S. HRG. 106–1024

S. 1501, THE MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 29, 1999

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

73–433 FDP WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

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S. 1501, THE MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999

WEDNESDAY, SEPTEMBER 29, 1999

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:35 a.m. in room SR–253, Russell Senate Office Building, Hon. Kay Bailey Hutchison, Chairman of the Subcommittee, presiding.

Staff members assigned to this hearing: Ann Begeman and Charlotte Casey, Republican professional staff; and Carl Bentzel, Democratic senior counsel.

OPENING STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. I am pleased to call to order the subcommittee hearing on S. 1501, the Motor Carrier Safety Improvement Act of 1999.

As the Surface Transportation Subcommittee chairman and a former vice chairman of the National Transportation Safety Board, I firmly share Senator McCain's desire to improve truck safety. This is something that I have looked at for a long time, and certainly all of us who have been traveling on America's highways realize that as trucks are getting bigger and cars are getting smaller we do need to address the issue of safety. We have a good safety record, but there are some improvements that we certainly need to make, because the statistics are showing that we need to give attention to this matter.

I plan to work closely with the chairman and the other committee members to move truck safety legislation to the Senate floor as quickly as possible.

In the last 10 years, the number of interstate motor carriers has more than doubled, growing from about 200,000 to 469,000. These carriers operate more than 7 million motor vehicles, and projections indicate the trucking industry and miles traveled will continue to grow dramatically in the years ahead.

Tragically, safety statistics show that truck and commercial bus-related fatalities are on the rise. As a result, motor carrier safety programs and enforcement activities have been under considerable scrutiny. It is my hope that much good can come from this extensive analysis and that in the long term truck and bus safety can be improved and fatalities reduced.

I further believe we need to proceed cautiously, and not as alarmists. The overwhelming majority of motor carrier companies and drivers operate extremely safely. We should focus, though, on how to get the unsafe driver and vehicle off the road.

We need to do more to educate car drivers on how to share the road with commercial vehicles, and we need to expand public education efforts on grade crossing safety. This has been a concern of mine since I was vice chairman of the National Transportation Safety Board, when we started really focusing on one of the most preventable of all truck or bus or vehicle accidents, and that is at grade crossings with railroads.

I do want to express my concern with the findings of the Inspector General about the operation of Mexican trucks. The Inspector General found a 50-percent out-of-service rate for trucks crossing the border. This compares to a general U.S. rate of 25 percent.

Moreover, the number of inspectors is inadequate. There is one inspector at an El Paso border crossing, with 1,300 trucks coming across the border each day at that stop. He can only inspect 13 or 14 trucks per day. This just cannot stand. I want to question today's witnesses on this issue.

Let me conclude by saying that I approach this morning's hearing with an open mind on the various bills that will be discussed. I want to hear the views of all the witnesses, and especially I want their views on the record so that as we are drawing up a final bill that we would push through Congress, we would have all of the input that we need to have a bill that will go forward on safety for our highways, but also one that can be accomplished.

So I hope we will have a good record, and I look forward to working with all of you to make sure that the traveling public is safe in their travel and certainly we want to have safe trucks and a good atmosphere of competition that makes every truck that comes into America meet the same safety standards that American truckers are required to meet.

With that, I would like to just call on Senator Breaux and see if he would like to make an opening statement.

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

Senator BREAUX. Thank you, Madam Chairman, and thank you for holding the hearings, and I thank our witnesses for being with us today. It is a very important hearing, and I am glad that we have the opportunity to listen to our witnesses and also to hear some recommendations, hopefully, about this very important issue of safety in particular.

As we all know far too well, in May of this year, on Mother's Day, to make it even worse, in New Orleans we had a very tragic bus accident in which 22 people were killed, and Madam Chair, the unfortunate thing about it is, I think the accident was totally avoidable. It should not have occurred.

I think had there been proper rules and regulations properly implemented it would not have occurred, and so that, indeed, is a real serious wake-up call I think to all of us who have concerns about transportation and safety, and particularly the motoring public

who were affected by this and will be affected the rest of their lives.

If you look at the record from investigations and press reports, that driver should never have been behind the wheel of that bus that day. I mean, no one can dispute that and hindsight is a wonderful thing, but it is very clear, according to reports, he was high on marijuana, he was dizzy from Benadryl, he was suffering from congestive heart failure, he had bad kidneys, and he had gotten out of the hospital less than 8 hours before reporting to work the morning of the accident and, further, he had been fired from two previous jobs after testing positive for drug use.

But even if the company had known where he had worked before, they probably still would not have been able to find out why he was fired from the previous jobs, because Federal law prohibits the release of such information without the person's consent.

The article also pointed out that he the year before, just last year, had been arrested by a state trooper for violating one of the probably most important laws with regard to transportation safety, driving for over 18 hours without any breaks.

Safety experts have said that many bus companies would have fired the driver for that violation, as serious as it was. But the bus company officials said they didn't even know about it because the State police never informed them or told them about it. State police say that notification of such violations is not required under their policies.

So this is clearly an example—a very tragic example—of something that really should never have occurred. How do we prevent it? How do we stop it? Hindsight is a wonderful thing. I have introduced legislation, as have some other colleagues, and I hope we all would be supportive of it, Madam Chairman, which really tries to address the problem. I think I will just very quickly say that I would hope that we would have an opportunity to do something on this, and I think this is a good start.

It creates a training and certification program for motor carrier specialists, establishes a program in which the motor carrier safety specialist certification board would collect and verify the current information on motor carriers, and provide the information to the Federal Highway Administration to augment its database to start a public education campaign so that people can know the conditions of the bus companies that they employ to carry their loved ones.

So I think we have a lot of problems here. But I am not here to point blame. I am here to help correct the problem, and I think that new Federal legislation is necessary.

There are no certification procedures for motor carrier safety inspectors today, and there are no standards to ensure compliance reviews are consistent.

The final thing is that in July, just 4 months after the Federal Highway Administration had assigned a satisfactory rating to this particular bus company in New Orleans, a private inspection company under contract with the Department of Defense had failed the same bus company for not having a drug and alcohol testing program. Two inspectors, two totally different results, and we end up

with a very tragic accident, killing 22 people who were very innocent.

So I think this is an important hearing. I think the legislation is an important effort, and I look forward to the comments of our witnesses.

Senator HUTCHISON. Thank you, Senator Breaux. I really appreciate the interest that you are taking. I remember reading about that tragedy, of course, Louisiana being so close to Texas. It was absolutely incredible and, as you have pointed out, avoidable with just a minimum of effort. It seems to me that the background of that driver would have disqualified him.

So I certainly appreciate your coming to the hearing and look forward to working with you on your legislation.

Senator Cleland, did you have an opening statement?

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Senator CLELAND. Thank you very much, Madam Chairman. I would just like to call the Committee's attention to a picture of a terrible accident involving a tractor-trailer on Interstate 285, which is the main beltway around Atlanta, on August 31 of this year. In the early morning hours of that day, two tractor-trailer drivers died on Interstate 285 in Atlanta. Their 18-wheeler exploded, and the cab that carried the two drivers was engulfed in flames. Initial reports from the DeKalb County Police Department indicated the accident was typical of an accident caused by the driver falling asleep.

Two trucking related fatalities occurred in Georgia that early August morning, and for drivers in Atlanta that tried to get to work—and by the way, we have the worst traffic congestion in the south, and the longest commute in the Nation—traffic was held up for some 8 hours in our city.

We know from national statistics that this is not an isolated case. We have to ask, what caused the accident? Is it a result of changes in the hours of service regulations? Did this accident have to occur? What can Congress do to prevent future trucking fatalities?

We have got to be mindful that motor carrier drivers do dangerous and important work that often goes unnoticed as they work each day to transport passengers to their desired destination, or to convey goods from the producer to market.

My own State of Georgia is an important State for trucking commerce. According to the National Highway Traffic Safety Administration, at any one time Georgia roads carry 4 percent of the entire Nation's trucking traffic. Although that might not sound like a lot, this is the fifth largest percentage of trucks in the Nation. We are tenth largest in size, but we have got the fifth largest amount of trucks on the highway of any State in the Nation.

Most of these vehicles travel from one destination to the next without incident, but those that do not make it safely sometimes are involved in fatalities and almost always cause major traffic backups and frustration in metropolitan areas.

I am told that trucks make up about 13 percent—excuse me, about 3 percent of the vehicles on the highways, and yet 13 percent

of highway fatalities. I look forward to hearing from my colleagues the comments that they have, and from the panelists, on their ideas of how to reduce motor carrier accidents and most importantly reduce motor carrier fatalities.

Thank you, Madam Chairman.

Senator HUTCHISON. Thank you. I certainly appreciate you bringing the picture of that. That does show very graphically the tragedy that occurs when we have such a big vehicle that crosses into another lane.

With that, I would like to call on our first panel. I would first include a statement by the chairman of the full committee.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

I want to thank Senator Hutchison for holding this morning's hearing on S. 1501, the Motor Carrier Safety Improvement Act of 1999, which I recently introduced to improve truck and bus safety. In my judgement, truck safety legislation must be one of the Committee's top priorities and I plan to consider S. 1501 at the next Executive Session in October.

S. 1501 is chiefly designed to remedy weaknesses regarding the existing federal motor carrier safety program that were identified by the Department of Transportation's Inspector General (DOT IG) in April 1999. I am pleased that Ken Mead, the DOT IG, will testify this morning on my legislation. As always, Mr. Mead's input will be valuable as the Commerce Committee works to move motor carrier safety legislation to the full Senate for debate.

The Motor Carrier Safety Improvement Act would establish a separate Motor Carrier Safety Administration within the DOT. That agency would be responsible for carrying out the federal motor carrier safety enforcement and regulatory responsibilities currently held by the Federal Highway Administration.

Let me be clear that it is not my desire to substantially grow the Federal government. But I do want to ensure the critical issue of truck safety receives the attention and leadership necessary to forcefully address driver and motor carrier safety deficiencies and in turn, improve safety for the road traveling public. In an effort to guard against increasing the already bloated Federal bureaucracy, S. 1501 would cap employment and funding for the new agency at the levels currently endorsed in May 1999 by the Administration for motor carrier safety activities. In recognition of the significant differences between truck operations and passenger carrying operations, my legislation would require the establishment of a separate division within the new agency to oversee commercial bus safety activities.

Aside from organizational issues, the Motor Carrier Safety Improvement Act would require the Department to implement all of the safety recommendations issued by the IG's April report. DOT has indicated it will act on some of the recommendations, but it has yet to articulate a definitive action plan to implement *all* of the IG's recommendations. I do not believe we can risk the consequences of ignoring the IG's recommendations and accordingly, my bill would require concrete action to eliminate the identified safety gaps at DOT.

S. 1501 includes other provisions to improve truck and bus safety. Specifically, the legislation would require States to report and include on a commercial driver's record all the traffic violations committed by a driver-whether those violations occur when driving a passenger vehicle or a commercial vehicle. S. 1501 would also require DOT to initiate a rulemaking to combine driver medical records with the commercial drivers license and to ensure medical providers are knowledgeable of driver medical and physical requirements for commercial drivers licensure eligibility.

The legislation directs the Secretary to carry out a program to improve the collection and analysis of data on crashes, including crash causation involving commercial motor vehicles. NHTSA, in cooperation with the new Motor Carrier Safety Administration, would administer the program. The bill includes a variety of other reforms including giving DOT authority to establish an advisory committee to assist the Secretary in the timely completion of ongoing rulemakings and other matters.

I want to discuss some of the history leading up to the introduction of S. 1501. In the last Congress, a comprehensive package of motor carrier and highway safety provisions was enacted as part the Transportation Equity Act for the 21st Century (TEA-21). This package was developed over a two-year period. Throughout the 105th Congress, the primary impediment faced by this Committee when crafting our high-

way safety legislation was an insufficient allocation of contract authority from the highway trust fund. Despite this serious constraint, the Committee did succeed in raising the authorizations for motor carrier and highway safety programs. At the same time, the Committee also succeeded in incorporating into TEA-21 almost every safety initiative brought to the Committee's attention.

Shortly after TEA-21 was signed into law, there was an effort on the House side to move authority over motor carrier safety from the Federal Highway Administration (FHWA) to the National Highway Traffic Safety Administration (NHTSA). Advocates of this proposal argued such a transfer would improve highway safety, a goal we all can support. But since this proposal had never been discussed during the TEA-21 deliberations by the authorizing committees, I strongly felt we needed to first ascertain whether such a transfer would be an effective approach to improving safety. That is why I asked for the IG's counsel.

I chaired a hearing in April at which the IG released his report and offered several ways to improve motor carrier safety. After a near 6-month analysis, the IG was unable to endorse the proposed transfer to NHTSA. While this and several options were discussed, the IG stressed that the greatest problem impeding motor carrier safety was a fundamental lack of leadership as currently structured at DOT.

One way to raise the visibility of truck safety and bring leadership to motor carrier safety issues is to create an entity that has motor carrier safety as its sole purpose. Given that we have agencies responsible for air, rail, and highway safety, it seems within reason to provide similar treatment in this modal area, particularly given the many identified problems stemming from a lack of attention within its current organizational structure.

Further, creating a direct link with the Office of the Secretary would guarantee that motor carrier safety share holders, including owners, operators, drivers, safety advocates and even government employees, would not be forced to vie for attention, forced to compete against highway construction and other interests as is currently the case. As we have regrettably learned, the scales of safety and highway construction are not balanced and we need to take action to alter this inequity.

S. 1501 legislation was crafted over many months. Safety suggestions were sought from all the major organizations involved in commercial motor carrier operations. Many of these suggestions were incorporated into S. 1501. At the same time, I continue to welcome additional suggestions on how this legislation can be further improved. I am confident that with the input of today's witnesses and the advice of the other Committee members, we will be able to report a major motor carrier safety bill before the end of the session.

[The prepared statements of Senator Hollings and Senator Inouye follow:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

Madam Chairwoman, thank you for convening this hearing on the subject of motor carrier safety. I have reviewed S. 1501 and look forward to this morning's testimony.

As many of you know, I introduced legislation to establish a separate modal administration for the motor carrier industry in the 1980s. There is a modal agency for rail, transit, air, and maritime, but nothing for the largest mode of transportation—the trucking industry. I am pleased that the Committee has returned to this subject and look forward to working with Senator McCain on his bill.

At our last hearing on this subject in April, the Department of Transportation's Inspector General and the Chairman of the National Transportation Safety Board had multiple concerns about the Office of Motor Carriers. I look forward to moving ahead on the issues of increased inspections, more timely and effective rulemakings and safer highways for truck drivers and passenger cars.

S. 1501 includes recommendations from the DOT IG's report that need to be addressed. The IG's report clearly indicates that we need to do more in the way of compliance reviews and we need to clear up the back log of regulatory initiatives that have not been completed. These initiatives are overdue, and the public deserves an aggressive pro-active safety policy.

In addition, the IG reports that far too few trucks are being inspected at the US-Mexico border and far too few inspected trucks comply with U.S. safety standards. For example, at the border crossing in El Paso, Texas, an average of 1,300 trucks enter daily, yet only one inspector is on duty and he can inspect only 10 to 14 trucks daily. At other crossings, there are no inspectors. Of those Mexican trucks inspected, about 44 percent were placed out of service because of serious safety violations. This

contrasts with a 25 percent out-of-service rate for US trucks and 17 percent for Canadian trucks. This safety record is unacceptable.

The trucking industry receives over 80% of the revenues derived from the domestic transportation of cargo, and the industry has undergone fantastic growth in the past five years alone. The number of carriers operating in the trucking industry has close to doubled since 1994 alone. The sheer volume of trucking being done in this country is astounding, and clearly, this volume has an impact on safety. I look forward to hearing what is being done and what can be done to address these important safety issues.

I appreciate the witnesses being here and am interested in hearing today's testimony with respect to S. 1501 and motor carrier safety.

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman, thank you for calling this hearing on the Office of Motor Carriers and on motor carrier safety, and S. 1501, the Motor Carrier Safety Act of 1999. This is a very important issue, and given the growth of the trucking industry, an issue that will impact the trucking industry, truck drivers and the traveling public.

Our roadways are getting more crowded, and in the future it will be necessary that we take additional steps to ensure public safety. The task is very difficult given the increasing congestion that we all face on a daily basis.

Clearly, we need to do a better job in this area. We originally initiated changes in the mid-1980's to establish a commercial driver's license and to increase oversight of trucking safety. We followed that up with the safety improvements made in the Intermodal Surface Transportation Efficiency Act of 1990. Progress in trucking safety increased in the early 1990's, but recently, we have felt the safety impacts of higher volumes of trucking, and we need to take further steps to make our roadways safe for the traveling public.

I look forward to working Subcommittee Chairman Hutchison, and Chairman McCain, to help enact legislation that will enable us to work with the industry to make positive improvements in transportation safety.

Senator HUTCHISON. We will start with Mr. Kenneth Mead, Inspector General of the U.S. Department of Transportation, and following that, if the Hon. Kenneth Wykle, the Administrator of the Federal Highway Administration would proceed, and then it is my understanding that you are going to also have Jack Basso, the Assistant Secretary for Budget and Programs at the U.S. Department of Transportation as a part of your testimony that you are going to split.

So Mr. Mead, if you would start.

STATEMENT OF HON. KENNETH M. MEAD, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY MS. BARBARA COBBLE

Mr. MEAD. Thank you, Madam Chair, Senator Breaux, Senator Cleland. We really commend the committee for having this hearing today. Motor carrier safety is probably the number one public safety issue in the Department of Transportation.

I am going to summarize my prepared statement. Ms. Cobble is on my left. She directed our work in the motor carrier area.

The debate concerning oversight of the motor carrier industry is clearly not a new one. It began over 30 years ago when motor carrier oversight was taken away from the Interstate Commerce Commission and given to the Department of Transportation. Thrity years later, the debate continues. The severity of the problem intensifies.

Looking back on the congressional record, many of today's concerns are laid out there almost verbatim. In 1998 alone, highway crashes claimed over 41,000 lives. Of those, over 5,300 people died

in commercial vehicle-related crashes, including 700 truck drivers. As a frame of reference, that equates to a major airline crash every 2 weeks with over 200 fatalities.

Most carriers, as you pointed out, Madam Chair, comply with the safety rules. But there is a portion of this industry that puts profit first and then puts safety in the back seat. We need to get these companies to change their behavior or get them off the road.

In May, Secretary Slater established a bold goal of reducing the number of fatalities by 50 percent over the next 10 years. Achieving this goal will require major efforts, especially in the face of extraordinary industry growth. There are 450,000 motor carrier companies today, an increase over 35 percent since 1995. That is a startling figure.

We have testified before Congress on numerous occasions highlighting what we consider to be fundamental deficiencies in the Federal Highway Administration's motor carrier safety program. Many others, including the safety investigators themselves, share that view. Half of the investigators responding to a survey we conducted rated their enforcement program as poor to fair. An overwhelming 86 percent of them said stronger enforcement actions were needed.

Congress is now considering several different bills that contain much-needed safety provisions. The bills all call for the strengthening of oversight and enforcement, tightening commercial driver's license requirements, improving data collection, and additional funding. All those are admirable provisions.

We think the bills make a compelling case for organizational change. The Senate and House bills make a most compelling case for a separate Motor Carrier Safety Administration within the Department that would have a preeminent mission of safety. Industry, labor, oversight agencies, and safety advocacy groups, support the transfer of the motor carrier program away from the Federal Highway Administration.

As I mentioned earlier, there is a 30-year history here. The deep-seated, persistent nature of the problems in the trucking industry have not diminished. The same concerns apply to a much larger and more diverse industry, and there is the prospect of the border opening eventually and the infusion of more trucks from Mexico.

The safety conditions that exist in the motor carrier industry today and the loss of life and injury would not be tolerated in any other commercial mode of transportation. There are nearly 6,000 carriers in the United States today who are operating with less than satisfactory safety ratings.

Of the 7 million trucks estimated to be operating today, approximately one out of every four that is inspected is placed out of service for safety violations. In 1997, there were over 2 million truck inspections and over 500,000 trucks placed out of service.

Between 1995 and 1998, the number of motor carriers increased by over 35 percent, while at the same time the Office of Motor Carriers' review of them declined by 30 percent. In our opinion, the decline in compliance reviews and enforcement actions can be explained in part by the fact that the Office of Motor Carriers shifted its emphasis to a more collaborative partnership approach with the motor carrier industry. That is fine where the carrier has safety as

a top priority, but it will not work with people who put safety in the back seat. Violators have come to consider low fines as simply a cost of doing business.

Recently, OMC initiated corrective action, hiring and training new inspectors, working through some long-overdue rulemakings, and establishing goals to increase compliance reviews. We are concerned, though, that this came on the heels of intense criticism from ourselves, the General Accounting Office, the National Transportation Safety Board, this committee, the House Transportation and Infrastructure Committee, and the Senate and House Appropriations Committees as well.

More fundamentally, we do not believe that even with the best of intentions the Federal Highway Administration could provide motor carrier safety with the level of attention it deserves. The current organizational structure forces the safety mission to compete for management attention and emphasis with the Federal Highway Administration's predominant mission, which involves the distribution and investment of about $26 billion in infrastructure funds. A Motor Carrier Safety Administration would eliminate this very longstanding problem.

No organizational change in itself is a panacea. Just changing the organization chart will not be enough. That is why the other provisions of the bill, the safety features, and strong leadership, are important. It is also very important in our view that there be no ambiguity in the purpose of this Motor Carrier Safety Administration and that its overarching, predominant purpose has to be safety.

I will conclude my oral statement with that observation.

[The prepared statement of Mr. Mead follows:]

PREPARED STATEMENT OF HON. KENNETH M. MEAD, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION

Madam Chair and Members of the Committee:

We appreciate the opportunity to be here today to discuss S. 1501, the Motor Carrier Safety Improvement Act of 1999.

Although the debate over whether the Office of Motor Carriers (OMC) should remain in the Federal Highway Administration (FHWA) appears relatively recent, it is not. Over three decades ago the debate was whether the Bureau of Motor Carrier Safety should remain in the Interstate Commerce Commission or be placed in DOT. The debate focused on addressing accident prevention and, ultimately, the Bureau was placed in FHWA. Twenty years later, a bill to establish a Motor Carrier Administration was introduced in the Senate Commerce Committee. Again, the argument was to reduce the number of accidents by improving the effectiveness of the motor carrier safety program. The bill was not enacted.

Currently, over 90 percent of transportation-related deaths involve motor vehicles. Highway crashes claimed over 41,000 lives in 1998. One out of every eight traffic fatalities involved large trucks. Over 5,300 people died in those crashes, including 700 truck drivers. Truck-related fatalities have increased 20 percent since 1992. The number of fatalities equates to 1 major airline crash with 200 fatalities every 2 weeks. The problem is not with the majority of motor carriers that operate safely. Rather, it is with a minority of companies who egregiously violate safety rules.

In May, Secretary Slater established a bold goal of reducing the number of commercial vehicle-related fatalities by 50 percent over the next 10 years. Faced with a rapidly expanding industry, a shortage of drivers, and an expansion of cross border traffic from Mexico, achieving this goal will require major efforts of the trucking industry and government.

We have testified before Congress on numerous occasions on the subject of motor carrier safety. We concluded in a comprehensive report to this Committee that there were fundamental deficiencies in the FHWA's motor carrier safety enforcement program. These included low fines, weak sanctions, few compliance reviews, failure to

enforce safety regulations, a lack of shut down orders for unsafe carriers, and a shift in emphasis from enforcement to a more collaborative partnership with the industry.

Our assessment of the motor carrier program is shared by many others including safety investigators in OMC. Over 73 percent of the safety investigators responded to our survey; almost half of them rated their enforcement program as "poor to fair." Almost 86 percent of the inspectors called for stronger enforcement actions.

Since we have already testified before the Commerce Committee on this subject, our testimony today will overview our findings and conclusions. A copy of the findings and recommendations contained in our April 1999 report is attached to this statement.

LEGISLATIVE PROPOSALS WILL IMPROVE HIGHWAY SAFETY

Congress is now considering three different bills dealing with highway safety. All three bills are designed to forcefully address driver and motor carrier safety. The bills contain much needed safety provisions, such as the strengthening of oversight and enforcement, enhancement of commercial drivers' license requirements, improvements in data collection and analysis, and additional funding for implementation of safety features. In our opinion, OMC could have and should have administratively implemented many of these elements years ago.

BILLS MAKE COMPELLING CASE FOR ORGANIZATIONAL CHANGE

In previous testimony industry, labor, oversight agencies, and safety advocacy groups have called for the transfer of the motor carrier safety program from FHWA. Enactment of any of the three bills will result in some organizational change. The Senate's bill (S. 1501) and the House of Representatives' bill (H.R. 2679) would create a separate agency with a preeminent safety mission within the Department of Transportation. The Administration's bill retains OMC within FHWA, but the Department has stated separately that they would elevate the motor carrier safety program's stature through internal reorganization.

In our opinion, the Senate and the House bills make the most compelling case for a separate administration with a preeminent safety mission within DOT. After 30 years, Congress is still concerned about the adequacy of oversight of the motor carrier industry and is still debating who should perform this mission. As reflected in 30 years of history, the deep-seated and persistent nature of serious safety problems in the trucking industry has not diminished with time. Furthermore, the emphasis and priorities placed on motor carrier safety by OMC has not led to significant improvement.

In light of the rapid expansion of the industry and the need to reduce the number and severity of crashes, it is clear that a separate motor carrier safety administration is needed. As we stated in prior testimony, the current organizational structure forces OMC's safety mission to compete for management attention and focus with the FHWA's predominant mission, which involves investing over $26 billion annually in infrastructure. Given the significant safety problems, the extensive loss of life, and the growth of the industry, we do not believe that, even with the best of intentions, FHWA can provide motor carrier safety the level of attention it deserves.

We recognize that an organizational change, in itself, is not a panacea that will ensure improvements in motor carrier safety. It is critically important, therefore, that there be no ambiguity in the predominant and overarching purpose of this proposed organization, namely safety.

S. 1501 very clearly focuses on safety with the title of the organization being the Motor Carrier Safety Administration. In our opinion, the Senate bill would be improved by incorporating the language contained in the House bill's preamble which says "...the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation."

Madam Chair, we generally support the provisions of S. 1501. The conditions that exist today in the motor carrier industry would not be tolerated in any other mode of commercial transportation. We would like to elaborate on the magnitude of the problem.

SAFETY PROBLEMS ARE NUMEROUS

Over 7 million trucks are estimated to be operating today. Approximately one out of every four trucks inspected in the United States is placed out of service for serious safety violations. In 1997, over 2 million truck safety inspections were conducted and over 500,000 trucks were placed out of service.

In fiscal year (FY) 1995, 1,870 motor carriers received a less-than-satisfactory safety rating. From October 1, 1994, through September 30, 1998, 650 of those same carriers had 2,717 crashes resulting in 132 fatalities and 2,288 injuries. In FY 1998, there were about 6,000 motor carriers still operating with less-than-satisfactory ratings that received those ratings from October 1995 through September 1998. Last year, OMC reviewed the operations of 6,500 motor carriers. Nearly, 2,800 carriers received less-than-satisfactory ratings.

Between 1995 and 1998, the number of motor carriers increased by over 35 percent. OMC's review of them, however, declined by 30 percent. During this same time frame, 846 carriers were subject to multiple enforcement actions. Of these, 127 carriers had 3 or more enforcement actions, and 117 carriers had multiple violations of the same, significant safety regulations. Only 17 of those carriers were issued out-of-service orders, with penalties averaging $2,500. In FY 1998, enforcement actions were processed on only 11 percent of the 29 most violated safety regulations identified by OMC's safety investigators. Violators have come to consider the low fines imposed by OMC, not a deterrent, but merely a cost of doing business.

Research has shown that fatigue is a major factor in commercial vehicle crashes. Driver hours-of-service violations and falsified driver logs pose significant safety concerns. In FY 1995, OMC enforced only 11 percent of driver log violations it identified. In 1998, that number fell to 8 percent.

Since January 1997, our investigators, acting on referrals from OMC safety investigators, have conducted criminal investigations that have resulted in 61 indictments and 48 convictions of carriers and drivers who violated motor carrier safety laws. Almost $3 million in fines and restitutions have been recovered. These are particularly egregious cases because they involve carriers with repeat regulatory violations requiring drivers to grossly exceed hours-of-service limits, and then falsify their driver logs to conceal the violations.

The decline in compliance reviews and in strong enforcement actions can be explained, in part, by the fact that OMC shifted its emphasis from enforcement and compliance to a more collaborative partnership approach with the motor carrier industry. This is a good approach for carriers that have safety as a top priority, but it has gone too far. It does not work with firms that persist in violating safety rules and that do not promptly take sustained corrective action. In replying to our report, FHWA acknowledged "the pendulum has swung too far towards education/outreach and now must move toward stronger enforcement, particularly for repeat offenders...."

RECENT ACTIONS BY OMC

Following adverse findings by the Office of the Inspector General (OIG), the General Accounting Office and others, OMC has initiated corrective action to enhance its safety oversight of the motor carrier industry. For example, OMC initiated actions to hire and train new inspectors, establish goals to increase the number of compliance reviews, reduce the enforcement case backlog, and increase average penalties. In addition, OMC initiated or completed rulemakings to make truck and bus operations safer. These rulemakings include the recent conspicuity rule, redefinition of unfit carriers to reflect a TEA-21 enforcement provision, a new TEA-21 definition of passenger carriers, commercial drivers' license disqualification for railroad grade crossing violations, requirements for trailer rear underride guards, and hours of service revisions. We are concerned, however, that it took so long for the OMC to recognize that the pendulum had swung too far away from enforcement of safety rules.

CASE FOR ORGANIZATIONAL CHANGE

As we have reported and previously testified before Congress, there are persuasive reasons to establish an organization with a clear, preeminent safety mission free of the need to compete with FHWA's primary mission of infrastructure investment. Even with the best of intentions, FHWA will have difficulty giving adequate leadership attention to the motor carrier safety program because it must compete for attention in an agency whose primary mission is the investment of more than $26 billion annually in transportation infrastructure.

Since 1995, the motor carrier industry grew over 35 percent, from approximately 330,000 motor carriers to over 450,000 motor carriers in 1998. This level of growth is projected to continue. During the same period, OMC's oversight of the industry diminished as greater attention was given to education and partnership. In our opinion, the Motor Carrier Safety Program must have leadership that makes tough decisions on issues such as shut downs, when appropriate, and uses inspection and enforcement as some of its primary tools.

Today, Congress is faced with the same concerns it expressed 30 years ago, which centered around the fact that (1) too few trucks were being inspected, (2) too many inspected trucks were found unsafe for operations, and (3) driver fatigue was a major factor in many accidents. Today, these same concerns apply to a larger and more diverse industry that includes the national and international motor carriers. We see the safety challenges growing larger and more urgent, not less so. Based on our work and safety statistics, we are of the opinion that it would be in the best interest of public safety to create a Motor Carrier Safety Administration.

We will now turn to the specific safety provisions of the pending legislation.

IMPROVED MOTOR CARRIER OVERSIGHT AND ENFORCEMENT

If enacted, S. 1501 would significantly improve the Federal Government's ability to make our highways safer, with tools such as stronger enforcement actions against repeat violators, stiffer fines, and shut down orders. In this regard, S. 1501 requires the Secretary to implement the recommendations contained in our April 1999 motor carrier safety report. We believe, however, that these recommendations can be most effective if they are written in statutory language, possibly in the preamble to the legislation, to give them the emphasis intended by the bill's sponsors and to avoid ambiguity in subsequent interpretations of the legislation. If it would be helpful, we would be pleased to work with you in this regard.

STRENGTHENING REQUIREMENTS FOR COMMERCIAL DRIVERS' LICENSES (CDL) AT THE STATE AND DRIVER LEVEL

S. 1501 bans the use of temporary driving permits, strengthens the requirements for issuance of commercial drivers'licenses, and decertifies states not in compliance with Federal regulations. It requires recording of all traffic violations and convictions on drivers' records, whether or not committed in commercial vehicles and requires medical certifications to be part of the driver's CDL record.

Ongoing OIG audits show commercial drivers in some states continue to drive trucks weighing 80,000 lbs. even though they have committed serious driving offenses, such as driving under the influence of alcohol, while in their personal vehicles. At least 12 of 39 states we reviewed allow convictions of this type to not be recorded on driver records. Some states also allow drivers with suspended commercial drivers' licenses to purchase temporary licenses and continue driving. These situations would not be authorized under S. 1501. The driver involved in the March 1999 grade crossing accident in Bourbonnais, Illinois, that killed 11 passengers on an Amtrak train and injured 122 others was operating his truck with a "special" permit.

IMPROVEMENT OF DATA COLLECTION

Provisions contained in S.1501 improve the collection and analysis of data on crashes, including crash causation involving commercial motor vehicles. OMC cannot effectively target motor carriers with the worst safety records when its Motor Carrier Management Information System is incomplete, is inaccurate or contains dated information. In this regard, we found that driver and vehicle information for over 70,000 carriers, or 16 percent of the total population, was not in the database. Furthermore, 31 percent of the crashes reported by the States were entered in the database more than 180 days after the crash date.

INCREASED SAFETY FUNDING

S. 1501 authorizes an additional $50 million a year for motor carrier safety initiatives and data improvements. OMC's budget is currently $55 million, with an additional $100 million going to the Motor Carrier Safety Assistance Program. Given the significant loss of life and injuries associated with large truck crashes, an additional $50 million, if put to good use, could easily satisfy the most rigorous cost benefit analysis. As a frame of reference, FAA's FY 1999 budget for aviation inspectors alone was approximately $475 million.

RETROFIT RULEMAKING AUTHORITY

Currently, the National Highway Traffic Safety Administration (NHTSA) is responsible for establishing safety standards for the manufacture of commercial motor vehicles. FHWA is responsible for establishing standards for in-service commercial motor vehicles. But this split responsibility can result in inconsistent rulemaking requirements. As an example, Congress directed the Secretary to adopt methods for making commercial motor vehicles more visible to motorists. NHTSA issued its rule-

making for safety standards of new equipment on December 10, 1992. FHWA's rulemaking for in-service equipment was completed in March 1999.

S. 1501 provides for NHTSA to have the responsibility for rulemaking for both new and in-service equipment. We believe this change would allow NHTSA to conduct cost benefit analyses associated with rulemakings more efficiently and to more effectively gauge the impact on the industry. It should also result in quicker implementation of safety requirements for in-service trucks. Our concerns with this change are that the timeliness of NHTSA's rulemaking not be negatively impacted, and that provisions be made for meaningful and timely input by the Motor Carrier Safety Administration in advance of issuing draft and final rules.

ELECTRONIC RECORDERS TO MONITOR HOURS OF SERVICE

Truck driver fatigue has been identified as one of the top issues affecting motor carrier safety. The Administration's bill calls for regulations requiring, as appropriate, the installation and use of electronic recorders and other technologies to manage the hours of service of drivers. Based on our work, we can attest that falsification of truck drivers' "hours of service" logs is a very serious problem. It is linked to the more fundamental problem of driver fatigue. If the use of electronic recorders is not directed legislatively, then it should be recognized that Congress would be relying on the new agency to issue a rulemaking governing the use of electronic recorders and including specific privacy protections. We support the National Transportation Safety Board's recommendation, first issued in 1990 and reiterated in 1995, requiring automated/tamperproof on-board recording devices to record the driving time of commercial truck drivers. The potential safety value of electronic recorders is quite significant. In our opinion, it could be accomplished more expeditiously if it was phased in over a period of years and coupled with revised hours of service rules.

PASSENGER CARRIER DIVISION

Establishing a separate passenger carrier division will provide the capability to distinguish between the motorcoach and trucking industries and allow for the development of different standards such as vehicle inspections. We believe this provision has merit because the safety records of passenger carriers indicate that their safety performance is better than large trucks, but that there are safety risks that are peculiar to passenger carriers. For example, the standards for crash protection, rollovers and body joint strength applicable to motorcoaches need to be different from those of large trucks. A separate division would allow the new agency to focus on the development of such standards and at the same time ensure that the fatalities associated with motorcoaches do not increase.

BORDER STAFFING STANDARDS

H.R. 2679 requires the Secretary to develop and implement staffing standards for border inspectors in the international border areas, and requires that staffing levels not be reduced below the average level of staffing in those areas in FY 2000. Although staffing standards can be established administratively, we agree that, in light of the history of inadequate inspector staffing at the U.S.-Mexico border, a legislative standard is appropriate. In a report, dated December 1998, we cited a serious deficiency in the number of inspectors at the U.S. border with Mexico. Following our report, the Department increased the number of inspectors at the U.S.-Mexico border from 13 to 40.

This concludes our testimony. We have a number of other technical suggestions on the bill, which we will discuss with your staff. I would be pleased to answer any questions.

ATTACHMENT

EXCERPTS FROM OIG REPORT ON THE MOTOR CARRIER SAFETY PROGRAM FEDERAL HIGHWAY ADMINISTRATION

April 26, 1999

Report No. TR-1999-091

RESULTS

We found that OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations, and that the OMC enforcement program did not adequately deter noncompliance. The basic safety problem is not with the majority of motor carriers, who do operate safely and have good maintenance and operating practices. Rather, the problem is with a minority of motor carriers, who repeatedly violate safety rules and have unsatisfactory safety ratings for extended periods of time. This problem is exacerbated by the fact that sanctions imposed by OMC are all too often minimal or nonexistent, thus suggesting a tolerance level for violations of safety requirements. Specifically, we found that:

- The fatality *rate* for large truck crashes has remained flat since 1995, while the number of fatalities involved in those crashes continues to increase. In 1997, the latest year for which data was available as of April 21, 1999, 5,355 deaths resulted from large truck crashes. This equates to a major airline crash with 200 fatalities every 2 weeks. This number of fatalities is unacceptable.

  The Department's truck safety performance measure is based on reducing the fatality rate, which allows the number of fatalities to increase as the number of vehicle miles driven by truckers increases. This measure should be changed to substantially reduce the number of fatalities, irrespective of the fact that there are more trucking firms and that greater distances are traveled. We have been advised that the Department does intend to change its goal accordingly.
- OMC has shifted emphasis from enforcement to a more collaborative, educational, partnership-with-industry approach to safety. This is a good approach for motor carriers that have safety as a top priority, but it has gone too far. It does not work effectively with firms that persist in violating safety rules and do not promptly take sustained corrective action. Strong enforcement with meaningful sanctions, including "shut down" orders in appropriate cases, is needed in these situations. In its reply to our draft report, FHWA acknowledged the "pendulum has swung too far towards education/outreach and now must move towards stronger enforcement, particularly for repeat offenders."
- The number of compliance reviews OMC performed has declined by 30 percent since FY 1995, even though there has been a 36 percent increase in the number of motor carriers over this period. Nearly 250 high-risk carriers recommended for a compliance review in March 1998 did not receive one.

  Also, in FY 1995, 1,870 motor carriers received a less-than-satisfactory safety rating. From October 1, 1994, through September 30, 1998, 650 of those same carriers have had over 2,500 crashes resulting in 132 fatalities and 2,288 injuries. There are about 6,000 motor carriers operating with a less-than-satisfactory safety rating that received those ratings from October 1995 through September 1998.
- Only 11 percent of the more than 20,000 violations (for the 29 most significant safety regulations) identified by inspectors in FY 1998 resulted in assessments (fines), and assessments were settled for 46 percent of the dollar amounts initially assessed, which is down from 67 percent of initial assessments in FY 1995. The average settlement was $1,600, down from $ 3,700 in FY 1995. It is apparent that many motor carriers who are fined see the penalties imposed as little more than a "cost of doing business."
- Approximately 47 percent of OMC's workforce responding to our survey rated OMC's enforcement program as Poor to Fair. Over 86 percent favored stronger OMC enforcement, such as putting unsafe carriers out of service, assessing larger fines for repeat offenders, and taking more enforcement actions.
- OMC has been referring motor carriers with the most egregious records and indications of criminal conduct to the OIG for criminal investigation. These cases target those motor carriers that intentionally defraud OMC's safety program and pose a serious threat to highway safety. OMC, OIG and the Federal Bureau of Investigation signed a letter of agreement establishing a cooperative effort on the criminal investigation of such motor carriers. OIG has more than 30 ongoing criminal investigations involving motor carriers. Between January 1, 1997 and April 1999, OIG investigations in this area have resulted in 41 in-

dictments, 35 convictions, and $2.6 million in recoveries. As part of their sentencing by the courts, motor carriers have also been suspended from operating commercial vehicles, effectively removing the operators from the highways.

• OMC implemented the Safety Status Measurement System (SafeStat) to identify and target motor carriers with high-risk safety records by, for example, targeting compliance reviews of the worst carriers. This system is a major improvement over past practices, and the agency deserves credit for doing this. However, SafeStat cannot target all carriers with the worst records because OMC's database is incomplete and inaccurate, and data input is not timely. For example, driver and vehicle information on over 70,000 carriers, or 16 percent of the total population, was not in the database. Both OMC and the National Highway Traffic Safety Administration (NHTSA) obtain statistical data on crashes but data collection procedures are not standard. Furthermore, neither database contains crash causes or fault data because comprehensive crash evaluations are not performed.

• About 44 percent of trucks entering the United States from Mexico do not meet U.S. safety standards. This rate is unacceptably high in comparison to 17 percent for Canadian and 25 percent for U.S. trucks. Except for California, there are too few safety inspectors at the U.S.-Mexico border --for example at an El Paso border crossing, where 1,300 trucks enter the United States daily, there is only one inspector. He can inspect a maximum of 14 trucks per day. California, which has a good border inspection program, is staffed with sufficient State personnel.

A strong correlation exists between an inspection presence and the safety condition of trucks. This is because there is a significant economic consequence to a trucking firm when its trucks are placed out of service, and when there is a strong inspection presence there is a substantial likelihood of poorly maintained trucks or unqualified drivers being detected. Because of California's strong inspection program, California's out-of-service rate for Mexican trucks is 28 percent compared with 50 percent in Texas. It is time to resolve this matter and establish a strong inspection presence at the border.

• There are no clear-cut answers as to whether the motor carrier safety function would be discharged more effectively if it were transferred from FHWA to an existing or new DOT organization. The suggestion that it should be transferred was made due to the significant number of fatalities associated with large truck crashes and a concern that OMC did not maintain a sufficient "arm's-length" relationship with the industry it regulated. In fact, an OIG investigation found that senior OMC managers did not always maintain an appropriate "arm's length" relationship, calling into question the credibility of OMC's leadership.

A range of organizational options exists, including combining the motor carrier safety function with the NHTSA, creating a new agency dedicated to motor carrier safety, combining the Department's surface safety functions in a new multi-modal Surface Transportation Safety Agency, or keeping OMC in FHWA. There are pros and cons to each option; none is a panacea.

Maintaining an "arm's-length" relationship is critical for any enforcement agency, yet the right type of new leadership can change direction and restore credibility over time. In this regard, we note that the Federal Highway Administrator recently changed the top leadership in OMC. However, our greatest concern with the current organizational placement of motor carrier safety in FHWA is whether safety can receive the priority it needs in an agency whose primary mission is investing billions of dollars in highway and bridge infrastructure. This is not to say that it cannot be done, but it will be a formidable undertaking. In responding to our workforce survey, nearly 48 percent of OMC's safety workforce thought an organizational change was necessary. None of the other organizational options require safety to compete with another mission.

Considering the range of options, the two most viable and practical are leaving the motor carrier safety function in FHWA or creating a Motor Carrier Safety Administration dedicated to motor carrier safety. The principal drawback to the NHTSA option is that NHTSA's mission, though dedicated to safety, is heavily focused on regulating the manufacture of vehicles. NHTSA has no experience regulating and enforcing the safety of operating trucking companies and their drivers. The Surface Transportation Safety Administration, while appealing in concept, would be the most complex and disruptive to establish. Large pieces of five Department of Transportation agencies would have to be removed from their present organization and merged into one to form the new organization.

One approach available to the Secretary and the Congress is to base the decision on whether a Motor Carrier Safety Administration is necessary on FHWA's commitment and expeditious implementation of action needed to substantially strengthen enforcement. FHWA's comments on this report make such a pledge. If Congress and the Department decide on this approach, the measure of success should be bottom-line improvements in motor carrier safety, and a one-year timeline should be set to judge the agency's progress and make the final decision.

However, based on our work, together with a nearly 30-year history of congressional and public calls for strengthening motor carrier safety, we increasingly are of the view that it would be in the long term interests of public safety to create a Motor Carrier *Safety* Administration. The simple fact is that under the current organizational arrangement, motor carrier safety necessarily will compete for leadership attention and emphasis with the legitimate, if not primary, FHWA mission of investing over $20 billion annually in highways and bridges. In light of the increasing number of fatalities associated with large trucks, demand for truck drivers and enormous industry growth in the last few years, the safety challenge will be larger and more urgent. This situation justifies an agency with a clear, preeminent safety mission, free of the need to compete with other very important transportation department missions.

We also are troubled by the fact that it has taken so long for the FHWA to recognize, as it does in comments on this report, that the pendulum has swung too far away from enforcement of safety rules. Also, almost a year ago, TEA 21 was enacted, which provided additional enforcement authority to FHWA, yet those mandates have not been implemented. FHWA now says it will move to do this immediately and improve the safety program, but this is occurring on the heels of and with prompting by multiple congressional hearings, and adverse findings by the DOT Inspector General, the General Accounting Office, and the National Transportation Safety Board.

We hope FHWA's commitment to change is followed through on with a sense of urgency and made permanent, as this would save many lives on our highways, prevent injuries, and avoid economic loss. In our opinion, the likelihood of this occurring would increase if the leadership and charter of the agency responsible for motor carrier safety had motor carrier safety as its exclusive and unambiguous mission.

However, it should be recognized that unless visible improvements in safety are achieved and a strong enforcement program adopted, critics would question the new Motor Carrier Safety Administration's closeness to industry, just as they do with the current Office of Motor Carriers. It is pointless to make an organizational change if only the chairs from one agency are shifted to another or by simply changing the organization's name.

• Regardless of where the motor carrier safety function is placed organizationally, strong enforcement action, including "shut down" orders in appropriate cases, will be necessary for significant violations, repeat violators, and motor carriers who have unsatisfactory safety ratings. Other measures will also have a significant bearing on motor carrier safety. These include the long-overdue revision of hours of service regulations, improvements in driver accountability, and performance of required annual vehicle inspections.

RECOMMENDATIONS

Improvements are needed to ensure compliance with Federal Motor Carrier Safety Regulations and to improve the effectiveness of the Motor Carrier Safety Program. FHWA needs to make the following improvements:

• Strengthen its enforcement policy by establishing written policy and operating procedures to take strong enforcement action against motor carriers with repeat violations of the same acute or critical regulation. Strong enforcement actions would include assessing fines at the statutory maximum amount, issuing compliance orders, not negotiating reduced assessments, and when necessary, placing motor carriers out of service.

• Remove all administrative restrictions on fines placed in the Uniform Fine Assessment program and increase the maximum fines to the level authorized by the Transportation Equity Act of the 21st Century.

• Establish stiffer fines that cannot be considered a cost of doing business and, if necessary, seek appropriate legislation raising statutory penalty ceilings.

• Implement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements are completed.

• Establish criteria for determining when a motor carrier poses an imminent hazard.
• Require follow-up visits and monitoring of those motor carriers with a less-than-satisfactory safety rating, at varying intervals, to ensure that safety improvements are sustained or, if safety has deteriorated, that appropriate sanctions are invoked.
• Establish a control mechanism that requires written justification by the OMC State Director when compliance reviews of high-risk carriers are not performed.
• Establish a written policy and operating procedures that identify criteria and time frames for closing all enforcement cases, including the current backlog.
• Require applicants requesting operating authority to provide the number of commercial vehicles they operate and the number of drivers they employ, and require all motor carriers to periodically update this information.
• Revise the grant formula and provide incentives through the Motor Carrier Safety Assistance Program grants for States to provide accurate, complete and timely commercial vehicle crash reports, vehicle and driver inspection reports, and traffic violation data.
• Withhold funds following a reasonable notification period such as one year, from the Motor Carrier Safety Assistance Program grants for those States that continue to report inaccurate, incomplete and untimely commercial vehicle crash data, vehicle and driver inspection data, and traffic violation data.
• Initiate a program to train local enforcement agencies for reporting of crash, and roadside inspection data including associated traffic violations.
• Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.
• Obtain and analyze crash causes and fault data as a result of comprehensive crash evaluations to identify safety improvements.

Senator HUTCHISON. Thank you. That was a good beginning. You have already answered some of my questions.

Now, Mr. Wykle, you have 5 minutes to divide as you wish.

STATEMENT OF HON. KENNETH WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, ACCOMPANIED BY HON. PETER "JACK" BASSO, JR., ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS, OFFICE OF THE SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Mr. WYKLE. Madam Chairman, members of the subcommittee, thank you for the opportunity to testify today on motor carrier safety. As the IG mentioned, during the last year a great deal of attention has been focused on the performance of the Department's motor carrier program. Weaknesses were identified by various congressional committees, the Department's IG, the GAO, the review of former Congressman Mineta, and the NTSB.

Collectively, they emphasized the need for increased enforcement, stronger penalties, a reduction in the backlog of enforcement cases, use of on-board recorders, more timely publication of regulations, improved safety information systems, and a strengthened organizational structure.

We listened to the witnesses, we read the reports, and we responded. We developed a safety action plan with 65 specific safety initiatives. Let me summarize some of our achievements.

Total compliance reviews have increased by 59 percent over the previous year. Our goal is a 100-percent increase. In August we were at 3.9, almost there in terms of compliance reviews per inspector, moving toward 4.

We increased the financial penalties from an average of $1,600 to $3,200 per enforcement case.

We reduced the backlog of enforcement cases by two-thirds.

We increased the number of Federal investigators at the U.S.-Mexican border by 200 percent.

We issued final rules on trailer conspicuity, rear underride guards for trailers, and commercial license disqualifications for rail grade crossing violations.

We issued notices of proposed rulemaking on the definition of an unfit carrier and the definition of a passenger vehicle.

We proposed our motor carrier safety legislation to address such issues as on-board recorders, strengthening the CDL program, funding a crash causation data collection effort, and expanding State enforcement programs.

Most significantly, we are nearing completion of a notice of proposed rulemaking on the complex and controversial 60-year-old issue of driver hours of service, and we have embarked on the first-ever national study of causes of serious large truck crashes.

We have entered into an agreement with the NHTSA to conduct a study on its established crash investigationsites across the country.

Over the next several months, we will establish a unified carrier registration system, provide additional funding to States for the performance and registration management program, encourage all States to develop the safety system and capabilities of the commercial vehicle information systems network, and we will begin fleet tests of advance technology collision avoidance systems on trucks.

I strongly support the retention of the Department's motor carrier function within the Federal Highway Administration, following the recommendation of former Chairman Mineta. The Federal Highway Administration reorganized in the fall of 1998. One of the key changes was bringing together the various pieces of safety into one core business unit. The Mineta recommendations build on this by further strengthening the reporting and management structure.

By creating a new Deputy for Motor Carrier and Highway Safety, and improving the field reporting structure, we bring together safety as it pertains to the driver, the vehicle, technology, and infrastructure. To create a new agency will be costly, slow the current momentum, weaken the program, and make coordination and program execution more difficult.

We welcome the opportunity to work with the committee to enact a bill that will enable us to achieve our goal of reducing fatalities resulting from large truck and bus crashes by 50 percent within the decade.

Chairman McCain's bill includes a number of provisions that are similar to those in the administration's bill: the CDL program, increased funding, and improved data collection. We believe there is broad agreement between the administration's bill and S. 1501 in several areas. We look forward to continuing our work with Congress to achieve our top priority, safety.

This concludes my remarks. I look forward to your questions.

Senator HUTCHISON. Thank you. Did you want to add, Mr. Basso?

Mr. BASSO. Madam Chair, yes, thank you, just very briefly. I will be very brief.

First let me say on behalf of Secretary Slater, Madam Chair, he wanted me to convey to you safety is the Department's number 1

priority. Second, with regard to many of the things that General Wykle has put forward in particular, we need strengthened data collection, we need strengthened laws, and I think this committee, Chairman McCain has put forward a very sound legislative proposal.

We submitted, on behalf of the Department of Transportation and the Administration, legislation which in many ways would, if combined with Senator McCain's legislation, move the motor carrier safety program forward on the question of organization. One way, certainly, of reinforcing and improving the organization is retention within the Federal Highway Administration, adding a new Deputy for Motor Carrier Safety, and that is one way, but there are other considerations.

The Inspector General has pointed those out, and we certainly want to work with this committee and with the Congress to deal with those questions of organization, and I will simply conclude by saying, the bottom line for all of us is not about simply organization, but it is about effective implementation of the laws to prevent the kinds of things we have seen in Atlanta that Senator Cleland brought up, and also Senator Breaux's concerns in Louisiana, and we share those concerns, and that will conclude my statement, Madam Chair.

We would be happy to answer your questions.

[The prepared statement of Mr. Basso follows:]

PREPARED STATEMENT OF HON. PETER "JACK" BASSO, JR., ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS, OFFICE OF THE SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

INTRODUCTION

Madam Chairman and Members of the Subcommittee, thank you for the opportunity to testify on motor carrier safety and legislation introduced by Chairman McCain, S. 1501, the Motor Carrier Safety Improvement Act of 1999. The Department has also proposed legislation, the Motor Carrier Safety Act of 1999 and the Highway-Rail Grade Crossing Safety Act of 1999, together introduced by Sen. Lautenberg as S. 1559, to enhance the safety of motor carrier operations and the Nation's highway system, including highway-rail crossings. We think there are many similarities between these bills, including a mutual goal of putting safety first.

SAFETY GOAL

President Clinton and Secretary Slater have repeatedly stated that the safety of our Nation's transportation systems is our Department's highest priority. This year the Department has made an extraordinary effort to meet its challenge in motor carrier safety. The motor carrier industry has grown and changed dramatically over the past 30 years and it will continue to grow with the vigor of our economy. There are now more than 500,000 truck and bus companies and 6 million drivers subject to Federal and State safety oversight. There are more than 7 million large trucks and 125,000 buses traveling almost 200 billion miles on the Nation's highways each year. The rate of fatalities resulting from large truck and bus crashes has dropped significantly over the past 20 years, from 6.0 fatalities per 100 million vehicle miles traveled in 1977 to 2.8 fatalities per 100 million vehicle miles traveled in 1997 (the last year for which we have complete data to compute this rate). Nevertheless, 5,374 deaths occurred in heavy truck crashes in 1998 and another 123,000 persons were injured that year in heavy truck crashes. These are still unacceptable losses. Secretary Slater announced on May 25 of this year that the Department is committing itself to an aggressive goal of reducing fatalities resulting from large truck and bus crashes by 50 percent within the next 10 years.

THE DEPARTMENT'S COMPREHENSIVE PROGRAM

The Department of Transportation and its State and local partners have comprehensive motor carrier safety efforts that involve coordination among the Federal Highway Administration (FHWA), the National Highway Traffic Safety Administra-

tion (NHTSA), the Research and Special Programs Administration (RSPA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), and the Bureau of Transportation Statistics (BTS), as well as State and local safety and law enforcement agencies. The programs of the different modal administrations within the Department are complementary, and together they address each of the following areas:

- Drivers—We require that professional drivers be qualified and licensed, medically fit, alert and fully attentive to their driving task.
- Vehicles—Trucks and buses must be manufactured and equipped with appropriate safety technologies and be well maintained for safe operation.
- Highway Infrastructure Environment—The highway environment must be designed and built to safely accommodate large and small vehicles, while incorporating the latest features to minimize driver errors and mitigate their consequences when they do occur. To ensure a safe environment, there must also be strong enforcement efforts with respect to speed limits and size and weight laws
- Motor Carrier Operations—We require that carriers employ sound safety management systems to oversee their operations, and we use data to compare individual carrier performance against overall industry safety performance.
- Hazardous Materials (HM) Transportation—We set standards for the safe handling, routing, packaging, marking, and labeling of HM shipments and containers, and provide support and grants for emergency response planning and training.
- Technology—By fostering the development and use of advanced technologies, we can improve driver, vehicle, and roadway safety. We can reduce human error, receive warning of mechanical problems, target high risk carriers, and improve the effectiveness and coverage of roadside inspections.

Our programs have helped reduce the rate of crashes, injuries, and fatalities, and we are taking action every day, throughout the Department, to make them stronger, better, and more effective in saving lives.

Senator HUTCHISON. Thank you. I want to start with Mr. Mead.

Being a border State, I have been very concerned about the safety level of Mexican trucks coming in through my State, but it is certainly not limited to my State. We find today that there are Mexican trucks operating in 24 States and if they are not meeting the same level of safety as our American trucks are required to meet, that is an issue for all 24 of those States, soon to be 48.

I want to ask you in your report that you issued what you would suggest that we can do to increase the rate of inspection, or is it just too early to open our doors to Mexican trucks? What is the right answer, to make sure that all of the people that are traveling on our highways are going to be safe and also have the security of knowing that every truck that enters our country, whether from Canada or Mexico, meets the same standards?

Mr. MEAD. You mentioned in your opening remarks a statistic about that inspector at the El Paso border, the one gentlemen responsible for a crossing that had a peak of nearly 2,000 trucks a day. He could inspect only 13. The Department has increased the number of inspectors since we issued our report, based on our recommendations to 40 at the border. We do not think that is enough. We think the number of inspectors ought to range from somewhere from 60 to 125.

The bill contains a requirement for staffing standards at the border. Although staffing standards can be directed administratively, I think in view of the sad history here at the border of inadequate staffing, that it would be appropriate for the legislation to direct a staffing standard. This is very important: to have enough inspectors so that the truckers know when they are coming across into that commercial zone that there is going to be a consequence, and

that there is a chance of getting caught. If an inspector can only inspect 13 trucks a day, there is not much chance of getting caught if you are a driver in the other 1,900 of them.

Second, we are going to be issuing a report next month on what we have found in the 24 States in which these Mexican trucks were operating. Most of those trucks should not have been in those 24 States.

Senator HUTCHISON. How did they get through?

Mr. MEAD. Well, I thought that the commercial zones, having never been to one until this review, perhaps had a barrier around them and that Mexican trucks could drive across the border and then could not go on. But that is not so. There is nothing that actually physically prevents the trucks from going on into the interior States, or leaving the commercial zone and going into the interior of the State of Texas.

There are some exemptions that do allow Mexican trucks to come into the United States, but they are fairly limited, and based on what we have seen so far and the trucks we have identified, most of them would not fall within the scope of those exemptions.

Senator HUTCHISON. So you are saying in addition to more inspectors we need to have some sort of barrier that would eliminate the possibility of someone just getting through?

Mr. MEAD. Yes, control mechanisms of some sort. I visited the border crossing in the State of California—where the State government has established a first-rate facility and adequately staffed it with State inspectors—and the out-of-service rate for trucks at the border in Otay Mesa is a little higher than 25 percent, which you quoted as the out-of-service rate for U.S. trucks, but not by much. That compares to almost 50 percent at the crossings at El Paso and Laredo. That is unbelievable. 50 percent—even 25 percent—is nothing to write home about.

Senator HUTCHISON. Well, I really commend California for taking that State effort, but honestly, it should not be a State requirement. It should be a Federal requirement, and we need to have Federal standards, Federal regulations, and Federal inspectors, and we are shirking our responsibility.

Mr. MEAD. We agree totally. It is an international border, after all. I think that it is clear that it is a Federal responsibility at the border.

Senator HUTCHISON. I just want to ask you one quick question before my time is up, and that is, Mr. Wykle has, or perhaps Mr. Basso said that adding a new Deputy Secretary for safety would perhaps be sufficient, rather than an administration dedicated to safety. Would you comment on that?

Mr. MEAD. Yes. I view that as creating two agencies in one. I would agree that it would elevate the importance of motor carrier safety. But there is no way that an agency with a $100 million budget is going to be able to compete effectively with an agency charged with investing $26 billion.

The clear and preeminent purpose of the Federal Highway Administration is investment in infrastructure. The dynamics and profile of the trucking industry and the enormous growth and the loss of life suggests to us that the time has come to really focus on safety and we are going to need a special unit to do that.

Senator HUTCHISON. Thank you. So you do not feel it is adequate just to add another Secretary, or Deputy?

Mr. MEAD. No, Madam Chair, I do not.

Senator HUTCHISON. Thank you. Senator Breaux.

Senator BREAUX. Thank you, Madam Chair, and thank the witnesses for the presentation.

Mr. Wykle, I think your administration is in serious danger of losing this program, and I am not sure that is a bad thing. I think the Inspector General makes a good point that the Federal Highway Administration in handling probably $20 billion a year in road construction funds is not the proper place to also do the inspection, that this is such a critically important area that it deserves a unit in and of itself that is separate from putting out funds to construct roads that I really think the case has been made and the facts are clear that it is not working.

If you look back to when we passed the Motor Carrier Safety Act back in 1984 giving the Department of Transportation authority for safety, and that was delegated to the Federal Highway Administration, it has not been a great record. I mean, this is through several administrations. It is not just this administration, it is previous and several back.

I note that the Highway Administration had promised to complete inspections of all motor carriers by July 1990. You all were quickly overwhelmed by the size of the job, and Congress back in 1989 gave 150 more inspectors, nearly doubling the size, but then the agency postponed the deadline for inspecting all motor carriers to September 1992, and then the agency scrapped that plan altogether saying it simply did not have the resources to check every motor carrier in the country.

It seems, however, that they were not using really the money that we gave. I mean, if you look at some of the records, the agency let the number of inspectors drop from 348 inspectors in 1991 to 260 last year, and going in the opposite direction, and during that same period the number of major safety inspections done by the agencies and State inspectors, as the IG has said, decreased by 30 percent from 9,272 to 6,473.

Then I am reading from the New Orleans Times-Picayune, which did an excellent job of looking at this particular situation, pointed out that in reviewing the Highway Administration's enforcement record, they point out the Inspector General discovered that few companies have been even paying fines for breaking the law.

In 1998, just last year, 11 percent of the 22,000 serious safety violations resulted in fines, so almost 90 percent did not get fined, and the agency's Office of Motor Carriers was settling those cases with fines averaging $1,600 in 1998, which is down from an average fine of $3,700 in 1995.

I think the record is not a good one. That is unfortunate. I am not here to point blame, but I suggest very strongly that it is simply not working where it is now, and this is such a high priority that it should be given the attention of an independent agency.

What is wrong with that, Mr. Wykle?

Mr. WYKLE. Well, certainly the statistics you have quoted and those the IG found from his investigation are not good. Part of that is an issue of how resources had been applied and were being ap-

plied. As the IG pointed out, the balance was skewed more toward education and outreach, and the application of technology versus compliance reviews.

Senator BREAUX. On that point, isn't that fine if you have got a cooperative operator, but if you have a fly by-night operator, just educating them is not going to make a difference?

Mr. WYKLE. Certainly that is true, so the key is striking the right balance, and through these various——

Senator BREAUX. I am not sure you can balance safety. It is not a balancing question. It is a question of ensuring that the people who operate buses with innocent people on it are complying with the law. This does not cry out for balance as much as it does for enforcement. Why are we trying to balance safety? You cannot do that.

Mr. WYKLE. Well, that is the point I am trying to make, sir. We have gone too far in terms of the outreach, and the technology side, and we need to get back more on the compliance side, and so we set out to increase the number of compliance reviews by 100 percent over what we did last year.

Senator BREAUX. But you are not even close.

Mr. WYKLE. Well, we will never be able to inspect 460,000 carriers each year.

Senator BREAUX. How many are you—how many did you inspect last year?

Mr. WYKLE. We conducted 6,000 compliance reviews last year.

Senator Breaux: Out of 400,000 operators?

Mr. WYKLE. Yes, sir. Even doubling that only gets to 12,000. A new Motor Carrier Administration is not going to be able to get——

Senator BREAUX. Why can't we have every bus that carries passengers for hire have some type of inspection that certifies that, like in the New Orleans case, the driver is subject to a drug test? I mean, your inspectors apparently gave that bus company a satisfactory rating. The Defense Department said they did not even have a drug inspection program.

Mr. WYKLE. Every motor carrier, whether it is a bus company or a for-hire carrier for freight is required to have a drug and alcohol testing program. One of the things we do when we go in on a compliance review is to validate that they in fact have that program and are applying that.

Senator BREAUX. Well, on that point, I mean, the tragic accident we had in New Orleans just 4 months after you said it was satisfactory, the Department of Defense inspection program turned them down for not even having a drug inspection program. How could they miss not even having a program?

Mr. WYKLE. We rated them conditional, but certainly that was permission for them to continue to operate.

Senator BREAUX. You did not rate them satisfactory?

Mr. WYKLE.

It was my understanding it was conditional. We have three ratings, satisfactory, conditional, and unsatisfactory.

Senator BREAUX. Every bit of information I have says you rated it satisfactory. Just 4 months later the Department of Defense turned them down saying they did not even have a drug program.

Mr. WYKLE. We will certainly go back and check that. My information was, it was a conditional rating, so we will clarify that, sir.

Senator BREAUX. Well, I think we have got a problem. I mean, we gave you more money to add 150 inspectors, and the number of inspectors actually went down. I mean, I just think that the concept of trying to balance safety with enforcement and education, you cannot balance safety.

These are tragic incidents, and I think we ought to learn from them. I am not here to just blame people, but I think the Inspector General makes a good point that there has been an explosion of these companies and trucks on the road, but you have got a big task in building the highways of this country and keeping them in shape, and that the safety inspection program is so important that it at least deserves a separation from the Federal Highway Administration, and let you do what you do best and move on to something else.

Mr. WYKLE. Can I just comment on that, sir? I know the time is up there, but there are several core competencies that are in the Federal Highway Administration that I think relate directly to truck safety, and they should not be split apart. Highway design and construction, which really is the geometrics of the highway, really pertains to the large trucks, will stay in Federal Highways.

Such things as traffic operation, truck size and weight, signs and signaling, a lot of things like that, technology, the intelligence transportation program for the Department is located in Federal Highway. The crash avoidance systems, all of that technology is in the Federal Highway Administration.

Senator BREAUX. I would not have any problem, when you are talking about weights and design, that is certainly something that should be under the expertise of the Federal Highway Administration.

I am talking about ensuring that people who are drunk, on drugs, and have failed driving tests and inspections, or other conditions, are done by a group that focuses in on that, not to take away the design of bridges and roads and weight limits and all of that. That is something that is uniquely important to the Federal Highway Administration.

But just a common-sense inspection to focus in on getting it done as their only mission—as their only mission—needs to be in a different Department.

Thank you.

Senator HUTCHISON. Thank you. Senator Cleland.

Senator CLELAND. Madam Chairman, I am struck by a line from Julius Caesar, when in doubt, reorganize.

I am in serious doubt as to the ability of our Government to enforce compliance on the motor carrier industry here, resulting in creating risks to the traveling public, both drivers who drive trucks and those who are commingled with them, as on Interstate 285 in Atlanta, where that terrible accident happened. I think that is part of the challenge here. Trucks are intermingled with commuter traffic, as is the case in Atlanta on 285, as is the case more and more on our interstate highways.

I would just like to try to get a gauge here and see—Mr. Mead, did you say that one out of four trucking companies that were investigated were noncompliant, or out of compliance?

Mr. MEAD. Those are trucks, Senator, that are stopped for roadside inspections. When inspectors stop these trucks and pull them off to the side, 25 percent are placed out of service for safety violations. In other words, that particular truck, or the person driving it, has such a serious safety problem that the inspectors cannot let that truck and the driver proceed.

That is an enormously high rate and it is approaching 50 percent at crossings in the State of Texas.

Senator CLELAND. Pardon me, I am new to this committee, but on the Surface Transportation Subcommittee that seems an unacceptably high risk to the motoring public, both to the drivers of the trucks and to the motoring public. The question is what to do about it. I am not sure what to do about it, but I think we have a problem.

Second, did I hear you say, Mr. Mead, that 6,000 trucks total were out of compliance? I just wrote that down.

Mr. MEAD. I said, sir, that 6,000 motor carrier companies are operating in the United States today with a less-than-satisfactory safety fitness rating.

Senator CLELAND. The total number of motor trucking companies are what, 460,000?

Mr. MEAD. In that neighborhood, sir, yes. Seventy percent of the population has not even been rated.

Senator CLELAND. Seventy percent of the motor trucking firms that are out there have not been rated, or in effect tested or evaluated?

Mr. MEAD. That is correct.

Senator CLELAND. Mr. Wykle, part of your argument is, as I understand it, that regardless of where the Office of Motor Compliance is located, and even if you doubled the compliance from, say, 6,000 checks a year to 12,000, that does not even come close to what we need. Is that part of your testimony?

Mr. WYKLE. Well, I was responding to Senator Breaux. I believe his comment was along the lines that we needed to inspect every one of those companies and give them a rating, and I was just saying, with the current manpower, and even by doubling the number of compliance reviews per year, it will not come close to that. You could get 12,000 out of the 460,000.

So it is more than just the Federal Government going to inspect. The companies themselves have an obligation to put safe trucks on the road. We are trying to find the 10 to 15 percent that are really out of compliance. It is just like speed enforcement. Law enforcement agencies go after the 10 to 15 percent that are outside the norm.

Based on the IG's report of a couple of years ago, he recommended that we change our safety rating system to try to target the highest risk carriers. We developed a Safe Stat system to do that. We inspect the highest risk carriers, looking at their past crash record, the vehicle-out-of-service rate, their driver out-of-service rate, and their overall safety program.

Looking at those factors helps us target our efforts against those carriers that should be in the worst shape. Those are the ones that we focus on primarily.

I would just like to point out, that of the 460,000 trucking companies, the vast majority of those, about 70 percent, are really small operators, one to five truck-size companies, so we have a lot of small businesses out there operating.

Senator CLELAND. I am on the Small Business Committee, so I am an advocate of small business. Do you find you have more noncompliance, more trucks that are dangerous on the road to operate with smaller companies rather than larger companies?

Mr. WYKLE. Generally that is true, because they do not have the capital to invest in driver training programs, to hire safety vice presidents, or establish safety programs to do their own internal training and so forth, so that is an issue.

Senator CLELAND. My time is up, but I would like to squeeze in one more question here.

The terrible accident on I–285 in Atlanta seemed to be due to driver fatigue. Who sets the hours of service for motor drivers today?

Mr. WYKLE. We do that. There is an hours-of-service regulation, and I commented in my opening statement that the rule is 60 years old, and we are trying to update it. It is very complex, and it is very controversial, but we have a draft revision that is already put together. We are staffing that now, and we hope to have the notice of proposed rulemaking out this fall on proposed changes. We are responsible for that regulation.

Senator CLELAND. As a final comment, Madam Chairman, given what I have heard today about the risk out there with non-compliant companies and non-compliant trucks and a 60-year-old hours of service regulation, many of our truck drivers may not live to be 60 years old.

Thank you very much.

Senator HUTCHISON. Thank you, Senator Cleland.

Senator Snowe.

Senator SNOWE. Thank you, Madam Chairwoman.

Obviously this is an issue that continues to be of tremendous concern to all of us. Because I think we have not seen any dramatic change that would suggest that we can see improvement on the issue of enforcement.

Mr. Wykle, I included a provision when we eliminated the Interstate Commerce Commission back in 1995, that required a change in the rules regulating truck drivers and the hours they could be driving. The language required an advance notice of proposed rulemaking be issued no later than March 1, 1996. And then, with the ICC Termination Act, it also required the original proposal be followed by a notice of proposed rulemaking within 1 year, and a final rule within 2 years.

It is now September 1999. Under the law, the final rule should have been published this year. The Federal Highway, the Office of Motor Carriers, have failed to publish this rule. It is required by law. The hours of service regulations are 62 years old. They are older than the interstate highway system. And yet we have not

seen any changes, any final rule, with respect to the hours of service regulations.

Obviously, trucker fatigue is a serious issue, and has been the focus and the reason for so many truck fatalities in this country today. In my State of Maine over the last few years, we have had some horrendous accidents that have resulted in fatalities due to trucker fatigue. Yet your agency has yet to publish a final rule, as required by law.

Can you tell this subcommittee why there has been no final rule published?

Mr. WYKLE. Yes, ma'am. That is the rule I was actually referring to with the Senator. An advance notice of proposed rulemaking did go out in November 1996. As I mentioned, it is a complex, controversial rule. We received 1,600 comments, and references to 120 different studies. So we have been trying to go through all that, as we are required to do, and consider those comments and studies, and respond to every one of those.

We have basically completed that work. We have put together the draft notice of proposed rulemaking, and we hope to have that out this fall. But we are behind. It is very controversial, very complex. There is a lot of interest in it. We are working hard to get that out. Because it is important to get the rule out, get the comments, and get it finalized.

Senator SNOWE. When do you think it would be finalized? Obviously trucker fatigue is on the National Transportation Safety Board's 10 most wanted list when it comes to what is responsible for truck fatalities in this country.

Mr. WYKLE. Well, we have a very aggressive schedule. It is our intent to have it final within about 1 year. But that is extremely aggressive.

Senator SNOWE. Well, then we are talking probably almost more than half a decade by the time we could see something become a reality on the issue that is of utmost concern to people who have suffered as a result of trucker fatalities. I mean, there have been what, how many accidents, 5,000?

According to Mr. Mead's audit, 5,355 deaths from large truck crashes. That is the equivalent of a major airline crash with 200 fatalities every 2 weeks. Can you imagine the airline industry and the reaction you would have here in the U.S. Congress or throughout America if that was the case with the airline industry?

So there is something wrong. That is why Senator McCain has introduced this legislation about the transfer. It is going to be more than just an administrative change. It is going to be a substantial change. Because obviously the agency has failed to respond to the issues that are of genuine concern because of the significant number of truck fatalities that have occurred throughout this country, and we do not see any changes.

I am sort of amazed to read Mr. Mead's testimony here this morning. Almost 86 percent of the inspectors called for stronger enforcement actions. So we even have a failure of enforcement. I mean people out in the field recognize that there has not been sufficient enforcement with respect to even those regulations that are currently on the books. So something dramatic has to change.

I recognize it is contentious and controversial. But I do not think that the agency has demonstrated a commensurate response to the seriousness of the problem that is out there on our Nation's highways today.

Mr. WYKLE. Well, I am certainly not making excuses for the slowness in getting it out, other than pointing out the factual basis in terms of the number of comments and various studies that impact on that. In terms of the enforcement, as I mentioned, we have set a goal of doubling the amount of enforcement we do per year. We are well underway to doing that.

While I said we conducted 6,000 compliance reviews last year, there were over 2 million roadside spot inspections done to check the mechanical condition of the vehicles. So 2 million of those out of 7 million trucks, theoretically every third to fourth year you would get through all the trucks. Now, we know that is not factually correct because some are repeat. But we get a lot of vehicles checked at roadside spot inspections. But the overall compliance review is a major challenge because of the sheer magnitude.

Senator SNOWE. Well, in U.S. News & World Report, in September, there is an article called "Killer Trucks," that talked about various accidents that occurred. In one instance, State police found that only one of the truck's 10 brakes worked. The glove compartment of the truck was stuffed with crumpled failure slips from roadside inspections. Federal records showed the driver's vehicle was ordered out of service at 55 percent of its inspections in the past 2 years, but the truck always returned to the highway.

So what does it take to get a truck off the road today? And how many trucks have never been subject to review with respect to compliance?

Mr. WYKLE. I cannot give you a number in terms of how many have never been inspected. I indicated to you we do 2 million a year. There are 7 million trucks on the road. Theoretically, every 3 and a half years we would go through every truck. But we know some trucks are inspected multiple times.

In terms of when we find a vehicle out of service, we put it out of service right there. The driver cannot continue to drive until they come and repair that vehicle on the spot. But that is not to say that a week or 10 days later something else may go wrong with that vehicle, and we have to catch that at a subsequent roadside inspection. So you can get multiple failures in a given vehicle.

Mr. MEAD. Senator Snowe.

Senator SNOWE. Yes, Mr. Mead.

Mr. MEAD. I know the time has expired. I just had a perspective to offer.

Senator Cleland said that even doubling the number of compliance reviews would jump the reviews up to about 12,000, and remember, there are 450,000 companies out there. It does not matter much if there is a compliance review, and it proves the truck is unsatisfactory from a safety point of view, if nothing happens. It does not matter much if a trucker can operate on the roads with an unsatisfactory fitness rating continues to operate, and there is no consequence, or the fine imposed is a nominal cost of doing business. The inspectors lose a lot of your leverage.

As with the FAA, the FAA is never going to have enough inspectors to inspect planes as often as they would like, everywhere they would like. So you have to use the leverage of not only doing the compliance reviews, but when something is found wrong, taking some meaningful enforcement action. This program needs fundamental improvement in both of those areas.

Senator SNOWE. Well, mentioning the FAA, that was one of the issues that came before this committee over the last few years, about the dual mandate of the FAA with respect to the safety issues and at the same time encouraging the growth in the airline industry. We saw those dual mandates at FAA as incompatible and conflicting. We changed that.

What do you think about this reorganization under Senator McCain's legislation? Is it possible to have a safety program without strong enforcement? My concern is that there is a lack of enforcement. I think that the agency already has said that, sending out a policy memorandum that says we are not, first and foremost, an enforcement agency, but rather a safety agency and enforcement should be the underpinning of our safety agency. Yet this agency has done fewer enforcements every year.

So what can we do to ensure that that mandate includes strong enforcement?

Mr. MEAD. You need a safety agency, and as you point out with the FAA, there was this conflict, or perceived conflict, between promoting the industry and safety. The Congress clarified that, so now there is no doubt.

This safety function is a very important function. Just like we have a Railroad Administration and an Aviation Administration, I think the time has come, given the size of the trucking industry, to focus like a laser on the safety mission. I just do not see the arithmetic adding up, where this mission, this safety mission in the Federal Highway Administration, can be the predominant mission. Arguably, nor should it be. We really want the Federal Highway Administration to focus on good, sound infrastructure investment.

So it is not that anybody has ill intentions here or that anybody should be blamed. But I think it is a fact that the two missions are going to compete with each other. And that is not healthy.

Senator SNOWE. Thank you, Madam Chair.

Senator HUTCHISON. By way of analogy, I think that is why the National Transportation Safety Board was created as a separate agency, so that it could be objective and not have to take into account a mission or promoting transportation. I think you are doing a terrific job, Mr. Mead.

Mr. Wykle, I think you are trying, but you have a dual mission. That makes it very difficult when you are not able to separate those two. I understand that. But I am, coming from my safety background, convinced that when you are dealing with safety, you need to do it in a more focused atmosphere.

I do have a few more questions for Mr. Wykle, but I think, in the interest of time, I am going to submit those for the record, so that I can call on the second panel.

Senator BREAUX. Madam Chair.

Senator HUTCHISON. Yes, Senator Breaux.

Senator BREAUX. Just a quick comment on what we have all been saying. Mr. Wykle, it is not to condemn in any way the Federal Highway Administration. I think the chair has accurately stated it. You probably ought to be anxious to get rid of this portion of safety enforcement.

[Laughter.]

Senator BREAUX. You have got everything you have got to do with highways and the construction. You do a terrific job. The standards are all very, very important. But what we are looking at, it is almost like a police operation, in the sense of enforcing the law and giving out sufficient penalties for violations. That is a whole other thing. You ought to be saying, good gosh, take this away from me and get somebody else to do it. I think it can be made to work better if we did that.

Thank you.

Senator HUTCHISON. That is a new approach.

Mr. WYKLE. I have been told that by others also, sir. Thank you.

Senator Hutchison: Well, I thank you very much for coming. I think this has been a very helpful panel. I think it has clarified some of the issues. And I also especially appreciate the participation of the committee. I think we are coming to a consensus here.

Thank you very much.

Now I would like to call the second panel forward. The second panel I will introduce shortly. But as they are coming forward, I would like to submit for the record statements from the National Transportation Safety Board, the American Bus Association, the American Insurance Association, Citizens for Reliable and Safe Highways, and the American Association of Motor Vehicle Administrators. This will add to our written record. I will insert those.

Senator HUTCHISON. Now, I thank all of you very much for coming. Because I think this will give us a fleshing out of the record from the standpoint of the diverse views that are represented here.

I would like to welcome Mr. Steve Campbell, the Executive Director of the Commercial Vehicle Safety Alliance; Joan Claybrook, the President of Public Citizen and Board Member of Advocates for Highway and Auto Safety; Mr. Ken Bryant, of Teamsters Local 745, of whom I have had a great relationship in my hometown of Dallas, Texas; Mr. Walter McCormick, the President and CEO of American Trucking Associations; and Mr. Kevin Sharpe, the Illinois Customers Commission, on behalf of the National Conference of State Transportation Specialists.

I thank all of you for being here. I will just start with Mr. Campbell, the Executive Director of the Commercial Vehicle Safety Alliance, for a statement of up to 5 minutes.

STATEMENT OF STEPHEN F. CAMPBELL, EXECUTIVE DIRECTOR, COMMERCIAL VEHICLE SAFETY ALLIANCE

Mr. CAMPBELL. Thank you, Senator, for the opportunity to speak to you today.

CVSA, the Commercial Vehicle Safety Alliance, works to improve commercial vehicle safety on the highways by bringing Federal, State and Provincial truck and bus enforcement agencies together with representatives from industry in the United States, Canada and Mexico. Every State in the United States, all Canadian Prov-

inces, the country of Mexico, and all U.S. Territories and Possessions are members of the Commercial Vehicle Safety Alliance.

We believe S. 1501 is a good bill and the best step that this subcommittee and, hopefully, the full Senate can take on the matter of commercial vehicle safety. A separate Motor Carrier Safety Administration with a total and exclusive focus on commercial vehicle oversight will help ensure that.

Let me reiterate a point I made before the full committee last April. CVSA's longstanding support of a separate administration should not be viewed as a criticism of the many hardworking and dedicated individuals in the current Office of Motor Carrier and Highway Safety. Current Program Director Julie Anna Cirillo should be given high marks for the efforts she has made since assuming her position last February.

We just think that the OMCHS's work would be much more effective and produce better results when pursued under a separate agency, out from under the Federal Highway Administration, whose mission and goal, as we all know, is not primarily focused on truck and bus safety. The bill's funding increase of $50 million a year for the Motor Carrier Safety Assistance Program over the levels established in TEA–21 is also a positive step.

However, we have two additional recommendations that we believe will strengthen the bill. The first deals with a special program for new entrants into the motor carrier business. The second deals with the procedure that establishes a certification program for safety specialists who perform carrier compliance reviews.

The motor carrier industry is expanding. New motor carriers are entering the business at an estimated rate of close to 40,000 a year. The majority of these carriers are small, with six or fewer trucks. Studies show that new carriers with fewer than 3 years' experience have higher crash rates and lower rates of safety compliance than carriers that have been in business longer.

Thus, we feel there is a need for a new program, tailored specifically to the new entrant. The basis of such a program should include the filing of a safety management plan by the new entrant with the Department of Transportation. Regardless of the size or type of carrier, the plan should demonstrate an understanding of Federal safety rules and regulations and, more importantly, the methodology for compliance.

Our next recommendation is outlined in recent legislation which was introduced by Senator Breaux, S. 1524, the Motor Carrier Safety Specialist Certification Act. The Act specifies a process to professionally certify all motor carrier safety specialists, whether in the public or private sector, that performs compliance reviews on truck and bus companies. We believe professional certification would ensure the highest quality compliance reviews and, most importantly, that accurate and timely safety data be filed with the DOT—a need the Inspector General has highlighted in his report.

Until now, compliance reviews have not always been performed in a consistent and accurate manner, as evident in the recent tragic Mother's Day tour bus crash in Louisiana. The case history of that accident, as Senator Breaux mentioned earlier, reveals that just 4 months after compliance review data was presented to the FHWA, and a satisfactory safety rating issued to the bus company,

a private, third party company, under contract to the Department of Defense, failed that same bus company for not having a drug and alcohol testing program.

Unfortunately, this was not the only example of a flawed compliance review. The contractor responsible for reviewing carrier safety for the DOD found that 27 percent of the satisfactory rated FHWA carriers were unable to enter the DOD program because of noncompliance with FHWA safety regulations. These examples would seem to indicate a weakness in the FHWA compliance review program in terms of resources and structure, and to certify and train those who do compliance reviews.

TEA–21 authorized the Secretary of Transportation to study the third party contractors, in conjunction with the motor carrier enforcement program. S. 1524 outlines a way to do that by directing the Secretary of Transportation, in consultation with a newly created Motor Carrier Safety Specialist Certification Board, to establish a program for the testing and certification of Federal, State and local government, and nongovernmental motor carrier safety specialists. I believe CVSA can be a key player in this certification program because of its many years of experience in certifying State roadside truck and bus inspectors.

Again, we support S. 1501 as the best way to improve safety oversight in DOT and in the States, and offer these additional recommendations today to help us all achieve the goal of reducing truck and bus crash fatalities. Senator, thank you again for inviting me here today, and I welcome any questions that you have regarding my written or oral testimony.

[The prepared statement of Mr. Campbell follows:]

PREPARED STATEMENT OF STEVEN F. CAMPBELL, EXECUTIVE DIRECTOR, COMMERCIAL VEHICLE SAFETY ALLIANCE

I. INTRODUCTION

I am Stephen Campbell, Executive Director of the Commercial Vehicle Safety Alliance (CVSA). Thank you for the opportunity to appear before the Subcommittee at today's hearing.

CVSA (established in 1981) works to improve commercial vehicle safety on the highways by bringing federal, state, and provincial truck and bus enforcement agencies together with representatives from industry in the United States, Canada, and Mexico. Every state in the U.S., all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions have signed on as members of CVSA.

CVSA's mission is to achieve uniformity and reciprocity of commercial vehicle roadside inspections and other enforcement activities throughout North America. CVSA achieves its mission by promoting effective motor carrier, driver, vehicle, and cargo safety standards and enforcement practices. While the Motor Carrier Safety Assistance Program (MCSAP) through its grant program to the states serves as the underpinning of a national commercial vehicle safety program, CVSA is the organization responsible for implementing this commercial vehicle safety program not only in the U.S., but implementing essentially a comparable program throughout North America even in jurisdictions without a program such as MCSAP.

II. S. 1501

S. 1501, introduced by Senator McCain, is a good bill. We think that action on the bill is the best step that this Subcommittee, and hopefully the full Senate, can take to try and get a handle on the issue of commercial vehicle safety that Congress has been working on over this past year. The proposal in this bill to create a separate Motor Carrier Safety Administration with a total and exclusive focus on commercial vehicle safety oversight will enhance safety on the highways and help reduce commercial vehicle fatalities which is the only bottom line that counts.

Let me reiterate a point I made before the full Commerce Committee last April. CVSA's long standing support of a separate administration should not be viewed as a criticism of the many hard working and dedicated individuals in the current Office of Motor Carrier and Highway Safety with whom we work on an almost daily basis, both in Washington and in the field. Its current Program Director, Julie Anna Cirillo, should be given high marks for the effort she has made since assuming her job this past February. We just think that their work will be much more effective and produce better results when pursued under a separate agency, out from under the Federal Highway Administration, whose mission and goal as we all know is not primarily focused on truck and bus safety.

The bill's proposed increase in funding of an additional $50 million a year for motor carrier safety and data improvement programs over the levels established in TEA–21 is a positive step and should allow the new Motor Carrier Safety Administration in partnership with states under the MCSAP program to implement programs to bring down fatalities.

III. ADDITIONAL RECOMMENDATIONS

We do, however, have additional recommendations that we think will strengthen the bill even more and we would hope that you will give them serious consideration.

The first deals with a special program for new entrants into the motor carrier business.

The second deals with a program that establishes a certification program for safety specialists who perform carrier compliance reviews.

IV. NEW ENTRANT PROGRAM

The motor carrier industry is expanding and new motor carriers are entering the business at a rapid pace. Since deregulation of the industry in 1980, the number of carriers has more than doubled. In recent years, the numbers of new entrants annually has reached 40,000. There are nearly 500,000 carriers operating today. According to the American Trucking Associations, approximately 78 percent of all motor carriers have 20 or fewer trucks and 69 percent have 6 or fewer trucks. Because of this, increased roadside enforcement is necessary and S. 1501 will certainly help us achieve that. But we believe an increased roadside effort may not necessarily be enough to help us deal with the safety problems resulting from such a rapidly growing industry. We will also need a new program tailored specifically to the new entrant.

Today, one can enter the business by obtaining a DOT number, checking a box on a form (self-certification) that one has knowledge of the Federal Motor Carrier Regulations, certifying proof of the requisite insurance, and listing the process agents.

Studies show that new carriers with fewer than three years experience have higher crash rates and lower rates of safety compliance than carriers that have been in business longer. A process to deal with the problem of the new entrant is a way to get a handle on a significant part of the problem. The basis for such a program should include the filing of a safety management plan by the new entrant with the DOT. Let me make clear here that this new entrant may be an owner operator, but it is just as, or even more likely, to be a small carrier with 6 to 20 vehicles. Regardless of the size or type of carrier, the plan should demonstrate an understanding of federal safety rules and regulations and, more importantly, the methodology for compliance. This plan should describe methods for such key functions as driver selection, training, and controls; daily operation such as CDL requirements, hours-of-service and dispatch procedures; other federal record keeping requirements; compliance with drug and alcohol testing rules; vehicle maintenance procedures such as how to make sure that manufacturers equipment recommendations are followed and how roadside inspection violations will be addressed; policies for reporting and recording of accidents; and, of course, evidence of financial responsibility. If the new carrier plans to haul hazardous materials, there are additional regulations and financial responsibility requirements which must be met.

It is important to point out that a safety management plan requires an investment of resources and money by the new carrier. Thus, the plan should demonstrate that the new carrier management is aware of, and has planned for, such items as the cost of vehicle maintenance. For example, are they aware of what it costs to buy new tires? If the new carrier happens to be a one person operation, the safety management plan should show a balance between the need to haul freight, to take care of various other management tasks, and to take the requisite days off to rest in order to comply with federal hours-of-service regulations.

It is important that the filing record of these safety management plans be computer documented by the new Motor Carrier Safety Administration so that a data base can be developed for future follow up on these carriers. A point so consistently made during earlier hearings on motor carrier safety this year was the fact that close to two thirds of the carriers operating today are not found in any of the information systems such as SAFESTATE, SAFER, and PRISM. This new entrant program would help solve this problem.

We are aware that Senator Lautenberg in his bill S.1559, would require that all new entrants be required to complete a short term training program (one or two day seminar). While this is certainly a good idea, mere attendance at an educational seminar is not enough. It is not, in and of itself, evidence of a long term commitment to necessary safety goals that a thorough and well thought-out safety management plan would be.

Furthermore, a safety management plan provides a base from which the new small business owner (that is really what a new small carrier is) can measure progress so that it can succeed. It is also the basis for a safety investigator to do the follow-up compliance review, an important component of the new entrant program. If a new carrier entrant is treated as a small business and accorded that status along with thousands of other small business owners throughout the country, then to hold them to the requirement of a long term strategic safety management plan should bring positive results. Frankly, according them this status through the requirement of a safety management plan, more than anything else, may impress upon them the seriousness of the responsibility that goes with their new endeavor. More so than the just the requirement of attending a one or two day training course, meritorious though that may be.

A follow-up with a more traditional compliance review of the type now performed on existing carriers, should be conducted on new entrants in a pre-set period of time that could range from six months to one or two years and then as often as needed.

The initial safety assessment (plan submittal, review, and approval process) would require considerable resources on the part of federal and state enforcement agencies. Specific personnel must be assigned the task of conducting new entrant safety assessments as well as providing the necessary safety education for the new entrant. It is unlikely that even with the generous increase in funding provided for in S. 1501 and similar legislation passed by the House, that Federal and State governments would be able to carry out the program on their own.

V. SAFETY SPECIALIST CERTIFICATION

This leads to our next recommendation which is outlined in recent legislation introduced by Senator Breaux, S. 1524, the Motor Carrier Safety Specialist Certification Act. The Act specifies a process to professionally certify all Motor Carrier Safety Specialists be they in the public sector (federal, state, local) or in the private sector (third parties) who perform compliance reviews on truck and bus companies. Such professional certification would ensure the highest quality compliance reviews on high risk carriers now operating and the highest quality safety assessments described above relative to new entrants. It also would ensure that accurate and timely safety data be filed with the DOT for which there is a pressing need as pointed out in the recent Inspector General's report on DOT motor carrier safety oversight. Until now, compliance reviews have not always been performed in a consistent and accurate manner as evident in the recent tragic Mother's Day tour bus crash in Louisiana.

The case history of that accident reveals that back in July 1996, just four months after the Federal Highway Administration (FHWA) did a compliance review on the bus company and assigned it a satisfactory rating, a private third-party company under contract to the Department of Defense (DOD) failed that same company for not having a drug and alcohol testing program. Unfortunately, this was not the only example of a flawed compliance review. A total of 27% of motor carriers that were assigned a satisfactory rating by FHWA failed to enter the DOD program after a compliance review was done by the DoD contractor. These examples demonstrate that FHWA has a weakness in its compliance review program in terms of resources and structure to certify and train those who do compliance reviews. This results in compliance reviews that are not always performed in a consistent and accurate manner.

TEA–21 authorized the Secretary of Transportation to approve the use of third party contractors in conjunction with the motor carrier enforcement program. Senator Breaux's legislation takes the next step and provides the Secretary with a means to carry out such a program. It would direct the Secretary of Transportation, in consultation with a newly created Motor Carrier Safety Specialist Certification

Board, to establish a program for the training and certification of Federal, State and local government, and nongovernmental motor carrier safety specialists.

This program enhances the role of the DOT to do its job of carrier rating and enforcement which is currently hampered by the lack of accurate information as the Inspector General pointed out in his recent report. It does not create a business totally separate from the DOT but creates a new force of qualified safety specialists who are partners with, and agents of, the government engaged in an effort to do compliance reviews on existing high risk carriers and new entrant safety assessments on many more carriers than present capacity allows. It will improve the skills and knowledge of those in both federal and state government who now do compliance reviews. Why can't we improve upon existing standards for the compliance reviews and those who do them? I believe we can through a certification program.

The use of properly certified third party safety specialists is the only practical means of providing enough human resources to implement a safety assessment program for new entrants and to significantly increase compliance review efforts for existing high risk carriers.

In conclusion, CVSA supports a certification program to improve the system already in place and to add considerable resources to it. CVSA would welcome an opportunity to be a key player in this effort and to help develop a program as outlined by Senator Breaux to ensure that everyone who does compliance reviews has the same level of training. This would provide the Motor Carrier Safety Administration with a consistent quality of data for rating purposes. I believe CVSA can be a key player because of its track record in certification as demonstrated by its successful program of certifying state roadside truck and bus inspectors since 1981. I might point out that the DOT has endorsed and participated in CVSA's roadside certification program from the start.

Again, we support S. 1501 as the best way to improve safety oversight in DOT and in the states, and offer these additional recommendations to help us all achieve the goal of reducing truck and bus crash fatalities.

Thank you again for inviting me here today.

Senator HUTCHISON. Thank you, Mr. Campbell.

Ms. Claybrook, in addition to your role in Public Citizen, you were also a former Director of the National Highway Traffic Safety Administration I met you when I was Vice Chairman of NTSB. And we have had a long and good relationship, working on safety for our highways. So I appreciate your being here.

STATEMENT OF JOAN CLAYBROOK, BOARD MEMBER, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Ms. CLAYBROOK. Thank you very much, Madam Chairman. It is a pleasure for me to be here. And we very much appreciate this committee taking up this issue. It is a serious one and one that needs attention, as this committee has made very clear.

The number of deaths and injuries that are occurring—Senator Snowe said, if this were happening in airlines, 200 people every 2 weeks in airline crashes, dying, the Nation would be going crazy, the press would be outraged, and so would the Congress. And we believe that, if you look at the truck statistics, trucks are really 3 percent of registered vehicles, are involved annually in 9 percent of the fatal crashes and are responsible for 12 percent of all deaths. So they are very over-involved and we are extremely concerned about it.

The failures of the Federal Highway Administration in its regulatory and enforcement activities have been documented extensively by the Inspector General, by the GAO, by the National Transportation Safety Board, and in congressional hearings. And I do not need to repeat them. I would like my entire testimony submitted for the record, which outlines some of them.

Senator HUTCHISON. It will be.

Ms. CLAYBROOK. A new thing that we are mentioning today is the public opinion on this subject. A public opinion poll that was just recently conducted by Public Opinion Research and for the Consumer Federation of America has found that when asked whether the public would pay more—which is interesting—would they pay more for a good shipped by truck in exchange for truck safety improvements, 78 percent said yes, they would. That is really quite remarkable, in our view.

Also motorists know that fatigued drivers behind the wheel are a hazard. Ninety-three percent of the public said that allowing truck drivers to drive longer hours is less safe. And 80 percent said that longer hours are much less safe.

I would point out, in the rulemaking proceeding that is now pending on hours of service, that Senator Snowe queried Mr. Wykle about, it is our understanding that the proposal that is about to come out would allow longer hours of driving. Right now it is a maximum of 10 hours of continuous driving, 2 hours more than most people work without overtime. But FHWA is going to propose 12 hours of continuous driving time. They would increase the number of rest hours, which is essential and critical. And we support that. But we are very concerned about longer hours of continuous driving.

In addition, on the public opinion poll, 81 percent said they were in favor of installation of new technologies, such as driver warning systems and black boxes. One of the major recommendations of the National Transportation Safety Board for 15 years has been the installation of black boxes in trucks, as they are in airplanes, so that you would be able to enforce the hours of service rules effectively by electronic means, and also you would get data when there are crashes. And we certainly support that.

With regard to the legislation, we very much support the transfer of the in-service vehicle rulemaking to the National Highway Traffic Safety Administration. Generally, this rulemaking done by OMC is to make sure that the rules issued by the National Highway Traffic Safety Administration for new trucks are kept up to date on the trucks on the road. And so it is very much an extension of what the agency already does.

Rarely does the Office of Motor Carriers require a retrofit of old trucks that have never had these devices on them. So it really is an extension of what NHTSA already does and so, for that reason particularly, we believe that this authority should be transferred and that is a provision in Senator McCain's bill, and we very much support it.

In addition, the National Highway Traffic Safety Administration has been effective at issuing regulations, unlike the Office of Motor Carriers. It has the expertise and the technical capacity to do so. And we certainly also support another provision in the bill which would require data collection and analysis and research transferred to NHTSA, because that agency has a very effective data system and the Office of Motor Carriers never has. In fact, OMC has no reliable State-by-State information, even the most basic data categories, for commercial vehicle operations and commercial driver licenses.

We also support another provision in the bill for the Inspector General recommendations to be implemented by the Secretary. We think that without these three provisions, this creation of a new administration would be an empty box. Because the failures of OMC have been so substantial that if it were simply transferred as it now is into a higher-level administration, it would mean nothing. It has to have these additional provisions in order to make sure that it operates effectively.

We also endorse CVSA's proposal for a new entrants special program. We would suggest that be added to the bill. Our reasons are that our greatest number of problems always occur with new entrants, so we definitely support that.

We also support what Ken Mead suggested, which is that enforcement without any action is no enforcement at all. You have to have sufficient penalties and action. We believe that the penalties should be increased. We would be happy to work with the committee on our suggestions with regard to that.

We also are concerned about conflicts of interest. Under the current OMC, there are many conflicts of interest that are involved in the granting of money to the trucking industry to do research preparatory to doing a rulemaking to regulate the trucking industry, and we think that is very inappropriate. We would like to see the bill contain provisions on conflict of interest, both as to the research activities and also as to the leadership of this new agency, because, without that, we think that it will not have appropriate conflict of interest controls.

And we have several other suggestions. I see my time is up. In conclusion, I would say that we would suggest that the responsibility in the Department of Transportation for NAFTA, which is now diverse and spread all over this agency, this Department, be centralized. I would urge the committee to address that here. Because the only way that you are going to have effective enforcement at the border and effective implementation of the requirements on transportation as to NAFTA is if there is one person that you know is responsible for this and you can go to, and we can go to, to make sure that the border is properly managed. Because today it is not.

I guess the last point, if I could just take 1 second to say it, is this issue of a dual mandate. This committee changed the FAA so that it would not have both promotional and regulatory responsibilities for safety. And you were not here in the Senate, either one of you, but I worked in the Senate in 1966 when this Office of Motor Carriers was transferred from the ICC to the Department of Transportation so that it was out of the industry promotion business and safety was the only requirement of the Department of Transportation for truck safety.

We think it would be terrible to have it have a dual mandate. Again, we think that the Congress was wise in 1966. We hope that you will make that clear in this legislation.

Thank you very much for the opportunity to testify.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK, BOARD MEMBER, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Senator Hutchison and members of the Surface Transportation Subcommittee, thank you for the opportunity to testify at this extremely important hearing. I am

Joan Claybrook, Program Co-Chair of Advocates for Highway and Auto Safety and president of Public Citizen. Advocates is a national highway and motor vehicle safety organization that I am proud to have helped to start in 1989. We are a unique, non-profit group that is composed of a wide range of consumer, health, safety, and law enforcement organizations, and insurance companies and representatives who are dedicated to the belief that carefully focused actions to improve safety policies and practices at both the federal and state levels will reduce motor vehicle crashes, deaths, and injuries.

Advocates is celebrating its tenth anniversary this year. During the past ten years we have worked closely with the Senate Commerce, Science, and Transportation Committee on a wide range of issues affecting highway and auto safety. Because of this committee's leadership and the legislation that members and committee staff have proposed and persisted in championing through enactment, the American public is driving safer motor vehicles, the government is providing better consumer information about auto safety, and motor carrier safety has been enhanced because of your timely initiatives on commercial licensing, truck and bus anti-lock brakes, as well as commercial driver drug and alcohol testing. The leaders of this committee are continuing this tradition of advancing public health and safety with these hearings on motor carrier safety and through Chairman John McCain's recent introduction of S. 1501.

Today's hearing and its subject could not be more timely or more pressing. Each year, thousands of Americans are needlessly losing their lives and suffering severe, often permanently disabling, injuries because of motor vehicle crashes involving large trucks. Sadly, the overall number of passenger vehicle deaths due to truck crashes has increased over the past seven years. In 1998, 4,212 occupants of passenger vehicles were killed in big truck crashes, an increase of 33 deaths over the 4,189 who died in 1997. Just as important are the injuries sustained by passenger vehicle occupants: almost 100,000 each year according to the National Highway Traffic Safety Administration (NHTSA). Overall, in 1998, 5,374 people died in truck crashes (an average of more than 100 people a week) and 127,000 were injured. If 400 people died every month in airline crashes, this Committee would be demanding the resignation of the Federal Aviation Administration (FAA) Administrator, holding emergency hearings condemning airline operations, and the newspapers would make it front page news. Why is it that truck crash deaths are considered routine, not a crisis?

These figures are disturbing enough on their own. However, when they are viewed from other statistical perspectives, they become especially alarming and demand a response from all levels of government:

- Large trucks are much more prone to be involved in fatal multiple-vehicle crashes than passenger vehicles and their rate of involvement in such collisions has grown in 1998 to 84 percent. When big trucks have crashes with passenger vehicles, more than four out of five of these collisions result in deaths.
- *Ninety-eight (98) percent* of the people killed in crashes involving a passenger vehicle and a large truck are passenger vehicle occupants.
- Although big trucks account for only 3 percent of registered vehicles, they are involved in 9 percent of all fatal crashes and in 12 percent of all passenger vehicle deaths.
- Even more startling is the fact that *more than one out of five* (22 percent) of all passenger vehicle occupant deaths on our roads and highways result from crashes with large trucks.

I do not think that these horrifying facts and figures from NHTSA and the Insurance Institute for Highway Safety are a coincidence. They are unacceptable and intolerable losses that have increased dramatically since the Federal Highway Administration's (FHWA) Office of Motor Carriers (now the Office of Motor Carrier and Highway Safety) took a nosedive in the quantity and quality of its key safety stewardship at the start of the 1990's. FHWA's regulatory and enforcement lapses over the past several years were amply documented in 1997, 1998 and 1999 by devastating reports from the U.S. Department of Transportation (DOT) Office of the Inspector General (OIG), in oversight studies by the U.S. General Accounting Office (GAO), and through repeated criticism and calls to action issued by the National Transportation Safety Board (NTSB).

I also want to stress here that these critical evaluations showing FHWA's failure to advance commercial motor vehicle safety are not confined to the safety problems of our domestic trucking operations, but extend to foreign operations as well. Indeed, the GAO published two reports, in 1996 and in 1997, showing the abysmal failure of the U.S. DOT to ensure the safety fitness of drivers and commercial motor vehicles crossing into the U.S. at our southern border. And FHWA has not provided

the kind of comprehensive inspection of these motor carriers to catch the dangerous vehicles and drivers, and provide a deterrent to those south-of-the-border trucking businesses that are violating our safety regulations. Even today, three years later, if this border were open to all truck traffic, there is *de minimis* capacity to detect the unfit and dangerous trucks and drivers.

Taken together, these crash facts and oversight reports make it crystal clear that major actions are needed quickly to stem this terrible tide of crashes, deaths, and injuries that cost our country dearly. Increasingly, the systemic defects of FHWA's administration of motor carrier safety have been revealed over the past several years, with a crescendo of failures documented in reports issued by several government organizations and in letters, testimony, and regulatory comments filed by safety groups and victims over the past year alone. I would like to submit for the record a chronology which includes all of the hearings, meetings, workshops, and plans proposed by the U.S. Department of Transportation to address this serious safety problem. (See attachment).These basic failures by FHWA of its statutory responsibilities demand rapid—but carefully crafted—legislative corrections enacted by Congress. And Congress must pass comprehensive commercial motor vehicle safety reform legislation before it adjourns this year. The American public cannot endure another year of horrific reports of fatal big truck and bus crashes, confirmed by recent government figures, that are portrayed almost daily on television and in the newspapers. The issue is too important to await more plans and reports detailing the failures of the federal motor carrier safety program or the release of new government figures confirming that the large number of truck-related deaths and injuries are a national disgrace. In fact, the public has recently weighed in on truck safety and the results are clear: the majority of Americans are very concerned about the safety of big trucks on our roads.

Today, Advocates is releasing for the first time the results of three recent polling questions on truck safety. Two public opinion questions were contained in a survey conducted this summer by Opinion Research Corporation International, prepared for the Consumer Federation of America and Advocates. When asked whether they would pay more for goods shipped by trucks in exchange for truck safety improvements, 78% of the American public said they would be willing to pay more. This clearly shows that consumers see an obvious benefit in paying more for their goods when lives are at stake. On another truck safety issue, motorists know that fatigued truck drivers behind the wheel are a safety hazard on the road, and that the problem would only be worsened by allowing longer driving hours. An overwhelming 93% of the public said that allowing truck drivers to drive longer hours is less safe, and 80% of respondents said that driving longer hours is *much* less safe. Moreover, a large majority of the public—81%—said they would favor the installation of new technologies such as driver warning systems and black boxes in trucks to improve enforcement of motor carrier safety regulations, in a September, 1999 survey conducted by Lou Harris for Advocates. The American public continues to voice its concern on the issue of truck safety and now looks to the Congress and the Administration to make a real difference in saving lives.

Let me first state that the best fundamental reform of motor carrier safety is to transfer all of the safety regulation and enforcement responsibilities currently housed in FHWA to NHTSA. The NHTSA track record of timely, carefully targeted safety regulation and its field office infrastructure complements its excellent data collection, analysis, and crash research capabilities. NHTSA can and will do the job. However, if a complete transfer of authority is not made to NHTSA, at a minimum some basic safety responsibilities need to be transferred to it, regardless of the final venue for core motor carrier functions currently administered by the Office of Motor Carrier and Highway Safety (OMCHS). At the top of the list is the duty for issuing regulations addressing the motor vehicle standards, maintenance, and safety performance of key components and equipment of commercial motor vehicles already in service. We simply can no longer tolerate FHWA's shortsighted regulatory actions to delay or avoid requiring important safety improvements for trucks and buses already on the road. That is why we strongly support the provision (Section 2) in S. 1501 that transfers to NHTSA the regulation of the safety equipment on existing trucks, trailers, and buses.

Even when FHWA finally gets around to extending the new vehicle regulations issued by NHTSA for in-service trucks and buses, it usually applies these safety rules only to a small portion of the existing fleet, by limiting its regulations to the maintenance of safety equipment on these vehicles required by NHTSA in standards for newly-manufactured commercial vehicles. This approach, however, avoids correcting widespread safety deficiencies for most of the existing fleet, especially for trailers which can have service lives as long as 20 years. For example, when FHWA published its final rule just several weeks ago requiring carriers to maintain rear

underride guards on trailers to prevent these lethal crashes by small vehicles, the agency only made the rule prospective in application from 1996 onward, the effective date for NHTSA's standard for newly-manufactured vehicles. This ensures that the overwhelming majority of trailers on the road still fitted with the dangerous, obsolete Interstate Commerce Commission type of rear trailer guard required in 1953 will not be removed and upgraded to the current NHTSA standard. For many years to come, these inadequate, and even lethal, trailer guards will continue to threaten the lives of all the motorists who are unlucky enough to run into the back of a tractor-trailer.

Another example involves improved heavy truck conspicuity, where FHWA issued a final rule for combination truck trailers manufactured before a NHTSA regulatory compliance date. The rulemaking took nearly six years and was a sham safety decision for trailers already on the road. In essence, FHWA essentially grandfathered trailers produced before the NHTSA compliance date by giving carriers up to 10 years to comply if they already had other, non-conforming retroreflective treatment of the sides and rear ends of trailers. This means that most of these trailers will reach the end of their useful service lives without being retrofitted to NHTSA specifications. In the meantime, FHWA has undermined the benefits of the NHTSA regulation by allowing thousands of existing trailers with non-complying reflective markings, even with colors such as blue and green, to continue to operate. Improving trailer visibility for motorists by requiring uniform markings is an inexpensive fix for a dangerous and costly problem, and importantly, reduces the chances of drivers of small passenger vehicles running into the back ends of trailers. Nevertheless, FHWA found a way for motor carriers to avoid ever having to comply with the rule.

These examples show why Congress must enact the provision in S. 1501 to transfer important safety regulatory powers to NHTSA so that timely, compatible policy decisions can be made by a single agency coordinating its new vehicle safety standards with standards to maintain and improve the safety performance of on-the-road trucks and buses.

In order to give full effect to Section 2 of S. 1501, and transfer regulatory authority over retrofit and maintenance of in-service commercial motor vehicles to NHTSA, Congress will also need to amend another law. Section 104(c)(2) of Title 49 United States Code, requires the FHWA Administrator to carry out duties and powers under Chapter 315 of Title 49, which includes the authority to prescribe requirements for the safety of operation and equipment of motor carriers. Enactment of Section 2 of S.1501, without a corresponding amendment to Section 104, may create dual jurisdiction in both NHTSA and FHWA over these regulatory issues, a situation that will not lead to regulatory efficiency or improve safety. In addition, Section 104(d) prevents the Secretary of Transportation from transferring this authority from the FHWA Administrator. To clarify this situation, S. 1501 should include a technical amendment that deletes the reference to Chapter 315 now contained in Section 104(c)(2).

Similarly, we strongly support the provision in S. 1501 (Section 6) that transfers data collection, analysis, and administration of motor carrier reporting systems to NHTSA. The U.S. DOT OIG's April 1999 report stressed FHWA's poor data and data collection. Even in its recent rulemaking proposal to revamp the Motor Carrier Safety Assistance Program (MCSAP), FHWA itself admitted that it has no reliable State-by-State information on even the most basic data categories for commercial vehicle operations or commercial driver licenses. In addition, FHWA has repeatedly repudiated even the need for doing careful crash causation studies, including its public statements to that effect at a major NTSB hearing just this past March. FHWA does not know why or how many truck crashes happen. Moving the administration and evaluation of truck safety data, including crash causation analysis, to NHTSA is a baseline requirement of motor carrier safety reform. It is crucially important for Section 5 of S. 1501 to be made the law of the land.

Another central feature of agency reform contained in S. 1501 is the provision in Section 4 directing the Secretary to implement the safety improvement recommendations in the OIG's April 26, 1999, report (TR-1999-091). This provision is critical to the success of this legislation because it is the only provision in the bill addressing the safety inspection and compliance review responsibilities of motor carrier oversight. A complete and detailed fulfillment of the OIG findings and recommendations—appropriately strengthened by the OIG's March 1997 report, as well as by GAO reports on safety in both domestic and cross-border commercial traffic, and by recent NTSB reports and hearing findings on truck and bus safety—is pivotally important to the establishment of a vigorous safety inspection and compliance review system. A new, independent motor carrier agency is simply a bankrupt idea unless it is accompanied by a renewed motor carrier enforcement mission that addresses the enormous backlog of unrated carriers and inadequate roadside and bor-

der inspections. Advocates strongly supports the purposes of Section 4, which is central to the success of S. 1501 in reforming the federal administration of motor carrier safety.

There are two more features of the bill that we believe are forward looking and will ensure improved commercial vehicle safety on a national scale. First are the strong provisions mandating further strengthening of the successful Commercial Driver License (CDL) program by closing the last loopholes in the system and increasing the penalties for violations, as well as setting penalties for infractions overlooked in FHWA's regulations. Section 5 is particularly strong in its no-nonsense message to the states to administer its CDL programs to the highest standards. In particular, we support the decertification authority provided the Secretary to suspend a State's authority to issue commercial licenses until it complies with all of its responsibilities under federal safety regulations for the program. Although other, financial penalties suspending and reallocating federal funds can have significant deterrent effects, the legislated authority to issue a decertification order is a powerful incentive to the States in foreseeing and curbing abuses, particularly in view of the misadministration of this program in some states.

Second, we also strongly support the rulemaking action of Section 5 to integrate the federal medical certificate confirming driver qualification under the physical fitness standards of the Federal Motor Carrier Safety Regulations with the CDL in each State. If States issue renewed medical certificates on the same cycle as their CDLs, this will correct the abuse of drivers failing a medical examination but continuing to drive because their licenses have not yet come up for renewal.

The allied provision, mirroring FAA requirements, for a national registry of medical providers, will substantially improve the fail-safe approach to CDLs and physical qualification by ensuring a pool of health care providers with demonstrated knowledge about the special medical standards which apply to new CDL applicants and current license holders. A few years ago, there was a strong majority among the members of an FHWA negotiated rulemaking committee supporting such a national registry, including motor carrier industry representatives, health care providers, and Advocates. There are just too many documented cases, corroborated by FHWA and the States, of drivers being certified by health care providers who are unaware of the higher medical standards that a driver must pass to become or remain eligible to operate a commercial motor vehicle in interstate commerce. Controlling the quality of the physical requirements required for operating a commercial vehicle in interstate commerce is long overdue because it will enhance the protection of the traveling public.

The provisions of S. 1501 which I have just reviewed are its great strengths and I believe they will go a long way toward reforming motor carrier safety. However, we believe there are other provisions, if incorporated in S. 1501, would advance safety even further. Let me review these briefly.

- Compliance Reviews, Safety Ratings, and Roadside Inspections.

In a September 13, 1999, interview with *Transport Topics,* published by the American Trucking Associations, a senior OMCHS official stated that the number of federal motor carrier compliance reviews would increase until they reach the 1992 average of more than 9,000 per year (roughly 770 per month). When that 1992 level is reached, OMCHS would take a look at safety and "see if we can ease off a bit."

However, reducing the number of compliance reviews is the last thing that we need. This agency official failed to acknowledge that there are *almost twice as many registered motor carriers today as there were in 1992:* nearly 478,000 interstate motor carriers, according to FHWA figures. The OIG's April 1999 report stated that FHWA has performed 30 percent fewer compliance reviews since 1995 while there has been a 36 percent increase in the number of registered interstate motor carriers in only four years. In fact, in March 1998, the agency even failed to perform compliance reviews on 248 (or 15 percent) of the high-risk carriers recommended for such a review.

Given FHWA's indifferent attitude toward its oversight and enforcement mission, we believe that Congress needs to set a firm goal, perhaps even a specific number, for the agency's completion of motor carrier safety reviews. Without specific legislated targets, we are not confident that government regulators will ever overcome the enormous backlog of unreviewed carriers and carriers that are either unrated or bearing out-of-date ratings.

- New Motor Carriers.

Looking forward, we also recommend that the bill contain a provision requiring the Secretary to conduct rulemaking to establish a new motor carrier entrant proficiency examination. If the backlog of unreviewed and unrated carriers seems

daunting, we need to avoid adding to it by allowing new applicants for interstate operating authority to begin operations simply by paying a fee and showing proof of insurance. FHWA records show that carriers early in their business lives are more prone to rack up violations, often in large part because their owners simply do not know the federal regulations that govern their interstate operations. This safety problem can be avoided by requiring applicant carriers to pass a federally prescribed proficiency test demonstrating their understanding of the Federal Motor Carrier Safety Regulations. Within a year of gaining operating authority, these new carriers should undergo a compliance review that either confirms or changes their initial safety rating.

- Minimum Penalties for Federal Violations.

It is high time to stop the widespread federal practice of routinely either forgiving any monetary sanctions for safety regulation violations or reducing them to nominal sums so that carriers, when fined, simply regard the fines as incidental costs of doing business. The April 1999 OIG report underscored the chronic problem of federal enforcement officials looking the other way when stiff fines are called for. In response, the OIG called for legislation to raise the statutory penalty ceilings.

While we support this recommendation wholeheartedly, Advocates believes that the first order of business is to establish a floor for the minimum amounts that can be assigned for violations. We believe that a figure equal to one-half the maximum amounts listed in the Federal Motor Carrier Safety Regulations as the minimum permitted by law is a good benchmark. Curtailing regulators' discretion to forgive all fines or make them just a "slap on the wrist" will make motor carriers understand that safety violations can have serious financial consequences. We also suggest the committee adopt a strong provision in H.R. 2679, Section (b)(2), inserted at the request of Rep. James Oberstar (D-WI), that mandates agency imposition of the maximum civil penalties when enforcement officials find that a motor carrier has twice committed the same or related violations. Advocates supports this "get-tough" approach, which clearly will deter repeated violations and urges the committee to include a similar provision in S. 1501. We also support routine updating of the schedule of penalties in 49 Code of Federal Regulations to keep pace with the Consumer Price Index.

- Conflicts of Interest.

It is imperative that Congress imposes effective controls on the abuses involving FHWA's provision of federal funds to the trucking industry and its affiliates to conduct sensitive motor carrier safety research which directly affects prospective regulatory actions and policy choices of the agency. This is nothing more than the regulated industry producing studies to serve as the basis for the FHWA regulations governing the industry. It is using taxpayer dollars to pay the fox to dwell in the chicken coop. Right now, there are several research efforts underway, including investigations directly affecting commercial driver hours of service rules, being conducted by an arm of the trucking industry. Recent studies costing millions of dollars and taking several years, such as the Driver Fatigue and Alertness Study conducted in part by the Trucking Research Institute of the American Trucking Associations, have prejudiced major rulemaking initiatives. Despite the numerous flaws in this and other research studies, FHWA most inappropriately continues to rely on them as a basis for its regulatory and other policy decisions. In three separate NTSB hearings held this year on motor carrier safety and technology, Chairman Jim Hall decried the prejudiced research conducted with the trucking industry concerning whether on-board recorders are needed to show commercial driver compliance with hours of service regulations.

This is a practice which NHTSA would never condone or engage in. Having vehicle manufacturers federally contracted and paid with taxpayer money to conduct research bearing directly on forthcoming regulations affecting the industry's safety standards is simply inconceivable. Yet this is exactly the practice consistently pursued by FHWA with study after study carried out by the trucking industry at a cost of millions and millions of taxpayer dollars directly impacting federal motor carrier safety standards. In a word, this practice must be stopped. A large part of the intransigent attitude of FHWA toward vigorous federal safety regulation is due directly to the research findings it relies on being produced by the regulated industry. If Congress wants to achieve significant changes in the way motor carrier safety standards are finally adopted, it must eliminate the conflict-of-interest problem in motor carrier safety research and regulation.

This pervasive, chronic problem of prejudiced research contracts provides important instruction on controlling any future federal appointments to high-level administrative positions regarding motor carrier safety. Congress also needs to enact

strong conflict of interest provisions to ensure that any agency officials overseeing motor carrier regulation and enforcement have unimpeachable credentials. Employment in the motor carrier industry or strong financial ties to the industry through repeated contracted work, for example, should immediately disqualify any prospective candidate for an appointed position. If Congress creates a new, separate motor carrier agency and does not address these two major conflict-of-interest issues of agency research and agency leadership, public confidence in the impartiality of the policy decisions of a separate motor carrier agency will be undermined from the start and, more importantly, a new era of motor carrier safety will not occur.

- State and Federal Motor Carrier Law and Regulation.

According to the NTSB, perhaps one-half of the deaths from big truck crashes each year involve intrastate-only motor carriers. Because of the Tolerance Guidelines adopted by FHWA (49 CFR Pt. 350, App. C) as a result of the 1991 amendments to the Motor Carrier Safety Act, many states' rules significantly differed from the Federal Motor Carrier Safety Regulations for intrastate-only commercial vehicle operations. For example, medical standards in many states are lower for in-state CDLs. Also, a number of states have more liberal hours-of-service rules than the Federal requirements, such as permitting drivers to operate trucks and buses for up to 12 continuous hours instead of 10 hours, the interstate limit. In some instances, statewide operations in larger states allowing longer driving hours result in longer trips and more annual vehicle-miles-traveled than some regional interstate carriers accrue in their operations traversing two or three northeastern states.

Congress has made it clear in successive hazardous materials transportation reauthorization acts that it expects the U.S. Department of Transportation to conform intrastate hazardous materials truck transport to the Federal Hazardous Materials Regulations issued by the Research and Special Programs Administration (RSPA). In fact, RSPA just this past year adopted new regulations requiring hazmat truck movements to comply with the Federal safety rules, save for a few exceptions carefully crafted to reduce burdens on farmers and small businesses using small quantities of materials of trade.

If it is important to reduce risks to public safety from all hazmat incidents on our highways, we think Congress should take a careful look at reducing the public's exposure to the increased risks of crashes resulting from intrastate safety regulations which often are not as stringent as the Federal Motor Carrier Safety Regulations. Let me emphasize again that in small vehicle-big truck fatal crashes, 98 percent of the deaths are suffered by the occupants of the passenger vehicles. This means that more than 2,000 fatalities may result from truck-car crashes with intrastate-only motor carriers. We strongly encourage Congress to adopt a provision directing the Secretary to conduct public rulemaking on whether the deviations by the States from federal interstate safety standards pose a safety threat that should be eliminated.

- Commercial Driver License.

Another important safety area which needs legislative attention in this bill is the extension of the CDL to drivers of commercial vehicles in interstate commerce between 10,001 and 26,000 pounds gross vehicle weight. S. 1501 pays close attention to refining the CDL system, but these changes, if enacted, will increase the already considerable differences between the CDL program and the requirements and penalties applying to drivers of big trucks below 26,000 pounds.

When Congress enacted the CDL program in 1986, part of the reason for confining CDLs to for-hire carriers of passengers and to private and for-hire freight carriers above 26,000 pounds was simply the burden involved in asking the States to implement across-the-board CDL systems for all commercial vehicles weighing 10,001 pounds or more. Also, in that era, single-unit trucks in the 10,000-26,000 pounds commercial vehicle segment were responsible for a smaller portion of the annual crash deaths and injuries compared with trucks more than 26,000 pounds.

In recent years, however, single-unit trucks in the lower weight range have contributed disproportionately to the annual truck crash death toll. In fact, fatality figures for 1997 and 1998 show that nearly one-third of all deaths in large truck crashes involve single-unit trucks. Many of these trucks are in interstate commerce, especially on a regional service basis, yet the disparity of the licensing approaches used by many States between their CDL requirements and non-CDL licenses for commercial vehicles in the lower weight range are even more glaring when compared with pending proposals to further strengthen the CDL system.

For example, many states do not even issue a special truck license for drivers of single-unit trucks in the lower weight range or require these drivers to meet special safety standards. Apart from the medical qualification under federal regulations, the

States do not have to require drivers of trucks between 10,000 and 26,000 pounds to take specific knowledge and skills tests. Furthermore, even though federal regulations prohibit any driver of any commercial motor vehicle in interstate commerce from having more than one driver license, only the CDL program for vehicles more than 26,000 pounds contains the safeguards for preventing multiple license acquisition. And, last, the real paradox is that the weight range division between trucks above and below the 26,000 pound threshold is essentially arbitrary. This arbitrary division has been made even more acute by FHWA's recent amendment to the federal regulations which now makes actual on-the-road weight—and not the weight *rating* assigned by a vehicle manufacturer—the basis for whether a vehicle is or is not to be regarded as a commercial motor vehicle subject to the Federal Motor Vehicle Safety Standards.

The bottom line is that there are hundreds of thousands of single-unit trucks on the road right now that are more than 26,000 pounds whose drivers must have CDLs. But there are hundreds of thousands of single-unit trucks which fall below 26,000 pounds, sometimes only by small margins, whose drivers do not have to meet any of the standards or suffer the same penalties for federal violations prescribed for CDL holders.

This simply makes no sense. Given the disproportionate rise in single-unit truck-related crash deaths over the past several years, Congress needs to consider extending the CDL requirements below 26,000 pounds for commercial drivers in interstate commerce. If the rules for a CDL are going to be tightened, the safety payoff of stronger standards for commercial drivers of vehicles between 10,000 and 26,000 pounds also need to be addressed. The best way, now that we all have seen the tremendous benefits of the CDL, is simply to extend the CDL program throughout the entire range of interstate commercial drivers.

- North American Free Trade Agreement Truck Safety.

Advocates continues to be very disturbed about the lack of concerted effort by the Department of Transportation to deal with the serious, pervasive foreign motor carrier safety violations occurring especially at our southern border. One of the problems in dealing with this in an effective and timely manner appears to be a lack of focused resources and personnel in the Department to put a well-crafted border safety plan into operation. There are several offices and individuals spread among the modal administrations and in the Secretary's office which have been assigned duties to improve border safety, including customs interdiction, criminal law enforcement, and motor carrier safety inspection. Congress should take a hard look at whether a single, focused resource—perhaps a single office—in one location should be created in the Department and charged specifically with the sole responsibility of taking actions to rapidly improve commercial vehicle safety at our borders. Right now, it seems as if almost everybody is responsible for some aspect of commercial motor vehicle border safety which, in the end, means that there really is no one whose sole job is to ensure quick improvement of border safety inspections. We believe that Congress should consider directing the Secretary to collect the expertise and resources spread throughout the Department dealing with border safety and house them in a single office, give them targeted goals to achieve in a time certain, and hold them accountable when those goals are not met. Without this, the same diffuse, indeterminate response to commercial vehicle safety violations at our southern border seems certain to continue.

- Dual Mandate for Federal Motor Carrier Regulation and Enforcement.

Even strong provisions in final legislation mandating comprehensive motor carrier safety reforms can be undermined if a "dual mandate" is established by law. By a "dual mandate" I mean legal permission for or direction to a new federal motor carrier safety agency to place safety policies and actions in the scales and weigh them against the productivity or economic interests of the industry. This kind of dual role blunts the possibility of federal safety regulators choosing policies which maximize safety improvements. I cannot emphasize enough how important it is in legislating any new approach to federal motor carrier oversight to avoid underwriting this destructive approach to safety stewardship and, instead, to ensure that the sole mission of federal motor carrier oversight is safety enhancement. This is the reason the Bureau of Motor Carrier Safety (now OMC) was removed from the Interstate Commerce Commission (ICC) in 1966 and placed in the U.S. Department of Transportation.

- Findings and Purposes.

I would also like to support the addition of a strong preliminary section for S. 1501 stressing both general and specific actions that need to be taken by a reinvigo-

rated federal motor carrier safety agency to achieve big reductions in truck and bus crashes, deaths, and injuries. The kind of legislative direction provided in a well-crafted findings and purposes section can have a substantial, positive impact on agency behavior. For example, the most recent hazardous materials reauthorization act contained strong, directive language for guiding the regulatory initiatives of the Research and Special Programs Administration, particularly in conforming intrastate hazardous materials surface transportation more closely with the requirements of the Federal Hazardous Materials Regulations.

Section 2 of H.R. 2679 contains exactly the kind of legislated guideposts for agency observance which produce much more impact on and control over subsequent strategic planning, problem identification, and policy choices than stating the same ideas in accompanying report language. Advocates endorses adoption of Section 2 as the preface for S. 1501 because it epitomizes the basic failures of federal motor carrier safety oversight and sets forth the central issues that need primary attention by federal safety regulators. In this regard, Section 2 is very similar to important findings and purposes sections that have introduced the pivotally important Motor Carrier Safety Acts enacted in the 1980s.

That completes my testimony. I again want to express my deep thanks that this committee has confronted the serious problem of commercial motor vehicle safety head-on in this session. We support your efforts and we support your bill. I hope that the modest but essential suggestions I have made today can make your strong bill even better. Advocates believes that these issues, which literally are matters of life and death, cannot be deferred to another session of Congress. We need a bill enacted now. I am pleased to answer any questions you may have about my testimony.

A Year of Discussion and Debate

Time for Decisions and Actions

In June, 1998, Rep. Frank Wolf (R-VA), Chair of the House Appropriations Subcommittee on Transportation, proposed moving the Office of Motor Carriers (OMC) from the Federal Highway Administration (FHWA) to the National Highway Traffic Safety Administration (NHTSA) in the FY 1999 Department of Transportation (DOT) Appropriations bill. This proposal was strongly endorsed by more than 40 consumer, health, safety, victims, medical and insurance organizations because of the failed performance of OMC in stemming the rise in truck-related deaths and injuries, the unprecedented drop in truck inspections and compliance reviews, the abysmal record of ignoring serious safety violations and levying inadequate fines, OMC's insufficient or nonexistent data collection systems, and the failure to issue federal safety standards including those mandated by Congress.

In the past year there have been:

- Two critical DOT Inspector General reports and a General Accounting Office (GAO) report documenting OMC failures;
- A half dozen major Congressional hearings, involving more than 50 witnesses from government, industry, law enforcement, labor, insurance, health and safety organizations;
- A three-day investigation of motor carrier safety programs by the National Transportation Safety Board (NTSB) involving more than 80 participants;
- Two plans offered up by the DOT;
- A 90-day review of OMC and consultations with more than 25 groups at the request of Secretary Slater, resulting in a plan recommended by former Rep. Norm Mineta;
- Countless discussions and meetings among the various stakeholders convened by Rep. Wolf, former Rep. Mineta, and NTSB;
- Two workshops held by DOT in the summer of 1999.

The following chronology demonstrates that there has been plenty of debate and discussion about proposals and now it's time for decision-making and actions.

June, 1998: Rep. Frank Wolf includes a provision in the FY 1999 DOT spending bill to transfer OMC to NHTSA.

October, 1998: Trucking interests succeed in stripping the transfer provision from the FY 1999 DOT spending bill.

January 14, 1999: U.S. DOT Inspector General investigation reveals that senior OMC staff improperly worked with trucking interests to lobby Congress against the transfer and that the actions of some senior staff of OMC foster at a minimum an appearance that OMC does not have the "arms length" relationship called for between government safety regulators and the industry.

February 2, 1999: Rep. Wolf introduces HR 507, legislation to transfer OMC to NHTSA.

February, 1999-April, 1999: Rep. Wolf convenes a series of meetings involving DOT, trucking interests, law enforcement and safety groups on strategies to improve motor carrier safety programs.

February 11, 1999: The House Transportation and Infrastructure Committee holds the first in a series of hearings on the OMC with three witnesses from DOT.

February, 1999: Former Rep. Mineta is requested by Secretary Slater to undertake an independent review of motor carrier safety, functions and operations within DOT.

February 23, 1999: The House Appropriations Subcommittee on Transportation holds hearings on motor carrier safety with 16 witnesses representing government, victims, safety, insurance and trucking interests. The General Accounting Office (GAO) testifies that OMC activities to reduce fatalities are likely to have "little short-term effect", and that projected increases in truck traffic are likely to result in more than 6,000 truck related fatalities in the year 2000.

March 12, 1999: The first motor carrier safety plan is proposed by OMC with the issuance of a draft "Safety Action Plan" covering 1999-2003.

March 17, 1999: The House Transportation and Infrastructure Committee holds a second oversight hearing on motor carrier safety programs.

March 25-26, 1999: The House Transportation and Infrastructure Committee holds additional hearings on motor carrier safety programs.

April 14-16, 1999: The National Transportation Safety Board (NTSB) holds three days of hearings on truck and bus safety involving more than 80 experts, including OMC staff, industry representatives, victims, insurance and safety groups highlighting serious deficiencies in OMC's data collection, inspections, research and regulatory programs.

April 26, 1999: A second report is issued by the U.S. DOT Office of Inspector General at the request of the Congress to determine the effectiveness of OMC safety programs. The major conclusions are that OMC programs are not sufficiently effective and enforcement activities do not adequately deter noncompliance.

April 27, 1999: The Senate Commerce, Science, and Transportation Committee holds oversight hearings on motor carrier safety and hears testimony from eight witnesses on the necessary steps to improve safety.

May 25, 1999: A second plan of action is announced by Sec. Slater and Administrator Ken Wykle to improve motor carrier safety. The announcement includes a goal of achieving a 50% reduction in truck crash fatalities over the next ten years and outlines key components of a safety plan.

May 26, 1999: At the request of DOT, another plan of action is unveiled by former Rep. Norm Mineta including the results of his review of the OMC and details about specific actions, strategies and recommendations to the U.S. DOT for reducing truck related deaths and injuries. Rep. Mineta's efforts involved three roundtable discussions with 14 different stakeholder groups and meetings with 11 other individuals and groups. DOT also reveals in testimony before the House Transportation and Infrastructure Committee that the final truck fatality figure for 1997 is 5,398, an increase of 43 deaths from preliminary FARS fatalities indicating 5,355 deaths.

May 27, 1999: DOT announces "preliminary data" on 1998 motor vehicle fatalities and injuries. Fatalities associated with large trucks dropped only 1.8%, from 5,398 in 1997 to an estimated 5,302 in 1998. However, injuries associated with large trucks jumped by 6% (from 133,000 in 1997 to 141,000 in 1998).

June 23, 1999: The House adopts HR 2084, the FY 2000 DOT Appropriations bill including a provision which prohibits funding of OMC activities, including a $70 million increase, unless it is transferred from FHWA.

July 14-15 and August 3-4, 1999: DOT holds workshops on the future of the Commercial Motor Vehicle Industry to design long-term strategies for DOT, industry, labor and others on "dramatically increasing safety in the trucking industry".

August 3, 1999: House Transportation and Infrastructure Chair, Ranking Democrat and other senior members hold a press conference to introduce the Motor Carrier Safety Act of 1999. The bill creates a new separate modal administration, the National Motor Carrier Administration. Safety groups object to provision giving new agency a dual mandate of safety and industry promotion. Provision is dropped. Rep. Shuster (R-PA) introduces by request HR 2682, the Administration's proposal to reform motor carrier safety.

August 4, 1999: The House Transportation and Infrastructure Subcommittee on Ground Transportation marks-up HR 2679, the Motor Carrier Safety Act of 1999.

August 5, 1999: Senator John McCain (R-AZ), Chair, Senate Commerce, Science, and Transportation Committee, introduces S 1501, the Motor Carrier Safety Improvement Act of 1999. The bill creates a new separate modal administration, the

Motor Carrier Safety Administration, requires OMC to implement the recommendations of the U.S. DOT Inspector General and gives NHTSA responsibility for data collection and issuing retrofit safety rules for commercial motor vehicles on the road. The House Transportation and Infrastructure full committee marks-up and reports out HR 2679. Senator Frank Lautenberg (D-NJ) introduces S 1559, the Administration's proposal to reform motor carrier safety.

September 29, 1999: The Senate Commerce, Science, and Transportation Subcommittee on Surface Transportation and Merchant Marine, holds a hearing on S. 1501, the Motor Carrier Safety Improvement Act of 1999.

Senator HUTCHISON. Thank you.

I do want to pursue at some point the agencies coming together for border control. Because I see it just in Customs and Border Patrol and not having enough coordination there. And of course, inspections by Customs are a very important component of safety. So I do think more coordination and a bigger picture on the border would be very helpful.

I would like to call on Mr. Ken Bryant, representing the International Brotherhood of Teamsters, a member of the Teamsters Local 745 in Dallas, and just say that I have worked with the Teamsters on truck safety issues for over 8 years now, and I appreciate that effort that they have made and the focus they have put on truck safety. It has been a very important component of our deliberations on this bill. I welcome you.

STATEMENT OF KEN BRYANT, TEAMSTERS LOCAL 745, DALLAS, TEXAS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. BRYANT. Thank you, Madam Chair.

Madam Chair and members of the Subcommittee, I am Ken Bryant, Business Agent for Teamsters Local 745, which is located in Dallas, Texas. I have been employed as a truck driver for 20 years, the last 11 as a Teamster. It is within the last 2 years that I have joined the administrative staff of Local 745.

I am pleased to appear today before this subcommittee, and especially my home State Senator, on behalf of 1.4 million members of the Teamsters Union and the hundreds of thousands of our members who literally make their living on our Nation's highways.

The Teamsters Union has taken a serious interest in the work that Congress, and in particular this Subcommittee, has undertaken to address the problems that have been identified in recent months at the Office of Motor Carriers and Highway Safety. Now, as this Subcommittee moves forward with hearings concerning the legislation that Senator McCain introduced, S. 1501, the Motor Carrier Safety Improvement Act of 1999, we are pleased to have the opportunity to share our views on this legislation.

In general, we believe that S. 1501 will go a long way toward strengthening motor carrier safety. The bill emphasizes better enforcement of current regulations, calls for increased inspections, compliance reviews, makes significant improvements to the commercial driver's license program and data collection activities, and addresses other weaknesses in the OMC's motor carrier safety program through structural reforms.

The Teamsters Union now believes that the right approach to improving motor carrier safety is the establishment of a separate administration. Senator McCain's bill would create that new adminis-

tration which, in our view, is appropriately named the Motor Carrier Safety Administration. We believe that safety must be the primary mission of this agency. It is certainly logical to emphasize "safety" in its title.

We also support other provisions in the bill. These include ensuring the new administrator be appointed by the President, requiring the Secretary of Transportation to implement the safety improvement recommendations in the Inspector General's April 26th audit report, and establishing a commercial motor carrier advisory committee.

In our written testimony, we have suggested additional ways that motor carrier safety can be improved through this legislation but, due to time constraints, my comments today will focus on one issue that is a great concern to the Teamsters Union. That is the issue of NAFTA cross-border trucking.

Madam Chair, in order to improve motor carrier safety, we must not ignore the possibility of the pending invasion of unsafe and unqualified drivers coming across our border from Mexico under the NAFTA cross-border trucking provisions. While we would assume that increased funding levels in S. 1501 would filter down to the border States and bolster a rather lackluster inspection and enforcement regime, there is no certainty of that occurring, especially with the recent track record of the OMC.

Neither can one simply throw additional money at a problem and expect a solution. While Congress should not micromanage a Federal department or agency, there are a number of directives that a new agency can be given to help ensure that it addresses the most serious threat to the future safety of our highways—that of unsafe Mexican trucks and unqualified drivers undoing whatever gains the Congress intends to make with the creation of the new agency.

One such directive is contained in H.R. 2679, the House Transportation and Infrastructure Committee's version of the Motor Carrier Safety Act of 1999, which calls on the Secretary of Transportation to develop and implement appropriate staffing standards for Federal and State motor carrier safety inspectors in the international border areas. Developing standards, volume of traffic, hours of operation of the border facilities, types of commercial vehicles and cargo, and delineation of responsibility between Federal and State inspectors would be some of the issues to be considered.

This goes directly to the findings of the I.G. report, which noted that Mexican trucks entering the U.S. through Arizona, New Mexico and Texas are unlikely to be inspected, because those States' border crossings do not have sufficient inspectors on duty during all commercial operating hours, and some border crossings do not have any inspectors assigned. The report concluded that the placement of adequate inspection resources at the Southern Border is an essential control mechanism to ensure that Mexican trucks comply with U.S. safety regulations.

The creation of an Office of International Affairs within the new agency is another area where the McCain bill is less adequate than its counterparts. The importance of possibly integrating another 4 million commercial motor vehicles from Mexico onto our highway system and continuing a high level of safety in this country war-

rants a separate office to oversee this major facet of motor carrier safety. The House bill contains such a provision, and we strongly support its creation.

Last, the Teamsters Union is very concerned with evidence that suggests that Mexican motor carriers are operating outside of the currently permitted commercial zones. A letter sent to Senator Shelby from the Inspector General shows that 68 Mexican motor carriers are currently operating in 24 States, well beyond the commercial zones, even though they are not authorized to do so. Many of these States are represented by members of this panel.

What disturbs the Teamsters Union is that the DOT knew these Mexican carriers were operating illegally in the U.S., and that no enforcement actions, such as assessing fines and penalties or revoking the carriers' operating privileges in commercial zones, were taken against them. We therefore urge the committee to include S. 1501 language to ensure that such actions are taken in the future. I ask that this language be submitted for the record.

Senator BROWNBACK. Without objection.

Mr. BRYANT. Madam Chair, the serious safety issues surrounding cross-border trucking should raise deep concerns for the State of Texas and your constituents, especially as we approach the deadline for opening the border to these unsafe Mexican trucks in the year 2000. The Teamsters Union urge you and the members of this Subcommittee to work with Senator McCain to include our recommendations regarding cross-border trucking in the final version of the motor carrier safety bill.

Thank you, again, for providing me the opportunity to testify. I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Bryant follows:]

PREPARED STATEMENT OF KEN BRYANT, TEAMSTERS LOCAL 745, DALLAS, TEXAS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Madam Chair and Members of the Committee:

The International Brotherhood of Teamsters represents hundreds of thousands of workers who make their living on our nation's roads, whether they are interstate highways or city streets. Department of Labor statistics show that these transportation workers are employed in one of the most dangerous of all occupations, and the Teamsters Union is very much committed to making their workplace as safe as any other jobsite.

We have taken a serious interest in the work that Congress and, in particular, this Committee has undertaken to address the problems that have been identified in recent months at the Office of Motor Carriers and Highway Safety (OMCHS). The fact that safety compliance reviews have decreased, Level 1 inspections are down, and prosecutions are at a 10-year low, while fatalities involving commercial trucks has remained somewhat stagnant over the last few years, points to the fact that changes must be made to improve the functions of the agency. The Teamsters Union has testified before the House Transportation and Infrastructure Subcommittee on Ground Transportation (3/25/99) and the Senate Commerce, Science and Transportation Committee (4/27/99) concerning the focus of motor carrier safety programs and the organizational structure of the OMCHS.

Now, as this Subcommittee moves forward with hearings concerning the legislation that Senator McCain has introduced, S. 1501, the Motor Carrier Safety Improvement Act of 1999, we are pleased to have the opportunity to share our views on this legislation and to suggest additional ways that motor carrier safety can be improved.

MOTOR CARRIER SAFETY ADMINISTRATION

The discussion over the future of the Federal Highway Administration's (FHWA) Office of Motor Carriers (OMC), which is responsible for monitoring the operation

of commercial motor vehicles and their drivers, is not new. It first began in the 1980's when the Ranking Member of this Committee, Senator Ernest Hollings, introduced legislation to create a new motor carrier administration. His purpose was to promote organizational efficiency and enhance the effectiveness of motor carrier safety. While no further action was taken on this legislation, it is clear that the problems plaguing the OMC in the 80's still remain.

This was most evident last fall when the Department of Transportation's (DOT) Inspector General (IG), Kenneth Mead, released the findings of an investigation into activities of the OMC aimed at rallying the trucking industry to oppose a proposal by House Transportation Appropriations Subcommittee Chairman Frank Wolf to transfer the OMC to the National Highway Traffic Safety Administration (NHTSA).

The activities criticized included drafting and editing opposition letters for the American Trucking Associations (ATA) and individual motor carriers to send to Congress and contacting heads of large trucking firms to urge them to voice their opposition to the proposal with Senate Majority Leader Trent Lott (R-MS). In the end,the IG concluded that these activities fostered "at a minimum an appearance that the OMC does not have the arms length relationship called for between government safety regulators and the industry." These actions are unacceptable, and the Teamsters Union has stated on numerous occasions that the incident itself shakes the confidence of all of us who rely on the OMC to effectively carry out its functions in overseeing the motor carrier industry and enforcing important safety regulations.

Since the release of the IG report, the Teamsters Union has reviewed several proposals to restructure or reform the OMC, including proposals to transfer the agency in whole or in part to NHTSA, to create a new administration, or to elevate the role of the OMC within the FHWA. During Congress' early debate in exposing the problems of the OMC, we concentrated our efforts on ensuring that reforms are made within the agency to better target the bad carriers and bad drivers and strengthen enforcement mechanisms, rather than focus on where the OMC should be housed.

Now that those problem areas have been identified and real solutions have been proposed, the Teamsters Union believes that the right approach to improving motor carrier safety is the establishment of a separate administration. Senator McCain's bill would create that new administration, which in our view is appropriately named the Motor Carrier Safety Administration. We believe that safety must be the primary mission of this agency, and it is certainly logical to include safety in its title.

We also support Senator McCain's recommendation for an Administrator who is appointed by the President, and subject to confirmation by the Senate. Strong leadership is crucial for the success of an agency that has squandered the public trust. Unfortunately, the organizational structure offered in S. 1501 doesn't go far enough. What a new administration needs to function properly is a logical division of the core responsibilities of the agency. The agency should be properly segmented to provide leadership and accountability in key areas. Missed deadlines, policy missteps and overall disarray that have infected the performance of the OMC cannot be allowed to continue in the new Administration. In addition, the public has a right to know who is responsible for specific functions of the agency. The Teamsters Union therefore suggests that the Committee closely examine H.R. 2679, the House companion bill to S. 1501, which we believe offers the appropriate structural and organizational framework for a new Administration. It requires that the Deputy Administrator be appointed by the Secretary, with the approval of the Senate, and creates new positions for a Chief Safety Officer and a Regulatory Ombudsman—all of which are essential to improving the performance of the new Administration.

RECOMMENDATIONS FOR STRENGTHENING MOTOR CARRIER SAFETY

In addition to structural reforms, the Committee must address other problems within OMC. If you look at the enforcement activities of the agency in the last few years, you will find that compliance reviews have fallen by 30 percent since FY 1995 (the latest information available), even though there has been a 36 percent increase in the number of motor carriers over this period. According to the IG in a second Audit Report, Report Number: TR-1999-091, *Motor Carrier Safety Program,* nearly 250 high-risk carriers that were recommended for a compliance review in March 1998 did not receive one. Also in FY 1995, 1,870 motor carriers received a less-than-satisfactory rating. From October 1, 1994 through September 30, 1998, 650 of those same carriers have had over 2,500 crashes resulting in 132 fatalities and 2,288 injuries. Currently, there are about 6,000 motor carriers operating with a less-than-satisfactory rating that received those ratings from October 1995 through September 1998.

In addition, Level 1 inspections (a 27-step process) have fallen off in favor of Level 2 (walk-around) and Level 3 (driver only) inspections. And while the Federal govern-

ment has prosecuted trucking companies for flagrant violations in a few highly visible cases recently, statistics show that prosecutions by the Federal government have dropped to the lowest level since 1989. In FY 1998 alone, only 11 percent of the more than 20,000 violations cited by safety investigators resulted in fines, and were settled for 46 percent of the dollar amounts initially assessed. The average settlement per OMC enforcement case was $1,600. According to the IG, this is little more than "a cost of doing business" for motor carriers.

The IG concluded that the "OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations, and that the OMC enforcement program did not adequately deter compliance." To address these problems, the IG made several recommendations aimed at ensuring compliance with Federal Motor Carrier Safety Regulations and improving the effectiveness of the Motor Carder Safety Program. Specifically, the IG recommended that the FHWA Administrator:

- Strengthen its enforcement policy by establishing written policy and operating procedures to take strong enforcement action against motor carriers with repeat violations of the same acute or critical regulation. Strong enforcement actions would include assessing fines at the statutory maximum amount, the issuance of compliance orders, not negotiating reduced assessments, and when necessary, placing motor carriers out of service.
- Remove all administrative restrictions on frees places in the Uniform Fine Assessment program and increase the maximum fines to the level authorized by the Transportation Equity Act for the 21st Century (TEA-21).
- Establish stiffer fines that cannot be considered a cost of doing business and, if necessary, seek appropriate legislation raising statutory penalty ceilings.
- Implement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements are completed.
- Establish criteria for determining when a motor carrier poses an imminent hazard.
- Require follow-up visits and monitoring of those motor carriers with a less-than-satisfactory safety rating, at varying intervals, to ensure that safety improvements are sustained or if safety has deteriorated that appropriate sanctions are invoked.
- Establish a control mechanism that requires written justification by the OMC State Director when compliance reviews of high-risk carders are not performed.
- Establish a written policy and operating procedures that identify criteria and time frames for closing all enforcement cases, including the current backlog.
- Require applicants requesting operating authority to provide the number of commercial vehicles they operate and the number of drivers they employ and require all motor carriers to periodically update this information.
- Revise the grant formula and provide incentives through the Motor Carrier Safety Assistance Program grants for States to provide accurate, complete and timely commercial vehicle crash reports, vehicle and driver inspection reports and traffic violation data.
- Withhold funds from the Motor Carrier Safety Assistance Program grants for those States that continue to report inaccurate, incomplete and untimely commercial vehicle crash data, vehicle and driver inspection data and traffic violation data within a reasonable notification period such as one year.
- Initiate a program to train local enforcement agencies for reporting of crash, roadside inspection data including associated traffic violation.
- Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.
- Obtain and analyze crash causes and fault data as a result of comprehensive crash evaluations to identify safety improvements.

While the Teamsters Union believes that these recommendations are a good step toward improving motor carrier safety, it's up to the OMC, or the new Administration, to implement them. We must question whether that will ever happen given the OMC's poor track record in executing recommendations from past reports. It is important to note that six other General Accounting Office and IG Audit Reports regarding the Motor Carrier Safety Program dating back to 1991 made similar recommendations. Thankfully, S. 1501 addresses our concern by requiring the Secretary of Transportation to implement the safety improvement recommendations included in the IG report. The Secretary is also required to report to the Senate Commerce, Science, and Transportation Committee and the House Transportation and Infrastructure Committee beginning 90 days after the date of enactment of the bill, until all of the recommendations have been implemented.

The Teamsters Union, however, would suggest two additions. First, we ask the Committee to include language in S. 1501 to require all new-entrant owners and operators to attend and pass an educational program that covers, at a minimum, safety, employee training, size and weight, and financial responsibility regulations administered by the Secretary prior to being granted the authority to conduct business on our nation's roads. This will ensure that new entrants have the knowledge to comply with the Federal Motor Carrier Safety Regulations rather than merely checking-off a box on the application form, as is currently the case.

The Teamsters Union also requests that the Committee include language in S. 1501 to direct the newly established Motor Carrier Safety Program to require carriers to reregister every five years. This was mandated under the Interstate Commerce Commission Termination Act of 1995, but was never implemented by the OMC. This is crucial as the volatility of the industry causes many carriers to go out of business while new carriers enter the market everyday. In addition, many carriers grow to the point where Class III new entrants have become Class I carriers. Without re-registration, the OMC has no way of really tracking the growth of these carriers.

NAFTA CROSS-BORDER TRUCKING

Madam Chair, if this committee is committed to improving motor carrier safety through the proposals that we are discussing today, then we must not ignore the possibility of the pending invasion of unsafe and unqualified drivers coming across our border from Mexico under the NAFTA cross-border trucking provisions. While we would assume that the increased funding levels in S. 1501 would filter down to the border states and bolster a rather lackluster inspection and enforcement regime, as outlined in the Audit Report of the DOT Inspector General, Report Number TR-1999-034, *Motor Carrier Safety Program For Commercial Trucks at U.S. Borders,* there is no certainty of that occurring, especially with the recent track record of the OMC.

Neither can one simply throw additional money at a problem and expect a solution. And while Congress should not micromanage a Federal department or agency, there are a number of directives that a new agency can be given to help ensure that it addresses the most serious threat to the future safety of our highways, that of unsafe Mexican trucks and unqualified drivers undoing whatever gains the Congress intends to make with the creation of the new agency.

One such directive is contained in H.R. 2679, the House Transportation and Infrastructure Committee's version of the Motor Carrier Safety Act of 1999, which calls on the Secretary of Transportation to develop and implement appropriate staffing standards for Federal and State motor carder safety inspectors in the international border areas. In developing standards, volume of traffic, hours of operation of the border facilities, types of commercial vehicles and cargo, and delineation of responsibility between federal and state inspectors would be some of the issues to be considered. This goes directly to the findings of the IG audit report which noted that "Mexican trucks entering the U.S. through Arizona, New Mexico and Texas are unlikely to be inspected because those States' border crossings do not have sufficient inspectors on duty during all commercial operating hours, and some border crossings do not have any inspectors assigned." The report concluded, "that the placement of adequate inspection resources at the southern border is an essential control mechanism to better ensure that Mexican trucks comply with U.S. safety regulations." The provision in the House bill also provides the Secretary with an enforcement mechanism to ensure that the levels of staffing required by the standards are deployed.

While we have mentioned organization and structure of the new agency as important to its success, the creation of an Office of International Affairs within the new agency is another area where the McCain bill is less adequate than its counterparts. The importance of possibly integrating another four million commercial motor vehicles from Mexico onto our highway system and assuring a high level of safety in this country warrants a separate office to oversee this major facet of motor carrier safety. The House bill contains such a provision and we strongly support its creation.

In addition, the Teamsters Union is very concerned with evidence that suggests that Mexican motor carriers are operating outside of the currently permitted commercial zones. In fact, a letter sent to Senate Transportation Appropriations Subcommittee Chairman Richard Shelby from the DOT's IG (see Attachment 1) shows that Mexican motor carriers are currently operating beyond the commercial zones of the four border states, irrespective of the fact that they are not authorized to do so. Specifically, the letter states that in 1998 roadside inspections were performed:

(1) beyond the commercial zones on 68 Mexican motor carriers, and were performed more than once for 11 of those carriers; (2) on the 68 Mexican motor carriers at least 100 times in 24 states not on the U.S.-Mexico border, outside of the commercial boundaries, including Montana, Missouri, Kansas, Louisiana, North Dakota, Nevada, and Oregon; and (3) on the 68 Mexican motor carriers outside the commercial zones but within the four border states more than 500 times. This information was obtained from the OMC's Management Information System. What disturbs us is that the DOT knew these Mexican carriers were operating illegally in the U.S. and that no enforcement actions, such as assessing fines and penalties or revoking these carriers' operating privileges in commercial zones, were taken against them. We therefore urge the Committee to include in S. 1501 language to ensure that such actions are taken in the future (see Attachment 2).

In the last few weeks since the disclosure of these illegal operations by Mexican carriers, the DOT has inferred that it has no authority to regulate Mexican trucks operating in foreign-to-foreign commerce. Therefore, according to statements made by "unnamed" DOT officials, Mexican trucks can traverse the United States if traveling directly to Canada. This as yet "unofficial" policy of the DOT is totally unacceptable and is counter to the Administration's decision not to open the border to unsafe Mexican trucks for the safety and protection of the American public.

DOT staff has proffered 49 U.S.C. Section 13906 and 49 C.F.R. Section 387.321 which provides that foreign motor carriers may only transit the U.S. if they provide certain financial security which is accepted by the Secretary, in support of their position. But since the Secretary does not and cannot register motor carriers to operate beyond the commercial zones because of the serious safety concerns, he should not accept evidence of financial security from the same motor carriers, thereby permitting them to operate a vehicle on roads throughout the U.S.

Furthermore, DOT's position is in direct conflict with its own representation to the U.S. Court of Appeals for the D.C. Circuit that it would "not approve applications by Mexican carriers seeking to provide cross-border trucking services into the United States pending the outcome of ongoing consultations on safety issues between the two countries." (Order of Jan. 21, 1997, No. 95-1603, *International Brotherhood of Teamsters v. Secretary of Transportation, United States of America).* Only after a determination is made that Mexican trucks are fit for operation on U.S. highways are they to be granted unlimited access to the border States. That determination has not yet been made, and, in fact, no one denies the fact that Mexican trucks are still prohibited from entering these states beyond the commercial zones.

It is therefore ludicrous to now suggest that these trucks, while unfit for entry into the border States, should be allowed unlimited nationwide access to U.S. highways for the purposes of traveling to Canada. Such a policy would seriously endanger the lives of all highway users and cannot and should not be tolerated by this Committee and this Congress.

COMMERCIAL MOTOR VEHICLE ADVISORY COMMITTEE

The Teamsters Union is pleased that S. 1501 authorizes the newly established Motor Carrier Safety Administration to create a Commercial Motor Vehicle Advisory Committee. This Committee, which we believe should be entitled the Motor Carrier Safety Advisory Committee, given the nature of this bill, will ensure that the new Administration is more receptive to the diverse interests represented by the motor carrier community. After all, participation in developing rulemakings, coordinating educational programs, and discussing pending and future initiatives and other activities should not be limited to industry representation.

It is important to mention that the concept of establishing such an advisory committee is not new. Years ago, a committee existed within the FHWA but was disbanded over disagreements among the members. Similarly, the Federal Railroad Administration (FRA) has created the Railroad Safety Advisory Committee (RSAC), under the leadership of FRA Administrator Jolene Molitoris. And the Occupational Safety and Health Administration has formed the National Advisory Committee on Occupational Safety and Health (NACOSH). The NACOSH was established under Section 7(a) of the OSH Act of 1970 to advise the Secretaries of Labor and Health and Human Services on matters related to administration of the Act.

Like RSAC and NACOSH, S. 1501 requires that the Committee be structured in a way that would ensure the new Administration does not fall victim to the same type of influence from the industry as currently exists at the OMC. Specifically, the Committee would be comprised of individuals affected by rulemakings, including representatives of labor, industry, safety advocates, manufacturers, and safety enforcement officials, but no one interest would be permitted to constitute a majority

of the Committee. It should be noted, however, that unlike RSAC and NACOSH there is no term limit for Committee members.

Also unlike RSAC and NACOSH, the role of the Committee is limited to assisting the Secretary in the timely completion of ongoing rulemakings by utilizing negotiated rulemaking procedures. S. 1501 should not stipulate that all current rulemakings must be resolved through negotiation. Negotiated rulemakings only work when the stakeholders have a reasonable belief that a consensus can be reached on the issues. In certain circumstances, negotiated rulemakings do work but that process should be decided on a case-by-case basis, not mandated by Congress.

In contrast to S. 1501, the House companion bill allows the Committee to advise, consult with and make recommendations to the Administrator on all matters relating to activities and functions of the new Administration. Not all policy matters are necessarily decided in rulemakings, and this approach better allows all parties to have input on a broad range of activities of the new Administration.

HOW THE OMC CONDUCTS ITS RESEARCH

Finally, the Teamsters Union has long been concerned with how the OMC conducts its research. For example, since 1996, the OMC has awarded over $8 million to the ATA and its consultants to perform research on various issues, including driver fatigue and graduated licensing. What concerns us is that this research often serves as the basis for future rulemakings governing the trucking industry.

Such was the case with the Driver Fatigue and Alertness Study (DFAS), which was intended to provide non-biased research on drivers' hours of service. Instead, its conclusions ″coincidentally″ benefited the industry by justifying their arguments for allowing truck drivers to drive more consecutive hours with less rest. Thankfully, a peer review panel saw through ATA's attempts and discredited the DFAS, stressing that it "suffered from poor design and inappropriate statistical approach to address the objectives"

The OMC and several Members of Congress would probably argue that these funds were earmarked for ATA in appropriations bills and thus it is the responsibility of the agency to carry-out these congressional directives. This is not, however, entirely true. We refer to a Federal Register notice published in July 1999 that seeks public comment on a proposed survey to be conducted by the ATA's Transportation Research Institute (T) on the development of a graduated or provisional Commercial Drivers License program (CDL). Specifically, the notice states:

> "Conference Report 104-286 to accompany H.R. 2002 to the DOT Appropriations Bill directs the FHWA to contract, during FY 1996, with the ATA's TRI to perform applied research to address a number of highway safety issues, such as driver fatigue and alertness, the application of emerging technologies to ensure safety, productivity and regulatory compliance, and commercial drivers licensing, training and education. The amount allocated was to be not less than $4 million. A survey of industry opinion pertaining to a graduated CDL is one of these projects under the congressionally-mandated cooperative agreement with the TRI."

However, upon reading Conference Report 104-286 we found the following:

> "In fiscal year 1994, the Congress continued its participation in the development of an aggressive research agenda by directing the FHWA to undertake three projects totaling $1,750,000: truck loading and unloading as a possible contributor to driver fatigue; technology to automate commercial vehicle roadside inspection; and guidelines for the inspection and maintenance of wheels and bearings. In fiscal year 1995, the Congress identified additional studies, totaling $2,500,000, for the implementation in the same fashion with TRI: the use of 'smart cards' to facilitate compliance with motor carrier safety rules; medical requirements associated with commercial vehicle operation; and electronic truck and intermodal information systems...The conferees therefore reiterate the direction to FHWA to use unobligated balances to make grants to, enter into cooperative agreements or contracts with, or use any existing technical support services agreements with TRI, in amounts totaling not less than $4,000,000 to conduct the six studies referenced above..."

Once again, Congress intended these funds to cover *six* specific studies (truck loading and unloading as a possible contributor to driver fatigue; technology to automate commercial vehicle roadside inspection; guidelines for the inspection and maintenance of wheels and bearings; "smart cards" to facilitate compliance with motor carrier safety rules; medical requirements associated with commercial vehicle operation; and electronic truck and intermodal information systems). What it did not intend was for the OMC to provide ATA with unlimited resources to conduct numer-

ous studies on a broad range of topics, like graduated CDLs. The fact is that the OMC has contracted with the ATA for at least 18 studies/projects since 1996, as follows:

Fatigue Research: $1,080,000
Conference on Technological Countermeasures to Fatigue: $40,000
International Industry Conference of Fatigue: $118,000
Operating Practices on Commercial Driver Alertness: $1,000,000
Ocular Dynamics as a Predictor of Fatigue/Pilot Napping Study: $300,000
TRI and NPTC Safety Promotion and Compliance Workshops: $280,000
Recommended Management Practices for Driver Training and Evaluation: $172,000
Pilot Test of Fatigue Management Technologies: $1,654,000
Survey of Emerging ITS Technologies: $430,000
Graduated Licenses Survey: $243,000
Driver Wellness Program $520,000
Truck Stop Fitness Facility Utilization Study: $200,000
Survey of Scheduling Practices and Their Influence on Driver Fatigue: $509,000
How to Drive/No-Zone: $301,000
Sloop Apnea Prevalence and Severity: $1,008,000
Heavy Vehicle Brake Use and Maintenance: $188,000
ITS Industry Champion: $25,000
Driver Acceptance of In-Vehicle Technologies: $130,000

Given this information, the Teamsters Union requests that the Committee examine H.R. 2679 and include its bill language to require the Motor Carrier Safety Administration to comply with Section 1252.209-70 of Title 48, Code of Federal Regulations (which deals with conflicts of interest) in awarding any contract for research. This is crucial to ensuring that unethical practices of the past do not carry over to the new Administration.

CONCLUSION

The Teamsters Union believes that S. 1501 will go a long way toward strengthening motor carrier safety. The bill emphasizes better enforcement of current regulations, the importance of increased inspections and compliance reviews and the need for significant improvements to the Motor Carder Safety Program.

Again, we appreciate the opportunity to present our views on truck safety, and look forward to continuing to work with Chairman McCain, Ranking Democratic Member Hollings, Senator Hutchison and members of the Subcommittee on this important legislation as it moves through the Senate.

Attachment 1

June 14, 1999

The Honorable Richard C. Shelby
Chairman, Subcommittee on Transportation
Committee on Appropriations
Washington, DC 20510-5037

Dear Chairman Shelby:

At the February 9, 1999 hearing before your committee on the Top Ten Management Issues within the Department of Transportation you asked if Mexican trucks drive beyond the commercial zone boundaries of the four border states. The answer is "yes", even though Mexican trucks are not authorized to go beyond the commercial zones.

All interstate motor carriers operating in the United States, including Mexican motor carriers operating in the commercial zones, are required to obtain a Department of Transportation (DOT) identification number and to display this unique identifying number on their commercial trucks. We used the identification number to get the information needed to answer your question.

Under the Motor Carrier Safety Assistance Program, state safety inspectors perform roadside inspections of commercial trucks and drivers throughout the United States to ensure compliance with U. S. safety regulations. Therefore, Mexican trucks operating inside or outside the commercial zones are subject to roadside inspections.

The Office of the Inspector General extracted the DOT identification numbers for motor carriers identified as domiciled in Mexico from the Office of Motor Carriers Management Information System. We compared these unique numbers to the FY 1998 roadside inspections of commercial vehicles also contained in the Office of

Motor Carriers Management Information System. The results of our comparison indicate that:

- Roadside inspections were performed beyond the boundaries of the commercial zone on 68 motor carriers identified as domiciled in Mexico, and were performed more than once for 11 of the 63 camera.
- Roadside inspections were performed on the 68 motor carriers at least 100 times in 24 states not on the US.-Mexico border, which include the States of New York, Florida, Washington, Montana, North Dakota, Colorado, Iowa, South Dakota, and Wyoming.
- Roadside inspections were also performed on the 68 motor carriers outside the commercial zones but within the four border states (Arizona, California, New Mexico and Texas) more than 500 times.

This demonstrates that Mexican trucks are operating well beyond the designated commercial zones Enclosed is a copy of our recent report on the Department's Motor Carrier Safety Program. It identifies the current problems that impact negatively on motor carrier safety together with recommendations to address those issues.

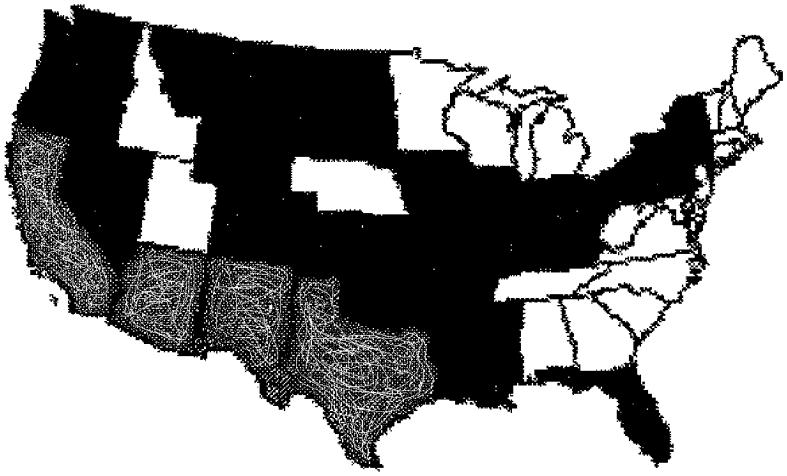
If I can answer any questions, or be of further assistance, please feel free to contact me at 366-1959 or my Deputy, Raymond J. DeCarli at 366-6767.

Sincerely,

Kenneth M. Mead

Inspector General

Enclosure



Attachment 2

FOREIGN MOTOR CARRIER DISQUALIFICATIONS

The Teamsters Union is concerned with the contents of a letter sent to Senate Transportation Appropriations Subcommittee Chairman Richard Shelby from the Department of Transportation's (DOT) Inspector General (IG) Kenneth Mead which shows that Mexican motor carriers are currently operating beyond the commercial

zones of the four border states, irrespective of the fact that they are not authorized to do so. Specifically, the letter states that: (1) roadside inspections were performed beyond the commercial zones on 68 Mexican motor carriers, and were performed more than once for 11 of those carriers; (2) roadside inspections were performed on the 68 motor carriers at least 100 times in 24 states not on the U.S.-Mexico border, outside of the commercial boundaries, including New York and Illinois; and (3) roadside inspections were performed on the 68 motor carriers outside the commercial zones but within the four border states more than 500 times. This information was obtained from the Office of Motor Carriers Management Information System. What disturbs us is that the DOT knew these Mexican carriers were operating illegally in the U.S. and that no enforcement actions, such as assessing fines and penalties or revoking these carriers' operating privileges in commercial zones, were taken against them. To ensure that such actions are taken in the future, we urge the Senate Commerce Committee to include in its motor carrier safety bill the following language:

FOREIGN MOTOR CARRIER DISQUALIFICATIONS.—Section————of Title 49 United States Code is amended by inserting the following:"Foreign Motor Carrier Disqualifications.—

"(1) FIRST VIOLATION. The Secretary of Transportation shall issue a civil penalty of up to $10,000 and disqualify from operating a motor vehicle anywhere within the United States for a period not to exceed six months any foreign motor carrier or foreign motor private carrier (as such terms are defined under section 13102) who is found to operate outside the boundaries of any commercial zone prior to the implementation of the land transportation provisions of the North American Free Trade Agreement (see NAFTA Implementation Act, Chapter 12(B) (3).

"(2) SECOND VIOLATION. The Secretary shall issue a civil penalty of up to $25,000 and permanently disqualify from operating a motor vehicle anywhere in the United States any foreign motor carrier or foreign motor private carrier (as defined under section 13102) who commits more than one violation of operating outside the boundaries of a commercial zone prior to the implementation of the land transportation provisions of the North American Free Trade Agreement (see NAFTA Implementation Act, Chapter 12 (B) (3))."

Senator BROWNBACK. Thank you, Mr. Bryant.

There was a switch that took place while you were testifying here. So I apologize about that. "Madam Chair"—I have been called worse.

[Laughter.]

Senator BROWNBACK. But I appreciate your testimony and the good points you raise, particularly about the NAFTA implementation. I am going to have some questions for you about that.

When that NAFTA agreement was negotiated, those things were all supposed to be taken care of. And so I will be interested to hear what you have to say regarding whether they were or were not.

Next to testify is Mr. Walter McCormick, President and CEO of the American Trucking Associations. Mr. McCormick, welcome to the committee. The floor is yours.

STATEMENT OF WALTER B. McCORMICK, JR., PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. MCCORMICK. Mr. Chairman, thank you very much. It is a pleasure to be here today, representing the American Trucking Associations. The American Trucking Associations is a federation, comprised of 50 State associations, 14 affiliated organizations that represent the various segments of the industry, and thousands of dues-paying motor carrier members.

And, Mr. Chairman, we care deeply about highway safety, because the highways are our work place. And we therefore support Senator McCain's call for a separate Motor Carrier Administration. You see, today, trucking represents 82 percent of freight transpor-

tation revenues. Since 1980, the number of motor carriers registered to do business in the United States has increased from 55,000 to over 450,000. And you heard Mr. Wykle say earlier today that each year, between 20,000 and 25,000 new motor carriers are registered to do business.

The other 18 percent of freight transportation revenues is split between air, rail, pipeline, and water transportation. Yet every one of those modes is regulated by an independent administration, with a Presidential appointee, Senate-confirmed administrator. Trucking, alone, is not regulated by an administration. Instead, it is regulated by a small office, deep within the Federal Highway Administration.

Going back as far as 1985, Senator Hollings called for a separate Motor Carrier Administration, and was joined in that call by then-Senator Gore. We believe that now, 15 years later, it is even more imperative that this committee move forward to establish such an administration. Because trucking has grown so exponentially and because the highways are ever more congested.

In addition, we support other important provisions in this legislation. We support the legislation's call for a Department-wide policy on access to electronic records. There needs to be a single policy for air, rail, maritime, and motor carriers that will encourage the adoption of safety-related technologies.

We support the call for improvements in commercial driver's licenses. We need to have CDL's reflect all moving violations, not just those in a truck, but also in a car. A bad driver is a bad driver.

We need to prevent States from masking violations for remedial testing. And we need to eliminate special licenses, such as provisional licenses or hardship licenses. If a driver violates the law, he should have his license yanked.

We support the bill's provisions calling for improved data collection. If we are going to improve highway safety, then we need to know more about accident causation. We have to identify the ailments before proposing cures.

We do have some concerns with the legislation. We think that the legislation inappropriately transfers jurisdiction over retrofits to NHTSA. And I take issue with Ms. Claybrook's position, where she said it is an extension of what NHTSA already does. It is not at all an extension of what NHTSA already does.

NHTSA regulates manufacturers. And once a vehicle is manufactured, NHTSA may call for a recall for a defect investigation. But just as once an automobile is in the hands of the user, once a truck is sold to a trucker, it then becomes a matter of operations, and it is the Federal Highway Administration or, hopefully in this case, a separate Motor Carrier Administration, that should have jurisdiction over determining whether or not there should be an appropriate retrofit.

We would also like the legislation strengthened with some provisions suggested by Senator Breaux. Senator Breaux, we think that your call for testing of inspectors and standardized inspection procedures is an important reform. We think that legislation that has been introduced, called for accountability on the part of those who aid and abet violations for hours of service or speed limits—we believe an Office of Motor Carriers should have jurisdiction to hold

liable those who engage in that kind of activity. It is a kind of dram shop liability.

Finally, it was just yesterday that ATA was able to review the testimony that will soon be given by the National Conference of State Transportation Specialists with regard to the Single-State Registration System. No mention was made of it in my written remarks, so I would like to focus on that briefly now.

Congress saw the need to establish a 50-State program for ensuring that all trucks, for hire and private fleets, have adequate insurance. The current system leaves 12 States out. And it does not include private trucks. That is why Congress created the Uniform Carrier Registration System. Under SSRS, a few States-a few States-do receive funds for a purpose that is no longer necessary under the Uniform Carrier Registration System. If there is a desire to replace funding for motor carrier safety programs, the American Trucking Associations is willing to work with the Congress on that. But we insist it should be a 50-State program, and all money collected from the trucking industry should be dedicated to motor carrier safety—neither of which is the case under the current program.

Mr. Chairman, thank you for having me to testify.

Senator BROWNBACK. Thank you very much, Mr. McCormick, for you thoughts. I have questions for you afterwards.

[The prepared statement of Mr. McCormick follows.]

PREPARED STATEMENT OF WALTER B. MCCORMICK, JR., PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS, INC.

I. Introduction

I am Walter B. McCormick, Jr., President and Chief Executive Officer of the American Trucking Associations, Inc. The ATA is a federation that includes thousands of dues paying motor carrier members, 50 affiliated state trucking associations, and 14 conferences that represent virtually all segments of the trucking industry.

Our industry has been a leader in the improvement of highway safety. Truck safety, and overall highway safety, is ATA's highest priority as it represents those who move America's freight. Placing a sincere and genuine focus on safety is not only the responsible thing to do for us as a transportation trade group, but it also makes good business sense for our members. Safety really is good business.

Therefore, on behalf of the ATA federation, I would like to thank Chairwoman Hutchison and the members of this subcommittee, for your interest in truck safety, for holding this hearing, and for allowing us the opportunity to testify.

II. ATA Supports Senator McCain's Legislation to Create a Separate Motor Carrier Administration

I begin by applauding Senator McCain for introducing the Motor Carrier Safety Improvement Act of 1999, S.1501, calling for the creation of a separate Motor Carrier Administration to regulate the trucking industry. Fifteen years ago, Senator Ernest F. Hollings had the wisdom to propose a separate Motor Carrier Administration. More recently, nearly every major stakeholder has signed on to this initiative, including the National Private Truck Council, The Owner Operators Independent Drivers Association, and the Commercial Vehicle Safety Alliance. Even the U.S. Department ofTransportation's Inspector General has called for the creation of a motor carrier administration to focus exclusively on the motor carrier industry.

It may sound strange for an industry to promote a separate government oversight organization; however, because the trucking industry is interstate in nature, we believe there must be a strong federal agency with the appropriate manpower to effectively ensure the operating safety of thousands of companies nationwide.

The necessity of such an agency is clear. Trucking's impact on the economy is enormous. The numbers show that the trucking industry dominates freight transportation in this country. In 1998, 82 percent of the freight transportation bill in this country went to trucking. That 82 percent totaled $346 billion. The remaining

18 percent was *split* between freight hauled on the rails, in the air, in pipelines, and on the water.

And while these other modes are regulated by separate administrations, the safety and efficiency of the trucking industry is regulated by a small office within the Federal Highway Administration (FHWA), the nation's highway building agency. The trucking industry and the motoring public deserve a Federal agency that has truck and bus safety as its core mission. This would allow an administrator, appointed by the President and confirmed by the Senate, to sit with other administrators from the other modes as an equal.

As I mentioned, this is not a new idea. In fact, Vice President Gore supported such an administration in 1985 when it was proposed by Senator Hollings. At that time, according to the Congressional Record, Senator Hollings said "a Motor Carrier Administration would serve several important functions...it would fulfill the purposes of the Department of Transportation Act relative to transportation policy...safety...improving transportation systems and protecting consumer interests...[and] would provide comprehensive research, planning, and programming that will enable Congress and the Federal Government to make well founded and properly directed legislative and regulatory decisions...". Now, 14 years later, as our economy has grown even more reliant on trucking, and our highways have become even more crowded, we agree with this committee, with CVSA and others that it is the right time to create this long needed organization to further advance the many motor carrier safety issues before us.

III. ATA Supports Additional Provisions of S. 1501

A. A DEPARTMENT-WIDE POLICY ON THE PRIVACY OF ELECTRONIC RECORDS COULD ENCOURAGE MOTOR CARRIERS TO ADOPT SAFETY-RELATED TECHNOLOGY

ATA supports the provision in S.1501 requiring the Secretary of Transportation to establish a department-wide policy protecting privacy for any individual or entity utilizing electronic recorders or other electronic performance or location monitoring device. Currently, the agencies within the Department of Transportation have conflicting policies with respect to the use of electronic records for accident investigation and enforcement purposes, and the privacy of truck owners and operators should receive no less protection than the privacy of airplane or train operators.

For instance, the FAA has recognized that to encourage carriers to participate in their Flight Operations Quality Assurance Program, a voluntary program that relies on safety related technology and electronic data, the agency must guarantee that the data generated by this program not be used for routine enforcement purposes. In a press release dated December 2nd, 1998, FAA Administrator Jane Garvey wisely stated that FAA will not use safety data generated in the FOQA program for enforcement action except in egregious cases and that "Safety is President Clinton's highest transportation priority. We encourage airlines to participate in this program, which will provide the FAA with an additional tool to make the world's safest aviation system even safer."

FHWA's policy in this area, however, offers no such guarantee. In addition, certain FHWA-funded intelligent transportation systems (ITS) programs generate vehicle-tracking data that is being used for purposes entirely unrelated to safety improvement, such as tax collection. Therefore, some motor carriers are discouraged from adopting safety-related technologies for fear of possible self-incrimination or expanded taxation. This inconsistency in department policies is illogical and unnecessary. Hopefully, this legislation will bring greater privacy protection and uniformity to how the Department treats electronic data and will encourage the further adoption of safety-related technology in the trucking industry.

B. WE SUPPORT MANY OF THE CDL IMPROVEMENTS IN S. 1501

I would like to note for the record that ATA has called for and supports many of the Commercial Drivers License (CDL) improvements now found in S. 1501. When I had the privilege of testifying before the full Commerce, Science and Transportation Committee in April, I outlined ATA's Safety Agenda, an inventory of safety-related legislative and regulatory reforms that we intended to pursue. Commercial Drivers License improvements were high on our agenda and I am pleased to see that they are on yours too.

For instance, there is a substantial need to include on a driver's CDL record all moving violations regardless of whether or not they were committed in a commercial motor vehicle. An unsafe driver is an unsafe driver. States, law enforcement officers and motor carriers need to know a driver's complete driving history—not just a history of serious violations, or violations which occurred in a commercial truck.

Federal law must also be amended to prohibit states from "masking" violations of traffic laws so that they do not appear on a driver's commercial driving record. This practice of removing violations for drivers who attend remedial training classes, or take some other similar action, interferes with the intent of the act that created the CDL. The states that engage in this activity are simply circumventing the requirement to post these convictions on a driver's record. It is critical that this record be complete so that employers, insurers and other state licensing and enforcement agencies can make appropriate and fully informed decisions affecting drivers. These decisions have a direct impact on highway safety.

States must also be prohibited from issuing "special" licenses to disqualified truck drivers. Federal regulations provide specific sanctions for drivers who commit certain violations and forbid them from operating a commercial motor vehicle for a given length of time. However, some states will issue hardship or provisional licenses to these drivers and continue to allow them to drive. This practice contradicts the intent of the law and is unacceptable. Drivers who commit disqualifying offenses should be taken off the road for the appropriate period of time-no exceptions.

C. BETTER COLLECTION OF DATA IS NECESSARY TO IDENTIFY MEASURES THAT WILL HAVE THE GREATEST IMPACT ON SAFETY

One of the most important provisions of S. 1501 may be that which calls for a program to improve the collection of crash data, especially with respect to crash causation. Clearly, to identify regulatory and legislative proposals that will have the most impact on safety, we must identify the principal causes of truck crashes and ways to prevent them. To draw a parallel, before proposing a cure one must first identify the ailment. Otherwise, without truly understanding the factors leading to truck crashes, we cannot identify and implement effective countermeasures.

On this note, the Department of Transportation has recently completed some interesting and compelling, albeit limited, research looking at crash causation. Through a contract with the University of Michigan Transportation Research Institute, DOT examined the factors involved in fatal crashes between trucks and passenger vehicles. The findings of the study, released this past April, show that in more than two-thirds of fatal passenger vehicle/large truck crashes, the driver of the passenger vehicle was the only one cited for a related factor contributing to the crash. The physical evidence from these crashes (e.g., pavement gouge marks, location of oil and other fluids from the vehicle) is even more compelling. For instance, in 89% of fatal head-on crashes between a large truck and a passenger vehicle, the passenger vehicle had crossed the centerline into the truck's lane of travel.

In light of such evidence pointing to the causes of many fatal car/truck crashes, ATA has been actively involved in educating drivers of all types of vehicles on how they can safely share the road with trucks. For instance, the industry has supported DOT's "No-Zone" campaign, an education program to enlighten drivers about the size and location of a truck's blind spots. We have also urged state licensing agencies to include information in their drivers' manuals about trucks' unique operating characteristics such as braking distances and turning radiuses.

Further understanding of the causes of truck crashes will provide us with additional opportunities to find and implement effective countermeasures.

IV. ATA Has Concerns With Some Provisions In S. 1501

ATA has met with committee staff regarding S. 1501 to express some concerns with the bill. Let me discuss some of our most critical concerns.

A. SHIFTING RESPONSIBILITY FOR VEHICLE RETROFIT REQUIREMENTS TO NHTSA WOULD NOT PROMOTE SAFETY

The proposal to shift responsibility for retrofit requirements to the National Highway Traffic Safety Administration (NHTSA) is ill-conceived. It is apparently based on a notion that NHTSA would issue retrofit rules in a more timely fashion than past efforts by FHWA. The example most commonly cited by critics of FHWA is the conspicuity tape retrofit rulemaking for older truck trailers. These groups are critical of the fact that it took FHWA 6 years to complete a rulemaking requiring older trailers to be retrofitted with conspicuity tape. These groups believe that NHTSA would have completed the rulemaking more quickly. The fact is that while it took FHWA 6 years to complete the retrofit rulemaking, it took NHTSA 12 years to complete the original rulemaking requiring conspicuity material for newly manufactured vehicles.

NHTSA's current methods for writing standards are inconsistent with the way retrofit requirements should be developed. New vehicle standards are written so manufacturers can design components to meet certain specifications that can be

tested in a laboratory or on a test track. The regulations require the components to perform to a certain standard manufacturers can test using special equipment and procedures. Motor carriers do not have the means or equipment to meet these standards nor are they mounting components on brand-new, showroom condition vehicles. The development of standards for these two purposes, new vehicle and retrofit, would take place on separate paths. In addition, NHTSA does not have the staff or infrastructure to enforce retrofit requirements once they were written.

Additionally, NHTSA is not a truck-oriented agency. In fact, less than 5% of its staff is currently devoted to large trucks. Why? There are far more cars on the road, far more car crashes and much more that must be done to make cars safer, especially as cars get smaller. In addition, it is illogical to have trucking regulated by two separate agencies. The ultimate goal of regulation is increased safety through compliance with effective standards. This is a goal that cannot possibly be met if the regulations are too difficult for motor carriers to understand. As it is today, the regulations are far too complex. By subjecting motor carriers to vehicle regulations from two separate agencies, NHTSA for retrofitting vehicles and a Motor Carrier Administration for maintaining them, it would make a bad situation worse.

B. REVOKING A STATE'S AUTHORITY TO ISSUE CDLS IS MISPLACED PUNISHMENT

The provision of the bill that calls for rescinding a state's authority to issue CDLs if the state is not in compliance with the CDL requirements concerns ATA. While the trucking industry has long been an advocate of the CDL, we believe this approach to enforcing the CDL program requirements at the State level is a wrong one. In effect, this provision would punish drivers, not the state agency, since the drivers would no longer be able to get licenses from their state. As a result, the state's economy will suffer from a lack of truck drivers to deliver the freight.

It is important to note that the states the bill proposes to penalize are not out of compliance due to an unwillingness to adopt the required procedures. Instead, these states often lack the infrastructure, personnel and data systems to implement the CDL system as required. Sanctioning these states will have little effect on their likelihood of coming into compliance. Therefore, we support the provision of the S. 1501 that provides up to $1,000,000 each to non-compliant states to fund the changes necessary to bring them into compliance. It is this approach that is more likely to achieve the desired result.

C. CREATING A REGISTRY OF MEDICAL PROVIDERS TO CONDUCT DRIVER PHYSICALS WILL NOT IMPROVE THE PROCESS

While we agree that the process for conducting driver physical examinations could stand some improvements, we do not agree with the method S.1501 proposes in order to make these improvements. The biggest problem lies in the fact that some medical examiners are simply unfamiliar with the physical qualification requirements for truck drivers. Others are aware of the requirements, but do not enforce them as diligently as possible since the system does not hold them accountable for doing so. The solution to these two problems is to better educate medical examiners and to hold them at least partially accountable for certifying only those drivers who meet FHWA's strict medical criteria.

We recognize that in proposing a registry of medical examiners to conduct driver physicals, the Senate may be attempting to ensure that only qualified medical examiners perform physicals. But the creation of a registry alone can neither assure that an examiner is knowledgeable and will not necessarily hold an examiner accountable. Instead, a registry will simply limit the number of medical examiners who can conduct these physicals, drive up costs to motor carriers and make it more difficult for drivers, especially those in rural areas, to find examiners who can certify them.

The solution is to improve the flow of information to examiners, to better educate them on the physical qualification requirements and to impress upon them their responsibility to ensure that only qualified drivers are medically certified. We feel that all of these objectives can be achieved through improvements to the form that FHWA requires examiners to complete when evaluating a driver. The form provides detailed instructions to examiners, contains information on the physical qualification requirements and requires physicians to attest to the fact that the driver is qualified. It may interest you to know that FHWA is in the process of revising the medical form to address these issues, and expects to have the improved form in place within a matter of months. We believe the new exam form is certain to improve the way drivers are medically examined and qualified.

V. ATA Also Supports Safety Improvements in Related Legislation

While S. 1501 proposes some real, substantive truck safety improvements, we would like to point out that other legislation currently under consideration has identified additional improvements that we support as well. For instance, S. 1524 introduced by Senator Breaux and S. 1559 introduced by Senator Lautenberg contain some related safety measures that deserve mention in this forum.

A. THE MOTOR CARRIER SAFETY SPECIALIST ACT WILL ALSO IMPROVE TRUCK SAFETY

S. 1524 recently introduced by Senator Breaux proposes a means to raise the training standards for those who audit the safety records of motor carriers. It will also help standardize the process used by inspectors who conduct these compliance reviews. We support this legislation as improved training of inspectors and standardized procedures are growing increasingly necessary.

Currently, there is no formal training requirement for government or private sector investigators and consultants who conduct compliance reviews. While Federal government inspectors typically complete an initial training program, state inspectors who conduct federal compliance reviews are not required to do so. Private sector consultants who conduct reviews of motor carriers' operations also have no formal training requirement.

While the standards against which carriers are judged during a compliance review are fairly uniform, the procedures for determining if a carrier meets the standards are not. For instance, when sampling records for review no two inspectors may select the same number of records nor will they use the same selection method (e.g., random or targeted). For these reasons, it is important to establish formal training requirements which should, at a minimum, include standard procedures for conducting compliance reviews.

B. THE PROPOSAL TO REQUIRE NEW ENTRANTS TO DEMONSTRATE THEIR SAFETY COMPETENCE HAS MERIT

We are aware of a provision in S. 1559 that would require new carriers to demonstrate their knowledge of and compliance with the Federal Motor Carrier Safety Regulations. We are generally supportive of this proposal since there is a need to ensure the safety of the tens of thousands of new motor carriers who are entering the industry each year. The industry is growing at a tremendous rate and we must search for new and innovative ways to ensure that the industry's safety performance continues to improve.

We have some suggestions, however, with how FHWA should implement this mandate if it is ultimately issued. Naturally, completing the task of certifying the safety of all new motor carriers could be quite difficult given the industry's explosive growth. On average, an additional 20 to 25 thousand motor carriers register with the FHWA each year. It is simply unrealistic to expect FHWA to perform an on-site review of each of these carriers' operations, as some have suggested. FHWA currently only has sufficient resources to audit approximately 2% of the *existing* motor carrier population which translates into about 8,000 motor carrier compliance reviews annually.

As an alternative, we would support an industry-based self-reporting program to assure that new carriers are familiar with the safety regulations and have mechanisms in place to support safe operations.

C. FHWA SHOULD PENALIZE ANY PARTY IN THE TRANSPORTATION CHAIN WHO INDUCES CARRIERS TO VIOLATE THE SAFETY REGULATIONS

Finally, I would like to bring to your attention Section 109 of S.1559 that gives FHWA the authority to issue fines against anyone who aids, abets or induces a carrier to violate the safety regulations. The purpose of the provision is to penalize shippers or others who require carriers to deliver loads on violation of the hours of service regulations or state speed limits. It also provides a means to enforce against those who are not directly employed by motor carriers but who are nonetheless responsible for violations of the Federal Motor Carrier Safety Regulations.

ATA strongly supports this provision as a means to improve commercial motor vehicle safety. Motor carriers sometimes face great difficulty in meeting the demands of shippers while at the same time complying with the safety regulations. However, the need to comply with the regulations is not of foremost concern for some shippers, since FHWA does not have the authority to enforce against them. Yet, we believe that all parties in the transportation chain should bear responsibility for highway safety and should be held accountable for violating the regulations, or inducing others to do so.

VI. Conclusion

Madam Chairwoman, the time has come to advance the motor carrier safety agenda and truly make a difference. We support a separate modal administration dedicated to the advancement of the many motor carrier safety improvements proposed in S. 1501.

We look forward to working with you and Chairman McCain, Senator Hollings, the members of the Committee, all members of Congress, the DOT, and all reasonable parties involved in making the roads as safe as possible.

Thank you for providing ATA an opportunity to submit this information to the Subcommittee.

The final panel member, Mr. Kevin Sharpe, Illinois Commerce Commission, testifying on behalf of the National Conference of State Transportation Specialists.

Mr. Sharpe, welcome to the committee.

STATEMENT OF KEVIN SHARPE, ILLINOIS COMMERCE COMMISSION, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE TRANSPORTATION SPECIALISTS

Mr. SHARPE. Thank you very much, Mr. Chairman. I can barely see the lights there. So if I run over, I would appreciate a tap on the shoulder.

Senator BROWNBACK. OK.

Mr. SHARPE. On behalf of the National Conference of State Transportation Specialists and the Illinois Commerce Commission, and especially on behalf of the motorists we deal with every day, I would like to commend the committee for its concern over trucking safety, as shown by this hearing today.

The National Conference of State Transportation Specialists is a national organization whose members are State agencies engaged in transportation regulatory functions. In addition to many other activities, the NCSTS provides oversight of and assistance to States participating in the Single-State Registration System, established by Congress in the Intermodal Surface Transportation Efficiency Act of 1991.

The NCSTS, through its SSRS steering committee, promotes uniformity in the administration of the rules, and has served as the focal point for communication of State concerns and interests to the Federal Highway Administration. Since intrastate trucking deregulation in 1994, the States have become increasingly concerned about the safety of the motoring public in an environment of unsafe trucks and trucking operations.

In Illinois alone, we issue licenses to over 100 new motor carriers each month. Many of these new license holders are seriously underfinanced, and represent a considerable safety concern. Our experience is repeated in every State in the Union. The NCSTS States have dealt with this problem for years. And it is from this perspective that I appear before you this morning.

NCSTS and the State of Illinois are in favor of most all of the provisions discussed here today in Senate Bill 1501, and congratulate Congress for addressing motor carrier safety in this manner. But I would like to direct my remarks to a specific section of the bill, and to two separate actions being proposed. First, in Section 6, Subsection G, that is titled Motor Carrier Safety Initiatives, it proposes two significant actions which, if approved, would signifi-

cantly impact the safety, compliance and enforcement activities of the 38 participating SSRS States.

The first action would strike the last sentence of Subsection D of Section 13908, which would eliminate the statutory requirement for fees to be collected and distributed to the States. Approximately $95 million of State funds are at risk.

The second action calls on the U.S. DOT to create a unified Federal program that actually subsumes the States' current SSRS registration program. In effect, the current language gives the Federal Highway Administration, or its successor, the authority to Federalize a successful State registration program, and possibly eliminate or reduce State revenues.

On behalf of the States, I want to emphasize that we are in favor of a Uniform Carrier Registration System. We have advocated this for years, and have demonstrated to representatives of the Federal Highway Administration how it could be done rapidly, at virtually no additional cost, and in a manner that avoids the creation of a new Federal bureaucracy. The States' proposal would provide the public with vastly more effective protection from uninsured trucking companies, because it would be enforced at the roadside.

Our proposal would provide Congress and the U.S. DOT with accurate and reliable motor carrier demographic information for the first time. We believe this last point is very important. Were Congress to ask the U.S. DOT today for accurate information about the trucking industry, and FHWA sent out a survey to its carriers of record, we believe about half would be returned "address unknown." This is because the FHWA data base has never been updated, whereas the State data bases are refreshed each year via an annual registration.

The States have been disappointed that FHWA has not proceeded with the 13908 rulemaking called for in the ICC Termination Act. As far as the States are concerned, none of the implementing problems that FHWA has alleged are not to be overcome. They are minor and could be easily overcome, rather.

The language in S. 1501, which directs FHWA to complete rulemaking within a year, is a sound idea. Representatives of the States have met many times with the representatives of the American Trucking Associations, but despair of ever getting ATA to agree to the creation of an effective enforcement program. The prospect of getting a Federal fee cut at the expense of the States seems to be their objective.

For our part, we think it is anomalous that a motor carrier safety bill could be the vehicle to cut $95 million of revenue to States used to enforce safety. Please understand that that is exactly what elimination of State revenues under the current State registration program would accomplish. It would in fact diminish each State's overall safety reach.

Many States use SSRS money for the local match to the Motor Carrier Safety Assistance Programs. Others use it directly for their State police to administer their insurance oversight, such as the Illinois Public Guardian Program, and for a wide range of safety activities. I have attached to my written remarks an analysis of how much revenue each State collects and how the revenue is used.

The States take exception to a recent handout the ATA has distributed, which purported to demonstrate that the States were not using the moneys collected for safety purposes. We believe that our figures and other information that the States can provide would show that the information purported by ATA is not accurate, and that States do use a preponderance of the moneys collected for safety.

With that, I will conclude my remarks. If there are any questions, I would be happy to entertain them.

Senator BROWNBACK. Thank you, Mr. Sharpe.

This has been an excellent panel. Let us run the time clock here for 10 minutes. Maybe we can bounce back and forth.

Senator Breaux, since you were here before me, if you would like to go ahead and proceed first.

Senator BREAUX. I will be as brief as I can, Mr. Chairman. Thank you for chairing the remainder of the hearing. And I thank the panel for their presentations.

The accident that I referred to in New Orleans, where 22 people were killed, was indeed a very tragic and unnecessary and avoidable accident. What would be even more tragic is if we do not learn anything from it, and even worse if we do not do anything about it. I think that we have an opportunity to do that, to learn from what happened and to try and understand how it happened.

The more I delve into exactly what happened, it just is very difficult, I think, to explain to people how something like that could happen. I was looking more into the details about the particular bus driver, who is now deceased, who was driving at the time of the accident. If you look at the history of how he was employed, you wonder why this was not caught before. How did this fall through the system?

What can we do to correct the system that allowed a driver to have been rejected the same year he was hired by this company, by another company that he had interviewed with after testing positive for cocaine? And it was at least the fifth time that this driver had failed a drug test. The fifth time. In 1996, he was fired by one transit company for testing positive for marijuana for a second time. He was then fired from another transit authority, where he had failed two drug tests.

And then, when he applies to work for this company, he does not say anything about those prior incicdents on his application. There was no information that they could go to, I guess, to check out what was the guy's history. So he just files his application and does not mention anything about his previous employers and the number of times he had failed drug tests for marijuana and cocaine and the violations for driving 18 hours in 1 day, and all of the other numerous violations that he would be required to comply with.

Apparently, there is a Federal requirement that he should have stated that on his application, but he did not. The bus company does not check. Here we have a bus driver who, by any measurement or standard, should not have been on the road.

Then to have the Federal Highway Administration say that they had a good drug testing program, and then, 4 months later, the Department of Defense says they do not even have one. This thing was such an accident waiting to happen with this company.

State and Federal inspections show that in the past 3 years, the company had violated 31 Federal safety requirements. State troopers found violations by the company in 36 of their 53 inspections. A violation rate of 68 percent.

So you have a company that has a terrible, terrible record, hiring a person who should never have been hired. The poor guy should have probably been in the hospital before the accident. He was in such bad shape, but he was driving on Mother's Day with a bunch of elderly people in a bus. It is not surprising that this happened.

So the question is, what did we learn from this? It is even more tragic if we do not do anything about it. So we have got a number of bills, and let me just talk about that in general.

The question is, where do we put this new agency? I think we would really have to take it out of the promotion end of the highways and put it somewhere else. My staff has suggested, the way it is now, it is kind of like the Maritime Administration doing the work of the Coast Guard. The Maritime Administration is supposed to support maritime transportation. The Coast Guard enforces the laws. But it would be really ironic if the Maritime Administration enforced the laws. It would not work very well.

So the question, we have got the National Transportation Safety Board, we have got the National Highway Traffic Safety Administration, we have got the OMC, we have got all these alphabets out there, so what do we do? How do we construct this? I think Senator McCain has talked about creating a new agency or a new department. What are your suggestions about who should do the enforcement of the rules for this particular problem? Where do we put this? Any comments?

Mr. Campbell.

Mr. CAMPBELL. Senator, I would be happy to comment. I think that a measure of what we do now with regard to who has oversight or who is responsible needs to be in anything that we do in the future. First and foremost, roadside inspections throughout this country are conducted—you heard Administrator Wykle talk about 2 million roadside inspections, and they characterize them as spot inspections, and they are anything but spot inspections now.

They are not all level 1, which is a full inspection, where you look at every component on the vehicle, you actually measure the brakes, you look at everything that is involved with the driver, you look at his commercial driver's license, you look at his compliance with the hours of service regulations. We would like to say that every one of those inspections are that level of inspection. In all honesty, they cannot be done at the roadside in that formal a manner.

But we need to have, as the heart and soul of any enforcement program, a continued effort at roadside inspections, conducted where those trucks operate. That is in the States and in the localities of this country.

Senator BREAUX. I understand what you are saying. I agree with that. My question is, who do we get to do that? Where do we put it?

Mr. CAMPBELL. We say it pretty strongly, that it needs to be a separate administration within the Department of Transportation. But it needs to be a separate administration, apart from the Fed-

eral Highway Administration, in our view. That is the way our people do those inspections every year. Our people are responsible for motor carrier safety in the States. They need to be in an administration in the Federal Government that has full responsibility for that activity, and not just highways or road building.

Senator BREAUX. Ms. Claybrook, you have been around this town and the Department. What do you think we ought to do with it?

Ms. CLAYBROOK. Well, first of all, we think there needs to be a change, without any question. It has to come out of the Federal Highway Administration. Several Secretaries of Transportation have recommended, over the years, that the Office of Motor Carriers be transferred to the National Highway Traffic Safety Administration, because it is the major agency doing surface transportation highway safety.

The bill that is before the committee recommends creating a separate administration, but having some of the rulemaking and the technical work of data collection and research be conducted by the National Highway Traffic Safety Administration, and enforcement carried out, the on-the-road enforcement, the NAFTA enforcement, the compliance reviews and the penalty imposition, carried out by a separate administration.

We do not necessarily oppose that. We think that the most important issue, if that is going to happen, is that it be clear that the recommendations of the Inspector General, which are quite extensive, be mandated by law to be carried out, so that this is not just moving a box into another box and the rulemaking work for in-service vhicles which the NHTSA is very expert at, and the data collection, which it has done the best job in the Department of doing, that that be carried out by NHTSA.

The standards that are issued for on-the-road trucks are extensions, in most cases, of the new standards already issued by NHTSA for new trucks. In other words, when NHTSA issues a standard for an underride guard, then the on-the-road truck standard is to keep that in good working order. It is rarely to do something brand-new.

So we feel that it makes a lot of sense, with NHTSA's expertise in issuing standards, to have the follow-through to the new vehicle standard be issued by the same agency. And it will be done on a more timely and effective basis. There have been years of delay.

NHTSA has not been a perfect agency. Let me say that I have been a critic of it, both when I ran it and since I have left—and before I went. So that is what our role is, is it not? But we do think that it has been a lot better than the OMC, and particularly in the technical rulemaking activity, the data collection and research.

A major issue that we have recommended for the new administration that this bill would create is that there be clear conflict of interest standards. Because there have been tremendous conflicts of interest in the Office of Motor Carriers. The Inspector General and the GAO have documented these extensively.

So we think that it is not just moving the box, but how you do that movement. The other statutory requirements—I know that Senator Snowe got a provision in law in 1995, requiring the issuance of an hours of service rule in a very timely manner, and it has not happened.

The law has to be clear on its mandate to the agency. And I would urge that the recommendations of this panel be given serious consideration in the way you write the rules and the obligations of this new administration. But oversight by this Committee and others is very important, too. I think the I.G. has done an enormous service to you and to us for the work that he has done, bringing this all to our attention.

Senator BREAUX. Thank you. I also would commend that. Mr. Chairman, I do not think you were here when the I.G. testified, but they really did a fine job of looking at this and giving us some valuable suggestions, which is their role.

I, for one, and I think many others, are not anxious just to go around creating more agencies or more boxes out there. We want to make sure that we give the people the tools to do the job, that they are not somehow lost in a bureaucracy that has a thousand other missions, and that safety is one of the missions way down on the bottom of their list and they wished it would go away. We have not given motor carrier safety the attention it deserves and the American public I think wanted it to have.

Safety is such an important thing, and we have got to learn from these accidents that are occurring out there, and we need to do it better. Certainly, in many cases, better inspections and more enforcement would avoid a lot of people who are not here today because of an accident.

Ms. CLAYBROOK. Mr. Breaux, there was a terrible crash today on the interstate highway just outside of Washington, D.C., two trucks and a van. It has tied up traffic for 3 or 4 hours. So there are many, many costs to these truck crashes. As you know, in Virginia, just 2 months ago, traffic was stopped for a whole day because of hazardous cargo that was being carried.

Senator BREAUX. Yes.

Ms. CLAYBROOK. I would urge that the committee look at the relationship between the State rules and the Federal rules, as well, for intrastate traffic and interstate traffic. Because that is very relevant to making sure all the trucks on the highway are safe.

Senator BREAUX. I want to thank also the American Truckers Association and the Teamsters for I think a very positive statement about recognizing this, and not just opposition to any more changes. I think you all have been very positive in what you all have suggested, as well.

I think, Mr. Chairman, clearly this is one of those rare issues that should not be Republican or Democrat. We should be able to do this in a bipartisan fashion, and work together on something like this. We should be able to get it done.

I thank the panel very much.

Senator BROWNBACK. Thank you, Senator Breaux.

In looking through some of the testimony that you put forward and listening to some of the testimony, I do not think anybody here, as Senator Breaux mentioned, would be or is opposed to increasing safety on the highways and clearly that provided by trucks. And we need to do that for the wrecks that happen out there.

I would be curious, Mr. McCormick, from your perspective, what would be the single most important thing that we could do to im-

prove safety amongst truckers and the trucking industry? And I am going to ask you, Mr. Bryant, that same question next.

Mr. MCCORMICK. Mr. Chairman, we believe that the reforms in this bill, the creation of a separate Motor Carrier Administration. We think that agencies do best when they have a core mission. And when people go to work, they say, What is my job?

At the Federal Railroad Administration, it is: You make railroads safe. At the Federal Aviation Administration, it is: You make sure aviation is safe. At the Federal Transit Administration: You take care of transit. But with trucking, we do not have that. We need to have people who go to work each day and they say: "I am responsible for trucking."

That is also why we believe that it should follow the model that has worked with the other modes, and that it should not be split between agencies, between a new Motor Carrier Administration and NHTSA. When the people at NHTSA go to work, they say: What is my job? They say: Well, it is automobiles and it is pedestrians.

We want folks to know that if it comes to trucks and buses, it is the Office of Motor Carriers. And that is what this committee and this Congress is holding them accountable to.

Senator BROWNBACK. You believe that would be the most important thing we could do to increase safety?

Mr. MCCORMICK. We believe that is the single most important thing.

Senator BROWNBACK. Mr. Bryant.

Mr. BRYANT. Thank you. Let me first say that the unionized carriers participate in the random drug testing program. Drivers are chosen in a random pool. There is no way that a driver can get prepared in the event that he is positive for any kind of drug or alcohol. We have methods in the National Master Freight Contract to ensure that those guidelines are complied with.

In respect to who should enforce these administrations, it is important that we have clear directives, whoever enforces them. The Teamsters supports a separate administration. The Teamsters also support an advisory committee, made up by people of everyday walks of life. It is important that the hands-on people have a say-so in what goes on.

I can relate a story where 2 weeks ago I got a phone call from one of my drivers that was in Laredo, Texas. And he said: "Well, they are at it again." I said: "What are you talking about?" He said: "Well, they are lining up on the other side of the border. The hotel is five stories tall."

The Mexican trucks line up on the other side of the border and wait for the Border Patrol inspection to close down. Once they close down, the Mexican trucks have free rein. There is a serious problem there, and it needs to be addressed. Those inspection stations should be open 24 hours a day.

Senator BROWNBACK. That situation has been reported, or that story, to the proper authorities, that that is the common operating procedure?

Mr. BRYANT. As far as I know. They only have hours to operate. And when those hours are over, they shut the system down, and

it is just free rein across the border. There are no inspections going on.

Senator BROWNBACK. I would sure hope people are made aware of that when that happens, if that is a common operating procedure. That ought to be something that people could get a hold on pretty fast.

Ms. CLAYBROOK. Mr. Chairman, it has been in the media. It is very commonly known.

Senator BROWNBACK. Ms. Claybrook, what would you say? You have been both on the inside and outside. What is the single most important thing we could do?

Ms. CLAYBROOK. Well, I would say that the dilemma that faces both the enforcement people today, where they are located, and that I think is a conundrum for this committee, as well as for ourselves, is the huge number of trucking operations and the very small number of inspectors, unfortunately, that can inspect them. What do you do about that?

Our view is that the way to start dealing with this terrible backlog is to focus on new entrants. New entrants are most over-involved in crashes. And we believe that there should be an entrance test, if you would, for new entrants, to make sure that those companies know what the rules and regulations are and what their obligations.

Senator BROWNBACK. That would be the lead thing you would suggest, so that new entrants would know and be aware?

Ms. CLAYBROOK. Well, yes. There are about 14,000 new entrants a year. And they can enter the business, and they are just in the mix of all the trucks and companies that there are on the road. We think that they ought to be selected out each year for an entrance exam, if you would, to enter into this business, because it is so important for safety. And they should be listed at the end of the first year for a compliance review.

The focus of the agency's efforts should be on new entrants, because they are definitely the most over-involved in crashes. If they are given a tough entrance experience, then they are much more likely to both be aware and to behave. We think that that is an enormous focus that ought to be on the Federal agency's docket and also in the money that it gives to the States and for the State activity that is carried out.

Senator BROWNBACK. That is a good suggestion.

Mr. Campbell.

Mr. CAMPBELL. Senator, I would agree by saying that if you held me to one suggestion and only one suggestion, it would be the establishment of a separate Motor Carrier Administration, closely followed by a new entrant program that would establish the safety procedures that a new entrant would have to follow and that the new entrant would have to lay out as to how they would comply with those regulations. And then, a methodology for going back and testing that.

We have highlighted the specifics of how that program, in our view, should be operated in our full testimony. We believe that those are the two single most important things that you could do to impact safety.

Senator BROWNBACK. Mr. Sharpe, any other additions to those suggestions?

Mr. SHARPE. I would like to just say I agree with the panel on that—with the last two members of the panel.

One additional thing that I think has to be included in that is that the States' registration systems, and the entrance exams that are talked about here, have to include local input. For instance, if in fact there is a corporation that applies for a license, someone locally has to check and see if that corporation is in fact a viable entity. If someone operates under an assumed business name, those assumed business names have to be registered with the States.

So all of this leads us to good demographics. Do you have a handle on who these operators are? What is their past experience? Have they been in business with another DOT number 20 minutes ago, 2 days ago, a year ago? Did they have a problem there? Did they just simply change their name and start into another business?

So the original MCMIS data base, the Motor Carrier Management Information System, that dates back into the early eighties, was designed as a census. It was not designed as an enforcement data base. So entry standards, I would say, are paramount.

I come from an old Commerce Commission. We are the last ICC in the country. For the what-it's-worth department, this sounds a lot like regulation to me. Harkening back, entry standards were part of the regulatory structure. And safety fitness was a large part of the hearings we used to conduct on motor carrier entry. So there is a pattern there, and it is a way to look back and see history repeat itself there.

Ms. CLAYBROOK. I would add, Mr. Chairman, that the Inspector General mentioned before you came in today another factor that I think plays an important role in this whole enforcement problem. That is that there has to be consequences when violations are found. Today, often these penalties are either not imposed, they are not paid, or they are at the level of a cost of doing business. And unless you have a tough enforcement operation with sufficient penalties to get the attention of the companies that are violating the law, they are never going to bother to violate the law.

And we know that, whether it is individuals who commit crimes or whether it is companies that commit crimes. So we believe that the tough enforcement has to be followed up with penalties that are sufficient. And if there is a second violation of the same problem, they ought to get a maximum penalty. They ought to get hit where it hurts—in the pocketbook—and then they will say: "It is not worth the risk of continuing to behave this way."

Senator BROWNBACK. Those are good suggestions.

It has been an excellent panel. I want to thank the panelists for traveling here and providing your expertise to us, as well.

With that, the hearing is adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIX

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO KENNETH WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

Question 1. On page 9 of your testimony, you mentioned that the Department does not have licensing or registration authority over Mexican trucks traversing the U.S. that go to Canada. Don't you think this policy should be changed?

Answer: Under current law, the Department has no authority to license or register a Mexican motor carrier using the United States essentially as a "land bridge" to reach Canada. Moreover, a 1943 treaty involving American automotive traffic provided the right for foreign carriers to "circulate freely on the roads" of the United States. Thus, carriers may operate anywhere in the United States to get from Mexico to Canada, so long as they meet insurance filing and safety requirements. A review of data currently available to us suggests that such foreign country to foreign country commercial crossing of the United States is highly infrequent. Because such transportation is infrequent, permitted by international law, and already subject to Federal and State safety laws and financial responsibility requirements, we do not, at this time, see a need for changing Federal policy in this area. However, we do intend to monitor this situation carefully.

Question 2. One of the Department's goals is to increase the number of federal inspectors from 13 to 40 on the U.S. Mexico border. Do you really think this would be an adequate level of inspectors for the large amount of truck traffic coming across the border?

Answer: The Office of Motor Carrier Safety (OMCS) currently employs 40 Federal safety inspectors at border locations. Thirteen were hired in 1995 and 1996. and twenty-seven were hired in June 1999. In FY 2000 Congress appropriated $816,000, which is used to support the twenty-seven recent hires. We will evaluate whether this is sufficient with the FY 2001 budget. The Office of the Inspector General has recommended that from 73 to 126 Federal inspectors should be maintained at the border. Last May, former Congressman Norman Y. Mineta's review of the motor carrier safety program recommended an increase of 50 Federal inspectors. While we continue to increase the Federal enforcement presence, we are equally committed to providing the States the resources they need for inspection facilities, additional inspectors, equipment, and implementation of electronic clearance technologies.

So that we may better assess the number of inspectors needed, we have initiated discussions with the United States Customs Service to obtain crossing data to determine the number of vehicles that enter the U.S. Even though we have nearly 4 million crossings per year, we know that many of the vehicles make 2-3 crossings per day. The information would enable us and the States to more effectively deploy inspectors at each port of entry.

Question 3. I am very concerned about the safety issues associated with the cross-border trucking provisions of NAFTA. What is the Department of Transportation doing to insure that Mexican trucks are inspected and meet U.S. safety standards?

Answer: The Department of Transportation has been working with the States, the Commercial Vehicle Safety Alliance (CVSA), the International Association of Chiefs of Police (IACP), and with Mexico to improve the safety infrastructure on both sides of the U.S.-Mexico border. We have initiated a variety of activities to increase truck safety at the Southern border. and we are committed to taking further actions in the months ahead.

To step up State enforcement activities, we are providing special border grants to border slates. Since 1995, we have provided the border States with over $10 million in additional grants to conduct additional inspections, purchase equipment, conduct training, conduct education and outreach activities, purchase laptops and fund projects designed to improve data on Mexican carriers. TEA-21 continues the special funding to border states by authorizing the Secretary to dedicate up to percent of Motor Carrier Safety Assistance Program (MCSAP) funds for border commercial motor vehicle safety program and enforcement activities and projects through FY 2003. In fiscal year 1999, $4.5 million was made available to both the Southern and

Northern border States on a competitive basis. Following is a summary of the amount awarded to each State that applied for the funds:

Texas:	$1,826,300
California:	$1,505,800
Arizona:	$530,900
New Mexico:	$551,000
Washington:	$60,000
Vermont:	$6,000

In applying for the grants, States used performance-based principles to develop programs that address both the State and national safety concerns. The majority of the funds were used for personnel services to increase inspection and other compliance and enforcement activities. Other specific projects funded include: purchase of vehicles, laptop computers, and other equipment needed by inspectors; traffic enforcement activities; and development of software to integrate Mexican motor carriers into the existing automated pre-clearance systems. Projects which lead to improved and more timely data and projects that include additional inspection activities will be given priority consideration in the distribution of FY 2000 special border enforcement grants.

We are encouraging States to consider inspection facilities when applying for Federal funds under the National Corridor Planning and Development Program, the Coordinated Border. Infrastructure Program, and other Federal-aid programs. Approximately $7.1 million in Federal dollars was awarded in FY 1999 from the Border and Corridor Grant Programs for infrastructure improvements to support safety enforcement activities at the Southern border. The projects included:

- Nogales, AZ-Site Development work for commercial vehicle inspection and weighing-$2.5 million
- California-Coordinated Border Transportation Study: study of feasibility of new border crossing; planning for port of entry improvements and planning for improving border transportation efficiencies in the vicinity of Mexicali; and to improve border transportation system with Baja California-$340,000
- El Paso County, Texas - Border station improvements at the International Bridge of the Americas in El Paso County-$2.4 million
- Hidalgo, Texas (Port of Entry)-Construction of a safety inspection facility, a bus processing center, development of an electronic vehicle traffic management system, and related improvements at three border crossing locations-$1.9 million

The leveraging of the Federal-aid funds with the grants States receive under MCSAP and other TEA-21 discretionary programs should provide the States with a greater opportunity to expand their enforcement capabilities.

To promote greater understanding and awareness of the U.S. safety standards, the OMCS and the CVSA worked through CVSA's International Affairs Committee to train Mexican civilian inspectors and law enforcement officials to perform driver and vehicle inspections using the North American Standards Inspection (NASI) procedures. The NASI procedures are the same procedures used to inspect commercial motor vehicles operating in the United States and Canada. The goal is to ensure that the majority of Mexican vehicles and drivers are in compliance with the safety standards even before they reach the border, and to achieve uniformity of inspection procedures throughout North America. We are also providing Mexico with technical assistance to develop information systems to improve its capabilities to monitor the safety compliance of its commercial vehicle operations. Once the systems and appropriate links are completed, the U.S. and Mexico will be able to exchange safety information about drivers, vehicles, and carriers.

OMCS is considering three draft Notices of Proposed Rulemaking (NPRM) which would propose (1) to require an enhanced safety fitness showing by Mexican carrier applicants seeking authority under NAFTA, as well as for Mexican carriers operating in U.S. border commercial zones; (2) to reissue Certificates of Registration issued to border zone carriers to update our data base and discourage fraudulent use of the authorizations; and (3) to provide for an accelerated safety monitoring and enforcement program.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY SAFETY

Thank you for your follow-up questions to the important hearing held by your committee on September 29, 1999. Advocates has provided detailed responses to your

questions which consist of recommendations for strengthening S. 1501 to make it a comprehensive approach to motor carrier safety reform. We are prepared to supply additional materials and explanations on any topics discussed in our answers, as well as to respond to any other concerns you may have about allied issues. We are convinced that S. 1501, with modest changes, is a forward-looking bill which can save lives and prevent crashes on our streets and highways.

1. I would like each of the panelists to identify which provisions in S. 1501 they believe are key to improving truck safety and then to offer their suggestions for how the legislation might be further improved.

S. 1501 is an appropriate legislative response both to the problem of increasing truck crashes, deaths, and injuries as well to the declining quality of federal motor carrier safety oversight, regulation, and enforcement. There are important areas of motor carrier safety improvement which could be added to the bill. In some instances, these are modifications or extensions of existing provisions, and in other cases adding new provisions would further strengthen S. 1501. Advocates has specific language prepared for each of our recommendations.

Findings and Purposes.

- *Statement of Motor Carrier Safety Needs.* S. 1501 currently has no overall assessment of the present condition of motor carrier safety, including the unacceptable status of the regulatory and enforcement responsibilities statutorily assigned to the federal steward. Advocates recommends that the fundamental concepts of Section 2 of H.R. 2679 as passed by the House on October 14, 1999, be incorporated as a statement of Congressional purpose for enactment of S. 1501. Characterizing the basic goals and mechanisms of major legislation such as this bill has significant impact on the force and effect of mandatory provisions set forth in the body of the legislation in a way that cannot be achieved with report language. A recent example showing the important influence of a strong, preliminary Findings and Purposes section is the Congressional statement of the need to strengthen both national and State hazardous materials regulation and oversight in the 1995 hazardous materials reauthorization bill as enacted.

Section 2. Establishment Of A Motor Carrier Safety Administration.

• *Separate Motor Coach Safety Division.* Subsection (d): This is a necessary and commendable charge to a new agency which is long overdue. However, amending the provision slightly to ensure that motor coach oversight includes the establishment of safety standards specific to the operation of motor coaches will appropriately refine the statutory direction to the Secretary in this important area of commercial motor vehicle safety.

National Highway Traffic Safety Administration Jurisdiction. Subsection (c)(2): The charge to NHTSA in administering certain after-market safety regulations needs to be made clearer because the term "retrofit" does not accurately describe all the rulemaking areas for which NHTSA should be made responsible with regard to in-service commercial vehicles. These include safety standards governing retrofit, safety maintenance practices and components, and equipment performance of trucks, buses, trailers, and tractors on the road. Accordingly, Advocates suggests that 49 U.S.C.§ 30102(a)(9) be amended by changing the period after "performance" to a comma and adding: *"including the equipment retrofitting, maintenance, or other safety performance enhancement of in-service vehicles greater than 10,000 pounds gross vehicle weight or carrying 8 or more passengers and the driver."* Also, 49 U.S.C.§ 31502(b)(1) is amended by striking the words *"and equipment of";* (b)(2) is amended by striking the words *",and standards of equipment of,";* (b)(3) is amended by striking the words *"and equipment."*

• *Transfer of Office of Motor Carrier and Highway safety.* Subsection (e)(1): This would transfer highway safety functions of the reorganized Office of Motor Carriers and Highway Safety (OMCHS), including the administration of, e.g., highway safety appurtenances as well as traffic engineering issues (the Manual on Uniform Traffic Control Devices), to the new Motor Carrier Safety Administration which, given the provisions in the remainder of the bill, is not the actual intent of the legislation. Highway safety and traffic engineering functions of the OMCHS should remain at the Federal Highway Administration because they address road design and safety oversight issues properly assigned to a highway authority.

Section 4. Administrative Improvements.

• *List Inspector General Findings and Recommendations for Implementation.* This provision could benefit from fine-tuning the charge to the Secretary by listing the

specific recommendations of the Inspector General's (IG) April 1999 report. In addition, not all of the shortcomings identified by the IG needing action were formally enshrined as explicit recommendations. Finally, a number of major deficiencies in the OMCHS administration of federal motor carrier safety regulation and enforcement were identified in preceding reports issued over the past few years by the IG and the General Accounting Office. These include:

• *Motor Carrier Safety: Federal Highway Administration,* TR-1999-091.
• *Motor Carrier Safety Program for Commercial Trucks At U.S. Borders,* TR-1999-034.
• *Motor Carrier Safety Program: Federal Highway Administration,* AS-FH-7-006.
• *Truck Safety: Motor Carriers Office's Activities to Reduce Fatalities Are Likely to Have Little Short-Term Effect,* T-RCED-99-89.
• *Truck Safety: Effectiveness of Motor Carriers Office Hampered By Data Problems and Slow Progress on Implementing Safety Initiatives,* T-RCED-99-122.
• *Truck Safety: Motor Carriers Office Hampered By Limited Information On Causes of Crashes and Other Data Problems,* RCED-99-182.
• *Commercial Passenger Vehicles: Safety Inspection of Commercial Buses and Vans Entering the United States From Mexico,* RCED-97-194.
• *Commercial Trucking: Safety Concerns About Mexican Trucks Remain Even as Inspection Activity Increases,* RCED-97-68.
• *Commercial Trucking: Safety and Infrastructure issues Under the North American Free Trade Agreement,* RCED-96-61.

If a specific listing of the recommendations and findings of the IG's April 1999 report is not possible, then Advocates strongly suggests that the bill (a) amend Sec. 4 to state *"the safety findings and recommendations provided for in the Department of Transportation Inspector General's Report . . ."* and (b) provided legislative report language to accompany the bill which refers the Secretary to these preceding IG and GAO reports for a comprehensive understanding of the measures necessary to ensure reform of federal motor carrier safety regulation and enforcement required through the creation of a new agency.

• *Implementation Oversight.* Three other changes would greatly benefit Section 4. First, Secretarial reporting to Congress on progress made in accomplishing the findings and recommendations of preceding IG and GAO reports should be governed by a deadline. Advocates suggests February 1, 2001. Second, the Secretary should be required to file a report with Congress a few months before the deadline stating which actions have been taken in accordance with these findings and recommendations, such as by October 1, 2000, and which actions will not be accomplished by the deadline, the reasons for not meeting the deadline, and the date by which completed action can be expected. Third, the IG should be made an active part of the ongoing oversight of the new agency's progress in meeting the safety goals of the IG and GAO reports. The IG should be charged with reviewing the agency's actions on a semi-annual basis and reporting its findings and recommendations to the Secretary and to the Congressional committees of jurisdiction in both houses.
• *Office of Inspection General Semiannual Enforcement Audit.* With regard to a statutorily guaranteed role for IG continuing oversight of the actions of the new federal motor carrier safety steward, Advocates endorses Section 208, Subsection (e) of H.R. 2679 as passed by the House on October 14, 1999, which requires a semi-annual audit by the IG specifically of the quality of the enforcement effort undertaken by the new federal steward. Congress needs an independent assessment of the extent to which the federal enforcement authority is imposing fines and other penalties which are commensurate with the severity of violations, which make significant inroads on the large backlog of violations, and which provide measurable deterrent effects on the willingness of drivers and carriers to commit violations of the safety regulations.

Section 5. Improvements To The Commercial Drivers License Program.

• *Commercial Driver Disqualifications.* S. 1501 would benefit from the carefully drawn provisions of Section 201 of H.R. 2679 as passed by the House on October 14, 1999. which identifies serious driver offenses not previously contained in federal law and regulation. These are important controls on driver abuses which formerly had no federal sanctions for such violations.
• *Definition of Imminent Hazard.* Two different definitions of imminent hazard are currently used in motor carrier transportation statutes. The hazardous materials-related definition in Title 49 U.S.C.§ 5102(5) refers to a safety or environmental "condition that presents a *substantial likelihood* that death, serious illness, severe personal injury" may occur before the "completion date of a formal proceeding"

brought by the Government to lessen the hazardous condition. This definition requires a high burden of proof because the safety or environmental hazard will not occur immediately, but at some time in the future, *i.e.,* during the weeks or months required to complete a formal proceeding. Although the hazard is "imminent," the provision does not require the immediate cessation of the activity to protect the public. Moreover, this definition is tied to the commencement of a civil action in federal court under 49 U.S.C.§ 5122. The Government has more time to meet the demanding burden of showing that the condition presents a *substantial likelihood* of death or serious illness or injury.

By contrast, the definition of imminent hazard found in Title 49 U.S.C.§ 521(b)(5)(B), refers to safety hazards that threaten to cause death or injury if not "discontinued immediately." Currently, § 521(b)(5)(B) defines an imminent hazard as any "condition of vehicle, employee, or commercial motor vehicle operations which is *likely to result in* serious injury or death if not *discontinued immediately."* The word "likely" imposes a burden on the Secretary to establish that the hazard results in serious injury or death more often than not. Section 521(b)(5)(A) requires that the Secretary of Transportation, on finding an imminent hazard, place a vehicle or driver Out Of Service, or order the employer to cease operations. This provision focuses on emergency situations and conditions that must be dealt with summarily, through immediate discontinuance of activity, in order to protect public safety. Enforcement takes place at the scene, and review of Out Of Service orders or orders to cease operation are only permitted subsequent to the enforcement action. The immediate nature of safety hazards addressed by § 521(b)(5), as well as the summary nature of the enforcement actions required by that provision, necessitate that the definition of the term "imminent hazard" as used in § 521(b)(5) require a lower burden of proof than the definition specified in § 5102(5).

These issues need to be viewed against the problems occasioned by Section 214 of H.R. 2679, as passed on October 14, 1999. Section 214 of H.R. 2679 would amend existing language in § 521(b)(5)(B) by striking *"is likely to result in"* and substituting *"substantially increases the likelihood of"* death or serious injury if not discontinued immediately. This wording, which is similar to the wording in § 5102(5) *("presents a substantial likelihood"),* imposes far too high a burden of proof on enforcement officers1 and severely limits the discretion of the Secretary to take quick action to protect public safety. The proposed substitute wording means that not only must a dangerous condition be "likely" to result in death or serious injury, but also requires additional proof that the condition "substantially increases" the likelihood of death or serious injury before intervention by law enforcement authorities is permissible. This wording ties the hands of law enforcement and can result in even fewer Out Of Service orders when dangerous conditions are found.

Further, Section 201 of H.R. 2679 mistakenly links the emergency disqualification of drivers to the definition of imminent hazard found in § 5102(5). This linkage is inapposite, since the definition in § 5102(5) is specifically geared toward hazardous material-related safety risks that will occur at some point over a prolonged time span, referencing the completion of legal proceedings. The legal proceedings contemplated in § 5102(5) are civil actions filed in federal district courts under 49 U.S.C.§ 5122. Since section 201 of H.R. 2679 provides authority for the temporary emergency disqualification of drivers for 30 days, and is unrelated to hazardous materials transport, the citation to § 5102 is erroneous and should instead cite 49 U.S.C. § 521.

Given these considerations, Section 110 of S. 1559 offers a definition of "imminent hazard" which is simply unworkable. The proposed wording would impose a very high standard on the Secretary to show that an "imminent hazard" could likely result in a crash if operation of the vehicle is not discontinued within 24 hours. This has been interpreted in S. 1559, the U.S. Department of Transportation bill introduced by Senator Lautenberg, to mean that "the Secretary must demonstrate that a crash could happen in the next 24 hours without corrective action." Such a specific, hard number time frame imposes a new requirement that is impossible to sustain against legal challenges. In addition to requiring that a crash is probable, this provision would require additional evidence that it is likely to occur within 24 hours of the discovery of the safety violation. Such prognostication is beyond the capability of law enforcement authorities and is not a reasonable requirement. Alternatively, if the proposed wording is interpreted to mean that the enforcement action, not the crash, has to occur within 24 hours in order to avoid an imminent hazard, the Secretary, in that case, would have to prove that a failure to act within 24 hours would in fact result in a crash. This also imposes a burden that cannot be met since it requires proof of a contrary-to-fact conditional if a carrier is stopped from operating.

Rather than raising the burden of proof beyond what is currently required, *i.e.,* that a condition be likely to result in death or serious injury, 49 U.S.C. § 521 should be amended in S. 1501 to provide greater enforcement discretion to the Secretary. The definition of imminent hazard should allow enforcement action even when the chance that a hazardous condition will result in serious injury or death is higher than normally encountered. Advocates strongly recommends that S. 1501 adopt a definition of "imminent hazard" in § 521(b)(5)(B) as a condition of a vehicle, employee, or operation that presents a *"reasonable possibility"* of serious injury or death if not discontinued immediately. This provides the Secretary and law enforcement personnel the flexibility necessary to protect public safety in emergency circumstances without the need to establish that serious injury or death is probable.

• *Unique commercial driver personal identifier.* There should be a provision requiring the Secretary to establish requirements in a time certain for the states to use unique, fraud-proof personal identifier (not necessarily a biometric identifier) in order to prevent illegal issuance and use of Commercial Driver Licenses (CDL).

• *Out-Of-Service Order Violation Records.* Subsection (a)(6): There should be a provision complementing the prohibition on masking or expunging driver records pursuant to the violations delineated in 49 U.S.C. § 31310 which specifically directs the Secretary to ensure that the 10-year record of violations currently required in federal regulations for tracking driver Out-Of-Service (OOS) orders is maintained by the States. Neither the States nor FHWA have been maintaining the necessary 10 years of OOS order records which control license suspension, revocation, and driver disqualification for violations of the Federal Motor Carrier Safety Regulations. According to both federal and state officials, thousands of drivers who have repeatedly violated OOS orders continue to drive with impunity, although these commercial operators should have had their driving privileges suspended or revoked. Since Section 6 of S. 1501 directs major reform of data acquisition and transmittal systems to ensure timely electronic recordation and retrieval for, among other things, ensuring careful oversight of the CDL program, asking the States and federal government to maintain the necessary 10-year records for OOS order violations would not be burdensome.

• *Merger of Commercial Driver License With Medical Certificate.* Subsection (c)(1): Integration of medical certificates with the CDL is highly desirable, but additional language needs to be provided which requires the renewal cycle for medical certificates in each State to coincide with the renewal cycle for CDLs. In many States, the federal medical certificate can expire prior to CDL expiration (e.g., the driver fails the physical examination and is not reissued a valid medical certificate). The result is drivers taking their chances in driving without a valid medical certificate until their CDL comes up for renewal.

Also, although (c)(1) mandates the initiation of a rulemaking to provide for integration of the medical certificate with the CDL, it does not require the Secretary to issue a final rule nor does it establish a deadline for completing rulemaking. Advocates suggests that (c)(1) be amended to state that a final regulation shall be issued no later than 18 months following enactment of this legislation.

• *National Medical Provider Registry Rulemaking.* Subsection (c)(2): The problem of no mandated final regulation and no rulemaking completion date also needs to be corrected for this provision establishing a national registry of preferred medical providers to conduct examinations of commercial drivers.

Commercial Driver Training And Certification. There should be a provision requiring the Secretary to establish entry-level and advanced endorsement commercial driver training standards as a condition for taking the CDL test in each State. Inadequate training especially of young, new commercial drivers is a major reason for the high crash rates of entry-level drivers. Moreover, the special endorsement tests for driving Longer Combination Vehicles (LCVs), tank trucks, and vehicles carrying placarded quantities of hazardous materials are knowledge examinations without demonstration of driving skills. Commercial drivers should be required to be trained in safely operating all vehicles requiring additional endorsements as a condition for taking the special endorsement tests.

• *Commercial Driver Safety Standards Proficiency Examination.* There also should be a provision requiring CDL applicants to demonstrate their adequate understanding of the Federal Motor Carrier Safety Regulations through a proficiency examination. The current CDL test is a multiple-choice examination which does not demand a demonstration of actual applicant familiarity with the Federal Motor Carrier Safety Regulations.

• *Improved Commercial Driver And Motor Carrier Oversight and Enforcement.* Including H.R. 2679 Sec. 201(a), (b), (c), and (d) in S. 1501 will increase the safety of commercial drivers by ensuring national uniformity of the disqualification period,

specifying new serious traffic violations overlooked in current federal law and regulation, and providing for the immediate cessation of an imminent hazard. However, the definition of "imminent hazard" in Sec. 201(b) must be amended to cite the proper section of Title 49 (§ 521(b)(5)(B)) and to establish a realistic, flexible standard for the Secretary's application of enforcement authority to protect public safety, as explained in our discussion above on pages 3-5.

• *Extending The Commercial Driver License To Drivers Of Trucks Less Than Twenty-Six Thousand Pounds Gross Vehicle Weight.* S. 1501 and H.R. 2679 together substantially strengthen the CDL program, close remaining loopholes, and, in the process, increase the disparity of the stringency of licensure for commercial vehicles greater than 26,000 pounds gross vehicle weight with the current licensing requirements for non-CDL operators of commercial vehicles in interstate commerce. In many states operators of commercial vehicles between 10,001 and 26,000 pounds gross vehicle weight are required to have only a passenger vehicle or chaffeur license to operate a medium truck. In the last several years, the contribution of medium trucks to annual commercial vehicle fatalities has risen disproportionately to the point where they are responsible for nearly one-third of the more than 5,300 deaths. Advocates strongly recommends that S. 1501 include a provision directing the Secretary to conduct rulemaking to determine the benefits of extending the CDL requirements to drivers of commercial motor vehicles between 10,001 and 26,000 pounds gross vehicle weight.

Section 6. Improved Data Collection And Motor Carrier Safety.

• *Ensuring The Role Of The National Highway Traffic Safety Administration.* Subsection (f): Although prior subsections of Section 6 explicitly assign responsibility for improved data acquisition and analysis to NHTSA, this subsection, preceded by a funding subsection (e) which appears to conclude the enumeration of NHTSA's responsibilities, can easily be interpreted as a charge to the Secretary which does not include delegation to NHTSA for the development with the States of a uniform system for electronic transmission of commercial driver violation data. This should be clarified, preferably in the provision itself, to ensure that NHTSA is legislatively authorized for all motor carrier-related data gathering and oversight.

• *Use Of National Data Banks And Reform Of The Commercial Driver Licensing Information System.* Inclusion of H.R. 2679 Section 206 would further strengthen the goals and mechanisms of Sections 5 and 6 because Section 206 ensures that states access national, uniform driver record data banks (the National Driver Register and the Commercial Driver Licensing Information System (CDLIS)) rather than requesting the driver's violation record only from the State issuing the CDL. Section 6 of S. 1501 would ensure reform of CDLIS.

• *Bar Against Enforcement Use Of Electronically Recorded Data.* Subsection (g)(1): This subsection goes beyond the provision of Privacy Act protection and effectively bars enforcement authorities from accessing and relying on electronically recorded data monitoring commercial motor vehicle compliance with the Federal Motor Carrier Safety Regulations (such as conformity to commercial driver hours of service limits), as well as compliance with other federal laws and regulations governing routing restrictions, and size and weight limits. The provision could be interpreted to prevent the discovery and use of such data for forming charges, and assessing civil and criminal sanctions, against a commercial driver or motor carrier. As a result, the subsection essentially legislates that enforcement authorities maintain a pre-electronic data posture in documenting violations. This means relying only on paper receipts, paper logbooks, and other non-electronic evidence. FHWA and State enforcement officials have repeatedly shown that both paper logbooks as well as supplementary paper documentation are easily and widely falsified. This kind of bar would also thwart the National Transportation Safety Board's recommendations for the explicit use of recorders to abate safety standards violations. Accordingly, this provision needs significant clarification to ensure that the kinds of data we refer to above will be accessible by enforcement authorities for determining regulatory violations and assessing penalties while appropriate privacy protection for individuals is secured. Furthermore, the establishment of a privacy policy in statute should not be indexed to agency regulatory policies but should independently state the specific sphere of interests to be protected. If certain agency privacy protection policies are considered salutary, these should be mentioned only in an accompanying legislative report.

Section 7. Commercial Motor Vehicle Safety Advisory Committee.

• Advisory Committee. Subsection (b): This kind of generic advisory committee is ill-suited to perform the highly detailed and technical work of a specially empaneled negotiated rulemaking committee which must be composed of specialized experts in

a specific area of expertise. In addition, Subsection (b) would permit such a committee to intervene during active rulemaking, thereby triggering a violation of the Administrative Procedures Act (APA) in certain circumstances. Advocates recommends that the culminating phrase of the subsection *"by utilizing negotiated rulemaking procedures" be struck.*

Other Provisions:

Several other provisions could substantially strengthen S. 1501 by making it more comprehensive and effective in advancing motor carrier safety reform.

• *Conflicts of Interest.* As pointed out in September 29, 1999, testimony presented before the Subcommittee on Surface Transportation and Merchant Marine, FHWA has regularly awarded major research and study contracts to arms of the regulated industry to conduct sensitive research directly affecting the regulation of the industry. Much of this research has been poorly done and FHWA has even been warned by the Secretary's office not to continue conducting certain invalid research investigations and not to rely on their conclusions for forming motor carrier safety policy. However, the agency has persisted in allowing industry to conduct research impacting federal rulemaking in sensitive areas, such as commercial driver hours of service requirements. S. 1501 should contain a strong provision barring research contracts bearing on agency safety regulation and policy from being awarded to industry and its affiliates, or to any other person or organization receiving significant financial support from the industry.

• *Minimum Penalties Assessed For Safety Regulation Violations.* The IG's April 1999 report carefully documents the poor enforcement record of FHWA in assessing penalties for violations, including the imposition of penalties in only a small percentage of cases or lowering penalty amounts to nominal sums which can be regarded by motor carriers as only incidental costs of doing business. S. 1501 would amply reinforce a new federal steward's enforcement authority and provide strong deterrent value of fine assessments by including a provision which mandates the imposition of at least one-half of the maximum penalty currently listed in the schedule of fines in 49 U.S.C. § 521. Moreover, repeat violations should automatically trigger the application of the maximum fine amount. Allowing the federal enforcement authority unfettered discretion to impose penalty amounts can result again in low sums assessed for violations which creates a scofflaw environment because carriers believe that the financial consequences of enforcement actions can be disregarded.

• *New Motor Carrier Applicants For Interstate Operating Authority.* At the present time, there are no requirements in federal law and regulation for applicant motor carriers to demonstrate their familiarity with the Federal Motor Carrier Safety Regulations and to provide assurance that they have functioning safety management programs. It is well known, as verified by FHWA, that new motor carriers have the highest rates of safety regulation violations in the early stages of operation because of their lack of knowledge about the regulatory compliance responsibilities accompanying an award of interstate operating authority. Interstate operating authority applicants should be required to demonstrate proficiency in the understanding and application of the safety regulations in an examination and to file a safety management plan with the federal steward for approval as conditions for an award of operating authority. In addition, motor carriers should be required periodically to refile updated management schemes for approval in order to sustain their operating authority. Finally, new carriers awarded operating authority should undergo a full federal safety compliance review no later than one year after beginning interstate operations. These controls are crucial because a new federal authority needs to control the safety quality of new motor carriers given the enormous backlog of unrated, misrated, and obsolete rated motor carriers.

• *Interstate-Intrastate Motor Carrier Safety Law And Regulation.* According to the National Transportation Safety Board, about half of all fatalities in the U.S. involving commercial motor vehicles are the product of crashes by intrastate-only carriers. Unfortunately, many states have significantly weaker safety requirements for in-state motor carriers even though, in some cases, annual mileage and risk exposure for many intrastate carriers are the same as some interstate carriers. Despite often lower safety standards for such areas as in-state licensure, medical qualifications, and hours of service limits, all states currently qualify for federal funds under the Motor Carrier Safety Assistance Program (MCSAP). S. 1501 should either amend 49 U.S.C. § 31104 to ensure that State requirements for intrastate motor carriers conform to the Federal Motor Carrier Safety Regulations or include a provision directing the Secretary to conduct rulemaking to increase the compatibility of intrastate commercial motor vehicle safety law and regulation with federal safety standards. It should be noted that Congress in the Hazardous Materials Transportation Safety Act of 1990 directed that the states conform their intrastate hazardous materials laws and regulations to the federal model in order to ensure increased public

safety. This admirable goal is just as applicable to general freight transportation given the disproportionate contribution of truck crashes to the annual death and injury toll on our highways.

• *Certification Of Corrections Of Safety Violations By Motor Carriers.* Currently, there is no system of verifying that safety violations detected by State and Federal enforcement authorities are actually corrected by changed management practices, as in the case of carrier violations of hours of service requirements, or by appropriate repairs of components and operating systems of commercial vehicles which directly affect operating safety and are the subjects of roadside inspections and Out Of Service orders. The federal steward, Congress, and the public need assurance that defects identified by safety inspectors are corrected in a timely manner. Accordingly, a provision should be included in S. 1501 which requires each State on an annual basis to submit appropriate certification with supporting information that it has ensured timely correction and repair of safety violations cited as the result of vehicle and driver inspections carried out with funds authorized under 49 U.S.C. § 31104. This certification system could operate similar to the one in place for State vehicle size and weight certification pursuant to 23 U.S.C. § 141.

• *Registration Enforcement.* Advocates supports inclusion of the purposes of Section 210 of H.R. 2679 in order to abate the increasing number of verified instances of carriers operating illegally because of a failure to possess proper registration, including foreign carriers operating illegally outside the boundaries of the U.S. southern border zone. However, we believe that the Secretary *shall* place any carrier out of service in new 49 U.S.C. § 13902(e)(1) which is operating without evidence of proper registration. We note here that a passenger vehicle driver without proof of registration is not allowed to operate the vehicle under the Manual of Nationally Uniform Traffic Laws and Ordinances. Given the disproportionate risks associated with commercial vehicle operation, no commercial driver should be permitted to continue operating a large truck or bus without proper registration and should immediately be placed out of service unless and until such proof of legal registration is forthcoming.

• *School Bus Commercial Driver License Endorsement.* Inclusion of the basic concept of H.R. 2679 Section 202 requiring minimum testing standards for operating a school bus and the addition of a special endorsement to the existing roster of additional CDL endorsement is an important safety provision. However, the examination and special endorsement should be required just as the current endorsements are mandatory for those operating motor coaches, tank trucks, Longer Combination Vehicles, and vehicles transporting placardable quantities of hazardous materials. In addition, the endorsement should require both a knowledge test and a skills test because the current motor coach endorsement requires both.

Question 2. Would each of the panelists please provide the Committee their thoughts on the Administration's truck safety proposal introduced by Senator Lautenberg. I would be specifically interested in knowing which provisions you believe should be most closely considered by the Committee as we work toward a final truck safety bill.

Advocates has found a number of excellent provisions in Senator Lautenbergs bill, S. 1559, which, in some cases with a few recommended changes, would increase the comprehensive treatment of motor carrier safety reform in S. 1501. We list and discuss these provisions below:

• *Section 102(c).* Drug- Or Alcohol-Related Violations. This subsection prohibits any commercial license applicant from being awarded a new or renewed CDL if the applicant has been convicted within the previous three years of a drug- or alcohol-related traffic violation whether in a commercial or other vehicle. A strong provision like this simultaneously prevents higher risk applicants from securing CDLs and operating large trucks and buses, as well as providing deterrence of controlled substance and alcohol abuse by those desiring to operate large commercial vehicles with CDLs. The provision should be extended, however, to cover all commercial vehicle operators, including drivers of trucks between 10,001 and 26,000 pounds gross vehicle weight in interstate commerce. Advocates urges inclusion of Section 102(c), with these changes, in S. 1501.

• *Section 105. On-Board Recorders.* Directs the Secretary, after notice and opportunity to comment on a proposed rule, to issue regulations requiring installation of on-board recorders or other technologies on commercial motor vehicles to manage the hours of service of drivers. Although Advocates strongly supports mandatory on-board recorders and other technologies, this provision would require amendment to ensure that enforcement authorities were enabled to retrieve and use commercial vehicle electronic data to gather evidence and assess penalties for violations of the Federal Motor Carrier Safety Regulations. As drafted, the provision is easily read as only mandating these technologies for management purposes by motor carriers without authorizing the use of such data for determining regulatory compliance. Advocates would support amendment of this provision to ensure access and use of on-

board recorder, GPS system, and other technologies data for federal and state enforcement purposes, and its inclusion in S. 1501.

• *Section 106. Driver Compensation And Safety Study.* This provision directs the Secretary to conduct a study identifying methods of commercial driver compensation and how they each affect motor carrier safety and federal safety regulatory compliance. However, contrary to the gloss provided for Section 106, it does not require an evaluation of the safety and compliance effects of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*) . Advocates believes that this study is very important to reform of driver compensation systems which encourage systematic violation of hours of service restrictions, falsification of paper logbooks, and widespread commercial vehicle speed zone violations because commercial drivers are primarily paid by the mile. Advocates supports this provision for inclusion in S. 1501 and recommends that it specifically direct the new agency to study the effects of the Fair Labor Standards Act and to forward the findings and recommendations to Congress.

• *Section 108. Periodic Refiling Of Motor Carrier Identification Reports.* The provision directs the Secretary to amend the Code of Federal Regulations to require both foreign and domestic motor carriers to refile the forms verifying their continued or lapsed interstate operations. Carriers frequently cease business operations, yet are still listed in federal and state records as active interstate carriers. Periodically updating the interstate motor carrier census will enable the new federal motor carrier safety authority to know which carriers are actually in business. Advocates urges inclusion of this provision in S. 1501.

• *Section 112. Research On Heavy Vehicle Safety And Driver Performance.* Advocates strongly supports this dedicated funding for targeted research to be conducted by NHTSA on heavy vehicle safety, specifically on the key factors leading to truck and bus crashes or increasing their severity, including braking capabilities, static roll stability, and heavy vehicle aggressivity amelioration to reduce the severity of crashes with smaller vehicles. However, we believe that the separately specified study of driver performance should focus solely on improving driver skills and behavior in the operation of commercial motor vehicles, not all vehicles. This provision supplies important funding for commercial vehicle research which has been chronically underfunded at NHTSA.

Question 3. Recently, the DOT-IG found that 68 Mexican-based carriers were operating in the U.S. beyond the permitted commercial zones. According to the IG, roadside inspections were performed on the 68 Mexican-based carriers at least 100 times in 24 states beyond the US-Mexican border. I would like each of the panelists to comment on the IG findings and to offer their suggestions on what should be done to address these disturbing findings.

Answer. Advocates agrees that these systematic and widespread violations of the commercial zone at the U.S.-Mexican border show that a scofflaw attitude is beginning to be manifested by some Mexican trucking businesses. Only stern measures will abate these violations. We suggest the following actions:

1. Border inspection, including review of Mexican registration, proof of surety/insurance, manifests, and bills of lading, must be radically increased in order to deter carriers from operating beyond the border zone.

2. As we argue above in our evaluation of Section 210 of H.R. 2679, carriers found to be operating outside the legal scope of their registration, such as intrastate-only carriers found to be operating in another state or foreign carriers currently restricted to operating only in the narrow commercial zone at the U.S.-Mexican border, or with expired registration or no on-board proof of registration, *shall* immediately be placed out of service. Also, violations should be charged and adjudicated under strict liability. In the case of carriers which are unable to provide any legal registration for their operations or which are operating illegally, vehicles should be impounded. Owners who can eventually provide proof of registration showing the legality of their operations should be able to move these commercial vehicles under their own power after payment of appropriate fines. Owners who cannot demonstrate the legality of their operations should be prosecuted, fined, and any vehicles and drivers allowed to return to legal domiciles only through other methods of transport -- these trucks or buses may not be driven, and the drivers associated with the violations may not drive these or other commercial vehicles.

If these severe penalties were applied in all violation instances described above under the doctrine of strict liability, there would be substantial deterrence of similar violations.

Question 4. As you know, S. 1501 proposes to transfer FHWA's Office of Motor Carrier and Highway Safety to the new agency. I would be interested in receiving each panelist's view on whether the Office in its entirety should be moved or if safety

would be better served by retaining some of the highway safety functions with FHWA?

Answer. Advocates found the original FHWA reorganization plan to be both defective and poorly rationalized when it was first placed into effect more than a year ago. The reorganization simultaneously demoted motor carrier safety to a lower program stature within the agency and commingled its clear statutory mission with highway safety design and traffic engineering functions which are not directly relevant to its regulatory and enforcement responsibilities. The chief functions of the Office of Highway Safety, primarily oversight of state highway and traffic safety engineering and operations, including funding of hazard elimination projects and revision of the national Manual on Uniform Traffic Control Devices, should be retained at FHWA. Only core motor carrier safety functions, without the additional compromise of responsibility for industry economic regulation and oversight, should be the focus of the new safety agency.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO KENNETH WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

Question 1. In late May, Secretary Slater announced a Departmental goal of reducing commercial vehicle-related deaths by 50 percent in the next 10 years. Obviously, this is a significant goal that cannot be easily accomplished. In fact, with the exception of 1998 statistics, truck-related fatalities have been rising in recent years while the fatality rate has remained relatively consistent.

(a) Other than your sanction proposal to take away highway funding and penalizing states that don't reduce commercial vehicle-related fatality rates by five-percent a year, what specific actions has the Department taken since this May announcement and what else is planned? Perhaps this Committee should consider a sanction against DOT if it doesn't reduce commercial vehicle-related fatality rates by five-percent a year, since you seem to think such an approach is good for the states? Should DOT's budget be cut by each percentage point reduction it misses?

(b) What type of communications have taken place since the May announcement between the Department and the States in an effort to help reduce truck and bus accident fatalities?

Answer: (a) The Administration proposed in Section 104 of the Motor Carrier Safety Act of 1999 to redistribute *unused* Federal-aid highway obligation limitation as an incentive to States to reduce the number of fatalities that result from large truck and bus crashes. Thus, our proposal should not be viewed as a sanction. Our intent was never to be punitive. We believed the proposal would encourage States to model their programs after those of other States who discover ways to achieve safety improvements. Under current law, obligation limitation is subject to lapse if the Department or a State does not use it before the end of the fiscal year. The limitation is redistributed annually to those States that can obligate funds before the end of the fiscal year. Section 104 would amend existing law to create an incentive for States to reduce the number of fatalities and provide additional obligation authority to further improve the condition and safety of their roads.

Described below are actions taken by the Department since May to improve motor carrier safety. Some of the Department's anticipated actions are also identified.

Administrative and Legislative Actions Completed

- Hired and trained 27 new roadside inspectors to increase the enforcement presence along the Southern border.
- Added 10 new safety investigators for non-border locations, who are now in training and will be in the field by the end of December 1999.
- Requested an annual $55.8 million supplemental appropriation to fund increased enforcement, improved data and technology deployment.
- Proposed the Motor Carrier Safety Act of 1999, which would have required, among other things, additional training for new carriers and drivers, improvements to the Commercial Driver's License program, regulations for on-board recorders, improvements to motor carrier information systems, and additional funding for enforcement.

Rulemakings Actions Completed

- Issued NPRM on unfit carriers to reflect TEA-21 enforcement provisions (August 1999).
- Issued NPRM on new TEA-21 definition of a passenger carrier (September 1999).

• Issued NPRM on driver CDL disqualification for railroad grade crossing violations (September 1999).
• Issued final rule requiring carriers to maintain trailers with rear underride guards (September 1999).

Enforcement Actions Completed

• Increased the number of reviews per investigator by 59 percent, with a goal of 4 to 5 reviews per investigator per month.
• Reduced the overall backlog of enforcement cases by over 66 percent.
• Implemented higher civil fines and penalties for violations of the Federal Motor Carrier Safety Regulations (FMCSRs), incorporating the changes in the Uniform Fine Assessment model accessible to the safety investigators via laptop computers.
• Limited negotiated settlements for safety violations resulting in fine settlements doubling from an average of $1,600 per case to approximately $3,200 per case.
• Established progressive sanctions for repeat violators.

Data and Information Systems Actions Comnleted

• Provided funding to NHTSA to undertake a truck crash causation study.
• Developed a new truck crash investigation data collection course for police officers; currently completing a pilot program.

Rulemakings Actions Anticipated

• Issue rules required by the Motor Carrier Safety Improvement Act of 1999.
• Issue an NPRM on driver hours-of-service regulations.
• Complete the zero-base review of the Federal Motor Carrier Safety Regulations. This is a complete revision of the existing rules to provide clarity and to simplify the requirements where possible.
• Establish a Unified Carrier Register (UCR) that replaces the carrier registration system, the former ICC's licensing and insurance system, and the Single-State Registration System. The UCR is a single, Federal on-line system that identifies interstate and intrastate motor carriers, shippers, brokers, and freight forwarders.
• Propose training requirements for entry-level drivers of commercial motor vehicles and training standards for multiple trailer combination vehicle drivers.
• Propose a revised safety rating process.

Enforcement Actions Anticipated

• Expeditiously implement the enforcement provisions in the Motor Carrier Safety Improvement Act of 1999.
• Completely eliminate the current backlog of enforcement cases by January 1, 2000.
• Create a new entrant program to ensure safety compliance by new motor carriers.
• Expand the PRISM program, linking State vehicle registration and safety fitness to approximately 20 States by the end of FY 2000. The program tracks high-risk carriers from initial identification through the compliance review. Progressive sanctions are applied if safety improvements are not made.
• Monitor progress of enforcement actions to ensure consistency with guidelines and a high level of enforcement.
• Provide MCSAP incentive funding to States to increase compliance reviews performed by States, roadside inspections, and traffic enforcement.
• As required by TEA-2 1, complete an assessment of the extent of shipper involvement in safety violations and provide Congress with an implementation plan.

Data and Information Systems Actions Anticipated

• Expand the on-going OMCS/NHTSA commercial driver history initiative to improve the completeness and accuracy of driver history files and the exchange of the information between State agencies and among States.
• Provide a crash investigation course to State police to improve crash investigation data collection.(b) The Office of Motor Carrier Safety has issued specific guidance to the States regarding formulation of their Commercial Vehicle Safety Plans. That is, the primary focus of any State plan is the reduction of fatal accident numbers, fatal accident rates, and the adoption of programs that meet specified safety performance criteria. In addition, in a series of meetings held across the nation, OMCS headquarters and field staff have personally met with

all State MCSAP administrative personnel to further emphasize the need to focus on crash reduction. The Acting Director, OMCS, and other headquarters staff have addressed State MCSAP personnel at two CVSA conferences, and conducted workshops related to MCSAP and accident/fatality reduction. OMCS headquarters staff meet periodically with CVSA staff to develop enforcement and education strategies designed to achieve further accident reductions.

Question 2. Please provide for the Committee a status report on the DOT's implementation of each of the safety recommendations outlined in the JG's April report. Also, when should the Committee expect the recommendations to be fully implemented?

Answer: Provided below are the 010 recommendations from its April report number TR-1999-091 and the status of action taken on the recommendations. The Motor Carrier Safety Improvement Act of 1999 provides new authority and additional resources to help the OMCS and the new FMCSA implement the OJG recommendations. The Department hopes to implement the recommendations as soon as possible in FY 2000 in accordance with the Act and will provide regular reports on progress being made.

Recommendation A1. Obtain Departmental approval to revise the motor carrier safety goal to substantially reduce the absolute number of deaths per year.

Status: The Department's FY 2000 performance plan was revised on April 14, 1999, to include the absolute number of deaths per year.

Recommendation A2. Strengthen its enforcement policy by establishing written policy and operating procedures to take enforcement action against motor carriers with repeat violations of the same acute or critical regulation. Strong enforcement actions would include assessing fines at the statutory maximum amount, the issuance of compliance orders, not negotiating reduced assessments, and when necessary, placing motor carriers out of service.

Status: Enforcement guidance was issued in April 1999 and June 1999 to double the number of compliance reviews performed by safety specialists and increase penalties provided in TEA-21. OMCS established a repeat violators policy and limits negotiated settlements except in unusual circumstances. OMCS issued an NPRM in August 1999 on the TEA-21 shutdown authority.

Recommendation A3: Remove all administrative minimum fines placed in the Uniform Fine Assessment (UFA) program and increase the maximum fines to the level authorized by TEA-21.

Status: Guidance was issued in June 1999 that updates the Uniform Fine Assessment (UFA) model with the TEA-21 fine schedule, including progressive sanctions for repeat violators. The Motor Carrier Safety Improvement Act of 1999 recommends the establishment of minimum civil penalties for violations.

Recommendation A4. Establish stiffer fines that cannot be considered a cost of doing business and, if necessary, seek appropriate legislation raising statutory penalty ceilings.

Status: OMCS updated the UFA model with the TEA-21 fine schedule and set progressive sanctions for repeat violators with an effort to obtain settlement for the full amount of assessment. OMCS will continue to monitor the appropriateness of fine levels.

Recommendation A5. Implement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlementagreements are completed.

Status: The Motor Carrier Safety Improvement Act of 1999 includes authority to take strong sanctions against carriers that fail to pay civil fines. This will be implemented as quickly as possible.

Recommendation A6. Establish criteria for determining when a motor carrier poses an imminent hazard.

Status: An NPRM on the new shutdown authority was issued August 1999. In addition, the Motor Carrier Safety Improvement Act of 1999 revises the definition of imminent hazard.

Recommendation A7. Require follow-up visit and monitoring of those motor carriers with a less-than satisfactory safety rating, at varying intervals, to ensure that safety improvements are sustained or, if safety has deteriorated, that appropriate sanctions are invoked.

Status: A key feature of the nationwide implementation of the Performance and Registration Information Systems Management (PRISM) program is the Motor Carrier Safety Improvement Process (MCSIP). This process was adopted in all PRISM States and their companion Division offices, including a monitoring program and a

progressive sanction program. The MCSJP tracks high-risk carriers through compliance reviews and applies progressive sanctions, if safety improvements are not made. Additional funding was requested by the Administration to rapidly expand PRISM. An eight month follow-up is required for those carriers with an enforcement case. In addition, carriers with unsatisfactory safety ratings will be subject to shutdown orders under TEA-21.

Recommendation A8. Establish a control mechanism that requires written justification by the OMCS State Director when compliance reviews of high-risk carriers are not performed.

Status: Each State Director is expected to complete reviews on all high-risk carriers identified by SAFESTAT prior to the next SAFESTAT list. A review may not be performed if the carrier has been subject to a review within the previous 12 months. If a review is not performed on a high-risk carrier, the Director must have evidence of corrective action by the motor carrier. Completion of compliance reviews on all high-risk carriers is monitored by headquarters.

Recommendation A9. Establish a written policy and operating procedures that identify criteria and time frames for closing all enforcement cases, including the current backlog.

Status: Enforcement guidance has been issued on enforcement cases. To date the OMCS has reduced the overall backlog by over 66 percent.

Recommendation B1. Require applicants requesting operating authority to provide the number of commercial vehicles they operate and the number of drivers they employ and require all motor carriers to periodically update this information.

Status: OMCS has a pending rulemaking that, among other things, would propose requiring applicants for operating authority to submit a Motor Carrier Identification Report, Form MCS-150, with the application to capture vehicle and driver data. The Motor Carrier Safety Improvement Act of 1999 requires that motor carriers update their motor carrier identification report one year from enactment. Also, to ensure that the information is updated periodically, the OMCS is implementing the PRISM program. States participating in PRISM require carriers to update their MC-150 annually when their commercial vehicles are registered.

Recommendation B2. Revise the grant formula and provide incentives through the Motor Carrier Safety Assistance Program grants for those States that continue to report accurate, complete and timely commercial vehicle crash data, vehicle and driver inspection data, and traffic violation data within a reasonable notification period, such as one year.

Status: The OMCS issued the March 1999 MCSAP Notice of Proposed Rulemaking to encourage States to meet the target deadlines for reporting accurate, complete, and timely data, and the final MCSAP rule is now being prepared.

Recommendation B3. Withhold funds from the Motor Carrier Safety Assistance Program (MCSAP) grants for those States that continue to report inaccurate, incomplete, and untimely commercial vehicle crash data, vehicle and driver inspection data, and traffic violation data within a reasonable notification period, such as one year.

Status: In some cases, the lead enforcement agency which receives the MCSAP funding is not the same State agency that collects the data. In such cases it can be difficult for the State agencies to correct data problems. OMCS is examining how withholding of MC SAP funds could be used in appropriate cases. In addition, OMCS is taking steps to amend the MCSAP formula to provide incentives for better data. OMCS hopes to avoid the possible consequence of reducing enforcement.

Recommendation B4. Initiate a program to train local enforcement agencies for reporting of crash and roadside inspection data, including associated traffic violations.

Status: OMCS has been working with the State of Minnesota to create a crash investigation course for police to improve crash investigation data collection. OMCS will offer the course more broadly in FY 2000. Courses directed at MCSAP personnel are open to local enforcement agencies, space permitting. Study of crash reporting problems in the 10 worst reporting States and in the 10 largest States has been completed. Forty States have submitted crash data improvement plans.

Recommendation B5. Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.

Status: OMCS and NHTSA have been working together for several years to standardize a core set of data elements that each State would include on their police crash reports. This effort, the Model Minimum Uniform Crash Criteria, would enhance crash data for both agencies. State training in the use of criteria will begin in FY 2000.

Recommendation B6. Obtain and analyze crash causes and fault data as a result of comprehensive crash evaluations to identify safety improvements.

Status: OMCS and NHTSA have an interagency agreement to conduct a large truck crash causation study within the framework of the NHTSA National Automotive Sampling System. This effort will collect detailed truck crash data and build a heavy truck crash data base. The crash causation feasibility study was completed by NHTSA in August 1999. Data collection methods and forms are now in development and crash data investigations will begin in pilot States in June 2000. In addition, the Motor Carrier Safety Improvement Act of 1999 and the FY 2000 DOT Appropriations Act provide special funding to build a large truck crash data base with NHTSA.

Question 3. The Administration's truck safety legislation introduced by Senator Lautenberg includes a provision seeking to mandate the use of on-board recorders to enforce federal hours-of-service regulations.

(a) Doesn't the Department currently have legal authority to carry out such a directive and how does your proposal differ from the voluntary pilot program you have entered into with Werner Enterprises?

(b) S. 1501 would direct the Secretary to establish a department-wide policy to ensure the protection of privacy for any individual or entity utilizing electronic recorders or other technology to monitor vehicle and operator performance. This policy is expected to be similar to the protections already afforded users and owners of flight data recorders and other voice recorders. What is the Administration's view on this proposal?

Answer: (a) We have the authority to propose and subsequently require on-board recorders after going through a notice and comment rulemaking. However, we believed an expression of Congressional intent on this highly debated issue would be valuable and would aid the Department's efforts. The pilot demonstration project in which Werner Enterprises participates is totally voluntary and intended primarily to test whether the potentially less time consuming method of recording drivers' work/rest schedules (in lieu of paper logbooks) is also effective and practical from a regulatory compliance verification viewpoint. To date, those results have been positive, but comparatively few carriers are opting for this method of compliance verification.

(b) The Department strongly supports the safeguarding of individual privacy and agrees that privacy issues should be addressed in each mode with the expanding utilization of electronic recorders or other technologies. However, such policies cannot effectively be developed or applied on a Department-wide basis. In fact, the most fair and effective privacy protections may be those developed with attention to unique operating requirements and conditions of individual modes. We believe the presently drafted language on this issue, which extends the same privacy policies developed for cockpit voice recorders or flight data recorders, is inappropriate for application to other types of electronic recorders which could legitimately and appropriately be used to verify that drivers of large trucks and buses adhere to reasonable hours-of-service requirements.

Question 4. TEA-21 required, among other things, that all commercial vans carrying more than 8 passengers be covered by most federal motor carrier safety rules by June 1999, except to the extent DOT exempts operations as it determined appropriate via rulemaking. I understand DOT failed to issue an implementing rule by the June deadline and is not enforcing the law in this regard.

As you know, there have been a number of deadly accidents involving these vans "the so-called camionetas" particularly in the border states of Texas and Arizona. Further, TEA-21 wasn't the first effort to get unsafe "camionetas" off the road. Let me remind you that FHWA was directed to address this van safety issue 4 years ago as part of the ICC Termination Act of 1995. The TEA-21 provision was included out of frustration over the lack of action by the Department to regulate these vehicles. I continue to be concerned that DOT—the agency that repeatedly reminds Congress and the public that safety is its "NORTH STAR"—is still not regulating these potentially deadly vehicles, and instead, has actually "exempted" the entire class of vehicles from regulations until further notice.

When can we expect DOT to uphold the law and require these van operations to comply with our federal safety regulations? And, why should we approve your request for more authority when you won't act on the safety authority you already have including specific mandatory directives?

Answer: Understanding the serious concerns about the length of time it has taken to address this issue, the Department will move as expeditiously as possible to complete the rulemaking for small passenger vans as required by the Motor Carrier Safety Improvement Act of 1999.

Question 5. I am sure you won't be surprised to hear that truckers across the nation are very concerned over FHWA's lack of timely action to revise the 60-year-old federal hours of service regulations. Despite the technological advancements and dramatic changes in the motor carrier industry, those rules have remained largely unchanged after all these years. In addition to the National Transportation Safety Board's repeated call for the department to develop new hours of service rules that reflect current research on truck and bus driver fatigue, the ICC Termination Act of 1995 required the Department to issue an Advance Notice of Proposed Rulemaking (ANPRM) by March 1996 and a final rule by March 1999, although those deadlines were not met.

There have been a number of press reports that the Department already has developed its proposal and the alleged revisions that some truckers are hearing about have them up-in-arms. Safety groups are also complaining about proposals circulating at DOT.

What should we expect in the Department's proposed rule to revise these regulations and when should we expect it?

Answer: The Department's proposed rule will emphasize increased opportunities for rest, address circadian rhythm concerns, consider flexibility for different types of motor carriers, and address various record keeping methods.

We are working diligently to complete this important proposed rule, with a goal of publishing it in the Federal Register in 2000.

Question 6. I understand the Administration has not embraced the idea of establishing a separate motor carrier safety agency. But in the event a separate agency is established, we certainly want to consider the Administration's views as extensively as possible. S. 1501 proposes to transfer the responsibilities of FHWA's Office of Motor Carriers and Highway Safety to the new agency. Since FHWA had recently restructured, creating that office through the merging of two separate offices, it seems reasonable to move the Office in its entirety given the recent merging, but I am certainly open to considering the views of others. In your view, should FHWA's highway safety activities be transferred or should they remain at FHWA? Please include in your response a description of how the recent merger of FHWA's Office of Motor Carriers with the Office of Highway Safety has affected motor carrier safety in the short term.

Answer: The Department of Transportation supports the creation of a new Administration for motor carrier safety and is actively working toward the January 1, 2000 date for establishment of the Federal Motor Carrier Safety Administration (FMCSA), as required by the Motor Carrier Safety Improvement Act of 1999.

On October 9, prior to enactment of H.R. 3419—the Motor Carrier Safety Improvement Act of 1999, the Department established a separate Office of Motor Carrier Safety (OMCS), which did not include the highway safety functions. The Department strongly recommends that highway infrastructure safety activities remain with FHWA to ensure that infrastructure safety is adequately addressed in delivery of the national highway program. FHWA, along with NHTSA, is responsible for achieving a 20 percent reduction in highway-related fatalities and injuries in 10 years (by 2008). The 1998-1999 merger of the FHWA's Offices of Motor Carriers and Highway Safety, although brief, provided positive benefits for both groups. FHWA Office of Highway Safety staff are now more aware of truck-related safety issues and their relationship to the highway infrastructure. The Office of Motor Carrier Safety staff are now more informed about infrastructure issues including single vehicle run-off-the-road crashes, speed-related crashes, and pedestrian crashes and the role large trucks play in these priority safety areas. In addition, the significant involvement of large trucks in highway-rail grade crossing crashes and work zone crashes are areas where cooperative efforts will continue to focus on improving highway safety.

Question 7. How do you explain the IG's findings that Mexican trucks have been found traveling in 24 states beyond the border? Is the Department taking any action on this? What specific actions have the Department taken to address the IG's findings and what future initiatives are planned?

Answer: The IG's findings reaffirm our assessment that a more aggressive enforcement program is needed to make certain the Mexican trucks are properly registered and do not operate outside the scope of their registration. Currently, we initiate enforcement cases on carriers found to be operating outside the scope of their registration or found to be operating without registration. Carriers are subject to civil penalties and loss of operating privileges. We are considering additional enforcement options, and supported provisions in the Motor Carrier Safety Improvement Act of 1999 to provide authority to deny entry of all carriers that are not properly registered, assess higher penalties, and place vehicles out-of-service if they are

found operating outside the scope of their registration authority. However, in order to be effective, it is essential that our state MCSAP partners become more fully involved in the effort to detect and deal with Mexican carriers operating outside border commercial zones.

We should also note that a limited group of Mexican carriers have authority to operate outside the commercial zones. Under current law, the Department has no authority to license or register a Mexican motor carrier using the United States essentially as a "land bridge" to reach Canada.

Moreover, a 1943 treaty involving American automotive traffic provided the right for foreign carriers to "circulate freely on the roads" of the United States. Thus, carriers may operate anywhere in the United States to get from Mexico to Canada, so long as they meet insurance filing and safety requirements. A review of data currently available to us suggests that such foreign country to foreign country commercial crossing of the United States is highly infrequent. In addition, a small number of Mexican carriers obtained authority to operate in the U.S. before the issuance of the moratorium established in the Bus Regulatory Reform Act of 1982, and U.S.-owned, Mexican-domiciled carriers are permitted to operate in the U.S. if carrying cargo under certain circumstances. Finally, Mexican passenger carriers conducting international charter and tour bus operations may operate in the U.S. pursuant to the first entry provision of the North American Free Trade Agreement.

Question 8. Please provide the Committee with an update on the Department's efforts to establish the uniform registration system required by the ICC Termination Act of 1995. When can we expect the system to be in operation?

Answer: Before the operating authority/insurance database which supports Motor Carrier number issuance can be combined with the Motor Carrier Management Information System (MCMJS) Census database which supports USDOT number issuance, a rulemaking must be conducted to define the functions the unified registration system will be required to perform.

Assuming no major adjustments, we would expect the system to be in place 1 year after a final rule was published.

The following steps have already been taken towards satisfying the requirements for a Unified Carrier Register:

- An Internet web site is now available for public access that provides the operating authority and insurance status information for individual for-hire motor carriers. This provides a method for the States to do insurance verification which serves the central function of the SSRS.
- We are now in the process of redesigning the MCMIS so that it will be operated on a system compatible with the licensing and insurance system. The software currently in use on the MCMIS is not transferable to the licensing and insurance system or vice versa. Upon completion of the new system design, all of the programming code for the hundreds of MCMIS support programs will be rewritten to operate on the new system. This will allow the two systems to be combined when the rulemaking is complete.
- We are also in the process of identifying the differences in the MCMIS and licensing databases and getting the mechanisms in place to resolve them. We have developed programs which have resolved tens of thousands of records between the two databases. However, additional work will be required and is ongoing to resolve differences such as current names, addresses, etc. for thousands of remaining carriers that automated programs could not resolve.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO KENNETH M. MEAD, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION

Question 1. S. 1501 proposes to transfer the responsibilities of FHWA's Office of Motor Carrier and Highway Safety to a new Motor Carrier Safety Administration. Since FHWA had recently restructured, creating that office through the merging of two separate offices, it seems reasonable to move the office in its entirety given the recent merging, but I am certainly open to considering the views of others. In your view, should FHWA's highway safety activities be transferred or should they remain in FHWA?

Answer: The reorganization of the Federal Highway Administration merged the Offices of Motor Carriers and Highway Safety and consolidated their functions. Prior to October 9, 1999, OMCHS was responsible for developing regulations and policies and providing guidance for the motor carrier and highway infrastructure safety programs, including highway and ramp design functions. However, highway design issues are not unique to commercial vehicles. We believe the functions of

highway safety that relate to highway safety design for *all* vehicles, should remain with FHWA.

Question 2. One provision in S. 1501 which has received some attention concerns the transfer of commercial vehicle safety retrofit authority from FHWA to the National Highway Traffic Safety Administration. Although this provision was not part of the recommendations included in your report, it has been suggested by others involved in highway safety. What are your views regarding the proposal?

Answer: We believe that this proposal would allow the National Highway Traffic Safety Administration (NHTSA) to more efficiently conduct cost benefit analyses associated with rulemakings and more effectively gauge the impact of those rulemakings on the motor carrier industry. It should also result in quicker implementation of safety requirements for in-service trucks. However, we are concerned that this change could harm the timeliness of NHTSA's rulemaking and we would want to see provisions made for meaningful and timely input by the Motor Carrier Safety Administration in advance of issuing draft and final rules.

Question 3. I want to ensure this legislation is not misconstrued as largely expanding the size of the federal bureaucracy and as such, included language in the bill to cap funding and personnel. Can you offer any additional suggestions for helping ensure this new entity is established with as little additional expense to the American taxpayers as possible?

Answer: Yes, the Congress should direct that most administrative services such as personnel, financial, etc., be obtained from other Operating Administrations that already have established systems, including FHWA. Congress should require periodic reporting from the new Motor Carrier Safety Administration to monitor the number of staff assigned to the organization's primary safety mission.

Question 4. I am very concerned about the safety issues associated with the cross-border trucking provisions of NAFTA. Last December, your office issued a critical report on the Department's safety program for commercial trucks along the U.S.-Mexican border. The report cited that "far too few" trucks were being inspected and "too few" of the inspected Mexican trucks met U.S. safety standards. More recently, you reported that Mexican trucks were found traveling widely throughout the United States. In fact, you found Mexican carriers in 24 states beyond the border.

(a) How has the Department responded to your December report?

(b) Are you aware of any actions the Department has taken in response to the identified shortcomings?

(c) Could you provide any additional comments on your findings of the Mexican trucks traveling beyond the commercial zones?

Answer: (a) The Department submitted a written response to our December report on February 1, 1999. The response did not address, with any specificity, two of the recommendations regarding increasing the number of inspectors and inspection facilities at the border. A *significant increase* is urgently needed in the number of inspectors, the number of trucks inspected, and the hours of inspection coverage to make sure trucks entering the United States from Mexico are safe. OMC and the border States point to each other as having responsibility for inspecting trucks entering the United States.

(b) Following our report, the Department:

- increased the number of inspectors at the U.S.-Mexico border from 13 to 40 by adding 27 temporary inspectors in Texas;
- provided some portable buildings and computer equipment; and
- drafted a rulemaking on the application process for Mexican carriers to obtain U.S. operating authority, the establishment of distinct U. S. Department of Transportation identification numbers and the accelerated monitoring and oversight of the Mexican carriers operating outside the commercial zones.

(c) Mexico-domiciled motor carriers are operating improperly in the United States and violating U. S. statutes by operating outside the commercial zones and by not obtaining the required operating authority to operate in the United States. Adequate fines are not being levied against these motor carriers who are discovered operating outside their operating authority. These unauthorized motor carrier operations are occurring because an effective oversight system with adequate control mechanisms is not in place to ensure compliance with U.S. statutes. We are preparing a report on these issues and will provide this Committee a copy of the report in early November.

Question 5. In addition to the matters discussed during today's hearing, are there other issues that you would like to bring to the Committee's attention that should be considered as we move forward with motor carriers safety legislation?

Answer: Yes, there are several.

First, increase driver accountability. Make the driver responsible for inspecting the truck just like a pilot must do for the aircraft. The driver must be held accountable for ignoring safety deficiencies. By implementing this requirement, both the company and the driver could be sanctioned for out-of-service violations related to vehicle condition.

Second, require periodic inspections. Require all trucks to undergo an independent inspection not less than annually, similar to the requirements that exist for automobiles in some states. Companies determined to have good safety inspection processes could be certified to self-inspect their vehicles and perhaps those of other companies as well.

Third, adopt a 60-mile-per-hour maximum truck speed, nationwide. There is no national speed limit. The impact of a full "18-wheeler" weighing as much as 80,000 pounds hitting another vehicle, perhaps an automobile or a minivan weighing about 3,000 pounds, at a speed greater than 60 miles per hour is often fatal. Some of the largest trucking companies in the United States support a truck-speed limit of 60 or lower.

Question 6. It has been suggested that motor carrier safety legislation should mandate that new carriers demonstrate knowledge of truck safety regulations prior to being granted authority to operate and once in operation, such carriers should be more closely monitored than operators already on the road. What is your view of such a proposal?

Answer: We support this proposal. Past FHWA research has indicated that new motor carriers registering with the Department have, on average, higher crash rates and are less likely to comply with safety regulations. Establishing minimum standards for new entrants into the motor carrier industry to ensure the safety fitness of new carriers is a positive step toward improving safety and reducing fatalities involving large trucks.

Question 7. I understand that a recent Order by a U.S. District Court concerning a motor carrier suspected of engaging in criminal activities may affect your Office's authority to continue investigative work in this area. Please provide to the Committee the circumstances surrounding this specific Order and its potential impact on future investigations by your office.

Answer: We received a referral from the Office of Motor Carriers regarding alleged criminal violations by a motor carrier based in Arizona, including alleged systemic falsification of drivers' hours-of-service records (drivers' logs).

A U.S. Magistrate Judge in Arizona approved a search warrant that was executed by special agents from our office. Subsequently, the motor carrier moved to quash the search warrant and demanded return of the seized evidence. The Magistrate Judge concluded that our agents did have the necessary authority to conduct such criminal investigations and recommended that the District Court deny the motor carrier's motion.

Unfortunately, the District Court Judge did not agree with the Magistrate's recommendation and he issued an Order on September 22, 1999, stating that we did not have the authority to conduct this type of criminal investigation because the motor carrier did not directly receive DOT funds nor were they suspected of being in collusion with DOT employees. The Judge ruled that the search warrant was improperly issued and he ordered the evidence returned. The motor carrier has agreed to stay return of the evidence pending probable appeal of the Order.

We are urging the Department of Justice to appeal this Order, which we believe is contrary to the IG Act and DOT Orders, as well as recent legal decisions, including a similar case decided last year by a District Court in Iowa.

Since January 1997, criminal investigations conducted by our special agents have resulted in more than one hundred indictments and convictions and almost $5 million in fines, restitution and recoveries in the area of *Motor Carrier Safety* and the illegal transportation of *Hazardous Materials.*

In the area of *Unapproved Aircraft Parts,* another of our priority criminal investigative programs, we also obtained hundreds more convictions and $65 million in fines, restitution, and recoveries since 1990.

Most of our investigations are based on referrals from Departmental and state regulators. We work with other federal, state, and local law enforcement agencies in criminally investigating and prosecuting criminal elements which defraud DOT's safety programs through false certifications and statements.

The Order itself only affects cases in Arizona, of which there are few. However, it has the potential of adversely impacting our future investigations by inviting further challenges. About half of our cases involve fraud against DOT programs where federal funds are not involved nor are there allegations of criminal relationships be-

tween non-Government entities and DOT employees. These cases involve parties subject to DOT regulations which make false certifications or statements to DOT pursuant to the safety regulations. Any challenges similar to what we face in Arizona would have the potential of impeding our investigations in the area of public safety.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO DAVID S. ADDINGTON, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS

Question 1. I would like each of the panelists to identify which provisions in S. 1501 they believe are key to improving truck safety and then to offer their suggestions for how the legislation might be further improved.

ATA Response: The American Trucking Associations, Inc. (ATA) strongly supports enactment of legislation to create within the U.S. Department of Transportation a separate trucking administration focused on strengthening safety in the trucking industry as the industry strives to meet America's economic needs. In 1998, the vast majority—82 percent—of the country's freight transportation bill was for trucking. Although the trucking industry is the country's most important provider of freight services, the U.S. Department of Transportation (DOT) lacks a trucking administration that corresponds to the separate DOT administrations for the rail industry, air industry, and ship industry. Enactment of a final version of S. 1501/H.R. 2679 will remedy this shortcoming in the organization of the Department of Transportation and ensure that the DOT can focus properly on the safety and other issues important in the trucking industry.

The ATA views the following provisions of S. 1501 as introduced as key to trucking safety and related matters:

Section 2—Establishment of a Motor Carrier Safety Administration. Section 2 of S. 1501 achieves the vital goal of establishing a separate trucking administration within the U.S. Department of Transportation. The ATA strongly supports the Senate approach of specifying the functions, powers and duties of the separate trucking administration by reference to existing provisions of law, without the introduction of novel legal standards (such as that contained in Section 113(b) of Title 40 of the U.S. Code as enacted by Section 101(a) of H.R. 2679 as passed by the House) that would inappropriately skew the rulemaking processes of the new trucking administration and result in needless litigation. The ATA notes, however, that it opposes the provision in Section 2 of S. 1501 that mandates assignment to the National Highway Traffic Safety Administration (NHTSA) of the authority to promulgate motor vehicle safety standards applicable to the manufacture and retrofit of trucks and buses, because NHTSA is ill-suited to that role.

Section 5—Improvements to the Commercial Drivers License Program. Section 5 of S. 1501 strengthens the Commercial Drivers License (CDL) program, with which a State must comply as a condition of receiving its full share of Federal highway funding. Section 5 includes the following important changes in the CDL program that contribute directly to improved safety:

- A State that disqualifies a CDL holder from operating a commercial motor vehicle will be required to keep a record of the violation that caused the disqualification and to ensure its entry into the CDL information system.
- A State will not be able to issue a special license or permit that allows an individual to drive a commercial motor vehicle during a period in which the individual is disqualified from operating such a vehicle.
- A driver's CDL record will reflect all the drivers moving violations, regardless of whether the driver committed the violations in a commercial vehicle or in a non-commercial motor vehicle.
- A State will not be able to allow information regarding violations by a CDL holder that constitute grounds for disqualification to be withheld or masked from the record of that CDL holder.

Section 6(f)—Harmonization of Reporting of Violations by States. Section 6(f) of the S. 1501 requires the Secretary of Transportation to develop a uniform system to support electronic transmission of data State-to-State on violations of all motor vehicle traffic control laws by individuals possessing a commercial driver's license. Implementation of such a uniform system will strengthen the ability of States to gain and act on relevant safety information about applicants for and holders of commercial driver's licenses.

Section 6(g)(1)—Motor Carrier Safety Initiatives/Event Recorder Privacy. Section 6(g)(1) of S. 1501 requires the Secretary of Transportation to establish a policy applicable throughout the Department of Transportation to ensure the protection of privacy for any individual or entity utilizing electronic recorders or other technology to monitor vehicle and operator performance or location. The department-wide privacy policy must grant at least as much protection of privacy as current Federal Aviation Administration and National Transportation Safety Board privacy procedures or regulations currently grant with regard to users and owners of flight data recorders, cockpit voice recorders, and other forms of safety information. ATA views Section 6(g)(1) as an important first step in recognizing the importance of protecting the privacy of individuals and entities with regard to electronic recorders or other technology and of protection against the use of the data provided by electronic recorders or other technology for liability purposes. The purpose of using electronic records and other technology to monitor vehicle and operator performance or location should be for safety only, and not for litigation or invasion of personal or business privacy.

The ATA recommends that changes to improve S. 1501 include the following:

1. *Change:* In Section 113(c)(2) of Title 49 of the U.S. Code as enacted by Section 2 of S. 1501, strike ", except for the authority to promulgate motor vehicle safety standards applicable to the manufacture and retrofit of trucks and buses which authority shall be in the National Highway Traffic Safety Administration".

Reason: The new trucking administration, like the existing Office of Motor Carrier Safety, will be better suited than NHTSA to handle the motor vehicle safety standards applicable to the manufacture and retrofit of trucks and buses.

2. *Change:* In Section 113(e) of Title 49 of the U.S. Code as enacted by Section 2 of S. 1501, strike "immediately before the effective date of such Act" and insert in lieu thereof "October 8, 1999".

Reason: This technical amendment ensures that the functions as of October 8, 1999 of the Office of Motor Carrier and Highway Safety (OMCHS) of the Federal Highway Administration (FHWA) will be transferred to the new trucking administration created by S. 1501. This technical amendment takes account of the enactment on October 9, 1999 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (Public Law 106-69), Section 338 of which forced the Secretary of Transportation to move the office of motor carriers out of FHWA and into the Office of the Secretary of Transportation (see page 56270 of volume 64 of the Federal Register, October 19, 1999).

3. *Change:* At the end of Section 31312 of Title 49 of the U.S. Code as enacted by Section 5 of S. 1501, add "The Secretary shall by regulation ensure that individuals domiciled in a State that is prohibited under this section from issuing a commercial driver's license can, if qualified for a commercial driver's license in accordance with this title, obtain such a license without undue burden from the U.S. Department of Transportation or another State."

Reason: Under Section 31312 of Title 49 of the U.S. Code as enacted by Section 5 of S. 1501, the Secretary of Transportation must bar a State from issuing commercial driver's licenses if the State is in substantial noncompliance with chapter 313 of Title 49 of the U.S. Code, which governs commercial motor vehicle operators and the CDL program. The legislation should not punish applicants or renewal applicants for a commercial driver's license because of the failures of State commercial driver's license bureaucracies to be in substantial compliance with chapter 313. The change ensures that, if the Secretary must bar a State from issuing a CDL, the Secretary must provide an alternative means for an applicant or renewal applicant to obtain a CDL elsewhere than from the barred State, without undue burden. The applicant must, of course, be otherwise qualified for a CDL. The requirement that the alternative means not impose an undue burden on applicants or renewal applicants ensures that the legislation will not impose on applicants a requirement to devote substantial time and financial resources to the objective of obtaining or renewing a commercial driver's license (e.g., will not be required to make a long and expensive trip to a distant location).

4. *Change:* Strike Section 6(g)(3) of S. 1501 and instead add at the end of S. 1501 the following new section (which is the text of Section 217 of H.R. 2679

as passed by the House, with the addition of a new subsection (e) at the end of the section):

"SEC.———. REGISTRATION OF MOTOR CARRIERS.

"(a) REGISTRATION OF MOTOR CARRIERS BY A STATE.——

(l) INTERIM RULE.—Section 14504(b) of title 49, United States Code, is amended—

"(A) in the first sentence by striking 'The' and inserting 'Until January 1, 2002, the'; and

"(B) in the second sentence by striking 'When' and inserting 'Until January 1, 2002, when'.

"(2) REPEAL.—Effective January 1, 2002, section 14504 of such title and the item relating to such section in the analysis for chapter 145 of such title are repealed.

"(b) COMPREHENSIVE REGISTRATION—Section 13908 of such title is amended-

"(1) in the first sentence of subsection (a) by inserting 'the requirements of section 13304,' after 'this chapter,';

"(2) by striking the last sentence of subsection (a);

"(3) in subsection (b)—

"(A) by striking paragraphs (1), (2), and (3); and

"(B) by redesignating paragraphs (4), (5), and (6) as paragraphs (1), (2), and (3), respectively;

"(4) in subsection (c) by striking 'cover' and inserting 'equal as nearly as possible'; and

"(5) by striking subsection (d) and inserting the following:

'(d) STATE REGISTRATION PROGRAMS.—Effective January 1, 2002, it shall be an unreasonable burden on interstate commerce for any State or political subdivision thereof, or any political authority of two or more States, to require a motor carrier operating in interstate commerce and providing transportation in such State or States to, or to collect fees to—

'(1) register its interstate operating authority;

'(2) file information on its interstate Federal financial responsibility; or

'(3) designate its service of process agent.'.

"(c) DEADLINE.—Section 13908(e) of such title is amended—

"(1) by striking 'Not later than 24 months after January 1, 1996,' and inserting 'By January 1, 2002,';

"(2) by inserting 'and' after the semicolon at the end of paragraph (1);

"(3) by striking paragraph (2); and

"(4) by redesignating paragraph (3) as paragraph (2).

"(d) CONFORMING AMENDMENT.—Section 13304(a) of such title is amended by striking 'and each State' and all that follows through 'filed with it'.

"(e) IDENTIFICATION OF VEHICLES; EXCLUSIVE REGISTRATION; INCLUSION OF PRIVATE MOTOR CARRIERS.—(1) Section 13908 of title 49, United States Code, as amended by subsection (b) of this section, is further amended by adding at the end thereof the following new subsection:

'(f)(1) Regulations prescribed by the Secretary to implement the single, on-line Federal system shall—

'(A) identify a carrier by the carrier's name and a carrier-specific alpha/numeric identifier; and

'(B) shall provide for a transition period of not less than five years after which carriers must use the carrier's name and carrier-specific alpha/numeric identifier on commercial motor vehicles operated by the carrier.

(2) No State or political subdivision thereof, or any political authority of two or more States, may require a carrier registered in the single, on-line Federal system to display any form of identification on or in a commercial motor vehicle, except for the carrier's name and carrier-specific alpha/numeric identifier under the regulations for which paragraph (1) provides.

'(3)(A) It shall be an unreasonable burden on interstate commerce for any State or political subdivision thereof, or any political authority of two or more States, to require a carrier to register its intrastate operations if the carrier has registered with the Department of Transportation pursuant to Section 13902 of this title.

'(B) Nothing in paragraph (3)(A) shall be construed to prohibit a State from requiring a carrier to display—

'(i) a credential that identifies the carrier's participation in, and isconsistent with, the International Registration Plan as set forth in section 31704 of this title;

'(ii) a credential that identifies the carrier's participation in, and is consistent with, the International Fuel Tax Agreement as set forth in section 31705 of this title;

'(iii) information to the extent required by Federal law to meet Federal requirements for hazardous materials transportation as set forth in section 5103 of this title; or

'(iv) information to the extent required by Federal law to meet Federal vehicle inspection standards as set forth in section 3 1136 of this title.

'(4) The term "motor carrier" as used in section 13902 and this section shall include motor private carriers as defined in section 13 102(13) of this title.'

'(2) Section 13908 of title 49, United States Code, as amended by subsection (b) and paragraph (e)(1) of this section. is further amended by striking 'to motor private carriers and' in paragraph (3) of subsection (b) of section 13908.".

Reason: The change requires an end to the Single State Registration System, effective January 1, 2002, in favor of a uniform, on-line Federal registration system for motor carriers. The change facilitates interstate commerce and removes a patchwork of State registration-related requirements that constitute an undue burden on interstate commerce. The change consists of the text of Section 217 of H.R. 2679 as passed by the House, with the addition of a new subsection (e) at the end of the section. Under the new subsection (e), carriers registered under the uniform, on-line Federal registration system have only a single Federal identification number to identify them; States may not impose additional identification numbering requirements; States may not require a motor carrier registered with the Department of Transportation under 49 U.S.C. § 13902 to register their intrastate operations with the States; and the Federal registration obligations under 49 U.S.C.§ 13902 apply to motor private carriers.

5. *Change:* Amend Chapter 5 of Title 49 of the U.S. Code by inserting the following after Section 526 (and making a conforming change to the table of contents of Chapter 5 of Title 49):

"SEC. 527. Aiding and abetting.

"A person who knowingly aids, abets, counsels, commands, induces, or procures a violation of a regulation or order issued by the Secretary of Transportation under chapter 311 or section 31502 of this title shall be subject to civil or criminal penalties under this chapter to the same extent as the motor carrier or driver who commits a violation.".

Reason: Chapter 311 and Section 31502 of Title 49 govern commercial motor vehicle safety. The change ensures that the Federal government can impose penalties on people who knowingly aid or abet a violation of commercial motor vehicle safety laws and implementing regulations. The requirement that a violation be "knowing" ensures that penalties for aiding or abetting will apply only to those whose conduct merits such penalties. The provision appears in Section 109 of S. 1559, which was referred to the Senate Committee on Commerce, Science and Transportation on August 5, 1999.

6. *Change:* Add at the end of S. 1501 the text of Sections 3 through 7 of S. 1524.

Reason: Sections 3 through 7 of S. 1524, which was referred to the Senate Committee on Commerce, Science and Transportation on August 5, 1999, establish a program for the training and certification of governmental and nongovernmental motor carrier safety specialists. Implementation of these provisions would substantially improve the standards and capabilities of those who audit the safety records of motor carriers, yielding improved safety.

7. *Change:* Add at the end of S. 1501 the text of Section 219 of H.R. 2679 as passed by the House, relating to a study of the feasibility and merits of requiring a report of positive results of a test of a commercial driver for controlled substances to the State that issued the driver's commercial driver's license and requiring prospective employers of a driver to check with States for such reports.

Reason: ATA supports the conduct of the study contemplated by Section 219 of H.R. 2679. because the potential system to which Section 219 refers is likely to improve safety by assisting employers in ensuring that they do not hire as operators of commercial vehicles people who abuse controlled substances.

8. *Change:* Add at the end of S. 1501 the following new section:

"SEC.————. Study and Report on Adulterants in Drug Testing.

"(a) The Secretary of Transportation, in coordination with the Attorney General and the Director of the Office of National Drug Control Policy as appropriate, shall study the availability and use of products that are-

"(1) designed to defeat, or sold for the purpose of defeating, the ability of a controlled substances test to detect the presence of controlled substances in a body fluid; and

"(2) which may reasonably be expected to assist an individual in defeating the ability of a controlled substances test to detect the presence of controlled substances in a body fluid.

"(b) The Secretary of Transportation, after coordination with the Attorney General and the Director of the Office of National Drug Control Policy as appropriate, shall, not later than six months after the date of enactment of this Act, submit to the Senate and the House of Representatives a report of the results of the study conducted pursuant to subsection (a), together with the Secretary's recommendations on whether a law should be enacted to penalize the sale or use of products described in subsection (a).".

Reason: The validity of drug testing of truck drivers and driver applicants is essential to motor carrier safety. The use by a driver or applicant who abuses controlled substances of products that would allow that driver or applicant to defeat a drug test would pose a threat to safety. The change would require the Secretary of Transportation to examine and report to Congress on the issue, and to make recommendations concerning whether a law should be enacted to penalize the sale or use of such products.

9. *Change:* At the end of S. 1501, add the following new section:

"SEC.————. EXPIRATION OF APPROVALS

"Section 13703 of title 49. United States Code, is amended—

"(I) by striking subsection (d); and

"(2) by redesignating subsections (e), (I), (g), and (h) as subsections (d), (e), (I), and (g) respectively.".

Reason: Section 13703 of Title 49 of the U.S. Code authorizes motor carriers to make agreements with other motor carriers with regard to aspects of the transportation business specified in the statute. The agreements take effect upon approval by the Surface Transportation Board (STB). The STB approval also confers protection from the antitrust laws for implementation of the STB-approved agreements. Under current law, the STB approval of the agreement expires 3 years after it is granted, unless the STB renews its approval. The change eliminates the 3-year restriction on the duration of STB approvals. The STB would continue to have the authority to impose as part of its approval process "reasonable conditions" on the agreements under Section 13703(a)(3) and to conduct investigations under Section 13703(a)(5).

The ATA appreciates the opportunity to express its views on the contents of S. 1501.

Question 2. Would each of the panelists please provide the Committee with their thoughts on the Administration's truck safety proposal introduced by Senator Lautenberg. I would be specifically interested in knowing which provisions you believe should be most closely considered by the Committee as we work toward a final truck safety bill.

ATA Response: The American Trucking Associations, Inc. (ATA) notes that many of the subjects addressed in S. 1559, as introduced by Senator Lautenberg and referred to the Committee on Commerce, Science and Transportation on August 5, 1999, are addressed in S. 1501 as introduced by Senator McCain. As stated in response to Subcommittee Question 1, the ATA supports addition to S. 1501 of the Section 109 of S. 1559, relating to civil and criminal penalties for persons who knowingly aid or abet violations of Federal motor carrier safety laws and regulations.

Question 3. Recently the DOT-IG found that 68 Mexican-based carriers were operating in the U.S. beyond the permitted commercial zones. According to the IG, roadside inspections were performed on the Mexican-based carriers at least 100 times in 24 states beyond the US/Mexican border. I would like each of the panelists to comment on the IG findings and to offer their suggestions on what should be done to address these disturbing findings.

ATA Response: The American Trucking Associations, Inc. (ATA) is concerned that the U.S. lacks an effective capability to enforce trucking safety regulations through inspections at border checkpoints and that Mexico-based carriers that have operating authority to transit in U.S. commercial zones often operate illegally in the U.S. outside those zones. The ATA supports enactment of Sections 207 and 210 of H.R. 2679 as passed by the House of Representatives, which encourage the Secretary of Transportation to implement appropriate staffing standards for motor carrier safety inspections at international borders and require trucks of carriers based

in Mexico or Canada to maintain evidence of registration in accordance with U.S. law. The ATA would support stronger steps, such as addition at the end of S. 1501 of the following provision:

"SEC. ————. (a) The Secretary of Transportation, in cooperation with the Secretary of the Treasury and other heads of executive departments as appropriate, and, as appropriate, in coordination with the States, shall ensure that the United States assigns sufficient personnel and funds to the mission of enforcing motor carrier safety regulations through inspections at international border checkpoints of trucks bound for the United States.

"(b) The Secretary of Transportation, in cooperation with the Attorney General and other heads of executive departments or agencies with law enforcement responsibilities and, as appropriate, in coordination with the States, shall ensure that motor carriers based in countries other than the United States do not operate in areas of the United States for which they do not have the requisite authority to operate under United States law.

"(c) The Secretary of Transportation shall ensure that this section is implemented in a manner consistent with the obligations of the United States under treaties and other international agreements and other applicable United States law.

"(d) The Secretary of Transportation shall submit to the Senate and the House of Representatives not later than six months after the date of enactment of this Act a detailed report on the actions taken by the Secretary to implement this section.".

The ATA also is concerned that a Mexico-based carrier may abuse the leasing out of its trucks as a means to circumvent U.S. law restricting movement of Mexico-based carriers' trucks in the U.S. beyond the U.S. commercial zones for which they have transit authority. For example, a Mexico-based carrier could move one of the its trucks and a driver to the U.S., into a U.S. commercial zone that it has operating authority to transit. While in that commercial zone, the Mexico-based carrier might then lease that truck and driver to a U.S. carrier (which might be a bona fide U.S. carrier or, in a worse case, a U.S. "paper" subsidiary created by the Mexico-based carrier). The U.S. carrier could then operate the truck with that driver throughout the U.S. To correct this leasing loophole for foreign-based carriers to get around U.S. law. ATA recommends inclusion in S. 1501 of the following provision:

"SEC. ———. Section 14102 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"'(c)(l) During any period in which a suspension, condition, restriction or limitation imposed under section 13902(c) applies to a motor carrier, that motor carrier may not lease a commercial motor vehicle to a motor carrier or a motor private carrier to transport property in the United States.

"(2) As used in this subsection, the term "motor carrier" has the meaning given that term in section 13902(e).

"(3) The Secretary of Transportation shall ensure that this subsection is implemented in a manner consistent with the obligations of the United States under treaties and other international agreements in force on the date of enactment of this subsection.'".

The ATA appreciates the opportunity to address these concerns.

Question 4. As you know, S. 1501 proposes to transfer FHWA's Office of Motor Carriers and Highway Safety to the new agency. I would be interested in receiving each panelist's view on whether the Office in its entirety should be moved or if safety would be better served by retaining some of the highway safety functions in FHWA?

ATA Response: Subsequent to the Subcommittee's posing the question, the Department of Transportation and Related Agencies Appropriations Act, 2000 was enacted (Public Law 106-69, 10/8/99), Section 338 of which forced the Secretary of Transportation to move the office of motor carriers functions out of the Federal Highway Administration (FHWA) and into a new Office of Motor Carrier Safety in the Office of the Secretary of Transportation (OST) (see page 56270 of volume 64 of the Federal Register, October 19, 1999). The ATA response to the Subcommittee's question is made with reference to the Office of Motor Carriers and Highway Safety (OMCHS) of the FHWA as it existed on October 8. 1999 (i.e., before enactment of Public Law 106-69 and before the transfer of motor carrier functions from FHWA to the new Office of Motor Carrier Safety in OST).

The ATA believes that the functions performed by the OMCHS/FHWA Office of Highway Safety Infrastructure (including the Safety Design Division and the Safety Programs Division) should remain with FHWA, as its functions relate to the safety

of the infrastructure. The functions performed by the remaining elements of OMCHS/FHWA should be transferred to the new trucking administration, including the functions performed by the Office of Data Analysis and Information Systems, Office of Motor Carrier Enforcement, Office of Motor Carrier Research and Standards, Office of National and International Safety Programs, Office of Policy and Program Management. Office of Program Evaluation, Office of Technology Evaluation and Deployment, and the National Training Center.

As a matter of legislative drafting, ATA recommends that S. 1501 continue to define the functions, powers and duties of the Administrator of the new trucking administration by reference to existing statutes and assign all personnel and resources that carry out those functions to the Administrator. That is a better approach than attempting in legislation to catalogue by name particular existing elements within the motor carrier bureaucracies for transfer to the new Administrator, because the labeling and location of those elements is in flux as a result of the Secretary of Transportation's efforts to comply with Section 338 of the Department of Transportation and Related Agencies Appropriations Act, 2000.

RESPONSE TO WRITTEN QUESTIONS BY HON. JOHN MCCAIN TO KEVIN SHARPE, NATIONAL CONFERENCE OF STATE TRANSPORTATION SPECIALISTS

Question 1. I would like each of the panelists to identify which provisions in S.1501 they believe are key to improving truck safety and then to offer their suggestions for how the legislation might be further improved?

Answer: We believe the most effective provisions in S.1501 are the establishment of the Motor Carrier Safety Administration, and the inclusion of the recommendations of the Department of Transportation Inspector General's Report. We strongly support both provisions.

Of utmost concern to the states is the elimination, in this bill, of the Single State Registration System (SSRS). This state-run safety program is a crucial component of any national motor carrier registration program, and in many states provides the state matching funds for federal MCSAP grants. As introduced, S. 1501 will eliminate SSRS, and its approximate $105 million in direct funding to the states. Section 6, Subsection (g), titled "Motor Carrier Safety Initiatives" would first eliminate the statutory requirement that the States receive the SSRS revenues, and secondly, calls on the US DOT to create a unified federal program that subsumes SSRS. In effect, this language gives the Federal Highway Administration, or its successor, the authority to federalize a successful state safety program, eliminate state revenues, and establish a new federal program that will be much less effective than the state program it replaces, because it lacks adequate administrative or roadside enforcement.

The States recommend that the Committee consider combining the ICC/FHWA insurance system, US DOT numbering system, ICC/FHWA registration system and the Single State Registration System into a single national on-line system as required by Section 13908 of the ICC Termination Act. The States would collect and enter registration information into a single on-line database maintained by the new agency and the States as suggested more that a decade ago in the States' centralization proposal. The States would continue to enforce compliance with registration and other requirements according to standards established by a cooperative Federal/State agreement.

Presumably, the final goal of such a system would be the dissemination of enforcement information to the states regarding motor carrier insurance status and other related safety information. Under the above proposed solution, the states would collect registration fees, as they do now, to fund their enforcement activities. The funding proposal in S.1501 is adequate only to cover the costs of the registration system creation and maintenance, with no provision to fund enforcement activity or data management. The elimination of direct funding to the states will severely hamper, or eliminate their ability to keep carrier information current or provide meaningful roadside enforcement of insurance and safety fitness requirements.

Question 2. Would each of the panelists please provide the Committee their thoughts on the Administration's truck safety proposal introduced by Senator Lautenberg. I would be specifically interested in knowing which provisions you believe should be most closely considered by the Committee as we work toward a final truck safety bill?

Answer: The States support the inclusion of a requirement that the owners of motor carrier companies, applying for authority, complete safety training programs before a permit is issued. We believe there should be more emphasis on the motor carrier company's responsibility to maintain safe equipment and train safe drivers.

Too much emphasis has been placed on the individual trucks and drivers rather than on the companies ultimately responsible for assuring their safe operation. Government's role in motor carrier safety can be much more effective if efforts are concentrated on company level oversight and enforcement, rather than on the current practice of trying to inspect every truck in the country. We believe consideration should also be given to Senator's Breaux's proposal in S.1524, which specifies a process to professionally certify all personnel who perform motor carrier compliance reviews. We would also recommend, that the Commercial Vehicle Safety Alliance (CVSA), as the front-line experts on safety certification, be consulted in the development of any certification process.

Question 3. Recently, the DOT-IG found that 68 Mexican-based carriers were operating in the U.S. beyond the permitted commercial zones. According to the IG, roadside inspections were performed on the 68 Mexican-based carriers at least 100 times in 24 states beyond the US-Mexican border. I would like each of the panelists to comment on the IG findings and to offer their suggestions on what should be done to address these disturbing findings.

It was clear from the testimony and discussion that the operation of Mexican carriers outside the permitted commercial zones is a problem for the individual border states, as well as for US DOT. The States have a program that has the ability to screen carrier safety and insurance compliance records at the roadside for 100 percent of the carriers passing a particular location. This enables enforcement personnel to target their limited resources on those carriers most likely to be out of compliance. The system, an offshoot of SSRS, is just one of many state system initiatives developed with SSRS funding. The NCSTS would be pleased to demonstrate this technology for the Committee members and/or to enforcement personnel at the border crossings.

Question 4. As you know, S. 1501 proposes to transfer FHWA's Office of Motor Carrier and Highway Safety to the new agency. I would be interested in receiving each panelist's view on whether the Office in its entirety should be moved or if safety would be better served by retaining some of the highway safety functions with FHWA?

The States support the Inspector General's testimony and recommendations that a separate new agency needs to be created. All current functions within the present Office of Highway Safety and Motor Carriers of the FHWA should be moved. We would encourage Congress to clearly and specifically set out the mission of the new agency and vest it with quasi-judicial powers and with the ability to publicly docket complaints, revoke licenses and impose civil penalties in amounts that represent to the violators more than just "the cost of doing business"

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO THE COMMERCIAL VEHICLE SAFETY ALLIANCE

Question 1. I would like each of the panelists to identify which provisions in S. 1501 they believe are key to improving truck safety and then to offer their suggestions for how the legislation might be further improved.

Answer: CVSA believes that S.1501 is on balance a good bill and that the key provision is the one which establishes a separate Motor Carrier Safety Administration within the Department of Transportation. A new agency with a mission and focus exclusively on motor carrier safety is the best way to ensure implementation of the other provisions in the bill. With a new culture and environment geared solely to truck and bus safety, the other proposals in the bill designed to improve enforcement efforts will be much easier to carry out.

Two provisions in the bill, however, are cause for concern. One would shift the responsibility for vehicle retrofit requirements to NHTSA and the other, although providing for a new Uniform Carrier Registration System (UCR), replacing the Single State Registration System (SSRS), does not specify that states that use the proceeds from the current SSRS system for their commercial vehicle safety program would be guaranteed replacement funding.

With respect to vehicle retrofit requirements, we believe this should be a function of the new agency. The whole idea of creating a new agency is to eliminate the ″stove-pipe″ approach to motor carrier safety and pull together as many truck and bus safety functions as possible within one agency. If anything, the new vehicle standard setting function should eventually be transferred from NHTSA to the new agency.

With respect to repeal of the SSRS program, we strongly urge that those states that can substantiate the amount of SSRS proceeds used for commercial vehicle safety be guaranteed replacement of such funds.

Question 2. Would each of the panelists please provide the Committee their thoughts on the Administration's truck safety proposal introduced by Senator Lautenberg. I would be specifically interested in knowing which provisions you believe should be most closely considered by the Committee as we work toward a final truck safety bill.

Answer: CVSA offers the following comments on the Administration's bill introduced by Senator Lautenberg (S. 1559).

With respect to Section 103, Safety Fitness of Owners and Operators, we think this proposal is a step in the right direction, but as indicated in our testimony before the Committee on September 29, a new entrant program should go beyond just ensuring that the new entrant is familiar with the federal motor carrier safety rules. A safety management plan should be required.

With respect Section 112, Research on Heavy Vehicle Safety and Driver Performance, and Section 113, Improved Data Analysis System, we suggest that the new Motor Carrier Safety Administration should in the near term coordinate efforts with the National Highway Traffic Safety Administration (NHTSA) in these areas.

NHTSA does have a process carried out through its Fatal Accident Reporting System (FARS) analysts in each state that could be enhanced to gather truck and bus accident reports as well as those they now collect on automobile accidents. This appears to be the quickest way to correct current deficiencies in the truck accident reporting system.

Similarly, NHTSA's accident investigation teams that now operate out of 24 major cities around the country could be expanded to include investigations of truck accidents. This effort, along with additional funding for state enforcement agencies to send officers to a new truck accident investigation and causation training program conducted by the state of Minnesota, will provide reliable accident causation statistics and a data base that does not exist today.

This collaboration with NHTSA on accident data and causation, should be viewed only as a temporary measure until such time as the Motor Carrier Safety Administration's capacity to do this is fully developed. Truck and bus accident reporting and causation should be major functions of the Motor Carrier Safety Administration. These are functions on which new motor carrier safety rules, regulations, and standards should be based and promulgated, and the new Motor Carrier Safety Administration is the promulgating agency, not NHTSA. It is important to nurture this capacity in the new Motor Carrier Safety Administration, not siphon off such functions to NHTSA. These functions should become as well developed in the new Motor Carrier Safety Administration with respect to commercial motor vehicles, as they now are in NHTSA with respect to automobiles.

Question 3. Recently, the DOT-IG found that 68 Mexican-based carriers were operating in the U.S. beyond the permitted commercial zones. According to the IG, roadside inspections were performed on the 68 Mexican-based carriers at least 100 times in 24 states beyond the U.S.-Mexican border. I would like each of the panelists to comment on the IG findings and to offer their suggestions on what should be done to address these disturbing findings.

Answer: We believe that the new Motor Carrier Safety Administration should work with the state motor carrier safety enforcement agencies to develop a timely and accurate reporting system with respect to any carrier found to be operating without the proper authority including Mexican carriers that may be found operating illegally in the United States.

Question 4. As you know, S. 1501 proposes to transfer FHWA's Office of Motor Carrier and Highway Safety to the new agency. I would be interested in receiving each panelist's view on whether the Office in its entirety should be moved or if safety would be better served by retaining some of the highway safety functions with FHWA?

CVSA recommends that those functions transferred from the Federal Highway Administration's (FHWA) Office of Highway Safety to the then FHWA Office of Motor Carriers last year should be transferred back to FHWA. These functions include such programs as pedestrian and highway safety infrastructure programs. While very important programs, they are not really directly related to motor carrier enforcement, and any resources directed to such programs would dilute motor carrier safety enforcement, research, and regulatory efforts.

May 15, 1999

The Honorable John McCain, Chairman
United States Senate Commerce, Science,
and Transportation Committee
508 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

We are pleased to submit this statement setting forth the Amalgamated Transit Union's views on "The Future of the Office of Motor Carriers (OMC)" as part of the record in connection with the April 27, 1999, hearing held by the Committee on Commerce, Science and Transportation.

The Amalgamated Transit Union, AFL-CIO, (ATU) represents more than 165,000 transportation workers in the United States and Canada, employed in the mass transit, over-the-road, school bus and paratransit industries. We fully support this Committee's focus on ensuring the safety of transportation industry employees and the riders we serve. As both this Congress and the Department of Transportation focus on improving the safety of truck and bus operations throughout the United States, a refocused, restructured and well-funded Office of Motor Carriers can play a pivotal role in ensuring effective development and enforcement of our nation's transportation safety laws and regulations.

Throughout the ATU's 106-year history, ensuring the safety of our members and the passengers we carry has and continues to be of paramount concern. In fact, the ATU was the first union to require binding arbitration in lieu of strikes to avoid both economic risk and potential dangers to our passengers if transit operations sought to run without trained ATU professionals. We were among the first unions to fight for and secure the 6-day work week and the 8-hour day. And, we were the first union to convince our employers and State legislatures of the necessity for covered booths for operators to shield them from harsh weather conditions which affected employee health and safety and interfered with safe transit operations. Throughout the United States and Canada, the ATU has also been a leader in implementing programs to stop workplace violence and provide employees assistance through jointly funded health plans.

We have also stressed individual responsibility to prevent substance abuse, and, through our commercial driver's license training programs, sought to make sure that every employee is trained to uphold the highest standards of job safety.

More recently, in response to recent assaults on transit operators and passengers, the ATU supported the introduction of H.R. 1080, the "Protect America's Transit Workers and Riding Public Act" that would make it a Federal crime to assault mass transit or school bus employees or their on board passengers.

Today, as we seek to strengthen the legislative and regulatory framework supporting the Department of Transportation's surface transportation safety programs, we must recognize that safe operations require not only well-trained professional operators and mechanics, but equipment that is also properly designed, tested and inspected, as well. The third leg of our transportation safety stool involves the vast network of roads, bridges, tracks and tunnels on and through which our nation's trucks and buses operate. And, without opening the scope of this inquiry too wide, it is fair to say that commercial motor vehicles do not drive on roads in isolation, but must confront and deal with numerous risks from those who share our "office" space. The effective regulation and enforcement of all these components are essential to maximizing safety in public transit and transport.

As we now turn to the debate over the Office of Motor Carriers, one overriding but simple point must be made and kept in mind: *A truck is not a bus.* All of our concerns, and those expressed by our counterparts in the truck and bus industries over the Federal regulatory scheme, including the role of the OMC and the priorities governing the expenditure of DOT resources, are driven by this simple distinction.

> Given the vast differences in equipment, travel and transport functions, training, and operating environment, the federal Office of Motor Carriers should establish a separate regulatory and enforcement division with responsibilities over intercity bus operations.

To date, the inspection, investigative, and other enforcement resources of the OMC have been targeted in the trucking sector, rendering bus operation a mere stepchild in their oversight role. By way of example, the current effort to consider revisions to the hours of service regulations has, as in the past, begun with a unified set of alternative options governing *both* truck and bus operators. Yet, given the substantial difference in day-to-day operations and scheduling, any proposed changes should begin with a separate inquiry concerning the current rules effects

on safe bus operations to determine whether *any* changes are warranted. A separate, refocused division within the OMC could help overcome this "information gap."

Expanding the use of new technologies to improve commercial motor vehicle safety also compels separate consideration of both truck and bus operations.

Recently, there has been much interest in using technology to improve commercial motor carrier safety. Yet, many of these "systems" have not been developed or tested for application to motor coaches. Simply transferring technology such as "black boxes" or "global positioning systems" (GPS) modules from other modes can be dangerous and may even compromise our shared commitment to bus safety. It is vital, therefore, that the development of these systems include input from motor coach employees, their representatives, companies, manufacturers and passengers, as well as other government agencies.

For example, while the ATU believes the use of "on board recorders" (black boxes) could assist in proving the accuracy of driver logs and monitor engine performance, we question whether this equipment can play a role comparable to that in the airline industry. Unlike aircraft accidents, such incidents in the bus industry rarely involve circumstances where operators, passengers or witnesses could not be interviewed for investigative purposes. And, without question, communications and global positioning systems can assist our drivers in emergency situations, allowing for the tracking of vehicles and providing opportunities for immediate accident response. At the same time, recent experience with so-called "collision avoidance" systems tested by Greyhound in the early 1990's has not been successful. Drivers and passengers were constantly distracted by false alarms and the systems were ultimately deactivated on those buses where they had been installed. These concerns and cautions clearly warrant a comprehensive examination of the contributions, if any, such systems can make to improve safe bus operations.

Increased funding and resources are needed to support effective bus safety regulation.

According to the National Safety Council, in an average year, more than 360 million bus passengers travel 28 billion passenger miles in North America. Yet, very few government resources are dedicated to ensuring that these passengers arrive at their destinations safely. Other modes of transportation such as aviation and rail have separate, well-fund agencies dedicated to overseeing the safe operation of their industries.

Increasing resources for effective enforcement is critical in the years ahead. Perhaps no more compelling argument for expanding such resources can be made than with reference to the potential safety risks that may arise from full implementation of the North American Free Trade Agreement (NAFTA). Under its provisions, both Mexican truck and bus operators are to be permitted full access throughout the United States. Fortunately, in December 1995, given widespread concerns over the potential safety risks of such expanded operations, the Clinton Administration suspended efforts to open the border. Current plans call for expanded cross-border operations in January 2000. Already, according to an August 1997 Government Accounting Office report, from January to May 1997 an estimated 90,000 commercial passenger vehicles crossed the border, yet only 528 buses were inspected, and 22 percent of those inspected were placed out of service. In comparison, about 10 percent of the U.S. commercial passenger vehicles inspected from October 1996 through June 1997 were placed out of service. While commendable efforts have been undertaken by both countries to ensure comparable safety and training standards and effective enforcement of those laws, no one can question the necessity for additional resources to meet the challenges of increased cross-border operations.

Finally, we wish to highlight one area where existing safety regulations are clearly insufficient to both measure and monitor transit operations.

Current DOT regulations allow commercial passenger vans carrying less than 16 passengers to operate outside of any Federal safety regulations. At the same time, however, increased funding under both the Department of Labor's Welfare to Work grant program and the Federal Transit Administration's Job Access program will result in a significant expansion of these vehicles operating on our nation's roads and highways. The Transportation Equity Act for the 21st Century (TEA-21) mandated application of the Federal Motor Carrier Safety Regulations to commercial passenger vans capable of carrying nine (9) individuals including the driver, but the only vans "captured" by the new law involved those in interstate commerce. Yet, the vast majority of 8-passenger vans operate within state borders and are exempt from even this new regulatory safety net. *We strongly recommend that both the Congress and DOT pursue efforts to develop the appropriate legislative and regulatory frame-*

work necessary to apply the FMCS standards to all vans capable of carrying eight or more passengers plus a driver.

In conclusion, we again express our appreciation for the opportunity to express our safety concerns to the Committee.

If you have any questions or require any additional information concerning our views, please do not hesitate to contact our office.

Sincerely,

Jim La Sala

International President

PREPARED STATEMENT OF THE NATIONAL CONFERENCE OF STATE TRANSPORTATION SPECIALISTS AND THE ILLINOIS COMMERCE COMMISSION

On behalf of the National Conference of State Transportation Specialists, and the Illinois Commerce Commission, and especially on behalf of the motorists we deal with every day, I would like to commend the Committee for its concern over trucking safety as shown by this hearing today.

The National Conference of State Transportation Specialists (NCSTS) is a national organization whose members are state agencies engaged in transportation regulatory functions. These state agencies include state departments of transportation, public utility commissions, public service commissions, departments of motor vehicles and state commerce commissions. In addition to many other activities the NCSTS provides oversight of and assistance to states participating in the Single State Registration System (SSRS) established by Congress in the Intermodal Surface Transportation Efficiency Act of 1991 and implemented through rules adopted by the Interstate Commerce Commission (ICC) on May 18, 1993. The NCSTS, through its SSRS Steering Committee, promotes uniformity in the administration of the rules and has served as the focal point for communication of state concerns and interests to the Federal Highway Administration (FHWA).

Since the trucking deregulation in 1994, the states have become increasingly concerned about the safety of the motoring public in an environment of unsafe trucks and trucking operations. In Illinois alone, we issue licenses to over 100 new motor carriers per month. Many of these new license holders are seriously under financed and represent a considerable safety concern. Our experience is repeated in every State in the Union. The NCSTS states have dealt with this problem for years, and it is from this perspective that I appear before you this morning.

NCSTS and the State of Illinois are in favor of most of Senate Bill 1501, and congratulate Congress for addressing motor carrier safety. But I would like to direct my remarks to a specific section of the bill and two separate actions being proposed. Section 6, Subsection (g) Motor Carrier Safety Initiatives proposes two significant actions, which if approved would significantly impact the safety compliance and enforcement activities of the thirty-eight participating SSRS states. The first action would strike the last sentence of Subsection (d) of Section 13908 of Title 49, United States Code, which would eliminate the statutory requirement for fees to be collected and distributed to the states. Approximately $95 million dollars of state funds are at risk. The second action calls on the US DOT to create a unified federal program that subsumes the states' current SSRS registration program. In effect, the current language gives the Federal Highway Administration, or its successor, the authority to federalize a successful state registration program and possibly eliminate or reduce state revenues.

On behalf of the states, I want to emphasize that we are in favor of a Uniform Carrier Registration System (UCR). We have advocated this for years and have demonstrated to representatives of the FHWA how it could be done rapidly, at virtually not additional cost and in a manner that avoids the need to create a new federal bureaucracy. The states' proposal would provide the public with vastly more effective protection from uninsured trucking companies because it would be enforced at the roadside. Our proposal would provide Congress and the United States Department Of Transportation (US DOT) with accurate and reliable motor carrier demographic information for the first time. We believe this last point is very important. Were Congress to ask US DOT for accurate information about the trucking industry and FHWA sent out a survey to its carriers of record, about half of them would be returned "address unknown". This is because the FHWA database has never been updated, whereas the state databases are refreshed each year via annual registration renewals.

The States have been disappointed that the FHWA has not proceeded with the 13908 rulemaking called for in the ICC Termination Act. As far as the States are

concerned, none of the implementing problems FHWA alleges are more than minor and could easily be overcome. Language in SB 1501, which directs FHWA to complete rulemaking within a year, is a sound idea.

Representatives of the States have met many times with representatives of the American Trucking Association (ATA), but despair of ever getting ATA to agree to the creation of an effective enforcement program. The prospect of getting a federally mandated fee cut at the expense of the states seems to be their only objective. For our part, we think it is extraordinary that a motor carrier safety bill could be the vehicle to cut $95 million of revenue the states use to enforce safety. And please understand that is exactly what elimination of state revenues under the current state registration program would accomplish. It would lead to a diminution of each state's overall safety reach.

Many states use SSRS money for the local match for the Motor Carrier Safety Assistance Programs. Others use it directly for their State police, to administer their insurance oversight, such as Illinois' Public Guardian program, and for a wide range of safety activities. I have attached to my written remarks an analysis of how much revenue each state collects and how that revenue is used. The States take exception to a handout ATA distributed recently which purported to demonstrate that the states were not using monies collected for safety purposes. We believe that our figures and other information that States can provide would show that the information purported by ATA is inaccurate and that the states do use a preponderance of the monies collected for safety.

Historically, the States needed a duplicative registration system in order to obtain the necessary information *to enforce* state and *federal* registration and insurance requirements. The stakes were too high to depend on the outdated information in the Federal databases. Strides in technology have now rendered duplicative systems as burdensome and unnecessary. But that is not a blanket endorsement for a strictly federal solution to state registration. Technology *has not* eliminated the need for states to continue to enforce registration and insurance requirements within their borders at the roadside nor the need to have accurate and real time data available to do so. The states have relied on the funding from state registration under the Single State Registration System (SSRS) and its predecessor Cab Card Stamp program to fund motor carrier regulatory and safety programs for almost thirty-five years. These state funds were not federalized until 1995 by Section 13908 of the Interstate Commerce Commission Termination Act. It is anomalous to propose to jeopardize almost $95 million in safety funding in a bill that is intended to promote and improve motor carrier safety. To eliminate SSRS funding would set back safety enforcement and compliance in most of the SSRS participating states. A number of the states use SSRS funding as the match for MCSAP funding.

It is our understanding that this proposal, at least in part, is being put forward because USDOT has said that it has been unable to develop a UCR that would keep the states whole with respect to SSRS funding. The ICC Termination Act required USDOT to develop a single online data system *in cooperation with the states.* The states, through NCSTS, have been trying to work with DOT over the last three years to do just that. In all that time no one from DOT has ever said that they were unable to develop a UCR that did not keep the states funding intact. Never once did anyone from DOT come to the states and ask for assistance in this area. Regardless of DOT's position, we know that it is possible to develop a UCR that is effective, efficient and keeps the states funding in tact. More important than the question of whether or not it is possible to develop a UCR that maintains the states funding is whether or not the funding is required to promote motor carrier safety and compliance. If the funding is necessary and the states believe it is, then a way must be found to keep the funding intact. On the other hand if the funding were determined not to be an integral part and necessary for the states to carry out their motor carrier safety functions it should be eliminated regardless of the ease or difficulty in integrating it in to a UCR system. We are concerned that if US DOT is relieved of the requirement of maintaining the states funding derived from SSRS it will take the easy way out and ignore it in their development of the UCR.

On October 24, 1996 the NCSTS submitted its comments in response to the FHWA advance notice of proposed rulemaking (ANPR) published in the Federal Register, Volume 61, No. 166, August 26, 1996. Since that time representatives of NCSTS, on behalf of the conference and in the interests of its member state agencies, have participated in an almost continuous dialog with all interested and affected parties in an effort to come to a resolution that would meet the needs of FHWA and state agencies and be the least burdensome, economically and administratively, on both the motor carrier and insurance industries. Over the last three years, NCSTS representatives have met with FHWA administrators, American Trucking Association and other motor carrier industry representatives, insurance

company representatives and congressional staff members in an effort to better communicate our interests and concerns, better understand the interests and concerns of other affected parties and work together to try to develop a proposal that met the interests and concerns of all the parties.

NCSTS and its member states are committed to the development and implementation of a UCR that meets the needs of all concerned parties. To this end, NCSTS adopted "Recommendations for a Unified Carrier Registration System" at the NCSTS 1998 annual conference in San Antonio. This document varies little in substance from the views presented in NCSTS original response to the ANPR in October 1996, but does incorporate some of the ideas and concerns that surfaced subsequent to the original submission. Representatives from twenty-seven of the thirty-eight SSRS participating states were present at the San Antonio meeting adopting the recommendations for a UCR without opposition (copy attached). After the San Antonio meeting the ATA gave its written support to the UCR document but has since withdrawn that support.

During the almost three year process since the ANPR was originally released fully thirty-six of thirty-eight SSRS participating states have been involved in the NCSTS effort. While NCSTS does not presume to speak officially for any state, we feel confident that the system as proposed by NCSTS will be embraced by a significant majority of SSRS participating states and represents the interests and needs of most, if not all, of the states.

We are aware that to fully implement a truly unified carrier registry system that meets the needs of all of the concerned parties will require legislation in addition to rulemaking. NCSTS and its member states are prepared to work with FHWA, the motor carrier and insurance industries and congress to implement, monitor and maintain a unified carrier registry. The States believe that state infrastructure is in place to gather the most accurate industry data, make the data available to enforcement officers and provide the best service to the industry in the process. States are use to gathering and entering data into single national databases for vehicle inspections, issuing US DOT numbers to purely intrastate operations and implementation of national clearinghouses. States have also been exchanging data between states for a number of years.

States have developed business plans and are preparing detailed deployment plans to implement Commercial Vehicle Information Systems and Networks (CVISN) for the Intelligent Transportation System (ITS)/Commercial Vehicle Operations (CVO). Within these plans, state computer systems will integrate national core infrastructure systems that include the Commercial Drivers License Information System, clearinghouses for fuel tax, licensing and hazardous materials information, the Safety and Fitness Electronic Records (SAFER) system, the UCR and other state and federal agencies with state roadside enforcement. This system will allow for compliance verification of motor carriers' vehicles traveling on the highways at highway speeds. States will be able to use this information and its limited resources to focus on non-compliant and unsafe operations. Implementation of CVISN has been slow because federal funding has only been approved for a few core states. It appears that some additional funding could be available to the states in this bill to begin integration of state systems and access to the UCR.

Section 6, Subsection (g) of this bill would add a deadline for an operational system and implement a uniform carrier registration no later than one year after the date of enactment of the Motor Carrier Safety Improvement Act of 1999. The States are committed to implement a new UCR as quickly as possible but would recommend that the timing of the implementation coincide with the current calendar year process for registration renewals for interstate carriers. Implementing a new system at the beginning of a calendar year would create less confusion in the industry and allow a smoother transition from one program to another.

Attachment A

RECOMMENDATIONS FOR A UNIFIED CARRIER REGISTRATION SYSTEM

The following summary represents the NCSTS's Interstate Registration Committee recommendations for combining of the ICC/FHWA insurance system, US DOT numbering system, ICC/FHWA registration system and the Single State Registration System into a single national on-line system as reference in section 13908 of the I.C.C. Termination Act. The information is consistent with the original NCSTS' response to Federal Highway Administration's advanced notice of proposed rulemaking and serves to update and clarify the states recommendations for a Unified Carrier Registration System. It is the states' intention to present these recommendations to the Federal Highway Administration and then aggressively lobby

for adoption of this plan with the Public, Congress, Industry and Federal Highway Administration.

NATIONAL SYSTEM

Proposal: The States would collect and enter registration information into a single on-line database maintained by the Federal Highway Administration, and/the States, or an outside vendor on their behalf of the FHWA and the States. States would continue to enforce compliance with registration and other requirements under a cooperative Federal/State agreement. All State registration processes would be subject to Federal oversight. Each State would be bound by a standard and uniform set of rules for the accuracy and veracity of data it enters.

Access to registration and other information maintained in this system will be available to all government entities at no cost and will be accessible to the insurance industry and other interested parties for a fee. The data access fee would be used for administration of the program. The registration program would apply to interstate for-hire carriers, private carriers, freight forwarders, brokers and, at the option of the States, carriers operating exclusively in intrastate commerce. A national numbering system, preferably the USDOT number, will be utilized. When fully implemented, no in-cab or vehicle specific registration credential will be issued by the States. All interstate vehicles will be required to display the USDOT number, and State's will also have the option of using the USDOT number for carriers' operating exclusively in intrastate commerce. All registrants will be required to provide proof of financial responsibility. A fee would be collected and retained by the States for administering and enforcing federal safety fitness and financial responsibility requirements. Designation of Process Agents would be filed with the registration forms.

Justification: The States have proven that they can quickly and efficiently implement a national interstate registration program and administer that program in an efficient and accurate manner. Other trucking-related programs in this country such as safety enforcement, fuel tax collection, vehicle licensing, Commercial Vehicle Information Systems and Networks (CVISN) and others are moving towards base-state systems.

The States have the infrastructure in place to administer the renewals, registration and enforcement processes. Problem resolution, whether enforcement related or simply a matter of clerical "housekeeping" issues will be better addressed as a local, State problem. The carrier community will have adequate access to essential services only if the program is administered by the States.

SINGLE STATE PROCESSING

Proposal: Each state would serve as the registration point for motor carriers domiciled in their state. Currently, 38 states administer the Single State Registration System for carriers located in their State, neighboring states and foreign countries. These 38 States will be able to continue to register all carriers in the new system. States not currently participating in SSRS will also be able to register carriers.

Justification: The vast majority of the interstate and intrastate carriers are small operations. These motor carriers need access to local officials for assistance and service. It is also efficient to provide service at the local level. Carriers can achieve compliance more quickly at the State level and thus enter the marketplace and provide greater economic benefit. The federal Government is currently allocating millions of dollars in funds to effectuate Electronic One-Stop Shopping in the States. Consolidating this program with those efforts makes sense. A State system will also allow states to voluntarily apply federal requirements to intrastate operations thus eliminating duplication and promoting national uniformity.

REGISTRATION

Proposal: Registration will be renewed periodically and will be applicable to all for-hire, private motor carriers, brokers and freight forwarders.

By incorporating all private and exempt motor carrier operations into the registration system, states will voluntarily waive any future State-specific interstate registration requirements for these carriers. Motor carriers would be required to file a Designation of Process Agent for Service of Process. The States would issue the USDOT number in conjunction with this registration. States will be encouraged to issue a USDOT number to intrastate only carriers.

Justification: The renewal process will enhance the accuracy of motor carriers demographic information, and serve to verify a companies' continuing safety fitness to operate, and compliance with financial responsibility requirements. Filing of Des-

ignation of Process Agents would continue to protect the public in case of any legal actions taken.

INSURANCE

Proposal: Financial responsibility data will eventually be electronically transmitted by insurance companies into a central database. Insurance companies may initially submit proof of financial responsibility at the State level during a transition period. All registrants will be required to provide proof of financial responsibility. The limits of liability will be established by Federal Highway Administration. Self-insurance capability will continue at the federal level or at the state level if available. Notice of non-compliance, warning, suspension and revocation will be administered and enforced by the States. A Certificate of Insurance filing and maintenance fee will be established.

Justification: Financial responsibility is the key to effective administration and roadside enforcement efforts. The system provides for interactive electronic filing of certificates of insurance. This process allows the insurance industry immediate real time access of filing of certificates and cancellations and promotes an exchange of information that serves the public interest. Electronic filings and State access to this system will encourage non-duplicative filings of similar information for intrastate operations and combined filing requirements, and state access to this system will encourage non-duplicative filings of similar information for intrastate operations and combined filing requirements.

STATE FUNDING

Proposal: All registrants will pay annual fees. Fees collected will be used for carrier safety fitness and financial responsibility compliance, registration processing, and administration and roadside enforcement. A company based fee, calculated by fleet size, would be implemented in the transition period and the current per vehicle fee will be phased out. Each State would continue to receive at least the same level of funding received in the Federal fiscal year 1995. Monthly distribution of company fees would be based on each State's percentage of total dollars for the year 1995. Each State will submit that percentage of its total monthly revenues to each other State. The annual fee would include administrative costs incurred in registering previously excluded motor carriers or other costs associated with establishing this program. The amount of fees needed for this program will not exceed the 1995 level plus the additional administrative costs associated with this program. The shift to carrier based fees would be phased in over three years. For the first and second year the per-vehicle fee and vehicle credentials requirements will remain under the SSRS program for the for-hire carriers. All other registrants will be charged a nominal filing fee. In the third year, a new per company based fee will be in place. The Single State Registration System will be discontinued at that time.

Justification: Time will be needed for States and Federal Highway Administration to review, upgrade or develop new systems. This time will also be needed to write procedures, develop processes, and forms and implement rules and regulations at the federal and state level. State legislation may be needed. Some state legislatures meet every two years. States will need to develop an accurate database of the carriers that will be incorporated into this new system. When the exact number can be determined, the company base fee structure can be determined. States do not need, or desire, new or additional revenue as a result of implementing this new system.

SSRS FUNDS DISTRIBUTION SURVEY FALL 1995

State	Total Collected		Where Deposited	State/Fed MCSAP Match	Total Spent On Motor Carrier Safety And Insurance Enforcement
	AMT (MIL)	PCT			
AL	2.99	3.21%	PSC Fund & Motor Carrier Fund	.6mil St	2.5 mil spent on insurance & safety. 584,000 to MC Fund for matching Fed funds up to 2.9 mil used for highway maintenance.
AR	1.94	2.08%	General Fund		
CA	1.3	1.40%	Public Ultilities Transportation Reimbursement Account	3.2 mil-Fed 800,000-St	CHP spends 53.0 mil on size and weight enforcement and 12.0 mil on off- MC inspections. PUC spends 1.3 mil on safety and insurance enforcement.
CO	1.6	1.72%	Motor Carrier Fund	1.1 mil-Fed 275,000-St	2.0 mil spent by combined enforcement efforts of DPS, PUC & Dept of Rev (Ports of Entry).
CT	3.375	4.01%	Transportation Fund	784,000-Fed 196,000-St	Allused for MC enforcement and administrative activities funded from Transportation Fund.
GA	4.856	5.22%	General Fund	1.8 mil-Fed 1.7 mil-St	8.0 mil
ID	0.537	0.58%	General Fund	220,000-St	PUC-500,000; State Police 200,000 field enforcement DOT spent an indeterminate amount on MC safety/insurance enforcement.
IL	3.1	3.33%	Transportation Regulatory Fund	Proposed SSRS/MCSAP match 3.2mil/ 800,000	3.1
IN	2.1	2.26%	Motor Carrier Regulation		
IA	0	0.43%			

KS	4.272	4.59%	Motor Carrier License Fee Fund	289,000-St	1.415 mil used by Ks Corp Comm for MC administration and enforcement; 3.8 mil transferred to department of transportation for roadside and MCSAP enforcement.
KY	5.48	5.89%	Road Fund		12 Million
LA	4.518	4.85%	Transportation Regulatory Fund	Yes	20% SSRS $ to LaPSC for Safety/fitness and insurance enforcement and administration; 80% to General Fund for State Police and DOTD for MC enforcement programs including IFTA, size & weight and general administration.
ME	1.847	1.98%	Traffic Safety Fund		1.847 mil.
MA	2.359	2.53%	General Fund		2.359 mil used by State Police for insurance and safety enforcement.
MI	2.4	2.58%	Public Service Commission Fund	3.2 mil-Fed 800,000-St	900,000 to Truck safety Commission which funds 15+ MC Safety Officers; 300,000 to PSC for safety/fitness and insurance enforcement; 1.2 mil to State Police for MC Division operations and enforcement.
MN	1.289	1.38%	Trunk Highway Fund	Yes	Trunk Highway Fund contributes to MCSAP and funds all MC enforcement.
MS	4.411	4.74%	Dedicated Fund used exclusively for MC enforcement and admin.	3.2 mil-Fed 800,000-St	3.182 mil used for MC enforcement.
MO	2.14	2.30%	Highway Fund	Yes	2.140mil

SSRS FUNDS DISTRIBUTION SURVEY FALL 1995—Continued

State	Total Collected		Where Deposited	State/Fed MCSAP Match	Total Spent On Motor Carrier Safety And Insurance Enforcement
	AMT (MIL)	PCT			
MT	1.253	1.35%	General Fund	500,000-Fed 100,000-St	125,000 for economic and insurance enforcement; Highway Patrol spends all MCSAP money; DOT spends 3.2 mil on size/weight enforcement; Highway Patrol spend indeterminate amount on MC Enforcement.
NE	0.70	0.75%	General Fund		Safety enforce provided by Highway Patrol which is funded from General Fund.
NH	2.841	3.05%	General Fund	2.97 mil-Fed .74mil-St	2.8 mil.
NM	3.5	3.76%	State Road Fund	830,000-Fed 491,000-St	MTD handles all MC enforcement and is funded exclusively from road fund; 6.0 mil safety and insurance; 2.5 mil size and weight enforcement.
NY	4.0	4.30%	Transportation Regulatory Fund	250,000-St	4.0 mil used exclusively for administration and enforcement of MC insurance and safety.
NC	0.440	0.47%	Highway Fund	1.17 mil-Fed	242,505
ND	2.674	2.87%	Highway Fund	Yes	2.674 mil
OH	2.155	2.32.%	Motor Transportation Regulation Fund	3.1 mil-Fed 700,000-St	All funds used for motor carrier enforcement activiies.
OK	2.02	2.17%	State Corp Comm Revoling Funds which funds Transportation Division and Transportation Support Services.	316,000-St	1.3 mil by Corporation Commission; indeterminate amounts spent by other agencies in ports and roadside enforcement efforts.

RI	2.3	2.47%	General Fund		2.3 mil
SC	2.5	2.69%	General Revenue Fund	923900-Fed 467,000-St	
SD	1	1.04%	General Fund		972,000 used for State Highway Patrol.
TN	4.396	4.72%	Motor Carrier Account	1.2 mil State	8.6 mil (4.4 SSRS; 3.0 Fines; 1.2 MCSAP).
TX	1.5	1.61%	General Fund		
UT	1.7	1.83%	800,000 to DOT; 350,000 to DPS	1.2 mil-Fed 720,000-St	DPS-Roadside enforcement; DOT-Fixed inspections; total both depts =1.2 mil.
VA	2.66	2.86%			DMV recieves 2.1 mil State Police recieves 1.6 mil VDOT recieves 2.5 mil.
WA	2.5	2.69%	Dedicated fund all 2.5 mil stays inWA Utilities and Transportation Commission for MC safety program (until 1/1/96-then transferred to State Patrol for same purpose).	1.2 mil-Fed 300,000-St	5.5 mil spend by combined efforts of State Patrol, Dept of Labor, and Utilities and Transportation Commission.
WV	1.4	1.50%	PSC Motor Carrier Fund	500,000-Fed 780,000-St	2.1 mil on MC safety programs.
WI	2.3	2.47%	Transportation Fund	1.5 mil-Fed 372,000-St	2.3 used for transportation related activities, especially size/weight enforcement, roadside inspections, CDL enforcement, and commercial vehicle enforcement by State Patrol.
TOTAL	93.085	100.00%			

NOTE: These numbers represent the net SSRS revenue collected by the states and available to them for expenditure on motor carrier safety programs.

PREPARED STATEMENT OF THE AMERICAN BUS ASSOCIATION

ABA is the national trade association for the intercity bus industry. We have approximately 700 member companies that operate buses in intercity service. Some 100 of ABA's member companies provide regular route scheduled service, and nearly all of the operator members provide some sort of charter, tour or commuter service. Collectively, the membership of ABA offers:

- regular route intercity service between fixed points on set schedules;
- charter service, where a group of passengers (such as a church or organization) purchases all of the seats on a bus for exclusive use on a particular trip;
- tour service, for which seats are sold on an individual basis, and which usually includes stops for sightseeing and recreational purposes;
- commuter bus services, generally from the suburbs into urban areas; and
- special operations, which is scheduled service to enhance public transportation systems (such as bus service from a city to an airport), or may be connected with a special event, convention or attraction at the destination.

The remaining 2,300 of ABA's members include representatives of the travel and tourism industry, and the manufacturers and suppliers of products and services used by the bus industry.

ABA strongly supports S. 1501, the Motor Carrier Safety Improvement Act of 1999. It is a good bill that perceives the critical need to focus more effectively on safety issues in the industry by the establishment of a separate Motor Carrier Safety Administration within the Department of Transportation (DOT). We are also gratified that the legislation recognizes the clear distinction between truck operations and passenger carrier operations. For too long, the motorcoach industry has been regulated as if a bus were a truck. However, ABA prefers the language proposed in the House bill, H.R. 2679, which creates an "Office of Passenger Vehicle Safety." In our view, an Office, headed by a Senior Executive Service individual, and made up of several divisions would be better able to address the diverse nature of passenger safety in much more detail that a single division. We believe that passenger vehicle safety will be best served by the creation of an Office with sufficient staff resources to address the diverse nature of the passenger carrier industry rather than having all passenger vehicle safety issues housed in one small division within an office devoted only to trucking issues.

As we have told the Senate Commerce Committee before, safety has always been our industry's and ABA's number one priority and current statistics bear this out. Travel by motorcoach is by far the safest mode of transportation available to the public. The National Transportation Safety Board (NTSB) highlighted this fact at their board meeting last week. In addition, according to the National Safety Council, during the last decade for which statistics are available, 1987-1996, interstate motorcoach travel accounted for an average of 4.3 fatalities per year compared to an average of 44,000 persons per year killed in all highway fatalities during this period. ABA and its member companies believe that even one fatality is tragic and is too many. Further, our industry continually looks to improve its safety record.

At the same time, the record our industry achieved was accomplished by motorcoach operators and manufacturers through their own efforts to promote the highest standards of safe design and operation and through their compliance with stringent federal and state safety regulations. The very fact that ABA has a safety committee indicates just how important this issue is to our members. In addition, ABA has recently hired a safety director dedicated to enhance our members' performance. ABA's safety committee serves as a resource for the entire motorcoach industry and is proactive in advancing new safety concepts to its members. It also provides important information on regulatory compliance to our members and to the industry. We hope that with the creation of this new administration, ABA can serve a similar function. We have always had a good working relationship with the Office of Motor Carriers and Highway Safety (OMCHS) and expect to have a similar role with the new Motor Carrier Safety Administration.

In addition to organizational issues, ABA also supports the legislation's proposed improvements to the Commercial Drivers License (CDL) program. It especially supports the initiation of a rulemaking action to provide for Federal medical qualification certificates to be made a part of commercial drivers' licenses by any state and a national registry of medical providers.

ABA also endorses the provision that would make significant improvements in the way motor carrier safety data is collected. However, in addition to the data improvements proposed, we would like to see DOT develop definitions differentiating motorcoach, transit bus, and school bus operations as a way to improve the quality of the

data collected. We would like to note that NTSB made a similar recommendation in the report that it issued last week.

With respect to other motor carrier safety initiatives, ABA supports the bill's establishment of departmental policy to ensure the protection of privacy for those using electronic recorders or other technology to monitor vehicle and operator performance and/or location. We continue to believe, however, that the use of technology should be voluntary, and that the privacy of those users should be protected.

With respect to the proposed Commercial Motor Vehicle Safety Advisory Committee, ABA fully supports the development of this group and would welcome the opportunity to participate.

ABA strongly supports Section 6(g)(2) of S.1501 which mandates that the Federal Motor Carrier Safety Regulations (except Commercial Drivers Licenses and drug and alcohol testing) become applicable to commercial vans 60 days after the bill's enactment. This language is needed because DOT has simply not responded to prior congressional action intended to bring appropriate safety regulation to commercial vans.

TEA-21 mandated that one year after its effective date, the Federal Motor Carrier Safety Regulations (FMCSR), with few exceptions, would apply to commercial vans carrying more than 8 passengers.

Recent Federal Highway Administration (FHWA) rulemakings appear contrary to the TEA-21 mandate and the intent of Congress. For example, on August 16, 1999 it published a Notice of Proposed Rulemaking (NPRM) promulgating new safety fitness procedures for commercial motor vehicles. In doing so, it exempted commercial vans from those procedures even though they are part of the Federal Motor Carrier Safety Regulations (FMCSRs). ABA considers it a grave error to formalize a process that will not allow the FHWA to shut down interstate commercial van operators no matter how unsafe they prove to be.

Second, both the interim final rule and NPRM on the applicability of FMCSRs to interstate commercial passenger vans also appears contrary to congressional intent. The interim rule exempts commercial vans for a period of 6 months while the FHWA considers comments submitted in response to the NPRM. However, the NPRM, as written, only requires commercial passenger vans to file a Motor Carrier Identification Report, comply with vehicle marking provisions, and complete an accident register. This NPRM completely ignores driver qualifications, including medical requirements, hours-of-service provisions, and vehicle maintenance and inspection requirements. Research shows that more that 250 people annually are killed in commercial passenger van accidents, far exceeding motorcoach fatalities. ABA is confident that, in light of these statistics, that Congress never intended for the FHWA to exclude the bulk of the FMCSRs. Section 6(g)(2) of S.1501 would mandate the long overdue application of a substantial portion of the FMCSRs to commercial vans, and we support it fully. However, in light of DOT's past inaction on this subject, it is also important to build into this provision language which ensures that DOT enforces these regulations.

There are several issues in which ABA would like to see the legislation address, which are not part of S. 1501.

One provision ABA would like to see included in the legislation is one involving alcohol and drug testing. We firmly believe that these alcohol and drug tests should be reported by the Medical Review Officer to a national database for use by carriers, with proper controls to ensure individual privacy.

With regard to medical qualifications for drivers, ABA believes that medical professionals who perform DOT physicals should be certified to ensure that they understand and follow the DOT medical guidelines. We understand that the Congress is working with DOT to establish such a process.

As you may know, ABA is a member of the Commercial Vehicle Safety Alliance's (CVSA) Passenger Carrier Committee. At a recent meeting of this Committee, it endorsed several concepts, some of which are incorporated into S.1501. The Passenger Carrier Committee voted to support the following: the creation of a Passenger Vehicle Safety Office within DOT; the establishment of minimum standards for driver and vehicle qualifications; the enhancement of data collection including driver accident histories, listing of violations, and a proper definition of a passenger vehicle; the prequalification of new carrier entrants; and semi-annual inspections on commercial vehicles by the states. ABA urges the Committee to consider these recommendations when mark-up commences.

A final safety issue involves the certification of motor carrier safety specialists. ABA favors the establishment of a certification process for all those who perform safety reviews. Senator Breaux's bill, S.1524, would accomplish this and create a training and certification program for Motor Carrier Specialists at the federal, state, and local level as well as those non-governmental specialists (third parties) who per-

form safety reviews. Our view is that third parties will help alleviate the backlog of certain types of reviews, including those conducted on new companies and those initiated by company requests. ABA does not, however, support using third parties for normal compliance activities such as unscheduled compliance reviews and complaint investigations. We believe this certification proposal outlined in S.1524 will go a long way toward ensuring a more consistent, accurate, and uniform review process nationwide. We strongly believe that had this sort of program been in place already, accidents such as the tragic Mother's Day motorcoach crash in New Orleans might have been prevented. We hope that this legislation will somehow be incorporated into S. 1501 as the legislation advances to mark-up.

ABA is committed to safety and has been pro-active both on the regulatory and legislative fronts to advance those proposals that enhance the safety of the motorcoach industry. S. 1501 marks a milestone in the effort to achieve this objective. The recognition that the operations of the motorcoach industry differ dramatically from the trucking industry is to be commended and the fact that a separate administration is being proposed that would be dedicated to motor passenger safety illustrates the commitment of Senator McCain to making safety a number one priority. ABA offers its resources and support as S.1501 advances in the legislative process and will dedicate itself to transforming the legislation into law.

PREPARED STATEMENT OF THE AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS (AAMVA)

The American Association of Motor Vehicle Administrators (AAMVA) is an international association whose members are the chief motor vehicle administrators and chief law enforcement officials in the United States and Canada. Just recently, the federal government of Mexico joined the Association which expands our presence throughout North America.

The Association appreciates the opportunity to comment on S. 1501, the Motor Carrier Safety Improvement Act of 1999 and will take this opportunity to report on our involvement in the highway safety arena as well as areas of the proposed legislation that are of concern to the AAMVA community.

What is not widely recognized is the fact that the Association is a key participant in the many highway traffic safety programs, projects, and issues addressed in S. 1501. Our involvement is not on the periphery; AAMVA is a "major player." AAMVA's Police Traffic Services Committee is represented by state police and highway patrol. In many instances the enforcement officials and highway patrol are one in the same. While motor vehicle agencies are involved with the collection of fees and revenues from the motor carrier community, we also have a significant role in ensuring that compliance programs are implemented. If Congress wants to implement new compliance, enforcement or training programs, our members are the ones relied upon to make it happen.

The Association's members also have weighed in heavily on driver training. From a safety aspect, it's hard to argue with tying the training requirement for commercial drivers to the licensing process. But, it raises several motor vehicle related issues that need to be dealt with such as monitoring issues that need to be in place, as well as the critical issue of funding.

Enhancement of the commercial drivers license program will require a change in the way we all do business; the Federal government, State agencies and the motor carrier industry. The Association is currently reviewing and revising the entire commercial drivers license test battery to make it stronger and more functional. The Association believes that there is much more involved in becoming a good, safe commercial motor vehicle operator than just passage of the knowledge and skills tests. We will look at the structure of the tests in an attempt to make them stronger, but we must also look at the training needs and find ways to tie training into the licensing environment. We also need to explore ways to get novice drivers more experience in a controlled environment. One of the ways to do that is through graduated licensing.

We are working with FHWA, OMC and the industry in analyzing the feasibility of looking at establishing a graduated licensing program for commercial drivers. The other big issue to study is training—training that is tied to the licensing process, strengthening the knowledge tests and incorporating some form of behind-the-wheel experience are aspects of the graduated licensing study.

The Association also is taking a leadership role at our nation's borders. Border states are very concerned about the conditions of vehicles and the skill level of drivers soon to be entering their borders. We are focusing on the Mexican driver—how well they are trained, how their commercial driver licensing process works, their

testing process and inspection procedures and whether their drivers hold valid commercial drivers licenses. The problems they face today in Mexico will become problems the United States will face tomorrow.

Understanding this fact, AAMVA has developed a mutually beneficial working relationships with representatives of Mexico to share data on our commercial drivers licensing program and third-party examiner testing and training.

It is for the above reasons that we believe housing all of the funding for enhancement of the commercial drivers license program under MCSAP does not work. Even though the funds for the MCSAP program are doubled in this legislation, rarely are those funds used to improve the training programs for the drivers. Most MCSAP funds are earmarked for compliance or enforcement programs. We believe a portion of the MCSAP funding should be appropriated for the commercial driver licensing program and those agencies that are responsible for administering those programs. The experience level of the driver should be of equal importance in any discussion of improved motor carrier safety on our highways.

Specific issues of concern with S. 1501, as proposed, are as follows:

1. Section 5(c)(1), Medical Certificates. Over the years, AAMVA has been involved with FHWA's Office of Motor Carriers' negotiated rulemaking process to amend the Federal Motor Carrier Safety Regulations with regard to the determination of physical qualifications to operate a commercial motor vehicle in the commercial driver licensing process. Incorporating the commercial driver fitness determination into state-administered commercial drivers license procedures may eventually eliminate the requirement that operators requiring a CDL carry a separate medical certification.

Speaking on behalf of state motor vehicle agencies across the country, there is a great deal of concern among jurisdictions about tying driver medical qualifications to the licensing process. The issues and associated questions that states have are as follows.

- *Decision about whether the driver meets the FMCSR standards.* Who would be making the final determination regarding a driver's physical qualifications? Would it be the medical provider or the licensing agency?

Uniformity. Should a federal medical standard be created to apply to both interstate and intrastate commerce drivers?

Interim changes in medical conditions. Would states be capable of handling changes in medical conditions that may occur between licensing cycles?

Tracking systems. Who would report unqualified drivers and to whom should those reports be made? Should the medical provider be required to report to FHWA the results of medical examinations? Should the motor carrier assume responsibility for reporting drivers who do not meet the medical requirements? What exactly is the role of the states in this activity?

Report requirements for medical examinations. Should a reporting requirement be considered if a tracking system is created? Who would be liable for a driver who is not medically qualified? Should the medical examiner be accountable or should the responsibility lie solely with the motor carrier? If the responsibility for medical determinations is transferred to the states, would the states be responsible for follow-up enforcement, or would they merely report to the federal authority.

Renewal periods. Would there be a uniform renewal cycle for medicals in all states and who would it relate to the renewal period for drivers licenses?

Cost. Who would pay for the driver's lost time and wages that are incurred as a result of compliance with the new system? Who will pay to implement and maintain the new system and registry?

Enforcement. Who would be subject to enforcement action upon violation of these rules—the driver or the motor carrier? Will vehicle credentialing be tied to compliance?

Record keeping/paper work. Who would be responsible for maintaining driver records—the motor carrier, the driver licensing agency or the driver?

These are some of the concerns we have with such a system. However, our member jurisdictions would much rather see this current rulemaking process carried out to its fruition rather than legislating the creation of a federal medical qualification certificate process.

2. In general there is widespread support for Section 5(a)(5) that prohibits states from issuing special licenses that permit an individual to drive a commercial motor vehicle during a period in which the individual is disqualified from operating a commercial motor vehicle or the individual's driver's license has been revoked, suspended, or canceled.

3. We support the creation of a Commercial Motor Vehicle Safety Advisory Committee; however, we feel strongly that if such a committee is established that motor vehicle and driver licensing administrators be represented on the committee.

4. Another issue of concern is funding. We feel that implementation of this bill would create a funding hardship, requiring an increase in personnel and extensive programming. It may also require legislative change in many jurisdictions. However, given ample lead time to pursue legislative changes, adequate funding assistance and leadership at the national level, we feel this bill could be successfully implemented. We do encourage the Committee to give serious consideration to dedicating funds to motor vehicle agencies to carry out the provisions of this bill. Without those obligated dollars, it is highly unlikely that states would be able to comply with and implement the provisions of this bill.

5. The development of a uniform system to support the electronic transmission of data from state-to-state on violations of all motor vehicle traffic control laws by CDL holders is a technological advancement that the Association and its members are extremely interested in pursuing. As you are aware, monies were appropriated under Section 2006 of TEA-21 for AAMVA, in conjunction with the Secretary of Transportation, to conduct an assessment of available electronic technologies to improve access to and exchange of motor vehicle driving records. We would recommend that a portion of the funding being made available to implement the provision of this bill be dedicated to this technology assessment.

6. Finally, the Association does not have any overriding concerns with the establishment of a new Motor Carrier Safety Administration.

PREPARED STATEMENT OF DAVID F. SNYDER, ASSISTANT GENERAL COUNSEL, AMERICAN INSURANCE ASSOCIATION

The American Insurance Association represents more than 370 insurers which provide 36% of the commercial vehicle insurance in the United States. They have extensive experience in truck safety issues as businesses and as safety advocates. On their behalf, we are pleased to state our strong support for S. 1501, the "Motor Carrier Safety Improvement Act of 1999". We also wish to take this opportunity to ask you to adopt some enhancements which are entirely consistent with the purpose and provisions of the S.1501.

TRUCK SAFETY IS A MAJOR CONCERN

Truck crashes are a major public health, safety, economic and transportation efficiency issue for all citizens. During the last year for published statistics, despite a genuine commitment to safety by the affected industries, 5,282 persons were killed and nearly 20 times that number injured in large truck crashes. The total economic costs to society exceeded $15 billion in lost productivity, medical costs and property damage--costs shared by the victims and their families, employers, insurance consumers and taxpayers. Large truck crash fatalities reached their highest levels this decade in 1997 (5,295) and 1998 (5,282). Clearly we have not yet achieved success.

Insurers underwrite and charge premiums on the basis of safety performance. They also provide expert advice on reducing risk and improving the safety of operations. But they cannot substitute for a vigorous Federal regulatory program, which has often been lacking.

Major causes of truck crashes, according to our member insurers, include fatigue, hours of service violations, speeding, brakes and general maintenance problems. They also believe that Federal regulatory programs should be more accountable and higher in visibility and effectiveness. S.1501 addresses most of the major issues.

TO SUCCEED, FEDERAL TRUCK SAFETY PROGRAMS MUST BE MORE FOCUSED AND ACCOUNTABLE

Federal truck safety programs are nearly invisible to the public and there is no apparent focal point or official to be held publicly accountable for truck safety matters. This has led directly to delays in critical rulemakings such as hours of service and worse safety results than expected. The most important reform S.1501 accomplishes is to create a highly visible and accountable truck safety focus in the Federal Government that, under the Interstate Commerce Clause, has the plenary responsibility for the subject.

Simply pouring more resources into the current regulatory structure is like putting more gas into a car without a motor. S.1501 remedies this fundamental shortcoming by establishing an independent agency modeled on the Federal Aviation Administration. Considering the size and economic importance of trucking industry,

crash costs and regulatory failures, this reform is essential for achieving success. The duties of the new agency are appropriately comprehensive, including implementing the US DOT Inspector General's recommendations on better and stronger enforcement, safety ratings and data analysis. Some added responsibilities are also assigned to the National Highway Traffic Safety Administration.

BEYOND REFOCUSING SAFETY PROGRAMS, SPECIFIC PROGRAM FLAWS AND INCREASED FUNDING ARE ADDRESSED BY THE BILL

We support the increased funding levels in Section 3, especially because they will provide more resources to an updated and refocused federal regulatory structure established by Section 2 of S.1501. The payback should be quite significant.

Section 4 provides that the new agency shall act to carry out the Inspector General's recommendations including tougher enforcement and oversight, more current safety ratings, and more extensive and better analyzed data, in addition to the restructuring. We support addressing all of these issues.

Section 5 will remedy some of the current flaws in the Commercial Drivers License program. Most importantly, it will be changed to take account of violations by truck drivers that occur in other vehicles. To us this makes sense, because dangerous driving behavior is often not compartmentalized. The bill also contains provisions to assure better and more complete participation by the States.

Section 6 addresses the paucity and comparatively poor analysis of data. It will also help harmonize differences between the States in data reporting. Section 7 creates an advisory committee. Because of their economic stake and relevant expertise, the provision should includecommercial vehicle insurers as members. Section 6 also moves closer to the use of event recorders.

ADDITIONAL PROVISIONS WOULD IMPROVE THE LEGISLATION

The issue of the safety of Mexican trucks entering the U.S. should be addressed. Repeated studies show high out-of-service rates, overweight loads, poorly maintained vehicles and hours of service and operator violations. The U.S. must assure that adequate programs, infrastructure and personnel are in place to achieve full compliance with U.S. safety laws. Nothing would hurt the cause of NAFTA or free trade more than a preventable truck crash with multiple casualties or environmental damage. Provisions addressing these issues should be included in the legislation.

CHANGES ARE NEEDED ON SEVERAL INSURANCE ISSUES

Section 6 helps establish an improved Federal proof of insurance system covering all commercial motor vehicles. Wasteful multiple insurance status reporting could be eliminated and all motor carriers included in a readily accessible and efficient proof of insurance system. However, S.1501 does not dispose of the duplicative and costly State system and does not cap system access fees to actual costs charged to provide information to, and receive information from, the system. Again, under the Interstate Commerce Clause, the Federal Government can and should exclusively perform this responsibility. Therefore, preemption language and fee limitation language should be added to S.1501.

Section 8 concerns owner-controlled insurance programs. We support the concept of the Federal Government preventing grantees of Federal funds from inflating insurance reserves and using the money to offset their financial obligations for participation. However, the current language is overly broad and could be interpreted as infringing on the McCarran-Ferguson Act. We therefore request that this provision be limited clearly to the grantee of Federal funds, leaving to State regulation oversight of insurance companies. In this way, all parties will be subject to scrutiny but without conflict or duplication.

CONCLUSION

We strongly support S.1501. We also urge the Congress to make some changes to strengthen and better carry out its clear intent.

Respectfully Submitted,

David F. Snyder
Assistant General Counsel
American Insurance Association

PREPARED STATEMENT OF JENNIFER MOONEY TIERNEY, CITIZENS FOR RELIABLE AND SAFE HIGHWAYS

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit this testimony concerning S. 1501, the Motor Carrier Safety Act of 1999.

The trucking industry in the United States is plagued by numerous safety problems. Oversize and overweight trucks, truck driver fatigue, substandard vehicle maintenance, insufficient regulatory enforcement, and lack of reliable truck crash data are all obstacles to safe trucking operations. The trucking industry consistently places productivity concerns over issues of safety. But we feel that the U.S. Congress, the U.S. Department of Transportation and trucking interests have a shared responsibility to truck drivers and to the motoring public to make safety a top priority. Safety must be an integral part of trucking operations, and it is our goal to ensure that safety is the highest priority and that it does not take a back seat to economic efficiency and productivity.

According to fatality statistics recently released by the National Highway Traffic Safety Administration (NHTSA), 5,300 people died in over 400,000 truck-related crashes in 1998; 141,000 more were injured, 26,000 suffering severe brain damage or loss of a limb. Now more than ever, the federal government must seriously address this public health crisis and overall improvements must be made in the safety of trucking operations in the U.S.

Citizens for Reliable and Safe Highways (CRASH), formed in 1990, is a nationwide, grassroots non-profit organization dedicated to improving overall truck safety in the U.S. and eliminating the unnecessary deaths and injuries caused by truck crashes every year. We represent the millions of Americans who travel the nation's highways every day, including truck drivers, motorists, truck crash victims, and their families. Our goal is to make safety as important as productivity in all U.S. trucking operations.

On behalf of our 45,000 members nationwide we would first like to thank this Subcommittee and the Congress for responding to the increasing numbers of motorists demanding greater transportation safety. Members of CRASH come from a broad spectrum of backgrounds and affiliations.

CRASH volunteers are often members of medical associations, emergency care units, head injury foundations, state highway patrols, and crash reconstructionist teams. Together with the families of truck crash victims, these individuals truly understand the urgency behind our fight to save lives by improving truck safety standards.

Truck drivers are also an integral part of the CRASH team, reminding us that the current system often forces drivers to choose between driving safely and making a living. CRASH's Board of Directors are national leaders who volunteer their services to advance our public safety objectives. Finally, many CRASH members are just regular people, motorists who share the roads with big trucks and share the goal of making truck operations safer.

I am a CRASH Board member and a member of the CRASH Survivors Network. That means I can personally attest to the fact that commercial truck safety is a life and death issue that affects real people and real families. The course of my life changed drastically one night 15 years ago, when my father, James William Mooney, Sr., was killed in a senseless, preventable side underride crash with a big rig truck on a dark country road in North Carolina. He had beautiful eyes but they never saw that truck backing up across both lanes of the road because there was no reflective tape on the sides of that truck. Since that night I have dedicated my life to preventing this tragedy from happening to others.

It has been a difficult process to turn my grief into positive action. For six years I was on my own, talking to anyone who would listen and many more who didn't want to hear that daddy's crash didn't have to happen. I was a young woman when he died. Now I am middle-aged, married, with a teenage daughter of my own.

In 1990, I discovered Citizens for Reliable and Safe Highways and knew immediately that I had found at last a means to amplify my voice and magnify my presence because I was no longer alone. There were tens of thousands of us representing millions of motorists who felt let down and betrayed by a system that seemingly values trucking industry productivity over public safety on the roads and highways of this great country.

For 15 years I have struggled to solve the problem of truck conspicuity and many other dangers of unsafe trucks and trucking practices. I continue this work even when exhausted and outraged by the well-financed trucking industry's demands for bigger and heavier trucks and less stringent work rules. I do so as a volunteer because it's the right thing to do.

The number of people personally affected by commercial truck crashes is staggering and grows every year. Yet the trucking lobbyists, the trucking media, even government officials charged to uphold safety, hide behind their spin on the terrible statistics by saying the numbers of crashes, deaths and injuries are up because the traffic is up. They say the fatality rate per vehicle miles traveled is down so they're proud of the job they're doing of making the highways safer. 5,300 killed, 141,000 injured in 1998.

The death toll in truck-involved crashes is equivalent to a fully loaded jetliner crashing every other week. If the airline industry were involved in plane crashes every other week, they would be grounded! And neither the government or the public would accept the argument that these crashes were acceptable because air miles traveled were increasing. And Congress would never tolerate a major airline crash every other week on the argument that it facilitates a more profitable and efficient aviation industry. Yet these are the arguments used by some trucking interests against rules which would improve the safety of commercial trucking.

I am grateful that we are here today to continue focusing on restructuring the failed Office of Motor Carriers (OMC). The list of OMC regulatory and enforcement failures goes on and on and on. Because of its weakened culture the OMC has clearly lost the credibility to effectively oversee motor carrier safety. As a result, all motorists are suffering the effect of weak rules and laws and paralyzed compliance.

A restructured, revitalized OMC can take more efficient and effective steps to reduce the pain and suffering of all motorists including truck drivers. A re-empowered and redirected OMC can reduce the threat to all who share the road and begin to restore balance to our nation's system of safely transporting people as well as freight.

That is why CRASH supports the passage of S. 1501. Though the measure would create a separate motor carrier administration, it has other features which CRASH and other safety groups have been pushing for this past year and is, in general, a more comprehensive approach to improving the federal motor carrier safety programs. While the safety community maintains that the National Highway Traffic Safety Administration (NHTSA) is the best place for all motor carrier safety programs, S. 1501 is a better bill than others for three important reasons:

1. S. 1501 gives NHTSA some additional regulatory authority over commercial motor vehicles (CMVs), which includes trucks and buses, on the road.
2. S. 1501 gives NHTSA responsibility over all motor carrier data collection and analysis.
3. S. 1501 directs the Department of Transportation (DOT) to implement the safety recommendations in the Inspector General's (IG) April 26, 1999 report.

CRASH believes it is crucial to the safety of all motorists to keep these three key provisions in S. 1501. Additionally, there are other provisions that need to be added to S. 1501.

"PROVISIONS WE SUPPORT IN S. 1501"

1. S. 1501 transfers additional regulatory authority from the Office of Motor Carriers (OMC) the National Highway Traffic Safety Administration (NHTSA).

S. 1501 proposes to move responsibility for issuing motor vehicle safety standards for commercial motor vehicles (CMVs) already on the road from the Office of Motor Carriers (OMC) to the National Highway Traffic Safety Administration (NHTSA). NHTSA already issues motor vehicle safety standards for newly manufactured CMVs, while OMC currently has the authority to apply NHTSA standards for CMVs currently in service.

One of the major criticisms of the safety community has been the long, unnecessary delays of OMC to apply NHTSA safety standards to CMVs already in service. For example, in 1992 NHTSA adopted a safety regulation to improve truck visibility by requiring uniform conspicuity markings on the sides and rear of new trailers. OMC delayed coming out with a comparable standard for trucks already in service for seven years, (until April, 1999) and only issued the regulation in the face of severe pressure. Even worse, OMC's regulation provided loopholes for industry that will allow thousands of truck trailers to operate for up to 10 years before complying with a safety rule that has minimum costs and maximum safety benefits. The trucking industry strongly opposes giving NHTSA this added authority and is working to strip the provision from S. 1501.

Recommendation: Strongly support the provision in S. 1501 that grants authority to NHTSA to issue so-called "retrofit" safety rules to upgrade the safety of trucks on the road.

2. S. 1501 gives NHTSA responsibility for motor carrier data collection.

Improved data collection is crucial to improving motor carrier safety and enforcement programs. According to the Inspector General, "OMC cannot identify all the high-risk motor carriers because its database is incomplete and inaccurate, and data entry is not timely". NHTSA's data collection, administration and analysis is far superior to OMC's efforts. S. 1501 gives NHTSA responsibility for working with the States to collect data and developing a national database which includes driver citation and conviction information.

Recommendation: Strongly support the provision in S. 1501 that gives NHTSA responsibility for motor carrier data collection and analysis.

3. S. 1501 Directs the Secretary of Transportation to implement the Department of Transportation's Inspector General (IG) Recommendations.

Senator McCain asked the Inspector General to review the federal motor carrier safety program and to issue a findings report. S. 1501 contains a provision that directs the Secretary of Transportation to implement all of the safety improvements recommended in the IG's most recent report criticizing OMC programs. The findings and recommendations in the report cover areas such as strengthened safety inspections and compliance reviews, tougher penalties for not complying with safety rules, and improved data collection. These are all issues identified by safety groups as needing immediate attention.

Recommendation: Strongly support the provision in S. 1501 that directs the U.S. Secretary of Transportation to implement the Inspector General recommendations to improve truck safety.

"PROVISIONS THAT NEED TO BE INCLUDED IN S. 1501"

S. 1501 fails to direct DOT to develop basic requirements for new motor carrier companies.

When new motor carrier companies enter the market they should be required to demonstrate their knowledge of federal motor carrier safety laws, the safety practices of their drivers, and the safe condition of their vehicles. Current federal rules have failed to ensure this. At a minimum, carriers should have to pass a proficiency exam on the federal motor carrier safety laws, and all new motor carrier companies should receive a full compliance review within six months to a year of operation.

Recommendation: S. 1501 needs to include provisions that direct DOT to ensure that new motor carrier companies are operating safely by: (1) requiring new motor carrier companies to pass a proficiency exam on federal motor carrier safety laws and to receive an initial safety rating; and (2) requiring new motor carrier companies to receive a full compliance review within six months to a year following issuance of interstate operating authority.

• S. 1501 fails to address the current backlog of compliance reviews, safety ratings, and lack of inspections.

According to the Inspector General, the number of compliance reviews OMC performed in 1998 has declined by 30% since 1995, even though there has been a 36% increase in the number of motor carriers over this period. Additionally, the number of comprehensive roadside safety inspections has also been declining while motor carrier operations are growing. Compliance reviews and inspections must be conducted more frequently and must be improved in quality. Chronic offenders in the motor carrier community need to have their operating authority suspended or revoked. Although federal law requires OMC to assign safety ratings to all motor carriers, according to the Inspector General only 28% have ever been rated.

Recommendation: S. 1501 needs to include provisions that direct DOT to address the backlog of compliance reviews and safety ratings and to increase and improve the quality of inspections.

• S. 1501 fails to adequately prohibit Conflicts of Interest in research and rulemaking.

The American public would never trust tobacco industry research on the effects of smoking or research by the alcohol industry to determine drunk driving programs. Nonetheless, the Office of Motor Carriers repeatedly uses the trucking industry to conduct its basic research that is used to establish safety rules. This represents a clear conflict of interest.

Recommendation: S. 1501 needs to include provisions on Conflict of Interest standards to ensure that:

1. Research for rulemaking and other programs is not conducted by any interest affiliated with the trucking industry.

2. Any individual who serves in a senior position within a new motor carrier agency is not affiliated with the trucking industry.

In memory of my father and all who have suffered in truck involved crashes, thank you Mr. Chairman, for giving CRASH and me this opportunity to submit this information to the Subcommittee. Maintaining those provisions we support in S.1501, and adding the provisions we believe will make the bill stronger, will facilitate and expedite a significant restructuring of the OMC. This in turn will lead to the enhanced lifesaving truck safety rulemaking that CRASH advocates.

With S.1501 you have the power and the opportunity to save lives and prevent injuries. On behalf of millions of motorists nationwide, we look froward to working with you, the Committee, Congress, the Administration, the appropriate agencies and all the shareholders involved so that one day soon, trucking will no longer be known as the country's most dangerous commercial enterprise.

PREPARED STATEMENT OF JIM HALL, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Good morning, Chairwoman Hutchison and members of the Committee. We appreciate the opportunity to provide the National Transportation Safety Board's views regarding S.1501, the Motor Carrier Safety Improvement Act of 1999, introduced by Chairman McCain. We applaud the Committee's continued efforts regarding this important safety issue.

The number of registered large trucks on our nation's highways continues to grow, and with that growth come added concerns about the safety of motor carriers on our roads. In 1997, there were 5,355 fatal crashes—and countless others resulting in serious injuries—involving heavy trucks. Although large trucks accounted for only three percent of all registered vehicles, collisions involving large trucks accounted for nine percent of the 1997 traffic fatalities.

The Safety Board has a long-standing interest in motor carrier safety, and throughout this year, we have addressed the complex safety issues related to heavy vehicle transportation through several venues. Below is a list of current and future Board activity regarding this issue.

- March 1999—Issued a highway special investigation report on selective motorcoach issues. This report addressed the following safety issues: bus driver fatigue; Office of Motor Carriers (OMC) safety rating methodology; emergency egress; and passenger safety briefings.
- April 1999—Conducted a hearing to review the conditions and causes of truck/bus related crashes and evaluate the effectiveness of Federal and state oversight of the large truck and bus industry. Participants included representatives from truck and bus companies, drivers, owner-operators, associations, and government.
- September 1999—Conducted a second hearing which focused on advanced safety technology applications for commercial vehicles. Testimony was received from representatives of the U.S. government, the truck and bus industry, technology manufacturers, public advocacy groups, and foreign governments that have already implemented some of the advanced technologies.
- September 1999—Adopted a report on bus crashworthiness as a result of crucial safety questions regarding bus safety. The Board's report on bus crashworthiness addressed: school bus occupant protection systems; the effectiveness of Federal motorcoach bus crashworthiness standards and occupant protection systems; discrepancies between different Federal bus definitions; deficiencies in the National Highway Traffic Safety Administration's Fatality Analysis Reporting Systems bus ejection data; and the lack of school bus injury data.
- October 1999—A third hearing will be held to review the highway transportation safety aspects of the North American Free Trade Agreement (NAFTA).
- January 2000—A fourth hearing will be held to address issues related to the effectiveness of the Commercial Driver's License (CDL) program that are being examined as a result of recent highway accidents.
- Spring 2000—The Board anticipates completion of a special study that will explore intrastate truck operations and their impact on highway safety.

I would now like to comment on three issues addressed in S. 1501: improvements to the CDL program; improved data collection; and protection of data obtained from event reorders.

Improvements in the CDL Program

According to the American Trucking Association, the trucking industry employs 9.5 million individuals and includes more than 442,000 companies which operate more than 4 million medium and heavy trucks and haul about 6.5 billion tons of

freight.Those same trucks travel more than 166 billion miles a year, and are driven by over 8 million CDL holders.

A safety recommendation asking the Secretary of Transportation to develop a national driver license program was first issued by the Safety Board on July 14, 1986, following accidents involving heavy trucks that occurred in October 1982 in Lemoore, California, and July 1984 near Ashdown, Arkansas. Although we have been a strong supporter of the CDL, there are still drivers who should not be behind the wheel of a heavy truck. For example, the Safety Board has recently investigated two tragic motorcoach accidents in which the bus drivers were impaired from either over-the-counter medications or elicit drugs.

On June 20, 1998, near Burnt Cabins, Pennsylvania, a Greyhound bus on a scheduled trip from New York City to Pittsburgh, Pennsylvania, traveled off the right side of the roadway into an emergency parking area where it struck the back of a parked tractor-semitrailer, which was pushed forward and struck the left side of another parked tractor-semitrailer. This accident resulted in the death of 6 bus occupants. Post-accident toxicological testing of the bus driver revealed that an antihistamine, a decongestant, and Tylenol were present in his system. The Board's investigation is examining whether these over-the-counter medications could have resulted in the bus driver's sleepiness.

On May 9, 1999, in New Orleans, Louisiana, a tour bus going from La Place, Louisiana, to Bay St. Louis, Mississippi, departed the right side of the highway, struck the terminal end of a break-away cable guardrail, traveled along a grassy right-of-way, vaulted over a depressed golf cart walkway, collided with the far side of the embankment, and slid forward, upright. The accident resulted in 22 fatalities. The bus driver died in August 1999. At the time of the accident, the driver was under treatment for kidney failure and congestive heart failure, and he was undergoing hemodialysis three times a week. Post-accident toxicological tests revealed marijuana and an over-the-counter antihistamine and decongestant in the bus driver's system.

Mr. Chairman, if there had been a national driver registry of medical providers before the Louisiana bus accident, the driver would not have been licensed because of his medical history, and the 22 passengers may be alive today. We believe the proposal for a national driver registry of medical providers, as proposed in S. 1501, would go a long way to assuring the American public that CDL holders are, and will remain, medically qualified to operate large commercial vehicles on the nations highways.

Improvements in Data Collection

The second item we would like to discuss is the need to improve data collection. Poor accident data can preclude the ability to identify transportation safety concerns in a timely manner, lead to poor decisionmaking, and often result in inappropriate utilization of resources.

In November 1998, the Safety Board completed a special investigation of transit bus safety that concluded that the accident data maintained by many Department of Transportation (DOT) administrations, including the Federal Highway Administration (FHWA), do not accurately portray the industry's safety record due to the limitations of each agency's database. There is currently little uniformity in the data collected by the 50 states following highway accidents. As a result, even though the states transmit their data to Federal government agencies, comparative analysis of the causes of accidents between states, or nationwide, is nearly impossible because there are few common data points upon which to base that analysis.

We believe that the direction provided in S. 1501 will improve the quality of commercial vehicle crash data. This will contribute to the overall quality of the information to be gleaned from a database, and will thus lead to better decisions and help prevent the allocation of scant resources to projects that may not bring about improvements.

Protection of Data Obtained from Event Recorders

The third item we would like to discuss is the need for protection of data obtained from event recorders. The need for on-board recording devices has been an issue on the Board's Most Wanted list since May 1997. These devices can be used not only in accident investigation and reconstruction, but also by the trucking industry to identify safety trends, develop corrective actions, and can lead to operating efficiencies.

In May, the Safety Board held an international symposium focusing on recorder devices for vehicles in all modes of transportation. The most frequent concerns raised by stakeholders attending the symposium were the issues of privacy and access to event recorder data.

The Safety Board's request for reauthorization, pending before this Committee, addresses this issue and includes a section regarding withholding of voice and video recorder information for all modes of transportation from public disclosure, comparable to the protections provided for cockpit voice recorders. Industry representatives have advised they are reluctant to use on-board recorders because of privacy issues. Therefore, we believe the lack of statutory protection would limit the acceptance of new recorder technology. However, because current driver paper logs may not be reliable, the Safety Board has issued two recommendations that event recorders be used as a means to electronically monitor commercial vehicle operators' compliance with hours-of-service regulations.

In addition, the proposed Motor Carrier Safety Administration should embrace other technology that can improve safety. Collision avoidance systems, electronic braking systems, and intelligent transportation systems, are available today and can be used to prevent crashes and save lives.

Conclusion

If we are to improve highway safety, it is clear that effective leadership is needed, along with a desire to be more proactive and a willingness to be innovative—to try new approaches to solving not only the problems at hand, but those we know loom in the future. We believe that S. 1501 will establish a good framework for the DOT and the proposed Motor Carrier Safety Administration to begin the process of bringing about meaningful change to improve motor carrier oversight.

That completes the Board's statement on this issue, and we appreciate the opportunity to provide our views for the Committee's information.

PREPARED STATEMENT OF TODD SPENCER, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

INTRODUCTION

The Owner-Operator Independent Drivers Association is an association of over 45,000 small business truckers who own and operate their own trucks. Our members have a unique perspective on motor carrier safety because they represent the only trucking companies in which the business decisions are made by the people who drive the truck. Their ability to make their truck payments, sustain their business, support their families, and protect their own safety rests entirely upon the safe operation of their vehicles.

OOIDA would like to thank Senator McCain and this committee for introducing and considering this important piece of legislation, S. 1501, the Motor Carrier Safety Improvement Act of 1999. Establishing one strong federal authority that can act decisively on trucking issues is long overdue. The OOIDA Board of Directors endorsed the idea of a separate modal administration for trucking in 1998. In fact, we supported Senator Hollings's legislation to do the same thing over ten years ago.

In addition to the creation of a Motor Carrier Safety Administration, there are several important aspects of this legislation. Foremost is the mandate to improve data collection on the causes of commercial motor vehicle crashes. Knowing what really causes truck crashes is the only way in which the federal government can develop effective safety regulations. Currently, the majority of truck regulation is based, at best, on incomplete data and anecdotal evidence. More accurate data on the causes of accidents will ensure that regulations that burden and impose costs on the industry actually improve safety.

OOIDA also applauds the formation of a Motor Vehicle Safety Advisory Committee. Providing a forum for all parties interested in the motor carrier industry to discuss pertinent issues with the enforcement community is a very useful idea. It can help to broaden the public and industry's understanding of enforcement activities and better focus administration efforts to address potential safety problems before they arise.

There are a few issues, however, that are either part of the legislation or have been proposed by others, that cause OOIDA concern. These are outlined below.

NEW CARRIER ENTRANCE REQUIREMENTS

There has been significant testimony regarding a proposal to increase the requirements for new entrants into the motor carrier industry. This proposal is based on the suggestion that new motor carriers have a higher crash rate than do more experienced carriers. This claim is not borne out by either the Federal Highway Administration's own research or the experience of our members. OOIDA would like to suggest that the more important measure of the safe operation of commercial motor

vehicles is the experience of the individual driver. A new motor carrier whose drivers have eighteen years of commendable safe operation on our highways (the average length of time our members have driven) are likely to have safer operations than the seventeen year-old older motor carrier from Missouri who earlier this year attempted to bring in inexperienced workers from Barbados to be trained to drive a truck within a few months of classes. No motor carrier is any safer than its worst driver, and no amount of enforcement can offset this fact.

I have submitted with this written testimony a copy of a study published in February of this year by the Federal Highway Administration that considered the crash rate of motor carriers and the age of motor carriers. You will notice in Figures 5 through 8, under the heading "Safety Compliance Violation Rate Analysis"that there is evidence that older motor carriers have significantly higher compliance rates with the safety regulations. We may reasonably conclude that the longer a motor carrier has been in business, the better that motor carrier understands and complies with the safety regulations. But can we also conclude that these motor carriers operate more safely? The Federal Highway Administration's own data does not support this conclusion.

An examination of Figures 1 through 4 shows that the length of time a motor carrier has been in business has very little effect on a motor carrier's crash rate. In none of these figures are newer motor carriers the group with the highest crash rate. Neither do these figures show a measurable correlation between the age of the motor carrier and the motor carriers crash rate. (Nor, interestingly, does it show a correlation between compliance with regulations and the crash rate.)

We urge the Committee to consider this evidence and refrain from imposing additional regulatory burdens on small business truckers that will have no measurable effect on reducing the number of truck crashes.

OOIDA believes that the most significant factor in the safe operation of a motor carrier is the experience and knowledge of its drivers. Inexperienced drivers are more of a threat to highway safety than experienced drivers no matter how old the motor carrier for whom they drive.

We advocate tougher requirements for individuals to get their Commercial Driver's License ("CDL"). Currently, there is no requirement that drivers go through any comprehensive training before getting their CDL. They only have to pass a written test and often times no more than a parking lot driving test. This is simply no substitute for on-the-road experience. OOIDA advocates that there be a graduated CDL, and that new drivers be required to spend a significant time, perhaps a year, driving with an experienced driver. At no time should a CDL be granted to anybody under twenty-one years of age. Only then will a new driver be prepared to safety operate a commercial motor vehicle alone over different terrain, in different traffic patterns, and through a variety of weather conditions. Under such conditions a new driver will also learn from a veteran driver the routine of inspecting and maintaining a safe commercial motor vehicle.

The goal of safety legislation is to reduce the number of accidents that occur. It is important that the federal government's actions in this regard not be misled to create ineffective regulations that burden small businesses. Increasing the entry barriers to new motor carriers, rather than increasing the entrant requirement for new drivers, would be just such an effort.

Efforts of existing for-hire and private motor carriers and their associations to refocus limited enforcement resources toward, for the most part, very small businesses who comprise the majority of new entrants and away from existing large carriers should be highly suspect. Past efforts at narrowing the focus of enforcement efforts resulted in a tremendous waste of resources and left relatively untouched a significant percentage of large motor carriers who control many trucks and drivers.

"BLACK BOX" RECORDERS IN TRUCKS

OOIDA has a great concern for the proposal by some to put on board recording devices in trucks. Owner-operators believe that these devices are incapable of doing the job for which they are being prescribed, they are concerned for their privacy, and most disturbingly, they report that some trucking companies that require monitoring devices in their vehicles now use them to push drivers to work longer hours! OOIDA has heard estimates that on board recording devices may cost between two to four thousand dollars per vehicle. This is an enormous cost for a driver with a family and house who is lucky to net $35,000 a year. If owner-operators are to be required to bear this cost, they should be assured that they will be paid back in a measurable safety return.

The critical problem with black boxes is that they could never accomplish the purpose for which they are offered, to monitor a driver's compliance with the federal

hours of service regulations. The goal of hours of service regulations is to ensure that fatigued drivers are not operating a commercial motor vehicle. The rules proscribe the number of hours at a time that a driver may be "on duty." The hours of service regulations define "on duty time" to include more activities than just driving the truck:

TITLE 49—TRANSPORTATION DEPARTMENT OF TRANSPORTATION PART 395—HOURS OF SERVICE OF DRIVERS-SEC. 395.2 DEFINITIONS.

Driving time means all time spent at the driving controls of a commercial motor vehicle in operation.

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. On duty time shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
(3) All driving time as defined in the term driving time;
(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;
(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow- up testing required by part 382 of this subchapter when directed by a motor carrier;
(8) Performing any other work in the capacity, employ, or service of a motor carrier; and
(9) Performing any compensated work for a person who is not a motor carrier.

It makes sense that "on duty time" include all of these activities that contribute to a driver's fatigue. On board recorders may be able to measure the activity of a truck, but they cannot measure the activity of a driver. Black boxes would only record the activity described in Number 3 of the regulation's definition of "on duty time," and then only if the truck is operated by a single driver and not a team. This is, at best, a gross underestimation of the time a driver spends in activities that contribute to a driver's fatigue. The Truckload Carriers Association released a study this year that found that drivers of dry vans (tractors plus non-refrigerated trailers) spend an average of 33 hours a week waiting at loading docks to be loaded and unloaded. During this waiting, drivers must remain alert to preserve their turn at the docks. None of this time is recorded by on-board recording devices. Neither is the time a driver spends physically loading and unloading his vehicle. This activity can have a significant effect on a driver's tiredness, but would be unrecorded by the black box.

OOIDA believes that although there are many forms of new technology that exist to record the movement and use of a truck, these technologies simply cannot measure the fatigue of a driver and are plainly incapable of measuring a driver's "on-duty" time as defined by the regulations. OOIDA has heard no proposal that shows how a partial recording of a driver activities would be helpful to enforcing the broadly defined hours of service regulations.

Even if a partial accounting of a driver's on-duty time by measuring the activity of the truck were useful, there remain many unanswered questions as to whether it could do this job accurately. Would these recorders measure the number of miles driven? If so, how could it tell if a driver has spent long hours in heavy traffic congestion while traveling very few miles? Perhaps it could also measure the length of time that a truck is running. If so, how will it tell that the driver left the truck running to heat or cool his sleeper birth while he gets off-duty rest? It is unlikely that these devices will be made so that the driver can turn them on and off. The

specific details on how these recording devices would work have been conspicuously absent from the proposals of those who have promoted their use.

Most importantly, none of these devices can tell when a driver is tired. Drivers should have the flexibility to pull over, without penalty, any time they feel fatigued. The devices that have been employed by some trucking companies have the purpose of allowing the company to monitor the truck's use and location. If a company can monitor a driver's movement, and knows when a driver has stopped even though he has more "on-duty" time left in the day, it will have the ability to push the driver to keep driving even though he has determined he needs rest. Indeed we have received reports from individual drivers that this is the manner in which some companies are using monitoring devices.

We appreciate the initiative Senator McCain has taken to propose privacy protections for information gathered by any on-board recording devices. An owner-operator's vehicle is not just his workplace, but his home away from home for as many as 300 days a year (and sometimes more). In recent months the press has reported that General Motors has begun to put recording devices in several of its new cars. The public's negative reaction against this uninvited collection of information (even by non-governmental parties) is an example of the same concern that truck drivers have for their privacy. Any time the government invades personal privacy rights it must balance the invasion of those individual rights with the public interest. We need to know precisely what kind of data will be collected and define specifically how this information will be used before we can perform this balancing test. Only then can we be sure that the public's safety needs are met with minimal intrusion into the individual's privacy.

The proposal for on-board recorders needs much more consideration and definition before new laws are considered that would impose costly, privacy-compromising technology into commercial motor vehicles.

JURISDICTION OF A THE NEW MOTOR CARRIER SAFETY ADMINISTRATION

OOIDA would like to recommend that a new Motor Carrier safety administration be given oversight of all areas of motor carrier regulation currently assigned to the Office of Motor Carriers and Highway Safety ("OMCHS") (and not otherwise specifically assigned in the S. 1501). This would strengthen that office's ability to enforce safety regulations, and simplify the federal bureaucracy with the authority to deal with trucking issues. Although S. 1501 allows the Secretary to give and take away that additional oversight, OOIDA believes that this authority should be mandated to the new Motor Carrier Safety Administration for it to be effective.

For example, Chapter 141 of Title 49 (49 U.S.C. 140101 *et seq.*) provides for DOT oversight of a variety of motor carrier responsibilities including those to submit financial and safety reports. Additionally, a fully empowered motor carrier safety administration would be more effective if it had jurisdiction over motor carrier and transportation broker registration. Currently, S. 1501 does not give the new administration authority to give and take away the registration of a motor carrier. (See 49 U.S.C. 12901 *et seq.*). This ability to shut down a carrier by taking away its authority is the most potent tool a safety regulator could wield in enforcing safety regulations. In fact, the program that the OMCHS presently uses to identify motor carriers for compliance reviews only identifies motor carriers who have registered. A motor carrier can avoid compliance reviews by not registering with the DOT!

Equally important to protect the public is the responsibility to ensure that a motor earner has sufficient insurance coverage (See 49 U.S.C. 13901). Ensuring that motor carriers have the financial security to compensate the victims in truck crashes is an important component of public safety that should also be under the purview of the new motor carrier safety administration. The OMCHS currently has the responsibility to enforce motor carrier insurance requirements, but it does very little to make sure that these requirements are followed. Should the OMCHS discover that a motor carrier fails to carry the proper insurance, it does nothing more than send a warning letter giving the motor carrier thirty days to get proper coverage.

OMCHS currently also has oversight responsibility for the similar registration and insurance requirements of transportation brokers. These regulations are also important to the public's protection, but are just as poorly enforced by the OMCHS. It is a certainty that a trucking company or broker that fails to register and fails to carry sufficient insurance is just as likely to not comply with the safety regulations. The authority given a new Motor Carrier Safety Administration should encompass the authority to institute meaningful enforcement of these regulations.

The need for comprehensive oversight of motor carriers by the new agency is made more dramatic by the challenges it will face as the borders open to the North American Free Trade Agreement ("NAFTA"). Currently there is no system under

which an inspector can truly know whether a foreign truck is covered by adequate insurance. The driver may show what purports to be a certificate, but the inspector has no way of verifying that it is legitimate because no filing is required with the U.S. government. Foreign carriers who would like to operate in the U.S. should be required to comply with the same registration and filing requirement as U.S. carriers so that U.S. inspectors have the same ability to properly inspect all commercial motor vehicles no matter where they are from.

Members of the subcommittee have commented that authority over the many issues that arise with the opening of the border to foreign trucks rests with several different federal agencies. As with the need for all motor carrier oversight to be consolidated into one federal agency, OOIDA agrees with the apparent consensus of the Subcommittee that the federal authorities that oversee motor carrier safety, customs, cabotage should be contained into one organization with comprehensive oversight.

With no clear mandate that the new motor carrier safety administration has authority over all motor carrier issues, S. 1501 leaves a significant amount of motor carrier oversight in bureaucratic limbo. OOIDA believes that an administration with unquestionable responsibility for all motor carrier issues will have greater success in achieving its safety goals than this legislation gives it.

CONCLUSION

OOIDA compliments the Senate on its work to establish a Motor Carrier Safety Administration, and appreciates the opportunity to submit this written testimony to the Commerce Committee's Surface Transportation and Merchant Marine Subcommittee. Thank you for your consideration of these remarks.

ANALYSIS BRIEF

The mission of the Office of Motor Carrier and Highway Safety is to develop and promote, in coordination with other Departmental modes, data-driven, analysis-based, and innovative programs to achieve continuous safety improvements in the Nation's highway system, intermodal connections, and motor carrier operations. The Office of Data Analysis and Information Systems provides analytic and statistical support for all FHWA motor carrier and highway safety infrastructure program development and evaluation.

The Analysis Division analyzes motor carrier and highway safety crash trends, monitors patterns in motor carrier inspection rates, evaluates program effectiveness in reducing crashes, and researches crash causation and exposure data. It also conducts cost/benefit analyses and regulatory flexibility analyses to address new or revised regulations and policies, and coordinates information and data analysis with information and analysis specialists in the resource centers.

NEW ENTRANT SAFETY RESEARCH

Deregulation of the motor carrier industry combined with a period of sustained economic growth has resulted in sizeable increases in the number of new motor carriers entering interstate operation. Discussions with key stakeholders in the motor carrier safety environment and previous academic studies have suggested that the safety performance and regulatory compliance of these "new entrants" may be significantly worse than the performance and compliance of more experienced carriers.

INTRODUCTION

Several years ago, the Office of Motor Carrier and Highway Safety (OMCHS) undertook a multi-year research effort to define an improved process for motor carrier safety fitness determination. A critical aspect of this research involved gathering and integrating the ideas, concerns, and suggestions of numerous motor carrier safety stakeholders (individuals and organizations that are affected by and/or have an interest in the process).

A principal source of this input was a series of eight nationwide meetings. The charac-teristics of an ideal process were determined from these meetings, written comments, interviews, and observations. The limitations of the current process were identified, and an improved, comprehensive, integrated approach to determining motor carrier safety fitness was formulated. The improved process consisted of three components: SafeStat, an automated, data-driven analysis system; a Progressive Compliance Assurance Program; and the New Entrant Program.

For the purpose of this research, a "new entrant" was defined as a recently formed carrier initiating interstate operations (or intrastate hazardous materials or pas-

senger operations), or a previously operating carrier initiating interstate operations (or intrastate hazardous materials or passenger operations) for the first time.

PURPOSE

Key motor carrier safety stakeholders and researchers reviewed the current safety fitness determination process and concluded that one of its most conspicuous limitations was the lack of a prequalification program and monitoring for new motor carriers. Currently, motor carriers can begin interstate operations simply by registering with the U.S. Department of Transportation (USDOT) and obtaining the required insurance. In contrast, in other industries performing commercial operations, particular-ly in the transportation sector, a new business must satisfy certain safety requirements before it can begin.

A second and more compelling argument in favor of a new entrant program relates to a study performed in 1988 by Professors Corsi (of the University of Maryland Business School) and Fanara (of the Howard University School of Business and Public Administration) that showed that new motor carriers had higher crash rates and lower rates of compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) than carriers of record (i.e., established carriers). The authors identified the existence of what they described as a *safety learning* curve for new entrants. That is, new carriers exhibit higher compliance rates and improved performance (i.e., lower crash rates) as they accumulate experience with safety management policies and procedures.

This investigation examines the need for and the possible elements of a program to improve the safety performance and regulatory compliance of new entrants. It focuses specifically on regulatory compliance and crash rates as they relate to a motor carrier's time in interstate operations.

METHODOLOGY

This study revisited the 1988 Corsi-Fanara analysis, this time using the markedly improved safety performance data now available in the Motor Carrier Management Information System (MCMIS), and expanding the coverage to include all carriers, not just the ICC-regulated (for-hire) carriers included in the original study.

Researchers performed two analyses to confirm the existence of a safety performance (i.e., crash rate) learning curve, and one study to confirm the existence of a safety regulation compliance learning curve. In all three analyses, the age of the carrier was calculated from the date that the carrier's USDOT registration Form MCS-150 information was entered into the MCMIS Census File. This date was used as the best available approximation of the date that the carrier began interstate operations.

FINDINGS

The *Compliance Review Crash Rate Analysis* used data from compliance reviews that were conducted between April 1993 (when the USDOT definition of a crash changed) and June 1997 (the latest data available at the time this study was conducted). The data were broken out according to the age of the carrier at the time of the review. Weighted mean, or overall, crash rates [recordable crashes per million vehicle miles traveled (VMT) weighted by VMT] were calculated for each age group. This calculation is equivalent to calculating the aggregate crash rate in each group, i.e., dividing the total crashes in the group by the total VMT in the group and multiplying by 1 million.

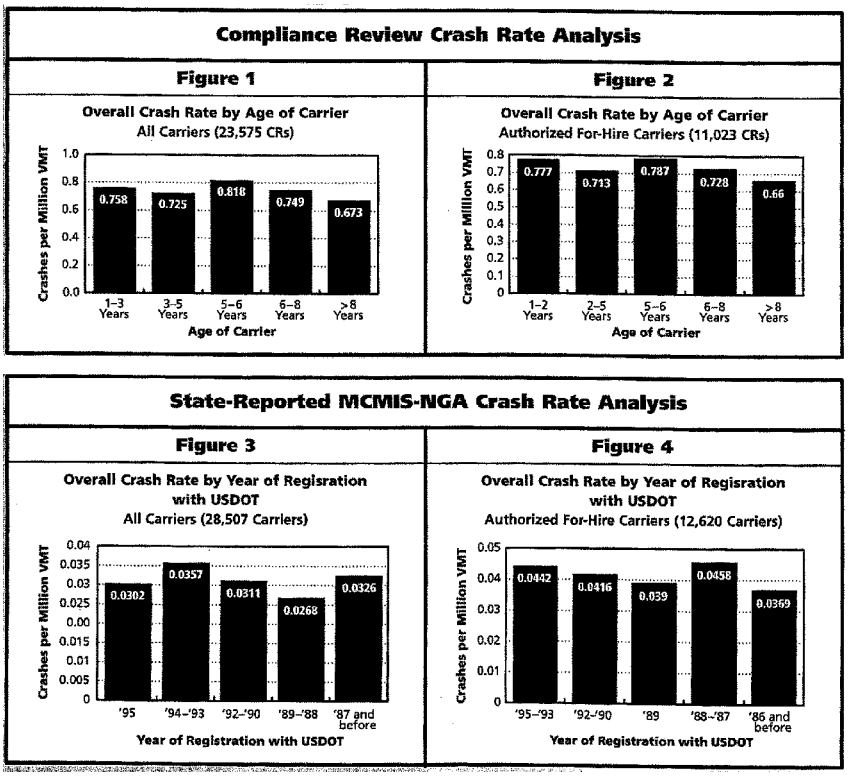
The *State-Reported MCMIS-NGA Crash Rate Analysis* used calendar year 1996 MCMIS-NGA (National Governors' Association) crash data from the MCMIS Crash File and power unit data from the MCMIS Census File to calculate crash rates by age of carrier. The analysis included only carriers with non-zero power unit values that had received compliance or safety reviews since April 1, 1993. Consequently, the power unit information was more current than theoriginal Form MCS-150 information.

The data were broken out into groups, based on the year the carrier registered with the USDOT, i.e., the year the carrier's Form MCS-150 information was entered into the MCMIS Census File. Weighted mean, or overall, crash rates (MCMIS-NGA crashes per power unit weighted by power units) were calculated for all age groups. This calculation is equivalent to calculating the aggregate crash rate in each group, i.e., dividing the total number of MCMIS-NGA crashes in the group by the total number power units in the group.

Each analysis was first performed using data for all carriers. The analyses were then repeated using data only for authorized for-hire carriers, as in the Corsi-

Fanara Study, to determine if the learning curve effect holds only for that carrier classification.

Although the most experienced carriers usually had the lowest overall crash rate, the results of the analyses as shown in *Figures 1-4* do not indicate the presence of a safety learning curve. The declines in crash rates from the least experienced carriers to the most experienced carriers exhibited patterns of variability, rather than the steady progressions that are characteristic of learning curves.



SAFETY COMPLIANCE VIOLATION RATE ANALYSIS

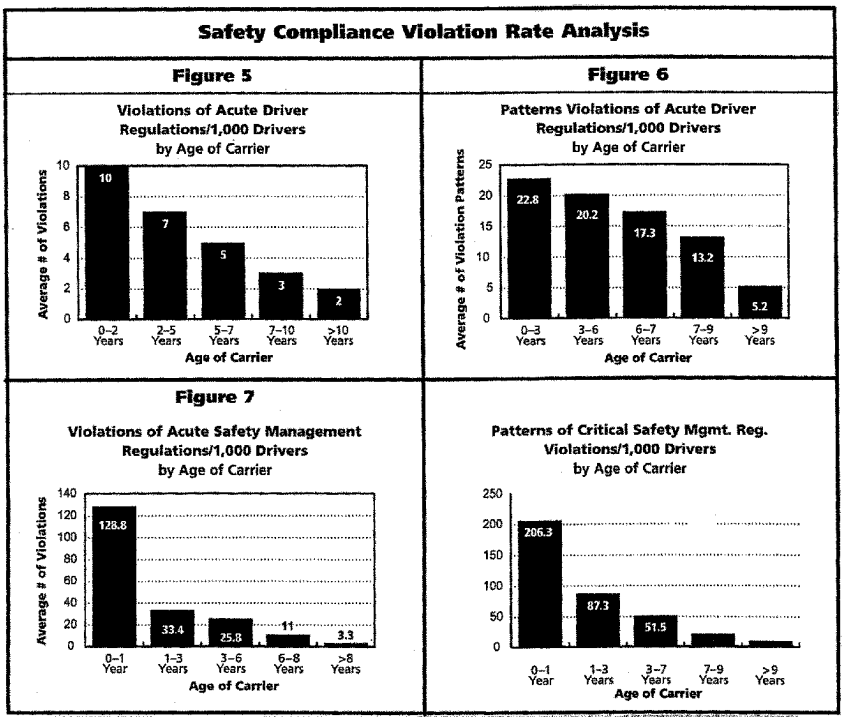
To examine the existence of a safety regulation compliance learning curve, a study was performed using data on violations of acute and critical regulations from compliance reviews (CRs). The study used data from 23,016 CRs that were conducted between October 1, 1994 (when acute/critical regulations were first used to evaluate the five regulatory factors in a CR) and June 2, 1997 (the latest data available at the time this study was conducted). The data were broken out according to the age of the carrier at the time of the review. The age of the carrier was calculated from the date that the carrier's Form MCS-150 information was entered into the MCMIS Census File. The data were broken out into 11 groups, based on the age of the carrier at the time of time of the review:

(X = Age of carrier at review)

0<X< 1 Less than or equal to 1 year
1<X< 2 Greater than 1 year and less than or equal to 2 years
9<X<10 Greater than 9 years and less than or equal to 10 years
10<X Greater than 10 years

The data were also broken out by SafeStat Safety Evaluation Area (SEA), either Driver or Safety Management. For each SEA/age group combination, the average

number of violations of acute regulations per thousand interstate drivers and the average number of patterns of violations of critical regulations per thousand interstate drivers were calculated. The results for the Driver SEA are shown in *Figures 5 and 6.* The results for the Safety Management SEA are shown in *Figures 7 and 8.*



The results show a substantial age-related pattern of compliance, i.e., the numbers of violations of acute regulations and patterns of violations of critical regulations in both SEAs were substantially higher for new entrants than for more experienced carriers. Furthermore, the rates declined in steady progression across age groups, showing clear evidence of a safety regulation compliance learning curve.

FURTHER RESEARCH

What can be done to assist new entrants in their efforts to improve their compliance with the FMCSRs? OMCHS is researching the development of a *New Entrant Program,* which would consist of two stages: prequalification and qualification. In the prequalification stage, a new carrier would receive educational material and then apply for both a USDOT number and "prequalified" status. The application would include an examination to measure the carrier's knowledge of the FMCSRs and applicable Hazardous Materials Regulations. Successful completion of these requirements would result in the issuance of a USDOT number and eligibility for the qualification stage.

In the qualification stage, the carrier would be monitored by SafeStat, using safety performance data from roadside inspections and crash reports. The carrier would also be subject to more intense surveillance than established carriers. After two years, a prequalified new entrant would be considered to be an established carrier. In addition, whenever sufficient safety performance data have been collected and analyzed by SafeStat, the carrier would receive an assessment of its safety status.

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