S. HRG. 112–345

MAKING OUR ROADS SAFER: REAUTHORIZATION OF THE MOTOR CARRIER SAFETY PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 21, 2011

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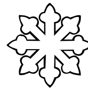

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MAKING OUR ROADS SAFER: REAUTHORIZATION OF THE MOTOR CARRIER SAFETY PROGRAMS

THURSDAY, JULY 21, 2011

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

The Subcommittee met, pursuant to notice, at 2:34 p.m. in room SR–253, Russell Senate Office Building, Hon. Frank R. Lautenberg, Chairman of the Subcommittee, presiding.

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

Senator LAUTENBERG. Thank you. We're going to bring this hearing to order.

I welcome everyone to today's hearing on reauthorizing the FMCSA—Federal Motor Carrier Safety Administration, which helps protect the public by making sure that commercial buses and trucks share our roads safely.

In 2009, trucking companies transported more than 16 billion tons of freight, certainly making trucks a major part of our economy. Intercity buses represent an important mode of transportation. Motorcoaches provided more than $720 million in passenger trips in 2009. And while most drivers and companies put safety first, crashes are still happening, and when they do, the consequences can be devastating.

In 2009, 70 people a week, on average, lost their lives; 3,600 people died in truck and bus-related accidents. Just this past weekend, a tour bus headed from Washington, D.C. to Niagara Falls crashed into a wood median in New York, killing two and injuring 35 people.

This has been a bad year, one of the worst, for bus crashes, with 7 major crashes that have killed 27 people. And the loss of these lives is unacceptable, and we've got to do something to stop that from occurring, and we've got to do more to help FMCSA protect Americans from dangers on our roadways.

And that's why I'm soon going to introduce a bill to strengthen safety regulations by making sure that only the safest motor carriers and drivers enter the industry, improving the laws and the regulations that govern drivers and vehicles, and giving the government the tools it needs to take unsafe drivers and carriers out

of the industry. My bill would require drivers to receive more training before they're granted a license to drive a truck or bus, and it would require more companies to demonstrate that their drivers understand the rules before they hit the road.

In addition, this bill would keep unsafe drivers from getting behind the wheel by requiring buses and trucks to have electronic onboard recorders to do better monitoring, and manage the amount of time that drivers spend on duty. We must not permit unqualified drivers, drivers that are not fully trained, qualified, and alert. They should not be on the road.

And, finally, my bill would also give the FMCSA the tools it needs to kick out bad actors, and to identify and remove so-called reincarnated carriers that change their companies' names but do nothing to improve their safety.

The bottom line is that trucks and buses remain essential parts of our transportation network, but we must work harder to make sure that safety never takes a back seat.

And I look forward to hearing from today's witnesses about how we can work together to make our roads safer, not only for the drivers and the passengers aboard our trucks and buses, but for all the travelers who share the road with them.

And, with that, I call on Senator Ayotte. Did I pronounce it right?

Senator AYOTTE. Ayotte. But, it's——

Senator LAUTENBERG. Ayotte.

Senator AYOTTE. It was, yes. Thank you.

Senator LAUTENBERG. I didn't want to do it, well, the more we meet like this, the more familiar I'll become.

Senator AYOTTE. Exactly. Thank you, Chairman.

Senator LAUTENBERG. Please.

Senator AYOTTE. I appreciate it.

Senator LAUTENBERG. If you would.

Senator AYOTTE. And, I think the Ranking Member is here, so I would defer to the Ranking Member.

Senator LAUTENBERG. In his own—present. All right.

Senator AYOTTE. Yes.

Senator LAUTENBERG. That's respect.

[Laughter.]

Senator LAUTENBERG. Thank you.

Ranking Member, Mr. Wicker.

Senator WICKER. Are we in the——

Senator LAUTENBERG. We're——

Senator WICKER.—opening statement phase?

Senator LAUTENBERG. Yes. We haven't heard yet from the witnesses. Yes.

STATEMENT OF HON. ROGER F. WICKER, U.S. SENATOR FROM MISSISSIPPI

Senator WICKER. Well, thank you very much. And I'm, I had sent word that I'd be a few moments late, but expected the hearing to go ahead. I don't know if it's respect on the part of Senator Ayotte, but I'll take it, if it, indeed, amounted to that.

Thank you for calling this hearing today, Senator.

This is my first hearing as Ranking Member of this subcommittee, and I look forward to examining a very important issue involving the safety of the Nation's trucking industry.

The trucking industry is vital to the health of the American economy. According to the American Trucking Association, there are 3 million large trucks on the roads of the United States, and the industry employs 8.9 million workers.

Trucks carry 69 percent of the total U.S. freight tonnage, and commercial trucking represents a staggering $645 billion industry. Without a well-functioning trucking industry, commerce in this country would suffer severe repercussions.

The trucking industry is not only large, it is very diverse. Trucking companies range from multi-billion dollar international companies like FedEx and UPS, to small independently-owned businesses that may own only a single truck. New rules can have dramatically different impacts on each. And this dichotomy is important to bear in mind when we make changes to the regulatory framework. To that end, I'm glad we have representatives from both ends of the trucking industry spectrum to hear from today.

Truck safety is important to everyone, because we all share the same roads. While we can always do more to prevent accidents, the trucking industry safety record is strong, and it continues to improve, with the incidents of fatalities falling to 1.64 per 100 million miles, as opposed to more than 4.5 per 100 million miles in the 1970s—a major achievement.

The Federal Motor Carrier Safety Administration, which was created only a little more than a decade ago, has certainly helped keep the focus on safety, and extended the strong safety record. The Federal Government has an important and necessary role to play when it comes to promoting transportation safety, and truck safety deserves our attention.

However, Congress must take great care when creating new regulatory frameworks to allow also for economic growth and productivity. Make no mistake—our actions as policymakers are felt across the economy, and that is why it is essential that we strike an appropriate balance between these dual goals.

So, Chairman Lautenberg, again, thank you for holding this hearing, and I look forward to hearing from our distinguished panel.

Senator LAUTENBERG. Thank you.

Senator Ayotte.

STATEMENT OF HON. KELLY AYOTTE, U.S. SENATOR FROM NEW HAMPSHIRE

Senator AYOTTE. I want to thank the Chairman, and certainly, the Ranking Member. It was out of respect, I want you to know.

I appreciate the witnesses being here today. This is a very important topic, and certainly, motor carrier safety is extremely important to my constituents, and all of us.

We have at least 3,000 small trucking businesses operating across New England, and I look forward to hearing, particularly, from the small truck operators today, as their expertise is critical when we look at Federal safety standards. I appreciate what the Ranking Member said in terms of the impact of regulations being

different based on the size of the carrier. And, representing over 93 percent of the industry, small business motor carriers have a vested interest in highway safety. Any safety-related incidents could cost them not only their lives, but their entire livelihood, of course. And many of the Federal safety regulations, while well-intentioned, have been much more burdensome on the small trucking community.

And an estimated 73 percent of the value of all freight shipped throughout our country is transported by trucks, and these trucks service 80 percent of our Nation's communities. Economic strain on this delivery system can affect our entire economy, and so this is why it's so important that we get the balance correct in terms of regulations that we pass.

I also am concerned about a couple of proposals that have been brought forward. One of them would mandate both speed limiters and electronic onboard recorders. I think that there are issues that have to be addressed in terms of speed limiters having the potential to, in some instances, decrease safety on the road by taking away control from the driver, and also preventing the safe flow of traffic, in some instances. Electronic onboard recorders may cost a significant amount of money to install, and questions remain in terms of whether—in some instances—they provide more safety than traditional written records. I think these are very important issues. Before we mandate these types of products from Congress, these issues must be addressed.

I'm also concerned about the proposed changes to the hours of service rules. Under current rules, truck-related injuries and fatalities have dropped more than 30 percent, to the lowest levels in recorded history. The proposed changes in the hours of service rules, in my view, fail the Federal Motor Carrier Safety Administration's own cost-benefit analysis, and could result in significant productivity loss to the tune of $2 billion annually, according to the Department of Transportation.

So, what I'm interested in hearing about today is, we all certainly support efforts for safety and responsibility, but we need to do so in a way that also allows a very important industry, the motor carrier industry, to be able to thrive, and particularly, that we don't put an undue burden on our small businesses, which are very, very important in my state and, I know, across the country.

So, thank you. I want to thank all the witnesses for being here today, and I look forward to hearing from you.

Senator LAUTENBERG. Thank you.

We'll go side to side.

So, Senator Pryor.

STATEMENT OF HON. MARK PRYOR, U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman, and thank you for holding this hearing.

I would like to say that this is a very important and timely hearing here in Congress, to try to work on a multi-year surface transportation reauthorization bill. I look forward to reviewing the FMCSA and the industry's efforts to improve commercial motor ve-

hicle safety, the NTSB recommendations, and how states have assisted in motor carrier safety efforts.

So, I'm just interested, and, all the things that we have talked about—we've been talking about a database for drug testing, which we think would be important, an important improvement, and we have some other ideas.

So, I look forward to being part of this dialogue, Mr. Chairman. Thank you for doing this hearing today.

Senator LAUTENBERG. Thank you.

Senator Boozman.

STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS

Senator BOOZMAN. Thank you, Mr. Chairman and Senator Wicker, for bringing us this important hearing today.

I'd also like to thank our witnesses for being here and testifying.

Motor carrier safety is an extremely important issue for Arkansas and for the Nation as a whole. Arkansas is home to several large trucking companies, and also many small owner-operators.

One of these owner-operators, Michael Caswell, of Centerton, Arkansas, was recently recognized by one of the groups testifying today—the Owners-Operators Independent Drivers Association—for 18 years of safe, accident-free driving of a commercial tractor-trailer. And so, I'd like to extend my congratulations, and I know Senator Pryor also would like to extend his congratulations for this feat.

Senator Lautenberg, you and I listened to testimony this morning at the EPW committee hearing on highway funding and reauthorization issues, and I look forward to listening again this afternoon as we talk about reauthorization of the Motor Carrier Safety Program.

I yield back. Thank you.

Senator LAUTENBERG. Thank you very much.

And now we turn to our witnesses. We have a distinguished group of witnesses here.

And, now, Ms. Ferro, we'll call on you first.

STATEMENT OF HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Ms. FERRO. Thank you, Mr. Chairman, Ranking Member Wicker, and members of the Committee, the Subcommittee. Thank you very much for inviting me to speak today.

Eleven years ago, some of you noted, when Congress established the Federal Motor Carrier Safety Administration, it recognized that our Nation needed a consistent and strong set of standards to bring commercial vehicle operations to the safest level possible. By design, FMCSA is not about Washington. It's about the front lines in our states and hometown communities, where the overwhelming majority of our employees are boots-to-the-ground in partnerships with State and local law enforcement, because that's where the commercial vehicle activity is.

We take our safety-first mission with complete commitment, passion and enthusiasm, because we know that lives are on the line.

Death and injury from crashes with commercial motor vehicles come at a very high price—over $60 billion each year in costs that include health, medical, emergency services, lost wages and productivity, pain and suffering. And FMCSA does its best to leverage just under 1,100 employees nationwide to oversee an industry of more than 500,000 discrete companies, trucking companies, and 12,000 bus companies, and more than 5 million commercial vehicle drivers.

Given this challenge, as we look forward we must advance our partnerships with our state and local law enforcement agencies to achieve that highest level of safety. We also need enforcement tools that allow us to do our jobs as effectively as possible. And today, I respectfully urge you to consider key technical assistance that we submitted for the record for the next surface reauthorization bill. That technical assistance focuses on the biggest challenges facing commercial vehicle safety. It consists of recommendations built out of extensive discussions with our investigators nationwide, our program managers, stakeholders, over the course of several years, and analysis of cases against high-risk operators who continue to put the public at risk.

The underlying purpose of that assistance, our technical recommendations, is to improve the tools we use to prevent and deter unsafe operators, drivers and carriers, and to better screen and remove the least safe from the roadways.

It's also about closing statutory gaps through which unsafe carriers and drivers are able to move out of our reach, and it's about making sure our state grantees have access to grant programs that are more efficient and effective.

Our purpose in recommending these changes is not to impede safe companies and safe drivers. The vast majority of the over 500,000 companies we regulate make safety part of their operating values and practices every day. But it remains the fact that about 10 percent of the carriers operating are high-risk. They have violation numbers and frequency out of the norm. And it's that 10 percent that directly correlates, and has involvement in, over 40 percent of the serious and fatal crashes involving commercial vehicles.

Again the focus is to get at those bad actors, not the vast majority of operators. When crafting these initiatives, we pay close attention to the principles that govern this agency—the essentiality of raising the bar to come into the industry, the importance of maintaining high safety standards if you're operating as a commercial vehicle operator, and ensuring that we and our state partners, employers, the public at large, have the tools they need to get the bad actors off the road.

So, Mr. Chairman, members of the Subcommittee, Ranking Member Wicker, again, we are a very relatively small agency. We are very much on the front lines working side-by-side with your states as our partners to improve truck and bus safety, and together we need the tools to get the critical job done.

I speak for our employees nationwide when I say that we are looking forward to working with the subcommittee on the technical assistance in the reauthorization work you are doing. And we do believe that through this work we can significantly further reduce crashes and fatalities involving commercial vehicles.

I'll be happy to answer any questions you may have.
[The prepared statement of Ms. Ferro follows:]

PREPARED STATEMENT OF HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Good afternoon Mr. Chairman, Ranking Member Wicker and Subcommittee Members. Thank you for this opportunity to speak to you today about reauthorization of the motor carrier safety program. I appreciate the Subcommittee's steadfast dedication to making our Nation's roads as safe as possible by ensuring that only the safest motor carriers and commercial motor vehicle (CMV) drivers operate over our roads, and providing enhanced enforcement tools to the Federal Motor Carrier Safety Administration (FMCSA) and its State partners.

As Secretary Ray LaHood has said many times, "Safety is my number one priority. Nothing else even comes close." FMCSA's 2011–2014 Strategic Plan, for which we are now seeking public comment, is based on a strategic framework that is shaped by three core principles: *raise the bar to enter the motor carrier industry; maintain high safety standards to remain in the industry; and remove high-risk carriers, drivers, and service providers from operation.* In preparing technical assistance for legislative policy proposals for motor carrier safety, the Department paid close attention to suggested provisions that advance one or more of our three core principles.

With the help of SAFETEA–LU, we have achieved significant success in reducing crashes, injuries, and fatalities over the past six years, but no one can dispute that additional efforts are necessary to achieve our paramount goal of safety in motor carrier transportation. The Agency must be strategic in its use of resources to target identified compliance weaknesses and correct them. Through the technical assistance, we strove to close statutory gaps that place unsafe carriers, drivers and vehicles outside our grasp. At the same time, our goal was to ensure a level playing field without over-regulating the industry. We believe that these changes, taken together, and increasing Agency efficiency and effectiveness, will dramatically increase motor carrier safety without unduly burdening States or industry. I would like next to discuss our key technical assistance for reauthorization policy proposals.

CSA Proposals

For nearly seven years, FMCSA has been working to develop a new enforcement business model, which we call Compliance, Safety, Accountability or CSA. We have undertaken this with an unprecedented level of stakeholder input, analysis, and planning, including public meetings, webinars, over 350 live presentations, numerous meetings with Congressional staff and the National Transportation Safety Board (NTSB), and a 30-month/9–State Operational Model Test. Through this process, FMCSA worked with our partners to develop a new and improved enforcement model. CSA allows FMCSA to more effectively and efficiently target poor safety performers and take the necessary steps to either improve that performance or get the carrier off the road.

We have included in our technical assistance a number of statutory revisions and additional authorities needed to bring CSA to fruition. For example, we are requesting flexibility to allow an investigator's credentials to be displayed in writing rather than in person. This will allow FMCSA and its investigators—with clear statutory authority to conduct enforcement interventions—to display credentials and formally demand that a motor carrier provide records, without traveling to the motor carrier's business location. This is vital to expanding FMCSA's and our State partners' enforcement repertoire to include off-site reviews and investigations.

We also provided language to update the requirement, adopted in SAFETEA–LU, that the Agency perform compliance reviews on motor carriers rated as category A or B for 2 consecutive months under the Agency's old SafeStat measurement system. Under CSA, the Agency replaced SafeStat with a new, more accurate carrier safety metric and established our Safety Measurement System (SMS), which uses more data, and completes a more targeted assessment of the carrier. The Agency is committed to continuing to prioritize the carriers with the highest safety risk. However, we need to use the new, improved metrics rather than the category A or B system to identify problem carriers.

As the centerpiece of CSA, the Agency is currently developing a proposed rule to revise its procedures for issuance of motor carrier safety fitness determinations. We anticipate issuing that proposed rule by the end of 2011. Longer term, FMCSA anticipates adopting comparable safety fitness determination procedures for individual drivers, and we have proposed a new statutory section to grant express authority

for that rule. This authority would strengthen FMCSA's ability to identify high-risk commercial drivers and to remove them from service.

The final CSA policy proposal would help ensure that the roadside enforcement data, which takes on heightened importance under CSA, is based on nationally uniform criteria for selecting vehicles for roadside inspections. Consistency in State-operated inspection selection systems is vital to preserving the integrity of the SMS. The FMCSA's language would, therefore, authorize FMCSA to withhold a portion of a State's Motor Carrier Safety Assistance Program (MCSAP) grant funds if the State's inspection selection system does not use a methodology FMCSA has approved.

Reincarnated/Affiliate Carrier Proposals

In recent years, FMCSA has witnessed a disturbing practice—carriers that commit safety violations and then slightly change their corporate identity or "reincarnate" to either continue operating after being placed out of service, avoid paying civil penalties, or to otherwise avoid the regulatory consequences of poor safety performance. More recently, unsafe carriers, particularly motorcoach companies, have attempted to avoid FMCSA enforcement by creating closely affiliated entities under common operational control. Our investigations have found that these companies quickly shift customers, vehicles, drivers, and other operational activities to an affiliated company when FMCSA places one of them out-of-service. These practices of "reincarnating" as a supposedly new motor carrier or simultaneously operating affiliated companies to circumvent Agency enforcement actions result in the continued operation of high-risk carriers and create an unacceptable safety risk to the traveling public.

Our policy proposals would confront this problem from a number of angles. First, the technical assistance would expressly authorize the Secretary to withhold, suspend, amend, or revoke a motor carrier's registration if the carrier failed to disclose its adverse safety history or other material facts on its application, or if the Secretary found that the applicant was a successor or closely related to another company with a poor compliance history within the preceding 5 years. Another proposed section would amend existing law to authorize the Secretary to withhold, suspend, amend, or revoke the registration of a motor carrier, employer, or owner or operator if the Secretary determined that: (i) there was a common familial relationship to avoid compliance or to mask non-compliance; or (ii) the company engaged in a pattern or practice of avoiding compliance or masking non-compliance within the preceding 5 years. Both of these proposals would require that, before taking action on such carriers' registration, the Secretary provide the carrier due process in the form of notice and an opportunity for a proceeding.

Second, the Secretary would also be authorized to take steps, after notice and an opportunity for a proceeding, against individual officers, directors, owners, chief financial officers, safety directors, or other persons who exercise controlling influence over the operations of a motor carrier, if those persons intentionally, knowingly, or recklessly engage in a pattern or practice of violating CMV safety regulations or assist companies in avoiding compliance or concealing non-compliance. Sanctions against such individuals would include a prohibition on associating with other motor carrier companies, including temporary or permanent suspension of any individual registration and a temporary bar on association with any registered motor carrier. A related proposal would increase the current civil penalty ten-fold, up to $5,000 per violation, for attempted evasion of motor carrier regulations.

Third, FMCSA's policy proposals would clarify that a uniform, Federal legal standard applies to determinations of whether one motor carrier is liable for the acts of a predecessor or closely related carrier. Under this Federal standard, the Secretary would be authorized to determine, after notice and an opportunity for a proceeding, that the officers, financial arrangements, equipment, drivers, and general operations of the company were closely related to those of another motor carrier. The Agency's technical assistance lists 12 factors for consideration and includes a limited, express preemption of State law that is narrowly restricted to Federal motor carrier regulations. Application of the Federal standard would not affect State corporation laws, such as debtor/creditor rights, taxes, tort liability, director and officer liability or other rights between private parties. The Agency is very mindful that it is proposing a limited intrusion into what is traditionally State authority. However, without this Federal standard, the Secretary lacks clear authority to prevent unscrupulous motor carriers from using State corporation laws to avoid Federal penalties and out of service orders.

Finally, some of the Agency's registration proposals would also assist in identifying and tracking reincarnated carriers by authorizing the Secretary to refuse a USDOT number to applicants that are not fit, willing, and able to comply with ap-

plicable regulations. In addition to granting the Secretary new authority to deny operational licenses to private motor carriers, the USDOT number provision would grant the Secretary express authority to refuse to issue the USDOT number if the applicant company is, or was, a close affiliate or successor to a motor carrier that is not or was not fit, willing, and able to comply with the regulations. The Secretary would also be authorized to revoke or suspend the USDOT number on these grounds. Again, such a determination would require notice and an opportunity for a proceeding. The registration provision would also require motor carriers to update their registrations annually, as well as within 30 days of a change of certain essential information.

Imminent Hazard Orders

The FMCSA has current authority to place a motor carrier, vehicle or driver out of service immediately if the Agency determines that regulatory violations create an imminent hazard to safety. The Agency's policy proposals include a number of modifications to this emergency authority. Currently, imminent hazard orders apply expressly to operations of CMVs in interstate commerce. The Agency's proposal would clarify that such orders also apply to the intrastate operations of such interstate carriers.

In addition, the technical assistance, if adopted, would require that the Secretary revoke the operating authority registration of *any* motor carrier determined to constitute an imminent hazard. Under current law, operating authority is revoked for only passenger carriers, not for property carriers, determined to constitute an imminent hazard.

Finally, the proposal would partially harmonize the two Acts of Congress that granted the Secretary imminent hazard authority by redefining "imminent hazard" in one section of the United States Code to encompass hazards other than those dealing with hazardous materials. As a result, the Secretary will have the authority under section 31310 of title 49, United States Code, to disqualify any driver whose continued operation of a CMV substantially increases the likelihood of death, serious injury or illness, or a substantial endangerment to health, property, or the environment.

Driver Penalty Provisions

Through our work developing CSA, FMCSA confirmed that focusing on the motor carriers can advance safety only to a certain point. To take the next significant step, we need to focus on drivers. We want to make being an unsafe driver impossible. To this end, our proposal would require the State licensing agencies to take action against commercial driver's license (CDL) holders based on a Federal disqualification, regardless of whether the same offenses would lead to action on the CDL under State traffic laws. This would result in unsafe CDL holders having their State-issued licenses suspended or revoked by the State following a Federal disqualification. This change is necessary because States are not currently required to take certain actions against a driver's CDL if the individual has been disqualified by FMCSA from operating a CMV. To assist the Agency, we need Congressional affirmation that disqualifications imposed by FMCSA must be reported in the CDL Information System (CDLIS).

The proposal also includes a requirement to disqualify an individual from operating a CMV when that individual has not paid a civil penalty or complied with a settlement agreement resulting from a Federal enforcement action. This would apply to all drivers of CMVs, whether they hold a CDL or not.

Currently, the Secretary is required to disqualify a driver for driving a CMV when the driver's CDL is revoked, suspended or canceled. The Secretary is not authorized to disqualify such a driver, however, if the underlying offense that led to the revocation, suspension or cancellation occurred while the individual was operating a non-CMV. This means that a CDL holder whose license was suspended following a DUI in his personal vehicle, but who continued to operate a CMV during the suspension, would not be subject to disqualification. Our policy proposal would plug this regulatory hole. Under the proposal, we would disqualify an individual from operating a CMV for 1 year for the first violation, and for life for committing two or more such violations.

The Secretary is required to establish programs to improve CMV driver safety and may access the safety data and driving records of drivers who hold a CDL. Drivers who drive CMVs that weigh less than 26,001 pounds or that transport less than 16 passengers, however, do not need a CDL. To close an existing information gap, we need authority to access safety data and driving records of non-CDL holders who operate CMVs. We included such a proposal in our submission.

Penalty Provisions

To ensure compliance with our regulations, the Agency needs to make penalties for non-compliance significant enough that they are not simply a cost of doing business. To this end, we recommend several increases to existing minimum penalties, including:

- Raising the minimum penalty per day for general reporting and recordkeeping violations from $500 to $1,000.
- Changing the minimum penalty for passenger carriers operating without the necessary registration from $2,000 per violation, and $2,000 for each subsequent day of violation, to a flat minimum penalty of $25,000. A $25,000 minimum penalty would be the same as the current minimum penalty for transporting household goods without operating authority registration, and certainly passengers are more important than cargo.
- We also propose a new penalty of $10,000 per violation for operating without required registration.
- The proposal also calls for an increase from $20,000 to $25,000 for transporting hazardous wastes without the necessary registration.

Even in the face of the best regulations, there remain carriers that consciously choose to defy the requirements. As a result, we suggest that the maximum penalty for continuing to operate after an unfit safety rating be increased from $11,000 to $25,000. Our current authority applies to drivers and not the motor carriers. This loophole needs to be closed.

In this same vein, we also propose raising the penalty for violating an imminent hazard out of service order from $16,000 to $25,000. These out of service orders are issued only where the continued transportation presents a substantially increased likelihood of serious injury or death, and a motor carrier's violation of such orders obviously poses a grave safety risk. We need the authority for stronger penalties to ensure that these carriers do not continue to do business illegally and unsafely while under such a serious order.

Under our current penalty structure, motor carriers with sufficient capital can take corrective action, pay their penalty and not otherwise be impacted by the enforcement action. We would like to see a greater impact to the operations of unsafe carriers. To that end, the proposal would prohibit carriers from operating for at least ten days if they receive an unfit or unsatisfactory safety rating. This provision would increase the consequences to motor carriers that allow their safety performance to deteriorate to the point of becoming unfit, and would encourage carriers to address safety problems earlier, to avoid this rating.

In addition, as noted previously, we recommend increasing the penalty for evading compliance through reincarnation, and we would also expand the scope of the penalty to apply to evasion of the Hazardous Materials Regulations and statutes. This additional penalty is necessary to deter rogue motor carriers, and those who assist them, from, for example, re-registering under a different identity after issuance of hazardous materials and other safety violations and enforcement orders or imposition of civil penalties.

Taking legal action against unsafe motor carriers is often complicated by the fact that they disobey subpoenas or requirements to produce witnesses or records. As a result, we have proposed that motor carriers that fail to provide access to records and equipment in response to investigators' demands be placed out of service. Our proposal includes new authority for the Secretary to suspend, amend or revoke the registration of a motor carrier, broker or freight forwarder for failing to obey an administrative subpoena.

However, despite our legal actions and penalties, some carriers continue operating unsafely, sometimes with unsafe drivers and/or unsafe vehicles. To combat this, we seek express authority for FMCSA and authorized State grant officials to impound or immobilize commercial motor vehicles. This provision would give the Agency an additional enforcement tool when motor carriers refuse to comply with out of service orders, and continue operating vehicles that are safety risks to the vehicle's passengers, the traveling public, and the driver.

While one of the Agency's key goals is to remove unsafe carriers, drivers and vehicles from the roadways, we do recognize that some carriers or drivers make honest mistakes. Our proposal, therefore, includes clarifying language that would allow the Agency, even for violations relating to transportation of household goods, to accept lesser amounts of money, suspension of penalties, payment over time or investment in training or other activities or equipment to improve regulatory compliance. Such strategies are additional tools that can be used to improve motor carrier compliance with applicable rules, to promote the public interest and to respond with enforce-

ment flexibility as justice requires. We do not want to put a carrier out of business; we want them to comply.

Registration

As noted in my earlier remarks regarding reincarnated carriers, the Agency is proposing to revamp some of its motor carrier registration provisions. Under the jurisdictional structure FMCSA inherited from the Interstate Commerce Commission, only for-hire motor carriers are subject to a statutory requirement to register with the Secretary. Other motor carriers, including private carriers operating equally large motor vehicles, are not statutorily required to register. To enhance the Agency's authority to ensure the safety of private motor carriers before they begin operating, we offered technical assistance that would require *all* motor carriers that operate CMVs subject to FMCSA's safety jurisdiction to apply for and receive a USDOT number before beginning operations.

As explained above, under FMCSA's technical assistance proposal, the Secretary would be authorized to refuse a USDOT number to any carrier if the motor carrier is unfit, unwilling or unable to comply with the Federal Motor Carrier Safety Regulations or the Hazardous Material Regulations. The proposed language would also authorize the Secretary to revoke or suspend a USDOT number if the Secretary determines that a motor carrier is unfit, unwilling, or unable to comply with the requirements or refuses to submit to a new entrant safety audit.

The Agency is completing its Unified Registration System rulemaking that would consolidate the existing operating authority registration (or MC Number) and its USDOT number systems. However, FMCSA is currently limited by statute to charging a maximum fee of $300 for registration. The costs associated with registering and vetting new carriers exceed the $300 cap. Our technical assistance would allow the Agency to increase this fee to cover the costs of processing the registration.

Medical Programs

The Agency has made significant strides in the past three years with rulemakings related its medical programs, including a proposed National Registry of Certified Medical Examiners and the requirement for medical certificate information on the CDL driver's record. To make the next large step forward in this area, we offered assistance that would require States to develop and maintain the capacity to receive electronic copies of the medical certificates prepared by certified medical examiners for each CDL holder who intends to operate in interstate commerce. The availability in the State database of an electronic report prepared by the certified medical examiner will greatly reduce the incidence of fraudulent medical examination reports.

The DOT policy proposal would make available up to $1,000,000 in each of Fiscal Years 2013 and 2014 to help the States pay for the information technology improvements needed to receive medical examiners' reports. The funding is front-loaded to ensure that the States upgrade their driver information systems by the time the National Registry of Certified Medical Examiners and associated requirements become operational.

The Agency receives several hundred applications for vision and diabetes exemptions each year. Medical exemption requests currently must be published in the Federal Register, but the number of these requests, and the requirement for not one, but two, publications in the Register creates administrative and financial burdens for FMCSA. As a result, we suggest publishing these notices on a dedicated FMCSA website. Using the Internet will be simpler and cheaper for the Agency, will produce quicker results for applicants and will improve public access to these exemption requests. A statutory change is needed to effect this program improvement.

The FMCSA would also like to make improvements in the delivery of information regarding medical exemptions to roadside law enforcement. Our proposal would require MCSAP agencies to transmit exemption information to their roadside enforcement staff. This will ensure that enforcement officers have the means to verify any exemption claimed by a driver stopped at roadside and reduce the opportunities for fraud.

Household Goods Provisions

The Agency's technical drafting assistance includes additional provisions relating to household goods transportation. One proposal would allow persons injured by unscrupulous moving companies to seek judicial relief to compel the companies to release household goods held hostage. A second proposal would authorize FMCSA to assign all or a portion of the penalties it receives from non-compliant moving companies to the aggrieved shipper. FMCSA also recommends that the Agency be authorized to order moving companies to return household goods held hostage.

Drug and Alcohol Clearinghouse

Another significant set of Agency proposals would authorize the establishment of a national controlled substances and alcohol Clearinghouse. The provision would clarify the Secretary's authority to conduct a rulemaking and authorize funding for an electronic repository for records on alcohol and controlled substances testing of CMV operators. This new Clearinghouse would improve both driver and employer compliance with DOT's alcohol and controlled substances testing program and would provide employers important information about drivers before hiring them.

Miscellaneous

The DOT policy proposals include a variety of additional, miscellaneous recommendations including:

- A representative from a nonprofit employee labor organization would be added to the Motor Carrier Safety Advisory Committee.
- The Unified Carrier Registration Plan would be restructured to limit DOT's participation and to operate as a not-for-profit corporation.
- The current statutory provision allowing motor carriers to submit proof of qualification as a self-insurer in lieu of the bond, insurance policy or other security would be eliminated. FMCSA has determined that the self-insurance program does not further motor carrier safety, and administration of the program for the fewer than 50 motor carriers that participate is unreasonably burdensome and costly to taxpayers.
- Existing authority under the Motor Carrier Safety Improvement Act of 1999 to include a proficiency examination would be broadened to include tests on new entrant carriers' knowledge not only of safety regulations, but of applicable commercial regulations and regulations relating to accessibility for disabled persons. By granting the Secretary authority to develop an examination covering these areas to administer to applicant motor carriers, knowledge of and compliance with these regulations will be increased.

All of these changes will have significant impacts on the Agency's resources and programs.

Grant Program Changes

We could not complete our safety mission without our State partners who are the boots on the roadways through our grant programs. In this policy proposal, FMCSA identified ways to improve the efficiency and effectiveness of our grant programs. We focused on streamlining the Agencies' grant programs, improving the States' flexibilities in applying for FMCSA financial assistance and increasing the Agency's flexibilities in using funds to maximize their safety impact. Through reauthorization, FMCSA is seeking to consolidate 10 existing grants into 3 umbrella grant programs. These changes will not only improve the flexibility of the funding, but will also ease the administrative burden on States in applying for Federal financial assistance by allowing States to apply for multiple projects in one application, if they choose to do so. This structure will also allow the Agency to be responsive to new initiatives and priorities by allocating discretionary funds based on expected improvements to safety.

The 3 umbrella grant programs set forth in our policy proposal on grant programs are: CSA Grants, Driver Safety Grants, and Safety Data and Technology Grants.

The CSA Grants would provide funding primarily to State and local law enforcement agencies to continue successful enforcement programs and promote new motor carrier programs that improve the safety of the industry and protect consumers. The CSA umbrella grant program would continue to provide formula grants for the MCSAP Basic and Incentive grants so that the States would be confident that their cornerstone safety initiatives would be maintained. In addition, the proposal would allow the Agency to provide discretionary grants for New Entrant safety audits, border enforcement, safety data improvement and other high priority programs to address National safety priorities. The CSA program would also include new Agency funding priorities such as household goods enforcement and hazardous materials safety and security. The requested flexibility in these grants programs is essential because enforcement priorities can change due to national events, such as 9/11, which drove the need for increased security reviews, due to the development of new technologies, such as electronic on board recorders, or as the result of new safety initiatives, like distracted driving. The CSA program goals would allow the Agency to target the funding appropriately in a dynamic environment.

The second umbrella grant program, Driver Safety Grants, is intended to prioritize driver issues by directing funds specifically to programs that impact com-

mercial drivers. Similar to CSA, Driver Safety would consist of existing program goals, such as continued funding for CDL programs and systems, including covert and overt fraud investigation, and CMV operator training. It would also include new initiatives, such as prioritized funding for CDL coordinators and funding for States to notify employers of their drivers' CDL violations.

The Safety Data and Technology grant program, the third umbrella grant program under our policy proposal, is intended to provide financial assistance to promote the efficient and effective exchange of CMV and CDL data among the States. Tying vehicle registration to carrier safety data and maintaining a consistent national IT infrastructure improves the quality and safety value of roadside inspections and assists law enforcement officers in targeting unsafe vehicles and drivers.

The proposed changes to our grant programs will allow the States to request the funds they need for other initiatives based on where the State stands with its safety initiatives. In addition, this model rewards the best/safest States by allowing them to request funding for new initiatives that will make a difference in their State.

To assist the States, we have suggested changes to the match requirements to create more consistency between the grant programs; we suggested that unused MCSAP formula grant funds be redistributed after August 1 to States that can use the funding; and we requested a change in the Maintenance of Effort requirements for MCSAP Basic and Incentive. Under SAFETEA–LU, the maintenance of effort level changed annually—creating an increasing obligation for the States in a time of economic duress. To this end, we suggest that the levels be established once at the start of the authorization period and remain constant. In addition, we have provided language that would provide the Agency authority to waive maintenance of effort requirements for a period of 1 year and in limited circumstances such as a natural disaster or economic hardship.

To maximize the flexibility of the States, we have also suggested that the States be allowed to request redistribution of awarded funds under each umbrella grant program, provided that the State shows that it is unable to expend funds within 12 months prior to expiration and the State has a plan to spend funds within the remaining period of expenditure on programs with comparable safety benefits.

These changes will allow both the Agency and the States to be more responsive to safety issues and problems, while simplifying the administration of the grants. As a result, these changes make the programs more effective and allow them to be implemented more quickly.

Closing

As you can see, FMCSA has thoughtfully considered gaps in its statutory authorities and ways to enhance its enforcement efforts and program delivery capabilities. Mr. Chairman, we look forward to continuing to work closely with the Subcommittee in its reauthorization efforts to make significant strides to improve safety, reduce crashes and save lives.

I thank you for the opportunity to discuss our policy proposals. I would gladly answer any questions at this time.

Senator LAUTENBERG. Forgive me for neglecting to remind the gather that Ms. Ferro is the Administrator of the Federal Motor Carrier Safety Administration. We had some significant conversations when you were up for appointment, and I'm pleased to say it's worked very well. And we like what we see you doing. And thank you for your consciousness about the safety factor. It agrees totally with what we're looking at.

Mr. Hart.

Mr. Hart is Vice Chairman of the National Transportation Safety Board. He'll tell us, we believe, about the agency's recommendations to improve safety after investigating recent truck and bus accidents.

Mr. Hart.

STATEMENT OF HON. CHRISTOPHER A. HART, VICE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. HART. Thank you.

Good afternoon, Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee. Thank you very much for the opportunity to appear before you today.

The National Transportation Safety Board has recently launched investigative teams to several major highway crashes involving both trucks and motorcoaches.

Less than a month ago, on June 24, a tractor-trailer hauling two empty dump trailers collided with an Amtrak train near Marion, Nevada, resulting in the deaths of the truck driver, a train crew member, and four train passengers.

On May 31, a motorcoach ran off the road and overturned on I–95 near Doswell, Virginia, causing four fatalities and numerous injuries. This accident closely followed three other motorcoach accidents that occurred in March in New York, New Jersey, and New Hampshire.

In an effort to learn more about the issues specific to truck and bus safety, the NTSB hosted a two-day truck and bus forum in May during which many open recommendations and their underlying safety issues were discussed by witnesses from DOT, safety advocates, and the motor carrier industry.

My written statement addresses a number of areas where we believe more effective FMCSA oversight could lead to crashes prevented and lives saved. But, for my oral statement today, I will focus on three issues that are especially important: new entrants, motor carrier oversight, and fatigue.

With respect to the new entrant process, in 2003 the NTSB recommended that FMCSA require new motor carriers to demonstrate their safety fitness prior to obtaining new entrant operating authority. The recommendation came as a result of our investigation into the collision of a tractor-trailer with a Greyhound bus in which we found that the truck operator had falsified key information in order to obtain operating authority. In response to this recommendation, FMCSA developed the New Applicant Screening Program, which screens new applicants of prospective motor carriers before they receive operating authority. Unfortunately, unscrupulous motor carriers are still able to circumvent the New Applicant Screening Program.

As a result of subsequent investigations, we have recommended that FMCSA develop a system to evaluate the effectiveness of the program and to seek additional authority to revoke the operating authority of those unscrupulous carriers.

With respect to oversight, the NTSB has expressed its concerns for many years regarding the effectiveness of FMCSA's motor carrier rating system. For example, the two most important factors related to safe motor carrier operations in FMCSA's six-factor rating system are vehicle condition and driver performance. Except when found to be an imminent hazard, however, operators must be found to be unsatisfactory in at least two of the six rating factors in order to be disqualified.

The NTSB has recommended that FMCSA emphasize both driver performance and vehicle condition as critical elements in its compliance reviews, and that an unsatisfactory rating in either the vehicle area or the driver area should disqualify the operator. To date, FMCSA has not completed action on this recommendation,

but they are in the process of completing their Compliance, Safety and Accountability, CSA Program, which may have some of these components. To make a final evaluation, the NTSB is waiting on FMCSA's rulemaking on its safety fitness determination methodology.

Finally, I would like to discuss some of the issues relating to fatigue. The slides you are seeing now show just a few of the commercial vehicle accidents that we have investigated over the years involving fatigued drivers.

One of the issues related to fatigue is hours of service rules. FMCSA's recent ANPRM proposed changing the hours of service rules for truck drivers, but not for bus drivers. The NTSB believes that hours of service rules must also be updated for bus drivers in order to reduce the potential risk to the passengers and to the driving public.

Another issue is electric onboard recorders, EOBRs. EOBRs allow for better monitoring of hours of service and driver fatigue. The NTSB is encouraged that FMCSA's most recent NPRM on EOBRs corrects many of the inadequacies, and expands the scope of the new role to cover most carriers.

Fatigue management is another important component in the reduction of fatigue accidents. In 2008, the NTSB asked the FMCSA to develop a methodology to assess the effectiveness of fatigue management plans that are implemented by the motor carriers. In 2010, the NTSB asked FMCSA to require that all motor carriers adopt a fee, fatigue management program, and create educational materials on fatigue and fatigue countermeasures and make them available in different formats. These safety issues and accidents are a reminder that there is much to be done to improve the safety of commercial highway operations. We need to do better.

Again, thank you for this opportunity to appear. I would be pleased to take any questions.

[The prepared statement of Mr. Hart follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER A. HART, VICE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Good morning, Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee. Thank you for the opportunity to appear before you today on behalf of the National Transportation Safety Board (NTSB) regarding the reauthorization of the Federal Motor Carrier Safety Administration (FMCSA).

The NTSB is charged by Congress to investigate major transportation accidents to determine their probable cause and make recommendations to prevent similar accidents from happening again. Unfortunately, our highway investigators have been quite busy with a number of major highway tragedies. Less than a month ago, on June 24th, a truck tractor hauling two empty dump trailers collided with an Amtrak train near Miriam, Nevada, resulting in the deaths of the truck driver, a train crewmember, and four train passengers.

In another accident, on May 31, a motorcoach ran off the road and overturned on I–95 near Doswell, Virginia, causing four fatalities and numerous injuries. This accident closely followed three similar motorcoach accidents that occurred in March. In the first of these, during the early morning hours of March 12, a motorcoach traveling southbound on I–95 toward New York City struck a guardrail, swerved, and rolled over on its side, cutting the bus in half as it struck a signpost. Fifteen people were killed in this accident and the other 18 occupants were injured. Within 3 weeks of that accident, two other motorcoach accidents occurred: one in East Brunswick, New Jersey, on March 14 that killed two, and one in Littleton, New Hampshire, on March 21 that injured all 25 occupants.

The NTSB has also investigated highway accidents involving large trucks. In June 2009 in Miami, Oklahoma, the fatigued driver of a tractor-semitrailer failed to stop for a line of vehicles that had slowed and stopped behind a minor traffic accident, causing a multivehicle collision that killed 10 and injured 6. Just four months later, in October 2009, a truck with an 11,600-gallon cargo tank carrying liquefied petroleum gas (LPG) struck a guardrail while traveling south on Interstate 69 in Indianapolis, Indiana, resulting in the release of the LPG, which vaporized and ignited. The ensuing fires involved eight other vehicles and injured at least five people.

In an effort to learn more about the issues specific to truck and bus safety, NTSB hosted a 2-day Truck and Bus Safety forum in May at which many open recommendations and their underlying safety issues were discussed by stakeholders from the U.S. Department of Transportation (DOT), safety advocates, and the motor carrier industry. Some of the safety issues examined included

- Carrier oversight and the determination of carrier safety fitness by Federal, state, and industry organizations;
- Aspects of carrier operations, including electronic onboard recorders, hours of service, safety culture, vehicle size and weight, and operating models;
- Training and licensing of commercial drivers, including commercial learner's permits, employer notification systems, graduated licensing, and data collection;
- Driver safety;
- Driver health and wellness programs and medical oversight for interstate commercial drivers;
- Enhanced vehicle technologies, including electronic stability control and collision avoidance systems;
- Advances in crash mitigation, such as passenger restraints, vehicle crashworthiness, vehicle compatibility, and highway barrier systems.

Although the NTSB can investigate only a fraction of the tens of thousands of highway accidents that occur, we have made hundreds of recommendations over our 42-year history to improve the safety of highway transportation. We currently have 166 open highway safety recommendations issued to the DOT, the National Highway Traffic Safety Administration (NHTSA), the FMCSA, the Federal Highway Administration (FHWA), the Pipeline and Hazardous Material Safety Administration (PHMSA), and the states. Fifty-five of those open recommendations are addressed to the FMCSA.

Motor Carrier Safety Oversight

Rating Methodology

The FMCSA rates the safety of motor carriers in six areas. The two most important related to safe motor carrier operations are the condition of the vehicles and the performance of the drivers. Except when found to be an "imminent hazard," operators must be found to be unsatisfactory in at least two of the six rating factors to be disqualified. In other words, they can be unsatisfactory in either the vehicle or driver areas and still be allowed to operate.

A good illustration of how this system fails to protect the traveling public occurred in 1999 when a motorcoach rolled over in Indianapolis, Indiana, killing 2 passengers and injuring 13. The accident motorcoach had only 50-percent braking efficiency, and a post-accident compliance review of the operator by the FMCSA resulted in all 10 of the carrier's vehicles being placed out of service. The company had been inspected nine times between 1987 and 1995. In 1994, even though fully 63 percent of the vehicles met the criteria for being placed out of service, the operator received a "conditional" rating for the vehicle factors. Because all the other factors were rated "satisfactory," the operator was given an overall rating of "satisfactory" and was thus able to continue to operate with unsafe vehicles. As a result of our investigation of this accident, the NTSB recommended that the FMCSA emphasize both of these critical elements in its compliance reviews, and that an unsatisfactory rating in *either* the vehicle area or the driver area should disqualify the operator.[1] To emphasize our concern over this issue, we added this recommendation to our Most Wanted List in 2000.

In years following, we investigated additional motorcoach accidents that involved the same issue: a 5-fatality motor coach accident in Victor, New York, in 2002; a

[1] *H–99–6.* To FMCSA: Change the safety fitness rating methodology so that adverse vehicle or driver performance based data alone are sufficient to result in an overall unsatisfactory rating for a carrier.

23-fatality motorcoach fire near Wilmer, Texas, in 2005; a 17-fatality motorcoach accident in Atlanta, Georgia, in 2007; and a motorcoach rollover accident in Victoria, Texas, in 2008. FMCSA says these concerns will be addressed with full implementation of its Compliance, Safety and Accountability (CSA) program. However, to date, action that would satisfy this recommendation has not been completed.

New Entrants and Reincarnated Motor Carriers

In 2002, the NTSB investigated an accident involving a tractor-semitrailer collision with a Greyhound bus in Loraine, Texas, which resulted in three deaths. Our investigation revealed that, when the trucking company owner submitted his application, he lied about his knowledge of regulations and his systems to comply with the regulations, and he failed to disclose a drug conviction for possession of large amounts of marijuana the year prior to his application. The owner also failed to maintain any records on his drivers or vehicles, to have a drug and alcohol program, and to conduct background checks of his drivers. Further, he dispatched the accident driver knowing that the driver had neither a commercial driver's license nor a medical certificate.

At that time, the owner of a truck or bus company needed merely to fill out an online form and pay a small fee to receive operating authority from the FMCSA and become a motor carrier. Further, the FMCSA conducted essentially no review or follow up of new entrant motor carriers.

As a result, the NTSB recommended that the FMCSA require new motor carriers to demonstrate their safety fitness *prior* to obtaining new entrant operating authority.[2] In response to this recommendation, the FMCSA developed the New Applicant Screening Program, under which a new motor carrier operating in interstate commerce is subject to an 18-month safety monitoring period and receives a safety audit sometime after its first 3 months of operation but before it completes the 18-month monitoring period.

In 2008, the FMCSA began its New Entrant Safety Assurance Program, under which the agency identified 16 regulations that constitute essential, basic safety management controls necessary in interstate commerce. It made a carrier's failure to comply with any of these 16 regulations an automatic failure of the safety audit. Additionally, if certain violations are discovered during a roadside inspection, the new entrant is subject to expedited actions to correct these deficiencies.

Unfortunately, unscrupulous motor carriers still use the new entrant program to evade an enforcement action, or an out-of-service order, by going out of business and then reincarnating themselves as if they were a brand new motor carrier. The NTSB found that the motorcoach operator involved in the Sherman, Texas, accident had engaged in this subterfuge. After losing its authority to operate because of an unsatisfactory compliance review rating, the operator subsequently applied for new operating authority, as a new entrant, under a new name. The NTSB concluded that the FMCSA's processes were inadequate to identify the operator as a company that was simply evading enforcement action. Thus, we recommended that the FMCSA evaluate the effectiveness of its New Applicant Screening Program.[3]

We found additional deficiencies with the FMCSA's new entrant program during our investigation of a 2008 accident in which the driver fell asleep and the motorcoach overturned in Victoria, Texas, killing one person. The FMCSA failed to notice that the operator reincarnated into a new operator shortly after the accident. As a result, the NTSB issued recommendations to the FMCSA that asked the agency to develop methods to identify reincarnated carriers and seek authority to deny or revoke their operating authority.[4] The FMCSA's Motor Carrier Safety Advisory Com-

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[2] *H–03–2.* To FMCSA: Require all new motor carriers seeking operating authority to demonstrate their safety fitness prior to obtaining new entrant operating authority by, at a minimum: (1) passing an examination demonstrating their knowledge of the Federal Motor Carrier Safety Regulations; (2) submitting a comprehensive plan documenting that the motor carrier has management systems in place to ensure compliance with the Federal Motor Carrier Safety Regulations; and (3) passing a Federal Motor Carrier Safety Administration safety audit, including vehicle inspections.

[3] *H–09–21.* To FMCSA: To Develop an evaluation component to determine the effectiveness of its New Applicant Screening Program.

[4] *H–09–34.* To FMCSA: Seek statutory authority to deny or revoke operating authority for commercial interstate motor carriers found to have applications for operating authority in which the applicant failed to disclose any prior operating relationship with another motor carrier, operating as another motor carrier, or being previously assigned a U.S. Department of Transportation number.

H–09–35. To FMCSA: Apply the evasion detection algorithm process against all interstate passenger carriers that obtained Federal Motor Carrier Safety Administration operating authority, after the New Entrant Safety Assurance Program began in 2003 but before the program began

Continued

mittee echoed the NTSB's position that new entrants should be evaluated *before* being allowed to operate in a September 2, 2009, letter to the Acting Deputy Administrator of FMCSA.

Drivers and Fatigue

In the 1990s, the NTSB conducted two safety studies of commercial truck accidents [5] and found that fatigue was the most frequently cited probable cause or factor in investigated crashes that had been fatal to the driver. Based on these studies, the NTSB recommended that the FMCSA use science-based principles to revise the hours-of-service regulations for commercial drivers, ensure that the rule would enable drivers to obtain at least 8 hours of continuous sleep, and eliminate sleeper berth provisions that allow for the splitting of sleep periods.

In December, 2010, the FMCSA issued an NPRM proposing to change the hours-of-service rule for truck drivers, but this proposed rule does not apply to passenger carriers. The NTSB supports those provisions that are scientifically based and would reduce continuous duty or driving time, encourage the taking of breaks, promote nighttime sleep, and foster scheduling patterns that are predictable and consistent with the normal human diurnal circadian rhythm. However, we are opposed to providing exceptions for buses, motorcoaches, and other groups because of the potential increased risk such exceptions pose to the passengers and the driving public.

Of course, no hours-of-service rule is adequate unless it is enforceable. Since 1977, the NTSB has advocated the use of electronic on-board recorders (EOBRs) to allow better monitoring of hours of service and driver fatigue. Again in 2007, the NTSB asked the FMCSA to require EOBRs for hours-of-service monitoring for all interstate commercial carriers, following our investigation of a tractor-trailer accident that had occurred in Chelsea, Michigan.[6] The NTSB believes that the FMCSA's April 2010 final rule on EOBRs did not adequately address this safety issue, and we are encouraged that the FMCSA's new NPRM, issued in January 2011, corrects many of the inadequacies and expands the scope of the new rule to cover most carriers, as originally recommended by the NTSB.

In addressing the issue of fatigue, hours-of-service regulations are important, and tamperproof EOBRs will help enforce those rules. But fatigue management is another critical strategy. In 2008, following three fatigue-related bus accidents that occurred in Osseo, Wisconsin; Lake Butler, Florida; and Turrell, Arizona; in which a total of 27 people died and 60 were injured, the NTSB asked the FMCSA to develop a plan to deploy technologies in commercial vehicles to reduce fatigue related accidents [7] and to develop a methodology to assess the effectiveness of the fatigue management plans implemented by motor carriers.[8] The Miami, Oklahoma, accident, which involved a fatigued truck driver, prompted the NTSB to reiterate these recommendations and make an additional recommendation to require all motor carriers to adopt a fatigue management program.[9]

A problematic and often undiagnosed sleep disorder that can exacerbate fatigue is obstructive sleep apnea (OSA). The NTSB has investigated several accidents in which OSA contributed to the fatigue of the driver, pilot, mariner, or train operator. As a result, the NTSB issued recommendations to the FMCSA in October 2009 addressing this safety problem. In particular, the NTSB recommended that the FMCSA (1) require drivers with a high risk for OSA to obtain medical certification

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vetting those carriers, to verify that those new entrant carriers do not have a concealed history of poor safety management controls because they were able to reenter interstate commerce undetected as reincarnated carriers.

H–09–36. To FMCSA: Establish a requirement to review all passenger carrier lease agreements during new entrant safety audits and compliance reviews to identify and take action against carriers that have lease agreements that result in a loss of operational control by the certificate holder.

[5] (a) *Fatigue, Alcohol, Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes,* Safety Study NTSB/SS–90/01 (Washington, D.C.: NTSB, 1990); (b) *Factors that Affect Fatigue in Heavy Truck Accidents,* Safety Study NTSB/SS–95–01 (Washington, D.C.: NTSB, 1995).

[6] *H–07–41.* To FMCSA: Require *all* interstate commercial vehicle carriers to use *electronic on-board recorders* for hours of service.

H–07–42. To FMCSA: As an interim measure, until industry-wide use of recorders is mandated, prevent log tampering by requiring motor carriers to create *audit control systems for their paper logs*.

[7] *H–08–13.* to FMCSA: to develop and implement a plan to deploy technologies in commercial vehicles to reduce the occurrence of fatigue-related accidents.

[8] *H–08–14.* To FMCSA: to develop and use a methodology that will continually assess the *effectiveness of the fatigue management plans* implemented by motor carriers.

[9] *H–10–9.* To FMCSA: Require all motor carriers to adopt a fatigue management program based on the North American Fatigue Management Program guidelines for the management of fatigue in a motor carrier operating environment.

that they have been appropriately evaluated and, if necessary, effectively treated for that disorder,[10] and (2) provide guidance for commercial drivers, employers, and physicians about identifying and treating individuals at high risk of OSA.[11] The NTSB is aware that the FMCSA continues to address this issue, consulting the expertise of various medical and industry groups, as well as its own Medical Review Board, to better understand OSA and its risks in order to develop appropriate guidance for medical examiners, motor carriers, and CDL drivers.

Another problem for operators is overlooking or not detecting serious preexisting medical conditions in their drivers. The NTSB has seen this issue in many accident investigations, the most tragic example of which was the 1999 Mother's Day motorcoach accident in New Orleans, Louisiana. A motorcoach driver lost consciousness while driving on an interstate highway and crashed into an embankment, killing 22 passengers and injuring 21. At the time of the accident, the driver suffered from multiple previously known, serious medical conditions, including kidney failure and congestive heart failure, and he was receiving intravenous therapy for 3 to 4 hours, 6 days a week.

Although the FMCSA has taken important steps to address medical issues, including publishing a final rule on merging the commercial driver's license with the medical certificate, much still remains to be done. For example, the FMCSA needs to ensure that medical certification regulations are updated periodically[12] and examiners both are qualified and know what to look for when conducting physical exams.[13]

FMCSA has published an NPRM proposing to create a national registry of certified medical examiners. We believe that the proposed registry needs to include a tracking mechanism for driver medical examinations.[14] Such a registry and mechanism would reduce the current practice of drivers "doctor shopping" to find one who will sign their medical forms. Likewise, a second level of review is necessary to identify and correct the inappropriate issuance of medical certification.[15] The FMCSA must establish a system for reporting medical conditions that develop between examinations.[16] Finally, the FMCSA needs to develop a system that records all positive drug and alcohol test results and refusal determinations, and require prospective employers and certifying authorities to query the system before making hiring decisions.[17]

Also of concern is the lack of information available to commercial drivers about the side effects and interactions of various drugs, and the impact these drugs may have on driving ability. Such interactions can present serious problems for drivers with diagnosed medical conditions who are being treated with prescription or over-the-counter medications. For example, in 1998 a motorcoach driver and six passengers were killed when the driver drove into the back of a parked tractor-trailer near Burnt Cabins, Pennsylvania. The NTSB found that the accident had been caused, in part, by the driver's use of an over-the-counter antihistamine, which negatively affected his alertness, performance, and judgment. As a result, the NTSB recommended that FMCSA help drivers understand which medications are appro-

[10] *H–09–15.* To FMCSA: Implement a program to identify commercial drivers at high risk for obstructive sleep apnea and require that those drivers provide evidence through the medical certification process of having been appropriately evaluated and, if treatment is needed, effectively treated for that disorder before being granted unrestricted medical certification

[11] *H–09–16.* To FMCSA: Develop and disseminate guidance for commercial drivers, employers, and physicians regarding the identification and treatment of individuals at high risk of obstructive sleep apnea (OSA), emphasizing that drivers who have OSA that is effectively treated are routinely approved for continued medical certification.

[12] *H–01–19.* To FMCSA: Ensure that medical certification regulations are updated periodically to permit trained examiners to clearly determine whether drivers with common medical conditions should be issued a medical certificate.

[13] *H–01–17.* To FMCSA: Ensure that individuals performing medical examinations for drivers are qualified to do so and are educated about occupational issues for drivers.

H–01–20. To FMCSA: Ensure that individuals performing examinations have specific guidance and a readily identifiable source of information for questions on such examinations.

[14] *H–01–18.* To FMCSA: Develop a tracking mechanism be established that ensures that every prior application by an individual for medical certification is recorded and reviewed.

[15] *H–01–21.* To FMCSA: Develop a review process prevents, or identifies and corrects, the inappropriate issuance of medical certification.

[16] *H–01–24.* To FMCSA: Develop mechanisms for reporting medical conditions to the medical certification and reviewing authority and for evaluating these conditions between medical certification exams; individuals, health care providers, and employers are aware of these mechanisms.

[17] *H–01–25.* To FMCSA: Develop a system that records all positive drug and alcohol test results and refusal determinations that are conducted under the U.S. Department of Transportation testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system before making a certification decision.

priate for use when driving,[18] provide guidance to drivers on specific medications that may be hazardous,[19] ensure that drivers are aware of the hazards of using specific medications,[20] and establish toxicological testing requirements.[21]

The Miami, Oklahoma, accident investigation raised two other interesting aspects of fatigue-related accidents. First, because fatigue is very difficult to identify as a causal factor, fatigue-related accidents are likely underreported in accident statistics: There is no "blood test" for fatigue, as there is for alcohol. Second, motor carriers are increasingly installing video cameras that capture images both outside and inside the vehicle. These cameras are not only documenting drivers falling asleep, they are also documenting a number of unsafe driver behaviors and distractions. More importantly, some motor carriers are increasingly using these cameras as a training tool to coach their drivers about safe driving habits. In fact, the NTSB found that some companies have seen reductions in accidents by about 30 percent to as much as 50 percent when using these cameras as a coaching tool.

Truck and bus driving are two occupations where it is nearly impossible for a supervisor to directly observe and supervise an employee's behavior. Operators of trucks and buses have no copilots, additional engineers, or conductors that pilots and train engineers have. Therefore, to help prevent future fatigue accidents like the one that occurred in Miami, Oklahoma, or similar accidents involving bad driver behavior, the NTSB recommends the installation of video event recorders in commercial vehicles[22] and asks that motor carriers be required to use these tools to improve driver behavior.[23]

Cell Phone Use

The NTSB issued its first recommendation about cell phone use by a commercial driver in 2004, following an accident in Alexandria, Virginia, in which an experienced motorcoach driver, engaged in a heated conversation on his hands-free cell phone, failed to move to the center lane to avoid striking the underside of an arched stone bridge on the George Washington Memorial Parkway. Our investigation found that the driver had been familiar with the route and had received numerous cues to change lanes at the appropriate time to have enough clearance for the height of the bus. In fact, not only was the driver familiar with the road, but he also was following another bus that had appropriately moved to the center lane. Yet, this driver did not notice the well-marked signage or any other cues as he approached the arched stone bridge. The accident was clearly caused by this driver's cognitive distraction, caused by his use of a hands-free cell phone.

The NTSB recommended that the FMCSA [24]and 50 states[25] enact laws to prohibit cell phone use by commercial drivers while driving passenger-carrying com-

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[18] *H–00–12.* To FMCSA: Establish, with assistance from experts on the effects of pharmacological agents on human performance and alertness, procedures or criteria by which highway vehicle operators who medically require substances not on the U.S. Dept. of Transportation's *list of approved medications* may be allowed, when appropriate, to use those medications when driving.

[19] *H–00–13.* To FMCSA: Develop, then periodically publish, an easy-to-understand *source of information* for highway vehicle operators on the hazards of using specific medications when driving.

[20] *H–00–14.* To FMCSA: Establish and implement an *educational program* targeting highway vehicle operators that, at a minimum, ensures that all operators are aware of the source of information described in Safety Recommendation H–00–13 regarding the hazards of using specific medications when driving.

[21] *H–00–15.* To FMCSA: Establish, in coordination with the U.S. Department of Transportation, the Federal Railroad Administration, the Federal Transit Administration, and the U.S. Coast Guard, comprehensive *toxicological testing* requirements for an appropriate sample of fatal highway, railroad, transit, and marine accidents to ensure the identification of the role played by common prescription and over-the-counter medications. Review and analyze the results of such testing at intervals not to exceed every 5 years.

[22] *H–10–10.* To FMCSA: Require all heavy commercial vehicles to be equipped with *video event recorders* that capture data in connection with the driver and the outside environment and roadway in the event of a crash or sudden deceleration event. The device should create recordings that are easily accessible for review when conducting efficiency testing and system-wide performance-monitoring programs.

[23] *H–10–11.* To FMCSA: Require motor carriers to *review and use video event recorder information* in conjunction with other performance data to verify that driver actions are in accordance with company and regulatory rules and procedures essential to safety.

[24] *H–06–27.* To FMCSA: Publish regulations prohibiting cellular telephone use by commercial driver's license holders with a passenger-carrying or school bus endorsement, while driving under the authority of that endorsement, except in emergencies.

[25] *H–06–28.* The National Transportation Safety Board makes the following recommendation to the 50 States and the District of Columbia: Enact legislation to prohibit cellular telephone use by commercial driver's license holders with a passenger-carrying or school bus endorsement, while driving under the authority of that endorsement, except in emergencies.

mercial vehicles or school buses. We also recommended that motorcoach associations, school bus organizations, and unions develop formal policies to prohibit cell phone use by commercial drivers, except in emergencies.[26] Unfortunately, the current FMCSA NPRM, issued in December 2010, proposes to limit cell phone restrictions to only hand-held devices and does not address the cognitive distraction posed by the use of hands-free devices.

Vehicles

The NTSB has also taken issue with the FMCSA's oversight of vehicle inspections. Following the eight-fatality Tallulah, Louisiana,[27] motorcoach accident and the 17-fatality Sherman, Texas,[28] motorcoach accident, the NTSB recommended that the FMCSA provide adequate oversight of private inspection garages. However, these recommendations remain open.

In accidents involving a school bus in Mountainburg, Arizona, and another involving a dump truck in Glen Rock, Pennsylvania, the NTSB found that the FMCSA lacked adequate oversight of pre-trip brake inspections[29] and oversight of the qualifications of brake inspectors;[30] we also found a need for formal training of these inspectors.[31] The Glen Rock, Pennsylvania, accident prompted the NTSB recommend in 2006 that the FMCSA require drivers to demonstrate proficiency in air-braked vehicles and to understand the dangers of adjusting automatic slack adjusters.[32]

The NTSB has also found problems with commercial vehicle tires. For example, some tires have a speed restriction because they are not meant for highway speeds. If a speed-restricted tire is used in service at speeds above 55 mph for extended periods, a catastrophic failure can result. Although the tires did not cause the motorcoach accident in Tallulah, LA, the inspection process had never identified the speed-restricted tires installed on this vehicle, even though it was being operated on major highways. The NTSB made recommendations to correct this deficiency.[33]

Following the Sherman, Texas, motorcoach accident, which had been caused by low air pressure on one of the front tires, the NTSB found that even small reductions in air pressure can cause commercial tires to be overloaded, to overheat, and to fail. This potential overloading problem is especially true for the front tires of motorcoaches where, even with proper air pressure, these tires may be close to their maximum load rating. Therefore, the NTSB made recommendations to NHTSA and the FMCSA to require tire pressure monitoring systems[34] and to require commercial drivers to check their tire pressure with a gauge.[35]

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[26] *H–06–29.* The National Transportation Safety Board makes the following recommendation to motorcoach industry, public bus, and school bus associations and unions: Develop formal policies prohibiting cellular telephone use by commercial driver's license holders with a passenger-carrying or school bus endorsement, while driving under the authority of that endorsement, except in emergencies.

[27] *H–05–04.* To FMCSA: Conduct a study on the safety effectiveness of the self-inspection and certification process used by motor carriers to comply with annual vehicle inspection requirements and take corrective action, as necessary.

[28] *H–09–20.* To FMCSA: Require those states that allow private garages to conduct Federal Motor Carrier Safety Administration inspections of commercial motor vehicles, to have a quality assurance and oversight program that evaluates the effectiveness and thoroughness of those inspections.

[29] *H–02–15.* To FMCSA: Revise 49 Code of Federal Regulations 396.13, Driver Inspection, to require minimum *pre-trip inspection* procedures for determining *brake adjustment*.

[30] *H–02–17.* To FMCSA: During compliance reviews, rate companies as unsatisfactory in the vehicle factor category if the *mechanics and drivers* responsible for maintaining brake systems are not *qualified brake inspectors*.

[31] *H–02–18.* To FMCSA: Revise 49 Code of Federal Regulations 396.25, Qualifications of *Brake Inspectors*, to require certification after testing as a prerequisite for qualification and specify, at a minimum, *formal training in brake maintenance* and inspection.

[32] *H–06–02.* To FMCSA: Require drivers of commercial vehicles that weigh less than 26,000 pounds and are equipped with air brakes to undergo training and testing to demonstrate proficiency in the inspection and operation of air-braked vehicles; the training should emphasize that manually adjusting *automatic slack adjusters* is dangerous and should not be done, except during installation or in an emergency to move the vehicle to a repair facility.

[33] *H–05–03.* To FMCSA: Revise the Federal Motor Carrier Safety Regulations Appendix G to Subchapter B, Minimum Periodic Inspection Standards, Part 10: Tires, Sections A(5) and B(7), to include inspection criteria and specific language to address a tire's speed rating to ensure that it is appropriate for a vehicles intended use.

[34] *H–09–22.* To NHTSA: Require all new motor vehicles weighing over 10,000 pounds to be equipped with direct tire pressure monitoring systems to inform drivers of the actual tire pressures on their vehicles.

[35] *H–09–19.* To FMCSA: Require that tire pressure be checked with a tire pressure gauge during pretrip inspections, vehicle inspections, and roadside inspections of motor vehicles.

Illegal Motorcoaches

The NTSB discovered another oversight issue as a result of the motorcoach accident in Victoria, Texas. This motorcoach had been imported from Mexico, and it repeatedly crossed the border into Texas. It should never have been allowed into the United States because it was not built to meet NHTSA's *Federal Motor Vehicle Safety Standards* (FMVSS). Therefore, the NTSB made several recommendations to the FMCSA and NHTSA to develop a database of FMVSS-compliant buses[36] and verify that operators are using FMVSS-compliant vehicles.[37] The NTSB also recommended that the FMCSA train law enforcement to detect non-FMVSS-compliant vehicles,[38] and to obtain the authority to put operators out of service if they use such illegal vehicles.[39]

Closing

The safety issues and accidents discussed today are a reminder that there is much to be done to improve the safety of commercial highway operations. Accidents—although often tragic and costly—provide a unique opportunity to identify real world issues and to learn from our mistakes. Frustrating to the NTSB is that many of the issues discussed today have been identified as causal to truck and bus accidents for a number of years, yet NTSB investigators continue to see these factors again and again. Transportation safety is too important for the well-being of our citizens, our industry, and our economy to continue to repeat past mistakes. We need to do better.

Senator LAUTENBERG. Thank you.

Now we have Mr. England. And, Mr. England is First Vice Chairman of the American Trucking Association. We look to hearing the industry's views on improving the Federal Government's truck safety programs.

Thank you for being here.

STATEMENT OF DANIEL ENGLAND, VICE CHAIRMAN, BOARD OF DIRECTORS, NATIONAL TRUCKING ASSOCIATIONS AND CHAIRMAN OF THE BOARD AND PRESIDENT, C.R. ENGLAND

Mr. ENGLAND. Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee, I am Dan England.

I am Chairman of the Board and President of C.R. England, a family owned and operated business headquartered in Salt Lake

[36] *H–09–37 & H–09–30.* To FMCSA and NHTSA, respectively: Assist the National Highway Traffic Safety Administration in developing a Web-based database of FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States. Implement a process to periodically update this database.

H–09–38. To FMCSA: Require that Federal and state inspectors utilize the database requested in Safety Recommendation H–09–37 during both roadside and compliance review inspections of passenger-carrying commercial motor vehicles to identify and place out of service non-FMVSS-compliant vehicles.

H–09–31. To NHTSA: When the database requested in Safety Recommendation H–09–30 is completed, make the database known and accessible to state vehicle registration agencies and to Federal, state, and local enforcement inspection personnel for their use during roadside inspections and compliance reviews to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles.

[37] *H–09–40.* To FMCSA: Require that passenger motor carriers certify on their OP–1(P) forms—(Application for Motor Passenger Carrier Authority) and initial MCS–150 form (Motor Carrier Identification Report [Application for USDOT Number]) and subsequent required biennial submissions that all vehicles operated, owned, or leased per trip or per term met the FMVSSs in effect at the time of manufacture.

[38] *H–09–39.* To FMCSA: Institute a requirement for Federal and state enforcement officials to obtain training on a procedure to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label, and work with the Commercial Vehicle Safety Alliance to develop and provide this training.

[39] *H–09–41.* To FMCSA: Seek statutory authority to suspend, revoke, or withdraw a motor carrier's operating authority upon discovering the carrier is operating any non-FMVSS-compliant—passenger-carrying commercial motor vehicles, a violation of the FMVSS-compliant certification requested in Safety Recommendation H–09–40.

City. It was founded in 1920. We have more than 5,500 drivers, 4,000 tractors, and 6,000 trailers.

Today I appear on behalf of ATA, where I currently serve as Vice Chairman of the Board. Thank you for the opportunity to testify today.

First, I want to stress the need to strengthen the requirements for new carriers entering the industry, since they have significantly higher violation and crash rates. Regrettably, 41 percent of these carriers fail their initial safety audits, and 24 percent ultimately have their authority revoked.

To address this problem, ATA urges that every new entrant be required to successfully complete comprehensive online training and an examination prior to initiating operations. Further, the initial safety audit should occur sooner—within 6 months of the carrier start date, not 18 months, the current standard.

To prevent unsafe drivers from entering the industry, Congress should enact S. 754, legislation sponsored by Senator Pryor, to create a clearinghouse for drug and alcohol test results, which would help carriers identify and better screen applicants that have violated the drug and alcohol regulations. I would like to thank Senator Pryor, as well as cosponsors Boozman, Snowe, Vitter and Wicker, for their support of this important measure.

Finally, the Federal Government should allow hair testing in order to meet the drug and alcohol testing requirements. Motor carriers are increasingly relying on hair testing as a means to identify unsafe drivers.

Once drivers are permitted to enter the industry, both FMCSA and motor carriers need the tools to assure their continued safety. ATA fully supports improving safe operations through a Federal mandate for electronic logging devices, including S. 695, legislation sponsored by Senators Pryor and Alexander. An EOBR mandate should be coupled with retention of the current rules governing the hours of service of truck drivers.

The industry safety record has improved dramatically since the current regulations were put into place in 2004, even though truck mileage has increased. Given these improvements, the most appropriate course of action is to mandate electronic logging devices to improve compliance with the current rules, rather than change them.

Other tools to improve safety include a national system to promptly notify employers of drivers' convictions for moving violations; two, a mandate that speed limiters on large trucks be set at 65 miles per hour at time of manufacture; three, a national 65 mile-per-hour speed limit for all vehicles; and, four, improvements to FMCSA's new CSA program.

ATA shares Congress's strong desire to remove unsafe drivers and carriers from the industry. CSA represents an important means to this end. However, the system's ability to reliably identify unsafe carriers and drivers is hindered by underlying data and methodology issues. To correct erroneous data, ATA strongly encourages Congress to expand motor carrier safety assistance program funding dedicated to adding State data correction personnel.

Perhaps the most pressing area of improvement for the CSA program is how the system measures carriers' crash involvement. Cur-

rently, the system does so using all carrier-involved crashes, including those for which the motor carrier could not reasonably be held accountable. As a result, carrier scores in this are less meaningful and reliable. In order to more accurately identify unsafe carriers, FMCSA should only measure performance on crashes for which motor carriers can reasonably be held accountable.

In closing, meaningful solutions to truck safety require a focus on the primary causes of crashes, and require an acknowledgment of the role that other motorists play in truck crashes. FMCSA should devote resources to programs that address the role of passenger vehicles in car-truck crashes.

Truck safety regulations are important, and we support them. However, regulations alone are insufficient to achieve optimum results. Employing more creative solutions and tools to leverage the mutual interest of the industry and government to improve highway safety will bring about even greater safety gains.

Thank you for the opportunity to offer ATA's views on how best to collaboratively improve highway safety. I would be happy to answer any questions you may have.

Thank you.

[The prepared statement of Mr. England follows:]

PREPARED STATEMENT OF DANIEL ENGLAND, VICE CHAIRMAN, BOARD OF DIRECTORS, NATIONAL TRUCKING ASSOCIATIONS AND CHAIRMAN OF THE BOARD AND PRESIDENT, C.R. ENGLAND

Introduction

Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee, my name is Dan England, and I am the Chairman of the Board and President C.R. England, a nationwide transportation company specializing in the movement of temperature-controlled products. Founded in 1920, we are a family-owned business employing more than 4,600 drivers and operating 3,500 trucks.

I also currently serve as Vice Chairman of the American Trucking Associations (ATA). ATA is the national trade association for the trucking industry, and is a federation of affiliated State trucking associations, conferences and organizations that together have more than 37,000 motor carrier members representing every type and class of motor carrier in the country. Thank you for the opportunity to testify before the Subcommittee today.

Mr. Chairman, today I have been asked to speak about ways to ensure that only safe motor carriers and drivers are able to enter the industry; steps to strengthen laws and regulations governing drivers and vehicles that are permitted to operate; and the tools Federal and State authorities need to remove unfit drivers and carriers from the industry. I will also address a number of other opportunities to improve highway safety later in my testimony.

The Industry's Safety Record

It is important to point out that the trucking industry has long supported sensible and effective measures to improve highway safety. Because the highway is our workplace, we are concerned whenever any motorist—professional truck driver or passenger vehicle operator—engages in risky behavior behind the wheel. ATA was an early advocate of mandatory drug and alcohol testing for drivers and the ban on radar detectors in trucks. More recently, we successfully petitioned the National Highway Traffic Safety Administration (NHTSA) to initiate a rulemaking to mandate that speed limiters in all large trucks be set at time of manufacture to no more than 65 mph. In addition, we have published an 18-point Safety Agenda, a series of policy recommendations that, if implemented, would go a long way to further improving highway safety.

We have seen a truly incredible improvement in truck safety, especially over the last decade. In fact, in 2009 the number of injuries and fatalities in truck-involved crashes reached its lowest level in recorded history. Some may try to discredit these accomplishments by attributing them to the recession. However, these crash reductions have occurred even though truck mileage has increased. As a result, the *rate*

of trucks involved in fatal and injury crashes has also reached a record low level. Charts depicting these improvements can be found at the end of my testimony.

Preventing Unsafe Motor Carriers and Drivers From Entering the Industry

New Entrant Requirements

In order to continue the positive trends in truck safety, FMCSA must further strengthen the requirements for new motor carriers entering the industry. As a study conducted by the Volpe National Transportation Systems Center (Volpe Center) demonstrated, new motor carriers have significantly higher violation and crash rates. For instance, the violation rate of critical safety regulations for new entrants was 206.3 per 1,000 drivers compared to 11.8 per 1,000 drivers for experienced carriers. Similarly, the violation rate of acute safety regulations for new entrants was found to be 128.8 per 1,000 drivers versus 34.1 for experienced carriers.[1] Not surprisingly, the rate of crashes for new carriers was found to be higher as well. The crash rate for carriers in their first year of operation was 0.505 per million vehicle miles traveled, compared to 0.411 for carriers with more than a year of operating experience.[2]

Despite these risks, FMCSA currently grants operating authority to new motor carriers without any demonstration of the carrier's understanding of, or compliance with, Federal safety regulations. Instead, an initial new entrant safety audit occurs up to 18 months after a carrier has commenced operations. Regrettably, 41 percent of carriers fail these initial safety audits and 24 percent ultimately have their authority revoked.[3]

Clearly, more needs to be done to ensure the safety of new entrants *before* they begin operating, and new entrant safety audits must be done sooner. As the Subcommittee may be aware, the Motor Carrier Safety Improvement Act (MCSIA) of 1999 directed the Secretary of Transportation to "consider the establishment of a proficiency examination for applicant motor carriers. . .to ensure such applicants understand applicable safety regulations before being granted operating authority". However, in implementing the new entrant program, the Federal Motor Carrier Safety Administration (FMCSA) opted not to require such an exam but instead created a self-certification process. Carriers merely had to answer "yes" or "no" to a series of questions about whether they complied with Federal safety regulations.

In March 2003, the National Transportation Safety Board (NTSB) criticized the new entrant safety assurance process in its safety recommendations stemming from a tragic motorcoach accident. NTSB noted that the self-certification process ". . . does little more to screen new motor carrier applicants than the previous new entrant form requirements did. . . . In other countries and territories, the new applicant process is more stringent. . . . In all member countries of the European Union, a new motor carrier must take an examination to ensure that he knows the rules and regulations. . . . The Safety Board therefore concludes that FMCSA's New Entrant Safety Assurance Process lacks meaningful safeguards to ensure that a motor carrier is aware of, understands, and has a safety management system in place to comply with the FMCSRs (Federal Motor Carrier Safety Regulations)."

In a rulemaking completed in 2008, FMCSA subsequently eliminated the self-certification process, noting that "Many carriers were discovered to have falsely certified having such knowledge, and commenters urged the Agency to remove this requirement. The Agency concluded that enhanced educational materials and technical assistance materials would provide most carriers with sufficient knowledge of applicable regulations and of how to comply with such regulations. . . ."

With the elimination of the self-certification process, there is now no means to effectively ensure knowledge and compliance with the regulations by new entrants before they begin operations. ATA recognizes that strengthening the new entrant safety assurance process is a large task for FMCSA to tackle. Over 40,000 new motor carriers file for authority to operate annually, but FMCSA must focus its limited resources on auditing existing carriers that present known safety risks. However, it is clear that the new entrant process must be improved.

ATA urges mandatory minimum training requirements, pre-authority proficiency exams, and accelerated initial safety audits as components of highway reauthoriza-

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[1] Acute regulations those where a single violation is indicative of a breakdown in, or lack or, safety management controls. Critical violations are those a pattern of violations (*e.g.,* more than 10 percent of records check) is indicative of a breakdown in, or lack of, safety management controls.

[2] *Background to New Entrant Safety Fitness Assurance Process,* John A. Volpe National Transportation Systems Center, March 2000.

[3] Presentation at 2011 Commercial Vehicle Safety Alliance Spring Workshop by Jack Van Steenburg, Director, Office of Enforcement and Compliance, FMCSA, April 2011.

tion legislation. Specifically, every new entrant should be required to successfully complete comprehensive on-line training on compliance with the Federal Motor Carrier Safety Regulations and an examination prior to initiating operations. Further, FMCSA should conduct the initial safety audits sooner, specifically, within 6 months of the carrier's start date.

Drug and Alcohol Clearinghouse

There are also steps FMCSA can take to prevent unsafe drivers from entering the industry. In particular, FMCSA can leverage the industry's shared desire to prevent these drivers from operating by providing motor carriers with tools to more effectively screen driver applicants. For instance, *the creation of a clearinghouse for drug and alcohol test results would help carriers identify applicants that have violated the drug and alcohol regulations.* The clearinghouse would represent a major step toward closing a known loophole that allows unsafe drivers to evade the consequences of their actions by simply failing to disclose to hiring carriers the names of motor carrier they worked for when they committed drug or alcohol violations.

Driver Safety Measurement System Scores

FMCSA could also leverage the power of the industry to remove unsafe operators from the industry by providing carriers with driver applicants' Driver Safety Measurement System (DSMS) scores. These scores are generated by the agency's new safety Measurement System and represent each driver's safety performance reflected as a percentile ranking compared to all other drivers. Currently, these scores are only accessible by agency enforcement officials.

Hair Testing For Drugs

Finally, the Department of Transportation (DOT) should work with the Department of Health and Human Services to develop standards for the acceptance of hair testing as a component of the Federal Workplace Drug Testing program. Motor carriers are increasingly relying on hair testing as a means to identify unsafe drivers who make drug use part of their lifestyles. These carriers have found that hair is far superior to the only currently accepted specimen—urine—in its ability to detect drug use. Specifically, they have found that hair tests are up to 30 percent more likely to reveal drug use. Further, hair testing is less subject to subversion than urine and has a longer window of detection time—up to 30 days.

However, carriers that employ hair testing must still conduct redundant urine tests. Also, they are prohibited from sharing positive hair test results with former drivers' prospective employers. As a result, a driver who is terminated for testing positive on a hair test can merely apply for employment with another motor carrier without fear that the new employer will learn of his failed drug test.

Improve Laws and Regulations that Govern Drivers and Vehicles

Employer Notification System

Once drivers are permitted to enter the industry, both FMCSA and motor carriers need the tools to assure their continued safety. *One such tool that is desperately needed is a system to proactively notify employers of drivers' convictions for moving violations and of other licensing actions* (*e.g.,* license suspensions). Such systems have been shown to function effectively in several states and could serve as models for a Federal program.

Research has repeatedly shown the strong predictive value of moving violations. One such study, an April 2011 analysis published by the American Transportation Research Institute[4] (ATRI), showed that drivers convicted of moving violations are far more likely to be involved in future crashes. For instance, drivers convicted of improper passing, improper turns or improper/erratic lane changes are over 80 percent more likely to be involved in a future crash than those who have not. More timely notification of such violations would improve safety by revealing problem driving behavior promptly so that corrective action (*e.g.,* training, progressive discipline) can be taken more quickly.

Consistent with ATRI's findings, a 2004 FMCSA study *Driver Violation Notification Service Feasibility* concluded that a national ENS could save approximately 15 lives and avoid up to 373 injuries and 6,828 crashes per year. More recently, two States—Colorado and Minnesota—participated in an ENS pilot program mandated by Section 4022 of the Transportation Equity Act for the 21st Century (TEA–21). Nearly 1,100 drivers participated in the pilot which generated 229 notifications to the drivers' employers. In its final report on the pilot, FMCSA estimated that a na-

[4] *Predicting Truck Crash Involvement: A 2011 Update;* American Transportation Research Institute, April 2011.

tional DRNS system would prevent between 2,500 and 3,500 crashes and generate $240.5 million in societal safety benefits annually.

Under the current Federal process, motor carriers often do not learn of drivers' convictions in a timely manner. Employers are required to check drivers' records annually, however these records may reveal violations committed up to 11 months earlier. Similarly, CDL holders are required to notify their employers of violations within 30 days of a conviction, but are often reluctant to do so fearing repercussions. FMCSA estimates that at least 50 percent of drivers do not notify employers of convictions and licensing actions (*e.g.,* suspensions, revocations) within the required time-frames.

For these reasons, *ATA strongly advocates swift development of a national employer notification system.* DOT can deploy such a system relatively quickly and easily by endorsing a hybrid approach—combining the capabilities and expertise of a third parties with strong Federal guidance.

Electronic Logging Devices

FMCSA could also better ensure safe operation of commercial motor vehicles by moving forward with its proposed mandate for electronic logging devices. ATA supports mandating such devices as a means to improve compliance with the hours of service rules. FMCSA's data generated in the context of its Compliance, Safety, Accountability (CSA) program, shows a very strong correlation between compliance with the *current* hours of service rules and safe operation. Hence, the proper course of action is to improve compliance with the rules, rather than change them.

Moreover, FMCSA's proposed changes to the hours of service rules are unnecessary and unjustified. Truck safety has improved to unprecedented levels since 2003 when the basic framework for the current hours of service regulations was first published. The numbers of truck-related injuries and fatalities have both dropped more than 30 percent to their lowest levels in recorded history.

Also, the productivity losses and other negative impacts of the proposed rule would be dramatic. Past estimates by DOT placed the net cost to society of similar changes at over $2 billion annually. In fact, FMCSA's own cost benefit analysis acknowledges that the safety benefits of the proposed rule do not outweigh the costs. Only by applying creative "driver health" benefits can the agency justify making these changes. However, the agency mischaracterized the findings of the research upon which it makes this tenuous claim.

Given these many reasons, the best course of action is for FMCSA to abandon its proposal, retain the current hours of service regulations, and devote attention to improving compliance with the rules by, among other things, mandating electronic logging devices.

Speed Limiters

Perhaps one of the most effective means to ensuring continued safe operation is to reduce the speed of vehicles. As the Subcommittee may know, in 2006 ATA petitioned FMCSA and NHTSA to require speed limiters be set at time of manufacture. Also, ATA subsequently recommended a maximum national speed limit to 65 miles-per-hour for all vehicles. NHTSA recently agreed to grant ATA's petition and will initiate a rulemaking on this matter. However, the agency has delayed its planned initiation of this rulemaking until the end of 2012. Including this mandate in the safety title of reauthorization would raise the visibility and priority of this issue causing NHTSA to begin its rulemaking process sooner.

Tools to Remove Unsafe Drivers and Carriers From the Industry

ATA shares Congress' strong desire to remove unsafe drivers and carriers from the industry. Perhaps the most important part of that process is the accurate identification of bad actors. Fortunately, FMCSA's new CSA program represents an important means to this end. By design, the system uses real-time performance data, measures relative crash risk, and creates scores of comparative performance. These scores are then used to identify the most unsafe actors (carriers and drivers) and prioritize them for enforcement intervention.

Data Quality Issues

ATA has supported CSA from the outset since it is generally performance-based, provides real time measurements, and has the potential to distinguish responsible carriers from those that may not share their commitment to safety. However, the integrity of the system is hindered by underlying data quality issues. As such, its use as a system to reliably identify unsafe carriers and drivers is somewhat limited.

Given the heightened impact of safety data (roadside inspection results, crashes) on carriers' performance measurements, carriers are increasingly scrutinizing their data and challenging erroneous records. These challenges are made through a pro-

gram called DataQs, which channels correction requests to the appropriate state agencies. However, since the launch of CSA, DataQ correction requests have skyrocketed, challenging the states' abilities to correct erroneous reports in a timely fashion. To help resolve this data crisis, *ATA strongly encourages Congress to expand Motor Carrier Safety Assistance Program (MCSAP) funding dedicated to State DataQ resources.* At a minimum, each state will need to add a full time employee (or two) in order to keep pace with the increasing demand for data corrections.

Scoring Methodology Improvements

It is also necessary for FMCSA to make some changes to the methodology CSA uses to develop carriers' scores. Most importantly, FMCSA should modify the severity weights or "points" assigned to violations so that they more accurately correspond to relative crash risk. Several, if not many, of the violation severity weights are illogical and inappropriate, in that they do not accurately reflect relative crash risk. As a result, the system targets the wrong carriers—those that may not present the greatest crash risk.

For instance, a tire with less than 2/32nd tread on the trailer bears the same weight (8 points on a scale of 1—10) as a tire in the same condition mounted on the steering axle. Naturally, these two mounting positions present very different relative risks. Also, failing to have all four hazardous materials placards mounted horizontally bears the same weight (5 points) as having no placards mounted at all.

To develop these severity weights, FMCSA initially relied on data generated through a crash risk analysis. However, the agency later modified the weights based on "subject matter expert input" and is now in the process of seeking recommendations for additional changes based on the opinions expressed by members of the agency's Motor Carrier Safety Advisory Committee. *In order to ensure that the system accurately identifies drivers and carriers that represent the greatest crash risk, FMCSA should carefully weight each violation on its statistical relationship to crashes.*

Crash Accountability

Perhaps the most pressing area for improvement with the CSA program is with respect to how the system measures carriers' crash involvement. Currently, the system measures carrier performance by considering *all* carrier involved crashes, including those for which the motor carrier could not reasonably be held accountable. Accordingly, a carrier involved in a number of crashes for which it was not responsible is seen as just as safe/unsafe as a like-sized carrier who was involved in the same number of crashes—but caused the majority of them.

As a result, safe carriers are erroneously labeled as crash prone and targeted for interventions and roadside inspections. Conversely, unsafe carriers (those with a pattern of *causing* crashes) with slightly fewer crashes may appear safer by comparison and escape scrutiny.

Undoubtedly, one of the best predictors of future crash involvement is a carrier's past at-fault crash involvement. However, because the current system does not consider crash accountability, carriers' scores in this area are less meaningful and reliable. Hence, *in order to use the system to its fullest potential as a means to target unsafe drivers and carriers for intervention and potentially remove them from the industry, FMCSA should only measure carrier performance based on crashes for which they could reasonably be held accountable.*

Additional Opportunities to Improve Safety

While dedicating attention to the enforcement and regulatory issues discussed above is important, doing so is restrictive and will yield limited results for two primary reasons. First, this approach focuses exclusively on motor carriers and drivers, despite the fact that the majority of car/truck crashes are initiated by actions committed by other motorists. Second, it emphasizes enforcement and compliance as the primary means to improve safety. Though enforcement programs are necessary and important, seeing them as the only avenue to improving highway safety is severely limiting and discounts the potential of other solutions that would leverage the power of the industry to achieve additional improvements.

Focuses On A Small Part of the Problem

As the Committee is well aware, FMCSA is primarily focused on regulating only part of the highway safety equation: motor carriers and commercial motor vehicles. Yet the single largest factor impacting truck safety is the behavior of other motorists. Hence, focusing almost exclusively on motor carriers and their drivers directs attention to a small part of the equation.

FMCSA's own research shows that in the majority of large truck/passenger vehicle crashes, the driver of a passenger vehicle was the sole party cited for a related fac-

tor (*e.g.,* speeding, failure to yield).[5] Numerous additional studies have analyzed crash data and arrived at similar conclusions. For instance, a University of Michigan Research Institute (UMTRI) study of 8,309 fatal-car truck crashes examined driver factors in these crashes and found that car drivers made errors in 81 percent of these crashes and trucks drivers 26 percent of them. In addition, two recent studies conducted by the Virginia Tech Transportation Institute (VTTI) collected data on 210 car/truck incidents using both video and non-video data. The evidence, much of it video, showed that 78 percent of these incidents were initiated by car drivers, while the remaining 22 percent were initiated by truck drivers.[6] In fact, the VTTI study said:

> *". . . the current study lends further credibility to the hypothesis that light vehicle drivers are responsible for a substantial proportion of the light vehicle/heavy vehicle interactions and that addressing this problem should include focusing on the light vehicle driver."*[7]

Since meaningful solutions to commercial motor vehicle safety require a focus on the primary causes of crashes, *FMCSA should devote its awareness and education resources and promote traffic enforcement programs to address the role of passenger vehicles in car/truck crashes.* Due to the agency's statutory limitation on regulating only commercial motor vehicles, the agency must continue find new and creative ways to address this part of the truck-involved crash problem. FMCSA's *Ticketing Aggressive Cars and Trucks* (TACT) program is one such program, albeit a small one, aimed directly at the high risk behaviors—those that cause crashes—of both car and truck drivers. This program that has been evaluated and shown to be effective. As a result, FMCSA should work to implement it as part of each state's motor carrier safety assistance program.

Motor carriers recognize that the key to reducing crashes is finding ways to prevent them, regardless of fault. Congress and FMCSA must adopt this approach as well. In order to further reduce commercial motor vehicle crashes, we must acknowledge the primary causes of these crashes and accept the need to initiate programs that will address them.

The Regulatory Compliance and Enforcement Model

Again, ATA recognizes that truck safety regulations are important and we support them. However, regulations alone are insufficient to achieve optimum results. Employing more creative solutions and employing tools to leverage the mutual interest of the industry to improve highway safety will bring about even greater safety improvements. I have already mentioned a few of these tools such as a drug and alcohol clearinghouse, an employer notification system and access to DSMS scores. They represent good examples of ways to provide the industry with the means to help achieve our mutual goals. To achieve the fullest potential, Congress and FMCSA should explore additional tools that will bring about safety gains.

Incentives for Safety Technologies

Congress and FMCSA should consider tax and/or regulatory incentives for carriers to adopt systems and programs with potential safety benefits. For instance, FMCSA might consider providing positive credits in the CSA scoring methodology for carriers that voluntarily adopt emerging safety technologies. Also, ATA strongly supports passage of S. 1233/H.R. 1706, legislation that would provide a tax credit equal to 50 percent of the cost of qualified advanced safety systems, including brake stroke monitoring systems, lane departure warning systems, collision warning systems, and vehicle stability systems. These technologies are very promising, but their relative risks and benefits are not fully known. Hence, mandating their use on every truck in all segments of the industry would be premature. However, providing incentives for voluntary use would promote real world testing of the devices to provide data in support of a potential future mandate. Further, such incentives could driver carriers to adopt the devices sooner, since such voluntary incentives can be introduced more quickly than a regulatory mandate.

More Productive Trucks

ATA supports giving states more flexibility to adjust their truck size and weight regulations in order to address local needs. More productive vehicles would produce important environmental benefits by reducing vehicle miles traveled, fuel consump-

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[5] Department of Transportation: Federal Motor Carrier Safety Administration, *Report to Congress on the Large Truck Crash Causation Study,* (2006).

[6] Virginia Tech Transportation Institute, *A Descriptive Analysis of Light Vehicle-Heavy Vehicle Interactions Using In Situ Driving Data,* (2006).

[7] *Ibid*.

tion, and greenhouse gas emissions. Use of these vehicles could reduce fuel usage by up to 39 percent, with similar reductions in criteria and greenhouse gas emissions.[8] More productive trucks can be as safe as or safer than existing configurations. Furthermore, because fewer truck trips will be needed to haul a set amount of freight, crash exposure—and therefore the number of crashes—will be reduced.[9] [10] In order to take advantage of the benefits that productivity increases can deliver, Congress must reform its laws to give states greater flexibility to change their size and weight regulations.

Conclusion

Mr. Chairman, I appreciate the opportunity to offer ATA's views on how best to collaboratively improve highway safety. The trucking industry is justifiably proud of its recent safety accomplishments, but recognizes there is much more that needs to be done. Please know we strongly support your desire to improve the safety of our workplace, as demonstrated by our broad safety agenda. We share your interest in preventing unsafe carriers and drivers from entering the industry and means to ensure that rogue operators are effectively identified and removed from the roadways.

As I mentioned earlier, further meaningful improvements will require a departure from the traditional approach to truck safety. The government must acknowledge the role other motorists play in truck crashes and identify the programs we can put in place to prevent these crashes. Further, we must be more creative in our approach to improving driver and carrier safety. Providing carriers will safety tools will leverage the size and power of the industry to achieve the mutual objective of improving highway safety.

Thank you and I would be happy to answer any questions you may have.

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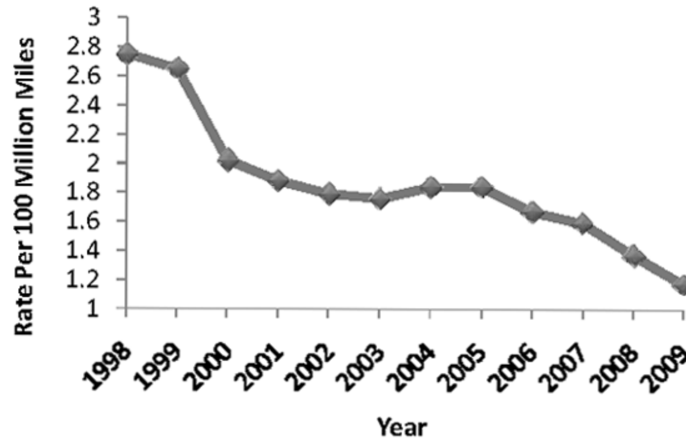
[8] American Transportation Research Institute, *Energy and Emissions Impacts of Operating Higher Productivity Vehicles,* March 2008.

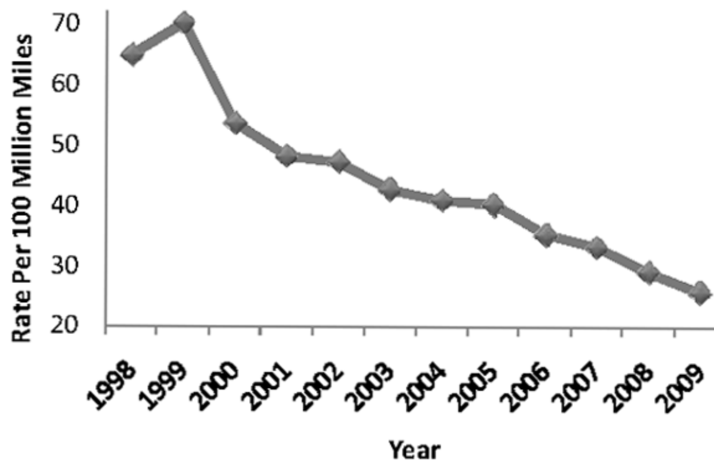
[9] See for example: Campbell, K.L., *et al.,* "Analysis of Accident Rates of Heavy-Duty Vehicles," University of Michigan Transportation Research Institute (UMTRI), Report No. UMTRI–88–17, Ann Arbor, MI, 1988.; Transportation Research Board, National Research Council, "Truck Weight Limits," Special Report 225, Washington, D.C., 1990; Cornell University School of Civil and Environmental Engineering, "Economic and Safety Consequences of Increased Truck Weights," Dec. 1987; Scientex, "Accident Rates For Longer Combination Vehicles," 1996; Woodrooffe and Assoc., "Longer Combination Vehicle Safety Performance in Alberta 1995 to 1998," March 2001.

[10] Though ATA expects truck traffic to increase as the economy grows, productivity increases will slow the rate of this growth.

LARGE TRUCK FATALITY AND INJURY RATES—1998–2009



Large Truck Fatality Rate
Per 100 Million Vehicle Miles Traveled
1998-2008



Large Truck Injury Rate
Per 100 Million Vehicle Miles Traveled
1998-2008

Senator LAUTENBERG. Thank you very much.

Mr. Rajkovacz, the Director of Regulatory Affairs for Owner Operator Independent Drivers Association, an international trade organization that represents truck drivers and independent truck operators.

We're looking forward to hearing from you. Please.

STATEMENT OF JOE RAJKOVACZ, DIRECTOR OF REGULATORY AFFAIRS, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Mr. RAJKOVACZ. Thank you.

Good afternoon, Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee. Thank you for the opportunity to testify this afternoon.

As a former truck driver and current representative of the small business trucking community, I can tell you that matters discussed this afternoon are extraordinarily important to the thousands of men and women who work hard every day behind the wheels, of driving commercial vehicles.

First, I would like to say that it is of the utmost importance that members of this committee and other policy decisionmakers recognize that one cannot simply divorce safe operations and safety compliance from the economic realities that truckers must face every day.

With that said, the U.S. trucking industry has never been safer. From a peak of 6,702 fatal accidents involving commercial motor vehicle safety in 1979, the industry had a record low of 3,380 in 2009. FMCSA statistics clearly show a continuous improving trend over the course of three plus decades.

Additionally, it is important to recognize that interstate trucking is not at fault in the majority of the involved accidents.

Many take credit for these dramatic improvements. Unfortunately, we rarely hear credit given to those most responsible—the men and women who actually drive trucks.

Small business truckers dominate the industry; yet, their business model is under assault from larger motor carrier interests that have cleverly crafted and support initiatives, like EOBR speed limiters in heavier trucks, under well-sounding, but false, safety and environmental arguments. We hear the repeated mantra from large motor carriers that leveling the playing field is necessary. That is nothing more than sloganeering for initiatives designed to drive their competitors from the marketplace.

It's ironic that probably the most significant safety issue affecting compliance with hours of service regulations, which is the excessive amount of time drivers are detained at loading docks by shippers and receivers. It is viewed by larger motor carriers as something better off left to market forces alone to deal with. Yet, they think government mandating a wide array of onboard safety systems, from EOBRs to speed limiters, is necessary to level he playing field. Where is the logic in that?

Here are some interesting safety statistics that have resulted from FMCSA's new and more comprehensive Motor Carrier Safety Measurement System, which replaced the old SafeStat system, and

is a key component of CSA. Small business motor carriers look pretty good when compared to their big business counterparts.

Under SafeStat, large motor carriers—those with more than 500 trucks—showed up as deficient in one or more of the safety evaluation areas only 22.1 percent of the time. Within the new, more detailed system, the number of large motor carriers having an alert or warning in at least one category jumped to 51.4 percent. Conversely, under the increased scrutiny of the new system, for motor carriers with five trucks or less, safety deficiency only increased by three-tenths of a percentage, from 7.1 to 7.4; and for carriers with 6 to 15 trucks, their safety record actually improved by 6 percent.

Those small business motor carriers represent over 80 percent of all registered nationally. Clearly, owner-operator small business motor carriers and their drivers are doing something right.

During the past 9 months, this industry has dealt with dozens of rulemakings from different Federal agencies, every one of them coming at additional cost to small businesses who are unable to get cost recovery in this economy. I hear constantly from owner-operators, drivers, and small business owners that they've had enough. Far too many are looking to exit the industry.

Today's significant safety gains can, and will be, lost if policies are implemented that cause a rush to the exits by veteran, experienced operators. We think today's tremendous safety achievements can be improved upon, but not if safety is viewed through the same prism of only applying more screws to drivers out on the road. We should not be advancing regulations that reduce driver flexibility for no clear safety benefit, while ignoring those outside of trucking who share responsibility for compliance issues.

Minimum driver training standards which are the most effective and least costly manner for improving safety should be given greater attention than simple reliance on mandating technological solutions. There is a real disconnect between the executive suite and the driver's seat on how to improve highway safety, and we cannot afford to ignore the real-life experiences and opinions of the men and women who are on the road every day.

Chairman Lautenberg, Ranking Member Wicker, and members of the subcommittee, on behalf of small business truckers who live in every community in our nation, thank you for the opportunity to testify. And I look forward to responding to your questions.

[The prepared statement of Mr. Rajkovacz follows:]

PREPARED STATEMENT OF JOE RAJKOVACZ, DIRECTOR OF REGULATORY AFFAIRS, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Good morning, Chairman Lautenberg, Ranking Member Wicker and distinguished members of the Subcommittee. Thank you for inviting me to testify on matters which are extremely important to our Nation's small business truckers and professional truck drivers.

My name is Joe Rajkovacz. I am Director of Regulatory Affairs for the Owner-Operator Independent Drivers Association and serve on the association's Board of Directors. Prior to my current position with OOIDA, I was an owner-operator for more than two decades operating my own equipment and leasing my services to a motor carrier. You have asked today for OOIDA's input on reauthorizing highway safety programs and as someone who spent nearly thirty years behind the wheel of a truck, and spent the past decade listening to the safety concerns and complaints from active truckers, I am happy to provide you with my unique perspective.

As you are most likely aware, OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is

the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 152,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 200,000 individual heavy-duty trucks. The Association actively promotes the views of small-business truckers through its interaction with state and Federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment and safe working conditions for commercial drivers.

The majority of trucking in this country are small-business, approximately 93 percent of all motor carriers have 20 or less trucks in their fleet and roughly 86 percent of carriers have fleets of just 6 or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of registered motor carriers operating in the United States. These small-business motor carriers have an intensely personal and vested interest in highway safety as any safety related incident may not only affect their personal health, but also dramatically impact their livelihood. As such, OOIDA sincerely desires to see further improvements in highway safety and significant progress toward the highway safety goals of the Subcommittee and U.S. Department of Transportation.

With that said, during this reauthorization process, Congress has the potential to accomplish great things with the drafting of a "Highway Bill". However, in light of the current economic conditions and the regulatory assault under which America's small-business truckers are currently operating, some proposed legislation passed under the guise of safety could cause irrevocable harm to this significant portion of the industry and their contributions to the unprecedented levels of highway safety we are currently experiencing.

Detention Time

One cannot simply divorce safe operations and safety compliance from the economic realities that truckers must face every day. While truck drivers certainly should be held accountable for their actions, the same should be true for the stakeholders who often have more control over truckers' schedules and activities than the drivers themselves.

The excessive, uncompensated time truckers spend waiting to be loaded or unloaded at shipping and receiving facilities represents one of the greatest examples of how lacking regulatory enforcement and economic pressures within the industry can negatively impact a trucker's ability to comply with safety regulations. Detention time has been a growing problem in the trucking industry for many years, according to a study performed by the FMCSA, detention representing more than 3 billion dollars in waste to the industry and over 6 billion dollars to society. Unless and until the problem of excessively detaining drivers at loading/unloading facilities is addressed, most safety regulations pertaining to hours-of-service (HOS) of drivers will be undermined.

Repeatedly, time spent waiting to be loaded or unloaded has been identified by drivers and small motor carriers in studies, as well as at FMCSA's public listening sessions, as a major factor that must be addressed in order to have effective HOS regulations. The pressure to violate HOS regulations will not fade away even with an electronic on-board recorder mandate (EOBRs).

Under current HOS regulations, the daily 14-hour clock begins to tick for a trucker when the driver performs any on-duty activity, including those duties related to loading and unloading. However, unlike other industrialized nations throughout the world, most U.S. based drivers are not compensated by the hour but rather based upon the number of miles driven. This translates into a drivers' time having essentially no value, particularly to shippers and receiver which fall outside of FMCSA's authority and are not held accountable for their actions related to HOS violations by drivers.

Shippers and receivers routinely make truckers wait for considerable amounts of time before they allow them to load or unload their trucks and drivers routinely arrive at the same facilities with little or no idea how long they will be there. Known in the industry as "detention time," most shippers and receivers do not pay for this time and have little financial or regulatory incentive to make more efficient use of drivers' time. It is common for a driver to pull into shipping or receiving facilities with no idea of whether he or she will be there for 2 hours or for 10. In certain segments of our industry, it is not unusual for drivers to wait up to 24 hours before receiving a load. During this waiting time, it can be nearly impossible for a driver to rest. Often, the driver must wait in line or be "on call," ready to take the load and make the "just-in-time" delivery.

As a driver and owner-operator I contended with excessive detention time on a daily basis, for example: for over two decades I hauled refrigerated food products

between the Midwest and the west-coast—primarily California. The receivers I frequented most were grocery wholesalers. Appointments would be set, I'd show up on-time and the games would begin. I'd be lucky to be immediately assigned a door to begin unloading. There was always some excuse such as "we over-booked" appointments and "we'll get to you when we can". Often, I had other scheduled appointments to make and this first delay caused a cascading effect that would cause every other appointment to be missed. Increasingly, the other receivers would assess non-negotiable "late fees" in order to unload the product they ordered. None of these receivers would compensate me for unwarranted detention time that was a result of their inefficiency but they were not shy about taking from me both my time and hard earned money in extortionate unloading fees.

Once I was empty, I'd begin the return trip by loading produce. Contrary to what many people may believe, this is not a process where I'd simply go to one shipper, get loaded and hit the road. Most produce shipments involve multiple pick-ups. Each shipper could take anywhere from 1 hour to more than 24 hours to complete loading. As a driver, I'd have to constantly monitor my C.B. radio for the call from the shipper to head to the loading dock. If I had the misfortune to fall asleep and missed the call, I was marked as a "no-show" and the process would start all over.

None of these massive delays were ever recorded against my available HOS. The hours were logged as "off-duty" time because it would have been financial suicide for me to burn as much as half my available weekly time for zero compensation (as an aside, EOBR's will not change this dynamic). Nobody in the supply chain cared about how their actions complicated my ability to comply with the HOS regulations.

From OOIDA's perspective, if the time spent by drivers waiting to be loaded or unloaded is contemplated and if compensation for excessive detention time begins to be negotiated or if shippers and receivers are held accountable under FMCSA regulations, the trucking industry and the American public would benefit from more efficient freight movement and dramatically improved highway safety—because drivers will no longer be incentivized to hide their actual on-duty hours. Furthermore, if the compensation structure for drivers were to be changed from mileage based pay to a form of hourly compensation many safety concerns would be alleviated.

We appreciate that within FMCSA's draft Strategic Plan (2011–2016), the agency recognizes that in order to truly "raise the safety bar" for our industry, under Goal1, Strategy 1.1 the agency proposes to "*Identify gaps in current legislative and regulatory authorities that prevent FMCSA from reaching certain elements of the CMV transportation life-cycle (e.g., entities touching roadway movement of passengers and freight: shippers, receivers, brokers, freight forwarders) who may have a deleterious effect on safety through their actions.*" Without full supply chain accountability related to drivers HOS, many strategies designed to improve highway safety will find that achieving that goal remains elusive.

Speed Limiters

For years, many safety advocates and large corporate interests have been advocating for the government to impose restrictions on the engine speed of heavy-duty commercial vehicles despite the fact that the use of "speed limiters" is not widely researched or an act grounded in safety or sound scientific principle. Large motor carriers traditionally have opted to use speed limiters as a business decision and fleet management tool and as such support an industry wide mandate in an effort to level the playing field against small businesses which are perceived to have a competitive advantage because engaging a speed limiter is often not necessary of a small trucking operation. The limited research that has been conducted on speed limiters has demonstrated mixed and controversial results including results showing they are highly dangerous and offer very little economic or environmental benefit, particularly to small motor carriers despite the promoted misconception that they will improve upon fuel efficiency and highway safety.

Speed limiters are costly, ineffective, easily tampered with, and dangerous as they can cause speed differentials and disrupt the on-going flow of traffic. Highway safety engineers have long recognized that highways are safest when all vehicles are traveling at the same speed regardless of the speed limit. This is clearly evidenced by the well documented fact that accident rates are lower on interstate highways than on other roads because of access control, wider lanes, shoulders and the steady movement of traffic. Indeed, notwithstanding higher speeds, the interstate highway system experiences accidents and fatality rates two to five times less than the primary road system it replaced. It is well established that deviations from the mean speed of traffic in the negative as well as positive direction contribute significantly to accidents. For example, it has been found that for every 1 kilometer per hour increase in speed differential the casualties increase by 270.

Forcing heavy-duty trucks to drive slower than the flow of traffic will lead to frequent lane changes, passing and weaving maneuvers as well as tailgating by other faster moving vehicles. Indeed, traffic safety statistics produced by NHTSA in 2011 show that an average of 423 people die each year and 5000 are injured where the passenger vehicle rear ends the truck. In addition, other studies have shown that almost 1 in 5 fatal accidents involving a truck include a vehicle striking the rear end of truck. Removing trucks from the free flow movement of traffic exacerbates the potential for more passenger vehicles colliding with the back of slower moving trucks.

Safety is compromised when drivers lack full control of their vehicles. A study produced in Great Britain found that drivers of vehicles with external speed controls had a tendency to travel as fast as the speed limiter would allow, even when speed was too fast for the driving conditions. Further, OOIDA's research has shown that drivers have a tendency to drive over the speed limit in lower speed zones to make up for the effects of the speed limited truck. While prevailing highway research shows that one of the major contributors to truck accidents is driving too fast for conditions, there are situations where extra power and speed are essential. When a speed limited truck is trying to pass another truck efficiently, speeds higher than 68 mph may be required to avoid what is known in our industry as an "elephant race." In addition, truck drivers are trained to know that during a tire blow out, one must accelerate to attempt to maintain control of the truck with a speed limited truck a driver may have limited ability to have the control necessary to regain control.

OOIDA believes that in order to ensure safety, efforts must be made to keep all traffic flowing at the same rate of speed and drivers must have the power and ability to maneuver around impediments on the road. The best way to keep traffic flowing smoothly and safely is through increased enforcement of existing speed limits. Any Highway Bill which seeks to compromise the safety and livelihood of small business trucking operations will face considerable opposition by our membership considering it is small-business truckers, who have their skin and bones on the line and should have the right to stay safe behind the wheel.

Although, we are here to primarily discuss safety, I would be remiss if I didn't mention at least some of the disproportionate impact speed limiters would have economically on small business trucking operations. Among the many illustrations two of the most frequent concerns by owner operators include: (1) the ability to spec the truck to the necessary business model and (2) the method of enforcement. As a small business owner, trucks are "speced" to match the demographics of the route, the weight, the loads being hauled etc. This often requires changing the gear ratio, tires, and other relevant equipment on a truck to obtain optimal performance. An operator forced to operate a speed limited truck may not be able to make these changes and as a consequence the truck may not be running as efficiently and therefore costing the operator money and compromised compliance. Also, many drivers have concerns about enforcement as the only way for law enforcement to monitor speed limited compliance is to port into the engine of a truck which, if done incorrectly can disable the entire vehicle. This is a problem OOIDA has already been experiencing with its membership in speed limited provinces in Canada. It is a problem that can cost small business truck operators thousands of dollars to fix.

We would also like to point out that the FMCSA's Large Truck Crash Causation Study (LTCCS) did not record a single truck involved fatality above 75 mph. Additionally, states have set speed limits within their borders based upon traffic engineering studies establishing the safest speeds for vehicles to operate upon their highways. Any Federal action to require speed limiters on commercial motor vehicles would act as a de facto national speed limit.

Finally, not allowing trucks to operate at posted speed limits will reduce trucking productivity thus requiring MORE trucks to haul the same amount of freight as is currently hauled thus increasing car-truck interactions. From personal experience, I could legally drive from Salinas, California to Milwaukee, Wisconsin in 33 total hours of driving time—without violating posted speed limits. Arbitrarily speed limiting my truck to 62 mph would add 14.13 hours to the trip and one less day of shelf-life for perishable commodities.

Large truckload motor carriers who are proponents of speed limiting trucks also historically experience triple digit turn-over rates among their drivers. Our average member spends over 200 nights away from their families. I personally averaged 280 days away from my family for over 20 years. For an industry that has difficulty retaining drivers, further increasing the time they must spend away from their families through reduced productivity is simply counter-intuitive to encouraging good, safe drivers to remain in the industry.

Electronic On-Board Recorders

The FMCSA is currently in the process of another effort to require truckers engaged in interstate commerce to install EOBRs on their trucks. If EOBRs could prevent the manipulation of a driver's work schedule and respect drivers' privacy rights, OOIDA would consider supporting their use for HOS reporting. But for now, OOIDA's opposition to EOBRs remains unchanged. OOIDA remains convinced that EOBRs are no more a reliable or accurate record of a driver's compliance with the HOS regulations than paper log books. In our collective mind there remains no rational basis for the economic burden and unreasonable imposition to personal privacy presented by requiring drivers to be monitored by EOBRs.

The theory behind the use of EOBRs for HOS enforcement is that the devices will provide an accurate, tamper-proof record of a driver's duty status and therefore ensure compliance with the HOS rules which in turn will make for a safer trucking industry. This theory is undermined by the fact that EOBRs cannot capture, without the driver's input, data related to the time a driver spends conducting on-duty, non-driving activities. The HOS rules require a record to be kept of both driving time and all non-driving work activity (waiting to load and unload, inspecting/repairing the truck, performing the loading and unloading, looking for the next load, receiving a dispatch, doing paperwork, performing compensated work at another job, etc.). Even though an EOBR can record how long someone has operated a truck, if the driver does not manually enter his non-driving work time into the EOBR, the EOBR will show the driver as available to drive when he actually has no available time under the HOS rules. In fact, EOBRs will still permit someone to perform compensated work for the motor carrier to continue driving, without showing a violation.

The EOBR's reliance on driver input means they provide a no more accurate or tamper-proof record of a driver's HOS compliance than paper log books. The substantial costs of EOBRs, costs that would be especially burdensome to small-business, cannot be justified by any perceived improvement in compliance. The costs also include those to personal privacy. The truck cab is the home away from home of most long-haul truck drivers. They sleep, eat and conduct personal business in the truck while not driving. They have a legitimate expectation of privacy that must be afforded to them.

OOIDA is also certain that EOBRs will make it easier for motor carriers to harass drivers. Congress required FMCSA to ensure that such devices would not be used to harass truck drivers. Unfortunately, the EOBR rule that was recently issued seems to ignore this requirement. As the agency knows, it must ensure that its safety regulations do not have a deleterious effect on the physical condition of drivers. The only evidence on the record regarding the potential health effects of EOBRs are the studies that show that electronic monitoring of employees can increase the stress of workers. EOBRs can be used to exacerbate driver fatigue as carriers will be able to notice whenever a driver has stopped their truck during their on-duty time. Perhaps the driver has decided to take a break and get rest. Such breaks do not suspend the running of the 14-hour work-day under the HOS rules. The carrier will be able to instantly instruct the driver to return to the road and maximize his or her driving time. Carriers will also be able to instruct drivers, whenever they want, to log their on-duty, not-driving work as off-duty, thereby preserving their on-duty driving time. Both practices remove what little discretion drivers have today to resist the economic pressure discussed above.

OOIDA encourages lawmakers to seek solutions to motor carrier safety issues that are much less intrusive and much more effective such as mandating comprehensive driver training, resolving problems at the loading docks, revising methods of driver compensation, creating more flexible HOS rules, and providing adequate truck parking in those areas around the country where drivers who wish to rest cannot find such parking today.

Driver Training

An adequately trained driver is the key to any advances in safety goals. To this end, OOIDA has consistently been a strong proponent of Federal government efforts to develop and impose mandatory driver training and licensing requirements for entry-level truck drivers. During the recent HOS rulemaking process, the ATA published a whitepaper stating that *"Finally, by restricting truck driver productivity and forcing the use of more inexperienced drivers, the revised rules are likely to result in more highway crashes—new drivers present more than 3 times the risk of crashes than their more experienced counterparts."* It is simply mystifying that we still have no meaningful training standards for entry-level drivers, but instead a continual push for more on-board safety technology.

At present, FMCSA regulations require entry-level drivers to be trained in only four subjects—driver qualifications, hours-of-service, driver wellness and whistle blower protection—all of them unrelated to the hands on operation of a commercial motor vehicle. The Notice of Proposed Rulemaking published in 2008 would expand the required training for Class A drivers to include a minimum of 44 hours behind the wheel training in addition to 76 hours of classroom training, nearly all of it involving subjects pertaining directly to the safe operation of a commercial motor vehicle. The rulemaking also proposes the accreditation of driver training schools offering entry-level courses as well as the establishment of standards for ensuring that instructors at such schools are qualified to teach those courses. The goal of these regulatory revisions is to enhance the safety of commercial motor vehicle operations on the Nation's highways.

Based upon on our continuing, firm belief that minimum training requirements for entry-level drivers will improve highway safety for all motorists, private as well as commercial, OOIDA very much supports the FMCSA's proposal to establish minimum training requirements that require a specified amount of behind-the-wheel training for entry-level drivers. OOIDA also believes that the effectiveness of such a training program can be ensured only if all facilities providing entry-level driver training programs are accredited by independent agencies and the instructors providing the training are required to meet relevant qualification standards. Accordingly, OOIDA also supports the agency's proposal to regulate training providers.

We sincerely hope FMCSA will soon move forward with its rulemaking on driver training.

New Entrant Safety Assurance

As a part of its Congressionally mandated efforts to beef up its New Entrant Safety Assurance efforts, FMCSA is conducting safety audits of new entrant motor carriers within 18 months of their being granted operating authority. OOIDA believes that instead of conducting safety audits well after the granting of operating authority, FMCSA should focus its limited resources on gathering information during the initial application process to determine an applicant's ability to comply with regulations. Prior to granting operating authority, FMCSA can derive plenty of data regarding an applicant's ability to perform safely and comply with regulations from evidence of work experience, training, and/or knowledge of the industry. FMCSA should also enhance current protest procedures to encourage industry stakeholders, including States, to provide data and other information that could lead to a more informed authorization process. This larger body of information could be checked against existing DOT databases to identify "chameleon" carriers and brokers as well as other problem applicants and to deny them new authority.

OOIDA believes it is wrong to lump all new applicants together either for prequalification testing or later safety audit purposes. OOIDA's experience assisting its members to obtain their operating authority has shown that the majority of these new applicants are experienced commercial motor vehicle drivers with excellent safety records. They are stable business owners who have for many years been driving a truck as an owner-operator or employee driver and have, throughout those years, learned much about applicable safety regulations and effective safety management procedures.

There's a strong correlation between a carrier's future performance and its past accident record. Thus, FMCSA should expand the application form to collect information that will help the agency to identify those applicants with poor crash history records and safety practices.

All owners (whether individuals, partners or shareholders) as well as key personnel, especially including, but not limited to, those who will be responsible for safety compliance and management should be identified. Their past training, experience, and work histories should be listed on the application. This information should go back at least 5 years, and should not be limited to trucking experience as all work experience will help determine whether the applicant possesses the character and integrity to conduct safe trucking operations.

FMCSA could also enhance this pre-qualification review process by modifying current protest procedures to take full advantage of third-party information about applicants. FMCSA's current practice is to post in the Federal Register a summary of the application (49 C.F.R. § 365.109(b)), which contains only the applicant's name and address, its designated representative, assigned number, the date of filing, and the type of authority requested. Interested parties, including States who would have a direct interest in keeping applicants with poor driving and accident records from receiving new authority, then have only ten days to request the full application and file a formal protest.

It is our understanding that close to 40,000 applications for operating authority are filed with FMCSA each year. Thus, the ten-day review and protest period is far too short to allow stakeholders an opportunity to contribute in a meaningful way to the decision making process.

All names, businesses, and equipment identified in an application or by protesters could then be checked against the substantial pool of information currently collected in DOT's various computer databases, such as MCMIS, PRISM, and CDLIS, to confirm past performance and crash history. Certain types of information, such as evidence that the applicant is simply seeking to evade prior enforcement actions or out-of-service orders, or has a history of the 16 types of violations that now result in denial of permanent authority when discovered in a new entrant safety audit, should result in automatic denial of authority.

The proposed pre-qualification investigation is analogous to that currently conducted and effectively used by the Federal Maritime Commission in its licensing process for ocean transportation intermediaries. Applicants must demonstrate not only that they possess the "necessary experience" in related activities but the "necessary character" to render such services. 46 C.F.R. §§ 515.11(a)(1) and 515.14. Further, the Federal Maritime Commission investigates the accuracy of the information, the integrity and financial responsibility of the applicant, the character of the applicant and its qualifying individuals, and the length and nature of the applicant's relevant experience, before granting a license.

Such a thorough pre-qualification review process should eliminate problem applicants long before the current application and safety audit procedure might find them.

Conclusion

OOIDA firmly believes that it is in the best interest of the industry and highway safety for Congress to continue the practice of passing multi-year reauthorization Highway Bills. However, due to economic and regulatory uncertainty, Congress must be careful how the bill is funded and what legislative priorities are passed into law. Instituting a massive new private infrastructure funding configuration will result in additional taxation upon the traveling public and the shipment of goods, risking our economy even further. Costly mandates such as EOBRs and speed limiters are not in the best interest of the small-business trucking community. Moreover, mandates such as speed limiters will cause small business truckers to actively work to oppose the overall bill. Congress however has an opportunity to effectuate great and much needed change in the industry, and significantly help drivers and small-business truckers, through the pursuit of mandatory detention time, improved training, and most importantly, a refocused Federal investment that will improve the flow of interstate commerce and increase highway safety.

Thank you again for this opportunity and I look forward to answering any questions that you may have.

Senator LAUTENBERG. Thank you.

Ms. Gillan is Vice President of Advocates for Highway and Auto Safety. She's a tireless advocate that will discuss the importance of critical safety provisions to prevent tragic crashes.

Ms. GILLAN. Thank you very much.

Senator LAUTENBERG. Ms. Gillan.

STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY (ADVOCATES)

Ms. GILLAN. Thank you, Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee, for the opportunity to testify this afternoon on motor carrier safety issues.

This subcommittee has a long history of advancing many important motor carrier safety laws that are preventing crashes, saving lives, and saving dollars, including recent committee action on the Motorcoach Enhanced Safety Act. The FMCSA authorization bill presents a unique opportunity to build upon these achievements.

In the past 10 years there have been more than 48,000 people killed in truck crashes—an average of 4,000 people annually. This is both unacceptable and unnecessary.

While Advocates welcomes the news that truck crash deaths have decreased these past 2 years, there is still an unfinished and overdue motor carrier safety agenda that needs to be adopted if we are serious about achieving significant and steady reductions in truck crash deaths and injuries.

I have submitted to the record a very detailed statement identifying some of the most critical motor carrier safety issues we face and recommendations for action, but let me briefly highlight some of these.

Large trucks are dramatically over-represented each year in severe crashes, especially fatal crashes. Large, overweight trucks are more dangerous for truck drivers and the public. They destroy our roads and bridges, and they undermine the national goal of a balanced intermodal freight transportation system.

A major step forward in truck safety is to enact S. 876, the Safe Highways and Infrastructure Preservation Act, sponsored by Chairman Lautenberg. This bill will stop the deadly race in states for bigger, heavier and longer trucks, where the public and truck drivers are always the losers. Over 85 consumer health, safety, and law enforcement groups support this common sense bill.

Driver fatigue remains a serious and deadly problem in the trucking industry. Two important strategies for addressing truck driver fatigue is an hours-of-service rule that advances safety and better enforcement by requiring electronic onboard recorders instead of paper log books.

Advocates urges passage of S. 695, the Commercial Driver Compliance Improvement Act sponsored by Senator Pryor, to guarantee efforts by Congress and safety groups to require EOBRs will finally be completed and I also want to recognize the work of the Chairman in pushing for a universal requirement for electric onboard recorders.

Keeping unsafe motor carriers and unsafe drivers off of our highways is essential to everyone's safety.

FMCSA has fallen short in meeting both of these goals. We recommend that FMCSA adopt a stronger requirement for motor carriers entering the industry, such as a preauthorization safety audit, or a proficiency exam for new entrants. We also urge FMCSA to issue a strong entry-level driver training requirement for commercials drivers of trucks as well as motorcoaches.

Another bill that Advocates supports is S. 754, sponsored by two members of this subcommittee, Senator Pryor and Senator Boozman. This bill implements a GAO recommendation that DOT establish a national clearinghouse for records relating to alcohol and controlled substance testing of commercial drivers.

One of the major challenges facing the agency is ensuring rigorous oversight of the motor carrier industry and enforcement of safety laws and regulations. FMCSA has recently implemented the CSA program to achieve this goal. Unfortunately, although it has the potential to improve monitoring and oversight of the industry, it is difficult at this point to accurately assess its effectiveness, and our testimony includes several key recommendations that echo NTSB concerns on driver and vehicle violations, as well as the need for additional evaluations by GAO, and continued oversight by Congress.

As Chairman Lautenberg stated, every week of the year the number of people killed in truck crashes is equivalent to a major airplane crash. Furthermore, driving a truck is one of the most dangerous occupations in the United States.

There are several overdue actions we urge this subcommittee to consider. These include speed governors for trucks supported by safety groups and the ATA, stronger actions by the agency to identify and punish reincarnated motor carrier companies, as well as giving law enforcement the tools they need to inspect curbside motorcoach companies.

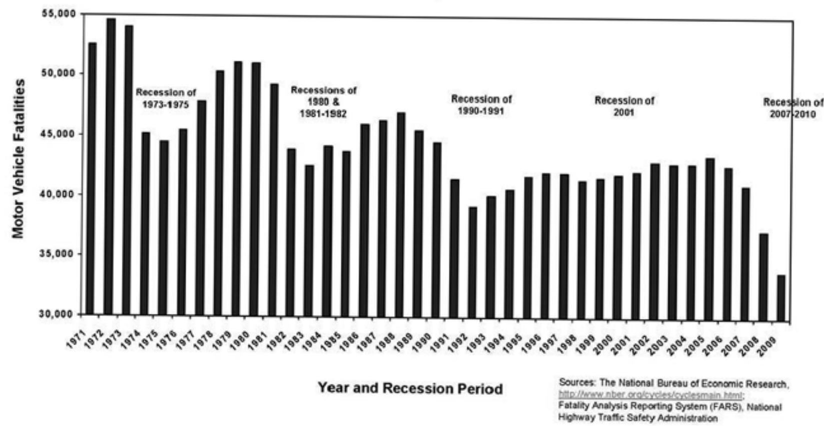
Advocates is closely monitoring, and still has concerns outlined in our testimony about the implementation of the new cross-border pilot program to ensure the safety of Mexican trucks entering and traveling throughout the United States.

Trucking is vital to our economy. But truck crashes extract an enormous financial and human cost in terms of deaths and injuries, and we can do better. We urge the subcommittee to continue its oversight and provide clear direction to the agency in the reauthorization legislation to continue our efforts to reduce truck crash deaths and injuries. Advocates looks forward to working with you on this lifesaving legislation.

Thank you very much.

[The prepared statement of Ms. Gillan follows:]

PREPARED STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY (ADVOCATES)



Introduction

Good morning Chairman Lautenberg, Ranking Member Wicker, and members of the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. I am Jacqueline Gillan, Vice President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, and insurers and insurer agents that promotes highway safety through the adoption of safety policies and regulations, and the enactment of state and Federal traffic safety laws. Advocates is a unique coalition dedicated to improving traffic safety by addressing motor vehicle crashes as a public health issue.

This Subcommittee has been responsible for many important motor carrier safety improvements that have been accomplished over the years, including establishment of a uniform commercial driver license (CDL) program, mandates for U.S. Department of Transportation (DOT) action on numerous safety rulemakings, strong oversight of the Federal Motor Carrier Safety Administration (FMCSA) plans and programs and recently, full Committee approval of the Motorcoach Enhanced Safety Act, S. 453, a bipartisan bill that has now received the endorsement of safety groups, crash victims and their families, as well as Greyhound Lines, a leading national motorcoach operator.

I welcome this opportunity to appear before you today to emphasize that there is still an unfinished safety agenda that needs your attention and your leadership.

This Subcommittee and Congress will play a critical role in leading our Nation to a safer, more rational use of its transportation resources. It will take leadership by Congress to implement a national, uniform approach to truck size and weights on our federally-assisted National Highway System (NHS) in order to enhance safety and protect highway infrastructure; to stop enactment of piecemeal special interest exemptions from crucially important Federal safety requirements; and to ensure that the Federal regulatory safety agency, the FMCSA, which has rededicated its efforts to making safety its highest priority, issues regulations that improve motor carrier safety and implements strong enforcement policies.

The Annual Death Toll from Large Truck Crashes Remains Unacceptable

Over the decade from 2000 through 2009, there were 48,317 people killed in truck-involved crashes, averaging 4,832 fatalities each year.[1] At the beginning of my testimony is a national map that indicates the fatalities in the last decade by state. In 2009, one of every 10 people killed in a traffic crash was a victim of a large truck crash.[2] Annual deaths in large truck crashes are disproportionately represented in

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[1] *Large Truck and Bus Crash Facts 2009,* FMCSA–RRA–10–060, Federal Motor Carrier Safety Administration (FMCSA) (Oct. 2010).

[2] *Traffic Safety Facts 2009,* DOT HS 811 402, National Highway Traffic Safety Administration (NHTSA) (2010), available at *http://www-nrd.nhtsa.dot.gov/pubs/811402ee.pdf*.

our annual traffic fatality data, with large truck deaths still accounting for about 11 percent of all annual highway fatalities, although large trucks are only about four percent of registered motor vehicles.[3]

Large, heavy trucks are dramatically overrepresented each year in severe crashes, especially fatal crashes. Although truck crash fatalities have declined in 2008 and 2009, this reduced death toll is strongly linked with a major decrease in truck freight demand, including substantially reduced truck tonnage starting in the latter part of 2007 and continuing through 2009.[4] Industry data verifies this decline in freight tonnage. According to published reports, for-hire tonnage fell in June 2009 by 13.6 percent over the freight transported in 2008, and freight analysts did not believe that the decline would stop until the second half of 2010 at the earliest.[5] This is consistent with previous tonnage declines associated with economic recessions. Recent data indicating that freight tonnage increased by 5.7 percent in 2010[6] as compared with 2009 may well be a harbinger of future increases in truck crash fatalities and injuries.

In terms of annual fatalities, I have included a chart at the beginning of my testimony that shows the strong relationship between economic recessions and declines in total highway deaths since 1971.[7] As pointed out by several authorities, including the Honorable David Strickland, Administrator of the National Highway Traffic Safety Administration (NHTSA), which collects and analyzes national fatality data, the unprecedented decline in deaths and injuries among all types of motor vehicles over the last few years is strongly linked to the recent downturn in the economy.[8] Just as personal travel will likely increase as the economy continues to improve, freight traffic will also resume its upward trend, which means more truck miles of travel each year that will likely translate into an increase in truck fatalities.

While the safety community welcomes the news of recent declines in truck crash fatalities it is not a reason to delay, defer or discard pressing forward with a strong, life-saving motor carrier safety agenda.

The Safe Highways and Infrastructure Protection Act (SHIPA) Will Improve Safety, Protect Infrastructure, Conserve the Environment, Enhance Intermodalism

It is up to Congress to take action now that will improve safety, protect the long-term national investment in our crumbling highway and bridge infrastructure while also protecting the environment and providing a more level playing field for intermodal freight transportation. We are at a crucial juncture in highway and motor carrier safety in this Congress. The debate over future funding for road and bridge construction and repair make conservation and preservation of the existing highway infrastructure an essential part of any plan to protect taxpayer investment in continued surface transportation mobility and safety.

A pending Senate bill, S. 876, the *Safe Highways and Infrastructure Preservation Act,* or SHIPA, sponsored by Chairman Lautenberg, has the potential, if enacted, to dramatically improve the safety landscape for all motorists, including truck drivers, and to protect our economic investment in highway and bridge infrastructure. SHIPA will stop the relentless cycle of demands and pressure imposed on the states

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[3] *Large Truck Fatality Facts 2009,* Insurance Institute for Highway Safety (IIHS), *http://www.iihs.org/research/fatality_facts_2009/largetrucks.html*.

[4] *See, e.g., http://www.glgroup.com/News/Leading-Indicator_2008-North-America-Freight-Market_Truck-Build-Numbers-Down_2009-Predicted-To-Be-Worse-With-2010–30689.html,* demonstrating 7 consecutive quarterly declines in truck freight tonnage through the third quarter of 2009. Also *see, http://www.ttnews.com/articles/basetemplate.aspx?storyid=22609,* "ATA's Costello Hopeful Freight Levels Have Bottomed Out," *Transport Topics,* Aug. 27, 2009, and a similar, earlier report in *Transport Topics,* March 2, 2009.

[5] *Freight Tonnage Continues to Decline,* Martin's Logistics Blog, Aug. 3, 2009. *http://logistics.about.com/b/2009/08/03/freight-tonnage-continues-to-decline.htm.* Also *see, e.g., http://www.glgroup.com/News/Leading-Indicator_2008-North-America-Freight-Market_Truck-Build-Numbers-Down_2009-Predicted-To-Be-Worse-With-2010–30689.html,* demonstrating 7 consecutive quarterly declines in truck freight tonnage through the third quarter of 2009. Also *see, http://www.ttnews.com/articles/basetemplate.aspx?storyid=22609,* "ATA's Costello Hopeful Freight Levels Have Bottomed Out," *Transport Topics,* Aug. 27, 2009, and a similar, earlier report in *Transport Topics,* March 2, 2009.

[6] "January Truck Tonnage Hits 3–Year High," *Transport Topics.,* Feb. 23, 2011, available at *http://www.ttnews.com/articles/basetemplate.aspx?storyid=26177*.

[7] *U.S. Recession Periods and Motor Vehicle Fatalities, 1971–2009,* Advocates for Highway and Auto Safety (2010).

[8] "While these latest trends are encouraging, we do not expect them to continue once the country rebounds from its current economic hardships." Administrator Strickland emphasized that with an improving economy, more driving will result with high crash risk exposure. *Budget Estimates Fiscal Year 2011,* Statement from the Administrator, at 1–2, National Highway Traffic Safety Administration (Jan. 2010).

by the trucking interests for increased tractor-trailer lengths. If truck lengths are increased again beyond the industry "standard" of 53 feet, it would trigger a cascading effect of negative outcomes for safety, environmental protection, infrastructure preservation, fuel use, the Highway Trust Fund, and a balanced national transportation freight strategy.[9]

SHIPA is crucial for curtailing the growth of large trucks and their expansion to more and more highway miles off the Nation's Interstate system, on the NHS. One of the two main objectives of the legislation is to freeze the length of truck trailers at a maximum of 53 feet. Promoters of much bigger, heavier trucks, such as supporters of current H.R. 763,[10] would allow trucks weighing up to 97,000 pounds and more throughout the country and melt the 1991 freeze on longer combination vehicles (LCVs).[11] The bill buys into the specious argument that trucking will become safer because bigger, heavier trucks will mean fewer trucks on the road. But increases in truck size and weights have never resulted in fewer trucks. In fact, allowing super-sized heavy trucks on more highways will make our roads and bridges more dangerous, not safer, and inevitably there will be more, not fewer, trucks than ever before.

Since the enactment of the 1982 Surface Transportation Assistance Act (STAA)[12] Federal law mandates certain minimum truck sizes, weights, and configurations but, unfortunately, does not restrict the length of trailers and semi-trailers in truck combinations.[13] This has had two particularly pernicious consequences.

First, the states are pressured endlessly by the special interests to increase the length of the semi-trailers used in tractor-trailer combinations. This situation has resulted in repeated increases in the length of the standard semi-trailer from 45 feet in the 1960s and 1970s, to 48 feet by the time the 1982 STAA was enacted, to 53 feet by the end of the 1990s, with many states now allowing trailers that are 57 feet long and a few states even permitting 59- and 60-foot long trailers.

Second, increasing trailer length and, therefore, volume leads to special interest demands for higher state and Federal weight limits in order to take advantage of the increased size of bigger, longer trailers. Since fully loaded trailers may not always exceed the Federal axle and gross weight limits on the Interstate highway system,[14] or the even higher maximum weight limits allowed in many states on their non-Interstate highways, the trucking industry has persistently sought higher truck weight limits. This incessant drum beat to raise truck weight limits has been part of the strategy to simultaneously pressure lawmakers at both state and Federal levels raise weight limits. Truck weight increases adopted in one state put pressure on neighboring states to do likewise, and eventually special interests besiege Congress seeking higher, uniform national weight limits. This strategy to continually "ratchet" upwards legal truck weight limits has been successfully practiced by special interests for decades.

The main argument used by proponents of longer, heavier trucks is that it will result in fewer trucks. Nothing is further from the truth. Since 1974, every time truck sizes and weights have been increased by state or by Federal mandate, *the result has been more trucks than before.*[15] In fact, from 1972 to 1987 alone, the number of for-hire trucks *increased by nearly 100 percent.*[16] During this era an increas-

[9] Companion bill in the House of Representatives is H.R. 1619, introduced by Rep. James McGovern (D–MA).

[10] *Safe and Efficient Transportation Act of 2011,* introduced by Rep. Michaud (D–ME).

[11] Title 23 U.S.C. § 127(d).

[12] P. L. No. 110–53.

[13] Title 23 U.S.C. § 127.

[14] *Id.*

[15] For example, the states began to allow bigger, heavier trucks on their non-Interstate highways in the early 1970s. The Federal-Aid Highway Act in 1978, Pub. L. 95–599 (Nov. 6, 1978), authorized the states to allow substantial increases in truck weights on Interstate highways and bridges. Subsequently, the Surface Transportation Assistance Act of 1982 (1982 STAA), Pub. L. 97–424 (Jan. 6, 1983), pre-empted state size and weight restrictions both on and off the Interstate systems by enacting new, higher Federal size and weight limits. Those new limits applied to a designated National Network consisting of several hundred thousand miles of interconnected, primary highways, most of which had never had any Federal control on truck size and weight. Many states gave up fighting after this sweeping act of Federal pre-emption and simply extended the new, higher weight and size limits to all or most of their highways. Many other exemptions from the Interstate weight restrictions were enacted in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100–17 (April 2, 1987); the Truck and Bus Safety and Regulatory Reform Act of 1988, Pub. L. 100–690 (Nov. 18, 1988); and the Motor Carrier Safety Act of 1990, § 15, Sanitary Food Transportation Act of 1990, Pub. L. 101–500 (Nov. 3, 1990); and the Motor Carrier Safety Act of 1991, Title IV, Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240 (Dec. 18, 1991).

[16] *Truck Inventory and Use Survey,* U.S. Bureau of the Census, 1974, 1982, 1987.

ing number of states adopted longer, wider, heavier trucks and trailers on their state highways and also interpreted their Interstate grandfather rights broadly in order to grant more overweight permits to extra-heavy trucks.[17]

The result was predictable: trucks were bigger and heavier than ever before, and there were *more of them* than ever before. The total increase in the number of trucks by 1992 was 128 percent over the number of registered trucks on our highways in 1972.[18] Longer, larger, heavier trucks have kept multiplying. By 1997, the number of large trucks had grown to 174 percent more than 1972, and by 2002, the number of for-hire trucks had increased by 228 percent over the 1972 figure.[19] According to the Federal Highway Administration (FHWA) the number of trucks on the road today is at least 250 percent higher than the comparable 1972 figure.[20]

Evidence of the negative effects of raising Interstate highway weight limits can be found in the data from the Maine pilot program that allowed trucks weighing up to 100,000 pounds to operate on the northern portion of I–95 that is normally subject to the Federal 80,000 pound limit for Interstate highways. Congress permitted the weight limit increase for a one-year period from late 2009 through late 2010.[21] About 600 six-axle trucks used the I–95 corridor in Maine each week before the higher weight limits were permitted, 400 of these trucks used I–95 (presumably loaded only to the 80,000 pound legal limit), and 200 trucks used a parallel state route (on which loads up to 100,000 pounds were legal). However, once the weight limit was raised on I–95 the increase in the number of trucks entering I–95 after the pilot program began was startling. More than 1,000 six-axle trucks used that route most weeks with more than 1,200 trucks using I–95 in some weeks.[22] Thus, the number of heavy trucks using the Interstate route *tripled* from 400 to 1,200 and the total number of these heavy trucks using the corridor *doubled* from 600 to 1,200 during the experiment with increased truck weight limits. This clearly shows that raising Federal weight limits increases the heavy truck traffic on Interstate highways. Moreover, assuming these trucks were loaded to 100,000 pounds, the gross weight loads on the highway also increased dramatically, placing greater stress on highway bridges and degrading roadway pavement at an even faster rate.

The two actions of limiting truck lengths and freezing existing state weight practices for the entire NHS are complementary and both are crucial to achieving SHIPA's goal. In order to protect the national investment in our highways and bridges, SHIPA extends the current state and Federal weight limits on the Interstate system to the non-Interstate highways on the NHS and prohibits any further increases. This not only puts a ceiling on truck weights at their current levels, but it also recognizes and protects the states' existing grandfathered rights to allow certain differences in truck axle and gross weights from the maximum weight figure in Federal law. SHIPA restores FHWA to its traditional position as steward of Federal size and weight limits for public safety and infrastructure protection.

Recommendation:

- ***Congress should enact S. 876, the SHIPA bill.***

Special Interest Exemptions Jeopardize Safety and Compromise Enforcement

Over the years, Congress has granted numerous statutory special interest exemptions from Federal safety regulations including exemptions from the maximum driving and on-duty limits, as well as the logbook requirements, for motor carriers under the hours of service regulations, and from commercial driver physical and medical qualifications.[23] These exemptions pose safety issues because they are un-

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[17] This increasingly liberal interpretation of grandfather rights in many states was the result of a major amendment in the 1982 STAA that excluded the Federal Highway Administration from overseeing and enforcing state weight limits on the Interstate highway system. The amendment allowed the states to determine for themselves the force and effect of their grandfather rights to vary axle and gross weights, and bridge load formulas, from the requirements of 23 U.S.C. § 127.

[18] *Truck Inventory and Use Survey, op. cit.,* 1992.

[19] *Vehicle Inventory and Use Survey* (formerly the *Truck Inventory and Use Survey*), U.S. Bureau of the Census (1997).

[20] *Highway Statistics 2008,* Federal Highway Administration (FHWA) (Jan. 5, 2010).

[21] Sections 194(a) and 194(d), Fiscal Year 2010 Transportation, Housing, and Urban Development Consolidated Appropriations Act of 2009, P.L. 111–117 (Dec. 16, 2009).

[22] Maine and Vermont Heavy Truck Interstate Pilot Program, 6 Month Report, p. 10 (FHWA). *See also* subsequent chart "Impacts to Sidney I–95 NB, Vassalboro Rte. 201 NB & So. China Rte 3/9/202 EB (Year 2010)" (FHWA).

[23] *See, e.g.,* Transportation Efficiency Act for the 21st Century (TEA–21), P.L. 105–178 (June 9, 1998) (eliminated major Federal safety regulations governing drivers of utility service vehicles); National Highway System Designation Act of 1995, P. L. 104–5 (Nov. 28, 1995) (exempted

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tested and unproven deviations from established Federal safety requirements. Enactment of exemptions on a piecemeal basis bypasses careful investigation and findings on the impact of these exemptions on safety. In addition, it creates a patchwork quilt of disparate regulatory exemptions that makes it nearly impossible for enforcement authorities to determine the status of exempt drivers and vehicles and to effectively enforce Federal safety requirements.

Advocates is gravely concerned that these exemptions, which deviate from established safety requirements, are not based on research and scientific analysis, and pose increased safety risks for commercial operators and the public. The FMCSA openly decried the exemptions practice concluding that the multiple existing exemptions were not compatible with reform of the drivers' hours of service rule.[24] These exemptions are also opposed by the Commercial Vehicle Safety Alliance (CVSA) which represents state law enforcement officials who are charged with ensuring compliance with Federal motor carrier safety rules. Because the exemptions were established by statute, rather than regulation, there has been no thorough examination of the safety consequences of these exemptions. It is time for the U.S. DOT to conduct a comprehensive evaluation of each statutory exemption from safety rules.

Even U.S. DOT severely criticized the statutory adoption of exemptions only a few years ago because of the harm it does both to highway safety and infrastructure protection. In a massive 2004 study of the effects of overweight and extra-long tractor-trailer trucks, DOT determined that LCVs damage bridges more severely than "18-wheelers" and could have substantially more serious safety consequences. U.S. DOT concluded that a patchwork quilt of size and weight exemptions for specific states undermined a coherent, national policy of size and weight limits.[25]

Congress has also granted similar special interest exemptions for truck size and weight limits. Most recently, Maine and Vermont were granted special legislative exemptions which, as already discussed, allowed the operation of 100,000-pound trucks on the northern section of Maine's I–95 to the Canadian border, and of 99,000-pound trucks on all of Vermont's Interstate highways.[26] These exemptions were adopted despite reams of reliable evidence concerning the adverse safety effects and increased infrastructure damage that such excessively heavy combination trucks inflict on roads and bridges.

Safety organizations opposed these and other motor carrier safety exemptions. Granting special interest requests for specific exemptions from the Federal axle, and both gross weight and bridge formula weight limits in Federal law, as well as special interest exemptions to exceed limits on maximum driving and working hours, undermines national uniformity and constitutes a serious and unacceptable threat to the traveling public who must operate their small passenger cars next to these unstable, overweight combination trucks that are, in some cases, operated by tired truckers.

Fortunately, the mechanism for review of these types of exemptions already exists in Federal law. In 1998, Congress required U.S. DOT to review regulatory exemptions from safety requirements using reasonable, recognized screening criteria.[27] Under this provision, many special interest exemption requests addressing motor carrier safety regulations are reviewed using the expertise of DOT and FMCSA, rather than the lobbying clout of special interests. The process enacted by Congress allows the agency to carefully consider the safety requirements and implications of

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drivers transporting agricultural commodities and farm supplies from maximum driving time, maximum duty time, and minimum off-duty time hours of service requirements, and allowed drivers of ground water well drilling rigs, of construction materials and equipment, and of utility service vehicles to use a 24-hour restart for each new work week rather than the minimum required layover time after a tour of duty).

[24] 65 FR 22540 (May 2, 2000). *See, e.g.:* "The FMCSA has found no sleep or fatigue research that supports any of the current exceptions or exemptions, including the 24-hour restart provisions authorized by the NHS Act." *Id.* at 25559.

[25] *Western Uniformity Scenario Analysis,* U. S. Department of Transportation (April 2004).

In recent years a number of *ad hoc,* State-specific exemptions from Federal truck size and weight laws have been enacted. For instance, TEA–21 contained special exemptions from Federal size and weight limits in four States, Colorado, Louisiana, Maine, and New Hampshire. The Department does not support this kind of piecemeal approach to truck size and weight policy. It makes enforcement and compliance with truck size and weight laws more difficult, it often contributes little to overall productivity, it may have unintended consequences for safety and highway infrastructure, and it reduces the willingness to work for more comprehensive solutions that would have much greater benefits.

Id. at XI–3.

[26] Sections 194(a) and 194(d), Fiscal Year 2010 Transportation, Housing, and Urban Development Consolidated Appropriations Act of 2009, P.L. 111–117 (Dec. 16, 2009).

[27] TEA–21, § 407, *codified* at 49 U.S.C. § 31315(b).

a proposed exemption and to determine if the exemption poses a problem for law enforcement.

Recommendations:

- ***U.S. DOT and FMCSA should be required to review all existing statutory exemptions from the Federal motor carrier safety regulations to determine whether they are safe and enforceable, have contributed to increased risk of deaths and injuries, and to make recommendations to Congress about exemptions that pose an increased public safety risk; and,***
- ***Congress should pass legislation similar to Section 49 U.S.C. § 31315 but that requires U.S. DOT to review requests for truck size and weight exemptions on an ongoing basis.***

Congressional Oversight and Direction Is Essential to Ensure Effective Safety Rules

Let me turn now to an analysis of FMCSA's performance and an appraisal of its first decade as a Federal agency. The agency was established in 2000 with motor carrier safety as its primary mission and highest priority.[28] Over its first 10 years the agency compiled a poor track record that was at odds with its safety mission. Until recently, the FMCSA exhibited a stark failure of leadership and oversight of the motor carrier industry, an inability to issue effective safety regulations, and an inadequate enforcement policy.

While we see clear signs that the current FMCSA leadership is finally taking truck safety regulation and enforcement more seriously, Advocates is closely watching for evidence that the initiatives and final rules it adopts will fulfill the agency's mission to make safety its number one priority. While Secretary LaHood and the agency leadership team are headed in the right direction, Congressional oversight and guidance will continue to be needed in order to ensure that the performance of the agency remains on course.

FMCSA Safety Oversight Issues

Failure to Implement NTSB Safety Recommendations

One strong indication of FMCSA's job performance is whether the agency has implemented the numerous motor carrier safety recommendations issued by the National Transportation Safety Board (NTSB). Since it began issuing recommendations in 1968, NTSB has repeatedly called for commonsense and urgent safety actions by FMCSA and its predecessor agency, FHWA. NTSB has issued dozens of recommendations that address vehicle operating systems, equipment, commercial drivers, and motor carrier company safety administration and oversight. However, many of the recommendations remain unfulfilled and others have been closed out in exasperation by NTSB because there was no agency response or the agency response was inadequate or unsatisfactory.

The NTSB's current list of "Most Wanted Transportation Safety Improvements" includes a number of safety recommendations for commercial motor vehicles.[29] FMCSA's failure to implement some recommendations has led the NTSB to formally categorize the agency's actions as "Unacceptable Response". For example, in 1977, NTSB first issued its recommendation on the use of on-board recording devices for commercial vehicle hours of service compliance. NTSB then urged FHWA to mandate the use of on-board recorders in a 1990 safety study, after concluding that on-board recording devices could provide a tamper-proof mechanism to enforce the HOS regulations.[30] That request for a mandate has been re-issued periodically by NTSB and the recommendation is currently listed as open but with an "Unacceptable Response" from FMCSA.[31] The safety recommendation to require all interstate commercial vehicle carriers to use electronic on-board recorders is included on the

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[28] The Motor Carrier Safety Improvement Act of 1999 (MCSIA), P. L. 106–159 (Dec. 9, 1999), *codified at* 49 U.S.C. § 113(b).

[29] Available at *http://www.ntsb.gov/safety/mwl.html*. The current, 2011 Most Wanted Transportation Safety Improvements for motor carriers include the following issues:

- Addressing Human Fatigue
- Bus Occupant Safety
- Electronic Onboard Recorders
- Addressing Alcohol-Impaired Driving for Commercial Motor Vehicles.

[30] *Fatigue, Alcohol, Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes,* NTSB (1990).

[31] National Transportation Safety Board Recommendation H–07–041 issued Dec. 2007. *http://www.ntsb.gov/safetyrecs/private/QueryPage.aspx*.

NTSB's 2011 list of Most Wanted safety improvements. Only this year has FMCSA proposed a general EOBR requirement.

Recommendation:

- ***Congress should direct FMCSA to fulfill major NTSB safety recommendations on the current Most Wanted List and review and adopt previously issued NTSB motor carrier safety recommendations that have not yet been implemented.***

FMCSA Has Not Required Adequate State Vehicle Inspection Programs

The Secretary of Transportation is required to prescribe standards for annual inspection of motorcoaches and of trucks greater than 10,000 pounds gross vehicle weight in interstate commerce, or approve state inspection programs that are equally effective.[32] FMCSA last publicly addressed the state inspection system in a 2008 *Federal Register* notice indicating that 23 states and the District of Columbia have approved periodic inspection programs for trucks.[33]

FMCSA has not issued reports that evaluate how comprehensive the commercial motor vehicle inspection programs are in each of the 23 states and the District of Columbia that have approved inspection programs. Audits of the state programs have not been performed and timely information on state truck and motorcoach inspection programs is not available to the public on FMCSA's website.

Furthermore, while FMCSA allows motor carriers to "self-inspect" and annually certify that the mechanical inspection has been performed, the agency does not conduct routine audits to evaluate a representative sample of these state self-inspection programs.

It should be stressed that the minimum period for the required inspection is only once a year.[34] Since it is well known that inspection of commercial motor vehicles needs to be much more intensive and frequent than for personal or light motor vehicles, a once-a-year inspection regime is clearly no guarantee of safe trucks and motorcoaches. While reputable carriers may conduct more frequent inspections, others do not. Many companies, even in states that have inspection programs, can come into compliance just for an annual inspection, only to allow major mechanical and safety features of their vehicles to fall into dangerous disrepair soon after passing the annual inspection.

Although commercial motor vehicles are subject to random roadside inspections, trucks and motorcoaches can go for long periods of time without being stopped for inspection. Relying on roadside inspections to detect mechanical defects that pose threats to public safety and then place them out of service is simply too late—it allows vehicles that should never have been on the road from the start to operate on our highways.

One example of the serious consequences that can occur as a result of weak oversight of state-run, state-approved, company self-inspection programs is the deadly 2008 Sherman, Texas motorcoach crash in which 17 people died and 39 were injured. The motorcoach was operated by Angel Tours, Inc., which had been stopped from operating by FMCSA just weeks earlier, but continued to operate under anther name, Iguala Busmex.

The NTSB's investigation of the crash found, among other Federal violations, that the proximate cause of the crash was a failure of one of the retreaded tires on the front steering axle of the motorcoach. The retreaded tire failed, destabilizing the motorcoach, making it difficult to control, and facilitating its crash into the overpass guardrail. NTSB speculated that either the tire was not inspected properly by an extremely perfunctory pre-trip inspection, or that the tire was punctured during the trip prior to the crash. NTSB found that the motorcoach had been inspected by a Texas state government-certified private inspection company called "Five-Minute Inspection, Inc".[35] The private inspection cost $62.00, but failed to detect a number of mechanical defects including the retreaded tires on the steer axle, under-inflated tag-axle tires, wrong tag-axle wheels mounted, and a grossly contaminated brake assembly.

The Texas commercial motor vehicle state inspection program was approved federally in 1994. NTSB concluded that there was no quality control evaluations of agen-

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[32] 49 C.F.R. Part 396; MCSIA, § 210, *codified at* 49 U.S.C. § 31142.

[33] 73 FR 63040 (Oct. 22, 2008). *See also,* 66 FR 32863 (June 18, 2001); 63 FR 8516 (Feb. 19, 1998).

[34] 49 U.S.C. § 31142.

[35] R. Accetta, *Motorcoach Run Off Bridge and Rollover Sherman, Texas, August 8, 2008,* Power Point Presentation, Office of Highway Safety, NTSB, Oct. 30, 2009, available at *http://www.ntsb.gov/events/2009/sherman-tx/introduction.pdf.*

cy-approved state programs, and no state oversight of the certified inspection companies.

We commend the Senate Commerce, Science and Transportation Committee for approving S. 453, the "Motorcoach Enhanced Safety Act of 2011," introduced by Senators Brown (D–OH) and Hutchison (R–TX). This legislation, when enacted, will address some of the inspection oversight concerns with respect to motorcoaches. Similar action is needed regarding state inspection programs for trucks.

Recommendations:

- ***Congress should direct FMCSA to:***
  - ***establish specific standards for state-authorized, state-operated inspection programs to determine how well they meet the requirements of the Federal Motor Carrier Safety Regulations;***
  - ***conduct annual inspections of a sample of state-authorized or state-operated truck inspection programs to determine their effectiveness; and***
  - ***audit motor carrier self-inspection programs in each state to determine how well trucks are being inspected and maintained for safe mechanical condition.***

En-Route Inspections of Motorcoaches

Under current law, aside from imminent or obvious safety hazards, inter-city buses and motorcoaches cannot be regularly inspected except at planned stops and terminals along the bus route.[36] This affords highly favorable treatment to motor carriers of passengers and insulates motorcoaches from routine roadside inspections required by law for other commercial motor vehicles. Recently, U.S. DOT conducted 3,000 "surprise" passenger carrier safety inspections and placed 442 unsafe buses and drivers out-of-service.[37] This represents 15 percent of the motorcoaches subject to the "surprise" inspections. This shows that motorcoaches need to be subject to more frequent and routine random roadside inspections at convenient locations but not just at bus terminals and planned stops along the scheduled route.

Recommendation:

- ***Congress should amend Federal law, Title 49 U.S.C. § 31102(b)(X), to allow roadside safety inspections of motorcoaches at more times and additional locations.***

FMCSA Regulatory Issues

Electronic On-Board Recorders Are Needed To Reduce Fatigue and Fraud

It has been more than 15 years since Congress in 1995 directed the Secretary of Transportation to address the issue of Electronic On-Board Recorders (EOBRs).[38] After all this time, FMCSA has produced only a weak and ineffective remedial final rule that requires carriers that fail two consecutive compliance reviews (CR) to install EOBRs, a measure the agency itself admits will apply to less than one percent of motor carriers.[39]

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[36] 49 U.S.C. § 31102(b)(X).

[37] Obama Administration Has Stepped Up Action Against Unsafe Motorcoach, Trucking Companies, News Release, DOT 90–11, July 19, 2011, available at *http://www.fmcsa.dot.gov/about/news/news-releases/2011/Obama-Administration-Action-Against-Unsafe-Motorcoach-Trucking-Companies.aspx*.

[38] Sec. 408 of the Interstate Commerce Commission Termination Act of 1995, P.L. 104–88 (Dec. 29, 1995).

[39] Electronic On-Board Recorders for Hours-of-Service Compliance, Final Rule, 64 FR 17208 (Apr. 5, 2010). FMCSA's remedial final rule will take effect in 2012 and will require only about 5,700 motor carriers to install and use EOBRs—but only after an hours of service (HOS) violation is discovered in the course of a Compliance Review (CR). Because FMCSA annually conducts CRs on only two percent of motor carriers registered with the agency, the chances of being caught violating HOS requirements are very remote, and the detection of violations will be based on examination of logbooks recording duty status, which are widely known to be regularly falsified by a large percentage of commercial drivers to conceal violations.

In addition, the remedial rule has numerous other shortcomings including the following:

- The EOBR Global Positioning System (GPS) function will record only at 60 minute intervals rather than at one minute intervals—a serious problem that allows carriers to evade fixed weigh stations, use illegal hazardous materials routes, and traverse bridges posted for reduced loads, without detection.

- Carriers required to install and use EOBRs will not have to provide certain supporting record of duty status (RODS) documents—which reduces the documentation that enforcement

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The FMCSA has, however, earlier this year proposed a much broader requirement that would apply to all motor carriers of drivers that are required to maintain records of duty status (RODS), that is, driver logbooks.[40] The pending proposed rule responds to numerous calls for an EOBR mandate. At a hearing before this Subcommittee held May 1, 2007, on the topic of EOBRs,[41] Chairman Lautenberg said in his opening statement: "We need electronic on-board recorders in every truck on the road to ensure the safety of our truck drivers and our families who travel on the highways."[42] Similar sentiments were expressed by the President of CVSA.[43] The current Chair of NTSB, Deborah Hersman, has also repeatedly emphasized the need for a U.S. DOT requirement for EOBRs on all commercial motor vehicles.[44] As noted above, NTSB is resolute in continuing to list an EOBR mandate on its Most Wanted list and still classifies the agency's previous responses as "Unacceptable."

Moreover, pending legislation, the Commercial Driver Compliance Improvement Act, S. 695, introduced and cosponsored by Senators Pryor (D–AR) and Alexander (R–TN), would require the completion of the pending rulemaking within 18 months of enactment. Passage of this bill would ensure that the 16-year-long effort by Congress to adopt modern technology for truck safety enforcement would reach closure in the near future. Advocates supports S. 695 as do many safety organizations, law enforcement groups and leading segments of the trucking industry.

It is time for Congress to act. As mentioned before, this Committee has approved the MESA safety bill that includes a mandatory requirement for EOBRs on all motorcoaches.[45] Congress should mandate EOBRs for all interstate commercial vehicles operated by drivers who are required to maintain logbooks to ensure the FMCSA final rule is an effective rule.

Recommendations:

- ***Congress should pass:***
  - ***S. 695, the Commercial Driver Compliance Improvement Act, to direct the FMCSA to issue a universal EOBR requirement for all commercial motor vehicles operated in interstate commerce by drivers who maintain records of duty status logbooks; and,***
  - ***the Motorcoach Enhanced Safety Act of 2011 mandating EOBRs on all passenger-carrying commercial motor vehicles under FMCSA jurisdiction.***

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personnel need to determine whether drivers using sleeper berths complied with minimum off-duty time.

- The EOBRs default to "on-duty not driving status" when a commercial vehicle has been stationary for only five minutes. This allows time during intermittent vehicle movement in traffic congestion or while waiting in loading dock lines, to be recorded as non-driving time. As a result it will extend the drivers' shift beyond the maximum 11 consecutive hours allowed by regulation.

- EOBRs will not collect speed data thereby reducing the deterrent effect on speeding by commercial drivers and undermining the effectiveness of speed limit enforcement by public authorities.1

- FMCSA thoroughly fails to address the need for specific fail-safe controls to ensure that EOBRs are tamper-proof, and are protected with adequate, security control measures to limit access only to appropriate users.

[40] Electronic On-Board Recorders and Hours of Service Supporting Documents, 76 FR 5537 (Feb. 1, 2011).

[41] U.S. Senate Committee on Commerce, Science and Transportation. Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. *Electronic On-Board Recorders (EOBR's) and Truck Driver Fatigue Reduction.* 110th Cong. Washington: May 1, 2007.

[42] Sen. Lautenberg, Frank. Statement to the U.S. Senate Committee on Commerce, Science and Transportation. Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. *Electronic On-Board Recorders (EOBR's) and Truck Driver Fatigue Reduction.* 110th Cong. Washington: May 1, 2007.

[43] "EOBR technology is proven. More than 50 countries have mandated Electronic Data Recorders for driving and standby time recording and/or speed and distance recording." Captain John E. Harrison. Statement to the U.S. Senate Committee on Commerce, Science and Transportation, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. *Electronic On-Board Recorders (EOBR's) and Truck Driver Fatigue Reduction.* 110th Cong. Washington: May 1, 2007.

[44] Chairman Deborah Hersman, statement to the Transportation and Infrastructure Committee, Subcommittee on Highways and Transit, *Motor Carrier Safety: The Federal Motor Carrier Safety Administration's Oversight of High Risk Carriers,* 110th Cong. Washington: July 11, 2007.

[45] S. 453, § 12(a).

Truck Driver Hours of Service and Fatigue

A revised Hours of Service (HOS) rule is nearing completion. The FMCSA has committed to issuing a new HOS rule by the end of October, 2011. While Advocates is hopeful that the agency will finally issue a safer rule, returning to the traditional limit of 10 consecutive hours of driving and restricting the use of the 34-hour restart, we await the final decision this fall.

There are important reasons for the agency to revise the HOS rule. The current, unsafe HOS rule adopted in 2003 substantially increased maximum daily and weekly driving and working hours for truckers.[46] Driving time for each shift was increased from 10 to 11 consecutive hours. Driver fatigue from this excessively long driving shift is increased further by allowing an additional three or more hours in each shift for other work including the loading and unloading of trucks.

The danger posed by these provisions to the health and safety of truck drivers and the motoring public are made even worse by the weekly "restart" provision. The restart undermines what previously was a "hard number" 60-hour weekly driving cap (or 70 hours for drivers on an 8-day schedule). Instead, the rule permits drivers to reset their accumulated weekly driving hours to zero at any point during the work week after taking only a 34-hour off–duty break, and then start a new tour of duty. This permits drivers who use the restart provision to cram an extra 17 hours of driving into a 7-day schedule, actually operating their trucks for a total of 77 hours in seven calendar days instead of the limit of 60 hours. Drivers operating on an 8-day schedule can drive an extra 18 hours in 8 days for a total of 88 driving hours instead of the limit of 70-hours.

The restart permits companies to squeeze these excessive "bonus" driving hours out of drivers. Instead of having a full weekend of 48 to 72 hours off duty for rest and recovery, which was required under the previous HOS rule, the restart permits motor carriers to compel drivers to cash in their rest time for extra driving hours. This dramatically increases truck driver crash risk exposure, yet FMCSA rationalized this dramatic increase in daily and weekly driving and work hours as being just as safe as the previous HOS rules, even though drivers had more end-of-week rest time under the previous rule.

The current HOS rule was issued by FMCSA despite the findings of fact by the agency, and its predecessors, that crash risk significantly increases after eight consecutive hours of driving, and that long driving and work hours promote driver fatigue. FMCSA also failed to properly take into account driver health impacts and scientific findings showing that more driving and working hours are dangerous and lead to an increased risk of crashes, especially among workers in industries with long hours of shiftwork who have little opportunity for rest and recovery. Advocates meticulously documented the science showing that long periods of work and cumulative fatigue drastically effect driver performance. The agency's selective use of research findings was designed to justify a predetermined regulatory outcome, and the agency cherry-picked research data in order to justify its expansion of driver working and driving hours.

These concerns were echoed by the U.S. Court of Appeals in two separate, unanimous decisions that vacated the current HOS rule and remanded the rule to the agency for changes. In each case, the Court questioned the basis for the agency's decision-making in allowing longer driving hours despite the safety threat, adverse health effects and the increased crash risk posed by the rule, indicating that the current HOS rule was not based on sound reasoning.[47] Despite back-to-back judicial decisions overturning the rule in each case, FMCSA refused to make changes to the maximum daily and weekly driving and work hours allowed by the rule.

On December 19, 2007, this Subcommittee held a hearing on the HOS rule. The record of that hearing documents the safety concerns about the HOS rule and its precarious legal status. In 2008, the FMCSA nevertheless defiantly reissued the same flawed HOS rule for a third time and, in 2009, Advocates, Public Citizen, the Truck Safety Coalition and the International Brotherhood of Teamsters filed a third lawsuit challenging the rule.[48]

In an effort to expedite the issuance of what safety advocates hope will be a new, safer HOS rule, and to allow the new Administration to determine the right course on this issue, safety and labor organizations agreed to hold the lawsuit in abeyance

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[46] Hours of Service of Drivers; Drivers Rest and Sleep for Safe Operations; Final Rule, 68 FR 22455 (Apr. 28, 2003).

[47] *Owner-Operator Independent Drivers Ass'n* v. *FMCSA,* 494 F.3d 188 (D.C. Cir. 2007); *Public Citizen* v. *FMCSA,* 374 F.3d 1209 (D.C. Cir. 2004).

[48] Petition for Review, filed March 2009, *Public Citizen et al.,* v. *FMCSA,* No. 09–1094 (D.C. Cir.)

while FMCSA develops a revised HOS rule. Under the terms of the settlement[49] the agency has committed to issuing a final rule by October 31, 2011.[50]

Recommendation:

- ***The Committee should continue rigorous oversight of the HOS rulemaking activity and efforts of FMCSA to comply with the HOS legal settlement and to issue a new rule that enhances the health and safety of truck drivers and the traveling public.***

FMCSA's New Entrant Motor Carrier Program Lacks Critical Safeguards

In the Motor Carrier Safety Improvement Act of 1999 (MCSIA),[51] the law that established the FMCSA, Congress directed the new agency to establish minimum requirements to ensure that new motor carriers are knowledgeable about the Federal motor carrier safety standards (FMCSRs).[52] It also required consideration of the need to implement a proficiency examination.[53] National safety organizations called on the agency to require, prior to making a grant of temporary operating authority, a proficiency examination to determine how well new entrant motor carriers understand and are capable of complying with the FMCSRs and Hazardous Materials Regulations (HMRs), and whether they can exercise sound safety management of their fleet, drivers, and operations.

FMCSA's new entrant final rule lacked many important aspects of appropriate agency oversight of new truck and motorcoach companies, especially the need to mandate an initial pre-authorization safety audit of new carriers before awarding them temporary operating authority, and performing a compliance review (CR) at the end of the 18 month probationary period of temporary operating authority along with assigning the carrier a safety fitness rating.[54] Advocates and other safety organizations strongly urged FMCSA to adopt these and other stringent oversight and enforcement mechanisms as part of the new entrant program, but these suggestions were largely ignored or rejected.

The pre-authorization safety audit and proficiency exam are intended to screen out carriers that are obviously not fit to start operating on our Nation's highways. The CR inspection after 18 months is essential to evaluate whether actual carrier operations are unsafe in practice. Both types of inspections are needed to ensure public safety.

Because the agency rule did not implement the statutory directives in the MCSIA, and rejected other reasonable safeguards for new entrants, Advocates filed a petition for reconsideration with the agency on January 14, 2008.[55] The petition emphasized that the final rule contains no data or other information demonstrating that the new entrant review procedure adopted by FMCSA will improve the operating safety of new entrants through their knowledge about and compliance with the FMCSRs and HMRs. The petition also pointed out that the rule did not include an evaluation of the merits of a proficiency examination for new entrants, even though the MCSIA required the agency to consider the need for such an examination.

FMCSA granted Advocates' petition and issued an advance notice of proposed rulemaking (ANPRM) asking for preliminary data, views, and arguments on the need for a new entrant proficiency examination.[56] While this is a positive step, FMCSA continues to insist that its efforts to determine the capabilities of new entrants are adequate, and that the agency has fulfilled the statutory direction to ensure that applicants for the new entrant program are "knowledgeable about applicable safety requirements *before* being granted New Entrant authority."[57] In fact, the agency has no verification of a new entrant's knowledge of or capability to comply with the FMCSR and HMR because it doesn't ask for any demonstration by the applicant prior to starting operation. The only way to ensure that high-risk carriers

[49] *Id., see* Settlement Agreement dated Oct. 26, 2009 and Order dated March 3, 2010.
[50] 76 FR 26681 (May 9, 2011).
[51] P. L 106–159 (Dec. 9, 1999).
[52] Section 210 of MCSIA added 49 U.S.C. § 31144(g) which directed the establishment of regulations requiring each owner or operator with new operating authority to undergo a safety review within 18 months of starting operations.
[53] MCSIA, § 210(b).
[54] 73 FR 76472 (Dec. 16, 2008).
[55] Advocates for Highway and Auto Safety, Jan. 14, 2008, "Petition for Reconsideration Filed with the Federal Motor Carrier Safety Administration Regarding the Order Issued on New Entrant Motor Carriers Safety Assurance Process, 49 CFR Parts 365, 385, 386, and 390, 73 Federal Register 76472 *et seq.,* December 16, 2008."
[56] New Entrant Safety Assurance Process; Implementation of Section 210(b) of the Motor Carrier Safety Improvement Act of 1999, advance notice of proposed rulemaking, 74 FR 42833 (Aug. 25, 2009).
[57] *Id.* at 42834 (emphasis supplied).

are not allowed to start operating is to test their knowledge and check their equipment and drivers to prevent them from threatening public safety.

In addition, careful safety evaluation of new entrant applicant motor carriers before the start of operations and prior to an award of temporary operating authority will help the agency screen for "chameleon" or "reincarnated" motor carriers. These are companies that, as discussed below, went out of business or were forced to cease operations, but return under the guise of being "new entrants." These carriers conceal the fact that they are continuing operations with the same officers and equipment under a false identity.

Recommendations:

- ***Congress should:***
  - ***explicitly require the FMCSA to adopt a proficiency examination to determine how well a new entrant knows the FMCSRs and HMRs, and how capable it is to conduct safe operations; and***
  - ***mandate that FMCSA conduct a pre-authorization safety audit of new entrant motor carriers to determine the quality of their safety management, drivers, and equipment before awarding temporary operating authority.***

FMCSA Still Needs to Issue A Strong Entry-Level Driver Training Standard

Congress originally directed the FHWA to establish training standards for entry-level drivers in 1991.[58] There followed a long and tortured history of intermittent rulemaking and two lawsuits, the first for failing to issue a rule,[59] and the second for issuing an entirely inadequate, illegal final rule in 2004.[60] In the second case, the U.S. Court of Appeals rendered a judgment against the FMCSA, taking the agency to task for issuing a training standard that did not include any on-the-road, behind-the-wheel training.[61]

FMCSA reopened rulemaking with a new proposed rule published on December 26, 2007,[62] 16 years after the original deadline for agency action. While the proposed rule represents a minimal improvement over the unacceptable final rule, it is seriously flawed and fails to improve the knowledge and operating skills of entry-level commercial motor vehicle drivers in several respects.

First, without explanation the FMCSA reduced the minimum number of hours of instruction recommended in the 1985 Model Curriculum,[63] developed for the FHWA, from the 320 hours or more of instruction to only 120 hours. Second, the agency provides no justification in the proposal of the content of the curriculum or the minimum number of hours of instruction that would be required by the proposed curriculum. Third, the agency requires the same curriculum for drivers of motorcoaches as for drivers of straight trucks. The mounting number of motorcoach crashes emphasizes the need for special training requirements for these buses which operate and handle differently than trucks. Moreover, all curriculum content is indexed to truck driving, with no specific training and skills for motorcoach operators such as responsibilities for passenger safety management including emergency evacuation and combating fires.

Finally, FMCSA's proposal impermissibly restricts the scope of the entry-level driver training in two ways. First, it restricts the mandatory training requirement only to operators of interstate trucks, buses, and motorcoaches that have commercial driver licenses (CDL). Nothing in the law itself or the legislative history indicates any intent by Congress to exempt entry-level CDL holders who operate exclusively in intrastate commerce from driver training.[64] Second, the proposed rule applies only to entry-level CDL holders. Again, there is nothing in the law itself, or the statutory history, permitting FMCSA to exclude entry-level drivers of commercial vehi-

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[58] ISTEA, § 4007(a).

[59] *See* settlement agreement dated February, 2003, *In Re Citizens for Reliable and Safe Highways v. Minetta,* No. 02–1363 (D.C. Cir. 2003).

[60] *Advocates* v. *FMCSA,* 429 F.3d 1136 (D.C. Cir. 2005).

[61] *Id.*

[62] 73 FR 73226 (Dec. 26, 2008).

[63] *Model Curriculum for Training Tractor-Trailer Drivers,* FHWA 1985.

[64] The original legislation creating the commercial driver license (CDL) explicitly required that CDLs must be issued to both interstate and intrastate commercial drivers. FMCSA has no statutory basis for the unilateral exclusion of intrastate CDL holders from required entry-level driver training. In addition, Congress has specifically emphasized the need for *greater* uniformity in motor carrier safety regulation in Sec. 203 of the Motor Carrier Safety Act of 1984.

cles who do not have or need a CDL from the training required for other commercial drivers.[65]

Recommendation:

- ***Congress should direct FMCSA to issue a final rule on driver training that requires a more comprehensive training curriculum and includes all entry-level commercial motor vehicle drivers regardless of whether they have CDLs or operate in interstate or intrastate commerce.***

Other Regulatory Issues

Establish a Clearinghouse for Positive Controlled Substance and Alcohol Tests

Establishment of a mandatory national clearinghouse for records relating to alcohol and controlled substance testing of commercial drivers is critical to ensuring highway safety. Today, drivers who have tested positive for drugs and alcohol are on the road operating commercial motor vehicles. Many applicants for CDLs fail to disclose previous drug or alcohol violations and motor carriers may conduct only partial background checks on new employees. This allows applicants with positive drug and alcohol tests in their background to be licensed and hired to operate commercial vehicles.

Legislation introduced by Senators Mark Pryor (D–AR) and John Boozman (R–AR), the Safe Roads Act of 2011, S.754, would require the Secretary to establish a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators within two years of the date of enactment. The bill would prohibit employers from hiring individuals who have tested positive, unless they have subsequently completed the return-to-duty process. The Government Accountability Office (GAO) supported the creation of a national database for positive alcohol and drug test results and test refusals in a 2008 recommendation to Congress.[66] The establishment of a national clearinghouse will make it easier for employers to ensure that they hire safe drivers and will prevent unsafe drivers from operating commercial motor vehicles on our Nation's highways. Advocates supports the enactment of the Safe Roads Act of 2011.

Recommendation:

- ***Congress should enact S.754, the Safe Roads Act of 2011.***

The Need to Require Speed Limiters on Commercial Motor Vehicles

Another action that will help reduce the severity and frequency of commercial motor vehicle crashes is requiring speed limiters on all class 7 and 8 trucks. In 2006, Road Safe America and nine motor carriers petitioned the FMCSA and NHTSA to require devices to limit the speed of heavy trucks.[67] Although this issue is in the jurisdiction of the NHTSA, the outcome will have a direct impact on the safety of motor carriers. Early this year the NHTSA granted the petition but a proposed rule is not expected before 2012 at the earliest.[68] Advocates wants the Subcommittee to be aware of the fact that the petition has been granted and that action is expected on an issue that is closely related to the safety initiatives that are part of the Subcommittee's jurisdiction.

Event Data Recorders (EDRs)

Likewise, the installation of Event Data Recorders (EDRs) on all commercial motor vehicles will provide long-term safety benefits for commercial motor vehicles. EDRs are devices that record several seconds of valuable vehicle information in the moments before and during a crash. In addition to the potential use of this date to provide immediate, accurate crash information to emergency medical responders through Automatic Crash Notification (ACN) systems, the objective data collected in EDRs is invaluable to ensure accurate crash reconstruction and provide research data that can be used to improve crash avoidance and crashworthiness countermeasures for commercial vehicles. Although this is also an issue within the jurisdiction of the NHTSA, the Subcommittee should be aware that progress on requiring EDRs on trucks is being pursued. I would also point out that the MESA bill on mo-

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[65] The provision in the Intermodal Transportation Efficiency Act of 1991 and accompanying legislative history cannot be construed to abbreviate the scope of required entry-level training only to drivers of commercial motor vehicles who also have CDLs.

[66] *"Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them Off the Road,"* Government Accountability Office Report to Congressional Requesters. GAO–08–600. May 2008. *http://www.gao.gov/new.items/d08600.pdf*.

[67] Road Safe America Petition dated Sept. 8, 2006. A similar petition was later filed by the American Trucking Association dated Oct. 20, 2006. *See* 72 FR 3904 (Jan. 26, 2007).

[68] 76 FR 78 (Jan. 3, 2011).

torcoach safety includes an EDR mandate to improve the safety of motorcoaches and their passengers.

Pilot Program on NAFTA Long-Haul Trucking Provisions

The Safety of Mexican Trucks Entering the U.S. Must Be Assured

Despite the fact that the FMCSA has provided additional information and has made the new version of the NAFTA Long-Haul Trucking Provisions Pilot Program[69] more transparent, a number of serious safety concerns remain. For example, it is not at all clear whether all appropriate and pertinent violations data needed in the license database used by enforcement authorities will be available when the pilot program begins. The most recent report of the Department of Transportation (DOT) Office of Inspector General (OIG) cited the need to improve the monitoring of drivers with Mexican Federal licenses operating in the U.S., especially timely reporting and data inconsistencies among U.S. states, and the reporting and matching of different categories of traffic convictions, including convictions in non-commercial vehicles and convictions using various types of Mexican licenses by Mexican authorities.[70] Under U.S. law, states are not currently required to report convictions of Mexican or Canadian drivers, so even FMCSA has noted that reporting of convictions by foreign drivers has been voluntary and inconsistent. Such reporting needs to be made mandatory before the pilot program begins.

In addition, FMCSA has indicated that in order to document the prior violation records of Mexican drivers that participate in the pilot program to determine whether they have disqualifying violations in personal vehicles on their personal licenses, the drivers will be asked to voluntarily provide their personal licenses to FMCSA officials. This leads to several additional problems. First, each driver is asked to voluntarily provide their personal license or driving history, but it is not a mandatory part of the pilot program so drivers can refuse to cooperate. Second, drivers may have multiple personal licenses from one or more states in Mexico. The voluntary submission of a single or even several state licenses does not ensure that all personal licenses have been handed over. Third, the license databases of the 31 Mexican states have never previously been reviewed for accuracy and data quality. Only the database of the Mexican Federal license has been subject to scrutiny. Without a review and audit of these new databases there can be no certainty that the licenses voluntarily provided by drivers participating in the pilot program, or the resulting driving histories, are accurate and complete.

Another as yet unresolved issue is the fact that Federal agencies in the U.S. do not have the authority to disqualify a driver licensed by a foreign jurisdiction. Currently, a foreign driver who commits violations in the U.S. can be placed out-of-service (OOS) but cannot be disqualified from driving by U.S. authorities. The driver can be disqualified by the foreign state or foreign Federal authority. But, if, the foreign jurisdiction refuses to disqualify the driver the U.S. has no power to disqualify the driver. This should be changed by statutory amendment to allow the FMCSA to disqualify a foreign driver before the commencement of the pilot program.

One more issue has been raised by the FMCSA in terms of data collection in the pilot program. The agency states that "violation rates based on inspection data will be used to assess the safety performance of each participating motor carrier."[71] This statement, however, does not indicate whether the agency will properly and fairly use the same type of inspection data for comparison purposes. First, there are three levels of commercial vehicle inspection intensity, Level 1 being the most intense and Level 3 being least intense. If the pilot program data is drawn largely from low-intensity level 3 inspections, that would not present a fair basis for comparison with trucks operated in the U.S. While the agency asserts that it "anticipates that inspections performed on the program participants' trucks will be, on average, as thorough and rigorous as those performed on U.S. motor carriers[,]"[72] this is not the same as a commitment to using the same percentages of each level of inspection for comparison purposes between pilot program and U.S. trucks.

Likewise, the location of the inspection matters a great deal in terms of credibility of the comparison between truck fleets. Pilot program trucks are expecting to be inspected at the U.S. border so the inclusion of port-of-entry border inspections should be eliminated from the data pool. Equally critical, inspection data should not be drawn from inspections conducted within the commercial border zones because the

[69] 76 FR 40420 (July 8, 2011); 76 FR 20807 (Apr. 13, 2011).

[70] Follow-Up Audit on the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions, p. 31, FMCSA, MH–2009–068, Office of the Inspector General, U.S. DOT (Aug. 17, 2009).

[71] 76 FR 40436.

[72] *Id.*

pilot program vehicles in the border zones may have driven relatively few miles from their home base to get to the border zone. Inspections conducted in the border zones may be far less indicative of long-haul operating conditions than inspections conducted at locations throughout the 48 contiguous states and Alaska. Moreover, if the pilot program is truly a test of whether Mexican carriers can operate safely on long-haul trips throughout the U.S., then the inspection data must be drawn from roadside inspections conducted outside of the commercial border zones and, preferably, from inspections conducted in non-border states. Inspections conducted at a distance from the U.S.-Mexican border will provide the most accurate measure of the safety of drivers, vehicles and motor carrier operations on long-haul trips within the U.S. Since the overwhelming majority of trips taken by participating motor carriers in the previous cross-border pilot program were completed in the border zones (85 percent),[73] reliance on similar data collected from border zone inspections in the proposed pilot program would not provide a valid basis for comparison. In addition, a large percentage of the trips beyond the border zone by participating carriers were completed in the four (4) border states. In order to obtain data that accurately compares long-haul operations of pilot program participants with long-haul operations in the U.S., only inspections conducted beyond the border zones, and typically after a trip of at least 250 miles, should be considered for inclusion in the data collection from the subject pilot program vehicles.

Recommendations:

- ***Congress should amend Federal law to:***
  - ***require states to report violations by foreign commercial motor vehicle drivers to the Secretary of Transportation, and***
  - ***include foreign commercial motor vehicle drivers among the listed disqualifications provided under 49 U.S.C. §31310;***
- ***FMCSA should evaluate the NAFTA long-haul pilot program based on inspections:***
  - ***which compare violations determined based on similar percentages of Level 1,2 and 3 inspections as are conducted on U.S. trucks; and***
  - ***that are conducted outside the U.S. commercial border zones and do not include inspections conducted at ports of entry at the U.S. border.***

FMCSA Enforcement Issues

Compliance, Safety, Accountability—Results Are Uncertain, Evaluation Is Needed

FMCSA has argued that enforcement rigor will be substantially increased as the new enforcement methodology, Compliance, Safety, Accountability (CSA), is fully implemented. Because CSA for the first time will include roadside inspection data as part of the monitoring and oversight of motor carrier enforcement, there is reason to believe that this may improve the agency's previously limited, bureaucratic approach to motor carrier enforcement interventions.

However, since CSA was only implemented at the beginning of this year, the information needed to assess the effectiveness of the CSA program is incomplete and not available to the public. CSA is supposed to provide more data from roadside inspections and the new Safety Measurement System (SMS) uses crash reports and violations grouped into seven (7) safety-related categories, called BASICs (Behavior Analysis Safety Improvement Categories), to conduct its safety analysis.[74] While more data is being collected and made available to the public in some of the seven safety categories of interest under CSA, many carriers have little or no data in some or a majority of these critical areas at this time. So the CSA program remains a potentially positive initiative but there is insufficient information available at this time to permit either the public to make reliable decisions based on the incomplete motor carrier safety information data, or for Advocates and other organizations to assess the impact of the CSA program on motor carrier safety.

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[73] U.S.-Mexico Cross-Border Trucking Demonstration Project, Independent Evaluation Panel Report to the U.S. Secretary of Transportation, p. 12 (Oct. 31, 2008).

[74] CSA relies on the Safety Measurement System (SMS) which quantifies the on-road safety performance of carriers and drivers to identify candidates for interventions, determine the specific safety problems the a carrier or driver exhibits, and to monitor whether safety problems are improving or worsening. The SMS weighs the violation data collected in seven areas called the Behavior Analysis Safety Improvement Categories, or BASICs: unsafe driving; fatigued driving (hours of service); driver fitness; controlled substance/alcohol; vehicle maintenance; cargo-related; and crash indicators.

It is important to note, however, there are several safety concerns regarding a bias that is built into the agency's new methodology on which CSA relies that will skew the resulting enforcement efforts. The new system will still not ensure that mechanical problems will have parity with driver violations for stopping dangerous carriers from operating unsafe trucks or motorcoaches. FMCSA's decision to place heavy emphasis on driver behavior as the core principle behind CSA [75] ignores the fact that mechanical defects are dramatically under-reported. Even though in 2010 the OOS rate for vehicles (large trucks) was 20.3 percent, and the OOS rate for drivers (large trucks) was just 5.2 percent,[76] the CSA BASICs includes four driver-related violation categories but only one category for vehicle maintenance violations.[77]

Studies [78] show that of the nearly 1,000 truck crashes investigated by FMCSA, fully 55 percent of them had one or more mechanical problems, and almost 30 percent had at least one condition that would trigger an OOS order, that is, a directive to the truck and driver to stop operating. It was also found that just a brake OOS violation increased the odds of a truck being assigned the critical reason for precipitating the crash by 1.8 times. For this reason, Advocates has criticized FMCSA's policy of only issuing an OOS order when both driver and vehicle violations exceeded the required levels under the previous Safety Management System (SafeStat). Advocates believes that either driver or vehicle violations, if serious enough, should require the issuance of an OOS order. The NTSB likewise issued a safety recommendation calling for the same treatment of driver or vehicle safety violations.[79] The implications are clear: FMCSA's new approach under CSA, which includes four driver BASICs but only a single BASIC related to vehicle maintenance may well result in the same unbalanced, excessive emphasis on driver as opposed to vehicle violations.

The over-emphasis on driver behavior over mechanical defects has another collateral consequence when it comes to hours of service enforcement. Because of the current necessity to rely on the use of driver logbooks that are so often falsified that they are known as "comic" books, violations of HOS rules are often missed in roadside inspections. A high percentage of drivers are able to repeatedly conceal hours of service violations by manipulating the entries in their logbooks. Even with supplementary documents available to law enforcement, such as toll and fuel receipts, truck drivers can still make their logbook entries appear to be valid. If the CSA BASICs are overly reliant on driver violations, and enforcement personnel remain un-

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[75] *See,* 71 FR 61131 (Oct. 17, 2006). Also *see,* www.csa2010.fmcsa.dot.gov. Primary data sources available to researchers and enforcement authorities contain very little information on vehicle mechanical condition, but lots of detailed information about driver condition and behavior. In addition, available crash data systems are not designed to support any analysis of how mechanical defects played a role in CMV crashes. All well-known crash data sets, such as the Fatality Analysis Reporting System (FARS), the General Estimates System (GES), and state crash files maintained and sent to FMCSA as part of each state's requirements under its State Enforcement Plan to qualify for Motor Carrier Safety Improvement Program (MCSAP) funds, are based on police reports. These data sets, unsurprisingly, contain very low percentages of various mechanical defects as contributing to reported crashes.

Officers on crash scenes do not engage in forensic work to detect mechanical failures. Police crash reports concentrate overwhelmingly on supposed driver errors or violations as the proximate reasons for the crash occurrences. If a report does contain mechanical or equipment failure information, it probably will involve an obvious, catastrophic failure and not deterioration of performance in key vehicle operating systems that cannot be detected at the crash scene. This disregard of mechanical defect involvement in CMV crashes is even more likely in injury or property-damage-only crashes.

Empirical data highlights the paradox of the radical under-reporting of CMV mechanical defects: roadside inspections, such as the annual Commercial Vehicle Safety Alliance (CVSA) Roadcheck repeatedly and consistently show high rates of mechanical defects and out-of-service (OOS) orders issued for such defects. For example, CVSA's Roadcheck 2009 found an average of 1.12 vehicle violations in every roadside inspection, and 26.1 inspected trucks were placed OOS for mechanical/equipment violations. *http://www.cvsa.org/news/2009_press.aspx.* Severe under-reporting of mechanical defects that contribute to crashes has been borne out by several investigations. (Massie and Campbell 1996). Without special, in-depth studies keying on mechanical defects, crash data sets available for research cannot accurately gauge the role of mechanical problems in large truck crashes.

[76] Roadside Inspections and Out-of-Service (OOS) Rates for Commercial Motor Vehicles, Commercial Motor Vehicle Facts, FMCSA (April, 2011) available at http://www.fmcsa.dot.gov/documents/facts-research/CMV–Facts.pdf.

[77] *See* CSA BASICs website available at *http://csa.fmcsa.dot.gov/about/basics.aspx*.

[78] A. McCartt, *et al.,* "Use of LTCCS Data in Large Truck Underride Study," Insurance Institute for Highway Safety, Society of Automotive Engineers 2010 Government/Industry Meeting, Washington, D.C., Jan. 26–29, 2010.

[79] NTSB Rec. H–99–6, issued Feb. 26, 1999. to FMCSA ("Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier").

able to accurately detect this major source of violations, then the data and accuracy of CSA will be questionable, and its capability to adequately address ongoing driver and carrier violations suspect.

For this reason, Advocates reiterates the need for Congressional action to direct FMCSA adoption of a universal EOBR regulatory requirement. Only the use of EOBRs can address this potential problem in the CSA approach.

Recommendations:

- ***FMCSA should be directed to:***
  - ***re-evaluate the imbalanced approach to motor carrier violations in CSA that relies too heavily on driver violations as part of the BASICs; and,***
  - ***implement NTSB safety recommendation H–99–6 so that either driver or vehicle violations alone can trigger issuance of an out-of-service order.***
- ***Congress should direct the GAO to assess:***
  - ***the accuracy and deterrent value of safety performance findings from the SMS;***
  - ***the progress of CSA and whether the effort is proceeding in the right direction;***
  - ***whether safety performance will be evaluated in a more timely and meaningful manner than the previous compliance review-oriented regime; and***
- ***whether the system will detect a significantly higher percentage of dangerous motor carriers that either need major, immediate reforms to their safety management or must stop operating.***

FMCSA Should Impose the Maximum Penalties Allowed by Law on Violators

FMCSA has a history of avoiding the imposition of maximum penalties on serious motor carrier violators but we hope there will be a change under the new agency leadership. There has been no recent update on whether the agency has increased average penalties and is imposing sufficiently tough penalties in order to send a message to all truck and motorcoach companies that the agency means business. Congress indicated in the agency's authorizing law that civil penalties had not been sufficiently used to deter violations.[80] Stiffer penalties levied against offending motor carriers would provide a strong deterrence to prevent other companies from committing serious violations.

FMCSA administers civil penalties allowed under the civil penalties section of the transportation code.[81] Despite the fact that this section has been amended a number of times in an effort to strengthen the legally allowed penalties, the statute affords the agency considerable discretion in setting the amount of penalties to be imposed and the maximum penalties are set too low. Motor carriers—the trucking, motorcoach, and bus companies—are liable for a maximum penalty of $10,000 for each offense, while the motor carrier employees who are actually responsible for committing the violations are subject to no more than a fine of $2,500 per offense.[82]

In the past, the agency has through its policies and interpretations limited the penalties it has imposed. For example, Congress made it clear in the agency's enabling legislation that FMCSA was supposed to assess maximum financial penalties for commission of certain acute or chronic motor carrier safety regulatory violations after the commission of two offenses or a pattern of violations.[83] However, the GAO found that the agency did not assess maximum fines for a pattern of violations.[84] The same GAO report also found that the agency misinterpreted the statutory basis for imposing maximum fines, assessing maximum fines only after a third violation rather than following a second violation.

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[80] MCSIA, § 3(2).

[81] 49 U.S.C. § 521(b).

[82] *Id.* at § 521(b)(2)(A).

[83] MCSIA, § 222 states:

(b) ESTABLISHMENT.—The Secretary— * * *

(2) shall assess the maximum civil penalty for each violation of a law referred to in subsection (a) by any person who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or a related violation of critical or acute regulations issued to carry out such a law.

[84] *Motor Carrier Safety: Federal Agency Identifies Many High-risk Carriers but Does not Assess Maximum Fines as often as Required by Law,* GAO–07–584, Aug. 2007.

FMCSA has conceded that it cannot determine whether the changed penalty structure and amounts of fines have a beneficial effect on motor carrier violation rates and on motor carrier safety.[85] Part of the problem is that the agency has imposed substantially different amounts of fines from year to year. Even after the maximum penalty amount was increased, average non-recordkeeping penalties plummeted from $5,066 in 2000 to $2,938 in 2006.[86] The latter figure is only a little more than 29 percent of the maximum permitted by law. It is clear that raising penalty ceilings in Federal legislation while allowing broad agency discretion in the amounts of penalties actually imposed does not ensure that violations trigger stiff penalties or promote deterrence.

While FMCSA has recently announced the issuance of OOS orders to several motor carriers, prior recent failures by the FMCSA to impose stiff penalties has had deadly consequences. Just two months ago, on May 11, 2011, a horrific motorcoach crash occurred in Caroline County, Virginia in which four people were killed and over 50 injured when the fatigued driver ran off the side of the road and the motorcoach overturned and landed on its roof. The motorcoach operator, Sky Express, had 46 violations for fatigued drivers, 17 violations for unsafe driving, and 24 violations for driver fitness in the past two years.[87] The company was among the worst in the industry and FMCSA had proposed an "Unsatisfactory" safety rating for the company in April 2011. The rating meant that FMCSA could have shut down Sky Express after 30 days,[88] three days before the crash occurred on May 28, but the agency chose to extend the carrier's response and operating time for an additional 10 days.[89] Had FMCSA cracked down on Sky Express for its dozens of violations and poor fitness rating and shut the operator down, the crash could have been prevented. Secretary LaHood has stated that the practice of allowing additional time would not occur again.[90] Advocates questions whether any motor carrier, especially a passenger-carrying operation, should be allowed to continue operations on public highways once the determination has been made that its operations are unsafe.

Recommendations:

- ***Congress should request a GAO study of FMCSA's imposition of penalties for motor carrier safety violations to determine:***
    - ***whether the current maximum penalty amounts are actually deterring motor carriers from committing violations;***
    - ***the extent to which FMCSA has reduced or compromised penalty amounts in a manner that results in lower penalties per violation and per motor carrier;***
    - ***the extent to which motor carriers regard current levels of imposed penalties as acceptable costs of doing business rather than as a deterrent;***
    - ***whether setting statutory minimum required penalties is necessary and appropriate, and to recommend such minimum amounts;***
    - ***whether motor carriers given "Unsatisfactory" safety ratings by FMCSA should be allowed to continue operations while challenging or trying to improve the safety fitness determination .***

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[85] FMCSA states in its study of civil penalties:

[I]t was determined during the original analysis that it is not possible to isolate the effects of the revisions to the civil penalty schedule on carrier behavior from other elements of the CR program or other FMCSA programs (*e.g.,* the roadside inspection program). Other actions that could be taken against a carrier as a result of a CR include: placing a carrier OOS for reasons other than nonpayment of fines, and determining that a carrier is unfit to operate. Also, it is not possible to isolate the effects of TEA–21 penalty revisions from other civil penalty revisions that follow in later years. Therefore, the 2004 study focused primarily on the impact of the changes in the revised civil penalty schedule on the dollar amount of the fines assessed to the carrier and on the number of violations assessed.

Analysis of FMCSA's Revised Civil Penalties (1995–2006): A Follow-up Study, FMCSA, U.S. Department of Transportation, Aug. 2009, at v.

[86] *Id.,* Table 4, at 11.

[87] Federal Motor Carrier Safety Administration Safety Measurement System for Sky Express, USDOT# 1361588.

[88] 49 U.S.C. § 31144(e)(2).

[89] *Safety Agency Rebuked in Deadly Bus Crash,* USA Today, June 2, 2011, available at *http://www.usatoday.com/news/nation/2011–06–01-bus-crash-lahood_n.htm?loc=interstitialskip#.*

[90] *"LaHood Ends Extended Appeals After Fatal Bus Crash,"* AP/NBC. 1 Jun 2011. *http://www.nbcwashington.com/news/local/DC–Fed-Agency-Was-Set-to-Suspend-Bus-Company-Before-Crash-122972973.html.*

FMCSA Lacks A Reliable Method to Detect "Reincarnated" Motor Carriers

At present, it is simply unknown what is the number of illegally operating carriers that have restarted their trucking and motorcoach companies as new entrants to mask prior operations, and to avoid paying large fines and complying with OOS orders.

It has become increasingly apparent that FMCSA's methods of detecting whether a motor carrier is legitimately registered with the agency and has legal operating authority are unreliable and unsafe. Thousands of motor carriers subject to heavy fines from repeated, past violations and even given stop operation orders sink out of sight and then re-appear as new entrants seeking registration and initial operating authority from FMCSA.

In 2008, the horrific crash of a motorcoach in Sherman, Texas, resulted in the deaths of 17 passengers and injuries to the driver and the other 38 passengers. As referenced previously in this testimony, the motorcoach was operated by Angel Tours, which had been stopped from operating by FMCSA just weeks prior to the crash but continued to operate under the new name Iguala Busmex. Angel Tours had an extremely poor safety record and had been ordered by the agency to cease operations.[91]

The NTSB investigation found that the numerous safety violations of the motorcoach and its drivers were a continuation of the company's exceptionally poor safety record when it registered with FMCSA as a new company. NTSB determined that FMCSA processes for vetting new entrant carriers through the use of its New Applicant Screening Program were inadequate for identifying the motorcoach company as an operation that had deceptively re-incorporated—a "reincarnated" or "chameleon" carrier—to evade agency enforcement actions. That failed screening process had allowed hundreds of motorcoach and trucking companies to escape detection as illegal, new motor carriers.

In a separate study, GAO tried to determine the number of motorcoach carriers registered with FMCSA as new entrants in FY2007 and FY2008 that are substantially related to previous companies or are, in fact, the same companies that have "reincarnated" themselves as new operations. GAO found 20 motorcoach companies that had re-appeared as new companies from old companies, representing about nine percent of 220 interstate motorcoach companies that FMCSA placed out of service during those two Fiscal Years. (These 220 companies are part of the approximately 4,000 motorcoach companies registered with FMCSA in FY 2008.) According to GAO, this percentage is probably an underestimation of the number of "chameleon" carriers in operation that have disguised their prior, unsafe operations to hide their reincarnation from the agency.

FMCSA officials admitted to GAO that until the 2008 motorcoach crash in Sherman, Texas, reincarnating was easy to do and hard to detect. In fact, five of the 20 carriers identified by GAO were still operating in May 2009, and GAO referred them to the agency for investigation. GAO also found another 1,073 trucking companies that appeared to be reincarnated "chameleon" carriers, which FMCSA had not detected.[92] FMCSA's new process for detecting such carriers has not been evaluated by GAO.

A follow-up study is needed to determine whether FMCSA's new procedures for detecting "reincarnated" carriers has made substantial inroads on the number of illicit trucking and motorcoach companies currently operating as new companies.

Recommendations:

- ***Congress should direct:***
  - ***FMCSA to require the principal officers of each new entrant motor carrier to declare, on the new entrant application, under penalties for perjury, that the new entrant is not a reincarnated or previously operating motor carrier with a different DOT registration number; and,***
  - ***GAO to conduct a follow up investigation to assess whether the FMCSA's new process for detecting "reincarnated" carriers is effective.***

Conclusion

Creation of a new Federal agency to oversee motor carrier and motorcoach safety has not yet resulted in the rigorous oversight and enforcement that Congress di-

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[91] *Highway Accident Report—Motorcoach Run-Off-The-Bridge and Rollover, Sherman Texas, Aug. 8, 2008,* NTSB/HAR–09/02, http://www.ntsb.gov/publictn/2009/har0902.htm.

[92] *Motor Carrier Safety: Reincarnating Commercial Vehicle Companies Pose Safety Threat to Motoring Public—Federal Safety Agency Has Initiated Efforts to Prevent Future Occurrences*, GAO–09–924 (July 2009).

rected and the public expected. In the past, safety goals had not been met but merely changed, rulemakings were routinely overturned in legal challenges because of faulty reasoning and illegal underpinnings, enforcement was sporadic and weak, and unsafe carriers and drivers operated with near impunity. Every year thousands are killed and over 100,000 injured in truck crashes, every month on average there is a serious motorcoach crash, and every day tough safety regulations to combat driver fatigue, improve enforcement and train new commercial drivers still go uncompleted. While the new leadership team at DOT has addressed some of these issues, and shows signs of revitalizing the FMCSA's safety mission, it is still necessary for Congress to conduct constant oversight and provide clear direction to this agency if we expect any strong and sustained progress in reducing deaths and injuries. Advocates thanks you for your leadership and looks forward to working with you on advancing motor carrier safety.

Senator LAUTENBERG. Thank you very much.

Well, the one thing that is obvious here is that we all feel the responsibility to make it safer out there on the highways, and to make sure that companies and individuals are equipped to do their jobs with safety in mind.

Now, Ms. Gillan and Mr. England, electric onboard recorders help prevent driver fatigue by ensuring that the drivers comply with our service requirements. FMCSA has a rule that goes into effect next year that only requires electronic onboard recorders for bus companies with a history of hours of service violations.

Might not the safety be improved by expanding this rule to require EOBRs on all commercial vehicles? First, Mr. England?

Mr. ENGLAND. Certainly I agree with you 100 percent, and that's why the ATA supports electronic onboard recorders. We believe that a combination of the electronic onboard recorder, plus the current hours of service regulations, will prove to, will show that safety rates, the number of fatalities, will continue to decline.

Now, we also believe that there are various kinds of technologies and solutions in meeting this EOBR need. There shouldn't be just a one-size-fits-all.

And finally, I'd just like to say, our company has been operating with electronic logs now for 2 years. And we have seen, gosh, our violations, 70 hours, 14 hours and so forth, literally drop off the chart. And drivers have accepted it well. Studies have shown that there is a strong correlation between compliance there as to service regulations and safety. And we believe that electronic logs are essential, really, to meeting that end.

Senator LAUTENBERG. Thank you.

Ms. Gillan, how do you see the need for the EOBRs, you know, recorders on all commercial vehicles?

Ms. GILLAN. Well, we feel that electronic onboard recorders are about 10 or 15 years overdue. They're already required in Western European countries, in South America. And we have a problem with enforcement of hours of service, and we know that fatigue is a factor in up to 30 percent of all crashes. Right now, law enforcement has to rely on paper log books which, even within the trucking industry are referred to as comic books.

There's no question that electronic onboard recorders are needed. This will not only help to ensure that truck drivers comply with hours of service, but it will also help law enforcement enforce those laws. And I think that electronic onboard recorders will actually help truck drivers, who are constantly being pushed by shippers and their employers to exceed hours of service. And the electronic

onboard recorders will monitor that. It will be an accurate representation of how many hours that truck has been on the road. And it will definitely improve safety, not only for the public, but for the truck drivers as well.

Senator LAUTENBERG. Thank you.

Ms. Ferro, NTSB found that fatigue is the primary factor in 30 to 40 percent of large truck crashes. Is the latest fatigue research and safety data being incorporated in FMCSA's hours-of-service rulemaking?

Ms. FERRO. Mr. Chairman, yes. We certainly incorporated fatigue research, both workplace as well as other studies, into building the hours-of-service proposal that went through the public notice and comment period and is now under the final edits to submit through the rest of the process. So, the simple answer is yes.

Senator LAUTENBERG. Mr. Hart, a new motor carrier must self-certify that it understands and will abide by Federal safety regulations. However, FMCSA does not verify the carrier, that the carrier's capable of complying with regulations until its first safety audit, which can be up to 18 months after the motor carrier begins operation.

What can we do to improve FMCSA's registration process to ensure that new motor carriers comply with safety regulations?

Mr. HART. Thank you, Mr. Chairman.

The issue you have highlighted is the reason we made recommendations that were based on our recent investigation of a collision of a tractor-trailer with a Greyhound bus. In that accident, there was considerable falsification of the information by the owner, which led to our recommendation that the scrutiny and the examination of the carrier be completed before the carrier enters into service.

Senator LAUTENBERG. Ms. Ferro, 18 months is a long time to wait for a safety audit. What resources might FMCSA need to speed up these reviews?

Ms. FERRO. Well, in today's environment, we complete the new entry safety audits on all trucking company new entrants within 12 months, as opposed to the 18, for the very reason that you and Member Hart just stated, and for motorcoach carriers within less than 5 months. We do feel the urgency, and it underscores the technical assistance we submitted which is recommending that motorcoach carriers go through a pre-authority safety audit—let's not even wait for that new entrant audit. Let's do it before they get their authority.

And we continue to advance a knowledgeability proposal for any new entrant applicant, again, to get at the sense of that knowledge and fitness before they get their authority.

Senator LAUTENBERG. Mr. Rajkovacz, Federal law prohibits large trucks weighing more than 80,000 pounds, or that are longer than 53 feet, from using interstate highways. What effect might allowing heavier trucks have on the safety of drivers and passengers on our highways who are already on our stretched infrastructure?

Mr. RAJKOVACZ. We are not supporters of the longer and heavier combination vehicles. Currently, longer and heavier vehicles do selectively operate within this country. However, often the drivers have to receive special training by regulation. They are typically

the most experienced and veteran drivers in the industry. And they operate in primarily rural interstates away from major urban areas. And those areas they operate in typically have the lowest accident rates.

We've been to this rodeo before. When you increase size and weight, one of the requirements, or one of the things that would have to happen is, you would end up having to go to a three-axle trailer. When we went from 45-footers to 48-footers it became the industry standard, even though it wasn't mandated by Congress. But it went from 48-footers to 53-footers. That became the industry standard. You weren't going to get loaded unless you showed up with a 53-footer. You increase the weight to 97,000 pounds, three-axle configuration on the trailer.

One of the arguments made by the proponents is that it's going to be environmentally friendly. We're going to save fuel.

You're going to have everybody dragging around a three-axle trailer not at 80,000 pounds. It's significantly less. When all of that weight, if it is at 97,000 pounds, is sitting on a bridgedeck, the whole 97,000 pounds is on the bridgedeck. You can't get around that. We have a crumbling infrastructure in this country; there's not the money there; who knows when the money's going to be there to replace it. That is sitting on the bridge. We saw it in Minneapolis.

Senator LAUTENBERG. Thank you very much.

Senator Wicker.

Senator WICKER. Thank you.

Mr. England, you represent ATA. But your own company also has some 4,600 drivers and 3,500 trucks. How many of those trucks have these electronic devices on them?

Mr. ENGLAND. Just a small correction. We operate 4,000 trucks. Maybe we made an error in the report we gave you. But, yes, all of them do.

Senator WICKER. OK. All of them do. And, as far as you are concerned, that's working pretty well?

Mr. ENGLAND. Yes. It's been accepted well by drivers. We've seen a slight deterioration in productivity, but only slight. And we feel it's more than offset by the comfort that it gives us that we are seeing greater compliance with the hours of service regulations.

Senator WICKER. OK. And, do I take it, then, that if you had your druthers, we'd just keep those devices on there, and keep the hours of service rules as they are, rather than changing them as they're proposed to be? Did I understand that correctly?

Mr. ENGLAND. That is correct.

Senator WICKER. Why is that?

Mr. ENGLAND. Well——

Senator WICKER. Explain that to the Committee.

Mr. ENGLAND.—the data speaks for itself in terms of improvement. Over a period of time, when mileage has increased, fatalities have continued to go down, as has the accident rate. Our concern is that if the proposed changes were made to the hours, such as an 11-hour driving period, the restart provision, and so forth, it would require us to put more trucks on the road and hire more drivers who would be less experienced. And we just think the net

effect would be a deterioration in highway safety, rather than an improvement as we've seen over recent years.

Senator WICKER. OK.

Now, Mr. Rajkovacz, I'm going to ask you to answer that question also. What is your feeling, and the feeling of your organization, about keeping the hours of service rules as they currently are, rather than moving to the changes?

Mr. RAJKOVACZ. We do not believe there is any sound, rational scientific justification for altering the current hours of service. They have certainly proved, you know, in real-world use that the industry has gotten safer under the current hours of service that are in place.

We do think that if you reduce the productivity of the industry by reducing the hours of service, you are likely to see a less safe industry, because you're going to have to add more trucks, more drivers, to handle the same amount of freight that's hauled today. You're going to have a productivity issue. More trucks on the highway means more car-truck interactions.

Senator WICKER. And then, let me ask both of you to explain to the subcommittee this problem with detention time, and comment about proposed solutions to this situation.

Mr. England, you can go first.

Mr. ENGLAND. Well, as recently as January of this year, the GAO issued a report showing there's really no nexus between this issue of detention and safety. And so, we feel that if regulation were to take place, it would be nothing more than economic regulation. At our company, we pay our drivers detention regardless of whether we get paid by the customer. And we feel like these are transactions that should be handled through negotiations between our customer and us. We really don't believe in a one-size-fits-all sort of scenario.

Senator WICKER. So, do I understand—the proposals in the legislation that would require contracts between shippers and motor carriers, you're not really very excited about having that included in the statute, are you?

Mr. ENGLAND. We are not.

Senator WICKER. How about you, Mr. Rajkovacz?

Mr. RAJKOVACZ. The detention issue, delay of docks, is the 800-pound gorilla in any meaningful safety discussion in this country. In my written testimony, I gave an actual example that happened week after week, month after month, year after year. It's not imagined. It's real. I disagree with the characterization of the GAO report in saying that there's not a nexus to highway safety. This is one of the reasons the Association's not warm and fuzzy about EOBRs. There is a tremendous amount of driver time spent at these docks that's not being recorded. The EOBRs will never capture that. It's there. It's for real. And if we don't address that, if we ignore it, a lot of the rest of the safety discussion, really, in many respects, becomes somewhat shallow.

Senator WICKER. Now, just to follow up, because my time is gone, do you think the requirement of a contract dealing with carrier detention time would be a good requirement to put in the new statute?

Mr. RAJKOVACZ. Something clearly has to be done. My answer to that's going to be a qualified yes. And the reason for that is that small businesses do not have the economic power in the marketplace to insist on any equitable treatment from large shippers and receivers. It's take it or leave it. And so, you face this coercion. I mean, within driver parlance, this coercion is an everyday, real, actionable thing that happens to small businesses and drivers.

Senator WICKER. OK. Well, let me give you a little time on the record to supplemental your answer on behalf of your Association as to what the best statutory solution would be.

Senator WICKER. And, thank you all.

Senator LAUTENBERG. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Mr. England, let me start with you, if I may. You mentioned in your testimony a few moments ago about hair testing. Tell me the advantage of hair testing over other types of testing.

Mr. ENGLAND. We found in our company that it's much more reliable. Where we have a violation rate of, say, around 2 percent with urine testing, we find that, a violation of about 9 percent with hair testing. Where urine testing may be good for 2 weeks or 3 weeks or something like that, maybe not that long, but, really, hair testing is good for 60 to 90 days.

There's also a greater likelihood of subverting the system with urine testing than there is with hair testing. And that what, we just think it's one more means of ensuring safe operations.

Senator PRYOR. And, if the Congress is able to pass this database proposal that I've offered, would that help you in your hiring process, and how so?

Mr. ENGLAND. Absolutely. I mean, we can buy all the technology in the world, and many in our industry are doing that. Weighing departure technology, roll stability systems. There's just a whole array of technologies. It really comes down, for the most part, to the person behind the wheel of that truck. And if we don't have knowledge that a person that we're putting behind the wheel of a truck had a positive drug test or alcohol test somewhere back along the line that he or she didn't report on their application, we're obviously handicapped in knowing whether we're putting a safe person behind the wheel.

Senator PRYOR. Thank you.

And, I'm sorry. Help me with how to pronounce your name. Is it Rajkovacz?

Mr. RAJKOVACZ. Rajkovacz.

Senator PRYOR. Rajkovacz. OK. Well, bear with me as I struggle with that. But, thank you. And I'm not sure in your opening statement if you really told us your thoughts on the data base, and whether that would help or hurt owner-operators, in your opinion.

Mr. RAJKOVACZ. The drug and alcohol clearinghouse is something that the Association—we've been discussing it. We haven't taken an official stance on it. But I can say from conversations I've had with small business owners, owner-operators, they're very concerned about the placement of a database like that in the hands of a third party, an independent third party, not the government. We have seen way too often where, once a third party has data on drivers, it's not used in a very ethical manner.

When it comes to drug and alcohol testing, the Association has, on numerous occasions in responses to the agency, suggested changes to how drug and alcohol testing are performed to be more effective. Right now, we as an industry test at a 50 percent rate on randoms, and, you know, you have drivers that have been driving for 30 years. And they've never tested positive. They'll never test positive. But they're caught up in the whole system.

It seems to us to make more rational sense to allow those who have never tested positive to go into a lower rate, thus concentrating testing on those who haven't achieved a certain level.

Senator PRYOR. OK.

Mr. Hart and Ms. Ferro, I don't want you to feel like you've been left out of this conversation so, let me ask, if I may, a little bit about the data base, the drug and alcohol testing. But also, what I'd like to focus on is something that one of the witnesses said earlier about the idle time, the time of loading and unloading, and what impact that does have on safety, and how the current system handles that. I don't want to call it downtime because that's probably not accurate. It probably depends on what they're doing.

Mr. Hart, would you like to go first, or——

Mr. HART. Thank you, Senator Pryor. I'm not aware that we have any recommendations specific to that issue, because I'm not aware that we've ever addressed that as a causal factor in any of our accidents.

Senator PRYOR. OK.

Ms. FERRO. So, from FMCSA's perspective on the detention time component, we had done some research in the past where we did identify the cost and correlation to safety. In addition, our Motor Carrier Safety Advisory Committee following some of the GAO work last year took it up as an issue and, under consideration. It's a very broad-based advisory committee with stakeholders from every major interest group that has a stake in commercial vehicle safety. And the advisory committee recommended to the agency that they wanted to continue looking at the issue.

The correlation is that uncompensated time at a dock, which is generally from our research, in many cases uncompensated time puts pressure—not just economic pressure—on a driver, but it also puts pressure on that driver's restricted operating time. And by the time the driver may be released from that site, that driver is invariably inclined to push the limit, both on hours of driving—on hours of service, as well as the stress and fatigue related with waiting. So, we get two safety factors there.

Senator PRYOR. OK. Thank you.

Mr. Chairman, I may have more questions for the record.

But, thank you.

Senator LAUTENBERG. Thank you very much.

Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman.

Ms. Ferro, what were the results of the cost-benefit analysis, of the safety benefit versus the cost of the proposed change in the hours of service rules?

Ms. FERRO. Senator, that, we had several ranges based on the different assumptions of minimum amounts of sleep, moderate, and

maximum, and I do not have the numbers in front of me. I'd be pleased to submit them for the record.

Senator BOOZMAN. Was it positive?

Ms. FERRO. The overall cost-benefit analysis did come out positive in the context of both the tangible costs to industry, and offset by the savings of lives under the hours-of-service rules. So, yes, across the range of those options, it was a positive outcome in terms of beneficial.

Senator BOOZMAN. OK. I'd like to have a copy of those——

Ms. FERRO. I'd be pleased to provide a copy.

Senator BOOZMAN. For sure.

Mr. Hart, you mentioned fatigue accidents. Those accidents—were the people that were fatigued, were they following in the current hours of service requirement?

Mr. HART. I would have to get back to you with specifics. But in general, the answer is no.

Senator BOOZMAN. OK. So, if you change the hours of service, those individuals were cheating anyway.

Mr. HART. My understanding is that in most cases they were fatigued for a number of reasons. But one of the reasons was not following the hours of service.

Senator BOOZMAN. Very good. Thank you.

Ms. Ferro, in the IG report, they noted that there was an issue in the states, with the states stopping people, the Mexican truck drivers, and having violations, and then it wasn't getting reported back to you so that you would have that on record and could do something about it. And I think they recommended that something be done about that.

Can you tell us what has been done?

Ms. FERRO. Absolutely. Through our relationship with the states as grantees in the Motor Carrier Safety Assistance Program, we encourage all states to post moving violation convictions of foreign drivers to the host record, so that driver would, in fact, have a violation and conviction posted and it would come through our Commercial Driver License Information System. It's voluntary today.

In the context of that recommendation and our own recognition of the importance of that data, we have proposed in our technical assistance that it be mandatory, that states be required to post those convictions.

Senator BOOZMAN. Now, I'd very much like to encourage you to make this mandatory starting as soon, as quickly as possible.

I had experience with an interesting thing early on, when meth was such a problem. Arkansas had a tremendous problem, and yet it was not on record because it took a long time to fill out the forms and send it to the government that there was a problem. And so the government, the Feds, looked at that and said, "Well, you don't have a problem because it wasn't reported." And so, I really would encourage—in fact, I'd insist that we do that.

Ms. FERRO. Good.

Senator BOOZMAN. If not, it's not going to get done, because those people, like your agency, are working very hard, and understaffed. And so, again, I think that's very, very important.

Ms. FERRO. I appreciate that support.

Senator BOOZMAN. So, will you follow up with that? And, I'd like two things.

Ms. FERRO. Yes, sir.

Senator BOOZMAN. The results of the cost analysis.

Ms. FERRO. Mm-hm.

Senator BOOZMAN. And then, two, will you follow up with a plan on getting the other implemented?

Ms. FERRO. Oh, absolutely. In terms of the conviction reporting? Yes.

Senator BOOZMAN. Yes.

Ms. FERRO. And the value——

Senator BOOZMAN. Not just reporting, but——

Ms. FERRO. Mandatory.

Senator BOOZMAN.—the, mandatory with teeth in it.

Ms. FERRO. Yes. We'll highlight that and forward that to your committee, to your staff.

Senator BOOZMAN. Thank you.

Ms. FERRO. Thank you.

Senator BOOZMAN. Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you.

Senator Snowe.

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Mr. Chairman. And thank you for allowing me to participate in this hearing, even though I am not a member of this subcommittee. I appreciate it very much.

Ms. Gillan, I wanted to discuss comments raised in your testimony, because truck weights are a critical issue for my state, and presumably other states in this country. And it's been a longstanding issue that is of paramount concern to our state, to truckers, to industry, and to State government officials, including the Governor and the Congressional delegation. And that's why Maine had a pilot program, as you know, and it operated for a year, in 2009.

You indicated in your statement, and I'd like to know on what you based your assessment, of Maine's pilot program that underscored concerns about safety. Because the Maine Department of Transportation report concluded otherwise. I know you do it on the basis of more trucks on the road. That may be true. But the question is, on which roads? And, unfortunately, for Maine, what's happening is, all of these trucks are now ending up on secondary roads and it's proven to be a real hazard.

I've been fighting this issue for a long time in this committee. And I'll tell you, it is an issue about which truckers in Maine feel very passionately, because it's a very dangerous issue. We have had accidents in some of the communities back in the last few years because these trucks are present on secondary roads when they should be on the Interstate.

To give you an example; in Maine we can have a truck traveling local roads, passing nine schools, more than 3,000 homes, through hundreds of intersections. A similar route on the Interstate would have a truck pass 32 controlled access ramps and exactly zero homes and schools.

Now, the Maine Department of Transportation said there were 14 fewer crashes—a 10 percent improvement—involving six-axle trucks—because that's what we're talking about, six-axle trucks, which are even safer because of the weight dispersion and the extra brake system—on all Maine roads, due to increased truck traffic on the safer roads, which is the Interstate, there were 10 fewer crashes on the Interstate involving six-axle trucks, possibly due to heightened safety awareness for both trucks and cars. There were four fewer total crashes on secondary roads, which is a positive result, because we're seeing all of these trucks rumbling through some very small towns, on narrow roads, and it makes it very hazardous in these communities.

Even with the increased truck traffic on Maine's Interstate system, during the pilot project there were no fatalities on this safer road, either in 2009 or during the pilot in 2009–2010.

Now, your comments reflected, you were referring to combination trucks. We don't allow combination trucks in Maine. And we don't allow them on State roads. Also, the fact that the 2000 Federal Highway Administration report entitled, "Comprehensive Truck Size and Weight Study" noted six-axle configurations have less impact on pavements, and trucks currently using five axles and distribute weight on fewer points cause greater fatigue.

Those are some of the issues, among others. My concern is that we have 27 states that already have exemptions, and Maine desperately wants one above the 80,000-pound limit to travel the Interstate, because it's safer. And somehow, we've conflated the notion of what is safe, and what isn't. I would invite you to come to the State of Maine to watch these trucks coming through small towns. We have heavy industry. And our road systems are designed to accommodate that. We used to have Loring Air Force Base which housed B–52 bombers. We had numerous other military facilities. We have the pulp and paper industry. So, that's important to us and our economy.

So, I'm wondering, how we can reconcile some of these issues. Because it's been going on for so long. I've introduced a bill that would allow the Secretary of Transportation to have a waiver authority based on a three-year pilot program within the state, to certify that it would be safe, so they could achieve a permanent exemption rather than coming to Congress. It's not fair to our State of Maine not to be able to have this exemption.

For example, just to give you an idea, if you're driving a 100,000-pound truck from Gary, Indiana, just outside of Chicago to Portland, Maine, you'd be forced to unload the additional weight to continue on the Interstate in Maine, or travel through the state on local roads. Conversely, you can drive a truck weighing 90,000 pounds all the way from Kansas City, Missouri to Seattle, Washington exclusively on the Interstate system.

That's our challenge. And I have had truckers down here multiple times for many years, and we're trying to figure out, what is the best way we can work with you, as a safety advocate, to understand the challenge that we're facing in our state in wanting that exemption? Our Department of Transportation wants it; they've certified it; we've got our documentation on the pilot program, and all of the evidence suggests it's all moving in the right direction.

It'll take 7.8 million vehicle miles off the roads with this exemption. It'll save money—$300,000 in rehabilitation of bridges. It would save more than a million dollars in pavement costs.

So, what could we do to sort through this, and figure out if we can get to a mutual agreement on what works, and what constitutes safety?

Ms. GILLAN. Senator Snowe, I hate to be on the other side of a safety issue with you, because we have worked so closely on so many other issues, like the safety of 15-passenger vans, and SUV rollover. But, on this one, I think we may have to agree to disagree.

Advocates for Highway and Auto Safety opposes 100,000-pound rigs on local roads, on the NHS system, and on the Interstate system. And there are really important safety reasons.

First of all, 100,000-pound rigs take much longer to stop. Right now, an 80,000-pound rig takes the length of a football field to come to a complete stop. A 100,000-pound truck takes 25 percent longer than that.

We also know the argument of the industry, that if we allow heavier trucks, there will be fewer trucks on the road. And that has never, ever occurred in the history of the United States, and it didn't occur in Maine. When we, Daphne Izer, with Parents Against Tired Truckers, FOIA'd information from Maine DOT, we found out that there actually was a 300 percent increase in the number of heavy trucks that were using that portion of I–95.

The other issue is that bigger trucks are more difficult to maneuver. They have a higher propensity to roll over, and they are unsafe. In fatal crashes involving a large truck and a passenger car, 97 percent of the deaths are individuals in the passenger cars.

And that's why it's not only Advocates, but we are joined by the Independent Owner-Operators, and the Teamsters, who are out there every day driving these big trucks.

There are also infrastructure issues. In some of the documents that we were able to review, the Federal Highway Administration raised the issue that there were a significant number of bridges that will have their factor of safety reduced significantly with the additional weights. And the issue of heavy weights on bridges is really of paramount importance. We saw what happened in Minnesota when the bridge collapsed.

So, there's not only the safety of driving the vehicle, and its stopping distance, and the ability to maneuver, but it's also the risk to the public when we allow these 100,000-pound rigs to be on the interstate, particularly, bridges, when we have such a tremendous backlog of bridge repair needs right now.

So, again, we believe that these 100,000-pound trucks, they don't have any business on the local roads. They don't have any business on the NHS road. And they certainly shouldn't be on the interstate. And the public doesn't want them. The trucking interests are the only ones that want the big trucks.

Recently, we, with the Truck Safety Coalition, did a public opinion poll. Three out of four respondents don't want bigger trucks. And the American public will pay with their lives, and with their wallets by having to do the repair, if we allow these overweight trucks on all the roads.

Senator SNOWE. Well, Ms. Gillan——

Ms. GILLAN. And I'm happy to work with you——

Senator SNOWE. Well, yes. But, you referred in your remarks to trucks that are not operating in Maine. And that's the point here, on the six-axle trucks, first of all. Second of all, it's a matter of commerce, and when you have a pulp and paper industry, it does require large trucks. And the question is, which roads are safer?

There are 27 states that have exemptions currently. And why is it fair that those 27 states have exemptions, and not the State of Maine, or any other state that chooses to? Maybe not every state chooses to. We would like the option, based on the certification, based on the experience of a pilot program, and certified by the engineers and other who are in a position to certify that. That's how my legislation would be crafted. But, it's a matter of commerce; it's a matter of jobs; it's a matter of industry.

So, I just would hope that we could compare apples to apples, and oranges to oranges, when it comes to this issue, because it is a very important issue to our state. And, you sound like it's a truckers interest. It's our economic interests in our state, people desperately holding on to these jobs that depend on the trucking industry. There's one mode of transportation. And being on the Interstate system that has been certified to be safer than on these local roads, that traverse small communities where we've already had fatalities as a result. That's the point here. It is a huge safety issue for us, in the way we look at it and what's happened on the thousands of miles of roads that we have in our state.

So, I hope that we can continue to have this conversation.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Indeed. And we thank you for being with us, even if we might not quite agree on allowing these heavier trucks on the Interstate highway system. It's my view that they're not safe on these roads. And that's, that we see, I think it's fair to say, statistics that support that view. So, we'd like to not encourage that. And I regret there is any imposition on the industry that might use them. But the fact of the matter is that we are, in this committee and subcommittee, talking about safety and that's our focus.

Mr. Hart, a bus operator that crashed in New Jersey had a driver safety record worse than 99.6 percent of all U.S. bus companies, but FMCSA gave the company a satisfactory safety rating.

Now, the NTSB has recommended that an adverse rating for either vehicle or driver safety should result in an overall unsatisfactory rating. Is that, if CSA makes sufficient progress on this recommendation?

Mr. HART. Thank you, Mr. Chairman. We're waiting to see whether the CSA has implemented—and this will be dependent on the rulemaking yet to be issued—we're waiting to see how FMCSA addresses that issue. At this point we don't have an answer. We don't know how it's going to be addressed.

Senator LAUTENBERG. And, I'll close with this.

Ms. Ferro, the DOT Office of Inspector General found that FMCSA has chronic problems with data quality accuracy, timeliness that must be addressed as the compliance safety accountability initiative is implemented, or else it's not going to be effective.

What's your agency doing to correct these deficiencies?

Ms. FERRO. In response to that Inspector General report several years ago, the FMCSA advanced, and Congress enacted, a Safety Data Quality Improvement Grant Program. It's an annual $3 million-a-year grant program that we advanced. Through that program we set certain data quality standards on inspection reports, fatal crash reports, violation reports. And we rate states on the integrity of the accuracy, the timeliness of those reports.

Over the course of this SaDIP program, which is the acronym for this grant program, the data quality on inspections and violation and crash reports has improved dramatically. And we continue to up the bar every year with our state partners.

The, one of the, as, the CSA program that's been referred to several times this year really is being rolled out in three components—a system, a process, and then the safety and fitness determination rule.

The system is available today and the data, and basics or factors that directly correlate crash risk formulated through a carrier's violation history, are available today. And we use them to prioritize who we look at. That data is driven from the violation and inspection data at the roadside. This is a second area through which we are continuing to improve the data quality, through SaDIP, but also through the visibility that the SMS system is giving to the inspection reports and the data inquiries—or Data Qs, we call them—that carriers and others are submitting on that data.

So again, the vast majority of that data is looking very good. There is always room for improvement, and we have two core programs that help us advance improvement in that data.

Senator LAUTENBERG. I thank you. That's an issue, too, that must be carefully implemented in order to, for all of us to be doing our jobs.

There is one more question I'd like to ask Mr. Rajkovacz.

Most truck drivers are paid by mile, not by the hour. If they're delayed in loading their trucks, they have a strong incentive to stay on the road longer and then violate hours of service rules. How do we reduce this incentive for truckers to stay on the road longer, even when they may be fatigued?

Mr. RAJKOVACZ. That's a $64,000 question. That's correct, that most truckers are paid basically piece work, by the load, by the mile; nothing by the hour. And that's what ends up creating the reverse incentive that you hide a significant amount of your on-duty not driving time. So often, when we have a conversation about hours of service and fatigue, everybody seems to one-dimensionally look at it as on-duty driving time. There's this whole universe of on-duty not driving. And as long as the driver is paid nothing for that, he is not incentivized to ever report that. It is financial suicide. I said that in my written comments.

That's how I lived for decades. That's a system that we've created in this country. Have some couriers dealt with that? Union carriers pay by the hour. They don't have a problem with that. It is a significant issue that does compromise safety. EOBRs aren't going to solve that problem. They're not going to deal with it.

Senator LAUTENBERG. They may not solve the problem. What, then, can be done about it?

Mr. RAJKOVACZ. There are those, certainly, hypothetically, that think that this is an area that perhaps the Federal Government actually should step into and regulate. But, obviously, there's a significant amount of lack of interest in the Government getting involved in economic matters like contracting.

It, in some respects, is a Catch-22, for everybody. How do you do something where, right now the supply chain's getting something for nothing? The, you know, the free market emphasis is on the word "free" right now when it comes to drivers' time.

And, you know, I entered the industry in 1977, when we had a federally mandated detention policy. And there are those who didn't think it worked real well. It worked real well for me, hauling beer out of the breweries in Milwaukee. And that expired, I believe, in 1982. Why is it the driver's responsibility to eat that time? We have a very—as efficient as trucking is, this is one of the biggest inefficiencies in our supply chain.

You know, just hypothetically, if somehow we dealt with it, imagine how many less trucks we'd even need in the highway to haul the existing amount of freight. I just talked with two of our members last week—for four pallets and six pallets, respectively, spent over 24 hours at a dock in Los Angeles after they showed up on time. Nobody cares.

Senator LAUTENBERG. Mr. England, do you want to comment?

Mr. ENGLAND. Yes, I'd gladly respond to that.

Senator LAUTENBERG. I'd be surprised——

Mr. ENGLAND. I'm a fellow CDL holder, by the way.

But here's my contention. With the mandating of electronic logs, and with strenuous auditing of falsification, these issues can be overcome. When the DOT comes in and audits us, they look for falsification. They compare times at which a truck arrived at a loading facility, the times they left, and so forth. But the job of doing that becomes tremendously eased with the advent of the EOBR.

And I think we all want the same thing here. We want that driver not being overworked. We want him to comply with the hours of service. And the electronic log is a tremendous tool in ensuring that that happens.

Ms. GILLAN. Senator Lautenberg?

Senator LAUTENBERG. Yes.

Ms. GILLAN. I was wondering if I could just add something. Because earlier, in some of the question and answers, there was a lot of discussion about the hours of service rule, and I really feel compelled to state that the reason that the hours of service rule is being revised right now is not because of some frivolous exercise by the Department of Transportation.

It's because two U.S. Court of Appeals back-to-back unanimous decisions overruled that hours of service rule, because it was not based on science, and it was not based on the research that shows that truck drivers are tremendously fatigued, as well as all workers, when they're putting in these extraordinary hours of work. And the research shows that after the eighth hour of driving, the risk of a truck crash increases dramatically.

The Bush administration issued a rule that, even though truck driver fatigue was a major problem, would significantly increase

the number of hours that a truck driver could drive during the week. They increased it by 25 percent.

So, this is the reason that revising this hours-of-service rule is so important. And I know that in the last Congress you chaired a hearing on this. But, this is really an important rule that will do a great job in advancing safety, as well as saving lives, if we look at that. And we have the research that shows that the current hours-of-service rule is really an invitation to fatigue for truck drivers around the country.

Thank you.

Senator LAUTENBERG. Thank you.

Is this a battlefield of sorts between safety and driver income? Anyone want to pass an opinion on that? That is a challenge, obviously. I mean, if safety is our mission—it has to be our mission. What's the consequence of that if the system was changed? I'm not talking about injecting about injecting the Federal Government into that part of the decisionmaking. But, what, is it a case of the seesaw being tipped one way, without giving respect or response to how would the drivers feel about this?

Mr. ENGLAND. I'll comment on that. I would just say that if these changes are implemented, the hours of service regulations, a driver is going to make less. And, in a word, to keep those drivers in our industry, we will need to pay them more. And that's a cost, obviously, that will be passed on to the consumer ultimately.

Do you want to say something?

Senator LAUTENBERG. No. It's just, to say, trying to keep our program focused. What's the price of letting these hours be ever longer, and the consequences? We agree that driver fatigue is a significant factor in having a safe operation. So, it's a dilemma. And how you resolve it is an important question that I'm sure your industry and—are qualified drivers easily available now, considering that the job market is as tough as it is? Does that say there are people lined up wanting to come in and——

Mr. ENGLAND. No. Absolutely not. It's, obviously, as the economy continues to improve, then we have the ever-increasing problem of finding enough drivers to drive the trucks. One good thing about the fact that our economy has sort of, is ramping up rather slowly, is that that's helped with that problem. But, ultimately, as the economy heats up again, we have a hard time getting and keeping enough drivers in the industry.

Senator LAUTENBERG. So, well, I'll leave you, with all of the experience that you have, to solve the problem. Our objective is a safer condition for the citizens in the country.

Now, it's said that, all right, if we make it tougher, make it more difficult to maintain reasonable conditions for drivers, that they're going to make less money, and therefore, it follows that casualties might continue to stay at a higher level than they should be.

Thanks, everybody. I'll leave this question now to be resolved in future discussions.

Thank each one of you for your excellent testimony.

And with that, this hearing is adjourned.

[Whereupon, at 4:05 p.m. the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO HON. ANNE S. FERRO

Question 1. Concerns have been raised about the amount of time that truckers are sometimes detained and loading and unloading facilities. This can affect hours of service requirements and the timely movement of goods. Do we have any research indicating how much time truckers spend being detained at loading and unloading facilities?

Answer. The FMCSA does not have research data concerning the time truck drivers are detained at loading and unloading facilities. However, the Agency is planning to initiate a study in FY 2012 in response to the United States Government Accountability Office's (GAO) January 2011 report, "Commercial Motor Carriers: More Could Be Done to Determine Impact of Excessive Loading and Unloading Wait Times on Hours of Service Violations" (GAO–11–198). The report examines the impact of excessive detention time on the ability of drivers to comply with FMCSA's hours of service (HOS) regulations. The FMCSA study could potentially help the Agency estimate the detention time at loading and unloading facilities.

Question 2. I have previously stated that we should explore paying truck drivers by the hour rather than by the mile. I know that this would be a big change but it could eliminate some of the problems that are currently created by excessive detention time. Moreover, paying truckers by the hour could make the roads safer if drivers are not driving at excessive speeds to make up distances lost by detention time, traffic, or other issues. How would changing the compensation structure address detention time? If drivers are paid by the hour, will it bring about any other benefits within the industry? Conversely, what are the potential problems that could be created by changing the compensation structure?

Answer. The FMCSA does not have research data concerning driver compensation and its impact on detention time and overall safety. Many drivers, and most over-the-road drivers employed in the long-haul industry, are compensated on a per-mile basis rather than a per-hour basis. In addition, compensation often extends to payment of a percentage of freight revenue, which is generally determined by a combination of market factors such as weight, distance, and commodity type. The University of Michigan Trucking Industry Program (UMTIP) conducted a truck driver survey and found that 67 percent of all over-the-road drivers earn mileage-based pay and 87 percent of these drivers earn either mileage-or percentage-based compensation. In early FY 2012, the Agency is initiating a study to evaluate the impact of compensation on commercial vehicle safety. This study will collect information regarding detention times and determine which drivers are compensated for detention time. The causes of detention time are, however, very complex and are likely highly influenced by the actions of shippers and receivers and whether they are required to provide the motor carrier detention pay. Once the research has been conducted the Agency will have a better understanding of the issue of driver compensation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO HON. ANNE S. FERRO

Question 1. Administrator Ferro, on the same day Jacy Good graduated from college in 2008 her car was struck by a tractor-trailer that had swerved to miss a teen driver running a red-light because he was distracted by his cell phone. Jacy Good survived, but her parents died that night. Jacy now speaks to high school students and recently joined you at an event to highlight the dangers of distracted driving among novice drivers. Tragic stories like this are why Senator Gillibrand and I introduced the STANDUP Act, which requires states to adopt graduated drivers license programs that limit cell phone use for novice drivers, preventing crashes like the one that killed Jacy's parents. In December, FMCSA launched an effort to curb

hand-held use of cell phones for truck drivers. What has been the response by industry?

Answer. The legislation you introduced would help to ensure that young drivers are more aware of the dangers of distracted driving. Upon implementation by the States, the legislation would provide a means for State and local enforcement officials and State licensing agencies to take action against the unsafe practice of distracted driving.

Secretary LaHood's campaign to raise awareness of this critical issue is producing results, not only among State legislatures but also with drivers of all kinds of vehicles. Federal legislative efforts would require the States to take action.

With regard to FMCSA's rulemaking concerning hand-held cell phones, motor carrier stakeholders (including truck drivers) generally support efforts to limit or restrict the use of handheld wireless telephones. FMCSA has reviewed the docket comments responding to its proposed rule and expects to issue a final rule later this year.

Question 2. Administrator Ferro, motor carriers usually use large vehicles that are not responsive to quick changes in direction, and a novice distracted driver may not recognize a dangerous situation until it is too late. Will preventing hand held cell phone use of drivers in trucks and buses and passenger vehicles help prevent these types of situations?

Answer. Prohibiting the use of hand-held wireless telephones would address an important source of distraction and help to prevent some of the crashes attributable to driver distraction. Coupled with increased public awareness on this issue, we believe Federal and State laws and regulations would have a highly beneficial effect. FMCSA has completed its review of the public comments to its proposal to ban the use of hand-held wireless telephones by truck and bus drivers and expects to issue a final rule later this year.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. ANNE S. FERRO

Question 1. As you know, in May the GAO released a report, Improper Motor Carrier Grant Obligations, detailing $23 million in errors that occurred during FMCSA's implementation of the Commercial Vehicle Information Systems & Networks (CVISN) program. Based on FMCSA's approval, numerous states, including my home state of South Dakota, began implementation of the CVISN plan. For South Dakota this meant spending almost $1 million in funds that they believed would be reimbursed by FMCSA. I am now told that FMCSA is asking for states to "deobligate" these grants and take the loss even though the error was made by FMCSAs.

- Can you explain how FMCSA incorrectly approved this $23 million in grants?
- Do you think it is fair for states, many who are faced with serious budget shortfalls, to take the financial hit for a mistake that FMCSA made?
- Will you pledge to fix the error impacting South Dakota?
- What steps has FMCSA taken to ensure a similar situation does not occur in the future?

Answer. Can you explain how FMCSA incorrectly approved this $23 million in grants?

FMCSA violated its statutory authority in Section 4126, Commercial Vehicle Information Systems and Networks (CVISN) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) by obligating funds in excess of the $2.5 million core deployment aggregate cap, obligating expanded funds in excess of the $1 million annual cap, and obligating expanded funds before the completion of core deployment. Additionally, FMCSA exceeded the Agency's contract authority in FY 2007 by obligating CVISN funds in excess of CVISN's annual contract authority of $25 million. Both the Agency's internal review and externally conducted reviews of the CVISN program in 2010 identified two primary causes of the Agency's CVISN violations: (1) the Agency's failure to establish and maintain an accurate core deployment financial baseline and (2) the dissemination of an erroneous policy in 2008 encouraging States to apply for expanded deployment funding before completion of core deployment. There is no evidence of any personal gain or bad faith actions associated with these violations.

I am now told that FMCSA is asking for states to "deobligate" these grants and take the loss even though the error was made by FMCSAs.

After the release of the GAO report on the CVISN program, the FMCSA Administrator and Agency invited all CVISN States to participate in a teleconference re-

garding the GAO findings and potential resolutions of the Anti-Deficiency Act (ADA) violations. FMCSA emphasized that most of the resolutions were State-specific. As a result, the Agency held additional teleconferences with each of the affected States to discuss the findings and potential resolutions. These individual teleconferences were completed on June 15, 2011. During each State conference call, the States were presented with two options: (1) deobligate funds not already dispersed or (2) wait for possible legislative relief. FMCSA did not recommend one option over the other.

Do you think it is fair for states, many who are faced with serious budget shortfalls, to take the financial hit for a mistake that FMCSA made?

The FMCSA appreciates that there is a significant impact on the affected States. However, based on the findings and applicable legislation, there are limited legal options for resolving the violations. Although FMCSA was responsible for the errors, the Improper Payment Act requires states to reimburse funds they received inappropriately. States may deobligate unexpended balances that exceeded the statutory caps specified in Section 4126 of SAFETEA–LU. Additionally, FMCSA provided technical assistance to our House and Senate Appropriations and Authorizing committees that would provide a solution for the issues in all CVISN States. If Congress enacted it as proposed, the technical assistance language would hold the States harmless for FMCSA's improper grant obligations and reimbursements, thus allowing the States to retain any obligations or improper payments awarded in violation of Section 4126 of SAFETEA–LU. Without this authority, any reimbursement of obligations in violation of Section 4126 of SAFETEA–LU would result in an improper payment.

Will you pledge to fix the error impacting South Dakota?

FMCSA recognizes that South Dakota has expended funds in excess of the statutory cap based on FMCSA's improper obligations. FMCSA recognizes that there are no available funds left to deobligate in order to cure FMCSA's violations. FMCSA is available to provide assistance on this issue to reach resolution to the extent allowable.

What steps has FMCSA taken to ensure a similar situation does not occur in the future?

FMCSA initiated a multi-year, multi-phased plan several years ago to address internal control gaps in its grant making processes. FMCSA consolidated management of its grant programs under the Agency's Office of Safety Programs. FMCSA developed a comprehensive grants management process to include standard policies and procedures, implemented an electronic grants management system, initiated the development of comprehensive grants management training, and requested resources to create an FMCSA grants management office in its FY 2011 and FY 2012 budget requests.

Question 2. Since the Hours of Service rules were last changed in 2003, the trucking industry has seen both the number and rate of fatal and injury accidents involving large trucks decline to their lowest levels in recorded history, even as truck mileage increased by almost 10 billion miles.

- Why did the FMCSA feel that these hours of services rules needed to be changed?
- When does FMCSA expect to have a final rule published?
- When analyzing the rule does the FMCSA take into account the fact that more stringent rules will mean more trucks on the road to deliver the current amount of fright being transported?

Answer. The FMCSA initiated the Hours of Service (HOS) rulemaking to seek public input on potential changes to reduce the prevalence of fatigue-related crashes involving drivers of property-carrying vehicles. While the existing rules represent a significant improvement over the requirements that were in effect prior to the Agency's 2003 Final Rule, FMCSA determined that a new rulemaking was appropriate based on research data and information reviewed since the publication of the 2003 Final Rule, and on input from the Agency's Motor Carrier Safety Advisory Committee. The Agency anticipates issuing a final rule in October 2011.

With regard to the question about the rulemaking's impact of the trucking industry, the Agency's regulatory analyses includes consideration of whether the proposed changes would result in carriers being forced to hire more drivers and purchase more trucks to deliver the current amount of freight being transported on the Nation's highways. The preliminary analyses indicate the safety, health and economic benefits for the proposed rule exceed the economic costs.

BACKGROUND: The regulation of hours of service for the motor carrier industry has been a controversial subject. Two final rules issued previously by FMCSA, pur-

suant to Congressional direction, were challenged in litigation and overturned, at least in part.

The first rule, issued in 2003, was vacated in its entirety by the U.S. Court of Appeals for the D.C. Circuit in 2004 because the Agency had not addressed the issue of driver health. Congress restored the vacated rule for a year, allowing FMCSA to produce a new rule in 2005, which discussed driver health at length.

On July 24, 2007, the D.C. Circuit vacated portions of the second rule. Specifically, the Court indicated the Agency did not provide an opportunity for public comment on the methodology of its driver-fatigue model and failed to explain certain elements of the methodology. It vacated two features of the rule dependent on that methodology, as used in the cost-benefit analysis: a provision that retained the increase in the daily driving limit from 10 to 11 hours and a provision that retained drivers' ability to restart the calculation of the 60-or 70-hour weekly on-duty period, in which driving is allowed by taking at least 34 consecutive hours off duty (the so-called 34-hour restart). Both provisions were established originally in the 2003 rule.

The FMCSA responded with an interim final rule in December 2007 that addressed both of the deficiencies identified by the Court, while retaining the 11-and 34-hour provisions. The Agency published a final rule in November 2008, making permanent the provisions of the interim final rule, effective January 19, 2009. Two significant petitions for reconsideration of the final rule were filed in December 2008. One was submitted by the Advocates for Highway and Auto Safety (Advocates), the International Brotherhood of Teamsters, Public Citizen, and the Truck Safety Coalition, the other by the Insurance Institute for Highway Safety. The FMCSA denied both petitions in lengthy responses dated January 6, 2009.

On March 9, 2009, Public Citizen, Advocates, the Teamsters, and the Truck Safety Coalition petitioned the D.C. Circuit to review the final rule. The American Trucking Associations filed a motion to intervene on March 12.

On October 26, 2009, Public Citizen, *et al.,* (the Petitioners) and FMCSA entered into a settlement agreement under which the petition for judicial review of the November 19, 2008, Final Rule on hours of service of drivers would be held in abeyance pending the publication a Notice of Proposed Rulemaking (NPRM). The settlement agreement states that FMCSA will publish a Final Rule within 21 months of the date of the settlement agreement.

The settlement agreement did not include any guidance, directions, or restrictions on the scope and content of the NPRM that was published on December 29, 2010, or make any commitments on the outcome of the notice-and-comment rulemaking process. FMCSA may reconsider provisions of the August 25, 2005, Final Rule, if the Administrator determines reconsideration of those requirements may provide an opportunity to put into place a new HOS rule which promotes the safe operation of commercial motor vehicles without disrupting the delivery of goods and services to the American people.

The NPRM proposed seven changes from current requirements. First, the proposed rule would limit drivers to either 10 or 11 hours of driving time following a period of at least 10 consecutive hours off duty; on the basis of all relevant considerations. Second, it would limit the standard "driving window" to 14 hours, while allowing that number to be extended to 16 hours twice a week. Third, actual duty time within the driving window would be limited to 13 hours. Fourth, drivers would be permitted to drive only if 7 hours or less have passed since their last off-duty or sleeper-berth period of at least 30 minutes. Fifth, the 34-hour restart for calculations of the maximum weekly on-duty time would be retained, subject to certain limits: the restart would have to include two periods between midnight and 6 a.m. and could be started no sooner than 168 hours (7 days) after the beginning of the previously designated restart. Sixth, the definition of "on-duty" would be revised to allow some time spent in or on the CMV to be logged as off duty. Seventh, the oilfield operations exception would be revised to clarify the language on waiting time and to state that waiting time would not be included in the calculation of the driving window.

On February 17, 2011, FMCSA held a Public Listening Session to solicit comments regarding the HOS NPRM. The session was webcast for Internet participants, and telephone call-in opportunities were provided. On the same day, FMCSA conducted an Internet Question and Answer Forum to receive additional on-line comments.

On May 9, 2011, FMCSA published a notice of availability of four additional research reports concerning fatigue and commercial vehicle drivers. These studies had not been completed at the time the NPRM was published in 2010. The Agency requested public comment on the research reports with a deadline of June 8 for the submission of comments.

On May 20, 2011, the settlement agreement was amended; FMCSA now intends to publish a final rule on or before October 28, 2011. The draft final rule is currently under review in the Office of the Secretary.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO HON. ANNE S. FERRO

Question. FMCSA has issued a rulemaking that would require trucking companies in the United States to install Electronic On-Board Recorders, or EOBRs, on all of their vehicles. The cost of installation would be the responsibility of individual carriers. Yet at the same time the Federal government has agreed to finance EOBR installation on Mexican trucks operating in the United States. Isn't such an arrangement unfair to U.S. carriers?

Answer. Before initiating this program, Secretary LaHood engaged members of Congress and other stakeholders for ideas and input for an improved Cross-Border Long Haul Trucking program. FMCSA used that information to develop a more robust program that is built on the highest safety standards. As a result of the Congressional feedback, FMCSA included a provision requiring Mexican trucks to be equipped with electronic monitoring devices to allow DOT to track the vehicle and investigate any hours of service or cabotage concerns. Stakeholders felt strongly that we include this as an element of the new phased-in program.

These devices are not currently required for United States carriers and are not a cost of doing business in the United States. The EOBRs are an additional safety measure specifically for the Cross-Border Long Haul Trucking program. In order to have access to the cabotage and hours of service information, therefore, DOT needs to own the electronic equipment. The estimated cost of this equipment equates to less than 0.1 percent of the annual tariffs that the Government of Mexico was legally entitled to affect under NAFTA.

If the EOBR final rule is published and implemented during this pilot program and EOBRs are required for U.S. carriers, we will require the Mexican companies to provide their own equipment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO DANIEL ENGLAND

Question 1. Concerns have been raised about the amount of time that truckers are sometimes detained and loading and unloading facilities. This can affect hours of service requirements and the timely movement of goods. Do we have any research indicating how much time truckers spend being detained at loading and unloading facilities?

Answer. I share the concern about my drivers being detained unreasonably when loading or unloading. For shippers where that has been an issue or where we foresee that may be an issue, my company negotiates detention charges. As I testified, we compensate our drivers for detention time, regardless of whether the customer pays the detention charges or not.

As you may be aware, the Government Accountability Office (GAO) recently published a report on its investigation into the impact of excessive loading and unloading wait times on hours of service violations. The January 2011 report generally concluded that FMCSA does not collect data to assess the extent to which detention time truly contributes to hours of service violations and that further research is necessary, noting that detention could be just one of many factors that contribute to these types of violations. Specifically, GAO stated, "[T]here are no data available that can provide any definitive information on how often [detention time] occurs, how long detention time lasts, or what types of carriers or facilities experience the most detention time." In response to the GAO inquiry, FMCSA indicated that it planned further research in the area.

With the increased implementation of technology, carriers have the capacity to better track the time their drivers spend waiting for loading and/or unloading. This data is helpful in negotiations with shippers and helps carriers identify problem shippers with whom they may not want to do business.

ATA agrees with the GAO recommendation that obtaining a "clearer industry-wide picture about how detention time contributes to hours of service violations [w]ould help FMCSA determine whether additional Federal action might be warranted." ATA notes, however, that conducting a sound study is fraught with issues, such as agreeing upon what constitutes detention time (an issue identified by GAO) and determining the causal link to hours of service violations (as opposed to delays caused by weather, congestion or some other reason). ATA further agrees with

GAO's cautionary note that "Any additional Federal actions to address issues associated with detention time beyond hours of service would require careful consideration to determine if any unintended consequences may flow from Federal action to regulate detention time."

Question 2. I have previously stated that we should explore paying truck drivers by the hour rather than by the mile. I know that this would be a big change but it could eliminate some of the problems that are currently created by excessive detention time. Moreover, paying truckers by the hour could make the roads safer if drivers are not driving at excessive speeds to make up distances lost by detention time, traffic, or other issues. How would changing the compensation structure address detention time? If drivers are paid by the hour, will it bring about any other benefits within the industry? Conversely, what are the potential problems that could be created by changing the compensation structure?

Answer. As discussed in the answer to your first question, ATA agrees with the GAO conclusion that there currently is not sufficient information to reliably understand the problems that may be created by excessive detention time. Therefore, it seems premature to consider changing longstanding, well-settled compensation practices in the trucking industry as part of an effort, well-intentioned as it may be, to improve safety. In the absence of data demonstrating otherwise, ATA views detention time as an economic matter between a carrier and its customer(s) that is not amenable to a one-size-fits-all regulatory mandate.

Trucking is a very competitive business with very narrow profit margins. Motor carriers generally must find ways to reward and encourage initiative and hard work by their employees, including drivers. In order to do so, motor carriers have employed a wide variety of compensation systems. It would not be fair to characterize today's compensation structure for drivers as a binary choice between per hour or per mile. Attached, please find a chart summarizing some of the most prevalent methods carriers who participated in ATA's Driver Compensation Study utilize to compensate drivers. Oftentimes, carriers utilize a combination of the approaches depicted.

Over the years, payment by the mile and pay based on a percentage of the load revenue have become effective tools in getting drivers to understand the value of their time and to work as efficiently as possible. And, it's important to add that over time, trucking has also become remarkably safer in its operations, no matter which compensation system has been employed. Truck driving also requires a significant amount of non-driving work (loading and unloading, fueling, equipment inspection, and handling of paperwork). A driver paid by the hour has no incentive to minimize those non-driving times and in fact, is rewarded by dragging them out and getting paid for additional hours. Consequently pay systems based on some indicia of actual work accomplished (miles driven or percent of load revenue) encourages efficiency and allows trucking company's to pass along the benefits of these efficiencies to their shipping customers.

Since detention time is an economic issue between the carrier and its customer(s), we do not see how changing the basis of compensation for drivers from per mile to by the hour would address detention time. Changing the compensation structure, by potentially adding more costs for the carrier, may further incentivize carriers to seek charges from shippers but the need to efficiently utilize a carrier's assets provides incentive enough to address the issue where there is a detention problem. The current hours of service rules, which became effective in 2004, already provide an incentive. These rules addressed detention head-on by reducing the maximum allowable on-duty time from 15 non-consecutive hours to 14 consecutive hours, and requiring that all on-duty time count towards one's hours of service. Under the old rules, drivers could extend their work day well beyond 15 hours to take into account time spent waiting at pick up and delivery locations, and other non-driving activity. This longer on-duty period under the old hours of service rules facilitated driver fatigue and safety problems. This is no longer the case today. Many shippers, recognizing that all of a driver's time is now "on the clock," have worked with their partner carriers to improve scheduling and loading and unloading procedures, thereby reducing detention times. These changes have also made it easier for many, if not most carriers, to negotiate charges for excessive detention time.

There are a number of potential negative consequences to switching from per mile to an hourly compensation model. As mentioned above, there would no longer be an incentive for a driver to efficiently do the non-driving work. In fact, the incentive for a driver seeking to maximize his/her wages would be to extend the on-duty time to all 14 hours and utilize all 11 hours of permissible driving time on a routine basis. This would be a departure from current practice and could have a negative effect on safety. A driver with no incentive to be efficient would likely increase carriers costs—costs that would likely ultimately be borne by the consumer.

ATA's members are committed to safety and compliance and invest significant dollars and time in training to instill a culture of adherence to the safety rules. Tougher driver training standards, rigorous enforcement of hours of service rules, and the development of a sincere safety culture within fleets have a far more direct impact than any one compensation model. Further, ATA supports deployment of speed governors on trucks set to limit speeds at 65 mph and, with some common sense protections, the use of electronic logging devices. These tools can better help ensure that carriers and drivers do not sacrifice safety in exchange for meeting customer-driven deadlines resulting from today's just-in-time, low inventory environment. These approaches are proven to improve safety without taking from the trucking industry and our economy the efficiencies that are associated with various pay systems that reward work accomplished and not simply time spent employed—regardless of how efficiently.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO DANIEL ENGLAND

Question. In the hearing, you noted that detention time is a tremendous problem. What is your recommendation for an ideal solution?

Answer. First, I would like to clarify that I did not indicate that detention time is a "tremendous problem". In response to your question about detention at the hearing, I stated that the current understanding is detention is an economic issue—not a safety issue. As I responded, it is our policy at C.R. England to pay drivers for time detained regardless of whether our customer pays us a detention charge. I also indicated that I believe detention should be negotiated between the shipper and the carrier, not addressed through regulation. Detention is not a one-size-fits-all issue that can or should be dealt with through a regulatory mandate.

This view is underscored by the findings of a January 2011 report on detention time by the Government Accountability Office (GAO). The report noted that FMCSA "does not collect . . . information to assess the extent to which detention time contributed to [hours of service] violations," and further noted that FMCSA's "ability to assess the impact of detention time on hours of service violations, which may affect driver safety, is limited." The GAO recommended obtaining a "clearer industry-wide picture about how detention time contributes to hours of service violations [w]ould help FMCSA determine whether additional Federal action might be warranted." We agree with the GAO report as well as its cautionary note that "Any additional Federal actions to address issues associated with detention time beyond hours of service would require careful consideration to determine if any unintended consequences may flow from Federal action to regulate detention time."

The current hours of service rules, which became effective in 2004, addressed detention head-on by reducing on-duty time from 15 non-consecutive hours to 14 consecutive hours, and requiring that all on-duty time count towards one's hours of service. Under the old rules, drivers could extend their work day well beyond 15 hours to take into account time spent waiting at pick-up and delivery locations, and other non-driving activity. This longer on-duty period under the old hours of service rules made for increased driver fatigue and safety problems. This is no longer the case. Many shippers, recognizing that all of a driver's time is now "on the clock," have worked to improve their scheduling and loading and unloading procedures.

Unlike other factors that limit driver productivity over which the carrier has no control, such as the latest proposal to change the hours-of-service regulations and congestion on our nation's deteriorating highway system, detention is an item carriers have some control over. Carriers can and do sit down with their shipper customers and negotiate charges for unreasonable detention time. Carriers are best positioned to determine what makes sense for them from a business standpoint, taking into account the frequency that unreasonable detention time occurs, the causes for such detention and other surrounding circumstances.

While the solution may not be "ideal" to some, the consequences of the government re-regulating the economic relationship between shippers and carriers, particularly in the absence of research or data demonstrating a relationship with safety compliance or performance, will likely be far worse for carriers, the shipping community and ultimately for consumers. That said, if sound scientific studies determine there is a causal connection between unreasonable detention time and increased violations of the safety regulations, ATA would reconsider the appropriateness of government intervention. FMCSA has indicated plans to conduct relevant studies. Until the picture is clearer, a government mandate would be proffering a solution without knowing the problem, if any.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO JOE RAJKOVACZ

Question 1. Concerns have been raised about the amount of time that truckers are sometimes detained and loading and unloading facilities. This can affect hours of service requirements and the timely movement of goods. Do we have any research indicating how much time truckers spend being detained at loading and unloading facilities?

Answer. Much of the larger motor carrier community opposes any Federal intervention attempting to address the complications associated with excessive detention because they believe the market place is capable of correcting the problem on its own. These same carriers openly support significant and costly regulatory mandates so that they can "level the playing field" to address the perceived competitive advantage small businesses often have over larger motor carriers. While OOIDA opposes the majority of these efforts, in the case of detention, we support Federal intervention because the marketplace cannot address this problem effectively.

In part, although studies have repeatedly acknowledged that excessive detention is problematic, there is a reluctance to recognize that the problem exists and it is having a deleterious effect on safety. For example, during the hearing, ATA Vice Chairman, Dan England stated that a GAO study[1] on detention published earlier this year showed no nexus between detention issues and highway safety. This is inaccurate. In the "Highlights" (GAO–11–198) section of the study, the following paragraph shows that there is a possible correlation:

The interstate commercial motor carrier industry moves thousands of truckloads of goods every day, and any disruption in one truckload's delivery schedule can have a ripple effect on others. Some waiting time at shipping and receiving facilities—commonly referred to as detention time—is to be expected in this complex environment. ***However, excessive detention time could impact the ability of drivers to perform within Federal hours of service safety regulations, which limit duty hours and are enforced by the Federal Motor Carrier Safety Administration (FMCSA).*** Emphasis added.

In addition to GAO's recommendation for further study, the FMCSA has also promised to perform more analysis. Meanwhile, the majority of the industry (predominately comprised of small-businesses) is left to fend for itself in a market where they have little or no negotiating power to secure detention provisions in the contract from shippers, receivers, and brokers. In contrast, large motor carriers have considerable leverage in negotiating contracts simply because of their size and ability to engage in multi-faceted contracts utilizing more trucks and higher volumes. The marketplace is set up to benefit large carriers and with the support of technology mandates that would "level the playing field" between small and larger carriers, and clearly certain special interest groups are fighting to ensure it stays that way. The argument that the marketplace can correct this and government should not intrude in the interest of preserving private contracts shows a lack of understanding of how the trucking industry works.

But, even if detention time is contemplated in a transportation contract, shippers will often ignore payment of charges and because of the hyper-competitive market for trucking services, motor carriers will not press the issue for fear of losing a shipper, therefore the driver loses out. *Bloomberg News* reported this dynamic in an article published on May 18, 2011, "*Truckers' $4 billion of Wasted Time Revives Penalty Push*."

A Department of Transportation study that surveyed drivers showed that in cases even when shippers are working to reduce delays, detention can often run upwards of six to seven hours per day, with delays totaling upwards of 40 hours per week. The study went on to highlight cases where at certain locations, such as steel mills, drivers were routinely delayed from ten to 24 hours per day (Department of Transportation, Federal Highway Administration, *A Qualitative Assessment of the Role of Shippers and Others In Driver Compliance with Safety Regulations,").* The GAO study highlighted that almost 90 percent of the 300 drivers they interviewed had been detained long enough for the detention to have impacted their ability to meet HOS requirements, which limit drivers to 14 hours on-duty and a maximum of 11 hours driving.

FMCSA issued a report to Congress as required by Section 5503(d) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109–59) (SAFETEA–LU) that estimated the annual loss to motor carriers from wait-

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[1] Commercial Motor Carriers: "More Could Be Done to Determine Impact of Excessive Loading and Unloading and Unloading Wait Times on Hours of Service Violations," U.S. Government Accountability Office (January 2011).

ing in ports and time spent loading and unloading at $4 billion annually. The indirect cost and gain to society by dealing with these inefficiencies was estimated at $6.59 billion annually. Clearly the ability of the marketplace to self-police itself in a rational manner is absent; when something is free a market will use it to excess regardless of the ramifications. The most serious and hidden ramification is decreased highway safety.

Question 2. I have previously stated that we should explore paying truck drivers by the hour rather than by the mile. I know that this would be a big change but it could eliminate some of the problems that are currently created by excessive detention time. Moreover, paying truckers by the hour could make the roads safer if drivers are not driving at excessive speeds to make up distances lost by detention time, traffic, or other issues. How would changing the compensation structure address detention time? If drivers are paid by the hour, will it bring about any other benefits within the industry? Conversely, what are the potential problems that could be created by changing the compensation structure?

Answer. In Europe, drivers are paid either a salary (regardless of time worked) or hourly. Payment methods that could encourage unsafe driving behavior are not permitted. Clearly, if employee drivers in the U.S. were paid by the hour, they would feel less compelled to maximize most of their legally permissible hours for the single task of driving.

In addition to providing FMCSA new authority to address detention's impacts on safety, there are other steps that can be taken to remove legal distortions in the market that negatively impact highway safety. Currently, truck drivers routinely work 70 hour work weeks. This is in part because of the exemption for truckers from the Fair Labor Standards Act (FLSA). While this area of law falls outside the jurisdiction of the Commerce Committee, removal of that exemption would rationalize the marketplace by placing a premium on any time past 40 hours spent working by employee drivers. Drivers don't chose to work 70 plus hours (when factoring the hidden time spent loading and unloading), it's a result of market distorting policies such as the exemption from the FLSA.

By affirmatively addressing this issue, the entire supply chain would be forced to become more efficient in how they utilize capital and labor. OOIDA's preference for solving the problem of detention time, which is Federal legislation setting acceptable parameters for detention, would not necessarily represent any cost increase for shippers and receivers. They'd have every incentive to use transportation resources wisely thus avoiding incurring additional costs—exactly how a true marketplace should operate.

OOIDA and its members are sensitive to arguments about government "over-regulation" of the trucking industry—in fact we are the leading, and sometimes only, voice in the industry objecting to unwarranted, counter-productive, and intrusive rulemakings that have nebulous links to improving highway safety. Paying drivers by the hour would very likely mitigate any need for many other regulatory mandates (*e.g.,* reformed H.O.S. regulations, electronic-on-board-recorders, and speed limiters).

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO JOE RAJKOVACZ

Question. In the hearing, you noted that detention time is a tremendous problem. What is your recommendation for an ideal solution?

Answer. Arriving at the ideal solution will take an acknowledgement that a nexus does exist between highway safety and the wasted and uncompensated time truckers spend waiting to load and unload at shipping and receiving facilities. Dealing with the issue will necessitate some sort of Federal intervention, focused around setting meaningful but reasonable limits on the time shippers and receivers can detain drivers, since the supply-chain has proven unwilling to relinquish its addiction of abusing a truckers time. With few exceptions, truckers, both drivers and motor carriers, only earn revenue when the "wheels are turning."

There are many hidden direct and indirect costs to society from abusing trucker's time, and all are negative. These delays at the dock cost our economy more than $6.5 billion each year in inefficiencies, but the safety costs are even greater. Fatigue increases as drivers are coerced into hiding untold hours of uncompensated time in order to save available hours for compensated activity. As a result of abuses built into the system, veteran drivers often decide they have had enough and leave the industry, increasing both driver turn-over and a reliance on inexperienced replace-

ment drivers, who have three times the crash risk.[1] Too often, a significant number of the trucks that should be on the road are sitting in a shipping or receiving yard, acting as 18-wheeled warehouses, forcing more trucks onto the road to take up the slack. Each of these examples has a negative effect on highway safety, and they all can be tied to the unaddressed inefficiency of detention time.

It is important to note that this tie between detention and highway safety has been confirmed in the past. Importantly, the link was most recently confirmed by the Government Accountability Office (GAO) in its study on detention time released this year.[2] The Vice Chairman of the American Trucking Associations stated during the hearing that the GAO study showed no nexus between detention issues and highway safety. This is not accurate. Most clearly, the study states that "excessive detention time could impact the ability of drivers to perform within Federal hours of service safety regulations." OOIDA hears these complaints daily. It is a reality of the industry.

OOIDA and its members are sensitive to arguments about government over-regulation of the trucking industry—in fact we are the leading, and sometimes only, voice in the industry objecting to unwarranted, counter-productive, and intrusive rule makings that have tenuous links to improving highway safety. However, we believe that government can play a role in certain areas. In this case, we believe that giving the Federal Motor Carrier Safety Administration (FMCSA) the power to set minimum acceptable standards for detaining drivers would not only serve as an incentive to increase supply chain efficiency, but would also be the most cost-effective and productive way to reduce commercial motor vehicle (CMV) crashes and fatalities. Such an action, which should occur following significant engagement by FMCSA with all segments of the supply chain, represents a major step forward toward having effective HOS regulations.

The majority of the industry, which is predominately comprised of small-businesses, has little negotiating power to insist on equitable treatment from shippers, receivers, and brokers in the contracting phase for transportation. Large motor carriers have leverage in their contracting simply because of their size. This is a tremendous benefit to them in the marketplace as they negotiate major, national transportation contracts with shippers.

Even when detention time is contemplated in a transportation contract, shippers will often ignore payment of contractually mandated charges. Because of the hyper-competitive market for trucking services, smaller motor carriers will not press the issue for fear of losing shipping cliental. Many small carriers, especially one-truck operations, live load-to-load. If a carrier decides to push a shipper for payment of detention charges, the shipper will just move on to another carrier. Bloomberg News reported on this dynamic in an article published this spring.[3]

The ability of shippers and receivers to pass on the costs of their inefficiencies to truckers places significant costs on society. FMCSA estimates the annual loss to motor carriers from waiting in ports and time spent loading and unloading at $4 billion annually.[4] The indirect cost and gain to society by dealing with these inefficiencies was estimated at $6.59 billion annually. Clearly the ability of the marketplace to self-police in a rational manner is absent; when something is free (*e.g.,* a driver's time) a market will use it to excess regardless of the ramifications. The most serious and hidden ramification is decreased highway safety, a cost that does not show up in the balance sheet of a shipper or a receiver but has significant impacts on the American public.

By affirmatively addressing this issue through a measured increase in FMCSA's safety-related authority, the entire supply chain would be forced to become more efficient in how they utilize capital and labor. OOIDA's preference for solving the problem of detention time, which is Federal legislation setting reasonable parameters for detention, would not necessarily represent any cost increase for shippers and receivers. They would have every incentive to use transportation resources wisely thus avoiding incurring additional costs—exactly how a true marketplace should operate. OOIDA and its members would prefer to never see a dime in penalties or other costs related to detention paid out. We simply want the elimination of this inefficiency within the supply chain because of its impact on highway safety.

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[1] American Trucking Association's White Paper on "Truck Driver Hours of Service Rules." (Page two, first paragraph, enclosed).

[2] Commercial Motor Carriers: "More Could Be Done to Determine Impact of Excessive Loading and Unloading and Unloading Wait Times on Hours of Service Violations," U.S. Government Accountability Office (January 2011).

[3] "Truckers' $4 billion of Wasted Time Revives Penalty Push." May 18, 2011.

[4] Motor Carrier Efficiency Study, 2009 Annual Report to Congress. *http://www.fmcsa.dot.gov/documents/congress-reports/MCES-Annual-Report-January-2011.pdf.*

As highlighted above, many shippers and receivers and the associations representing them view detention not as a safety issue, but as a contractual issue alone with no highway safety implications. This shows a clear misunderstanding of the important role they play in ensuring highway safety. This misunderstanding is reinforced when examining extra contractual policies that encourage unsafe behavior by truck drivers. Many shippers and receivers across the country have instituted unilateral, non-contracted receiving policies that assess a wide assortment of fees on unsuspecting truckers once they arrive with goods in interstate commerce.

Late arrival fees that amount to hundreds of dollars are commonplace in certain segments of the transportation industry. They cause an incredible amount of angst for drivers when they've been delayed over issues they have no control (roadside inspections, traffic accidents or road closures, and detention by another shipper or receiver are just examples), and serve as an incentive for drivers to engage in unsafe behaviors. Knowing one is facing a fine for "late delivery" or rescheduling to another day causes unsafe driving practices such as speeding. Yet, these same shippers and receivers who have instituted these types of receiving policies will not pay a single dime in detention fees for keeping a driver delayed for innumerable or take proactive steps to reduce or eliminate driver detention at their docks.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO JACQUELINE S. GILLIAN

Question. Ms. Gillian, as we have discussed, ensuring that new drivers have the tools and knowledge necessary to be safe on the road is critically important. Would graduated drivers' license programs, like those promoted in the STANDUP Act help prevent these kinds of situations?

Answer. Yes, graduated driver licensing (GDL) programs allow teens to gain the skills and experience of operating a motor vehicle gradually by limiting distractions and giving them additional responsibility at each stage of the process. As a result, young drivers in GDL programs are less likely to practice unsafe driving behaviors and are less likely to be involved in fatal crashes. The STANDUP Act establishes a three-stage licensing process with minimum requirements, including prohibitions on nighttime driving, passenger restrictions, prohibitions on non-emergency cell phone use, and sets a minimum age of 16 for issuance of a learner's permit and age 18 for a full license.

Research and experience show that these types of provisions are extremely effective in reducing the crash risk of new teen drivers, and the National Transportation Safety Board (NTSB) has placed teen driver safety on its Most Wanted List and has recommended many of the provisions in the STANDUP Act for years. For example:

- Minimum Age of 16 Years for Learner's Permit—
  - A study published in 2010 by *Traffic Injury Prevention* concluded that raising the learner permit age from 15 to 16 would reduce the fatal crash rate of 15- to 17-year old drivers by approximately 13 percent.
- Nighttime Driving Prohibition—
  - While only about 15 percent of the total miles driven by 16-to 17-year-old drivers occurs between 9 p.m. and 6 a.m., about 40 percent of their fatal crashes take place during these hours, according to a 1997 study published in the *Journal of Public Health Policy.*
  - This provision is supported by NTSB Recommendation H–93–9.
- Teen Passenger Restrictions—
  - A study published in the *Journal of American Medicine* in March 2000 found that driver death rates (per 10 million trips) increased with the number of passengers in the vehicle for drivers ages 16 and 17. The highest death rate (5.61 deaths per 10 million trips) was observed among drivers aged 16 years carrying 3 or more passengers.
  - This provision is supported by NTSB Recommendation H–02–32.
- Cell Phone Use Prohibition During Learner's and Intermediate Phases—
  - A study released in 2009 by the Virginia Tech Transportation Institute (VTTI) found that dialing a cell phone made the risk of a crash or near-crash event 2.8 times as high as non-distracted driving. In addition, an Australian study published in the *British Medical Journal* in 2005 found that cell phone use while driving resulted in a fourfold increase in crashes. These findings are particularly dangerous for young drivers, who are both inexperienced and

have the highest reported level of cell phone use while driving, according to NHTSA.

  - This provision is supported by NTSB Recommendation H–03–08.

- (Minimum) 6–Month Learner's Permit and Intermediate Stages—
  - According to the Insurance Institute for Highway Safety (IIHS), an extended learner's permit period is essential to provide the opportunity for extensive supervised on-road practice in a variety of conditions. The specified minimum length of time for the intermediate phase is 1 year in Newfoundland; 1 year, 3 months in Manitoba; 1 year, 6 months in the Yukon; and 2 years in Nova Scotia.
  - The NTSB recommends that teen driver safety programs include learner's permit and intermediate licensing stages with mandatory holding periods.
- Maintaining Restrictions Until Age 18—
  - Drivers aged 16–17 years have markedly higher risks for fatal crashes than older drivers, according to a study in the *Journal of American Medicine* in March 2000.

When these provisions are combined into comprehensive GDL laws, the benefits are outstanding. For example, in 2007, Illinois passed a comprehensive law that gave teens more time to gain driving experience while supervised and limited in-car distractions. In the first full year that the GDL law was in effect, teen driving deaths in Illinois dropped by over 40 percent.

Unfortunately, not all states have followed the example set by Illinois and, while most states have some elements of a GDL program, every state needs to have all key components. Enacting the STANDUP Act and encouraging state adoption of comprehensive GDL laws is a commonsense solution to preventing the number one killer of American teens—motor vehicle crashes.