S. HRG. 111–892

OVERSIGHT OF MOTOR CARRIER SAFETY EFFORTS

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 ELEVENTH CONGRESS

SECOND SESSION

APRIL 28, 2010

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OVERSIGHT OF MOTOR CARRIER SAFETY EFFORTS

WEDNESDAY, APRIL 28, 2010

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 11:46 a.m. in room SR–253, Russell Senate Office Building, Hon. Frank Lautenberg, Chairman of the Subcommittee, presiding.

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

Senator LAUTENBERG. Thanks, everybody, for being here. Thank you, Senator Thune, for being here. I want to welcome everyone to today's hearing as we continue this Subcommittee's work on truck and bus safety.

On an early Friday morning last month, a tractor trailer in Kentucky unexpectedly left the lane of the highway it was driving down, crossed the median, and veered toward oncoming traffic. The out-of-control truck soon struck a van head on. The van was carrying 15 members of an extended family on their way to a relative's wedding. Ten of the passengers onboard that van died, including parents and children. The 45-year-old truck driver, who is believed to have fallen asleep behind the wheel, was also killed. It was Kentucky's worst highway crash in more than 20 years, but it was not an isolated incident.

The fact is that when a car crashes with a large truck, the results are often fatal. Crashes with large trucks along our highways cause an average of 14 Americans to die on the highways every single day. Just think, big trucks account for only 3.5 percent of all registered vehicles on our roads, yet they are involved in more than 11 percent of all of the motor vehicle crash deaths.

And make no mistake, our economy relies on trucks. They provide a valuable service and we want them to operate and continue to help our economy, but we want them to do it safely. In fact, New Jersey is home to the biggest port on the East Coast which relies on trucks to transport goods. As important as trucks are, we have to remember that these vehicles share the roads with our families and they are more widespread than ever before.

Between 1980 and 2000, highway capacity in our country increased by less than 2 percent, but during roughly the same period,

the number of miles traveled by trucks grew by nearly 100 percent. That is from 1980 to the year 2000.

Since 2000, the number of large trucks on our highways has increased by more than a million newly registered vehicles. As more trucks clog our highways, we have to make sure that they are safe. Double- and triple-trailer trucks do not belong on our highways. Yet, a loophole in our laws allows them to endanger the public. We need to close that loophole and block these long, overweight trucks from using our national highway system. But we also need to make sure that truck drivers are alert and driving safely.

While the Department of Transportation has taken some steps recently to increase safety, including moving to ban texting while driving, we need to do more. It is essential that we take the danger posed by tired truck drivers seriously.

In the last Congress, we brought to light the flaws in hours-of-service regulations that were imposed by the Bush administration. Those regulations allow drivers of large trucks to remain behind the wheel nearly 30 percent longer each week, pushing them to the brink of fatigue. These regulations were so egregious that the court struck them down not once but twice. The Obama Administration has made the right move by initiating a new rulemaking on driver hours.

But I want to be clear. When this process is over, we cannot wind up with the same flawed regulations that the last Administration designed. And I do not mean that as a political statement. I am simply saying that we have got to improve safety on our roads.

A key way to enforce hours-of-service rules, combat driver fatigue, and hold drivers accountable is with electric on-board recorders, known as EOBRs. A new rule was recently issued by the Federal Motor Carrier Safety Administration that is going to require some trucks and buses to have EOBR. While this proposal is a modest improvement over what has been suggested, these new rules still only affect 1.3 percent of all trucking companies. It is infinitesimally small. And that is far short of the universal installation which the National Transportation Safety Board has placed on its Most Wanted List. Electronic on-board recorders should be installed on every truck and bus to protect all drivers on the roads, whether they are driving a truck, a bus, or a family car.

I look forward to working with our witnesses and my colleagues on the Committee to create common-sense solutions so that our trucking industry is safe, our economy keeps moving, and our families are protected.

I call on my colleague, Senator Thune.

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman. Thank you for holding today's hearing.

I am pleased that with this hearing we are beginning our work to reauthorize the Federal Motor Carrier Safety Administration. The highway bill, which is the traditional vehicle for reauthorizing this agency and the National Highway Traffic Safety Administration, is already past due. I hope that we will soon begin drafting

the motor carrier safety title so that we are fully prepared when the other authorizing committees have completed their work and are ready to go to the floor.

I think it is also important to reflect today on what has been accomplished since FMCSA was established in 1999. Significant progress has been made in improving truck safety. Through 2008, the rate of fatalities involving large trucks per 100 million vehicle miles traveled has declined by 28 percent, a greater decline than that of passenger vehicles over the period. The rate of injuries in crashes involving large trucks has fallen by 29 percent. The work of FMCSA, the industry, and this committee have all contributed to these positive results.

While FMCSA has experienced some rocky periods, I believe the agency has turned a corner. I expect there will be a fair amount of discussion this morning about the agency's CSA 2010 initiative, but it is refreshing to be in the position of questioning the agency about this important new initiative rather than to be chastising the FMCSA Administrator for being behind in over 30 rulemaking and report requirements, which was the case when Congress last reauthorized the agency. I commend the current Administrator, as well as the past two Administrators, John Hill and Annette Sandberg, for the progress being made.

The Commerce Committee made an important first step on commercial vehicle safety last December when it reported the Motor Coach Enhanced Safety Act. While all of the motorcoach safety provisions may not be practical for the trucking industry, given its much larger number of trucking companies and drivers, the bill is a good start and can serve as a guide in terms of the safety issues that need to be addressed in the trucking industry.

Some contentious issues will certainly be before us today as we work to develop comprehensive reauthorization legislation. I hope, Mr. Chairman, that we will be able to work through the difficult issues and achieve constructive solutions that will promote safety without imposing undue burdens on an industry that is so vital to the health of the American economy.

Thank you, Mr. Chairman, and I look forward to hearing from our witnesses.

[The prepared statement of Senator Thune follows:]

PREPARED STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

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Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

Senator LAUTENBERG. Thank you, Senator Thune.

And now Ms. Anne Ferro, the Administrator of the Federal Motor Carrier Safety Administration. This is your first time before the Committee since your confirmation. We welcome you. We are anxious to know what has happened since you took charge, and we look forward to hearing you. Ms. Hersman, the Chairperson of the National Transportation Safety Board. We thank you both for sharing your time and knowledge with the Committee. We do have a 5-minute limit. We apply the brakes gently, but firmly. So, Ms. Ferro, if you might begin.

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

Ms. FERRO. Mr. Chairman, thank you very much for the opportunity to be here, and Ranking Member Thune, thank you.

Before I get started, I would like to quickly talk about the final gap in my team-building and introduce Bill Bronrott, our new Deputy Administrator with the Federal Motor Carrier Safety Administration. He was sworn in yesterday, and now that he has signed the paper, I know he is going to stay. So we are very pleased to have him on board.

I am very grateful for the opportunity to address the range of efforts underway by the Federal Motor Carrier Safety Administration to eliminate severe crashes and fatalities involving trucks and buses.

During my confirmation hearing last September, Mr. Chairman, you said that "every year for the past decade, nearly 5,000 people have died and 125,000 were injured in crashes involving a large truck." That is 50,000 individuals over the course of a decade who did not get home to their loved ones. That is a constant reminder for me and what drives me and ensures that I am dedicating my vision to achieving our safety mandate and reducing, eventually eliminating, severe crashes involving commercial motor vehicles.

Through a strategic focus on research, regulations, enforcement, grants to States and public outreach, FMCSA's workforce is committed to fulfilling our mandate. It is my job as Administrator to set a strategic framework that places the highest priority on safety, and that framework is shaped by three core principles: raising the bar to enter the industry, maintaining a high safety standard to

stay in the industry, and ensuring that high-risk behaviors and high-risk operators are removed from our roads and highways. These principles apply whether we are talking about a motor carrier company, a driver, a vehicle, a service provider, household goods provider.

I would like to share a few examples of the work that we have underway that works within and supports this framework.

First, with regard to raising the bar to enter the motor carrier industry, a couple of key examples of new and ongoing initiatives. We recently strengthened the New Entrant Safety Assurance Program to identify startup truck and bus companies who are deficient in key areas that must be addressed in order to continue operations.

Additionally, about 18 months ago, we implemented a vetting program to weed out unsafe motorcoach and household goods carriers who reincarnate to avoid sanctions. Since its start, about a third of the 2,600 applicants we have received through this vetting program, applicants for operating authority, have been either dismissed, denied, or withdrawn. In the future, with system improvements, we plan to expand this vetting program to hazardous materials carriers and eventually to all carriers applying for authority.

With regard to the second principle, maintaining a high safety standard to stay in the industry, again CSA 2010 absolutely is our agency's new safety fitness determination and compliance program and it fulfills in a significant way the concept and principle of maintaining a high standard. It consists of three core components: a new rating system, safety fitness determination rulemaking, and a new intervention process. Combined, these three measures will accelerate corrections to safety problems before the crash occurs. The program represents a move from the current one-size-fits-all compliance review to a dynamic, targeted examination of high-risk factors, and those are unsafe driving, fatigued driving, driver fitness, crash history, vehicle maintenance, improper loading of cargo, and drugs and alcohol.

Our work in the context of ensuring the industry maintains high standards continues. To accomplish this goal, as you mentioned, Mr. Chairman, we have published a final rule that requires carriers with serious patterns of hours-of-service violations to install electronic on-board recorders. Work is already underway to develop a broader mandate to ensure that EOBRs are applied uniformly across the hours-of-duty status for carriers.

Critical to this whole concept of maintaining a high standard is the hours-of-service rule. As you know, FMCSA is undertaking a new rulemaking on this vitally important operating factor. Late last year, we set in play a process to collect and receive information and perspective both through an open docket, as well as listening sessions around the country. The process has given us a wide range of perspectives to incorporate when examining research we are using to develop the rule.

With regard to high-risk behavior, two key measures I want to highlight. First is the Department and our administration's aggressive focus on distracted driving. Under the leadership of Secretary LaHood, FMCSA very recently issued a proposed rule to ban

texting for commercial motor vehicle drivers. We will soon follow with a proposed rule on cell phone use.

The second is a proposed rule to create a drug and alcohol test clearinghouse to mandate stricter reporting requirements on CDL holders who test positive for drugs and alcohol or who refuse the test.

On a final note, Ranking Member Thune, again with regard to reauthorization, I look forward to discussing reauthorization and FMCSA's programs when Congress considers the reauthorization of surface transportation funding.

In my travel around the country in these first few months, I have heard firsthand the budget constraints facing States and the importance of Federal funding to achieving strong commercial vehicle safety enforcement. The work of FMCSA comes together in the field, both at our division level and at the roadside, and we must support our frontline staff in this regard, both with tools and resources.

So with all of this to report and more, I believe we are on, in fact, the path to significant progress in setting the bar high for motor carrier safety. The employees of FMCSA share my sense of urgency and they share my commitment to work with you on the many important challenges we face.

With that, Mr. Chairman, I will conclude my remarks and look forward to taking any questions.

[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

Chairman Lautenberg, Ranking Member Thune, and members of the Subcommittee, thank you for inviting me to appear before you today to give an overview of the priorities and programs of the Federal Motor Carrier Safety Administration (FMCSA), the successes we have had in enhancing safety on our Nation's highways, and our continuing challenges as we strive to significantly reduce severe and fatal crashes involving commercial motor vehicles.

Introduction

During my confirmation hearing to be Federal Motor Carrier Safety Administrator last September, Chairman Lautenberg pointed out that "[e]very year for the past decade, nearly, 5,000 people died and 125,000 were injured in crashes with a large truck. That's nearly 14 people a day, or 14 families torn apart by horrible, and often avoidable accidents." Each one of these fatalities and injuries reflects a tragic loss, pain, suffering, or hardship and is truly unacceptable. As the head of the Agency responsible for reducing these fatality and injury rates, I do not waiver in my commitment to prevent and eliminate these avoidable motor carrier crashes. Under the strong leadership of Secretary LaHood, Deputy Secretary Porcari, and with the dedication and support of every man and woman who works for FMCSA, we are steadfast in achieving the Agency's mission to improve and secure motor carrier safety.

Core Priorities

As I will describe in further detail, FMCSA has a number of initiatives and programs underway aimed at achieving our mission. As the new Administrator, it is my job to set a strategic framework in which to prioritize our responsibilities and clearly focus our efforts and resources on a vision of eliminating severe and fatal crashes involving commercial vehicles. FMCSA must:

1. Raise the safety bar to enter the industry;
2. Require operators to maintain high safety standards to remain in the industry; and
3. Remove high-risk operators from our roads and highways.

This strategic framework applies to companies, drivers, brokers, and service-providers alike. To achieve the best outcome within this framework, FMCSA must improve its program and rule-development processes, its stakeholder relationships, and the health of the organization.

While recognizing the important safety work that remains to be accomplished, I would like to point to some of the recent safety improvements in motor carrier safety:

- Total miles traveled by all vehicles has grown significantly over the past 10 years, most significantly for large trucks and buses—there has been a 16 percent increase in miles traveled by these vehicles from 1998 to 2008. In addition, the number of large trucks and buses registered has increased 17 percent over this time period.
- Even with the continued growth in commercial vehicle traffic, the most recent data available show that our Nation's highways experienced their lowest number of fatalities (4,525 in 2008) from crashes involving large trucks and buses since fatal crash data collection began in 1975.
- Fatalities from large truck or bus crashes have dropped for 3 years in a row, a decline of 15 percent from 2006 to 2008.
- Safety improvements have been realized not only in terms of fatal crashes, but also in injury crashes. In 2008, 113,000 people were injured in crashes involving large trucks and buses, the lowest number of persons injured in these crashes since 1988, the first year of injury crash data collection.
- The number of people injured in large truck and bus crashes declined 10 percent from 2006 to 2008.

The reduction in severe and fatal crashes involving commercial motor vehicles comes about through the dedication and hard work of many people represented by the stakeholders in this room. We are broadening the participation of these stakeholders on our Motor Carrier Safety Advisory Committee (MCSAC) to improve the transparency of the input we receive about our programs. However, we can and must do more. FMCSA's employees are passionate about saving lives. With clear priorities and productive stakeholder relationships, I assure this Committee and the public that we are on a path to demonstrate the effectiveness of our passion better than ever.

Overview of FMCSA

FMCSA's primary mission is to prevent commercial motor vehicle (CMV)-related fatalities and injuries. We achieve this mission through a mix of programs, rules, and resources that together exert direct and indirect influence over approximately 500,000 actively registered commercial motor carriers and 7 million commercial driver licensees. Our direct influence is made possible by FMCSA's workforce of 1,100 employees, almost 900 of whom are in our field operations utilizing a suite of strong laws, programs, and resources.

Indirectly, we achieve our mission by making it a priority for licensing and law enforcement agencies in 50 States and the District of Columbia through grants, laws, education and partnerships. State commercial vehicle police and inspectors, Department of Motor Vehicles (DMV) employees and examiners, public service commissions, our employees in the field, and employers are the people closest to preventing or enabling an unsafe carrier or driver from operating.

The range of FMCSA's authority, programs and activities includes:

- *Commercial Drivers Licenses*: FMCSA develops standards to test and license CMV drivers and maintain the Commercial Driver License Information System. Through grants and guidelines States carry out and administer these programs.
- *Data and Analysis*: FMCSA collects and disseminates safety performance and crash data to improve motor carrier and motorcoach safety.
- *Regulatory Compliance and Enforcement*: FMCSA directs an aggressive compliance and enforcement program to improve safety performance and remove high-risk carriers from the Nation's highways through reviews of the motor carrier's compliance with safety and economic regulations.
- *Research and Technology*: FMCSA works closely with the other modes within DOT on research and technology projects to identify best practices and new technologies that improve the safety of motor carrier operations, CMVs, and drivers.
- *Safety Assistance Grants*: FMCSA provides financial assistance to conduct roadside inspections, traffic enforcement and other CMV safety programs. These

grants promote motor vehicle, motorcoach and motor carrier safety and regulatory uniformity.

- *Other Activities*: FMCSA supports the development of uniform reciprocal motor carrier safety requirements and procedures throughout North America. It participates in international technical organizations and committees to learn about the best practices in motor carrier and motorcoach safety throughout North America and the rest of the world. It enforces regulations, ensuring safe highway transportation of hazardous materials and enforces statutory and regulatory consumer protection provisions regarding the transportation and delivery of household goods in interstate transportation.

A discussion of current developments in FMCSA's programs, rules, and resources follows.

Programs

Comprehensive Safety Analysis (CSA) 2010

The CSA 2010 initiative, the Agency's new operational enforcement business model, is a critical and far-reaching component in addressing the Agency's priorities and meeting its goals. CSA 2010 represents a move from the current one-size-fits-all compliance review model. Once implemented, it could help FMCSA achieve a greater reduction in large truck and bus crashes and fatalities and injuries by enabling the Agency and our State partners to analyze the safety performance of a much larger population of motor carriers.

CSA 2010 will allow more comprehensive review, analysis, and restructuring of FMCSA's current safety fitness determination process and compliance and enforcement programs. The overall goal is to lead FMCSA to a more effective and efficient operational model—one that will have a greater impact on large truck and bus safety while better using Agency resources. This new operational model includes four major elements: (1) measurement, (2) intervention, (3) safety fitness determination, and (4) information technology.

The Agency is planning to begin nationwide CSA 2010 deployment before the end of 2010. At that time, FMCSA plans to replace its current Safety Status Measurement System (SafeStat) with the new Carrier Safety Measurement System (CSMS) and send more comprehensive information on unsafe motor carriers to roadside inspectors. Through CSMS, FMCSA will focus on 7 key behaviors that are linked to CMV crash risk:

- Unsafe Driving
- Fatigued Driving
- Driver Fitness which includes licensing and medical compliance standards
- Crash History
- Vehicle Maintenance
- Improper Loading and Cargo
- Controlled Substances—Drugs and Alcohol

This new measurement system will allow the Agency to identify more high risk carriers based on improved safety performance data than under the previous system.

New Entrants to the CMV Industry

FMCSA recently significantly strengthened its New Entrant Safety Assurance Program by raising the standard for successfully completing the new entrant safety audit. The Agency identified 16 safety regulations for which a violation by a new entrant carrier would result in an automatic failure of the safety audit. Any new entrant that fails the safety audit must submit a Corrective Action Plan (CAP) in order to continue to operate in interstate commerce. FMCSA also closely monitors the new entrant during the initial 18-month period of operation and, if certain violations are discovered during a roadside inspection, the new entrant will be subject to an expedited action to correct the identified safety deficiencies. Compliance with the New Entrant rule has been required for just over 3 months and the statistics on the new entrant safety audits to date show:

- 4,808 New Entrant Carriers underwent safety audits
- 2,184 New Entrant Carriers failed the safety audit
- FMCSA has received approximately 632 Corrective Action Plans (CAP) to date from new entrant carriers.

Vetting—Passenger and Household Goods Carrier

FMCSA has made significant progress in identifying motorcoach carriers that operate illegally and place passengers at risk. After the tragic August 2008 fatal motorcoach crash in Sherman, Texas, FMCSA initiated its passenger carrier vetting program to examine in detail the history and background of new applicants for passenger operating authority to ensure they conform with FMCSA's safety fitness policy. In addition, the vetting process allows FMCSA to discover reincarnated, or "chameleon," passenger carriers before such carriers are authorized to engage in for-hire interstate transportation. The Agency subsequently expanded the program to include interstate household goods carriers. FMCSA has added additional personnel to participate in this labor intensive process, which has proven valuable as FMCSA received over 2,600 applications for operating authority and 879 have had their applications dismissed, denied or withdrawn. FMCSA is exploring the resources needed to expand the vetting program to hazardous materials carriers seeking FMCSA operating authority and eventually to all applicants for authority.

FMCSA still faces challenges keeping these carriers off the roads, however. Unfortunately, although our vetting program denied the application for operating authority from the motorcoach company involved in a crash that killed 6 people near Phoenix, Arizona, on March 5, FMCSA's rejection of the application did not stop the carrier from operating illegally. FMCSA's investigation of this carrier is continuing, however, the Agency responded swiftly to the carrier's actions. Working with the Department of Justice, FMCSA was able to get the carrier to enter into a consent decree on the day of the crash in which it agreed to immediately cease all interstate and international passenger service. The following day, FMCSA obtained an order from a Federal District Judge further enforcing the consent decree and making any violations subject to the court's contempt powers and associated criminal and civil penalties. The Agency is examining its current authorities to determine if more is needed to prevent unsafe or illegal carriers from operating after authority is denied.

Motorcoach Safety

On April 30, 2009, Secretary LaHood ordered a full departmental review of motorcoach safety and the development of a departmental Motorcoach Safety Action Plan. The review considered recommendations from the National Transportation Safety Board (NTSB) and other transportation stakeholders. On November 16, 2009, the Department released an Action Plan that contains 7 priority action items derived from that review. FMCSA is responsible for implementing 4 of these items: (1) initiating rulemaking to require electronic on-board recording devices on all motorcoaches to better monitor drivers' duty hours and manage fatigue, (2) initiating rulemaking to propose prohibiting texting and limiting the use of cellular telephones and other devices by motorcoach drivers, (3) enhancing oversight of carriers attempting to evade sanctions and of other unsafe motorcoach companies, and (4) establishing minimum knowledge requirements for passenger transportation authority applicants.

In addition, FMCSA has increased the number of compliance reviews (CRs) conducted on motorcoach companies. In FY 2005, FMCSA and our State partners conducted 457 motorcoach company CRs. The FMCSA increased this number to 646 in FY 2006. The FMCSA conducted 1,304 motorcoach company CRs in FY 2007, which more than doubled the previous period's efforts. In FY 2008, the Agency completed 1,307 CRs. The FMCSA completed 1,286 motorcoach company CRs in FY 2009. Given that there are approximately 3,100 motorcoach companies in the United States, FMCSA conducted CRs on about one-third of the industry during each of the past three Fiscal Years.

The FMCSA requires State agencies to include a formal motorcoach inspection program in their Commercial Vehicle Safety Plan in order to receive grant funding through the Motor Carrier Safety Assistance Program (MCSAP). As a result of this initiative, the number of motorcoach inspections increased annually for the last several years. In Fiscal Year 2005, States inspected 12,991 motorcoaches and in FY 2009 inspected 28,957 motorcoaches.

Compliance with Americans with Disabilities Act (ADA)

In late 2008, the Agency sent informational letters to authorized over-the-road bus companies and over 100 disability stakeholder organizations about the Over-the-Road Bus Transportation Accessibility Act of 2007 (OTRBTAA). In compliance with the OTRBTAA, in February 2009, FMCSA and the Department of Justice executed a Memorandum of Understanding that defines the respective enforcement efforts of both agencies for accessibility requirements of the ADA.

In March 2009, FMCSA began conducting ADA Reviews (ADARs) to investigate the regulatory compliance of over-the-road bus companies. As of February 23, 2010,

FMCSA had conducted 33 ADARs on large and small fixed route over-the-road bus companies. FMCSA had initially targeted large fixed route companies for ADARs because this industry sector transports the largest number of passengers. No major violations have been discovered to date.

Commercial Enforcement of Household Goods (HHG)

The FMCSA regulates household goods carrier and broker compliance with motor carrier safety regulations, financial responsibility requirements and commercial regulations. Our authority provides protection to consumers during interstate moves by defining the rights and responsibilities of consumers, household goods carriers and brokers.

In FY 2009, FMCSA Safety Investigators conducted 557 HHG reviews; responded to 2,127 consumer complaints, many of which were satisfactorily resolved by HHG staff; and maintained a consumer based "Protect Your Move" website (*www.protect yourmove.gov*). FMCSA issued an enforcement policy identifying and targeting the top 100 household goods carriers for compliance reviews. These carriers are generally those that receive the most consumer complaints, although some have also been identified as unsafe or as operating while their authority has been inactivated. For the last 2 years, FMCSA field staff have conducted strike forces on household goods carriers that have been identified as unsafe and the subject of various consumer complaints. In FY 2009, the strike force activity concluded, having completed 224 targeted compliance reviews that resulted in 50 enforcement cases.

The Government Accountability Office recently published its final report on the HHG moving industry stating that progress has been made in enforcement, but indicating that increased focus on consumer protection is needed. The report identified the enforcement tools used to regulate the HHG industry, noting that FMCSA conducted 629 HHG reviews in FY 2008. The report also identifies a provision in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) that permits State regulatory agencies and State Attorneys General to bring Federal consumer protection actions against interstate HHG carriers that has not been implemented by States.

Pre-employment Screening

FMCSA recently launched the initial phase of its Pre-employment Screening Program (PSP) to provide motor carriers with access to crash and inspection data found in FMCSA's Motor Carrier Management Information System (MCMIS) on drivers they are seeking to hire. The driver must provide his or her prior written consent to have information released to the motor carrier. The program is expected to be rolled out next month.

Safety Belt Use

Safety belts save lives and FMCSA is committed to promoting and educating CMV drivers on the importance of using them. In March, FMCSA announced that safety belt use for CMV drivers has improved. New data show that 74 percent of commercial truck and bus drivers currently use their safety belts, an improvement from the 65 percent of drivers who were using safety belts in 2007. It is important, however, to note the key research findings that show there is work yet to be done:

- In States where not wearing a safety belt is a primary offense, 78 percent of CMV drivers and their occupants used safety belts, compared to a 67 percent usage rate for CMV drivers and their occupants in States with weaker belt use laws.
- CMV drivers for regional or national fleets showed higher safety belt use at 78 percent, versus 64 percent for independent owner-operators.
- Safety belt use rates for CMV drivers and their occupants were highest at 79 percent in the West, compared with 75 percent in the South, 68 percent in the Midwest, and 64 percent in the Northeast.

Driver Medical Standards—Programs

The FMCSA's medical program promotes the safety of America's roadways through the development and implementation of medical qualification standards that ensure physical qualifications of interstate truck and bus drivers. The Agency receives important advice and recommendations concerning the physical qualifications and standards for CMV drivers from its Medical Review Board (MRB), a Federal Advisory Committee Act committee. FMCSA staff reviews MRB recommendations in developing regulatory options for future rulemakings. In the meantime, FMCSA is phasing in new regulatory requirements issued in December 2008 to combine the medical certification process with the commercial driver's license (CDL) issuance and renewal process. The rule requires interstate CDL holders and those

applying for a CDL to operate heavy trucks and buses in interstate commerce to provide a copy of the medical certificate to the State licensing agency as proof the individual is medically qualified to drive commercial vehicles in interstate commerce.

Later this year, FMCSA expects to issue a final rule to establish a National Registry of Certified Medical Examiners. This rulemaking would establish minimum training and testing requirements for all healthcare professionals that issue medical certificates for interstate truck and bus drivers.

Rulemaking

Hours of Service for Truck Drivers

Regulating the number of hours commercial drivers may work has been a Federal Government responsibility for 75 years, beginning with the Interstate Commerce Commission (ICC). Through the years, there have been three reforms of the rules, the most notable of which was the April 2003 rule, when FMCSA made significant revisions. The 2003 rule limited driving to 11 hours within a 14-hour, non-extendable window after coming on duty following 10 consecutive hours off duty (known as the 11-hour rule). Although the rules concerning weekly limits for on-duty time were unchanged, drivers were allowed to restart the weekly limit calculation after they took 34 consecutive hours off duty (known as the 34-hour restart provision). The rule also extended the requisite off-duty time from 8 to 10 hours, providing drivers more time for restorative rest.

As this Subcommittee is well aware, FMCSA's efforts to craft revised hours of service (HOS) regulations for CMV drivers has been an arduous process and has resulted in court challenges. In October 2009, FMCSA entered into a settlement agreement with parties that had challenged the rule and agreed to undertake a new rulemaking.

One of my top priorities as Administrator has been to elicit the views of the many individuals and entities affected by this rule and for the Agency to craft an HOS rule that provides the best framework for managing fatigue and making our roads as safe as possible.

To that end, in December 2009, FMCSA tasked its MCSAC with providing the Agency with a list of ideas and concepts that should be considered in drafting a HOS rule. In January, FMCSA took steps to encourage all interested parties to help the Agency identify new research and perspectives. Specifically, the Agency posted the MCSAC's meeting notes, opened the HOS public docket and held a series of public "listening sessions" around the country. Over 3,500 people participated in the listening sessions—in person, by phone, or web—to provide a broad range of comments, ideas, information, and relevant research the Agency might consider in developing a Notice of Proposed Rulemaking (NPRM). We are committed to using all of the information we have received to propose a rule that addresses the concerns of our stakeholders and presents the safest option. FMCSA intends to publish its NPRM later this year and issue a Final Rule no later than July 2011.

Electronic On-Board Recorders (EOBRs)

On April 5, 2010, the Agency took another step toward reducing the number of fatigue related crashes by publishing a final rule mandating the use of EOBRs by carriers that have violated the hours-of-service rules. This action will reduce the likelihood of falsified or incomplete records of duty status.

The final rule follows up on the January 2007 NPRM but broadens the remedial directive to require installation of EOBRs on many more carriers. It represents a significant step forward in response to Congressional concerns about the 2007 NPRM, the NTSB Most Wanted Safety Recommendation concerning EOBRs, and the public comments we received in response to the proposal. The final rule establishes: (1) a new performance-oriented standard for EOBR technology; (2) a mandate for certain motor carriers to use EOBRs to remediate regulatory noncompliance (a remedial directive); and (3) incentives to promote voluntary EOBR use by all carriers. The rule will result in approximately 5,700 motor carriers being required to use EOBRs each year after the first full year of implementation.

Distracted Driving

Since the Department's historic Distracted Driving Summit last fall, FMCSA has played an active role in supporting Secretary LaHood's efforts in bringing to bear all the tools at DOT's disposal to address this critical safety issue. FMCSA completed its "Driver Distraction in Commercial Vehicle Operations" study and released the final report on October 1, 2009. The purpose of the study was to investigate the prevalence of driver distraction in CMV safety-critical events (*e.g.,* crashes, near-crashes, unintended lane departures). The study included over 200 truck drivers

and 3 million miles of data. The dataset was obtained by placing video recorders on vehicles and monitoring the behavior of real drivers driving in real-world situations.

The study concluded that drivers who engage in texting took their eyes off the road for an average of 4.6 seconds out of the 6 seconds prior to a safety-critical event. At 55 miles per hour, this means that the driver is traveling the length of a football field, including the end zones, without looking at the road and is 23 times more likely to have a safety critical event than drivers who do not text while driving. Because of the safety risks associated with texting while driving, FMCSA took expedited action. The Agency published regulatory guidance in the Federal Register on January 27 regarding the applicability of current regulations to texting by commercial motor vehicle drivers. The regulatory guidance clarified that truck and bus drivers operating in interstate commerce who text while driving commercial vehicles may be subject to civil or criminal penalties of up to $2,750. FMCSA followed up on the regulatory guidance by publishing a NPRM with an explicit prohibition against texting on April 1, 2010. The NPRM also provides driver disqualification penalties that would enable FMCSA and its State partners to take unsafe drivers off of the road.

As part of our effort to get the maximum amount of public participation and collaboration in the texting rulemaking, the Department announced an unprecedented partnership with Cornell University. The Cornell e-Rulemaking Initiative (CeRI) partnership will make the Federal regulatory process more accessible to the public through its "Regulation Room," an online public participation environment where people can learn about and discuss proposed Federal regulations and provide effective feedback to the Department. This is an important step toward keeping President Obama's promise of opening government to more effective public citizen participation.

Drug and Alcohol Database

FMCSA is currently drafting a proposed rule that would mandate reporting requirements to identify CDL holders who test positive for drugs or alcohol or otherwise fail to comply with drug and alcohol testing requirements. The system will also track a driver's compliance with the return-to-duty requirements of the Department's workplace drug and alcohol testing programs.

Uniform Carrier Registration Plan and Agreement (UCR)

The UCR is a fee program established under SAFETEA–LU as a means to provide States with funds equivalent to the revenue they collected under a previous, State-only program known as Single State Registration System (SSRS). Many States use UCR fee revenue to pay for motor carrier enforcement programs.

The UCR law requires FMCSA to set a fee schedule based upon a recommendation by a governing board composed largely of State and motor carrier industry members. The fee schedule must be projected to provide approximately $108 million in revenue to the 41 participating States.

The UCR Board proposed a change in the 2010 fee schedule prompting a rulemaking cycle that has encountered a series of delays. The rule was published on April 27. The States now have the authority they need to begin collecting fees for calendar year 2010 to support important motor carrier safety programs to protect the traveling public.

Resources

Motor Carrier Safety Assistance Program

MCSAP grants provide financial assistance to States to help them reduce the number and severity of CMV involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. It uses crash and fatality rates as critical performance measures. One of the strengths of MCSAP is its performance-based structure. Although FMCSA limits spending eligibility and sets performance goals in a range of areas based on the Agency's targeted safety program elements, our State partners have the flexibility to mix and match a range of strategies that they believe will be most effective in reducing their CMV fatality and crash rates based on specific needs of their State. States conduct compliance reviews, safety audits, roadside inspections, and other programs to improve CMV safety. While FMCSA provides guidance and direction in a number of areas based on analyses of nationwide safety data, we do not dictate a prescriptive program for each State expecting them to produce a completed, effective plan of action. In FY 2009, MCSAP lead agencies or sub-grantees employed 13,300 certified CMV inspectors almost 11,000 of which had traffic enforcement authority. FY 2010 funding for MCSAP is $212,000,000.

Commercial Driver's License (CDL) Improvement Program

FMCSA works closely with the American Association of Motor Vehicle Administrators (AAMVA) and the States to improve CDL driver history record (DHR) data quality and the timely exchange of conviction, withdrawal, and other DHR data elements. Through a phased implementation of electronic edit checks that prevent the movement of bad data from one State to another, and a battery of matrices and reports that notify States of their compliance with the requirements for accurate, complete, and timely exchange of information, FMCSA continues to ensure that the data elements critical to the success of the CDL program are improving.

FMCSA has expanded fraud prevention through a grant-funded update of the AAMVA Fraudulent Document Recognition training for frontline State driver licensing agency employees. The Agency also assisted the Department of Transportation's Office of the Inspector General in investigating fraudulent CDL practices throughout the country. Recently, FMCSA provided grant funds to help enhance and increase usage of the Fraud Emergency Warning System maintained by AAMVA, which allows for real-time alerts to State driver licensing agencies on the potential for fraudulent activities and suspicious documents.

To ensure that States are making continuous improvements in their compliance with the CDL program requirements, in the coming months, FMCSA will deploy the Automated Compliance Review System. This web-based system will provide real-time tracking of State compliance issues. It will also allow FMCSA to generate reports that document outstanding compliance issues at the State or national level. Through this increased reporting, FMCSA can focus its oversight efforts and provide targeted outreach and education to assist States with specific compliance issues.

Data Quality

FMCSA relies on high quality data for identifying CMV safety issues, assessing individual carrier safety performance, and allocating enforcement and compliance resources. The Agency has developed, an online system, known as DataQs, that allows motor carriers, commercial drivers, State agencies, FMCSA staff, and the general public, to request a review of the accuracy of Federal and State data collected by FMCSA. With the implementation of CSA 2010, which relies heavily on high quality data, and the initiation of the Pre-employment Screening Program, which, as described above, provides drivers' crash and inspection data to prospective employers, it is important that DataQs is effective in resolving data issues quickly and responsively. To assist responsible agencies in meeting data quality requirements, FMCSA is developing a DataQs operational procedures guide.

New Technologies

FMCSA is continuously developing and researching new technologies that improve commercial vehicle safety. Such technology resources include applications that help avoid a crash, prevent rollovers, and warn of lane departures. The technologies improve CMV operations, limit technical and mechanical road failures, and reduce the probability of crashes involving CMVs. Examples of FMCSA's technology resource development include the following programs and activities:

Commercial Vehicle Information Systems and Networks (CVISN)—FMCSA plans to implement an electronic credentialing function. Electronic credentialing will allow carriers to submit various credentials, including International Registration Plan and International Fuel Tax Agreement credentials, to States for automated electronic processing via Web-based or computer-to-computer solutions. States that implemented e-credentialing have reported noticeable benefits.

Onboard Safety System Testing Program—FMCSA has partnered with motor carriers to test and evaluate several onboard safety systems and identified those systems that showed promise for having the greatest impact on reducing crashes.

New Technologies Evaluated at the CMV Roadside Technology Corridor—In partnership with the Tennessee Department of Safety, Tennessee Department of Transportation, University of Tennessee, and the Oak Ridge National Laboratory, the Agency created the Commercial Motor Vehicle Roadside Technology Corridor in Tennessee. The goal of the Corridor is to provide a test bed for existing, new, and emerging truck and bus safety and enforcement technologies and concepts. Currently, the partnering agencies are evaluating a fully automated inspection station screening device—(Smart Infrared Inspection System (SIRIS)—that uses temperature measurements derived from infrared cameras to identify trucks with potential brake, tire, or hub defects.

Creating Opportunities, Methods, And Practices To Secure Safety (COMPASS): Business Improvement And Information Technology Modernization Program—The COMPASS information technology modernization effort is a multi-year, FMCSA-wide initiative to improve data accessibility, data quality, system flexibility, and business processes. COMPASS and CSA 2010 are closely integrated efforts within FMCSA. The Agency plans to issue incremental releases of COMPASS as legacy systems are replaced; these releases will be closely aligned with the roll-out of the new CSA measurement system (CSMS) later this year.

Conclusion

In summary, over the course of the Agency's past 10 years, there have been encouraging results in declining numbers of severe crashes and fatalities involving commercial vehicles thanks to the dedicated work and commitment of FMCSA's employees and stakeholders. Yet, we are not satisfied with the progress to-date. We cannot justify or explain away the CMV crashes that take lives not ready to leave this earth and destroy the fabric of their families' joy. With the strategic framework and expectations I outlined at the beginning of my presentation and the foundation of programs, rules and resources described herein, we are poised to achieve more significant gains in saving lives than ever before.

Thank you for inviting me to discuss the FMCSA's current work and future programs. I would be pleased to respond to any questions you may have.

Senator LAUTENBERG. Thank you very much.

Now, Ms. Hersman, we look forward to hearing from you.

STATEMENT OF HON. DEBORAH A.P. HERSMAN, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Ms. HERSMAN. Thank you. Good morning, Chairman Lautenberg, Ranking Member Thune. Let me begin by thanking the Committee for its hard work on the Motor Coach Enhanced Safety Act which addressed many of our recommendations to improve crash-worthiness and the safety of motorcoaches.

It goes without saying that no carrier wants to have an accident, but we recognize that the economic pressures in the motor carrier industry can create conditions where safety is just not guarded as vigilantly as it should be. That is why the American people need comprehensive and consistent oversight of the industry.

The Safety Board believes that the two factors that have the greatest impact on safe motor carrier operations are the condition of the vehicles and the performance of the drivers. Let me begin by telling you about an accident that demonstrates how these rules play out.

In 1995, a motorcoach rolled over in Indianapolis causing 2 fatalities and 13 injuries. The NTSB's investigation concluded that the motorcoach was operating with only 50 percent braking efficiency. A postaccident compliance review of the company's vehicles put all 10 out of 10 vehicles out of service. The investigation revealed that just a year before the accident, the company had been reviewed, and even though 63 percent of the vehicles met out-of-service criteria, FMCSA had given that operator an overall rating of satisfactory.

The Safety Board believes that an unsatisfactory rating in either the vehicle or the driver performance area should be sufficient to place a carrier out of service. We have called upon FMCSA to fix this deficiency since 1999, and it has been on our Most Wanted List of Transportation Safety Improvements every year for the last decade.

We also identified FMCSA's ineffective compliance review system as contributing to the probable cause of a motorcoach fire that

killed 23 elderly passengers near Wilmer, Texas, in 2005. Now, 5 years after that tragedy, the old rules have not changed.

We have also called on FMCSA to help prevent fatigue-related accidents. Our studies show that fatigue is the most commonly cited probable cause or factor in fatal-to-the-driver crashes. In 2004, a fatigued truck driver ran into a stopped queue of traffic in a work zone near Chelsea, Michigan. A post-accident compliance review revealed that 20 percent of the carrier's driver records were falsified. Yet, the motor carrier continued to operate under a conditional rating.

We have found the no hours-of-service rule is inadequate unless it is enforceable. We saw in the Chelsea accident, and our investigations repeatedly find, that some drivers falsify their paper log books or keep two sets of log books, and some motor carriers do not closely monitor their drivers' compliance with the rules. That is why since 1977 the Safety Board has advocated the use of electronic on-board recorders for all drivers.

Our Most Wanted List also advocates the use of technology to reduce the likelihood or severity of an accident, improvements to the medical oversight program for CDL holders, and recommends that cell phone use be prohibited for passenger-carrying CDL holders.

For the last several years, FMCSA has been working on a complex set of programs called Comprehensive Safety Analysis 2010, or CSA 2010. We have been told that it will address many of our concerns associated with oversight and enforcement. While we commend FMCSA for its efforts to address a wide range of critical safety issues, CSA 2010 is an ambitious program with milestones that will be difficult to meet. In 2007, NTSB recommended that the FMCSA immediately proceed with incremental rule changes even while moving toward the long-term CSA 2010 implementation. If incremental steps had been made along the way, it is possible that fatal accidents could have been prevented.

Mr. Chairman, Ranking Member Thune, when we commute to work, when we load our families in our cars for a trip, we must be able to trust that the trucks and the buses that are operating on the roadways next to us are safely designed, carefully maintained, and expertly operated. Right now, much more needs to be done to improve motor carrier safety on our roads and highways.

Thank you, and I will be happy to respond to your questions.

[The prepared statement of Ms. Hersman follows:]

PREPARED STATEMENT OF HON. DEBORAH A.P. HERSMAN, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Good morning, Chairman Lautenberg 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 oversight of motor carrier safety. I am privileged to represent the men and women of the NTSB, who work tirelessly to improve the safety of the traveling public. As you know, the NTSB is charged with investigating major transportation accidents, including highway accidents, determining their probable cause, and making recommendations to prevent similar accidents from happening again. We frequently recommend changes in highway or vehicle design, driver training, occupant protection, and regulatory oversight.

Every day, there are thousands of accidents on our Nation's highways, resulting in tens of thousands of fatalities each year. Historically, accidents involving large trucks comprise approximately 10 percent of the fatalities on our highways.

Today, I will highlight some specific issues of concern regarding the safety of trucks and buses.

Motor Carrier Safety Oversight

No carrier wants to have an accident, but strong economic forces sometimes create an environment in which safety is not always every carrier's priority. That is why we need comprehensive and consistent oversight of the motor carrier industry.

The two most important factors related to safe motor carrier operations are the condition of the vehicles and the performance of the drivers. Current rules prevent the Federal Motor Carrier Safety Administration (FMCSA) from putting carriers out of service with an unsatisfactory rating in only one of the 6 rated factors. They must be unsatisfactory in 2 factors. In other words, they could be unsatisfactory in either the vehicle or driver areas and still be allowed to operate. The NTSB believes that an unsatisfactory in *either* category should be sufficient cause to place a carrier out of service. We have been asking the FMCSA to fix this deficiency since 1999.

The NTSB raised this deficiency as the result of our investigation of an accident involving a motorcoach that had only 50-percent braking efficiency. The motorcoach rolled over in Indianapolis, Indiana, killing 2 passengers and injuring 13. A post-accident compliance review of the motor carrier by the FMCSA resulted in 10 out of 10 vehicles being placed out of service. Clearly, the motor carrier had some issues with its vehicle maintenance prior to the accident. It had been inspected nine times between 1987 and 1995. In 1994, even though 63 percent of the vehicles met the out-of-service criteria, the carrier received a "conditional" rating for the vehicle factors and, because all the other factors were rated "satisfactory," it was given an overall rating of "satisfactory." Thus, with the blessing of the FMCSA, the carrier was able to continue to operate with unsafe vehicles.

The NTSB recommended that the FMCSA do something relatively simple: change the safety fitness rating methodology so that adverse vehicle- or driver performance-based data alone would be sufficient to result in an overall "unsatisfactory" rating for a carrier.[1] To date, the FMCSA has not acted on this recommendation. As a result, the NTSB added this recommendation to our Most Wanted List of Transportation Safety Improvements in 2000.

Two years after the Indianapolis accident, a truck with poorly maintained brakes collided with a school bus near Mountainburg, Arkansas, killing three students. Our investigation found that, prior to the accident, the FMCSA considered the motor carrier "satisfactory" but postaccident, it was rated "conditional" overall. The motor carrier profile report showed it had had 29 roadside inspections in the previous 12 months, which resulted in 4 out-of-service vehicles (14 percent), all with out-of-adjustment brakes. In the NTSB's view, 14 percent of a fleet with bad brakes should not be considered "satisfactory." As a result, the NTSB reiterated our 1999 recommendation.

The Board revisited this recommendation to the FMCSA in a number of subsequent accidents:

- In 2002, a five-fatality motorcoach rollover accident occurred near Victor, New York, involving a carrier that had received a favorable compliance review rating despite a long and consistent history of driver- and vehicle-related violations.
- In 2004, a fatigued tractor-trailer driver ran into a stopped queue of traffic in a construction zone near Chelsea, Michigan. A postaccident compliance review by the FMCSA revealed a 20-percent falsification rate of drivers' logs, yet the FMCSA allowed the motor carrier to continue to operate with a "conditional" rating.
- In 2005, 23 elderly passengers died in a motorcoach fire near Dallas, Texas, caused by the motor carrier's poor maintenance of the vehicle's wheel bearings. The Texas Department of Public Safety (DPS) and the FMCSA both identified numerous driver and vehicle safety violations prior to the accident, but they did not shut the carrier down. The FMCSA gave the carrier a "satisfactory" rating. At the time, the Texas DPS had no authority to force the motor carrier to cease operations. (They do now.) As a result, the NTSB not only reiterated the 1999 recommendation, our report cited the FMCSA's ineffective compliance review system as contributing to the probable cause of the accident.
- In 2007, seven passengers died in a motorcoach accident involving Bluffton University students in Atlanta, Georgia. A postaccident compliance review by the FMCSA rated the carrier "satisfactory." However, the NTSB's investigation found that the driver failed to properly record hours-of-service information for the trip and that the motor carrier had numerous earlier driver-related violations.

[1] Safety Recommendation H–99–6.

Just last year, the NTSB completed its investigation of a 2008 motorcoach rollover accident near Victoria, Texas. Again, we found that the FMCSA safety rating methodology did not provide adequate oversight of the motor carrier and its leasing partners. The NTSB reclassified the 1999 recommendation as "unacceptable" because we believe the FMCSA has not made the necessary changes to take problem carriers off the road.

CSA 2010

To address its oversight shortfalls, the FMCSA has initiated a complex set of programs called the "Comprehensive Safety Analysis 2010," or "CSA 2010." CSA 2010 is based on the development of new performance-based systems for determining motor carrier and driver safety. These changes are long overdue. However, we are concerned whether the final implementation of CSA 2010 will make the changes necessary to take problem motor carriers off the road.

The FMCSA should have made incremental changes to its compliance review process while developing more sweeping changes to its oversight program through CSA 2010 or some other means. In fact, we issued a recommendation to that effect in 2007.[2] The FMCSA's current efforts represent a comprehensive review of the process of determining the safety of commercial motor carriers, and the agency should be commended for that effort. However, CSA 2010 is an ambitious program with milestones that will be difficult to meet. In fact, just this month, the FMCSA announced that the start of CSA 2010 will be delayed, with some portions postponed until 2011. In the meantime, motor carriers continue to operate with poor management of their drivers and vehicles, which will lead to more accidents.

Hours of Service

The NTSB's interest in the fatigue of commercial drivers goes back more than 30 years. In the 1990s, the NTSB conducted two safety studies[3] that found that fatigue was the most frequently cited probable cause or factor in crashes with driver fatalities. The studies also found that the most important factors influencing fatigue-related crashes were the amount of sleep a driver received and whether the driver was engaging in "split-sleeps" (that is, multiple short sleep episodes rather than one continuous 8-hour period).

Based on these studies, the NTSB recommended that the FMCSA use science-based principles to revise the hours-of-service rule, 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 September 2005, the FMCSA issued a final rule with a provision that drivers using a sleeper berth must take at least 8 consecutive hours in the sleeper berth, plus 2 consecutive hours either in the sleeper berth, off duty, or in any combination thereof.

Recent Investigations of Accidents Involving Fatigue

1997	Slinger, WI	(8-fatality passenger van/tractor-trailer collision; fatigued truck driver)
2000	Jackson, TN	(1-fatality tractor-trailer collision with parked state police vehicle; fatigued truck driver)
2004	Sulphur Springs, TX	(5-fatality multi-vehicle collisions during road closure; fatigued truck driver)
2004	Chelsea, MI	(1-fatality tractor-trailer collision in work zone; fatigued truck driver)
2004	Turrell, AR	(15-fatality motorcoach rollover accident; fatigued motorcoach driver)

[2] Safety Recommendation H–07–3: "To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include all Federal Motor Carrier Safety regulations in the current compliance review process so that all violations of regulations are reflected in the calculation of a carrier's final rating."

[3] (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).

Recent Investigations of Accidents Involving Fatigue—Continued

2005	Lake Butler, FL	(7-fatality tractor-trailer/sedan/school bus collision; fatigued driver)
2005	Osseo, WI	(5-fatality motorcoach collision with overturned tractor-trailer; fatigued truck driver)
2008	Victoria, TX	(1-fatality motorcoach rollover accident; fatigued motorcoach driver)
2008	Mexican Hat, UT	(9-fatality motorcoach rollover accident; fatigued motorcoach driver)

In September 2008, following completion of investigations into fatigue-related accidents that occurred in Osseo, Wisconsin; Lake Butler, Florida; and Turrell, Arkansas; the NTSB asked the FMCSA to develop a plan to deploy technologies in commercial vehicles to reduce fatigue-related accidents,[4] and to develop a methodology to assess the effectiveness of the fatigue management plans implemented by motor carriers.[5] The 2008 motorcoach accident in Victoria, Texas, again demonstrated the serious nature of fatigue-related accidents and the need for both in-vehicle technologies and effective fatigue management programs. Upon completion of its investigation of this accident, the NTSB urged the FMCSA to continue to work on these recommendations.

Citing many of the accidents mentioned above and several others from other modes of transportation in which drivers, pilots, and train engineers had undiagnosed obstructive sleep apnea, in October 2009, the Board issued recommendations on obstructive sleep apnea to the FMCSA. In particular, we recommended that the FMCSA: (1) require drivers with a high risk for obstructive sleep apnea to obtain medical certification that they have been appropriately evaluated and, if necessary, effectively treated for that disorder,[6] and (2) provide guidance for commercial drivers, employers, and physicians about identifying and treating individuals at high risk of obstructive sleep apnea.[7]

Electronic On-Board Recorders for Hours of Service

No hours-of-service rule is adequate unless it is enforceable. In our investigations, the NTSB has repeatedly found that some drivers falsify their paper logbooks or keep two sets of books, and some motor carriers do not closely monitor their drivers' compliance with the rules. To address these problems, 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.

In 2007, the NTSB asked the FMCSA to require EOBRs for hours-of-service monitoring for all interstate commercial carriers following our investigation of an accident in Chelsea, Michigan. Also in that year, the FMCSA issued a proposed rulemaking for on-board recorders. However, the rule mostly promotes voluntary installation of EOBRs, and it only requires installation for carriers with serious patterns of hours-of-service violations. The NTSB is concerned that the FMCSA and law enforcement authorities will have a difficult time identifying such pattern violators without this technology. We are convinced that the only way on-board recorders can help stem hours-of-service violations is if they are mandated for use by all operators. Therefore, in 2008, the NTSB added EOBRs to its Most Wanted List.

EOBRs have the potential to efficiently and accurately collect and verify the hours-of-service of all commercial drivers. A universal and mandatory requirement for EOBRs will create a level playing field for compliance with hours-of-service rules that will ultimately make our highways safer for all drivers.

New Entrant Motor Carriers

In 2002, the Board investigated an accident involving a tractor-semitrailer collision with a Greyhound bus in Loraine, Texas, which resulted in three deaths. At the time, the FMCSA had essentially no review or follow-up of new entrant motor carriers. To become a motor carrier, the owner of a trucking company merely had to fill out an online form and pay a small fee to receive operating authority from the FMCSA. In this case, our investigation revealed that when the trucking com-

[4] Safety Recommendation H–08–13.
[5] Safety Recommendation H–08–14.
[6] Safety Recommendation H–09–15.
[7] Safety Recommendation H–09–16.

pany owner submitted his application, he lied about his knowledge of the regulations, about having systems in place to comply with the regulations, and about a drug conviction for possession of large amounts of marijuana the year prior to his application. He also did not maintain any records on his drivers or vehicles, did not have a drug and alcohol program, and did not conduct background checks of his drivers. Further, he knowingly dispatched the accident driver, who did not have a commercial driver's license or medical certificate.

The NTSB recommended that the FMCSA require new motor carriers to demonstrate their safety fitness prior to obtaining new entrant operating authority.[8] 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 18 months of operation.

In 2008, the FMCSA began its New Entrant Safety Assurance Program, under which the agency identified 16 regulations that are essential elements of basic safety management controls necessary to operate in interstate commerce and made a carrier's failure to comply with any of the 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 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 are a brand new motor carrier. The NTSB found that this had occurred with a motor carrier involved in an accident in 2008, when a motorcoach ran off a bridge and rolled over in Sherman, Texas, killing 17 passengers. After losing its authority to operate because of an unsatisfactory compliance review rating, the motor carrier applied for operating authority under a new name as a new entrant. The NTSB concluded that the FMCSA processes were inadequate to identify the carrier as a company that was simply evading enforcement action. The NTSB issued a recommendation to the FMCSA to evaluate the effectiveness of its New Applicant Screening Program.[9]

The NTSB found additional deficiencies with the FMCSA's new entrant program during its 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 accident carrier reincarnated into a new carrier shortly after the accident. As a result, the NTSB issued three recommendations to the FMCSA that ask the agency to develop methods to identify reincarnated carriers and seek authority to deny or revoke their operating authority.[10]

Medically Unqualified Commercial Drivers

The NTSB has investigated many accidents involving commercial drivers with serious preexisting medical conditions that had not been adequately evaluated. A driver's medical conditions are not always causal to an accident, but finding these undocumented and unevaluated conditions in commercial drivers is of significant concern to the NTSB. The most tragic example of this issue was the 1999 Mother's Day motorcoach accident in New Orleans, Louisiana, in which a motorcoach driver lost consciousness while driving on an interstate highway, left the roadway, and crashed into an embankment, killing 22 passengers and injuring 21. The driver had multiple known serious medical conditions, including kidney failure and congestive heart failure, and was receiving intravenous therapy for 3–4 hours a day, 6 days a week.

The Board recommended that the FMCSA develop a comprehensive medical oversight program to address the need to:

- Ensure that examiners are qualified and know what to look for;
- Track all medical certificate applications;
- Enhance oversight and enforcement of invalid certificates; and
- Provide mechanisms for reporting medical conditions.[11]

The NTSB specified the development of a comprehensive and systematic oversight program, because a piecemeal approach to the problem may result in deficiencies that will continue to permit unqualified drivers to operate on the Nation's highways. Because of its critical importance and the lack of substantive progress by the

[8] Safety Recommendation H–03–2.
[9] Safety Recommendation H–09–21.
[10] Safety Recommendations H–09–34 through –36.
[11] Safety Recommendations H–01–17 through –24.

FMCSA on the recommendations, this issue was placed on our Most Wanted List in 2003.

In response, the FMCSA took two important steps. In November 2008, the FMCSA proposed a rule that would require all medical examiners who conduct medical examinations of interstate commercial motor vehicle drivers to complete training on physical qualification standards, pass a test to verify an understanding of those standards, and maintain competence by periodic training and testing. If adopted, the rule will help ensure that the medical examiners are properly qualified to evaluate the fitness of commercial drivers. In addition, the FMCSA has hired its first medical officer, a physician with occupational medical experience, to provide the necessary expertise to guide its efforts in establishing a comprehensive medical oversight system.

In December 2008, the FMCSA issued a final rule requiring interstate commercial drivers to provide a current original or copy of their medical examiner's certificate to their state drivers' licensing agency. This rule is an important improvement because law enforcement officials at the roadside will be able to determine whether a driver possesses a current medical certificate and will be able to take appropriate action if the driver does not. The NTSB thus was able to close two of its eight recommendations on this issue in "acceptable" status.[12]

We are encouraged by the FMCSA's hiring of a medical officer, because it indicates that the FMCSA appreciates the importance of this issue to improving highway safety. I have personally met with the FMCSA Medical Officer, who has an excellent background to deal with these issues, and I think this step represents substantial progress.

Although the FMCSA continues to work to address medical issues, much remains to be done. For example, the national registry of certified medical examiners should include a tracking mechanism for driver medical examinations. This step would reduce the current practice of drivers "doctor shopping" to find one who will sign their medical forms. Likewise, the FMCSA's medical oversight program should establish a mechanism to review medical certificates, beyond the examiner evaluating the driver, to identify and correct the inappropriate issuance of medical certification. Finally, the FMCSA has taken no action to establish a system for reporting medical conditions that develop between examinations.

Cell Phone Use

Driver distraction may be one of the least understood causes of traffic accidents. Recent interest in the effect of cell phone use and the use of other personal electronic devices while driving has prompted numerous studies. The explosive growth of text-messaging while driving has prompted several states and the Federal Government to restrict such activity.

Most would agree that texting while driving is unsafe. In fact, Virginia Tech has shown that texting increases the risk of an accident by 23 times. However, the problem is much bigger than texting. If you dial a phone number or reach for the phone while you are driving, you are taking your eyes off the road. You may be able to do this and get away with it hundreds or even thousands of times, but 1 day, you will look down at your cell phone at just the wrong moment and become an accident statistic. When the driver of an 80,000-pound tractor-trailer or a motorcoach carrying 55 passengers looks away from the road at the wrong instant, the results can be catastrophic.

The NTSB investigated a passenger car accident in February 2002 in Largo, Maryland, in which an inexperienced 20-year-old driver lost control of her high-profile, short-wheelbase vehicle on the Capitol Beltway. She was talking to her boyfriend, who was speeding in another vehicle ahead of her. She lost control of her vehicle and crossed over the median, striking a minivan and killing all four of its occupants and herself. The cause of the accident was a combination of inexperience, unfamiliarity with the vehicle, speed, and distraction caused by use of a handheld wireless telephone. As a result, the NTSB recommended that the applicable states prohibit holders of learner's permits and intermediate licenses from using wireless communication devices while driving, and that they add driver distraction codes to traffic accident investigation forms.[13]

In 2004, we investigated an accident in Alexandria, Virginia, in which an experienced motorcoach driver, who was having a heated conversation on his hands-free cell phone, failed to move to the center lane and struck the underside of an arched stone bridge on the George Washington Parkway. Our investigation found that the driver had numerous cues to change lanes at the appropriate time. In fact, the driv-

[12] Safety Recommendations H–01–22 and –23.
[13] Safety Recommendations H–03–8 and –9.

er was familiar with the road and was following another bus that had moved to the center lane. Yet, this driver did not notice the well-marked signage as he approached the arched stone bridge. The accident was clearly caused by this driver's cognitive distraction, due to his conversation on his cell phone. The NTSB recommended that the FMCSA and the 50 states enact laws to prohibit cell phone use by commercial drivers while driving a passenger-carrying commercial vehicle or school bus. [14] 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.[15]

Last fall, we participated in the U.S. Department of Transportation's (DOT) Distracted Driving Summit, which addressed the dangers of text-messaging and other driving distractions. During the summit, Secretary LaHood announced a plan to initiate rulemaking that would consider banning texting altogether and would restrict the use of cellular telephones by truck and interstate bus operators. A notice of proposed rulemaking was issued this month. While a ban on texting is definitely a step in the right safety direction, it does not satisfy our recommendation to prohibit the use of cellular telephones by drivers of passenger-carrying motorcoaches or school buses. The NTSB believes that cell phone use can be just as dangerous as text-messaging, because it is a cognitive distraction for the driver.

Motorcoach Passenger Protection

Progress in the area of improving the protection for motorcoach passengers has been disappointing. We continue to investigate motorcoach accidents in which passengers are thrown from their seats, striking hard objects within the vehicle, and in which they are ejected out the windows. In 1999, we recommended that the National Highway Traffic Safety Administration (NHTSA) develop performance standards for motorcoach occupant protection systems and require newly manufactured motorcoaches to have such systems.[16]

In the 11 years since we issued these recommendations, we have investigated more than 30 motorcoach accidents that have caused 140 fatalities and 1,070 injuries.[17] These accidents have included 259 ejections. NHTSA has not established any meaningful occupant protection standards for motorcoaches, and last year, the NTSB identified NHTSA's lack of action in this area as contributing to the probable cause of the nine-fatality motorcoach accident in Mexican Hat, Utah. Shortly thereafter, Secretary LaHood directed several of the modal administrations within DOT, including the FMCSA, NHTSA, the Federal Highway Administration (FHWA), the Research and Innovative Technology Administration (RITA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA), to develop a Motorcoach Safety Action Plan. The NTSB is hopeful that this initiative will lead to meaningful improvements in the safety protections provided to motorcoach passengers.

Motorcoach Roof Strength

Structural integrity of a motorcoach is as important to the safety of passengers as occupant protection systems. The NTSB has recommended that NHTSA develop performance standards for motorcoach roof strength that provide maximum survival space for all seating positions and that take into account current typical motorcoach window dimensions.[18] We have also recommended that NHTSA revise window glazing requirements for newly manufactured motorcoaches.[19] The roof strength recommendations were added to the NTSB's Most Wanted List in 2000. Because of inaction by NHTSA on improving roof strength and window glazing, the NTSB reclassified all of these recommendations as "unacceptable response" in 2009.

Motorcoach Passenger Egress

Most motorcoaches in the United States have emergency egress windows. However, in a 1999 study on *Selective Motorcoach Issues*, the NTSB found that passengers had difficulty in opening emergency windows and keeping them open during evacuations. Consequently, in 1999, we recommended that NHTSA require window

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[14] Safety Recommendations H–06–27 and –28.

[15] Safety Recommendation H–06–29.

[16] Recommendations H–99–47 and –48.

[17] Some of the major investigations include the following accidents: 1999 New Orleans, LA (22 fatal, 21 injured, 10 ejected); 2002 Loraine, TX (3 fatal, 29 injured); 2002 Victor, NY (5 fatal, 41 injured, 6 ejected); 2003 Hewitt, TX (5 fatal, 29 injured, 15 ejected); 2003 Tallulah, LA (8 fatal, 6 injured, 1 ejected); 2004 Turrell, AR (15 fatal, 15 injured, 30 ejected); 2005 Osseo, WI (5 fatal, 35 injured, 1 ejected); 2007 Atlanta, GA (6 fatal, 28 injured, 12 ejected); 2008 Victoria, TX (1 fatal, 46 injured, 1 ejected); 2008 Mexican Hat, UT (9 fatal, 42 injured, 50 ejected); and 2008 Sherman, TX (17 fatal, 39 injured, 4 ejected).

[18] Safety Recommendations H–99–50 and –51.

[19] Safety Recommendation H–99–49.

exits and other emergency exits not at floor level to be designed so that they are easy to open and to keep open during an emergency evacuation, when a motorcoach is either upright or at unusual attitudes.[20] This recommendation is on our Most Wanted List.

Motorcoach Fire Protection

Although injuries or fatalities resulting from motorcoach fires are relatively uncommon, fires on motorcoaches are very common (about one motorcoach is lost to fire per day). The importance of fire detection and suppression came to the forefront of everyone's attention when elderly motorcoach passengers perished near Dallas, Texas, in 2005 during the evacuation from Hurricane Rita. As a result of that investigation, the NTSB asked NHTSA to evaluate current emergency evacuation designs of motorcoaches and buses.[21] The evaluation should take into account acceptable egress times for various postaccident environments, unavailable exit situations, and the current aboveground height and design of window exits to be used in emergencies by all potential vehicle occupants. The NTSB also asked NHTSA to develop early warning detection systems to monitor the temperature of wheel well compartments in motorcoaches and buses, and to evaluate the need for a Federal Motor Vehicle Safety Standard to require fire detection and suppression systems on motorcoaches.[22]

Event Data Recorders

Event data recorders are a proven technology. They record critical vehicle movements and driver inputs. Such information greatly helps in accident reconstruction, leading to better accident prevention initiatives. Since 1997, the NTSB has issued six recommendations and participated in or hosted five public forums on the use of data recording devices in highway transportation.

Following the 2003 pedal misapplication accident in a Santa Monica, California, farmers' market, which resulted in 10 fatalities and 63 injuries, we recommended that NHTSA make event data recorders mandatory on newly manufactured light-duty vehicles.[23] Most manufacturers now provide these devices.

Specific to school buses and motorcoaches, the NTSB recommended in 1999 that NHTSA require school buses and motorcoaches manufactured after January 1, 2003, to be equipped with on-board recording systems that record a number of vehicle parameters.[24] We reiterated the recommendations in 2008, following the seven-fatality motorcoach accident involving Bluffton University students in Atlanta, Georgia.

New Crash Avoidance Technologies

Since 1995, the NTSB has advocated collision warning systems and adaptive cruise control to prevent accidents. In 2001, as part of a study on *Technology for the Prevention of Rear-End Collisions*, the NTSB investigated nine commercial vehicle rear-end collisions in which 20 people died and 181 were injured. Common to all nine accidents was the degraded perception of traffic conditions ahead by the driver in the rear. The NTSB recommended that NHTSA issue performance standards for adaptive cruise control and collision warning systems for new commercial vehicles.[25]

In 2003, the NTSB investigated a multivehicle accident near Hampshire, Illinois, in which a tractor-trailer failed to slow for the stopped or slow-moving traffic on the approach to the Interstate 90 toll plaza. The tractor-trailer driver was distracted and the tractor-trailer struck the rear of a specialty bus, killing 8 passengers and injuring 12. As a result, the Board reiterated the above recommendations. In 2007, these important safety recommendations were added to our Most Wanted List. They were reiterated in 2008, in the NTSB's report on a five-fatality motorcoach and tractor-trailer accident in Osseo, Wisconsin, as well as a seven-fatality tractor-trailer/sedan/school bus collision in Lake Butler, Florida, and a 15-fatality motorcoach rollover accident in Turrell, Arkansas.

Electronic stability control is standard in most automobiles today. As a result of the Osseo accident investigation, the NTSB recommended that NHTSA determine whether equipping commercial vehicles with collision warning systems with active braking and electronic stability control systems would reduce commercial vehicle accidents, and if so, require their use on commercial vehicles.[26]

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[20] Safety Recommendation H–99–9.
[21] Safety Recommendation H–07–8.
[22] Safety Recommendations H–07–6 and –7.
[23] Safety Recommendation H–04–26.
[24] Safety Recommendations H–99–53 and –54.
[25] Safety Recommendations H–01–6 and –7.
[26] Safety Recommendation H–08–15.

In many commercial vehicle tires, a small loss of air can degrade tire carrying capacity and cause sufficient heat build-up to result in tire failure. In 2008, a motorcoach became uncontrollable after a tire failure and plunged off a bridge near Sherman, Texas, resulting in 17 fatalities. NHTSA now requires the installation of tire pressure monitoring systems on passenger cars and light trucks weighing 10,000 pounds or less. As a result of the Sherman accident, the NTSB recommended that all commercial vehicles weighing over 10,000 pounds be equipped with tire pressure monitoring systems,[27] to help avoid crashes caused by tire failures.

Closing

Many of the issues discussed today have been around for decades, and much is left to be done to improve highway safety. Immediate action is needed so that when we load our children into our cars and get out on the highway, we are surrounded by trucks and buses that are safely designed, carefully maintained, and expertly operated.

Mr. Chairman, this completes my statement, and I will be happy to respond to any questions you may have.

Senator LAUTENBERG. Ms. Ferro, your agency recently issued a final rule regarding EOBRs, and while the rule was an improvement to the previous administration's proposed rule, it captures a very small percentage, just over one percent, of all carriers on the road today. The NTSB has called for EOBRs, as we heard, on all commercial motor vehicles. Why has your agency not issued a more comprehensive EOBR mandate for all carriers on the road?

Ms. FERRO. With regard to the current rule that we just achieved final status on, it was clear from the original notice of proposed rulemaking several years ago that we were constrained in how broad we could make the current rule. It was a very challenging discussion internally because, as you have seen, through our indications both in our rulemaking website, as well as my comments today, we are pressing ahead with a broader mandate across all carriers.

But it was very important to me, if we had the opportunity, to implement a tool today that could get at the behavior of high-risk carriers, those violating hours-of-service rules most egregiously, that we needed to deploy the tool as soon as possible. It was clear to me that the opportunity to develop a universal rule, while in play now, would not have been in place as quickly as this one. So while Chairman Hersman spoke about incremental achievements, this is incremental, but it was very important that we get it in place.

Senator LAUTENBERG. It is hard to accept a condition that threatens people on the road when we can do something about it. And the mandatory use of EOBRs, as we heard, is included in the NTSB's list of Most Wanted Safety Improvements.

Are there any more safety risks that will remain for trucks that do not fall within the FMCSA's new rule?

Ms. FERRO. The rule that is under development today——

Senator LAUTENBERG. Yes.

Ms. FERRO.—that we expect to have a draft by the end of the year?

I am not sure how to answer that question, but I will be happy to follow up with regard to any other risks.

Senator LAUTENBERG. OK, please do. And, Ms. Hersman, we might ask you the same thing.

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[27] Safety Recommendation H–09–22.

The NTSB has found that fatigue is a primary factor in 30 to 40 percent of large truck crashes. How does the current hours-of-service rule contribute to driver fatigue?

Ms. HERSMAN. There are many challenges associated with fatigue. The Safety Board has specifically made recommendations about the enforcement of the current hours-of-service rule. In many of our accidents, we find that the rules are not being observed, whether it is through pressures to get loads there on time or economic pressures that the drivers feel to continue to drive additional miles.

There are challenges for roadside inspectors. One of the concerns that we have is that in roadside inspections, which are conducted every year, we see about a 7 percent out-of-service rate for drivers who have not kept accurate logs, falsified logs, or do not possess logs at all. This has remained fairly static, and what this says to me is that this is the cost of doing business, and people are violating these rules on a regular basis. We do not see that same hours-of-service violation in other transportation industries. In the aviation industry, in the railroad industry, there is accountability on the part of the carriers for their drivers' hours or their workers' hours. We do not see the same in the trucking industry.

Senator LAUTENBERG. Well, in fairness, we have seen fatigue in the aviation industry as well, and the consequences are very serious.

Ms. HERSMAN. We certainly see fatigue in all modes of the transportation industry, but the violations of the hours-of-service are not there. Pilots, when they have reached their duty-day limit, go off-duty. The company is responsible for making sure that happens.

Senator LAUTENBERG. They are supposed to. We have to watch them all.

Ms. Ferro, last fall your agency entered into an agreement to drop the Bush Administration's hours-of-service rule and undertake a new rulemaking. What have you done to base this new rule on sound science?

Ms. FERRO. We must base our work on sound science and sound research, Mr. Chairman.

The settlement agreement requires us to have an NPRM to the Office of Management and Budget by July of this year, and we are well on pace to achieve that.

Our work in getting to the point of submitting that NPRM has included a nationwide process both of an open docket to solicit as much new research or comment or perspective that we may not have already had or been aware of, as well as listening sessions around the country. We do have some research in place that we are using, in fact, to analyze the rule, analyze our findings. And the rule that we produce in July will be based on that.

Senator LAUTENBERG. Ms. Ferro, in your testimony you highlighted the Comprehensive Safety Analysis 2010, or CSA 2010, as a new enforcement tool that can help your agency meet its safety goals. The NTSB has described this new tool as an ambitious program with milestones that are going to be difficult to meet. The program has already been delayed and may not be ready until next year. When will CSA 2010 be ready for implementation? Do you

have the tools and resources for the program to be put in place effectively?

Ms. FERRO. Two points in that regard. It is an ambitious program, and for that very reason, I challenged our team to say we must roll this out to succeed, and significant change is achieved through incremental processes, much like Chairman Hersman mentioned. Consequently, we are rolling out the program in components starting today, actually several weeks ago, with the initiation of the preview of the data set forth in the basics that I described focusing on driver fatigue, driver safety, vehicle maintenance, and some of the other components. Those components for all carriers are on display today to each individual carrier. That part of the system is moving forward.

Late this Fall, we will be rolling out the rating system as the complementary component of the system that is up and running today.

Following that will be the safety fitness determination rule, the waiver letter process, and the change management process that engages our investigators and inspectors, as well as our law enforcement partners, in a series of intervention actions that go from warning letter, to targeted intervention, to full compliance intervention review.

So that schedule is covering a 12-month period. Again, it includes systems, rule, State rollout. So we are very much on track with regard to an implementation schedule designed to succeed.

Senator LAUTENBERG. In my earlier remarks, I pointed out that fatalities occur each and every day. That is common knowledge.

Ms. FERRO. That is right.

Senator LAUTENBERG. And so there is an urgency to all of these things.

Ms. FERRO. There is.

Senator LAUTENBERG. I ask you to move things along as rapidly and, of course, as efficiently as you can.

Ms. FERRO. Yes, sir.

Senator LAUTENBERG. Ms. Hersman, four recommendations on the NTSB's Most Wanted List are directed at FMCSA, and since 1992, the agency has been cited for 13 unacceptable responses to recommendations from NTSB investigators.

In the past year, has there been any progress with FMCSA toward resolving these recommendations?

Ms. HERSMAN. I will say that we see a lot of good discussion and some plans to accomplish many of our recommendations. One of our frustrations is that many of these recommendations were issued over a decade ago. So, even though there is a good discussion that is taking place, what we really want to see is a little less talk and a lot more action. We want these things to be completed and accomplished.

There are a few things that the FMCSA has done. One that I pointed out in my testimony was the integration of the medical certificate and a CDL when drivers go to renew their license. That is an issue that we focused on as far as medical certification is concerned, and has been completed. The FMCSA has initiated action in a number of other issue areas, but the regulatory process is slow and they have not yet completed action in those areas.

I am referring to issues like the medical review board that was instituted at the direction of this committee in legislation. One of our concerns about that is we have made recommendations addressing sleep apnea. We know that truck drivers often are sedentary, and that they may have high body mass index and thus are more susceptible to sleep apnea than the general population. Their own medical review board, in January of 2008, made recommendations about what needed to be done to address the problem of sleep apnea, and we are still waiting on their response to those issues.

I think progress has been made in certain areas, but what we want to see is completion.

Senator LAUTENBERG. I thank you. And I commend you each for picking up the pace and making sure that we move along with these things.

As I look at the situation—I discussed it with my team—the fact that EOBRs are not compulsory really as part of original equipment is unacceptable. EBORs have got to be encouraged in some way, and we must do whatever we can do to move these things along. It is a safety step that ought to be taken.

Senator Thune, I have taken more time.

Senator THUNE. It is quite all right. You are the Chairman, Mr. Chairman.

FMCSA's budget justification for Fiscal Year 2011 includes a description of the agency's safety goals for 2009 through 2011, and there are seven different safety goals that are mentioned, including goals for reducing fatal crashes involving large trucks and buses and improving seat belt use by truck drivers. In every instance, however, the actual results in 2008 actually exceed the goal for 2009, and in most instances, actual 2008 results exceed the goals for 2010 and 2011.

I guess my question is, why has the agency not set more aggressive goals for itself and for truck safety improvements?

Ms. FERRO. Well, I think that is a very fair question, particularly as we are laying the groundwork today both for our strategic planning, as well as our reauthorization goals. So I would agree. We need to set stronger stretch goals.

The reason we achieved some of those gains in the past couple years I would attribute to some rather aggressive management and focused attention on both the efficiency and effectiveness of the actions that the FMCSA staff and leadership at that time were taking.

But I would agree with you that we need to be sure we are looking at those numbers and setting more aggressive goals going forward. The 2011 budget was framed up before I came on board, so I did not have a hand in that.

Senator THUNE. FMCSA has indicated that good quality data is critical to the success of CSA 2010. Since quality data has been such a problem under the existing rating system, the SAFESTAT, what is FMCSA doing to safeguard carriers from being unfairly targeted, subject to intervention, and receiving an unsatisfactory score as a result of incorrect safety data?

Ms. FERRO. Well, it's along the lines of what gets measured gets done. Several years ago, FMCSA—I want to say early in 2000—began a very concerted effort, in working with our State partners,

to ensure that the data quality on the inspection reports, out-of-service and violation reports, as well as compliance reviews, was on a steady path of improvement. And I will say today that close to 98–99 percent of the State data that we are receiving achieves that high quality, green status. It is a continuing effort. It is an area where we must never lose our focus, and it is an area that both CVSA, as well as our own division administrators, are focused on.

CSA 2010 puts a stronger spotlight on the importance of data quality for the roadside enforcement officer or inspector, and so to that end, it makes it, again, an even surer outcome that the data we are achieving are both consistent, as well as on the improvement path.

That being said, there are some system issues we need to address that will allow us to ensure consistent implementation of certain data in those fields coming forward, and CVSA very recently submitted recommendations in that regard.

Senator THUNE. From August 2008 to October 2009, the number of states that were rated good in terms of data quality rose from 31 states to 41 states. South Dakota was one of the states to show an improvement. I guess the question—and you have touched on it a little bit—is how do you measure data quality and how high is the bar for the states to get to that next level.

Ms. FERRO. Well, if I might, I would like to follow up on the record with a more thorough answer for you. It is an area through a program called the SADIP grants, S–A–D–I–P, that we are focused both on evaluating, as well as setting very key measures for. I do not have that information with me at this time, but I would like to follow up for the record.

Senator THUNE. Do you know how implementation of CSA 2010 will differ with regard to the nine states that still only have a poor or fair data quality designation?

Ms. FERRO. Well, again, it is rolling number as we continue to evaluate data quality, and I will say that today that data is on preview. The opportunity for carriers to request a review of the data entered on certain violation reports if, in fact, they think it was the wrong carrier or the wrong vehicle, the wrong driver is going on today as we speak, which was a part of the purpose of the preview, not to change the violation, not to impact that, but to ensure the quality of the data that is on their record. So again, it is an accountability feature in the CSA 2010 program, combined with our data query process that works through our agency to the law enforcement entity that issued the violation. So, again, on that kind of continuous loop piece, we expect continuous improvement in those States that are showing some areas of problems.

Senator THUNE. Is it possible that certain carriers who are considered safe under the current system would not be considered safe under CSA 2010, and if that were to happen, how would you intend to work with those carriers to bring them into compliance?

Ms. FERRO. No, I do not believe that any carrier will be falsely accused of being unsafe for data quality because these are continuous points of data. These are carriers that are receiving inspections or violations or interception points throughout the country in their travels, and so I would say across the board, given the quality of the data we have today and the continuous improvement path,

that given the averages that CSA 2010 identifies using that very recent data, we will have a process of accurately identifying unsafe carriers, that it will not be distorted by some inconsistencies. That does not mean we can let up our focus on continued improvement in the data quality.

Senator THUNE. Ms. Hersman, what recommendations do you have for further improving CSA 2010?

Ms. HERSMAN. CSA 2010, as I mentioned, is an ambitious undertaking and we certainly want to see it succeed.

One of the things that I believe would be very helpful for the general public, as well as for people who are participating, is for FMCSA to clarify the purpose and goals of CSA 2010, and how they are going to be achieved and to identify the milestones that will be necessary to meet. I think that it is important for this committee and perhaps other oversight entities, such as the IG and GAO to periodically review their progress to make sure those milestones are being achieved as they implement this program.

Senator THUNE. I understand this hearing is primarily focused on examining the Federal role in motor carrier safety, but the states also have an important role to play. I guess the question is, are there areas where NTSB believes that the states could be doing more?

Ms. HERSMAN. With respect to inspections and?

Senator THUNE. Just with respect to the whole, I guess, subject of motor carrier safety. There is a responsibility, obviously, at the Federal level and I guess the states are also an important and integral part of that sort of partnership. The questions is, do you see a more expansive role or something more that the states could be doing in the area of motor safety?

Ms. HERSMAN. Absolutely. There are several areas where FMCSA really has to rely on the States. Certainly one of those areas is the State inspectors. I know you are going to hear from CVSA next. They are the ones who conduct the roadside inspections—the source of all the data—and so they are extremely critical to the effectiveness of CSA 2010.

I can tell you that through some of our accident investigations, we have found deficiencies. I will mention a couple of accidents that we investigated in Texas. States have some challenges with respect to registration and authorization of entities who are authorized to provide motor carrier operations. We have investigated accidents where we found noncompliant vehicles that enter the U.S. They have entered through Mexico, they do not meet Federal motor vehicle safety standards and they have been registered in the states inappropriately. FMCA needs to do a better job with that oversight.

Also making sure that the PRISM program is adopted nationwide would be extremely effective. One of the issues that Administrator Ferro talked about was chameleon carriers. What we see with chameleon carriers is they are bad operators who get put out of business and then they reincarnate. In accidents we investigated where a chameleon carrier was involved, the husband typically will be the CEO of the company. That company will get shut down. They will reopen the company at the same address under the wife's name and operate with the very same vehicles that they just got

put out of service for operating. Under the PRISM program, the license plates of those vehicles are pulled. When someone comes to re-register again, checks can be made to ensure that it is not the same company, not the same vehicles, and not essentially a shell for what it used to be. The PRISM program is certainly something that we think the states could administer.

There are also some self-inspection programs. We investigated an accident in Texas involving a motorcoach where there was a retread front tire on the steering axle of the bus. You cannot have retread tires on the steering axle. This motorcoach had passed inspection just weeks before the accident. It was not clear when the retread tire had been put on, but the State only authorized them to charge $63 for the commercial vehicle inspection. How good of an inspection are you going to get of a bus or a truck for $63? It is critically important for the states to have good oversight and perhaps even for FMCSA to look at the states to see if they are doing an effective job with their oversight responsibilities.

Senator THUNE. Thank you.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you both. We will keep the record open for additional questions. As I continue my quest, wearing another committee hat, to limit the expansion of ever-larger trucks on the highway system—we look at that as a threat to those traveling on the same highways. So we will be doing that as well.

I thank you each for your testimony.

Now Francis France, President of the Commercial Vehicle Safety Alliance; Jackie Gillan, Vice President of the Advocates for Highway and Auto Safety; Mr. David Osiecki, Senior Vice President for Policy and Regulatory Affairs for the American Trucking Association; and Todd Spencer, Executive Vice President, Owner-Operator Independent Drivers Association. Thank you all for being here.

Welcome all, and we will start with the same admonition to keep your testimony as close to 5 minutes as you can. Mr. France, you are the first and we look forward to hearing from you.

STATEMENT OF FRANCIS (BUZZY) FRANCE, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE

Mr. FRANCE. Mr. Chairman, members of the Subcommittee, thank you for holding this hearing and inviting CVSA to testify.

I am Buzzy France, President of CVSA, and I am currently an Administrative Officer with the Maryland State Police.

CVSA represents State, provincial, and Federal officials responsible for administration and enforcement of commercial motor carrier safety laws in the U.S., Canada, and Mexico.

First, we urge Congress to pass a long-term transportation bill. We fully support CSA 2010 and give credit to FMCSA for moving it forward. However, CSA 2010 will require States to expend more resources to implement it, just as it will FMCSA. We hope that FMCSA will be sensitive to the needs of the States in this regard.

EOBR technology and hours-of-service issues are very closely linked. We believe a universal mandate of EOBRs should come first so we can ensure a more reliable method of assessing compliance and enforcement of hours-of-service. This should happen before

making a determination of whether to change the current hours-of-service rules.

Also, a comprehensive rule should contain important technical considerations, such as interoperability, data security, driver identification, tampering, uniformity, standard interface for law enforcement, and proper certification for EOBR devices.

Now let me address CVSA's reauthorization priorities. More flexibility of State grant programs is needed, along with increased funding. Also, we recommend changing the match in the MCSAP program from 80/20 to 90/10 in recognition of the increasing difficulty States are having in coming up with the match money.

Maintenance of Effort is handcuffing state safety efforts. The MOE requirements, as they currently exist, are a significant problem for states and must be revised. The way it exists now presents in many cases a disincentive for states to develop new, innovative approaches to commercial vehicle safety plans. While the basic component of MOE is simple and fair, its implementation has flaws.

Flexibility also should be given and authorized through FMCSA to give them the means to waive MOEs under certain circumstances.

Existing safety exemptions must be reviewed and the process for granting and reviewing them, as specified in the statute, must be adhered to.

The proliferation of motor carrier exemptions is out of control. They are eroding safety and weakening enforcement efforts at roadside. The exemptions provided in SAFETEA–LU, allowing a total hours-of-service exemption for utility service vehicles' drivers beyond a declaration of emergency and expanding the agricultural hours-of-service exemptions beyond the original intent of such exemptions must be repealed. These industries must reapply for these exemptions under procedures outlined in section 31315, Title 49 of the U.S. Code.

All other safety exemptions, whether granted by statute or by regulation, should similarly be received accordingly. This process would be no different than that which the Pipeline and Hazardous Materials Safety Administration exercises with respect to the HM special permits and approvals.

As a way to get started, we recommend the IG of DOT conduct a study of the exemption process at FMCSA, just as the IG did with PHMSA.

Why spend time developing hours-of-service rules and developing a comprehensive rule for EOBRs to monitor drivers' hours-of-service if significant segments of the industry are exempt from the hours-of-service. Fatigue is not caused by the product hauled or the service provided, but it is caused by the time spent by drivers behind the wheel and their time on task. Exemptions are a privilege. They are not a right.

Increased truck size and weight should not be allowed until more safety data is available. The data is intensifying, yet still lack the fundamental safety data to make major policy decisions. I believe there is an opportunity to do this by strengthening the two pilot programs provided for Maine and Vermont in the 2010 appropriations bill. Four months after the bill was signed, the FHWA and

State enforcement officials have begun to conduct meaningful criteria for these pilots. CVSA has submitted 20 separate recommendations we believe should be considered for the pilot programs. Until there is meaningful data for these pilots, as well as additional safety research, we oppose any similar pilot programs in other states.

More efforts are needed to ensure safety for passenger carrying motor carriers. CVSA supports many of the provisions offered in Senate bill 554 that was reported out of the Commerce Committee on December 17, 2009. We do have a few concerns with the bill, particularly with respect to unfunded mandates and time tables on research and rules, as well as the State preemption issue. In our written statement, we have offered more specific recommendations.

More emphasis on safety technology will save lives. We strongly support Senate bill 1582, the Commercial Motor Vehicles Advanced Safety Technology Tax Act of 2009. It provides tax incentives for motor carriers to purchase four basic technologies, brake stroke monitoring systems, vehicle stability systems, lane departure warning systems, and collision warning systems. These are tested and proven technologies.

We also believe a new study of heavy vehicle brake systems is needed. We recommended NTSB be authorized, along with provisions of adequate resources, to update their 1992 study to accurately quantify the magnitude of the brake adjustment and deficiency brake problems today relative to heavy trucks.

This concludes my statement, Mr. Chairman, and I thank you again for allowing me to come here and speak before this committee.

[The prepared statement of Mr. France follows:]

PREPARED STATEMENT OF FRANCIS (BUZZY) FRANCE, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE

Mr. Chairman, members of the Subcommittee, thank you for holding this important hearing and for inviting CVSA to testify.

I am Francis (Buzzy) France, President of CVSA, and Administrative Officer with the Maryland State Police.

CVSA is an organization of state, provincial and Federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing Federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems and save lives. Every state in the United States, all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are CVSA members.

Long Term Transportation Bill Is Needed to Continue the Downward Trend in Crashes and Deaths

First, there is some good news to report. The large truck fatality rate dropped by 12.3 percent in 2008, and is down 20.8 percent since 2005. There were more than 1,000 fewer deaths in 2008 from large truck crashes than there were in 2005. I believe significant credit for this goes to the more than 12,000 commercial vehicle inspectors in North America who are working hard each and every day. Credit for this success also goes to the many responsible members of the truck and bus industries who are mindful every day of the need to keep our highways safe.

However, there still were 4,229 deaths in trucks and 307 in buses in 2008, so we still have plenty of work to do in our march toward zero deaths on our roadways.

The downturn in the economy certainly has played a role in this, and my fear is that as it begins to recover, as thankfully it looks to be the case, we will not have adequate resources to maintain these numbers, much less improve upon them.

A critical step for ensuring there are adequate resources in place today and in the future is for the Congress to pass a long term Transportation bill as soon as possible. Solutions to many of the issues I will discuss this morning can only happen through enactment of a long term transportation bill. We look forward to working with this committee on highway and commercial motor vehicle safety policies to be included in the bill, and we are pleased that you are signaling the beginning of this process by holding this hearing today.

Before I do that, I want to comment on issues that you identified in your letter inviting us to testify.

CSA 2010

We support CSA 2010 and give credit to FMCSA for moving it forward. It offers significant promise to transform compliance and enforcement activities to be more "surgical" in nature and to allow for more proactive safety interventions with motor carriers, which will ultimately save more lives. It also is consistent with one of CVSA's major reauthorization priorities—to streamline the compliance review process to make it more effective, as well as to establish a better safety rating process for motor carriers. The CSA 2010 experience thus far through the 9 pilot states shows that is it having a positive impact and is being received well by both enforcement and industry. We fully understand why FMCSA recently announced that they are modifying their timelines for implementing this program and fully support their doing so. A program of this size and scope needs careful planning, as well as input from all affected parties. Throughout his process FMCSA has been listening to us and others, and we appreciate them doing so.

However, CSA 2010 will require the states to expend more resources to implement it, just as it has required the FMCSA to expend additional resources. We fully understand why FMCSA requested an additional $20 million beyond SAFETEA–LU authorized limits for its Fiscal Year 2011 budget for the purpose of rolling out CSA 2010. We do not understand why FMCSA is not seeking additional funding for the states as well. States will need to add additional personnel, upgrade their information systems, upgrade their processes and resources for data challenges, and conduct more training to make CSA 2010 a success. We would recommend that FMCSA direct at least a part of the $20 million they are seeking to the states, or find other sources of funding, such as the High Priority grant program, to help the states. We realize this is an issue for the Appropriations Committee but, nevertheless we wanted to bring this issue to your attention.

Electronic On-Board Recorders and Hours of Service

Mr. Chairman, in our view, the policy decisions made with respect to EOBR technology and Hours-of-Service regulations are closely linked. We are cognizant of the Secretary of Transportation's directive to the FMCSA to re-open the existing hours-of-service rules to try and make improvements. We have been and will continue to be committed to participating in that process and ultimately to enforce whatever the final outcome may be.

However, we believe universal mandate of electronic logging technology is critical so we can ensure a more reliable method of assessing compliance and enforcing hours-of-service, whatever the ultimate outcome of the rules might be. We advocated this position at the May 2007 hearing you chaired on the subject of EOBR's. Adoption of such a rule must also contain critically important technical considerations such as interoperability, data security, driver identification, tampering, uniformity, standard interface for law enforcement, and proper certification of EOBR devices. In our judgment, the EOBR rule recently issued by FMCSA does not go far enough. It falls short of a universal mandate and does not do enough in the areas identified above. While we are aware that FMCSA has publicly stated that another EOBR rule is forthcoming, we would suggest that legislation will be needed to ensure a future rule will meet the ultimate goal of being able to accurately reflect a driver's records of duty status through the use of electronic logging devices—and one that is enforceable—on all commercial motor vehicles.

As for the hours-of-service regulations, we would suggest that taking measures such as mandating electronic logging devices and a supporting documents rule should be in place for several years, as well as the collection and evaluation of more performance data on compliance rates and crashes, before revisiting the regulations. Every time there is a change in the hours-of-service rules it significantly impacts enforcement. The first challenge is for all of the states to adopt the new rule. Most states can do so administratively or through automatic adoption, but a number of them have to do it through an abbreviated legislative process and in a few cases during their normal legislative process. In some cases it can take up to 3 years. This coupled with education and outreach efforts, changes to software and training nec-

essary with any rule of such significance, make this a challenge to the enforcement community. I am not saying that enforcement is not up to the task, because we are. But it is important to get it right with respect to what the best hours-of-service regime should be. The last several years we have seen several changes with respect to the rules and going through such changes is not an easy task. The last item I will note is as we go through this process we should consider harmonizing the rules with respect to those in Canada.

Regulatory and Policy Issues With Respect to FMCSA That Need Resolution before Reauthorization

Before I discuss these issues, let me say that the new FMCSA Administrator, Anne Ferro, has been on the job for barely 6 months. The matters I am about to discuss in most cases precede Administrator Ferro's arrival on the job. Let me also say that in this short period Administrator Ferro has been reaching out to CVSA as I know she has done with other safety partners. When she makes important safety decisions, whether we all agree with them or not, I think we can be certain that she has listened to as many people as possible and has studied the issues carefully. The enforcement community knows that in Administrator Ferro we have a strong safety voice in this Administration and in the Department of Transportation. We appreciate that. I will tell you from our experience with her thus far that she has been doing an outstanding job.

Regulatory Responsiveness and Timeliness

We all know that regulatory responsiveness and timeliness has been a problem at FMCSA. While there has been significant improvement in some areas, more improvement is needed. Since 2007, CVSA has filed 13 petitions for rulemaking with FMCSA that are still pending.

Regulatory Guidance and Policy Memos Issued by FMCSA

We appreciate that FMCSA may have the best of intentions in issuing a Regulatory Guidance and Enforcement Policy Memorandums in its attempts to clarify existing rules, be responsive and assist with their enforcement. However, there is no substitute for rule changes. A recent example of this was the Regulatory Guidance prohibiting texting for commercial vehicle drivers. We support the goal of banning texting while driving for everyone, but I must point out that such guidance is not a substitute for a rule and states have no authority to enforce guidance as opposed to a rule. Generally speaking, if guidance is issued with respect to a rule, there likely is a problem with the rule that needs to be fixed. In the case with the texting ban, there was no existing rule. We do appreciate the Agency recently issuing a Notice of Proposed Rulemaking on this subject, but we still do not have a rule. Another recent example was the Regulatory Guidance issued on March 1 allowing states to send out UCR registration notices reflecting the old 2007–2009 fee structure. Again, we appreciate the intent behind this, but it did not provide the regulatory authority to actually collect the old fees and opens the door for a potential legal challenge.

The same holds true for Policy Memos issued by FMCSA that direct state enforcement agencies to make changes in their enforcement practices. Such policy memos need to be consistent with regulations and if they are not, the rules need to be changed.

This is not just important for enforcement, but for industry as well. They need to be sure to know what the rules are so they are able to comply with them.

I will now discuss our Reauthorization issues.

CVSA Major Reauthorization Issues

More Flexibility in State Grant Programs Is Needed Along With Increased Funding

With commercial motor vehicle traffic projected to increase significantly over the next 5 to 10 years, increases in education, compliance and enforcement efforts are needed to reduce crashes and fatalities from their existing levels and, overall funding levels and programmatic flexibility must be increased significantly for states to make the necessary level of effort to achieve reductions. Many states believe that as funding levels of takedowns and state grant programs are increased, they are done so at the expense of the basic Motor Carrier Safety Assistance Program (MCSAP) and take away the flexibility of states to meet changing safety priorities. This also greatly increases the administrative and accounting burdens on states, which in turn takes away from their ability to use the funding for efforts that will directly impact safety.

Several recommendations are offered:

- There are currently seven existing categorical state grant programs including the Motor Carrier Safety Assistance Program (MCSAP). There are differing

schedules and application processes and the time-frame for the use of the grant money is too short.

- There should be one uniform application date and the clock should not start running on the time for use of the grant money until the day the state receives the grant, and the grant period should be changed to 3 years.
- The existing six state grant programs outside of MCSAP should be reconfigured into five new programs: Enforcement, Education, Incentive, Technology, and Driver.
- The total funding for the entire grant programs should be increased from the current $300 million annually to a minimum of $340 million in the first year and indexed over the life of the bill.
- The current match levels of 80/20 should be changed to 90/10. As the overall funding levels for the grant programs increase, the required amount for the match goes up as well, and that becomes problematic for many states particularly under current economic conditions.
- Costs to conduct the New Entrant program (now a $29 million takedown from the core MCSAP program) should be pulled out of MCSAP and the funding to the states for this program should be covered by the establishment of a new carrier registration fee. Funding to the states for this program should be maintained at 100 percent and eligible expenses should include not just the safety audits but also education and awareness activities, materials and training. Since the New Entrant program is resource intensive, we recommend that states be allowed the flexibility to contract with and use certified third-party auditors to conduct new entrant safety audits should they choose to do so. We understand that FMCSA has received a request on behalf of one of the states to conduct a pilot program for the use of third-party auditors. We endorse this idea and hope that FMCSA will act favorably on the request.

Maintenance of Effort Requirements Must Be Revised

The Maintenance of Effort (MOE) requirements as they currently exist are a significant problem for the states and must be revised. The way it exists now presents in many cases a disincentive for many states to develop new and innovative approaches to their commercial vehicle safety and enforcement programs. While the basic concept of MOE is simple and fair, its implementation has flaws:

It preserves the "relative" CMV safety efforts among the states and the "ratcheting up" effect serves as a disincentive for states to invest more in CMV safety. It does not incent innovative and efficient strategies;

It preserves uneven and non-uniform programs from state to state rather than promoting uniformity and equality from state to state; and

As MOE currently is structured it is not based on risk and performance nor is it outcome-based. It is input and funding based.

With the passage of SAFETEA–LU in 2005, the MOE base period was changed to a sliding three-year period beginning with 2001–2003, and its scope was amended to include enforcement on CMVs without an inspection as well as traffic enforcement on passenger vehicles when they affected safe CMV operations.

There are two primary problems this system created. First, states have no incentive to do anymore than what is necessary to meet their Federal obligation since any expenditures above and beyond their MOE only serves to further increase that obligation in future years. Therefore, a state is better off investing only what it must to meet its MOE requirements and nothing more. However, this issue is complicated by the fact that in many states the amount of Federal funding has not kept pace with the needs of states. When this occurs states have two choices. They can make up the difference and continue to run the program at the same level causing their MOE to increase, or they can reduce the scope of the program. A state that chooses to cut its program will not see its MOE rise but will not be able to sustain its current enforcement program.

The formula specified in the House Reauthorization bill already considered by the Highways and Transit Subcommittee is a step in the right direction, but needs to go further. That bill provides a standard MOE formula for all of the safety grant programs including MCSAP. The formula is based on a 3-year average prior to the date of enactment the bill and is fixed. The MOE would then be in effect for the life of the bill.

In an ideal world MOE would be eliminated. While the MOE concept makes sense, many states contribute much more state dollars to their commercial vehicle safety programs than the 20 percent MCSAP match requires. MOE is a good ap-

proach to newer Federal-state funding programs as it is there to help ensure Federal dollars are not used to replace state dollars. The MCSAP is now a mature program and all of the states have had and will continue to have robust programs.

Flexibility also should be authorized for FMCSA on this issue to give them the means to waive MOE under certain circumstances. Currently, many of the states are in very difficult budget situations and giving FMCSA this authority will help relieve pressure on the states to meet their MOE requirements. Consideration also should be given to an activity-based approach to MOE rather than a financial-based approach. We urge the Committee to take a hard look at addressing this issue and to work with FMCSA, CVSA and the states to come up with an appropriate solution in the next Bill.

Existing Safety Exemptions Must Be Reviewed And the Process for Granting and Reviewing Them As Specified in Statute Must be Adhered To

The proliferation of motor carrier safety exemptions is out of control and the process for granting them must be reformed. They are eroding safety and weakening enforcement efforts at the roadside.

The most blatant examples can be found in SAFETEA–LU which provided a total hours-of-service exemption for all utility service vehicle drivers beyond those periods covered by a declaration of state or national emergency and greatly expanded the agricultural hours-of-service exemption well beyond its original intent of providing relief to farmers during very defined periods of time in the planting and harvesting seasons.

These statutory exemptions must be repealed in the next Transportation bill and both the agricultural and utility industries must re-apply for these exemptions under the Federal regulatory process outlined in Section 31315 of Title 49, U.S. Code. This process requires proof that the exemption would provide a level of safety equivalent to, or greater than, the level achieved without such an exemption. It also requires that such exemptions be monitored to ensure that safety performance is maintained. If it is not, then the exemption can be revoked. Statutory exemptions do not afford the appropriate regulatory agency the ability to exercise proper oversight.

These, and all other safety exemptions, whether granted by statute or by regulation, according to Section 31315, must be reviewed by FMCSA every 2 years and either re-issued or withdrawn based on the safety data available. This process would be no different than that which the Pipeline and Hazardous Materials Safety Administration (PHMSA) exercises with respect to hazardous materials special permits and approvals.

Mr. Chairman, as a way to get started, we recommend that the Inspector General (IG) of the Department of Transportation conduct a study of the exemption process within FMCSA just as the IG has recently conducted with respect to PHMSA's administration of the hazardous materials safety permit program. We understand the House T & I Committee has requested from FMCSA a list of all safety exemptions going back to the 1950s and that most certainly this information should be included in the IG study.

Why spend time developing an hours-of-service rule yet continue to allow significant segments of the trucking industry to be exempted from the rule? Why spend time developing a comprehensive rule on EOBR's if there is no need to track the record of duty status of a significant number of drivers in various segments of the industry? Fatigue is not caused by the product hauled or service provided but is caused by the time spent by drivers behind the wheel and their time on task.

I will offer a brief example of how this is impacting on "real world" operations. Recently CVSA's Executive Director took a call from a driver, and I have included below the text of the e-mail he sent to me summarizing the discussion:

> *"I just took a call from a Utility Service Driver pleading for help in rolling back the HOS exemption. He told me in some cases him and other drivers in his company have worked 16–18 hours per day and up to 120 hours in 7 days during emergencies. After these emergencies they are given 8 hours off and asked to return to work. In these 8 hours he has to drive home (he lives 1 hour from his work location), as well as take care of any other personal items, allowing him about 4 hours of sleep. He said often times when he hears stories of drivers being tired and getting in crashes their company covers up for the problems. He told me the story of the "mystery deer" that always seems to run in front of their drivers when they are out working. He also indicated that they have asked for their union to support them and they have been unwilling to do so, and the company he works for has no policy on fatigue. He said at least under the old rules they could get a 24 hour reprieve after an emergency. Now they get no break either after an emergency or at any other time."*

We understand FMCSA has recently taken positive action in this regard with one of the states where the exemption issue was a concern. This particular state had a regulatory incompatibility that was not acted upon within the 3 year time-frame afforded under the MCSAP. A letter was sent to the State encouraging them to act upon the incompatibility or else they were at risk of losing MCSAP funds. The state acted and the end result was they came into compliance. This is an example of where the regulatory agency exercised their authority on this issue and it worked—when statutory exemptions are in place there is no recourse for FMCSA. It handcuffs FMCSA and they have no means to exercise their authority or monitor these motor carriers for compliance and as a result safety is compromised. This is in our view not just unacceptable, it is irresponsible.

Exemptions are a privilege, not a right.

Increased Truck Size And Weight Should Not Be Allowed Until More Safety Data Is Available And More Funding is Needed for Size And Weight Enforcement

The truck size and weight issue is very much in the forefront as preparation begins for the next Transportation bill.

CVSA does not support enacting any significant legislative or regulatory changes to truck size and weight until such time as we have a more uniform, methodical and science-based approach to evaluate the safety, infrastructure and environmental costs and benefits through carefully constructed pilot programs. This has not been done and as a result we have a patchwork system of regulations, exemptions, and permit programs that present a challenge for enforcement as well as for industry to maintain compliance.

CVSA advocates a stronger Federal role in facilitating a framework for research, policy and performance based regulations and enforcement for truck size and weight operations. We did not support Section 194 of the 2010 DOT Appropriations bill that provided for truck size and weight exemptions (above the national limit of 80,000 lbs.) on sections of the Interstate Highway System in Maine and in Vermont as it was written. These were described as 1 year "pilot" programs but neither the statutory or report language provided meaningful criteria on how the pilots should be carried out except to direct the two states to work with the Secretary of Transportation to determine the impact on safety, road durability, commerce, and energy use. We understand the economic reason for these state pilots, but safety should be an equal priority.

Four months after the pilots began, the Federal Highway Administration has begun to work with our state enforcement representatives in those two states to set up meaningful criteria for these pilot programs. What hopefully will now be included in the criteria, and what we told Secretary LaHood in a letter, are 20 separate recommendations that are necessary for any pilot program. Among them are that motor carriers must be selected to participate in the pilot based on a proven track record of superior safety performance and that states participating in the pilot must be fully compliant with Federal Motor Carrier Safety Regulations (FMCSR). It happens that Maine receives only 50 percent of its annual MCSAP Federal funding from FMCSA because it provides exemptions from driver hours-of-service regulations for all motor carriers operating within 100 air miles from their place of business. We believe as a condition for participating in the pilot, Maine should revoke this exemption and become fully compliant.

Until there is meaningful data from these pilots, we oppose any more similar pilot programs in other states. We have expressed these concerns to the House and Senate Transportation Appropriations Subcommittees because we understand they are already being pressed to extend the pilots to other areas of the country in the 2011 Fiscal Year. A string of pilots would in all reality be a "backdoor" process to changing the national truck size and weight laws.

Another important component of the size and weight issue is enforcement. The state safety enforcement agency is charged with the responsibility of enforcing the Nation's size and weight laws, but may only use MCSAP funds for such enforcement activity when it is tied to an inspection. More comprehensive size and weight enforcement must extend beyond that limitation and depends upon funding from the Federal Highway Administration (FHWA). While a number of state enforcement agencies do receive the FHWA funding and support through their state DOTS for overall size and weight enforcement, others have difficulty in making the necessary agency linkages for such funding support. CVSA's Size and Weight Committee is working with FHWA on this issue and we will come back to this Committee with more detailed recommendations to assist in resolving this problem. One recommendation to consider is allowing labor for size and weight enforcement to be an eligible expense under the Federal-aid highway program in Title 23. Currently this funding eligibility does not exist.

More Efforts Needed to Ensure Safety for Passenger Carrying Motor Carriers

While historically the transportation of passengers by motorcoach has been a very safe form of transportation, recent events have caused this to become a more front and center safety issue. On the whole, the industry takes great pride in their safety commitment and performance as they should. However, there is tremendous competition in the industry and there are a number of rogue operators that do not respect safety and are cutting corners in order to generate business. We believe there are some steps that can and should be taken to ensure that this form of transportation remains as safe as it can be and more resources are made available to the appropriate Federal and state agencies for effective oversight, monitoring and enforcement.

CVSA supports many of the provisions offered in Senate Bill 554 that was reported out of the Commerce Committee on December 17, 2009. We do have a few concerns with the bill, particularly with respect to unfunded mandates and timetables on research/rules, as well as the state preemption issue. The following information offers more specifics on our policy positions on this issue.

Part 350 of the FMCSR should provide more specifics in terms of what activities are eligible under the MCSAP for motorcoach compliance and enforcement programs, as well as what elements should be contained in a state's Commercial vehicle Safety Plan. In this regard, FMCSA should be cognizant of the states' needs for resources and training as new motorcoach oversight and safety requirements are instituted. As part of legislative and regulatory modifications, it should be made clear that roadside inspection and periodic inspection data on all buses and school buses (for both inter and intrastate operations) need to be submitted to FMCSA and maintained in MCMIS to be accounted for in establishing the motor carrier's safety fitness rating. Congress needs to authorize and appropriate the necessary resources for these efforts.

Safety belts should be required on all school buses and motorcoaches. NHTSA and FMCSA need to collaborate on standards for OEM and retrofit design and installation requirements. Congress needs to direct a study to examine the costs and benefits associated with retrofitting all in-use buses with seat belts, and take the findings and costs into consideration when (assuming the cost-benefit is to the positive for benefits) the mandate is put in place for retrofits.

Occupant protection and crashworthiness and avoidance standards need to be pursued for items like window glazing to minimize ejection through portals in the roof or sides of the vehicle, fire prevention and suppression systems, roof strength and crush resistance, collision warning systems, rollover stability systems, lane departure warning systems and brake stroke monitoring systems. While measures to improve bus design and occupant protection should be identified, the specifics of how to implement them should be left to the appropriate regulatory agency (NHTSA) for action. Incentives should be investigated as a potential option to help accelerate implementation.

Passing of the New Entrant Safety Audit should be required as a condition of the carrier being issued their DOT registration/operating authority. As a part of the New Entrant requirements, consideration should be given to enacting minimum training standards for drivers as well as critical passenger motor carrier safety personnel.

There needs to be stronger safety regulation on school buses used for charter transportation (and school transportation) as well as public transit buses used in charter transportation. Exemptions from safety regulations and oversight need to be minimized. States need to be provided with adequate resources to make sure they have the ability to conduct the proper amount of inspections and oversight.

The provision in SAFETEA–LU prohibiting motorcoach inspections to be conducted roadside is overly restrictive and needs to be revisited. While most states work with origin and destination locations to do inspections on the premises or nearby before loading or after unloading passengers, in some cases (for various reasons) this does not always work effectively. In addition, while conducting motorcoach inspections roadside or at rest stops/weigh stations is not the preferred solution due primarily to the safety of the passengers, the outright restriction should not be in the law. States must be given flexibility to implement best practices and conduct inspections where they are most needed. Every effort should be made to minimize risk to the passengers.

Brokers of passenger transportation services need to be regulated and subject to the same regulatory regime as are freight forwarders are for the trucking industry. There needs to be appropriate penalty provisions and enforcement oversight on brokers who fail to comply or who are negligent in their duties/responsibilities.

Windshield mounted video monitoring systems that help assist with driver/operator safety need to be able to be installed in a fashion that do not impede the driv-

er's ability to perform. Regulatory changes need to be enacted to account for new technologies and changes to windshield designs.

Standards with respect to passenger carrying driver licensing, testing, training and certification need to be revisited and likely strengthened to make sure they are appropriate and effective.

The "Camioneta" population (9–15 passenger vehicles and motor carriers) needs to be subject to a much stronger regulatory framework.

All school buses and motorcoaches should be required to undergo periodic inspections (at least once annually) in accordance with Part 396 of the FMCSR, and each state should be required to have an inspection infrastructure/program to support, deliver and oversee these inspections. This could be accomplished through the use of 3rd parties should the state choose to do so. Congress needs to authorize and appropriate resources to the states to establish these programs, but long term they should be self-sustaining and pay for themselves. The data resulting from these inspections needs to contained in a centralized database (MCMIS) to be used for analysis and also should be accounted for in the safety fitness determination of the motor carrier.

CVSA also supports the Secretary's recent Motorcoach Safety Action Plan. Of CVSA's 17 Reauthorization recommendations with respect to bus and motorcoach safety, 11 of them are included in the Plan. In particular, the process the Secretary used in developing the plan was commendable and CVSA appreciates being involved in the process. We do have some concerns relative to whether resources are available in DOT to meet their projected timelines and funding being made available to states to deal with the potential mandates.

FMCSA is making good strides in their efforts to increase their oversight of the industry and put in place programs for enhancing safety. In particular, the vetting process they have instituted is having very good success. CVSA fully supports this vetting process, and FMCSA should be afforded additional resources to help administer this process in the future and not just for motorcoach operators, but for ALL motor carriers. Proper due diligence at the front end when a motor carrier enters the business not only helps to ensure only responsible motor carriers are able to conduct business, it is important in identifying and taking appropriate action on "chameleon" carriers who are skirting the law.

More Emphasis on Safety Technology Will Save Lives

The mission and goals of CVSA necessarily focus on better enforcement as the means to prevent crashes and save lives. At the same time, however, we also believe that greater use of safety technology will also help in reaching this goal. CVSA strongly supports Senate Bill 1582, and its companion bill in the House, H.R. 2024, the "Commercial Motor Vehicle Advanced Safety Technology Tax Act of 2009." It would provide tax incentives for motor carriers to purchase four basic technologies: brake stroke monitoring systems; vehicle stability systems; lane departure warning systems; and, collision warning systems. These technologies have been tested and proven to work.

As one example of the effectiveness of just one of these technologies, a DOT analysis has shown that 48 percent of accidents could be prevented by the use of collision warning systems.

We support this legislation because we believe it is the quickest way to encourage more widespread use of this technology by the truck and bus industries. A mandated rule can take three to 5 years. Support for this bill does not preclude mandates in the future, but the incentive takes effect the day the bill is signed and we will start saving lives.

A New Study of Heavy Vehicle Brake Systems Is Needed

The use of safety technology depends on continuing research of mechanical aspects of truck parts and equipment. FMCSA's Large Truck Crash Causation Study (LTCCS) indicated that deficient brakes were a factor in over 29.4 percent of the fatal crashes that they investigated and ranked brakes as the number one equipment-related cause factors associated with the crashes. In another recent study of the LTCCS data sponsored by FMCSA, a brake out of service condition increased the odds of the truck being assigned the critical reason in the crash by 1.8 times. In rear-end and crossing paths crashes, brake violations, especially related to adjustment, increased the odds of the truck being the striking vehicle by 1.8 times.

And the most recent compilation of statistics from CVSA's Operation Air Brake Program indicate of the more than 2.19 million brake systems inspected, 17 percent were placed out of service for brake-related defects.

Yet the last comprehensive study of brake system issues was conducted by the National Transportation Safety Board back in 1992. Despite the overall advance-

ment of technology and enhanced enforcement activities since 1992, there is still evidence that poorly adjusted or defective brakes still pose a serious threat to highway safety. We recommend that the NTSB be authorized along with the provision of adequate resources to update this 18-year old study to accurately quantify the magnitude of the brake adjustment and deficient brake problems today relative to heavy trucks.

Additional Reauthorization Issues

While I have spent a good deal of time today in outlining our major motor carrier safety issues as we all know there is no one silver bullet to reduce truck and bus fatalities and crashes. There are multiple approaches that can be taken to improve truck and bus safety and I want to take this opportunity to briefly review other steps that can be taken to help us achieve our safety goals.

A *single point of carrier registration,* credentialing and safety data access should be established. There are at least six different credentialing and registration processes at the Federal level for motor carriers, not to mention various intrastate permits and authorities. They are the UCR, U.S. DOT #, Operating Authority, Hazmat permitting, Proof of Insurance, IFTA and IRP. The last 10 years has seen tremendous growth in technology development and deployment and the government needs to keep pace by establishing a web portal with FMCSA that combines the common data elements from each of these six programs. Helping to streamline and standardize the data entry process will help FMCSA and the states to have cleaner and more accurate data at the point the carrier enters into the system, which will then serve to assist in all aspects of compliance and enforcement.

The distinction between *inter and intrastate commerce* should be eliminated. These distinctions have resulted in a complicated web of applicable regulations, exemptions and inconsistent enforcement practices.

Education and outreach efforts are a critical element in addressing safety problems and creating a safety conscious culture. CVSA recommends additional funding be provided to states for these purposes over and above the basic safety grant programs to supplement basic compliance and enforcement strategies. Funding should remain at 100 percent and states should be encouraged to undertake new and innovative e outreach and awareness initiatives.

FMCSA needs to be provided legislative authority to establish and fund *national drug and alcohol testing clearinghouse,* well as the authority to close down fraudulent drug testing laboratories.

Senator LAUTENBERG. Thank you for your testimony.

Ms. Gillan, good to see you and we look forward to hearing from you.

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

Ms. GILLAN. Thank you, Senator Lautenberg, and I really appreciate the opportunity to testify this morning on motor carrier safety issues. You will have to bear with me because many of the points that I will raise this morning have already been addressed, both in your statement and in the statement of Chairwoman Hersman.

While Advocates welcomes the news about fewer truck crash deaths and injuries, it still means that we need to move forward with an overdue and unfinished motor carrier safety agenda that needs to be adopted if we are really serious about achieving significant, steady, and sustained reductions in truck crashes and deaths and injuries.

In my statement, I have a chart which shows, going back 40 years, overall dips in highway fatalities, and they always coincide with periods of economic downturn. So we are concerned that this reduction that we have experienced now is going to be temporary and will certainly go back up as soon as the economy rebounds.

Another map that we put in our testimony shows that in the last 10 years, there have been over 55,000 deaths as a result of truck crashes, and this is both unnecessary and unacceptable. Some of

the issues that are included in my testimony will go a long ways toward reducing deaths and injuries related to truck crashes.

My statement for the record that I submitted is very long and detailed, and I would really like to just spend the next few minutes highlighting some of the critical issues that we believe that the Federal Motor Carrier Safety Administration needs to address, as well as leaders in Congress.

Large, heavy trucks are dangerous, destroy our roads and bridges, and are dramatically overrepresented each year in severe crashes, particularly fatal crashes. A major step forward in truck safety is to enact S. 779, the Safe Highways and Infrastructure Protection Act sponsored by you and other members of this committee. The bill will stop the deadly race in States for bigger, heavier, and longer trucks, and this legislation is supported by over 75 safety, consumer health, environmental, and law enforcement groups.

Let me now turn to FMCSA's performance as a safety regulator and identify where congressional oversight and actions are still needed. As you heard from Chairwoman Hersman, there are many, many recommendations that NTSB has made to FMCSA concerning the safety of carriers and drivers. In most cases, the agency has given no response, the response was unacceptable, or the response was minimally adequate. And we feel that Congress should direct FMCSA to fulfill all of the major outstanding NTSB safety recommendations.

Driver fatigue is still a serious problem in the trucking industry, and there are two important strategies for addressing it. One is advancing a safe hours-of-service rule, and the other is to improve enforcement by requiring electronic on-board recorders. The current hours-of-service rule has been overturned by the U.S. Court of Appeals in two back-to-back, unanimous decisions and in each case the court opinion was a scathing rebuke of the agency's legal reasoning. I am pleased to report this morning that the long-running dispute is on hold while a new rule is being developed, and we hope that this new rule will be issued by August 2011.

It has been 15 years since Congress directed the Secretary to address electronic on-board recorders (EOBRs). We have waited too long for this technology, and it is time for Congress to act and mandate universal use of EOBRs.

Keeping unsafe drivers and unsafe carriers off the road is critical. There are many rulemakings that Congress has directed FMCSA to implement concerning minimum requirements for new entrants, and the need to implement a proficiency examination, and an entry-level driver training standard. None of these rules have been issued or, if they have, they have been weak and we believe ineffective. The agency still has not issued a final rule requiring sufficient behind-the-wheel driver training.

Another factor that must be considered is FMCSA still does not get tough on motor carrier violators. The agency evades the imposition of stiff penalties that would deter companies from violating safety rules.

And as has been mentioned before in earlier testimony, we know the tragic consequences of unsafe and unscrupulous motor carrier and motorcoach companies that shut down one day and open for

business the next. Unfortunately, there are hundreds of these so-called reincarnated companies that are still operating illegally and with impunity in the United States, and FMCSA needs to develop a new process for stopping this dangerous practice each and every time.

Let me conclude by saying creation of the new Federal agency 10 years ago by Congress to oversee motor carrier and motorcoach safety has not resulted in the rigorous oversight and enforcement that Congress directed and the public expected. We are hopeful that CSA 2010 will help address some of these problems. However, it will still be necessary for Congress to conduct strong oversight and provide clear direction to this agency in legislation if we expect any significant progress in reducing truck crash deaths and injuries.

Thank you very much for your leadership and we look forward to working with you on advancing motor carrier safety.

[The prepared statement of Ms. Gillan follows:]

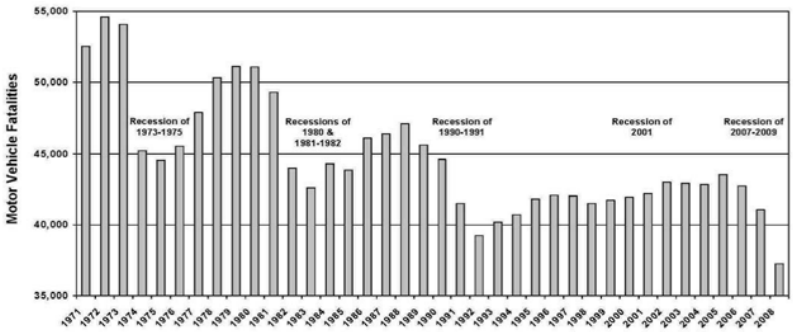
PREPARED STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Fatalities in Crashes Involving Large Trucks
55,377 total fatalities from 1998–2008

Sources: Fatality Analysis Reporting System, National Highway Traffic Safety Administration; Advocates for Highway and Auto Safety

U.S. Recession Periods and Motor Vehicle Fatalities

Chart shows correlation between U.S. recessions and motor vehicle fatalities, 1971–2008.*



Year and Recession Period

*Motor vehicle fatality data only available through 2008.

Sources: The National Bureau of Economic Research, *http://www.nberorg/cycles/cyclesmain.html;* Fatality Analysis Reporting System (FARS), National Highway Traffic Safety Administration

Introduction

Good morning Chairman Lautenberg, Ranking Member Thune, 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 celebrating 20 years as 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 of the 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.

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.

I cannot emphasize enough the critical role that this Subcommittee and Congress must play 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 in order to enhance safety and protect highway infrastructure; to stop enactment of piecemeal special interest exemptions from crucially important Federal safety requirements; and finally, to get the Federal regulatory safety agency, the FMCSA, off the sidelines and actively back on the field to improve motor carrier and highway safety.

The Annual Death Toll from Large Truck Crashes Remains Unacceptable

Over the decade from 1998 through 2007, the number of people killed in truck-involved crashes has averaged 5,145 fatalities.[1] In 2008, one of every nine 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 our annual traffic fatality data,

[1] *Large Truck and Bus Crash Facts 2007*, FMCSA–RRA–09–029, Federal Motor Carrier Safety Administration (FMCSA) (Jan. 2009).

[2] *Traffic Safety Facts—Large Trucks,* DOT HS 811 158, National Highway Traffic Safety Administration (NHTSA) (2009).

with large truck deaths still accounting for about 11–12 percent of all annual highway fatalities, although large trucks are only three to 4 percent of registered motor vehicles.

Large, heavy trucks are dramatically overrepresented each year in severe crashes, especially fatal crashes. Although truck crash fatalities have declined in 2007 and 2008, 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.[3] Industry reports over the last several months have verified this decline in freight tonnage. The American Trucking Associations (ATA), for example, reported that for-hire tonnage fell in June 2009 by 13.6 percent over the freight transported in 2008, and freight analysts do not believe that the decline will stop until the second half of 2010 at the earliest.[4] This is consistent with previous tonnage declines associated with economic recessions.

In terms of annual fatalities, I have attached to my testimony a chart that shows the strong relationship between economic recessions and declines in total highway deaths since 1971.[5] 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.[6] 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 pushing forward with a strong motor carrier safety agenda. Aside from the distinct likelihood that truck deaths will increase as the economy and freight transportation improve, the fact is that the fatality rate for large trucks continues to outstrip the rate for light vehicles and passenger cars. In 2008, the fatality rate for occupants of passenger cars stood at 0.92 deaths per 100 million vehicle miles traveled (VMT) while the large truck fatality rate was 1.79 deaths per 100 million *truck* VMT—about *double* that of passenger cars.[7] The overall national traffic fatality rate for all traffic crashes was reported at 1.25 deaths per 100 million VMT.[8]

Several years ago, in a stealth move that appeared in FMCSA budget submissions to Congress, FMCSA attempted to camouflage the actual truck fatality rate by merging it with the much lower fatality rate for buses and motorcoaches. The agency then further diluted the very high large truck fatality rate by measuring the combined rate not against 100 million *truck* VMT, or even against the total VMT of all commercial motor vehicles, but against the much more generous figure of *all* annual VMT for all vehicles—even including motorcycles. As a result, rather than state the traditional rate as 1.79 deaths per 100 million *truck* VMT for 2008, FMCSA now boasts a rate of just 0.160 fatalities per 100 million VMT, which is an order of magnitude smaller and, conveniently, already exceeds the agency's ambitious 2011 tar-

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[3] *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.

[4] *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*, 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] *U.S. Recession Periods and Motor Vehicle Fatalities, 1971–2008*, Advocates for Highway and Auto Safety (2010).

[6] "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).

[7] *Traffic Safety Facts 2008*, DOT HS 811 170, NHTSA (2010).

[8] *Id.*

get for fatality reduction.[9] This statistical claim distorts the traditional and fair means of measuring the truck fatality rate solely based on a truck exposure measure (*truck* VMT), and masks the extraordinary over-representation of large trucks in annual fatal crashes. It's amazing that the agency believes that Congress will be deceived by this shell game with numbers to mask the extraordinarily high large truck fatality rate.

Recommendation:

- *FMCSA should be required to accurately assess and publicly release the large truck fatality rate by reporting the total number of truck-involved fatal crash deaths measured against annual truck vehicle miles traveled.*

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.

A pending bipartisan Senate bill, S. 779, the Safe Highways and Infrastructure Preservation Act of 2010, or SHIPA, sponsored by Chairman Lautenberg, has the potential, if enacted, to dramatically improve the safety landscape for all motorists, including truck drivers. SHIPA will stop the relentless cycle of demands and pressure imposed on the states 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 protection, fuel use, the Highway Trust Fund, and a balanced, national transportation freight strategy.[10]

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. 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. 1799,[11] would allow trucks weighing up to 97,000 pounds and more throughout the country and melt the 1991 freeze on longer combination vehicles (LCVs),[12] while using the specious argument that trucking will become safer because bigger, heavier trucks mean fewer trucks on the road. 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 there will be more, not fewer, trucks than ever before.

Unfortunately, Federal law since the 1982 Surface Transportation Assistance Act[13] mandates certain minimum truck sizes, weights, and configurations, but does not restrict the length of trailers and semi-trailers in truck combinations.[14] 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 with combination trucks. This has resulted in the standard semitrailer increasing in length to 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 57 feet, and a few states even permitting 59- and 60-foot long trailers.

Second, increasing the volume of a trailer triggers the argument that some commodities in shorter trailers fall beneath the Federal axle and gross weight limits on the Interstate highway system in Federal law[15] or even the higher maximum weight limits allowed in many states on their non-Interstate highways. This claim is turned into an incessant drum beat to raise weight limits in order to take advantage of the increased volume of the bigger, longer trailers. This strategy is carried out simultaneously at both state and Congressional levels to pressure both Federal and state lawmakers. This is the upward "ratcheting" that special interests have been so successful at for decades.

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[9] *Budget Estimates Fiscal Year 2011*, at I–1, FMCSA (Jan. 2010).

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

[11] *Safe and Efficient Transportation Act of 2008*, introduced by Rep. Michael Michaud (D–ME).

[12] Title 23 U.S.C. § 127(d).

[13] P. L. No. 110–53.

[14] Title 23 U.S.C. § 127.

[15] *Id.*

The main argument advanced for the supposed advantages 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 ever before*.[16] In fact, from 1972 to 1987 alone, the number of for-hire trucks increased by nearly 100 percent.[17] During this era, an increasing number of states adopted longer, wider, heavier trucks and trailers on their state highways and also interpreted their Interstate grandfather rights more liberally to grant more overweight permits to extra-heavy trucks.[18]

The result is predictable: trucks were bigger and heavier than ever before, and there were still *more of them* than ever before. The total increase in the number of trucks by 1992 was 128 percent over the 1972 baseline.[19] Longer, larger, heavier trucks 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.[20] According to the Federal Highway Administration (FHWA) the number of trucks on the road today is at least 250 percent or more over 1972 figures.[21]

The two actions of putting the lid on truck lengths and freezing existing state weight practices for the entire NHS are complementary and both are crucial to achieving SHIPA's goal. While SHIPA extends current state and Federal weight limits on the Interstate system to the non-Interstate highways on the National Highway System, it 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 than the maximum weight figure in Federal law. SHIPA also restores FHWA to its traditional position as steward of state and Federal size and weight limits for public safety and infrastructure protection.

Recommendation:

- *Congress should enact S. 779, 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 qualifications and medical examinations.[22] These exemptions pose safety issues because

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[16] 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 preemption 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).

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

[18] 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.

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

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

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

[22] *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 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

Continued

they are untested 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 make 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 detour from established safety requirements, are not based on research and scientific analysis, and pose increased safety risks for commercial operators and the public. Because they 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 exemption from safety rules.

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

Even FMCSA itself openly decried the exemptions practice in its 2000 proposed revision of the hours-of-service rule. The agency concluded that the existing multiple 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) representing state law enforcement officials who are charged with ensuring compliance with Federal motor carrier safety rules.

Congress has also granted similar special interest exemptions for truck size and weight limits. Most recently, Maine and Vermont have been granted special legislative exemptions as "pilot programs," which allow the operation of 100,000-pound trucks on the northern section of Maine's I–95 to the Canadian border, and of 120,000-pound trucks on all of Vermont's Interstate highways.[25] 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 size and weight exemptions that have been enacted. Granting special interest requests for specific exemptions from the Federal axle, and both gross and bridge formula weight limits in Federal highway law undermines national uniformity, subjects roads and bridges to super-heavy weights that accelerate highway and bridge deterioration, 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.

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.[26]

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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).

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

[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] 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).

[26] *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.

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.*
- *All exemptions from motor carrier safety regulations should be subject to U.S. DOT and FMCSA review under* § 31315.
- *Legislation should be adopted, similar to* §31315, that requires U.S. DOT and FMCSA to evaluate all requests for truck length exemptions.

A Decade of Failed Leadership, Inadequate Oversight and Ineffective 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.[27] Over its first 10 years the agency compiled a poor track record that was at odds with its safety mission. 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 continue to hope that FMCSA can finally be turned into an effective force for motor carrier safety under its new leadership, congressional direction, oversight and guidance will continue to be needed in order to improve the performance of the agency.

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 were finally closed out in exasperation by NTSB because there was no response, the response was unsatisfactory, or the response was minimally adequate.

The NTSB's current list of "Most Wanted Transportation Safety Improvements" includes a number of safety recommendations for commercial motor vehicles.[28] NTSB has again placed two of the four FMCSA recommendations in the "Acceptable Response, Progressing Slowly" (yellow) category and two in the "Unacceptable Response" (red) category. The two recommendations that were deemed unacceptable have remained on the list as Code Red responses since 2008. One of these unacceptable responses on the 2010 Most Wanted List continues to indicate NTSB's long-term frustration with the U.S. DOT's failure to require electronic on-board recorders to corroborate commercial driver compliance with Federal hours-of-service limits.[29]

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

[28] Available at *http://www.ntsb.gov/recs/mostwanted/Federal_issues.htm*. The current, 2010 Most Wanted Transportation Safety Improvements for motor carriers include the following issues:

- Prohibit Cell Phone Use by Motorcoach Drivers: Acceptable Response Proceeding Slowly
- Require Electronic Onboard Data Recorders to Maintain Accurate Carrier Records on Driver Hours of Service: Unacceptable Response.
- Improve the Safety of Motor Carrier Operations: Action Needed by FMCSA.
- Prevent Medically Unqualified Drivers from Operating Commercial Vehicles: Action Need by FMCSA.
- Prevent Collisions by Using Enhanced Vehicle Safety Technology: Acceptable Response, Proceeding Slowly.
- Enhance Protection for Motorcoach Passengers: Action Needed by NHTSA.

[29] For the past 30 years, the Safety Board has advocated the use of on board data recorders to increase HOS compliance. In 1977, the Board issued its first recommendation on the use of on board recording devices for commercial vehicle HOS compliance, in response to FHWA's withdrawal of an advance notice of proposed rulemaking (NPRM) concerning the installation of tachographs. NTSB then urged FHWA to mandate the use of on board recorders in NTSB's 1990 safety study, *Fatigue, Alcohol, Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes* after concluding that on board recording devices could provide a tamper-proof mechanism to enforce the HOS regulations. That request for a mandate has been re-issued periodically

Continued

Another example of the agency's failure to adopt reasonable NTSB recommended safety measures includes preventing motor carriers from operating if they are found to have violated either mechanical safety standards or driver safety standards. NTSB has listed the agency's failure to adopt this recommendation as an "Unacceptable Response."[30] Currently, FMCSA will consider a stop operations order for a motor carrier only if it finds certain violations of both mechanical and driver safety standards. A violation of only one of the two categories will not result in a stop operations order from the agency.

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 Failed to Monitor and Ensure the Adequacy of State Motor Carrier Safety 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.[31] FMCSA last publicly addressed the state inspection system in a 2001 *Federal Register* notice indicating that 25 states have approved periodic inspection programs for trucks.[32]

More recent public information does not exist. A recent examination of the FMCSA website revealed that there were no entries on state truck and motorcoach inspection programs, nor was there information on the current status of state compliance with the vehicle inspection and repair requirements, including any updated listing of states that may have instituted periodic commercial motor vehicle inspection programs since 2001.

FMCSA has no reports that are publicly available evaluating how comprehensive the commercial motor vehicle inspection program may be in each of the 25 states. Our information is that no audits have been performed and that none are planned. Timely information on state truck and motorcoach inspection programs—whether they are still current and how well and how often they inspect commercial motor vehicles for safety compliance—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, it appears that 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.[33] 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 may 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, they can go for long periods of time without being stopped for an inspection. Relying on roadside inspections to detect mechanical defects that pose threats to public safety is simply too late—those vehicles should never have been on the road from the start.

One example of the serious consequences that can occur as a result of weak oversight of state-run, state-approved, and company self-inspections involves 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

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by NTSB since 1990. Since 2007, NTSB has raised the need for an EOBR mandate to its Most Wanted List.

[30] According to NTSB:

The NTSB reiterates Safety Recommendation H–07–3 and both reiterates and reclassifies Safety Recommendation H–99–6 to the Federal Motor Carrier Safety Administration * * * 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. (H–99–6).

www.ntsb.gov/recs/letters/2009/H09_32_41.pdf. (Jan. 4, 2010).

[31] 49 C.F.R. Part 396; MCSIA, §210, *codified at* 49 U.S.C. § 31142.

[32] 66 FR 32863 (June 18, 2001). *See also* prior notice issued by the FHWA, 63 FR 8516 (Feb. 19, 1998).

[33] 49 U.S.C. § 31142.

from operating by FMCSA just weeks earlier, but continued to operate under the name Iguala Busmex.

Among other Federal violations, the NTSB's investigation of the crash found 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 in route to its destination. NTSB found that the motorcoach had been inspected by a Texas state government-certified private inspection company.[34] 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 tax-axle wheels mounted, and a grossly contaminated brake assembly.

The Texas commercial motor vehicle state inspection program was approved by FMCSA in 1994. NTSB investigators concluded that there was no FMCSA quality control evaluations of agency-approved state programs, and no state oversight of the certified inspection companies.

We commend the Senate Commerce, Science and Transportation Committee for approving S. 554, the "Motorcoach Enhanced Safety act of 2009," originally 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.*
- *Congress should direct FMCSA to conduct annual inspections of a sample of state-authorized or -operated truck inspection programs to determine their effectiveness .*
- *Congress should direct FMCSA to audit motor carrier self-inspection programs in each state to determine how well trucks are being inspected and maintained for safe mechanical condition.*

FMCSA Regulatory Issues

Electronic On-Board Recorders—A Case Study of Bureaucratic Bungling: It has been 15 years since Congress in 1995 directed the Secretary of Transportation to address the issue of Electronic On-Board Recorders (EOBRs).[35] After all this time, FMCSA has only recently produced a weak and ineffective EOBRs regulation which the agency itself admits will apply to less than one percent of motor carriers.[36]

There is strong support for EOBRs from many quarters. At a hearing before this Subcommittee held May 1, 2007, on the topic of EOBRs,[37] Senator 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."[38] Similar sentiments were expressed by the President of CVSA.[39]

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[34] The company name is "Five-Minute Inspection, Inc," R. Accetta, *Motorcoach Run Off Bridge and Rollover Sherman, Texas*, August 8, 2008, PowerPoint Presentation, Office of Highway Safety, NTSB, Oct. 30, 2009. *http://www.ntsb.gov/events/2009/sherman-tx/introduction.pdf*.

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

[36] Electronic On-Board Recorders for Hours-of-Service Compliance, Final Rule, 64 FR 17208 (Apr. 5, 2010).

[37] 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.

[38] 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.

[39] "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.

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.[40] As noted above, NTSB is resolute in continuing to list an EOBR mandate on its Most Wanted list and to deem the agency's response "Unacceptable."

Yet, FMCSA's response is an extraordinarily weak rule that 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). This criterion immediately produces an extremely limited population of truck and motorcoach companies. Because FMCSA annually conducts CRs on only 2 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.

The rule has other serious defects, including the following:

- The EOBR Global Positioning System (GPS) function will record only at 60 minute intervals rather than at 1 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 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 5 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 driver's 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.[41]
- 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.

Although FMCSA has indicated that another, expanded rule may be under consideration,[42] it appears that the timetable on any further action has already slipped from this year into next.

It is time for Congress to act. As mentioned before, this Committee has approved a comprehensive motorcoach safety bill that includes a mandatory requirement for EOBRs on all motorcoaches.[43] The House of Representatives has also included an EOBRs requirement for all commercial motor vehicles in the Transportation and Infrastructure Committee's draft Surface Transportation Authorization Act.[44] Advocates supports both of these measures.

Recommendations:

- *Congress should pass the Motorcoach Enhanced Safety Act of 2009 mandating EOBRs on all passenger-carrying commercial motor vehicles under FMCSA jurisdiction.*
- *Congress should enact legislation requiring the FMCSA to issue a universal EOBR regulatory requirement for all other commercial motor vehicles in interstate commerce.*

Truck Driver Hours of Service and Fatigue: I am pleased to be able to testify today that the long running dispute over the truck driver HOS rule is on hold while

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[40] 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.

[41] It also undermines the safety management of carriers by reducing critical information about whether their trucks and motorcoaches are illegally speeding. Under current FMCSA regulation, AOBRs are required to record vehicle speeds, so this policy choice by FMCSA is weaker than the current agency rule.

[42] *Motorcoach Safety Action Plan*, U.S. Department of Transportation, DOT HS 811 177, November 2009.

[43] S. 554, § 12(a).

[44] *See* § 4036, Surface Transportation Authorizing Act of 2009, House Committee on Transportation and Infrastructure, Committee Print, available at *http://transportation.house.gov/*.

a new rule is developed. This does not mean that we have relaxed our opposition or vigilance regarding the serious safety failings of the current HOS rule. However, we believe that the quickest way to improve safety and to get a better rule issued is to work with the new Administration to produce a rule that advances public safety and not only productivity.

The federal commercial driver HOS rule is of critical importance to truck safety. The HOS rule governs truck driver working hours, setting maximum limits for on-duty work time, the number of continuous hours of driving and work hours allowed per shift, weekly driving hours, and the minimum required off-duty rest time. Countless studies, and the National Truck and Bus Safety Summit of 1995, have concluded that excessive driving and work hours, and inadequate rest time, lead to driver fatigue which plays a substantial role in large truck crashes.

The current, unsafe HOS rule adopted in 2003 substantially increased maximum daily and weekly driving and working hours for truckers.[45] Driving time for each shift was increased to 11 from 10 consecutive hours of driving. 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 (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 their schedule each week, actually operating their trucks for a total of 77 hours in seven calendar days instead of the previous limit of 60 hours. Drivers operating on an 8-day schedule can drive an extra 18 hours—a total of 88 driving hours instead of the previous 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 or more 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 just as safe as the previous HOS rules when drivers had more end-of-week rest time.

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 the agency's selective use of research findings was designed to justify a regulatory outcome prior to any studies FMCSA marshaled 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.[46] And 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

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

[46] *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).

Truck Safety Coalition and the International Brotherhood of Teamsters filed a third lawsuit challenging the rule.[47]

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 while FMCSA develops a new rule. Under the terms of the settlement the agency has agreed to forward a draft proposed rule to the Office of Management and Budget by the end of this coming July and, after taking public comment, to issue a new final rule by August, 2011.[48]

Recommendation:

- *The Committee should continue rigorous oversight of the 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),[49] 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).[50] It also required consideration of the need to implement a proficiency examination.[51] 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 safety audit of new carriers before awarding them temporary operating authority, and performing a CR at the end of the probationary period of temporary operating authority with an assigned safety rating.[52] 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. However, these suggestions were ignored or summarily rejected.

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.[53] 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 in part as the basis for issuing an advance notice of proposed rulemaking (ANPRM) asking for preliminary data, views, and arguments on the need for a proficiency examination.[54] While this appears to be 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."[55] 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. The only way to ensure that high-risk carriers are not

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

[48] *Id., see* Settlement Agreement dated Oct. 26, 2009 and Order dated March 3, 2010.

[49] P.L. 106–159 (Dec. 9, 1999).

[50] 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.

[51] MCSIA, § 210(b).

[52] 73 FR 76472 (Dec. 16, 2008).

[53] 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."

[54] 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).

[55] *Id.* at 42834 (emphasis supplied).

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". They conceal the fact that they actually 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.*
- *Congress should 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.*

Nineteen Years After Congress Ordered Entry-Level Driver Training Standards, FMCSA Still Has Not Issued a Rule Requiring Behind-the-Wheel Driver Training: Congress originally directed the FHWA to establish training standards for entry-level drivers in 1991.[56] There followed a long and tortured history of intermittent rulemaking and two lawsuits, the first for failing to issue a rule,[57] and the second for issuing an entirely inadequate, illegal final rule in 2004.[58] In the second case, the U.S. Court of Appeals rendered a judgment against the FMCSA, taking the agency to task for not issuing a training standard that included an on-the-road, behind-the-wheel training component.

FMCSA reopened rulemaking with a new proposed rule published on December 26, 2007,[59] 16 years after the original, legislated deadline for agency action. While the proposed rule represents a minimal improvement over the unacceptable final rule it is seriously flawed.

First, the FMCSA reduced, without explanation, the minimum number of hours of instruction recommended by the 1985 Model Curriculum,[60] 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. 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 to operators of interstate trucks, buses, and motorcoaches that have commercial drivers 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.[61] Second, the proposed rule applies only to entry-level drivers with a CDL. Again, there is nothing in the law itself, or the statutory history, permitting FMCSA to exclude entry-level drivers of commercial vehicles who do not have or need a CDL from the training required for other commercial drivers.[62]

FMCSA's weak rulemaking proposal is inadequate and fails to improve the knowledge and operating skills of entry-level commercial motor vehicle drivers.

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[56] ISTEA, § 4007(a).

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

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

[59] 73 FR 73226 (Dec. 26, 2008).

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

[61] 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.

[62] 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.

Recommendation:

- *Congress should direct FMCSA to require a more comprehensive driver training curriculum and include all entry-level commercial motor vehicle drivers regardless of whether they have CDLs or operate in interstate commerce.*

FMCSA Enforcement Issues

Compliance Safety Analysis 2010—Unknown and Untested: FMCSA has argued that enforcement rigor will be substantially increased when its new enforcement methodology, Comprehensive Safety Analysis 2010 (CSA2010), is fully implemented. Because CSA2010 for the first time will apply real-time roadside inspection data to motor carrier oversight and enforcement, there is some reason to believe that this may improve the agency's currently limited, bureaucratic approach to motor carrier compliance reviews and enforcement interventions. But, at the present time, most of the information needed to assess how effective CSA2010 could be is incomplete and not available to the public.

FMCSA has not finished its nine state pilot-testing of the new system. When reports on the pilot tests are completed, and released for public review and comment, a preliminary evaluation will be possible. Although FMCSA currently is encouraging motor carriers to assess how they rate using trial evaluations of their safety management performance, the results of these tests also will not be available to the public until later this year.[63]

The General Accountability Office (GAO) has stated that it could not evaluate the quality of FMCSA's overall CSA2010 effort until the major actions associated with the operational tests of the new system were completed in June 2010.[64]

In addition, the agency is still conducting a feasibility study on using police accident reports to determine motor carrier crash accountability before the crash data are entered into the new Carrier Safety Management System (CSMS) that is to replace the existing Safety Status Measurement System (SafeStat). Until this analysis is completed, the agency will continue to follow its current policy under SafeStat: the crash data will be displayed publicly, but the CSMS assessment of a motor carrier's crash history will not.[65] At this time, critical information about the findings of the feasibility study, its direction or emphasis, and how police accident report data would be weighted or entered into the calculus of the CSMS to determine safety performance ratings is not available.

In the meantime, until CSA2010 is implemented incrementally in all states through 2011, FMCSA will still conduct safety fitness audits using traditional CRs. As a result, any definitive evaluation of the effectiveness of CSA2010 will not be possible until the full system is implemented.

It is important to note, however, several safety concerns regarding a bias that is built into the agency's new CSMS, on which CSA2010 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 CSA2010[66] ignores the fact that mechanical defects are dramatically under-reported.

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[63] 75 FR 18256 (April 9, 2010).

[64] GAO letter to Senator Frank Lautenberg dated Dec. 20, 2007GAO–08–242R, at 9, Motor Carrier Safety (Dec. 20, 2007).

[65] *Id.* at 18258.

[66] *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 vehicle performance in key operating systems that cannot be detected by enforcement personnel 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)

Studies[67] 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 out of service (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. The implications are clear: FMCSA's approach to using its new enforcement metrics in CSA2010 will result in an unbalanced, excessive emphasis on driver as opposed to vehicle violations.

One consequence of the heavy emphasis on driver behavior over vehicle mechanical violations will be that, in practice, the agency is not accommodating NTSB's recommendation that violations of either mechanical or driver requirements alone should trigger a stop operations order.[68]

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 logbooks entries appear to be valid. If the CSMS is overly reliant on driver violations, and enforcement personnel remain unable to accurately detect this major source of violations, then the data and accuracy of CSA2010 will be questionable, and its capability to adequately address ongoing driver and carrier violations will be 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 CSA2010 approach.

However, Advocates also regards the overwhelming emphasis on driver issues, not mechanical issues, for measuring compliance and rating motor carrier safety performance as a critical flaw of CSA2010.

Recommendations:

- *FMCSA should be directed to re-evaluate the imbalanced approach to motor carrier violations in CSA2010 that relies too heavily on driver behavior.*
- *Congress should direct the GAO to assess:*
  - *the accuracy and deterrent value of safety performance findings generated by CSMS;*
  - the progress of CSA2010 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 current Compliance Review regime; and
  - whether the system will detect a much higher percentage of dangerous motor carriers that either need major and immediate reforms to their safety management or to stop operating.

FMCSA Still Not Imposing Maximum Penalties Allowed by Law: FMCSA still avoids getting tough with motor carrier violators and we hope there will be a change with the new leadership. The agency still evades the imposition of tough penalties that would 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.[69] Stiffer penalties than are

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Roadcheck repeatedly and consistently show high rates of mechanical defects and out of service 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 out of service 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). It is clear that without special, in-depth studies keying on mechanical defects, crash data sets available for research cannot accurately identify the role of mechanical problems contributing to large truck crashes.

[67] 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.

[68] [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" NTSB Rec. H–99–66, Feb. 26, 1999.

[69] MCSIA, § 3(2).

currently 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.[70] 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 requires at the threshold only modest maximum penalties. 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.[71]

Historically, 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.[72] However, the GAO found that the agency did not assess maximum fines for a pattern of violations.[73] 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.

Even after FMCSA corrected its policy,[74] the modified enforcement policy is not as tough as it looks. A number of roadblocks keep the agency from imposing maximum penalties for a "pattern" of violations. First, a "pattern" of violations must be those that occur when the FMCSA discovers two or more critical and/or acute violations in each of three or more different regulatory parts (*i.e.,* a minimum of six acute and/or critical violations). In practice, the agency again restricted the assessment of monetary penalties to fewer violators.

Second, the revised policy again limits maximum penalties for a pattern of violations only if the carrier has had prior "contact" with FMCSA or a state enforcement authority.[75] This means that a previous CR had been carried out or that the carrier had undergone a new entrant motor carrier exit audit (performed before FMCSA accords permanent operating). But FMCSA specifically excludes the more numerous roadside inspections as the basis for providing the necessary prior contact even though the driver and carrier clearly are informed about violations of safety rules and regulations.

A third condition is that FMCSA must also judge that it is reasonably likely that previous contact with the agency, through a CR or a new entrant safety audit, "alerts" the carrier to FMCSA's enforcement and regulatory jurisdiction over certain motor carrier violations. This in itself is a startling criterion because it directly implies that the agency may not be able to impose civil penalties for violations, even repeat violations, on motor carriers who are or claim to be unaware that their interstate operations fall under FMCSA's jurisdiction. This means that the carrier has never been adequately informed of its responsibilities as an interstate motor carrier, or of the agency's authority to impose penalties. Ensuring that every motor carrier, starting with new entrants, is aware of this information and the agency's power to impose penalties for rule violations should be a routine agency responsibility and failure to do so is appalling and unacceptable.

One aspect of the new policy is even less demanding than previous policy. Under the previous fines provision, proposed maximum penalties could not be settled for less than the amount assessed. However, under the new policy, all penalties, including patterns and two repeated violation penalties may be settled with FMCSA suspending a part of the assessed penalty for a variety of reasons. Also, the criteria

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[70] 49 U.S.C. § 521(b).

[71] *Id.* at § 521(b)(2)(A).

[72] 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.

[73] *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.

[74] 74 FR 14184 (Mar. 30, 2009).

[75] *Id.* The information is contained in a prefatory note inserted into the updated Recommendations for Executive Action section of the Aug. 28, 2007, GAO study. This later insert is itself undated, but it cites FMCSA's March 2009 supplemental policy published in the FR on assessing maximum fines that revises the agency's characterization of a "pattern of violations" and what violations constitute a "two strikes" ruling by the agency.

for assessing maximum penalties are limited. Maximum penalties will be only applied in cases where an acute, not a critical, violation is discovered during an investigation within 6 years of a previously closed case that contained a finding of violation of a critical or acute regulation in the same FMCSRs and/or HMRs part. Violations of different parts of the FMCSRs or HMRs do not count.

These examples of enforcement policies show that even when FMCSA obeys the letter of the law, it can find a way to use agency discretion to undermine both the standards for imposing fines as well as the amount of the fines themselves.

Finally, FMCSA admits in its updated study on the effectiveness of monetary penalties 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.[76] 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 nonrecordkeeping penalties plummeted from $5,066 in 2000 to $2,938 in 2006.[77] 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.

Recommendations:

- *Congress should request a GAO study of FMCSA's imposition of penalties for motor carrier safety violations to determine:*
  - *whether the current higher 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; and*
  - *whether setting statutory minimum required penalties is necessary and appropriate, and to recommend such minimum amounts.*

FMCSA Does Not Have a Reliable Method to Detect Illegally "Reincarnated" or "Chameleon" Motor Carriers from Restarting Operations under a False Identity: 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 out of service 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 operations orders sink out of sight and then re-appear as supposed 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.[78]

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

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[76] 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 out of service (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.

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

[78] *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*.

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 FY 2007 and FY 2008 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 reappeared as new companies from old companies, representing about 9 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.[79] Although FMCSA has instituted a new process for detecting such carriers, GAO has not evaluated its effectiveness.

A follow-up study is badly 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;*
- *GAO should 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 resulted in the rigorous oversight and enforcement that Congress directed and the public expected. Safety goals are not met but merely changed, rulemakings are routinely overturned in legal challenges because of faulty reasoning and illegal underpinnings, enforcement is sporadic and weak, and unsafe carriers and drivers continue to operate 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 are delayed. While we hope the new leadership team at DOT will set this agency on a new course, it will still be 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.
Mr. Osiecki?

STATEMENT OF DAVID J. OSIECKI, SENIOR VICE PRESIDENT, POLICY AND REGULATORY AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. OSIECKI. Chairman Lautenberg, my name is Dave Osiecki, and I am the Senior Vice President for Policy and Regulatory Affairs for the American Trucking Associations.

[79] *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.

Mr. Chairman, we share your goal of keeping unsafe and unqualified operators off the road. My remarks will summarize my extensive written statement.

At the outset, it is important to note that the trucking industry has made great strides and is the safest it has ever been. In 2008, the latest year for which data is available, the number of injuries and fatalities in truck-involved crashes reached their lowest level since the USDOT began keeping records. There were 1,166 fewer fatalities in 2008 than in 1998, remarkable progress in light of the trucking industry operating 1.3 million additional trucks and 31 billion more miles in 2008 compared to 1998. I will also add that is the year just prior to FMCSA's creation.

While this is excellent progress, we know we can do more. Improving motor carrier and highway safety is about understanding the behaviors that cause crashes and addressing the factors that raise crash risk. Future programs and Government-issued rules will only succeed to the degree that they address causation and actual crash risk. This should be a litmus test for new rules, programs, and new countermeasures.

On the CSA 2010 initiative, ATA also shares its goals. It is a far more sophisticated system and one that we have encouraged. Conceptually it is very good because it is based on mainly on safety performance and it measures specific driver-related behaviors. It is intended to better focus limited enforcement resources and it will provide real-time carrier safety performance ratings. ATA has a number of recommendations to further improve it.

Number one, we are urging the agency to make crash accountability or causation determinations on truck-involved crashes before entering them into a carrier's profile. In other words, hold carriers and drivers accountable for crashes they cause.

Number two, vehicle miles traveled in lieu of the number of trucks should be used as a carrier's exposure measure.

And number three, FMCSA should focus on using actual citations and not unadjudicated warnings in the system. These changes will help FMCSA better target carriers and drivers most in need of Government intervention.

Turning to hours of service, the rules are working and they should be retained virtually unchanged. The rules have been in place for 6 years now, and we all have the benefit of real-world safety and operational data. Comparing 2008 to 2003, the year before the rules went into effect, there were 807 fewer fatalities in 2008 and 32,000 fewer injuries. This progress was made in 2008 versus 2003, even with more than one million additional large trucks on the road operating an additional 10 billion miles. By providing a longer off-duty period between work shifts, the rules have provided greater opportunities for more restorative rest for drivers.

ATA is seeking one of hours-of-service rule change, though. The rigid sleeper berth rule should be modified to allow limited flexibility. This would encourage greater use of circadian-friendly naps which promote safety and driver health.

On the electronic on-board recorder issue, ATA supports the policy approach of targeting noncompliant companies with a remedial directive. It is a good first and incremental step and will allow

FMCSA and the industry to capture additional data on the benefits of these devices to inform future regulatory actions on this issue.

Moving beyond Government initiatives, ATA has developed its own safety agenda. All of our recommendations are included in my written statement, but I would like to briefly highlight three.

Number one, ATA recommends a return to a national maximum speed limit of 65 miles per hour for all vehicles.

Number two, the speed of all large trucks manufactured after 1992 should be electronically limited, or governed in the industry parlance, at a maximum speed not to exceed 65 miles per hours.

And number three, ATA recommends 50-State implementation of FMCSA's selective traffic enforcement program, known as ticketing aggressive cars and trucks. It targets risky operating behaviors of both passenger and commercial vehicle drivers.

ATA fully recognizes the political challenges over the years of enacting a national speed limit. However, if our Government does not have the political will to more effectively address speed and aggressive driving on our Nation's highways, we will continue to have a huge gap in our national highway safety strategy.

A few final thoughts. A singular reliance on enforcement of rules, given the size and diversity of the trucking industry, will not allow us to achieve our shared safety goals. FMCSA should not just focus on regulations. It should develop tools and resources that help foster safety. Using the stick is clearly necessary for some, and ATA supports its use when appropriate. Using the carrot is far more effective for the majority. Government, working with industry, can facilitate a more effective approach by providing safety management tools like a drug and alcohol test results clearinghouse and a driver conviction notification system. These and other tools will help carriers more actively manage safety. We fully support Senator Pryor's Safe Road Act, S. 1113, which would establish a drug and alcohol results clearinghouse. Promoting a more active safety management approach will facilitate even greater safety improvements.

Mr. Chairman, that concludes my remarks, and I thank you for the opportunity to testify.

[The prepared statement of Mr. Osiecki follows:]

PREPARED STATEMENT OF DAVID J. OSIECKI, SENIOR VICE PRESIDENT, POLICY AND REGULATORY AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.

Introduction

Chairman Lautenberg, Senator Thune, members of the Subcommittee, my name is Dave Osiecki, and I am the Senior Vice President of Policy and Regulatory Affairs for 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.

Mr. Chairman, today I will speak about the trucking industry's recent safety accomplishments and the remarkable long-term improvement in the industry's safety record. I will also talk about the need for a fundamental change in the government's approach to truck safety if we are to make further, significant safety gains. To bring about further meaningful improvements in truck safety, as a truck safety community, we need to move beyond the compliance and enforcement model to a more proactive safety management model.

I will also discuss ATA's views on FMCSA's oversight programs such as CSA 2010 and rulemakings such as hours of service. Finally, I will introduce ATA's progres-

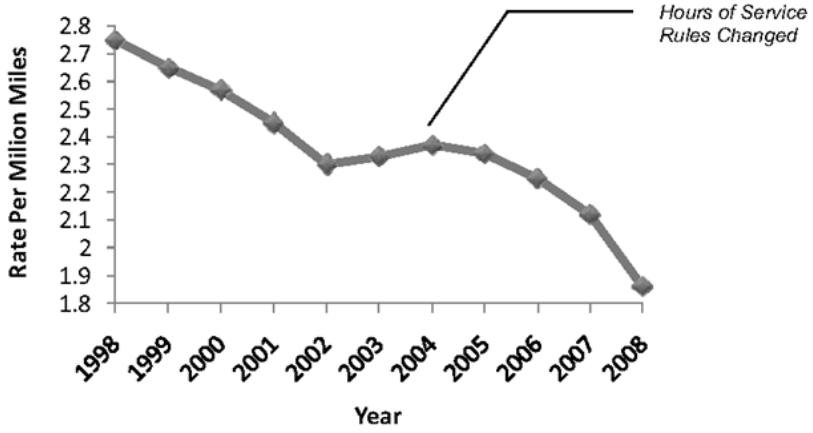
sive safety agenda which, if adopted, will provide the tools to help the industry move beyond the current model to a more comprehensive safety management model that will help us achieve even more significant safety gains.

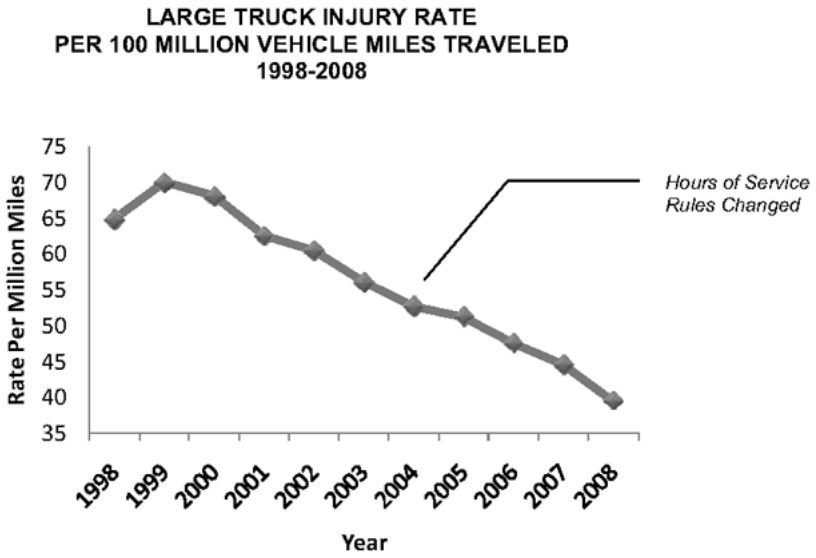
The Industry's Safety Record

The trucking industry is the safest it has ever been and continues to get even safer. For example:

- The truck-involved fatality rate has decreased 66 percent since 1975, the first year the USDOT began keeping records.
- Over the past decade alone, the truck-involved fatality rate has dropped by 32 percent.
- In actual numbers, there were 1,166 fewer fatalities in 2008 than in 1998—remarkable progress in light of the trucking industry operating 1.3 million additional trucks and 31 billion more miles in 2008 (compared to 1998).
- The truck-involved injury rate has decreased 58 percent since 1988, the first year USDOT began keeping records.
- Over the past decade alone, the truck-involved injury rate dropped by 39 percent.
- In 2008, the truck-involved fatality and injury rates fell to their lowest levels since USDOT began keeping statistics.
- More importantly, in 2008, *the number of injuries and fatalities* in truck-involved crashes reached their lowest ever levels since USDOT began keeping records.
- Comparing 2008 to 2003 (the year before the new hours-of-service rules became effective) there were 807 fewer fatalities in 2008 (a 16 percent decrease), and 32,000 fewer injuries (a 26 percent decrease).

LARGE TRUCK FATALITY RATE
PER 100 MILLION VEHICLE MILES TRAVELED
1998-2008





Even with this excellent safety progress, some may try to minimize these accomplishments by telling this Committee, and the public, that large trucks are significantly over involved in fatal crashes. Should some organizations make this statement, it is inaccurate and extremely misleading. Allow me to explain.

Some industry and government critics use truck registration figures as a measure of exposure, not truck mileage, which is the commonly accepted measure. Further, they choose not to point out that *trucks have overall crash rates less than half that of other vehicles*. Admittedly, when they do occur, truck crashes are generally more severe than light vehicle crashes, due to size and weight differences between large trucks and passenger vehicles. It is important to understand that *trucks are not more likely to be involved in a crash*, but truck crashes are slightly more likely to result in a fatality when they do occur. This is the case not because trucks are less safe, as some would have you believe, but due to Newtonian physics.

Necessary Steps for Continued Improvement

ATA and the trucking industry is proud of its safety progress and we believe it is, at least in part, the result of many safety initiatives ATA has fought for—and achieved—over the past decades including mandatory drug and alcohol testing, the commercial driver's license program, and well-reasoned hours-of-service regulations based on sound science. Yet, truck safety is about more than regulations. It is about understanding the factors that create crash risk and the behaviors and events that precipitate (*i.e.,* cause) crashes. It is about programs, countermeasures and preventive actions that truly address those risks and behaviors. Future FMCSA rules and programs will only succeed to the degree to which they focus on and address crash risk and causation.

Later in this statement, following discussion of four current FMCSA initiatives, I will address the future steps ATA believes are necessary in order to make significant highway safety progress going forward.

Truck Safety Oversight—Current FMCSA Initiatives

ATA appreciates this opportunity to offer its views on some of FMCSA's current truck safety oversight initiatives, specifically:

- Comprehensive Safety Analysis (CSA) 2010
- Hours of Service
- Electronic Logging
- New Entrant Carriers

1. Comprehensive Safety Analysis (CSA) 2010

ATA generally supports the CSA 2010 initiative since: (1) it is primarily based on safety performance and behaviors rather than compliance with paperwork requirements; (2) focuses limited enforcement resources on specific areas of deficiency (rather than comprehensive on-site audits); and (3) will eventually provide real-time, updated safety performance measurements. In addition, FMCSA plans to employ root-cause analysis of safety problems during its interventions with carriers. In concept, CSA 2010 is very good and could have a positive impact on truck safety. However, the devil is in the details of this program, and ATA has a number of concerns with, and recommendations to improve, "the details."

ATA has numerous improvement recommendations, but we are focused on the three outlined below. ATA believe changes and improvements in these three key areas will have the greatest impact on motor carriers and highway safety in general. ATA's intent in highlighting these areas and making the corresponding recommendations for improvement is to help ensure that relatively safe carriers are not selected for interventions and, more importantly, to ensure that unsafe carriers are selected.

A. *Risk Exposure Measurement—Power Unit Count vs. Vehicle Miles Traveled*—With respect to carrier exposure, ATA's principle concern is that FMCSA is planning to use a count of each carrier's power units (*i.e.,* number of trucks) as the measure of risk exposure rather than the total number of miles these vehicles travel. As a result, carriers who employ greater utilization of their trucks will have more true exposure to crashes and other safety related events, but will be compared to carriers who have less exposure—though the same number of trucks. This problem is especially acute for trucking companies that utilize team drivers to move expedited freight since their trucks travel more miles and, as a result, have more exposure to adverse safety events. *ATA has been and will continue to urge FMCSA to use vehicle miles traveled as the exposure measure in CSA 2010.*

B. *Crash Accountability*—In measuring safety performance, CSA 2010 considers all DOT-defined crashes in the scoring and ranking calculations—including those crashes for which the motor carrier and professional driver could not reasonably be held accountable. This is a significant problem in the system since many truck crashes are two vehicle crashes that are initiated by the actions of the driver of the other (non-commercial) vehicle involved. Accordingly, a carrier involved in a number of crashes for which it was not responsible is judged by CSA 2010 to be just as unsafe as a like-sized carrier who was involved in the same number of crashes—but caused them. *ATA has been and will continue to urge FMCSA to make crash accountability determinations on DOT-recordable crashes, and use motor carrier-accountable crashes in CSA 2010. This process should be in place prior to full-scale implementation.*

C. *Warnings for Moving Violations*—CSA 2010 counts all moving violations reported on roadside inspection reports, regardless of whether or not a citation was ultimately issued to the commercial driver for the violation. This presents several problems. First, since these are merely warnings, there is no due process procedure for drivers to challenge these violations. Second, in some states law enforcement officers must have probable cause in order to stop a truck and conduct a vehicle inspection. In these states, it is common practice for enforcement officials to stop trucks for very minor speeding offenses (*e.g.,* 3 mph over the limit), and issue warnings as justification to conduct inspections. As a result, carriers operating in probable cause states are disproportionately impacted and are very likely to have worse driver violation scores than carriers who operate elsewhere. *ATA is urging FMCSA to focus on using citation data in the system and discard "warnings."*

ATA has identified a number of additional problems with respect to how the proposed methodology will function. ATA's underlying concern is that the system will not reliably target truly unsafe carriers for intervention. However, we are generally supportive of the program since it focuses on performance-based information and strives to use the agency's limited resources to more efficiently impact unsafe motor carriers.

2. Hours of Service

The current hours-of-service rules should be retained virtually unchanged. ATA's position is based on three primary tenets:

- The current hours-of-service rules have provided more restorative rest for commercial drivers. This has had a positive impact on highway safety and has improved compliance with the regulations;

- Modifying the interdependent components of the rules in any substantial way would likely negatively impact highway safety by disrupting the circadian-friendly sleep patterns the current rule has helped to establish; and
- Changes in the rules that reduce productivity would have significant economic consequences, upsetting the equilibrium mandated by Congress and achieved by the current rules.

While it was mentioned above, the excellent safety progress made by the trucking industry while operating under these new rules is worth repeating. Comparing 2008 to 2003 (the year before the new hours-of-service rules took effect) there were 807 fewer fatalities in 2008 (a 16 percent decrease), and 32,000 fewer injuries (a 26 percent decrease). In addition, in 2008 there were 49 fewer truck occupant fatalities (a 7 percent decrease) than in 2003. This progress was made in 2008 (versus 2003) with more than a million additional large trucks on the road operating almost 10 billion additional miles.

In addition to this safety progress, the data and analysis the agency has developed over the past nearly 10 years on driver alertness and hours of service supports retention of the current rule, with one exception. ATA believes, as do the overwhelming majority of professional drivers, that FMCSA should modify the current sleeper berth provision (49 CFR, 395.1 (g)) to allow for additional, limited flexibility that will ultimately improve driver alertness and subsequently improve highway safety. Additional flexibility in the sleeper berth rule would encourage the use of short rest breaks which would promote safety and driver health by:

- Encouraging circadian friendly naps (*e.g.,* naps in the afternoon);
- Promoting shorter continuous driving periods;
- Helping to reduce highway congestion; and
- Increasing operational flexibility.

Giving drivers limited flexibility based on their use of the sleeper berth would give them a useful tool to manage fatigue, avoid times of highway congestion, rest when they feel tired, and otherwise take actions that would improve the quality of the driving job. Research conducted since the current rules were issued suggests that such limited flexibility would ultimately further improve highway safety.

On April 22, 2010, ATA filed extensive hours-of-service comments with FMCSA and, following today's hearing, we plan to share these with the Committee as further information.

3. Electronic Logging [1]

ATA has, for years, supported a requirement that seriously non-compliant carriers be mandated to install electronic logging devices. We applaud FMCSA's recently released final rule on this matter since it does just that. ATA also supports meaningful incentives for safe and compliant carriers to voluntarily adopt use of the devices. Unfortunately, the incentives offered in the final rule are weak, at best, and will do little to incent voluntary adoption of the devices.

In our comments to the agency's proposed rule in 2007, ATA offered many suggestions for incentives FMCSA could offer that would be effective in promoting voluntary adoption. These incentives included scheduling flexibility that would allow carriers to extend the 14-hour on duty period up to 2 hours for rest and meal breaks, and additional flexibility for drivers using the split sleeper berth provision in the regulations. However, FMCSA seemed to dismiss these suggestions since there were neither acknowledged nor mentioned in the final rule.

We also have some concerns with the technical and performance specifications for these devices as laid out in the final rule. For instance, the process for assigning driver identification numbers could lend itself to fraud. Further, the rule does not provide for a strong certification program to ensure that the devices are compliant and tamperproof. Finally, the design specifications require that the devices operate in such a wide temperature range that manufactures will have to make fairly radical, costly design changes for their devices to meet the new requirements.

[1] The FMCSA refers to such devices as "electronic on-board recording devices" (EOBRs). However, this term is commonly used to describe comprehensive fleet management systems that do far more than simply monitor hours-of-service compliance. To distinguish these more comprehensive systems from the ones that FMCSA intended to address in this final rule, ATA uses the term "electronic logging devices" to describe devices that merely track hours-of-service compliance.

4. New Entrant Carriers

Oversight of new motor carriers is an important FMCSA function. ATA believes that new motor carrier owners, both interstate and intrastate, should be required to satisfactorily complete a safety training class before commencing operation. Further, safety training curricula should meet uniform standards nationwide. Finally, ATA believes FMCSA's initial safety inspection of a new motor carrier should be conducted within 6 months of when a carrier initiates operations, rather than in the current 18 month timeframe.

Crash Causation and Prevention

FMCSA only regulates part of the highway safety equation: commercial motor vehicles. Yet the single largest factor impacting truck safety is the behavior of other motorists. Approximately 85 percent of truck crashes involve other vehicles. Since FMCSA does not regulate the operation of all vehicles, it is encumbered in its efforts to reduce truck-involved crashes.

As mentioned earlier, to truly be effective in improving commercial motor vehicle safety, FMCSA must address the primary causes of crashes. 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 factor (*e.g.,* speeding, failure to yield).[2] Numerous additional studies have analyzed crash data and arrived at the same conclusion.

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. Some would have you believe that these figures are slanted because in most instances the truck driver survives the collision to "tell his side of the story." However, the same study looked at crashes where both drivers survived (but there was some other resulting fatality). The result: the driver error proportions for these crashes were very similar to the entire sample.

In 2002, the AAA Traffic Safety Foundation sponsored research similar to the aforementioned UMTRI study. The AAA study analyzed more than 10,000 fatal car-truck crashes that occurred between 1995 and 1998. This study, too, found car drivers to be disproportionately coded for related factors (*e.g.,* speeding, failure to yield) in these crashes. Specifically, 80 percent of the car drivers had been attributed a related factor by the investigating officer while 27 percent of truck drivers had been attributed a related factor in these events.[3]

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.[4]

Since meaningful solutions to commercial motor vehicle safety require a focus on the primary causes of crashes, FMCSA should direct even more resources toward awareness, education and traffic enforcement programs to address the role of passenger vehicles in car/truck crashes. In light of 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" program is one such program, albeit a small program, 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.

Another means FMCSA has to impact truck-involved multi-vehicle crashes is to give motor carriers the tools to avert them. For example, regulatory or enforcement-related incentives to adopt crash avoidance technologies will give motor carriers the means to better prevent such crashes.

As a matter of practice, the trucking industry holds itself to a very high standard with respect to crash accountability. Trucking companies evaluate each crash not merely to establish fault, but to determine if the crash could have been prevented in any way. In other terms, they must determine if the driver could have taken any action to have averted the crash. If the motor carrier finds that the accident was

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

[3] AAA Foundation for Traffic Safety, *Identifying Unsafe Driver Actions that Lead to Fatal Car-Truck Crashes*, Washington, D.C., (2002).

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

preventable (based on a set of uniformly accepted industry criteria), then the driver is held responsible for the crash. FMCSA's Safety Rating Methodology employs this same standard. Any crash that is preventable is counted against the carrier in FMCSA's *Safety Rating Methodology*.[5]

This is worthy of note because 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, as a community, we must recognize the scope of the problem, understand the primary causes of these crashes, and have the political will to put programs in place that address all parts of the truck safety equation.

The Regulatory Compliance and Enforcement Model

Using the regulatory compliance and enforcement model in the future as the primary means to impact truck safety will yield limited returns, since it only addresses one of the many essential elements of an effective safety program. ATA recognizes that this model is necessary, and we support it. However, this model alone will be insufficient to achieve maximum results. Other safety interventions and countermeasures, beyond regulatory compliance, can address the main causes of crashes even more directly. Taking a broader approach to safety, that is, moving beyond a compliance and enforcement model, will enable even greater safety improvements.

This broader approach must embrace a variety of solutions. Government and industry together can facilitate various active safety interventions, and in fact, some of these interventions depend on government and industry action in order to be implemented. In ATA's view, the most innovative and effective future oversight programs will be the ones that provide motor carriers with the tools to support carrier-based safety improvements.

Here are some examples of FMCSA's current approach to truck safety oversight and how a broader approach to addressing true crash risk and the behaviors could be more effective.

Hours of Service

The current hours-of-service rules are good rules and have facilitated safety improvements. As described above, ATA supports these rules. ATA is concerned, though, that FMCSA is too focused on regulating time on task (driving hours) as the principal tool to prevent fatigue-related crashes. Crash statistics show that the vast majority of fatigue-related crashes occur in the first 8 hours of driving (*i.e.,* where the actual risk is), not at the end of the driver's shift, where relative risk may be higher but actual risk is miniscule. In light of this fact, focusing on driving hours and, more specifically, focusing on differences in risk between driving in the 9th, 10th or 11th hour of a shift, largely misses the point.

From the medical community ATA has learned that drivers with certain health issues and poor sleep hygiene habits are far more likely to suffer from chronic drowsiness. We also know that time of day, specifically the body's natural circadian rhythms, plays a greater role in driver alertness than time on task. FMCSA could more effectively address fatigue-related crashes by incenting carriers to implement wellness programs, to install alertness monitoring systems, and to develop fatigue management programs that help drivers understand and better manage circadian rhythms.

Drug and Alcohol Test Clearinghouse

The current drug and alcohol testing regulations have helped to ensure that alcohol and drugs play a very limited role in commercial motor vehicle crashes. However, there is a well-known loophole in the current testing program that is being exploited by some drug-abusing drivers. When a driver moves from one trucking company to another, some "positive" drug and alcohol test results are not being discovered by the hiring company because these "positive" results and the driver's work history are self-reported, and not centrally tracked.

To close this loophole, ATA has, for more than a decade, advocated the development of a clearinghouse for positive drug and alcohol test results, so that drivers cannot evade the consequences of their actions by "job-hopping," intentionally miscommunicating their work histories, or otherwise failing to remove themselves from service. However, until very recently, neither FMCSA nor the U.S. Department of Transportation's drug and alcohol policy office seemed to share ATA's urgency to create such a database, but instead focused its resources on verifying that motor carriers comply with minimum required random testing rates.

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[5] 49 C.F.R., Part 385, Appendix B, Section II, Subsection B, (e).

The Safety Management Model

Today's safety professionals see compliance with safety rules and regulations as a single component of a more comprehensive safety management program. The most effective programs are founded on the principle that the best way to reduce accidents is to focus on individual behaviors that create the greatest risk. Most crashes are the result of personal judgments and poor decisions, not compliance or non-compliance with a regulation.

If every driver were motivated by avoidance of government-imposed consequences, then the compliance and enforcement model would be adequate. Yet, individuals respond not only to rules, but to a sense of personal responsibility, personal enrichment and formal recognition. In other words, people generally respond better to the carrot versus the stick. Understanding this key principle, FMCSA could employ creative initiatives such as a formal recognition of safe drivers in its safety monitoring systems, advocating a special CDL designation for drivers with exemplary safety records, and the like.

The National Safety Council promotes *14 Elements of a Successful Safety and Health Program*. Of note, though, is that only one of these elements is directly related to regulatory compliance. In addition, FMCSA's own Motor Carrier Safety Advisory Committee has identified 20 non-regulatory safety practices that can improve commercial motor vehicle safety. In short, both of these groups recognize that compliance alone is insufficient for maximum safety.

To be even more effective in its mission, FMCSA should be creative in evaluating how it can provide tools and resources that will foster truck safety. For instance, FMCSA could gather and promote the most common and effective risk avoidance strategies employed by motor carriers. Also, the agency, with the backing of Congress, should develop programs that incent carriers to adopt advanced safety technologies such as collision mitigation systems, lane departure warning systems, electronic stability control and emergency warning/braking systems.

Another example is the development of an employer notification system. Under FMCSA's current compliance and enforcement model, safety investigators verify that motor carriers have obtained motor vehicle records on each of their drivers annually. Sometimes these records reflect violations that occurred as much as eleven months prior. To provide more timely information, ATA has advocated a nationwide employer notification system that would promptly alert a motor carrier each time one its drivers had been convicted of a moving violation or the like. Access to such timely information would go a long way toward helping motor carriers swiftly address problem behaviors before they impact safety.

ATA's Safety Agenda

The highway system is the workplace of millions of hard-working, professional truck drivers. As such, it is ATA's role to take a leadership position in making our workplace safer. To that end, ATA has developed an aggressive safety agenda with the goal of further reducing the number of motor vehicle fatalities and injuries. The agenda is comprised of multiple recommendations that address the performance of both commercial and passenger vehicle drivers, safer vehicles, and motor carrier performance. These recommendations are as follows:

1. ATA supports the safe use of technologies and encourages drivers and/or motor carriers to consider a range of policies and safeguards intended to reduce, minimize and/or eliminate driver distractions that may be caused by the increased use of electronic technologies (*e.g.,* global positioning systems, cellular phones, etc.) during the operation of all types of motor vehicles. ATA strongly encourages and recommends that manufacturers of these devices, vehicle manufacturers, policymakers, motor carriers and organizations representing motor carriers and the motoring public promote and adopt awareness, training, and safety policies on the use of such technologies—unless required by current laws or regulations—during the operation of a motor vehicle on our Nation's highways.

2. ATA recommends creation and implementation of national performance-based commercial driver's licensing testing standards that are more rigorous than current state standards. CDL testing standards should be uniform across states and oversight of third party testing entities should be strengthened. Compliance monitoring of state CDL programs should also require strict state compliance with the enhanced Federal CDL standards. The existing Federal penalty should be used to ensure state compliance with the new Federal testing standards.

3. ATA supports a study to evaluate the cognitive functioning and behaviors of individuals between ages 18 and 25 that could be used to establish criteria for graduated commercial driver licensing.

4. ATA recommends creation of more long-term truck parking as well as smarter parking in places where there is an identified shortage of parking.

5. ATA recommends a national, maximum 65 mph speed limit for all motor vehicles.

6. ATA supports strategies to enhance the use of seat belts, such as primary seat belt laws in all states; incentives and penalties to motivate states to pass primary seat belt laws; audible reminders for seat belt use in commercial vehicles; contrasting colors for seat belts so law enforcement can quickly identify non-users; state adoption of the failure to wear a seat belt defense; and denial of workers compensation for drivers who fail to use seat belts. ATA recommends exploring incentives and penalties that will motivate states to pass primary seat belt laws.

7. ATA recommends 50-state implementation of an education and enforcement program, such as Ticketing Aggressive Cars and Trucks, that targets the risky operating behaviors of both passenger and commercial motor vehicle drivers.

8. ATA supports enforcement using red light cameras and automatic speed enforcement for all vehicles deployed in high-risk zones, such as high-crash intersections, school zones and work zones, to reduce crash rates. Motor carriers must receive timely access to data and photos of the power unit and the driver. ATA opposes deployment of enforcement technology for the purpose of revenue generation.

9. ATA supports graduated drivers licensing for non-commercial teen drivers and wants to ensure states have good, uniform standards for graduated driver licensing.

10. ATA affirms that members support .08 g/dl. or less as the legal limit for blood alcohol content (BAC) for passenger vehicle drivers and .04 g/dl. or less as the legal limit for commercial drivers (CDL holders). Further, ATA supports alignment with leading safety advocates on alcohol safety topics such as administrative license revocation, ignition interlock devices, and open container laws.

11. Although ATA does not have a position on setting speed limiters or engine control modules (ECMs) for passenger vehicles, ATA recommends that states consider setting the speed limiters on the vehicles of drivers with certain driving convictions.

12. The speed of all electronically governed class 7 and 8 trucks manufactured after 1992 used in commerce should be governed at a maximum speed not to exceed 65 mph. Speed limiters on newly manufactured class 7 and 8 trucks should be made more tamperproof.

13. ATA supports crashworthiness standards for newly manufactured class 7 and 8 trucks, and a relative scale against which to measure a truck's crashworthiness.

14. ATA supports a mandatory national employer notification system and recommends development of a standard protocol specifying type, format, and frequency of information required to be transmitted from the states. Violations/offenses to be reported to the states should also be standardized. States should be required to fully participate in this national system and provide information in a timely fashion. The retention period for violations/offenses on a driver's motor vehicle record should be left to the state's discretion.

15. ATA recommends creation of a national clearinghouse for positive drug and alcohol test results (this has been ATA policy since 1999). Prior to hiring an employee, employers would be required to check with the clearinghouse for an applicant's failed tests and previous refusals to test.

16. ATA supports creation of the National Registry of Certified Medical Examiners provided the certification requirements are not unduly burdensome, the supply of examiners is sufficient in all areas of the country, and the system allows for information sharing among examiners.

17. ATA recommends following, shepherding, and stewarding the safety benefits of the Driver Information Resource (DIR). ATA recommends carriers access this data for drivers and that they access this data prior to hiring a driver.

18. ATA recommends new motor carrier owners, both interstate and intrastate, be required to satisfactorily complete a safety training class before commencing operation. Safety training curricula should meet uniform standards nationwide. The Task Force also recommends that the Federal Motor Carrier Safety Administration (FMCSA) safety inspection be conducted at 6 months rather than at

the current 18 months. Further, the Task Force recommends requiring new carriers to attach proof of training to their application for a DOT number.

For more details on each of our18 recommendations, see: *http://www.truckline.com/Newsroom/Policy%20Papers/Safety%20Task%20Force%20Report.pdf*

ATA feels strongly that these recommendations should be acted on quickly, since they will have a certain, positive impact on highway safety. To that end, we are hopeful that these recommendations will be a component of the safety title of upcoming highway reauthorization legislation.

However, if such legislation continues to be delayed due to other legislative priorities, we urge Congress to act expeditiously on a separate safety bill that incorporates these items, so that critical improvements to highway safety will not be delayed.

Conclusion

Mr. Chairman, thank you for the opportunity to offer our views on how collectively we can further improve truck and highway safety. As I mentioned at the beginning of my testimony, the trucking industry is justifiably proud of its recent safety accomplishments as well as its excellent long-term safety improvement. While as an industry we will strive to continue this safety progress, it will be incremental at best if we don't have the political will to change the fundamental government approach to truck safety oversight.

We must move beyond the current regulatory compliance and enforcement model as the primary means to improve truck safety. Instead, we must move toward an active safety management model that more directly attacks the main causes of crashes. This new model must be based on understanding the factors that create crash risk and the behaviors and events that precipitate crashes. It must also focus resources on giving motor carriers tools, like a drug and alcohol clearing house and an employer notification system, that will help motor carriers more effectively facilitate truck and highway safety improvement.

Senator LAUTENBERG. Thank you.

Mr. Spencer?

STATEMENT OF TODD SPENCER, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Mr. SPENCER. Good morning, Mr. Chairman, Ranking Member Thune, and very distinguished members of the Subcommittee. Thank you for inviting me to testify on matters that are extremely important to our Nation's small business trucking professionals and professional truck drivers.

I have been involved with trucking for more than 30 years, first as a driver and then as an owner-operator, and now as a representative for small business trucking professionals. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association, headquartered in Grain Valley, Missouri, just outside Kansas City.

The majority of trucking in this country is small business, as 96 percent of all carriers have less than 20 trucks in their fleet, and 86 percent of the carriers have fleets of just six or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of 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 it could put them out of business. As such OOIDA sincerely desires to see further improvements in highway safety and significant progress toward the highway safety goals of this subcommittee and the Department of Transportation.

I want to begin my comments by commending the Federal Motor Carrier Safety Administration and Administrator Ferro for holding the recent public hours-of-service listening sessions and for reaching out to drivers for their real-world perspective on what is needed and what is not. I hope the agency heard clearly that drivers need flexibility when they need to rest and flexibility to accommodate the unpredictable and grossly inefficient schedules of shippers and receivers. Some of those trucking stakeholders seem to delight in wasting drivers' time, and some large receivers have turned their unloading docks into profit centers. Drivers are not looking for more hours to work. They simply want to be productive and paid for the hours that they do work. That will not happen until all entities in the supply chain are accountable for their actions.

We also believe that FMCSA's 2010 initiative could be a much better way to trigger safety audits than we have had in the past where large carriers with far from the best safety practices might not be audited for a decade or more. CSA 2010 is a ways from being fully implemented, but it may end up as a particularly effective use of FMCSA's resources.

We see virtually the opposite with the agency's new entrant audit program. The current congressional directive is that every new carrier be audited within 18 months of their being granted operating authority. I believe there are some 40,000 new authorities granted each year. That means 40,000 new audits regardless of how safe motor carrier operations may be. We see this as a tremendous waste of the agency's scarce resources. We do not believe that any carrier, broker, or freight forwarder should be able to apply for and receive operating authority without thorough screening to verify that they will operate safely and in compliance with all applicable laws and regulations.

While a cursory review is currently required by regulations, it is not effective. The bad guys know that. Unscrupulous carriers and brokers have been free to flaunt the safety rules and scam small and mid-sized carriers out of hundreds of thousands of dollars with little fear of repercussions. When it starts getting hot, they simply go out of business or apply for a new operating authority under a different name. Clearly thorough scrutiny by FMCSA needs to take place before an operator is allowed to begin.

The first step toward achieving more improvements to trucking industry safety is a commitment by FMCSA to vigorously enforce all existing regulations governing motor carriers, as well as freight brokers and other transportation intermediaries. While we talk continuously about safety in the trucking industry, historically there has been an acceptance of the poor safety practices of large motor carriers. Similarly, there has been a lack of oversight of freight brokers and other transportation intermediaries that allows many dishonest entities to take advantage of small business carriers, forcing those truckers into choosing between safety and making enough money to support their families. It must be recognized that in trucking, economics and safety go hand in hand from the equipment aspect where a driver is unable to pay for repairs to his truck because he was not properly compensated despite delivering a load on time and in good order to unrealistic delivery schedules

that put drivers in the position of driving while fatigued or violating hours-of-service regulations.

FMCSA has jurisdiction over regulations that may be perceived as outside the safety purview, but in reality, regulations such as those governing lease agreements, loading/unloading of trucks, and transportation intermediaries have a tremendous impact on safety. Those regulations are often directly related to the driver's bottom line.

Unfortunately, since its inception, the FMCSA has placed little priority on enforcing these regulations being viewed as solely economic. In fact, in most instances, the agency has done little, if anything, to enforce those rules. This has resulted in a trucking industry where drivers and small players are regularly preyed on by dishonest entities who have little fear of recourse or reprisal from the trucker they are essentially defrauding or the Government agency expected to oversee them.

There is a chain of responsibility in safety, and FMCSA, in addition to being given the authority to properly govern it, must be given the resources to adequately enforce existing regulations. Enforcement priorities that ignore the relationship between highway safety and coercive demands of shippers, receivers, motor carriers, and freight brokers on drivers are impediments to our overall safety objectives. The demands and expectations of trucking stakeholders on drivers are far more influential on safety than any inspection scheme or schedule of fines that Congress or FMCSA may devise.

Unless those economic issues are addressed, drivers who become disqualified from driving for violations and other safety regulations will simply be replaced by new, less experienced drivers facing the same economic pressures. It is only by addressing the underlying economic concerns that we will begin to see significant improvements to highway safety.

Thank you.

[The prepared statement of Mr. Spencer follows:]

PREPARED STATEMENT OF TODD SPENCER, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

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

My name is Todd Spencer. I have been involved with the trucking industry for more than 30 years, first as a truck driver and an owner-operator, and then as a representative for small-business trucking professionals. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA).

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 156,000 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 is small business, as 96 percent of all carriers have less than 20 trucks in their fleet and 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 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 the U.S. Department of Transportation.

The first step toward achieving significant improvements is a commitment by the Federal Motor Carrier Safety Administration (FMCSA) to vigorously enforce all existing regulations governing motor carriers as well as freight brokers and other transportation intermediaries. While we talk continuously about safety in the trucking industry, historically there has been an acceptance of the poor safety practices of large motor carriers. There has also been an acceptance of labor abuses and perpetual violations of existing leasing regulations by motor carriers which has lead to industry wide problems such as high driver turnover rates and the inability to keep safe, experienced drivers in the industry. Similarly, the lack of oversight of freight brokers and other transportation intermediaries allows many unscrupulous entities to regularly take advantage of small business motor carriers forcing those truckers into choosing between safety and making enough money to support their families.

It must be recognized that in trucking, economics and safety go hand in hand. From the equipment aspect where a driver is unable to pay for repairs to his truck because he was not properly compensated despite delivering a load on time and in good order to unrealistic delivery schedules that put drivers in the position of driving while fatigued or violating hours-of-service rules. There is a chain of responsibility in safety and FMCSA, in addition to being given the authority to properly govern it, must be given the resources to adequately enforce existing regulations.

In addition to committing to enforcement, Congress and the FMCSA must formulate new rulemakings or modifications to existing regulations that will have a meaningful impact on the trucking industry and highway safety such as ensuring that hours-of-service rules hold all industry stakeholders accountable for their actions and mandating training for entry-level truck drivers. Optimum trucking and highway safety can only be achieved by holistically developing a safety culture that acknowledges the perspectives of people behind the wheel and accounts for all industry stakeholders.

FMCSA

OOIDA and the trucking professionals we represent are encouraged by FMCSA's recent efforts to reassess its enforcement activities and to expand its understanding of driver perspectives. For example, the considerable time and effort that the agency put into its public hours-of-service listening sessions should be commended.

However, OOIDA believes that over the past several years the limited resources of the FMCSA have been somewhat misdirected in a manner that diverts enforcement priorities away from efforts that would have a much greater impact on highway safety. For many years the agency's enforcement priorities have placed an increasing emphasis on targeting drivers while largely ignoring the enforcement of many regulations related to corporate motor carriers and transportation intermediaries. While some progress has been made, this model of enforcement has kept the trucking industry from achieving its full safety potential. To reach that potential FMCSA must seek to enforce all regulations under its authority and Congress must be willing to expand the agency's jurisdiction to encompass all industry stakeholders who influence and compromise safety.

You simply cannot 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 Department of Transportation and the FMCSA have jurisdiction over regulations that may be perceived as outside the "safety" purview, but in reality regulations such as those governing leasing agreements, loading/unloading of trucks and transportation intermediaries have a tremendous impact on safety. Those regulations are often directly related to a driver's bottom line. Unfortunately, since its inception the FMCSA has placed little priority on enforcing regulations perceived as being solely economic. In fact, in most instances the agency has done little if anything to enforce those rules. This has resulted in a trucking industry where drivers and small players are regularly preyed upon by dishonest entities who have little fear of recourse or of reprisal from the trucker they are essentially defrauding or the government agency expected to oversee them.

Enforcement priorities that ignore the relationship between highway safety and the coercive demands of shippers, receivers, motor carriers and freight brokers upon drivers are impediments to our overall safety objectives. The demands and expectations of trucking stakeholders on drivers are far more influential on safety than any inspection scheme or schedule of fines that Congress or FMCSA may devise. Unless those economic issues are addressed, drivers who become disqualified from driving for violating hours-of-service rules and other safety regulations will simply be replaced by new, less experienced drivers, facing the same economic pressures. It is only by addressing underlying economic concerns that we will begin to see significant improvements to highway safety.

Detention Time

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 impact a trucker's ability to comply with safety regulations. Time spent waiting to be loaded or unloaded was repeatedly identified by drivers and small motor carriers at FMCSA's public listening sessions as a major factor that must be addressed in order to have effective hours-of-service rules. In addition, excessive time spent waiting to be loaded or unloaded plays a major role in drivers' continued opposition to the use of electronic on-board recorders for hours-of-service enforcement.

Under current hours-of-service regulations, the daily 14-hour clock begins to tick for a truck driver 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 drivers' time having essentially no value, particularly to shippers and receivers. Shippers and receivers also fall outside of FMCSA's authority and are not held accountable for their actions related to hours-of-service regulations.

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 loading facilities with little or no idea how long they will be there. Known in the industry as "detention time," most shippers 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 a shipping or receiving facility with no idea of whether he or she will be there for 2 hours or for 10. In certain industries, it is not unusual for drivers to wait up to 24 hours before receiving a load. During this waiting time, it is 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.

To give you an idea of how significant the detention time problem is—industry surveys have estimated upwards of 40 hours per truck per week is wasted waiting to be loaded and unloaded. In fact, as a part of the Motor Carrier Efficiency Study the FMCSA identified loading and unloading as the most cited inefficiency in trucking—costing the industry an estimated $3 billion per year and society over $6.5 billion annually.

Not only is excessive time waiting to be loaded and unloaded uncompensated, but it essentially steals the time that drivers have under the hours-of-service rules to do the work for which they are paid—driving the truck.

In addition to the monetary cost, in research conducted for the Department of Transportation, excessive detention is often cited as a contributor to hours-of-service violations as well as driver fatigue. Because a driver's time is not accounted for by shippers, drivers are regularly put in the compromising position of having to choose between meeting scheduling demands or complying with safety rules such as hours-of-service regulations. Research shows that often, because of economic necessity and the structure of the industry, drivers feel pressured to not keep an accurate log book or to drive while fatigued. For example, a comprehensive study on shippers' role in driver regulatory compliance noted that waiting for freight to be loaded/unloaded can "impede a driver's ability to effectively meet schedules and lead to violation of HOS, driver fatigue and loss of income by all parties involved . . ." (A Qualitative Assessment of the Role of Shippers and others in Driver Compliance with Federal Safety Regulations, 1998).

The General Accountability Office is currently conducting a related investigation into the potential operational inefficiencies and safety problems associated with commercial motor vehicles that are detained at loading docks. The GAO is seeking to learn to what extent detention time affects trucking industry operations and safety as well as what Federal actions could be taken to reduce the implications caused by detention times on trucking industry operations and safety.

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 will benefit from more efficient freight movement and dramatically improved highway safety.

Hours-of-Service

To say the least hours-of-service regulations are significant to the men and women who make their living behind the wheel of commercial motor vehicles. Those rules have a major impact on the daily lives of truckers whether they are engaged in activities related to their livelihood or at home with their families. Truckers have appreciated FMCSA's genuine interest in hearing their thoughts and concerns as the agency works toward a new hours-of-service rule.

To achieve significant safety gains as well as reduce non-compliance, the next hours-of-service rule must be more flexible to allow drivers to sleep when tired and to work when rested. The rules must encourage truck drivers to get off the road when they are tired and must not penalize them for doing so. As such, the most important factor to consider as the next hours-of-service rule is devised is that the overwhelming majority of truck drivers governed by the rule are compensated only for driving even though they are expected to perform non-driving, uncompensated work that can consume considerable and unpredictable amounts of their on-duty time.

Under the current hours-of-service regulations the 14-hour clock begins whenever a driver performs any on-duty activity after taking a compliant minimum rest. The remaining 10 hours of a 24-hour day is supposed to be reserved for resting. There are general and administrative functions that are required of drivers such as completing paperwork, fueling, undergoing safety inspections and general maintenance that require daily on-duty, uncompensated time that counts against their 14-hour on-duty clock. To some extent drivers can predict and control those duties, but there are many other activities that occur regularly that are also uncompensated yet highly unpredictable.

Physically loading or unloading vehicles, manually sorting and stacking freight and taking care of mechanical breakdowns are a few examples of these unpredictable, uncompensated activities that count against the 14-hour clock. In addition there are the delays from congestion, work zones, detours and inclement weather which reduce earnings potential because again, drivers are predominantly paid by the mile and must count this time against their 14-hour clock.

Considering all that they are asked to do, it is easy to understand that drivers want to get in as much compensated driving time as possible each day. In a survey done by OOIDA of its members, 66 percent reported that they forego short rest breaks, naps and meals under the 14-hour rule in order to perform as much compensated driving time as they can. In fact most drivers report that they seldom drive more than 10 hours per day, but still feel compelled to continue driving when they would like to take a break to compensate for either planned duties or unpredictable delays.

Significant reductions in driver fatigue and non-compliance will not be achieved until drivers are paid for all of their work and drivers face no economic downside for complying with the rules. If drivers were compensated for both their driving and non-driving on-duty work, they would have much less incentive to drive while fatigued. Additionally, they would have every incentive to record all of their on-duty time, and concerns with the accuracy of logbooks would disappear.

Electronic On-Board Recorders

If Electronic On-Board Recorders (EOBRs) could prevent the manipulation of a driver's work schedule and respect drivers' privacy rights, OOIDA would consider supporting their use for hours-of-service 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 hours-of-service 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 hours-of-service enforcement is that the devices will provide an accurate, tamper-proof record of a driver's duty status and therefore ensure compliance with the hours-of-service 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 hours-of-service 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 is not under the hours-of-service rules. In fact, EOBRs will still permit someone performing compensated work for a person other than the motor carrier to drive, 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 hours-of-service compliance than paper log books. The substantial costs of EOBRs, costs that would be especially burdensome to small businesses, 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 hours-of-service 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.

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.

CSA 2010

There has been much misinformation communicated within the trucking industry concerning FMCSA's Comprehensive Safety Analysis 2010 initiative or "CSA 2010." Much of the information seems to have purposely distorted the basic goal of this initiative—improving highway safety.

For too long, drivers seem to have been the sole focus of enforcement at roadside. The large motor carrier community actually encouraged this one dimensional view because it allowed them to shirk their shared responsibility for having adequate safety management practices in place.

CSA 2010 will hold a motor carrier immediately responsible for actions of their drivers on the highway. Once the initiative is fully implemented, motor carriers' safety ratings will be tied to actual data from roadside inspections as opposed to the current practice where they may face an introspective review of their safety practices once in a decade—if even then.

For motor carriers that choose to continue with business as usual through insufficient training of their new drivers and failure to implement genuine preventive maintenance programs on equipment for which they own, CSA 2010 will very quickly be able to determine their indifference to good safety management practices. This is a significant improvement over the current system which really amounts to a "catch me if you can" and "catch and release" enforcement model.

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 authorizations.

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 first 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 records.

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. Applicants should also explain briefly why they left each employer or, if they were self-employed, why the business was shut down. 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 might also consider requesting the applicant's recent tax returns and/or contracts and agreements as confirmation of the veracity of information provided.

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 10 days to request the full application and file a formal protest.

It is our understanding that well over one hundred applications for operating authority are filed with FMCSA each day. 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 decisionmaking 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 safety audit, should result in automatic denial of new entrant 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) & 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.

Distracted Driving

Professional truckers are the safest drivers on the road per vehicle miles traveled. They have a vested interest in highway safety as their lives and livelihoods quite literally depend on it. Every day on roadways across America, professional truckers witness drivers operating vehicles while engaged in activities that significantly impede their ability to attend to the task of driving safely. Experience has shown these professionals that in particular drivers sending text or e-mail messages while operating a vehicle are a significant hazard to themselves and other roadway users.

OOIDA supports government efforts to prohibit motorists from sending text or e-mail messages while operating a moving vehicle. While we applaud the FMCSA for moving forward with a rulemaking to ban interstate operators from texting or e-mailing while driving, we do have some concerns as to whether this ban will be equitably levied on motor carriers utilizing fleet management devices. The current rulemaking makes an unfounded assumption that fleets utilizing on-board management systems do so responsibly.

Many of OOIDA's members who drive for larger fleets tell us a different story. Our members inform us that it is common for them to be messaged during their driving hours and in many instances, their immediate response is required—which they do while their vehicle is in motion. For example, I recently spoke with a member who desired to take a short nap during the middle of his duty cycle and was repeatedly harassed via his on-board dispatch system to "return to driving" otherwise he would not make the delivery on-time. He was effectively kept by his motor carrier from getting the short nap he felt he needed in order to perform his driving duties safely.

Most everyone understands the danger in "texting" with cell-phones or other handheld communication devices while driving. However, the reading and sending of alpha-numeric script from a fleet dispatch system also needs to be specifically prohibited otherwise the intent of the proposed regulation will be undermined.

Conclusion

We are encouraged by FMCSA's recent efforts to reassess its enforcement activities and to expand its understanding of driver perspectives. We hope that the agency and this subcommittee recognize that enforcement priorities that ignore the relationship between highway safety and the coercive demands of shippers, receivers, motor carriers and freight brokers upon drivers are impediments to safety objectives, that the demands and expectations of trucking stakeholders on drivers are far more influential on safety than any inspection scheme or schedule of fines that Congress or FMCSA may devise and that only by addressing underlying economic concerns that we will begin to see significant improvements to highway safety.

OOIDA and the hardworking men and women who comprise our membership sincerely desire to see further improvements in highway safety and significant progress toward highway safety goals of the Subcommittee and the U.S. Department of Transportation. To reach the trucking industry's full safety potential FMCSA must

seek to enforce all regulations under its authority and Congress must be willing to expand the agency's jurisdiction to encompass all industry stakeholders who influence and compromise safety.

Thank you again, Chairman Lautenberg and Senator Thune, for the opportunity to testify before the Subcommittee. I look forward to the dialogue, and will be happy to answer any questions that you may have.

Senator LAUTENBERG. Thank you each for your testimony.

There is, obviously, a conflict of views here. Frankly, our responsibility is to get to the end of the game, and that is to keep the trucking industry going. It is a very important element in terms of our commercial enterprise in this country—but at the same time, we ought to be able to do it in a safer manner than we have and reduce the risk to the ordinary passenger on our roads by all kinds of factors.

Ms. Gillan—and I will ask the same question of Mr. Spencer—large trucks take longer to stop, have higher rates of rollover, and cause tremendous wear and tear on our crumbling transportation infrastructure. Yet, some propose relaxing the ban on large trucks that weigh more than 80,000 pounds or are longer than 53 feet on our interstate highway system.

What might be the impact on safety if we were allowed these bigger trucks back on our interstate highway system? I will first ask Mr. Spencer.

Mr. SPENCER. We do not believe the answer to productivity or efficiency or environmental issues is to make trucks bigger and heavier. The reality for the people that drive them today is there is not even any training required to get behind the wheel of a big truck. A state will give you a commercial driver license with virtually—well, I mean, actually with no training. As long as you can basically drive around cones, somebody will turn you loose——

Senator LAUTENBERG. Mr. Spencer, is there a consequence on safety if we get these bigger trucks on the road? Is it a factor that we ought to be looking at?

Mr. SPENCER. We do not think it is a good idea to go bigger and heavier. Again, trucks are hard enough to handle by seasoned, professional, experienced drivers, and the way our business works is those seasoned professionals are very much on the chopping block. They leave the industry because the rewards are not there. The fair treatment they desire is not there—to be replaced with new people that may have dire consequences.

Senator LAUTENBERG. But yet, there are lots of people who enter the profession independently, obviously, when 86 percent of carriers have less than six vehicles. So lots of people go into the business despite the anomalies that you talk about and apparently make a living doing so.

Mr. SPENCER. Trucking is blessed, I suppose, and cursed with unbelievably high turnover. The economic situation that we have been dealing with for the past 3 years has taken many, many, many people off of our highways. See, the people that are attracted to owning their own truck, to actually being in business themselves, are not lazy folks. They are not looking for an easy buck. Many of them have 20, 25, 30 years of experience and millions of miles of safe drivers.

Senator LAUTENBERG. Well, I know they take these jobs because they are available and because they think they can make a living.

Ms. Gillan, I started the question with what happens to safety if we allow these larger trucks on our interstate highway system. What is the risk that we put on our citizens?

Ms. GILLAN. Senator, there is a tremendous risk in allowing trucks to get heavier and longer. There is no question about it. Right now, large trucks are overrepresented. One out of nine highway fatalities is a result of a crash with a truck. In fatal crashes involving a large truck and a passenger car, 98 percent of the fatalities that result from those fatal crashes are the occupants of passenger cars.

I think what is interesting about this debate right now and the legislation you have introduced is that it is not only the safety groups that are supporting your legislation, but the drivers themselves. The drivers know that these large, overweight trucks are difficult to handle. They are difficult to stop. Right now, it takes a fully loaded truck the length of a football field to come to a complete stop. Why would we possibly want to jeopardize the safety of drivers and the public by allowing bigger and heavier trucks? And there are plenty of studies, which I am happy to submit, showing that bigger trucks are more dangerous.

Senator LAUTENBERG. I wanted to ask Mr. Osiecki about hours-of-service. You say that the rule should remain unchanged. It contradicts almost every safety organization's view of the NTSB and the Federal courts. Does the trucking association really believe that increasing driver time by 30 percent is an effective solution to fatigue?

Mr. OSIECKI. What we believe is that the rules are working. The rules have been in place for about 6 years, a little longer than that. In large part, the rules are working based on the data and the safety data because the rules have provided additional rest time.

One of the things about fatigue is time on task or time spent driving is not a very good predictor of fatigue. What is a much better predictor of fatigue is how well a person rests, how they rested most recently, their most recent extended, what they call anchor sleep period, and also time of phase, circadian rhythm factors. Time on task or time driving is a factor, but it is about fourth or fifth on the list.

Senator LAUTENBERG. Are you going to give everybody some sleep consulting and medical exam to see their sleeping habits? Come on.

Mr. OSIECKI. We support better sleep disorder screening.

Senator LAUTENBERG. And the companies will pay for it. ATA will recommend the companies pay for that kind of service.

Mr. OSIECKI. Yes, sir. There are some companies paying for it today. There are some companies that are not paying for it today. But the point is that there are probably more efficient and more effective ways to address fatigue in the industry, and one is sleep disorder screening. Another one is effective use of fatigue management systems or fatigue management programs at the fleet level, and that is a recommendation that NTSB has made recently.

Ms. GILLAN. Senator, could I just add something to that? The trucking industry likes to claim that the decrease in truck fatalities

is somehow related to the hours-of-service rule, but they do not acknowledge that the first 2 years that the hours-of-service rule was in effect, truck deaths went up. And there is conclusive research showing that after the eighth hour of driving, that the risk of a crash for a truck driver increases dramatically. So these hours-of-service allowing 11 consecutive hours of driving and a 34-hour restart which allows a driver to drive upwards of 77 hours in 7 days are clearly contributing to fatigue, and that is frankly why the courts overturned——

Senator LAUTENBERG. Mr. France, what do you think? You see the results out there on the highways.

Mr. FRANCE. The results right now that we are seeing over the last several years seem to substantiate the fact that the hours-of-service that we currently have on board with the 14-hour operating rule where you can only operate 14 hours and then you have to get out from behind the wheel and making them take 10 hours off has substantially increased our safety factor on the highway.

Senator LAUTENBERG. Are these things observed? Are they really enforced?

Mr. FRANCE. Yes, sir. They are being enforced. The current rules that are in place right now for law enforcement at roadside—it is a fairly easily enforceable rule.

Senator LAUTENBERG. Do you think you ought to extend the hours-of-service?

Mr. FRANCE. To extend what we currently have?

Senator LAUTENBERG. Yes.

Mr. FRANCE. My feeling is yes.

Senator LAUTENBERG. So you would allow more of the drivers to be on the road, behind the wheel, for longer hours.

Mr. FRANCE. No, no longer than what we are doing now. I am comparing with what we have.

Senator LAUTENBERG. I just want to be sure on that record.

What is the electronic on-board recorder cost, Mr. Spencer?

Mr. SPENCER. The on-board recorder?

Senator LAUTENBERG. Yes, the EOBR.

Mr. SPENCER. An on-board recorder is simply a——

Senator LAUTENBERG. No. How much might it cost to install?

Mr. SPENCER. Oh, initial cost likely for an operator would be a couple thousand dollars up front; ongoing costs of hundreds of dollars every year based on what is being projected now what a requirement would be.

Senator LAUTENBERG. I have different information on that.

Do you know anything about that, Mr. Osiecki?

Mr. OSIECKI. Thank you, Mr. Chairman.

The range is somewhere between $500 and $2,000 depending on the system, $500 obviously being on the very low end with a very minimally functional device, the $2,000 device and perhaps even a little bit higher than that——

Senator LAUTENBERG. What does a truck cost on average? Is there an average?

Mr. OSIECKI. It is north of $100,000.

Senator LAUTENBERG. North of $100,000?

Mr. OSIECKI. Yes.

Senator LAUTENBERG. And it might cost 500 bucks or something close to that, some $500 or $1,000 to install an EBOR? Does it compare to having extra windshield wipers in places or sufficient horns or lights? They are all safety issues and safety factors, are they not? I mean, why should this not be mandatory on vehicles to make sure we know the rules are being observed? Mr. Osiecki?

Mr. OSIECKI. The challenge that ATA and the trucking industry have regarding a universal mandate for every vehicle is not necessarily the cost. It is really about is this the most effective safety-related technology that we can adopt in the industry. And the reason I say that is because the challenge that the industry has is the same challenge that the FMCSA has in moving toward a universal mandate. The agency itself has done field operational tests of numerous safety-related technologies, lane departure warning systems, collision mitigation systems, electronic stability control, and more, and what they found is there is a true safety benefit and a return-on-investment for making the investment on some trucks. That same set of studies and field operational test does not exist for electronic on-board recorders, and it does not exist because the data is not there to demonstrate the safety benefits. I am not saying it cannot work, that it will not work, but it is just not there. And that has been the challenge for fleets when they have to make an investment decision in technology and that has been the challenge for FMCSA in moving toward a universal mandate.

Senator LAUTENBERG. Well, safety is the issue. As I said earlier, the trucking industry is central in our society and we want them to work effectively and to prosper as well. But the question of lives on the highways is a whole different thing when we look at the thousands of people that we lost over a 10-year period—what was that, Ms. Gillan?

Ms. GILLAN. 55,000.

Senator LAUTENBERG. 55,000 people. And we lost 58,000 in Vietnam. So it is a fairly substantial penalty that we pay for lack of safety.

I am going to ask further questions later. I am running a little over time here. I call on Mr. Thune and then Senator McCaskill.

Senator THUNE. Thank you, Mr. Chairman.

Mr. Osiecki, your written testimony is silent on the issue of truck size and weight, which is a safety issue as well as an economic one. What is ATA's position with respect to productivity in the next highway bill?

Mr. OSIECKI. Well, thank you, Senator.

We certainly support an open debate on this issue. We think a "just say no" answer is not appropriate. We do support increased productivity for trucks. We support, certainly in the western States, a harmonization of longer-combination vehicles, or LCV, regulations at that regional level. We support a number of other more productive initiatives for a couple of reasons. We do not think safety and more productive trucks are mutually exclusive. We think that they can be used in harmony. They are harmonious. In fact, many fleets—in fact, many of the larger fleets in this country have demonstrated that over and over again with their use of LCVs and larger trucks. There are a host of types of configurations being used today that are being done safely.

While some have suggested there are reams of studies and volumes of studies that indicate safety problems, really it is the reverse. The most recent Federal Highway Administration study indicated that LCVs or more productive trucks, are a safer vehicle when they are used in a controlled environment. The Ohio and Indiana situation is a good example where you have a lane and it is limited access. It is with operational controls. And the safety of those larger trucks are terrific. In fact, the safety record is more than 100 percent better. The crash rate is half of the typical truck configuration in that lane.

So there are a lot of opportunities for safety. There are opportunities for environmental and economic benefits, but most importantly, we would not be advocating greater use more productive trucks if we did not think that they could be done in a safe and responsible way.

Senator THUNE. And is that pretty much a consensus position in the trucking industry?

Mr. OSIECKI. That is a terrific question. That has been a challenge, and in large part, I would say yes. There are pockets of the industry that do not necessarily agree with that, but the majority do, yes.

Senator THUNE. Are there provisions in the chairman's bill, his proposal, that ATA supports?

Mr. OSIECKI. That we do support?

Senator THUNE. Yes.

Mr. OSIECKI. For the most part, no, sir.

Senator THUNE. What is your view about the appropriate role for EOBRs in motor carrier safety?

Mr. OSIECKI. As I mentioned in my oral statement, as well as the written testimony, we think that the step that FMCSA has recently taken is a good first step. It is a good incremental step. It targets the noncompliant folks, and gets them into compliance. We can better develop the performance specifications for the devices. We can collect data as a result of this rule, and that data, we believe, can inform future rulemakings on this issue, perhaps moving toward a universal mandate. But again, the safety data is not there to justify that at this point.

Senator THUNE. Mr. Spencer, the new rule on EOBRs would only require carriers with a serious history of hours-of-service violation to have them installed. Is your organization opposed to EOBRs even for carriers with a history of hours-of-service violations?

Mr. SPENCER. No, we do not oppose the agency's actions in those areas. Obviously, if you have problems with violations, that can simply be just another penalty and perhaps a deterrent.

But, you know, the point that I want to make on EOBRs is that there is no safety data to show that they enhance highway safety. They cannot tell if a driver is sleepy. They cannot tell if a driver needs to rest. They cannot tell whether a driver is off duty or whether he is physically handling 44,000 pounds of cargo. They are no more reliable than the paper logs that they would replace.

And to get to the issue of cost, absolutely they would have the greatest cost impediment on the small business people we represent, which are most of truckers in the country, including South Dakota and everywhere else. We think if we are going to ask peo-

ple to spend thousands of dollars and a continuing cost, that there should be a safety benefit to them. It is simply not there.

Senator THUNE. Ms. Gillan, in your written testimony, you attribute the declines in truck crash fatalities to a decline in freight demand. Do you agree that the rate of fatal truck crashes, as measured per one hundred million miles of travel, has also declined, from 2008 compared to 2007, by about 12.2 percent?

Ms. GILLAN. I agree that we have made some progress, Senator Thune, in reducing the fatality rate. It still remains the fact, though, that the truck fatality rate is still twice what the passenger vehicle fatality rate is. So while we have made some progress, is it enough? Absolutely not. And I think that we need to do more.

And we also need to keep in mind that the fatality rate is based on 100 million miles of truck travel. Those are estimates by the agency. Reporting that information is voluntary by the states. So I think we always have to also look at the number of fatalities we have. Now, we have had a drop. As I said, in our testimony we have a chart showing that overall highway fatalities have dropped. That always happens in a recession. So we cannot let this drop in fatalities in any way take our eye off the ball of advancing truck safety.

Senator THUNE. While the rate is not satisfactory, I guess independent of the drop in freight as a result of the economic circumstances the country is in, but would you agree that at least the trend is in the right direction?

Ms. GILLAN. Yes, absolutely, and we support that and we want that to continue.

Senator THUNE. Your organization also contends that the hours-of-service rule that was adopted in 2003 is unsafe, and yet the rate of fatalities and injuries and crashes that involve large trucks steadily declining. What is the basis for that assertion that the rule is unsafe?

Ms. GILLAN. Well, the fatality rate is declining, but it does not have any relationship to the hours-of-service rule. I mean, to try to make that connection that for some reason allowing truck drivers now to drive 77 hours in a week has some way contributed to this drop—is absolutely supplied by Advocates and other safety groups would say absolutely not. When the courts overturned that rule in a scathing opinion, they questioned and criticized the agency.

We have firm research showing that after 8 hours of driving, the risk of a crash increases dramatically. We have a whole body of research. We have an FAA that is working to reduce the number of hours of a pilot in the cockpit because of fatigue, and yet, in the trucking industry and over at FMCSA, we issued a rule that allows a truck driver to drive 77 hours in a week, which is almost a 30 percent increase over the old hours-of-service rule.

So our group is very concerned about this. At a time where the Department of Transportation has identified transportation worker fatigue as a top priority, increasing the number of hours that a truck driver can drive and work is not the answer to addressing fatigue.

Senator THUNE. I guess the only observation I would make is that—and your assertion about hours of service being what it is—the numbers still—I would say independent of the decline in freight demand—you still have a substantial decline based on 100 million miles of travel in that one-year period. So at least the trend is in the right direction notwithstanding the hours-of-service issue.

Ms. GILLAN. And as I said earlier, Senator, the first 2 years that the hours-of-service rule was in effect, truck crash deaths went up. So I guess if I thought that there was a connection, you could argue that the hours-of-service rule caused the increase in fatalities. However, in that case, the trucking industry said, oh, no, that is not the reason. So I think we have to separate those two issues.

Senator THUNE. One last question, Mr. Chairman, for Mr. France, and that is, what can be done to simplify and harmonize the Federal truck size and weight limits?

Mr. FRANCE. To be honest with you, I cannot really speak to that because I do not have all the details. But as an association, we would be more than glad to get back with this committee with that information. Like I said, we support the fact that right now, until there is more data on board, we do not raise our size and weight limits on the highways because I do not think we are ready personally to do that.

Senator THUNE. OK, very good.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you.

Senator McCaskill?

STATEMENT OF HON. CLAIRE MCCASKILL, U.S. SENATOR FROM MISSOURI

Senator MCCASKILL. Thank you, Mr. Chairman.

I would like to look at the safety issue from the perspective—and, Mr. Spencer, I would like you to comment on this—about the practice in this industry to pay for miles driven as opposed to hours. Clearly that is contributing to this problem. Loading and unloading time is, in fact, uncompensated according to what I have learned from your testimony. Is that correct, Mr. Spencer?

Mr. SPENCER. That is correct. You know, I have tried to characterize—somewhat describe it as the problem it is. But I mean, there are drivers that lose 30, 40, 44 hours a week just waiting to get loaded or unloaded. Now, this is all uncompensated time. Then after putting in all of those hours, then they have to go out and try to drive. If the only way they get paid is for miles driven, then you can understand how long that workweek is.

Senator MCCASKILL. Yes. I had never really thought about it from that perspective. I assume if you are waiting 10 or 14 hours to load, you cannot take a nap during that period of time. Correct?

Mr. SPENCER. In most instances, you cannot do that. Again, this time is unpredictable. We have talked a lot about efficiencies, finding ways to make the industry more efficient. That is the most inefficient way to use human resources ever, and the problem is not getting better on its own and it is not going to get better on its own.

We talk about safety. We talk about why do we have these people that work too long, that drive too hard, that drive too fast.

Well, how do we pay them? We only pay for miles that they drive. Why do you think they want to do that?

Senator MCCASKILL. Right. If the only way you get paid is to drive miles, then we are incentivizing the system to drive as many miles as possible as opposed to compensating drivers for the time they are spending working at their job. Right?

Mr. SPENCER. It makes all the sense in the world to me, and of course, the reality is—there are economic incentives or disincentives to wasting a driver's time. Well, the practice ceases. Drivers become much more efficient. Costs can even go down, costs to customers, to society. But again, it is doing things a little different than we have historically done it, but it is what we have to do.

Senator MCCASKILL. Let me clarify. The loading and unloading time does not count toward the 14 hours?

Mr. SPENCER. It should if it is recorded as loading and unloading time.

Senator MCCASKILL. But that is where somebody is going to fudge.

Mr. SPENCER. Because if a driver is not going to be compensated for that time, there is going to be a tremendous temptation——

Senator MCCASKILL. Incentive to not count it.

Mr. SPENCER.—15 minutes.

Senator MCCASKILL. And that electronic on-board recorder is not going to help you for your loading and unloading time.

Mr. SPENCER. Not in the least.

Senator MCCASKILL. There is no way that the electronic on-board recorder is going to be able to capture how many hours someone is spending before they get in the cab of that truck getting either loaded or unloaded?

Mr. SPENCER. It cannot tell the difference. The only thing it can tell is if the truck is moving.

Senator MCCASKILL. Right.

And, Ms. Gillan, what about that? What about us going to a compensation model for hours worked as opposed to miles driven as a step forward on safety?

Ms. GILLAN. Senator, Advocates does not have a position on that, but I work with a lot of the truck safety groups. Clearly, we have set up a situation, as you have aptly described, by paying truck drivers by the hours, not only do we encourage them to drive as far as they can, but also——

Senator MCCASKILL. By the miles you mean.

Ms. GILLAN. By the miles, but also drive as fast as they can. And I think that if the compensation was changed and truck drivers were paid for overtime, if they were paid for loading and unloading the truck, that would be a significant step forward in addressing truck safety.

Senator MCCASKILL. And, Mr. Osiecki, are you all opposed to paying by the hour as opposed to miles driven? It seems like to me we could avoid a lot of problems here because what we are doing is incentivizing unsafe conduct. We are incentivizing the way the system is set up.

Mr. OSIECKI. Thank you, Senator.

I guess the first thing I would say is there is not a single silver bullet in the truck safety equation. It is not driver pay. It is not hours of service. It is not EOBRs. It is not one single thing.

But getting to your question, we are not aware of any study that links a particular method of driver pay to improved safety outcome in the trucking industry. I am aware of one case study, and it is a fairly significant and large case study, that looked at a large truck-load company that raised driver pay, per-mile pay, and got an improved safety outcome as a result of raising driver pay, and they got it because it reduced their turnover rate. Drivers stayed with the company longer because they were getting compensated better, and that resulted in an improved safety outcome because historically older, more experienced drivers are better, safer drivers in this industry. So that is a case study that is meaningful.

But in terms of method of pay, there is nothing that we are aware of out there that says a driver paid by the hour versus paid by the mile versus paid by the percentage of the load or any other method is better than the other.

Senator MCCASKILL. You know, maybe because nobody wants to switch to paying by the hour, nobody has done that case study, and the drivers in this industry are the people who are paying these trucks to drive. I would certainly encourage someone to do that study because that would also contribute, I think, to less driver turnover because these folks are ground down by only being paid by how far and how quickly you go. The faster you go, the more miles you can drive within the set period of time.

It just seems common sense would dictate that if we could look at paying hourly, because none of these people are lazy people—it is not like these drivers are, all of a sudden, going to put their feet up and not do the job. I just think it would be time—and I would encourage everyone who cares deeply about truck safety to try to motivate some carrier to look at payment by the hour as opposed to miles driven and do that case study. I just don't think there has been a motivation in the system to even study it because the money driving the system does not want it. That is what I think.

Would you disagree with that assessment?

Mr. OSIECKI. No, I would not disagree but I would simply add that in the National Master Freight Agreement, there is actually a difference between over-the-road driver pay and local driver pay or pick up and delivery driver pay. Over-the-road is paid by the mile. Local pick up and delivery are paid by the hour. And there is a reason for that. It is because of the differing operating environments do not allow a pick up and delivery driver to really make any money by the mile. He gets paid much more money being paid by the hour. The over-the-road makes more money getting paid by the mile. And I am not intimately familiar with the agreement, but I will tell you there is a distinction in the Teamsters agreement today which may form the basis for taking a look at this issue. But, again, there is not much there.

As I remarked earlier, we really need to make policy decisions based on data, good data, good analysis, what causes crashes, what raises crash risk, and right now we do not have that in this arena.

Senator MCCASKILL. Well, I would be happy to visit with the Teamsters about that. I think that everybody ought to cooperate

and see if we could get a decent case study on paying by the hour because I think we are setting up a system for unsafe behavior just by the incentives that are inherent in it.

One more question, if you do not mind, Mr. Chairman, to Ms. Gillan. Senator Thune asked Mr. France about a common-sense approach in terms of uniform lengths and weights for trucks on the interstate and national highway system. What about your perspective on that? I mean, would that not make it simpler just to have a uniform standard across the board?

Ms. GILLAN. Oh, absolutely, Senator. And that is why the safety groups are so strongly behind adoption of Senator Lautenberg's bill, which I know you have cosponsored.

Senator MCCASKILL. Right.

Ms. GILLAN. In 1992, Congress passed legislation which put a freeze on the spread of triple-trailer trucks. That was a significant stop for truck safety where we allowed triple-trailer trucks in the 12 States that already had them, but we prevented the spread across the United States. The legislation, S. 779, would do the same thing right now. Instead of letting the States race to increase weights and then come to Congress and say, oh, my gosh, you know, we have this patchwork quilt, we need to lift everybody's weights to 100,000 pounds, what that legislation does is say let us take a time out. Let us take a time out. We should not allow the weights on the interstate to go above 80,000. There is numerous research and data showing that they are dangerous. And that is what is important because if we do not call that time out right now, we will constantly be faced with different states wanting Congress to pass exemptions for them because they are unique, and then it puts pressure on other States. So that is why this legislation is really important and we really have got to stop that.

Senator MCCASKILL. Thank you, Mr. Chairman. Thank you for your leadership on this issue.

Senator LAUTENBERG. Thank you very much for your provocative thoughts.

Living in New Jersey where I do, a lot of trucks used to come from the coal fields of Pennsylvania, and they would be individual operators trying to make as much money as they could and drive as far as they could to try and keep their families going. So the temptation on the other side is great.

Mr. Osiecki, I have to thank you for your ringing endorsement of my bill.

[Laughter.]

Senator LAUTENBERG. I hear you talk the talk, but I am not sure I see walking the walk. What part does safety play in the agenda for the ATA? Do you think things are OK? Is that the general attitude?

Mr. OSIECKI. Thank you, Chairman.

No. We have done pretty well. We can do better. We have a very extensive safety agenda that is not just about truck safety and not just about professional truck driver safety. It is really about highway safety because we all share the road, cars, trucks, SUVs, motorcycles. We really all do share the road. We drive the same interstates. And we can do better. We can reduce speed. We can limit the speed of trucks. We can better enforce our operating rules.

Senator LAUTENBERG. I thought I heard you say increase the speed.

Mr. OSIECKI. No. We can reduce the speed.

Senator LAUTENBERG. No. But did you not earlier say that in terms of a more efficient system, that we ought to increase speed limits to 65 miles an hour?

Mr. OSIECKI. We support a return to a national maximum speed limit of 65 miles an hour. And this is politically unpopular, but bringing the 80-mile-per-hour and the 75-mile-per hour and the 70-mile-per-hour states back down to 65—and couple that with limiting large trucks to 65, electronically limiting those trucks so the trucks cannot go faster than that and then have greater enforcement of it. So that is a real issue in our highway safety strategy. It is a real gap. And it is not just about trucks. It is about all of us operating on our highway system, and we can do better.

Senator LAUTENBERG. You are looking at 65 as a maximum.

Mr. OSIECKI. Yes, sir.

Senator LAUTENBERG. Thank you all very much for your testimony.

The record will be kept open. We will submit questions to you and would ask for your prompt response when you get a question. Thank you.

[Whereupon, at 11:46 a.m., the hearing was adjourned.]

A P P E N D I X

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

I am very pleased that the Surface Transportation Subcommittee is holding today's hearing on motor carrier safety. The Commerce Committee reported legislation last December to address safety problems in the motorcoach sector of the motor carrier industry, but truck safety also requires our attention, oversight, and action.

The good news is that the numbers in terms of fatalities and injuries involving large trucks are moving in the right direction. Between 1998 and 2008, there was a 16 percent increase in the number of registered large trucks, but the involvement rate for large trucks in fatal crashes declined 29 percent, and the involvement rate in injury crashes fell 36 percent. Still, nearly one in 9 fatalities on our highways in 2008 resulted from a crash involving large trucks, and when an accident between a passenger vehicle and a large truck occurs, the occupants of the passenger vehicle are most likely to be injured or killed.

As we look ahead to reauthorizing the Federal Motor Carrier Safety Administration (FMCSA) as part of the next highway bill, this hearing will help us identify gaps and shortcomings in our truck safety programs. In this regard, I believe there is great commonality between the trucking and motorcoach industries. S. 554, the Motorcoach Enhanced Safety Act, for example, identifies new entrants and "chameleon" bus operators—operators taken out of service for safety violations who simply set up shop under another name—as carriers requiring significantly more scrutiny. The same holds true for the trucking industry, although the sheer number of new entrants annually in the trucking industry may dictate a somewhat different approach to the problem. Similarly, the motorcoach bill identifies a number of new technologies that could significantly contribute to motorcoach safety, including safety belts, electronic stability control, and advanced window glazing. While the specific types of technologies that could improve truck safety may be different, new technologies can certainly enhance truck safety, as the industry itself has acknowledged with respect to improved crashworthiness for cabs, lane departure warning systems, and collision avoidance systems.

While today's hearing is focused on truck safety, I want to express my disappointment over the lack of progress being made at the Department of Transportation on its Motorcoach Safety Action Plan. Even though the Plan was issued just 5 months ago, FMCSA and the National Highway Traffic Safety Administration (NHTSA) are falling behind on a number of important initiatives. Of perhaps most concern is the delay in the Notice of Proposed Rulemaking (NPRM) to require seat belts on all motorcoaches. Originally scheduled for the first quarter of 2010, the NPRM has been delayed until the 3rd quarter of the year. These delays, which are not the first on these issues, are unacceptable, and make enactment of S. 554 in the near future even more essential.

Thank you, Mr. Chairman. I look forward to working with you, Senator Thune, and Chairman Rockefeller on this and all of the safety programs that will be authorized in the next highway bill.

PREPARED STATEMENT OF STEPHEN OWINGS, PRESIDENT AND CO-FOUNDER, ROAD SAFE AMERICA

Class 7 and 8 trucks are involved in over 20 percent of all *multi-vehicle fatal crashes*. About half of the 43,000 deaths occurring on our roads each year happen in single vehicle crashes, including nearly all of the crashes that kill professional truck drivers (approximately 1000 truck drivers die on the job per year). Subtracting these 1000 deaths from the 5,500 total deaths per year involving heavy commercial trucks during the last decade means about 4,500 die in *multi vehicle crashes* involving large trucks annually. This reveals that the 3.5 percent of all vehicles that class 7 and 8 trucks represent are involved in over 20 percent (4,500/21,500 total deaths in multi-vehicle crashes = 20.9 percent) of all *multi vehicle fatal collisions*.

Our organization has worked to reduce these statistics by recommending a number of logical changes, which have already been implemented in other "first world countries" around the globe.

One is the call from NTSB for mandatory electronic logging. However, EOBRs as they have been implemented in this country do not appear to be the best approach. The system that is now being upgraded to its second generation in the EU does. It is a highly secure single-purpose system that electronically logs time driven by each driver. Its simplicity makes it highly secure and accurate as well as inexpensive.

Another crucial need is one that is nearly cost-free to the industry: requiring that every heavy commercial truck (class 7 & 8) manufactured since 1992, which is the year electronic speed limiters became standard equipment on all of these vehicles, program these devices to 65 mph or slower. Programming these devices to this speed, which is the average speed of all vehicles now on our highways, is not only safe, it's economical since the equipment is already on the trucks and the only cost is an incidental programming fee. Many leading companies already limit the top speed of their fleets to 65 mph or slower. They share that not only are their crashes, which their driver caused reduced along with all of the expenses associated with such events, but also they save money on fuel and maintenance since brakes, tires and engines all last longer at these top speeds. Please see attached letters of support from J.B. Hunt and Schneider National. Also, please note that Japan, Australia, the EU and recently the populous parts of Canada all have these requirements in place. The EU Governors are set at 56 mph. Interestingly, according to studies; 55 mph is the most profitable top speed at which to operate a heavy truck . . .

The insurance requirements for trucking firms must be brought up to date. They were set in 1980 and have stayed at those levels ever since. Please adjust them to reflect inflation during the past 30 years and require that they stay indexed to the CPI going forward. This one common sense change will go a long way toward getting reckless participants out of this inherently dangerous business and keeping "bad actors" out going forward.

We support the idea of tax credits for implementing safety technologies. We also think an attractive Federal loan program would be a great alternative to consider to stimulate the proliferation of the many amazing safety technologies now available.

There is a need for substantial barriers down to car bumper levels around four sides of heavy commercial trucks, as are currently required in the EU. This will become even more important as we work toward better fuel mileage (and passenger vehicles get smaller).

Passenger vehicle drivers need to be better educated on how to drive more safely around heavy trucks. All states should be required to do much more to educate drivers' license applicants about this. Also, the Federal DOT should fund educational communications campaigns targeting not only new applicants but also those who are already licensed, but are woefully ignorant of these life-saving techniques.

Truck drivers should have standardized rigorous training before being allowed to drive heavy commercial trucks. Their CDL's should be graduated so that new drivers are "brought along slowly." Also, there should be continuing education requirements as there are for so many other licensed professions.

On the topic of allowing heavier trucks, the real issue is that truck driving has become less and less attractive as is reflected in the over 100 percent turnover each year at the average company. It is clear that as dangerous as the grim statistics show 80,000 lb. trucks to be 100,000 lb. trucks will be exponentially more so. The proponents of heavier trucks point to the EU as an example of heavier trucks running safely. However, they fail to mention that in the EU all heavy trucks are governed at 56 mph and drivers must be paid per hour for all hours worked including overtime. Drivers in the EU cannot drive nearly as many hours as here (average there can't exceed 45 hours per week). Their drive time is electronically tracked by their highly secure and accurate "tachogram" system. Also, every truck there has substantial barriers around all four sides down to European car bumper levels. Make all of these changes and we will support heavier trucks, assuming that our bridges and roads can support them.

Finally, the "elephant in the room" in this industry is the economic dysfunction that exists. It was thrilling to hear Sen. McCaskill bring this up: paying truck drivers by the mile is clearly asking for the death and injuries that we experience each year in crashes involving these trucks. Truck drivers arguably have at least as much responsibility for public safety as do airline pilots. Yet even though the causes revealed in the recent Buffalo regional air crash (unhealthy, exhausted, poorly trained and poorly paid pilots) have been rampant problems in the trucking indus-

try for decades, there has been nothing done to ensure that these drivers are treated like the professionals they are expected to be. At a macro level, much of the profit that was in the trucking industry has shifted to the shippers/receivers and brokers. It has been done mainly "on the backs" of the truck drivers. Professional truck drivers provide an economic backbone service to our country. They should be healthy, alert, well-trained, and well-paid, including overtime after 40 *total hours worked, including loading & unloading time*. Some think that essentially paying truck drivers more for fewer hours worked will increase prices. We seriously question that argument (although saving lives and injuries should make the expense worth it to most Americans). Making the changes we call for would dramatically reduce the 400,000 crashes these vehicles have annually. When one calculates the consequential economic losses for the country including the lost productivity, wasted fuel and additional carbon in our air due to these massive traffic jams (it takes an average of 3.5 hours to clear a heavy commercial truck from the road) it is enormous. Add to this the medical, legal and liability expenses, as well as the wrecked equipment involved, and one has quite a bit of savings to more than offset the "cost" of paying professional drivers reasonably for the services they provide.

Please consider these requests as they will result in safer drivers in safer trucks on safer roads for us all.

Note: DuPre Logistics, a carrier in Louisiana, recently changed their pay to hourly with overtime. The resulting safety improvements are quite impressive (see attached article).

J.B. HUNT TRANSPORT, INC.
November 4, 2009

STEPHEN C. OWINGS,
President,
Road Safe America,
Atlanta, GA.

Dear Steve,

J.B. Hunt Transport was proud be a co-petitioner with Road Safe America pursuing the mandated setting of an electronic speed Governor of all class 7 & 8 commercial motor vehicles (CMV) manufactured after 1992. These vehicles have standard equipment allowing a maximum governed speed to be set.

Given the fact standard specifications of Class 7 & 8 CMV provide the means to electronically govern truck speed, we believe the debate over the use of speed Governors should center around what the maximum governed speed should be, not whether or not existing technologies should be used.

It does not make sense to roll a CMV off the assembly line that could weight up to 80,000 lbs when loaded and has a much greater stopping distance requirement than automobiles and place it on America's highways without a speed Governor set at a reasonable speed. What is a reasonable speed? 1 believe most Americans would agree that 100 mph, 90 mph or even 80 mph is not reasonable.

Setting a maximum governed truck speed will allow enforcement resources to be shifted from interstate highways to roadways with lower speed limits where accidents are more likely to be associated with driving too fast for conditions. The combination of a maximum governed truck speed and shifting of enforcement to higher risk areas could produce a further reduction in motor vehicle accidents and related fatalities and injuries.

J.B. Hunt has governed our equipment for over 20 years and has recognized the benefits associated with safety, fuel economy, maintenance expense and the environment.

Thank you for your continued efforts to bring attention to this issue.

Sincerely,

R. GREER WOODRUFF,
Sr. VP Corporate Safety and Security.

November 30, 2009

Memorandum for: Steve Owings, Road Safe America
From: Don Osterberg, Senior Vice President, Safety, Schneider National, Inc.
Subject: Support for Speed Limiter Legislation/Regulations

1. *References*:

a. Virtual Speed Differentials Safety Impact for Interstate Highways Using Fleet Data, Dr. Steve Johnson, University of Arkansas, undated draft.

b. Cost-Benefit Evaluation of Large Truck-Automobile Speed Limit Differentials on Rural Interstate Highways, Mack-Blackwell National Rural Transportation Center (MBTC), November 2005.

c. Empirical Study of Truck and Automobile Speed on Rural Interstates: Impact of Absolute Speeds and Speed Differentials, Dr. Steven Johnson, University of Arkansas, December 2007.

d. Investigation of Speed related Truck Accidents from Large Truck Crash Causation Study (LTCCS) Data, Dr. Steve Johnson, University of Arkansas, December, 2007.

2. *Background*: Schneider National, Inc., along with several others, petitioned the FMCSA to mandate that all large trucks be governed at a maximum speed of 68 MPH. Since that petition, we have revised our proposal that the maximum speed should be limited to no greater than 65 MPH for all large trucks manufactured after 1993.

3. *Facts bearing on the issue*:

- What is irrefutable are the basics of kinetic energy physics relevant to this issue. The kinetic energy (KE) to be dissipated in a crash is the best proxy we have today for crash severity. The formula for calculating KE is *.5 mass X velocity (speed) squared*. Since speed is squared in the formula, its effects are exponential.
- Data from the Large Truck Crash Causation Study suggests that speed was a causal factor in 26 percent of truck involved fatalities. . .the highest of any single causal factor.
- For those who argue that speed differentials are inherently unsafe, studies have confirmed that even where speed limits are uniform for large trucks and automobiles, and no speed limiters are used, speed differentials occur. Studies have consistently concluded that automobiles exceed posted speed limits by a greater margin than do large trucks. The reasons for this are many and varied, but on this point, the research is consistent and compelling. Therefore, discussions of vehicles safely traveling at the same speed is a theoretical—not a practical argument.

4. *Our Experience*:

a. *Safety*: Since reducing the maximum speed of the Schneider National company trucks, Schneider's overall roadway crash rates have dropped by 26 percent. Specifically, rear-end collision rates have dropped by 20 percent. The mean costs of those rear-end collisions (severity proxy) have been reduced by *85 percent.* Additionally, within our fleet we have both company drivers and independent contractors. They all operate within the same safety culture, led by the same leaders, incented with the same bonus criterion, etc. . . What is different is that we limit the maximum speed of our company trucks and not those of our ICs. In analyzing our high-severity crash rates, our ICs are over-represented (relative to company drivers by nearly 100 percent (IC represent ~20 percent of our capacity, but are involved in ~40 percent of our high-severity crashes). This is validation that higher speed leads to higher severity crashes.

b. *Fuel savings*: Our testing has confirmed that for every 1 MPH reduction in speed, MPG performance improves by .1. This effect applied nationally will likely save billions of gallons of diesel fuel, thus reducing carbon signatures dramatically.

5. *Conclusion*: Schneider National, Inc. unequivocally supports limiting the speed of all large trucks. Doing so will save lives, reduce fuel consumption, and thus will have significant environmental benefits.

6. If you have any questions, please contact me at 920–592–6000 or by e-mail, *osterbergd@schneider.com*.

DONALD A. OSTERBERG,
Senior Vice President, Safety
Schneider National, Inc.

TRUCKINGINFO.COM
March 23, 2010

2010 TRUCK FLEET INNOVATORS: TOM VOELKEL, PRESIDENT/COO, DUPRE LOGISTICS

By Diana Britton, Managing Editor

As a child, Tom Voelkel's parents instilled in him a strong work ethic. The current president and chief operating officer of Dupre Logistics got his first job, cutting grass, at age 8. "I quickly learned I didn't want to make a living cutting grass," Voelkel says, laughing.

After graduating from the University of New Orleans with a bachelor's in marketing, he went to work for the Lever Brothers Company, a subsidiary of Unilever, where he served 5 years in sales and sales management roles.

"Working for a big, national company wasn't really my forte," Voelkel says.

He wanted to work for a smaller company, where he could see the impact he was making. He wanted to be part of building a small company from the ground up. So when Voelkel was offered a job with Dupre Logistics in 1983, he took his chance.

Dupre was a small company at the time, with about $2.6 million in revenue, 34 employees, and a few trucks and trailers. Voelkel started as an operations manager, before being promoted to general manager and moving up through the ranks. "We've grown the company, and everyone has grown with the company," he says.

Dupre boasts $111 million in revenue for 2009, 1,000 employees, 700 drivers and 70 mechanics.

Dupre was launched in 1979 as a petroleum carrier with about five customers and grew to become a common carrier in Louisiana, where the company is based. In 1986, Dupre purchased an over-the-road truckload company. Shortly after, the company bought a food products carrier and an Arkansas petroleum company. Thanks to deregulation, the company was able to expand its reach geographically into Mississippi, Tennessee, Alabama, Texas, and Oklahoma. In the late '80s, the company launched a brokerage, and it started offering dedicated services in the mid-90s. About a year ago, Dupre purchased a small truckload company in the beverage business.

Aside from these few acquisitions, Dupre has grown organically, Voelkel says.

Servant Leadership

Dupre has been able to do this through its leadership and longstanding commitment to quality. Voelkel says people know they can count on Dupre, and this confidence helps the company stand out among other carriers. "We work real hard to try to do the right things and do the right things right," he says.

One thing Voelkel has strived to do right is leading the folks that make up Dupre Logistics. When he thinks about his favorite accomplishment, he thinks about the growth of the people in the organization, He looks back on how far they've come, from buying houses and having kids to seeing those children grow up and be successful adults.

It's not a surprise that Voelkel's leadership style would be one of servant leadership. "I believe you have to serve first before you lead," he says. "The people aren't there for you; you're there for the people."

Dupre trains its leaders to adopt this "servant leadership" skillset. The company tries to keep that philosophy alive by holding a stewardship meeting once a month.

One example of this servant leadership seems to be played out through the company's pay structure. The company compensates drivers by the hour, rather than by the mile. a system it says produces better schedules and safer drivers. The move was also part of a larger strategy to make Dupre a great place to work, Voelkel says.

"We saw a lot of inefficiencies in the trucking business that was put on the backs of the drivers," he says. For example, if there was congestion on the highway or if a customer delayed loading or unloading, "the driver ate that."

"If you get paid by the hour. you get paid for your time."

This pay structure also attracts higher quality drivers who want to stay—something that may give Dupre a leg up once the recovery shakes out and the driver

shortage comes back with a vengeance. The company's driver turnover is less than 25 percent, and this figure includes promotions, retirements, and terminations, as well as those who quit.

Pushing the Envelope

The hourly pay structure is not the only way Dupre has been pushing the envelope. Early on, the company saw technology as a way to differentiate itself. "We keyed in to technology to make our services better," Voelkel says. You have to get out of your comfort zone."

Dupre has been using electronic log systems across its entire fleet since the summer of 2007. According to Voelkel, the system puts less work on the driver, and it holds both the driver and the dispatcher accountable to the number of hours a driver can work. Drivers have been able to focus more on their driving, rather than worrying about the complications and wasted time that comes with having to keep a paper log.

Another technology Dupre has embraced is Advanced Predictive Analytics, a modeling system that aggregates data and presents potential accidents to the fleet's management team—before they happen. As a result, accidents have been reduced by 67 percent since 2004. The technology is through Fleet Risk Advisors.

A driver identified in the bottom tier, who goes through the targeted risk management training, counseling, schedule adjustment or programs suggested by management, is 50 percent less likely to have an accident within the next month.

"This is a major factor in moving us closer to our vision of being the safest transportation and logistics company in North America," Voelkel says. "Predictive modeling helps us see the future today and gives us the opportunity to create the future that we want tomorrow."

The primary objective of the Predictive Analytics implementation has been to combine historical data with the current month's operational data to predict the next month's safety performance. In order to accomplish this, computers capture data of a driver in over 400 data elements. Data aggregation and pattern recognition technology is used to identify risk signatures of drivers, vehicles and schedules.

Other recent developments at Dupre include adding SmartWay-certified tractors to its fleet for better fuel mileage and implementing GreenRoad, a driving behavior improvement technology that continuously measures and analyzes maneuvers that most impact safe driving, fuel efficiency and emissions, focusing driver-specific feedback accordingly.

Preparing for the Upturn

Voelkel describes the recession as having one foot on the accelerator and one foot on the brakes. You're trying to grow the company and be profitable while trying to pull back on spending. "You cannot maximize profits when you do that."

For Dupre, navigating the downturn was about trying to find that balance between the accelerator and the brakes. "It has been a brutal recession."

When the upturn comes around, Dupre will be prepared. According to Voelkel, the company has avoided cutting any muscle out of the organization during the downturn. It's actually adding to its sales force and building its operations bench strength. It has also geared up its information technology.

Looking ahead, Voelkel says they just need to get through 2010, and 2011 should be a pretty good year.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. ANNE S. FERRO

Question 1. In an effort to stop distracted driving by truck and bus drivers, your agency has sought to impose penalties on truckers and bus drivers who text and drive. Since these penalties have been in place, how many commercial motor vehicle drivers have been subject to fines or penalized because of texting while driving?

Answer. The Federal Motor Carrier Safety Administration (FMCSA) does not have data concerning the number of commercial motor vehicle (CMV) drivers who have been cited for texting while driving. The Agency's data collection systems have not been modified to gather such data because the enforcement activities would be coded under a general violation cite based on regulatory guidance, rather than an explicit Federal rule. On April 1, 2010, FMCSA issued a Notice of Proposed Rulemaking (NPRM) to put into place an explicit prohibition against texting while driving, which would include driver disqualification penalties in addition to civil penalties. When the Agency completes the notice-and-comment rulemaking process later this year, its data collection systems will be modified to provide a means for gathering violation data.

On January 27, 2010, FMCSA published regulatory guidance in the *Federal Register* concerning texting by CMV drivers. The guidance explains that the Agency's current regulation prohibiting the use of equipment that decreases the safety of operation of commercial vehicles (49 CFR 390.17) may also be applied to CMV drivers' use of electronic devices for texting. A civil penalty of up to $2,750 may be issued for violations involving the use of electronic devices that decrease safety.

Question 2. FMCSA and state law enforcement agency capabilities are dwarfed by the size of the motor carrier industry and, as a result, are only able to conduct compliance reviews on about 2 percent of carriers. What steps can your Agency take to leverage its limited resources to increase the motor carrier industry's compliance with Federal motor carrier safety regulations? Should Congress change the barriers to entry into the motor carrier industry to make sure that the safest drivers and companies are able to enter the market?

Answer. FMCSA is nearing completion of its operational model test of the Comprehensive Safety Analysis (CSA) 2010 high-risk carrier identification and intervention system. CSA 2010 is a major restructuring of FMCSA's current safety fitness determination process and compliance and enforcement programs. The goal is to lead FMCSA to a more effective operational model—one that will have a greater impact on a larger number of truck and bus companies while optimizing Agency resources.

The safety compliance review (CR) is currently the Agency's primary tool for ensuring compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations. However, while the CR program is effective, it requires a significant amount of our human resources, while assessing the safety performance of only a small fraction of the motor carrier industry—as you mention, less than 2 percent. CSA 2010 is designed to help impact a larger segment of motor carriers and drivers through a broader array of compliance interventions, with the expectation of changing unsafe behavior earlier.

The new CSA2010 operational model includes four major elements: (1) measurement, (2) intervention, (3) safety fitness determination, and (4) information technology. In February 2008, FMCSA launched a 30-month field test of the CSA 2010 Operational Model (Op-Model) with its State partners—Georgia, Colorado, New Jersey, and Missouri—using approximately 26 Federal and State investigators. Motor carriers domiciled in the four test States were randomly placed into a control or test group, with approximately 34,000 carriers in each group. Carriers in the test group receive the new CSA 2010 interventions using the new measurement system, while those in the control group receive CRs using the current FMCSA operational model.

FMCSA added five States to the test in the spring and fall of 2009—Minnesota, Montana, Kansas, Maryland, and Delaware. Throughout these States, the test is being run using the CSA 2010 new interventions and measurement system at 100 percent. The purpose of 100 percent participation in the newest CSA 2010 test States is to identify any operational issues that might otherwise not become apparent in the four States that are running both the old and new business models.

Preliminary results are largely positive with strong enthusiasm for CSA 2010 among the test States, as well as enthusiasm among other States that are eager to employ this new compliance and enforcement model.

The Agency is planning to begin nationwide CSA 2010 deployment before the end of the year. Later this year, FMCSA plans to replace SafeStat with the new Safety Measurement System (SMS) and send more comprehensive information regarding the behavior of unsafe motor carriers to the roadside. Warning letters will be sent out to those carriers that reach the deficiency thresholds of the new SMS, and compliance review assignments will be prioritized based on the SMS results. As each State is trained, the new CSA 2010 interventions will be employed.

The new SMS will work within the CSA 2010 operational model to monitor and quantify the safety performance of commercial motor carriers using information from the FMCSA's Motor Carrier Management Information System (MCMIS). Under CSA 2010, this data would include violations found during roadside inspections, traffic enforcement, and other types of interventions. The new SMS groups the data into 7 Behavior Analysis and Safety Improvement Categories (BASICs): Unsafe driving, fatigued driving, driver fitness, controlled substances and alcohol, vehicle maintenance, cargo related, and crash history. In addition, the CSMS uses all safety-based inspection violations, not just out-of-service violations and selected moving violations (as in SafeStat), and uses risk-based violation ratings, where SafeStat does not.

FMCSA is seeing up to a 35 percent increase in the number of motor carrier investigations (offsite, onsite focused, or onsite comprehensive) conducted using the new CSA 2010 approach versus the Agency's current business model.

In addition to these efforts, I believe it would be helpful to have a discussion about providing the Agency some discretion about revising entry requirements into the industry. I have made raising the bar to entry into the industry to be one of my 3 pillars as the FMCSA leadership and I believe we should explore this as a mechanism to improve safety.

Question 3. You recently held a series of public listening sessions on hours-of-service. Please summarize what FMCSA has learned from these sessions.

Answer. FMCSA held five public listening sessions in January and March in Washington, D.C.; Dallas, TX; Los Angeles, CA; Davenport, IA; and Louisville, KY. The Davenport session was held adjacent to a large truck stop and the Louisville session was held at the Mid-America Trucking Show to encourage participation by drivers. The sessions were webcast, and e-mailed and phoned comments were submitted. Approximately 300 individuals and organizations spoke at the sessions. Almost all of the speakers were drivers and carriers or associations representing them. Most of the drivers who spoke were in for-hire, long haul, truck load operations.

With two exceptions, carriers, drivers, and industry associations supported the existing rule. The speakers strongly supported 11 hours of driving per duty period and the 34-hour restart. Carriers and industry associations stated that the 11 driving hours provided flexibility and that some carriers had redesigned routes and schedules to use it; changing to a shorter period would be costly. Drivers indicated that they use the restart frequently; when away from home, they may take no more than 34 hours off; at home, the restart is usually longer. A few drivers argued for a shorter restart (24 hours or less).

Many, but not all, drivers objected to the fixed 14-hour driving window saying that it forced them to drive when they were tired because breaks were included in the calculation of the duty period. They also said that the rule made it hard to avoid congestion because they had to drive during rush hours. Under the pre–2003 rule, they could have pulled off the road and waited until congestion eased without cutting into their available duty hours. Drivers sought flexibility. Specifically, they asked FMCSA to make the 14-hour period cumulative (*i.e.,* off-duty time would not be included in calculation of the driving window) or allow the driving window to be extended to 16 or 18 hours. A few drivers supported the current 14-hour rule, stating that it prevented carriers and brokers from forcing them to log waiting time as off duty time so they could work longer days.

Many drivers and carriers objected to the existing sleeper berth rule that allows 10 hours off duty to be taken in two periods, one of 8 to 10 consecutive hours in the berth and the other of 2 or more hours, either in the berth or off duty; the shorter period is included in the calculation of the driving window. Team drivers in particular wanted the flexibility to be able to divide their 8-hour sleeper berth time into shorter periods (4 + 4 hours, 5 + 3 hours, etc.). Drivers who spoke on this issue asked that the shorter period not be included in the calculation of the duty period.

Safety advocacy groups and the Teamsters generally supported the 14-consecutive-hour provision, but opposed 11 hours of driving and the 34-hour restart because these provisions allow long days of continuous work and up to 84 hours of work in 7 days. They urged FMCSA to consider the body of research on the effects of long hours on performance and health and to establish a 24-hour circadian schedule.

Drivers also raised several issues that affect them, but are outside of FMCSA's statutory authority. The number of available areas where truck drivers can safely stop and rest, although never adequate, has been reduced in the last few years as some States have closed rest areas for budgetary reasons. Drivers stated that the lack of safe rest areas made it difficult for them to find a place to take their 10-hour off-duty period. A number of drivers also stated that the current methods of paying many drivers (by the mile or load) provide shippers with no incentive to load or unload a truck promptly. The independent owner operators and smaller carriers complained that they could spend 30 to 40 hours a week waiting for shippers, time for which they are not paid. Finally, drivers stated that anti-idling laws adopted by some State and local governments to reduce pollution can make it difficult to sleep because they cannot run their air conditioning or heating.

A complete transcript for each of the listening sessions has been placed in the rulemaking docket so that all interested parties may review the information.

Question 4. The Advocates for Highway and Auto Safety claim that FMCSA's statistics for truck fatalities are artificially low because FMCSA merges the truck fatality rate with the much lower fatality rate for buses and motorcoaches. Does FMCSA believe that this is an accurate way to report this data? Why doesn't your agency report the total number of truck-involved fatal crash deaths measured against annual truck vehicle miles traveled?

Answer. The Agency produces and publishes a variety of annual statistics for CMV fatality rates, including separate fatality rates for trucks and buses. This information can be found in our annual Large Truck and Bus Crash Facts publication available at *http://ai.fmcsa.dot.gov/CrashProfile/NationalCrashProfileMain.asp*. The publication shows, for example, that in 2008, the large truck fatality rate (fatalities in truck crashes divided by truck miles of travel) was 1.86 fatalities per 100 million truck miles traveled (Table 1). In that same year, the bus fatality rate (total bus fatalities divided by bus miles) was much higher at 4.32 fatalities per 100 million bus miles traveled (Table 20) The combined rate, using the fatality and vehicle miles of travel (VMT) information provided in the publication, is a truck and bus fatality rate of 1.93 fatalities per 100 million bus and truck miles traveled, which is higher (not lower) than the truck-only fatality rate of 1.86. Using data from other years produces similar results.

In addition to the metrics just mentioned, FMCSA also produces other performance metrics, on an annual basis, such as all bus and truck crashes per all vehicle VMT, and all bus and truck fatalities per all vehicle VMT. These particular performance metrics are included in the Agency's annual Performance Budget Estimates Submission to Congress, and were specifically designed to be consistent with performance metrics used by the other modes of DOT. For example, for 2008, the fatality rate for trucks and buses using all VMT was 0.152 based on the latest data available. This rate represents a 10 percent improvement from 2007.

Question 5. Most truck drivers are paid by the mile, which tempts drivers to drive longer than what is permitted under the Hours of Service regulations, especially if they are delayed at ports and loading facilities. As we work to reauthorize the Federal Motor Carrier Safety Administration, what additional steps should the Committee take to reduce this incentive?

Answer. FMCSA acknowledges the influence that compensation has on employers' and drivers' decisions concerning work schedules. However, the Agency does not have sufficient information to assess the extent to which hours-based or mileage-based compensation may impact safety. It stands to reason that hours-based compensation would deter motor carriers from requiring or allowing drivers to work excessive hours but this disincentive to long work hours could be circumvented by employers offering low hourly wages. FMCSA believes the complex nature of wage discussions would require collaboration between Federal and State government agencies, transportation industry groups (including shippers and receivers), labor unions, and safety advocacy groups to identify factors that need to be considered in developing a plan to address the issue.

Response to Written Questions Submitted by Hon. Mark Pryor to Hon. Anne S. Ferro

Question 1. Last year I introduced S. 1113, the Safe Roads Act, to establish a national drug and alcohol testing database for employers to better select qualified drivers and avoid hiring employees with a drug or alcohol background.

Under this law, the FMCSA would require medical review officers, employers, and other service agents to report positive results from FMCSA required drug or alcohol tests to the database and clearinghouse. Employers would be required to check the database prior to hiring a prospective employee. If a prospective employee has a positive result, an employer would not be allowed to hire the prospect unless he/she has not violated the requirements of the testing program or he/she has fully completed a return-to-duty program as required by the testing program. This law will also require privacy protections and employee rights of action. Do you support the establishment of a drug and alcohol test result clearinghouse? Does FMCSA have the authority to establish such a clearinghouse without Congressional guidance? Is FMCSA designing a database as part of CSA 2010 that could accommodate such a database?

Answer. FMCSA believes the establishment of a drug and alcohol test result clearinghouse to improve the quality of drivers operating commercial motor vehicles on public roadways would likely bring about increased levels of compliance with the controlled substances and alcohol testing rules and thereby improve motor carrier safety.

FMCSA technically has the authority to establish a drug and alcohol clearinghouse without Congressional guidance, but it lacks the compliance and enforcement authority necessary to effectively implement such a clearinghouse. The Agency lacks the authority to assess civil penalties against medical review officers, and other service agents, that fail to report drug and alcohol test results and driver recovery information to a central database. Existing authority to require service agent com-

pliance with the regulations is limited to a Public Interest Exclusion (PIE), which is a 150-day administrative process to require a single service agent to comply. In establishing a new database with service agent reporting requirements, the Agency would focus its limited enforcement resources on problem drivers and employers who directly impact highway safety. Expanded civil penalty authority for service agents would provide for more effective and immediate enforcement; the general deterrent effect would promote service agents voluntarily compliance with the reporting requirements for the new database.

FMCSA is actively engaged in drafting a notice of proposed rulemaking and designing a drug and alcohol database that, due to privacy and security considerations, will be separate and distinct from CSA 2010. Many of the violations that will be identified, through matching the drug and alcohol database with traditional roadside inspection and crash data, will be fed into CSA 2010 to improve the development of motor carrier and driver profiles. Data gathered through the drug and alcohol reporting process, will primarily be used to inform motor carrier employers of problem drivers. This will reduce the numbers of positive-tested drivers, who continue to operate commercial vehicles in violation of drug and alcohol testing regulations and will lead to increased compliance with the DOT drug and alcohol testing program and its goal of increasing safety by reducing the numbers of drivers who choose to abuse drugs or alcohol.

FMCSA plans to publish a Notice of Proposed Rulemaking regarding the national drug and alcohol database in April 2011.

Question 2. During consideration of SAFETEA–LU, I worked closely with my colleagues to provide consumers with additional resources to enforce Federal laws against unscrupulous house-hold goods moving companies. Specifically, provisions I worked on provided State Attorneys General additional authority to bring Federal consumer protection actions against interstate HHG carriers. While this authority has not been utilized much to date, I believe it is an important authority for States to have at their disposal to protect consumers in their States. Has FMCSA worked with State officials to help them implement this provision?

Answer. FMCSA has had some success in coordinating with States in these enforcement efforts. SAFETEA–LU gave States the authority to enforce Federal household goods (HHG) laws and regulations. State HHG regulators may bring actions in either State or Federal venues pursuant to 49 U.S.C. § 14710. State Attorneys General may bring actions in Federal Court pursuant to 49 U.S.C. § 14711.

To date, no States have used the provisions that permit them to bring consumer protection actions for the violation of Federal HHG statutes and regulations. Many of the States reference resource constraints and a preference for using State courts rather than Federal courts as why they are not using the SAFETEA–LU authority. Additionally, the State Attorneys General have indicated that there are statutory constraints on the use of the authority. FMCSA is currently engaging in substantial outreach to States in an effort to interest them in using their authority soon.

Section 4213(a) of SAFETEA–LU required FMCSA to convene a working group consisting of Federal, State, and local enforcement officials to:

> "[D]evelop[ ] practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts with respect to interstate transportation of household goods. . . ."

FMCSA implemented a by-product of the working group—an "Enforcement Assistance Outreach Plan." The working group produced an outreach plan to aid in the coordination and enforcement efforts for household goods related complaints. FMCSA currently hosts quarterly coordination meetings to address action items in the plan.

Currently, there are at least four States that have expressed an interest in working with FMCSA to utilize the provisions in SAFETEA–LU. They are Louisiana, Ohio, Illinois, and Texas. FMCSA is actively engaging these States to forge a relationship and determine how best to implement the SAFETEA–LU provision.

Question 2a. How effective has the "Protect Your Move" initiative at FMCSA been in enforcing consumer protection laws?

Answer. Since 2005, the Protect Your Move Website has had over 19,391,174 hits. This is an average of 11,138 hits a day. The website is extremely informative for those customers who are taking the initiative to be proactive in selecting a HHG mover. However, there are hundreds of unsuspecting consumers who are not being proactive in their search of a HHG mover and are victims to unscrupulous carriers. FMCSA is continuously working to improve our outreach efforts and currently developing a more user friendly Website. The Agency is also collaborating with State

agencies to champion consumer protection. We are granting State consumer protection agencies user privileges to the Protect Your Move website to access data on rogue carriers in an effort to combat fraud and other types of commercial infractions. FMCSA believes the Protect Your Move Website to be informative and helpful in enforcing consumer protection laws.

Question 2b. What additional tools or resources does FMCSA need to enforce consumer protection laws against unscrupulous house-hold goods moving companies?

Answer. There are over 6,196 household goods carriers/brokers with active operating authority identified in our MCMIS database. We continue to believe that finding ways to leverage our limited resources by empowering and allowing the States to conduct enforcement of the Federal consumer regulations is the strategy most likely to address unscrupulous household goods moving companies.

Question 3. I understand that on April 5, 2010, FMCSA developed a final rule to require the use of EOBRs by carriers that have violated the hours of service rules. What information is required to be recorded by the EOBRs? Is there a performance standard? Do you believe all motor-carriers should be equipped with EOBRs to better comply with Hours of Service laws? If Congress were to require EOBRs for all carriers, what information should we require to be recorded?

Answer.

Summary of EOBR Final Rule

On April 5, 2010, FMCSA published a Final Rule amending the FMCSRs to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in CMVs manufactured on or after June 4, 2012. Motor carriers that have demonstrated serious noncompliance with the Hours of Service (HOS) rules will be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determines, based on HOS records reviewed during a compliance review, that a motor carrier has a 10 percent or greater HOS violation rate, FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs regardless of their date of manufacture and use the devices for HOS recordkeeping for a period of 2 years.

FMCSA also changed the safety fitness standard to take into account a remedial directive when determining fitness. Additionally, to encourage industry-wide use of EOBRs, FMCSA revised its compliance review procedures to permit examination of a random sample of drivers' records of duty status after the initial sampling, and provides partial relief from HOS supporting documents requirements, if certain conditions are satisfied, for motor carriers that voluntarily use compliant EOBRs.

Finally, because FMCSA recognizes that the potential safety risks associated with some motor carrier categories, such as passenger carriers, hazardous materials transporters, and new motor carriers seeking authority to conduct interstate operations in the United States, are such that mandatory EOBR use for such operations might be appropriate, the Agency will initiate a new rulemaking to consider expanding the scope of mandatory EOBR use beyond the remedial directive approach adopted as part of the new rule.

Required Information

An EOBR must record the following information:

(1) Name of driver and any co-driver(s), and corresponding driver identification information (such as a user ID and password). However, the name of the driver and any co-driver is not required to be transmitted as part of the downloaded file during a roadside inspection.

(2) Duty status.

(3) Date and time.

(4) Location of CMV.

(5) Distance traveled.

(6) Name and USDOT Number of motor carrier.

(7) 24-hour period starting time (*e.g.,* midnight, 9 a.m., noon, 3 p.m.).

(8) The multiday basis (7 or 8 days) used by the motor carrier to compute cumulative duty hours and driving time.

(9) Hours in each duty status for the 24-hour period, and total hours.

(10) Truck or tractor and trailer number.

(11) Shipping document number(s), or name of shipper and commodity.

With regard to duty status categories, an EOBR must use the following duty statuses:

(1) "Off duty" or "OFF."

(2) "Sleeper berth" or "SB" to be used only if sleeper berth is used.

(3) "Driving" or "D."

(4) "On-duty not driving" or "ON."

The April 5 Final Rule provides detailed performance specifications for EOBRs.

Should the EOBR Mandate Be Expanded

FMCSA has announced its intention to issue a new EOBR NPRM to expand the population of motor carriers that are required to use the devices to monitor their drivers' hours of service. The Agency has not determined how broad a mandate will be proposed, but the Agency will seek public input through a notice-and-comment rulemaking proceeding later this year.

Required Information Under a Congressional Mandate

Based on the public comments and technical information FMCSA considered in developing its April 5 Final Rule, the Agency believes the data required by the rule is sufficient to ensure accurate information about commercial motor vehicle operators' driving time and the date, time and location of changes in duty status.

Question 4. I understand that the USDOT and their Mexican counterparts have established a working group to potentially redevelop the cross-border trucking program. Can you provide the Committee with a status report on the working group? Will you commit to keeping members of the Committee up to speed with developments of any such program? What government agencies and outside interest groups are participating in the working group?

Answer. After Congress terminated the U.S. Department of Transportation's (DOT's) Cross-Border Truck Demonstration Program in March 2009, President Obama directed DOT, the State Department, the U.S. Trade Representative and other relevant agencies to develop a solution that will ensure the highest degree of safety, satisfy our NAFTA obligations, facilitate the lifting of tariffs, and advance the economic interests of the United States. This interagency group is considering all viable programmatic options based on existing statutory authority and legal obligations and is working diligently on a proposal that fulfills President Obama's directive. While our work is not yet complete, we expect to present a proposed plan in the near future. We look forward to presenting this proposal to Mexico, Congress and the public and are hopeful that it will provide a reasonable and workable path toward resolving this dispute.

Secretary LaHood and Mexican Transport Secretary Molinar agreed to establish a working group to negotiate the precise terms of a new cross-border long haul trucking program. We expect the working group to convene once the United States has presented Mexico with a new cross-border long haul trucking proposal. Representatives of the U.S. Government and the government of Mexico will participate in the working group.

DOT and our interagency partners are committed to being transparent in the development, implementation and oversight of any new cross-border long-haul trucking program with Mexico.

Question 5. Over the recess, I met with a group of Arkansas motor-coach carriers that stated that DOT did not have the resources available to investigate rogue motor-coach carriers with poor safety records and that many motor-carriers without interstate transportation authority were illegally participating in such activities. They believe that focusing on these operators would dramatically enhance the safety record of motor-coach carriers. Do you believe FMCSA lacks the resources to investigate and prosecute rogue motor-coach operators?

Answer. FMCSA dedicates a significant level of its resources to investigate the compliance of motorcoach operators. In each of the previous three Fiscal Years, FMCSA conducted approximately 1,300 compliance reviews on motorcoach operators. There are approximately 3,800 interstate, for-hire motorcoach operators. As a result, at this rate, over one-third of the motorcoach industry has a compliance review annually.

Question 5a. How does FMCSA investigate reports of motor-carriers operating outside of their authorities or not in compliance with FMCSA requirements?

Answer. In August 2008, FMCSA implemented a Passenger Carrier Prioritization System within its compliance review prioritization system, SafeStat, to enhance its ability to monitor the safety performance of passenger carrier companies. Under this revised system, seven groups of passenger carriers were identified as FMCSA's highest priorities for compliance reviews. One group includes passenger carriers with recent interstate operational activity while having no or inactive operating authority

and no or inadequate insurance filing, or an out of service order in effect. The new SafeStat module identifies passenger carriers with the highest safety risk and worst compliance histories without regard to the size or age of the transportation operation.

Question 5b. Has FMCSA reviewed the provisions in the comprehensive motorcoach safety enhancement bill passed by the Committee in December? Would you provide comments to the bill?

Answer. FMCSA conducted a comprehensive review of Senate Bill 554 and worked closely with Committee staff to provide technical assistance through briefings, conference calls, and electronic documents. In addition, FMCSA staff has worked in coordination with the Congressional Budget Office in evaluating the costs of implementing the various provisions of the bill.

Question 6. Do you believe the current size and weight restrictions can be increased without compromising highway safety or infrastructure integrity? Would you comment on your views of increasing the allowable weight of trucks to 97,000 pounds by adding a third axle to the rear pair of axles?

Answer. FMCSA is committed to working with the Office of the Secretary and the Federal Highway Administration (FHWA) to ensure the potential safety impacts of any legislative proposals concerning the Federal size and weight statutes are fully considered. The FHWA has responsibility for implementing the statutory provisions concerning truck size and weight and assessing the impacts of potential changes on the Nation's infrastructure, and the FMCSA has responsibility for working with the FHWA to ensure that safety impacts are considered as part of the analysis of any legislative proposals concerning truck size and weight. Both agencies work together to provide recommendations on truck size and weight issues.

FMCSA acknowledges concerns about the impact that increases in truck size and weight limits (including the elimination of certain restrictions on Longer Combination Vehicles (LCVs)) would have on the Nation's highways. The current statutory restrictions on truck size and weight and LCV operations appear to strike an appropriate balance among safety, the efficiency of our transportation system, and minimizing pavement damage. Also, LCVs continue to have a place on American roads within the constraints of the current size and weight statutes and the FHWA's implementing regulations.

With regard to the safety of operation of LCVs, the Agency is not aware of data or other information that would suggest that highway safety is compromised by LCVs within the areas in which they are currently allowed to operate. As with any commercial motor vehicle, safety depends on the driver having the necessary knowledge and skills—as validated by LCV drivers' commercial driver's license with the "Doubles/Triples" endorsement—and the vehicle being properly maintained.

To ensure the safe operation of LCVs, the Department's FMCSA has regulations (49 CFR Part 380) establishing minimum requirements for LCV drivers and LCV driver instructors. The rule covers drivers that operate any combination of a truck tractor and 2 or more trailers and semitrailers, with a gross combination weight greater than 80,000 pounds, and which operate on the National System of Interstate and Defense Highways.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO HON. ANNE S. FERRO

Question 1. How do you respond to concerns that CSA 2010 gives too much weight to driver behavior and not enough to mechanical defects?

Answer. The new CSA 2010 Safety Measurement System (SMS) uses all safety violations discovered during roadside inspections to measure the relative safety performance of motor carriers. Each violation is weighted based on its crash risk. SMS groups these data into seven unsafe behavior areas named Behavior Analysis Safety Improvement Categories (BASICs). These are: (1) Unsafe Driving; (2) Fatigued Driving (Hours-of-Service); (3) Driver Fitness; (4) Controlled Substances/Alcohol; (5) Vehicle Maintenance; (6) Cargo-Related; and (7) Crash Indicator. Research has shown that driver behavior is a major contributing causal factor in large truck and bus crashes. FMCSA analysis shows that among the seven BASICs, there are three that are the strongest predictors of future crashes: Unsafe Driving, Fatigued Driving, and the Crash Indicator (past crashes).

Question 2. When measuring a carrier's exposure or risk, FMCSA currently looks at the number of trucks that carrier uses, not the number of miles traveled. Some stakeholders argue that mileage is a more accurate indicator of a carrier's risk. Will FMCSA consider changing its current practice?

Answer. Two of the seven CSA 2010 BASICs use power units as the measure of exposure in the current Safety Measurement Methodology. These are the Unsafe Driving BASIC and the Crash BASIC. Based on stakeholder feedback and lessons learned from the CSA 2010 field test, FMCSA is currently revisiting the exposure measure used in these two BASICs. The Agency's analysis to date indicates that biases are introduced when either power units or vehicle miles traveled are used as the sole measure of exposure. FMCSA is currently analyzing this matter to come up with the most reliable exposure measure that can be implemented as part of the CSA 2010 rollout later this year.

Question 3. Last November, DOT published a comprehensive Motorcoach Safety Action Plan at the direction of Secretary LaHood. But it appears that numerous deadlines set by FMCSA and NHTSA for their agencies are already slipping. At FMCSA, completion of the motorcoach driver fatigue study has been delayed 6 months; initiation of a pre-employment screening study has been pushed back 6 months; the safety fitness determination rulemaking supporting CSA 2010 has been delayed until next fall; and rulemaking on State bus inspection programs appears to be delayed indefinitely. What are the causes of the delays? Were the deadlines unrealistic to begin with?

Answer. The majority of projects and initiatives contained in the Motorcoach Safety Action Plan are complete or on schedule. Some of the initiatives are notice and comment rulemakings which must compete with other rulemakings for priority and attention. The rulemaking on State bus inspection programs is pending further action on S. 554, the Motorcoach Enhanced Safety Act of 2009, which includes language on this program. Target dates for a number of studies were extended to improve the quality of the study. Overall, progress implementing the Plan is on track.

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

Question 1. In your oral testimony, you mentioned that FMCSA has an "open docket" on the hours of service issue and is seeking additional scientific research that may be relevant for the Agency to consider as part of its ongoing review. What new research studies have been identified by FMCSA since the Agency began its latest review?

Answer. The following is a list of scientific studies is identified by FMCSA since the Agency began its latest review of the hours of service rule:

- Artazcoz, L., Cortés, I., Escribà-Agüir, V., Cascant, L., and Villegas, R. "Understanding the relationship of long working hours with health status and health-related behaviours." Journal of Epidemiology and Community Health. 2009 July;63(7):521–7.
- Banks, S. and Dinges, D. "Behavioral and physiological consequences of sleep restriction." Journal of Clinical Sleep Medicine 2007;3(5):519–28.
- Balkin *et al.*, "Sleep Loss and Sleepiness: Current Issues." Chest 2008; 134–653–660; DOI 10.1378/chest.08–1064.
- Bureau of Labor Statistics, 2008 American Time Use Survey database, available from the Bureau of Labor Statistics for Census Code 9130, Drivers/Sales Workers and Truck Drivers.
- Bureau of Labor Statistics. The Employment Situation—March 2010. USDL–10–0394. April 2, 2010. *http://www.bls.gov/news.release/pdf/empsit.pdf*, accessed 4/29/10.
- Cappuccio, F., Taggart, F., Ngianga-Bakwin, K., Currie, A., Peile, E., Stranges, S., and Miller, M. "Meta-analysis of short sleep duration and obesity in children and adults." Sleep. 2008 May;31(5):619–26.
- Cohen *et al.*, "Uncovering residual effects of chronic sleep loss on human performance." *Science Translation Medicine* 2 14ra3(2010), DOI 10.1126/scitranslmed.3000458.
- Dahl, S., Kaerlev, L., Jensen, A., Tüchsen, F., Hannerz, H., Nielsen, P.S., and Olsen, J. "Hospitalization for lifestyle related diseases in long haul drivers compared with other truck drivers and the working population at large." Work. 2009;33:345–53.
- Di Milia, L. and Mummery, K. "The association between job related factors, short sleep and obesity." Industrial Health. 2009;47:363–8.

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Question 2. It is the Committee's understanding that testing of the CSA 2010 operation model will be completed in the 9 pilot States at the end of June 2010. Will FMCSA receive a final evaluation report on the effectiveness of the CSA 2010 program in those States, and how will the report impact the rollout of CSA 2010 to the balance of the States?

Answer. On June 30, 2010, FMCSA will conclude its field test involving the nine pilot States. The Agency has contracted with the University of Michigan Transportation Research Institute (UMTRI) to provide a formal, independent evaluation of the test results and the effectiveness of the CSA 2010 model. The UMTRI report is due to FMCSA in December 2010. During the field test, FMCSA has also monitored the test results. Those preliminary results indicate that CSA 2010 increases the efficiency and effectiveness of the Agency's compliance and enforcement program, and helps to maximize FMCSA resources as well as those of its State partners. As the CSA 2010 model is rolled out to the balance of the States, FMCSA will use the results of the UMTRI evaluation to improve upon the Agency's application of the model. For example, the Agency hopes to learn more about which specific types of CSA 2010 interventions work best for particular types of motor carriers, and the cost effectiveness of various types of interventions. This information will be used to improve upon the Agency's application of the CSA 2010 model as it is implemented throughout the country.

Question 3. When did the agency first interpret the hours of service exemption for the transportation of agricultural commodities as *only* applying to a delivery from a retail store and *not* from a distribution point to an intermediate distribution point such as a storage facility or cooperative, and why?

Answer. The Agency analyzed the legislative history of the Hours of Service agricultural exemption and formulated the interpretation described above in April 2005, shortly before it issued its regulatory guidance in Question 33 under 49 CFR 395.1 (posted at FMCSA's website).

Question 33 under 49 CFR 395.1 describes that the *Agricultural operations* exemption applies only to the transportation of farm supplies (including anhydrous ammonia) from the retailer to the ultimate consumer. The FMCSA's interpretation is based on the Conference Report for the National Highway System Designation Act of 1995, the statute that created the exemption for *Agricultural operations*. The Conference Report says the following about the House amendment that was adopted by the conferees:

> Subsection (a) [of Sec. 345 of the NHS Designation Act] directs that waivers be granted from certain Federal motor carrier regulations. Subsection (a)(1) grants an exemption from the Federal hours of service regulations for drivers transporting agricultural supplies or farm supplies during planting and harvesting seasons operating within a 100 air mile radius of the source of the commodities or the distribution point of the supplies. *This exemption is intended to operate in a similar manner as the exemption granted 40 years ago for small package[s] delivered during the Holiday season in December.* This exemption is limited to the planting and harvesting seasons, as determined by the Governor [emphasis added].

H.R. Rep. No. 104–345, at 103 (1995) (Conf. Rep.).

The "Holiday season" exemption at 49 CFR 395.1(f) provides:

> (f) Retail store deliveries. The provisions of §395.3(a) and (b) shall not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year [emphasis added].

This is the source of the Agency's Guidance in Question 33 that the "distribution point for the farm supplies" in 49 CFR 395.1(k) means "distribution from a retail distribution point of the farm supply to a location (farm or other location where the farm supply product would be used)."

Question 4. Will FMCSA show flexibility with respect to deliveries of farm supplies? The entire supply chain, not just deliveries from retail locations, can be critical during planting and harvest seasons.

Answer. On March 17, 2010, FMCSA issued a 90 day waiver for the delivery of anhydrous ammonia for the 2010 spring planting season. (The waiver determination was published in the Federal Register on March 22, 2010). The Agency will review if the waiver has achieved a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption, based on the terms and conditions imposed. In addition, the Agency welcomes the opportunity to work with Congress and stakeholder groups to better understand the needs of the agricultural industry in providing products for consumers, and the potential impact on safety if the current agricultural exemption from the hours-of-service regulations were applied to the entire supply chain.

Question 5. Last December, this Committee reported legislation to improve motorcoach safety. For example, new motorcoach entrants would be required to successfully complete an on-site pre-authorization safety audit *before* they could begin operating. While pre-authorization safety audits may not be practical for the trucking industry, which has thousands of new entrants each year, what more can be done *before* a carrier begins operations to ensure the carrier, its vehicles, and drivers are in compliance with Federal safety regulations?

Answer. The Agency has considered the possibility of requiring a pre-screening examination that would ensure that a new entrant motor carrier has basic knowledge of the Federal Motor Carrier Safety Regulations. This examination would be mandatory before the carrier is issued a USDOT number. This examination could be developed and implemented via the FMCSA website, as part of the initial registration process.

This approach, however, has a number of challenges that must be considered and overcome. For example, the Agency would have to ensure that: (1) the person taking the examination is an appropriate motor carrier officer, not a consultant or other party; (2) the prescreening examination is sufficient to ensure a basic level of safety knowledge; and (3) motor carriers do not just learn the responses to pass the test, but rather are applying the FMCSA regulations to establish and maintain safety operations.

Question 6. Federal law makes FMCSA the Federal agency in charge of enforcing regulations on fraudulent practices by interstate moving companies, but also provides for substantial coordination between FMCSA and state enforcement agencies. Has FMCSA been able to effectively coordinate with states in these enforcement efforts?

Answer. FMCSA has had some success in coordinating with States in these enforcement efforts.

SAFETEA–LU gave States the authority to enforce Federal household goods laws and regulations. State household goods regulators can bring actions in either State or Federal venues pursuant to 49 U.S.C. § 14710. State Attorneys General can bring actions in Federal court pursuant to 49 U.S.C. § 14711.

To date, no States have used the provisions that permit them to bring consumer protection actions for the violation of Federal household goods statutes and regulations. Many of the States reference resource constraints and a preference for using State courts rather than Federal courts as why they are not using the SAFETEA–LU authority. FMCSA is currently engaging in substantial outreach to States in an effort to interest them in using their SAFETEA–LU authority. FMCSA is hopeful that States will begin to use their authority soon.

Section 4213(a) of SAFETEA–LU required FMCSA to convene a working group consisting of Federal, State, and local enforcement officials to:

> "[D]evelop[ ] practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts with respect to interstate transportation of household goods. . . ."

FMCSA has been effective in implementing a by-product of the working group—an "Enforcement Assistance Outreach Plan." The working group produced an outreach plan to aid in the coordination and enforcement efforts for household goods related complaints. FMCSA currently hosts quarterly coordination meetings to address the following action items contained in the plan:

1. General Communication and Information Sharing
   a. FMCSA is working with the States to provide access to information on household goods carriers that will facilitate enforcement actions.
2. Information Sharing Related to Federal Laws and Regulations
   a. Prepare and share guidance documents related to Federal laws and regulations with State enforcement partners.
3. Enforcement-Specific Communication and Information Sharing With Partners
   a. FMCSA is developing a policy to distribute enforcement information to partners; provide them with access to enforcement tools and databases; alert them to ongoing Federal enforcement actions and investigations; encourage States to notify FMCSA of actions; and work with partners to establish procedures to better target and coordinate enforcement actions and court filings.

Question 7. In your view, is FMCSA the right agency to lead these efforts?

Answer. Yes. Although FMCSA's primary mission is safety, the commercial regulations are closely related to its mission. FMCSA has programmatic operational capabilities necessary to effectively implement the household goods consumer protection program. We offer the benefits of a sound programmatic perspective, a national field office structure and staff, and the regulatory leverage that is necessary to effectively address household goods industry oversight. As a result, FMCSA offers the best available location within the Department's existing organizational structure to address this important consumer protection function.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. DEBORAH A.P. HERSMAN

Question 1. Four recommendations on the NTSB "Most Wanted" list are directed at FMCSA, and since 1992 the agency has been cited for thirteen unacceptable responses to recommendations from NTSB investigations. What steps has FMCSA taken in the last year to resolve these recommendations?

Answer. This question necessitates a two-part answer.

The Most Wanted List of Transportation Safety Improvements is comprised of issue areas that may contain one or more recommendations. Currently, the Most Wanted List includes four issue areas, encompassing nine safety recommendations directed to the FMCSA, as follows:

- *Prohibit Cell Phone Use by Motorcoach Drivers*
- *Require Electronic Onboard Data Recorders to Maintain Accurate Carrier Records on Driver Hours of Service*
- *Improve the Safety of Motor Carrier Operations*
- *Prevent Medically Unqualified Drivers from Operating Commercial Vehicles*

Below are the individual recommendations associated with each issue area and a summary of the FMCSA's actions to date to address these recommendations. Please note that although some of these recommendations are classified "Open—Acceptable Response," the overall issue areas may have an "Unacceptable" action/timeliness designation.

Prohibit Cell Phone Use by Motorcoach Drivers

H–06–27
Issued November 30, 2006
Added to the Most Wanted List: 2008
Status: Open—Acceptable Response

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. (Source: *Investigation of a Motorcoach Collision with a Bridge Overpass on the George Washington Memorial Parkway in Alexandria, Virginia, on November 14, 2004.* [NTSB/HAR–06/04])

Summary of Action

The FMCSA initiated a study, conducted by the Virginia Tech Transportation Institute (VTTI) using naturalistic driving data, to assess the potential safety benefits of establishing a Federal rule to restrict the use of cellular telephones by drivers of commercial motor vehicles and to determine whether adequate

data exists to warrant initiating a rulemaking. VTTI's portion of the study was completed in July 2009. Despite the FMCSA's limited jurisdiction over school buses, the NTSB encouraged the agency to include school bus operations to the greatest extent possible in its study. The FMCSA also considered property-carrying CMV drivers and the availability of adequate data on cellular telephone-caused driving distractions in the study. Additionally, the FMCSA is conducting a synthesis of literature and operating safety practices relating to cellular telephone use (including limitations on the use of personal digital assistants) in commercial vehicles. This study was expected to be completed in February 2010.

The Secretary of Transportation ordered a full departmental review of motorcoach safety to create a Departmental Motorcoach Safety Action Plan outlining the additional steps needed to improve motorcoach safety. Released on November 16, 2009, the review also considered outstanding recommendations to the U.S. Department of Transportation (DOT) from the NTSB.

On September 30 and October 1, 2009, the Secretary also convened a "Distracted Driving Summit" to address the dangers of text-messaging and other driving distractions. During the summit, the Secretary announced the DOT's plan to create rulemaking that would consider banning text messaging altogether and restrict the use of cellular telephones by truck and interstate bus operators.

Because "texting" was identified as the most serious distracted-driving behavior in the VTTI study mentioned above, the FMCSA is currently developing a notice of proposed rulemaking (NPRM) prohibiting "text messaging" on cellular telephones and similar devices by operators of commercial motor vehicles. The NPRM will also propose disqualification of school bus operators convicted of violating the texting prohibition. After publication of this NPRM in Spring 2010, the FMCSA intends to publish a second NPRM to address broader concerns regarding the use of cellular telephones and similar devices (including those for hands-free use) and possible differences in regulatory requirements for truck and bus drivers. Both of these rulemakings will be given high priority status. A third rulemaking is planned for a later date to address other distracted-driving issues involving devices such as fleet management systems, GPS navigation screens, and laptop computers.

The FMCSA continues to work consistently to address the issue of cell phone use by CDL drivers. Although the results of the naturalistic driving study are encouraging, the NTSB continues to believe that CDL holders must be prohibited from using a cellular telephone, even in a hands-free mode, while driving under the authority of a passenger carrying or school bus endorsement.

Action Remaining

Prohibit CDL holders from using a cellular telephone while driving under the authority of a passenger-carrying or school bus endorsement.

Require Electronic Onboard Data Recorders to Maintain Accurate Carrier Records on Driver Hours of Service

H–07–41
Issued December 17, 2007
Added to the Most Wanted List: 2008
Status: Open—Unacceptable Response

Require all interstate commercial vehicle carriers to use electronic onboard recorders that collect and maintain data concerning driver hours of service in a valid, accurate, and secure manner under all circumstances, including accident conditions, to enable the carriers and their regulators to monitor and assess hours-of-service compliance. (Source: National Transportation Safety Board, *Investigation of the Rear-end Chain Reaction Collision on Interstate 94 East near Chelsea, Michigan, on July 16, 2004.* [NTSB/HAB–07/01])

Summary of Action

On January 18, 2007, the FMCSA published an NPRM on EOBRs that included a proposal to establish new performance standards for EOBRs. These performance standards would include requirements that the new devices be "valid" and "accurate" within certain defined parameters and that they be "secure" against non-evident tampering. Also under the proposal, motor carriers that have demonstrated a history of serious noncompliance (a 10-percent or greater violation rate) with the HOS rules would be subject to mandatory installation and use of EOBRs for HOS recordkeeping for a period of 2 years, unless the carrier al-

ready had equipped its vehicles with recording devices that met the agency's current requirements under 49 *Code of Federal Regulations* (CFR) 395.15 and could demonstrate to the FMCSA that its drivers understood how to use the devices. Under the proposed rule, the FMCSA would also encourage industrywide use of EOBRs by providing the following incentives for motor carriers to voluntarily use EOBRs in their commercial motor vehicles (CMVs): (1) revising the agency's compliance review procedures to permit examination of a random sample of drivers' records of duty status and (2) providing partial relief from HOS supporting documents requirements, if certain conditions are satisfied.

The NTSB responded with concern that the FMCSA issued an NPRM on EOBRs that would require only those carriers with a history of serious HOS violations to install EOBRs in all of their CMVs; thus, only an estimated 930 of the 700,000 carriers in operation would be affected by this requirement within the first 2 years of the rule's enforcement. The NTSB also expressed its concern that the only effective way for EOBRs to help stem HOS violations, which the NTSB has linked to numerous fatigue-related accidents, is to mandate EOBR installation and use by all operators subject to HOS regulations. EOBRs have the potential to efficiently and accurately collect and verify HOS data for all drivers, to establish the proper incentives and a level playing field for compliance with HOS rules, and, ultimately, to make our highways safer for all drivers.

On April 10, 2010, the DOT issued a final rule on EOBRs that established new performance standards and mandated that motor carriers that demonstrate serious noncompliance with HOS rules be required to install EOBRs for a period of 2 years. The Safety Board is generally satisfied with the performance standards in the rule but the NTSB is still concerned that compliance reviews will be the only method used to identify threshold rate violators, when only about 2 percent of all carriers undergo compliance reviews annually. Furthermore, the NTSB has identified flaws in the compliance review system, guaranteeing that many unsafe carriers will continue to evade even initial identification as an HOS violator. The NTSB has documented several instances in which carriers have received favorable compliance review ratings despite long and consistent histories of driver- and vehicle related violations. With the paper logs currently in use, it is relatively easy for drivers or carriers to misrepresent HOS data. As a result, to exceed HOS limits undetected, many drivers falsify their logs and subsequently drive in a fatigued state. The NTSB remains convinced that the only effective means of curbing the many tragic fatigue-related accidents is to mandate EOBR installation and use by all operators subject to HOS regulations. A remedial program that relies on compliance reviews and the evaluation of paper logs to identify high risk carriers will have limited success.

The *DOT Motorcoach Safety Action Plan*, published on November 16, 2009, indicated that the FMCSA is considering the encouragement of industrywide use of EOBRs by providing incentives for motor carriers to voluntarily use EOBRs. The FMCSA is also beginning another rulemaking intended to propose a more widespread mandate of EOBRs, including mandating that all motorcoaches be equipped with EOBRs. Although the increasing scope of the carriers that would potentially be affected by EOBR rulemaking efforts is encouraging, the NTSB continues to believe that a mandate for the use of EOBRs by all motor carriers is necessary for the collection and maintenance of accurate data on driver HOS.

Action Remaining

Continue efforts to require the use of EOBRs by all motor carriers to improve monitoring of driver HOS.

Improve the Safety of Motor Carrier Operations

H–99–6
Issued February 26, 1999
Added to the Most Wanted List: 2000
Status: Open—Unacceptable Response

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. (Source: *Selective Motorcoach Issues* [NTSB/SIR–99/01])

Summary of Action

The Motor Carrier Safety Act of 1984 directed the U.S. Secretary of Transportation to establish a procedure to determine how safely motor carriers operate.

Currently, the DOT, through the FMCSA, uses a system for determining how safely a motor carrier operates that does not place sufficient emphasis on driver or vehicle qualifications.

Under the current compliance review system, when any motor carrier receives an unsatisfactory rating in two of six factors (general, driver, operational, vehicle, hazardous materials, or accident), the carrier receives a proposed unsatisfactory rating, which becomes effective according to the following time frames: a passenger or hazardous-materials carrier has 45 days to correct the noncompliance; freight carriers have 60 days. If the carrier corrects the noncompliance to the satisfaction of the FMCSA, the rating is revised to either satisfactory or conditional. If the carrier does not correct the noncompliance within the established timeframe, the carrier receives an out-of-service order and is prohibited from operation.

The NTSB believes that if the carrier receives an adverse rating (conditional or unsatisfactory) for either the vehicle or driver factor, regardless of ratings received in any of the other factors, the overall compliance rating should be unsatisfactory.

The FMCSA believes that its *Comprehensive Safety Analysis 2010 Initiative (CSA 2010)* will address this issue through the development of new performance-based systems for determining motor carrier and driver safety that emphasize preventive measures, motor carrier education, and early detection of unsafe driver and carrier conditions. As the FMCSA demonstrated to stakeholders at an October 2008 public listening session; to staff members from Congress, the General Accountability Office, the Office of the Inspector General, and the NTSB at a February 2009 meeting; and during a December 2009 two-part webcast public listening session, the FMCSA is continuing to develop CSA 2010 programs to improve enforcement efficiency. The new Safety Measurement System: (1) measures safety performance using all roadside inspection safety-based violations, (2) weights time and severity of violations based on relationship to crash risk, and (3) calculates safety performance in seven Behavior Analysis and Safety Improvement Categories (BASIC). These BASICs include unsafe driving, fatigued driving, driver fitness, drugs and alcohol, vehicle maintenance, cargo securement, and crash experience. The Comprehensive Intervention Process provides tools to educate carriers and compel safety compliance before crashes occur.

In February 2008, the FMCSA launched a pilot test of the CSA 2010 operational model in four states: Colorado, Georgia, Missouri, and New Jersey. The tests in these four states divided the carriers into two groups—a test group, carrying out CSA 2010 interventions, and a control group, using the traditional compliance reviews; additional test states are being added using only CSA 2010 interventions. Preliminary results indicate that nearly half of the test carriers have logged onto the Comprehensive Safety Information System website to view their violations data, as suggested in a warning letter, and have replied to the FMCSA describing the corrective actions they have taken or are initiating in response to the warning. In May 2009, Minnesota and Montana were added to the pilot test; Maryland and Kansas were added in fall 2009. The FMCSA expects to complete the pilot test in June 2010 and to implement CSA 2010 nationwide during July through December 2010. The FMCSA is launching an outreach effort to inform carriers and drivers of the upcoming change and to encourage all stakeholders to become more involved.

On March 5, 2007, the FMCSA Administrator appointed experts from the motor carrier industry, safety advocates, and safety enforcement officials to serve on the Motor Carrier Safety Advisory Committee (MCSAC). The MCSAC, which holds quarterly public meetings, provides advice and recommendations to the Administrator regarding motor carrier safety programs and motor carrier safety regulations. On August 6, 2008, after considering the potential safety benefits and operational feasibility of the task, the MCSAC recommended that Safety Recommendation H–99–6 be incorporated into CSA 2010. Based on the MCSAC's recommendation, the preliminary safety fitness methodology that is currently being tested, and the progress that has been made with the CSA 2010 initiative, the FMCSA has been preparing an NPRM to address Safety Fitness Determination, the third element of CSA 2010. The NPRM was expected to be published in February 2009; however, it was delayed for further analysis, and subsequently has an anticipated publication date of February 2011. There is as yet no proposed date for publication of the final rule.

The NTSB is concerned with the FMCSA's continued slow progress in addressing this issue. Although the FMCSA has made progress with CSA 2010, during the investigation of a January 2, 2008, motorcoach rollover on U.S. Highway 59 near Victoria, Texas, the NTSB again found that the current FMCSA safety rating methodology did not provide adequate oversight of motor carrier safety. The NTSB will continue to monitor the FMCSA's actions to recognize the importance of driver and vehicle factors in addressing motor carrier safety as the CSA 2010 pilot testing continues and rulemaking is completed.

Action Remaining

Continue efforts to develop standards that appropriately recognize the importance of vehicle and driver factors in measuring the overall safety of a motor carrier's operations.

Prevent Medically Unqualified Drivers from Operating Commercial Vehicles

H–01–17, 18, 19, 20, 21 24
Issued September 10, 2001
Added to the Most Wanted List: 2003
Status: See below

The NTSB recommended to the FMCSA in 2001 that it develop a *comprehensive medical oversight program* that addressed the following issues:

- Establish a comprehensive medical oversight program for interstate commercial drivers.
- Ensure that examiners are qualified and know what to look for.
- Track all medical certificate applications.
- Enhance oversight and enforcement of invalid certificates.
  Provide mechanisms for reporting medical conditions.

(Source: *Investigation of the Motorcoach Run-Off-The-Road, New Orleans, Louisiana, May 9, 1999.* [NTSB/HAR–01/01])

These recommendations are grouped together and specify a comprehensive oversight program, because the NTSB believes that only by addressing this issue in a systematic fashion can a truly effective program of oversight be developed. A piecemeal approach to the problem may result in deficiencies that will continue to permit unqualified drivers to operate on the Nation's highways. The specific recommendations and their current status are as follows:

Develop a comprehensive medical oversight program for interstate commercial drivers that contains the following program elements:

- A tracking mechanism be established that ensures that every prior application by an individual for medical certification is recorded and reviewed. (H–01–18) [Status: Open—Unacceptable Response]
- The review process prevents, or identifies and corrects, the inappropriate issuance of medical certification. (H–01–21) [Status: Open—Unacceptable Response]
- 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. (H–01–24) [Status: Open—Unacceptable Response]
- Individuals performing medical examinations for drivers are qualified to do so and are educated about occupational issues for drivers. (H–01–17) [Status: Open—Acceptable Response]
- 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. (H–01–19) [Status: Open—Acceptable Response]
- Individuals performing examinations have specific guidance and a readily identifiable source of information for questions on such examinations. (H–01–20) [Status: Open—Acceptable Response]

The FMCSA has taken steps toward addressing medical fitness of drivers::

- In November 2008, the FMCSA published a proposed rule that would require that all medical examiners who conduct medical examinations of interstate commercial motor vehicle drivers complete certain training on physical qualification standards, pass a test to verify an understanding of those standards,

and maintain competence by periodic training and testing. Although the NPRM has certain deficiencies noted in the NTSB's comments on the rulemaking, this rule, if adopted, should help to ensure that the individuals performing examinations are qualified to do so, as recommended. The FMCSA expects the final rule to be published in January, 2011. (H–01–17)

- The FMCSA has hired its first medical officer, a physician with occupational medical experience, to provide necessary expertise to guide its efforts in the establishment of a comprehensive medical oversight system.

Unfortunately, although the FMCSA continues to work to address medical issues for commercial vehicle drivers, the agency has yet to take definitive action regarding the three recommendations in "Unacceptable" status, as noted below.

- The NPRM concerning the national registry of certified medical examiners does not include the establishment of a tracking mechanism for driver medical examinations, as recommended in H–01–18, and the FMCSA has no other specific actions underway to do so. Instead, the agency indicates that it is laying the groundwork for such a mechanism in future rulemaking. This important recommendation would reduce the current practice of driver "doctor shopping" from physician to physician to find one willing to sign the driver's medical form.
- Likewise, the NPRM does not require any review of certificate issuance, beyond the examiner evaluating the driver, to prevent or identify and correct, the inappropriate issuance of medical certification, as recommended in H–01–21. The FMCSA has indicated that such a process will be included in the national registry program.
- Finally, the FMCSA has not taken any action on H–01–24, which suggests development of a system for reporting medical conditions between examinations of which individuals, health care providers, and employers would be aware. The FMCSA's latest response on this topic indicated that the agency continues to "explore the feasibility" of such a system.

To address the second part of Senator Lautenberg's question (1), below is synopsis material concerning the 13 recommendations to the FMCSA that are currently classified "Open—Unacceptable Response." Five of these recommendations are repeated from the first portion of the question because they are currently on the Most Wanted List. The information presented in this second group of recommendations comes from the NTSB's most recent correspondence with the FMCSA on each recommendation.

H–99–6 To U.S. DOT: 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.

The FMCSA believes that its CSA 2010 initiative will address this issue through the development of new performance-based systems for determining motor carrier and driver safety that emphasize preventive measures, motor carrier education, and early detection of unsafe driver and carrier conditions. As the FMCSA demonstrated to stakeholders at an October 2008 public listening session; to staff members from Congress, the Government Accountability Office, the Office of the Inspector General, and the NTSB at a February 2009 meeting; and during a December 2009 two-part webcast public listening session, the agency is continuing to develop CSA 2010 programs to improve enforcement efficiency. The new Safety Measurement System: (1) measures safety performance using all roadside inspection safety-based violations, (2) weights time and severity of violations based on relationship to crash risk, and (3) calculates safety performance in seven BASICs. These BASICs include unsafe driving, fatigued driving, driver fitness, drugs and alcohol, vehicle maintenance, cargo securement, and crash experience. The Comprehensive Intervention Process is designed to provide tools to educate carriers and compel safety compliance before crashes occur.

In February 2008, the FMCSA launched a pilot test of the CSA 2010 operational model in Colorado, Georgia, Missouri, and New Jersey. The tests in these four states are being conducted by dividing the carriers into two groups—a test group, carrying out CSA 2010 interventions, and a control group, using the traditional compliance reviews; additional test states are being added using only CSA 2010 interventions. Preliminary results indicate that nearly half of the test carriers have logged onto the Comprehensive Safety Information System website to view their violations data, as suggested in a warning letter, and have replied to the FMCSA describing the corrective actions they have taken

or are initiating in response to the warning. In May 2009, Minnesota and Montana were added to the pilot test; Maryland and Kansas were added in fall 2009. The FMCSA expects to complete the pilot test in June 2010 and to implement CSA 2010 nationwide during July through December 2010. The FMCSA is launching an outreach effort to inform carriers and drivers of the upcoming change and to encourage all stakeholders to become more involved.

On March 5, 2007, the FMCSA Administrator appointed experts from the motor carrier industry, safety advocates, and safety enforcement officials to serve on the MCSAC. The MCSAC, which holds regular quarterly public meetings, provides advice and recommendations to the Administrator regarding motor carrier safety programs and motor carrier safety regulations.

On August 6, 2008, after considering the potential safety benefits and operational feasibility of the task, the MCSAC recommended that Safety Recommendation H–99–6 be incorporated into CSA 2010. Based on the MCSAC's recommendation, the preliminary safety fitness methodology that is currently being tested, and the progress that has been made with the CSA 2010 initiative, the FMCSA has been preparing an NPRM to address Safety Fitness Determination, the third element of CSA 2010. The NPRM was expected to be published in February 2009; however, it was subsequently delayed for further analysis and has an anticipated publication date of February, 2011. There is as yet no proposed date for publication of the final rule.

The NTSB is concerned with the FMCSA's continued slow progress in addressing improvements with its safety fitness rating process. Although the agency has plans to begin implementing this program in early 2011, until the Safety Fitness Determination rulemaking is complete, the FMCSA must rely on the current safety rating system, which lacks sufficient driver and vehicle qualifications emphasis. As a result of our investigation of a January 2, 2008, motorcoach rollover on U.S. Highway 59 near Victoria, Texas, the NTSB again found that the current FMCSA safety rating methodology does not provide adequate oversight of motor carrier safety. Although the NTSB recognizes the progress that the FMCSA has made with CSA 2010, the agency has failed to institute an interim rule that would make adverse vehicle and driver performance based data alone sufficient to result in an overall unsatisfactory rating for a carrier, while continuing to incorporate the principles of the NTSB's recommendations into the FMCSA's new system being field tested and evaluated in CSA 2010. Accordingly, Safety Recommendation H–99–6 is classified "Open Unacceptable Response."

H–01–18 To FMCSA: Develop a comprehensive medical oversight program for interstate commercial drivers that contains the following program elements: a tracking mechanism is established that ensures that every prior application by an individual for medical certification is recorded and reviewed.

Based on our investigations of accidents involving drivers with serious medical conditions, the NTSB has determined that serious flaws exist in the medical certification process for commercial vehicle drivers. These flaws can lead to increased highway fatalities and injuries for commercial vehicle drivers, their passengers, and the motoring public. The NTSB issued Safety Recommendations H–01–17 through –24 to the FMCSA as a result of our investigation of the May 9, 1999, accident involving a Custom Bus Charters motorcoach in New Orleans, Louisiana.

An NPRM published in 2008 concerning the national registry of certified medical examiners does not include the establishment of a tracking mechanism for driver medical examinations, as recommended in H–01–18, and the FMCSA has no other specific actions underway to do so. The agency indicates that it is laying the groundwork for such a mechanism in future rulemaking. This important recommendation would reduce the current practice of driver "doctor shopping" from physician to physician to find one who will sign the driver's medical form.

H–01–21 To FMCSA: Develop a comprehensive medical oversight program for interstate commercial drivers that contains the following program elements: The review process prevents, or identifies and corrects, the inappropriate issuance of medical certification.

The FMCSA's NPRM does not require any review of certificate issuance, beyond the examiner evaluating the driver, to prevent, or identify and correct, the inappropriate issuance of medical certification, as recommended in H–01–21. The FMCSA has indicated that such a process will be included in the future rulemaking.

H–01–24 To FMCSA: Develop a comprehensive medical oversight program for interstate commercial drivers that contains the following program elements: Mechanisms for reporting medical conditions to the medical certification and reviewing authority and for evaluating these conditions between medical certification exams are in place; individuals, health care providers, and employers are aware of these mechanisms.

The FMCSA has not yet taken any meaningful action on H–01–24, which proposes development of a system for reporting medical conditions between examinations of which individuals, health care providers, and employers are aware. The FMCSA's latest response on this topic indicated that the agency continues to "explore the feasibility" of such a system.

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.

As a result of the NTSB's recommendation, in 2004, the FMCSA completed a study of the feasibility and merits of requiring medical review officers and employers to report positive test results to state commercial driver's license (CDL) licensing agencies. The study found that it was feasible to establish a national database of positive drug test results and that it should be operated by the Federal Government to ensure consistency and uniformity. The FMCSA is developing rulemaking to establish a National Drug and Alcohol Test Results Data base, which would allow Federal and state governments to identify drivers who have refused a DOT drug or alcohol test or who have tested positive for drug(s) and/or alcohol under the established DOT drug and alcohol testing regulations. Areas of consideration for the rulemaking include the following: (1) requiring Medical Review Officers to submit confirmed positive controlled substances test results to the FMCSA, including follow-up tests stemming from an initial positive test; (2) having motor carriers submit information on refusals-to-test, positive alcohol test results, and annual summaries of their controlled substances and alcohol testing programs each year; and (3) requiring all laboratories to submit annual reports to the FMCSA. Safety Recommendation H–01–25 is currently classified "Open—Unacceptable Response" because of the FMCSA's slow response time. The recommendation to develop a database of positive drug and alcohol test results and to establish requirements for use of the system is now 9 years old. Although the FMCSA has increased its enforcement action against commercial motor vehicle drivers who have tested positive for controlled substances and failed to comply with the return-to-duty requirements before performing a DOT safety-sensitive function, and also against motor carriers that use or have used a driver to perform safety-sensitive functions if the motor carrier was aware or should have known that the driver did not comply with return-to-duty requirements, these actions will be the result of investigations and will, therefore, affect only a small percentage of the driver and carrier populations. The NTSB concluded that if motor carriers cannot check the controlled substance testing backgrounds of prospective employees, they cannot make well-informed decisions when attempting to hire safe drivers.

H–02–16 To FMCSA: Require that vehicle inspections of a motor carrier's fleet be conducted during compliance reviews.

Since 2006, the FMCSA has taken the position that its CSA 2010 Initiative will address this recommendation.

H–05–3 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.

The FMCSA's position is that rulemaking to amend the periodic inspection standards under 49 CFR Chapter III, Subchapter B, Appendix G, would be ineffective. The NTSB disagrees. At the NTSB's public hearing on the Wilmer, Texas, motorcoach fire accident, which killed 23 passengers, FMCSA representatives explained that the FMCSA is relying on the carrier to have some knowledge and understanding of the appropriate maintenance practices for their vehicles in order to comply with the regulations. The NTSB's investigation of the 8-fatality motorcoach accident in Tallulah, Louisiana, found that the current

Federal Motor Carrier Safety Regulations (FMCSRs) do not address the identification and appropriate use of speed-limited tires. The lack of specific criteria on speed-restricted tires overlooks an important vehicle safety factor that can result in commercial vehicles intended for highway use being operated with tires not suited for highway speeds. Therefore, it is important that the FMCSRs be updated to offer complete information regarding speed-limited tires to private motor carriers of passengers, allowing the carrier to understand these restrictions and have the opportunity to comply. The NTSB considers that it is imperative that the motor carrier be given the opportunity to understand and comply with specific standards before being cited.

H–05–4 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.

At the NTSB's public hearing on the Wilmer, Texas, motorcoach fire accident, which killed 23 passengers, FMCSA representatives explained that the FMCSA is relying on the motor carrier to ensure that vehicles are maintained in safe and proper operating condition throughout the year, not only at the time of the annual inspection. The FMCSA further indicated that it has not initiated a detailed study to compare the out-of-service rates of carriers that perform self-inspections under a state program to those inspected by a third party. The NTSB's investigation of the 8-fatality motorcoach accident in Tallulah, Louisiana, found that the self-inspection process allows motor carriers to inadvertently or knowingly pass defective vehicles. Because these vehicles are certified and permitted to remain in operation, current methodology does not ensure an adequate level of safety, even if some vehicles are eventually identified as defective in roadside inspections. By mandating that vehicles undergo annual Federal or state inspection, the FMCSA would increase the probability that defects will be found and repaired and that vehicles will be brought up to an acceptable level of maintenance at least once a year.

H–05–5 To FMCSA: Develop a method for inspecting motorcoach passenger seat mounting anchorages and revise the *Federal Motor Carrier Safety Regulations* Appendix G to Subchapter B, Minimum Periodic Inspection Standards, to require inspection of these anchorages.

At the NTSB public hearing on the Wilmer, Texas, motorcoach fire accident, FMCSA representatives explained that the agency is relying on the carrier to have appropriate vehicle maintenance practices in place in order to comply with the regulations, supported by passenger reports of problem seats and driver verification of seat securement during the pre-trip and post-trip inspections by gripping the seatback to see if the assembly moves. The NTSB's investigation of the 8-fatality motorcoach accident in Tallulah, Louisiana, found that the current FMCSRs do not contain procedures or criteria for the inspection of seat anchorage securement in motorcoaches. Because no criteria or procedures are available for the inspection of motorcoach passenger seat anchorage systems, improperly secured motorcoach passenger seats are not likely to be identified during commercial vehicle inspections, leading to an increased risk of failure under higher forces, such as occur during an accident.

H–07–3 To FMCSA: To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include *all Federal Motor Carrier Safety Regulations* in the current compliance review process so that all violations of regulations are reflected in the calculation of a carrier's final rating.

The FMCSA's position has been that its CSA 2010 Initiative will address this recommendation. The NTSB believes that the current FMCSA compliance review process does not effectively identify unsafe motor carriers and prevent them from operating. Although the NTSB recognizes the progress that the FMCSA has made with CSA 2010, the NTSB believes that, to maintain safety in the interim, the FMCSA should focus resources toward changing the current rating methodology by instituting an interim rule that makes adverse vehicle and driver performance-based data alone sufficient to result in an overall unsatisfactory rating for a carrier, while continuing to incorporate the principles of the NTSB's recommendations into the agency's new system being field-tested and evaluated in CSA 2010. The FMCSA is responsible for ensuring that motor carriers operate safely, and temporary measures to improve the compliance review process should be taken until the new rules are enacted. The FHWA (the FMCSA's predecessor) set a precedent for the issuance of interim rules to im-

prove safety programs when, in 1997, the agency issued an interim final rule to immediately improve the safety rating methodology without prior notice and comment, stating that to have done otherwise would have been contrary to the public interest. Therefore, the NTSB's position is that deferring action on this recommendation until completion of the CSA 2010 initiative is not in the best interest of the motoring public and is therefore unacceptable.

H–07–41 To FMCSA: Require all interstate commercial vehicle carriers to use electronic on-board recorders that collect and maintain data concerning driver hours of service in a valid, accurate, and secure manner under all circumstances, including accident conditions, to enable the carriers and their regulators to monitor and assess hours-of-service compliance.

For the past 30 years, the NTSB has advocated the use of onboard data recorders to increase hours-of-service (HOS) compliance. We first urged mandatory use of onboard recorders in our 1990 safety study, *Fatigue, Alcohol, Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes*, after concluding that onboard recording devices could provide a tamper-proof mechanism to enforce the HOS regulations. As a result of our investigation of a July 16, 2004, multiple-vehicle accident near Chelsea, Michigan, the NTSB issued Safety Recommendation H–07–41 to the FMCSA on December 17, 2007.

On April 10, 2010, the DOT issued a final rule on EOBRs that established new performance standards and mandated that motor carriers that demonstrate serious noncompliance with HOS rules be required to install EOBRs for a period of 2 years. The Safety Board is generally satisfied with the performance standards in the rule but the NTSB is still concerned that compliance reviews will be the only method used to identify threshold rate violators, when only about 2 percent of all carriers undergo compliance reviews annually. Furthermore, the NTSB has identified flaws in the compliance review system, guaranteeing that many unsafe carriers will continue to evade even initial identification as an HOS violator. The NTSB has documented several instances in which carriers have received favorable compliance review ratings despite long and consistent histories of driver- and vehicle related violations. With the paper logs currently in use, it is relatively easy for drivers or carriers to misrepresent HOS data. As a result, to exceed HOS limits undetected, many drivers falsify their logs and subsequently drive in a fatigued state. The NTSB remains convinced that the only effective means of curbing the many tragic fatigue-related accidents is to mandate EOBR installation and use by all operators subject to HOS regulations. A remedial program that relies on compliance reviews and the evaluation of paper logs to identify high risk carriers will have limited success.

In the Motorcoach Safety Action Plan, the FMCSA indicates that it is considering the encouragement of industrywide use of EOBRs by providing incentives for motor carriers to voluntarily use EOBRs. The FMCSA is also beginning rulemaking intended to propose a more widespread mandate for EOBRs, including mandating that all motorcoaches be equipped with EOBRs.

The NTSB has stated that the only effective way for EOBRs to help stem HOS violations, which the NTSB has linked to numerous fatigue-related accidents, is to mandate EOBR installation and use by all operators subject to HOS regulations. EOBRs have the potential to efficiently and accurately collect and verify HOS for all drivers, to establish the proper incentives and a level playing field for compliance with HOS rules, and, ultimately, to make our highways safer for all drivers.

H–07–42 To FMCSA: As an interim measure and until industry-wide use of electronic on-board recorders is mandated, as recommended in Safety Recommendation H–07–41, prevent log tampering and submission of false paper logs by requiring motor carriers to create and maintain audit control systems that include, at a minimum, the retention of all original and corrected paper logs and the use of bound and sequentially numbered logs.

The NTSB has documented several instances in which carriers have received favorable compliance review ratings despite long and consistent histories of driver- and vehicle-related violations, most recently in our investigation of the Wilmer, Texas, motorcoach fire that resulted in the deaths of 23 people.

The NTSB remains convinced that the only effective way to help stem HOS violations, which we have linked to numerous fatigue-related accidents, is to mandate EOBR installation and use by all operators subject to HOS regulations. According to the FMCSA's March 2006 *Report to Congress on the Large Truck Crash Causation Study*, 13 percent of large truck drivers involved in study

crashes were believed to be fatigued. In our 1995 safety study, *Factors That Affect Fatigue in Heavy Truck Accidents*, the NTSB found that the incidence of driver fatigue is underrepresented in the Fatality Analysis Reporting System database. Law enforcement reporting of the role of fatigue in accidents is low because of the difficulty of proving that it is causal to the accident; an officer is more likely to cite a symptom of fatigue—inattention, excessive speed, illegal lane maneuver, following too closely, etc.—because these are easier violations to prove. Because fatigue is extremely difficult to detect, fatigue-related accidents continue to plague our Nation's highways. EOBRs hold the potential to efficiently and accurately collect and verify HOS for all drivers, to establish the proper incentives and a level playing field for compliance with HOS rules, and, ultimately, to make our highways safer for all drivers.

A universal mandate would help improve the FMCSA's oversight of the current logbook system. As long as the FMCSA continues to accept the use of paper logbooks without an audit system to verify the accuracy of a driver's entries, drivers will continue to tamper with and falsify their records. Until a universal EOBR requirement is effective, the NTSB recommends that an interim measure be implemented to monitor driver records of duty status.

H–08–13 To FMCSA: Develop and implement a plan to deploy technologies in commercial vehicles to reduce the occurrence of fatigue-related accidents.

The NTSB is concerned that the FMCSA is attempting to develop a universal technology solution to reduce the occurrence of fatigue-related accidents rather than interim measures that may be currently available. Although there are currently no commercially available fatigue detection products that could be used under both daytime and nighttime driving conditions, a recently published FMCSA review of activities underway to develop unobtrusive, in-vehicle, real-time, drowsy driver detection and alertness systems discussed at least five separate systems that are capable of functioning under a variety of conditions, both day and night. In addition to passenger-carrying operations, a substantial proportion of commercial transportation occurs at night. Given the increased fatigue risks inherent in nighttime operations, it is reasonable to believe that even a system that functions only at night could provide a substantial safety benefit as a stopgap measure until a universal system is available. Sleep deprivation and circadian desynchronization can cause drivers to be susceptible to fatigue even when they are complying with HOS limits. The NTSB continues to believe that the FMCSA should consider the deployment of nighttime-based technologies during the ongoing development of in-vehicle technologies to reduce fatigue-related accidents.

Question 2. Has the Department of Transportation done enough to combat distracted driving in commercial motor vehicles?

Answer. The NTSB believes that more can be done. Driver distractions are probably one of the least understood and imprecisely documented causes of traffic accidents involving many different accident scenarios and we have addressed several of them in our recommendations. Recent interest in the effects of using cell phones and other electronic devices has prompted numerous studies, and the explosive growth of texting while driving has prompted several states and the Federal Government to restrict such activity.

Most would agree that texting while driving is unsafe. In fact, Virginia Tech has shown that texting while driving increases the risk of an accident by 23 times. However, the problem is much bigger than texting. If you dial a phone number or reach for the phone while you are driving, you are taking your eyes off the road. You may be able to do this and get away with it hundreds or even thousands of times, but one day, you will look down at your cell phone at just the wrong moment and become an accident statistic. When the driver of an 80,000-pound tractor-trailer or a motorcoach carrying 55 passengers looks away from the road at the wrong instant, the results can be catastrophic.

The NTSB investigated a passenger car accident in February 2002 in Largo, Maryland, in which an inexperienced 20-year-old driver lost control of her high-profile, short-wheelbase vehicle on the Capitol Beltway. She was following her boyfriend and talking to him on her cell phone. She lost sight of his speeding vehicle and, as she was attempting to catch up with him, she lost control of her vehicle and crossed over the median, striking a minivan and killing all four of its occupants and herself. The cause of the accident was a combination of inexperience, unfamiliarity with the vehicle, speed, and distraction caused by use of a handheld wireless telephone. As a result, the NTSB recommended that the states prohibit holders of learner's permits and intermediate licenses from using wireless communication de-

vices while driving, and that they add driver distraction codes to traffic accident investigation forms. Specifically, the NTSB issued the following recommendations to 33 states:

> Enact legislation to prohibit holders of learner's permits and intermediate licenses from using interactive wireless communication devices while driving. (H–03–8)
>
> Add driver distraction codes, including codes for interactive wireless communication device use, to your traffic accident investigation forms. (H–03–9)

In 2004, we investigated an accident in Alexandria, Virginia, in which an experienced motorcoach driver, who was having a heated conversation on his hands-free cell phone, failed to move to the center lane and struck the underside of an arched stone bridge on the George Washington Parkway. Our investigation found that the driver had numerous cues to change lanes at the appropriate time. In fact, the driver was familiar with the road and was following another bus that had moved to the center lane. Yet, this driver did not notice the well-marked signage as he approached the arched stone bridge. The accident was clearly caused by this driver's cognitive distraction, due to his conversation on his cell phone. The NTSB recommended that the FMCSA and the 50 states enact laws to prohibit cell phone use by commercial drivers while driving a passenger-carrying commercial vehicle or school bus. 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, as follows:

> *To the FMCSA and the 50 states*: Publish regulations (or 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. (H–06–27 and –28)
>
> *To motorcoach associations, school bus organizations, 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. (H–06–29)

Last fall, we participated in the DOT Distracted Driving Summit, which addressed the dangers of text-messaging and other driving distractions. During the summit, Secretary LaHood announced a plan to initiate rulemaking that would consider banning texting altogether and would restrict texting by truck and interstate bus operators. A notice of proposed rulemaking to ban texting by commercial vehicle drivers was issued on April 1, 2010. While a ban on texting is definitely a step in the right safety direction, it does not satisfy our recommendation to prohibit the use of cellular telephones by drivers of passenger-carrying motorcoaches or school buses. In fact, the NTSB feels so strongly about these recommendations that they are both on the Board's Most Wanted List of Transportation Safety Improvements.

Another potential area for reducing distracted driving accident lies in technology. For example, collision warning systems and adaptive cruise control could alert a distracted driver of an impending emergency situation. Since 1995, as part of its *Special Investigation of Collision Warning Technology*, the NTSB has advocated the installation of such systems to prevent accidents. In 2001, as part of another study on *Technology for the Prevention of Rear-End Collisions*, the NTSB investigated nine commercial vehicle rear-end collisions in which 20 people died and 181 were injured. Common to all nine accidents was the rear following vehicle driver's degraded perception of traffic conditions ahead. Therefore, the NTSB recommended that NHTSA take the following action:

> Complete rulemaking on adaptive cruise control and collision warning system performance standards for new commercial vehicles. At a minimum, these standards should address obstacle detection distance, timing of alerts, and human factors guidelines, such as the mode and type of warning. (H–01–6 and –7)

In 2003, a multivehicle accident occurred on near Hampshire, Illinois, in which a tractor-trailer failed to slow for the stopped or slow-moving traffic on the approach to the Interstate 90 toll plaza. The tractor-trailer driver was distracted and rear-ended a specialty bus, killing 8 passengers and injuring 12. As a result, the NTSB reiterated recommendations H–01–6 and –7.

In 2007, these important safety recommendations were added to the Board's Most Wanted List. These recommendations were again reiterated following the Board's 2008 report on a 4-fatality motorcoach and tractor-trailer accident in, Osseo, Wis-

consin, a 7-fatality tractor-trailer/sedan/school bus collision in Lake Butler, Florida, and the 14-fatality motorcoach rollover accident in Turrell, Arkansas.

NHTSA is currently in the process of evaluating forward collision warning systems in field tests to evaluate several human factors considerations related to integrating safety warning systems in both heavy and light vehicles.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO HON. DEBORAH A.P. HERSMAN

Question 1. Last year I introduced S. 1113, the Safe Roads Act, to establish a national drug and alcohol testing database for employers to better select qualified drivers and avoid hiring employees with a drug or alcohol background.

Under this law, the FMCSA would require medical review officers, employers, and other service agents to report positive results from FMCSA required drug or alcohol tests to the database and clearinghouse. Employers would be required to check the database prior to hiring a prospective employee. If a prospective employee has a positive result, an employer would not be allowed to hire the prospect unless he/she has not violated the requirements of the testing program or he/she has fully completed a return-to-duty program as required by the testing program. This law will also require privacy protections and employee rights of action. Does the NTSB support the establishment of a drug and alcohol test result clearinghouse? Do you believe the CSA 2010 should accommodate such a database?

Answer. The NTSB strongly supports the both the establishment of a drug and alcohol test result clearinghouse and the inclusion of such a database in the FMCSA's CSA 2010 initiative. The NTSB has supported this initiative since investigating the 1999 Mother's Day motorcoach accident in New Orleans, Louisiana. In this accident, the motorcoach driver lost consciousness while driving on an interstate highway, left the roadway, and crashed into an embankment, killing 22 passengers and injuring 21.

By way of background, the driver had multiple known serious medical conditions, including kidney failure and congestive heart failure, and he was receiving intravenous therapy for 3–4 hours a day, 6 days a week. Additionally, when the driver submitted his application to the motor carrier, he did not mention previous positions he had held with two other motor carriers where he had been dismissed for testing positive for marijuana. He explained the gaps in his employment record by stating that he was a musician in a brass band during those times. His employer sent requests for information to the two previous employers, both of whom were authorized by the bus driver to provide the information. However, neither company responded. Before being hired by his current employer, the driver took a preemployment drug test; he subsequently had three random drug tests during his tenure, all with negative results.

Three problems are evident from the events described above. First, the driver was able to avoid negative scrutiny from his current employer by omitting parts of his employment history. Second, his current employer did not receive a response from any of the former employers it contacted. Third, no enforcement mechanism or incentive exists to compel previous employers to comply with information requests.

Today, it is still possible for drivers to hide positive drug test results in the manner of the New Orleans driver. Title 49 CFR 391.21 requires drivers to provide carriers with the names and addresses of employers from their previous 3 years of employment, including their employment dates and reasons for leaving. However, drivers are unlikely to provide such history when it might limit their opportunities for employment. Additionally, enforcing this requirement is difficult because the only way to detect a false employment history would be to obtain employment information from someone other than the driver.

Because employees are unlikely to divulge positive drug test results and because prospective employers may not have sufficient employment history or the authority to obtain information from previous employers regarding positive drug tests, the results of tests for controlled substances performed under the DOT testing guidelines, even when positive, are often not available to prospective employers, making it difficult for them to make well-informed hiring decisions.

Drivers who own and operate their own commercial vehicles (owner-operators) are required by regulation to comply with all the requirements stipulated for both drivers and employers. Owner-operators are thus in the precarious position of overseeing their own substance abuse programs. No Federal requirements exist for reporting drivers who have tested positive for controlled substances to any regulatory or certifying authority. Therefore, the only entity with information regarding a positive test is the employer, who, if an owner-operator, may also be the individual

being tested. Such an arrangement requires owner-operators who are abusing controlled substances to remove themselves from driving if they test positive for such substances. It seems highly unlikely that those owner-operators who are not complying with the regulations regarding the use of controlled substances will comply with other sections of the drug testing regulations.

Therefore, the NTSB concluded that the current Federal drug testing regulations cannot adequately identify owner-operators who abuse controlled substances. A database that records positive drug and alcohol test results and refusal determinations for all commercial drivers would provide an effective way for both employers and certifying authorities to verify and evaluate the drug test history of all commercial drivers. Such a database would allow employers to make better-informed hiring decisions and would allow certifying authorities to determine whether a driver has a potentially disqualifying medical condition regarding substance abuse. Therefore, the NTSB made the following recommendation to the 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. (H–01–25)

Question 2. I understand that on April 5, 2010, the FMCSA developed a final rule to require the use of EOBRs by carriers that have violated the hours of service rules. What is the NTSB's view of the new EOBR rule?

Answer. For the past 30 years, the NTSB has advocated the use of onboard data recorders to increase HOS compliance. The NTSB first proposed the use of automatic onboard recorders for commercial vehicle HOS compliance in 1977. In 1990, the NTSB recommended that they be required on all commercial vehicles. Although the final rule on EOBRs is an improvement over what had been proposed in 2007, it still falls short of industrywide implementation and will not lead to significant improvements in HOS compliance.

In the final rule, the primary purpose of EOBRs is remedial. The FMCSA has improved the process described in the NPRM and adopted a more stringent approach, whereby motor carriers with a 10-percent violation rate of any 49 CFR Part 385, Appendix C, HOS regulation in any single compliance review—rather than two consecutive compliance reviews, as proposed in the NPRM—would be required to equip their fleets for 2 years with EOBRs that meet the parameters described in the final rule or be prohibited from operating. The FMCSA estimated that the directive proposed in the NPRM would have resulted in the annual issuance of 465 remedial directives to install EOBRs; it estimates that the final rule will result in the annual issuance of 5,419 remedial directives, affecting 104,428 power units.

The NTSB is still concerned that compliance reviews will be the only method used to identify threshold rate violators, when only about 2 percent of all carriers undergo compliance reviews annually. Furthermore, the NTSB has identified flaws in the compliance review system, guaranteeing that many unsafe carriers will continue to evade even initial identification as an HOS violator. The NTSB has documented several instances in which carriers have received favorable compliance review ratings despite long and consistent histories of driver- and vehicle-related violations. With the paper logs currently in use, it is relatively easy for drivers or carriers to misrepresent HOS data. As a result, to exceed HOS limits undetected, many drivers falsify their logs and subsequently drive in a fatigued state. The NTSB remains convinced that the only effective means of curbing the many tragic fatigue-related accidents is to mandate EOBR installation and use by all operators subject to HOS regulations. A remedial program that relies on compliance reviews and the evaluation of paper logs to identify high-risk carriers will have limited success.

It is the NTSB's position that using EOBRs as a form of remediation or punishment undermines the goal of achieving voluntary industrywide acceptance and runs counter to the intent of the NTSB's previously issued safety recommendations and continued support of recording technologies. The FMCSA lists several incentives that it hopes will promote the voluntary installation and use of EOBRs. Among these incentives are new compliance review procedures and exemptions for certain supporting documentation requirements. The NTSB is in favor of any incentive that fosters the use of EOBRs without undermining safety; however, we remain skeptical as to whether the incentives currently proposed will be strong enough to override the financial motivation some carriers and drivers have for continuing to circumvent the HOS regulations and not use EOBRs.

The NTSB understands that the FMCSA is considering publication of a separate NPRM in the near future, initiating a new rulemaking to expand the scope of EOBR use beyond what has been set forth in this final rule. The FMCSA did not propose

a timeline for this action, and the NTSB would like to encourage publication of the notice mandating industrywide implementation of EOBRs as soon as possible.

The NTSB has urged the FMCSA to continue its work in evaluating regulatory options for expanding the use of EOBRs by all carriers. The NTSB believes that it is past time to act and that the use of EOBRs should be mandatory throughout the industry, as is the case in most of Europe.

Question 2a. What information should be required to be recorded by the EOBRs? What should be a minimum performance standard?

Answer. With respect to performance-oriented standards for EOBR technology, the NTSB is generally satisfied with the FMCSA's final rule. The FMCSA's decision to require that onboard recording devices be integrally synchronized to the engine was especially well received and should help ensure the accuracy of electronic records of duty status. However, the NTSB is disappointed that the final rule does not include further standards for EOBR damage resistance and data survivability beyond those for other electronic components used in trucks and buses and encourages the FMCSA to revisit this issue in subsequent EOBR rulemaking.

Question 2b. Should all motor-carriers be equipped with EOBRs to better comply with Hours of Service laws?

Answer. The NTSB supports mandatory EOBR implementation by all motor carriers. Although the NTSB does not agree with the FMCSA's rationale for not implementing an industrywide mandate at this time, the NTSB understands that the FMCSA plans to publish a separate notice in the near future initiating a new rulemaking to consider expanding the scope of EOBR use beyond what has been set forth in the final rule. The FMCSA did not propose a timeline for this action, and the NTSB has encouraged the FMCSA to publish an NPRM mandating the industrywide implementation of EOBRs as soon as possible.

By way of background, the NTSB supports EOBR use by all motor carriers because it believes that compliance with HOS laws can help reduce the number of fatigue-related accidents. As you know, fatigue-related accidents continue to plague our Nation's highways because, unlike alcohol or drugs, fatigue is extremely difficult to detect. In fact, fatigue is probably the most underreported causal factor in highway accidents. Electronic on-board recorders have the potential to efficiently and accurately collect and verify the hours of service for all commercial drivers. Mandatory use of EOBRs will also establish the proper incentives and create a level playing field for compliance with HOS rules that will ultimately make our highways safer for all drivers.

Question 3. Do you believe the current size and weight restrictions can be increased without compromising highway safety or infrastructure integrity? Would you comment on your views of increasing the allowable weight of trucks to 97,000 pounds by adding a third axle to the rear pair of axles?

Answer. The NTSB has not evaluated the safety implications, nor has it taken an official position, on adding a third axle to tractor-trailers and increasing the weight limit to 97,000 pounds. Most of our recent recommendations have focused on oversize and overweight vehicles that require a special permit. In fact, we are currently reviewing an accident that occurred last Friday, June 11, 2010, involving the lead escort vehicle for an oversize load traveling on Interstate 74 near the village of St. Joseph, Illinois. Oversize and overweight "permitted" loads require special handling and procedures and the NTSB has made associated recommendations from accidents that occurred in Glendale, California, in 2000 and Intercession City, Florida, in 1993. Again, these accidents involved very specialized vehicles, traveling on specified routes, and they required special considerations and oversight.

The NTSB has not made specific recommendations on a general increase in the current size and weight restrictions. However, many safety implications should be considered. For example, the NTSB has numerous outstanding recommendations to the FMCSA, NHTSA, and the FHWA that involve heavy commercial vehicles, and perhaps some of those issues should be addressed prior to allowing larger and heaver trucks on the road. For instance, concerning braking and stopping distances, larger and heavier vehicles are likely to have longer stopping distances, and the NTSB has made several recommendations involving truck brakes and maintenance. For example, our investigation into a tractor-trailer with bad brakes that collided with a school bus in Mountainburg, Arkansas, in 2001 illustrated the importance of truck brake maintenance. Those recommendations to the FMCSA included the following:

> Revise 49 CFR 396.13, Driver Inspection, to require minimum pre-trip inspection procedures for determining brake adjustment. (H–02–15)
>
> Require that vehicle inspections of a motor carrier's fleet be conducted during compliance reviews. (H–02–16)

> Revise 49 CFR 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. (H–02–17)
>
> 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. (H–02–18)

Another example includes the NTSB's investigation of a 2003 runaway truck accident in Glendale, Pennsylvania, that was caused by brake failure and poor maintenance. The Board recommended that the FMCSA:

> Work with the Commercial Vehicle Safety Alliance to develop and add to the North American Standard Inspection training materials a module that emphasizes 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, because manual adjustment of this brake component: (1) fails to address the true reason why the brakes are not maintaining adjustment, giving the operator a false sense of security about the effectiveness of the brakes, which are likely to go out of adjustment again soon, and (2) causes abnormal wear to the internal adjusting mechanism for most automatic slack adjusters, which may lead to failure of this brake component. (H–06–1)

In general, the NTSB considers that the FMCSA's methodology for identifying unsafe motor carriers is lacking in several areas, but specifically, we have reiterated a recommendation to recognize the importance of vehicle maintenance when evaluating the adequacy of a motor carrier's operations. That longstanding recommendation to FMCSA is as follows:

> 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. (H–99–6)

This recommendation has been reiterated in several accident investigation reports and has been on our Most Wanted List for over a decade. Therefore, until the FMCSA has adequate procedures in place to monitor motor carrier vehicle maintenance, it seems unlikely that the Board would support an increase in truck size and weight.

Likewise, the Board is very concerned with fatigued truck and bus drivers, and for the last 30 years has made recommendations for the FMCSA to require EOBRs for HOS compliance. This issue was added to our Most Wanted List in 2008. It was most recently reiterated in a report of a 9-fatality motorcoach accident in Mexican Hat, Utah. That recommendation to the FMCSA states:

> Require all interstate commercial vehicle carriers to use electronic on-board recorders for hours of service. (H–07–41)

In addition, as a result of three fatigue-related accidents that occurred in Osseo, Wisconsin; Lake Butler, Florida; and Turrell, Arkansas, the NTSB issued a report in 2008 with the following new recommendations to the FMCSA:

> Develop and implement a plan to deploy technologies in commercial vehicles to reduce the occurrence of fatigue-related accidents. (H–08–13)
>
> Develop and use a methodology that will continually assess the effectiveness of the fatigue management plans implemented by motor carriers. (H–08–14)

Before larger and heavier trucks, with potentially longer stopping distances, are allowed on the road, we believe that NHTSA should consider implementing some of the NTSB's recommendations concerning new technologies that could help prevent large truck and bus accidents. Those include the implementation of collision warning systems, adaptive cruise control with active braking, and electronic stability control. Again, the Most Wanted List contains some of these longstanding recommendations to NHTSA, including the following:

> Complete rulemaking on adaptive cruise control and collision warning system performance standards for new commercial vehicles. At a minimum, these standards should address obstacle detection, timing of alerts, and human factors guidelines, such as the mode and type of warning. (H–01–6)
>
> Determine whether equipping commercial vehicles with collision warning systems with active braking and electronic stability control systems will reduce commercial vehicle accidents. If these technologies are determined to be effective in reducing accidents, require their use on commercial vehicles. (H–08–15)

Finally, it goes without saying that increasing truck size and weight will have implications affecting the highway infrastructure, its bridges, and general roadway deterioration. The NTSB's investigation of the Minneapolis bridge collapse showed that a design flaw in that bridge caused the collapse, but the report also acknowledged the overall deterioration of the Nation's infrastructure. Similarly, the NTSB's recent investigation into a motorcoach accident in Sherman, Texas, illustrated that bridge barriers on many existing bridges are not adequate to redirect large buses and trucks. Therefore, any proposal to increase the size and weight of trucks should take into consideration the adequacy of our highway infrastructure to accommodate those vehicles. The recommendation from the Sherman accident to the FHWA is as follows:

> Establish, in conjunction with the American Association of State Highway and Transportation Officials, performance and selection guidelines for bridge owners to use to develop objective warrants for high-performance Test Level Four, Five, and Six bridge railings applicable to new construction and rehabilitation projects where railing replacement is determined to be appropriate. (H–09–17)

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO HON. DEBORAH A.P. HERSMAN

Question 1. In your testimony, you state that the NTSB has recommended that event data recorders (EDRs) be required in all newly manufactured light duty vehicles. You also state that school buses and motorcoaches should be required to record specific vehicle parameters. While many vehicles have these recorders, they are still not required by NHTSA. Today I introduced legislation, S. 3271 the Vehicle Safety Improvements Act, which would require that all vehicles, including medium and heavy-duty vehicles, have an EDR. What are the benefits of having event data recorders (EDRs) in vehicles?

Answer. An EDR is a device or function that records a vehicle's dynamic, time-series data just before a crash (vehicle speed versus time) or during a crash (change in velocity versus time). Intended for retrieval after the crash event, EDR data can provide critical safety system performance information. To enhance crash testing with real-world data, it is important that data from motorcoach crashes be available for use in postaccident analysis, forensics, and design evaluation.

EDRs are a proven technology. They record critical vehicle movements and driver inputs that greatly help in accident reconstruction and future accident prevention initiatives. That is why since 1997, the NTSB has issued six recommendations and participated in and/or hosted five public forums on the use of data recording devices in highway transportation.

Although the NTSB has been advocating the installation of EDRs for decades, the importance of such devices has just now become apparent to members of the general public, as they wrestle with the issue of unattended acceleration. It is just this type of device that would have assisted in determining whether the Toyota unintended acceleration problem was caused by mechanical or human error. NHTSA has maintained that use of these devices should be voluntary, but the NTSB considers that they should be mandatory. In fact, we investigated an accident involving pedal misapplication in 2003 in a Santa Monica, California, farmers market that caused 10 fatalities and 63 injuries. As a result, we recommended that NHTSA take the following action:

> Once standards for event data recorders are developed, require their installation in all newly manufactured light-duty vehicles. (H–04–26)

In addition, the NTSB has advocated the use of EDRs in school buses and motorcoaches since 1999. Most recently, we reiterated these recommendations in the report of the 2008 7-fatality motorcoach accident in Atlanta, Georgia, in which a motorcoach carrying Bluffton University students launched off a highway overpass, falling to the roadway below.

That accident illustrated how the lack of valuable crash data continues to restrict accident investigations. In that case, data concerning the exact vehicle speed, status of the cruise control and high beams, throttle position, and driver steering and brake inputs, as well as several other parameters, could not be precisely determined based on physical evidence. The NTSB's investigation into the cause of passenger injuries and the points of ejection was severely limited because insufficient data were available from which to calculate reliable crash pulses. An EDR would have provided vehicle dynamics information throughout the accident sequence. Crash pulses and/or Delta V are often used to calculate passenger occupant kinematics, help evaluate injury exposure, and help evaluate passenger protection safety devices

and systems. Using these data, investigators can predict potential injury mechanisms and the effects of various design elements on occupant protection systems.

Question 1a. Could requiring that all medium and heavy-duty vehicles also have EDRs lead to vehicle safety improvements?

As mentioned above, EDRs provide many benefits beyond just determining the cause of a crash, especially in the areas of crashworthiness and occupant kinematics research. That is why the NTSB made the following recommendations in 1999, and we reiterated them as a result of the Atlanta, Georgia, accident:

> Require that all school buses and motorcoaches manufactured after January 1, 2003, be equipped with on-board recording systems that record vehicle parameters, including, at a minimum, lateral acceleration, longitudinal acceleration, vertical acceleration, heading, vehicle speed, engine speed, driver's seat belt status, braking input, steering input, gear selection, turn signal status (left/right), brake light status (on/off), head/tail light status (on/off), passenger door status (open/closed), emergency door status (open/closed), hazard light status (on/off), brake system status (normal/warning), and flashing red light status (on/off) (school buses only). For those buses so equipped, the following should also be recorded: status of additional seat belts, airbag deployment criteria, airbag deployment time, and airbag deployment energy. The on-board recording system should record data at a sampling rate that is sufficient to define vehicle dynamics and should be capable of preserving data in the event of a vehicle crash or an electrical power loss. In addition, the on-board recording system should be mounted to the bus body, not the chassis, to ensure that the data necessary for defining bus body motion are recorded. (H–99–53 and –54)

In recent years, NHTSA has made progress in developing EDR data standards for light vehicles, which include passenger cars, multipurpose passenger vehicles, light trucks, and vans with a gross vehicle weight rating of 8,500 pounds or less. In August 2006, NHTSA published a final rule that standardizes the information EDRs collect, making EDR data retrieval easier, and that addresses the survivability requirements for EDRs based on crash testing. The final rule was amended on January 14, 2008, in response to numerous petitions for reconsideration. Based on this revised rule, compliance dates have been changed to September 1, 2012, for most light vehicles, and to September 1, 2013, for vehicles manufactured in two or more stages. The new rule, however, does not address vehicles over 8,500 pounds. Thus, it would not apply to buses or motorcoaches.

In its comments on the proposed rule, the NTSB highlighted its concerns that limiting the EDR requirement to vehicles weighing less than 8,500 pounds will exclude vehicles involved in crashes for which data from EDRs would be especially beneficial. The NTSB has previously recommended that school buses and motorcoaches be equipped with EDRs, and NHTSA indicated in its NPRM that it will address heavy vehicles later. The NTSB believes that this rulemaking for light vehicles should have applied to all vehicles weighing 10,000 pounds or less and that heavy-vehicle rulemaking should apply to all vehicles with a gross vehicle weight rating of 10,001 pounds or more. Thus, no vehicles would be excluded from EDR requirements.

Response to Written Question Submitted by Hon. John Thune to Hon. Deborah A.P. Hersman

Question. Last December, this Committee reported legislation to improve motorcoach safety. For example, new motorcoach entrants would be required to successfully complete an on-site pre-authorization safety audit before they could begin operating. While pre-authorization safety audits may not be practical for the trucking industry, which has thousands of new entrants each year, what more can be done *before* a carrier begins operations to ensure the carrier, its vehicles, and drivers are in compliance with Federal safety regulations? What other recommendations do you have for improving FMCSA's new entrant program?

Answer. The Committee's initiative last December which emphasized that FMCSA review a carrier's fitness *before* they are allowed to engage in interstate commerce is precisely what the NTSB wants and has asked for in its recommendations for both passenger and freight operations. The fact that there are numerous new entrant applications each year should not be a deterrent. In fact, it is an even greater reason to establish a program that reviews these applications *prior to* engaging in interstate commerce. Otherwise, we are allowing thousands of rookie operators on the road. Some will certainly be unsafe and thus raise the risk of accidents for

themselves and the traffic around them. Intervening as soon as possible before their vehicles move onto the highway reduces those risks.

An example of the danger of allowing a motor carrier to conduct business before being evaluated on their knowledge of the FMCSRs is found in the NTSB's investigation of an accident that occurred in 2002 near Loraine, Texas, in which the Safety Board made recommendations to the FMCSA to establish a program to evaluate new entrants *prior to* operating. At the time of this accident, FMCSA had essentially no program to review or follow-up on new entrant motor carriers. This accident involved the collision of a motorcoach with a tractor-semitrailer and resulted in 3 fatalities and 30 injuries. In this case, our investigation revealed that when the trucking company owner, who had no previous experience running a motor carrier operation, submitted his application to FMCSA, he lied about his knowledge of the regulations, about having systems in place to comply with the regulations, and about a drug conviction for possession of large amounts of marijuana the year prior to his application. He also did not maintain any records on his drivers or vehicles, did not have a company drug and alcohol program, and did not conduct background checks of his drivers. Further, he knowingly dispatched the accident driver, who did not have a commercial driver's license or medical certificate.

As a result of the NTSB's recommendation from this accident, Congress required the FMCSA to establish a new entrant audit program. Subsequently, the FMCSA developed the New Entrant Safety Assurance Program in 2003 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 18 months of operation. Unfortunately, this program included very little screening *prior to* allowing motor carriers to engage in interstate commerce. Since it relies on evaluating the performance of the carrier during this 18-month safety monitoring period, it essentially allows new entrants to engage in interstate commerce without proving their safety fitness.

The current application process relies on the motor carrier to read the material and to do what is required. The FMCSA has no way of determining whether a motor carrier is complying with the FMCSRs until the safety audit occurs, up to 18 months after the motor carrier begins operations. In other countries and territories, the new applicant process is more stringent. In British Columbia, a new motor carrier must describe the types of systems that are in place and the records that will be kept. 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. In the United Kingdom, the new motor carrier must inform the licensing agency of its maintenance program and capabilities and is inspected within 9 months.

In the U.S. motor carrier certification process, no such checks are in place. The FMCSA does not verify that the motor carrier understands or has complied with the regulations. While many new motor carriers do put safety management systems in place to comply with the FMCSRs, the NTSB is concerned that some carriers will fail to do so. The application form for a new entrant only requires the carrier to check "yes" or "no" boxes to verify that he understood the rules and regulations. The NTSB believes that the FMCSA's New Entrant Safety Assurance Program 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 *prior to* beginning operations. Thus the Safety Board's recommendation (below), issued to FMCSA after the Loraine accident, remains valid.

> *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. (H–03–02)*

This concept of evaluating new entrants prior to allowing them to engage in interstate commerce was echoed by FMCSA's Motor Carrier Safety Advisory Committee in September of 2009. The Committee stated:

> *"Currently, a new entrant may engage in interstate commerce before the Federal Motor Carrier Safety Administration (FMCSA) conducts any kind of safety assessment (whether a roadside inspection, safety audit, or compliance review). The Committee believes that the process for granting new entrant motor carriers permission to engage in interstate operations should emphasize safety by improving the knowledge, capabilities, and commitment of applicants on the front end."*

Another area of concern is when unscrupulous motor carriers 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 are a brand new motor carrier. The NTSB found that this had occurred with a motor carrier involved in an accident in 2008, when a motorcoach ran off a bridge and rolled over in Sherman, Texas, killing 17 passengers. After losing its authority to operate because of an unsatisfactory compliance review rating, the motor carrier applied for operating authority under a new name as a new entrant. Although the application was still in the review process, the carrier began operating under the new carrier name.

The Sherman accident prompted the FMCSA to develop a vetting process as part of its New Applicant Screening Program, under which the agency compares information on new applications against information on companies previously granted authority. Using this system, the FMCSA is potentially able to identify carriers who are attempting to reincarnate themselves.

The Sherman accident also prompted the GAO to study FMCSA's new entrant program. The GAO report, published in July 2009, found that roughly 9 percent of the carriers, which FMCSA had previously placed out of service, attempted to reincarnate themselves as new entrants. GAO also acknowledged that their conservative methodology in identifying these reincarnated carriers likely underestimates the problem.

The NTSB's final report on the Sherman, Texas, accident concluded that the FMCSA's program for identifying reincarnated carriers would benefit from a process that evaluated how effective the screening program was in identifying reincarnated carriers. Therefore, we asked them to evaluate the effectiveness of the new program by issuing the following recommendation to the FMCSA:

> *Develop an evaluation component to determine the effectiveness of its New Applicant Screening Program. (H–09–21)*

In 2008, the NTSB investigated an accident in which the driver fell asleep and the motorcoach overturned in Victoria, Texas, killing one person. The Safety Board discovered that FMCSA lacked sufficient authority to deny or revoke operating authority from a carrier who failed to disclose a relationship with a prior carrier. The NTSB concluded that some motor carriers are circumventing the legitimate corporate succession processes by reapplying for FMCSA interstate operating authority without declaring previous relationships with carriers under enforcement actions.

As a result, the NTSB issued a recommendation to the FMCSA that asks the agency to develop methods to identify reincarnated carriers that fail to disclose previous transportation operations and to seek authority to deny or revoke their operating authority:

> *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–09–34)*

Also in its Victoria accident investigation, the NTSB identified motor carriers that owned and operated vehicles that did not meet the requirements of the Federal Motor Vehicle Safety Standards (FMVSS). As such, the NTSB asked the FMCSA to require motor carriers to declare on their operating authority application that they will only use FMVSS compliant vehicles. Further, the NTSB asked the FMCSA to seek legislation allowing the FMCSA to put out of service any company that uses non-FMVSS compliant vehicles, *i.e.*:

> *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. (H–09–40)*
>
> *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. (H–09–41)*

Finally, a recurring theme in many of the NTSB's investigations is vehicle maintenance, and, in fact, all of the above accidents contained vehicle issues of some sort. Our report on a 2001 collision between a school bus and a tractor-semitrailer near Mountainburg, AR, in which 3 students were killed, highlighted the ease with which

carriers avoid vehicle inspections. As a result, the Safety Board recommended that the FMCSA:

Require that vehicle inspection of a motor carrier's fleet be conducted during compliance reviews. (H–02–16)

None of the above recommendations have been fully implemented by FMCSA. However, the NTSB believes that all of them would help contribute to improved vigilance in reviewing and granting operating authority to new motor carriers.

In summary, there are very few professions where you get to practice that occupation prior to being licensed or taking some kind of test. Still, the NTSB recognizes that predicting how safe a motor carrier will be in the future is difficult. Nevertheless, the risks to the public from unsafe motor carriers are too high. As our recommendations indicate, the NTSB believes more can be done to ensure that only safe, knowledgeable companies are allowed to operate on our Nation's highways.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO FRANCIS (BUZZY) FRANCE

Question. Most truck drivers are paid by the mile, which tempts drivers to drive longer than what is permitted under the Hours of Service regulations, especially if they are delayed at ports and loading facilities. As we work to reauthorize the Federal Motor Carrier Safety Administration, what additional steps should the Committee take to reduce this incentive?

Answer. There are many components to the issue of driver compensation, both economic and safety. CVSA supports the idea of a study to look further into the issue as we do the current GAO study of driver detention time. The guiding principle for CVSA in looking at driver compensation is the impact it has on safety. CVSA will look closely at the safety issues raised in the study when it is completed and make further comments at that time.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO FRANCIS (BUZZY) FRANCE

Question 1. Last year I introduced S. 1113, the Safe Roads Act, to establish a national drug and alcohol testing database for employers to better select qualified drivers and avoid hiring employees with a drug or alcohol background.

Under this law, the FMCSA would require medical review officers, employers, and other service agents to report positive results from FMCSA required drug or alcohol tests to the database and clearing house. Employers would be required to check the database prior to hiring a prospective employee. If a prospective employee has a positive result, an employer would not be allowed to hire the prospect unless he/she has not violated the requirements of the testing program or he/she has not violated the requirements of the testing program or he/she has fully completed a return-to-duty program as required by the testing program. This law will also require privacy protections and employee rights of action. Do you support the establishment of a drug and alcohol test result clearinghouse?

Answer. Yes.

Question 1a. Does FMCSA have the authority to establish such a clearinghouse without Congressional guidance?

Answer. We believe there is a need for Congress to provide FMCSA with additional authority to establish the clearinghouse.

Question 1b. Should a drug clearinghouse be a part of CSA 2010?

Answer. A drug and alcohol clearinghouse should be established irrespective of CSA 2010. However, drug and alcohol driver violations will be an important factor in implementing CSA 2010. The clearinghouse will help provide driver data that is important to the new rating system to be established under CSA 2010.

Question 2. I understand that on April 5, 2010, FMCSA developed a final rule to require the use of EOBR's by carriers that have violated the hours of service rules. Do you believe all motor carriers should be equipped with EOBRs to better comply with Hours of Service laws?

Answer. Yes. We do. However, it is critically important that the implementing rule should contain important technical considerations, such as interoperability, data security, driver identification, tampering, uniformity, standard interface for law enforcement, and proper certification for EOBR devices.

Question 2a. If Congress were to require EOBRs for all carriers, what information would we require to be recorded?

Answer. CVSA's comments filed with respect to the original EOBR rulemaking are attached. They carefully detail what information should be required and how to obtain this information as accurately as possible. In addition, as FMCSA's rulemaking on this issue has evolved, CVSA has been working with a broad partnership to help provide guidance to achieve uniform performance standards for EOBR's. The purpose and statement of objectives of this partnership is attached.

Question 3. Do you believe the current size and weight restrictions can be increased without compromising highway safety or infrastructure integrity?

Answer. CVSA does not support enacting any legislative or regulatory changes to truck size and weight until such time as we have a more uniform, methodical and science-based approach to evaluating the safety, infrastructure and environmental costs and benefits. CVSA has adopted a comprehensive size and weight policy in anticipation of consideration of this issue relative to the upcoming surface transportation bill. This is attached along with a letter sent to Secretary of Transportation LaHood in which we ask the Secretary to apply our criteria for any pilot program that might allow size and weight standards above the current limitations.

Question 3a. Would you comment on your views of increasing the allowable weight of trucks to 97,000 pounds by adding a third axle to the rear pair of axles?

Answer. We would not support increasing the allowable weight under these circumstances until a pilot study has been conducted according to the criteria spelled out in our size and weight policy that demonstrates that highway safety would not be compromised.

Commercial Vehicle Safety Alliance

Before the

Department of Transportation

Federal Motor Carrier Safety Administration

Docket No. FMCSA–2004–18940

Electronic On-Board Recorders for Hours-of-Service Compliance

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Comments submitted on behalf of

Commercial Vehicle Safety Alliance

April 11, 2007

The Commercial Vehicle Safety Alliance

The Commercial Vehicle Safety Alliance (Established in 1982) works to improve commercial vehicle safety and security on the highways by bringing Federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives in the United States, Canada, and Mexico. Every state in the United States, all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are CVSA Members. Nearly 350 industry companies and organizations are CVSA Associate Members.

Background

Since 2000, the regulations regarding commercial driver hours of service (HOS) have been through a series of formal agency actions, as well as being challenged on the outside from special interest groups and the D.C. United Stated Circuit Court of Appeals. Countless hours have been devoted to this subject, both internal to the agency and by the public.

We believe the implementation of Electronic Onboard Recorders (EOBRs) for compliance with HOS regulations holds great promise for helping improve compliance with HOS regulations and ultimately providing a positive impact on safety and reducing crashes related to driver fatigue and other work-related injuries. We also believe that the wide-scale adoption of EOBRs will also help to curb the challenges that currently exist with the limited resources available at the state and Federal

levels for overseeing the motor carrier industry. With nearly 50,000 new motor carriers entering the business each year in the United States, the implementation of proven safety technologies serves to assist the law enforcement community in focusing its attention on high-risk drivers, vehicles and motor carriers.

Key Points

As identified by FMCSA, the intent of the EOBR NPRM is to:

1. Improve CMV safety;
2. Increase use of EOBRs within the motor carrier industry: and
3. Improve HOS compliance.

The FMCSA approach has three components:

1. A new performance-oriented standard for EOBR technology;
2. Use of EOBRs to remediate regulatory noncompliance; and
3. Incentives to promote EOBR use.

CVSA believes that the approach FMCSA has taken with this NPRM will not measurably impact on the 3 objectives of the NPRM. The universe of motor carriers required to install EOBRs is a small fraction of the motor carrier population as a whole. Additionally, we also believe that their voluntary adoption, even with the incentives offered, will not occur in large numbers.

Safety

Given the fact that hours of service (HOS) compliance continues to be a major problem area for many motor carriers, and large truck crashes related to fatigue are significant, we firmly believe that in order to have a substantial impact on safety and HOS compliance EOBRs must be universally used in the motor carrier industry. We believe that a more prudent and effective option for dealing with the habitual HOS offenders is stronger enforcement rather than requiring the installation of EOBRs. HOS non-compliance is indicative of a systemic management problem within the motor carrier's operation, and the mere installation of EOBRs will not serve to correct this problem. The resources expended by government to monitor the motor carriers subject to mandatory EOBR use will be substantial and in our view, the benefits will not outweigh the costs.

Level Playing Field

In our view the NPRM will do little to help deploy EOBRs in large quantities. Most carriers already using these systems are doing them primarily to help better manage their drivers and not necessarily for HOS compliance. HOS compliance [to many of them] is a secondary benefit of these devices. We do not believe this thinking will change much with the implementation of this NPRM. Most carriers will view this as a cost item (and a legal liability) that will put them at a competitive disadvantage with their peers, therefore making them reluctant to voluntarily invest in these devices. The EOBR vendors will not put much capital outlay into the development and deployment of these systems since there is not a clear market for them. Additionally, given the minimal number of devices that will likely penetrate the market, the benefit of economies of scale will not be realized, therefore not putting much pricing pressure or competition in the marketplace. This will likely result in most of the devices not being an attractive purchasing option for many small to medium sized fleets, or for those fleets operating on thin margins. Ultimately, in our view the NPRM will not enable a level playing field for the motor carrier industry as a whole, which will cause most fleets to opt not to purchase an EOBR.

Technology

As FMCSA indicates in the NPRM, technology has come a long way in recent years and is capable of performing many more functions than what would be needed to monitor and manage HOS compliance. We caution the Agency to make sure to limit the performance requirements for EOBR devices to just those areas necessary for HOS compliance. This will help to keep costs down, and also help to ensure that the display, evaluation and back office system functionality that will be needed for enforcement to monitor and evaluate compliance will be made easier and it will minimize the liability exposure to the industry.

We believe the Agency needs to put more explicit focus and emphasis on standardizing the performance specifications regarding tamperproof requirements, information gathering and display, editing and error recording and reporting, and as well as communication accuracy, timeliness and redundancy. We are appreciative of the fact that FMCSA has made GPS a performance requirement, as this will provide some measure of assistance in accuracy and redundancy. We also appreciate the

agency requiring parallel data streams and making sure that the original data is kept intact, this should help law enforcement when reviewing records and during the driver interview process. However, we still strongly believe there must be a tamper*proof* requirement. To assist the agency on this particular issue, FMCSA may want to review the Information Technology Security Evaluation process Europe has in place with regards to EOBRs.

A related issue is one of FMCSA's identified seven performance requirements—identification of the driver and ensuring the EOBR is able to attach the driver to his/her appropriate hours of service. In our view this issue is critical and fundamental to helping minimize falsification and errors/inaccuracies. Although we support providing flexibility to motor carriers and technology providers on this point, we strongly believe that FMCSA needs to specify a minimum performance requirement, to include outlining standardized and explicit test procedures and expectations. This would be part of the EOBR certification program (see recommendation section). The EOBR must be able to correctly identify the driver/employee in all duty status stages of his/her hours of service and be able to accurately tie the employee to the vehicle, cargo and motor carrier at all times. This is especially important for leased drivers and owner/operators.

The NPRM discusses the notion of permitting EOBR devices that are not integrally synchronized with the vehicle. While we fully understand that cell phone and other like technologies are available that use hours of service applications, at this point in time we are not supportive of permitting them to be used as EOBRs. We are not convinced that these technologies will effectively minimize the opportunity for falsification and drivers taking ghost runs. However, as you will see below in our recommendations, we do believe that these types of devices are in need of further study to understand how in the future they may be used in this capacity. We are sensitive to the fact that cell phone and like technologies are pervasive in the industry and tend to be on the lower cost end of EOBR devices. We do not want to dismiss out of hand the fact that once they (and the performance specifications) are more fully outlined and understood they possibly could be used as an EOBR.

As for the recording interval, we support the 1 minute increments. We also support the +/− 1 percent location accuracy. We believe that EOBRs must use standardized data formats and communications protocols. We also firmly believe there must be a standardized display using the graph-grid format, and that non-compliance must be easily identified.

FMCSA may not want to explicitly identify the different types of communications technologies that are able to be used in the application of EOBRs, since they are so rapidly changing and evolving. The more important aspects related to the data in our view are the security aspects as well as the content and timeliness of the information availability, and not necessarily the method of communication.

Enforcement

The NPRM upon implementation will likely make it difficult for enforcement officers. The problem with EOBRs today is that there is no standardization in terms of how the information is made available for officers to evaluate compliance, how errors and modifications to records are recorded and reported, nor is there a rigorous certification program to ensure they are operating correctly. The combination of grandfathering existing devices, providing the 2 year window for voluntary adoption of non-complaint 395.16 devices, and the likely limited penetration of EOBRs will continue to create difficulties for enforcement with understanding and accurately evaluating the operation of all the different device types. We also believe that the option of using devices not integrally synchronized with the vehicle presents its own set of challenges for enforcement that are not yet fully understood. We also strongly believe that EOBRs must be made tamperproof. Although the NPRM does make an attempt to correct some of these concerns in the performance specifications, we do not believe it goes far enough to minimize tampering or to make sure that officers will feel comfortable with using the devices.

Law enforcement needs the capability to be able to print HOS records at roadside to more effectively review HOS compliance and collect evidence. Although we support having EOBRs providing the functionality to print out the HOS records, we think a more prudent and cost effective approach is to equip certified inspectors/officers with the appropriate technologies and printing device to be able to do this themselves. This will help those officers who do not currently use laptop or hand held computers (or the software to read the EOBR data file). Ultimately, this approach will also serve to assist in having more roadside inspections completed (and uploaded) electronically, since many inspectors are still completing inspections on paper.

As for access to the HOS data, we agree with FMCSA that EOBRs must not require the officer to have to enter the cab of the vehicle. If electronic files are going to be made available for download, they must adhere to common, uniform and strict standards. In addition, the officers must be able to read the data on their (for those who have) laptops or hand held computers. However, we do have concerns with the possibility of these files introducing a virus or otherwise damaging the operating system or software.

Recommendations

We believe that in order to meet the intent of the NPRM, EOBRs must be made mandatory for all commercial vehicles. Most of the developed and even some undeveloped countries in the world already have this requirement for commercial motor vehicles and have had positive results on safety.

FMCSA should work with NHTSA to make these devices standard OEM equipment. Aftermarket/retrofit installations should only be permitted if they meet the OEM equipment standards. In order to assist the manufacturing community and to help minimize the cost impacts to the industry, we would suggest that the requirement would be put in place at a point in the future, somewhere on the order to 3–5 years after the final rule is published. We believe existing devices should be grandfathered into this new requirement ONLY if they are able to meet the new OEM standard specifications. We also believe the existing AOBRD regulations in 395.15 should be sunsetted. Those drivers operating existing vehicles (those built prior to the new OEM requirement) or using EOBR devices not compliant with the new standard would be required to retrofit their vehicles within 3 years to meet the OEM equipment standards. The paper-based logging system would no longer be permitted.

In the interim, we would suggest that FMCSA conduct several field operational tests of different device types (to include those not integrally synchronized with the vehicle) to understand what the optimum performance requirements should be, as well as to more fully evaluate their impact on safety. One option for this test could be to use the motor carrier population the Agency has suggested in the NPRM that would be subject to a remedial directive and be required to have the EOBRs installed—those carriers FMCSA has determined, based on HOS records reviewed during each of two compliance reviews conducted within a 2-year period, that the motor carrier has a 10 percent or greater violation rate ("pattern violation") for any regulation in proposed Appendix C to Part 385. Theoretically, once EOBRs are installed on the habitual offenders' vehicles, they should realize a significant improvement in safety, both in HOS compliance and in fatigue related crashes. Another option to consider for the test phase, which is our preferred option, is to tie EOBR application (for the test phase) to SafeStat and ISS scores. This approach will broaden the pool of candidates and will likely also serve as a more representative sample. We believe that by taking into account BOTH SafeStat and ISS scores, carriers with demonstrated performance problems, as well as those with no history can be part of the pool to be evaluated. If the test is properly carried out and administered, it should effectively demonstrate how to positively impact HOS compliance for carriers on both ends of the scale—those who are uninformed about the hours of service regulations those who are habitual violators.

EOBRs must use standardized data formats and have a standardized interface for law enforcement so that training, compliance evaluation and monitoring is effective and simplified.

We also recommend that FMCSA (and NHTSA) create a more rigorous certification program for EOBRs that is administered by a 3rd party, and to also create an advisory board that would serve to create and maintain an approved EOBR list. This advisory group could operate similarly to those groups who are involved with speed measuring instruments and breath alcohol testing devices. Wherever possible, EOBR design and performance specifications should use accepted industry standards that are verifiable and certifiable.

It is our belief that moving forward with a mandatory requirement will help on all fronts. It will provide some certainty and competition in the manufacturing community and likely result in more "hardened" and user friendly systems, help keep costs down for the motor carrier industry through economies of scale, and will assist the enforcement community since there will be stringent and uniform standards. It also will provide adequate lead time for both industry and enforcement to ramp up their operations and provide for training, as well as budget planning for the procurement of these devices and the development of back office systems to accept and manage the data output.

Summary

We believe that in order to enable significant positive changes to hours of service compliance there needs to be universal adoption of EOBR technology. However, it is critically important the performance specifications for these devices, and the oversight of those producing and using them is done in such a manner that enables them to be user friendly for law enforcement and that there is credibility and confidence in the accuracy of the data.

We appreciate FMCSA confronting this difficult issue and attempting to address it. Hours of service continues to be a challenging area for many motor carriers to make significant strides in improving compliance. There must be a multi-faceted approach in terms of finding solutions, and the status quo is just not acceptable. We believe that the implementation of EOBRs is one of the important elements of such an approach.

ELECTRONIC LOGGING PARTNERSHIP

Purpose

The purpose of the electronic logging partnership is to promote the use of technology for recording commercial driver hours of service throughout North America that will improve regulatory compliance and save lives.

Principles

The partnership aims to ensure that any future laws and/or regulations mandating electronic logging devices for hours of service compliance shall be fully interoperable, tamperproof and easy to use by drivers, motor carriers and enforcement. In addition, to the extent possible, existing investments in onboard telematics and safety management systems that can meet the E-LOG system requirements should be preserved and leveraged.

The partnership supports future regulations that will:

- Standardize the user interfaces (unique and secure driver ID, data access, transportability and format for law enforcement), the drivers' data transfer when drivers change trucks or buses (use of standard portable data carrier), the data download and storage requirements and the interface(s) to other onboard telematics;
- Require devices to be integrally synchronized with the vehicle;
- Define and require a standard security level for the devices to be tamperproof (using a methodology endorsed by NIST such as Common Criteria); and
- Require that all devices be certified by a nationally recognized, independent organization.

Absent these key provisions, any future mandate would result in the use of devices that are not standardized, are not interoperable with systems from various vendors, provide unreliable data and would impede industry and law enforcement efforts to ensure hours of service compliance and improve safety.

Key Considerations

- *Standardized enforcement approach*—A standard law enforcement interface with electronic logging systems must be specified to ensure secure, efficient, and uniform driver hours of service inspection processes and data integrity.
- *Apply new controls to meet challenges inherent with mandate*—As the new FMCSA regulatory approach extends electronic logging to carriers with poor compliance, there will be new challenges. To assure system integrity and a level playing field, e-log system standards need to add stronger controls, including: secure unique national driver ID, secure portable driver data records, tamperproof devices integrally synchronized with the vehicle, verifiable independent certification, secure and controlled processes for system installation and support.
- *Preserve existing investments in safety management systems*—Today's electronic driver logs have proven effective in achieving significant compliance and safety results. Any update to requirements for electronic logging systems should also include standards for interoperability and integration with on-board, wireless systems for safety and fleet management that support carriers in proactive safety management.

Implementation

In the event a universal mandate is not able to take effect in a timely manner, consideration should be given in the interim to accelerating industry-wide implementation of electronic logging devices by providing:

- Financial incentives such as tax credits for the early adoption of compliant systems;
- Relief from some supporting document or "paperwork" requirements; and/or
- Alternative compliance options for carriers to maintain accountability and provide efficiencies for those demonstrating and maintaining superior safety performance.

CVSA DOT Reauthorization Policy Issues

Issue #12—Truck Size & Weight

Problem

There has been no significant change in Federal size and weight law since 1982 except for the 1991 freeze on longer combination vehicles. However, since 1982 there have been many changes in freight movement that are also related to truck size and weight such as significant growth in freight traffic, changes in freight characteristics and movement patterns, just-in-time delivery, global economics and trade, intermodalism, economic deregulation, enhanced safety and enforcement programs and truck equipment advances. In addition, there has been a tremendous movement in the adoption of technology (in industry and government), data availability and analytical capabilities and performance-based program development and delivery. Given the above, as well the current landscape, it is clear that we need a more comprehensive approach in the United States to truck size and weight policy.

Background

The enforcement of truck size and weight limitations has been a long-standing obligation of the states, performed in conjunction and with the assistance of the Federal Highway Administration (FHWA). Traditionally, the enforcement aspects of truck size and weight have been viewed through the prism of infrastructure protection and preservation. While CVSA supports this belief and view, we also believe more emphasis needs to be placed on the safety performance of vehicles, drivers and motor carriers who operate larger vehicles—and more specifically and importantly—those who choose to violate the law and operate vehicles in excess of the size and weight limitations.

Without question we understand the need to protect and maintain our Nation's highway infrastructure—and want to continue our compliance and enforcement efforts in this regard. However, we are also committed to compliance and enforcement efforts that not only ensure the protection of our infrastructure, but also ensure the safety of those vehicles and drivers traveling on our highways.

One of the largest challenges with existing truck size and weight policies and regulations is the lack of uniformity from state to state, and sometimes even within states. The problem that exists today is due to the fact that we have had a patchwork of regulations, exemptions and permit programs for decades. We cannot allow this to continue. This often times translates into challenges for enforcement, and it certainly makes life more difficult for industry to maintain compliance. Many of these programs have varying requirements associated with them. As an example, some states require pilot car escorts with certain types of loads. Some states require law enforcement officials to escort the load. Some states do not require escorts. We are encouraged of the efforts of AASHTO, SASHTO and WASHTO with respect to trying to standardize pilot car escort policies among the states. FHWA should continue to support this effort and any resulting impacts to the states from recommended changes should be supported by Federal funds.

From 2006 through 2008, there were 911,101 commercial vehicle size and weight violations cited by roadside inspectors. These data were for those situations where a driver/vehicle inspection report was completed and uploaded to the MCMIS database. This number represents 13.41 percent of the total number of violations cited during driver inspections over this time period and ranks number 2 on the list in terms of the most often cited violations.

Solution(s)

1. CVSA does not support enacting any significant legislative or regulatory changes to truck size and weight until such time as we have a more uniform, me-

thodical and science-based approach to evaluating the safety, infrastructure and environmental costs and benefits.

2. There needs to be a stronger Federal role in facilitating a framework for research, policy and performance based regulations and the enforcement for truck size & weight operations on the Interstate portion of the National Highway System.

3. U.S. DOT needs to evaluate and determine the safety nexus to truck size and weight. Having this will help the state enforcement agencies make their case for receiving their full measure of support and resources (state and Federal funding) from the state Departments of Transportation to carry out their enforcement efforts. While a number of state enforcement agencies do receive the FHWA funding and support through their state DOTs for this effort, others have difficulty in making the necessary agency linkages for such funding support. As a final point related to resource issues, one of the major cost items for size and weight enforcement is labor. We are hopeful that as efforts move ahead to reauthorize the Federal truck size and weight program that this will be taken into consideration concerning the state enforcement agency's funding needs.

4. We MUST gain a better understanding of the true impacts that truck size and weight have to all aspects of our transportation system. We also need to further examine the various oversize/overweight exemptions and permit programs to evaluate their costs and benefits. The more variety there is in regulations and permit programs, the more difficult the task for enforcement to monitor compliance, initiate effective enforcement actions and levy appropriate sanctions.

5. Except under extreme circumstances, states and municipalities should not be permitted to provide exemptions or exceptions for inter OR intrastate operations on this portion of the National Highway Network. If the National Network weight threshold were to be increased, states would be pressured to allow for increases to the state roadway network. The state roads (and bridges) are not built to the same standards and therefore could not adequately support the increased loading. This would present a risk to both the condition of the infrastructure as well as to safety.

6. More study needs to be completed on the non-interstate portions of the National Highway System because there are similar infrastructure and safety concerns on these sections of roadway. In fact, the large truck-related crash data seems to indicate that are larger proportion of fatality crashes occurring on non-interstates. Many of our member enforcement agencies are seeing increases in truck size and weight violations on these sections of roadways.

7. CVSA supports the recommendation referenced in *Transportation Research Board Special Report No. 267: Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles* which discusses the creation of a Commercial Traffic Effects Institute (CTEI). The work that would fall under the mandate of this organization would help guide and develop a more comprehensive, rational and equitable national freight policy that will aid decisionmakers in making more sound and objective judgments with regards to truck size and weight issues. It will also aid in establishing more transparency and accountability throughout the system.

8. CVSA supports a federally supervised, state-administered, performance-based oversize and overweight permit program for the operation of heavier and larger vehicles on the public highways.

9. CVSA believes there is merit to the idea of establishing (in certain locations and circumstances) dedicated truckways for commercial vehicle operations. As previously mentioned, since many large truck crashes are multi-vehicle crashes involving smaller vehicles and the fact that many crashes occur off the interstate system, we believe the notion of dedicated highway facilities for trucks is worth further exploration.

10. If Congress were to consider any increase in truck size and weight, there MUST be at the minimum an equivalent level of safety established. In particular, there are several specific safety issues that would concern us with respect to increasing sizes and weights:

a. The potential increases in stopping distances that would likely result, and how the performance of other vehicle components will be affected;

b. How size and weight increases to carrying capacity will impact performance as it relates to manufacturer weight ratings (*i.e.,* we do not want people overloading vehicles further than what they were designed for);

c. We already have issues and compliance problems today with load securement, and there continues to be a large number of crashes related to this issue—how would size and weight increases impact on this;

d. Adding axles—while in concept this is helpful to spread the load to more locations, but in practical terms we have concerns (today) with air axles (*i.e.,* putting not enough air or too much air as it hampers vehicle stability and perform-

ance) and lift axles that have the potential of being exacerbated with an increase to truck sizes and weights; and

e. While we are not experts on the infrastructure-related issues, we wonder what the impact of increasing truck sizes and weight would have on the bridges in our country. It is well documented that many of our bridges are in need of significant maintenance and upgrade, and the obvious question arises as to whether increasing truck sizes and weights will add to these concerns.

f. In addition to the safety issues above, there MUST be adequate resources made available to the enforcement agencies so they are able to monitor compliance and take enforcement action when warranted.

11. With respect to the "pilot study" recommendation provided for in TRB Special Report 267, we suggest the following factors be considered for the program if that recommendation is to be pursued:

a. Make sure the sample is science-based and that (to the extent possible) the results can be shown to be statistically significant;

b. Motor carriers, drivers and vehicles participating in the pilot study must abide by the Federal Motor Carrier Safety Regulations;

c. States participating in the study need to be fully compliant with the Federal Motor Carrier Safety Regulations;

d. Select companies with a proven track record of superior safety performance;

i. Must have a Satisfactory U.S. DOT Safety Rating;

ii. Cannot be a SafeStat category A-D carrier; and

iii. Must maintain their crash rate per 100 million miles, and their vehicle and driver out-of-service rates in the top 25 percent of the national average as indicated in the Motor Carrier Management Information System.

e. Ensure there is a control group in order to help assess and measure the efficacy of the vehicle configuration(s) and performance;

f. Ensure that the drivers are trained, tested and competent at operating the vehicles they will be driving and have clean driving records;

g. Ensure that the drivers are operating the vehicles on sections or roadways that they are familiar with;

h. Make sure the vehicle size and weight configuration(s) do not put additional stress on the bridge structures than the current bridge formula allows;

i. Employ computer modeling and validation testing of vehicle configuration(s) prior to initiating the pilot vehicle(s) into operation on the roadways;

j. Consider the establishment of truck-only lanes and/or time of day restrictions to confine the use of heavier trucks to these lanes and limit their interaction with smaller vehicles;

k. Require that the vehicles install all 4 of the truck technologies contemplated in The Commercial Motor Vehicle Advanced Safety Technology Tax Act of 2009 (H.R. 2024): collision warning systems, lane departure warning systems, vehicle stability systems and brake monitoring systems;

l. Provide consideration for time of day operational limitations;

m. Require vehicle monitoring systems to record and measure performance data;

n. Instrument vehicles and roadways to measure impacts on the infrastructure;

o. Require periodic vehicle inspections to evaluate the impacts on the condition of performance of the vehicles;

p. Consider limitations on length or travel and/or adjustments to driver hours of service requirements to minimize the potential for fatigued operators;

q. Consider allowing the vehicles only on sections of roadway that are major freight corridors;

r. The Federal Government should be charged with creating and managing the performance standards, evaluating performance and establishing Federal sanctions for non-compliance, while the state governmental agencies should be charged with administration and enforcement of the program;

s. Evaluate the compliance and enforcement resources necessary to adequately monitor compliance in the event the result(s) of the pilot would become national standard(s); and

t. Conduct a comprehensive cost-benefit evaluation and to build what works from the pilot studies into national performance-based standards.

COMMERCIAL VEHICLE SAFETY ALLIANCE
January 5, 2010

Hon. RAYMOND LAHOOD,
Secretary of Transportation,
U.S. Department of Transportation,
Washington, DC.

Dear Secretary LaHood:

The Commercial Vehicle Safety Alliance (CVSA) has reviewed Section 194 of the Department of Transportation's 2010 Appropriations Bill that provides for truck size and weight exemptions on sections of the Interstate Highway System in Maine and Vermont. Even though the bill provides for the exemptions to be granted under a 1-year pilot program, we have some concerns, as well as some suggestions for your consideration. We are hopeful that you will consider these issues as soon as possible since the exemptions became effective the day the President signed the bill.

In particular, the legislative language in Section 194 and the accompanying report language provide little or no criteria as to how the pilot program is to be carried out except directing you—in conjunction with the two states—to study the impact of this pilot program on safety, road durability, commerce, and energy use. We presume that you will assemble a team from the Federal Highway Administration to work with the impacted states in administering this pilot, although the bill does not specify such action. We would also suggest that you consider adding representatives from FMCSA as a part of your review.

We are enclosing a copy of CVSA's comprehensive truck size and weight policy and urge you and your team to review it. In particular, we would like to point out the provisions contained in item 11 of our policy. It includes 20 separate recommendations which we believe are necessary criteria with respect to safety for any pilot program regarding truck size and weight. We would like to take this opportunity to point out several key items:

- Motor carriers must be selected to participate in the pilot based on a proven track record of superior safety performance; and
- States participating in the pilot must be fully compliant with Federal Motor Carrier Safety Regulations (FMCSR). As you may know, Maine receives 50 percent of its annual Motor Carrier Safety Assistance Program (MCSAP) Federal funding from FMCSA because it provides exemptions from commercial driver hours-of-service regulations for all motor carriers operating within 100 air miles from their place of business, along with other inconsistencies that have caused an incompatibility issue between Maine Law and the FMCSR. We believe as a condition for participating in the pilot, Maine should revoke this exemption and become fully compliant.

We are hopeful the size and weight issues raised in Section 194 are a catalyst for a much more comprehensive analysis of the United States' overall truck size and weight policy. The current situation allows for a checkerboard of differing regulations and exemptions that make enforcement difficult and also compromises highway safety.

We believe—if constructed and evaluated properly—comprehensive and well thought out truck size and weight pilot programs have the *opportunity* to provide the necessary data for evaluating safety, infrastructure and environmental costs and benefits. Having this information is tantamount before we even consider changes to existing laws to allow for higher size and weight limitations. We believe having this data will also allow us to evaluate the current system in the United States and possibly make some changes so it can be more effectively managed based on performance and not politics.

We look forward to working on this issue with you and your team, and would be more than happy to meet with you to discuss it in more detail.

Sincerely,

STEPHEN A. KEPPLER,
Interim Executive Director.

Enclosure
Cc: Administrator Anne S. Ferro, Federal Motor Carrier Safety Administration
Administrator Victor Mendez, Federal Highway Administration
Colonel Patrick J. Fleming, Maine State Police

Commissioner David Cole, Maine Department of Transportation
Commissioner Anne H. Jordan, Maine Department of Public Safety
Commissioner Robert Ide, Vermont Department of Motor Vehicles
Francis (Buzzy) France, Maryland State Police; CVSA President
Captain Gary Albus, Texas Department of Public Safety; CVSA Size & Weight Committee Chairman

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO JACQUELINE S. GILLAN

Question. Most truck drivers are paid by the mile, which tempts drivers to drive longer than what is permitted under the Hours of Service regulations, especially if they are delayed at ports and loading facilities. As we work to reauthorize the Federal Motor Carrier Safety Administration, what additional steps should the Committee take to reduce this incentive?

Answer. Congress should bring the trucking industry under the Fair Labor Standards Act to incentivize industry payment by the hour as well as require overtime pay for hours worked beyond a normal work week. Congress could also give the Secretary of Transportation authority to regulate the practices of shippers at loading and unloading facilities to ensure that time delays in delivering freight, which have a negative effect on drivers' hours of service, are kept to a minimum. In addition, commercial driver working and driving hours must be verified through universal, mandatory installation and use of electronic on-board recorders (EOBRs) that are highly secured against tampering and fraud. Enforcement authorities should have unimpeded access to the data stored in EOBRs to ensure compliance with the limits and other requirements of commercial driver hours of service. It is crucial that EOBRs record vehicle speed and not just real-time location and hours behind the wheel in order to reduce commercial driver speeding to make unrealistic pick-up and delivery schedules forced by dispatchers, consignors, and receivers. To date, the U.S. Department of Transportation has explicitly deleted speed recording as part of the data acquisition of EOBRs.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO JACQUELINE S. GILLAN

Question 1. Last year I introduced S. 1113, the Safe Roads Act, to establish a national drug and alcohol testing database for employers to better select qualified drivers and avoid hiring employees with a drug or alcohol background.

Under this law, the Federal Motor Carrier Safety Administration (FMCSA) would require medical review officers, employers, and other service agents to report positive results from FMCSA required drug or alcohol tests to the database and clearinghouse. Employers would be required to check the database prior to hiring a prospective employee. If a prospective employee has a positive result, an employer would not be allowed to hire the prospect unless he/she has not violated the requirements of the testing program or he/she has fully completed a return-to-duty program as required by the testing program. This law will also require privacy protections and employee rights of action. Do you support the establishment of a drug and alcohol test result clearinghouse?

Answer. Advocates for Highway and Auto Safety strongly supports this legislation that is badly needed to prevent commercial drivers who have violated drug and alcohol requirements, including testing requirements, from gaining or keeping commercial licenses to drive large trucks and motorcoaches.

Question 1a. Does FMCSA have the authority to establish such a clearinghouse without Congressional guidance?

Answer. It appears that under prior legislation the Secretary of Transportation may have authority to include drug and alcohol test results in the commercial driver's license information system (CDLIS) established under Section 31309, Title 49, United States Code. That section requires the Secretary to establish and maintain a clearinghouse and depository for information about commercial drivers licensing, including disqualification of operators, and requires the system to be coordinated with alcohol and controlled substances testing activities conducted under Section 31306, Title 49, United States Code. To date the Secretary has not seen fit to include a drug and alcohol testing database function in the CDLIS clearinghouse and therefore, legislation requiring the Secretary to follow through on this initiative is necessary and appropriate.

Question 1b. Should a drug clearinghouse be part of CSA 2010?

Answer. The results of a drug clearinghouse reporting of drug and alcohol test results for each commercial driver should become part of FMCSA's new algorithm and protocol for quantifying and scoring driver safety, especially in light of the agency's insistence on emphasizing driver quality under CSA2010 as a primary consideration in reducing truck and motorcoach crash risk.

Question 2. I understand that on April 5, 2010, FMCSA developed a final rule to require the use of EOBRs by carriers that have violated the hours of service rules. Do you believe all motor-carriers should be equipped with EOBRs to better comply with Hours of Service laws?

Answer. Advocates regards the mandatory, universal installation and use of EOBRs as crucial to stopping the epidemic of hours of service violations that produce fatigued, sleep-deprived commercial drivers pushed by unrealistic schedules so that they are at very high risk of serious injury and fatal crashes. Having law enforcement officials try to determine hours of service compliance based on paper logbooks (known as "comic" books), gas, toll and other receipts is like having a police officer try to determine whether a driver is illegally impaired without the use of a breathalyzer.

The rule published on April 5, 2010, 75 FR 17208 et seq., is limited in scope because it is focused only on requiring EOBRs for those motor carriers in violation of the current hours of service rule (HOS). Although in this final rule FMCSA has increased the stringency of its enforcement approach, the agency only predicts that about 5,700 motor carriers out of approximately 700,000 registered interstate truck and motorcoach companies—less than 1 percent—will annually be cited for HOS non-compliance and be required to install and use EOBRs. This rule is clearly insufficient, and Advocates supports Federal legislation mandating FMCA to issue a rule resulting in a universal mandate—no exceptions, no exemptions and no excuses.

Safety groups, leaders in the House and Senate and the National Transportation Safety Board all support a requirement for EOBRs on all motor carriers. Over 15 years ago, Congress directed action by the U.S. Department of Transportation. The recent rule will not have a dramatic impact on truck and bus safety.

Question 2a. If Congress were to require EOBRs for all carriers, what information should we require to be recorded?

Answer. 1. *Time spent behind the wheel.* One of the major flaws of the April 5, 2010 final rule on EOBRs is that the U.S. Department of Transportation allows an EOBR to turn off after a vehicle does not move for only a few minutes. This will permit drivers to spend extra, unrecorded hours at the wheels of their trucks when they move intermittently either in traffic or to reach loading and unloading docks. This practice will allow drivers to far exceed the current shift limitation of 11 consecutive hours of driving.

2. *Real time, moment-to-moment vehicle location through the use of Global Positioning Satellite (GPS) technology that is an integral part of EOBRs.* Having real-time information on truck location is crucial in order to curtail drivers' use of alternate, illegal routes to evade fixed weigh stations when they are operating illegally overweight. Drivers often use diversionary routes that have load-posted bridges whose weight limits are badly exceeded, leading to dramatic reductions in bridge service lives and increasing the potential for catastrophic collapse. Drivers also use illegal routes that are not allowed for transporting placarded quantities of hazardous materials (hazmat). In addition, given the safety and security implications of hazmat cargo on large trucks accessing prohibited routes, motor carrier officials and enforcement authorities must be able to track in real-time the actual routing used by large trucks transporting hazmat. However, U.S. DOT regulation on EOBRs only requires hourly confirmation of vehicle location.

3. *Speed data*. The April 5, 2010, final rule requiring EOBRs to be installed and used on motor carriers violating hours of service requirements explicitly deletes the collection of truck and motorcoach speed data. Advocates strongly opposes this policy. Even drivers complying with hours of service requirements will often speed to make scheduled pickups and deliveries. This places truck drivers and everyone sharing the road with them at an increased risk of crashes that will be more severe. Enforcement of speed limits through collection of EOBR speed data is crucial not only to reduce large truck crash risk but also to help change the freight transportation culture that currently intimidates drivers to speed in carrying cargo.

4. *Fail-safe driver identification*. EOBRs must have unambiguous, total reliability in identifying and authorizing the driver that operates a truck or motorcoach with an EOBR. More than 20 years ago, long before the terrorist attack on September 11, 2001, Congress required the U.S. DOT to develop a unique biometric identifier to ensure the identification of operators of commercial vehicles, but DOT did not fulfill that mandate. In connection with this, EOBRs must also be controlled by regula-

tions ensuring their tamperproof condition and total security when serviced by authorized personnel.

Question 3. Do you believe the current size and weight restrictions can be increased without compromising highway safety or infrastructure integrity?

Answer. No. Advocates does not believe that any increase in gross and axle weights of large trucks is safety-neutral in its consequences. Larger trucks are more dangerous and jeopardize safety. Recent studies by the Transportation Research Board and the National Cooperative Highway Research Program of the National Academy of Sciences have not shown any acceptable safety impacts of larger, heavier trucks. These studies have also shown that trucks in the 100,000-pound range rapidly increase pavement damage on lower-class roads and dramatically accelerate the deterioration of bridges that results in severely reduced bridge service lives. Money diverted to the repeated repair of destroyed pavement and damaged bridges diverts scarce funds from being applied to improving the safety of our Nation's infrastructure. Also, in many cases, reductions in bridge service lives can lead to load posting bridges for lower weights and raise the chances of catastrophic bridge collapses. Any increases in the weights of large trucks will quickly produce an even more staggering backlog of unmet highway pavement repair and bridge reconstruction needs for which the U.S., at the present time, has no Federal funding to support the enormous cost of state maintenance and rehabilitation needs.

The state of Wyoming and the Federal Highway Administration (FHWA) also have shown the detrimental effects of increasing the weights and number of trucks on our highways, which is no longer acceptable in light of the predicted increase in damage to our roads. Wyoming and FHWA have authored a major report showing that the benefits of transferring a substantial amount of truck freight to rail movement will result in major benefits to Wyoming and other western states by reducing the rate and extent of road damage. *Feasibility of a Next-Generation, Intermodal Rail-Truck Transport System for the Western I–80 Corridor: Engineering, Economic, Environmental, Safety and Security Policy Considerations—Final Report*, FHWA–WY–06/05, Nov. 2006 (FHWA/Wyoming Truck-to-Rail Study). These substantial benefits were calculated for road pavement alone without a separate benefit-cost analysis for bridge protection. The authors believe that additional quantification of bridge protection benefits from heavy truck loads would produce even more substantial benefits if freight transfers from large trucks to rail could be implemented in the near future. As the authors point out in an initial paragraph,

> Although it is considered by some inappropriate for public officials to favor one mode of freight transport over another, benefits aside, the fact is that costs borne by the public (pavement wear, congestion, safety, emissions) from freight transport on highways are much greater than costs borne by the public from freight transport on rails.

FHWA/Wyoming Truck-to-Rail Study at v.

The truck freight to rail concept also comprises truck drivers riding in trains along with their rigs, which the authors believe will significantly reduce commercial driver fatigue and sleep deprivation, thereby lowering large truck crash risks. In addition, reducing truck tonnage on major highways like I–80 is a safety measure because it will reduce exposure by other motorists sharing the road with big trucks to the risk of severe and fatal crashes.

Question 3a. Would you comment on your views of increasing the allowable weight of trucks to 97,000 pounds by adding a third axle to the rear pair of axles?

Answer. The dangerous safety impacts of larger, heavier trucks with 6 axles can be severe, and conducting an experiment with the safety of the U.S. people on their roads and bridges by allowing 97,000–100,000-pound trucks is not acceptable. Everything we know about larger, heavier trucks and their adverse safety and infrastructure effects militates against their use. No heavier, larger trucks allowed by Congress or the states have ever resulted in fewer trucks, contrary to claims made by trucking and shipping interests. Past census data on the growth of tractor-trailer combinations alone for the preceding 35 years, for example, proves that each time Congress has increased truck size and weight limits, the result has been more bigger, heavier trucks than ever before. Since large, heavy trucks are heavily subsidized by owners and operators of small passenger vehicles, bigger, heavier trucks increase the disparity in the equitable distribution of user fee responsibility by forcing small passenger vehicle owners and operators to shoulder an even larger share of the highway cost burden.

In addition, bigger, heavier trucks will cause even more rapid decay of our roads and bridges at a time when both the Federal Government and the states are unable to raise highway funds to repair an already badly deteriorated highway system.

Larger, heavier trucks would also further undermine the Nation's major need for a balanced, multi-modal system of transporting freight, as has been recognized in pending House legislation for surface transportation re-authorization, in the U.S. DOT April 2010 Draft Strategic Plan, and in the recent Congressionally-mandated report, *Transportation for Tomorrow*, that has documented the severely imbalanced freight transportation system and the radical underpayment of appropriate user fees by the trucking industry. Finally, the FHWA/Wyoming Truck-to-Rail Study discussed in the answer to the previous question underscores the importance of a major, initial effort to transfer truck freight to freight rail movement to gain multiple payoffs in improved safety and infrastructure protection, reduced congestion and emissions, and fuel conservation. In short, the motoring public will pay with their lives and their wallets if Congress permits longer and heavier trucks on our roads and bridges.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO JACQUELINE S. GILLAN

Question 1. In your testimony, you commented that a truck driver's risk of being involved in a fatigue-related fatal crash increases after the eighth hour of driving. Are you aware of any empirical data showing how many fatigue-related fatal truck crashes occur in hours 1–8, and how many occur in hours 9–11, or even beyond the 11th hours?

Answer: Several studies have been conducted showing that the relative risk of a crash begins to rise exponentially after the 8th hour of driving, and that the number of fatal crashes increase in the later hours of driving in relation to the number of truck drivers operating their trucks. The greatest risk of a fatal crash occurs in the 11th hour of driving within legal driving time limits, as demonstrated in the study conducted by Paul Jovanis for the Federal Motor Carrier Safety Administration (FMCSA): P. Jovanis, *et al., Factors Affecting Motor Carrier Crash Risk—Final Report,* FMCSA, Sept. 30, 2005. That study found that the crash risk for truck drivers in the last hour of a now legal 11-hour day behind the wheel is more than three times higher than during the first hour. In addition, another study conducted for FMCSA by the University of Michigan Transportation Research Institute (UMTRI) found that crash risk increased exponentially as hours of driving increase: K. Campbell and M. Belzer, *Hours of Service Regulatory Evaluation Analytical Support—Task 1: Baseline Risk Estimates and Carrier Experience,* FMCSA, 2000. Also *see,* K. Campbell, *Estimates of the Prevalence and Risk of Fatigue in Fatal Accidents Involving Medium and Heavy Trucks,* FMCSA, 2003, which reached the same conclusion using data from the Trucks in Fatal Accidents (TIFA) system.

Question 2. What empirical data can you provide the Committee to demonstrate that truck drivers are driving many more hours per week under the current hours of service rule?

Answer: The most prominent source are the findings of the Insurance Institute for Highway Safety (IIHS) surveys conducted before and after the amendment of the hours of service regulation that permitted very large increases in both the number of hours of work over 7 or 8 calendar days, and in the number of driving hours of 25–28 percent over 7 or 8 calendar days. A. McCartt, L. Helinga, M. Solomon, *Work Schedules Before and After 2004 Hours of Service Rule Change and Predictors of Reported Rule Violations in 2004: Survey of Long-Distance Truck Drivers*, International Truck and Bus Safety and Security Symposium, November 14–16, 2005. A substantial percentage of drivers surveyed worked and drove longer hours, both per shift and per tour of duty, and a substantial percentage were driving more miles per tour of duty. In addition, the surveys found that drivers also admitted that they sometimes or often violated the new 14 hours duty ceiling per shift (11 hours maximum driving plus 3 hours additional work time). The study was supplemented later in 2006 in an issue of the IIHS publication, *Status Report*, which found that:

- Nearly one in 5 truck drivers in 2005 drove longer per day than before the rule took effect in January 2004.
- The proportion of drivers that reported falling asleep at the wheel at least once during the previous month rose from 13 percent in 2003 to 21 percent in 2005.

Status Report 41:6, Oct. 7, 2006, at 6.

In addition, the FMCSA itself has pointed out that drivers are increasingly making use of the 11th hour of driving and, therefore, driving more hours than under the previous hours of service rule. The FMCSA pointed out in the HOS Interim Final Rule that in 2005, just 17 percent of driving periods analyzed involved the 11th hour of driving but 2 years later, in the agency's 2007 survey, the number of

driving periods in which the 11th hour of driving was used had jumped to 27 percent, an increase of over 50 percent in the number of driving periods that involved driving the 11th hour. 72 FR 71247, 71265 (Dec. 17, 2007).

Question 3. What studies have been completed on (1) increasing the current 80,000-pound gross weight limit on the Interstate System, and (2) Longer Combination Vehicles? What have been the studies' conclusions with respect to the safety relative to vehicles currently on the road?

Answer: One of the most prominent studies on the safety of longer, heavier trucks is the major 2002 Transportation Research Board (TRB) truck safety study addressing the implications of longer, heavier combination trucks conducted in 2002: *Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicle,* Transportation Research Board Special Report 267 (Special Report), National Research Council, 2002. That study was produced by a panel of internationally known truck and highway safety experts who reviewed every existing study on larger, heavier trucks, including longer combination vehicles (LCVs), and reached the following conclusions:

- The Committee producing the Special Report could not demonstrate any equivalent or superior safety benefits of heavier truck configurations, including B Train doubles, which are LCVs, and six-axle semi-trailer combinations at weights similar to those currently being championed in draft legislation.
- The Committee emphasized repeatedly that virtually nothing is known about the relationship between specific design configurations, crash risk, and truck handling and stability to support heavier, longer combination trucks.
- The Committee pointed out in several places that using safety performance standards for allowing bigger, heavier trucks without specific weight or size limits have no current operational evidence for their claimed superior effects on safety, including their ability to control the potentially adverse safety impacts of longer, heavier combination trucks.
- The Committee asserted that even improved models for analyzing the costs of operating trucks of different designs, including bigger, heavier trucks, provide only general, imprecise indications of how institutions, markets, and technology would react to any regulatory changes allowing commercial motor vehicles of increased sizes and weights.
- The Committee stated that the use of bigger, heavier trucks could actually produce an increase in the number of trucks on the road due to the economic stimulus triggered by the use of trucks that can carry both higher weights and increased freight volume in their trailers.

Studies conducted to date by the U.S. Department of Transportation (DOT) on the safety implications of LCVs, such as the *Western Uniformity Scenario Analysis* (Analysis), April 2004, resulted in the U.S. DOT opposing legislated large truck size and weight increases, including the use of special exemptions in Federal law for increasing the sizes and weights of large trucks:

- U.S. DOT stated in the Analysis that it does not support heavy commercial motor vehicle size and weight increases in general and specifically does not support piecemeal weight law changes such as Maine's use of extra-heavy trucks on I–95.
- U.S. DOT also stressed that the Maine weight exemptions actually contribute little to overall trucking industry productivity.
- U.S. DOT stated in the Analysis that size and weight exemptions may have unintended safety and highway infrastructure consequences.
- U.S. DOT determined that increases in truck sizes and weights, such as those achieved through piecemeal exemptions, reduce the chances for more comprehensive, planned solutions that would have greater benefits for all Americans and businesses.

Similarly, the Federal Highway Administration stated, in background research for the 1997 *Comprehensive Truck Size and Weight Study*, that making existing trucks heavier increases crash risk due to poorer braking and more rollover crashes.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO DAVID J. OSIECKI

Question. Most truck drivers are paid by the mile, which tempts drivers to drive longer than what is permitted under the Hours of Service regulations, especially if they are delayed at ports and loading facilities. As we work to reauthorize the Fed-

eral Motor Carrier Safety Administration, what additional steps should the Committee take to reduce this incentive?

Answer. The Committee should consider taking appropriate steps to collect facts and data on the most common pay methods, including 'hybrid' methods of pay (*e.g.,* a combination of methods depending upon the nature of the work), employed in the trucking industry and the percentage of drivers paid under each of these methods. The Committee could also identify and review existing scientific or case studies that may have tried to investigate whether different driver pay methods have resulted in the temptations suggested in the question. ATA supports facts and data driven policymaking, in lieu of decisions made based on perceptions and theories. At this time, we are aware of only one carrier-specific case study on driver pay, and it attempted to answer broader safety questions than what are contemplated in the question posed here. In short, this case study found that the amount of pay, and not the method of pay, had an effect on driver safety.

ATA is also aware of an ongoing GAO study, initiated this year at the request of Chairman Oberstar and Rep. DeFazio, looking at the size and scope of the driver detention issue, and whether delays at shippers or receivers have an effect on a driver's compliance with the hours of service regulations. ATA is pleased to provide the name of the GAO project leader upon request.

Lastly, greater use of electronic on-board recorders in the trucking industry will make enforcement of the hours of service rules easier and potentially more effective, no matter what might tempt a driver to violate hours of service rules.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO DAVID J. OSIECKI

Question 1. Last year I introduced S. 1113, the Safe Roads Act, to establish a national drug and alcohol testing database for employers to better select qualified drivers and avoid hiring employees with a drug or alcohol background.

Under this law, the FMCSA would require medical review officers, employers, and other service agents to report positive results from FMCSA required drug or alcohol tests to the database and clearinghouse. Employers would be required to check the database prior to hiring a prospective employee. If a prospective employee has a positive result, an employer would not be allowed to hire the prospect unless he/she has not violated the requirements of the testing program or he/she has fully completed a return-to-duty program as required by the testing program. This law will also require privacy protections and employee rights of action. Do you support the establishment of a drug and alcohol test result clearinghouse?

Answer. Yes. ATA has been actively promoting the creation of a drug and alcohol test results clearinghouse since 1999.

Question 1a. Does FMCSA have the authority to establish such a clearinghouse without Congressional guidance?

Answer. While ATA believes FMCSA could reasonably argue it has authority under 49 U.S.C. Chapters 311 and 313 to establish such a clearinghouse, ATA also believes Congress should explicitly provide authority, direction and a timeline for the Agency to complete a rulemaking establishing a clearinghouse.

Question 1b. Should a drug clearinghouse be part of CSA 2010?

Answer. Yes.

Question 2. I understand that on April 5, 2010, FMCSA developed a final rule to require the use of EOBRs by carriers that have violated the hours of service rules. Do you believe all motor-carriers should be equipped with EOBRs to better comply with Hours of Service laws?

Answer. ATA does not currently support a requirement for all motor carriers to equip their vehicles with EOBRs. ATA supports cost-beneficial laws and regulations that have a firm basis in sound research and data analysis. Neither the industry nor FMCSA has been able to establish, through research or data analysis, that such a requirement would be cost-beneficial. The lack of such an analysis on EOBRs stands in stark contrast to the March 2004 study and report to Congress on the feasibility, merits and cost-effectiveness of establishing a national drug and alcohol test results clearinghouse.

Question 2a. If Congress were to require EOBRs for all carriers, what information should we require to be recorded?

Answer. Congress should review and consider the information requirements currently contained in 49 C.F.R. Section 395.8(d)(1) through (11).

Question 3. Do you believe the current size and weight restrictions can be increased without compromising highway safety or infrastructure integrity?

Answer. Forty-eight states currently authorize the operation of trucks which exceed Federal size and/or weight limits. In some cases, these higher limits precede establishment of Interstate Highway weight limits in 1956. Over the years, many U.S. and international studies have been conducted to determine the safety and infrastructure impacts of these vehicles. Based on the preponderance of the evidence, as well as carriers' own experience, we believe that responsibly expanding the operation of trucks with greater size and weight limits than currently allowed under Federal law would improve highway safety, lower energy use and emissions and reduce freight costs, without compromising infrastructure integrity.

Question 3a. Would you comment on your views of increasing the allowable weight of trucks to 97,000 pounds by adding a third axle to the rear pair of axles?

Answer. ATA supports giving states the authority to allow the operation of 6-axle trucks with a gross weight of 97,000 pounds, with appropriate Federal oversight. The additional axle will result in lower pavement maintenance costs and ensures that stopping distance is similar to the trucks they replace. We are not aware of any safety issues with this vehicle. In fact, the greater carrying capacity of this truck will reduce vehicle miles traveled, thus lowering crash exposure. Reducing truck vehicle miles also lowers emissions and energy use. Furthermore, use of this vehicle will help to level the playing field for certain industries with high freight transportation costs that compete with companies in countries that already allow higher weight limits than is currently authorized by Federal law in the U.S.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO TODD SPENCER

Question. Most truck drivers are paid by the mile, which tempts drivers to drive longer than what is permitted under the Hours of Service regulations, especially if they are delayed at ports and loading facilities. As we work to reauthorize the Federal Motor Carrier Safety Administration, what additional steps should the Committee take to reduce this incentive?

Answer. Under current Hours-of-Service (HOS) regulations, the daily 14-hour clock begins to tick for a truck driver when the driver performs any on-duty activity, including those duties related to loading and unloading. The Committee is correct, unlike other industrialized nations throughout the world, most U.S. based drivers are not compensated by the hour, but by miles driven. This means that under current practices, many U.S. drivers are forced to give away countless hours each week waiting to be loaded or unloaded, manually sorting and stacking freight, or physically loading or unloading the freight themselves. This egregious practice is a major contributor to driver fatigue, HOS violations, and the overall deterioration of highway safety.

It's estimated that truck drivers in the U.S. spend as much as 40 hours per week at shipping docks waiting to for their truck's cargo to be loaded or unloaded. It is common for a driver to pull into a shipping or receiving facility with no idea of whether he or she will be there for 2 hours or 10. In certain industries, it isn't unusual for drivers to wait up to 24 hours before taking a load. During this waiting time, it is 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. Excessive "detention time" alone not only costs the trucking industry approximately $3 billion dollars annually, but the value of this inefficiency doubles to over $6 billion annually when both motor carrier and societal costs such as environmental, safety, and mobility costs are included. [1] In addition to the monetary cost, in research conducted by the DOT, excessive detention is often cited as a contributor to fatigue and HOS violations. Because a driver's time is not accounted for by shippers, drivers are put in the compromising position of having to choose between meeting scheduling demands or complying with certain safety rules such as the Federal Hours-of-Service (HOS) regulations. Research shows, that often, because of economic necessity and the structure of the industry, drivers feel pressured to not keep an accurate log book or to drive while fatigued. [2] In one research forum conducted by FMCSA, it was noted that long waiting lines at shipper facilities were identified by carriers and

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[1] U.S. Department of Transportation-Federal Motor Carrier Security Administration (2007). The Motor Carrier Efficiency Study 2007: Annual Report to Congress, 2007

[2] U.S. Department of Transportation- Federal Highway Administration-Office of Motor Carriers (1998), A Qualitative Assessment of the Role of Shippers and others in Driver Compliance with Federal Safety Regulations.

safety advocates as one way "shippers can undermine commercial vehicle safety." [3] In a separate, more comprehensive study, it was noted that "the need for drivers to load or unload their own vehicles can often impede timely completion of a run and force the driver into excess hours in order to make delivery. Similarly, delays in accessing the unloading point can result in drivers feeling a need to make up for lost time." The same study also reported that certain timely goods "hot freight" can cause drivers to "see no alternative other than speeding or exceeding the HOS regulations in order to make timely delivery." (Carriers 1998)

So what is the solution to shippers/receivers having the power to detain drivers excessively in the loading and unloading process? Simple. Make a driver's time worth something of value in the supply chain. In the interest of promoting safe trucking practices, as well as the overall efficiency of goods movement in the U.S., the loading and unloading process in this Nation must be changed. According to one DOT study, waiting for freight to be loaded/unloaded can "impede a driver's ability to effectively meet schedules and lead to violation of HOS, driver fatigue and loss of income by all parties involved*" As of now, a driver's time is free and although he is "on the clock," shippers do not value this time. Although compensation for excessive dentition time was standard for a time in the trucking industry prior to deregulation and compensation for "demurrage" is still practiced in other freight modes, as of now, shippers have no incentive to improve the efficiency of loading and unloading trucks at their facilities. 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, the trucking industry and the American public will benefit from efficient freight movement and dramatically improved highway safety.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO TODD SPENCER

Question 1. Last year I introduced S. 1113, the Safe Roads Act, to establish a national drug and alcohol testing database for employers to better select qualified drivers and avoid hiring employees with a drug or alcohol background.

Under this law, the FMCSA would require medical review officers, employers, and other service agents to report positive results from FMCSA required drug or alcohol tests to the database and clearinghouse. Employers would be required to check the database prior to hiring a prospective employee. If a prospective employee has a positive result, an employer would not be allowed to hire the prospect unless he/she has not violated the requirements of the testing program or he/she has fully completed a return-to-duty program as required by the testing program. This law will also require privacy protections and employee rights of action. Do you support the establishment of a drug and alcohol test result clearinghouse?

Answer. OOIDA believes that drug and alcohol testing for commercial motor vehicle operators has played an important role in raising the level of safety on our Nation's highways. However, there are problems with existing regulations, procedures and enforcement that should be addressed to ensure that testing programs are effectively employed while also mindful of the significant harm that may be caused to a trucker's life and livelihood by errant administration.

OOIDA fully supports the goal of striving to make the trucking industry free of drug and alcohol abuse. However, we have privacy, operational, security, and oversight related concerns with the establishment and administration of a national clearinghouse for positive drug and alcohol testing results. We realize that your legislation goes to great lengths to address those concerns however we remain uncomfortable with how provisions of the legislation may be implemented by government agencies. If the operational, security and logistical oversight complications are not adequately addressed when the proposal is being implemented, the potential to negatively impact drivers far beyond the scope of those who abuse drugs and alcohol exists. We would be happy to continue working with you to address the concerns of the professionals we represent.

Question 1a. Does FMCSA have the authority to establish such a clearinghouse without Congressional guidance?

Answer. While FMCSA does have the ability to make changes to its drug and alcohol testing policies our understanding is that the agency does not have the legal authority to establish a clearinghouse.

Question 1b. Should a drug clearinghouse be part of CSA 2010?

Answer. We do not believe that a drug and alcohol testing clearinghouse should be a part of the CSA 2010 initiative.

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[3] U.S. Department of Transportation—Federal Motor Carrier Security Administration—Office of Research and Technology (2003) Results from 2003 Stakeholder Forums.

Question 2. I understand that on April 5, 2010, FMCSA developed a final rule to require the use of EOBRs by carriers that have violated the hours of service rules. Do you believe all motor-carriers should be equipped with EOBRs to better comply with Hours of Service laws? If Congress were to require EOBRs for all carriers, what information should we require to be recorded?

Answer. From our perspective EOBRs are not safety devices, they are record-keeping tools that are subject to the same shortcomings as paper logbooks. We have seen no evidence that using EOBRs for HOS enforcement purposes will result in better safety performances or in a reduction of accidents. We cannot see a justification in burdening the trucking industry with the significant financial and personal privacy costs of a universal EOBR mandate especially considering the industry is predominately made up of small businesses.

Question 3. Do you believe the current size and weight restrictions can be increased without compromising highway safety or infrastructure integrity? Would you comment on your views of increasing the allowable weight of trucks to 97,000 pounds by adding a third axle to the rear pair of axles?

Answer. Our members know from firsthand experience that further increases in sizes and weights of commercial motor vehicles can endanger highway users and hasten the deterioration of our Nation's roads and bridges. Increasing allowable vehicle weights from 80,000 pounds to 97,000 pounds may be described by some in the private sector as a minor change, but could have a dramatic impact on the safety and structural integrity of some Federal aid highways.

Generally speaking stability, mobility and maneuverability are substantially reduced on bigger and heavier trucks. The larger and heavier the vehicle, the more problems it has interacting with other vehicles on the highway. We firmly believe that increases to current standards could seriously jeopardize the safety of both automobile and commercial truck drivers.

Specifically, the 97,000 pounds gross weight on 6 axles configuration presents a serious handling issue due to the fact that adding a third axle to the trailer will increase the maximum allowable trailer weight to 51,000 pounds, compared to 34,000 to 40,000 pounds now. The trailer weight would then exceed the allowable weight of 46,000 pounds on the tractor creating a dangerous kinetic force that could easily push the tractor out of control when attempting to stop on icy, snowy and wet road surfaces. Add to that descending a steep mountain grade in the same conditions and even an experienced driver will surely be challenged to keep the vehicle under control.

In addition to the well discussed impact that heavier trucks have on our Nation's deteriorating infrastructure, additional axle combinations that are necessary to accommodate heavier loads will increase the damage to road surfaces related to "scuffing"—this is a phenomenon associated with certain axle configurations where the vehicle's tires drag across the road surface when turning. Scuffing is most prevalent in configurations where a trailer is equipped with a group of three or more axles. Scuffing is especially damaging in hot weather, a condition under which one can actually see the pavement buckle and roll up under stress.

Increases to allowable weight standards will also hasten the deterioration of trucking equipment. While these issues may not be of great concern to large corporate motor carriers who turnover their equipment on a regular basis, it would correspond to significant cost increases for the small business truckers that comprise the vast majority of the U.S. trucking industry. Furthermore, the increased wear on equipment is not only a costly issue, but also represents another serious safety concern.

Also as the weight of vehicles increase, the number of highways and bridges that are designed to accommodate them become fewer. If trucks weights are increased, many routes as well as pickup and delivery points would become totally inaccessible without substantial, costly upgrades to accommodate vehicles larger or heavier than currently allowed under the Federal rules—the already limited number of viable routes available to commercial motor vehicles would further be diminished. Efficiency in the trucking industry would be lost, not gained.