means following all safety rules, and procedures, and using safe driving techniques. You must approach work with a safe, positive attitude, and using safe work practices that will protect you, your fellow employees, the general public, vehicles, equipment and customers.

All employees must report any unsafe or hazardous conditions to their immediate supervisor, and caution and advise others who are observed working in an unsafe manner. This is important at all warehouse locations, delivery sites, truck stops and over the road.

Everyone is responsible for safety. By working in a manner that prevents accidents and injuries from occurring, we help The Company and everyone in it grow and prosper.

Thank you for your commitment to our safe work program!"⁷

The carrier policy also stated the following safety rules:

1. Do not take chances on the road.
2. You should not drive if your ability or alertness is impaired by or because of fatigue, illness or other causes that make it unsafe to operate your vehicle.

⁶ See Motor Carrier Attachment: AGL Safety Manual.

⁷ Ibid.

3. Compliance with the Hours-of-Service Regulations is required.
4. Report to work on time and allow adequate time to conduct a pre-trip inspection and eliminate the need to speed due to lateness.
5. Know and comply with all Federal, State and Local regulations applicable to your area of operation.
6. Your speed should be consistent with the posted speed limits and appropriately modified for weather conditions.
7. Keep to the right except when passing a slower moving vehicle.⁸

Per the safety manual, the carrier conducted quarterly safety meetings. Drivers were compensated for attending safety meetings. The crash-involved driver did not attend any safety meetings.

The carrier lacked a stand-alone fatigue policy. Two weeks after the crash AGL regional manager emailed the NTSB with new policies concerning fatigue, stating that they implemented a new policy regarding fatigue. The carrier also had a driver monitoring system by Samsara but there was no policy or procedure described regarding its application.⁹ The carrier stated that they had a driver rewards program, however; it was not described in the safety manual. Further discussion of the carrier's reward program is discussed in section 1.3.5.

1.3.1 Driver Hiring Practice

AGL officials stated the company recruited drivers by word of mouth, the website, Indeed.com, local newspapers, Facebook.com, and advertised on the company website: www.aerogloballogistics.com . The carrier stated that they use a third-party vendor to perform hiring services PEI Ohio Inc, located at 190 Highland Drive, Medina, Ohio 44256. PEI also provided payroll service to the carrier. The carrier stated that the AGL human resources manager performed the initial driver interview and then had PEI conduct the background check, drug testing, motor vehicle report (MVR) check, medical card, and other driver qualification requirements. If the driver passed the PEI requirements and the carrier made approval, the driver's paperwork is sent to the carrier's insurance company for final vetting and approval. The carrier stated they had implemented the following minimum qualifications for drivers:

- Minimum 23 years old
- 18 months of commercial driving experience for CDL positions

⁸ See Motor Carrier Attachment: AGL Safety Manual.

⁹ For additional information see: [The Connected Operations Cloud | Samsara](#)

- One year of commercial driving experience for straight truck driver positions
- Clean MVR

According to the Foxboro, MA terminal manager, the crash-involved driver had a start date of January 9, 2023. According to the terminal manager, drivers were paid on a per diem basis which equates to a set salary for the designated route which is negotiated by the union every three years. Overtime was calculated manually when the driver exceeded normal work hours for unexpected delays, such as a mechanical issue, weather, or terminal freight delay.¹⁰

1.3.2 Driver Training

Once the driver was made an offer for employment, the driver would undergo a 5-day training program with a trainer who was a senior driver that typically held a Class A CDL. The training consists of observing the driver for a week of hands-on route driving. The driver was evaluated for driving abilities as well as customer service procedures that are scored by the driver trainer during this period. After completing the training, the new driver was notified that there was a 90-day probationary period. The carrier provided PowerPoint slides on fatigue which was part of the training for the Winchester terminal but not for the Foxboro terminal. The crash-involved driver did not receive this training. See 2.3.1 for further details.

1.3.3 Driver Monitoring System

The carrier stated they had recently acquired a driver monitoring system by Samsara.¹¹ The carrier stated that the driver monitoring system had inward and outward facing cameras that would capture risky driver behaviors. These risky behaviors included: speeding, following distance, near collision, crash, harsh acceleration, harsh turn, harsh braking, obstructed camera, no seat belt, mobile usage, drowsy, inattentive driving, lane departure, ran red light, failing to yield, and rolling stop. If a driver conducted one of these risky behaviors, the monitoring system would send an email alert to the safety department. At the time of the crash, AGL had just started to implement this program and the system was not on the crash-involved truck and the crash-involved driver had never operated any AGL trucks that were equipped with the Samsara system.

1.3.4 Drug Testing Program

At the time of the crash, AGL had instituted a random drug and alcohol testing program. The carrier produced random drug and alcohol testing records for the previous four quarters for subject drivers. The carrier's testing program met or

¹⁰ See Motor Carrier Attachment: AGL Foxboro, MA Terminal Manager Interview pg. 7.

¹¹ For additional information on Samsara Fleet Dash Cams see: [Samsara - Dash Cams](#).

exceeded the requirements under §382.305.¹² The carrier also had instituted a non-DOT pre-employment drug testing program as a condition of employment for those drivers that operated non-CDL trucks. All drivers, both CDL and non-CDL drivers were required to acknowledge the AGL Drug policy when hired.

1.3.5 Driver Incentive Program

AGL had instituted a driver incentive program. This program was made available only to the Winchester terminal drivers. The driver incentive program was based upon a performance score card that had eight elements that included:

- Fuel card
- Phone and scanner
- EZ pass
- Trip and delivery paperwork
- Claims picked up.
- Attendance
- Speeding
- Scans percent

If the driver was successful in these goals, the driver received a \$50 bonus in their paycheck. Drivers who qualified for the weekly bonus were automatically entered into a monthly bonus that was conducted as a lottery with a drawing of those that qualified. The monthly bonus was \$1,000 for one individual. The summary incentive report provided by AGL indicated that approximately 12 drivers out of 75 would qualify for the monthly incentive lottery.

1.4 Whistleblower

While the NTSB was visiting the AGL PPOB, the FMCSA received a formal complaint on February 6, 2023, from an active AGL driver.¹³ According to the complaint AGL was circumventing and concealing the hours of service by allowing drivers to run routes in violation of the regulations. The driver further stated that there was a second company, AKDI LLC, who managed the dock operations at Winchester and operated trucks from the Winchester locations that was running double routes. The driver further stated in the complaint that he was concerned with mechanical issues of the AGL fleet that had not been addressed.

¹² For additional information concerning the federal requirements for drug and alcohol testing see: [eCFR: 49 CFR Part 382 -- Controlled Substances and Alcohol Use and Testing](#)

¹³ [NCCDB - National Consumer Complaint Database \(dot.gov\)](#)

Later that day on February 6, 2023, NTSB and FMCSA investigators interviewed the complainant.¹⁴ The driver stated that he was aware that some drivers were running double routes and that he had been asked by the AKDI owner to run extra routes but stated that he turned down the offer. The following morning, the NTSB and FMCSA investigators questioned AGL officials if the company was running extra routes and the officials stated “no.”¹⁵

1.5 Night Dispatcher

On February 8 - 9, 2023, the NTSB and FMCSA investigators interviewed the AGL night dispatcher.¹⁶ According to the night dispatcher, the AKDI owner also operated the dock operations and was a “key figure” on running the routes for AGL. The dispatcher also stated that AGL was operating two double routes and specifically knew of two routes that were currently operating in excess of the hours-of-service. She identified the driver who was running a route from Winchester, VA to Buffalo, New York, and back. She also identified a second driver who was also running a double route. The FMCSA coordinated with the Virginia State Police (VSP) and on February 9, 2023, the VSP intercepted the driver who was running the Winchester to Buffalo route and conducted a roadside inspection. The VSP ascertained that the driver was running from Winchester to Buffalo and back (approximately 400 miles one way, or 800 miles round trip). The VSP placed the driver Out-of-Service for exceeding his hours of service and was escorted back to the terminal in Winchester.¹⁷

On February 14, 2023, the NTSB and FMCSA contacted the DOT Office of Inspector General (OIG) concerning this investigation. On December 20, 2023, the NTSB was notified that the OIG investigation on AGL was closed.

1.6 Foxboro Terminal Visit

On May 9-10, 2023, NTSB and FMCSA investigators conducted a site visit at the AGL terminal in Foxboro, MA. Additional documents were requested, and additional interviews conducted. The Foxboro terminal was where the crash-involved driver was hired and dispatched from. On May 10, 2023, the NTSB interviewed the terminal manager.¹⁸ During that interview the manager stated that approximately 50 drivers operated from the terminal. The terminal manager also stated that the crash-involved driver received his training from a senior driver from this terminal.

¹⁴ See Motor Carrier Attachment: AGL Driver Interview.

¹⁵ See Motor Carrier Attachment: AGL Carrier Officials Interview dated February 7, 2023.

¹⁶ See Motor Carrier Attachment: AGL Night Dispatcher Interviews February 8 and 9, 2023.

¹⁷ See Motor Carrier Attachment: Virginia State Police Driver/Vehicle Roadside Inspection.

¹⁸ See Motor Carrier Attachment: AGL Foxboro Terminal Manager Interview.

1.6.1 Driver Trainer

According to the interviews conducted with the Foxboro terminal manager and driver-trainer, the crash-involved driver was trained four days, from Jan 9-13, 2023. The driver-trainer stated in his interview that the first day the crash-involved driver sat in the passenger seat and observed the route and operational procedures. The next three days the roles reversed, and the crash-involved driver drove the route and the driver-trainer observed. According to the terminal manager and the driver-trainer, the crash-involved driver did not receive any additional training. Investigators reviewed the original documents in the driver's driver qualification (DQ) file. The DQ file contained a road test that was conducted on Jan 16, 2023, which was signed by the driver trainer but not signed by the crash-involved driver. According to the driver's time sheets and payroll reports, the crash-involved driver was Off-Duty on January 16, 2023. The manager and the driver trainer were questioned about this and stated it must have been a clerical error. The terminal manager stated that his office sent the driver a new hire package. The DQ file contained a copy of the acknowledgment of receipt of the employment handbook and drug testing policy which were both signed by the driver on January 16, 2023.

1.6.2 Driver -Trainer HOS

According to the trip sheets the driver-trainer finished training the crash-involved driver in unit 313024 on January 13, 2023. The driver-trainer trip sheet showed a start time of 12:26 a.m. and an end time of 12:07 p.m. indicated a total on-duty time of 11.67 hours.¹⁹ AGL also provided electronic logging device (ELD) data for the driver-trainer which indicated that the driver-trainer then came back on duty January 13, 2023, at 13:50 hours (1:50 p.m.) and operated 318751 and ran route A1. The ELD shows the driver drove January 13, 2023, from 13:50 hours (1:50 p.m.) to 23:59 hours (11:59 p.m.) and drove an additional 15 minutes on January 14, 2023, ending at 00:15 hours (12:15 a.m.) for a total of 9:15 hours. The trip sheet hours and ELD for the driver-trainer indicated that he had been on-duty for a combined total of 20.92 hours. See, Figure 1. Driver trainer trip sheet on January 13, 2013. For additional information see Figure 2 and Figure 3 regarding the ELD for the driver-trainer for January 13-14, 2023.

¹⁹ See Human Performance Attachment: AGL iTracker Application Data for Truck Driver.

Route **A2 / Utica Area** Device **A1/A2** Power Unit **223915** Trailer _____
 Driver _____ EZ Pass _____ Start Odo _____ Hub Start _____
 Ops Date **1/12/2023** Tolls **none** End Odo _____ Hub End _____

#	STOP NAME	CODE	SEQ	ETA	ACTUAL TIME IN	ACTUAL TIME OUT
	Marcy Domicile	ROM-S		01:00	01/13/23 00:26	01/13/23 00:30
1	Wally's Chrysler	45847	A02	02:47	01/13/23 02:07	01/13/23 02:13
2	Bob Johnson Chrysler Dodge Jeep Ram	60858	A09	03:15	01/13/23 02:34	01/13/23 02:48
3	FX CAPRARA Chrysler Dodge Jeep Ram	60825	A14	04:01	01/13/23 04:26	01/13/23 04:32
4	BLEVINS BROS INC.	67109	A21	05:08	01/13/23 05:33	01/13/23 05:52
5	BLEVINS SEAWAY MOTORS	60479	A26	06:11	01/13/23 07:04	01/13/23 07:14
6	BLEVINS MOTORS	59469	A35	07:21	01/13/23 07:51	01/13/23 08:00
7	FX Caprara Chrysler Dodge Jeep Ram	45867	A40	07:57	01/13/23 08:30	01/13/23 08:31
8	TEAM BLEVINS CHRYS-DODGE-JEEP	60248	A46	08:49	01/13/23 09:13	01/13/23 09:17
9	Empire Chrysler Dodge Jeep Ram	60854	A51	10:05	01/13/23 10:55	01/13/23 10:57
	Marcy Domicile	ROM-E		11:30	01/13/23 12:06	01/13/23 12:07

Delivery Totals	Stops	Hours	Miles	Start	Finish	CAG	TOT	PCS	COF	MISC	Total Pcs	Total Cag	Total Tot
Expected	9	10.68	362.90	01:00	11:40	8	8	14	0	0			
Actual		11.67	0	00:26	12:06								

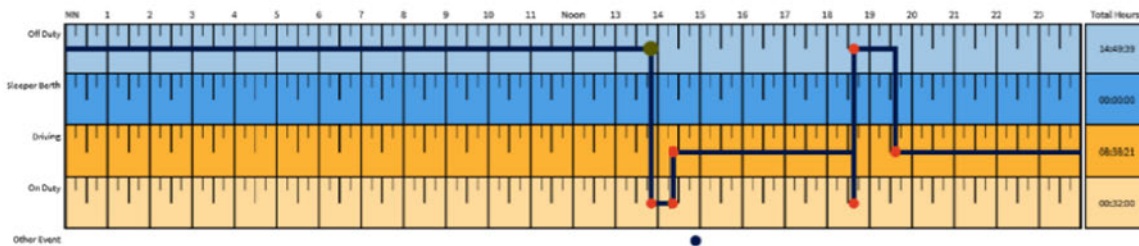
Please be on time for all routes - late/no shows will be entered into the System and added to the employees' records. Thanks.

Figure 1. Driver trainer trip sheet on January 13, 2013.²⁰

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²⁰ In Figure 1 the trip sheet lists the driver-trainer as the driver who trained the crash-involved driver. These trip sheets reflect HOS for both drivers.

Record of Duty Status



Event Detail

Date	Time	Geo Location	Location Coordinates	Odometer	Engine Hours	Event Type/Status	Origin	Sequence #
01/13/2023	13:50:00			0		Login	ELD	2E02
01/13/2023	13:50:49	1mi NE NY Whitesboro	43.13, -75.28	Missing power-up event	Missing power-up event	On-duty, not driving	Driver	2E06
Driver pre-trip/fuel;Pre trip / fuel								
01/13/2023	13:50:49	1mi NE NY Whitesboro	43.13, -75.28	Missing power-up event	Missing power-up event	Off-duty (Inactive - Change Requested)	Other	2E69
Driver pre-trip/fuel;Pre trip / fuel								
01/13/2023	14:20:45			305,565		Login	ELD	1365
01/13/2023	14:20:45			0		Logout	ELD	2E07
01/13/2023	14:21:42	2mi ESE VA	36.68, -77.5	Missing	Missing	On-duty, not driving	Driver	1366

		Emporia		power-up event	power-up event	driving		
Asset Inspection: Repair made [Lights and Reflectors ? Inope								
01/13/2023	14:22:34	2mi ESE VA Emporia	36.68, -77.5	Missing power-up event	Missing power-up event	Driving	Driver	1367
01/13/2023	18:37:57	2mi ESE VA Emporia	36.68, -77.5	Missing power-up event	Missing power-up event	On-duty, not driving	Driver	1369
01/13/2023	18:38:12	2mi ESE VA Emporia	36.68, -77.5	Missing power-up event	Missing power-up event	Off-duty	Driver	136A
Foxborough MA;Break								
01/13/2023	19:37:02	2mi ESE VA Emporia	36.68, -77.5	Missing power-up event	Missing power-up event	Driving	Driver	136C
Foxborough MA								

Figure 2. ELD for driver- trainer on January 13, 2023.

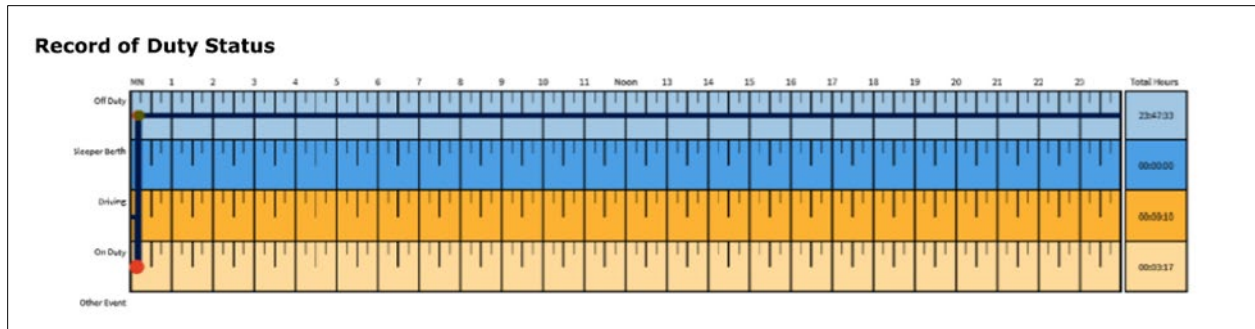


Figure 3. ELD for driver trainer for January 14, 2023.

Another discrepancy was also identified on the driver trainers ELD sheet. The driver- trainer was running route #A1, the line haul from Whitesboro to Foxboro. The ELD printout indicated Foxboro, MA. However, the GPS reading for the ELD was showing that the truck was in Emporia, Virginia. Both the terminal manager and the driver trainer were questioned about this discrepancy.²¹ Neither the manager nor the driver trainer could explain why the driver-trainer operated beyond the HOS of 14-hour duty day or why the ELD showed Emporia, VA.

Another discrepancy was noted regarding the crash- involved driver’s trip sheet. The NTSB recorder’s lab downloaded the crash-involved driver’s personal, and company issued cell phones. A photograph taken by the crash-involved driver on his personal cell phone was a picture of his trip sheet, dated January 10, 2023. NTSB investigators discovered that the photograph had notes documented on the trip report that were missing from the trip sheet provided by AGL. NTSB investigators requested the original trip sheet for the driver-trainer and crash-involved driver for January 10, 2023, but the carrier said it was lost or missing. The NTSB questioned the terminal manager why the photograph of the original trip sheet had notes on the document, but the copy provided to investigators in Winchester, VA on February 8-9, 2023, had been redacted. The terminal manager could not explain why this had occurred. See Photograph 1 and Figure 4 for additional details. The area highlighted in red in Photograph 1 shows handwritten notes that were redacted on the copy provided by AGL referenced by the arrow in Figure 4.

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²¹ See Motor Carrier Attachment: AGL Driver Trainer Interview.

AERO GLOBAL TRIPSHEET / CM / A2 Sch Start 1/10/2023 01:00

Route A2 / Ullica Area Device A1/A2 Power Unit 312024 Trailer
 Driver [REDACTED] EZ Pass Start Odo 201804 Hub Start
 Ops Date 1/9/2023 Tolls none End Odo 202169 Hub End

#	LOCATIONS	STOP CODE	SEQ	ETA	ODO	TIME IN	TIME OUT	CAG	TOT	PCS	COF
	Marcy Domicile	ROM-S		01:00	201	0000					
1	Wally's Chrysler	45847	A02	02:47	280						
2	Bob Johnson Chrysler Dodge Jeep Ram	60858	A09	03:15	290						
3	FX CAPRARA Chrysler Dodge Jeep Ram	60825	A14	04:01	294						
4	BLEVINS BROS INC.	67109	A21	05:08	295						
5	BLEVINS SEAWAY MOTORS	60479	A26	06:11	200						
6	BLEVINS MOTORS	59469	A35	07:21	2020						
7	FX Caprara Chrysler Dodge Jeep Ram	45867	A40	07:57							
8	TEAM BLEVINS CHRYS-DODGE-JEEP	60248	A46	08:49	2023						
9	Empire Chrysler Dodge Jeep Ram	60854	A51	10:05	2100						
	Marcy Domicile	ROM-E		11:30	2169	1045	1100				

Delivery Totals: Stops 9, Hours 362.90, Miles 362.90, Start 01:00, Finish 11:00, CAG 0, TOT 0, PCS 0, COF 0

Expected: Stops 9, Hours 362.90, Miles 362.90, Start 01:00, Finish 11:00, CAG 0, TOT 0, PCS 0, COF 0

Actual: Stops 9, Hours 362.90, Miles 362.90, Start 01:00, Finish 11:00, CAG 0, TOT 0, PCS 0, COF 0

Please be on time for all routes - late/no shows will be entered into the System and added to the employees' records. Thanks.

4/5 Truck Check engine light & x2 wheel nuts out @ Pennsylv 30min worked light out post trip Pennsylv Refrate

Protrip No. Bow Hot St Training

FUEL TICKET TRANS #: 752122075 DATE: 01/10/23 AERO GLOBAL LOGISTICS LLC CUST #: 82391280 VEHICLE #: 223915 ODOMETER: 202166 PUMP #1: DIESEL 2 GALLONS: 26.1 OIL QUANTS: 0.0 RA/POW: HIGHWAY SERVICED BY: GERALD

Photograph 1. Crash-Involved Driver's Trip Sheet taken by cell phone.

AERO GLOBAL TRIPSHEET / CM / A2 Sch Start 1/10/2023 01:00

Route A2 / Ullica Area Device A1/A2 Power Unit 223915 Trailer
 Driver [REDACTED] EZ Pass Start Odo 201804 Hub Start
 Ops Date 1/9/2023 Tolls none End Odo 202169 Hub End

#	LOCATIONS	STOP CODE	SEQ	ETA	ODO	TIME IN	TIME OUT	CAG	TOT	PCS	COF	MISCRET	RET	RET
	Marcy Domicile	ROM-S		01:00	201	0000								
1	Wally's Chrysler	45847	A02	02:47	280									
2	Bob Johnson Chrysler Dodge Jeep Ram	60858	A09	03:15	290									
3	FX CAPRARA Chrysler Dodge Jeep Ram	60825	A14	04:01	294									
4	BLEVINS BROS INC.	67109	A21	05:08	295									
5	BLEVINS SEAWAY MOTORS	60479	A26	06:11	200									
6	BLEVINS MOTORS	59469	A35	07:21	2020									
7	FX Caprara Chrysler Dodge Jeep Ram	45867	A40	07:57										
8	TEAM BLEVINS CHRYS-DODGE-JEEP	60248	A46	08:49	2023									
9	Empire Chrysler Dodge Jeep Ram	60854	A51	10:05	2100									
	Marcy Domicile	ROM-E		11:30	2169	1045	1100							

Delivery Totals: Stops 9, Hours 362.90, Miles 362.90, Start 01:00, Finish 11:00, CAG 0, TOT 0, PCS 0, COF 0

Expected: Stops 9, Hours 362.90, Miles 362.90, Start 01:00, Finish 11:00, CAG 0, TOT 0, PCS 0, COF 0

Actual: Stops 9, Hours 362.90, Miles 362.90, Start 01:00, Finish 11:00, CAG 0, TOT 0, PCS 0, COF 0

Please be on time for all routes - late/no shows will be entered into the System and added to the employees' records. Thanks.

Protrip ✓

Hot Stills no good Training hourly -

Figure 4. Crash-involved driver's trip report with redacted information provided by AGL.

2.0 AGL Crash-Involved Driver

2.1 Driver Qualifications

AGL officials provided a DQ file for the crash-involved driver. The DQ file contained an application for employment, inquiry to previous employers, motor vehicle report (MVR), driver evaluation road test form, and copy of the driver's DOT medical certificate. The DQ file contained the required documents under Part 391, however, the application for employment which is required to acknowledge that the information is true and complete was not signed by the driver. Additionally, the authorization / liability release of information for the background check was not signed by the driver, as required under 391.21(b)(12) as seen in Figure 5 and Figure 6.

Applicants Statement	
<small>I certify that answers given herein are true and complete to the best of my knowledge</small>	
<small>I authorize investigation of all statements contained in this application. I understand that misrepresentation or omission of facts called for is cause for dismissal. Further, I understand and agree that my employment is for no definite period and may, regardless of the date of payment of my wages and salary, be terminated at any time without any previous notice.</small>	
<small>Signature of Applicant</small>	<small>Date</small> 01/08/2023

Figure 5. AGL Application for crash-involved Driver.

AUTHORIZATION / LIABILITY RELEASE	
<small>I hereby authorize this company to release all record of employment, including assessments of my job performance, ability and fitness to include drug and alcohol results (if applicable) to each and every company (or their authorized agents) which may request such information in connection with my application for employment with said company. I hereby release this company from any and all liability of any type as a result of providing this information to the company requesting this information.</small>	
<small>Signature of Applicant</small>	<small>Date</small> 01/08/2023

Figure 6. AGL release of information for crash-involved driver.

The AGL driver held a valid 2-year DOT medical certificate with an issue date of May 2022, and expiration date of May 2024. The medical certificate indicated the exam was conducted by a physician's assistant who was listed on the FMCSA certified medical examiners.²² According to the carrier, the driver had a start date of January 9, 2023.

²² For additional information see: [FMCSA National Registry \(dot.gov\)](https://www.fmcsa.gov)

2.2 Crash-Involved Driver's Driving History

The crash-involved driver held a New York Class D license with an issue date of May 2021 and an expiration date of June 2029. The driver's MVR did not reflect any convictions, accidents, withdrawals, or restrictions. According to the DQ file, the driver held one previous commercial driving position at the company "Battery Delivery", located in Queens, New York, from October 2018 to December 2022, before being employed at AGL. Per the employment application, and the driver's statement, the driver had no other previous employment history. The NTSB attempted to contact Battery Delivery company however the company was no longer in business.

2.3 Crash-Involved Driver Drug Testing

The AGL crash-involved driver operated a non-CDL truck and was not required to hold a CDL. As such, the crash-involved driver was not subject to DOT drug and alcohol testing. As previously stated in section 1.3.4, AGL had instituted a non-DOT drug testing requirement. The crash-involved driver submitted to a pre-employment non-DOT drug test on January 12, 2023, which was negative.

2.4 Driver Interview

On February 1, 2023, NTSB investigators interviewed the AGL driver at his residence.²³ Per the driver's attorney, the driver spoke only Spanish.²⁴ The NTSB furnished a Spanish translator to facilitate the translation during the driver interview. The driver's attorney participated via Teams and cell phone during the interview. The driver stated that he went to truck driver school in Bronx, New York, in 2018. The driver confirmed that he had been employed by the carrier for the previous three weeks. The driver also confirmed that he had worked for Battery Delivery before working at AGL. The driver said that he had a substitute truck on the day of the crash. He stated that he always ran a set route and was not dispatched. The driver also stated that he used a company cell phone to keep record of his hours of service and hand wrote them on a paper time sheet.

2.5 Driver's Route

According to the driver and documents provided by AGL, the driver was assigned to a dedicated route. The route consisted of two legs. The first leg (A1) was the line haul, which started in Whitesboro, NY, and went to the Foxboro terminal, and

²³ See Human Performance Attachment: NTSB Interview with Truck Driver, found in the docket for this investigation.

²⁴ The crash-involved driver made a 9-1-1 call immediately following the crash and the driver spoke English to the dispatcher. Additionally, during the interview with the AGL driver trainer he stated the crash-involved driver spoke and understood English. For additional information see Motor Carrier Attachment: AGL Driver Trainer Interview.

then picked up parts and returned to Whitesboro, NY. The second leg (A2) consisted of the local routes and was assigned to the crash-involved driver. According to the carrier, the crash-involved driver operated a slip-seat route.²⁵ According to carrier officials the staging area for A1 and A2 was a rented parking space located at: 190 Mohawk Street, Whitesboro, New York 13492.

On February 4, 2023, NTSB investigators visited the 190 Mohawk Street location and interviewed the owner of the excavating company located at that location. The owner told the NTSB that he rented the parking spot to AGL. The owner of the excavating company stated that the AGL had been operating this slip-seat operation for quite a while and noticed that the truck did not return to the yard the day of the crash. While the NTSB investigators were conducting the site visit a substitute AGL straight truck was observed at the rented parking space. See Photograph 2 for additional details.



Photograph 2. Exemplar AGL straight truck at pickup location.

²⁵ Slip- seating is when multiple drivers share a truck.

2.5.1 Route Details

The driver stated that he lived approximately 14 minutes away from the location of the staged AGL truck. The AGL driver drove a set route delivering auto parts to Jeep and Chrysler dealerships. The route started and ended in the same parking space in Whitesboro, NY. The driver would make nine stops to the various Jeep or Chrysler dealerships and traveled approximately 363 miles. For additional details of the crash-involved driver's route, see Table 1.

Table 1. Crash-Involved Driver's Route.

Stop Name	City	State	Miles	Estimated drive time (minutes)	Estimated work time (minutes)
Marcy Domicile	Whitesboro	NY	0	0	15
Wally's Chrysler	Adams	NY	75.6	92	107
Bob Johnson Jeep	Watertown	NY	11.5	13	28
FX Caprara Chrysler	Alexandria Bay	NY	29.9	31	46
Blevins Bros	Ogdensburg	NY	39	52	67
Blevins Seaway Motors	Massena	NY	35.6	48	63
Blevins Motors	Potsdam	NY	18.8	25	40
FX Caprara Chrysler	Canton	NY	15.9	21	36
Team Blevins	Gouverneur	NY	27.7	37	52
Empire Chrysler	Lowville	NY	55	61	76
Marcy Domicile	Whitesboro	NY	53.9	66	81
Estimated total		NY	362.9		10.2 hours

2.6 AGL Driver's Hours of Service (HOS)

The carrier stated that the crash-involved driver operated within the short haul HOS exemption and maintained timesheets for hours-of-service record keeping. Under Part 395, the Short-Haul Exception states: "a driver is exempt from the requirements of §395.8 and §395.11 if: the driver operates within a 150 air-mile-radius of the normal work reporting location, and the driver does not exceed a maximum duty period of 14 hours. Drivers using the short-haul exception in §395.1(e)(1) must report and return to the normal work reporting location within 14 consecutive hours and stay within a 150 air-mile radius of the work reporting location."²⁶

The carrier stated the driver ran a set route five days a week, Tuesday through Saturday. According to the available records, the crash-involved driver maintained a consistent schedule from approximately 1:00 am to approximately 12:00 pm. See **Table 2** for additional details.

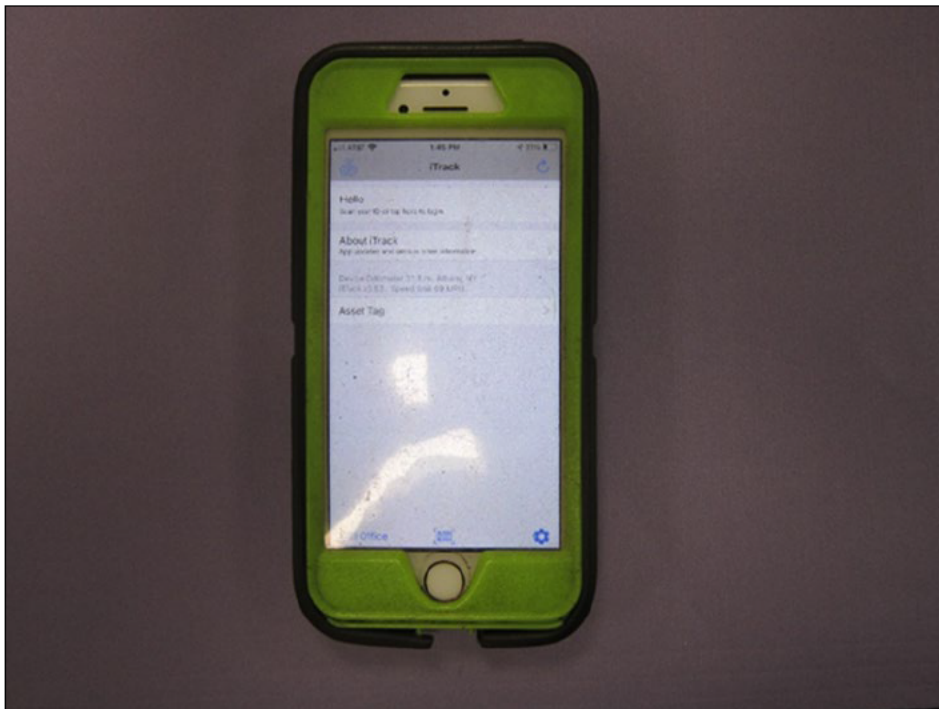
²⁶ Retrieved from: Retrieved from: [Summary of Hours of Service Regulations | FMCSA \(dot.gov\)](https://www.fmcsa.dot.gov/summary-of-hours-of-service-regulations)

Table 2. AGL Crash-Involved Drivers HOS.

Date	Start	Finish	Total hours
1/17/2023	12:54 am	11:44 am	10:6 ²⁷
1/18/2023	1:04 am	11:44am	10.4
1/19/2023	1:15 am	11:36 am	10.37
1/20/2023	12:44 am	11:01 am	10.28
1/21/2023	12:55 am	11:04 am	10.16
1/22/2023	Off	Off	0
1/23/2023	Off	Off	0
1/24/2023	12:49 am	11:26 am	10.62
1/25/2023	12:56 am	11:38 am	10.7
1/26/2023	1:27 am	12:00 pm	10.54
1/27/2023	1:12 am	11:32 am	10.38
1/28/2023	1:04 am	~6:00 am (crash)	~ 5.0 hours

2.7 Company Cell Phone

AGL provided their delivery drivers with a company cell phone. The cell phone had limited features and was restricted to outbound calls and the company applications. The cell phone contained an app called “iTracker” for drivers to record proof of their deliveries for the routes they ran. For more details see Photograph 3.



Photograph 3. Exemplar AGL company cell phone with iTracker app.

²⁷ AGL Trip sheet for 1/17/23 shows the driver-trainer who was training the crash-involved driver. This trip sheet was the HOS record for both drivers. For more information see Human Performance Attachment: AGL iTracker Application Data for Truck Driver.

The carrier provided the “iTracker” data for the three weeks prior to crash. The data was sent to the NTSB Recorders Division for download and analysis. That data matched with the iTracker driver logs provided by AGL. For additional information, see *Personal Electronic Device Data Specialist’s Factual Report* in the docket.

2.8 Vehicle Maintenance

As mentioned, the carrier leased their fleet vehicles from Penske. Vehicle maintenance was performed by Penske. When the driver started running A2 route (January 10, 2023) he was operating unit 223915 and operated that unit until January 27, 2023. On January 28, 2023, the day of the crash, unit 223915 needed maintenance and the truck was replaced with unit 381074, which was the subject vehicle involved in the crash. According to Penske records, unit 381074 had a Federal annual inspection in December 2022 and was valid until December 2023. According to the crash-involved driver, truck 381074 had no mechanical issues the day of the crash. The carrier produced evidence that the company had a systematic method to inspect, repair, and maintain the subject vehicle and the rest of the AGL fleet that met the requirements of §396.3. For additional information concerning the maintenance of the crash-involved truck see the *Vehicle Factors Group Chairman Report* in the docket.

3.0 FMCSA Safety Management System

According to the FMCSA Motor Carrier Management Information System (MCMIS) AGL’s first FMCSA MCS-150 was filed on October 10, 2013, and was issued USDOT number 2447319, and assigned a motor carrier (MC) number 844580.²⁸ The carrier is classified as “Authorized For Hire” interstate carrier. Cargo classification listed: “general freight, other - auto parts.” The carrier’s letters of incorporation listed as a Limited Liability Corporation (LLC) showing originally formed on November 17, 2014.²⁹

In 2010, the 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 related to CMVs. It introduced a new enforcement and compliance model that allows the 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 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).

²⁸ See Motor Carrier Attachment: AGL MCS-150’s.

²⁹ See Motor Carrier Attachment: AGL Letters of Incorporation.

3.1 CSA BASICS

- **Unsafe Driving** – Operation of CMVs by drivers in a dangerous or careless manner. *Example violations:* Speeding, reckless driving, improper lane change, and inattention. (Federal Motor Carrier Safety Regulations (FMCSRs) 49 CFR 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-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, and 396)
- **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 (violations related to that 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 and carrier size). Percentiles

from 0 to 100 are determined by comparing the BASIC measurements of the carrier to the measurements of other carriers in the peer group. A percentile of “100” indicates the worst performance.

The FMCSA established threshold levels that 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 3 represents the thresholds set by the FMCSA that help prioritize agency intervention and resource management.^{30’31} AGL was classified as a For-Hire property carrier and falls under the “all other motor carriers” criteria.

Table 3. FMCSA BASICS Thresholds

BASIC	Passenger Carrier	HM Carrier	All other Motor Carriers
Unsafe Driving, HOS, Crash	50%	60%	65%
Driver Fitness, Drug & Alcohol, Maintenance	65%	75%	80%
Hazardous Materials	80%	80%	80%

On a carrier’s SMS profile, which is publicly available on the Safer website, an alert symbol  is displayed in any designated BASIC where the carrier has exceeded the corresponding threshold.³² At the time of the crash, the MCMIS Carrier Profile showed AGL had one BASIC in alert status - Unsafe Driving at 81%.³³

FMCSA uses the BASICs to help prioritize interventions such as compliance review (CR). There are two categories for CRs - “focused” and “comprehensive.” A focused CR is used when two or fewer BASICs have exceeded their thresholds or when only certain portions of the *Code of Federal Regulations* (CFR) are reviewed related to the carrier’s operations. A focused CR normally does not result in a safety rating and usually is classified as “non-rated” when completed, however it may result in an adverse safety rating (conditional or unsatisfactory).³⁴ A comprehensive CR is used when three

³⁰ Retrieved from: www.fmcsa.dot.gov.

³¹ FMCSA is undergoing an overhaul of SMS and has proposed changes to the thresholds in a Request for Comments titled, “Revised Carrier Safety Measurement System,” published at 88 *Federal Register* 9954 on February 15, 2023.

³² FMCSA BASIC information publicly available for passenger and Hazardous Material carriers only. See additional information at the FMCSA Safer website: <http://safer.fmcsa.dot.gov/CompanySnapshot.aspx>.

³³ See Motor Carrier Attachment: AGL MCMIS Profile.

³⁴ Safety rating or 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** means a motor carrier has in place, functioning safety management controls to meet the safety fitness standards prescribed in 49 *CFR* 385.5. (2) **Conditional** means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness

or more BASICs have exceeded their thresholds. A comprehensive CR may also be used if the carrier was involved in a crash or there has been a complaint made. A comprehensive CR addresses all aspects of the carrier's operation and normally results in a safety rating. The safety rating is determined by the FMCSA using safety rating methodology outlined in 49 *CFR* 385.5 which evaluates patterns of critical and acute violations.³⁵

3.2 FMCSA Oversight

The carrier entered the FMCSA New Entrant Safety program on October 21, 2013. On May 20, 2014, AGL had a New Entrant Safety Audit (SA) which took place at the carrier's PPOB located in E. Stroudsburg, Pennsylvania, and the carrier received a Passing score.³⁶ The SA showed that AGL had six recordable crashes. Using the safety audit grading criteria for Factor 6 Accidents showed the carrier had a performance status of "FAIL -2.53."³⁷ See Figure 7 for more details.

Factor	Failed Questions		Performance Test Status	Total Points	Factor Status
	Critical	Acute			
1. General	0	0	—	0	PASS
2. Driver	0	0	—	0	PASS
3. Operations	0	0	—	0	PASS
4. Maintenance	0	0	PASS — 20.00 %	0	PASS
5. Hazardous Materials	—	—	—	—	—
6. Accidents	—	—	FAIL — 2.53	—	FAIL
SUM	0	0		0	PASS

Figure 7. Safety Audit results for AGL.

standards that could result in occurrences listed in §385.5 (a) through (k). (3) **Unsatisfactory** 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) **Unrated** means that a safety rating has not been assigned to the motor carrier by FMCSA.

³⁵ Acute violations are those identified where non-compliance is so severe as to require immediate corrective action by the motor carrier regardless of the overall safety posture of the carrier. Critical violations relate to management and/or operational controls that show a pattern of non-compliance. A list of acute and critical violations is listed in Appendix B of 49 *CFR* 385.

³⁶ See Motor Carrier Attachment: AGL Safety Audit 5/14/2014.

³⁷ How the SA is scored: under CRASH FACTOR - Carriers are defined as urban or non-urban in order to compensate for the higher crash risk of urban operations. Urban carriers are defined as those that operate within a 100 air-mile radius. The crash rate for a carrier is calculated as accidents per million miles traveled. Factor #6 is "FAILED" if the urban carrier crash rate exceeds 1.7 or the non-urban carrier crash rate exceeds 1.5.

Retrieved from: [eCFR: Appendix B to Part 385, Title 49 -- Explanation of Safety Rating Process](#)

When the Safety Audit was conducted AGL employed 60 CDL drivers, owned 59 truck-tractors and owned 65 semitrailers. The Safety Audit did not reference the size or scope of the operation or origin of the company and furthermore the Safety Audit stated that there was nothing “A-typical” of the carrier.

3.2.1 Motor Carriers Prioritized Based on Risk

On a monthly basis, the SMS calculates carrier basic percentiles, based on their on-road performance data. This information and other information such as intervention history, unresolved Acute and Critical violations, and operational characteristics is used to prioritize carriers based on risk. There are four categories which FMCSA assesses risk, which includes: High Risk, Moderate Risk, Risk, and Warning Letter. These categories help FMCSA prioritize interventions (i.e. CR, warning letter) as well as providing guidance when such an intervention should be accomplished. For example, a high-risk carrier should have an on-site investigation completed within 90 days of release of the high-risk carrier list. The criteria for carriers that are in one of these risk categories is detailed in Figure 8.

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Criteria for Risk-Based Prioritization within Primary Lists

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
High-Risk	Two (2) or more of the following BASICs at or above the 90 th percentile for two (2) consecutive months (passenger carriers: 1 month): Unsafe Driving, Crash Indicator, Hours-of-Service (HOS) Compliance, Vehicle Maintenance	Passenger carriers: no onsite comprehensive investigation in last 12 months. All other carriers: no onsite intervention in last 18 months.	None excluded
Moderate-Risk	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	<ol style="list-style-type: none"> 1. No intervention in last 12 months AND 2. No Warning Letter in last 6 months 	Excludes the following: <ol style="list-style-type: none"> 1. High-Risk 2. Warning Letter 3. New Entrant Carriers
Risk	One (1) or more BASICs at or above intervention threshold or with unresolved Acute or Critical Violation(s)	<ol style="list-style-type: none"> 1. No intervention in last 12 months AND 2. No Warning Letter in last 6 months 	Excludes Moderate-Risk
Warning Letter	One (1) or more BASICs at or above threshold	<ol style="list-style-type: none"> 1. No intervention or Warning Letter in last 18 months AND 2. If there was a previous intervention, then no BASICs or 	Excludes High-Risk <i>Note:</i> criteria for New Entrant warning letters are specified in the Safety Audit Manual section 3.1.1

Figure 8. FMCSA Risk Based Prioritization Guidelines.³⁸

3.3 FMCSA CR History

Prior to this crash AGL had 3 CRs. The first CR was conducted February 4, 2020.³⁹ The reason for the CR was because the carrier was identified as a Moderate Risk Carrier. The CR identified the following 10 violations:

1. §382.215 - Using a driver known to have tested positive for controlled substance. (Acute)
2. §391/23(a) - Failing to investigate driver’s background.
3. §391.23(c) - Failing to investigate driver’s background within 30 days of employment.

³⁸ Retrieved from: [Consolidated-eFOTM-Manuals 6.5.pdf \(dot.gov\)](#)

³⁹ See Motor Carrier Attachment: AGL Compliance Review 2/4/2020.

4. §391.23(e)(1) - Failing to investigate the driver's alcohol and controlled substances history for the previous three years.
5. §391.51(a) - Failing to maintain driver qualification on each driver employed.
6. §391.51(b)(3) - Failing to maintain road test certificate and driver's qualification file or copy of license or certificate the motor carrier accepted as equivalent.
7. §391.51(b)(5) - Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25 (c)(2).
8. §391.51(b)(6) - Failing to maintain a list or certificate relating to violations of motor carrier vehicle laws and ordinances required by §391.27.
9. §395.3(a)(3)(ii) - Driving more than eight hours have passed since the end of the driver's last off duty or sleeper birth period of at least 30 minutes.
10. §395.8(f) - Failing to require a driver to prepare record of duty status in form and manner prescribed.

This CR resulted in a Satisfactory safety rating and no enforcement action. This CR was conducted in Pittstown, New Jersey rather than in East Stroudsburg, Pennsylvania, where the original Safety Audit was conducted. Additionally, AGL's revenue went from \$1.8 million to over \$13.8 million. The CR did not make mention of the reason that the PPOB had changed or any notation on the significant change in revenue. See Table 4 for further details.

Table 4. Summary of FMCSA Interventions.

Date /Reason	Location	Revenue	Drivers	Vehicles	Rating
5/21/2014 New Entrant	E Stroudsburg, PA	\$1,877,000	60 CDL 0 non-CDL	59 truck tractors 65 trailers	Pass
2/4/2020 Moderate Risk	Pittstown, NJ	\$13,825,669	14 CDL 63 non-CDL	31 Straight trucks 22 truck tractors 44 trailers	Satisfactory
4/21/2021 Moderate Risk	Winchester, VA	\$23,822,326	53 CDL 80 non-CDL	37 straight trucks 40 truck tractors 79 trailers	Not Rated
6/27/2022 Complaint	Winchester, VA	\$22,754,630	69 CDL 60 non-CDL	59 straight trucks 43 truck tactors 79 trailers	Satisfactory
2/5/2023 Crash	Winchester, VA				Closed

On April 21, 2021, a second CR was conducted on AGL because the carrier was again classified as “Moderate Risk.” The FMCSA conducted a focused CR which included the following BASICs - unsafe driving, hours of service, controlled substances, crash indicator. The CR identified the following two violations:

1. §392.2 - Operating a commercial motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated - Unsafe Driving.
2. §395.8(a)(1)(i)- Carrier failed to install and /or require a driver to record the driver’s record of duty status using an ELD.

As a result of this compliance review the carrier received an Unrated safety rating and no enforcement action.⁴⁰

On June 27, 2022, the third CR was conducted. This CR was initiated because of a written complaint was sent into the FMCSA National Complaint Database.⁴¹ The complainant alleged that AGL used an unqualified driver who was involved in a DOT recordable crash. The AGL driver was operating without a CDL and tested positive on a drug test. This CR was a comprehensive review. The CR identified two violations:

1. §392.2 - Operating a vehicle in violation of local /state laws - Unsafe Driving.
2. §395.8(a)(1) - Failing to require a driver to prepare a record of duty status using the appropriate method.

According to the CR, the complaint was “unsubstantiated.” This CR resulted in a SATISFACTORY safety rating and no enforcement action.⁴²

As a result of this crash, the FMCSA initiated a post-crash investigation. The investigation was referred to another agency, the US OIG for further handling and contact. The FMCSA investigation closed; not completed.

3.4 History of AGL’s BASIC Scores

Since 2020, AGL has had one or more BASICs in alert status. During the four years prior to the crash, (between January of 2019 and December of 2022) AGL had BASICs in alert status in all but one category. See Table 5 for more details.

⁴⁰ See Motor Carrier Attachment: AGL Compliance Review dated 4/21/2021.

⁴¹ For additional information see: [NCCDB - National Consumer Complaint Database \(dot.gov\)](https://www.nccdb.gov/)

⁴² See Motor Carrier Attachment: AGL Compliance Review dated 6/27/2022.

Table 5. History of AGL BASICS in alert status.

BASIC	Safety Assessment	Period in Alert Status	Duration
Unsafe Driving	Alert	1/23-5/31/19	3 years, 7 months
Hours of Service	Alert	8/22, 11/22-10/20	32 months
Driver Fitness	Alert	9/22-7/21	37 months
Controlled Substances	Alert	1/21-2/20	11 months
Vehicle Maintenance	N/A	N/A	N/A
Crash	Alert	3/22-12/20	27 months

Examples of the carrier being in continuous alert status are documented in Figure 9. Snapshot of MCMIS Carrier Profile August 2022. Figure 10. Snapshot of MCMIS Carrier Profile January 2021. and Figure 11. Snapshot of AGL MCMIS Carrier Profile March 2019.

Company Safety Profile					
Legal Name:		AERO GLOBAL LOGISTICS			
Doing Business As:					
USDOT #:		2447319			
Report 2		BASICS Safety Information			
BASICS Date:		26-AUG-22			
BASIC	Percentile	Investigation Deficient	Investigation Deficient Date	On-Road Performance	Safety Assessment
Unsafe Driving	77			Display Percentile	Alert
Hours-of-Service (HOS) Compliance	65			Display Percentile	Alert
Driver Fitness	83			Display Percentile	Alert
Controlled Substances and Alcohol				No viol. within 1 yr	
Vehicle Maintenance	45			Display Percentile	
Hazardous Materials (HM) Compliance				No HM Veh. insp.	
Crash Indicator	63			Display Percentile	
Insurance/Other				Not Applicable	

Figure 9. Snapshot of MCMIS Carrier Profile August 2022.

Legal Name:		AERO GLOBAL LOGISTICS			
Doing Business As:					
USDOT #:		2447319			
Report 2		BASICs Safety Information			
BASICs Date:		29-JAN-21			
BASIC	Percentile	Investigation Deficient	Investigation Deficient Date	On-Road Performance	Safety Assessment
Unsafe Driving	83			Display Percentile	Alert
Hours-of-Service (HOS) Compliance	72			Display Percentile	Alert
Driver Fitness	82			Display Percentile	Alert
Controlled Substances and Alcohol		Serious Violation	04-FEB-20	No viol. within 1 yr	Alert
Vehicle Maintenance	63			Display Percentile	
Hazardous Materials (HM) Compliance				No HM Veh. insp.	
Crash Indicator	73			Display Percentile	Alert
Insurance/Other				Not Applicable	

Figure 10. Snapshot of MCMIS Carrier Profile January 2021.

Legal Name:		AERO GLOBAL LOGISTICS			
Doing Business As:					
USDOT #:		2447319			
Report 2		BASICs Safety Information			
BASICs Date:		29-MAR-19			
BASIC	Percentile	Investigation Deficient	Investigation Deficient Date	On-Road Performance	Safety Assessment
Unsafe Driving	74			Display Percentile	Alert
Hours-of-Service (HOS) Compliance	80			Display Percentile	Alert
Driver Fitness	95			Display Percentile	Alert
Controlled Substances and Alcohol				0%	
Vehicle Maintenance	57			Display Percentile	
Hazardous Materials (HM) Compliance				No HM Veh. insp.	
Crash Indicator	73			Display Percentile	Alert
Insurance/Other				Not Applicable	

Figure 11. Snapshot of AGL MCMIS Carrier Profile March 2019.

3.5 Safety Fitness Determination

When CSA 2010 was originally created, FMCSA intended to maximize the data generated by the new methodology. In January 2016, the FMCSA proposed Safety Fitness Determination (SFD) rule would replace the current three-tier federal rating system of "satisfactory-conditional-unsatisfactory" for federally regulated commercial motor carriers (in place since 1982) with a single determination of "unfit," which would require the carrier to either improve its operations or cease operations.⁴³

⁴³ Retrieved from: [Safety Fitness Determinations | FMCSA \(dot.gov\)](https://www.fmcsa.dot.gov/safety/safety-fitness-determinations)

Once in place, the SFD rule will permit FMCSA to assess the safety fitness of approximately 75,000 companies a month. By comparison, the agency is only able to investigate 15,000 motor carriers annually and per FMCSA less than half of those companies receiving a safety rating.⁴⁴

The proposed new methodologies would determine when a motor carrier is not fit to operate CMVs in or affecting interstate commerce based on the carrier's on-road safety data in relation to five of the Agency's seven Behavior Analysis and Safety Improvement Categories (BASICS); an investigation; or a combination of on road safety data and investigation information. The intended effect of this action is to more effectively use FMCSA data and resources to identify unfit motor carriers and to remove them from the Nation's roadways.⁴⁵

Under this proposal, unfit determinations could be based on a carrier's on-road safety data alone. In the NPRM, FMCSA proposed to eliminate the current three-tier rating system (i.e., satisfactory-conditional- unsatisfactory) for determining safety fitness in favor of a single determination of unfit. FMCSA's statutory requirement is to determine which owners or operators are unfit to operate on the Nation's roadways and prescribe specific consequences for motor carriers found to be unfit. By statute, such carriers are prohibited from operating in interstate commerce or transportation that affects interstate commerce. Using data from inspections or investigations or both, FMCSA proposes to evaluate carriers monthly to determine if they failed two or more Behavior Analysis and Safety Improvement Categories (BASICS) and thus should be proposed unfit. A motor carrier would be proposed unfit if it: (1) Failed two or more BASICS based exclusively on on-road safety data from 11 or more inspections with one or more violations in each, in a single BASIC, before a carrier could fail the BASICS; (2) had violations of the proposed set of critical and acute regulations, identified through an investigation, that cause the motor carrier to fail two or more BASICS; or (3) failed two or more BASICS based on a combination of data from inspections and investigation results. On March 23, 2017, FMCSA made a notice to withdraw the January 2016 NPRM for SFD.⁴⁶

3.6 AGL Crash History

During the on-site inspection at AGL, investigators identified that the carrier had a pattern of recordable crashes. According to the FMCSA the Motor Carrier Management Information System (MCMIS) profile, AGL has had 23 crashes in less than four years. When investigators were reviewing the police reports for these crashes, it was identified that most of these crashes occurred in the early hours between 1:00 am and 6:00 am and reviewed crash characteristics.⁴⁷ Several police reports indicated that

⁴⁴ Retrieved from: [Safety Fitness Determinations | FMCSA \(dot.gov\)](#)

⁴⁵ Retrieved from: [2015-33153.pdf \(govinfo.gov\)](#)

⁴⁶ Retrieved from: [Carrier Safety Fitness Determination | FMCSA \(dot.gov\)](#)

⁴⁷ See Motor Carrier Attachment: AGL Crash Reports and Loss Run Report.

the AGL drivers departed the either the travel lane or roadway, hit a tree, overturned, or hit a another vehicle. Further investigation into the carrier's crashes indicated the carrier had a recent fatal crash on January 13, 2023, in Chesapeake, Virginia, that was not on the carrier profile but identified on the loss run report.⁴⁸ Another crash not noted on the carrier's accident register was a recent crash that took place in Mansfield, MA on January 19, 2023, that resulted in three injuries. Additionally, the carrier also had a recent crash on May 19, 2023, that resulted in three injuries and the AGL driver was cited.⁴⁹ For additional information see Figure 12 which reflects AGL's crash history at the time of the Louisville, NY crash. An updated crash history as of October 2023 is documented in Figure 13.

Legal Name:	AERO GLOBAL LOGISTICS			
Doing Business As:				
USDOT #:	2447319			
Report 4	Crashes - 4 Year Summary			
Each Crash is counted only once according to the highest severity occurrence in the Crash (Fatality, Injury, Towaway). If multiple vehicles of the same Carrier are involved in a single Crash, each individual vehicle is counted as a Crash.				
Year	Fatalities	Injuries	Towaway	Total
2020	0	1	6	7
2021	0	4	5	9
2022	0	2	3	5
Total:	0	7	14	21
Average:	0.0	2.3	4.7	7.0
2023	0	0	1	1

Figure 12. AGL Crash History January 2023.

Legal Name:	AERO GLOBAL LOGISTICS			
Doing Business As:				
USDOT #:	2447319			
Report 4	Crashes - 4 Year Summary			
Each Crash is counted only once according to the highest severity occurrence in the Crash (Fatality, Injury, Towaway). If multiple vehicles of the same Carrier are involved in a single Crash, each individual vehicle is counted as a Crash.				
Year	Fatalities	Injuries	Towaway	Total
2020	0	1	6	7
2021	0	4	5	9
2022	0	2	4	6
Total:	0	7	15	22
Average:	0.0	2.3	5.0	7.3
2023	2	2	1	5

Figure 13. AGL Crash History October 2023.

⁴⁸ This crash was still being investigated by the local police and had not been updated to MCMIS until February 2023.

⁴⁹ See Motor Carrier Attachment: AGL Crash Reports and Loss Run Report.

3.7 Commonalities / Affiliations

As mentioned, the carrier stated that the company was an offshoot from the predecessor motor carrier Chopper (USDOT 1214884).⁵⁰⁵¹ Chopper shows inactive status in MCMIS and has no current operating authority. The FMCSA MCMIS database identified numerous elements that had common elements of company officials, drivers, and vehicles. The program identified the AGL CEO was also the president on the MCS-150 for Chopper dated January 13, 2013. The database NAS program also identified 13 drivers and two trucks that worked for AGL and were also associated with the Chopper DDS profile.

As described under §386.73(c), FMCSA may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is reincarnated if there is substantial continuity between the entities such that one is merely a continuation of the other. FMCSA may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is an affiliate if the business operations are under common ownership and/or common control. In making this determination, FMCSA may consider, among other things, the following factors:

(1) Whether the new or affiliated entity was created for the purpose of evading statutory or regulatory requirements, an FMCSA order, enforcement action, or negative compliance history. In weighing this factor, FMCSA may consider the stated business purpose for the creation of the new or affiliated entity.

(2) The previous entity's safety performance history, including, among other things, safety violations and enforcement actions of the Secretary, if any;

(3) Consideration exchanged for assets purchased or transferred;

(4) Dates of company creation and dissolution or cessation of operations;

(5) Commonality of ownership between the current and former company or between current companies;

(6) Commonality of officers and management personnel;

(7) Identity of physical or mailing addresses, telephone, fax numbers, or email addresses;

(8) Identity of motor vehicle equipment;

(9) Continuity of liability insurance policies or commonality of coverage under such policies;

(10) Commonality of drivers and other employees;

(11) Continuation of carrier facilities and other physical assets;

(12) Continuity or commonality of nature and scope of operations, including customers for whom transportation is provided;

(13) Advertising, corporate name, or other acts through which the company holds itself out to the public.

⁵⁰ See Motor Carrier Attachment: Chopper DDS MCS-150.

⁵¹ See Motor Carrier Attachment: Chopper DDS MCMIS Profile.

In total, there were 12 carriers that shared these common elements of close affiliations of AGL that are highlighted in Table 6.⁵²

Table 6. AGL Commonalities and Potential Affiliations.

Carrier	USDOT	Commonality	Status	Driver	Vehicle
Aero Global Logistics	2447319	AGL CEO and AGL Safety Manager ⁵³	Active	NA	NA
Chopper DDS	1214884	AGL CEO and AGL Safety Manager	Inactive	13	2
Pumpnickel Express	1214970	AGL Safety Manager	Inactive	11	NA
AKDI LLC	2725336	Drivers/vehicles	Active	15	1
TMD Logistics	1214985	AGL President ⁵⁴ / AGL Safety Manager	Inactive	5	1
CMD Logistics	1215023	AGL President	Inactive	3	2
KVC Logistics	1214863	AGL President	Inactive	4	NA
MFC Logistics	1208024	AGL Safety Manager	Inactive	2	NA
Trucks on the Run	1214998	AGL Safety Manager	Inactive	5	1
Black Horse Carriers LLC	775659, 807505	Drivers/vehicles	Active	13	3
North River Trucking	1215010	AGL Safety Manager	Inactive	4	NA
Reeny Logistics	1214964	AGL Safety Manager	Inactive	NA	NA
Dedicated Transportation Solutions Inc.	1219712, 1466266	AGL Safety Manager	Active	NA	NA

3.8 AKDI LLC

Of the carriers listed in Table 6, motor carrier AKDI LLC USDOT 2725336, MC #923071 had the most significant and recent affiliations. There were 15 drivers and one vehicle that were operated by AGL who were also listed on the AKDI profile. The AGL VP was questioned about this anomaly and why AGL drivers were listed on AKDI's profile. The VP stated that AKDI was owned and operated by the same person who held the contract for the dock operations at the AGL warehouse that employed the

⁵² For additional information concerning reincarnated carriers and commonalities see: [eCFR :: 49 CFR 386.73 -- Operations out of service and record consolidation proceedings \(reincarnated carriers\)](#).

⁵³ Identified as Director of Safety on MCS-150 for AGL.

⁵⁴ Identified as President on AGL MCS-150 October 2013 and President on TMD Logistics MCS-150 dated April 2012. For additional information see Motor Carrier Attachment: TMD Logistics MCS-150.

workers at the 2983 South Pleasant Valley Road, Winchester, VA. He was unsure why that had occurred.⁵⁵

An example of co-mingling of driver was discovered by investigators that involved an AGL driver who was documented operating an AKDI truck. This driver was listed as a current driver for AGL and had a hire date of July 8, 2021. This driver underwent a roadside inspection by the New Hampshire State Police on August 17, 2021, was operating an AKDI truck but not employed by ADKI. For additional details see Figure 14. AGL Driver Roadside Inspection in AKDI Truck. A subsequent roadside inspection conducted by the Massachusetts State Police on April 4, 2022, shows the same driver being inspected in a AGL truck. See Figure 15. Same AGL Driver at Roadside Inspection in AGL Truck.

DRIVER/VEHICLE EXAMINATION REPORT		Query Central 3.4									
New Hampshire State Police-Troop G Motor Carrier Enforcement Unit 33 Hazen Drive Concord, NH 03305 Email: Troopg@DOS.NH.Gov Phone: (603)223-8778 Fax: (603)271-1760		Report Number: NH0865002061 Inspection Date: 08/17/2021 Start: 7:30 AM ET End:08:16 AM ET Inspection Level: III - DriverOnly HM Inspection Type: None									
AKDI LLC 6923 17TH AVE HYATTSVILLE, MD 20783 USDOT#: 02725336 Phone#: (240)432-7076 MC/MX#: 00923071 Fax#: State#:		Driver: [REDACTED] License#: [REDACTED] State: MA Date of Birth: [REDACTED] CoDriver: License#: State: Date of Birth:									
Location: EPPING- E/B WEIGHT STATION Highway: ROUTE 101 County:	MilePost: Origin: FOXBORO,MA Destination: PORTSMOUTH,NH	Shipper: Bill of Lading: Cargo: AUTO PARTS									
VEHICLE IDENTIFICATION											
<u>Unit</u>	<u>Type</u>	<u>Make</u>	<u>Year</u>	<u>State</u>	<u>Plate #</u>	<u>Equipment ID</u>	<u>VIN</u>	<u>GVWR</u>	<u>CVSA #</u>	<u>New CVSA #</u>	<u>OOS#</u>
1	TR	INTL	2022	PA	3123579	482127	3HAEUML4NL376647	26,000			

Figure 14. AGL Driver Roadside Inspection in AKDI Truck.

DRIVER/VEHICLE EXAMINATION REPORT		Query Central 3.4									
Massachusetts State Police Commercial Vehicle Enforcement Section 906 Elm Street Concord, MA 01742 Phone: (978)369-1004 Fax: (978)369-5353		Report Number: MACG00004301 Inspection Date: 04/04/2022 Start: 9:28 AM ET End:09:46 AM ET Inspection Level: II - Walk-Around HM Inspection Type: None									
AERO GLOBAL LOGISTICS 2983 SOUTH PLEASANT VALLEY ROA WINCHESTER, VA 22601 USDOT#: 02447319 Phone#: (201)259-6912 MC/MX#: 00008445 Fax#: State#:		Driver: [REDACTED] License#: [REDACTED] State: MA Date of Birth: [REDACTED] CoDriver: License#: State: Date of Birth:									
Location: H-DEDHAM Highway: RT. 95 SOUTH County:	MilePost: Origin: PORTLAND,ME Destination: FOXBORO,MA	Shipper: Bill of Lading: Cargo: EMPTY									
VEHICLE IDENTIFICATION											
<u>Unit</u>	<u>Type</u>	<u>Make</u>	<u>Year</u>	<u>State</u>	<u>Plate #</u>	<u>Equipment ID</u>	<u>VIN</u>	<u>GVWR</u>	<u>CVSA #</u>	<u>New CVSA #</u>	<u>OOS#</u>
1	TR	HINO	2017	MA	P45222		5FVNJ8JV5H4S63844	26,000			

Figure 15. Same AGL Driver at Roadside Inspection in AGL Truck.

⁵⁵ See Motor Carrier Attachment: AGL Carrier Officials Interview February 7, 2023.

On February 7, 2023, NTSB and FMCSA investigators interviewed the AKDI owner.⁵⁶ The AKDI owner was questioned by investigators concerning AGL drivers being inspected under his USDOT number. The owner of AKDI told investigators that perhaps some of the drivers had used his trucks to run AGL routes but forgot to place the AKDI LLC placard with his USDOT number displayed when such trips occurred.

4.0 LBFNY LLC - Bus Operator

The owner/operator for Vehicle 2 (the bus) was identified as LBFNY LLC. The carrier's PPOB is located at: 16 Drumlin Drive, Weedsport, New York 13166. Carrier also has a mailing address of: PO Box 123, Cato, New York 13033. The carrier was registered as an LLC and as such the designated Managing Member. Per MCMIS the carrier was issued USDOT number 3773075 on December 1, 2021.⁵⁷ At the time of the crash, the carrier status in MCMIS showed "Inactive." The carrier was classified as "Private Passenger, Business, Migrant." The carrier entered the FMCSA New Entrant Safety Program on December 1, 2021.⁵⁸ According to MCMIS the carrier was "REVOKED" from the New Entrant Safety Program due to a "No-Show" for the Safety Audit. Subsequently, the carrier was placed under a Federal Out-of-Service Order effective April 26, 2022.⁵⁹ The MCMIS carrier profile did not show any inspections or crashes.⁶⁰

On January 31, 2023, the NTSB, FMCSA, and NY Department of Transportation investigators conducted a site visit at LBFNY's PPOB and interviewed the carrier owner.⁶¹ According to the carrier owner, the company began its operation as a working family farm called "Lake Breeze Farm New York." The owner's brother shared the location of the PPOB and operated an unrelated, non-motor carrier business for YouTube. At the time of the crash, the carrier stated they owned 15 buses, one 15 passenger van, and employed 15 drivers.

4.1 LBFNY Business Model

The carrier owner stated that for economic reasons the company decided to enter the solar panel installation business. The company's business model was to bid on solar panel job sites both in New York state and out of state (Maine, Connecticut, Rhode Island, and Pennsylvania). The carrier markets through word of mouth, via referrals and company website [LBFNY: Home \(lbfnsun.com\)](http://lbfnsun.com). Once a bid has been

⁵⁶ See Motor Carrier Attachment - AKDI Owner Interview

⁵⁷ See Motor Carrier Attachment: LBFNY MCS-150.

⁵⁸ See Motor Carrier Attachment: LBFNY New Entrant Letter.

⁵⁹ See Motor Carrier Attachment: FMCSA Out of Service Warning and Order to Revoke and Order to Cease Letters.

⁶⁰ See Motor Carrier Attachment: LBFNY MCMIS Profile.

⁶¹ See Motor Carrier Attachment: LBFNY Owner Interview.

formally accepted, LBFNY would send a crew to that location and set up the solar panels until the project was completed. At the time of the crash, the carrier employed approximately 100 employees. LBFNY furnished the bus which picks up the work crew from a local motel and transports the crew to the job site. At the end of the day, the bus transports the crew back to the motel. The bus driver was also considered a member of the work crew. LBFNY paid for the fuel, the motel, and meal expenses. LBFNY typically has a crew of 15-20 people per job site. The carrier used migrant workers for their work crews and drivers. Employees are recruited by word of mouth. Per the carrier, a solar panel installation project usually lasted 30 days.

4.2 LBFNY Bus Driver

The 36-year-old bus driver had a hire date of May 26, 2022. The bus driver did not have a US issued state license, however held a Venezuela driver's license with an issue date of November 2021, and an expiration date of April 2031. The driver also held an international driver's license that showed an issue date of May 2022 and expiration date of May 2023. The international driver's license stated that "this complementary non-government identification card is a translation of domestic driver's license" and further stated "this non-government ID card only use accompanied by domestic driver's license."⁶² The driver's Venezuela driver's license and international driver's license do not meet the definition of "commercial driver's license" in 49 CFR §383.5.

On January 30, 2023, the LBFNY bus driver was interviewed by NTSB investigators.⁶³ The bus driver stated that he had attended a Venezuela driving school but could not remember what year that took place. He stated that he also learned to operate buses and operated buses in Venezuela for 17 to 18 years before coming to the US. The driver stated that his father was also a bus driver in Venezuela. The driver further stated that he had been operating buses in the US since he started with LBFNY. According to the driver he stated that his primary function was to operate a skid steer while at the solar job site.

4.3 Safety / Compliance

The NTSB requested driver qualification file, drug testing, hours of service records, and maintenance records for the crash-involved bus. The carrier could only produce the copy of the bus driver's Venezuela driver's license and International Driver's License as mentioned above. The carrier also produced the title for the bus. The carrier failed to produce any of the other requested records (DQ file, drug testing records, hours of service and maintenance records). Additionally, the carrier could not produce a DOT medical certificate for the driver or a CDL for the bus driver. The carrier

⁶² See Motor Carrier Attachment: LBFNY Bus Driver Documents.

⁶³ See Human Performance Attachment: NTSB Interview with Bus Driver, found in the docket for this investigation.

further stated that the bus driver had not received any DOT required drug tested that would have included: pre-employment, random or conducted a post-accident drug test.

4.4 LBFNY Payroll

According to the payroll records for the LBFNY driver, those records reflected a different name than what is recorded on the driver's Venezuela license. The carrier owner stated that he knew there was a discrepancy with the driver's name however acknowledged this was the arrangement that was made with the driver.

4.5 Security Video / Hours of Service

The driver did not maintain any timesheet, logbook, or ELD for HOS requirements. The bus driver, as well as the rest of the passengers on the bus (solar panel installers) were staying at the Econo Lodge, in Massena, New York. The NTSB obtained approximately 45 minutes of video from the security camera from the motel that documented the events before the LBFNY bus departed the motel. The video indicated that the bus driver did not perform a pre-trip inspection of the bus. The video also indicated the headlights and taillights on the bus were illuminated. The video indicates the LBFNY bus departed the motel parking lot at 05:51 hours. See Figure 16.



Figure 16. Security video of LBFNY bus at motel day of crash. (Source NYSP)

The crash site was approximately 9.1 miles from the motel. Investigators used the carrier’s payroll records and the driver’s interview to determine the HOS for the bus driver. The driver stated that he typically started his shift the same time each day. The hours provided by the carrier did not reflect the on-duty travel time from the hotel to the job site. The approximate HOS for the LBFNY driver are detailed in Table .

Table 7. LBFNY Driver's HOS

Date	Start Time	End Time	Total Hours
1/23/2023	6:56 am	5:08 pm	10:12
1/24/2023	6:56 am	4:43 pm	9:47
1/25/2023	6:45 am	4:31 pm	9:46
1/26/2023	Off duty	Off duty	0
1/27/2023	6:59 am	4:55 pm	9:56
1/28/2023	5:51 am	~6:00 am	~00:09

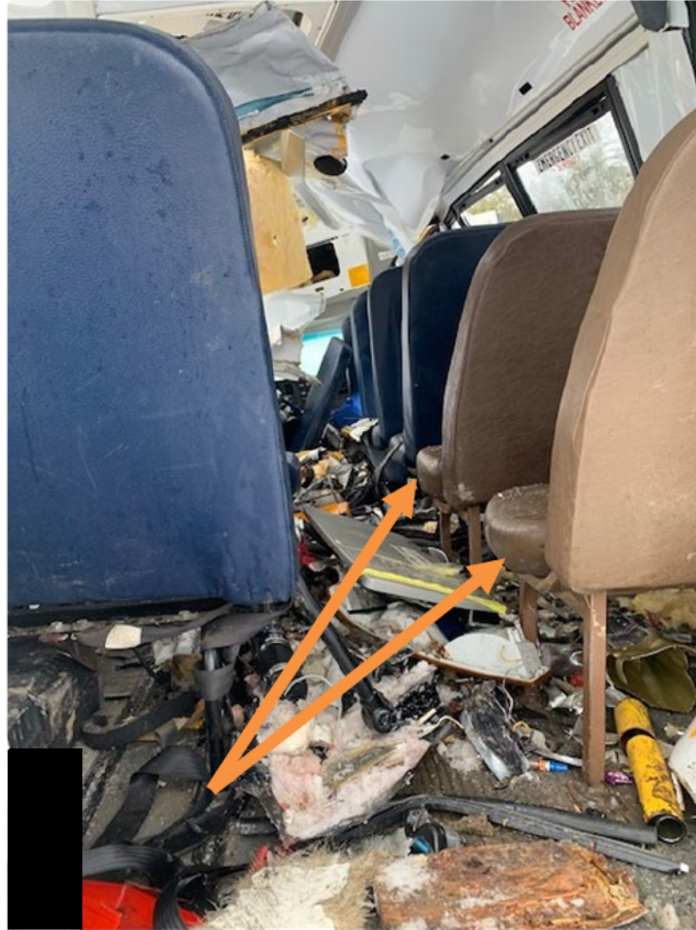
4.6 Hiring Practice and Training

The carrier stated that the minimum driver qualifications included: positive referral by family member or current worker and hold a valid driver license. The carrier however stated that they did not perform a DMV check for his drivers and did not have a DMV record or MVR inquiry for the crash-involved bus driver. The carrier also stated that they did not have any formal training program for their drivers. According to the carrier and the interview with the crash-involved driver, new drivers were road tested in the bus and provided with a verbal safety briefing that included the following safety message: “do not speed, obey all traffic laws, be very careful, no drinking and driving, and do not allow anyone to drink on the bus.” The carrier stated that they had a company safety manual which outlined company safety practices, however, it was not made available to investigators during the site visit.

4.7 Bus Seats

During the post-crash inspection of the crash-involved bus, the NTSB, NYSP, and NYDOT noted that the bus had been modified, with two right-side rows were added to the bus. See Photograph 4. The carrier was questioned about the additional rows during the interview, the owner stated that the LBFNY mechanic added the seating rows shortly after the buses were purchased in November 2021.

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Photograph 4. LBFNY bus with rows added (noted by arrows).

5.0 FMCSA Oversight

Prior to the crash, the FMCSA had not visited the carrier. The carrier should have been subject to a New Entrant Safety Audit, but as previously stated the carrier refused the FMCSA safety audit. The FMCSA conducted a post-crash CR on the carrier.⁶⁴ The CR identified the following violations:

1. §382.115(a)- Failing to implement an alcohol/or controlled substances testing program on the date the employer begins commercial motor carrier operations.
2. §383.37(a)- Allowing, requiring, permitting, or authorizing a driver to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An

⁶⁴ See Motor Carrier Attachment: LBFNY Post-Crash Compliance Review.

employer may not use a driver to operate a CMV who violates any restriction on the driver's CLP or CDL.

3. §391.45(a) -Using a driver not medically examined and certified.
4. §395.8(a)(1)- Failing to require a driver to prepare a record of duty status using the appropriate method.
5. §396.17(a) -Using a commercial motor vehicle not periodically inspected.
6. §382.303(a)- Failing to conduct post-accident alcohol testing on a driver following a recordable crash.
7. §382.303(b) - Failing to conduct a post-accident testing on a driver for controlled substances.
8. §382.701(b)(1) - Failing to conduct an annual query.
9. §382.701(a) - Failing to conduct a pre-employment query.
10. §382.711(b) - Failing to register in the Clearinghouse.
11. §385.331 - Operating after an Order to Revoke "New Entrant" registration and Cease All Interstate transportation was issued (New Entrant).
12. §390.21 (b)(2) - Failing to mark a commercial motor vehicle with the USDOT identification number.
13. §396.3(a) - Failing to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to your control.
14. §396.3(a)(2) - Failing to inspect pushout windows, emergency doors, and emergency marking lights in buses at least every 90 days.
15. §396.3(b) - Failing to keep minimum records of inspection and vehicle maintenance.
16. §396.3(b)(2) - Failing to have a means of indicating the nature and due date of various inspection and maintenance operations to be performed.

As a result of this CR the carrier received an Unsatisfactory Safety Rating. The carrier was also penalized with a fine of \$32,330. FMCSA considered whether the violations discovered during the investigation rose to the level of Imminent Hazard. Under 49 U.S.C. §521(b)(5) and 49 *CFR* §386.72(b), whenever FMCSA determines that a violation of a regulation issued under 49 U.S.C §31502 or Motor Carrier Act of 1984, as amended, or the Commercial Motor Vehicle Safety Act of 1986, as amended, poses an imminent hazard to safety, FMCSA shall order out of service a commercial motor vehicle, or order an employer to cease all or part of its commercial motor vehicle operations. "Imminent Hazard" means any condition of a vehicle, intermodal equipment, employee, or commercial motor vehicle operations that substantially increase the likelihood of serious injury or death if not discontinued immediately. On February 15, 2023, FMCSA declined to issue an Imminent Hazard Order to LBFNY, concluding that LBFNY's regulatory violations were more appropriately addressed using one of FMCSA's other enforcement tools.

According to the MCMIS database, LBFNY was upgraded from Unsatisfactory rating to "Conditional" on April 24, 2023 because the carrier submitted a corrective action plan which was accepted by the FMCSA.

6.0 Montana Bus Registration

The crash-involved bus, as well as the rest of LBFNY's fleet, had state of Montana license plates. See Photograph 5.



Photograph 5. LBFNY bus with Montana plate.

The owner was questioned why their vehicles were registered in Montana and he stated that it was for tax purposes. The Montana Vehicle Registration for the crash-involved bus (Montana tag 5-93787B) showed an issue date of June 14, 2022, and an expiration date of June 14, 2023. The carrier stated that the company did not have any brick-and-mortar building or any offices or fleet in Montana and used a third-party service to become an LLC in Montana. The carrier further stated that he used a mail forwarding service to receive related company mail and correspondence from the Montana PO Box address.

6.1 New York and Montana Bus Registration Timeline

Investigators researched the carrier's timeline of events. According to the bill of sale, the subject bus was purchased November 4, 2021.⁶⁵ On November 17, 2021, LBFNY obtained their USDOT number, and the carrier was automatically enrolled in the FMCSA New Entrant Program. On January 12, 2022, the NYDOT conducted a roadside inspection on one of the carrier's buses which resulted in violations.⁶⁶ Because the carrier failed to take corrective action on those violations, the carrier was issued a Notice of Violation (NOV) and ordered to appear in court. Due to the violations, the NYDOT assessed a civil penalty of \$10,000 and suspended the carrier's registrations for their fleet on March 7, 2022.⁶⁷ On April 7, 2022, LBFNY paid their fines and the NYDOT lifted the carrier's registration suspensions.

The NYDOT is the designated Motor Carrier Safety Assistance Program (MCSAP) agency that receives federal funding to enforce the Federal Motor Carrier Safety Regulations (FMCSRs).⁶⁸ As such, the NYDOT is the designated law enforcement agency to conduct the SA. The NYDOT attempted to contact the carrier to conduct the SA, but the carrier refused. Next the carrier became an LLC in Montana under a new name (LBF MT) on April 13, 2022. On April 26, 2022, the FMCSA placed a Federal Out Of Service order on the carrier for "No Show/Refusal" for the SA. On June 1, 2022, the carrier obtained Montana registrations for their buses.⁶⁹ A chronological timeline of the crash- involved bus's registration history is documented in Table 8.

Table 8. LBFNY License Plate History

Date	Event
11/4/2021	LBFNY purchased bus from Hilton Central School District New York
11/17/2021	LBFNY registered in NY State was issued plate KPA-2981
11/30/2021	LBFNY obtains USDOT number 3773075
1/12/2022	NYSP conducts bus inspection NYSPB0400582
1/19/2022	NYDOT issues Notice of Violation
2/17/2022	NYDOT Notice after Hearing
3/07/2022	NY DOT placed suspension on LBFNY for failing to pay fine for inspection
4/07/2022	LBFNY pays NYDOT fines and suspension lifted
4/13/2022	LBFNY became LLC in Montana under new name LBF MT ⁷⁰
4/14/2022	MCMIS generates "NO SHOW" letter to LBFNY in which LBFNY has 10 days to respond
4/26/2022	FMCSA placed LBFNY Out of service due to no show/refusal for SA
4/26/2022	NY DOT placed bus (VIN) in suspension for the Federal Out of Service
6/01/2022	LBFNY obtains MT registration and tag MT 5-93787B
1/28/2023	Crash

⁶⁵ See Motor Carrier Attachment: LBFNY Bus Bill of Sale.

⁶⁶ See Motor Carrier Attachment: New York State Police Roadside Inspection.

⁶⁷ See Motor Carrier Attachment: New York DOT NOV and Order After Hearing.

⁶⁸ For additional details see: 49 CFR 350.201, and 49 CFR 350.202.

⁶⁹ See Motor Carrier Attachment: LBF MT Montana Bus Registration.

⁷⁰ See Figure 17. LBF MT State filing for Montana. for more details of Montana LLC.

6.2 Montana Corporate LLC

The FMCSA sent an investigator to the PPOB of the LBF MT, LLC in Montana. At the address: 55 W 14th Street, Suite 101, Helena, Montana is the business office for Montana Corporate LLC. The investigator confirmed that there was no office, no staff, no drivers, or equipment for LBF MT located at this location. That location was solely dedicated for the Montana Corporation LLC, which was the business that represents clients and establishes LLCs in Montana. See Photograph 6 for additional details.



Photograph 6. Montana Corporate location in Helena, MT (Source FMCSA)

The Montana Corporate website states: "A Montana LLC is considered a Montana resident and like any other resident of Montana, you won't pay sales tax on any purchase. Why? You don't buy the motor home (boat, car, truck), your LLC does."⁷¹ When the carrier set up his LLC in Montana, he used the name LBF MT. For a copy of the filing in Montana see Figure 17.

⁷¹ Retrieved from: [Montana Corporate](#)

LBF MT LLC (C1280833) Domestic Limited Liability Company	
 Request Information	
<i>Filing Number</i>	C1280833
<i>Entity Type</i>	Domestic Limited Liability Company
<i>Entity SubType</i>	Limited Liability Company
<i>Status</i>	Active-Good Standing
<i>Managed By</i>	Manager
<i>Formed In</i>	Montana
<i>Principal Address</i>	N/A
<i>Mailing Address</i>	55 W 14TH ST SUITE 101 HELENA, MT 59601
<i>Registration Date</i>	04/13/2022
<i>AR Due Date</i>	04/15/2024
<i>Commercial Registered Agent</i>	Commercial C118874 BUSINESS TECH CORPORATE SERVICES, L.L.C. 55 W. 14TH STREET SUITE 101 Helena, MT 59601

Figure 17. LBF MT State filing for Montana.

6.3 Montana LLC Process

According to the Montana LLC website, the process required a few steps to form an LLC business in Montana. It costs about \$1,000 to have a Montana law firm set up an LLC and perform the registration and titling paperwork and send the Montana license plates. The process for applying for LLC with Montana Corporate and then obtaining tags is documented in Figure 18.

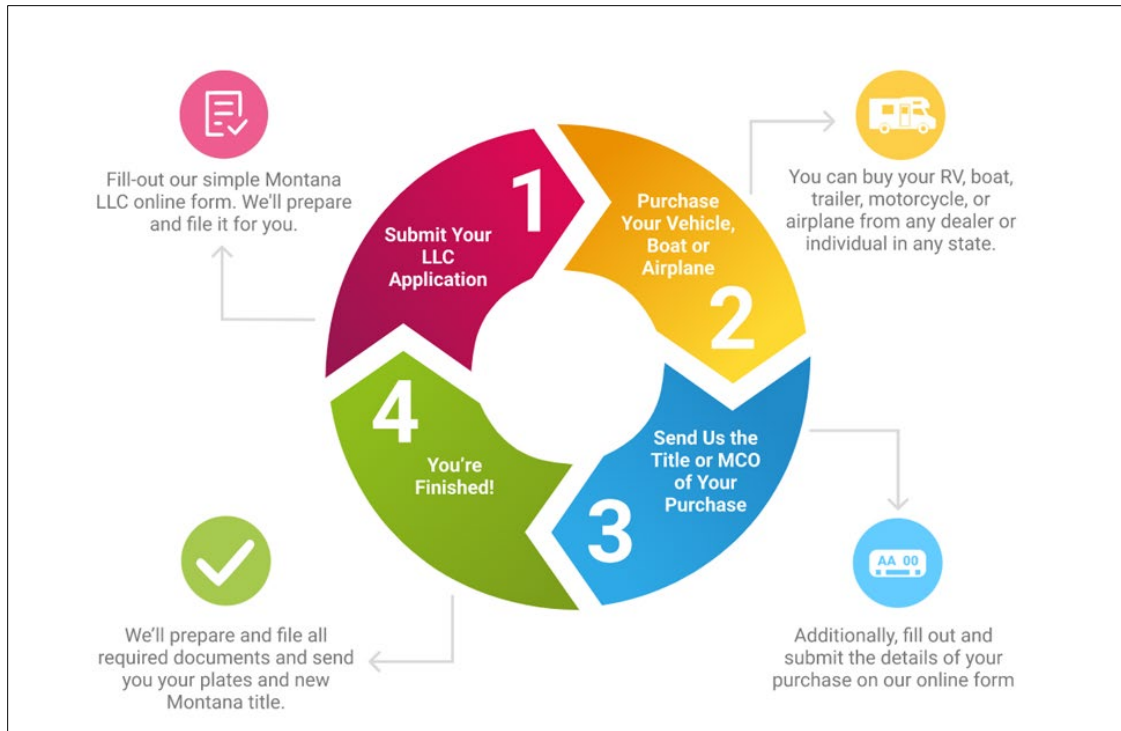


Figure 18. Montana Corporate LLC steps (Source: montanacorporate.com)

6.3.1 Montana Limited Liability Company Act

Montana state law pertaining to LLC's is covered under the Montana Limited Liability Company Act, Title 35-8-106 which states that an LLC is organized under 35-8-20 through 35-8-21 has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

6.4 MT Licensing Requirements - Original Registration Process

A Under 61-3-303. Original registration -- process -- fees. (1) Except as provided in [61-3-324](#), a Montana resident who is an owner of a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the county where the registering owner is domiciled. A nonresident who has an interest in real property in Montana may register in the county where the real property is located a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state.

(2) A Montana resident who is an owner of a motor vehicle, trailer, semitrailer, or pole trailer with co-owners, one or more of whom are not Montana residents, may register the vehicle regardless of the fact that one or more of the co-owners would

otherwise not qualify to register the vehicle under subsection (1) if the registering Montana resident is:

- (a) an individual human being; and
- (b) the principal operator of, and in whom is vested the right of possession and control of, the vehicle.

(3) Except as provided in subsection (4), the county treasurer or an authorized agent shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, an owner delivers an application for a certificate of title to the department, an authorized agent, or a county treasurer; or

(b) the county treasurer or an authorized agent confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under [61-3-101](#).

(4) (a) A county treasurer or an authorized agent may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under [61-3-701](#) after the county treasurer or the authorized agent examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in [61-3-701](#). The county treasurer or an authorized agent may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

7.0 International Registration Plan (IRP)

Although not required, many commercial vehicles are registered under the International Registration Plan (IRP) program. The International Registration Plan (Plan) is a reciprocity agreement among states of the US, the District of Columbia and provinces of Canada which recognizes the registration of commercial motor vehicles issued by other jurisdictions.⁷² Motor carriers register with and pay to one jurisdiction. The fee is based on the percentage of distance traveled in each jurisdiction according to that jurisdiction's fee schedule; these fees are then distributed to the relevant jurisdictions. Registered motor carriers receive apportioned plates and are able to travel through all IRP member jurisdictions. Commercial motor vehicles either alone or used in combination weighing more than 26,000 pounds (11,794 kilograms), and traveling in two or more jurisdictions, are likely registered under IRP. When applying for IRP the motor carrier would provide the issuing state the carrier's USDOT number. The LBFNY bus involved in this crash had a GVWR of 14,200 lbs. and was not subject to IRP.

⁷² Retrieved from: [International Registration Plan, Inc. \(irponline.org\)](http://irponline.org)

8.0 US Department of Labor

8.1 Regulatory Authority

The US Department of Labor (DOL) Wage and Hour Division provides regulatory oversight to the hiring, transportation, and housing of migrant workers. The Federal regulatory oversight for farming operations that utilize migrant or seasonal agricultural workers are outlined under 29 CFR 500. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) administered by the Wage and Hour Division of the DOL protects migrant and seasonal agricultural workers by establishing standards for wages, housing, transportation, and recordkeeping.

A farm labor contractor (FLC) is any person - other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association - who for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker; these are referred to as "farm labor contracting activities." Before performing any farm labor contracting activities, FLCs are required to apply to the DOL for a Certificate of Registration that authorizes the applicant to engage in "farm labor contracting activities." Persons employed by FLCs (farm labor contractor employees) to perform such activities on behalf of the contractor are also required to register with the DOL.⁷³

Farm labor contractors must register with the DOL and obtain authorization before conducting any FLC activities. Specific authorization is required for housing, transporting, or driving. If an application is approved by the DOL, the FLC is issued a U.S. Department of Labor Farm Labor Contractor Certificate of Registration Card (WH-511). All authorized FLCs are also posted on the DOL Farm Labor Contractor List website.⁷⁴ LBFNY was not registered with the DOL.

8.2 DOL Regulatory Requirements

If the carrier was subject to 29 CFR 500 the 2013 Chevrolet Express bus and the crash-involved driver would have been subject to the following regulations under MSPA:

1. Under MSPA the driver was required to hold a current valid motor vehicle operator's license or Commercial Driver's License (CDL) and DOL medical certificate.
2. MSPA also requires one of three insurance options: Option A-liability insurance coverage options that may represent amounts of \$100,000 per seat in a vehicle up to \$5,000,000 for any one vehicle; Option B- a surety

⁷³ Retrieved from: https://www.dol.gov/whd/forms/fts_wh530.htm

⁷⁴ Retrieved from: <https://www.dol.gov/whd/regs/statutes/FLClist.htm>

bond up to \$500,000 for damages; or Option C- Obtain workers compensation coverage.

3. Under MSPA, vehicles must comply with the applicable safety standards contained in the regulations under 29 *CFR* §500.104 or the Department of Transportation (DOT) standards incorporated at 29 *CFR* §500.105 and with all applicable Federal and State safety standards which includes the use of seat belts required under state law.

On April 27, 2023, the NTSB met with the DOL to determine if the LBFNY operation was subject to DOL oversight. The NTSB made a formal request to the DOL for an official interpretation of applicability of LBFNY with oversight of 29 *CFR* 500. On December 22, 2023, the DOL replied to the NTSB and stated: "based on the information provided, we determined that it was highly unlikely for employees on a solar farm to be covered by MSPA, and as a result, WHD did not open an investigation into LBFNY."

9.0 Attachments

Motor Carrier Attachment: AGL Carrier Officials Interview February 6, 2023.

Motor Carrier Attachment: Chopper DDS MCS-150.

Motor Carrier Attachment: AGL Letters of Incorporation.

Motor Carrier Attachment: AGL Safety Manual.

Motor Carrier Attachment: AGL Foxboro, MA Terminal Manager Interview

Motor Carrier Attachment: AGL Driver Interview.

Motor Carrier Attachment: AGL Carrier Officials Interview February 7, 2023.

Motor Carrier Attachment: AGL Night Dispatcher Interviews February 8 and 9, 2023.

Motor Carrier Attachment: Virginia State Police Driver Vehicle Roadside Inspection.

Motor Carrier Attachment: AGL Driver Trainer Interview.

Motor Carrier Attachment: AGL MCS-150s.

Motor Carrier Attachment: AGL MCMIS Profile.

Motor Carrier Attachment: AGL Safety Audit 5/14/2014.

Motor Carrier Attachment: AGL Compliance Review 2/4/2020.

Motor Carrier Attachment: AGL Compliance Review 4/21/2021.

Motor Carrier Attachment: AGL Compliance Review 6/27/2022.

Motor Carrier Attachment: AGL Crash Reports and Loss Run Report.

Motor Carrier Attachment: Chopper DDS MCMIS Profile.

Motor Carrier Attachment: TMD Logistics MCS-150.

Motor Carrier Attachment: AKDI Owner Interview.

Motor Carrier Attachment: LBFNY MCS-150.

Motor Carrier Attachment: LBFNY New Entrant Letter.

Motor Carrier Attachment: FMCSA Out of Service Warning and Order to Revoke and Order to Cease Letters.

Motor Carrier Attachment: LBFNY MCMIS Profile.

Motor Carrier Attachment: LBFNY Owner Interview.
Motor Carrier Attachment: LBFNY Bus Driver Documents.
Motor Carrier Attachment: LBFNY Post-Crash Compliance Review.
Motor Carrier Attachment: LBFNY Bus Bill of Sale.
Motor Carrier Attachment: New York State Police Roadside Inspection.
Motor Carrier Attachment: NYDOT NOV and Order after Hearing.
Motor Carrier Attachment: LBF MT Montana Bus Registration.

End of information

Submitted by:
Michael S. Fox
Senior Highway Accident Investigator