S. HRG. 108–972

REAUTHORIZATION OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JUNE 10, 2003

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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REAUTHORIZATION OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

TUESDAY, JUNE 10, 2003

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room SR–253, Russell Senate Office Building, Hon. John E. Sununu, presiding.

OPENING STATEMENT OF HON. JOHN E. SUNUNU, U.S. SENATOR FROM NEW HAMPSHIRE

Senator SUNUNU. Good morning. On behalf of Committee Chairman John McCain, I'm pleased to call to order today's hearing on motor carrier safety and welcome our witnesses, beginning with Annette Sandberg. We meet today to consider what has been accomplished with respect to truck and bus safety since the Federal Motor Carrier Safety Administration was created in 1999 and to hear the recommendations of the Administration, the trucking industry, and safety advocates for the future of the program.

FMCSA has set a goal of reducing the rate of fatalities in truck crashes to 1.65 fatalities per hundred million miles of truck travel by 2008. This goal represents a 30 percent improvement over the fatality rate in 2001 and obviously will require a strong commitment on the part of FMCSA, the states, as well as industry.

A major element of the Federal Government's safety effort is the Motor Carrier Safety Assistance Program, a state program to fund officers who perform equipment inspections, enforce traffic regulations, and conduct compliance reviews of carriers with poor safety records. FMCSA and the states also administer the Commercial Driver's License Program, which was established to prevent truck drivers from obtaining more than one license in order to hide bad driving records. Additionally, FMCSA is in the process of implementing a New Entrants Program, a very important program mandated by the Motor Carrier Safety Improvement Act of 1999 and aimed at educating new, inexperienced trucking companies about safety requirements.

Since FMCSA was established, truck safety has been trending in the right direction. That is, indeed, good news. In 2002, the number of fatalities and accidents involving large trucks declined 3.5 percent, to approximately 4,900 fatalities, while highway fatalities overall for all vehicles increased slightly compared to 2001.

I hope the witnesses will comment on whether current initiatives will be sufficient to continue to lower the fatality rate in crashes

involving large trucks in order to achieve the 30 percent goal of reducing fatalities over the next 5 years or whether or not we need to adjust those priorities.

The Committee will also hear testimony this morning about consumer fraud in the household goods moving industry. FMCSA, while primarily a safety agency, is also responsible for enforcing Federal regulations that apply to interstate movers. Complaints have been growing about rogue movers, who hold goods hostage and demand payments many times higher than the estimates originally provided to the customer. Consumers need protection against such fraudulent acts.

The Motor Carrier Safety Program is scheduled to expire on September 30, 2003. It's anticipated that both FMCSA and the National Highway Traffic Safety Administration Programs will be reauthorized as part of comprehensive legislation to reauthorize the Transportation Equity Act for the 21st century, lovingly known here on Capitol Hill here as TEA–21. It's the intent of the Committee to mark up and report legislation to reauthorize the Federal Motor Carrier Safety Administration and National Highway Traffic Safety Programs as soon as next week. It's our goal to be fully prepared for the floor action during Senate debate on TEA–21, which is expected to take place later this summer.

Again, thank you to all of our witnesses. And we begin with the Honorable Annette Sandberg, who is the Acting Administrator for FMCSA. Welcome, Ms. Sandberg, and we're pleased to take your testimony.

STATEMENT OF HON. ANNETTE M. SANDBERG, ACTING ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Ms. SANDBERG. Thank you, sir. Chairman Sununu, it is my pleasure to appear before you today to discuss the Motor Carrier Safety reauthorization.

When Secretary Mineta testified before you in May, he highlighted highway safety as the centerpiece of SAFETEA. The Federal Motor Carrier Safety Administration is committed to working with you to reduce fatalities on our nation's highways. With your help, we will make important changes to reduce unnecessary loss of life.

Due in large part to your efforts, fatalities involving large trucks have declined 4 years in a row, even as travel increased. This is significant progress, but much remains to be done.

I commit to build on this success by bringing greater efficiency to the Federal Motor Carrier Safety Administration programs. To enhance our existing programs, the Motor Carrier Safety Assistance Program, the Commercial Driver's License Program, border and performance registration and information system management, we envision them separately funded, totaling $1.4 billion over the reauthorization.

TEA–21 restructured the MCSAP program to promote performance-based activities, providing flexibility to state grantees to invest in areas of the greatest crash reduction. Reauthorization would expand motor carriers' relationship with our state partners into new areas of compliance, allowing us to amend traffic enforce-

ment, improve performance incentive funding, and fund new-entrant reviews.

The New Entrant Program will improve safety by requiring new motor carriers to undergo safety audits within their first 18 months of operation. Numbering almost 50,000 annually, these new entrants pose a real risk to commercial motor vehicle safety. Forty-six states will work with us to conduct these audits, a partnership that will yield significant results.

In the area of commercial driver's license, accurate and complete drivers' history records are a key to enhanced safety. The CDL grants under this program will allow states to enhance technology and upgrade recordkeeping systems and increase our ability to identify problem drivers.

The Performance Registration Information Management System Grants links safety fitness to vehicle registration at the State level, and identifies high-risk carriers based on their over-the-road performance, and actively monitors their safety performance. Under this program, carrier identification is made at the time of vehicle registration. Currently, just 25 states participate. As more states become fully operational and suspend vehicle registration in conjunction with Federal out-of-service orders, fewer vehicles associated with high-risk carriers will operate on the road.

Border safety remains a priority. And currently it is funded by the MCSAP program. We propose to create a separate grant program to address current and future needs. Congress required that the Department of Transportation Inspector General verify, to his satisfaction, all the statutory conditions prior to opening the border. The Motor Carrier Safety Administration has met these requirements. Currently, the border remains closed due to a ruling by the Ninth Circuit Court of Appeals. The Administration is considering appropriation action. Meanwhile, our agency is ready to ensure border operation safety and will be ready whenever the border opens.

Another important aspect of our reauthorization proposal is the creation of a standing medical review board to provide the agency with expert medical advice on driver qualification standards and guidelines, medical examiner education, and research, enhancing our ability to adapt and update our regulations. Establishment of a medical registry would respond to the NTSB, which issued eight safety recommendations in September 2001. These recommendations asked that the Federal Motor Carrier Safety Administration establish comprehensive standards for qualifying medical providers and conducting qualification exams.

As enforcement is the centerpiece of motor carrier safety, I would like to emphasize improvements in the household goods enforcement. I know that the Chairman and Members of this Committee have noticed the increase in consumer complaints about household goods carriers. Our proposal establishes more visible enforcement through increased investigations and expanded outreach. Our efforts seek to increase consumer awareness, helping them to make better informed decisions when moving across state lines. Additionally, we seek authority for state attorneys general to enforce Federal household goods regulations against interstate carriers. We believe this authority will help reduce these abusive practices.

This reauthorization represents the first opportunity for our new agency to step forward and stand on its own and chart our course. With your help, we can continue to improve highway safety for motor freight and passenger carriers and all highway travelers.

Thank you for this opportunity to testify on the Federal Motor Carrier Safety Administration's proposal to achieve this goal, and I would be happy to answer any questions that you may have.

[The prepared statement of Ms. Sandberg follows:]

PREPARED STATEMENT OF HON. ANNETTE M. SANDBERG, ACTING ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Chairman McCain, Senator Hollings, and Senators of the Committee. It is my pleasure to appear before you today as this Committee considers reauthorization of the motor carrier safety program.

When Secretary of Transportation Norman Mineta appeared before this Committee in May to present the President's reauthorization proposal, he outlined the centerpiece of the Administration's bill—highway safety. We have worked closely in the Department, joining NHTSA and FHWA, to develop our safety proposals. Our collaboration with the other safety agencies is essential because highway safety has many facets and no single solution. If we are to stem the tide of this terrible loss of life on our Nation's highways we all must play a role, combine our knowledge and expertise, and coordinate our program delivery. My colleagues and I share the belief that our programs are complementary rather than competing. We are committed to working together with this Committee to reduce fatalities on our Nation's highways. With your help, we will make much needed changes over this decade to reduce this senseless loss of life.

This Committee demonstrated great leadership in the passage and enactment of the Transportation Efficiency Act for the 21st Century (TEA–21) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The changes you crafted in these Acts have reduced fatalities in crashes involving trucks four years in a row, even as travel increased. This is clear and unequivocal progress, and justifies the confidence of your Committee in the impact that FMCSA would have on commercial motor vehicle safety. FMCSA has taken your direction and acted upon it. Despite this progress, much remains to be done. I commit to build on this success and to improve commercial motor vehicle safety by bringing greater efficiency and effectiveness to FMCSA's programs.

Enhancing Our Safety Grant Programs

Overall, TEA–21 and MCSIA provided a solid foundation for our traditional motor carrier safety grant programs—Motor Carrier Safety Assistance Program (MCSAP), Commercial Drivers' License Program (CDL), Border, and the Performance Registration Information System Management (PRISM). In TEA–21, CDL and PRISM were funded from Information System funds, while Border was a set-aside from MCSAP. We envision these four programs as separate grant programs totaling $1.4 billion over the six-year authorization.

Motor Carrier Safety Assistance Program Grants

TEA–21 eliminated most earmarks from MCSAP and restructured it to promote performance-based activities. This change provided the needed flexibility to State grantees to allow them to invest in areas of the greatest crash reduction based on their own circumstances. Our State partners conduct roadside inspections, perform compliance reviews, and enforce traffic laws on commercial operations. Reauthorization would continue to support this vital partnership and expand our relationship with states into new areas of compliance. This will enable us to address our future challenges by building on our past success.

While we recommend that most major features of the MCSAP remain unchanged, we believe we can improve MCSAP by amending the traffic enforcement component, improving the performance incentive funding, and providing funding to support new entrant reviews.

The current MCSAP includes an incentive for states to improve safety performance if they demonstrate improvement in any or all of five categories related to reduction of large-truck involved fatal accidents and fatal accident rates, timely upload of CMV inspection and accident data, and verification of CDL information. The Agency proposes to provide 100 percent MCSAP funding to states for performance incentives.

To address unsafe operation of passenger vehicles around large trucks, we seek discretion to fund traffic enforcement. This provision will give participating jurisdictions greater flexibility to use MCSAP funding for traffic enforcement when necessary to reduce large-truck related crashes. Education of the general public about sharing the road with large trucks is important, as well as targeted education to young adults on this subject. All State driving license manuals should reflect this information.

As outlined in MCSIA, a new entrant program to bring motor carriers into compliance with safety regulations at the onset of operations can improve safety. These new entrants, numbering 40,000–50,000 annually, will be targeted to improve commercial motor vehicle safety. Through MCSAP, a Federal-State partnership will be established to implement the New Entrant Program. Overseeing and supporting the conduct of safety audits, establishing baseline data, and implementing a program of regular data collection to assess the progress of the New Entrant Program will enable FMCSA to fulfill its statutory mandate to improve new entrant safety performance. This program will meet the requirements set out in Section 350 of the FY 2002 DOT Appropriations Act as a precondition to opening the Southern border to Mexican commercial vehicles.

Forty-six states have committed to work with us to conduct new entrant safety audits, having agreed to provide approximately 195 of the estimated 262 State and Federal personnel needed. The State personnel will be either new hires or be reassigned from other law enforcement duties. In FY 2003, these individuals were supported through MCSAP grant funds. Contracted safety auditors were used to make up the balance of staff. Over the reauthorization period these individuals will be supported through MCSAP grant funds. Approximately 67 contracted safety auditors will be used to make up the balance of staff. We plan to hire 32 full-time Federal staff to cover program oversight, including management, review, and approval of the safety audits. We believe this Federal-State partnership, like the traditional MCSAP, will yield significant results.

Commercial Drivers License Grants

The CDL grants provided under TEA–21 were a set-aside from the agency's information system funds. MCSIA provided additional funding when new driver disqualification standards and record-keeping requirements were imposed on states. Improving the accuracy and completeness of driver history records is key to enhanced safety. The driver's license is the main form of personal identification in the United States. Ensuring the bearer of the license is in fact who he or she claims to be depends on a diverse set of security technologies. Particularly in the transportation of hazardous materials, states need current driver licensing technology. Grants under this program will allow states to enhance this technology and continue to upgrade their record-keeping systems. We propose up to a 10 percent set-aside, which can be provided to states at 100 percent funding.

We propose increased CDL grant funding for: (1) improving State control and oversight of State licensing agency and third party testing facilities; (2) developing management control practices to detect and prevent fraudulent testing and licensing activities; (3) supporting State efforts to conduct Social Security Number and Bureau for Citizenship and Immigration Services (formerly the Immigration and Naturalization Service) number verification for CDLs; and (4) maintaining the central depository of Mexican and Canadian driver convictions in the U.S., the disqualification of unsafe Mexican and Canadian drivers, and the notification of Mexican and Canadian authorities of convictions and/or disqualifications.

Together, these activities will add to the variety of driver's license technologies for safety and security, and will enhance FMCSA's ability to identify problem drivers.

Performance Registration Information Management System Grants

The PRISM program was pilot-tested in ISTEA and mandated as a new program in TEA–21. Linking safety fitness to vehicle registration at the State level, it identifies high risk carriers based on their actual over the road performance, provides many opportunities for poor performing carriers to improve, actively monitors safety progress, and applies progressively harsher sanctions to those carriers who fail to improve. Under PRISM, identification of the carrier responsible for the safe operation of vehicles is made at the time of vehicle registration. Through the use of a "Warning Letter", thirty percent of the carriers improve their safety performance without Federal intervention. PRISM provides for immediate, visual identification to law enforcement that the carrier should not be on the road by removing the license plates. As more states become fully operational and suspend vehicle registration in conjunction with Federal out of service orders, vehicles associated with high-

risk carriers will be prevented from operating on the road. With 25 participating States, this program does not require long-term Federal maintenance once the state receives its development funds.

Border Enforcement Grants

Border safety activities continue to remain a high priority for FMCSA and the states. Under TEA–21, border operations, both northern and southern, are funded as a 5 percent set-aside from MCSAP. We propose to create a separate grant program to address current and future State needs at the border. In the FY 2002 Appropriations Act, Congress established requirements for opening the U.S.-Mexico border to long-haul commercial traffic. This event alone, when fully realized, necessitates a separate grant program to ensure a stable funding source for State inspectors and operations.

One Congressional requirement for opening the border was that the DOT Inspector General must verify the satisfaction of all statutory conditions. Inspector General Ken Mead concluded that FMCSA has met these requirements, including the hiring and training of enforcement personnel and the establishment of inspection facilities and safety procedures at the southern border. Due to our actions, Secretary Mineta certified that the Department had met the Congressional mandates, providing a basis for the President to lift the moratorium on granting operating authority to Mexican carriers within the interior of the United States in November 2002.

Currently, the border remains closed because of the 9th Circuit Court ruling that DOT had not conducted the appropriate, in-depth environmental analysis for certain rules designed to satisfy the Congressional requirements. The Court held that the environmental assessment that the agency prepared was inadequate, and that FMCSA should have prepared an Environmental Impact Statement and Clean Air Act Conformity Analysis. The Administration filed an *en banc* appeal of the decision to the 9th Circuit on March 10, which was denied. The Administration is considering appropriate next steps in responding to the ruling. Meanwhile, FMCSA is ready now, and will be ready whenever the border is opened, to ensure the safety of border operations.

Information Systems

Information systems and analysis support all of the agency's safety programs and will underlie our future efforts to improve program delivery. Data collected across the country by Federal safety investigators and State partners from roadside inspections, crashes, compliance reviews, and enforcement activities provide a national perspective on carrier performance and assist in determining enforcement activities and priorities. This allows us to analyze program effectiveness and direct resources in the most efficient and productive manner to improve motor carrier safety.

In TEA–21, this Committee provided essential *dedicated* funding to improve Federal and State systems of carrier, vehicle, and driver safety records, and enhance State on-line capabilities for roadside enforcement. With this funding we greatly improved the accuracy and timeliness of our inspection and crash data and made this information available on-line to shippers, carriers, and insurance companies. We created new systems to allow motor carriers to register for authority on-line and file the necessary insurance documentation. With long-term funding and authority we can continue our progress and upgrade our ability to identify the high-risk carriers through data improvements.

Regulatory Development

Regulatory development is another fundamental element of FMCSA's compliance and enforcement process. This is an area where greater attention and resources are needed to address all mandated regulations and ensure program performance will not be compromised. Previously, funding for this activity has been obtained by borrowing against other program activities, such as research and technology, requiring the agency to struggle with inconsistent funding streams.

The absence of a consistent funding source causes starts and stops in a process that requires a consistent level of effort for timely completion of regulations and their supporting analyses. For this reason, we are proposing to dedicate funds to our regulatory development program. We will also use our funds to examine alternative regulatory programs. In TEA–21, Congress provided FMCSA with authority to establish exemption and pilot programs under strict safety controls. We now operate a vision exemption program where applications total more than 60 per month. We are approached routinely to consider other alternative programs to our safety regulations. However, these are resource intensive programs with ample Federal oversight responsibilities. We need to approach these activities cautiously.

Medical Review Board and Registry

The authorization for a standing medical review board will provide the agency with much needed expert medical advice on driver qualification standards and guidelines, medical examiner education, and medical research. The members would come from leading medical/academic institutions and serve 3 to 5-year terms. In the past, we have assembled expert medical specialists on an *ad hoc* basis to review the standards and guidelines for qualifying truck and bus drivers. A standing review board will greatly enhance the agency's ability to adopt regulations that reflect current medical advances. Many of the medical standards currently in effect were originally adopted in the 1970s, or earlier.

With over six million commercial drivers under our jurisdiction, we must ensure that only drivers physically qualified to operate a commercial vehicle are doing so. There are tragic examples where this has not been the case. A medical examiner lacking familiarity with our medical criteria certified a Louisiana bus driver with heart and kidney disease who later crashed, killing 22 passengers. A medical examiner registry, as called for in our proposal, will help FMCSA to provide more comprehensive information on medical practitioners to drivers and carriers. It will help disseminate information to practitioners regarding medical policies and requirements relevant to the physical qualifications of commercial drivers.

A medical registry is necessary to upgrade the quality of CDL driver medical qualification exams. With the registry, we will better monitor the quality and practices of medical examiners. A certification process will ensure that medical examiners are qualified to perform driver physical exams. Establishment of a medical registry of qualified medical examiners would respond to the National Transportation Safety Board, which issued eight safety recommendations in September 2001 recommending that FMCSA establish more comprehensive standards for qualifying medical providers and conducting medical qualification exams.

Strengthening Enforcement

Enforcement is the centerpiece of our motor carrier safety program. This Committee made much needed improvements to our enforcement program under TEA–21. I believe those changes contributed substantially to the reduction in fatalities that we see today. We propose to expand the toolbox of enforcement techniques, close loopholes that permit unsafe practices, and improve our penalty structure. While there are many such features included in our legislative proposal, I would like to emphasize only a few today, addressing various penalties for motor carrier noncompliance with out-of-service violations and safety record-keeping requirements, improvements to household goods enforcement, and new authority over motor carrier management and operations.

Intrastate Violations

The agency's enforcement reach must extend to the *intrastate operations* of interstate carriers in order to enhance safety and ensure uniformity in enforcement and oversight responsibilities. At present, our inability to reach intrastate operations represents an artificial line from a safety point-of-view. When our investigators examine a carrier's operations they must discard intrastate safety violations they discover. If an interstate carrier is declared unfit to operate, it may continue to operate solely within a state.

Many interstate motor carriers have substantial intrastate operations. For purposes of safety, it is counterproductive to create two classes of accidents and safety inspection data—one subject to Federal jurisdiction, the other not—when, typically, both involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls and may have the same safety result. In examining a motor carrier's accident and inspection data, it is often difficult, and sometimes impossible, to determine whether the vehicle involved was making an interstate or intrastate trip. We seek to amend this enforcement boundary so that we may take steps to prevent unsafe carriers from operating. Under this proposal, a Federal safety determination of an interstate motor carrier suspends both interstate and intrastate operations. Similarly, a state safety determination that an intrastate carrier is unfit halts both its intrastate and any interstate operations.

Congress has recognized this limitation in other motor carrier safety programs and has set precedents in eliminating inter/intrastate distinctions in the areas of hazardous materials, drug and alcohol testing, and CDL regulations. In these cases, Federal regulations apply to the full scope of operations. An unfit carrier should not be allowed to operate anywhere.

Oversight of Company Officials

Similarly, we have limited authority over company officials who exhibit continual disregard of safety management practices. We find a few motor carrier managers that order, encourage, and tolerate widespread regulatory violations. When caught, they declare bankruptcy, rename the motor carrier and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties or obscure the identity of the motor carrier and, thus, its safety record. These individuals perpetuate a casual indifference to public safety. Although the total number of such officials is small, their actions create a risk disproportionate to their numbers.

To address this practice we seek authority to suspend, amend, or revoke the registration of a for-hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing non-compliance, with Federal motor carrier safety standards. This provision is intended to address those few motor carrier officers who have shown unusual and repeated disregard for safety compliance and would be used only in the most serious cases.

Household Goods Enforcement

I know that the Chairman and Senators of this Committee have noticed an increase in the number of constituent complaints regarding unscrupulous household goods carriers. The letters we receive, as well as the calls coming into the FMCSA hotline, have been increasing. FMCSA receives thousands of consumer complaints annually. Currently, the Agency has three full-time commercial investigators devoted to the Household Goods Enforcement and Compliance program and has budgeted for more for FY 2004.

While the household goods industry as a whole performs over a million successful moves annually, a small group of unscrupulous people scattered over a handful of states has used this industry to bilk unsuspecting consumers of their hard earned money. The complaints from the American moving public have reached significant proportions.

We need to establish a more visible enforcement program through increased investigations, and a more robust outreach effort to reduce the number of consumer complaints filed against household goods carriers and brokers. Our efforts will also be aimed at increasing consumer awareness to allow shippers to make better-informed decisions before they move across State lines.

Household goods carriers operating in interstate commerce are required to have or participate in an arbitration program as a condition of their registration with FMCSA. The arbitration programs must comply with the requirements of 49 U.S.C. 14708, and the carrier must submit to binding arbitration upon shipper request for cargo damage or loss claims of $5,000 or less. Seventy-five percent of the complaints we receive pertain to loss and damage claims.

FMCSA intends to conduct an extensive study of existing Household Goods Dispute Settlement Programs and alternative arbitration programs in the household goods moving industry. We need this critical information to determine the extent of the problem, to determine effective strategies and countermeasures, and to evaluate the effectiveness of these programs in resolving loss and damage disputes and claims between shippers and carriers.

We cannot continue to address these consumer issues on our own—safety is our primary business. Even with additional resources, household good disputes will likely increase. As such, we seek authority for state attorneys general to enforce Federal household goods regulations against interstate household goods carriers. This approach has been successful in increasing state enforcement of Federal telemarketing regulations. We believe it will help to reduce abusive practices among movers of household goods.

Out-of-Service Orders and False Records

The out-of-service order is one of the tools we have to prevent a motor carrier from operating when it is unfit. Once issued, the order is designed to stop a carrier from continuing to operate until it comes into compliance. In some instances, carriers violate these orders and consider the safety fines as a "cost of doing business." This mentality shows a flagrant disregard for the safety of the highway users. Currently, carriers who knowingly require or authorize drivers to violate the order are subject to a maximum civil penalty of only $16,000. To be effective, the penalty should be harsh to ensure compliance with the order. If a carrier knowingly and willfully requires a driver to violate an order, we propose a fine of $100,000, up to one-year imprisonment, or both. If a driver violates an order, there should be a standard of progressive fines and disqualification standards.

False records or companies that hamper the ability of our safety investigators to access safety records can limit the effectiveness of our enforcement program. A few carriers will deliberately impede our investigators by refusing access to records, buildings, or equipment or falsifying records to obscure safety violations. To deter those who refuse access to their records, we propose a $500 per day fine, up to a maximum of $5,000 for the same violation. Increasing the current fines for false records to $1,000 per day, up to a maximum of $10,000 per violation, would stem this practice.

Fundamental Building Blocks for Program Delivery

When this Committee established the FMCSA under the Motor Carrier Safety Improvement Act of 1999, you wanted a results-oriented and performance-driven safety organization. FMCSA shares that vision and wants to build an organization in this reauthorization that maximizes program safety benefits while utilizing an efficient delivery system.

Research and Technology

FMCSA's ability to integrate research and technology into our regulatory and enforcement programs has contributed to sound policy-making. MCSIA did not establish separate authority for a FMCSA research and technology program. We believe this authority is fundamental to ensuring that our future safety decisions are based on sound research. Research and technology supports life-saving and injury-reducing projects that create qualified and alert drivers, smart commercial vehicles, smart roadside facilities, secure hazardous material shipments, and expanded partnerships with states and universities.

The primary goal of FMCSA research and technology activities is to improve commercial vehicle safety and security by promoting studies on issues most frequently related to the cause of crashes and loss of life. Based on regulatory and enforcement needs and on input from stakeholders, industry, government, and academia, we have investigated, among others, driver fatigue and health issues, vehicle stability, carrier and shipper safety management, and a variety of vehicle-based safety technologies. We have actively participated in research activities sponsored by the Transportation Research Board and have cooperated with numerous transportation research centers and laboratories in the U.S. and abroad. FMCSA's role in the transportation research community will increase as we expand our partnerships beyond traditional roles and participate in and sponsor top-level national conferences and workshops. Finding effective solutions and harnessing emerging technologies does not happen without a solid research foundation.

Section 1704 of the Department's Reauthorization proposal would provide Federal ITS deployment funds each Fiscal Year to support of the Commercial Vehicle Information Systems and Networks (CVISN) Deployment program. The Department is requesting $25 million in its FY 2004 budget request for CVISN deployment. Eligible states would receive grants up to $2.5 million each for deployment of CVISN core capabilities in the areas of safety information exchange, interstate credentials administration, and roadside electronic screening. States that have already implemented core capabilities could be eligible to receive up to $1 million of Federal ITS funds for deploying enhanced CVISN capabilities that improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

Conclusion

TEA–21 and MCSIA provided a solid foundation for the motor carrier safety program. This reauthorization represents the first opportunity for our new agency to step forward, stand on its own, and chart our course for the future. Critical program characteristics—flexibility, a strong Federal-State partnership, and essential enforcement tools for our Federal programs—should be reinforced.

I look forward to working with you on this critical endeavor to improve highway safety for the motor freight and passenger carrier industries and all highway travelers. Thank you for this opportunity to testify on FMCSA's proposal to achieve this goal. I would be glad to answer any questions you may have.

Senator SUNUNU. Thank you very much.

Let me begin my questions by focusing a little bit on safety issues. A 30 percent goal is pretty significant, reducing the fatalities by 30 percent over the next 5 years. How do you intend to achieve that? What are the principal areas of focus that will allow you to meet that tough goal?

Ms. SANDBERG. There are a number of strategies that we have. First, I'd like to speak in the global perspective, and then narrow it down.

Right now, Motor Carriers works in conjunction with the National Highway Traffic Safety Administration and Federal Highways. We all share the same safety goal inside the Department of Transportation, and that's to reduce the overall fatalities to 1.0 per 100 million vehicle miles traveled, by the year 2008. And so we have a number of strategies that cut across all of our modes to achieve that goal.

And one that clearly ties with Motor Carriers and the National Highway Safety Administration is to increase seatbelt usage. Federal Highways is also working with us on this. We know that if we can increase seatbelt usage to 90 percent in this country, that by the year 2008 we will have saved 4,000 lives, and so that's a major goal.

In addition, it's a specific goal for us, in Motor Carriers, because we know that motor carrier—that truck drivers and bus drivers, their use is lower then the average population. Average seatbelt usage across the country right now is about 75 percent. In the motor carrier population, it's about 48 percent, and so we have some significant work to do with our state partners to increase seatbelt usage of even truck drivers.

Senator SUNUNU. How do you determine what the belt usage is among truck drivers?

Ms. SANDBERG. We do a survey similar to the survey that the National Highway Traffic Safety Administration does for all belt users. We use the same methodology and the same surveying mechanisms, where they actually stand on overpasses and at street corners to see if the belts are being used.

Senator SUNUNU. You'd think that people that drove for a living would be more inclined to take advantage of the safety equipment.

Ms. SANDBERG. You would think so, and I think that we need to work on some of the message. But, then again, I think that most people would be inclined to use the safety belt if they knew the impacts, particularly when they're involved in a crash. So we are working on some educational components, as well as enforcement components, to try to reinforce that message.

Senator SUNUNU. What share of the accidents that are taking place involve—accidents that involve large trucks—are related to equipment problems, what share are related to driver behavior, and what share would you attribute to other factors?

Ms. SANDBERG. I do not have that specific breakdown, but I can get that for you. I do know that a majority of the crashes, at least if I'm remembering the data correctly, are due to driver—or behavior problems.

Senator SUNUNU. Do you feel confident that the allocation of funds for motor carrier safety are lining up reasonably with the different causes of accidents that I just described?

Ms. SANDBERG. Yes, I do. As you see from specifically the four grant programs that I spoke about in my opening statement, those four grant programs really provide a substantial amount of money to the states, specifically to do inspections, as well as look at driver

log books and the other types of things that we need to ensure that drivers are doing.

One other specific component, though, that we think is a new safety feature here is the New Entrant Program, and that really gives us an opportunity to focus on what we know are the greatest-risk carriers. The data show that, currently, carriers that enter interstate commerce are the most—less likely to be safe. And so this New Entrant Program allows us to, one, when they register to be an interstate carrier, we give them conditional operating authority. And while they have conditional operating authority, they're actually flagged in our system to be inspected more often so that state roadside inspectors will know that they are a new entrant. We also, in the audit process, will audit them within the first 18 months to make sure that they are meeting all the conditions of operating authority. Once they successfully pass that audit, then they will be given full operating authority. So this gives us an opportunity to look at them early and often to make sure that they're operating safely.

Senator SUNUNU. The budget request for 2004 raises the cost of the federally managed part of the program to just over 200 million, from 117. What's the key justification for this kind of an increase?

Ms. SANDBERG. That's our administrative expenses. When we were initially formed under MCSIA in 1999, our administration was funded out of a portion of the take-down from Federal Highway's grants. And since we've been formed, we've had to come back in for supplemental budget increases. And, in reality, the Federal Highway Administration has actually been floating us along with our IT infrastructure, our human resources, our procurement, our payroll, those kinds of functions. Federal Highways has advised me that at the end of this Fiscal Year, they're going to cutoff that support, and so we felt that it was time, one, for us to stand our own and make sure that our administration was funded cleanly, without Federal Highways supplementing that out of other monies that should have been allocated to other things.

Senator SUNUNU. Back to the New Entrants Program just for a moment, you highlighted in your testimony that this is one of the key initiatives consuming your time, your focus right now. What are your principal concerns with respect to that program and your ability to ensure that it's successful?

Ms. SANDBERG. The principal concerns with the New Entrant Program, having 40,000 to 50,000 new entrants a year, is making sure that we actually get to all 40,000 to 50,000 of those new entrants. We have 46 states that have indicated that they want to partner with us on that program; however, we know that some of those states cannot fully partner, whether it's through statutory requirements that they're not allowed to actually participate in the program or whether they can't actually hire all the people. So our biggest challenge is going to be to make sure that we get as many states onboard as we can, get those state people hired, give them the funding to make sure that they can start doing new entrants in the states that they're responsible for, and then we need to supplement that with additional contractors and other employees to help make sure that we get to all 40,000 or 50,000 new entrants within that first 18 months.

Senator SUNUNU. Currently, there are over 20 open rulemaking proceedings related to directives that were required by the Motor Carrier Safety Improvement Act of 1999, TEA–21, and other legislation that we've passed. Could you describe a little bit why these rulemakings are still open? I'm sure that there are different reasons for different rulemakings, but, in general, what is keeping you from completing the work and what's your plan for concluding action on these Congressional mandates?

Ms. SANDBERG. Yes, thank you. Actually, we had a number of significant rulemakings that were outstanding, not just from MCSIA in 1999, but from some earlier Congressional mandates, some of those dating back 10 years from when the agency was inside the Federal Highway Administration. What we have done is, we have gone through and made a prioritized listing and looked at which of those were mandated under MCSIA, and we're working aggressively on those, as well as which ones have the biggest safety impact. And so those are getting the highest priority right now so that we get those rulemakings done.

We've established a new procedure inside Motor Carriers. We have weekly regulatory meetings so that staff can keep track—actually, what they do is, they update myself, the deputy administrator, and the acting deputy administrator on what progress we're making toward getting that backlog finished. And we've set a benchmark for each year. There are timelines that they have to report on, and if any of those timelines slip, then they are required to come in and report why they have slipped, how we're going to make up the time, so that we make sure that we keep on track. And our goal is to try to get as many of the backlog done within the next 2 years as we possibly can.

Senator SUNUNU. Thank you.

We're joined by Senator Breaux, and at this time I'd yield to the Senator for any comments or questions he cares to ask.

STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you very much, Mr. Chairman. I apologize for being late.

I have a statement, which I want to present, and it's not directed particularly at you, Ms. Sandberg, because some of the problems we have go back through several different Administrations.

I remember that last month Secretary Mineta came before the Committee to talk about the Administration's proposed SAFETEA, which would authorize all kinds of new transportation initiatives, to the tune of about $247 billion, with about only 1 percent of that money focused on motor carrier safety, of the $247 billion.

Before we move toward authorizing a whole bunch of new bold initiatives in this area, I question what has happened to all the things that we have initiated in the past that have never been finished. And before we start going into new areas and new requirements, I would like to see the old areas and the old requirements completed.

Let me just review some of the things that have been unfinished and, in some cases, even unstarted.

With regard to ISTEA, Congress directed the Department to issues rules addressing railroad highway grade crossings in February 1995. In July 1988, the Department issued a proposed rule prohibiting commercial motor vehicle drivers from driving onto railroad grade crossings unless there was sufficient space to drive completely through the crossing without stopping on the tracks. Hardly an innovative idea. But that's the last we've heard of that. Almost 5 years after that proposed rule, and more than 8 years after the Congress first set the Congressional deadline, we are still waiting on a rule that arguably could save thousands of lives.

And in TEA–21, the Secretary was to have initiated a rulemaking by January 1999 to determine whether Federal safety standards should be applied to interstate school bus transportation operations. The agency issued an advance notice of proposed rulemaking in October 2001 and then did nothing else. I mean, what happened to it?

The Secretary was supposed to carry out a pilot program with one or more states to improve the timely exchange of pertinent driver performance and safety records among motor carriers. The purpose, obviously, was to determine the extent to which driver records, including their fines and penalties and failures to appear for court, should be included as part of any driver information system. The Federal Motor Carrier Safety Administration has yet to propose a pilot program to carry out this Congressional directive from 1998. What's happened with that?

The Motor Carrier Safety Improvement Act directed the agency to address the safety of commercial van operations that transported nine to fifteen passengers. Since that congressional directive, the NTSB has stressed that special dangers are associated with the operation of these vans, and the final rule was supposed to be issued by December 9, 2000, but the only action by DOT has been the issuance of the proposed rule back in 2001. Where is the regulation?

On medical certifications, as you may remember, back on Mother's Day of 1999, we had this tragic accident in Louisiana where 22 of my constituents lost their lives as a result of a horrible bus accident involving a motorcoach that they were traveling in. The bus driver was found to be fatigued, had several serious medical conditions, and was under the influence of both sedatives and cocaine at the time of the accident. The NTSB recommended that the Department of Transportation take steps to strengthen the medical certification process.

Three years after that, 2002, last year, four Louisiana children lost their lives in yet another bus accident in Garland, Texas. The bus driver in that accident was also found to be under the influence of sedatives and cocaine, exactly the situation we had in Louisiana.

And last July, the Department did issue a final rule, disqualifying commercial motor vehicle drivers who have lost their driver's licenses after being convicted of a serious offense while driving a passenger vessel. The final rule also disqualified anyone who has been convicted of committing a drug- or alcohol-related offense. Now, this was a good step. I congratulate the Department for doing it, but I don't think it's nearly enough.

Almost a year has passed since the accident in Garland, Texas, and DOT has yet to issue any rules regarding the medical fitness of commercial bus drivers. The medical professionals are not required to notify anyone if they see a medical problem that could affect the ability of a commercial vehicle driver to drive safely. There are no health thresholds or requirements tied to a person's ability to get a commercial driver's license, or even to renew one.

Last September, Secretary Mineta wrote me that they had drafted a notice of proposed rulemaking proposing a process for combining the medical certification process with the issuance and renewal of the commercial driver's license and that this proposed rule would be published by March of this year. Last month, you testified, before our Committee, that it would now be December of this year before we saw this rule. Now, here we are in mid-June, and we've still not seen a proposed regulation in this area, much less the final regulation.

And last month the Administration presented its proposed reauthorization bill that would create a medical review board. Good idea. I question how long it's going to take to get a medical review board up and running. And why do we have a temporary board instead of having permanent staff people to oversee the medical issues related to commercial driver's license, rather than simply a part-time board?

And, finally, let me mention something that's ancient history, the commercial vehicle driver biometric identifier. And this thing was directed by the Secretary under the Truck and Bus Safety Regulation Act in 1988 to establish minimum uniform standards for a biometric identification system to ensure the identify of commercial motor vehicle operators. We issued a proposed regulation in 1991, Congress amended the mandate to require that commercial drivers had some form of this unique identifier, not necessarily as a biometric identifier, by January 2001. Yet DOT has not issued anything since 1991.

So, I took a long time, Mr. Chairman, pointing this out, but here we are looking at new regulations. We haven't finished the old regulations. Time after time, when Congress comes in and says—you happen to be there, and you're catching the target of this, but, anybody else in the past 10 years could be having the same point made to them—is that we write a bill, issue instructions, call for rules and regulations, and it's just not followed through. I don't know why we'd want to do a whole other round of new regulations when we haven't finished the old ones. So, that's just a statement of everything we've been able to find that has not yet been done that's already been required. Your comments?

Ms. SANDBERG. Thank you, Senator.

Actually, you point out exactly the problem I faced when I came in to the Administration in December of last year. And one of the things that the Secretary asked me to focus on was to look at the backlog in regulations and have a proposal on how we're going to reduce that backlog.

What we've proposed in SAFETEA is not to add new programs, but it's actually to shore up the infrastructure that we have in place so that we can, exactly, deal with this problem. If you look at one of the proposals we have, which is the increase in funds for

our regulatory program, we're actually asking for a $9 million increase. Part of that is, is that we have not had the funding to do the necessary staff research and regulatory evaluation to get these regulations done.

And so we are working through that backlog right now. What's happened is, the agency will start taking a step forward, and then we are given a whole host of new regulations. For example, we were given the new regulations that we needed to formulate for NAFTA so that we could open the southern border. And so we spent a tremendous amount of time last year working on those regulations.

We now have staff shifted. They're focusing on the backlog of regulations. And all the ones that you mentioned are on my hotlist. I look at those each week, particularly the ones that we know are going to be the biggest safety benefit.

The New Entrant Program that I spoke of earlier in my opening statement, that was a mandate by Congress when the agency was formed, in 1999, under MCSIA, and so we had to get that regulation in place. The funding that we're asking for and the authority that we're asking for there is actually what we need in order to make that program work so that we can meet the Congressional mandate.

As far as the other regulations, we have a number of programs underway. And, as I said at the hearing in May, we will have the medical certification tied to the commercial driver's license. That notice of proposed rulemaking will be out this year. The 15-passenger van or the camionette rule, that will be out very shortly.

We are working aggressively on all of these to deal with the backlog. And I know that some of them are 10 and 12 years old. And, to me, that's unacceptable, and I've told staff that, and we're going to continue to work through that backlog as quickly as we can. Some of the funding that we've asked for is to do just that.

Senator BREAUX. I thank you for that. I don't want to belabor the point. I think that some of the regulations and proposals that we required are probably now ancient history and outdated. Things that go back 10 years, maybe it was something to address the situation 10 years ago; and it may not be applicable to today. We need to take a look at some of these requirements that we've never been able to do.

Everybody has always come up here, and say the same thing. Your challenge is going to be to actually get it done. No one has ever come up and said, "We're not going to do the regulation." Everybody who comes before Congress says, "We're going to get right on it. We're going to get it done, I promise you." And then nothing ever happens.

These are critical areas, particularly the medical certification for driver's licenses. These things have to be done. I wish you the best of luck, and get in there and kick you know what to get it done.

Ms. SANDBERG. I'll be happy to provide periodic reports on our progress, if you would like that, Senator.

Senator BREAUX. I think it would be very helpful, because, I mean, we just can't let this thing hang forever, and I——

Ms. SANDBERG. I agree.

Senator BREAUX. Good luck, and our best toward getting this thing done.

Thank you, Mr. Chairman.

Secretary SUNUNU. Senator Lautenberg?

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thanks, Mr. Chairman. I'll take just a couple of minutes, if I might, to make a quick statement.

And I thank you for holding this important hearing on motor carrier safety. And I welcome Ms. Sandberg again and wish her luck, if I may, in getting on with the job. And we don't want to make it more difficult, but I do have a couple of questions.

And it's obvious that trucks and buses perform critical roles in our national transportation system, and we need them. But these vehicles share the road with smaller passenger vehicles, and those carry our families. And SUVs look miniature next to the large trucks. And trucks traveling at high speeds on our highways right next to the smaller vehicles can lead to disaster. And as more and more trucks and cars clog our highways, motor carrier safety becomes an ever increasingly important issue.

And while motor carrier safety is not on the mind of every American, anyone who has ever shared the road with a large tractor-trailer truck senses the safety risks. And the State of New Jersey bears more than its share of the Nation's truck traffic. We have over 11,000 heavy trucks registered in our state, but countless more travel through New Jersey from north to south delivering goods between points and commercial destinations.

We are concerned about these behemoths, some of which are 53-feet long and weigh as much as 80,000 pounds, and we will resist the pressure from some states to increase current weight and length limits so that even bigger trucks can barrel through our state. Bigger trucks present bigger safety risks, and we have to seriously ask ourselves if we're willing to tolerate those risks.

The U.S. Department of Transportation reported that multi-trailer trucks are likely to be involved in more fatal crashes, 11 percent more likely, than today's single-trailer trucks.

In 1991, I authored the freeze on longer combination vehicles, including triple-trailer trucks. And these things are as long as a 737 jetliner. And yet, in addition to efforts to increase size and weight limits, some states skirt restrictions by creating loopholes for some carriers. For instance, in Iowa, transportation officials created an exception for heavier trucks to carry such nondivisible loads as construction equipment and livestock. If there's a sheep that can't fit on a 53-foot trailer, maybe we'll hear about it on Thursday at the hearing that Senator Brownback is chairing on cloning.

[Laughter.]

Senator BROWNBACK. We'll try to cover that for you, Frank.

Senator LAUTENBERG. Sam, if we are looking at sheep longer than 53 feet, then we've got a problem. Please don't permit it.

[Laughter.]

Senator LAUTENBERG. We're getting to the point where these trucks ought to be on steel wheels and not on rubber tires. Not only

are bigger trucks more dangerous; their loads cause considerably more damage to our highways and bridges.

So last month, I introduced S. 1140, the Safe Highways and Infrastructure Protection Act, and that bill would freeze the current state and Federal limitations on truck size and weight, putting an end to the pressure to keep raising the limits unless Congress, after full debate, decides otherwise. My bill also closes decade-old loopholes that the trucking industry is exploiting to carry heavier loads and skirt weight limits. And I hope that Committee Members will join Senators DeWine and Feinstein and I as we push to get this bill passed.

And I look forward to having a moment for a question of Ms. Sandberg. Is your agency considering any changes to the freeze on longer combination vehicles?

Ms. SANDBERG. Senator Lautenberg, as I pointed out at my confirmation hearing on the 8th, the Department has not taken a position on whether to reexamine the 1991 freeze on LCVs. But what the Department—the question that we are looking at, which is a much broader question, has to do with the increase in freight that we're going to see over the next 10 years. We know that the projected freight increase is going to be by 43 percent over the next 10 years, which means that every mode inside Department of Transportation has to become part of the solution.

And so what we are examining is how we work with highways—the National Highway Traffic Safety Administration, Federal Railroads, and others—to look at how we're going to accommodate that increase in capacity. But we have not taken a position on the freeze.

Senator LAUTENBERG. OK. But if what you say is where you're going, it's all right with me, as long as all modes are included. That's the critical issue. Because to overburden our highways, really, with that much more traffic without really paying attention to it—and there's, you know, a huge resistance to pouring more concrete.

But we go on to say, according to NHTSA, almost 30 percent of all large-truck drivers involved in fatal crashes in 2001, something that Senator Breaux was talking about, had at least one prior speeding conviction compared to 20 percent of the passenger-car drivers involved in fatal crashes. What are we doing to address this problem—and you mentioned it briefly to Senator Breaux—of recurring high-risk behavior by some truck drivers?

Ms. SANDBERG. Yes, as Senator Breaux pointed out earlier, we recently passed a regulation, or finalized a regulation, last fall to look at a truck driver's entire driving record to determine whether they should hold a commercial driver's license. And what that regulation basically says is, if the driver has had a DUI or a drug-involved incident, whether it's in a car or a truck, and their license is suspended, then their commercial driver's license will be suspended. If they have two in a lifetime, then they lose their lifetime privilege to have a commercial driver's license.

To look at lesser included offenses, what we've done is, if a state suspends or revokes a driver's license of an individual—for speeding, for improper lane changes, those kinds of traffic violations—

then they would also lose their commercial driver's privilege, whether they were driving in a car or driving in a truck.

So this gives us an opportunity to look at the entire safety picture of these drivers. Before, we were only looking at the fines and the penalties while they were in a commercial vehicle.

Senator LAUTENBERG. And all the states contribute to a database that's accessible for——

Ms. SANDBERG. Yes.

Senator LAUTENBERG.—for review?

Ms. SANDBERG. All states know that they need to get their data bases up so that we can put these violations into the commercial driver's license information system——

Senator LAUTENBERG. So that it is—is that a condition that has not yet been met?

Ms. SANDBERG. They have 3 years to come into compliance once the regulation is issued.

Senator LAUTENBERG. When will the regulation——

Ms. SANDBERG. The regulation was issued last fall.

Senator LAUTENBERG. Last fall, so——

Ms. SANDBERG. And most states are going to be able to get their systems up. That's also the increase that we asked for in our commercial driver's license. We asked for an increase of $11 million, for a total of $22 million. And part of that was to help states get funding early on to update their systems so that they can come into compliance with this particular——

Senator LAUTENBERG.—what happens, Ms. Sandberg, at the end of the 3-year period, if the state hasn't complied?

Ms. SANDBERG. Then they are in jeopardy of losing some of their MCSAP money, the Motor Carrier Safety Assistance Program funding.

Senator LAUTENBERG. Is that an important grant that the states look for?

Ms. SANDBERG. Yes, it is.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Senator SUNUNU. Senator Brownback?

STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS

Senator BROWNBACK. Thank you, Senator Sununu, Mr. Chairman. Appreciate you holding this hearing.

Ms. Sandberg, welcome. I want to focus you on the hours-of-service regulation, something I know you're intimately familiar with and I'm sure you receive thousands of comments about. In particular, I want to look in on the agricultural commodities, farm supplies, groundwater well-drilling rigs, construction material, transportation, drivers of utility-service vehicles, snow and ice removal, so the areas that are in a limited radius of where they're traveling to, but are often involved in a lot of hours. And I have a written statement I'll submit to the record on the specific points.

[The prepared statement of Senator Brownback follows:]

PREPARED STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

I would like to thank our witnesses for being here today as well as Senator Sununu for holding this hearing. As the Congress continues to look at the Reauthor-

ization of TEA–21, or SAFETEA, as the Administration is calling it, I am pleased that we have the opportunity today to talk about issues that are very important to many people in my state.

The Administration has made a commitment to safety in the highway bill, as we see through the title alone: SAFETEA. I commend the President and Secretary Mineta for their efforts in highway safety. And I too am committed to promoting safety on our Nation's highways. I am also committed to ensuring that any efforts we take in safety reflect a common sense approach to addressing the problem of safety.

Specifically, I look forward to hearing Ms. Sandberg's comments on the hours-of-service rules that govern commercial operators. While I am encouraged by the willingness of the FMCSA to listen to and respond to the thousands of comments it received on the proposed rule as well as their decision to throw out many of the proposals that would have imposed significant burdens on the motor carrier industry, I am concerned about recent developments in this area as the rule becomes finalized. This new rule, which becomes effective January 4, 2004, marks the first significant change to the hours-of-service rules since 1939. I certainly hope that changes made to this rule reflect the intent of the Congress and actually address safety, rather than result in unnecessary burdens on industries dependent on motor carriers.

For example, the ground water industry has been directly effected by the hours-of-service requirement. In the 1995 National Highway System Designation Bill the Congress granted the ground water industry limited relief under the hours-of-service rules. The ground water industry has operated safely and efficiently within the maximum driving and on-duty time provisions that were established in this legislation.

However, the Department of Transportation has repeatedly demonstrated the desire to ignore congressional intent and re-regulate the ground water industry in a manner that would essentially "hollow out" the industry's limited relief. Most recently, DOT has expressed the desire to regulate the industry's off duty time.

It is my hope that as Congress pursues highway reauthorization, we maintain the relief the Congress granted the ground water industry in 1995, and prevent DOT from hollowing out this relief through arbitrary regulation that ignores congressional intent. Furthermore, if DOT or the Federal Motor Carrier Safety Administration do intend to change the rules affecting the ground water industry, they do so only after a study has been conducted specifically relating to the ground water industry. To my knowledge, the FMCSA has never studied fatigue as it specifically relates to the ground water industry and has no intention to do so.

On a related note, the FMSCA published a final rule on April 28th, 2003 regarding hour-of-service which significantly changes the current operation of the hours-of-service. I am most concerned about the impact these changes will have on small businesses. Specifically, the final rule adopted by the FMCSA increases the required off-duty time for drivers of commercial motor vehicles from eight to 10 consecutive hours; increases driving time from 10 to 11 hours; reduces a driver's total on-duty time from 15 hours to 14 hours; and most significant to many small businesses across the country, the final rule allows "short-haul" drivers to be on-duty 16 hours once in every seven-day period; and allows drivers to restart the cumulative 60-or-70 hour clock after taking 34 hours off duty. Under these new guidelines off-duty time taken by the driver during a 14-hour period, such as meal breaks, showers, or rest breaks, will not extend the driver's work day. While these breaks may seem insignificant, I can assure you that a few minutes multiplied by thousands of drivers, results in decreased efficiency across many industries on the road.

I look forward to addressing this issue further in my questions to the panel. Again, thank you to our witnesses for being here to discuss the future of safety on our nation's highways.

Senator BROWNBACK. I understand the Department of Transportation has done a report examining these specific industries outlined—is that correct?—on whether or not to provide some exemptions under the hours-of-service regulations or a different set of rules, in some of these areas?

Ms. SANDBERG. Actually, the exemptions that were under the old rule continue under the new rule. So all the exemptions that were put in the National Highway Act are still in place.

Senator BROWNBACK. Now, is there a proposal to change those rules to make them stricter?

Ms. SANDBERG. No, there is not.

Senator BROWNBACK. OK. And do you anticipate that you're going to be changing any of those rules for short-haul, water-well drillers, construction equipment, utility-service vehicles?

Ms. SANDBERG. Not at this time. One of the things I've instructed the staff is that we will not make any changes to regulation without specific data showing that there is a safety problem.

Senator BROWNBACK. Now, I had understood that there is a proposal sent to you that would request that operators be allowed the choice between the final rule that is being proposed, or the more strict proposal, on hours of service for these more short-haul type of provision—I don't have a better term to use than "short haul," versus the current rule that they are operating under—that they would have a choice. Now, is that being proposed?

Ms. SANDBERG. We have a number of petitions for reconsideration from various groups, looking at the old rules and the new rules, and we have a requirement that we have to post those and go through some deliberation. And so we're in the process of doing that right now. I don't know if, specifically, one of those requests is from this group.

Senator BROWNBACK. So are you considering, then, a change for short-haulers that's being in the proposed form at this point, that's gone to you, but it hasn't been put on forward?

Ms. SANDBERG. We're required to look at all petitions for reconsideration.

Senator BROWNBACK. All right. So you are considering——

Ms. SANDBERG. Yes, anything that——

Senator BROWNBACK.—a more strict environment for short-haul.

Ms. SANDBERG. No, it's not to make it more strict. I was—I think it was to make it more lax.

Senator BROWNBACK. Because they would——

Ms. SANDBERG. That they could continue to apply certain things under the old rule. Some of it has been misunderstandings from certain groups, who have had a little bit of difficulty understanding what exemptions still apply, what the hundred-mile radius rule—how that still applies. And so we're trying to work with those groups to eliminate any misunderstandings and then deal with any petitions that they may have under the specific new rule.

Senator BROWNBACK. All right. So that I'm clear, then, you are not proposing any changes to the hours of service regarding the litany of groups that I'm just lumping in the category of a short-haul category on limiting any further their hours of service or changing the rules regarding their hours of service.

Ms. SANDBERG. Their rules changed, the same as everybody else's, when we issued the final rule in April. And, actually, that rule went into effect and will be implemented January 4th of next year. So if the old hours-of-service rule applied to them, the new hours-of-service rule will now apply.

Senator BROWNBACK. OK.

Ms. SANDBERG. Their exemptions, though, stay the same. So whatever they were exempt from under the old rule, they stay exempt from under the new rule.

Senator BROWNBACK. OK. Then let me particularly focus you on water-well drillers. We have a number of water-well drillers in

Kansas. It's big. It's a need that we have. Are the rules for them going to change, come January 2004?

Ms. SANDBERG. Yes, they are.

Senator BROWNBACK. OK. What are they going to change to?

Ms. SANDBERG. They are allowed to work 14 hours a day and drive 11 hours. The old rule was that they were allowed to work 15 hours a day and drive 10 hours.

Senator BROWNBACK. Now, weren't they given a specific exemption under the hours-of-service——

Ms. SANDBERG. Yes, and that——

Senator BROWNBACK.—reg, under the 1995 National Highway System Design Act?

Ms. SANDBERG. That's correct. And when that exemption kicks in, that exemption would apply to the new hours-of-service rule.

Senator BROWNBACK. OK. So interpret what you mean, to me. Then, come January 2004, the water-well drillers come under the new rule, but the exemption——

Ms. SANDBERG. The exemption——

Senator BROWNBACK.—will allow them——

Ms. SANDBERG.—still applies.

Senator BROWNBACK.—to operate under the old rule.

Ms. SANDBERG. Yes. Well, no. It allows them to continue operating—whatever the exemption said—and I can't, off the top of my head, tell you exactly what that exemption said. I would be happy to give you that information later, for the record.

Senator BROWNBACK. OK, if you could, because I'm getting a lot of push from people that are in the short-haul business saying, "Come January 2004, the world radically changes for us." And I'm looking at what we put forward as exemptions in the law in 1995, and I'm thinking that, you know, the congressional opinion hasn't changed in that period of time. They should be allowed the flexibility more to operate—if you're within this hundred-mile radius where you're not going long distances, but you could be involved in long hours—you can get a water well-driller, once they start drilling, they need to continue——

Ms. SANDBERG. Uh-huh.

Senator BROWNBACK.—in this operation, because stopping and starting again's going to be very difficult and make the process much more lengthy and much more expensive for people to go into.

[The information referred to follows:]

FMCSA Response

Section 345(a) of the 1995 National Highway System Designation Act granted limited exemptions under the Hours-of-Service regulations for transportation of agricultural commodities and farm supplies, transportation and operation of ground water well drilling rigs, transportation of construction materials and equipment, drivers of utility service vehicles, and snow and ice removal.

Specifically, Section 345(a)(2) of the Act granted exemptions for transportation and operation of ground water well drilling rigs:

"(2) TRANSPORTATION AND OPERATION OF GROUND WATER WELL DRILLING RIGS—Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation and operation of a ground water well drilling rig, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time."

Section 345(e)(3) defines ground water well drilling rig—*The term "ground water well drilling rig" means any vehicle, machine, tractor, trailer, semi-trailer,*

or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

Ms. SANDBERG. Senator, we'd be happy to come up and meet with you and figure out exactly what it is that their concern is and give you a specific answer as to how the new rules apply, how the exemption applies, how the exemption applied under the old rule, and how it will apply under the new rule.

Senator BROWNBACK. OK. But it would be my desire that the exemption they're currently operating under would continue, come January 2004. I mean, that's what I'll be pushing for. That's what I think would make sense. I think the old rule has worked pretty well. Do you know any reason why we would need to change their current hours?

Ms. SANDBERG. No, the way that the staff briefed me is that the exemptions still apply the same.

Senator BROWNBACK. OK. And you have no particular reason, from your studies that you've done, safety studies, to think that this should change.

Ms. SANDBERG. Not on this specific group, no. But, again, like I said, we would be happy to come up and find out exactly what the issue is that they have.

Senator BROWNBACK. OK, good. Thank you very much.

Thank you, Mr. Chairman.

Senator SUNUNU. Thank you, Senator Brownback.

Let me just ask a few more closing questions. You had mentioned the household goods issues. Could you describe, in a little bit more detail, exactly what powers you all are recommending that the attorney generals be given in dealing with household goods complaints?

Ms. SANDBERG. Yes, actually, the provision that we have in the reauthorization proposal gives the state attorneys general the authority to enforce all the Federal regulations that currently exist, so they would have the ability to take enforcement cases.

Senator SUNUNU. For example?

Ms. SANDBERG. For example, if they have a carrier who has given false information to an individual—let's say they—it's like a hostage-goods example, where they tell you that it's going to cost you $2,000 to move, you know, they actually load your goods up, and then all of a sudden it costs you $4,000 once all your goods are on the truck. Then they would have the ability to enforce under our regulations.

Senator SUNUNU. Is there a precedent for attorneys general being given this power? In other words, any other areas of the Federal Government where they're allowed to enforce Federal statutes?

Ms. SANDBERG. That, I do not know, Senator. I can find out and give you an answer for the record.

Senator SUNUNU. Thank you.

[The information referred to follows:]

FMCSA Response

There is precedent in the telecommunications/telemarketing area. Both the Telephone Consumer Protection Act of 1991 (Pub. L. 102–243), and the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (Pub. L. 103–297), contain provisions authorizing State Attorneys General to bring actions in court to enforce

provisions of these statutes or of the implementing regulations adopted pursuant to them. Language from both Public Laws appears below:

- Pub. L. 102–243:
  Section 227
  (f) ACTIONS BY STATES——
  (1) AUTHORITY OF STATES-Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.
- Pub. L. 103–297:
  SEC. 4. ACTIONS BY STATES.
  (a) IN GENERAL-Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

Senator SUNUNU. Any other questions?

[No response.]

Senator SUNUNU. Thank you very much, Ms. Sandberg.

Ms. SANDBERG. Thank you, Senator.

Senator SUNUNU. We'll now ask that our second panel of witnesses come forward.

Our second panel includes Mr. Douglas Duncan, president and CEO of FedEx Freight; Mr. LaMont Byrd, Director of Safety and Health for the International Brotherhood of Teamsters; Ms. Joan Claybrook, President of Public Citizen; Mr. Peter Hurst, President of the Commercial Vehicle Safety Alliance; and Mr. Joseph Harrison, President of American Moving and Storage Association.

I want to thank each of the witnesses for taking the time to be with us at this hearing today. We will include your full statement in the record. Feel free, and, in fact, be encouraged, to summarize your testimony.

And let us begin with Mr. Duncan. Welcome.

STATEMENT OF DOUGLAS G. DUNCAN, PRESIDENT AND CEO, FEDEX FREIGHT ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC. (ATA)

Mr. DUNCAN. Thank you, Mr. Chairman.

Chairman and Members of the Committee, thank you for inviting the American Trucking Association to express our views on this very important subject.

As you stated, my name is Doug Duncan. I'm the President and CEO of FedEx Freight, headquartered in Memphis, Tennessee, and I'm testifying today on behalf the American Trucking Association, the ATA.

The trucking industry is large and diverse, and while the industry has disagreements on many issues, we all agree that safety is and must be the number one priority, whether considering changes in business practices or changes in the law. We are justifiably proud of our progress that we have made.

Over the past two decades, the trucking industry's fatal accident rate has come down by 53 percent, and injury and property damage crashes are at historical lows, as well. Furthermore, the number of fatal accidents involving trucks is down for 5 years in a row, even as fatal accidents involving other vehicles have continued to climb. Everyone, including the FMCSA, the CVSA, and the states, NHTSA, and the industry deserve some credit for these achievements. However, we do believe that there is more that can be done to prevent accidents and save lives.

Mr. Chairman, FMCSA's focus has traditionally centered on enforcing vehicle and driver regulations. While this is important, the best available research shows that traffic violations that are more a result of unsafe driving behaviors, particularly speeding and failing to yield the right of way, may be more prevalent causes of accidents. Unfortunately, neither FMCSA nor NHTSA's budgets reflect this research. The ATA believes that both agencies should adopt a stronger focus on visible speed and traffic law enforcement and that the program authorization and the budget for MCSAP and Section 402 programs should reflect that emphasis, as well.

Along with stepped-up traffic enforcement should come greater efforts to educate motorists and commercial drivers about how to share the road more safely with one another. Traditionally, the FMCSA has placed the burden of preventing truck-involved crashes on the truck driver and the trucking industry; however, the best available crash data indicates that the majority of truck-involved fatal crashes involved one truck and one automobile, and that the unsafe actions of the automobile driver play a contributing role in about 70 percent of those fatal crashes.

These findings were recently confirmed by the AAA Foundation for Traffic Safety, the leading advocate for motorists. The foundation found that, in some cases, unsafe actions by the car drivers were a contributing role in up to 75 percent of the fatal truck/car crashes.

Therefore, by focusing its truck-safety resources and attention primarily on truck drivers and trucking companies, the FMCSA is addressing a relatively small portion of the fatal crashes involving trucks.

A large cooperative effort is needed to attack the problem of motorists being unaware of the operating limitations of large trucks and buses. Private sector organizations and groups, in cooperation with FMCSA and NHTSA, can combine resources and expertise for the development and dissemination of information to their constituencies and to the general public. This effort should seek to more widely disseminate consistent credible information and messages by funding and leveraging off programs that are already in place.

Mr. Chairman, Congress can also assist in assuring trucking companies have information they need to make sure that the drivers they hire are safe by authorizing the trucking company access

to the Federal Motor Carriers Safety Administration driver safety data and information during the hiring process.

ATA also requests the Committee's assistance in addressing the issues with the FMCSA's SafeStat system, identified by the DOT Inspector General. Conceptually, the SafeStat system is good, but it can be improved to help better target unsafe motor carriers.

In addition, while this falls outside of the Committee's jurisdiction, ATA urges the Committee not to lose sight of the safety benefits of targeted investment in highway infrastructure as a part of overall strategy in improving highway safety. Poor road conditions and obsolete road designs play a role in nearly 12,000 highway deaths each year. ATA urges Congress to address this problem by focusing investment on projects that can prevent accidents and mitigate their severity.

Mr. Chairman, as there is a shortage of highway capacity, there is also a shortage of truck parking capacity on many of the major trucking corridors. Together with the Truckload Carriers Association, the National Association of Truckstop Operators, and the CVSA, ATA has developed a comprehensive approach to resolving this problem through the use of public/private partnerships. We hope the Committee will agree to support this important initiative.

I would also like to alert the Committee to another safety challenge facing the trucking companies and drivers. While the trucking companies are required to perform regular maintenance on our vehicles, a loophole in the Federal law allows 800,000 pieces of leased intermodal equipment to escape that regulation. We urge Congress to close this loophole by directing the Secretary to apply safety regulations equitably to all regulated equipment. And I believe the Teamsters also support this recommendation.

Finally, Mr. Chairman, the ATA recommends the Committee promote research that will allow for the adoption of effective safety regulations. For example, NHTSA should direct and undertake research to determine the appropriate method for incorporating reliability performance standards into future standards pertaining to trucks and provide dedicated sources for funding of this project.

ATA further recommends that the Secretary be directed to prioritize all Federal driver/vehicle-related research so that the majority of those funds support the research of the most common cause of accidents: the human factor.

In addition, ATA recommends that Congress require the Secretary to establish the Motor Carrier Safety Advisory Committee and extend the authorizing period by a minimum of 5 years.

Mr. Chairman and Member of the Committee, thank you for the opportunity to offer these thoughts regarding these safety issues. Much more detail is contained in the written testimony. And we look forward to working with the Committee to improve the safety and mobility of the Nation's highway transport system.

[The prepared statement of Mr. Duncan follows:]

PREPARED STATEMENT OF DOUGLAS G. DUNCAN, PRESIDENT AND CEO, FEDEX FREIGHT ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC. (ATA)

Introduction

Chairman Sununu and members of the Committee, thank you for the opportunity to express the trucking industry's perspectives regarding Truck and Highway Safety

Program issues that are of great importance to the trucking industry. I am Doug Duncan, President & CEO of FedEx Freight. As part of the FedEx Corp. family of companies, FedEx Freight is the market leader in providing next-day and second-day regional, less-than-truckload freight services. FedEx Freight generates more than $2 billion in annual revenues and is comprised of two operating companies, FedEx Freight East and FedEx Freight West.

I am appearing before the Committee today on behalf of the American Trucking Associations, Inc. (ATA). ATA is the national trade association of the trucking industry. ATA is a federation of affiliated State trucking associations, conferences, and other organizations that together include more than 37,000 motor carrier members, representing every type and class of motor carrier in the Nation. ATA represents an industry that employs nearly ten million people, providing one out of every fourteen civilian jobs. This includes the more than 3 million truck drivers who travel over 400 billion miles per year to deliver to Americans nearly 70 percent of their transported food, clothing, finished products, raw materials, and other items.

American industrial and commercial enterprises are able to compete more effectively in the global marketplace due to the benefits of safe and efficient trucking. Truck transportation is the most flexible mode for freight shipment, providing door-to-door service to every city, manufacturing plant, warehouse, retail store and home in the country. For many people and businesses located in towns and cities across the United States, trucking services are the only available means to ship goods. Trucks are the sole providers of goods to 80 percent of American communities. Five percent of the Nation's GDP is created by truck transportation. Actions that affect the trucking industry's ability to move its annual 9 billion tons of freight have significant consequences for the ability of every American to do their job well and to enjoy a high quality of life.

While we are a large and highly diverse industry, ATA members all agree that highway safety is job number one for our companies and our industry. Promoting and advancing safety is not only the right thing to do for our industry, it makes good business sense. I appreciate the opportunity to share our ideas with this Committee on ways to improve highway and truck safety.

The Trends in Truck Safety

Mr. Chairman, the past two reauthorization acts developed and promoted by this Committee have been instrumental in revitalizing and refocusing Federal surface transportation policy, particularly in the area of highway safety, and we commend this Committee for its ongoing leadership. The programs that this Committee has created and authorized have contributed to improving highway safety, and overall truck safety.

According to the Federal Motor Carrier Safety Administration (FMCSA), the safety trends in the trucking industry are clearly heading in the right direction. In their most recent report entitled, "Large Truck Crash Facts 2001," FMCSA reports that over the last 20 years (1981 to 2001), the *fatal crash rate* for large trucks has *declined* from 4.5 fatal crashes per 100 million miles traveled to 2.1 fatal crashes per 100 million miles traveled, a *53 percent decrease.* (See Table 1 from FMCSA's report)

Table 1. Large Truck Fatal Crash Statistics, 1975-2001

Year	Fatal Crashes	Vehicles Involved	Occupant Fatalities	Total Fatalities	Million Vehicle Miles Traveled	Fatal Crashes per 100 Million Vehicle Miles Traveled	Vehicles Involved in Fatal Crashes per 100 Million Vehicle Miles Traveled	Fatalities per 100 Million Vehicle Miles Traveled	Large Trucks Registered
1975	3,722	3,977	961	4,483	81,330	4.6	4.9	5.5	5,362,369
1976	4,184	4,435	1,132	5,008	86,070	4.9	5.2	5.8	5,575,185
1977	4,843	5,164	1,287	5,723	95,021	5.1	5.4	6.0	5,689,903
1978	5,405	5,759	1,395	6,356	105,739	5.1	5.4	6.0	5,859,807
1979	5,684	6,084	1,432	6,702	109,004	5.2	5.6	6.1	5,891,571
1980	5,042	5,379	1,262	5,971	108,491	4.6	5.0	5.5	5,790,653
1981	4,928	5,230	1,133	5,806	108,702	4.5	4.8	5.3	5,716,278
1982	4,396	4,646	944	5,229	111,423	3.9	4.2	4.7	5,590,415
1983	4,615	4,877	982	5,491	116,132	4.0	4.2	4.7	5,508,392
1984	4,831	5,124	1,074	5,640	121,796	4.0	4.2	4.6	5,401,075
1985	4,841	5,153	977	5,734	123,504	3.9	4.2	4.6	5,996,337
1986	4,785	5,097	926	5,579	126,675	3.8	4.0	4.4	5,720,880
1987	4,813	5,108	852	5,598	133,517	3.6	3.8	4.2	5,718,266
1988	4,885	5,241	911	5,679	137,985	3.5	3.8	4.1	6,136,884
1989	4,674	4,984	858	5,490	142,749	3.3	3.5	3.8	6,226,482
1990	4,518	4,776	705	5,272	146,242	3.1	3.3	3.6	6,195,876
1991	4,097	4,347	661	4,821	149,543	2.7	2.9	3.2	6,172,146
1992	3,825	4,035	585	4,462	153,384	2.5	2.6	2.9	6,045,205
1993	4,101	4,328	605	4,856	159,888	2.6	2.7	3.0	6,088,155
1994	4,373	4,644	670	5,144	170,216	2.6	2.7	3.0	6,587,885
1995	4,194	4,472	648	4,918	178,156	2.4	2.5	2.8	6,719,421
1996	4,413	4,755	621	5,142	182,971	2.4	2.6	2.8	7,012,615
1997	4,614	4,917	723	5,398	191,477	2.4	2.6	2.8	7,083,326
1998	4,579	4,955	742	5,395	196,380	2.3	2.5	2.7	7,732,270
1999	4,560	4,920	759	5,380	202,688	2.2	2.4	2.7	7,791,426
2000	4,573	4,995	754	5,282	205,520	2.2	2.4	2.6	8,022,649
2001	4,431	4,793	704	5,082	207,686	2.1	2.3	2.4	7,857,674

Note: A large truck is defined as a truck with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.
Sources: Vehicle Miles of Travel and Registered Vehicles: Federal Highway Administration. Fatal Crashes, Vehicles Involved, and Fatalities: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS).

FMCSA also reports that the large truck injury and property damage crash rates are also on the decline. From 1988 to 2000 (1988 was the first year in which FMCSA began collecting and analyzing injury and property damage crash data), the large truck injury crash rate has declined from 67.9 injury crashes per 100 million miles to 41.2 injury crashes per 100 million miles, a *39 percent decline.* Similarly, the property damage only crash rate declined between 1988 and 2000 from 210.7 crashes per 100 million miles to 153.7 crashes per 100 million miles, a *27 percent decline. (*See Tables 4 & 5 from FMCSA's report on the next page)

Table 4. Large Truck Injury Crash Statistics, 1988-2001

Year	Injury Crashes	Vehicles Involved	Persons Injured	Million Vehicle Miles Traveled	Injury Crashes per 100 Million Vehicle Miles Traveled	Vehicles Involved in Injury Crashes per 100 Million Vehicle Miles Traveled	Persons Injured per 100 Million Vehicle Miles Traveled	Large Trucks Registered
1988	94,000	96,000	130,000	137,985	67.9	69.5	94.4	6,136,884
1989	106,000	110,000	156,000	142,749	74.6	77.2	109.0	6,226,482
1990	102,000	107,000	150,000	146,242	69.7	73.3	102.6	6,195,876
1991	75,000	78,000	110,000	149,543	50.2	52.2	73.9	6,172,146
1992	91,000	95,000	139,000	153,384	59.2	61.8	90.4	6,045,205
1993	93,000	97,000	133,000	159,888	57.9	60.4	83.2	6,088,155
1994	91,000	96,000	133,000	170,216	53.3	56.2	78.1	6,587,885
1995	80,000	84,000	117,000	178,156	44.7	46.9	65.7	6,719,421
1996	89,000	94,000	129,000	182,971	48.6	51.3	70.7	7,012,615
1997	92,000	96,000	131,000	191,477	48.0	49.9	68.3	7,083,326
1998	85,000	89,000	127,000	196,380	43.3	45.1	64.8	7,732,270
1999	95,000	101,000	142,000	202,688	46.9	49.6	69.9	7,791,426
2000	96,000	101,000	140,000	205,520	46.9	48.9	68.0	8,022,649
2001	86,000	90,000	131,000	207,686	41.2	43.2	62.9	7,857,674

Notes: "Persons Injured" includes all nonfatally injured persons in injury and fatal crashes. A large truck is defined as a truck with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.
Sources: Vehicle Miles of Travel and Registered Vehicles: Federal Highway Administration. Injury Crashes, Vehicles Involved, and Injuries: National Highway Traffic Safety Administration, General Estimates System (GES).

Table 5. Large Truck Property Damage Only (PDO) Crash Statistics, 1988-2001

Year	PDO Crashes	Vehicles Involved	Million Vehicle Miles Traveled	PDO Crashes per 100 Million Vehicle Miles Traveled	Vehicles Involved in PDO Crashes per 100 Million Vehicle Miles Traveled	Large Trucks Registered
1988	291,000	297,000	137,985	210.7	215.2	6,136,884
1989	291,000	300,000	142,749	203.8	210.5	6,226,482
1990	265,000	273,000	146,242	181.4	186.9	6,195,876
1991	240,000	248,000	149,543	160.2	166.0	6,172,146
1992	268,000	277,000	153,384	174.8	180.8	6,045,205
1993	287,000	296,000	159,888	179.2	185.1	6,088,155
1994	350,000	360,000	170,216	205.4	211.6	6,587,884
1995	279,000	289,000	178,156	156.7	162.4	6,719,420
1996	285,000	295,000	182,971	155.8	161.3	7,012,615
1997	325,000	337,000	191,477	169.6	176.1	7,083,326
1998	302,000	318,000	196,380	153.8	162.0	7,732,270
1999	353,000	369,000	202,688	174.1	182.2	7,791,426
2000	337,000	351,000	205,520	163.9	170.9	8,022,649
2001	319,000	335,000	207,686	153.7	161.2	7,857,674

Note: A large truck is defined as a truck with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.
Sources: Vehicle Miles of Travel and Registered Vehicles: Federal Highway Administration. PDO Crashes and Vehicles Involved: National Highway Traffic Safety Administration, General Estimates System (GES).

FMCSA also reports that alcohol involvement for large truck drivers involved in fatal crashes has declined *75 percent* since 1982, the first year that the Fatality Analysis Reporting System (FARS) included data for alcohol involvement in fatal crashes.

FMCSA's report has a wealth of additional data and information on trends, and ATA encourages Committee Members and staff to view the report online at: *http://ai.volpe.dot.gov/CarrierResearchResults/CarrierResearchResults.asp?file=PDFs/LargeTruckCrashFacts2001.pdf*

Additionally, within the last two weeks, the National Highway Traffic Safety Administration (NHTSA) released a new crash study entitled *"An Analysis of Fatal Large Truck Crashes."* This report also has a great deal of useful information, and can be viewed online at: *http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/Rpts/2003/809-569.pdf*

The U.S. Congress, the U.S. Department of Transportation, the State agencies involved in truck safety, and the millions of people employed in the trucking industry should be proud of and pleased with the truck safety progress that has been made to date. However, ATA strongly believes that more can and should be done. However, the *right* policies must be established and the most effective actions must be taken, especially when resources are limited. Put more simply, the solutions must

address the problems. Incorrect or ineffective policies and actions may only blunt our pursuit of safer transportation systems. Our collective goal must be to continue to push the trends even further in the right direction. ATA's recommendations throughout the remainder of this testimony are aimed at achieving this goal. Our recommendations are categorized in the following three areas:

1. Traffic Safety and Truck Safety Program Recommendations
2. Regulatory Change Recommendations, and
3. Research and Advisory Committee Recommendations

I. Traffic Safety and Truck Safety Program Recommendations

Truck safety has improved over the last 20 years. An interesting question, however, is "What has caused the improvement?" This is a tough question to answer for both industry and government officials. We believe that some programs that have been implemented in the last 10 to 20 years have contributed to the overall positive picture. The industry supported Federal-State truck safety inspection grant program (known as the Motor Carrier Safety Assistance Program or MCSAP) has had an impact by improving truck condition; the Commercial Driver's License (CDL) program has contributed by raising the bar for driver entry into the industry; and the implementation of voluntary drug testing by the industry, followed by a mandatory Federal drug and alcohol testing program, has also contributed in a positive way. It is very likely that the increase in seat belt use by truck drivers and other motorists has also had a positive impact. Many other industry and government initiatives are likely to have had some benefit as well. The point here, however, is that we still need to have a better understanding of what has worked and why. Additionally, we still do not understand thoroughly how and why truck crashes occur.

A. Safe Speeds Save Lives—Greater Speed Enforcement Is Needed

ATA recommends that Congress authorize additional funding for the Section 402 Highway Safety Grant Program administered by NHTSA, and the MCSAP truck safety grant program administered by FMCSA, *specifically for increased traffic and speed enforcement efforts* in the highway reauthorization bill. ATA further recommends that Congress make it clear in legislative language that MCSAP funding should be used for State speed enforcement efforts aimed at both commercial and non-commercial drivers, and that speed enforcement activities aimed at commercial drivers do not have to be linked to a North American Standard Inspection. Additional funding, additional emphasis, and greater Federal leadership are needed on this issue to reduce the speed and unsafe driving behaviors of all drivers on our highways in order to save lives.

ATA is also a firm believer in the life-saving benefits of seat belt use. ATA recommends that Congress continue to support and fully fund the occupant protection programs of NHTSA, including the ongoing 'Click It or Ticket' grant program.

Justification—Since the results of FMCSA's ongoing large truck crash causation study are not yet available, policymakers must use the best available data and information to make informed policy and program decisions. For years, crash research has found that human errors and unacceptable driver behaviors are the primary causes of (or primary contributing factors to) highway crashes, including truck-involved crashes.[1] It is interesting to note, however, that both the Congress and the U.S. DOT have traditionally taken different approaches to improving traffic safety versus truck safety. NHTSA's traffic safety programs have focused on gaining strong traffic laws, educating the public on these strong laws, and then using visible and targeted traffic enforcement programs to enforce these laws in order to positively affect motorist behavior. NHTSA has shown that this selective traffic enforcement program (STEP) approach effectively changes motorist behavior and thereby increases highway safety. NHTSA has also focused on improving its traffic safety and crash data collection and analysis in order to better guide the agency's programs and resource expenditures.

FMCSA's truck safety programs, on the other hand, have focused on increasing the number and scope of regulations on drivers and motor carriers, enforced through on-road safety inspections and facility compliance audits. Unfortunately, FMCSA does not have persuasive research that shows increased regulatory and compliance efforts equal greater truck safety. Since so much of truck safety is rooted in overall traffic safety, Congress and FMCSA should seriously consider much more of a traffic safety approach toward improving truck safety.

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[1] *Tri-Level Study of the Causes of Traffic Accidents,* Indiana University, DOT HS 805 099, May 1979.

To expand on this point, NHTSA reports that speeding was a contributing factor in more than 30 percent of all fatal crashes in 2001. This means that more than 12,800 people lost their lives in 2001 in part due to speed-related crashes. This is simply unacceptable. The time has come to combat *excessive speeding,* in order to improve both traffic and truck safety. There are four words that every motorist and every commercial vehicle driver needs to remember when they buckle up and take the wheel of their vehicle: *SAFE SPEEDS SAVE LIVES!*

The Section 402 Highway Safety Grant Program administered by NHTSA supports many outreach and enforcement programs, including the priority programs to encourage the proper use of occupant protection devices and reduce drug and alcohol impaired driving. While these programs clearly deserve a high priority by NHTSA, ATA is concerned that *strong, visible speed enforcement* may not be getting the focus, attention and funding it deserves.

Additionally, the Motor Carrier Safety Assistance Program (MCSAP), administered by FMCSA, focuses on priority truck and bus safety initiatives that, for the most part, do not address speeding truck and bus drivers, or other motorists with which commercial drivers share the road. The MCSAP program, a generally successful truck and bus safety *inspection* program, is simply not putting enough emphasis on traffic enforcement activities. Strong, visible speed enforcement aimed at commercial vehicle drivers, *as well as other motorists with whom commercial drivers share the road,* needs to take on a much greater role in the MCSAP program. In fact, there is currently an artificial constraint that keeps the amount of speed enforcement activity in the MCSAP program small. FMCSA's regulations require that all speed enforcement stops of trucks (as well as all other types of traffic enforcement stops) include an appropriate North American Standard Inspection of the truck or the driver, or both, for the activity to be eligible for MCSAP funding. This inspection requirement, found at 49 CFR 350.111, is unnecessary and unwarranted and discourages traffic enforcement for commercial motor vehicles. Additionally, since speeding and other unsafe driving behaviors of non-commercial drivers play an even greater role in truck-involved crashes than do the actions of the commercial motor vehicle driver,[2] the MCSAP program must also include traffic enforcement efforts aimed at unsafe motorist behavior. This funding should be in addition to the money provided for traditional MCSAP enforcement activities.

B. A Comprehensive Education and Outreach Program Is Needed

ATA recommends that Congress authorize and fund a comprehensive Share the Road Safely education and outreach program that is designed to educate and change the behavior of all highway users. This effort must be coupled with increased MCSAP traffic enforcement to have the desired outcomes. A program evaluation requirement should also be included. This program should be funded at not less than $5 million dollars annually.

Justification—The majority of truck-involved crashes are multi-vehicle crashes that involve one truck and one passenger vehicle.[3] Traditionally, FMCSA (and its predecessor organization) has placed the burden of preventing these truck-involved crashes on the truck driver and the trucking industry. However, the best available crash data indicates that the actions of the truck driver play a contributing role in only 30 percent of fatal crashes where another vehicle is involved. The unsafe actions of the automobile driver play a contributing in about 70 percent of the fatal crashes involving a truck.[4] Therefore, by focusing their resources and attention on truck drivers and trucking companies, FMCSA is addressing a relatively small portion of the fatal crashes involving trucks.

A large cooperative effort is needed to attack the problem of motorists being unaware of the operating limitations of large trucks and buses and, therefore, being unaware of how to more safely share the road with these vehicles. Private sector organizations and groups, in cooperation with FMCSA and NHTSA, can provide resources and expertise for the development and dissemination of information to their constituencies and to the general public. This effort should not undermine or overtake existing efforts such as ATA's Share the Road program, or AAA's Share with Care program. Rather, it should seek to more widely disseminate *consistent and credible Share the Road Safely information and messages* by funding and leveraging

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[2] *The Unsafe Driving Acts of Motorists in the Vicinity of Large Trucks,* Anacapa Sciences, Inc. for the Federal Highway Administration, February 1999.

[3] *An Analysis of Fatal Large Truck Crashes,* U.S. DOT, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, DOT HS 805 569, June 2003.

[4] *The Relative Contribution of Truck Drivers and Passenger Vehicle Drivers to Truck-Passenger Vehicle Traffic Crashes,* The University of Michigan Transportation Research Institute (UMTRI 98–25), June 1998; and, *Identifying Unsafe Driver Actions that Lead to Fatal Car-Truck Crashes,* AAA Foundation for Traffic Safety, April 2002.

off of programs already in place. FMCSA has a very small Share the Road Safely program and has traditionally spent less than one percent of its annual budget on this program.[5] There is a small coalition as part of this program, in which ATA is a participant, which could provide the foundation for a much larger and more effective outreach effort. As recommended recently by the U.S. General Accounting Office,[6] this education and outreach effort should be closely coordinated with the increased traffic enforcement efforts, similar to NHTSA's STEP approach described above.

C. Safety Screening of Truck Drivers Can Be Improved

ATA recommends that Congress authorize FMCSA to provide access to safety data and information contained in MCMIS, within the confines of the Privacy Act and consistent with the Fair Credit Reporting Act.

Justification—FMCSA collects a substantial amount of driver and company compliance and safety performance information in a safety database called the Motor Carrier Management Information System (MCMIS). This safety information is different from the information captured on a driver's motor vehicle record maintained by the State licensing agencies. State motor vehicle records typically contain information on driver traffic law convictions (*e.g.*, speeding, reckless driving, etc.). MCMIS contains information on a driver's compliance with the medical certification process, the hours of service regulations, and other safety regulations that apply to the driver. Motor carrier employers currently have access to driver-specific information only for those drivers they currently employ. Truck safety could be improved if trucking companies had the ability to access driver-specific safety information contained in MCMIS during the driver screening and hiring process, in order to make more informed hiring decisions. Prospective employees would be asked to authorize the inquiry before a company is given access to the information. Reauthorization provides a real opportunity to make this existing safety database more useful than it already is, from a safety standpoint.

D. Improve the Motor Carrier Compliance Review Targeting System Known as SafeStat

ATA recommends that Congress direct the Secretary to address and improve the data and methodological shortcomings in FMCSA's Safety Status Measurement System (SafeStat) identified by the Department of Transportation's Inspector General during its recent audit.

Justification—FMCSA administers a safety scoring system that assigns a numerical score to every trucking company on which they have sufficient safety and demographic data. The score, and some of the data used to generate the score, is currently made publicly available on FMCSA's website. Serious concerns with the scoring system methodology, and with some of the safety data used in the system, led to a Congressional request for a DOT Inspector General audit that began in November 2002. Preliminary results from the audit indicate that the system can be improved substantially, and the final report to be released in the very near future will contain specific recommendations for improving the system.

E. Create A Safe Driving Environment Through Sound Infrastructure Investments

ATA recommends that Congress fund research that explores better highway design and management practices, particularly those that could result in improved truck safety. We also urge Congress to earmark money to State and local planning agencies to help them to better understand the unique needs of freight transportation, including those related to safety. Finally, we would like to see a much greater share of Federal highway funds directed toward those projects and highway networks that are most critical to motorist safety and to economic productivity.

Justification—Poor road conditions and obsolete road designs contribute to nearly a third of all fatal crashes in the United States. In other words, more than 12,000 people die each year in collisions with roadside hazards such as trees, utility poles, and embankments, and almost another 3,500 die in rollover crashes often related to veering off the roadway. Rollover crashes are a particularly significant concern for truck drivers. Many ramps were not designed to accommodate trucks' physical characteristics, and some have become notorious for the number of rollover truck accidents that have occurred because they were not designed with trucks in mind.

And unlike other areas of highway safety—such as drunk driving, seat belt use, and vehicle design—where significant gains have been made, the percentage of fa-

[5] *Share the Road Safely Program Needs Better Evaluation of Its Initiatives,* U.S. General Accounting Office, May 2003.

[6] *Ibid, p. 12.*

talities related to roadside hazards has actually risen over the past two decades. Fortunately, this trend can be reversed. Well designed and maintained roads reduce vehicle deaths and injuries. They also save Americans billions of dollars in medical costs and productivity.

Often, relatively simple, inexpensive changes can be made to roads that will produce tremendous safety improvements. Building wider shoulders, installing rumble strips, improving traffic signal timing to accommodate the slower acceleration of larger vehicles are all basic concepts that could improve truck safety. Unfortunately, knowledge about how to accommodate trucks' unique operating characteristics is lacking among many agencies. ATA has recommended that, on a general basis, State and local planning agencies need to hire people with specific freight transportation expertise.

Congress should also focus limited Federal resources on projects that promise the greatest safety benefit. The National Highway System (NHS) carries approximately 75 percent of all truck traffic and 40 percent of overall traffic. Yet about half of the NHS is comprised of two-lane, undivided highways. Because the NHS is the backbone of the Nation's freight transportation system, a single accident on the NHS can have ripple effects throughout the supply chain due to late deliveries caused by congestion related to the incident. It is also possible to identify specific priority projects. According to one study, fixing the Nation's 167 worst highway bottlenecks would prevent 287,000 crashes, including 1,150 fatalities.

F. Greater Truck Parking Can Improve Safety

ATA recommends that the Committee support the initiative to increase the amount of truck parking in certain freight corridors and, more specifically, support the recommendations contained in Attachment A.

Justification—The continuing growth of long-haul truck travel has produced tremendous demand by truck drivers for long-term rest. These needs arise when drivers require sleep while on the road, and when they need to fulfill their federally mandated hours-of-service obligations. While adequate long-term truck parking is available in many areas, there is a shortage of capacity on many of the Nation's major trucking corridors. According to a 2002 survey of truck drivers conducted for FHWA, 89 percent of respondents said that they are usually unable to find parking at public rest areas, and 66 percent usually had a problem finding space at a truck stop.

While the solution is often to expand the number of available parking spaces, in some cases the problems can be resolved through methods other than having to build new parking spaces. For example, better signage, improved security measures, and enhanced parking area design can all play a role in resolving the parking shortage. In addition, non-traditional approaches, such as allowing truck parking at weigh stations, commuter lots or warehouse facilities are being utilized successfully in some parts of the country currently and may be a feasible solution in other locations as well. ATA, in partnership with the Truckload Carriers Association, the Commercial Vehicle Safety Alliance and the National Association of Truckstop Operators, has developed a comprehensive proposal for addressing the truck parking shortage (see Appendix A).

II. Regulatory Recommendations

A. The Safety of Intermodal Chassis Can Be Improved

ATA recommends that Congress direct the Secretary of Transportation to equitably apply and enforce laws designed to ensure the safe condition of all regulated equipment, including intermodal chassis and trailers. Antiquated regulations should be replaced with ones that are in tune with current industry operations

Justification—Mr. Chairman, while the trucking industry cooperates with its intermodal partners in many areas, and will do so during this reauthorization cycle, there is one area on which we disagree. That area is the responsibility for safety and maintenance of the intermodal chassis on which intermodal cargo containers are transported on the highway. ATA is very concerned that foot-dragging by the U.S. Department of Transportation, and by many in the rail and ocean carrier industries, to work with the trucking industry to resolve the *"equipment roadability"* issue is having serious safety and economic impacts. Since the advent of containerized shipping in the 1970s, a serious safety loophole has remained in the Federal Motor Carrier Safety Regulations. This loophole is commonly referred to as *"equipment roadability."*

As containerized intermodal freight has evolved over the decades, the Federal safety regulations have not kept pace. As a result, 750,000 intermodal chassis and 83,000 intermodal trailers are operating in a safety loophole. These frame-like trailers (intermodal chassis) are used exclusively to haul intermodal containers, and are

interchanged between steamship lines, railroads, and intermodal trucking companies. The chassis are also classified as commercial motor vehicles by FMCSA. However, they evade traditional FMCSA safety oversight.

FMCSA safety regulations fundamentally assume that trucking companies have daily management control over all trucks and trailers they take onto public roadways. Based upon that assumption, the regulations read, "*Every motor carrier shall systematically inspect, repair, and maintain. . .all motor vehicles subject to its control.*"

FMCSA's interpretation of *systematic maintenance* is, *". . . a regular or scheduled program to keep vehicles in a safe operating condition."* It explains that the agency does not specify maintenance intervals, leaving that decision to trucking company management, based on fleet and vehicle considerations. So how does FMCSA know if a motor carrier is failing to "keep vehicles in a safe operating condition?" When MCSAP safety inspections, typically conducted by State law enforcement officials, drive a motor carrier's safety score above a certain threshold, the agency and/or State send an envoy to the trucking company's place of business to audit the maintenance and employee training records, inspect the carrier's equipment, etc.

While railroads and foreign-owned steamship lines (collectively called "providers") own or lease the intermodal chassis, and control their daily disposition, *they claim they are not motor carriers, thus not technically responsible for the condition of their equipment under Federal safety regulations.* However, they do affix the annual inspection sticker on their equipment, which constitutes an act of certification that the equipment was inspected in detail at least once a year. Providers conduct the annual inspection pursuant to the FMCSA's regulations, but many do not conduct systematic maintenance on the same equipment, which is likewise mandated by FMCSA's regulations. This explains the poor condition of intermodal chassis and points to FMCSA's failure to close their own regulatory loophole to hold the controlling party accountable for the safety compliance of their own equipment that is operated on public roads.

A recent study conducted jointly by the FMCSA and the University of Maryland provides support for ATA's concern about the *equipment roadability* issue. This study looked at 11 sectors of the trucking industry, one of which was intermodal operations. Researchers used nine safety performance measurements and other data managed by FMCSA to analyze the safety performance of each sector. One significant finding is that intermodal trucking operations were found to be average or better-than-average in six of the nine measurements. However, in the two measurements relating to vehicle condition, the intermodal sector ranked poorly. Specifically, among the 11 sectors, intermodal operations ranked last for vehicle safety condition and second-to-last (10th) for accumulating vehicle out-of-service violations. Thus, the latest research findings from FMCSA confirm what intermodal trucking executives have been saying for years – that the equipment controlled by steamship lines and railroads, and subsequently provided to motor carriers for brief periods of time, are potentially unsafe because they are not maintained by those controlling parties as required by FMCSA regulations.

FMCSA has acknowledged that it has jurisdiction over the issue, but has failed to place safety responsibility on the proper party. That places the 833,000 intermodal chassis and trailers squarely in a longstanding safety loophole.

B. Overly Restrictive Federal Size and Weight Standards Prevent Safety Improvements

ATA urges Congress to give states additional flexibility to determine the appropriate size and weight regulations for trucks operating on highways under their jurisdiction.

Justification—At the request of Congress, the Transportation Research Board (TRB) recently issued a new report on the impacts of Federal truck size and weight regulations.[7] Among the report's conclusions was that the largely static and inflexible system of Federal regulation that currently exists ". . . discourages private-and public-sector innovation aimed at improving highway efficiency and reducing the costs of truck traffic . . .," including costs related to accidents involving trucks.[8]

In a nutshell, the TRB report concludes that states should be given greater authority, with strong Federal oversight, to make decisions with regard to the size and weight limits of trucks on highways under their jurisdiction. This reflects ATA's own policy. TRB further recommends that Federal regulatory oversight of weight limits

[7] Transportation Research Board Special Report 267, *Regulation of Weights, Lengths and Widths of Commercial Vehicles,* 2002.

[8] *Ibid.,* p. 5–1.

should not be extended to the NHS, as S. 1140, the Safe Highways and Infrastructure Preservation Act (SHIPA) seeks to do.[9]

There is no doubt that continuing or further restricting current Federal size and weight limits will cost lives. While it would not make sense from a safety or economic standpoint to allow larger or heavier trucks to operate on every highway or in every state, Congress cannot continue to ignore the growing body of evidence that supports the fact that opportunities to prevent accidents through size and weight reform are available. Those states that identify these opportunities should be allowed to take advantage of them.

Allowing the expanded operation of more productive trucks would have two safety benefits. First, carriers would need fewer trucks to haul a given amount of freight, thereby reducing accident exposure. Second, studies have consistently found that certain trucks with greater carrying capacity have a much better safety record than trucks that are in common use today. A study sponsored by the Federal Highway Administration found that the accident rate for longer combination vehicles (LCVs) is half that of other trucks.[10] A recent Canadian study found that LCVs have an accident rate that is five times lower than the rate for tractor-semitrailers.[11] This study also found that during the 10-year period after LCVs were authorized to operate on a large scale in the Province of Alberta, the number of registered trucks dropped by 19 percent, even though the economy grew and non-truck vehicle registrations grew by 23 percent. The report concluded that increased truck productivity due to expanded LCV use was the most likely reason for this reduction in truck registrations.

ATA is not seeking changes to size and weight regulations during reauthorization. However, the approach suggested by TRB provides Congress with the opportunity to review this issue based on the facts, and ATA encourages the Committee to consider supporting it.

III. Research and Advisory Committee Recommendations

A. Reliability Performance Standards for Commercial Motor Vehicles are Needed

ATA believes it is imperative that NHTSA be directed to undertake a research program to determine the appropriate method for incorporating reliability performance standards into future Federal Motor Vehicle Safety Standards pertaining to trucks, and provide a dedicated source of funding for this project. NHTSA should be required to report to Congress on its work within two years, including the steps necessary to establish a reliability program and a timetable for doing so. NHTSA should also be directed to allow trucking equipment users and their representatives an opportunity to participate in the development and implementation of this program equal to that of manufacturers.

Justification—Since 1968, NHTSA has written Federal Motor Vehicle Safety Standards (FMVSS) which measure short-term output for vehicle safety, that is, manufacturers must certify that their equipment meets the regulatory standards when it is placed on the market to be sold. NHTSA has never considered *reliability*—which is intrinsic to the overall elements of a design—in determining its vehicle safety standards.

Today, as equipment systems and subsystems become more technologically complex, and truck manufacturers move to limit the ability of commercial fleets to specify which particular components to install in a particular vehicle, equipment reliability is rapidly becoming an overwhelming concern for motor carriers. An example of existing reliability standards for vehicle systems can be found in regulations established by the Environmental Protection Agency for emissions control, in 40 CFR 86.085. This issue is vital to highway safety, as compromises in reliability can deliver short-term performance enhancements, and may lower system costs, but may also lead to safety system failures when the equipment is most needed.

B. Prioritization in the Research Program is Needed

ATA recommends that the Secretary of Transportation be directed to prioritize all Federal driver and vehicle-related research so that the majority of funds support research in the most-common cause of accidents—human factors. The Secretary should direct NHTSA to undertake a multi-year research project to determine the effects of risk-adaptation in both commercial and passenger vehicles, and to determine if there are ways in which such effects may be mitigated. NHTSA should also be directed to allow vehicle equipment users and their representatives, including the

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[9] *Ibid.,* p. 5–16.

[10] *Accident Rates For Longer Combination Vehicles,* Scientex Corp., 1996.

[11] *Longer Combination Vehicle Safety Performance in Alberta 1995 to 1998,* Woodrooffe and Assoc., March 2001.

trucking industry, an opportunity for participation in this program equal to that of manufacturers.

Justification—Although the best available data continue to indicate that the overwhelming majority of traffic accidents are caused by driver behavior problems and human error, a significant percentage of Federal research and regulatory effort has been and continues to be focused on vehicles and equipment, with far less effort spent on human factor issues. Motor carriers continue to incorporate a number of new electronics systems into their commercial motor vehicles. Many of these may eventually interact with drivers and make decisions on their behalf. There is evidence of a growing danger from *"risk-adaptation"*—the tendency of drivers to take greater risks when faced with the false security of a system that promises greater safety. One example of this phenomenon can be seen in antilock braking systems (ABS) for passenger vehicles. NHTSA has found that these systems do not offer a net safety benefit, as ABS-equipped cars were simply involved in different kinds of accidents than cars without ABS, not fewer or less deadly ones. A better understanding of how this phenomenon works and, more importantly, ways in which it might be mitigated is necessary, as vehicles become more complex in the already-complicated highway environment.

C. A Motor Carrier Safety Advisory Committee Should Be Established

ATA recommends that Congress require the Secretary to establish a motor carrier safety advisory committee and extend the authorizing period by a minimum of five years.

Justification—Section 105 of the Motor Carrier Safety Improvement Act of 1999 authorized the Secretary of Transportation to establish a commercial motor vehicle safety advisory committee to provide advice and recommendations on a wide range of motor carrier safety issues. The advisory committee was to remain in effect until September 30, 2003.

More than three years after passage of the Act, DOT has taken no official action to establish an advisory committee. ATA finds this fact very troubling. Establishment of the Committee would bring together various industry segments, law enforcement, advocacy groups, manufacturers, and government officials to discuss the most pressing motor carrier safety issues. These groups often have conflicting opinions on important highway safety issues. Bringing them together in an advisory capacity would allow FMCSA to proactively develop regulatory and program changes that have a greater chance of being embraced and supported by the agency's stakeholders. An advisory committee could also provide the regulators with a regular opportunity to better understand the safety, economic, and human impacts that their actions might have on various segments of society.

IV. ATA's Reaction to the Administration's SAFETEA Proposal

ATA commends the Bush Administration for releasing a surface transportation reauthorization bill (SAFETEA) that recognizes the need for substantial highway safety improvements and greater freight transportation efficiency. While ATA has a number of specific concerns, we believe the bill represents a positive first step in the reauthorization process.

Some of the SAFETEA initiatives that ATA supports include:

- Creation of a new highway safety improvement program funded at $1 billion in 2004 and growing each year to $1.5 billion in 2009.
- Improvements in the project development process to ensure integration of freight transportation.
- A requirement that states identify a freight transportation coordinator.
- A set aside of funding for highways that connect intermodal freight facilities to the National Highway System, and a 90 percent state matching fund requirement for these highways (as opposed to the current 80 percent match).
- A proposal to fund "ready-to-go" projects at major traffic bottlenecks and to cut bureaucratic delay in the project development process so needed highway projects can move to completion more expeditiously.
- A greater focus on improving motor carrier information and data analysis systems. ATA trusts that these improvements will extend to the Federal Motor Carrier Safety Administration's safety status (SafeStat) measurement system.

ATA opposes the following SAFETEA proposals:

- While the Administration has stated a commitment to improving freight transportation, SAFETEA would subsidize the intermodal movement of freight at the expense of the highway system, which carries the vast majority of the Nation's freight. The bill proposes expansion of funding eligibility to the Surface Trans-

portation Program and the Transportation Infrastructure Finance and Innovation Act (TIFIA) for intermodal freight transportation projects, including rail facilities, even though just over one percent of the Nation's freight moves via intermodal rail. Trucks deliver 68 percent of the freight and are the exclusive provider of freight transportation services to more than 80 percent of American communities. A true commitment to improving freight efficiency cannot include the further diversion of limited funds from the Nation's ailing highways. A fair transportation bill will not require one transportation mode to subsidize its competitors.

- The U.S. Department of Transportation's own research suggests that the proposed investment levels will not be adequate to even maintain current highway system conditions and traffic congestion levels. We urge Congress to increase the Federal commitment to highways without raising taxes and to prioritize funding for highways of national significance.
- The proposal would eliminate the ability of trucking companies to pay their heavy vehicle use taxes (HVUT) on a quarterly basis and requires each truck to display a decal demonstrating payment of the tax. While we recognize that HVUT evasion is a serious problem, law-abiding trucking companies should not be punished because of the actions of a few miscreants. We strongly oppose the decal requirement. It is unnecessary, an added administrative burden and redundant to procedures already available as proof of fees paid. In addition, we are concerned about the adverse financial impact of elimination of the quarterly payment privilege on trucking companies.
- ATA opposes the exemption of safety, security and idle reduction technologies from the Federal excise tax on trucks and truck equipment. This provision would place the Federal government in a position of having to create a new Federal bureaucracy to evaluate potentially thousands of devices. ATA also has strong reservations about the exposure to legal liability created by federally-endorsed safety technologies.
- ATA opposes the Administration's proposal to continue the Interstate Highway toll programs created by TEA 21. Tolling existing Interstate Highways creates a disincentive for motorists to use Interstates, which are the safest roads. Alternative secondary routes are likely to be at least four times more dangerous than an Interstate Highway.
- ATA opposes the Administration's rest area commercialization pilot program. States in general have not demonstrated that they are willing to address the truck parking shortage issue. Ninety percent of truck parking is privately provided, and solutions to the truck parking shortage are more likely to be addressed by the private sector than by the public sector. Along with the Truckload Carriers Association, the National Association of Truck Stop Operators and the Commercial Vehicle Safety Alliance, ATA has developed the comprehensive proposal in Attachment A to address the truck parking shortage that focuses on public-private partnerships.

Summary

In summary, Mr. Chairman, ATA makes the following recommendations.

I. Traffic Safety and Truck Safety Program Recommendations

ATA recommends that Congress authorize additional funding for the Section 402 Highway Safety Grant Program administered by NHTSA, and the MCSAP truck safety grant program administered by FMCSA, *specifically for increased traffic and speed enforcement efforts* in the highway reauthorization bill. ATA further recommends that Congress make it clear in legislative language that MCSAP funding should be used for State speed enforcement efforts aimed at both commercial and non-commercial drivers, and that speed enforcement activities aimed at commercial drivers do not have to be linked to a North American Standard Inspection. Additional funding, additional emphasis, and greater Federal leadership are needed on this issue to reduce the speed and unsafe driving behaviors of all drivers on our highways in order to save lives.

ATA is also a firm believer in the life-saving benefits of seat belt use. ATA recommends that Congress continue to support and fully fund the occupant protection programs of NHTSA, including the ongoing 'Click It or Ticket' grant program.

ATA recommends that Congress authorize and fund a comprehensive Share the Road Safely education and outreach program that is designed to educate and change the behavior of all highway users. This effort must be coupled with increased MCSAP traffic enforcement to have the desired outcomes. A program evaluation re-

quirement should also be included. This program should be funded at not less than $5 million dollars annually.

ATA recommends that Congress authorize FMCSA to provide access to safety data and information contained in MCMIS, within the confines of the Privacy Act and consistent with the Fair Credit Reporting Act.

ATA recommends that Congress direct the Secretary to address and improve the data and methodology shortcomings in FMCSA's Safety Status Measurement System (SafeStat) identified by the Department of Transportation's Inspector General during its recent audit.

ATA recommends that Congress fund research that explores better highway design and management practices, particularly those that could result in improved truck safety. We also urge Congress to earmark money to State and local planning agencies to help them to better understand the unique needs of freight transportation, including those related to safety. Finally, we would like to see a much greater share of Federal highway funds directed toward those projects and highway networks that are most critical to motorist safety and to economic productivity.

ATA recommends that the Committee support the initiative to increase the amount of truck parking in certain freight corridors and, more specifically, support the recommendations contained in Attachment A.

II. Regulatory Change Recommendations

ATA recommends that Congress direct the Secretary of Transportation to equitably apply and enforce laws designed to ensure the safe condition of all regulated equipment, including intermodal chassis and trailers. Antiquated regulations should be replaced with ones that are in tune with current industry operations

ATA urges Congress to give states additional flexibility to determine the appropriate size and weight regulations for trucks operating on highways under their jurisdiction.

III. Research and Advisory Committee Recommendations

ATA believes it is imperative that NHTSA be directed to undertake a research program to determine the appropriate method for incorporating reliability performance standards into future FMVSS pertaining to trucks, and provide a dedicated source of funding for this project. NHTSA should be required to report to Congress on its work within two years, including the steps necessary to establish a reliability program and a timetable for doing so. NHTSA should also be directed to allow trucking equipment users and their representatives an opportunity to participate in the development and implementation of this program equal to that of manufacturers.

ATA recommends that the Secretary of Transportation be directed to prioritize all Federal driver and vehicle-related research so that the majority of funds support research in the most-common cause of accidents—human factors. The Secretary should direct NHTSA to undertake a multi-year research project to determine the effects of risk-adaptation in both commercial and passenger vehicles, and to determine if there are ways in which such effects may be mitigated. NHTSA should also be directed to allow vehicle equipment users and their representatives, including the trucking industry, an opportunity for participation in this program equal to that of manufacturers

ATA recommends that Congress require the Secretary to establish a motor carrier safety advisory committee and extend the authorizing period by a minimum of five years.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to offer our thoughts regarding these safety issues. We look forward to working with the Subcommittee to improve the safety and mobility of our Nation's highway transportation system.

ATTACHMENT A—REAUTHORIZATION PROPOSAL TO IMPROVE TRUCK PARKING

Background

The growth of long-haul truck travel has produced tremendous demand by truck drivers for long-term rest. These needs arise when drivers require sleep and when they need to fulfill their federally mandated hours-of-service obligations. While adequate long-term truck parking is available in most areas, there is a shortage of capacity on many of the Nation's major trucking corridors. While the solution is often to expand the number of available parking spaces, in some cases the problems can be resolved through methods other than having to build new parking spaces. For example, better signage, improved security measures, and enhanced parking area

design can all play a roll in resolving the parking shortage. In addition, non-traditional approaches, such as allowing truck parking at weigh stations, commuter lots or warehouse facilities are being utilized successfully in some parts of the country currently and may be a feasible solution in other locations as well. However, there continues to be a need to specifically identify where truck parking shortages do exist and why.

For the most part, and with a few exceptions, state transportation agencies have shown little propensity for resolving this issue. In fact, only one state has taken advantage of the availability of Federal highway funding for building truck parking spaces—which has been available without a state matching requirement since 1995—to alleviate the parking shortage. In the hierarchy of priorities, and within the range of available staff expertise, the provision of truck parking ranks well below highway construction and maintenance. Therefore, public rest areas are often the victims of state budget cuts and highway funding shortfalls. Moreover, truck parking does not have a strong local constituency. In fact, the topic often stimulates much local antagonism. This is because state and local officials do not place a high priority on meeting the parking needs of long-haul truck drivers. This means not only that relatively few public resources are dedicated to truck parking, but also that private providers of truck parking often have to deal with a variety of government-imposed roadblocks whenever they attempt to expand the availability of truck parking. This can encompass anything from zoning regulations to requirements that truck stop owners pay for infrastructure improvements to accommodate the additional traffic.

While it has been difficult to document the extent of the truck parking shortage, and the specific causes of a lack of capacity in certain areas, perhaps the best information comes from truck drivers themselves. A 2002 truck driver survey conducted for the Federal Highway Administration at the request of Congress revealed the following:

- 11 percent of truck drivers surveyed frequently or almost always find parking at *rest areas.*
- 34 percent frequently or almost always find parking at *truck stops.*
- 89 percent sometimes, rarely or almost never find parking at *rest areas.*
- 66 percent sometimes, rarely or almost never find parking at *truck stops.*
- 33 percent park on entrance or exit ramps for long-term rest.
- 21 percent park illegally in parking lots for long-term rest.
- 11 percent park on highway shoulders for long-term rest. On average, drivers who park in these locations do so two times per week.
- When asked why drivers park on ramps and shoulders, 94 percent gave "no empty spaces at rest areas or truck stops" as a reason. A smaller number of drivers cited rest area time limits, more convenient access, or a lesser likelihood of being bothered by drug dealers and prostitutes as other reasons for parking on a ramp or shoulder.
- 79 percent of drivers preferred truck stops for extended rest, while just 6 percent preferred rest areas.
- The top five recommendations to improve the truck parking situation identified by drivers were:

  1. Build more truck stop spaces (79 percent)
  2. Build more rest area spaces (66 percent)
  3. Stop enforcement officers from waking drivers (57 percent)
  4. Eliminate time limits on truck parking spaces (49 percent)
  5. Improve parking layouts and configurations (46 percent)

These results reflect other national and state studies of truck parking shortages. For example, a 1997 New York survey of truck drivers found that 80 percent were always, or often, unable to find parking at public rest areas. A recently released survey of truck drivers in Maine found that 79 percent of drivers parked on highway off-ramps or shoulders at some point; 42 percent on a daily or weekly basis. Most drivers said they parked at these locations because of a lack of convenient parking facilities. Interestingly, Maine truck drivers stated that relative to other Northeastern states, Maine did not have a chronic shortage of parking spaces. A 1999 Tennessee study found that on an average weeknight nearly 44 percent of the parked trucks were pulled over on ramps and shoulders.

All studies on the truck parking shortage have made similar recommendations on how to resolve the problem, and they fall into the following general categories:

- Federal funding for public and private parking facilities where demand is greatest.
- Improved lighting and security for parking facilities.
- Geometric improvements to improve truck access and throughput.
- Opening up non-traditional facilities to trucks for long-term parking (*e.g.,* weigh stations, commuter lots, warehouse parking lots, etc.).
- Better signage to increase awareness of private facilities.
- Elimination of parking time restrictions on trucks.

The recommended course of action described in this document is intended to address truck parking problems according to the best available research. The proposal is supported by the American Trucking Associations, the Commercial Vehicle Safety Alliance, NATSO (representing travel plaza and truck stop owners) and the Truckload Carriers Association.

Proposal

I. Objectives

A. Identify the geographic locations and highway corridors where availability of parking for drivers to stop and rest (both short term and long term) is inadequate and the reasons therefore.

B. Increase availability of truck parking at existing truck stops and public rest stops.

C. Upgrade truck parking area security.

D. Improve existing roadside signage system and develop real-time communication system.

E. Develop Intelligent Transportation System deployments that provide drivers with real-time information on the location and availability of parking spaces.

II. Solutions

A. Identify the specific geographic locations and highway corridors where the availability of parking for drivers to stop and rest (both short term and long term) is currently inadequate and the reasons therefore, and require future periodic comprehensive surveys

B. Open inspection and weigh stations, park-and-ride facilities to truck parking during off-hours and non-peak periods of demand; exempt trucks from enforcement actions at these sites to encourage the use of the sites for parking by fatigued drivers.

C. Provide tax credits and tax incentives to truck stop operators

D. Provide tax credits and tax incentives for the develop of secure 24-hour access pickup and delivery "truck staging" facilities in or adjacent to metropolitan areas

E. Develop a communication system that will provide drivers with real-time information on the location and availability of parking spaces, using cell telephones, radio frequencies, satellite-based text messaging systems and other avenues to broadcast parking locations and their availability to drivers.

F. Establish a non-profit quasi-governmental corporation, the "Parking Assistance Resource Corporation" (PARC), for the purpose of more efficiently and cost-effectively managing Federal funding expended to increase the number and availability of commercial truck parking in those areas with a demonstrated shortage of spaces and/or other barriers to adequate availability of long-term truck driver parking (4 or more hours)

1. PARC's primary authority and responsibility would include: (1) conducting periodic surveys to identify the location(s) of truck parking shortages in the future and the reasons for the shortage(s); (2) developing best practices and recommended minimum design, security and lighting requirements; (3) reviewing and prioritizing grant applications from private enterprise and recommending grant applications aimed at alleviating the shortage at specific location(s) to the DOT Secretary for the Secretary's approval; (4) identifying specific NHS corridors where regional/multi-state strategies would be most effective and encourage and facilitate cooperation among relevant entities.
2. PARC would be funded with a grant from the Federal Highway Administration with funds authorized by Congress. Proposed funding levels are $5 million (2005); $8 million (2006); $12 million (2007); 16 million (2008); $20 million (2009).

3. PARC would be governed by a Board of Directors comprised of representatives from the following organizations: Federal Motor Carrier Safety Administration, American Trucking Associations (ATA), Truckload Carriers Association (TCA); National Association of Truck Stop Operators (NATSO), American Automobile Association (AAA), and Commercial Vehicle Safety Alliance (CVSA).

G. Expand the eligibility of the Surface Transportation Program to allow 100 percent Federal funding for "Safety Rest Areas" on the NHS, as defined in Title 23 U.S.C. Sec. 120(c). Safety rest areas are already eligible under the NHS program. In addition, add access routes, ramps and interchanges serving safety rest areas, regardless of whether or not they provide commercial services, to the list of projects eligible for 100 percent Federal share under Sec. 120.

Senator SUNUNU. Thank you, Mr. Duncan. Mr. Byrd, welcome.

STATEMENT OF LAMONT BYRD, DIRECTOR, SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. BYRD. Mr. Chairman, Members of the Committee, my name is LaMont Byrd. I'm Director of Safety and Health for the International Brotherhood of Teamsters.

I'm pleased to appear here today on behalf of the hundreds of thousands of Teamster members who make their living driving on our Nation's roads. It's imperative to make their workplace as safe as possible, since it affects not only their safety, but the safety of the motoring public with whom they share the roads.

Although there are a number of issues I'd like to discuss, in the interest of time I'll focus on just a few and respectfully request that my written testimony be included in the record.

In April 2003, the Federal Motor Carrier Safety Administration issued a new hours-of-service regulation. Because the final rule is drastically different from the notice of proposed rulemaking, we're still analyzing how its implementation will impact on our membership. However, at this point, we do agree with the FMCSA's decision to increase the rest time each day, but we have serious concerns about how the new rule's increase in consecutive hours behind the wheel each day, and the 34-hour restart provision, will impact on our members. We feel that the latter two provisions are likely to increase fatigue and negate any safety benefit that the increase in rest time per day would provide. In our investigation into the driver-fatigue issue, we concluded that one of the primary problems contributing to driver fatigue is noncompliance with the hours-of-service rule.

If a Teamster driver is instructed to take a trip that violates the hours-of-service rule, he can refuse and has a collective bargaining agreement and the union to back him up. A non-union driver obviously has no such protections, and, therefore, may feel pressured to violate the rule. For this reason, we have pushed for better enforcement of the current rule and more funding to carry out enforcement.

The rule that the FMCSA has promulgated does little, if anything, to boost enforcement of the hours-of-service rule, and unless this Committee finds a way to do that, we will have accomplished little or nothing with respect to reducing fatigue and the number of traffic accidents that result from it.

On a separate issue, the Transportation Security Administration recently issued an interim final rule requiring criminal-background

checks for commercial motor vehicle drivers who currently possess or apply for a hazardous materials endorsement. For the most part, TSA borrowed the list of disqualifying offenses from the airline industry background check program. We've learned much from that initial program, including the need for waivers and appeals, which TSA has included. However, despite the appeal and waiver provisions, certain felony convictions do not necessarily point to potential terrorist behavior.

I would like to recount a situation involving two Teamster members who are sisters and who work as flight attendants for Northwest Airlines. On a shopping trip to New York City, one of the sisters discovered some knock-off designer purses being sold on a street corner. Thinking that her friends back home would like to have some of these bags, she purchased several and mailed them back to her sister. Little did she suspect that this innocent act would lead to their felony convictions on interstate transportation of counterfeit goods. With no appeal process under the airline criminal background check program, both flight attendants face termination from jobs they've held for a combined 35 years. They are not terrorists, nor are they persons who should be suspect of committing terrorist acts. This situation should lead to changes in the airline background-check process and should serve as a warning for the hazardous materials endorsement check program.

Another issue yet to be resolved is a requirement for criminal background checks for Mexican drivers who haul HAZMAT. To the best of my knowledge, the DOT has resolved the issue of criminal background checks for Canadian drivers hauling HAZMAT in the U.S. However, nothing has been reported on the status of criminal background checks for Mexican drivers.

I need not remind the Committee that it was the Department of Transportation which insisted that all foreign-domiciled motor carriers are subject to all U.S. safety regulations. Therefore, Mexican drivers hauling HAZMAT must undergo a criminal background check.

Furthermore, given that long-haul Mexican trucks may soon be traveling everywhere in the United States, a number of other issues brought out in the Inspector General's recent audit report need to be addressed. I won't go into them right now; rather, I ask that you review our written testimony.

Finally, the Teamsters believe that some diabetics should be allowed to operate in interstate commerce, but current law prohibits them from doing so. In fact, current law only allows people who use insulin to operate a commercial motor vehicle in intrastate commerce on a waiver period not to exceed 3 years. Most Teamster members don't operate in intrastate commerce; they operate in interstate commerce. And, unfortunately, many of them have lost their jobs as a result of diabetes, irrespective of the facts that they have a proven safe driving record and their medical condition is under control.

The Federal Motor Carriers Safety Administration has proposed an exemption program, but it does little to correct the problem. It would only permit people to participate in it if they participated in an intrastate waiver program for the 3 years immediately preceding their application for an exemption.

The Teamsters Union and the American Diabetes Association believe that the 3-year rule is unnecessary, based on the current practice of diabetes. This is a position that the Federal Motor Carrier Safety Administration's own expert medical panel pushed in both the FMCSA's July 2000 report, as well as in the expert medical panel's own additional comments, which were inserted in the public docket. We, therefore, urge the Committee to address this important issue in the upcoming TEA–21 reauthorization bill.

With that, I, again, thank you for this opportunity to testify.

[The prepared statement of Mr. Byrd follows:]

PREPARED STATEMENT OF LAMONT BYRD, DIRECTOR, SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. Chairman and Members of the Committee:

My name is LaMont Byrd and I am Director of Safety and Health for the International Brotherhood of Teamsters. Thank you for the opportunity to testify here today on behalf of our 1.4 million members on such an important issue: motor carrier safety.

The Teamsters Union represents hundreds of thousands of workers who make their living driving on our Nation's roads, from interstate highways to city streets. It is imperative to make their workplace as safe as possible since it affects not only their safety but also the safety of the motoring public with whom they share the roads. With that said, there are a number of issues that I'd like to mention that are integral to improving and strengthening motor carrier safety and decreasing the growing number of accidents, injuries, and fatalities on our Nation's roads.

Hours of Service

In April, the Federal Motor Carrier Safety Administration (FMCSA) issued new hours of service regulations that allow drivers to drive 11 hours and work a total of 14 hours after 10 consecutive hours off-duty. Current law allows 10 hours of driving time within a 15-hour on-duty period after 8 hours of rest. The Teamsters have not had nearly sufficient time to develop an opinion on all aspects of the regulation, since the final rule is drastically different from the first Notice of Proposed Rulemaking the FMCSA issued. We would have preferred an opportunity to comment on the new rule before it was finalized. However, we do agree with the FMCSA's increase in the rest time for drivers. For some time, we have advocated the need for more rest time. Eight hours is not sufficient time for a driver to conduct personal business (such as eating, showering, and spending time with his/her family) and to get the necessary sleep. However, we cannot help but wonder what the FMCSA was thinking when it increased the consecutive number of hours behind the wheel for a driver, which essentially negates any benefits the increased rest time would provide. The fact is that by the Department of Transportation's (DOT) own estimates, 755 fatalities and 19,705 injuries result from fatigued drivers each year on U.S. roads. Numerous fatigue studies show that after eight hours of driving time a driver's alertness significantly deteriorates. The U.S. military agrees. Twelve years ago, nearly 50 percent more soldiers died in accidents (235) than in battle (147). In the recent war in Iraq, there were only a third as many non-combat fatalities (36) as deaths in battle (101). The same pattern appears to hold for nonfatal injuries, with the data on evacuated Army troops showing that 107 had non-combat injuries, compared with 118 who had combat wounds. Col. Terry J. Walters, the physician who is chief of health policy in the office of the Army's surgeon general, attributed the steep drop in non-combat deaths and injuries, in part, due to the Army's efforts to improve driver safety and to ensure that soldiers were well-rested when operating vehicles. In the first Gulf War, motor vehicle accidents alone accounted for about half of all serious injuries.

With that said, the Teamsters Union has concerns about the FMCSA's increase in consecutive hours of driving and will be looking carefully at the effect this will have on the safety of our members and the safety of the motoring public. In addition to our concerns with increasing the consecutive number of hours behind the wheel, the Teamsters has significant concerns with the 34-hour restart provision in the FMCSA's regulations. The cumulative effect of this allowance will significantly increase driving time and fatigue and has the potential of even eliminating Teamster jobs.

Finally, it is important to point out that Teamster drivers and their companies are the safest on the road. We obey the rules. If by chance, a Teamster driver is asked to take a trip that violates the hours of service rule, he/she can refuse and has the union to back him up. For this reason we have pushed for years for better enforcement of the current rules and more funding to carry out enforcement. The rule that the FMCSA has put forward does little if anything to boost enforcement of the existing rules, which is the major problem with hours of service. Unless this Committee finds a way to do that, we will have accomplished nothing with respect to reducing fatigue and the number of traffic accidents that result from it.

Criminal Background Checks for Hazardous Materials Endorsement

The Transportation Security Administration (TSA) recently issued an Interim Final Rule requiring criminal background checks for Commercial Motor Vehicle (CMV) drivers who currently possess or apply for a Hazardous Materials Endorsement in order to haul hazardous materials. The Teamsters Union intends to file comments to the Docket, but we want to make the Committee aware of several issues that may present problems for our members who may have committed some indiscretion in their past but have been rehabilitated, proved to be model citizens, and are productive members of their communities.

For the most part, TSA has "borrowed" the list of disqualifying offenses from the airline industry background checks. We have learned much from that initial program, including the need for waivers and appeals, which TSA has included. TSA's notification process keeps the criminal history record check information out of the hands of employers, who have used this information to dismiss employees in the airline industry for offenses committed beyond the look-back period and outside the scope of disqualifying offenses. However, despite the appeal and waiver provisions, certain disqualifying felony convictions do not necessarily point to potential terrorist behavior.

I would like to recount a situation involving two Teamster members who are sisters and work as flight attendants for Northwest Airlines. On a shopping trip to New York City, one of the sisters discovered some "knock off" designer purses being sold on a street corner. Thinking that her friends back home would like to have some of these bags, she purchased several and mailed them back to her sister. Little did she suspect that that innocent act would lead to her and her sister's felony convictions on interstate transportation of counterfeit goods. With no appeal process under airline criminal background checks, both flight attendants face termination from jobs they have held for a combined 35 years. They are not terrorists nor are they persons who should be suspect of committing terrorist acts. This situation should lead to changes in the airline background check process and should serve as a warning for the hazmat endorsement check and background checks in other industries as well.

The trucking industry has been a place where reformed, former criminals have found a place to work, and where rehabilitation programs have encouraged entry into the trucking profession. For that reason, we intend to question the seven-year look-back provision. Although it is an improvement over the ten-year look-back in the airline industry, it is somewhat arbitrary when one considers whether a person is truly rehabilitated after four years, five years or even three years, for that matter, of committing a criminal act.

In addition, although TSA does not require a revocation of a hazmat endorsement based on an initial review (Initial Notification of Threat Assessment), the agency does notify the state that the individual may be within the prohibited category under the rulemaking, in which case the state may take whatever action it deems appropriate or do nothing until TSA issues its final determination. The Teamsters Union is concerned that a state could take immediate action and revoke a hazmat endorsement upon initial determination by TSA. And while there are specific time limits in the rulemaking for initiating the waiver and appeals processes by the individual, TSA fails to put any specific deadlines on its review processes. We could envision a state revoking or denying a hazmat endorsement for a driver upon initial determination, and have TSA take several months to get through the waiver or appeal process, only to finally determine that there is no threat posed by the individual (Final Notification of Threat Assessment). The driver could be adversely affected in not being able to work during this period. We should note for the Committee that all of the union Less-than-Truckload (LTL) carriers require their drivers to possess hazmat endorsements because they do not know from one day to the next whether part of a shipment may contain hazardous materials. So if a driver loses his hazmat endorsement, he loses his job, regardless of whether he still has his commercial drivers license (CDL). We also question whether the TSA has sufficient resources and personnel to address this issue, especially in light of recent reports that

half of the 30,000 airport security screeners are still awaiting criminal background checks. We would remind the Committee that it is estimated that 3.5 million drivers currently possess a hazmat endorsement. For these reasons, we will also encourage the TSA to establish strict deadlines for their review processes.

A final issue yet to be resolved is the requirement of criminal background checks for Mexican drivers who haul hazardous materials. The USA Patriot Act provided for such a requirement for U.S. drivers, and to the best of my knowledge the DOT has resolved the issue of criminal background checks for Canadian drivers hauling hazmat in the U.S. However, nothing has been reported on the status of criminal background checks for Mexican drivers. I need not remind the Committee that it was the DOT which insisted that all foreign domiciled motor carriers are subject to all U.S. safety regulations. Therefore, Mexican drivers hauling hazmat should and must undergo a criminal background check. Long-haul Mexican trucks will soon be traveling anywhere in the United States carrying chemicals, gasoline and other flammable liquids and gases. We need to know that terrorists will not find a more convenient way to infiltrate our hazardous materials industry.

Cross-Border Trucking

As this Committee well knows, the Teamsters Union has opposed the opening of the border to Mexican trucks for travel beyond the currently permitted commercial zones because of the serious concerns we have for the condition and safety of Mexican trucks. Had not the Teamsters and other safety groups voiced their concerns dating back to 1995, when the trucking provisions were to be first implemented, we fear that many of the safety measures put into practice within the past several years would never have occurred. While some may label us as obstructionists to free trade, we believe we have provided a valuable service to the motoring public in assuring that highway safety in this country will not be compromised.

With that said, the DOT's Inspector General just issued a *Follow-Up Audit On The Implementation Of Commercial Vehicle Safety Requirements At The U.S.-Mexico Border.* In it, the IG states that the FMCSA has made substantial progress in meeting the Murray-Shelby requirements incorporated in the past two Transportation and Related Agencies Appropriations Acts. However, there remain several areas of concern to us, and these, left uncorrected, could jeopardize the significant progress made to date.

First, the IG reports that inspection facilities were sufficient at 24 of the 25 commercial crossings. The Teamsters can only assume that these are temporary facilities because this statement seems inconsistent with facts later reported in the audit. Congress provided $66 million for the four border states to construct and develop permanent border inspection facilities. In Arizona, which received $2.1 million, construction of a permanent inspection facility in Nogales has not been completed, and construction of a permanent inspection facility in Douglas is only in the planning phase. In California, which received $8.9 million, construction of an inspection facility in Tecate is only in the design phase. In New Mexico, which received $2.2 million, construction of a permanent inspection facility in Santa Teresa won't be completed until 2005. In Texas, which received $52.8 million, permanent facilities at seven key border crossings—Eagle Pass, El Paso Bridge of the Americas, Laredo Columbia, Los Indios, Pharr, and Veteran's Bridge, also won't be completed until 2005. In addition, plans to construct a facility at Laredo World Trade Bridge, one of the largest ports of entry at the U.S.-Mexico border, are on hold.

The IG also reports that at two border crossings—Douglas and San Luis in Arizona—a portion of the dedicated out-of-service space was not being used because the General Services Administration had not completed improvements. In addition, at five border crossings—Columbus, New Mexico and Eagle Pass, El Paso Bridge of Americas, Laredo World Trade Bridge, and Roma in Texas—the Bureau of Customs and Border Protection moved or planned to move FMCSA's dedicated inspection and out-of-service spaces. For example, at the El Paso Bridge of Americas, without coordinating with FMCSA, the Bureau of Customs and Border Protection inspectors notified the local supervisory inspector that within 4 days the dedicated inspection and out-of-service spaces would be moved to a less desirable location on the compound. Clearly, this is unacceptable.

In addition, the IG reports that inspectors at 22 crossings could electronically access Mexican and U.S. databases to verify CDLs, license plates, authority to operate in the United States, and U.S. insurance coverage. There were problems at the other crossings, which I don't need to detail at this time. What's important to note here is that the IG states that it did not reverify the accuracy of the Mexican commercial driver's license and vehicle registration databases. The Teamsters pose a question to the Committee: Who cares about being able to access a database if the

information in it may not be accurate? We would urge the Committee to investigate this further.

We would also urge the Committee to look into how state and local law enforcement personnel will be able to access Mexico's databases. From what we can tell, he/she is expected to call an 800 number to access this information and to check if a Mexican driver has insurance or proper operating authority. We would suggest that such a system may prove to be a disincentive for state law enforcement officials to vigorously pursue violations by Mexican carriers and drivers.

Along these same lines, we question how the state and local law enforcement personnel will determine whether a Mexican driver/carrier is in violation of U.S. cabotage laws. If, for example, a driver was pulled over for running a red light in Florida and he was supposed to be taking a load to Idaho from Mexico, would the state and local law enforcement personnel recognize the cabotage violation and know how to enforce it?

Finally, the IG audit reports that 18 states, including the border state of New Mexico and the states of Nevada and New York, have not yet adopted FMCSA's rule authorizing their State inspectors to take action when they encounter a vehicle operating without authority. This finding leads us to question Secretary Mineta's November 20, 2002, certification that authorizing Mexican carrier operations throughout the U.S. does not pose an unacceptable safety risk. The fact is that State inspectors need to be able to place Mexican carriers operating without authority out of service. The IG states that the primary concern here is not necessarily the long-haul carriers whose authority will be checked every 90 days, but rather carriers authorized to operate only in the commercial zones that continue beyond the zones and do so illegally. As reported by the IG in 1999, at least 52 Mexican-domiciled motor carriers operated improperly in 20 states beyond the four border state's commercial zones, and roadside inspection data throughout the U.S. has shown that this practice has continued. Two of the 20 states were Nevada and New York, both of which have not authorized their State inspectors to place Mexican carriers out of service.

Diabetes

The Teamsters Union believes that some diabetics should be allowed to operate in interstate commerce but current law prohibits them from doing so. In fact, current law only allows people who use insulin to operate a Commercial Motor Vehicle (CMV) in intrastate commerce on a waiver for a period not to exceed 3 years. Most Teamster members don't operate in intrastate commerce. They operate in interstate commerce, and unfortunately many of them have lost their jobs as a result of diabetes, irrespective of the fact that they have a proven driving record and their medical condition under control. The FMCSA has proposed an exemption program, but it does little to correct the current problem. It would only permit people to participate in it if they have participated in an intrastate waiver program for the three years immediately preceding their application for an exemption.

But according to the FMCSA, there are as many as 20 states that do not have an intrastate waiver program or severely restrict participation through grandfather provisions. Thus, to participate in the program, you have to live in a state that has an intrastate waiver program, meet the state's criteria for participation in the waiver program, work for an employer that has intrastate driving opportunities, and work for an employer who is willing to let you drive intrastate for three years. Obviously, the end result is that no one will actually be able to participate in this program.

The Teamters Union and the American Diabetes Association believe that the three-year rule is unnecessary based on the current practice of diabetes, a position that FMCSA's own Expert Medical Panel pushed in both the FMCSA's July 2000 report as well as in the Expert Medical Panel's own additional comments which were inserted into the public docket. The Expert Medical Panel recommended a one or two month adjustment period, which the Teamsters would support following the doctor's advice and replacing the three-year rule with a one or two month adjustment period. We therefore urge this Committee to express their concern with the three-year rule and address this issue in the upcoming TEA–21 reauthorization bill.

Lack of Roadworthy Chassis

The Teamsters Union currently represents several hundred port truck drivers and has been working to organize all of the approximately 50,000 truck drivers who haul intermodal containers in ports located throughout the United States. These truck drivers suffer from deplorable wage and working conditions, and while I will not get into specifics about the cause of their plight, I do want to focus on the fact that they are forced every day to haul containers on unsafe, unroadworthy chassis, perpet-

uating a motor carrier safety problem that has existed for decades and has been largely ignored by the FMCSA.

Although widely disregarded, these workers play an integral role in United States trade. United States' ports and the shipping industry form the foundation for international trade upon which the vitality of the free market economy depends. International trade experts reported that the global container trade rose from an estimated 83 million containers in 1990 to 198 million in 2000. And despite the economic downturn in 2001, the top 20 U.S. ports still experienced increases in container volume from the previous year. Experts predict that by 2010 at least 90 percent of all freight carried by ocean carriers will be transported by intermodal containers. Consequently, profits for ocean carriers have increased steadily for the past three years.

Unfortunately, the same cannot be said for port truck drivers. Port drivers are forced to spend an average of 3 hours per day, or 15 hours per week, in ports, all unpaid, waiting in various lines to pick up chassis and containers. Because of their economic plight and the fear of retaliation and blacklisting, they are forced to choose between hauling unsafe chassis or taking their place at the end of a new line, while the maintenance and repair shop makes the chassis barely roadworthy. Port drivers are forced to choose between hauling overweight containers or receiving no work as a result of their refusal. They are also forced to haul improperly labeled containers that often contain hazardous materials. Again, if the port driver complains, he or she is likely to suffer some form of retaliation.

To correct this situation and assure that port drivers are given roadworthy chassis from the start, the Teamsters Union has joined with its union brothers on the docks, the ILA and ILWU, and the American Trucking Association, whose own member trucking companies have seen their safety ratings maligned, through no fault of their own, to support legislation that spells out who is responsible for inspection and repair of intermodal chassis and would require that equipment to comply with all commercial motor vehicle safety requirements before it is handed off to a port driver or trucking company. Mr. Chairman, motor carriers and drivers have been routinely cited and fined for violations of motor carrier safety regulations of chassis that they do not have an opportunity to systematically maintain. For the most part, rail carriers and foreign-owned steamship lines control the entire maintenance program for all 750,000 chassis under their management. Only those parties who control the equipment and have the opportunity and authority to maintain, repair and inspect that intermodal equipment should assume responsibility for the safety of that equipment.

That is what we would propose in new legislation, and we are hopeful that you, Mr. Chairman, and members of the Committee will work with us to assure that the thousands of chassis with containers that leave the ports every day have been maintained properly, inspected, and repaired if necessary, so that highway safety is not compromised by this segment of the trucking industry.

Toll Collector Safety

The Teamsters Union also represents hundreds of toll collectors and road crews across the United States who clearly work in hazardous conditions. These workers are exposed to fast-moving traffic with little or no protection. The DOT has addressed some of the safety issues involving road crews through its existing work zone safety program, although it is important to note that the DOT's SAFETEA bill doesn't seem to reauthorize it. We're hopeful that was an oversight and that this Committee will address it in its TEA–21 reauthorization bill. However, nothing has been done to deal with the safety issues that toll collectors must face at toll plazas, especially with regard to EZ Pass or Smart Tag programs that have gone into effect. While the Teamsters Union is in no way advocating elimination of these programs, we are requesting that the Committee include in its TEA–21 reauthorization bill a study that examines the inherent dangers of toll and express toll programs to workers and others.

15 Passenger Vans

Despite mounting evidence that 15-passenger vans are inherently dangerous when driven by an untrained driver, and despite repeated Congressional mandates that the DOT take action to ensure that vehicles and their drivers meet Federal safety standards, the DOT has yet to issue a final rule requiring the application of all Federal Motor Carrier Safety Regulations (FMCSRs), including commercial drivers license CDL and drug and alcohol testing regulations, to these unsafe vans. Further, in proposed rules, the DOT has refused to require states to apply similar regulations to vans operating intrastate.

Compounding this problem is the fact that many school districts across the country are transporting students in these dangerous vehicles, typically driven by an untrained teacher, coach or parent, to school and school-related activities. While Federal law prohibits the sale of these and other vehicles that do not conform to Federal school bus standards, for the purpose of transporting school children, the law does not prohibit schools from using the vehicles when they are able to obtain them through other means. Schools are taking advantage of this loophole and, in an effort to save money, are using 15-passenger vans in lieu of school buses—often with fatal results.

To explain, Section 4008(a) of TEA–21 changed the definition of commercial motor vehicle to cover all passenger vehicles that are designed or used to transport more than 8 passengers (including the driver) for compensation. In addition, TEA–21 required that all FMCSRs apply to those commercial motor vehicles, except to the extent that the Secretary of Transportation determines through a rulemaking proceeding, that it is appropriate to exempt such operators of CMVs designed or used to transport between 9 and 15 passengers (including the driver) from the application of those regulations.

In response to the changes made in TEA–21, the Federal Highway Administration (FHWA) instituted a rulemaking which would have required all CMVs designed or used to transport between 9 and 15 passengers (including the driver) to file a motor carrier identification report, mark their CMVs with a U.S. DOT identification number, and maintain an accident register. Under the proposed rule, these commercial passenger vans would be exempt from all other FMCSRs. This rulemaking was never finalized.

Congress, in response to DOT's failure to implement the changes required by TEA–21, enacted the Motor Carrier Safety Improvement Act of 1999 (MCSIA), which, among other things, ordered the DOT to finalize the rulemaking initiated by FHWA. In addition, MCSIA stated that "[i]n no case should the rulemaking exempt from such regulations all motor carriers operating commercial vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation."

Although TEA 21 required the rulemaking to be finalized by December 9, 2000, the DOT has yet to finalize the proposed rule in accordance with the requirements of TEA–21 and MCSIA. The newly-created FMCSA did initiate a new rulemaking on January 11, 2001, which proposes requiring certain CMVs designed to transport between 9 and 15 passengers (including the driver) that transport those passengers for direct compensation, interstate and to destinations beyond a radius of 75 miles to comply with the FMCSRs, except for the CDL and drug and alcohol testing regulations. FMCSA has not taken any further action on this proposed rule. At present, the FMCSRs apply to commercial motor vehicles designed or used to transport 16 or more passengers (including the driver).

Congress should require FMCSA to finalize its rulemaking expeditiously, and should require the application of all FMCSRs, including CDL and drug and alcohol testing regulations, to commercial passenger vehicles designed or used to transport between 9 and 15 passengers (including the driver), regardless of the distance traveled. FMCSA should also be required to make the states adopt comparable intrastate standards as a condition of MCSAP participation.

Hazardous Materials Reauthorization

Finally, the International Brotherhood of Teamsters is committed to supporting legislation that will provide a safe work environment for its members who are involved in the handling and transportation of hazardous materials. As Congress prepares for reauthorization of TEA–21, we anticipate that the Committee may also consider reauthorization of the Hazardous Materials Transportation Program, which in our view is long overdue.

Given the limited amount of time at this hearing, we won't go into detail on our priorities for hazmat reauthorization. Rather, we encourage the Committee to hold a separate hearing on this important issue. In the interim, we leave you with the following:

- The Teamsters support the existing shared jurisdiction of the Department of Transportation and the Occupational Safety and Health Administration to ensure safety of all hazmat workers.
- We urge all employees involved in, or around, the transportation of hazardous materials be included within the scope of DOT training requirements to assure their familiarization with the safety aspects of the HMR rules.
- We urge the Committee to maintain and increase funding to non-profit employee organizations to train hazmat employee instructors, and to expand that

program to allow those instructors to train rank-and-file hazmat employees. We also urge the Committee to increase funding for training firefighters and other emergency responders.

- We urge the Committee to reject any proposals to remove placards from hazmat shipments.
- We urge the Committee to retain existing language that requires the Secretary of Transportation to coordinate with the Director of the National Institute for Environmental Health Sciences (NIEHS) and others to monitor public sector emergency response planning and training for accidents/incidents involving hazardous materials.
- We oppose any special interest exemptions from hazardous materials transportation safety regulations, including any efforts to increase the special permitting period above two years.

With that, I thank you again for the opportunity to testify today. I'd be happy to answer any questions you may have.

Senator SUNUNU. Thank you, Mr. Byrd.
Ms. Claybrook?

STATEMENT OF JOAN B. CLAYBROOK, PRESIDENT, PUBLIC CITIZEN

Ms. CLAYBROOK. Thank you very much, Mr. Chairman.

I am here testifying today on behalf of Public Citizen, of which I am the President, Citizens for Reliable and Safe Highways, Parents Against Tired Truckers, and Advocates for Highway and Auto Safety. I'm an efficiency expert testifying for all of them.

Several years ago, this Subcommittee held hearings on truck-safety programs, and Senator Breaux held up a list of more than 20 actions mandated by Congress that the agency had ignored. The Administrator Clapp, at the time, stated that the agency was preparing a manual on how to do these regulations. Senator Breaux admonished the Administrator and told him he should "hammer and break some china" to get the attention of the agency staff.

I'm here to report today that no china has been broken, and not much has been scratched. I do hope, however, that Administrator Sandberg will carry out the commitment that she's made to this Committee to move these.

But the agency has long been unresponsive to Congressional mandates, and last fall Public Citizen and some other safety groups decided to take seriously the Congressional mandates and sued the agency on five rules that had never been issued that the Congress had mandated. And the agency immediately settled that lawsuit. And attached to my full testimony are some specific commands that Congress made, and 20 of which are still delinquent. This is unacceptable, and we hope that the Committee will exercise great oversight over this agency, as a result.

The annual death toll from truck crashes is equivalent to 26 major airline crashes a year. They cost $24 billion a year. Trucks are over-involved in crashes. And while there's been a recent reduction in deaths and injuries from truck crashes, a small amount, driver deaths in 2002 actually went up 1.2 percent. The Department of Transportation set a goal of 50 percent reduction in deaths within 10 years. This was in 1999. That's what they would have to achieve, that yellow line, in order to do that. And, as a result, they changed their goal so that instead of having to have a reduction of 50 percent, they recently set a reduction to 1.65 million

truck miles traveled by 2008, in order to lessen the burden that they had originally undertaken.

The agency has requested a 20 percent increase in their authorization budget for years 2004 to 2009. While our organization supports increased funding for truck safety programs, we're not sure the agency knows how to spend it effectively without strong direction, specified goals, and sustained goading by the Congress.

Our legislative proposal is extensively outlined in my statement that I'm submitting for the record. Without specific provisions requiring the agency to take action, it's unlikely there will be much progress.

Let me briefly describe the highlights of our proposals.

First, bigger trucks. Safety groups oppose any increase in truck size and weight, any proposal to give individual states the option to set weight limits on the national highway system, and any attempt to repeal or thaw the LCV freeze enacted in 1991. This has been one of the most successful safety laws ever passed by Congress—and I acknowledge Senator Lautenberg's important role in leading that—and it should be retained.

Triple trailers and longer doubles are not suited for many U.S. highways—I would say New Hampshire is a great example of highways for which they are not suited—and are dangerous in many driving circumstances and are hated by the driving public. A recent Transportation Research Board report attempting to rationalize bigger, heavier trucks is deeply flawed, as I explain in my full statement.

The hours-of-service rule. Current hours-of-service requirements are often characterized as sweatshop labor. The new rule by the Federal Motor Carrier Safety Administration, just issued in late April, is slave labor. Under the new rule, scheduled to take effect shortly, a truck driver, in 4 weeks, could drive as many as 308 hours. Compare this to the normal 40 hour work week for the majority of Americans, of 160 hours. Overall, the rule increases driving time by over 20 percent and from 10 to 11 hours of continuous driving. This increase was adopted despite overwhelming evidence that the risk of crash soars between the tenth and eleventh hour of driving. And without enforcement, such as a requirement for onboard recorders, a key provision dropped in the final rule, trucking companies and shippers will continue to abuse drivers and force them to violate even the new rule, with paper records.

HAZMAT transportation. The agency is lax, even after 9/11. There are serious loopholes and regulatory gaps that would facilitate an intentional or unintentional incident. There is a lack of critical coordination between two DOT agencies who share responsibility for MCSA and RSPA, the Research and Special Programs Administration, which registers carriers to haul HAZMAT. For example, a motor carrier wishing to carry HAZMAT need only register with RSPA and pay a $300 annual fee. That's it. It's a paper action. Neither the carrier, nor RSPA, informed FMCSA about the authorization to carry HAZMAT, and RSPA has proposed some new standards, but there is no plan for implementation with FMCSA as to Mexican and Canadian trucks.

Before being authorized to carry HAZMAT, a carrier should have to pass a safety audit and proficiency exam, and HAZMAT trucks

should be governed by the Global Positioning System technology to permit real-time tracking. In addition, FMCSA has failed to meet a congressional directive to require commercial driver's licenses to contain some form of unique identifier, as Congress has twice directed. This in one of the rules challenged in our lawsuit, and they will now be issuing this rule.

FMCSA is derelict in overseeing the safety of trucking companies. Their negligence in monitoring and evaluating the safety fitness of motor carrier companies would never be tolerated in aviation safety, the sister agency of FMCSA. There is no other word but "appalling" to describe how unsafe motor carrier companies enter business, and this agency sits back and does nothing.

We strongly support a program targeted at new motor carrier entrants—and I note that Ms. Sandberg mentioned some of those—and have proposed steps that the agency take to implement the program. Only in this way can we address the backlog of unrated motor carriers and stop unscrupulous companies from jeopardizing the safety of families on our roads. Yet FMCSA continues to initiate experimental pilot programs at the expense of safety, ignoring legislative directives, while undertaking costly and questionable programs.

Just this week, it finally conceded to discontinue a proposal the agency had initiated for a pilot program to lower the age of interstate truck drivers from 21 to 18—20 drivers who are documented to be heavily overinvolved in crashes.

Defects in the current commercial driver license program permit abuses. No training or prior certification of any kind are required to obtain a CDL for either truck or bus drivers in interstate commerce, and no CDL is even required of truck drivers of 10,000- to 26,000-pound trucks.

FMCSA also recently watered down its rule, disqualifying a CDL holder for offenses committed while operating either a commercial or noncommercial vehicle, to apply only if the violations resulted in suspension or revocation of the license, rather than conviction of various offenses. We urge the Congress to clarify the authority here.

Truck crash data collection is inadequate—and I will quickly finish my statement, Mr. Chairman—due to a lack of uniformity. And FMCSA and NHTSA were urged, in 1999, in the statute, to improve the collection and uniformity, and it hasn't happened yet. Many truck and bus issues at the Mexican border remain unresolved, most particularly the failure to require adequate safety audits of Mexico-domiciled carriers that operate just within the 20 mile zone.

Programs like Share the Road, which is supported by the administration, need to be reformed or terminated. This program is essentially a blame-the-driver program. It essentially says that car drivers should stay out of the way of trucks. And that's called the No Zone program. You can't be on either side or in the rear of a truck. I don't know how you drive on most highways in America and obey that rule. This has been subject to two GAO investigations. It's a waste of taxpayer money. And the only hope is that NHTSA, which is involved with car drivers, as opposed to truck drivers, would be designed to implement this program. If it fails to

reduce deaths and injuries, it should be sunset and the funds put into more effective programs.

I doubt, if the airlines were causing crashes and deaths of small-plane operators, the equivalent of trucks to cars, the FAA would solve the problem with an education program that shielded the airlines. This is exactly what this program is doing. And the MCSAP money should not be used to support it.

Finally, I'd like to comment on the Truck Advisory Committee, which was mentioned. I think that this is, once again, another program that should be—not be recreated. In a prior incarnation, it engaged in misbehavior and was eliminated. The Committee is a waste of money, because it's intended, really, just to give trucking officials an inside track on the agency's actions. And even though safety is spelled out in the agency statute as its top priority, only one safety group is represented, among 20 trucking members or associated—trucking related in the last Committee.

Mr. Chairman, we will submit, for the record, further comments on the specific requirements of the Administration's proposals and suggestions for other matters.

Thank you.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN B. CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, ON BEHALF OF PUBLIC CITIZEN, CITIZENS FOR RELIABLE AND SAFE HIGHWAYS (CRASH), PARENTS AGAINST TIRED TRUCKERS, AND ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Thank you, Mr. Chairman and members of the Senate Commerce Subcommittee on Surface Transportation and Merchant Marines for the opportunity to testify on the issue of improved motor carrier safety. My name is Joan Claybrook and I am President of Public Citizen and Chair of CRASH (Citizens for Reliable and Safe Highways). I am here today representing the truck safety views of Public Citizen as well as Advocates for Highway and Auto Safety (Advocates) and the Truck Safety Coalition, a partnership of CRASH and P.A.T.T. (Parents Against Tired Truckers).

Each year, almost 5,000 people are killed in truck-related crashes and about 130,000 more are injured. These statistics have been essentially steady for nearly a decade. The large number of truck-related deaths and injuries also carries an enormous personal and financial price tag. According to the U.S. Department of Transportation (DOT), the costs of large truck crashes in 1997 exceeded $24 billion.

Congress addressed this serious public health problem in 1999 by enacting legislation, the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Pub. L.106–159 (Dec. 9, 1999), creating a new agency, the Federal Motor Carrier Safety Administration (FMCSA), with the clear, specific mission to make safety its top priority.

Despite repeated promises by FMCSA to significantly reduce truck-related deaths and injuries on our highways and chart an improved course to enhance motor carrier safety, and despite increases in funding and resources for the new government agency, the traveling public remains the victim of an underachieving, and at times, indifferent agency. The annual death toll from truck-related crashes is the equivalent of 26 major airplane crashes every year. FMCSA adopted a goal in 1999 to reduce truck deaths and injuries by 50 percent over 10 years. That goal will not be achieved.

More recently, as stated in the U.S. Department of Transportation Performance Plan for Fiscal Year 2004, the agency has adopted a new goal of also reducing the rate of truck crash fatalities from the baseline of 2.8 deaths per 100 million truck miles traveled (MTMT) in 1996 to no more than 1.65 deaths per 100 MTMT in 2008. While we regard this as an admirable—and extraordinarily difficult goal—to be achieved in only a few years given the most recent rate of 2.4 deaths per 100 MTMT, there are serious questions about the intent of the Department and the FMCSA is choosing this new safety goal. Our concern is the fact that, under the right circumstances, given rapid growth in truck mileage accrued on an annual basis over the next several years, the rate of truck deaths using this exposure measure could continue to decline, even if only slightly, while the number of actual fatali-

ties could increase. We believe that the Department and the FMCSA need to reach both fatality reduction goals, as well as to make sure that they are compatible, but certainly not to abandon the target of dramatically reduced numbers of truck-crash related deaths in favor of only a better death rate as the achievement of its safety policies. This approach could be used to mask the fact that more people really died in a given year than in the prior year even though the rate of deaths was slightly better. NHTSA measures and publicizes both qualities.

No one in Congress, government, industry or the general public would ever accept as a reasonable goal 26 air plane crashes a year that are finally cut only in half after 10 years and no one would accept excuses from the airlines that the skies are safer for passengers who fly because, even though more people died each year, the rate of deaths per air mile of travel decreased. The attached chart shows that FMCSA has yet to reach any annual benchmarks that would indicate the agency has made progress and is on the right course. There have been only marginal decreases in truck deaths in the last three years, the fatality rate is essentially static, and there are additional, worrisome increases in truck crash injuries. I want to stress that it is especially disturbing that the slight decline in overall deaths in truck-related crash involvements has been offset, according to the National Highway Traffic Safety Administration's early Fatal Analysis Reporting System assessment, by an increase in the fatalities of truck occupants in these collisions from 704 deaths in 2001 to a preliminary figure of 712 deaths in 2002, an increase of 1.2 percent.

Yet FMCSA delays or disregards congressional mandates for long-overdue and vital safety rulemakings. Unsafe motor carrier companies and drivers continue to violate safety rules and threaten the safety of the traveling public yet are insulated from effective Federal oversight by FMCSA's failures to act. Attached to my testimony is a list of safety actions mandated by Congress since 1988 that FMCSA has ignored, delayed or deferred. Public Citizen filed suit against the agency last fall for not implementing five rulemaking actions. The agency immediately settled the suit, agreeing to act on all of them with final rules by June 2004. However, this list contains over twenty other congressional directives that have not been completed by the agency.

Two years ago, the FMCSA was prepared to give the green light to opening the southern border to trucks and buses from Mexico without adequate safety measures in place. It took the direct intervention of Congress to mandate common sense actions by the agency such as safety inspections at proper facilities with trained professionals. Meanwhile, some sectors of the trucking industry already are pursuing an agenda to increase truck size and weight, to repeal the congressionally-enacted freeze on longer combination vehicles, and seek exemptions from Federal safety rules under the ruse of so-called "pilot programs." Moreover, the agency's failure to take concerted action to improve truck safety is at odds with public opinion. The American public is very supportive of measures to improve truck safety both in their opinions and their pocketbooks. When asked in a Lou Harris public opinion poll in 1996 about truck safety, 81 percent of the respondents said they would be willing to pay more for goods if it meant an increase in truck safety.

Three and one-half years after bipartisan enactment of the 1999 MCSIA, and prior to taking up the reauthorization of the Transportation Equity Act for the 21st Century (TEA–21), it is time to review with a critical eye the progress and problems related to motor carrier safety to assess what improvements are needed to protect public safety.

Increasing Truck Size and Weight Will Imperil Public Safety

Safety groups have reviewed the *Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles,* Special Report No. 267, Transportation Research Board (TRB) (2002), the latest effort to rationalize bigger, heavier trucks on American roads. Every TRB special report on truck size and weight policy over the past 16 years has supported changes to increase the weights, lengths, and widths of large combination trucks—it appears that TRB has never seen a bigger truck it didn't like.

I would like to point out here to the members of the Committee that no explicit truck safety experts who are known to oppose increased truck sizes and weights were part of the TRB eight-person committee membership producing the Special Report. Also, of the eight outside reviewers, we know that at least four are all supportive of larger, heavier trucks. Although Advocates, CRASH, and other truck safety organizations have expertise and knowledge about truck size and weight safety issues and policy, none was invited to sit on the Committee or to perform an outside review of the draft of the Special Report.

On the merits, the Special Report is seriously flawed in several major respects. The TRB Special Report states that there is no confirming information that the

larger, heavier truck configurations that it champions are actually safer, would inflict less damage on highways and bridges, or would even ultimately result in fewer heavier and larger trucks on U.S. roads. Although the TRB Special Report supports two specific configurations as the larger, heavier commercial vehicles of choice for widespread use—a 90,000 pounds or heavier tridem axle-based six-axle semi-trailer combination truck and a 111,000 pounds eight-axle tridem axle-based "B Train" doubles combination composed of twin 33-feet long trailing units—there are no specific arguments anywhere in the study detailing exactly why these configurations are better than the others reviewed in the report. In fact, the Special Report clearly cannot demonstrate any superior safety benefits of its two favored combination truck configurations. Also, the TRB Special Report effectively undermines any possible rationale for supporting these combinations by pointing out that virtually nothing is known about the relationship between specific design configurations, crash risk, and truck handling and stability for these larger trucks.

With regard to the increased cost of operating heavier trucks, the Special Report argues that the infrastructure and externality costs that increase as a result of allowing larger and heavier trucks should be fully recaptured through adjustments in user fee equity scales, but, at the same time, the TRB committee indicates that recovery of only the costs of administering a permit system and of infrastructure damage is acceptable. The Special Report fails to acknowledge the reality that user fee equity has escaped policymakers for over 40 years, that the current Federal user fee for heavy vehicles has been capped at $550 per vehicle for 20 years, that the heaviest class of registered trucks dramatically underpays its fair share of user costs, and that the trucking industry has consistently and successfully opposed increases in user fees to offset the actual damage caused by large trucks.

The Special Report also engages the chronic issue of illegally overweight trucks yet fails to acknowledge how pervasive and entrenched these violations are, and the extent to which, under current state enforcement regimes, the continuation of these violations by major sectors of the trucking industry are a large part of the profitability of these enterprises. Amazingly, the FMCSA has not complied with the law and issued the annual report on certification of size and weight compliance since 1988.[1]

Finally, the TRB Special Report recommends a scheme for administering truck size and weight issues that is deeply flawed and would be dominated by interests supporting larger, heavier trucks regardless of the costs or safety consequences. The TRB Special Report recommends eliminating direct Congressional involvement in establishing nationally uniform size and weight limits, and the establishment of a new bureaucracy, the Commercial Traffic Effects Institute, to evaluate requests by states and the trucking industry for a variety of larger and heavier truck configurations. Funded by a mixture of highway trust fund and trucking industry monies, the Institute, the states, and the trucking industry would jointly develop standards implemented by the states to improve the safety of vehicles operating under the permit system.

The effect of the TRB committee's proposals would turn back the clock to a pre-1956 era of control by the states of interstate commercial transportation, and the elimination of a meaningful Congressional role in establishing and guaranteeing the Federal interest in national size and weight limits. This is a recommendation for a fragmented state-by-state regime of truck size and weight limits susceptible to inordinate influence and manipulation by trucking industry interests and lobbying efforts. It essentially privatizes responsibility for public safety.

These brief observations do not exhaust the full extent of the defects in this study. As an indication of the scientific weakness of the study, the Special Report recommends that trucks found after protracted operational experience to have shortcomings, including safety deficiencies, be withdrawn from service. This recommendation, however, is a further indication of the lack of credibility of the Special Report since no known truck configuration placed into service has ever been withdrawn from use, including some of the most unstable combinations, such as triple-trailer combinations composed of three short trailing units on single axles. Cur-

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[1] The evidence of chronic overweight violations, including violations by large trucks of the lower posted weight limits on many thousands of U.S. bridges, is well-known. However, official Federal government acknowledgement and documentation of these overweight violations ceased with the last report on state compliance with its Federal and state weight limits in March 1991. *Overweight Vehicles—Penalties and Permits: An inventory of State Practices for Fiscal Year 1989,* FHWA–MC–91–003. Following issuance of this report, former Secretary Rodney Slater suspended preparation and transmission of these reports. Although annual reports to Congress are required on state certifications of compliance with Federal and state motor vehicle weight limits, no reports have been sent to Congress for 12 years. See Section 123, Surface Transportation Assistance Act of 1978, P.L. 95–599 (Nov. 6, 1978).

rently, 16 states allow triples and no state that has allowed their operation has banned them.[2]

Safety groups are also concerned about possible attempts to void the Longer Combination Vehicle (LCV) freeze that was enacted in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). This was a hard-won victory that stopped the spread of giant triple-trailer rigs and other immense, extra-heavy vehicles throughout the U.S., trucks that would surely have had catastrophic crashes resulting in loss of life and massive congestion, especially in regions of the U.S. that have denser traffic and older road designs. The LCV freeze also stopped the accelerated destruction of our roads and bridges at a rate that no Federal funding provisions in authorizing legislation could have kept pace with.

The ISTEA LCV freeze was a bold, courageous move by Congress to limit the excesses of highway truck size. It saved lives and it helped to preserve our highways and bridges. It was a good idea 11 years ago, and it is a good idea today. At a time when there is little progress in decreasing truck crash deaths and injuries, we urge Congress not to increase truck size and weights, or to repeal or weaken the LCV freeze.

The public remains steadfast in its opposition to bigger, heavier, and larger trucks as evidenced in Advocates for Highway and Auto Safety's public opinion poll conducted by Lou Harris in 1996. By 88 percent to 7 percent, a majority of the American public is opposed to allowing bigger and heavier trucks on our highways.

Recommended Actions:

Oppose any increase in Federal truck size and weights on a national level and oppose legislation allowing any individual state exemptions.

Oppose repeal of the congressionally mandated freeze on longer combination vehicles enacted by Congress in 1991.

Many Truck and Bus Safety Issues at the Southern U.S. Border Are Still Unresolved

The safety of vehicles entering the U.S. presents special difficulties from the standpoint of both operating safety and security. Although some progress may have been made on issues that Congress directed DOT to address, other important safety concerns remain unresolved.

Several safety organizations called on FMCSA to require border-zone-only safety audits as a condition for Mexico-domiciled carriers to operate in the commercial zones. The agency rejected this recommendation in its March 19, 2002, final rule. This means that operating authority for Mexico-domiciled border-zone-only carriers will be awarded solely on the basis of paper applications, including certifications that are not independently corroborated, and on unverified documents submitted with the applications, such as the previous 12-month accident registers and the names of allegedly certified laboratories for testing drivers for alcohol and drug use. Two years ago, Congress rejected this approach to screening Mexico-domiciled carriers seeking to operate throughout the U.S. For both safety and security reasons, border zone Mexican motor carriers should also undergo a more rigorous evaluation.

In addition, although FMCSA asserts that it will evaluate written safety oversight policies and practices used by Mexico-domiciled motor carriers, the agency does not actually require that any safety management controls used by a company to comply with U.S. Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs) be in writing. Mexico-domiciled carriers should be required to have written safety management criteria representing how their companies will operate to comply with U.S. requirements. This is particularly important if the agency continues to refuse to require a threshold safety proficiency examination of motor carriers.

The Administration has repeatedly stated and testified before Congress that all Mexican trucks and buses that enter the U.S. and operate on American roads must meet U.S. safety standards. Unfortunately, most Mexican trucks and buses were not built to U.S. standards. DOT, however, intends to turn a blind eye to this problem for two more years.

Federal law requires that all vehicles, including those operated in the U.S. by foreign nationals to conduct trade, must be certified by the manufacturer as built in compliance with U.S. safety standards. Certification of compliance with the Federal Motor Vehicle Safety Standards (FMVSS) applicable at the time of manufacture is not just a mere technicality, but an important safety protection. A number of major safety regulations have been adopted and implemented by the National Highway

[2] The 16 states are: Oregon, Idaho, Montana, North Dakota, South Dakota, Nevada, Utah, Colorado, Arizona, Nebraska, Kansas, Oklahoma, Missouri, Indiana, Ohio, and Alaska.

Traffic Safety Administration (NHTSA) since the late 1980s such as anti-lock brakes for trucks and buses, automatic brake (slack) adjusters, a requirement for rear underride guards, and, among other things, safer emergency exits for buses.

According to unverified information from Mexican vehicle manufacturers, an unspecified portion of the trucks and buses built in Mexico since 1994 meet U.S. standards. However, even the vehicles built to U.S. standards were not certified as such by the manufacturers. Thus, less (possibly far less) than one-third of the Mexican trucks and buses currently operating on Mexico's Federal roads were built to U.S. standards, and DOT does not know how many or which trucks and buses were, in fact, built to U.S. safety standards. Moreover, Mexico did not have any vehicle safety standards until recently, or any requirement that manufacturers certify compliance with any vehicle safety standards. Thus, for Mexican-built trucks and buses, there are no labels or certification verifying compliance with U.S. standards. Canada has its own certification requirement, but this is to Canadian, not U.S., safety standards. While Canada's standards for new vehicles are similar to U.S. standards in many respects, they are not identical. Even those Canadian standards that mimic U.S. standards may have been adopted years after they were required in U.S. safety standards.

The FMCSA has proposed a two-year "grace period" for these vehicles. The agency intends to grant blanket permission to vehicles that have previously crossed the border to continue operating in the U.S. for another two years, regardless of whether they were or could be certified as having been built in compliance with U.S. safety standards. This means that unsafe vehicles that previously entered the U.S. in violation of U.S. law, or that begin to enter the U.S. prior to the issuance of the final rule, will be able to do so for another two years. The FMCSA is prepared to adopt this final rule even though it has no authority to rewrite the safety certification laws passed by Congress.

In addition, there is no system to verify that Mexico-domiciled carriers entering the country are properly insured by a U.S.-licensed insurer in order to protect against liability for personal injuries and the costs of crash and environmental clean-up in the event of a hazmat spill.

Finally, DOT has no effective plan to assure that Mexican-domiciled carriers adhere to U.S. hours-of-service (HOS) regulations when they enter the U.S. Although Mexican drivers may have been behind the wheel 8, 10, or even more hours when arriving at the border, FMCSA has no practical means of determining at the border whether these drivers have violated Mexican labor regulation restrictions on working time. At the very least, drivers arriving at the U.S. border who already meet or exceed the HOS 10-hour duty limit should be placed out-of-service for the required 8 hours off-duty time period. These sleep-deprived, fatigued drivers are a threat both to their own safety as well as to everyone that shares U.S. roads with them. This is another reason why electronic on-board recorders should be required on all trucks and buses operating in the U.S.

Recommended Actions:

To ensure improved motor carrier safety at the U.S.-Mexico border Section 350 of S. 2808 (Rept. No. 107–224), Fiscal Year 2002 Appropriations Legislation for the U.S. Department of Transportation, should be made a permanent provision in the FMCSA multi-year reauthorization legislation with other changes to improve safety.

Require each truck transporting general freight or hazardous materials, and each bus or motor coach transporting passengers in the U.S. domiciled in other countries must undergo a full CVSA Level One inspection at U.S. borders every 90 days and every truck transporting hazardous materials shall undergo a full CVSA Level Six inspection every 90 days.

The FMCSA Final Rule to Increase both Consecutive and Weekly Driving Hours for Truck Drivers Is A Major Threat to Highway Safety.

According to studies by the DOT, the National Transportation Safety Board and other research organizations, one of the leading causes of truck crashes is truck driver fatigue. In 2000, the FMCSA proposed amending the Federal rule on truck and bus driver hours-of-service (HOS). In that proposal the agency was willing to trade off necessary improvements in the Federal HOS regime against increasing driving time and shortcutting the amount of rest and recovery a commercial truck or bus driver needs after a tour of duty. Those proposed changes are unsafe for both commercial drivers and the public.

However, safety groups strongly supported several of the basic concepts and elements of the proposed HOS rule. FMCSA properly acknowledged the crucial role of adequate driver rest and recovery of peak safety performance and alertness as cru-

cial in avoiding operator sleep deprivation and reduced vigilance. When commercial drivers are exhausted from excessive daily and weekly work hours and get inadequate rest, the risk of crashes that result in deaths and injuries substantially and predictably increases, a fact that the FMCSA acknowledged in the proposed rule. Large truck and bus crashes are especially lethal highway events because commercial vehicles are much more likely to involve passenger cars and other light vehicles in which the chances of severe injury or death to their occupants are dramatically increased. In fact, 98 percent of the people killed in two-vehicle crashes involving passenger vehicles and trucks are the occupants of the passenger vehicles and, as the General Accounting Office recently stressed in its report on the Share the Road Safely program conducted by the FMCSA, which I will discuss later in my testimony, when passenger vehicles and big trucks collide, the occupants of the small vehicles have more than 15 times the risk of dying as compared with the truck occupants.

Commendably, FMCSA based its proposal on the adoption of a circadian, that is, a 24-hour work/rest shift cycle which an enormous body of research over many years has unerringly shown is necessary for ensuring adequate opportunity to gain sufficient recovery from long work hours. This is in contrast to the seriously fatiguing and dangerous effects of the rules (being changed by FMCSA as new rule) that permit drivers to drive and rest on an unnatural 18-hour cycle. The FMCSA for the most part also proposed a longer daily off-duty rest period than required under the current rule—which demands only a minimum of eight hours off-duty—and the agency insisted that this off-duty period be free from interruption by dispatchers and brokers. The agency also tried to provide for additional rest breaks during the day, although its effort is flawed in a number of ways, and it proposed that layover or "weekend" off-duty rest time shall take place over two successive nights. FMCSA also prohibited split rest time for solo drivers. Finally, the agency proposed to mandate on-board automated recordation (electronic on-board recorders or EOBRs) of driving duty time for two classes of commercial operators, an action Public Citizen, Advocates for Highway and Auto Safety, and other major safety organizations have urged and supported for many years. These reforms are necessary, well-supported by research findings, and are essential parts of any revision of the current regulations.

The good, however, got thrown out in favor of the bad in the recent final rule issued by the agency in late April of this year. A circadian, daily work schedule is gone in favor of allowing drivers to alternate driving and sleep on a 21-hour rotation. Drivers can operate their rigs for an additional consecutive hour before resting, an addition of one hour to the old rule's maximum of 10 hours. This was adopted despite overwhelming evidence in the research and the rulemaking record that the risk of a crash soars in these late hours of driving before a rest break, especially from the end of the 10th to the end of the 11th hour of driving.

But perhaps an even more disturbing feature of the new rule is the FMCSA "restart" provision that will dramatically increase the total hours that a driver can operate his rig on either a 7-or an 8-day duty cycle. Under the old rule, if a driver constantly alternated driving and rest on a 10-hours-on, 8-hours-off schedule, that driver could exhaust the available maximum permitted driving and duty hours per 7 or 8 days in as little as 4.5 to 5 days. Although that noncircadian rotation was exceptionally dangerous and exhausting, putting chronically sleep-deprived drivers behind the wheel for several days in a row, at least the old rule required "dead" time for the remainder of the 7 or 8 day tour of duty. Drivers had as much as 3 days of layover time to recuperate before being forced to drive this kind of horrific work schedule again. You might say that, in a sense, the old rule provided for a kind of "weekend" for drivers.

Under the new rule, that layover that could have been taken each week is gone. Truck drivers can now be forced to get back into their cabs and start 11 consecutive hours immediately after just a 34-hour off-duty period, an amount of off-duty time that research used by the agency itself shows is completely inadequate to restore driver alertness and safe performance after several days of long driving time.

This is the "restart" provision that radically alters the landscape of commercial driver hours of service in America by creating what has been called a "floating" work week, that is, a week with no fixed number of work days and driving hours. Whereas these drivers used to be held to a maximum of 60 hours of total driving time in 7 days, or 70 hours total in 8 days, under the new rule, if milked for its maximum potential, these same drivers can be compelled to drive up to 77 hours in 7days or 88 hours in 8 days, increases of up to 23 percent more time spent behind the wheel than formerly permitted.

Other admirable aspects of the proposed rule were also jettisoned in the agency's quest for more hours, more work, more productivity wrung out of commercial driv-

ers already operating under the old rules to the point of exhaustion and fatigue-triggered crashes. Under the 2000 proposal, solo drivers were no longer allowed to be contacted by carrier dispatchers, or other officials in the supply chain such as shippers, brokers, and freight consignees during their off-duty rest period. Drivers also had their off-duty rest period protected under the 2000 proposal. Split rest periods in sleeper berths, which the agency's own research review showed to be a major source of reduced length and quality of sleep for commercial drivers, were prohibited—drivers had to take their daily off-duty sleep in a single, unbroken block if they used a sleeper berth.

Under the new rule issued in April, drivers again can be constantly harassed by officials in the supply chain to stay awake on stand-by for notification that a load is ready for them to pick up or that a delivery time or destination has been changed. Drivers can be repeatedly awakened to be told that their schedule has changed and that they have to start driving sooner. And that same driver can now go back to the practice of splitting off-duty rest time in sleeper berths into two small portions with hours of driving time between the two attempts to get some sleep.

In its essence, Mr. Chairman, the FMCSA has issued a final rule that works truck drivers much harder than ever, allows the trucking industry to demand more work than ever from them, permits carriers to give them little more than 24 hours to begin driving another 77 or 88 hours in a tour of duty, allows trucking officials to wake them up over and over, and forces them under many operating circumstances to split up their rest time into pieces while being demanded to make deliveries sooner and faster than ever before.

Yet I have not stressed the most amazing feature of this final rule—it claims that it will benefit safety more than the old rule! Although it is hard to believe even while reading it, the final rule demanding far more hours from truck drivers and allowing them less rest than ever before claims that these changes are cost beneficial and will actually save lives on our highways. Even though these drivers will have far more exposure on the road in a tour of duty than ever allowed before by the Federal government—more hours accumulated in a shorter period of time—and less time to rest than possible under the old regulation, the FMCSA actually goes through an arcane exercise in benefit-cost analysis to show how safety will be improved by longer consecutive driving hours, far more hours driven per week, while returning to the *status quo ante* of split sleeper berth rest time with drivers suffering repeated interruptions during their off-duty rest periods.

It is not too strong to characterize this claim of improved safety as simply Orwellian. It is as if the government eliminated labor law protection of coal miners and provided a mathematics of costs and benefits that showed that miners working longer hours per day and per week, with less rest time, and forced to begin work at the drop of a hat when the management of the mines demands it, are safer and healthier than ever before. I think many members of Congress would regard such a claim as mind boggling and defying all logic. Yet this is exactly what the FMCSA has had the temerity to argue in issuing the final rule dramatically increasing driving hours for truck drivers.

The last major feature of the final rule increasing commercial driver work hours is the elimination of the 2000 proposed rule to require on-board recorders, or EOBRs, on long-haul trucks to clock the amount of time drivers actually spend behind the wheel. As the University of Michigan showed a few years ago, corroborated by the FMCSA's own regulatory analysis, violation of the regulatory ceilings on hours worked and driven, and of minimum rest time, is a chronic practice in the trucking industry that has gone on for decades and that has increased with the growth of Just In Time delivery demands that have turned truck trailers into rolling warehouses. In fact, there are trucking companies that stay in business because they run illegal hours and do not get caught.

The FMCSA proposed in 2000 to put an end to this abusive practice of violating even the generous limits of the old rule by requiring tamperproof electronic recorders to validate driving time. This would have aligned the U.S. with European Economic Commission policy which, as of next year, will require a change from the old mechanical tachographs that have been required for years to new tamperproof, electronic recorders that will be more reliable and accurate to ensure that drivers don't exceed maximum daily and weekly driving limits.

This proposal to control excessive driving hours with EOBRs is discarded in the final HOS rule. The FMCSA, in a startling turnaround, states that it in fact didn't get around to reviewing the merits of any of the recorders that it proposed certifying as compliant with the EOBR provision in the 2000 notice of proposed rulemaking. Accordingly, the agency states that it needs to study the issue some more because it didn't do what it was supposed to do. No specifics are provided on how this research would be conducted, who would perform it, what its goals would be, when

it would be completed, and how precisely it would be brought into play with respect to the contours of the final regulation just issued. A large percentage of the industry, cutting across all types of highway transportation including passengers, general freight and hazardous materials regularly use various types of electronic on-board recorders to monitor both vehicle functions and driver hours-of-service compliance. In the meantime, the agency will fall back to relying on the paper logbooks that have been maintained for decades, logbooks that are widely and systematically falsified by trucking officials and drivers, a hand-written record of duty time that is regularly referred to as the "comic book" by drivers who know how to mask violations and conceal or lose documentation, such as receipts for tolls, lodging, food, and fuel, creating a paper trail that would show regulatory violations.

So, next year the American people and truck drivers face on our highways a new regulation forcing drivers to work and drive even longer hours than ever before, allowed to have little rest and effectively no layover before being required to drive again, and to continue to exceed even the excessive limits on driving time allowed under the new rule without any accurate means adopted by our government to show whether these drivers are obeying the law.

This regulation is an affront to a modern democratic society's vision of protecting the safety, health, and well being of our workers and a direct threat to the safety of the millions of people who share the road every hour of every day with large trucks. This new rule is a formula for more truck crashes, more deaths, and more injuries instead of a well-reasoned effort to enhance highway safety and increase safe commercial trucking practices.

Let me stress here again in closing this portion of my testimony that this new regulation directly contradicts the policies that are evolving in the western world about commercial driving. The European Union (EU) is set to advance highway safety and protect drivers by reducing the current driving hours ceiling from 56 to 48 hours, with a general limit of nine (9) hours of driving each day, and off-duty time averaging 11 consecutive hours per day. The research supporting such reductions in working time and increasing rest time is overwhelming and the product of decades of investigation. But our government has ignored this research, disregarded the safety policies of several European nations, and moved exactly in the contrary direction to mount an increased threat to the health and safety of the American people.

Recommended Action:

Direct the Secretary of Transportation to conduct rulemaking and issue a final regulation requiring on-board recorders no later than September 30, 2005.

The New Motor Carrier Entrant Program Needs to Be Strengthened and Better Focused

An example of FMCSA's regulatory inaction is Section 210 of the MCSIA, which was intended to improve the agency's safety oversight in approving the operating authority applications of new motor carrier entrants, both foreign and domestic. The Secretary of Transportation was directed to issue regulations requiring each owner and operator granted new operating authority to undergo a safety review within the first 18 months after beginning motor carrier operations. The Secretary was also directed in that same provision to initiate minimum requirements for applicant motor carriers, including foreign motor carriers, to ensure their knowledge of Federal safety standards, and to consider requiring a safety proficiency examination for any motor carrier applying for interstate operating authority.

The FMCSA took no action until Congress reiterated the need for this rulemaking in H.R. 2299, the Department of Transportation Appropriations bill of FY 2002. Only then—and belatedly—did FMCSA respond by issuing an interim final rule without prior notice and comment, rather than issuing a notice of proposed rulemaking, which would have allowed public comment on the merits prior to adoption. 67 FR 31978 (May 13, 2002).

Unfortunately, the agency has seen fit to allow domestic carriers to be awarded operating authority without undergoing any initial safety evaluation, just as it has decided to allow border-zone-only Mexico-domiciled motor carriers to be registered without a prior safety audit. A safety audit for U.S. carriers under the interim final rule issued by the FMCSA will only be performed after-the-fact, up to 18 months after the U.S. business is given operating authority. The FMCSA actually notes in the interim final rule that it might not even meet the 18-month statutory deadline for conducting safety audits, thereby providing itself with a loophole for not meeting its statutory obligation, in direct contradiction of the express legislative intent of Section 210. I should emphasize that the safety evaluation will not be a comprehensive compliance review that results in a safety rating. As a result, the new entrant

approval process put into effect by FMCSA *will still allow domestic motor carriers to operate indefinitely without any assigned safety rating!*

The FMCSA should be directed to revise this policy to ensure that a new entrant motor carrier is not allowed to begin operations without either demonstration of its safety knowledge or its safety management competence. The agency should revise its interim final rule to require either a threshold safety proficiency examination of the applicant motor carrier, in accordance with the Congressional direction in Section 210 of the Motor Carrier Safety Improvement Act of 1999, or to conduct a safety management review of the new entrant, including an inspection of its equipment and an evaluation of its safety management practices and competence. Without this initial safety evaluation of new applicant motor carriers, the agency essentially is allowing untested companies to begin hauling freight, transporting hazardous materials, and carrying passengers based only on a brief paper application that is accompanied by a fee paid by the applicant.

Two years ago, Congress required both an initial and a subsequent on-site safety evaluation of Mexico-domiciled motor carriers to ensure that they have adopted adequate safety practices before they are allowed to operate on U.S. roads. Safety groups believe that Congress should also require a similar on-site safety evaluation of domestic carriers, or that these applicants demonstrate successful performance on a safety proficiency examination, as the basis for awarding conditional operating authority. A grant of permanent operating authority should be made based on an "exit" safety evaluation after the first 18 months of operation, including a review on site of safety equipment and an evaluation of safety management practices. However, it is not wise or responsible to allow these carriers to be awarded permanent operating authority without ever receiving a full safety compliance review and an assigned safety rating.

I want to list here our recommendations for reforming the new entrant program to make it a better fail-safe test of the capability of new motor carriers to conduct operations and to avoid creating an even bigger backlog of unrated carriers—currently almost 450,000 are unrated—and of the many thousands of carriers bearing older, unrenewed ratings. We also think that the task of the agency immediately being expected to rate upwards of 40,000 new entrant applicants each year is an overwhelming task that needs to be spread out over several years before it operates at full throttle. I also want to stress that a strengthened new entrant program can eliminate many carriers whose safety practices and knowledge of how to comply with the Federal Motor Carrier Safety Regulations are inadequate. If we can weed out the bad actors early in their operating histories, not only will safety improve, but also unsafe carriers will be prevented from swelling the rolls of the registered interstate companies carrying freight and passengers for a few months only to go quickly out of business.

Recommended Actions:

Congress should direct FMCSA to establish a 5-year phase-in for evaluating new motor carrier entrants with a protocol for identifying high-risk carriers that would most strongly benefit from an initial safety evaluation.

The FMCSA should be directed to conduct an "exit" safety evaluation of each new motor carrier after 18 months of operation. If a carrier fails this evaluation, a full safety compliance review should be triggered that results in an assigned safety rating.

Truck Crash Data Collection is Inadequate and Inaccurate Due to a Lack of Uniformity

Section 225 of the MCSIA calls on the Secretary through the joint efforts of the FMCSA and the National Highway Traffic Safety Administration (NHTSA) to cooperate with the states to improve collection and analysis of crash data involving commercial motor vehicles. However, there has been no action to require a nationally uniform crash data report form to be filled out by enforcement authorities so that a detailed, accurate national database of crash information on trucks and buses can be relied upon by both agencies to determine safety policies, including countermeasures and the accuracy of data entries to SafeStat to detect high-risk motor carriers in relation to their safety performance under the new entrant program, among other uses.

Recommended Actions:

Congress should direct the Secretary to conduct rulemaking in cooperation with NHTSA to adopt a nationally uniform crash data collection format that all states are required to use in order to increase the accuracy and reliability of data concerning crashes and other incidents involving commercial motor vehicles.

Congress should direct the Secretary to conduct rulemaking to consider changes to improve the SafeStat system itself, including, among other things, the use of exposure measures, such as vehicle-miles-traveled, in calculating the safety scores of carriers with regard to acute and critical violations.

FMCSA Pursues Experimental "Pilot Programs" At The Expense of Safety

Another example of how FMCSA defers Congressional directives and violates legislated deadlines for action is its pursuit of so-called "pilot programs." The agency has offered a series of pilot programs over the last several years and continues to publish new initiatives even while ignoring legislatively mandated pilot programs, such as the Improved Flow of Driver History pilot study required by Section 4022 of TEA–21. Moreover, the agency offers one pilot program after another without having concluded rulemaking, as directed by Section 4007 of TEA–21, to adopt the procedures for regulatory exemptions from the FMCSRs. No final rule setting out these procedures has been issued and the agency's most recent semi-annual regulatory agenda has again pushed back the deadline for final action to March 2003. 67 FR 33487–33488 (May 13, 2002). But no action has been taken while action under the deadline is now three months overdue.

The FMCSA has proposed a pilot program to lower the age for interstate drivers of big trucks and motor coaches from the current minimum age of 21, to only 18–20 years old. This action was taken in response to a petition from an interstate motor carrier interest group that has argued for years that there are not enough commercial drivers to fill jobs driving large trucks and, so, the only solution is to start getting truck drivers even younger than 21. At one time, the minimum age for an interstate commercial driver was 25 years old.

In comments opposing the 18–20 years old pilot program, major safety organizations systematically set out the research results, some of them produced by DOT itself, that consistently have shown for more than 30 years that teenage drivers in any vehicles have dramatically elevated crash involvement and traffic violation rates. These organizations detailed the research showing that current young truck drivers 21–25 years of age are badly over-represented in traffic violation convictions and in crash involvement rates. Also, they pointed out that every credible study for decades on the value of driver training has shown that even intensive driver training of young drivers makes little difference to their eventual crash involvement and violations rates.

The FMCSA Pilot Program for younger drivers comes at a time when States, at the urging of DOT and safety groups, are enacting graduated driver license systems in order to reduce the exposure of teenage drivers to the risks of operating passenger motor vehicles when they are very young. Putting teenage drivers behind the wheel of an 80,000-pound big rig or a 55-passenger interstate motor coach is a regressive move and a recipe for potential catastrophes.

The FMCSA has increasingly attempted to regulate through pilot programs, exemptions, and waivers over the last several years instead of fulfilling Congressionally mandated rulemaking requirements and meeting legislated deadlines. The agency expends resources on these experimental efforts instead of completing its enormous backlog of unmet regulatory actions—a backlog that the DOT officials in 1999 fervently promised would be dealt with expeditiously. Congress relied on those representations in establishing an upgraded and separate Federal motor carrier safety agency.

Recommended Actions:

Congress should eliminate the use of pilot programs, waivers and exemptions by FMCSA unless specifically directed by Congress.

Hazardous Materials Transportation Safety Oversight Is Dangerously Inadequate

The events of September 11, 2001 have pointed to another area requiring Congressional attention where safety and security are intertwined. This is the highway transportation of hazardous materials (hazmat). Safety groups are convinced that there are a number of aspects of hazmat transportation that can be readily addressed to make significant improvements in safety and security.

At present, motor carriers that want to transport hazmat need only register with the Research and Special Programs Administration (RSPA), pay the required fee (currently $300 per year), and begin to haul hazardous materials throughout the U.S. There is no requirement for a motor carrier, once it has secured general (non-hazmat) operating authority from the FMCSA, to go back to that agency and notify it that it has begun hauling hazmat. RSPA does not inform the FMCSA of the carriers that register to haul hazmat, and the FMCSA does not ask RSPA for hazmat

registration information. This lack of coordination and cooperation between the FMCSA and RSPA is ridiculous and creates opportunities for abuses.

No motor carrier seeking to start hauling hazmat should be able to make this kind of major shift in its transportation services without the FMCSA knowing about it. A motor carrier should not only be required to notify the FMCSA immediately that it is beginning to haul hazmat by having to register with RSPA, but each carrier should have to apply to the FMCSA for additional operating authority for hazmat carriage. This application should include a safety audit of the motor carrier's operations and a proficiency exam specifically for the purpose of testing the carrier's knowledge of and capability to comply with the Federal hazmat regulations.

In addition to operating authority, there is insufficient evidence of RSPA and FMCSA constantly coordinating hazmat regulation for motor carriers. RSPA has proposed requiring written security plans and expanded training for all motor carriers, both foreign and domestic, that apply to haul hazmat and Centers for Disease Control infectious disease selected agents (IDSA) in the U.S. This proposed requirement for training employees in hazmat/IDSA safety knowledge and safety measures would also affect all carriers entering the U.S. Aside from the fact that RSPA does not contemplate directly supervising the implementation of these requirements to ensure they are carried out in an effective manner, the two agencies do not have a joint plan for the effective implementation of this proposal with respect to Mexico-domiciled or, for that matter, Canadian-domiciled motor carriers. Neither has FMCSA announced how it intends to verify that the requirements are met by foreign-domiciled motor carriers entering the U.S. If this regulation is adopted by RSPA, it is crucial that the agencies determine how it will be implemented for foreign-domiciled motor carriers and how the two agencies will be able to determine that compliance by companies hauling hazmat/IDSA has been achieved. We recommend that Congress inquire of the two agencies how they contemplate implementing this RSPA rule and what coordinated actions will be taken to achieve compliance especially by foreign motor carriers.

Truck drivers, after obtaining a hazmat endorsement for the commercial drivers' license (CDL) by merely passing a written exam, can legally drive tractor semi-trailers carrying 80,000 pounds of placarded hazmat throughout the U.S. This underscores the crucial need for a secure and reliable identification of hazmat drivers to prevent dangerous and unauthorized persons from transporting hazmat. The Truck and Bus Regulatory Reform Act of 1988 directed the Secretary to issue regulations by December 31, 1990, establishing minimum uniform standards for a biometric identification system to ensure the accurate identification of drivers. DOT took no regulatory action in response to this mandate. As a result, in 1998 Congress directed that CDLs contain some form of unique identifier after January 1, 2001, to minimize fraud and illegal duplication. Once again, there has been no action on this issue. As a result, Public Citizen, CRASH, and P.A.T.T. sued FMCSA on this and four other rules on which no action had been taken for unreasonable delay. FMCSA settled the lawsuit agreeing to specific deadlines for action on each of these rules. For hazmat minimum standards for drivers, the agency agreed to issue the rule by March 30, 2004. Failure to meet this deadline allows the court to hold the agency in contempt. In light of changed circumstances concerning the safety transport of hazmat transported across the U.S., Congress should direct the Secretary to accelerate the development of a unique identifier, at least for commercial drivers with hazmat endorsements. This biometric or other unique security identification would dovetail with the background criminal and driving record checks for hazmat licensure and endorsements that soon will come into play as a result of Section 1012 of the USA PATRIOT Act, Title X, Pub. L. 107–56 (Oct. 26, 2001).

The ability to determine the location of drivers and hazmat loads on trucks is another crucial aspect for hazmat safety oversight. All hazmat carriage, including transport by motor vehicle, should be governed by Global Positioning System (GPS) technology that would permit real-time tracking of hazmat loads. This should be a requirement for gaining operating authority as a hazmat carrier. Safety inspectors should also be able to access GPS data in order to confirm other sources of hours of service compliance, as well as to determine whether hazmat vehicles have taken prohibited routes or have evaded safety inspections or weigh stations.

With regard to hazmat routes, the current routing regulations for non-radioactive hazardous materials highway transport are too general and inadequate. The Federal requirements do not require states even to have highway routing criteria for these hazmat shipments, and many states continue to allow loads of hazmat to be transported on most roads and through major metropolitan areas across the Nation regardless of population or traffic conditions. Even worse, the burdens imposed on the states by the Federal Highway Administration (FHWA) to justify alternative, diver-

sionary routes for public and environmental protection have a chilling effect on the willingness of states and local public authorities to tell hazmat carriers to use longer, safer routes. Congress should require the states to adopt non-radioactive hazmat routing criteria instead of leaving this action to state option.

Let me stress here at the end of this section of my testimony on hazmat transportation that the tragedies of 9/11 and, earlier, of the Murrah Federal Building bombing in 1995, as well as the repeated orange alerts issued for possible terrorist attacks have not impressed its message on the Research and Special Programs Administration (RSPA). Recent final regulations issued by RSPA indicate that the agency is not prepared to regulate vigorously in the area of hazardous materials (hazmat) transportation security.[1] As reviewed below, the final rules have little prescriptive content and, in general, they do not change current regulations about the types and quantities of hazmat that may be transported by motor carriers that, if made more stringent, could result in tighter security control and improved public safety.

This is surprising in light of 9/11 and the increased concern about the potential for hazmat incidents. In both rulemaking examples, the agency backed down from reasonable proposals in reaction to industry objections. In another instance RSPA's decision fails to achieve government uniformity in how specific quantities of hazmat are regulated because it rejected any willingness to use the different, more stringent definitions of hazmat applied by the Bureau of Alcohol, Tobacco, and Firearms. Here is an overview of both regulations' deficiencies:

- The RSPA deleted most of the major requirements of a proposed rule that would arguably improve enforcement oversight of hazmat security after receiving negative comments from the trucking industry (see specific aspects below).
- The RSPA will require offerors and carriers of hazmat to have security plans, but will not prescribe what the plans must contain, will not review and approve them before adoption, and will not keep any on file at the agency.
- The RSPA will require employee hazmat training, but will not specify any training requirements.
- The RSPA will not require hazmat offerors or carriers to verify the accuracy of information supplied by job applicants who will handle or transport hazmat.
- The RSPA has rejected changing any of the current types or level of hazmat requiring placarding, in order to increase hazmat transportation security, based on the more stringent definitions of hazmat used by the Bureau of Alcohol, Tobacco, and Firearms.
- The RSPA makes no mention of the longstanding Congressional statutory mandate to institute a Federal permitting system for specific types of hazmat explosives, toxic-by-inhalation agents, and highway route-controlled radioactive substances.
- The RSPA has ruled that mixtures of ammonium nitrate and fuel oil, like that used to blow up the Murrah Federal building in Oklahoma City in 1995, are not a sufficient security risk when transported in commerce to warrant detailed employee background checks for those workers handling or transporting such mixtures.
- The RSPA has also ruled that it will not change the types or quantities of hazmat requiring placarding to place more stringent requirements on transporting toy caps, signal devices, flares, and distress signals (either combustible or explosive) in less than 1,000 lbs. quantities; the agency judged that such hazmat does not present a significant security threat involving their use during transportation for a criminal or terrorist act.

More detailed comments on the two regulations are attached in Appendix B.

Research and Special Programs Administration (RSPA), Final Rule; Security Requirements for Offerors and Transporters of Hazardous Materials, 68 FR 14510 et seq., March 25, 2003

The NPRM published May 2, 2002, proposed the following main features:

- Requirement for motor carriers already registered with the agency to maintain a copy of that current registration certificate on board each motor vehicle transporting hazmat.

[1] Security Requirements for Offerors and Transporters of Hazardous Materials, 68 FR 14510 *et seq.,* March 25, 2003; Enhancing Hazardous Materials Transportation Security, 68 FR 23832 *et seq.,* May 5, 2003.

- Requirement for shipping papers to show the name and address of both the consignor (origin) and of the consignee (receiver) and for the shipping papers to show the shipper's U.S. DOT Hazmat Registration number.
- Requirement that shipper and carrier of certain highly hazardous materials develop and implement hazmat transportation security plans.
- Requirement that hazmat shippers and carriers assure that their employee training includes a security component.

The agency received more than 270 comments "from hazardous materials shippers, carriers, industry associations, and local government agencies." There is no acknowledgement that RSPA received comments from any commercial motor vehicle or highway safety organizations anywhere in the final rule, although Advocates for Highway and Auto Safety filed extensive comments pointing out the cardinal shortcomings of the proposed rule. The highlights of the final rule are:

- RSPA states that security measures cannot adversely affect the efficient transportation of hazmat or impose excessive economic burdens on the hazmat transportation industry.
- The agency deleted a requirement that a copy of current hazmat registration be on board each vehicle. RSPA accepted the industry's position that the certificate is no proof of security clearance for the hazmat carrier because "in no case is any background investigation conducted before registering an applicant, or even investigation to ensure that the applicant is a bona fide company legitimately engaged in the offering for transport and/or transporting hazardous materials." RSPA does not mention any consideration for future rulemaking to propose such required background checks of hazmat carrier applicants.
- RSPA deleted a requirement that shipping papers have current hazmat registration number because of industry opposition.
- Although RSPA believed the proposal had merit it rejected in the final rule a requirement that shipping papers have name and address of both consignor and consignee.
- Although RSPA adopted a requirement for security plans for both offerors of hazmat and carriers of hazmat there are no required elements for the plans in the final rule, shippers and carriers can use any risk model they like, and the agency will not review the plans for adequacy before the time of their adoption. RSPA also strengthens language in final rule as compared with the proposed rule to reduce the liability of a shipper or carrier if a terrorist action happens despite their compliance with the terms of the final rule.
- RSPA weakened a requirement for employers who are shippers or carriers to confirm information provided by job applicants who would handle or transport hazmat. RSPA weakens the final rule by changing the employer's responsibility from "verify" to "confirm" that information supplied by job applicants is accurate and agrees with industry comments that "verify" is too stringent. Moreover, RPSA "do[es] not expect companies to confirm all of the information that a job applicant may provide as part of the application process." A question here is whether this meets the letter and spirit of the U.S. PATRIOT Act.
- RSPA requires that employee hazmat training contain a security component but will not specify what to require.

Research and Special Programs Administration (RSPA), Interim Final Rule: Enhancing Hazardous Materials Transportation Security. 68 FR 23832 et seq., May 5, 2003

No prior NPRM. This interim final rule incorporates into the Hazardous Materials Regulations (HMR) a requirement that shippers and transporters of certain hazmat comply with Federal security regulations that apply to motor carrier and vessel transportation. The final rule also revises the procedures for applying for an exemption from the HMR to require applicants to certify compliance with applicable Federal transportation security laws and regulations. The final rule has several major weaknesses:

- It requires persons offering for transport or actually transporting hazmat to develop and implement security plans, but the rule relies on the existing regulations concerning the types and amounts of hazmat and Centers for Disease Control "select agents."
- RSPA considered and rejected consideration of the application of the more stringent definitions of 'hazmat' used by the Bureau of Alcohol, Tobacco, and Firearms. RSPA nonetheless concluded that its present threshold amounts for

placarding of certain radioactive materials, explosives, and agents toxic by inhalation are sufficient to control any security risk of their improper use. This means that the agency required placarding and the use of a security plan to these smaller amounts of hazmat regulated by BATF.

- The agency makes no mention of the hazmat motor carrier Federal permitting requirements Congress adopted in 49 U.S.C. § 5109 for specific types of hazmat that have never been implemented despite a clear statutory command enacted 10 years ago.
- RSPA concludes in the interim final rule that mixtures of ammonium nitrate and fuel oil, like that used to blow up the Murrah Federal building in Oklahoma City in 1995, "do[es] not meet the definition of a Class 1 material under the HMR" and that they "generally do[es] not pose a sufficient security risk when transported in commerce to warrant detailed employee background checks."
- RSPA also has decided throughout the interim final rule that it will not review or disturb the current threshold quantities of different hazmat requiring placarding, such as toy caps, signal devices, flares, and distress signals less than 454 kg (1,000 lbs.). As a result, the agency states that it has judged that "[w]hen shipped in amounts that do not require placarding, such shipments do not pose a security risk when transported in commerce sufficient to warrant detailed employee background check requirements at this time" and they "generally do not present a significant security threat involving their use during transportation for a criminal or terrorist act."

This is the quality of protection the U.S. people and their property are provided in this weak regulation. Although RSPA openly states that it is authorized under 49 U.S.C. § 5101 *et seq.* to designate any hazmat, including explosives, as dangerous when transporting it in commerce because it poses an unreasonable risk to health, safety, or security, the agency has judged "that the most significant security risks are associated with the transportation of explosives shipments in quantities that require placarding under the HMR." The shippers and carriers must formulate security plans to cover such transport, but the agency will not change the types and quantities of explosives subject to placarding that were adopted in a different—pre 9/11/01—era.

Recommended Actions:

Congress should direct RSPA to review the need to expand the types of materials subject to the hazmat regulations; evaluate the need to lower the quantities permitted to be transported without placarding and the other current safety requirements (emergency notification procedures, etc.); require specific training and security plan criteria to be applied by RSPA for motor carriers.

Congress should reaffirm its direction to the Secretary to implement the Federal safety permitting process in 49 U.S.C. 5109 for certain types of especially dangerous hazmat while also requiring an agency evaluation of whether the current types and quantities of hazmat listed there should be changed.

Congress should direct RSPA, after motor carriers of hazmat register with RSPA as currently required, to provide immediate notification of such registration to FMCSA. And, subsequent to registration with both agencies, a hazmat motor carrier shall undergo both a preliminary safety review to determine initial safety fitness, as well as subsequent compliance reviews with a satisfactory rating in order to continue transporting hazmat both interstate and intrastate.

Require Level Six Inspections of all trucks of motor carriers domiciled in other countries that are transporting placardable hazmat into the U.S. every 90 days.

Require all motor carriers transporting hazmat to be equipped with tracking systems, electronic on-board hours of service recorders, truck/tractor/trailer security interdiction technology, and crash data event recorders.

In order to improve security and safety, the Secretary is directed to issue regulations to implement 49 U.S.C. § 5109 by specifying the types and amounts of hazardous materials (hazmat) that can be transported only with a Federal permit: National System of Uniform Hazmat Motor Carrier Transportation Permits.

Direct FMCSA to Assign Unique, Including Biometric Identifiers to All CDL Holders with Hazmat Endorsements.

Direct FMCSA to Establish Regulations Requiring the States to Adopt Specific Routing Controls for Motor Carrier Transport of Hazmat.

Defects in the Current Commercial Driver License (CDL) Program Permit Abuses

The time has come for the U.S. DOT to place more rigorous requirements on the ability to obtain and renew a CDL. It is at present far too easy to obtain a CDL in the U.S. No training or prior certification of any kind is needed to apply for and obtain a license to operate a truck or bus in interstate commerce. It is even easier in most states to obtain a license to operate a truck or bus solely intrastate. In fact, in some states, a chauffeur's license or, in some instances, even an ordinary passenger vehicle operator's license, is sufficient to operate a smaller commercial motor vehicle.

Interstate CDLs are issued by states according to very minimal Federal rules, which have both a written and an on-road component. In most cases, passing a state test to obtain a CDL requires no specialized instruction. Many applicants are self-taught, have prepped with the aid of mail-order courses, or have been given only a few lessons by a truck or bus driver they know. No certification of any kind, such as the demonstration of having passed a federally approved training course, must be presented to take a multiple choice paper examination for the basic interstate CDL. The driving part of the test is often brief and perfunctory, and is often conducted in the parking lot of the inspection area. Many commercial drivers admit that they learned how to operate a truck only through their employment experience. This results in inexperienced drivers when they first take to the road carrying freight throughout the U.S.

Special endorsements, such as the additional authorization to haul placardable quantities of hazardous materials, are, again, simply written "knowledge" tests. The applicant does not need to demonstrate any driving skills, but only answer a set of written questions about hazardous materials transport. There is no limit on the number of times that a test can be taken by an applicant, so many drivers simply take the test until they pass it. According to news reports, the average failure rate for the hazardous materials endorsement in one state, Oregon, is only slightly higher than the failure rate for applicants taking the very simple test for a passenger vehicle driver's license (38 percent versus 35 percent).

Another key shortcoming of the Federal CDL rules is the lack of a requirement for a commercial license for drivers operating trucks that are less than 26,001 pounds gross vehicle weight. There are millions of single-unit trucks weighing between 10,001 and 26,000 pounds operating in interstate commerce with drivers who have no CDLs, who are not subject to mandatory drug and alcohol testing, and for whom the states often have patchy, unreliable driver records of traffic and other violations and convictions. This class of trucks comprise large single-unit delivery trucks, such as beverage trucks, large single-unit trucks used for interstate (primarily regional) movement of certain combustibles, small tankers used for propane delivery, single-unit regional moving vans, and many other single-unit trucks transporting a wide variety of cargo. Single-unit trucks are responsible for nearly a third of all truck-related fatalities and pose a significant safety problem. Overall, more than 40 percent of severe to fatal injuries each year in truck-related crashes are the result of single-unit truck collisions, according to FMCSA.

Congress should extend the CDL requirement to vehicles weighing between 10,001 and 26,000 pounds. By this action, Congress would include drivers in this weight class in an existing mandate for new data collection covering CDL-holders pursuant to Congressional direction in both the 1998 Transportation Equity Act for the Twenty-First Century (TEA–21) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This information could be crucial in our efforts to improve both safety and security oversight of drivers operating commercial motor vehicles.

Recommended Actions:

Congress should direct FMCSA to issue a final regulation requiring drivers to secure CDLs to operate commercial motor vehicles between 10,001 and 26,000 pounds gross vehicle weight.

FMCSA Should be Directed to Implement the Recommendations of the U.S. DOT Office of Inspector General for Improving Federal and State Administration of the CDL

Little more than a year ago, the U.S. Department of Transportation's Office of the Inspector General (OIG) released its detailed audit on the Federal and state administration of the Commercial Driver License (CDL), *Improving the Testing and Licensing of Commercial* Drivers, MH–2002–093, May 8, 2002. In general, the OIG found that Federal standards and state control over the issuance and follow-up oversight of the CDL were not sufficient to defend against the threat posed by individuals who seek to fraudulently obtain CDLs. The current Federal standards do not

adequately address how the states should verify the eligibility of CDL applicants, and the states themselves do not fully implement the existing Federal standards to adequately monitor third-party testers. The OIG found with regard to the last mentioned issue of third-party testers that 23 states did not require these examiners to annually take the driving skills test administered by the third-party testers.

The OIG also found that, although the FMCSA has increased the quality of its oversight reviews of state CDL programs, the agency nevertheless needs to broaden its reviews, improve the basis on which the states annually certify that their programs comply with Federal standards, and ensure that problems identified in state programs are corrected. The OIG also stressed that the agency needs to use the sanctions available to it when states fail to correct significant problems.

The OIG noted in its audit report that that successful implementation of many of its corrective actions is contingent upon the completion of several rulemaking actions. However, to date, we are not aware of any rulemaking actions that have been proposed or completed to address the multiple abuses in the current CDL program to improve state oversight of their licensing efforts to prevent fraud.

Recommended Actions:

Congress should direct FMCSA to issue a final regulation that implements the findings and recommendations of the U.S. DOT Office of Inspector General's Report to enhance safety and security. The final rule should include specific countermeasures that prevent fraudulent, inaccurate, or inadequate information from being used by the states to issue or renew CDLs; that ensure the competence and qualifications of licensing examiners, including third-party examiners; that improve the Federal oversight and review process for determining the adequacy of state CDL programs; and that apply appropriate Federal sanctions to any state that seriously or repeatedly violates Federal requirements for conducting its CDL program.

Unacceptable Loopholes Still Exist for Commercial Drivers with Unsafe Personal Driving Records to Obtain and Retain a CDL

Section 201 of Title II of the Motor Carrier Safety Improvement Act of 1999 (H.R. 3419), the enabling legislation for the Federal Motor Carrier Safety Administration (FMCSA), provides for several new or amended types of CDL-holder disqualifications for a variety of offenses committed while operating either a commercial motor vehicle or a non-commercial motor vehicles (non-CMV). However, the language needs to be amended because of several undesirable outcomes that occurred when the agency finally implemented the provision several years after the congressional deadline.

The FMCSA proposed implementing regulations for Section 201 (g) on May 4, 2001 (66 FR 22499 *et seq.*) and July 27, 2001 (66 FR 39248 *et seq.*). In those proposed rules, the agency adopted several disqualification periods for various offenses committed by operating a non-CMV.[2] However, subsequent to the issuance of a final rule on July 31, 2002 (67 FR 49742 *et seq.*), the FMCSA issued an amended final rule in response to a petition from several parties. 68 FR 4394 *et seq.* (January 29, 2003). In that revision to the July 31, 2002, final rule, the FMCSA acknowledged that it had adopted disqualification periods for non-CMV offenses committed by CDL holders without regard for whether those offenses resulted in CDL suspension or revocation. Petitioners had alleged that the agency had exceeded its statutory authority by adopting provisions triggering CDL-holder disqualification without also specifying that such disqualification shall result only if the violations also result in CDL suspension or revocation.

The consequence of this FMCSA January 2003 revision is far-reaching. Convictions for serious offenses by CDL holders in non-CMVs that would have systematically resulted in disqualification periods for CDL holders will now trigger disqualification only if the convictions result in suspension or revocation. This means that what had been adopted as a federally uniform system of removing offending CDL holders from the highways has effectively become a highly uneven system of disqualification that depends on individual state practice. If, for example, a CDL holder is convicted for one, two, or even three disqualifying offenses, but the state that issued the CDL does not require suspension especially after the first or second convictions, this CDL holder can continue to drive in interstate commerce.

[2] A non-CMV, for the purposes of the CDL provisions in 49 CFR Pt. 383, includes all passenger vehicles up to 10,000 pounds gross vehicle weight rating and all medium commercial vehicles from 10,001 to 26,000 pounds gross vehicle weight (not as rated, but actual operating weight).

In the final rule of July 31, 2002, the FMCSA acknowledged that convictions for the same serious offenses that would trigger disqualification for CDL holders that occurred prior to the issuance of a CDL would not adversely impact a CDL applicant in seeking commercial licensure: "[O]nly non-CMV convictions for offenses committed after a person obtains a CDL can be counted against his or her driving record." 67 FR 49745.

This is an anomalous result that needs correction in authorization legislation. If Congress intended that CDL holders be held accountable for convictions for serious offenses committed with a non-CMV, then it is equally important that convicted repeat offenders not be allowed to gain a CDL despite a string of prior serious violations. Section 201 of the Motor Carrier Safety Improvement Act of 1999 should be amended so that an individual with 3 convictions involving a non-CMV for the same offenses that trigger disqualification after gaining a CDL shall be barred from being granted a CDL for at least 3 years after the third conviction for a serious traffic violation. If the non-CMV holder has been convicted for any serious offense for use of alcohol or controlled substances, or for an at-fault crash resulting in a fatality, the non-CMV holder is barred for life from being issued a CDL.

Recommended Action:

Section 201(g)(1) should be amended to ensure that CDL holders will have their licenses suspended or revoked for all serious traffic violations and not just those violations that have resulted in suspension or revocation of a personal driver license.

Congress should direct FMCSA to issue a rule establishing the requirement that applicants are eligible to be awarded a CDL only if they have a convictions-free driving record for the previous three years for serious violations committed with any vehicle less than 26,000 pounds gross vehicle weight rating.

The Federal Medical Certification Required of Commercial Drivers Needs to Be Strengthened and Merged with the Commercial Driver License

Although the FMCSA began the process almost 10 years ago of merging the commercial driver license (CDL) and the certificate issued to a commercial driver every two years showing that the driver meets the medical standards for operating trucks and buses in interstate commerce, that initiative stopped in the middle 1990s and no further action has been taken on this important issue.

A number of abuses have been shown by the FMCSA and even representatives in the trucking industry to be chronic problems in the current Federal regime with the medical certification and the CDL issued as separate documents. Among other issues, drivers are sometimes tempted to drive with an expired certification because they failed their medical exams but their CDLs are still not up for renewal. Any action taken by the FMCSA to merge the two documents must ensure that drivers cannot get away with driving illegally with an expired medical certification.

I want to take this opportunity to voice our strong support for the Administration's proposal in Section 4005 of the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003" calling for enactment of a medical review board and a national registry of certified medical examiners. Both of these ideas have considerable merit and, in fact, are long-overdue policy actions by the Department of Transportation. However, I believe that the current provision, as drafted, needs to be amended to specify that a central duty of the appointees to the medical board is the review of appeals of physical qualification denials issued by the prospective medical examiners. The expertise of these health care providers should be applied to resolving challenges to any denials of medical certifications for commercial drivers.

It also is important for a medical review board in the FMCSA to be the result of selection criteria evaluated through public rulemaking by the agency. Further, the conduct of business by the board should always be in the sunshine to the extent permitted by privacy law and regulation. For example, Congress needs to specifically ensure that the meetings of the board will be open to public attendance, that all work products of the board including draft documents will be available for public review, and that the meetings of the board and any subcommittees or task forces are recorded for which a transcript is made available for public use.

In addition, we recommend that term limits be placed on medical review board service. Appointments to the board should not exceed a term of three/four years, and a current member should not be able to succeed herself—membership should be on a constantly rotating basis in order to guarantee that fresh talent and perspectives are consistently injected into the board advice and recommendations.

We also strongly support the other part of Section 4005 in the Administration's bill establishing a national registry of appropriately trained medical examiners that

lists the certified preferred providers for conducting the physical qualification medical examinations for commercial motor vehicle drivers. This kind of national list of trained health care providers certified to conduct the physical examinations will finally put an end to the multiple abuses under the current system that sometimes result in unqualified drivers nevertheless being given a pass to continue to operate trucks and buses in interstate commerce. For example, a famous insider joke among commercial drivers concerns "doctor shopping"—which, under the current FMCSA regulation also includes an advanced practice nurse, a physician's assistant, and a chiropractor. If you can't find a health care provider to pass you the first go-around, you have a good chance if you keep trying.

The ease with which some drivers can find a health care provider to certify them has multiple causes. First, many practitioners are not aware that the medical standards for commercial drivers in several major health areas are higher and more stringent than for passenger vehicle licensure. As a result, some drivers can pass a physical linked to operation of a passenger vehicle, but would fail a medical examination using the higher standards for interstate commercial vehicle operation. It's not that most of these practitioners are not competent but rather that they don't know the regulations—and many drivers are happy that they don't.

Unfortunately, there are also health care providers who override the criteria of the regulations and nevertheless certify a driver even though technically that driver failed some part of the exam. There also are providers who do not conduct a thorough physical, failing to test in required health areas, so that certification is provided on the basis of an incomplete exam.

These abuses can be substantially curtailed, if not eliminated, if the FMCSA is instructed to think along the lines of the well-trained, highly skilled cadre of flight surgeons currently used the Federal Aviation Administration that is specifically dedicated to performing the physicals for commercial pilots. We recommend that the FMCSA conduct rulemaking to garner a wide range of views on what the training and certification standards should be to govern these medical examiners. A national registry, for one thing, should be based on some demonstration of knowledge and proficiency in conducting physical examinations, and for an applicant to demonstrate a detailed understanding of the different medical standards in the Federal Motor Vehicle Safety Regulations used to qualify commercial drivers. We also recommend that anyone listed on the national registry be periodically re-certified by passing another proficiency examination as well as undergoing refresher training.

Recommended Action:

Direct FMCSA to include the driver fitness certification in the CDL issuance and renewal process, ensure that renewal periods coincide for both CDLs and medical certifications in each state, and establish a preferred registry of health care providers who pass a rigorous certification examination demonstrating their knowledge and competence to conduct comprehensive physical examinations of drivers seeking medical certification, including their understanding of the Federal Motor Carrier Safety Regulations.

The "Share the Road Safely" Program Needs Major Reforms or It Should be Terminated

The FMCSA's predecessor agency, the Office of Motor Carriers in the Federal Highway Administration, began an effort in tandem with the trucking industry in the early 1990s called the "No Zone" that emphasized a truck driver's "blind spots" on the road and the need for passenger vehicle drivers to avoid driving in these "no zones." Unfortunately, the no zone was used immediately by the trucking industry as a propaganda weapon to try to offset the horrific crash figures associated with big truck crashes: although large trucks are only 4 percent of registered vehicles on the road, they are involved in 12 percent of fatal crashes, and 23 percent of the passenger vehicle occupants who die each year in multi-vehicle crashes were involved in crashes with large trucks, according to the Insurance Institute for Highway Safety. The truck crash figures maintained by the Insurance Institute for Highway Safety also emphasize that when large trucks collide with small passenger vehicles in fatal crashes, 98 percent of the people who die are in the small vehicles.

Using bogus research claims, the trucking industry and even the FMCSA has kept up a steady drumbeat of claims that most fatal crashes involving large trucks and small passenger vehicles are primarily the fault of or are somehow caused by the drivers of the cars, pickup trucks, vans, and sport utility vehicles. But in a General Accounting Office (GAO) report released at the end of May 2003, the GAO states that subsequent research by the FMCSA showed that, at most, only 35 percent of

fatal passenger vehicle—large truck collisions are attributable to passenger vehicles traveling in the No Zone.[3]

The new version of the "No Zone" program, dubbed the "Share the Road Safely" program since the year 2000, already had been heavily criticized by the GAO in a previous evaluation.[4] The current GAO evaluation is similar to its previous evaluation and testimony in that both reviews stress the failure of the Share the Road Safely program to have quantified measures of effectiveness to determine the extent of the success of the effort to educate drivers how to operate their vehicles in the vicinity of large trucks.

The May 2003 GAO report also criticizes the earlier FMCSA evaluations of the No-Zone/Share the Road program because these reviews were unable to determine any program effectiveness. The reasons that these evaluations could not really show any benefits were:

- The evaluations relied on self-reporting by motorists, a process well-recognized to be inherently biased.
- The FMCSA had no baseline of driver knowledge and behavior with respect to the No-Zone/Share the Road effort to use to compare before/after effects of the program.
- The FMCSA had no ability to determine whether there were any changes in driving behavior or frequency of passenger vehicle-large truck crashes due to the influence of the program's initiatives or because of other, different influences.

The GAO report also stresses that the numerous highway safety officials and researchers contacted for the current evaluation of the Share the Road Safely program all agreed that public education efforts alone are unlikely to produce substantial changes in driver behavior and attitudes unless they are coupled with other safety initiatives such as local law enforcement programs to increase traffic law compliance. The report also points out that the FMCSA agreed that the National Highway Traffic Safety Administration has the expertise to develop and evaluate information programs aimed at improving driver safety consciousness and driving behavior.

I would like to add here that the Administration bill called "SAFETEA" currently has two provisions for refunding the Share the Road Safely program. Section 4018 of the Administration bill openly sanctions the program as an expanded effort, but provides no dedicated funds.

The other provision, Section 4002, is where the money will come from. This long provision deals with motor carrier safety grants, primarily the reauthorization of the Motor Carrier Safety Assistance Program (MCSAP), but expands the authorized use of funds to grant the Secretary broad discretion annually to use large percentages of these funds for any research or educational purpose, including funding private parties to conduct "activities and projects national in scope" to increase "public education or awareness." This includes, of course, using Federal funds originally dedicated to furthering the states' motor carrier safety oversight and enforcement programs to fund special interest groups and trade associations to conduct part of the Share the Road Safely program. I should also mention that part of the MCSAP funding authorized in Section 4002 of the Administration's bill directs the states to emphasize the enforcement of passenger vehicle traffic violations instead of using these precious dollars to improve numerous aspects of motor carrier operations.

So one of the purposes of a diluted MCSAP authorization provision is to siphon off limited Federal funds in uncontrolled amounts—funds originally intended to further the states' capabilities to increase motor carrier safety—to further an initiative that the GAO has indicated as amounting to 10 years of effort and 6.8 million spent Federal dollars with no measurable safety product to show for the money. And we should not forget to mention here that the GAO points out in its May 2003 report that most of the funds over this past decade were used to hire contractors, with some contracts costing up to $300,000 a shot. Unfortunately, however, the agency, as the GAO also points out, has no accounting of where the contracted payments went before the year 2000 (1992–1999). Perhaps Congress should require an investigation of where this money went and to whom.

As a result of these abuses of the public trust and the findings of the GAO in its recent report showing a decade of bankrupt agency and industry attempts at

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[3] *Truck Safety: Share the Road Safely Program Needs Better Evaluation of Its Initiatives,* U.S. General Accounting Office, GAO–03–680, May 2003.

[4] *Testimony of Phyllis Scheinberg, Director, Subcommittee on Ground Transportation, House Committee on Transportation and Infrastructure, U.S. Congress, March 17, 1999,* GAO–T–RCED–99–122.

"educating" the public and thus classifying light vehicle drivers as the prime offenders in truck-car crashes, we have formed our own recommendations for reauthorizing the program that are directly supported by the results of the May 2003 GAO report and its own recommendations.

Recommended Actions:

The Share the Road Safely program should be transferred to NHTSA to take advantage of that agency's expertise in creating, implementing, and evaluating educational programs, especially those addressing the need of changing driver behavior and attitudes.

MCSAP funds should not be used for the Share the Road program, allowed by the Administration in its reauthorization bill, until the program has demonstrated concrete success in meeting the measurable goals set forth by the GAO.

FMCSA Reauthorization

The reauthorization request by FMCSA for FY 2004 is $447 million, growing to $499 million in 2009. This is about a 20 percent increase over current funding for FMCSA programs. While we strongly believe that more Federal funds need to be spent on truck safety, we are not sure that this agency knows how to spend it effectively without strong direction, specified goals and sustained goading from Congress. One only need to review the legislation passed in 1999 creating this agency, particularly the findings and purposes section, to realize the shortcomings of this agency. Unfortunately, the American public is paying the price, with their lives and hard earned taxpayer dollars.

Thank you for allowing me to testify. I am pleased to answer any questions you and other members of the Subcommittee may have.

Senator SUNUNU. Thank you.

Mr. Hurst?

STATEMENT OF PETER HURST, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE; ACCOMPANIED BY LIEUTENANT PAUL SULLIVAN, MASSACHUSETTS STATE POLICE

Mr. HURST. Thank you, Mr. Chairman.

My name is Peter Hurst. I'm the President of the Commercial Vehicle Safety Alliance and the Director of the Carrier Safety and Enforcement Branch for the Ontario Ministry of Transportation. CVSA is an international association of state, provincial, and Federal truck and bus law enforcement agencies, along with representatives from industry in the United States, Canada, and Mexico. I want to thank the Committee for inviting us here today to present our proposals.

Commercial vehicle safety and enforcement have come a long way in the 20-plus years that CVSA has existed. Since 1991, the out-of-service rate has declined by 29 percent, and the fatality rate of crashes involving commercial vehicles has dropped by 25 percent. These achievements are the direct result of the efforts of thousands of CVSA-certified front-line inspectors, the programs under the Motor Care Safety Assistance Program, and our industry partners. However, we cannot stand pat as we are faced with change and new challenges. The volume of goods moved by commercial trucking grows almost daily, as trucking has become the economic lifeblood of North America and the need to balance commerce with security takes on more importance.

At this time, I would like to introduce our primary witness for today, Lieutenant Paul Sullivan, of the state of Massachusetts State Police and immediate past President of CVSA, who will present the details of CVSA's reauthorization proposals.

Senator SUNUNU. Welcome, Mr. Sullivan.

Lieutenant SULLIVAN. Thank you, sir.

It was only 10 days ago that 21-year-old rookie police officer, Jeff Parcell, was down doing his job in North Carolina, what he was trained to do, awareness and recognition programs, and he arrested the alleged Olympic bomber, Eric Rudolph, using an awareness and recognition concept. As we talk about traffic enforcement, new entrants, the effectiveness of the CDL program, the effectiveness of the technology programs, and the basic core group that we do every day, we share a goal with Federal Motor Carrier Safety Administration. But to do so, we need an increase in resources and flexibility in how they are administered for both the Federal and the state programs.

I've inspected thousands of trucks in my life, and I've been to hundreds of accident scenes. Now I'm talking to police officers about what their training needs are, and the local police officers are telling me that their training needs are—they want to know how to stop a truck, and they want the information on economic regulations that were created for seamless borders so that they can do some speed enforcement and maybe, when trucks spill something on the highway, they can also deal with that thing.

But the regulations have created these people over here that know the regulations, and this knowledge gap in the middle, and the people on the right that don't. And if we have bad drivers on the highway getting involved in crashes, and if they're working for bad carriers, and we want an effective, quick means to get more people involved in traffic programs, then we need a commercial vehicle one-on-one with the local police officers and get those people, that really want to do the work, the knowledge that they need. And they're telling me that they're avoiding contact with commercial-vehicle operations, because we've made it too confusing for them and they're going to be making mistakes left and right.

And I'm also talking to the small mom-and-pop trucking companies, and they come to me for questions about—that they have on the regulations, and we've built up a relationship with these people. And there's a knowledge gap there between the bigger companies that know and the small ones that don't. And then the small ones become successful, and they grow, and they become interstate transportation.

I want to suggest that they don't grow overnight. Big interstate transportation fleets don't pop up overnight. And the small people can't be responsible for where their customers live. So now they're involved in interstate transportation. But they still have that comfortable relationship they've always had with their state enforcement people, and they still seek them out, and they seek out local police officers to answer questions. And I'm suggesting, in the New Entrant Program, we not ignore that.

New Entrants is not a new concept. Jurisdictions, states and provinces, have been practicing this program for years, and the small companies have been using private contractors for years to satisfy their needs. And I'm afraid that we're going to ignore these successful state programs and provincial programs and the use of private contractors under the New Entrant Program.

And using the same concept for CDL—CDL problems are not strictly with the system itself, the process. Police officers are making mistakes filling out citations. Judges are letting people go that

they shouldn't. The licensing authorities are being very territorial in their information. We need to break down some of these institutional barriers. We've submitted our suggestions on how to do that under the CDL program.

You know the results of the self-assessment program that CVSA conducted in Massachusetts and West Virginia, and how the system is not working the way it's designed. But we have submitted suggestions for improvement of that system.

And also on the ITS systems, we've built chimneys of information that work fantastically well by themselves, and now the time has come for these information systems to start talking to each other and to the roadside inspector. That's who we represent here today, is the roadside inspector. And what might work very successfully at a desktop is not going to be very comfortable for a roadside inspector to do on the side of the road in a weigh station or if he's on patrol using a laptop computer. We need to tie those systems in together, complete the link that was the promise of CVISN when it started.

And, to recap, I'd like to talk about the MCSAP core program. It's been very successful, as President Hurst mentioned. But to keep it going, we have suggested that the resources will, of course, have to be increased to maintain the level of efficiency that we have provided in the past, and that there should be some flexibility involved in expenditures for both Federal programs and the state programs. And we work very strongly with FMCSA, and congratulate them on their hard work, and for Mr. Hurst.

Thank you very much.

[The prepared statement of Mr. Hurst follows:]

PREPARED STATEMENT OF PETER HURST, PRESIDENT AND PAUL SULLIVAN, LIEUTENANT, COMMERCIAL VEHICLE SAFETY ALLIANCE

I. Introduction

I am Peter Hurst, President of the Commercial Vehicle Safety Alliance and Director of Carrier Safety and Enforcement Branch for the Ontario Ministry of Transportation. CVSA is an international association of state, provincial, and Federal truck and bus law enforcement agencies along with representatives from industry in the United States, Canada, and Mexico.

As CVSA President, and a motor carrier enforcement official from Canada, I just want to tell the Committee how important this reauthorization legislation is to CVSA. At the same time, it will be of great interest to the Provinces and Territories of Canada especially with respect to border and new entrant issues.

At this time, I would like to introduce our primary witness for today, Lieutenant Paul Sullivan of the Massachusetts State Police and immediate past President of CVSA who will present the details of CVSA's reauthorization proposals.

Good morning, Mr. Chairman, and members of the Commerce Committee, I am Paul Sullivan, a Lieutenant with the Massachusetts State Police, and am here today to present CVSA's reauthorization policy on behalf of all of our members.

II. Challenges for the upcoming Reauthorization

Our recommendations have been carefully considered to meet the following challenges ahead of us:

- Help achieve the goal we share with the Federal Motor Carrier Safety Administration to reduce the truck fatality rate by 41 percent (from 1996 to 2008) or 1.65 fatalities per 100 million vehicle miles traveled. We appreciate the comments made by FMCSA Administrator-Designate Annette Sandberg before this Committee on May 21 in which she credited the states with playing a significant role in the preliminary estimated 3.5 percent reduction in fatalities resulting from commercial vehicle crashes for 2002.

- Strengthen safety enforcement programs that have worked and take on new programs which the performance-based approach has identified as having significant potential to achieve safety goals.
- The need for a greater focus on commercial vehicle transportation security and the implication for front-line police charged with motor carrier safety enforcement.
- Recognize that states are now facing their most severe budget crisis in many years as we determine a reasonable and appropriate balance between the funding of Federal and state operations.

III. CVSA Reauthorization Recommendations

Increase MCSAP by 5 percent annually over the life of the bill.

A CVSA member survey indicates that states need an increase of 5 percent annually, or 30 percent over the life of the bill, to keep the roadside inspection and other enforcement programs such as motor carrier Compliance Reviews at their present strength. It is important to note that in most states, the MCSAP grant is used almost exclusively for inspector salaries. States have the greatest ability to impact safety's bottom line of reducing crashes and injuries, and most importantly, saving lives. One of the primary reasons for this is the state roadside inspection program.

This is the conclusion of two recent studies commissioned by the Federal Motor Carrier Safety Administration and undertaken by the Volpe National Transportation Systems: *FMCSA Compliance Review Impact Assessment Model (February 2002) and FMCSA Roadside Inspection and Traffic Enforcement Effectiveness Assessment (December 2001).* Data was reviewed on compliance reviews, roadside inspections, and traffic enforcement for the year 1998. These are the primary enforcement programs constituting the "core" MCSAP programs. They created an analytical model to calculate the number of crashes avoided and injuries and lives saved. We, at CVSA, using dollar values taken from FMCSA's cost-benefit analysis for the latest CDL Final Rule on July 31, 2002, assigned total dollar values to each of the these three categories. Roadside inspections resulted in the greatest number of crashes avoided, lives saved and injuries avoided. When attaching dollars to these numbers, roadside inspections provided the greatest return on investment. (See Attachment A for a more detailed summary).

We are concerned that FMCSA's proposal does not increase the MCSAP program at all in the first year of reauthorization, keeping it at $164,500,000, while the FMCSA's administrative budget is increased by 59 percent in the first year of reauthorization. Looking at FMCSA's projected increases in their Administrative budget for the life of the bill, their administrative budget goes up by another 11 percent and the MCSAP program goes up by 10 percent. FMCSA's operations end up with a 70 percent increase over the life of the bill and MCSAP with only 10 percent over the life of the bill. We suggest that this is out of balance and that a 38 percent increase over the life of the bill for the MCSAP program is justified and reasonable.

In discussing the funding levels for the MCSAP program, we feel we are obligated to tell you that many states are having great difficulty in coming up with the full 20 percent match (MCSAP is an 80/20 program) to draw the maximum amount of their grant. Over the past two years, some 38 states were forced to roll over at least part of their full allocation to the following year. We realize that in these difficult economic times, this is an unfortunate reality in other Federal grant programs. But we do suggest that FMCSA work more closely with the states to try and resolve this problem. And we recommend that, as in the case of the ITS–CVO Commercial Vehicle Information Systems Network program administered by the Federal Highway Administration, consideration be given to allowing the states to use other Federal dollars for the match not to exceed 90 percent reducing the state share to 10 percent.

Another funding source available to help resolve this problem is the High Priority Program.

High Priority Program and Safety Performance Incentive Programs

We support the purposes of both of these programs. Our members fully embrace the incentive, performance-based approach. We also support FMCSA's proposed increase in the takedown for both programs from 5 percent to 10 percent of the overall MCSAP funding level.

We are pleased that neither of these programs will require a matching contribution from the state. CVSA has been a strong advocate of 100 percent funding for these programs because, unlike the basic inspection program grant, projects under either of these programs cannot necessarily be planned to coincide with the state legislative budget cycles. We appreciate FMCSA's recognition of this problem.

Traffic Enforcement

Flexibility for the states to use MCSAP officers for traffic enforcement that is not tied to an inspection (current policy), should only be allowed when funds are provided over and above the basic MCSAP core inspection grant. CVSA suggests use of High Priority Program funds for this purpose. Traffic enforcement efforts should not take resources away from the core program.

Traffic enforcement against the passenger car around trucks is something that should be tested in a pilot program to ensure uniform collection of violation data and provide a way to measure its effectiveness. We suggest that this pilot program be undertaken in conjunction with the National Highway Traffic Safety Administration.

This pilot should include the involvement of local law enforcement officers who already do traffic enforcement against the passenger car. There are close to 800,000 such officials throughout the country. These officers would be trained in basic "rules of the road" for trucks and security awareness as well. The training would help make them more comfortable in doing traffic enforcement around trucks multiplying the impact on safety.

Finally, the pilot program would be a way to test education/outreach strategies especially on the car/truck interaction issue.

New Entrants

We support this program which was a provision of the Motor Carrier Safety Improvement Act of 1999. It is important to do safety audits on the approximately 50,000 new carriers entering the trucking business each year. Studies show that new entrants are more crash prone in their early stages of operation.

This is a resource intensive program since in most cases, it requires a face to face meeting with the new entrant on site at the place of business. A survey of CVSA member jurisdictions indicates that the cost to fully implement a new entrant program would be $30,000,000 a year. The good news is that FMCSA's overall cost estimate agrees with our survey.

But a problem arises when it comes to finding the dollars to fund this program. FMCSA directed the implementation of this rule to begin in January 2003. Yet there is no line item in FMCSA's 2003 budget that would fund the program with the result that states are "scrambling" to try and comply and in most cases are having to pull their enforcement personnel away from targeting known bad carriers to do the new entrant safety audits. We do not believe that Congress intended this to happen.

In this past week, we have been hearing from members who are now working on their MCSAP commercial vehicle safety plan for Fiscal Year 2004 that starts in October and are uncertain about what to expect in 2004. They are asking whether there will be enough money in FMCSA's 2004 budget to help them with this program? Will the reauthorization bill pass providing enough funding?

When looking at FMCSA's reauthorization proposal we find that the $17,000,000 allocated for the states for this program is not enough. But we have learned that in public testimony before the Congress, FMCSA indicates that it is reserving another $16,000,000 within its Administrative budget to monitor and administer the program. This expenditure is to cover the cost of their hiring 32 new staff members and recruiting and training 67 private contractors to do safety audits in those states who are unable to implement a new entrant program on their own.

While on this issue of private contractors, we ask FMCSA what kind of certification and quality control program will be established to assure the quality of these private contractors? And why should states be precluded from using properly certified private contractors? Shouldn't this be an option for the states as well? We suggest everyone take a close look at what the Province of Manitoba is doing with respect to private contractors. They are implementing a uniform third party training, testing and accreditation program for use by all Canadian Provinces.

CVSA believes there appear to be two possible solutions to this problem. The optimum solution would be to delay the implementation of this program until all jurisdictions are able to implement it and a pilot program has been undertaken that would establish the best way to carry out the program, including the use of private contractors, without encroaching on current state enforcement efforts such as roadside inspections and compliance reviews. MCSIA'99 contains a provision providing for a staging or phasing in of the program precisely to avoid siphoning resources from inspections and compliance reviews. If reauthorization legislation does not pass Congress by September of this year, then this may be the only option because an extension of 2003 funding levels will not leave FMCSA with any dollars at all to fund the program for 2004.

The other option, assuming reauthorization passes, is to direct that not less than $13,000,000 of the $16,000,000 FMCSA is reserving for its own efforts to administer and monitor the program go directly to the states. The $13,000,000 when added to the $17,000,000 reserved for the states reaches the $30,000,000 total that CVSA has determined is necessary for the states and obviates the need to cut into the state core inspection grant to fund the new entrant program. We believe that the remaining $3,000,000 should be adequate for FMCSA to exercise program oversight.

Border Enforcement Grant Program

Funding under this program should not be limited to just the border states. It is very possible that any state in the country could be affected by the opening of the Southern border. A clear example is the necessity for roadside officers to enforce vehicle registrations which is a provision in another part of this bill.

Also, although it is not specifically detailed in the bill, FMCSA has otherwise stated in recent testimony that $9,000,000 of this grant program would be used to conduct 200,000 HM inspections at the Northern border. We ask how this money will be allocated to each of the Northern Border states? Will it be allocated as part of their annual MCSAP grant?

CDL Program

CVSA is pleased at the funding levels provided for a new CDL grant program that range from $22,000,000 in the first year to $25,000,000 in the last year of the bill. We have long advocated the creation of a separate CDL grant program with funding at these levels.

But the purpose and conditions for CDL grants to the states are not clearly defined in the proposed Act. Additional statements on this issue by FMCSA at recent hearings still do not define clearly the purpose of the program and do not stress the importance of remedying the many of the documented deficiencies that now exist in the CDL program. Man drivers are not being sanctioned and are causing crashes and fatalities.

CVSA recommends that the initial purpose of the grant program should be to encourage all states to undertake a comprehensive self-assessment of their CDL programs as has been done under CVSA (FMCSA funded) pilot program with the states of Massachusetts and West Virginia. The second part of the pilot program would be to specifically identify and implement those steps needed to correct the deficiencies.

CVSA recommends that this new grant program:

- be modeled after the MCSAP in terms of oversight and procedures, but with a 50/50 match since state licensing agencies have substantial resources through their fee structures
- provide accurate and timely driver information to roadside enforcement
- establish specific conditions under which grants will be awarded such as the creation of a state interagency task force including all state agencies responsible for administration and enforcement of CDL rules such as the state lead MCSAP agency and judiciary, and the preparation of an annual work plan
- require each state to undertake a CDL "Self-Assessment" program modeled after the CVSA pilot program funded by FMCSA under TEA–21.

A major goal of this program must be for all states to participate in the grant program because many of the problems must be addressed nationwide to have the maximum impact.

CVSA questions the designation of up to 25 percent of the CDL program for emerging issues without a clear definition of what they are. We believe the comprehensive self-assessment approach we recommend would certainly uncover any emerging issues that need to be addressed.

ITS–CVO—Commercial Vehicle Information Systems and Networks Deployment (CVISN)

CVISN ties together all of the vehicle, driver and carrier information that roadside inspectors need accurately and in real time. It is a necessary and companion system to make available to the inspector at the roadside, the critical driver information we have discussed with respect to our proposed CDL grant program.

Under TEA–21, $184,000,000 was authorized over the life of that bill for the states to deploy CVISN. However, only $40,000,000 actually reached the states with the result that as of today, only 9 states are at a point of being able to deploy CVISN Level I capabilities. Significant resources, $144,000,000 are needed to catch up.

We support Section 1704 in the Administration's bill which is a clear step in the right direction to make up for lost time. By transferring the program to Title I of the Federal-aid-highway program, the funding for CVISN will be "fire-walled" and more protected from the earmarking process which was a major reason that the money authorized for CVISN in TEA–21 did not reach the states.

However, the funding levels in Section 1704 are not fully adequate for the states to catch up in deploying CVISN. The allowance of $2.5 million per state falls short of the $144 million needed. Just as important is that the program remains a 50/50 matching program which is not consistent with the 80/20 matching provisions applicable to MCSAP. While the states are allowed to use other Federal dollars as a part of the match up to 80 percent, they may not always be able to take advantage of this exemption from a practice that is otherwise precluded in most grant programs. As we have pointed out earlier in our testimony, in these difficult times, states are having a problem in general in meeting the matching requirements.

Enforcement of Commercial Vehicle Registration Requirements

The requirement for roadside officers to enforce vehicle registration should not be achieved through an out-of-service declaration, but rather through a "*suspend operations declaration",* or something similar. The use of an "out-of-service" declaration would have the effect of adding an item which is not "imminent" hazard to the CVSA Out-of-Service criteria.

Use of MCSAP Funds for Local Government or Other Persons

In several provisions of Sec. 4002 (a), the Motor Carrier Safety Assistance Program, the Secretary of Transportation is provided the authority to make grants to a State agency, local government, or other person.

To preserve the uniformity and integrity of all of programs that are funded under the MCSAP program, it is absolutely essential that in those instances where local governments or other persons may be the applicants, funding must first pass through, and be coordinated by, the state lead MCSAP agency.

The hallmark of the CVSA inspection program is uniformity among all states, provinces and territories. To maintain this at the state and provincial level requires constant vigilance on our part. The need for this is just as great, or perhaps even greater, at the local level. The industry deserves this and, in our view, it is the only way to achieve the safety goals that we all support.

Uniform Carrier Registration Plan

It appears to us that Section 4008, Financial Responsibility for Private Motor Carriers, is the appropriate section to again direct the establishment of the Uniform Carrier Registration (UCR) program, which was first required in the ICC Termination Act.

CVSA supports the legislation developed by an industry task force that would establish a new UCR program to supercede the existing Single State Registration System (SSRS) which now applies only to for-hire carriers in 38 states. In addition, and of great importance to CVSA, is that this industry proposal would guarantee that states would be reimbursed for those SSRS proceeds currently being used for motor carrier safety enforcement.

Interstate Operations of Interstate Motor Carriers

CVSA supports Section 4011 in the FMCSA proposal that would allow capture of intra-state violation data on a carrier that also operates in interstate commerce. In addition, we support the measure that would apply an out of service order on an interstate carrier to its intra-state operations as well.

FMCSA Authority to Stop Commercial Vehicles

CVSA recommends that this grant of authority to FMCSA in Section 4012 should be confined to border situations. We do not believe the Administration or Congress is interested in creating a new police force. This provision could be interpreted as an intention of FMCSA to assume control of all, or part of, the existing state inspection program and we recommend additional language in this section that would confine the prescribed FMCSA authority "*in the vicinity of an inspection site at the border.*"

We also believe that Section 4012 would be an appropriate Section in the DOT proposal to more clearly reflect the process by which the North American Standard Inspection and Out of Service Criteria are developed and implemented by CVSA.

Section 31102(b)(1)(J) Title 49, United States Code, should be amended by adding the following language: "*This North American Standard Inspection and North American Standard Out of Service Criteria and decal program are developed by the Com-*

mercial Vehicle Safety Alliance and are identified in Parts 350, 385, and 390 of the Federal Motor Carrier Safety Regulations."

We believe there is precedent for our recommendation in the NAFTA border safety provisions of the 2001 Transportation Appropriations bill passed by the Congress.

International Cooperation

We fully support the intent of Section 4015. Given the fact that hopefully our Southern border will soon be open to Mexican truck and bus traffic and our long-standing seamless operations at the Northern border with Canada and its Provinces, we need to foster greater participation and cooperation in international activities that would that enhance highway safety through exchange of information, conducting research, and examining needs, best practices, and new technology.

One reason for our support is that this best describes what CVSA does as an alliance.

We would make one very important recommendation that we believe supports the intent of this section. It is that data from Canadian and Mexican inspections of U.S. commercial vehicles should be allowed to be used by FMCSA for purposes of carrier ratings and possible enforcement actions. Also, financial consideration should be given to Canada and Mexico for their inspection and enforcement efforts in this regard.

Truck Rest Areas

We do not believe that the proposal in Section 1306, Title I of the Federal-aid Highway Act adequately address the overall problem of the shortage of adequate rest areas for truck drivers. We do not need any more studies or pilot projects in this regard.

But we do believe that the proposal adopted by the American Trucking Associations and the National Truck Stop Operators will address the problem. It would establish a public-private partnership through the creation of a Parking Assistance Resource Corporation (PARC) to do the following:

- identify the locations of truck parking shortages and the reasons for them
- develop best practices and recommended minimum design, security and lighting requirements
- review and prioritize applications from private enterprise aimed at alleviating the shortage at specific locations and make corresponding recommendations to the DOT Secretary
- identify specific NHS corridors where regional and multi-state strategies would be effective in solving the problem

PARC would be funded with a grant from the Federal Highway Administration and be governed by a Board of Directors comprised of representatives from FMCSA, ATA, TCA, NATSO, AAA, and CVSA.

Training Passenger Car Drivers to Drive in the Vicinity of Commercial Vehicles

CVSA supports the provision in Section 4002 under MCSAP that would require the states to revise their driver training manuals for passenger car drivers to include information and best practices for driving in the vicinity of commercial vehicles.

However, we suggest that any administrative costs be funded by the state licensing agency that has jurisdiction over passenger car drivers. We believe that when appropriate, other state agencies must share the responsibility for highway safety.

Motor Carrier Advisory Committee

A Motor Carrier Safety Advisory Committee should be established by FMCSA. Section 105 of the Motor Carrier Safety Improvement Act of 1999 authorized the Secretary of Transportation to establish a commercial motor vehicle safety advisory committee to provide advice and recommendations on a wide range of motor carrier safety issues. The advisory committee was to remain in effect until September 30,2003. This never happened and CVSA believes the need to establish such a committee still exists.

Safety Program Performance Measurements

	Compliance Reviews	Roadside Inspections	Traffic Enforcement
Year(s)	1998/1999	1998	1998
Number of Crashes Avoided	1,200/1,500	9,073	3,608
Number of Lives Saved	**51/64**	**389**	**155**
Number of Injuries Avoided	**822/1,028**	**6,218**	**2,473**
$$ Value of Lives Saved	147.75/185.41	1,126.93	449.04
$$ Value of Injuries Avoided	119.71/149.72	905.57	360.16
$$ Value – Total	**267.46/335.13**	**2,032.5**	**809.2**
Unit Value* (Financial)	**$3,016.01** (1998: 8,868 Federal and State CRs)	**$1,324,80** (1998: 2.145 Million Roadside Inspections)	
Unit Value (Human)	**0.00575** Lives saved per Compliance Review **0.0927** Injuries avoided per Compliance review	**0.000254** Lives saved per Roadside Inspection **0.00405** Injuries avoided per Roadside Inspection	
Overall Totals (1998)			
Number of Crashes Avoided	13,881		
Number of Lives Saved	595		
Number of Injuries Avoided	9,513		
$$ Value of Lives Saved	1,723.72		
$$ Value of Injuries Avoided	1,385.45		
$$ Value – Total	**3,109.17**		

Notes

- Information on Compliance Reviews, Roadside Inspections and Traffic Enforcement was taken from
  - FMCSA Compliance Review Impact Assessment Model (February 2002)
  - FMCSA Roadside Inspection and Traffic Enforcement Effectiveness Assessment (December 2001)
- Except where there is an asterisk (*), dollar figures are in millions
- Figures to compute the dollars were taken from the cost-benefit analysis for the CDL Final Rule (07/31/02)
  - $3.419 million per fatal crash (in 1998 there were 4,579 fatal crashes, 5,395 fatalities, ratio of 1.18 fatalities per crash or $2.897 Million per fatality)
  - $217,000 per injury crash (in 1998 there were 85,000 injury crashes, 127,000 injuries, ratio of 1.49 injuries per crash or $145,637.58 per injury)
- Budgets
  - FY 2002 MCSAP funding: $160 million (FY 1998 -- $78.825 million)
  - FY 2002 FMCSA funding: $115 million

Senator SUNUNU. Thank you very much, Mr. Sullivan.
Mr. Harrison?

STATEMENT OF JOSEPH M. HARRISON, PRESIDENT, AMERICAN MOVING AND STORAGE ASSOCIATION (AMSA)

Mr. HARRISON. Good morning. I am Joe Harrison, President of the American Moving and Storage Association headquartered in Alexandria, Virginia. AMSA is the national trade association of the moving and storage industry, representing 3,500 movers worldwide, 2,000 of which are interstate motor carriers regulated by the Federal Motor Carrier Safety Administration and the Service Transportation Board.

My complete statement to this Committee provides a detailed explanation of my industry's position on a number of issues related to Federal regulation of the interstate moving industry and, in particular, the need to address the problems created by rogue movers.

However, at the outset, I will address the primary purpose of this hearing, reauthorization of the Safety Administration's programs and responsibilities. The moving industry supports the administration's effort to improve highway safety. We operate an estimated 70,000 vehicles, and we are responsible for the operations of 30,000 drivers that are on our Nation's highways. We commend the administration for the sensible approach it developed in the formulation of its recently announced hours-of-service regulations. We will continue to provide input to the administration on important truck safety issues that it must address.

Turning to its regulation of the moving industry, we also support the Administration's request for an additional $1 million in funding to bolster its enforcement capabilities. We are disappointed that more money is not available for this important effort, since we are convinced, as was the General Accounting Office in its 2001 report to Congress, that effective regulation of the interstate moving industry requires strong Federal oversight and, in fact, is not conducive to regulation by 50 different states.

Despite this, we are aware that serious consideration is being given to expanding regulation of interstate movers by authorizing the states to enforce the existing Federal statutes and regulations affecting my industry's daily operations. While we firmly believe strict enforcement of the consumer protection regulations by the Federal Government is the most effective way to rein in illegal operators, and not state enforcement, rest assured that we welcome the opportunity to work with this Committee and your staff to fashion a legislative proposal that will address enforcement without impeding the operations of legitimate movers.

As we move forward with this effort, Congress must not lose sight of the fact that the moving industry handles roughly 1.3 million interstate moves each year, the overwhelming majority of which are accomplished to the satisfaction of the moving public.

I urge your Committee to bear this in mind and reject overzealous demands to exponentially increase my industry's liability for loss or damage to goods. We are strongly opposed to any proposal that would expand our liability by making us also liable for damages arising from application of the state's deceptive practices acts. The moving industry, just like any other segment of our Nation's transportation industry—railroads, freight motor carriers, and freight forwarders—cannot withstand the economic uncertainties of loss-and-damage litigation that presents the potential for awards of punitive and other forms of consequential damages that are not related to the value of lost or damaged goods.

On the rogue-mover issue, my association has discussed a number of legislative measures with your staff and their counterparts in the House, which we believe would disrupt the rogues' ability to defraud consumers. Rogue movers exist solely to defraud the public. In its effort to deal with this problem, Congress must also not lose sight of the fact that only legitimate movers, those that are not at the heart of the problem, will comply with any new legislative

measures that are enacted. The rogue movers will not. They will continue to ignore the law. Certainly, that was the case with the illegal operators that are being prosecuted in the recent Federal criminal indictments of 42 rogue movers and 74 individuals that were involved in their operations. They were ignoring the law, and if they were allowed to continue to operate, they would ignore the existing law, as well as any other new enactments. Once again, the solution to the problem they have created is strict Federal enforcement and incarceration, if warranted.

AMSA's approach to dealing with rogue movers is grounded on our knowledge of the industry and our understanding of the traps rogues set for consumers. We, therefore, believe that the following legislative steps would seriously impact the operations of illegal operators and hamper their ability to defraud consumers.

Number one, authorize the states to proceed against movers that violate Federal licensing, pricing, and arbitration requirements, or hold customers' goods hostage. Two, establish civil and criminal penalties to combat unlawful hostage-freight practices. Three, require the regulation of Internet brokers of household goods. Number four, require that FMCSA establish meaningful registration requirements for authority to transport household goods. Number five, require that consumers receive written estimates of moving services, charges, and inventories of their goods. Number six, require that FMCSA increase its consumer-education activities. Number seven, establish a consumer complaint data center. And, finally, number eight, increase public access to mandatory loss-or-damage arbitration, and expand arbitration to include transportation payment disputes.

AMSA believes these legislative proposals will help consumers avoid use of rogue movers and make it much more difficult for rogue movers to prey upon consumers. It should receive your serious consideration.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Harrison follows:]

PREPARED STATEMENT OF JOSEPH M. HARRISON, PRESIDENT, AMERICAN MOVING AND STORAGE ASSOCIATION (AMSA)

My name is Joseph M. Harrison. I am the President of the American Moving and Storage Association (AMSA) with offices at 1611 Duke Street, Alexandria, VA 22314.

AMSA is the national trade association of the regulated moving and storage industry with 3,500 members worldwide representing the entire spectrum of the industry, including approximately 25 national van lines, 1,100 independent regulated carriers, 1,600 agents of van lines, 1,000 of whom are also regulated carriers in their own right, and over 500 international movers. These entities contract with 30,000 independent owner-operators who own equipment and perform much of the physical transportation of household goods. The industry employs roughly 450,000 workers, operates 66,000 trailers, 32,000 tractors and 18,000 straight trucks and generates revenues of $7 billion annually. We operate in every city, town, borough and hamlet in the United States. In addition to our interstate transportation service, we perform the intrastate and local moving and storage services that are required by consumers and industry. AMSA's functions include representation and promotion of the interests of the moving and storage industry before Federal and State legislative and regulatory bodies.

This statement is submitted in response to the Committee's invitation to participate in its hearing on reauthorization of the Federal Motor Carrier Safety Administration (FMCSA) programs and responsibilities and the issue of fraud in the transportation of household goods.

Reauthorization

The moving industry supports FMCSA efforts to improve highway safety. We commend the Administration for the sensible approach it developed in the formulation of its recently announced hours of service regulations. We will continue to provide input to the Administration on all important truck safety issues it must address.

We also support the Administration's request for an additional $1 million dollars in funding to bolster its moving industry enforcement capabilities. We are, however, disappointed that more money is not available for this important effort since we are convinced, as was the General Accounting Office in its 2001 Report to Congress, that effective regulation of the interstate moving industry requires strong Federal oversight and, in fact, is not conducive to regulation by the 50 states.[1]

It has become an accepted fact that rogue movers are the root cause of the current effort to involve the states in regulation of the interstate moving industry. Just recently a major blow was dealt to many unscrupulous operators by the criminal investigation and prosecution by the DOT Inspector General and the F.B.I. of 42 Florida-based rogue movers and 74 individuals that were involved in their operations. This is a prime example of the aggressive action that should be taken by the FMCSA to rid the industry of unlawful operators. Clearly, the solution to the problems created by rogue movers is more aggressive Federal enforcement of the existing Consumer Protection regulations and incarceration of the operators of these enterprises. This should be the main focus of FMCSA oversight of the moving industry. However limited their resources may be, the most effective use of those resources lies in action that is most beneficial to consumer shippers. This means vigorous prosecution of illegal operators.

We also believe FMCSA must demonstrate a more concerted interest in and focus on regulatory issues and proceedings that are intended to assist consumer shippers of household goods. For example, an FMCSA proceeding that would completely revamp the existing household goods Consumer Protection regulations has been pending an inordinately long 5 years.[2]

In addition, on more than one occasion, AMSA has petitioned FMCSA requesting formal proceedings to address issues that directly impact the rights of consumers. Each request was rejected for reasons we would submit simply evidenced an unwillingness to regulate.

Just recently (3 months ago) AMSA filed another petition with FMCSA requesting the adoption of regulations governing the relationship between brokers of household goods transportation services and consumers. A major regulatory void exists in this area and action is necessary to warn consumers of the unscrupulous practices of, most particularly, Internet brokers. AMSA drafted proposed regulations and, because of the urgency of this issue, recommended immediate FMCSA action. To date, no response has been received from FMCSA.

State Regulation of the Interstate Moving Industry

AMSA has advised your staff and their House counterparts that the moving industry is not opposed to conferring authority on the states to prosecute movers that violate important Federal licensing, pricing or arbitration requirements, or engage in hostage freight practices. We believe such a measure would seriously impact the rogue movers' ability to defraud consumers.

The Administration's proposed solution (proposed Section 14710 of title 49), on the other hand, goes much further. If enacted, this provision would vest in the state's authority to conduct investigations and institute civil actions related to all statutes, regulations, and orders administered by DOT and the Surface Transportation Board which now govern the entire licensed motor carrier and freight forwarder industries. (The language of proposed subsection (a)(1) is not limited to motor carriers and freight forwarders that are engaged solely in the transportation of household goods. Only subsection (a)(2), which is limited to foreign motor carriers, encompasses those that are engaged in the transportation of household goods).

Approaching this issue from a broader perspective, to the extent Congressional precedent exists for the shifting of Federal enforcement authority to the states to prosecute entities that are engaged in interstate enterprises,[3] we do not believe the

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[1] GAO–01–318, *Consumer Protection in the Moving Industry,* p. 22.

[2] Docket No. FMCSA 97–2979, *Transportation of Household Goods; Consumer Protection Regulations,* 63 Fed. Reg. 27126 (1998).

[3] *E.g.,* Telemarketing and Consumer Fraud and Abuse Prevention Act, 14 U.S.C. § 6101, *et seq.,* Fair Credit Reporting Act, 15 U.S.C. § 1601, *et seq.,* Fair Credit Billing Act, 15 U.S.C. § 1666. *et seq.*

circumstances underlying enactment of those statutes are analogous to the circumstances presented by regulation of the interstate moving industry.

Presently, Federal statutes and regulations preempt the entire field of regulation of the interstate moving industry. In addition to consumer protection regulations, interstate movers must comply with regulations governing registration, insurance and process service; binding estimates and guaranteed pickup and delivery service; extension of credit; van line/agent pooling and agent responsibility; owner-operator equipment leasing; loss and damage claim and dispute settlement, to name a few. This regulatory regime requires a uniform Federal approach to oversight and enforcement and is not suited to enforcement by the various authorities contained in 50 States. In its March 2001 Report to Congress, the General Accounting Office essentially adopted this position noting that whatever benefits may result from enforcement by the states cannot be measured until it has been preceded by vigorous DOT enforcement.[4]

The Administration's proposed statutory language is nearly identical to Section 6103 of the Telemarketing Fraud Act (15 U.S.C. §6103). In our view, enforcement of that Act by the FTC and the states is not an appropriate model of Federal/State cooperation when considering expanded regulation of the interstate moving industry.

The legislative history of the Telemarketing Act is quite clear in its description of the magnitude of the fraudulent schemes Congress addressed with its 1994 legislation. Congress found that consumers and others were estimated to be losing $40 billion annually to fraudulent telemarketers. Notwithstanding vigorous FTC efforts to curb those practices (90 cases in Federal courts halting fraud that was estimated to produce sales of over $1 billion), it was acknowledged that the FTC enforcement resources simply were not sufficient to adequately protect consumers. This was the case because, in part, telemarketers are not dependent upon fixed locations as points of sale, are very mobile, and move from state to state.[5]

Although the operations of telemarketers are easily distinguished from those of moving and storage operations, there has been a mistaken tendency to compare the two simply because rogue movers may also cross state lines. Thus, while on the one hand Congress was prompted to act because of the highly mobile nature of the fraudulent telemarketers, on the other hand, it understood the importance of not interfering with or in any way hampering the operations of legitimate telemarketers as evidenced by the following expression of congressional intent:

> The Committee is not interested in further regulating the legitimate telemarketing industry through this legislation. Rather, the goal is to curtail any deceptive (including fraudulent) and abusive practices by specific telemarketers.[6]

In a similar vein, AMSA is anxious to curb the practices of unscrupulous movers thus accounting for its support of limited State enforcement authority. However, routine operational problems that arise in the course of moving often become the basis for consumer complaints even though the problems are unavoidable—loss or damage, delayed pickups or deliveries, etc.—situations that impact the operations of the most efficient and reputable movers. Nonetheless, unavoidable problems can become the catalyst for persistent consumer complaints. Legitimate, regulated movers should not be subjected to an additional layer of 50 State regulators and their city, town and village subordinates that may or may not understand the boundaries of appropriate Federal regulation. Unfortunately, there has been an unwarranted tendency on the part of certain State attorneys general to assume that persistent consumer complaints, whether justified or not, require action on their part.

We must not loose sight of the fact that unscrupulous movers are nothing more than crooked operators. They only exist to defraud the public. In its effort to deal with this problem, Congress must also not loose sight of the fact that only legitimate movers—those that are not at the heart of the problem—will comply with any new legislative measures that are enacted. The rogue movers will not. They will continue to ignore the law. Certainly that was the case with the illegal operators that are the subjects of the previously referred to criminal indictments (42 rogue movers and 74 individuals). They ignored the law, and if they were allowed to continue to operate, they would ignore the existing law as well as any new enactments.

Our experience indicates that many states are ill-suited to regulation of the interstate moving industry because they have elected to completely deregulate the transportation of household goods in their own intrastate commerce. While rogue movers

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[4] See footnote 1.
[5] House Report 103–20.
[6] *Id.,* p. 4.

engage in interstate commerce, the majority of their efforts are devoted to local and intrastate moves. Before undertaking Federal regulation, the states should forcefully deal with unscrupulous movers that operate within their jurisdictions.

AMSA welcomes the opportunity to work with this Committee and your staff to fashion a legislative proposal that will address expanded enforcement without impeding the operations of legitimate movers.

Unlimited Carrier Liability Would Be Disastrous

The members of AMSA remain unalterably opposed to any legislation that would authorize State officials or consumers to invoke or enforce State laws as an additional remedy to that provided by the Carmack Amendment.[7] Any tinkering with Carmack to expose interstate movers to such expanded liability would likely have a severe disruptive economic effect on interstate commerce.

The availability of State law claims to shippers and the states would obviously embrace both common law causes of action and those authorized by statute such as the various Deceptive Trade Practices Acts maintained by most states. The remedies available under such common law and statutory claims include injunctive relief, civil penalties, consequential economic damages, punitive damages, mental anguish and emotional distress damages, treble damages, and attorney's fees.

The moving industry's concerns with the application of State laws is two-fold. First, carriers will be exposed to substantially increased liability. Unlike freight carriers, movers deal with the personal effects of individual consumers. As a result, virtually any claim for loss or damage to a shipment of household goods involves an emotional element, some more so than others. Allowing State laws to be invoked to permit recovery for mental anguish or emotional distress will undoubtedly convert every broken chair to a family heirloom having irreplaceable sentimental value. The potential increase in liability to carriers could well be devastating to the interstate moving industry.

The second and more far reaching problem is the diverse nature of the various State laws. There is no uniformity among them. This, coupled with the potential for greater recovery under State law, would gut Carmack and effectively repeal it.

The Carmack Amendment not only provides a uniform regime of carrier liability, it allows for complete compensation to shippers for their damages resulting directly from the loss, injury, or delay to their shipments. Carriers know and understand their liability exposure under this nationwide system. Expanding liability to include State laws will subject interstate movers to 50 different standards.

To illustrate the point, consider the various Deceptive Trade Practices statutes maintained by most states. Although several states have adopted the Uniform Deceptive Trade Practices Act, or a variation thereof, the implementation or enforcement of the remedies under such statutes is anything but uniform. This is so because these statute require a subjective determination of what is deceptive or unfair. For example, Illinois has adopted the Uniform Deceptive Trade Practices Act.[8] It defines a deceptive trade practice by listing 12 different categories of conduct, the last of which is a catchall for "any other conduct which similarly creates a likelihood of confusion or misunderstanding." 815 ILCS, 510, Section 2 (a)(12). California's Consumers' Legal Remedies Act[9] lists 23 different types of conduct deemed to be deceptive which differ from those in Illinois. Civil Code Section 1770 (a). In Texas, the Deceptive Trade Practices—Consumer Protection Act[10]categorizes 27 types of conduct which, not surprisingly differ from Illinois and California. Massachusetts' counterpart simply declares unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce."[11] And New York has a similar definition.[12]

The uncertainty in these definitions is compounded by the enforcement authority granted to State officials and the basis for civil actions created for private litigants. In New York, the Attorney General may bring an action for injunctive relief, restitution, or civil penalty whenever he/she believes that a person, firm, corporation, association, or agent or employee thereof has engaged in or is about to engage in a deceptive practice. NYS, General Business Law, Art. 22–A, Section 349 (b). The same broad authorization is granted to the Massachusetts Attorney General. See General Laws of Mass., Part I, Art. XV, Chapt. 93A, Section 4. The same unbounded discretion is granted to the Texas Consumer Protection Division. See Chapt. 17, Texas Business and Commerce Code, Section 17.47.

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[7] 49 U.S.C. § 14706

[8] Illinois Compiled Statutes, 815 ILCS 510.

[9] California Civil Code, Sections 1750, *et seq.*

[10] Chapter 17, Business and Commerce, Subchapter E.

[11] General Laws of Massachusetts, Part I, Title XV, Chapt. 93A, Section 2.

[12] New York State Consolidated Laws, General Business Law, Article 22–A, Section 349.

While it might be argued that a State official is duty-bound to act with restraint in enforcing these laws, the same cannot be said of private plaintiffs who have a significant self-interest in pursuing a deceptive practice remedy. Yet these statutes afford the same unbridled basis for instituting a civil action. Massachusetts authorizes a civil action, including a class action, for any person injured by another person's deceptive act or practice. Chapt. 93A, Section 9. In New York, any person who has been injured by a deceptive act or practice may institute a civil action for an injunction and money damages, which may be trebled, as well as attorney's fees. N.Y.S. General Bus. Laws, Art. 22–A, Section 349.

The remedies authorized by the Statutes also vary from state to state. Illinois authorizes a civil action for injunctive relief and attorney's fees . However, proof of monetary damage is not required. A person need only show that he is "likely to be damaged." 815 ILCS 510, Section 3. The Texas statute specifically authorizes recovery of economic damages and damages for mental anguish, as well as treble damages, and attorney's fees. Texas Business and Commerce Code, Section 17.50. And California authorizes consumers to bring an action, including a class action, for injunctive relief, restitution, actual and punitive damages, as well as attorney's fees. Civil Code Section 1780, 1781.

The application of these State laws also presents significant procedural problems. Under the Carmack Amendment, a 2 year statute of limitation to bring a lawsuit for cargo loss or damage is imposed. This period commences from the time the shipper's claim is denied. 49 U.S.C. 14706 (e). However, State laws often provide a different period. California has a 3 year limitation period and it starts to run from the date of commission of the deceptive practice. Civil Code Section 1783. In Texas, the period of limitation is 2 years, and it begins on the date the deceptive act or practice occurred or within 2 years after the consumer discovered it. Texas Business and Commerce Code Section 17.565.

Legislation that would permit states and individuals to resort to State laws would turn the standard for measuring carrier liability for loss or damage back 100 years. The same problems that existed prior to enactment of Carmack would be revisited on the moving industry. Those difficulties were clearly summarized in *Schultz* v. *Auld,* 848 F.Supp. 1497 (D. Idaho, 1993):

> [I]f this Court were to adopt Plaintiff's position, the uniformity and certainty of the national scheme would be compromised. The position asserted by Plaintiff would enable one moving from any state to the State of Idaho to proceed under the Idaho Consumer Protection Act. Such a rule would create an entirely new scheme of potential liability for a carrier, as the right to assert additional causes of action would fortuitously depend from where or to where the shipper moved. It is not difficult to imagine that every suit brought against a carrier of household goods would include allegations of intentional conduct or fraud in an effort to avoid the preemptive effect of the Carmack Amendment. Moreover, to account for increased liabilities occasioned by the exception, carriers would necessarily be required to increase their rates, thus further defeating congressional policy to encourage reasonable rates for transportation.

Congress must not lose sight of the detrimental consequences of the current explosion of tort litigation throughout the Nation. When doctors are walking away in some states because of the cost of litigation, Congress should think twice before creating avenues for additional litigation. This is particularly so where, as here, there is in place a uniform Federal process that mandates full protection for aggrieved shippers.

Pro-Consumer Initiatives Should Be Enacted

AMSA officials have discussed with your staff a number of possible legislative proposals that would assist consumers in their dealings with reputable movers and would also help them avoid the schemes employed by rogue movers. It is appropriate to review some of those measures.

Expanded Arbitration

The Administration has also proposed that Section 14708 (a) of title 49 be amended by requiring that movers arbitrate with shippers all disputes involving claims of $5,000 or less and not, as now required, claims involving loss or damage to goods. AMSA is opposed to this proposal because its broad scope makes it difficult to reasonably predict its potential impact. It is clear, however, that, if enacted, this requirement will generate arbitration cases that arise from myriad complaints such as mere shipper dissatisfaction with a move apart from the fact that loss or damage to goods may not have occurred. Such an open-ended dispute settlement process is an invitation to shippers to pursue purely subjective disputes as trivial as the mov-

er's personnel lacked "professionalism" or their appearance, language or demeanor was unacceptable. In addition, consumers will be encouraged to pursue damages they believe result from alleged inaccurate representations concerning a carrier's performance, emotional distress and physical inconvenience, all of which they would insist warrant some measure of damages, compounded possibly by requests for punitive damages. An obvious problem brought on by this scenario is the difficulty in determining how independent arbitrators will resolve disputes of this nature and what standards the moving industry must follow when addressing such claims.

It is AMSA's position that consumers would be better served if the existing mandatory binding arbitration threshold for loss or damage claims was increased from $5,000 to $10,000. This will provide greater consumer access to inexpensive neutral binding arbitration, thus avoiding the expense of costly litigation. It is also appropriate that the subject matter of claims that are eligible for arbitration be expanded beyond loss or damage to goods to include disputes involving the payment of carrier charges, a legitimate point of controversy between consumers and carriers.

Hostage Freight

The unlawful holding of consumers goods is a frequently employed tactic used by rogue movers to inflate charges and demand their payment in exchange for the consumer's goods. The rogues obviously ignore the existing Consumer Protection regulation. It requires that movers relinquish possession of shipments moving on nonbinding estimates when the shipper requests delivery upon payment of 110 percent of the estimated charges and defer demand for payment of the balance for 30 days from delivery.[13]

Civil or criminal penalties should be imposed for blatant violations of the existing regulation.

Operating Authority Registration Requirements

Under the current FMCSA registration requirements, essentially anyone that is willing to pay a $300 filing fee and provide evidence of certain insurance can obtain authority to operate as a motor carrier of household goods throughout the entire United States. Many rogue movers have been granted multiple operating authorities under this most liberal system. They use their multiple authorities to play "bait and switch" games with consumers and to disavow knowledge of conduct they want to disclaim.

In the case of applicants for household goods authority, it is AMSA's position that all such applicants should, at the time of their application, be required to (1) specifically identify their loss and damage arbitration program, (2) identify their tariff and provide a sample of its notice of availability for inspection, (3) make certain disclosures related to the service they will perform on behalf of consumers, and (4) disclose all its affiliations and ownership ties with other movers.

These are elementary requirements that can and should be met by all legitimate applicants for operating authority.

Written Estimates and Inventories

Consumer shippers of household goods deserve the benefit of written estimates of carrier charges for transportation and all related services. Reputable movers routinely provide this information to consumers. Rogue movers try to avoid putting anything in writing before they take possession of goods or their shipping documents are deliberately vague on the important points.

Likewise, consumers should also receive written inventories of the goods they tender in sufficient detail to assist them in resolving any disputes they may have with their movers.

Regulation of Brokers

FMCSA should be required to establish regulations governing the relationship between consumers and brokers of household goods transportation services, but most particularly brokers that operate exclusively on the Internet. A regulatory void exists in this area and the phenomenal growth of consumer reliance on the Internet as a means of locating service providers has resulted in countless numbers of moving arrangements that have no basis in the existing Consumer Protection regulations. AMSA, as noted, submitted a proposal to FMCSA that would address this situation.

Expanded Advice To Consumers

FMCSA should be directed to employ all available means to disseminate information to consumers concerning the moving process and their rights when dealing with

[13] 49 C.F.R. § 375.3(d).

movers. This would include the promulgation and dissemination of regulations through the FMCSA website and other means of communication customarily followed by Federal agencies. In this same connection, a consumer complaint data gathering system should be established by FMCSA.

Conclusion

The regulated interstate moving industry as represented by AMSA transports roughly 1.3 million interstate shipments each year with a high degree of consumer satisfaction. While the rogue mover problem is the predicate for possible Congressional action, the search for solutions must not result in statutory requirements that overburden and impair the legitimate mover's ability to provide its essential service to the public.

Since abolishment of the Interstate Commerce Commission in 1996, AMSA has been telling Congress, at every opportunity, that the solution to the problems created by unlawful and rogue movers is more effective enforcement by the Federal Government of the existing statutes and regulations governing the moving industry. This position has not waivered. AMSA is not, however, opposed to strengthening the existing Federal statutory enforcement scheme. We believe our recommendations to this Committee will effectively deal with rogue movers, bearing in mind that no body of law can completely deter a criminal element.

We also firmly believe that conferring enforcement authority on the states, or exposing the moving industry to potentially unlimited liability for its interstate service, would cause many moving and storage operators to question the wisdom of their continued involvement in interstate transportation. The network of small businesses that make-up the moving and storage industry should not be overburdened with State efforts to uniformly interpret and enforce Federal regulations, a proposition that will be virtually impossible to achieve.

The interstate transportation of household goods is a Federal endeavor which should be regulated by the Federal Government.

Senator SUNUNU. Thank you very much to all of our panelists.

Let us begin the questioning with Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman, and thank all the panel members.

You talked about diabetic drivers. I think someone—Mr. Byrd may have mentioned the proposals on drivers who use insulin. And I really don't understand it, because it kind of says, well, if you have 3 years of commercial driving experience as a diabetic, then you have to have that in order to qualify to get a commercial driver's license. I mean, I don't see how you have it in the first place in order to have that experience as a commercial driver.

Can anybody on the panel comment about the entire issue of diabetics being able to receive a commercial driver's license? I'm trying to figure out what is a fair way of determining their fitness for driving. Anybody want to comment on it? Mr. Byrd, you had mentioned it.

Mr. BYRD. Yes, I'd like to comment. Well, as I understand the issue, currently our members—we have an aging work force, aging membership, and a lot of our members are transitioning. They may not currently have diabetes, but, you know, they may have hypoglycemic-related issues that may transition over into having diabetes. One of the problems we've encountered is that these drivers, as they—they're usually some high-seniority people. They are no longer able to drive, because they no longer qualify under the medical qualifications.

But because we're not involved in intrastate commerce, and many states—as I understand it, FMCSA has reported that roughly 20 states either don't have a waiver program, or they have some very, very significant limitations as to how to get into their waiver

program. Our folks never will have an opportunity to get the 3 years of experience of driving while using insulin.

Senator BREAUX. Do you have a recommendation on how we should handle this?

Mr. BYRD. Yes. I think that the expert medical panel that FMCSA convened made recommendations. I think that the medical practice that's employed, in terms of treating diabetes now, has advanced to a stage, or to a state, to where, according to the Committee, as I recall—it's a month or two of evaluation to see how they tolerate using insulin, and then they'd be allowed to drive on an individual or a case-by-case basis.

Senator BREAUX. Ms. Claybrook—thank you—do you have any comment on how we should test or judge these drivers?

Ms. CLAYBROOK. It is a conundrum, Senator, and I know there's been a lot of controversy about this. We really don't have a proposal, but perhaps we could submit something for the record that might be helpful to you. I'd like to think about it a little bit more.

Senator BREAUX. Thank you.

[Ms. Claybrook submitted the following:]

ADVOCATES FOR HIGHWAY AND AUTO SAFETY
Washington, DC, November 30, 2001

SUMMARY OF COMMENT

Diabetes Exemption Program—Federal Motor Carrier Safety Administration

Current Federal regulation prohibits persons who require insulin injections to treat their diabetes from driving commercial motor vehicles (trucks and buses) in interstate commerce. The FMCSA has proposed establishing a program to grant certain drivers with insulin treated diabetes mellitus (ITDM) exemptions from the existing Federal medical safety standard. The agency already has a program under which exemptions are granted from the Federal vision standard to drivers who do not meet the existing vision requirements. Advocates presented a number of arguments against establishing the proposed program based on the scientific evidence and applicable legal standard.

The comments reviewed all the important evidence cited by the agency and showed, in turn, how each failed to provide a convincing basis for the agency's conclusion that persons with ITDM can operate at an equal level of safety performance. Advocates pointed out that all of the research studies available to the public provided, at best, mixed results. Even those that indicated that, in general, diabetic drivers might be able to operate vehicles safely, insulin treated diabetics (those for whom the program is designed) had a greater risk of medical impairment. Other cited research results did not distinguish between type of diabetes or by commercial vehicle size. The most recent study relied on by FMCSA to support the program, a 1997 study conducted by the Federal Highway Administration (FHWA), has not been made public. The agency violated principles of due process and fairness by proposing a program predicated on unpublished research results that are not available for public review and comment. Advocates' comments also faulted the agency's reliance on the FHWA Diabetes Waiver Program, which only had 116 drivers when it was discontinued in 1994 after Advocates successful litigation against the FHWA Vision Waiver Program. Because of poor research methodology, lack of a comparison group, the small number of participants and the fact that the program was terminated before completion, the data and conclusions from the FHWA waiver programs cannot be extrapolated to apply to other research and different drivers.

The comments also took issue with FMCSA's invocation of a Federal Aviation Administration (FAA) program that permits persons with ITDM to obtain third class pilots certificates. Reliance on the FAA program is misplaced because these certificates only permit the operation of private and personal aircraft. The FAA program prohibits, on safety grounds, anyone with ITDM from obtaining a second- or first-class certificates that would permit air freight or passenger aircraft operation. Thus, the FAA actually prohibits the very types of operation that are directly analogous to commercial truck and bus operations, which the FMCSA exemption program seeks to allow.

Advocates presented a strong argument regarding the legal standard the FMCSA must apply in making safety determinations to grant exemptions. The comments stated that based on the evidence presented in this record the agency had not met its burden of proof or sustained the legal standard required by law to grant exemptions. The comments also countered the agency contention that the present legal standard for exemptions is more flexible, and affords the agency more discretion, than the previous legal standard for granting waivers from the Federal standards.

Senator BREAUX. On driver disqualifications, on September 30, the—commercial motor vehicle drivers who are convicted of a traffic violation while operating a car, results in the cancellation or suspension or revocation of their car-driving privileges, are disqualified from getting a commercial motor vehicle license. Also disqualified are individuals convicted of committing drug- or alcohol-related offenses while driving a car. That restriction has now been in place, as I take it, for approximately 8 months. Can anybody tell me, has anybody been disqualified as a commercial driver as a result of that new regulation in the 8 months it's been in effect?

Ms. CLAYBROOK. I don't know that, Senator, but one of the things that we believe is that before a commercial driver's license is issued, that the car-driving record should be checked, and I think that that would be an improvement. This is if—once they have their license, their truck license, then if they have these convictions, then—or revocations—then it puts at risk their CDL. But we believe that it ought to be something that's checked initially, as a preventive measure. And I'm almost sure that, for pilots, that's correct.

Senator BREAUX. It is.

Mr. Byrd, do you have a comment on this?

Mr. BYRD. Yes, I receive probably about one call, possibly two calls per week concerning drivers who have received DWIs in their private cars. And now, pending, I guess, adjudication, they may be suspended.

At this point, I don't know of any actual cases of a person losing their CDL as a result. But I do know that there are some court cases that are in the process.

Senator BREAUX. Mr. Duncan—thank you—what's the policy of the Trucker's Association with regard to hiring drivers who have previous convictions or revocations or lost their licenses?

Mr. DUNCAN. Well, we do the background checks, and we will not hire those drivers. All right? And we do subsequent checks of the driver's license record so that we find violations that even the driver hasn't reported. So that's done on a subsequent basis. But, you know, as in the testimony, we would like access to more of the FMCSA's safety data, the roadside inspection data, and that type of thing, during the hiring process, so we would have more information about a driver that we are considering for hiring, more than just the driver's license information.

Senator BREAUX. Well, is the policy you just enunciated industry-wide, or each company has their own policy with regard to hiring someone, for commercial driving purposes, who had lost their driver's license as a—for driving a vehicle, a car?

Mr. BYRD. I can't state categorically that every company does that. No.

Senator BREAUX. Ms. Claybrook, what should the policy be here? Should a person who has a previous conviction or a DWI, for in-

stance, or had their license revocated, revoked, what have you, be able, in the future, to get a commercial driver's license at all?

Ms. CLAYBROOK. Well, I'm not sure that this should be a lifetime suspension from ever having the ability to get a CDL, but I do think that there ought to be criteria laid out so that they don't just automatically, you know, after a year or two, be able to come back and get a CDL. I think there ought to be a program for the training or for making sure that they're over the problem that they had, that they're no longer drinking or taking drugs, and that there ought to be a substantial period of time, because otherwise drivers would just come back.

Senator BREAUX. I take it that as of September 30 of last year, 2002, commercial motor vehicle drivers who are convicted of traffic violations, while operating a car, which resulted in the cancellation, suspension, revocation of the driver's license, are disqualified from operating a commercial motor vehicle. I'm not sure, but is that permanent, or is that for a period of time, for as long as the license is suspended?

Ms. CLAYBROOK. Suspended, right. It's until they get their driver's license back again, I believe.

Lieutenant SULLIVAN. SENATOR?

Senator BREAUX. If they get their driver's license, they'd be eligible for a CDL?

Ms. CLAYBROOK. That's correct.

Lieutenant SULLIVAN. Senator?

Senator BREAUX. Yes, Mr. Sullivan?

Lieutenant SULLIVAN. I think you're going to find, sir, that the states are going to wait the 3-year period, as they—they'll take this issue, particular issue, to their state legislatures. Even the states that have adopted the Federal regulations by rote will remove that and go to their legislature because of the importance of this issue.

Senator BREAUX. You think some states will not follow this, you say?

Lieutenant SULLIVAN. No, I think everybody will follow it, but they'll use a different mechanism to get there. By adoption. Massachusetts adopts a Federal regulation by adoption, and any change in the Federal regulations is a change in Massachusetts law, but I do not believe, from my conversations I've had with the licensing authority, the registry of motor vehicles, in Massachusetts, they are willing to do that with this, because of the nature of it. It think what we're going to find is there's going to be a delay on it, and they're going to bring it to the state legislature to put it into our "operating under the influence" law, or move it over under the Massachusetts general law, rather than into a regulation.

Senator BREAUX. Well, my only comment would be, I don't think there's any question that someone who has lost their driver's license to drive a vehicle, a car, should not be able to have a commercial driver's license to drive a truck. It just seems like just common sense.

Lieutenant SULLIVAN. I believe it is common sense, sir, and I—my understanding of the rule is that the penalty phase will continue on to the same finite period as it would in the other one, and the major concern now is, are our systems strong enough to hold the giant influx of convictions from passenger cars and histories of

everybody? Is the CDL system going to hold that? Do we have enough faith in that system to say, "Well, we have the regulation in place, and are we going to be able to effectively manage it?"

Senator BREAUX. Well, thank you. Thank the panel members.

Thank you.

Senator SUNUNU. Thank you.

Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman. And I want to thank the witnesses.

I think, Mr. Chairman, for future reference—I'm going to alert Senator McCain to this, as well—I think that when we have six witnesses at the table, it's awfully hard to be able to communicate the way we'd like to.

But we welcome all of you in the group. And there's so much ground that you've covered, with six people, all of whom present interesting testimony, that it's hard to connect the dots. But the Chairman has been patient. I appreciate that.

Mr. Duncan, I hold here an ad, run by the ATA, May 23 of this year, and it says, "Eighty-seven percent of America's goods move by truck. But some want Congress to enact a national roadblock." And it calls these roadblocks "bad for the economy, bad for public policy." Would you mind describing what roadblocks you see Congress wanting to enact, please?

Mr. DUNCAN. Well, I think you're referring to the SHIPA bill, which actually would extend legislation to more highway than—or just extend——

Senator LAUTENBERG. What kind of legislation, Mr. Duncan?

Mr. DUNCAN. The SHIPA bill? Is that what you're referring to?

Senator LAUTENBERG. Yes. Well, for instance, would the ATA want to allow expanded use of triple-trailer trucks?

Mr. DUNCAN. The ATA policy is that we believe the states are best suited to make those size and weight determinations. They best know which highway's infrastructure can serve them and which ones cannot serve them. There are obviously lots of places where there cannot be any expanded weight and size.

Senator LAUTENBERG. So the Federal Government should not place standards on highways that the Federal Government contributes to?

Mr. DUNCAN. It is the ATA policy that the states know best how to administer those regulations.

Senator LAUTENBERG. So if you had your druthers, you'd rather see the states just get the money from the Federal Government without condition as to what kind of vehicles, what highway construction there ought to be, et cetera.

Mr. DUNCAN. Well, I think you miss opportunities to enhance safety if you arbitrarily say that a certain state can't do certain things. So——

Senator LAUTENBERG. I don't understand that. I'm sorry. You say we miss opportunities for safety. Let me ask you this question. You say that we have to expand truck use and that we ought not to inhibit—how about—should we have a separate speed limit for trucks, do you think, different than the cars, if the highways are questionable as to the safety, or—for a speeding truck?

Mr. DUNCAN. Well, I think the safety experts would tell you, having vehicles moving at different speeds on the same highway creates a safety risk.

Senator LAUTENBERG. Creates a safety problem.

Mr. DUNCAN. Yes.

Senator LAUTENBERG. And you said that larger vehicles will promote safety and "no doubt that continuing to further restricting current Federal size and weight limit costs lives." I guess that confirms what you said. So you make them bigger, and you start saving lives. So if we make them big enough and often enough, then we won't lose anybody on the highway. Is that——

Mr. DUNCAN. Well, Senator, we only operate larger combination vehicles on restricted highways in pretty remote areas. And by doing that, you can haul more freight with fewer drivers, more freight with fewer diesel engines, so there's both a safety benefit and an economic benefit, but only in very restricted parts of the country.

Senator LAUTENBERG. Do you know whether triple trailers are involved in more accidents than just a regular double—or a regular long trailer?

Mr. DUNCAN. Triple trailers, for both the ATA and our company specifically, have the best safety record of any combination of vehicles we operate. Now, that's not to say that they're inherently safer; it says that they're operated in very restrictive highways, they're operated in very restrictive weather conditions, only the most senior, well-trained drivers are put on those vehicles. So you put all those factors together, yes, the safety factor for those vehicles are the safest we have in our industry.

Senator LAUTENBERG. Yes. But your testimony calls for more enforcement of speed laws, and so forth. But I don't see your ad here that warns us that all we want to do here is put roadblocks in the way of—does that hyperbole get you a little bit or——

Mr. DUNCAN. Senator, I don't have that——

Senator LAUTENBERG. OK.

Mr. DUNCAN.—ad in front of me. We'll be glad to give you testimony to that——

Senator LAUTENBERG. The type's pretty big. It says "Eighty-seven percent of America—goods move by truck, but some want Congress to enact a national roadblock." And the, you know——

Mr. DUNCAN. Well, 87 percent is correct. I mean, fast-cycle distribution has become a way of life in commercial business here, and that is inherently supported by the trucking industry. Even if it's moved subsequently by rail, the final delivery is accomplished by a truck in more cases than not. So it's a very, very important part of our commerce. And all we're saying is, we don't want to promote any unsafe practices, but we don't want to overlook practices that benefit the economy and also help in the environmental and the safety regard.

Senator LAUTENBERG. Ms. Claybrook, what do you have to say about the larger trucks and becoming safer? I must have some kind of an optical illusion. I've been driving a long time, as you can tell by the wrinkles and the color hair, but I always feel just a little bit more concerned about driving along a truck when he's outracing me and I'm going too fast in the first place.

Ms. CLAYBROOK. Well, first of all, the public hate these larger trucks, they fishtail and other things as they're going down windy highways. I have a map of 16 states where the longer—the triples are allowed, the longer combination vehicles. It is true that they're mostly in the western states. But, for example, my family lives in Oregon, and they're on the highways in Oregon, and they have to drive past them all the time. So it's not as though they're separated from cars.

In terms of going a different speed, these trucks take a much longer time to stop than do cars, and so if they're going at the same speed as cars, then they're going to have trouble stopping in the same distance that cars do. And so I think that that, alone, argues for them to go at a slower speed.

I'd also say that the argument of the industry has always been, "Well, we don't drive in bad weather, and we only drive on certain highways, and we have the best drivers doing the pulling of these trucks." But the fact is that the pressures of the trucking industry for just-in-time delivery, where drivers drive all night, and the shippers want their product at a certain time, or there are types of products that are, you know, subject to disintegration over a period of time if they're not delivered quickly, there is just tremendous pressure. And if these trucks were allowed anyplace in the country, the trucking industry would do what it's done with size and weight rules in the past, which—and you can, sort of, see it from this map—this one poor white state in the middle here is probably under a lot of pressure if the law was changed right now. It's not, but it would be. And so they get as many states as they can, and then the last states, they put tremendous pressure on and say, "Well, we're allowed to do it every other place."

If you have a triple that's allowed in one state or two states, and then they want to deliver something in the third state that doesn't allow triples, you know that there's going to be tremendous pressure to allow them, regardless of the condition of the highway.

So we think that the freeze on longer combination vehicles is very appropriate, and we hope that this Congress will not listen to the trucking industry and try and change that.

Senator LAUTENBERG. The U.S. DOT found, in its 2000 Comprehensive Truck Size and Weight Study, that multi-trailer trucks could be expected to experience an 11 percent higher fatal crash rate than single-trailer trucks. Does that 11 percent figure appear accurate to you?

Ms. CLAYBROOK. It does. I was going to use it. I should have, myself.

Senator LAUTENBERG. Yes.

Ms. CLAYBROOK. We rely on the DOT to do Those kind of statistical analyses, and I think that it is correct. And any——

Senator LAUTENBERG. Mr. Duncan, what——

Ms. CLAYBROOK.—anyone just has to drive beside one of those vehicles and realize—among other things, by the way, they have great trouble going on and off the highways, because the highways were designed many years before the advent of triple trailers, and so you often see them going on the edges of the exit ramps and sometimes over the exit ramps. They also, when they go around corners, if you're in the wrong position, your car can just be——

Senator LAUTENBERG. Mr. Duncan, what do you think about that question, about the 11 percent higher in fatal crash than single-trailer trucks?

Mr. DUNCAN. Well, the statistics we have do not support that. I've seen a number of statistics on highway crashes, both internally within our company, by the ATA, I've seen a recent study by the Ohio Turnpike, which showed that, over a 2 year period, I believe, that the triples combination had a 47-percent better accident frequency than all other combinations involved over that study of the time period. We can certainly get you those studies.

But time and time again—they are safe vehicles when used on proper conditions in proper highways and with the proper drivers.

Senator LAUTENBERG. So you're saying limited highway access——

Mr. DUNCAN. Absolutely.

Senator LAUTENBERG. Yes. Make sure that they don't get onto other roads. We're going to try to do that, Mr. Duncan.

And Lieutenant Sullivan, you say you've stopped thousands of trucks in your day. Is there a—I don't want to embarrass anybody in Massachusetts; I like the state very much, but——

Lieutenant SULLIVAN. Thank you.

Senator LAUTENBERG.—is there as much of a focus, do you think, that—your colleagues in law enforcement—on speeding trucks as there ought to be? Do you sense that you just don't have the hands—is it tough to stop a speeding truck that's got even a double behind it and moving along at a high rate of speed?

Lieutenant SULLIVAN. No. It's not. You have to use discretion when you're going to stop a truck. You can't just pull it over like you're going to do a passenger car and stand on the side of the road and wave it in running radar. But you have to have a plan, and you have to follow it to completion.

Senator LAUTENBERG. How about on a crowded highway? Is it——

Lieutenant SULLIVAN. No.

Senator LAUTENBERG. No?

Lieutenant SULLIVAN. It doesn't. It doesn't present a problem on a crowded highway, either. The problem is, is that with the resources available, the complexity of the regulations we've kind of ignored all the local police officers and even state police officers that don't have the specialized training. We've kind of left them out in the lurch, and they're embarrassed to stop trucks, because they don't know anything about them. A speeding truck is a speeding truck, but—and when you lose control of the situation, police officers don't like to do that. And that's why we suggest—you know, we've got this knowledge gap. We've got to close it.

Senator LAUTENBERG. Uh-huh. Speeding truck more dangerous than a speeding car?

Lieutenant SULLIVAN. I don't believe so.

Senator LAUTENBERG. You don't.

Lieutenant SULLIVAN. No, I don't. No, I don't.

Senator LAUTENBERG. OK. We're at odds on that, although with all due respect.

Lieutenant SULLIVAN. Yes, sir.

Senator LAUTENBERG. I'm not a police officer, but I've got a lot of mileage on this body, and I've been interested in safety questions for a long time. Everyone knows——

Lieutenant SULLIVAN. I think that——

Senator LAUTENBERG.—I mean, we've seen some horrible, horrible crashes in the State of New Jersey, where we are very, very crowded, because we're an entryway. As a matter of fact, as I listened to the group here, I think the production facilities ought to move closer to the market——

Lieutenant SULLIVAN. Well, all I can——

Senator LAUTENBERG.—down the highways——

Lieutenant SULLIVAN.—all I can do is speak from experience and from our statistics. And when we get involved in the speeding car and the speeding truck, and 70 percent of accidents are caused by driver error, and more than 50 percent is caused by passenger car, then it becomes——

Senator LAUTENBERG. Have you got a family——

Lieutenant SULLIVAN.—then it becomes——

Senator LAUTENBERG.—got a family, Lieutenant? Do you have a family?

Lieutenant SULLIVAN. Yes, I do. Thank you.

Senator LAUTENBERG. Would you rather see them not intimidated by large, speeding trucks or—I mean, the accidents that we've seen in our state—and I know that it's not unique to New Jersey—when a truck hits a car, you're looking at such incredible damage. I know that I worry about my family—my kids, my grandchildren—when they're out there in the highway mixing it up with trucks. In New Jersey, we have, on our turnpike, if you've ever seen it—a very, very busy road, we separate, as much as possible, the cars and trucks, but it's impossible, with the volume of trucks. And if Mr. Duncan is right, the only recourse is just to keep on expanding the facility—that we're going to present ourselves with a problem, I think. Look——

Ms. CLAYBROOK. Senator——

Lieutenant SULLIVAN. I agree, Senator. And the perception is that the greater damage in—because they're so big, that they're going to be dangerous, and we support the systems that can take these people, whether they're passenger-car drivers or they're truck drivers, off the road, and aggressive traffic enforcement against both.

Ms. CLAYBROOK. Senator Lautenberg, can I just comment on one thing? Twenty-three percent of all passenger-vehicle occupants who die in multi-vehicle crashes are involved in a collision with a big truck, but big trucks are only 4 percent of all registered vehicles. So they do an enormous amount of damage to people. And one of the reasons that the statistics of 70 percent is caused by the car driver is because when the police interview people after the crash, there's no car driver to interview, so the only person they interview is the truck driver, who says, "Yes, it wasn't my fault. It was that guy over there." And there have been several studies that have evaluated that.

I would like to submit for the record something that rebuts that number, because this is "blame the car driver" time.

And while I think that—whether you're a car driver or a truck driver, you ought to be arrested if you're speeding. Nevertheless, I think that statistic is completely incorrect, and I would like to mention that.

The other thing is, of course, when trucks are carrying hazardous materials, which many, many trucks are, and they're speeding and have a crash, they can close down, you know, an entire city or community for a day, as we have seen in this area in the not-too-distant past. And so when these trucks are speeding, they don't have the ability to stop in the same distance as cars. They're completely intermixed with cars. I think that they are more dangerous even than car drivers.

Senator LAUTENBERG. Yes.

Mr. Chairman, you've been more than patient. I appreciate it. Thank you very much.

We know one thing, that there is a message out there that says we have to make sure the rules and regulations are there and that they are enforced, and we have to provide the resources to be able to do that.

And, Mr. Duncan, I think that when the industry talks about that Congress wants to erect national roadblocks, I think you ought to be prepared to mention what those roadblocks are, so we can get after those in the Congress who are recalcitrant, and we ought to make sure that everyone knows that all they're doing is throwing up roadblocks.

Senator SUNUNU. Thank you, Senator Lautenberg.

I've been advised we have a vote in approximately 10 or 15 minutes.

Senator Smith?

STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON

Senator SMITH. Mr. Chairman, when I was a young boy, I remember our family made a move and when we got to the destination where our goods were to be delivered, the phone rang, and the mover was on the other end of the line saying if we didn't pay X additional, that we wouldn't get our stuff. It was a searing experience as a young boy.

And recently—I don't know why it is, but I've had several constituents come to me, who have moved to Oregon, and who have been held up, essentially bribed, by the people moving their goods. And I didn't know how big a problem this is until I started looking into it. And apparently, depending on the year, the number of complaints will go from 4,000 to 9,000 to 20,000. This is highway robbery, literally. And I would like this Committee to focus on this problem.

And I want to announce that—apparently today, the Department of Transportation has issued a new ruling to enhance household goods consumer protection. And apparently that's really very much in need, and I would love to get the response—Mr. Harrison, maybe you can help me to understand what's going on here, because the case I—I remember, as a boy, my Dad saying to the mover, "I will be calling the ICC as soon as we hang up here." But the ICC doesn't even exist anymore. And he got his stuff, because

he was able to say, "I'm taking you to the ICC unless I get my things."

But where do people go today? Where do they get redress? Where do they get justice on America's highways when families are put into this kind of trauma, where they've got a deadline, a job, a schedule, and somebody says, I'm keeping all your stuff?

Mr. HARRISON. Well, you're right, Senator, the Interstate Commerce Commission regulated the moving industry since 1935 or so. The Congress eliminated that agency in end of 1995 and transferred the household good regulations and responsibilities to the DOT. But first the Federal Highway Administration, and now the Federal Motor Carrier Safety Administration, have been somewhat indifferent about their responsibilities, relative to the enforcement of the consumer-protection rules, which have not changed; they've been on the books for a long time.

Senator SMITH. Sure.

Mr. HARRISON. And, as a consequence of that, since 1996, the so-called rogue movers have flourished and are ripping off consumers, mostly by holding shipments hostage and demanding four or five times more than what the original estimate called for, which is a violation of an existing Federal regulation.

Senator SMITH. Right.

Mr. HARRISON. But there hasn't been sufficient enforcement by the Federal Government up until just recently. There seems to be a renewed interest by the agency, in terms of enforcement, and they are asking Congress for more money to, in fact, increase their enforcement activities.

Senator SMITH. Well, I'm glad to hear that, and I'd like to suggest, Mr. Chairman, that this Committee make this the subject of a hearing, to turn up the heat and provide the resources, because the American people, in our mobile society, are getting ripped off. And I've had too many complaints—and it may just be a coincidence—that people come to me and say, I just had the worst experience moving to your State, by being ripped off by a moving van. And I just think if resources are needed, then this is a priority that ought to be put on the agenda of the U.S. Government, because this is interstate commerce, in a classic sense, and it is filled with corruption right now, and we've got to root it out.

So, Mr. Chairman, thank you for allowing me to make these comments and making this point about a very crying need in American commerce.

Thank you.

Senator SUNUNU. Thank you, Senator Smith. And I would certainly highlight the fact that the Acting Administrator, Ms. Sandberg, addressed this issue briefly in her remarks. We wanted Mr. Harrison to be here, because we fully understood the degree to which complaints have increased and that this is an issue. And obviously the new rule that's been put out today by FMCSA is an indication that they believe this to be a priority, as well.

Let me conclude with a few questions, beginning with the issue of safety. Ms. Claybrook, you suggested—I think you said in your testimony—that the 1991 Act, which, I believe, Mr. Lautenberg was largely responsible for—was very successful, correct?

Ms. CLAYBROOK. I did.

Senator SUNUNU. I look at fatalities, and I'm not an expert on the law, and I'm sure it is a step in the right direction, but with regard to its efficacy, in the 5 years following its passage in 1991, fatal accidents involving large trucks seem to have increased from roughly 4,500 fatalities per year to maybe 5,200, 5,300 per year. Why would that be?

Ms. CLAYBROOK. Well, I was talking about the longer combination vehicle freeze. And the numbers that you cited are all large trucks; they're not just the longer combination vehicles.

And I will take a look, Senator, if we can find the data—it's very hard to get this data—on the different types of trucks. It's one of our complaints, that the Federal Motor Carrier Safety Administration's data is not uniform; and, therefore, it's very difficult to evaluate, by type of truck, the fatalities.

But what I meant by that was that—my statement was that it did stop the incursion of these longer combination vehicles—that is, triples and longer doubles—into other states. And there had been huge fights over whether or not to allow them in, and there had been proposals to have them in the East Coast and some of the smaller states with smaller highways and so on. So that's essentially——

Senator SUNUNU. Well, any additional data that you might be interested in providing would be welcome.

This was a point that came up during Administrator Sandberg's testimony, that new regulations really should be based on evidence that indicates that those regulations will address concerns of safety. That's what we're all here for.

Ms. CLAYBROOK. Absolutely.

Senator SUNUNU. I mean, regardless of whether we agree or disagree on every specific regulation, everyone is concerned about safety. So data is important, and I know Mr. Duncan offered to provide some information that might reflect a different perspective than the statistic given regarding the 11 percent greater incidence of fatalities with certain large-truck vehicles. Again, that would be welcome, because—and I would want to make sure, as a policymaker, that we're working with the best information possible.

Ms. Claybrook, you suggested that—I think you said that the highways in New Hampshire were somehow not suited to trucks of a particular size. I'm not quite sure what you meant by that.

Ms. CLAYBROOK. Well, I meant that in the East Coast, the highways are—particularly the ability to get on and off in all these major highways. You come from smaller roads——

Senator SUNUNU. Littler states, so we have littler roads?

Ms. CLAYBROOK. No, but you have many more single-lane roads, often in some of the older states. I didn't mean because it was a littler state; but in the East Coast states—and, in the East Coast, particularly, in the New England area. Not in Maine. Maine, it has huge highways, and I've been on them—I've been on them in New Hampshire, as well—but you have a lot——

Senator SUNUNU. Do you think the per capita incidence of multilane roads in Maine is higher than the per capita incidence of multi-lane roads in New Hampshire? Is that what you're suggesting?

Ms. CLAYBROOK. I think it might be, actually, but I'm not positive. But I think it might be.

Senator SUNUNU. Let's see. You had a map. And I think you talked about—experience of Oregon. I'm sorry Senator Smith left. But it would seem to me, as I understand the regulations, that Oregon is free to decide not to allow tandems if they so choose.

Ms. CLAYBROOK. That's correct.

Senator SUNUNU. Are you suggesting that the people in Oregon are consciously making decisions that aren't in keeping with their safety interests?

Ms. CLAYBROOK. Well, it's the legislature that made the decision. But I think——

Senator SUNUNU. It's the people that elected the legislators.

Ms. CLAYBROOK. That's right. That's correct. I think if you take a poll of the population in any state, you'll see that they don't like these trucks, whether it's Oregon or any other state. It just happens that I have some family in Oregon, who moved there, were unused to triple trailers, and are scared to death of driving on those highways because of the triple trailers.

Senator SUNUNU. Being an elected official, I'm conscious of the importance of public opinion, but are you suggesting that that's how we should be promulgating new rules and regulations, is by taking polls?

Ms. CLAYBROOK. No, but I think that the public view ought to be taken into account, since they're the victims in truck crashes. They're the ones who are killed, and the public knows that. I think it's in—and I'll submit these polls for the record—that in the last 8 or 10 years, advocates for highway and auto safety have taken polls on a number of different trucks, safety and auto safety issues, and the most overwhelming support is in the regulation of trucks.

Senator SUNUNU. But there would seem to be some contradiction, just using the hypothetical case of Oregon, or the real case of Oregon. If the polls are so overwhelming, why would the legislature there either not take them into consideration in passing new rules, or, if these regulations are really contrary to the public will, why aren't these legislators paying a political price?

Ms. CLAYBROOK. Well, it takes a lot of organization to make that happen, Senator, as you know.

Senator SUNUNU. A public citizen knows a lot about organization.

Ms. CLAYBROOK. But the rules for triple trailers have been in Oregon for a long time. And I certainly would like to see that, actually. I don't know whether my family has the energy to get involved in doing something like that in Oregon. But I think that the legislators have felt the pressure of public opinion, but it's more than just public opinion that has to be taken into account. And, obviously, the support of the trucking industry is another major factor in the decisionmaking process, and they're probably much more potent, much more extensively, you know, involved in the legislative process than individual citizens.

Senator SUNUNU. Speaking of the trucking industry, Mr. Duncan, is the ATA seeking to change the current size and weight restrictions?

Mr. DUNCAN. No. The ATA policy is that we think, we believe, and it is our policy that the states should be allowed, but there is no effort underway to change that.

Senator SUNUNU. OK. You don't see any contradiction there? That you don't seek any changes, but you want the states to be allowed to seek changes?

Mr. DUNCAN. Well, we are a diverse industry, where our members have lots of different agendas. The one that we agree upon, however, is truck safety. All right? So on that matter, we—it's a matter of policy that we believe the states are best suited for that.

But, you know, to comment briefly, I heard time and time again about the large, speeding truck. I would contend that the operative word there is "speeding," and that's the behavior that needs to stop, whether it's a truck, whether it's a car, whether it's a bus, that that is the contributing factor.

I would also say that we have limited funds to approach truck safety. There is a major study underway for truck causation among the DOT, and we are anxious to get that study completed, because I think the results of that will tell us where we can put the dollars to save the most lives.

Ms. CLAYBROOK. Senator——

Senator SUNUNU. Ms. Claybrook, let me ask you a question, and you can comment on that.

Ms. CLAYBROOK. Right.

Senator SUNUNU. Maybe we can find some agreement here. Do you believe that carriers should have access to information on drivers' history of logbook violations, DOT reportable crashes, and roadside inspections?

Ms. CLAYBROOK. By driver name—you mean by driver?

Senator SUNUNU. Yes.

Ms. CLAYBROOK. Do you mean generically or statistically or by individual driver?

Senator SUNUNU. By driver.

Ms. CLAYBROOK. By driver. I do think that there are privacy issues, and that there ought to be some communication with the driver before that occurs, but——

Senator SUNUNU. Certainly, but—I mean, but barring that, some sort of a system for communication. I mean, don't you believe that the issues of safety here ought to drive us to want to share information about crash history and logbook violations?

Ms. CLAYBROOK. Yes, I do, Senator. And I think it has to be done very cautiously and carefully, because there is a possibility for some kind of misuse of that data, and I think that people's livelihoods depend on it, and so I just think—I would just say that it ought to be done very, very cautiously.

I would like to comment on that truck causation study by the DOT. That has been roundly criticized and reviewed—is under review now by the Centers for Disease Control, and I think that the outcome of that study is going to be much in question.

And I'd like to submit, for the record, a letter that the public interest groups wrote to the Centers for Disease Control, and another critique of that study.

Senator SUNUNU. Please. I'd be very happy to take that for the record.

[The information referred to follows:]

ADVOCATES FOR HIGHWAY AND AUTO SAFETY
Washington, DC, May 7, 2003

SUZANNE BINDER, M.D., Director,
National Center for Injury Prevention and Control,
Centers for Disease Control and Prevention,
Atlanta, GA.

Dear Dr. Binder:

The supplemental appropriations legislation for Fiscal Year 2003, enacted February 13, 2003, contains a House and Senate conference agreement directing the Centers for Disease Control (CDC) National Center for Injury Prevention and Control to evaluate the adequacy of the Truck Crash Causation Study's (TCCS) research design, and to report findings to the House and the Senate Committees on Appropriations. Rept. 108–10, 108th Congress, 1st Sess. (February 13, 2003), p.1280. The TCCS is being conducted jointly by the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) in compliance with Section 224 of the Motor Carrier Safety Improvement Act of 1999 which directed the Secretary of the U.S. Department of Transportation "to determine the causes of, and contributing factors to, crashes that involve commercial motor vehicles."

Highway and truck safety organizations strongly supported this language requiring the CDC National Center for Injury Prevention and Control to evaluate the study design of the TCCS because of your agency's sustained reputation as a leading institution in epidemiological research methods and outcomes. We are deeply concerned over the research approach used by NHTSA and FMCSA in this study to investigate the reasons for truck crashes. The two agencies decided three years ago to use a research protocol which only investigates a number of cases of crashes by tracing back a series of events and, through doing so, purportedly identifying the "critical event" and "critical reason" for the subsequent crashes. The agencies regard this effort as sufficient to identify the "causes" of the crashes. There is no comparison group being used to construct hypotheses about the reasons for such crashes and to test whether the identification of the supposed "critical event" that the agencies claim as the "cause" or reason for the ensuing crash is borne out.

The authors of the Interim Report on the TCCS assert that the most important aspect of the study's data collection effort is the interviewing of crash participants and witnesses.[1] This means that central reliance in the data entries and subsequent inferences about the chain of crash events is placed on characterizing narrative supplied by individuals who are on-scene during or soon after the crash. These problems of bias and subjectivity are fatal to the accuracy of the gathering of threshold data and information about how any of the investigated cases of crashes occurred.

Many of these criticisms have been repeated by the Transportation Research Board's special committee charged with overseeing the study in several meetings with the principal investigators in the two agencies, and in a letter to the former FMCSA Administration, Joseph Clapp, sent December 4, 2001 (copy attached).

The TCCS relies on the lowest level of evidence and poorest research design identified by, among others, the National Institutes of Health U.S. Preventive Services Task Force.[2] The safety community believes that the research design for the TCCS is deeply flawed and that conclusions drawn from the examination of truck crash cases cannot overcome bias and subjectivity. Unless corrective action is taken, we believe that the findings of the study will be misused, Congress will be seriously misled about the reasons for crashes, and misguided safety countermeasures will be enacted and funded for Federal agencies to carry out. Furthermore, NHTSA is asking Congress for funds to conduct a similar investigation over the next several years of passenger vehicle crash cases to determine the causes of car and light truck crashes. This new study is to be conducted using the same flawed study design as the TCCS.

Preliminary 2002 data released last week by the U.S. Department of Transportation show that overall highway fatalities have increased, the highest number in over a decade. Properly understanding crash causation, for trucks and passenger cars, is critical to developing an action plan to bring down deaths and injuries in the next decade. Public policy initiatives to address this growing public health crisis will be ineffective without defensible studies on which to base our actions. For this

[1] K. Thiriez, G. Radja, G. Toth, *Large Truck Crash Causation Study—Interim Report,* Report No. DOT HS 809 527, September 2002.

[2] *http://hstathim.niltgov/hq/Hquest/screen/TextBrowse/t/1049397685410/s/40169.*

important reason, we welcome the impartial, professional review by the CDC's National Center for Injury Prevention and Control of the quality of the research being conducted by NHTSA and FMCSA.

We would be pleased to have an opportunity to discuss further our concerns about the quality and direction of the TCCS. Thank you for your assistance.

Sincerely,

JUDITH LEE STONE,
President.

Joan Claybrook, President
Public Citizen

Clarence Ditlow, Executive Director
Center for Auto Safety

Stephen W. Hargarten, MD, MPH
Medical College of Wisconsin, Emergency Medicine

Jack Gillis, Director of Public Affairs
Consumer Federation of America

Daphne Izer, Founder and Board Member
Parents Against Tired Truckers (P.A.T.T.)

Randi Baun, Executive Director
Truck Safety Coalition

Andrew McGuire, Executive Director
Trauma Foundation

December 4, 2001

JOSEPH A. CLAPP,
Administrator,
Federal Motor Carrier Safety Administration,
Washington, DC.

Dear Mr. Clapp:

The Committee for Review of the Federal Motor Carrier Safety Administration's Truck Crash Causation Study (TCCS) held its third meeting on August 20–21, 2001, at the National Research Council facilities in Washington, D.C. The enclosed meeting roster indicates the members, liaisons, guests, and TRB staff in attendance. On behalf of the Committee, I want to thank the staff members of the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) for their presentations and responses to committee questions. The committee believes the continuing exchange of views and ideas on this project is highly beneficial.

The meeting provided the Committee with an opportunity to review a set of questions stemming from a task force review of several crash files and to discuss again the agency's study methodology.[1] In addition, the Committee heard a presentation about the database being prepared for the study and discussed the extent to which this database will be made available to the public. There was further discussion about the need to collect as much measurable data as possible about the crash characteristics of the roadway and vehicles involved. Finally, several committee members again underscored the need for the agency to document its method for assessing the crash data files and to consider using other analysis methods as well.

The committee then met in closed session to deliber to on its findings and begin the preparation of this report, which was completed through co espondence among the members. This report summarizes key points made during the Committee's iscussions and provides several recommendations to FMCSA. See Appendix A for a review of previous committee decisions that affect the Committee's discussion and recommendations.

Study Purpose and Agency Expectations

The TCCS is a congressionally mandated study of the causes of truck-involved crashes leading to fatality or serious injury. The results of the study will be used to design and select cost-effective measures for reducing the number and severity

[1] A task force comprising five committee members—John Billing, Michael Belzer, Anne McCartt, James McKnight, and Frank Wilson—visited Veridian Corporation, an FMSCA crash investigation contractor, in Buffalo, New York on July 9–10, 2001 to review crash case files.

of serious crashes involving large trucks. The study will consist of in-depth investigations of a nationally representative sample of 1000 large truck crashes, to be performed by teams of trained investigators from NHTSA's National Automotive Safety Sampling System (NASS) project and FMCSA-funded truck safety inspectors. The full study involves data collection at 24 data collection sites.

FMCSA staff reviewed the study's aims for the Committee, emphasizing that the study is designed to enable the agency to draw inferences about circumstances and contributing factors associated with truck crashes, thus helping the agency meet its goals for reducing truck crash fatalities. The committee agrees with the agency that the primary objective of the study is to collect the most complete and accurate possible set of factual evidence for use by agency analysts as well as future researchers. However, the study's goals are complicated by the fact that in more than 40 percent of fatal truck crashes, the driver of the other vehicle is believed to be solely responsible for the crash.[2] Thus the Committee remains concerned about whether the data being collected on the 1000 crash cases will yield sufficient causal information to identify the most effective truck-related countermeasures.

The TCCS is important for other reasons as well. It involves the largest nationally representative sample of truck crashes to date and is the first large-scale, on-scene investigation of such crashes. This study is also the first to use a combination of trained crash investigators and truck safety inspectors for data collection. Finally, the truck crash database being developed will be made available to the public and outside researchers as well as FMCSA and NHTSA researchers.

In funding the TCCS, Congress requested "a comprehensive study to determine the *causes* of, and contributing factors to, crashes that involve commercial motor vehicles . . . [emphasis added]" (Motor Carriers Safety Improvement Act of 1999, Section 224). Extracting causal information in complex events like crashes is quite difficult and depends on collecting reliable and valid data on each possible causal or contributing factor. FMCSA staff informed the Committee that the agency is focusing on the contributing factor(s) that increase the risk of crashes; the agency is not attempting to isolate individual or primary causes of crashes. According to the agency, the TCCS—based on the Perchonok method—will yield findings about critical precrash events, the critical reasons for these events, and relative risks in truck crashes. While these findings may help the agency improve the effectiveness of truck crash countermeasures, they may not meet the goals set by Congress. The agency recognizes these expectations and is addressing them as it prepares a crash data analysis plan based on the analysis methodology described by Blower in Appendix B, pp. 13–19. The committee supports this effort and urges the Committee to consider other analysis approaches as well. Several committee members also noted that some of the distinctions the agency is making—for example, between causation and contributing factors that increase the risk of a crash—may be lost to decision makers and the public. Thus, clarity in both analyses and report writing is critical.

Crash Event Assessment (Study Methodology)

In its first letter report, dated November 15, 2000, the Committee noted that FMCSA has chosen a clinical or case analytic methodology for the study. The discussions at this meeting, however, indicated that both a clinical approach (on the part of NHTSA) and a statistical approach (on the part of FMCSA) are envisioned for the analysis. (Material provided to the Committee on these approaches is included in Appendix B, pp. 2–8.) While the Committee believes that both are rational approaches, it continues to be concerned about whether the methodology to be used in coding and analyzing the data will yield valid results.

There was considerable discussion about how a critical event for each crash is identified in the Perchonok approach. (Appendix C contains background information on this approach provided previously by FMCSA.) The above-mentioned task force, which reviewed preliminary results from five crash investigations, disagreed with several critical events identified by agency analysts and also disagreed among themselves about appropriate critical events. The committee's concern is not whether universal agreement can be achieved on every critical event, but whether the Perchonok method leads analysts to identify a critical event that can be challenged in light of the data in the crash case files.

For example, the traditional Perchonok method does not recognize that failure to take an appropriate or expected action can be a critical event. This point is illustrated by a crash case involving a passenger car that did not stop at a red light and was struck by a left-turning truck (Appendix B, p. 11). In this example, the pas-

[2] Daniel Blower. Relative Contributions of Truck Drivers and Passenger Vehicle Drivers to Truck-Passenger Vehicle Traffic Crashes. UMTRI Report 98–25.

sage of the nonstopping car into the intersection after the light had turned red was not coded initially as the critical event. Agency staff now recognizes this limitation and has adapted the method to accept a driver's failure to make an appropriate maneuver as a critical event. The risk, however, is that similar challenges, even on just a few cases, could lead to the judgment that the methodology is subjective or arbitrary, which would undermine the study's conclusions. The committee previously urged FMCSA to follow the procedures of the version of the Perchonok method that is recognized as being the most objective for identifying key crash factors—the version shown to have the least bias toward any pre-determined outcome. The agency must thoroughly document the method being used so that other researchers can review the crash cases and independently analyze the results using the agency's method.

Previously the Committee urged FMCSA to conduct two independent assessments of each crash case and was informed that such assessments are planned for each of the TCCS's 1000 cases. At the meeting FMCSA reported that it has also established a review panel to make final determinations about critical events in cases where the results of the independent assessments differ and these differences cannot be resolved. This is commendable. Nevertheless, FMCSA should identify the members of the review panel and document the procedures used by the panel to make final determinations.

The agency discussed its plans to examine likely crash causes on the basis of statistical association and relative risk in the aggregate data, as well as case-by-case assessments. (A relative risk calculation regarding brake violations and crashes based on truck crash data collected in Michigan is described in Appendix B, pp. 17–18.) The committee suggests that FMCSA prepare a detailed, theoretically-based analysis plan for testing hypotheses. This plan should include a list of likely causes to be examined using statistical methods; a detailed analysis scenario for each cause; and a description of analyses that will examine alternative explanations for the observed effect (*e.g.,* the examination of other equipment problems in the brake analysis to disprove the poor driver/poor equipment alternative theory). Such a plan will help the agency determine whether additional data are needed to support these analyses. Agency staff indicated that a preliminary analysis plan would be available to the Committee early in the first quarter of 2002.

Crash Event Assessment (Alternative Analysis and Data Collection Issues)

The TCCS represents an important opportunity for causal analysis using methods other than those chosen by FMCSA. Moreover, the Committee previously suggested that the agency consider conducting such analyses (for example, the "but for" analysis discussed in its March 9, 2001, letter report). The potential for such alternative analyses is directly related to the depth of the investigation conducted—how far back in time the investigator pursues each possible causal chain of events for each vehicle involved in a crash. It was clear for some of the cases reviewed by the task force, as well as those presented at previous committee meetings, that such causal chains had been thoroughly pursued. (In one case, for example, the event chain went back in time from a rear-end crash to the failure of the driver to reduce speed at the top of a hill to an incomplete or unsuccessful brake repair which the driver was aware of.) The committee urges FMCSA and NHTSA to reinforce in their instructions to investigators the need to examine these event chains thoroughly for each vehicle and driver and to include this information in the database and in the narratives.

In some cases reviewed by the task force, there appeared to be data—potentially useful for current FMCSA analysis and for future agency and independent efforts to reconstruct the crashes more completely—that could have been collected but were not. These data were related to vehicle components and vehicle dynamics of the crash and they included brake condition, measurements of skid marks, and objective estimates of precrash speeds based on physical evidence at the crash scene. Agency staff indicated that they would instruct their investigators on the need and methods for collecting such data and for analyzing the data when necessary to identify the most likely of several possible critical events.

In addition to the data currently being collected and suggested for collection, the Committee believes future alternative causal analyses would be further enhanced by recording the crash investigator's assessment of whether a defensive avoidance maneuver or preventive action could reasonably have been taken by either the truck or nontruck driver to avoid the crash and what that maneuver or action might have been. This assessment could be based solely on the investigator's judgment in light of the crash data file and could be described in the narrative that is part of every crash case file. A reasonable maneuver is one that could be taken by an average driver given the roadway and roadside environment, traffic volume, and ambient

weather conditions. Judgments about potential avoidance maneuvers, while subjective, provided important information in the Indiana Tri-Level study (see Appendix B); such maneuvers were judged to be possible in one-third of the cases examined. If a similar finding applied to truck crashes, it would be very important for identification and development of countermeasures, as well as for FMCSA's enforcement and licensing/relicensing programs, especially because truck drivers can be required to undergo remedial training. In addition, the existing set of uncompleted cases should be reviewed by the investigators to determine whether avoidance maneuvers can be identified for them.

Crash Data Files

As noted above, a committee task force recently reviewed five crash case files. While these files were not yet complete—some follow-up data and interview information can take several months to obtain—the review provided the task force with a unique opportunity to become more familiar with the data being collected and the analysts' interpretations of the contributing factors involved. The review led to a set of questions that was addressed by agency staff at the meeting. The discussion of these questions is reflected throughout this report. Some specific issues are addressed in the following paragraphs.

Several committee members would like to review the five crash case files once they have been completed and entered in the database; they would also like to review additional completed files, time permitting. Agency staff pointed out that data continue to be added to the files, and data edits will take approximately 4–5 months to complete. According to agency staff, approximately 15–20 complete crash files should be available by March 15, 2002. The committee would like access to these crash files, as well as the interview forms, investigator notes, and other documents pertaining to the cases so they can be reviewed in detail. A review of completed cases will inform the Committee as to what final case files look like, give members another opportunity to review the data coding and critical event decisions, and allow them to check the usability of the public crash file structure. Agency staff assured the Committee that this review could be arranged.

Information attesting to the truthfulness and accuracy of data is often as important as the data itself and must be included in the database. Task force members noted their concerns about data known or suspected by the crash investigators to be erroneous. When the crash investigators know or suspect a data item is false, they make written notations to that effect on the data forms. However, agency staff informed the Committee that these qualifying notes—sometimes called flags—are lost when the data are extracted from the database for release to the public. The committee strongly recommends that such qualifying information be included in the electronic database because, in its absence, future independent analysts will be unaware of such potentially false data items.

The task force review of the crash files underscored the need for calculations based on physical measurements made at the crash site to verify data and information provided by drivers or others involved in or witnessing the crashes. Even basic calculations based on tire tracks or skid marks can help verify or disprove such subjective data. NHTSA staff indicated their intention to adopt simple speed-estimating procedures so that analytical methods will be used to the extent possible in future cases.

Several committee members emphasized the need, in some cases, for accurate information on roadway geometry and related topics, including shoulder and lane widths, radius of curvature, superelevation, presence and dimensions of rumble strips, sight distance, sideslope grades, and final vehicle resting position. In certain cases it is also necessary to include information about the roadway upstream from the crash site, especially if there are questions about whether sight distance was adequate or stopping distance was a factor. Currently these items are noted only on a scaled sketch included in the crash case file. However, the Committee recommends that information on critical roadway geometry be tabulated for each case and included in the database. Doing so will facilitate future analyses by FHWA and other researchers interested in the relationships between highway design and safety.

The committee inquired about the extent to which previous committee member suggestions for changes to the data forms have been adopted. Agency staff indicated that nearly every suggested change has been made. Several committee members, after a brief review of selected revised data forms, noted items that still could be improved. The committee's concern is that data items must be well defined on the forms to yield data useful for analyses. Agency staff agreed to send copies of all the data forms to each of the members. At the request of agency staff, individual committee members will continue to review the forms and provide comments. Finally,

agency staff agreed to change some of the terminology in the crash event assessment form so that fault will not be inferred. For example, under driver-related factors, "decision errors" should be termed "decision factors", and "performance errors" should be termed "performance factors."

Public Access to Data

An important aspect of the TCCS is that most of the data collected will be available to the public for analysis once the project is completed. However, data obtained in interviews conducted under nondisclosure agreements with interviewees may not be released. Two important issues emerged from the discussion about public access. First, the Committee understands the need to protect information that might lead to the identification of specific crashes and the individuals involved. While the agency standard and capability for protecting privacy appears to be high, it appears some information thus obtained, such as length of last sleep interval, will apparently be disclosed in an aggregated form. The rules regarding nondisclosure should be explicit and adhered to consistently or the agency risks losing the voluntary cooperation of crash-involved witnesses. Accordingly, the Committee urges FMCSA and NHTSA to review their nondisclosure rules and the way interviewers explain these rules to the interviewees to ensure that data sources are well protected. The agencies should also ensure that their field investigators comply with these rules and procedures.

Second, while recognizing that privacy concerns are important, the Committee believes that information critical to successful analysis by others once the data have been made public should not be withheld unnecessarily. Of concern is interview information about driver hours of service, fatigue, work compensation, working conditions, and truck ownership. Agency staff stated that when such information can be obtained from secondary sources, it will become part of the public record. In addition, FMCSA plans to prepare analyses that aggregate much of this information, thereby disclosing it in a form that does not violate nondisclosure agreements. Nevertheless, the Committee urges FMCSA to find secondary sources for as many of such data items as possible; doing so will increase the amount of data released to the public and their usefulness. For example, it may be possible for FMCSA inspectors to collect information on work compensation, truck ownership, and related items from truck companies and owners, thereby reducing reliance on the driver and/or company interviews by NHTSA investigators. In many cases it will be necessary for investigators to check hours of service and sleep claims independently. The committee suggests that such independent checks be standard practice for all crash case investigations.

Study Sampling Plan

FMCSA staff noted that data collection is now under way at all 24 study sites, and while some sites are yielding crash cases at a rate within an expected range for these sites, others are falling short in this regard. Because the agency's sampling plan is critical to achieving a nationally representative sample of crashes, the Committee would like to know whether the data collection effort is yielding the desired representative sample of truck crashes. Specifically, the Committee would like to know how many crashes are expected each year from each site, and how these figures compare with the basic NASS sample for these sites. The committee would also like to know, from the beginning of the study and for each study site, how many truck crashes have occurred, how many crash cases are under investigation, and how many crash investigations have been completed. In addition, the Committee requests that the agency categorize the crashes under investigation by type (*e.g.,* rollover, rear end). and location (*e.g.,* freeway, rural two-lane road, intersection). This information will provide a preliminary indication of the nature of the sample thus far and allow the crash selection methodology to be reviewed and any expected bias identified and assessed. The committee would like to have this information by January 31, 2002.

Study Report Preparations

There was considerable discussion about the potential study findings and how FMCSA plans to analyze and report them to Congress. To further ensure an adequate data collection and analysis plan, agency staff should begin preparing a strawman version of the report's expected key findings based on a coherent theoretical statement of what the possible, causal or contributing factors are and including suggested formats for tables of key data the agency expects to be able to summarize. Preparing a draft of the opening paragraphs of the executive summary for the study's final report would also be a useful exercise in this regard, since these paragraphs ultimately will provide the most important version of the study rationale and scope. Addressing these tasks now might reveal the need for additional data or anal-

ysis. As noted above, agency staff indicated that a draft analysis plan would be available for review and comment by January 31, 2002.

Future Meeting Plans

If the Committee receives the completed crash case files by March 15, 2002 it plans to meet on or around June 15, 2002. This schedule will give the Committee time to review the files and prepare questions for the agency. Final meeting plans will depend on when the crash case files are available.

Sincerely,

FORREST COUNCIL,
Chairman,
Committee for Review of the Federal Motor Carrier
Safety Administration's Truck Crash Causation Study

Enclosures

Senator SUNUNU. Let me say thank you, again, to all the panelists. It's been extremely helpful. And I welcome your submission of additional data for the record, and I look forward to working with you all on these issues.

This hearing is adjourned.

[Whereupon, at 11:35 a.m., the hearing was adjourned.]

A P P E N D I X

HOURS OF SERVICE COALITION
Alexandria, VA, June 9, 2003

Hon. JOHN MCCAIN,
Chairman,
Senate Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Chairman McCain:

In April 2000, after the Federal Motor Carrier Safety Administration (FMCSA) published the proposed "Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations," approximately 40 trade associations and corporations formed the Hours of Service Coalition to present our collective response to the proposal. The Hours of Service Coalition represents those commercial vehicle fleets that are primarily "short-haul" as opposed to long-haul for-hire trucking. Our membership represents a diversity of industries such as utilities, contractors, parcel services, fuel suppliers, agricultural commodities and food delivery such as baking, snack, soft drink, beer and confections. The operators the coalition represents spend a large percentage of their workday in non-driving activities such as selling to or servicing customers, waiting for trucks to be loaded or unloaded, awaiting paperwork, etc.

We strongly support the intention of FMCSA's Final Rule," 49 CFR Parts 385, 390, and 395 (Docket No. FMCSA–97–2350), which is to increase safety on our Nation's highways and reduce fatalities. It is designed to address driver fatigue problems with long-haul operation of tractor-trailers or tractor-semi-trailer combinations. Yet the cost burden of the new rules falls not on these high-risk operators, but on the short-haul carriers for whom no significant risk appears to have been identified. This discrepancy is so great that the agency could not cost-justify this rule for short-haul carriers. The question, then is: Why has the agency chosen to impose a rule wherein the entire burden, and none of the benefit, accrue to those least likely to be involved in fatigue-related accidents?

We have brought this discrepancy to the attention of FMCSA through a petition for reconsideration of the final rule, and requested that FMCSA reopen this proceeding to reconsider how the 14-hour on-duty requirement would affect "short-haul" operators—those operators who spend large portions of their on-duty periods in non-driving activities. We requested that operators be allowed the choice of using 14 hours of on duty time, of which 11 hours may be driving (Final Rule), or using 15 hours of on duty time, of which 10 hours may be driving (Current Rule).

Our petition for reconsideration is attached, and we ask that it be inserted into the Committee record following the Tuesday, June 10, 2003, hearing regarding reauthorization of the FMCSA.

Thank you for your attention to this.

Sincerely,

HOURS OF SERVICE COALITION.

HOURS OF SERVICE COALITION
Alexandria, VA, May 27, 2003

Ms. ANNETTE M. SANDBERG,
Acting Administrator,
Federal Motor Carrier Safety Administration,
U.S. Department of Transportation,
Washington, DC.

Dear Acting Administrator Sandberg:

Pursuant to Part 389.35 of 49 CFR Ch. III, Rulemaking Procedures—Federal Motor Carrier Safety Regulations, this letter (submitted in five copies) serves as our Petition for Reconsideration of the Final Rule published in the Federal Register on

April 28, 2003 "Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule," 49 CFR Parts 385, 390, and 395 (Docket No. FMCSA–97–2350). We wish to state at the outset that our organizations strongly support the intention of the Final Rule, which is to increase safety on our Nation's highways and reduce fatalities.

Our Associations represent businesses that employ operators for "short-haul" operations in which drivers return to their reporting location at the end of each shift. Operators in our industry often make numerous stops during the course of their daily on-duty activities. They spend a large percentage of their workday in non-driving activities such as selling to or servicing customers, waiting for trucks to be loaded or unloaded, awaiting paperwork, etc. Operators employed in our industries cannot reasonably be classified as "long-haul truckers," and have the benefit of spending large portions of their on-duty time in non-driving capacities which minimizes driving-related fatigue.

A number of our member companies have raised concerns about the provisions of the Final Rule that reduces total on-duty time from a flexible 15 hour-period to an inflexible 14-hour period from the time an operator begins his workday. A number of companies have noted that this change will require them to alter delivery routes and is likely to significantly alter distribution systems. Most importantly, some companies have indicated that in order to comply with the new Rule it will be necessary to increase the number of trucks on the road by 15 percent. Most of these new trucks will not be able to maximize their load capacity. We believe this could have the opposite affect of the intention of the Final Rule, which is to increase safety on our Nation's highways and reduce fatalities. Indeed, FMCSA's own analysis shows that the new daily on-duty time limitation has the "unintended consequence of requiring a significant increase in new [short haul] drivers . . . these new drivers would increase both costs and crashes", and "the increase in the need for new short-haul drivers would more than offset the slight reduction in fatigue . . ." Furthermore, the change will have a disproportionate impact on distribution in rural areas and on small businesses that rely on these operations to bring products to their businesses.

We are requesting a very narrow reconsideration of the Final Rule. We request that you reopen this proceeding to reconsider how the 14-hour on-duty requirement would affect "short-haul" operators, and we request that your agency consider allowing such drivers to retain the current 15-hour on-duty limit, if they spend large portions of their on-duty periods in non-driving activities. We request that operators be allowed the choice of using 14 hours of on duty time, of which 11 hours may be driving (Final Rule), or using 15 hours of on duty time, of which 10 hours may be driving (Current Rule).

At the very least, this is an issue that merits more thorough consideration by FMCSA. During the rulemaking process, the Notice of Proposed Rulemaking contained such a radical departure from the current rule that it was difficult to focus on all aspects of the rulemaking. Our organizations spent the bulk of our review and our comments and presentations on the most egregious issues in the proposal—notably the limits on nighttime driving and mandatory two consecutive days off.

In addition, the proposed rule's break down of five categories of operations was complex and confusing to most fleet owners. Many of our operators would have shifted from one category to another on a daily basis. Each of the proposed categories had differing sets of on-duty, driving, and rest times. Almost no attention was paid to the one-hour reduction in the amount of on-duty time.

While the reduction in daily on-duty time will clearly be costly and disruptive to "short-haul" fleet operations, the FMCSA has failed to identify benefits that would justify these costs. FMCSA's own research associates driver fatigue problems with long-haul operation of tractor-trailers or tractor-semi-trailer combinations. Yet the cost burden of the new rules falls not on these high-risk operators, but on the short-haul carriers for whom no significant risk has been identified. It is unreasonable, and contrary to the public interest, to impose a rule wherein the entire burden, and little of the benefit, accrue to those least likely to be involved in fatigue-related accidents.

In conclusion, we respectfully request that FMCSA reconsider the limit of on-duty time at 14 hours and provide operators the option of retaining the current rule's provision for 15 hours of on-duty time with driving time limited to the current 10 hours. We look forward to your consideration of our concerns and stand ready to discuss them with you.

Sincerely,

Air Conditioning Contractors of America
American Bakers Association

American Frozen Food Institute
American Supply Association
Food Marketing Institute
Grocery Manufacturers of America
Independent Bakers Association
International Mass Retail Association
International Foodservice Distributors Association
International Warehouse Logistics Association
National Beer Wholesalers Association
National Confectioners Association
National Potato Council
National Propane Gas Association
National Roofing Contractors Association
National Soft Drink Association
National Turkey Federation
Plumbing-Heating-Cooling-Contractors-National Association
Snack Food Association
U.S. Chamber of Commerce

Cc:
Secretary Norman Y. Mineta
U.S. Department of Transportation

Senator Richard S. Shelby
Chair, Transportation Subcommittee
Senate Appropriations Committee

Congressman Lee Terry
(Nebraska-2nd)

John Graham, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration

WRITTEN QUESTIONS SUBMITTED BY HON. JOHN B. BREAUX TO HON. ANNETTE M. SANDBURG

CDL Medical Certification

In the Motor Carrier Safety Improvement Act of 1999, Congress directed the Federal Motor Carrier Safety Administration (FMCSA) to initiate a rulemaking to provide for a Federal medical qualification certificate to be made part of commercial drivers' licensing process. In a letter Secretary Mineta sent to Senator John Breaux on September 24, 2002, he said that the Department would publish the proposed rule in March, 2003. To date, this rulemaking has not yet been issued.

Question 1. The Department has not been able to even propose regulations integrating medical qualification certification with the commercial drivers' licensing process in over three years. Yet the Mexican government already has this combined program in place. When will the Department issue the proposed rule to begin the process of establishing a procedure combining medical qualification with CDL qualification?

Question 2. Will this rulemaking be issued as planned, or is the Administration waiting to see what action Congress takes on SAFETEA?

Question 3. According to Secretary Mineta's letter, the proposed rule combining the medical certification process with the CDL issuance and renewal processes would "reduce the incidence of medical examiners improperly certifying drivers who are not medically qualified to operate trucks and buses in interstate commerce." How will the combining of the certification processes change the behavior of medical examiners?

CDL Medical Examiners

Under the Administration's proposed bill, SAFETEA, FMCSA would initiate another rulemaking to set standards for medical examiners to meet in order to be qualified to examine commercially licensed drivers. FMCSA would also establish a medical review board to provide advice to FMCSA and guidelines to medical examiners to use in examining CDL applicants.

Question 1. It seems that we need some threshold health standards that commercial vehicle drivers must meet to qualify for a CDL. Yet, the Administration is proposing to establish standards for *medical examiners* to meet to be qualified to examine commercial drivers. How will the FMCSA determine that the medical examiners are qualified? Will the examiners be tested by FMCSA?

Question 2. Qualified medical examiners will then have guidelines to follow in qualifying (or not) a prospective commercial vehicle driver. Guidelines are not mandatory, so it would follow that the medical examiners will have discretion in deciding who is qualified and who is not. Will this not lead to inconsistency among doctors? How will FMCSA ensure that the guidelines are uniformly applied?

Question 3. How will CDL holders and applicants know which medical examiners are qualified under the FMCSA program?

Question 4. Will the examiners have to be re-qualified, or will they obtain a lifetime qualification to perform the medical exams on CDL holders and applicants? Will the regulations include standards under which qualified medical examiners become disqualified? If so, will there be an appeals process for medical examiners who have been disqualified?

Question 5. FMCSA has revised the certification form used by medical examiners to include more medical advisory guidance to assist examiners in making physical qualification determinations in order to "ensure that medical examiners are more knowledgeable of the physical qualification standards." How will this change ensure that medical examiners use the guidance in examining CDL holders and applicants?

Question 6. Once medical examiners have evaluation standards and have been certified by FMCSA, will they be the ultimate authority granting a medical certificate or will the FMCSA withhold final approval during an evaluation period (i.e.. The FAA uses a 60 review window) and then grant final approval or reject the medical examiner's findings?

Diabetic Drivers

In TEA–21, Congress directed FMCSA to study the feasibility of eliminating the current blanket ban on insulin-treated drivers and move to a case-by-case assessment. FMCSA's response was to propose the "three-year rule" under which potential drivers must operate a commercial motor vehicle while using insulin for three years before they can even apply for a CDL. Since that would be illegal for interstate driving, insulin-treated drivers must find intrastate driving opportunities in those states that allow insulin-treated drivers to drive commercial motor vehicles at all.

Question 1. FMCSA's own expert medical panel found the three-year requirement to be medically unnecessary and not supported by current treatment of diabetes. Why did FMCSA ignore its expert medical panel and support the three-year requirement?

Question 2. Since about 20 states prohibit insulin-treated drivers from driving commercial vehicles, including Louisiana, what would FMCSA recommend commercial drivers do in those states to fulfill the three-year requirement?

Question 3. The three-year rule is still just a proposed rule, and the docket for the rulemaking shows strong public support of major changes to that rule. Would additional guidance from Congress on the proposed exemption program in TEA–21 reauthorization help speed the regulatory process?

CDL Disqualifications

Secretary Mineta stated that as of September 30, 2002, commercial motor vehicle drivers convicted of traffic violations while operating a car, which resulted in the cancellation, suspension or revocation of their drivers' license, are disqualified from operating a commercial motor vehicle. Individuals convicted of committing drug-or alcohol-related offenses while driving a car are also disqualified. That restriction has been in force now for almost eight months now.

Question 1. How many CDL holders have been disqualified as a result of this prohibition?

Question 2. What steps has FMCSA taken to ensure that states are following this new rule by revoking the CDLs of disqualified individuals or by reporting the individuals to FMCSA?

Secretary Mineta's September 24 letter stated that a driver who causes a fatality through negligent or criminal operation of a commercial vehicle while driving with a canceled, suspended, or revoked CDL is disqualified from operating a commercial vehicle.

Question 1. If a driver has a canceled or revoked CDL, isn't the driver already disqualified?

Question 2. Shouldn't negligent or criminal operation of a commercial vehicle be grounds for disqualification, whether or not the behavior causes a fatality?

Question 3. Is operating a commercial vehicle with a canceled, suspended or revoked CDL *a prima facie* case of negligent or criminal operation of a commercial vehicle?

Accident Investigation

Question 1. Has FMCSA completed its investigation of the June 24, 2002, motor coach accident in Garland, Texas which killed four Louisiana children?

New Entrants

New motor carrier entrants and new drivers consistently have been shown to pose the greatest safety risk. Section 210 of MCSIA requires the FMCSA to conduct safety audits of new entrant motor carriers within 18 months of receiving operating authority.

Question 1. How many safety audits has FMCSA performed?

Question 2. How many drivers have been disqualified after being subject to a safety audit by FMCSA?

Question 3. What types of driver behavior most commonly lead to disqualification from a safety audit?

Household goods movers

The protection of consumers involved in the movement of their household goods continues to be an issue for which action is needed. In recent years, there has been a growing number of complaints by people who have moved their household goods about movers engaging in illegal practices that leave the shippers with little or no recourse.

Question 1. In March, a two-year investigation by DOT and the FBI led to the indictment of 16 interstate moving companies, as well as 74 operators, owners, and employees of interstate moving companies, for violations of consumer protection laws for shippers of household goods. Is the investigation continuing? Are there other similar investigations ongoing? Are we likely to see additional indictments in the near future?

Question 2. SAFETEA proposes to allow state attorneys general to bring civil action against a carrier in Federal court enforcing Federal law. Why wouldn't the Administration favor states bringing civil action under their own consumer protection laws?

Question 3. What is a commercial zone in which laws governing interstate moves of household goods do not apply? What laws do apply?

Question 4. The Carmack Amendment, in effect since 1906, limits the damages a consumer can seek against a household mover for negligence. The damages are limited to compensatory damages and do not allow for consumers to seek additional damages for mental anguish or emotional distress, even though losing all of your belongings in a move due to negligence by a household mover is extremely distressing. For example, how can a person be compensated for the loss of or irreparable damage to old family portraits or great-grandpa's roll-top desk? Should the Carmack Amendment be repealed or amended?

Question 5. How would you define a "rogue" mover? How many rogue movers are estimated to be operating in the United States at this time?

WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO HON. ANNETTE M. SANDBERG

Hazardous Materials Background Checks

On May 2, 2003, TSA, the FMCSA at DOT issued companion interim final rules which require background checks on commercial drivers certified to transport hazardous materials, conform the background check provisions with the Commercial Drivers License (CDL) program administered by the states, and define what hazardous materials should be covered. This new rule will affect approximately 3.5 million commercial drivers that possess, renew or apply for a hazardous materials (HAZMAT) endorsement on their CDL. These drivers will undergo a background records check that includes checks of criminal, immigration and FBI records. The rule does not apply to applicants for CDLs without a hazmat endorsement.

Each applicant must pass the background check prior to being issued a license. There is also a provision for current CDL license holders, which allows for the vol-

untary surrender of their license if they know they do not meet the new background check requirements. Within the next six months, the TSA will be conducting background checks of all existing license holders with hazmat endorsements. After eight months, the TSA will start background checks on new applicants for CDLs with hazardous materials endorsements.

Question 1. What safeguards will be put into place to make sure that employers will not receive "private" employee information to specific findings of the employee's background check except for a "pass" or "fail" answer?

Question 2. How will employers guarantee that all commercial licensed drivers that they employ are not subjected to a hazardous materials endorsement background check for the sake of finding out the employee's employability to transport non-hazardous materials freight?

Funding for MCSAP to the States

The Administration's SAFETEA proposal decreases the amount of funding from previous years going to the states and increases the administrative funding of the motor carrier program.

Question 1. Why is there more money going into the administration of the Federal motor carrier safety program now then there has been in previous years and less to the states that carryout the program? What additional resources are necessary to facilitate the management of the Federal motor carrier program?

WRITTEN QUESTIONS SUBMITTED BY HON. JOHN B. BREAUX TO DOUGLAS G. DUNCAN, LAMONT BYRD, JOAN B. CLAYBROOK, PETER HURST AND JOSEPH M. HARRISON

Diabetic Drivers

FMCSA has issued a proposed rule that requires insulin-treated drivers to have three years of commercial driving experience while using insulin in order to qualify for a diabetes exemption in obtaining a CDL. This scheme would require an insulin-treated driver to drive a commercial vehicle illegally for three years in order to qualify for the exemption. In effect, the three-year rule makes it impossible for almost anyone with diabetes to qualify for the program and a CDL.

Question 1. Do you believe this is a fair method of qualifying insulin-treated drivers, especially given the fact that 20 states do not offer an intrastate waiver program so that drivers from those states would not have a chance to obtain a CDL under FMCSA's diabetes exemption program?

Question 2. How would you suggest that the licensing of diabetic drivers for interstate driving be accomplished?

CDL Medical Qualifications

Question 1. Should there be minimum medical qualifications for holders of commercial drivers licenses?

Driver Disqualification

As of September 30, 2002, commercial motor vehicle drivers convicted of traffic violations while operating a car, which resulted in the cancellation, suspension or revocation of the drivers' license, are disqualified from operating a commercial motor vehicle. Individuals convicted of committing drug-or alcohol-related offenses while driving a car are also disqualified. This restriction has been in force now for almost eight months now.

Question 1. Are you aware of any CDL holders that have been disqualified as a result of this prohibition?

Question 2. How good are states in following this new rule by revoking the CDLs of disqualified individuals or by reporting the individuals to FMCSA?

Household goods movers

In recent years, there has been a growing number of complaints by people household goods about movers engaging in illegal practices that leave the or no recourse. The problem has grown with the increased popularity of t which shippers often enter into contracts with carriers because the prices o cheap. Complaints involve carriers who move goods for a stated price an the goods back to the shipper until the shipper pays additional charges. Ot goods that have been lost or damaged in a move performed by a carrier th found, leaving the shipper with no recourse.

Question 1. There are several proposed ways to address this growing problem. One proposal would allow states to pursue consumer complaints about interstate

moves in their own state courts enforcing state laws. Another proposal would allow states to pursue the complaints, but in Federal court enforcing Federal law. Still another proposal would allow states to pursue complaints under Federal law, but only against so-called "rogue" movers. What do you think is the best way to offer the most protection to people who are hiring commercial movers to transport their household goods?

Question 2. The Carmack Amendment limits the damages a consumer can seek against a household mover for negligence. If a mover loses or irreparably damages a shipper's goods, the shipper can seek only to have the mover pay for the actual loss. There are no damages allowed for mental anguish or emotional distress, even though losing all of your belongings in a move due to negligence by a household mover is exteremely distressing. Should the Carmack Amendment be repealed or amended?