S. HRG. 109–196

HIGHWAY, MOTOR CARRIER, AND HAZARDOUS MATERIALS TRANSPORTATION SAFETY, AND TRANSPORTATION OF HOUSEHOLD GOODS

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

APRIL 5, 2005

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ONE HUNDRED NINTH CONGRESS

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CONTENTS

WITNESSES

APPENDIX

HIGHWAY, MOTOR CARRIER, AND HAZARDOUS MATERIALS TRANSPORTATION SAFETY, AND TRANSPORTATION OF HOUSEHOLD GOODS

TUESDAY, APRIL 5, 2005

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

The Subcommittee met, pursuant to notice, at 10:05 a.m. in room SR–253, Russell Senate Office Building, Hon. Trent Lott, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. The Subcommittee will come to order.

We will have some Senators that will be joining us momentarily, but I thought we could go ahead and have the opening statement and begin our testimony, because this is an important hearing. We need to get the witnesses' testimony, and we need to complete this section of the highway bill that we'll be moving later on this month, I hope.

The hearing today will be to receive testimony on truck and bus safety, highway and vehicle safety, hazardous materials safety, and recommendations for their reauthorization, including the Administration's legislative proposals. Most of the programs were last reauthorized in TEA–21.

The Subcommittee also will hear testimony about fraud in the transportation of household goods and the recommendations for better consumer protection. These programs should have been reauthorized almost 2 years ago, but, unfortunately, due to disputes about funding related to the highway construction and transit programs, these programs have simply been extended for short periods of time.

I hope that the Committee can mark up and report legislation by the middle of April, and that Congress can finalize a conference report by the end of May, when the current extension expires. The indication has been, from the Chairman of the full Committee, that we will have a mark-up on this section of that transportation bill next week—I believe, the 14th.

In the interest of moving the hearing along, I would call on the Ranking Member of the full Committee for his opening statement,

and then other statements of the Senators, as they arrive, will be included in the record, at this point in the record.

I look forward to hearing from today's witnesses and working with the Members of the Subcommittee during this Congress.

Senator Inouye, thank you for being here this morning, and I'd like to call on you for any opening statement you would like to make.

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

Senator INOUYE. I thank you very much, Mr. Chairman. I have a prepared statement. I ask for your concurrence that it be made part of the record.

[The prepared statement of Senator Inouye follows:]

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

Good morning. I want to welcome our witnesses and thank Chairman Lott for focusing our attention on the reauthorization of the highway programs under this Committee's jurisdiction.

We have a lot of work ahead of us and we need to work together as we craft our portion of the highway bill, and work to reduce accidents and improve safety.

Last year, the Senate passed a bipartisan version of the highway bill, SAFETEA, but no bill was enacted because of disagreements over overall funding levels. We are using the Senate bill as our starting point and will improve upon it where possible.

I wish to note that while traffic fatalities declined dramatically during the 1980s and early 1990s due to states enacting and enforcing tougher seat belt and drunk driving laws, we still had approximately 42,000 people killed on our highways in 2003. Further, the trend line for reducing traffic fatalities has flattened during the past several years, which means new safety strategies must be employed. This year's highway bill presents an opportunity to adjust our safety programs for greater impact.

As we prepare for the upcoming debate, it would be helpful to hear from the witnesses about a number of key issues, including:

- What is the appropriate level of funding for the Motor Carrier Safety Assistance Program (MCSAP), border safety enforcement, and new entrant safety?
- How can we improve the process for issuing Commercial Drivers Licenses and create a better medical review program for commercial drivers?
- What are the appropriate hours of service for truck drivers?
- What action should we take to encourage increased use of seat belts, and reduce alcohol-related fatalities?
- How can we reduce hazardous materials incidences and accidents?

I look forward to hearing from the witnesses about these important issues.

Senator INOUYE. I'd just like to point out, Mr. Chairman, that the subjects covered at this hearing will demonstrate the great range of activities and responsibilities held by this Committee. In fact, what we will hear today are major areas of jurisdiction for us. And let me reassure you of my full cooperation.

Senator LOTT. Thank you very much, Senator Inouye.

Senator Stevens, I was already speaking in your behalf that this is the hearing on highway, motor carrier, and hazardous materials transportation safety, and transportation of household goods and any recommendations for this portion that would go into the highway bill that hopefully will come to the Senate later on this month, and that your intent, at this time, is to mark this portion of the bill up by the middle of this month. So I hope that is what you,

in fact, plan. I'd like to call on you for any statement you'd like to make at this time.

STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA

The CHAIRMAN. Thank you very much, Senator Lott. That is our plan. And I'm delighted to work with my Co-Chairman to get this portion of this highway bill ready to merge with that of the Environment and Public Works Committee. But we're going to look to you, as Chairman of the Subcommittee, for the guidance as to how—you and your colleague on the other side—to how to merge our portion with the basic bill of the Senate and take it to the House conference. We look forward to doing that, as you said, before the end of next week.

So, we thank all the witnesses for being here. And I'm sorry to be slightly late. We had to open the Senate this morning.

Thank you.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Mr. Chairman, I do apologize for coming in late and being called to a leadership meeting. But, I do hope we'll pursue some concepts of incentives to the states to increase their safety precautions and the requirements for safety. My state is one that doesn't have a primary state seatbelt law, safety belt law, which I regret. Those of us who are pilots just automatically get in anything and lock up, you know, it becomes second nature. I'm saddened to see that this is the case. I would urge us to consider giving advantages to those states that have records of compliance in terms of safety features—both safety belts and guide rails and let them have more discretion in how they use their funds, but at the same time have some basic mandates for use of funds where there is no apparent attempt to adopt some of the approaches that have in fact reduced injuries and deaths on the highway. I want to particularly be able talk to you and Members of the Committee about the increasing problem that Mr. Mead has mentioned in terms of motorcycles. They are wonderful vehicles for enjoyment and seeing the outdoors, but the increased accident rate bothers me considerably and I think we have to find some way to stimulate greater safety education for those who use motorcycles. I thank you very much for the hearing.

Senator LOTT. Well, thank you very much for being here.

And let me call on our panel, now, to give their testimony. Your statements, written statements, will be entered into the record in their entirety. I'd like to ask you to take just 5 minutes to summarize your statement, since we have four of you here, and then allow us time to ask specific questions.

Our panel of witnesses today include the Honorable Kenneth Mead, Inspector General, U.S. Department of Transportation; the Honorable Jeffrey Runge, Administrator, National Highway Traffic Safety Administration; the Honorable Annette Sandberg, Administrator, Federal Motor Carrier Safety Administration; and Stacey Gerard, Acting Assisting Administrator, Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.

Thank you all very much for being here. This is an important part of our transportation system in America. We take it very seriously. These safety interests, you know, highway interests, consumer interests all have to be considered very carefully, and we are working on that, but we need the testimony of those of you that lead these various administrations in the Department of Transportation.

We'd like to begin with Honorable Kenneth Mead, Inspector General, U.S. Department of Transportation.

Mr. Mead?

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

Mr. MEAD. Thank you, Mr. Chairman. Thanks for inviting us to testify.

Our testimony is going to draw from audits and criminal investigations. We have new safety audits underway that I want to tell you about, one on alcohol-impaired driving, motor-carrier safety, and bridge safety.

Overall, I think the Motor Carrier Safety Administration and the National Highway Traffic Safety Administration have made progress, illustrated by a 6.3 percent decrease in the highway fatality rate between 1998 and 2003. While the fatalities increased 2.8 percent, from about 41,500 in 1998 to 42,600-odd in 2003, the number of highway vehicle miles traveled increased about 10 percent. And that increase in vehicle miles traveled explains why the fatality rate decreased, but the absolute number of fatalities increased slightly.

The Department has a very ambitious goal, you should know, to reduce the fatality rate to one death per hundred-million vehicle miles traveled by 2008. That is going to require some heavy lifting. It will require a decrease, in 5 years, that is almost twice the decrease accomplished in the past decade. It anticipates roughly 6,000 fewer fatalities per year.

Now, Mr. Chairman, it almost goes without saying that improving highway infrastructure improves safety, but we want to recommend eight action items.

First, strengthen enforcement of commercial driver's license fraud. This is a very basic matter. We have found commercial driver's license fraud schemes now in 23 states. They involve drivers who obtain their license fraudulently by giving bribes or kickbacks to state employees or third-party examiners. It's mostly third-party examiners. Some of these drivers have been retested, but Motor Carriers should require states to ensure that all these drivers are qualified. We also recommended that Motor Carriers require states to adopt counterfraud methods, such as having police officers pose as drivers. Georgia and Pennsylvania have already done this, and it is effective. If Motor Carriers doesn't believe it has the authority to take these actions, it ought to request Congress for that authority now.

Second, strengthen state enforcement that bars Mexican trucks from operating in the U.S. without proper authority. Now, you may think it odd that I raise this, since the border isn't open, but, in fact, trucks can come across now, but they can only operate in what are called the commercial zones. But some of those trucks, they keep on going into the interior United States, and they're not supposed to. They don't have that authority.

State inspectors have found over a hundred Mexican companies operating illegally in the U.S. And in 2002, Motor Carriers required state inspectors to place out of service any truck from Mexico that doesn't have the proper authority. Five states have not adopted

those rules. And a number of others don't follow them because there's confusion about how the new rules fit into existing safety criteria. Motor Carriers needs to take action to ensure its rule is fully implemented. If we don't take care of this now, it's only going to get worse once the border opens.

Third, increase enforcement of hours-of-service violations. I think you know, these regulations are aimed at preventing accidents caused by fatigued drivers. But regardless of what limits are in place, the old rules or the new ones, unscrupulous companies will violate the rule and force drivers to far exceed them. Our investigation showed that this occurs sometimes by these companies requiring drivers to drive as much as 20 straight hours, far in excess of any rule that you could imagine.

A California company, for example—they had been repeatedly fined—they were involved in an Arizona accident that killed a father and son and injured at least seven others. The company encouraged the drivers to falsify their logbooks. The driver in that accident had been behind the wheel for nearly 19 straight hours. His logbook said he was sleeping in the sleeper berth at the time of the accident.

Fourth, refocus funds to reduce drunk driving. Forty percent of highway fatalities—that's about 17,000 deaths in 2003, alone—are attributed to driving while under the influence. I think the Administration has a pretty good proposal in this area.

Increase seatbelt use. This is another one where I think the Administration has a pretty focused program, and they've achieved a lot of progress. The usage of seatbelts has gone from 70 percent to 80 percent from 1998 to 2004. Primary seatbelt rules, which allow an officer to stop and ticket a motorist solely for not wearing a seatbelt, they're quite effective. Only 21 states have them now.

Increase motorcycle-helmet use. I know that this is a very controversial one, but it is one of the few remaining areas of low-hanging fruit. Only 20 states require helmets for all motorcycle riders right now. I should tell you that there has been an increase in fatalities in motorcycle accidents by about 60 percent since 1998. Helmets save lives, and that's in addition to savings associated with inpatient medical costs that are occasioned by brain injuries.

Item seven, detect vehicle and equipment defects more effectively. In 2000, Congress held hearings on accidents involving vehicles equipped with defective tires, and it found that NHTSA did not collect enough data on defects; and the data it did collect, it didn't use. To address those concerns, Congress—in fact, I think this Committee had a major role in that—passed the TREAD Act to improve equipment standards and to create a computer system that analyzes data from warranty claims, manufacturers, consumers, and lawsuits to identify potential defects that warrant investigation. NHTSA ought to complete expansion of the system's capabilities, because the data's too voluminous and complex to analyze without a sophisticated tool.

We'd also like to hear from NHTSA on its views on what accounts for the increase in vehicle recalls, whether voluntarily or by action of the government. It's gone from 265 in 1995, to 541 in 2000, and to 602 in 2004.

You know there's a new agency at DOT. This is my item eight. It's called the Pipeline and Hazardous Materials Safety Administration, and it's pronounced "fimsa" [PHMSA], and this is a good opportunity to improve transportation safety here. They face three imperatives.

The first is to focus attention on the overlapping areas of safety and security, and identify vulnerabilities of hazardous-materials shipments to negligence, intentional violations, and terrorist attack. A good example here—I mean, I know this is dealing with mostly highways and surface safety, but—is the train accident in South Carolina, with that chlorine car. The switch there was found to be vulnerable to manual tampering. So there is a case where there's an overlap between safety and security.

A second imperative is to coordinate hazardous-materials issues with other agencies in the Department of Transportation. We have ten agencies over there, and a number of those agencies have HAZMAT enforcement responsibilities, and we need to break down those stovepipes.

And a third imperative for PHMSA is to complete long-overdue hazardous-materials-related mandates and NTSB recommendations.

Now, finally, I'd like to say a word about unscrupulous household moving companies. Now, they're clearly in a minority. It's not fair to paint the entire industry this way. But we have a very serious and, I think, a disgusting problem here that I'd like to see the reauthorization take on.

Typically what happens here is, a crooked mover will offer a lowball estimate, and then refuse to deliver the household goods unless he is paid an exorbitant sum. So, the goods, in effect, are held hostage. Sometimes they're even sold off. Meanwhile, the consumer is left with nothing, and no real effective remedy.

Here's one case. Elderly New York couple. They're quoted $2,800 to make this move to Florida. The foreman of the moving company threatens to confiscate their goods unless they're paid $10,000. Now, the consumer really doesn't have any choice. They don't have time to go to arbitration and all that. They need their household goods. But they're basically left with nothing.

To give you an idea of the magnitude of the problem, our office has investigated criminal fraud cases involving these companies, about 8,000 victims of more than 25 moving companies since 2000. And I think it's the tip of the iceberg. Since 2001, consumers have filed well over 2,500 complaints with Motor Carriers that accuse them of overcharging and other serious tariff violations. Motor Carriers stepped up its efforts beginning last year. Before that, they had one person. Now they have ten. But they don't really have an effective enforcement scheme. The penalties just aren't sufficient.

I think the good news is that the House version of TEA–21 reauthorization targets the crooked movers by increasing the civil penalties, giving the states the authority to enforce federal regulations. It also creates a federal crime called "holding goods hostage" with a maximum penalty of 2 years in prison per count. I think that's ridiculously low. For this type of offense, you ought to go, I think, a minimum of 5 years per count.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mead follows:]

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

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting us to testify today as the Subcommittee begins deliberations on the reauthorization of the safety programs in the Transportation Equity Act for the 21st Century (TEA–21). You have asked us to discuss highway and motor carrier safety, hazardous materials safety, and household goods transportation fraud.

Our testimony today will draw from our body of audit work and criminal investigations. We also want to advise the Subcommittee that we have several safety audits under way, including one on alcohol-impaired driving and another on implementation of the Motor Carrier Safety Improvement Act of 1999, which was required by Congress.

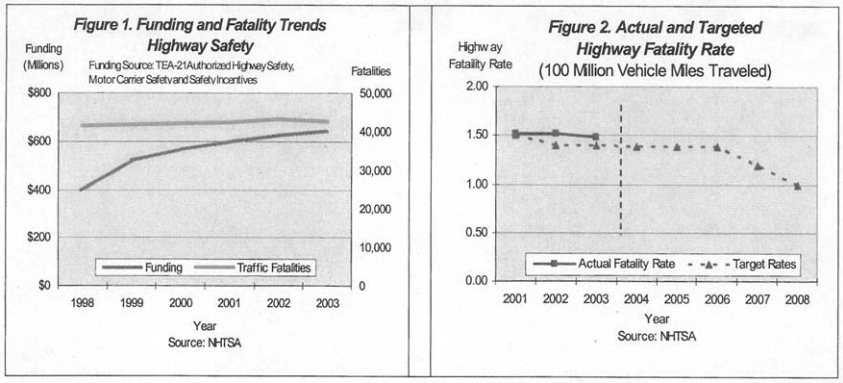
Given the challenges they have faced, two agencies dealing with highway safety—the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA)—have, overall, made good progress. Specifically, the highway fatality rate has decreased 6.3 percent, from 1.58 deaths per 100 million vehicle miles traveled in 1998 to 1.48 in 2003, the most recent year for which figures are available.

The absolute number of deaths has increased 2.8 percent, from 41,501 in 1998 to 42,643 in 2003. The number of large-truck-related fatalities decreased in every year from 1998 to 2002 but increased slightly in 2003. But the number of highway vehicle miles traveled increased 9.8 percent from 2.6 trillion to 2.9 trillion in the same period. This explains why the fatality rate has decreased as the absolute number of deaths increased.

These successes can be attributed to the increased attention given to highway safety, including Congress' creation of FMCSA in 1999; its passage of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in 2000; NHTSA's attention to seat belt use and potential vehicle and equipment safety defects; and FMCSA's efforts to increase enforcement and complete important rulemakings.

Funding for highway safety improvement increased more than 50 percent during the 5-year period from 1998 to 2003. But the fatality trends have essentially flattened during that period (as Figures 1 and 2 illustrate).

The Department has established a goal to reduce the overall highway fatality rate to one death per 100 million vehicle miles traveled by 2008. Meeting the Department's goals will require a decrease in 5 years that is almost twice the decrease that was accomplished in the previous 11 years.



While they will be difficult to achieve, accomplishing the Department's goals would save about 31,000 lives between 2004 and 2008, assuming that vehicle miles traveled remain constant. This would lower annual deaths by an average of about 6,200 lives, a significant decrease in the more than 42,000 annual deaths. Acting on the following items will help the Department to achieve these goals.

• **Use covert methods to reveal Commercial Drivers License (CDL) fraud and ensure that truck drivers who obtained their CDLs from exam-**

iners suspected of fraud obtained their licenses properly. We have found far too many CDL fraud schemes—in 23 states—and identified more than 8,000 drivers who had obtained their CDLs through state or "third-party examiners" suspected of fraud. Although some of these drivers were retested, FMCSA should require states to ensure that all of those drivers are properly qualified. We have recommended that FMCSA also require states to adopt effective CDL counter-fraud methods, including covert test methods, which includes having police officers pose as applicants. These methods have been successfully used in Pennsylvania and Georgia, and should be required in all states that use third-party examiners (our last study of CDL fraud found that 39 states use third-party examiners).

We have also recommended that when corrupt examiners are caught, the holders of CDLs approved by those examiners be retested. FMCSA officials recently advised us that they are assessing whether it has the regulatory authority to order states to use covert counter-fraud methods and retest suspect CDL holders. If FMCSA determines that it does not have the authority, it should seek that authority from Congress.

• **Strengthen state enforcement of laws that bar Mexican trucks from operating in the United States without proper authority.** These trucks can now operate in the United States in only limited ways, primarily in the commercial areas along the border. Mexican companies seeking to operate in the United States under new privileges granted by the North American Free Trade Agreement (NAFTA) are required to obtain operating authority from FMCSA. The agency will grant operating authority only to those Mexican companies that meet detailed safety-related requirements. Opening of the border has been delayed. But even before the border has opened, records indicate that state inspectors have already found more than 100 Mexican trucking companies operating illegally in the interior United States.

In August 2002, FMCSA issued an interim final rule requiring state inspectors to place out of service any commercial vehicle operating without authority or beyond the scope of their authority. However, in January 2005, we reported that gaps still exist in implementing and enforcing this rule. Five states still need to adopt rules to enforce operating authority, and some of the states that have adopted the rules are not placing trucks out of service when found operating without authority, because operating without authority is not one of the Commercial Vehicle Safety Alliance's (CVSA) North American Inspection Standards out-of-service criteria.

CVSA is an association of state and federal officials responsible for the administration and enforcement of motor carrier safety laws. According to CVSA, the term "out of service" is intended to refer to vehicles that "by reason of its mechanical condition or loading would likely cause an accident or breakdown." Training and guidance for state officials on the operating authority issue is also a problem.

In its response to our January 2005 report, FMCSA stated that it will continue to communicate with all states and encourage timely adoption and full enforcement of its August 2002 rule, which it considers to be clear and unambiguous. However, if this issue continues to present an obstacle to implementation of the rule, FMCSA will need to take further action to ensure that, notwithstanding CVSA's view of when vehicles may be placed out of service, the states consistently implement FMCSA's rule.

• **Increase enforcement of egregious violations of Hours of Service regulations.** Hours of Service regulations are aimed at preventing accidents caused by fatigued commercial drivers. The regulations prescribe a limit on the number of hours that a commercial driver can be behind the wheel. Simply put, the key provision in the regulations currently in effect limit consecutive hours of driving time to 11 hours, and this regulation expires in September 2005. The previous limit was 10 hours.

The Subcommittee should know that regardless of the limits in place, there will be unscrupulous operators who will violate the rule and drive 20 consecutive hours or more. We have conducted criminal investigations of egregious cases in which trucking company officials have been prosecuted for systematically forcing their drivers to drive well in excess of the limits.

In one case, a California trucking company that repeatedly had been fined by FMCSA for Hours of Service violations was involved in an accident in Arizona that killed a father and son and injured at least seven other people. The company, its two owners, and 11 employees have been indicted on federal criminal charges. The indictments charge that the company had encouraged its drivers to falsify their log books. Our investigation disclosed that the driver involved in the Arizona fatality had been behind the wheel for 19 hours, and that his log book falsely reflected he was in the sleeper berth at the time of the accident.

Unscrupulous trucking companies and drivers view FMCSA's fines for Hours of Service and log book violations simply as a cost of doing business. Current penalties and enforcement methods can be further strengthened to deter this offense. We note that at one time, FMCSA proposed that all trucks be required to have onboard electronic devices that would record driving time and provide key evidence for enforcement efforts. FMCSA rescinded that proposal, but the courts have directed FMCSA to review the decision to rescind it. If ultimately FMCSA does not require recorders, it needs to develop additional strategies to deter Hours of Service violations. For example, one way would be to eliminate FMCSA's distinction between a missing or incomplete log book and possessing a false log book, which carries a fine up to 10 times higher than a missing log book. Another would be to eliminate an FMCSA policy that restricts inspectors' use of data from a trucking company's GPS or onboard recording device to check for Hours of Service violations during compliance audits.

• **Refocus funds to reduce drunk driving.** Driving while under the influence of alcohol continues to be one of the largest highway safety problems in the nation, with an estimated 40 percent of all highway fatalities (more than 17,000 deaths in 2003 alone) considered to be alcohol-related. We agree with the Administration's proposal to focus new funding resources on up to 10 states that have an especially high number of alcohol-related fatalities.

• **Increase the use of seat belts.** NHTSA and the states have been effective in increasing the national seat belt use rate from 70 percent in 1998 to an estimated 80 percent in 2004. The number of states with primary seat belt laws increased from 14 in 1998 to 21 (plus the District of Columbia and Puerto Rico) in 2004. NHTSA estimates that for each 1 percent increase in seat belt use, 270 deaths and 4,400 serious injuries are prevented each year. A key tool in this effort is the primary seat belt law, which allows police to stop and ticket a motorist solely for not wearing a seat belt. We agree with the Department's proposal to reward states that enact the primary seat belt law or show significant improvement in their rate of seat belt use.

• **Increase the use of motorcycle helmets.** Annual deaths from motorcycle accidents increased 60 percent, or by 1,367 deaths, from 1998 to 2003. This is one of the few areas where there is still "low-hanging fruit" that can advance progress toward achieving safety goals. In 2003, only 20 states, the District of Columbia, and Puerto Rico require helmets for all riders. In four states that repealed helmet use laws for adults—Arkansas, Texas, Louisiana, and Kentucky—motorcycle operator deaths increased (in August 2004, Louisiana re-enacted a universal helmet law).

In a crash, a helmet-less motorcyclist is 40 percent more likely to suffer a fatal head injury and 15 percent more likely to suffer a nonfatal injury than a helmeted motorcyclist. In 2003, 3,661 motorcyclists died and approximately 67,000 were injured in highway crashes in the nation. NHTSA estimates that helmets saved the lives of 1,158 motorcyclists in 2003, and that if all motorcycle operators and passengers had worn helmets that year, another 640 lives would have been saved.

In addition to lives lost, a key issue in the debate over helmet laws are the medical costs that could be avoided with helmet use. One NHTSA study estimated that in 2002 motorcycle helmet use resulted in $1.3 billion in savings. An additional $853 million would have been saved if all motorcyclists had worn helmets. Another NHTSA study of motorcycle accidents in Missouri, New York, and Pennsylvania estimated that without a mandatory helmet law, inpatient medical costs for brain injuries would be almost twice as much.

• **Detect vehicle and equipment defects more effectively.** In September 2000, Congress held hearings to determine why NHTSA, Firestone, and Ford did not identify tread separation defects sooner to prevent the numerous deaths and injuries associated with Ford Explorers equipped with defective Firestone tires. During the hearings, Congress noted that the data available to NHTSA's Office of Defects Investigation (ODI) were insufficient, and that ODI did not use the data it did possess to spot trends related to failures in these tires. To address these concerns, Congress passed the TREAD Act in October 2000.

Its purpose was to create new equipment standards and ways for the automobile industry and the Department to discover safety defects more quickly. NHTSA has implemented all of the TREAD Act's 22 requirements, and completed a new safety defects system called the Advanced Retrieval (Tire, Equipment, Motor Vehicle) Information System (ARTEMIS). This system was created to analyze the large volume of early reports of defects from manufacturers and consumers, to identify defects that require further investigation and possible recall. In a 2002 audit we reported that ODI received an average of 34,000 complaints a year directly from consumers, and manufacturers received an even larger number.

In September 2004, we reported that ARTEMIS had cost and schedule overruns early in its development. In addition, the computer system cannot yet link deaths to an alleged defect, or identify relationships between disparate categories of information, such as a consumer complaint and the filing of a warranty claim.

Until these capabilities are implemented, analysts will not be able to fully utilize the information to help them find safety defect trends and subtle relationships in the large volume of data it receives. NHTSA is working to improve the system and has set milestones for adding the analytical capability and for completing training of staff to use the system by October 2005. It is important that the agency follow through on implementing those capabilities and that it determine the reasons why the number of vehicle recalls has been increasing. According to NHTSA, the number of vehicle recalls, whether voluntarily or by action of the government, has increased from 265 in 1995, to 541 in 2000, and to 602 in 2004.

• **The creation of the Pipeline and Hazardous Materials Safety Administration is a good opportunity for this new agency to have an effect similar to that of FMCSA.** PHMSA faces three imperatives. First is to focus attention on safety and security for the more than 3 billion tons of regulated hazardous materials that move nationally in more than 292 million shipments each year. Hazardous materials is an area where safety and security intersect in significant ways. PHMSA must develop new ways to identify vulnerabilities of hazardous materials shipments to negligence, intentional violations, and terrorist attack. The intersection of safety and security was particularly evident in the train derailment in South Carolina in January 2005 that leaked chlorine, killing nine people and injuring hundreds. While preliminarily attributed to human error, the train derailment also has revealed security vulnerabilities involving manually controlled switches.

A second imperative for PHMSA is to coordinate hazardous materials regulatory issues with other agencies in the Department of Transportation and coordinate hazardous materials security issues with the Department of Homeland Security (DHS). In the past 5 years, success in achieving Department-wide objectives to facilitate hazardous materials regulatory issues has been limited, due primarily to each modal administration separately administering its hazardous materials program. Coordinating hazardous materials security issues with DHS is never more evident than with the responsibility to secure the U.S. transportation system and protect its users from criminal and terrorist acts, especially in the area of hazardous materials safety oversight and enforcement. A third imperative for PHMSA is to lead and coordinate efforts to complete eight outstanding hazardous materials-related mandates and 23 outstanding hazardous materials-related National Transportation Safety Board recommendations throughout the Department that are long overdue. One outstanding recommendation is to act with the Federal Railroad Administration to create fracture resistance standards for rail tank cars carrying dangerous chemicals such as chlorine.

• **Protect consumers from fraud perpetrated by unscrupulous household goods moving companies.** Although it is not safety-related, household goods moving fraud is a serious problem, with thousands of victims who have fallen prey to these scams across the country. Typically, an unscrupulous operator will offer a low-ball estimate and then refuse to deliver or release the household goods unless the consumer pays an exorbitant sum, often several times the original estimate. In one case, for example, a New York husband and wife in their seventies were quoted a price of $2,800 to move their household goods to Florida. Once the movers had loaded about half of the goods, the foreman advised the couple that unless they paid the new price of $9,800 they would never see their property again. Fearing that the moving crew might physically hurt them, the couple paid the vastly inflated price.

Since 2000, our office has investigated allegations of fraud associated with approximately 8,000 victims, involving more than 25 household goods moving companies. FMCSA data reflects that since 2001, consumers have filed over 10,000 official complaints via its hotline against household goods movers, including about 2,500 complaints that accuse movers of overcharging, providing misleading and inaccurate estimates, and other serious tariff violations.

Until this year, FMCSA had dedicated one full-time investigator for household goods complaints. Because of Congressional concern over the increase in fraud, FMCSA received an increase in funding in FY 2004 to hire 10 additional investigators. It has also cross-trained other safety inspectors to support its household goods investigation efforts. FMCSA's goal is to conduct 300 investigations by the end of FY 2005, compared to just over 30 conducted in FY 2004. Clearly, this is an area where stronger sanctions and authorities are needed to leverage the limited resources available to respond to the steadily increasing volume of complaints of fraud and abuse in the household goods moving industry.

The House version of TEA–21 reauthorization (H.R. 3), which passed last month, contains important provisions to strengthen enforcement in this area, including greater civil penalties and ensuring that states have the authority to take enforcement action, under federal regulations, against a company operating in interstate commerce. Also, significantly, H.R. 3 creates a specific federal felony of holding goods hostage and sets 2 years imprisonment per count as the maximum penalty, but this is relatively low for a felony. We recommend that the maximum penalty be at least 5 years imprisonment, to fall in line with most other federal felonies, given the underlying nature of the crime, which really is extortion.

This concludes our testimony. Thank you for inviting us to testify here today. We would be glad to answer any questions that you have.

Senator LOTT. Thank you, Mr. Mead. I'll look forward to having an opportunity to ask you questions after we hear from the rest of the panel.

Our next witness is Dr. Jeff Runge, Administrator, National Highway Traffic Safety Administration.

Dr. Runge?

STATEMENT OF HON. JEFFREY W. RUNGE, M.D., ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Dr. RUNGE. Thank you, Mr. Chairman, Senator Inouye, Members of the Subcommittee, Chairman Stevens. Thank you for the chance to speak with you today about our mission to reduce fatalities and injuries on our nation's roadways.

During 2003, Mr. Chairman, 42,643 people died on our nation's roadways, and 2.9 million were injured. Our analysis of crashes in the year 2000 reveals that a single year's motor-vehicle crashes cost the American economy $230 billion. To put those figures into perspective, the fatality figure for crash victims is slightly more than three times the number of AIDS deaths annually, and the cost to our economy exceeds the gross national product of many, if not most, countries.

In response to these staggering numbers, Secretary Mineta did set a challenging goal to reduce deaths to no more than 1.0 deaths per hundred-million vehicle miles traveled, by 2008. Our current overall fatality rate is 1.48, an all-time low. But we will not approach that goal of 1.0 without the help of Congress to authorize safety programs that are based on sound science.

The Administration's proposal contains many sound, scientifically based proposals, but I want to focus my testimony on one provision that will save more lives, and do it faster and cheaper, than any other proposal that you will consider in this Congress or probably even this decade. This is our proposal to provide incentives to states to pass primary safety-belt laws or reach 90 percent safety-belt use for two consecutive years.

A primary safety-belt law treats safety-belt usage in the same manner as speeding, running a red light, blowing through a stop sign, as well as the hundreds of other laws that regulate dangerous behavior while driving. Twenty-one states, plus DC and Puerto Rico, have such laws. But, in 28 states, wearing a safety belt is also the law, but a police officer cannot issue a citation unless the motorist is cited for another offense. And this situation has led to a very low safety-belt use in many of those states, because traffic officers are prevented from enforcing the law.

If all states adopted a primary safety-belt law, we would prevent 1,275 deaths every year, and prevent 17,000 serious injuries from going to our trauma centers. Moreover, for every percentage point we raise belt use across the nation, we save 275 lives and $800 million of economic cost. There is no other safety countermeasure that NHTSA can employ that will save more than 1,200 people annually for no additional cost. It's simple, it works, and it's life-saving.

Now, consider, Mr. Chairman, that NHTSA recently completed all of our rulemakings related to the TREAD Act. These actions associated with that law cost consumers about $1.2 billion in cost, and took years to develop. In total, those improvements to vehicles and tires will save maybe 200 to 300 lives yearly. By comparison, if the remaining states passed a primary safety-belt law we could save four times that number every year at no cost to the consumer.

Simply put, getting safety-belt use to the level of other developed heavily motorized nations is long overdue. Nothing will accomplish this short of primary belt laws in every state in the land, and nothing will prompt the passage of those primary safety-belt laws than this Committee reporting out a bill with a meaningful incentive for states to enact those primary safety-belt laws.

I want to stress, Mr. Chairman, that our proposal includes incentives to the states, not sanctions. The Administration recognizes that states are sovereign entities and not branch offices of the Federal Government. Nonetheless, it is in the national interest for states to follow the science and pass this life-saving legislation.

Our proposal also gives the states unprecedented flexibility. If there's one complaint that I hear constantly from states, it's that they are forced to spend tax dollars not where they would do the most good, but according to a predetermined one-size-fits-all formula.

Under our safety proposal, for example, a state could use a portion of its highway-safety incentive funds for hazard mitigation, putting up guardrails along a dangerous highway, or installing better signage, or median barriers in an interstate. But, on the other hand, if a state has a high impaired-driving rate or low safety-belt use, safety funds could be redirected to more vigorous enforcement or to a more sustained public-information campaign.

The principle behind this provision is that states know, themselves, where their greatest needs are. And, therefore, we believe they should have the flexibility to address those needs.

Mr. Chairman, before coming to the Administration, I spent 20 years practicing and teaching emergency medicine in one of our nation's busiest trauma centers. Motor-vehicle injury is a disease. It consumes all of us, particularly our young people, at alarming rates. I've seen and felt the pain of many families who have been victimized by this disease, and literally so many of us, probably even in this room, are affected every year by this preventable cause of mortality.

Mr. Chairman, it's not hyperbole to state that providing a meaningful incentive to encourage states to enact primary belt laws would be the single most important traffic safety measure that could pass, this decade. No vehicle mandate for improved technologies, no elaborate rulemaking, no public-relations campaign or public education would save as many lives.

I would urge the Subcommittee to adopt all of the Administration's safety proposals; but, most especially, I urge you to adopt our primary safety-belt-use-law incentives for the states.

Thank you for your consideration of my views, and I'll be happy to answer any questions when my colleagues are finished.

[The prepared statement of Dr. Runge follows:]

PREPARED STATEMENT OF HON. JEFFREY W. RUNGE, M.D., ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Chairman Lott, Senator Inouye, Members of the Subcommittee: Thank you for the opportunity to appear before you today to discuss the Administration's proposal to reauthorize our highway safety programs in the "Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" or "SAFETEA." My staff and I look forward to working with this Subcommittee and the rest of the Senate to shape the proposals that will reauthorize our programs and address the highway safety challenges facing the Nation.

The National Highway Traffic Safety Administration's (NHTSA) mission is to save lives and prevent injuries. Motor vehicle crashes are responsible for 95 percent of all transportation-related deaths and 99 percent of all transportation-related injuries. They are the leading cause of death for Americans for every age from 3 through 33. Although we are seeing improvements in vehicle crash worthiness and crash avoidance technologies, the numbers of fatalities and injuries on our highways remain staggering. In 2003, the last year for which we have complete data, an estimated 42,643 people were killed in motor vehicle crashes. This number represents a slight decrease of 362 fatalities from 2002 (43,005), but we need to continue and accelerate that downward trend.

The economic costs associated with these crashes seriously impact the Nation's fiscal health. The annual cost to our economy of all motor vehicle crashes is $230.6 billion in Year 2000 dollars, or 2.3 percent of the U.S. gross domestic product. This translates into an average of $820 for every person living in the United States. Included in this figure is $81 billion in lost productivity, $32.6 billion in medical expenses, and $59 billion in property damage. The average cost to care for a critically injured survivor is estimated at $1.1 million over a lifetime, a figure that does not begin to account for the physical and psychological suffering of the victims and their families.

The fatality rate per 100 million vehicle miles traveled (VMT) in 2003 was at an all-time low of 1.48. Secretary Mineta has set a goal of reducing this rate even further, to no more than 1.0 fatality for every 100 million VMT by 2008. President Bush and Secretary Mineta have made reducing highway fatalities the number one priority for the Department of Transportation and for the reauthorization of NHTSA's programs.

As the statistics indicate, traffic safety constitutes a major public health problem. But unlike a number of the complex issues facing the Nation today, we have at least one highly effective and simple remedy to combat highway deaths and injuries. Wearing safety belts is the single most effective step individuals can take to save their lives. Buckling up is not a complex vaccine, doesn't have unwanted side effects and doesn't cost any money. It's simple, it works and it's lifesaving.

Safety belt use cuts the risk of death in a severe crash in half. Most passenger vehicle occupants killed in motor vehicle crashes are unrestrained. If safety belt use were to increase from the 2004 national average of 80 percent to 90 percent—an achievable goal—nearly 2,700 lives would be saved each year. For every 1 percentage point increase in safety belt use—that is 2.8 million more people buckling up—we would save hundreds of lives, suffer significantly fewer injuries, and reduce economic costs by hundreds of millions of dollars a year.

States recognize these lifesaving benefits, and have enacted safety belt laws. However, as of March 2005, only 21 states plus the District of Columbia and Puerto Rico have primary laws, which allow police officers to stop and issue citations to motorists upon observation that they are not buckled up. Other safety belt laws, known as secondary laws, do not allow such citations unless a motorist is stopped for another offense. In 2004, belt use in states with primary safety belt laws averaged 84 percent, 11 points higher than in states with secondary laws—a statistically significant difference. If all states enacted primary safety belt laws, we would prevent 1,275 deaths and 17,000 serious injuries annually. Enacting a primary safety belt law is the single most effective action a state with a secondary law can take to decrease highway deaths and injuries.

The Administration's SAFETEA proposal builds on the tremendous successes of previous surface transportation legislation by taking some important next steps. I'd like to highlight one very important component of this proposal that creates a strong incentive for states to enact primary safety belt laws or achieve high safety belt use rates, while at the same time streamlining NHTSA's grant programs to make them more performance-based.

The Administration's SAFETEA proposal, transmitted to Congress in 2003 and adjusted this February, proposes a major consolidation of NHTSA highway safety grant programs that would provide authorizations over the 6-year period to fund the basic formula grant program to the states under Section 402, but add two important new elements—a Safety Belt Performance Grant and a General Performance Grant.

The Safety Belt Performance Grant provides up to $100 million each year to reward states for passing primary safety belt laws or achieving 90 percent safety belt use rates in two consecutive years. Under our proposal, a state that has already enacted a primary safety belt use law for all passenger motor vehicles (effective by December 31, 2002) would receive a grant equal to 2.5 times the amount of its FY 2003 formula grant for highway safety. A state that enacts a new primary belt law or achieves 90 percent belt use for two consecutive years will receive a grant equal to five times the amount of its FY 2003 formula grant for highway safety. This significant incentive is intended to prompt state action needed to save lives. States achieve high levels of belt use through primary safety belt laws, public education using paid and earned media, and high visibility law enforcement programs, such as the *Click it or Ticket* campaign.

A state that receives a Safety Belt Performance Grant for the enactment of a primary safety belt law can elect to use all of those funds for a wide range of highway safety programs, including infrastructure investments eligible under the Federal Highway Administration's (FHWA) Highway Safety Improvement Program in accordance with the state's Comprehensive Strategic Highway Safety Plan.

Under another provision of the Safety Belt Performance Grant, a state can receive additional grants by improving its safety belt use rates. This incentive, alone, would provide up to $182 million over the 6-year authorization period. Any state that receives a grant for improved safety belt use rates is permitted to use up to 50 percent of those funds for activities eligible under the new Highway Safety Improvement Program.

The 6-year General Performance Grant component of our consolidated highway safety grant program not only eases the administrative burdens of the states but also rewards states with increased federal funds for measurable improvements in their safety performance in the areas of overall motor vehicle fatalities, alcohol-related fatalities, and motorcycle, bicycle, and pedestrian crash fatalities. Any state that receives a General Performance Grant is permitted to use up to 50 percent of those funds for activities eligible under the new Highway Safety Improvement Program.

These grants reflect a different approach to addressing the Nation's substantial highway safety problems. While formulating the Department's reauthorization proposal, the FHWA and NHTSA embraced the guiding principle that states should receive resources to address their own, unique transportation safety issues, should be strongly encouraged to increase their safety belt use rates—the single most effective means of decreasing deaths and injuries—and should be rewarded for performance with increased funds and greater flexibility to spend those funds on either infrastructure safety or behavioral safety programs.

But with the flexibility comes the accountability. States will be held accountable for setting realistic and appropriate performance goals, devising corresponding plans, and ultimately improving performance and achieving the goals.

These guiding principles of flexibility and accountability underlie all aspects of the Administration's highway safety reauthorization proposal. In fact, our Nation's governors speak with one voice on this issue—and they all want maximum flexibility to distribute highway safety funds where the need is the greatest.

Mr. Chairman, the single most important safety measure Congress could pass this decade is SAFETEA's proposal to provide incentive grants for states to pass primary belt laws. As the Nation's chief highway safety official, I urge you to pass a bill that gives states the strongest incentives possible to enact primary belt laws. No vehicle safety mandate, no elaborate rulemaking, no public relations campaign that NHTSA could undertake would have the life-saving impact of Congress providing meaningful incentives to the states to pass primary belt laws.

I'd like to give you a brief overview of some of the other provisions of our SAFETEA proposal transmitted to Congress in 2003.

SAFETEA would establish a new core highway safety infrastructure program, in place of the existing Surface Transportation Program safety set-aside. This new

FHWA program, called the Highway Safety Improvement Program (HSIP), would more than double funding over comparable TEA–21 levels, providing more funds for safety projects over the 6-year authorization period. In addition to increased funding, states would be encouraged and assisted in their efforts to formulate comprehensive highway safety plans. Those states with such comprehensive plans could flex up to 50 percent of their HSIP funds for behavioral safety programs.

SAFETEA also is designed to help the states deter impaired driving. Reducing the number of impaired drivers on our roadways is a complex task requiring interconnected strategies and programs. In 2003, an estimated 17,013 people died in alcohol-related crashes (40 percent of the total fatalities for the year), a 29-percent reduction from the 23,833 alcohol-related fatalities in 1988, and a decline of 3 percent over 2002. Our data show that 2003 was the first year since 1999 that the number of alcohol-related fatalities decreased. The proportion of traffic deaths of individuals with a blood-alcohol content above .08—the legal limit in every state—was highest in 2003 for 21–24 year olds, at 32 percent, followed by 25–34 year olds, at 27 percent.

A component of our revised Section 402 program would focus significant resources on a small number of states with particularly severe impaired driving problems by creating a new $50-million-a-year impaired driving discretionary grant program. The grant program would include support for up to 10 states with an especially high number of alcohol-related fatalities and a high rate of alcohol-related fatalities relative to vehicle miles traveled and population. A team of outside experts would conduct detailed reviews of the impaired driving systems of these states to assist them in developing a strategic plan for improving programs and reducing impaired driving-related fatalities and injuries. Additional support would be provided for training, for technical assistance in the prosecution and adjudication of driving while intoxicated (DWI) cases, and to help licensing and criminal justice authorities close legal loopholes.

NHTSA believes that this targeted state grant program and supporting activities, together with continued nationwide use of high-visibility enforcement and paid and earned media campaigns, would lead to a continuation of the downward trend in alcohol-related fatalities. Also, through the comprehensive safety planning process, all states could elect to use a significant amount of their FHWA Highway Safety Infrastructure funding, in addition to their consolidated highway safety program funds, to address impaired driving.

SAFETEA's highway safety title includes a key provision to authorize a comprehensive national motor vehicle crash causation survey to enable us to determine the factors responsible for the most frequent causes of crashes on the Nation's roads. This comprehensive survey would be funded at $10 million a year out of the funds authorized for our highway safety research and development program. The last comprehensive update of crash causation data was generated in the 1970s. Congress has recognized the importance of this survey and so far has appropriated $14 million for this effort. Appropriations have been used to develop protocols and methodology, procure equipment, hire and train new researchers, establish data collection methodology and structure and begin field data collection.

SAFETEA also would create a new $50-million-a-year incentive grant program that builds upon a TEA–21 program to encourage states to improve their traffic records data. Accurate state traffic safety data are critical to identifying local safety issues, applying focused safety countermeasures, and evaluating the effectiveness of countermeasures. Improvements are needed for police reports, driver licensing, vehicle registration, and citation/court data to provide essential information. Additionally, deficiencies in data negatively impact national databases including the Fatality Analysis Reporting System, General Estimates System, National Driver Register, Highway Safety Information System, and Commercial Driver License Information System.

For the past 20 years, federal support for Emergency Medical Services (EMS) has been both scarce and uncoordinated. As a result, the capacity of this critical public service has seen little growth, and support for EMS has been spread among a number of agencies throughout the Federal Government, including NHTSA. Except for NHTSA, most of the support offered by these agencies has focused only on specific system functions, rather than on overall system capacity, and has been inconsistent and ineffectively coordinated.

SAFETEA would establish a new $10 million-a-year state formula grant program to support EMS systems development, including 9–1–1 nationwide, and would provide for a Federal Interagency Committee on EMS to strengthen intergovernmental coordination of EMS with NHTSA providing staff support. The states would administer the grant program through their state EMS offices and coordinate it with their

highway safety offices. Enactment of this section would result in comprehensive support for EMS systems, and improved emergency response capacity nationwide.

SAFETEA also would provide a total of over $500 million for NHTSA's highway safety research and development program. This program supports state highway safety behavioral programs and activities by developing and demonstrating innovative safety countermeasures and by collecting and disseminating essential data on highway safety. The results of our Section 403 research provide the scientific basis for highway safety programs that states and local communities can tailor to their own needs, ensuring that precious tax dollars are spent only on programs that are effective. The states are encouraged to use these effective programs for their ongoing safety programs and activities.

Highway safety behavioral research focuses on human factors that influence driver and pedestrian behavior and on environmental conditions that affect safety. This research addresses a wide range of safety problems through various initiatives, such as impaired driving programs, safety belt and child safety seat programs and related enforcement mobilizations, pedestrian, bicycle, and motorcycle safety initiatives, enforcement and justice services, speed management, aggressive driving countermeasures, emergency medical services, fatigue and inattention countermeasures, and data collection and analysis efforts. These efforts have produced a variety of scientifically sound data and results.

Finally, SAFETEA would provide a total of over $23 million for the National Driver Register. This system facilitates the exchange of driver licensing information on problem drivers among the states and various federal agencies to aid in making decisions concerning driver licensing, driver improvement, and driver employment and transportation safety.

Overall, SAFETEA is a groundbreaking proposal that offers states more flexibility than they have ever had before in how they spend their federal-aid safety dollars. It reduces state administrative burdens by consolidating multiple categorical grant programs into one. It would reward states for accomplishing easily measurable goals and encourage them to take the most effective steps to save lives. It is exactly the kind of proposal that is needed to more effectively address the tragic problem of highway fatalities.

On the motor vehicle safety side of NHTSA's mission, we focus our efforts on actions offering the greatest potential for saving lives and preventing injury. In 2003, we published the first ever NHTSA multi-year vehicle safety rulemaking priorities and supporting research plan. It sets forth the agency's rulemaking goals for 2003 through 2006. We have transmitted to Congress the January 2005 update of the plan, which covers the years 2005 through 2009.

In addition, we are committed to reviewing all Federal Motor Vehicle Safety Standards systematically over a 7-year cycle. NHTSA is a data-driven and science-driven agency, and we decided that such a review is needed in light of changing technology, vehicle fleet composition, safety concerns and other issues that may require changes to a standard. Our regulatory reviews are in keeping with the goals of the Government Performance and Results Act, to ensure that our rulemaking actions produce measurable safety outcomes. Several decades of vehicle safety rulemaking have demonstrated that quality data and research produce regulations that are technically sound, practicable, objective, and repeatable. Our rulemaking priorities plan was crafted with these principles in mind.

NHTSA's priority rulemakings for the immediate future include enhanced side crash protection; improved rollover crash protection through advanced prevention technologies, reduced occupant ejection, and upgraded roof crush protection; reduction in light vehicle tire failures; and shorter stopping distances for heavy trucks. Our longer-term priorities include research and rulemaking decisions to address vehicle "aggressivity" toward other vehicles; improved visibility through enhanced mirrors and other technologies; reduction in crashes associated with driver distraction; improved heavy truck tires; ensuring the safety of hydrogen, fuel cell, and alternative-fueled vehicles; and advancing crash avoidance technologies, such as driver-assist systems. We have integrated our rulemaking priorities plan and our supporting research plan to ensure that research is available when needed to conduct rulemakings that advance safety.

I would ask the Subcommittee not to include rulemaking mandates in your bill to reauthorize NHTSA's programs. Mandates take away NHTSA's ability to prioritize its work based on its most important safety priorities, to revise those priorities as circumstances change, and to have the time needed to ensure that our regulations are based on sound science. Mandates that dictate timelines and the regulatory approach impair our ability to provide the public with the best safety solutions.

Mr. Chairman, the Secretary named the Administration's proposal "SAFETEA" for a very good reason. This Subcommittee literally has the power to save thousands of lives in the years to come at no cost to the consumer. I urge you to support the Administration's SAFETEA proposal, and especially to give the states the necessary incentives to pass primary belt laws. It is worth repeating that nothing Congress will do in this bill will have a greater and a more lasting impact on safety.

Thank you for your consideration of my views. I will be pleased to answer any questions you may have.

Senator LOTT. Thank you very much, Dr. Runge, for your testimony, and I will have some questions on the things you did talk about, and one or two that maybe you just ran out of time and didn't have enough time to comment on.

Next, we will hear from Annette Sandberg——

Oh, yes, Senator Stevens does have to leave to attend a leadership meeting. Senator Stevens, did you have any comment or any questions you'd like to submit for the record at this point?

The CHAIRMAN. Well, Mr. Chairman, I do apologize for coming in late and being called now to a leadership meeting, but I do hope we'll pursue some concepts of incentives to the states to increase their safety precautions and requirements for safety.

My state is one that doesn't have a primary seatbelt law—safety-belt law, which I regret. Those of us that are pilots just automatically get in anything and lock up. You know? It is—it becomes second nature. And I'm sad to see that this is the case.

I would urge us to consider giving advantages to those states that have records of compliance, in terms of safety features, both safety belts and the guardrails, and let them have more discretion in how they use their funds, but, at the same time, have some basic mandates for use of funds where there is no apparent attempt to adopt some of the approaches that have, in fact, reduced injuries and deaths on the highway.

And I want to, particularly, be able to talk to you about—Members of the Committee—about the increasing problem that Mr. Mead has mentioned, in terms of motorcycles. They're a wonderful vehicle for enjoyment and seeing the outdoors, but the increased accident rate bothers me considerably, and I think we have to find some way to stimulate greater safety education for those who use motorcycles.

So, I thank you very much for the hearing. I will have some questions I'd like to add for the record, and I apologize to my colleagues for speaking up before my turn.

Senator LOTT. And since we are on a tight time schedule, in terms of marking up a bill, I would urge the witnesses to respond as quickly as possible to these questions from the Chairman of the full Committee so that we'll have them when we go to mark-up here, in a week or so.

Senator Pryor, we have already noted that any prepared statement you have would be put in the record at the beginning. Do you have any question or comment right at this point, or can we proceed with the witnesses?

Senator PRYOR. I don't. Thank you.

Senator LOTT. All right. Thank you for being here, Senator Pryor.

Anything further, Senator Inouye?

Then we are ready to go with Annette Sandberg. Ms. Sandberg is Administrator of the Federal Motor Carrier Safety Administration.

Welcome. We'd be glad to hear your testimony.

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

Ms. SANDBERG. Thank you, sir.

Mr. Chairman, Senator Inouye, and Members of the Subcommittee, thank you for inviting me today to discuss the successes the Federal Motor Carrier Safety Administration has had in enhancing safety on our nation's highways, particularly as they relate to the safe operation of commercial motor vehicles and their operators.

As Secretary Mineta has said many times, safety is the centerpiece of the Administration's reauthorization proposal. We are committed to achieving the Department's highway-safety goal of reducing the fatality rate in all motor-vehicle crashes by 41 percent from 1996 to 2008. And I'm pleased to report that the Fiscal Year 2003 commercial motor-vehicle fatality rate of 2.3 is the lowest recorded since the Department initiated tracking in 1975.

In Fiscal Year 2004, federal and state enforcement operations that ensured compliance with the Federal Motor Carrier safety regulations included the following: more than 25,000 new entrance safety audits, over 11,000 safety compliance reviews, and nearly three million roadside inspections. As a result, our agency initiated more than 5,000 enforcement cases.

The Administration's SAFETEA proposal transmitted to Congress in 2003, and adjustments this February, proposes important advances to our Motor Carrier Safety Program. And I'm pleased that items we believe critical for safety continue to be addressed by your Subcommittee. However, we ask the Subcommittee to address the following issues in our title: the codification of the existing hours-of-service rule for interstate commercial motor-vehicle drivers, the commercial driver's license improvements, the safety and security of the southern border, increasing penalties for unscrupulous household goods brokers, establishment of the medical program and medical registry, and hazardous-materials transportation safety.

With regard to the hours of service, I would like to report on the progress we have made since Congress passed the most recent TEA–21 extension. I established a dedicated hours-of-service team that reports directly to me. The team is on track to meet the September deadline. However, the new rule, like the old rule, will not please everyone. I'm concerned that the revised rule will open the agency and the Department to the same kinds of legal challenges we've experienced already. These challenges keep the industry and others in a constant state of uncertainty. And, for this reason, the Administration seeks the inclusion of language in the Senate reauthorization bill that would make the 2003 rule permanent and allow our agency the opportunity to revise the rule in the future, if necessary.

Another important initiative is the Commercial Driver's License Improvement Program. In 2004, the Federal Motor Carrier Safety

Administration conducted 16 compliance reviews of state CDL programs, we strengthened oversight of the annual state self-certification CDL programs, and allocated 22 million of grant funds in support of states to address compliance, fraud, and security issues. We are also partnering with the Office of the Inspector General to coordinate CDL fraud investigation by providing CDL-specific investigative expertise to state agencies, and, where warranted, federal prosecution of criminal violations.

The Administration has requested greater enforcement of violations by movers of household goods. The Administration's proposal establishes more visible enforcement through increased investigations and expanded outreach. Additionally, we seek authority for state attorneys general to enforce federal household goods regulations against interstate carriers. We believe this authority will help reduce abusive practices and make sure there is consistency in enforcement across the country by having one set of regulations, rather than many state regulations.

Since the beginning of this fiscal year, the agency has conducted over 100 investigations, representing three times as many as in Fiscal Year 2004. And we are on target to meet our annual goal of 300 investigations this year.

Currently, the agency has 10 full-time safety investigators, and we've—devoted, specifically to household goods enforcement—and we've trained an additional 37 investigators to support this effort.

Another important aspect of our reauthorization proposal is the creation of a standing medical review board to provide our agency with expert medical advice on driver-qualification standards and guidelines, medical-examiner education and research, thereby enhancing our ability to adopt medically sound and up-to-date regulations.

In the past, we've assembled expert medical specialists on an ad-hoc basis to review the standards and guidelines for qualifying truck and bus drivers. Many of the standards that we now have in place were adopted in the early 1970s or since then. A standing medical review board will greatly enhance our ability to adopt regulations that reflect current medical advances.

The Administration is committed to implementing fully the NAFTA land transportation provisions. In 2004, the Supreme Court ruled in the Administration's favor in a suit which would have required preparation of an environmental impact statement for the rules. The most recent Inspector General audit for the NAFTA implementation released in January of this year stated that the Federal Motor Carrier Safety Administration has sufficient staff, facilities, equipment, and procedures in place to substantially meet the Section 350 provisions for Mexican long-haul trucks.

One of the requirements mandated in Section 350 makes the inspection procedures and decal of a nongovernmental organization mandatory for Mexican CMVs. In the Administration's safety adjustments, we propose that the required inspection decal be issued or approved by the Secretary of Transportation. We feel that this is an important function for which the Federal Government should be responsible.

FMCSA has implemented a comprehensive hazardous-material security program to improve the secure transportation of hazardous materials on our highways and protect the country from the threat of terrorism. The program includes an enforcement-compliance component, as well as an outreach component. A major element of our HAZMAT security program involves a new HAZMAT permit program. Carriers of extremely high-hazard materials are required to obtain a permit. This permit is contingent upon the carriers developing and maintaining a satisfactory security program that meets the requirements of the hazardous-materials regulations, and includes a communication component for permitted loads.

Mr. Chairman, I am pleased to report that the FMCSA is making steady progress addressing our congressional regulatory and reporting requirements. When I began as Administrator, there was a tremendous regulatory backlog. During my tenure, in the last 2 years, I have reduced this backlog by over 40 percent. I have met with your staff to update them on our progress, and I would ask that any current or future mandated rulemakings not be added to your bill. FMCSA needs to be able to set rulemaking priorities based on safety and not mandated timelines.

Thank you for inviting me to discuss the Federal Motor Carriers Safety Administration's priorities, and I would be happy to respond to any questions you may have.

Thank you.

[The prepared statement of Ms. Sandberg follows:]

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

Chairman Lott, Senator Inouye, and Members of the Subcommittee. Thank you for inviting me today to discuss the successes the Federal Motor Carrier Safety Administration (FMCSA) has had in enhancing safety on our nation's highways, particularly as they relate to the safe operation of commercial motor vehicles (CMVs) and their operators. I last appeared before this Committee in June 2003, just one month after my confirmation hearing. Nearly 2 years later, I am pleased to report that CMV safety has greatly improved during my tenure as Administrator.

Federal Motor Carrier Safety Administration Overview

As Secretary Mineta has said many times, safety is the centerpiece of the Administration's Safe, Accountable, Flexible, and Efficient Transportation Equity Act (SAFETEA). FMCSA is committed to that goal. Our agency was conceived out of the need for stronger CMV safety—it is our mandate. More than that, our agency consists of a group of dedicated professionals to whom safety is the highest priority. Toward that goal, FMCSA is working to reduce the unnecessary loss of life on our nation's highways. FMCSA is committed to achieving the Department's highway safety goal of reducing the fatality rate in all motor vehicle crashes by 41 percent from 1998 to 2008. Our part of that goal is to reduce commercial vehicle crash fatalities to 1.65 fatalities per 100 million miles of truck travel. Achieving our safety goal will be challenging, as commercial vehicle miles traveled are increasing at a rate faster than that of passenger cars. I am pleased to report that the FY 2003 CMV fatality rate of 2.3 is the lowest recorded since the Department initiated tracking in 1975.

Safety improvements like these cannot be accomplished without sound programs and adequate enforcement across all levels of government. Enforcement is the cornerstone of motor carrier safety. In FY 2004, federal and state safety enforcement operations that ensured compliance with Federal Motor Carrier Safety Regulations included the following: more than 25,000 new entrant safety audits; over 11,000 safety compliance reviews; and nearly 3 million roadside inspections. As a result, FMCSA initiated more than 5,000 enforcement cases. In 2003, an Office of Management and Budget assessment found that FMCSA has achieved reductions in the large truck fatality rate in each of the past 5 years and is on track to achieve its ambitious long-term safety goals.

The Administration's SAFETEA proposal, transmitted to Congress in 2003 and updated in adjustments this February, proposes important advances to our motor carrier safety program. I am pleased that items we believe critical for safety continue to be addressed by your Committee. They include: the penalty for denial of access to records, increased penalties for out-of-service violations, and safety fitness. We have also been working with Committee staff on some of our SAFETEA adjustments, specifically patterns of safety violations by motor carrier management and intrastate operations of interstate motor carriers, and we appreciate their willingness to work with us to increase safety in these areas.

However, in order for FMCSA to fully achieve its safety mission, we ask the Committee to address the following issues: the codification of the existing hours of service rule for interstate CMV drivers, Commercial Driver's License (CDL) improvements, the safety and security of the Southern Border, increasing penalties for unscrupulous household goods brokers, establishment of the medical review board and medical registry, mandatory fuel surcharge, and hazardous materials transportation safety.

Hours of Service

With regard to hours of service, I would like to report on the progress made since the most recent extension of the Transportation Equity Act for the 21st Century (TEA–21), on September 30, 2004. In the Surface Transportation Extension Act of 2004, Part V, Congress provided that the current hours-of-service rule will stay in effect until the Agency publishes a final rule addressing the factors in the July 2004 decision of the U.S. Court of Appeals for the District of Columbia Circuit, or September 30, 2005, whichever is earlier.

I established a dedicated hours-of-service task force that reports directly to me. This task force consists of some of the most highly respected professionals in our agency. Its work has already proved exceptional—since its creation the task force has issued its Notice of Proposed Rulemaking (NPRM) on the new rule and is on track to meet the September deadline. However, the new rule, like the old rule, will not please everyone. I am concerned that the revised rule will open the Agency and the Department to the same kinds of legal challenges we have experienced already. These challenges keep the industry and others in a constant state of uncertainty. For this reason, the Administration seeks the inclusion of language in the Senate reauthorization bill that will make the 2003 rule permanent and allow FMCSA the opportunity to revise the rule, if necessary.

Another issue of concern is the number of proposed exemptions to the hours of service rule. The old rule on hours of service contained statutory exemptions for various industries. These exemptions have been retained in the new rule. New blanket statutory exemptions for various industries increase the likelihood that tired drivers will be on the roads endangering the driving public.

Overall, these exemptions compromise safety. They create enforcement problems, hamper accurate recordkeeping, encourage other industries to seek exemptions, and dilute the objective of providing drivers a more regular schedule to coincide with circadian rhythms. As Administrator of the Agency, I am charged with fulfilling its mandate of improving the safety of these drivers and the traveling public with whom they interact. Exemptions to the hours of service rule without data and research to support the exemptions hamper the Agency's ability to fulfill our safety mission.

CDL Improvement Program

Another important initiative is the Commercial Driver's License improvement program. Critical to the safety and security of the United States, the CDL grant program is the latest in a series of efforts by our agency to improve and enhance the effectiveness of the CDL program. Since implementation of the CDL program in 1986, FMCSA has promulgated regulations addressing state compliance with the CDL requirements, initiated judicial outreach, expanded state CDL compliance review, and most recently developed a CDL anti-fraud program. In 2004, FMCSA conducted 16 compliance reviews of state CDL programs, strengthened oversight of annual state self-certification of CDL programs and allocated $22 million in grant funding for states to address compliance, fraud, and security issues.

Also in 2004, FMCSA organized a working group of motor vehicle administrators and law enforcement staff to address anti-fraud initiatives. The group has made several recommendations to eventually be included in a model law enforcement program for preventing CDL fraud. This program, when fully implemented, will establish a framework for motor vehicle and law enforcement agencies to work collaboratively in addressing CDL fraud.

FMCSA is also partnering with the Office of Inspector General (OIG) to coordinate CDL fraud investigations by providing CDL-specific investigative expertise to state agencies, and where warranted, federal prosecution for criminal violations. With FMCSA's assistance, the OIG is preparing training materials for their field investigators to assist in CDL-related investigations.

Finally, the CDL compliance review program now includes a specific anti-fraud component. The agency has included anti-fraud priorities as an eligible funding activity for CDL improvement grant funds. Not only has FMCSA elevated fraud issues with states during CDL compliance reviews and with CDL grant awards but also will continue to emphasize fraud awareness training to state law enforcement and motor vehicle personnel.

Household Goods Enforcement

The Administration has requested greater enforcement of violations by movers of household goods (HHG). I know that the Chairman and Members of this Committee have noticed an increase in consumer complaints about household goods carriers. The Administration's proposal establishes more visible enforcement through increased investigations and expanded outreach. Our efforts seek to increase consumer awareness and help citizens make better-informed decisions when moving across state lines. Additionally, we seek authority for State Attorneys General to enforce federal household goods regulations against interstate carriers. We believe this authority will help reduce abusive practices and makes sure there is consistency in enforcement across the country by having one set of regulations rather than many state regulations.

For FY 2005, FMCSA is conducting strike force activity in states where we have seen the highest level of complaints, with a goal of 300 investigations. These states are Florida, New York, New Jersey, and California. Since the beginning of the fiscal year, the Agency has conducted over 100 investigations, three times as many as in FY 2004, and is on target to meet its annual goal. FMCSA used the $1.3 million appropriated to hire federal employees to investigate HHG complaints and to conduct concentrated strike force activities, bringing together investigators from throughout the country to operate in a specific area for a short period of time. Currently, the Agency has 10 full-time safety investigators devoted to HHG enforcement and we have trained an additional 37 investigators to support this effort. Our agency is committed to eradicating this threat to American consumers.

Medical Review Board

Another important aspect of our reauthorization proposal is the creation of a standing medical review board to provide the Agency with expert medical advice on driver qualification standards and guidelines, medical examiner education, and research, thereby enhancing our ability to adopt medically sound and up to date regulations. In the past, we have assembled expert medical specialists on an *ad hoc* basis to review the standards and guidelines for qualifying truck and bus drivers. Many of the standards in place now were adopted in the 1970s or earlier. A standing review board will greatly enhance the Agency's ability to adopt regulations that reflect current medical advances. Establishment of a medical registry would respond to the National Transportation Safety Board (NTSB), which issued eight safety recommendations in September 2001, requiring that FMCSA establish comprehensive standards for qualifying medical providers and conducting medical qualification exams.

Last Congress, S. 1072 established a medical review board based on the Federal Aviation Administration (FAA) model for pilot standards. Neither FMCSA nor FAA believes the FAA model to be an appropriate one for CMV drivers. The sheer number of drivers and differences in the age and health characteristics of the driver population make this model an untenable one for FMCSA. The FAA has 6,000 authorized aviation medical examiners to perform yearly exams on approximately 270,000 pilots. FMCSA estimates that approximately 300,000 medical examiners perform exams on approximately 6.4 million CMV drivers on a biennial basis. While I appreciate the Committee's inclusion of the medical registry provision, I urge the Committee to rework the review board model and provide adequate funding to maximize our ability to set appropriate medical standards for CMV drivers.

Safety and Security at the Southern Border

The Administration is committed to implementing fully the North American Free Trade Agreement (NAFTA) land transportation provisions. In June 2004, the U.S. Supreme Court ruled in the Administration's favor in a suit that would have required environmental analyses of the rules. The most recent Inspector General audit for NAFTA implementation, released in January 2005, stated: "FMCSA has suffi-

cient staff, facilities, equipment and procedures in place to substantially meet the eight Section 350 provisions for Mexican long haul trucks."

In preparation for allowing Mexican carriers beyond the commercial zones and in response to the mandates of Section 350 of the FY 2002 DOT Appropriations Act, FMCSA has deployed 274 inspectors, auditors, and investigators along the border to process these carriers. FMCSA has provided funds to the four southern Border States to hire additional inspectors and construct inspection facilities. As of December 10, 2004, 693 Mexican carriers have applied for authority to operate beyond the commercial zones. Of the 693 applications, 314 are ready for the mandated safety audit.

One of the requirements in Section 350 of the FY 2002 DOT Appropriations Act, which has been adopted in all subsequent DOT appropriations acts, makes the inspection procedures and decal of a non-governmental organization mandatory for Mexican CMVs. In one of the Administration's SAFETEA Adjustments, we propose that the required inspection decal be issued or approved by the Secretary of Transportation. We feel that this is an important function for which the Federal Government should be responsible.

Hazardous Materials Transportation

FMCSA has implemented a comprehensive Hazardous Materials (HM) Security Program to improve the secure transportation of hazardous materials on our highways and protect the country from the threat of terrorism. The program includes an enforcement/compliance component as well as an outreach component.

A major element of the FMCSA HM Security Program involves FMCSA's new HM Permit Program. Carriers of extremely high-hazard materials are required to obtain a permit from FMCSA. This permit is contingent upon the carrier's developing and maintaining a satisfactory security program that meets the requirements of the HM Regulations and includes a communication component for permitted loads. FMCSA will validate the adequacy of the security plan for 1,200 carriers during FY 2006 using a Security Contact Review (SCR). The SCR includes an in-depth assessment of the adequacy of a carrier's security plan and its implementation as well as security training, communication requirements, and other requirements of the HM permit program.

Mandatory Fuel Surcharge

The Nation has benefited enormously from our economic deregulation of the transportation industry. In the last 25 years, the free market for motor carrier services in particular has made important contributions to the growth and efficiency of our economy and helped to sustain its remarkable ability to create new jobs. Although the price of diesel fuel has risen sharply in the past few years, the allocation of those costs among the buyers and sellers of transportation is best accomplished through the working of the marketplace, not by government prescription. The mandatory fuel surcharge for truckload transportation prescribed by section 4139 of H.R. 3 would insinuate government into commercial relationships in a way that is ill-advised and that would reverse a quarter-century of U.S. economic policy. For these reasons, the Administration strongly urges the members of this Committee, and other Senators, not to include language supporting a fuel surcharge in its reauthorization bill.

Regulatory Backlog

Mr. Chairman, I am pleased to report that FMCSA's progress has been steady and our future is bright. One aspect of our progress of which I am particularly proud is how we have addressed our Congressional regulatory and reporting requirements. When I began as Administrator, there was a tremendous regulatory backlog. During my tenure, I have reduced this backlog by over 40 percent. I have met with your staff to update them on our progress. I ask that no mandated rulemakings be added to the Committee's bill. FMCSA needs to be able to set rulemaking priorities based on safety, not mandated timelines.

Conclusion

I wish to thank you for inviting me to discuss the achievements FMCSA has made toward reducing fatalities and injuries on our nation's highways. This reauthorization represents the first opportunity for our 5-year old agency to step forward, stand on its own, and chart our course. I would be happy to respond to any questions you may have.

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

And, let's see, our last witness today is Ms. Stacey Gerard, Acting Assistant Administrator, Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.

Welcome. We'd be glad to hear your testimony.

STATEMENT OF STACEY L. GERARD, ACTING ASSISTANT ADMINISTRATOR/CHIEF SAFETY OFFICER, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

Ms. GERARD. Thank you, Mr. Chairman.

I am Stacey Gerard, the Acting Assistant Administrator/Chief Safety Officer, of PHMSA. And thank you for this opportunity to discuss our hazardous-materials program.

This is the first appearance before your Committee as an official of this new agency, PHMSA, created by the Norman Mineta Act. Our new organization reflects the importance the Department puts on improving the safety and security of hazardous materials.

Hazardous materials are essential to our economy and well-being. Our priority is keeping Americans safe. With more than 3 billion tons of regulated HAZMAT in transport each year, and those amounts on the rise, our focus in on those that pose the greatest threat to safety.

Our hazardous-materials program is focused on four principal areas. First, we have comprehensive regulations. Second, we help shippers and carriers understand and comply with those regulations. Third, we identify and stop those persons who do not comply with the regulations. Finally, we assist the nation's response community to plan for and respond to HAZMAT transportation emergencies.

Since 9/11, a major focus of the regulatory program has been security. In 2003, we required certain shippers and carriers to implement security planning, addressing personnel, unauthorized access, en-route security, and training. We're working with the Federal Railroad Administration and the Department of Homeland Security to enhance the security of rail shipments. Those materials classified as toxic by inhalation, or TIH, pose a special risk in an incident because of the greater likelihood of exposing a significant number of people to hazards.

Our regulations provide for domestic and international shippers to use largely the same set of standards. This is good for safety and commerce. We are currently working to harmonize requirements for cylinders and infectious substances.

We make a priority of helping shippers and carriers know and comply with the regulations. In addition to an active Website, we take 130 hotline calls every day, plus offering hundreds of workshops each year.

There will always be people who, through ignorance or negligence, do not comply with the hazardous-materials transportation safety regulations. PHMSA, alone, conducts 1900 inspections annually; 700 inspections this past year addressed adequacy of security plans. We are enforcing against over 40 percent of companies who did not meet our standards.

Despite best efforts, accidents will occur, and assisting emergency responders is a priority for us. Every 4 years, PHMSA and our partners in Canada and Mexico publish an updated version of

the Emergency Response Guidebook. The ERG, as it is commonly known, is hailed as a most valuable emergency reference for HAZMAT emergencies. But there is no better testament to it than its translation in more than 30 languages.

We also operate planning and training grants programs to assist local responders at HAZMAT incidents. This help is vital to our many communities served largely by volunteer emergency responders. This help is also useful to communities traversed by pipelines.

You invited me here today specifically to discuss reauthorization of the Hazardous Materials Transportation Safety Program. We hope that the Committee's proposal will reallocate food-transportation responsibilities to the most qualified agencies. We hope you will provide civil penalty authority for the postal service to help fine and punish undeclared HAZMAT shipments in the mail. We hope for enhancements to our enforcement program to help us take swift action to identify and remove hidden unsafe shipments from transportation. We should be permitted to open and examine suspect packages. Finally, raising penalties to 100,000 per violation is important and needed.

We do not support proposals to revise the Registration Fee Program. Specifically, we are concerned that a cap on the maximum annual registration fee may require us to modify our current two-level fee structure and impose substantial registration increases on small entities.

Finally, we hope you consider reducing the area of overlap between DOT's regulation of HAZMAT transportation and the Occupational Safety and Health Administration's regulation of worker protection.

We look forward to working with the Members of this Committee and with Congress to enhance the safe and secure transportation of hazardous materials.

Thank you, again, Mr. Chairman, for the opportunity to appear and respond to your questions and concerns.

[The prepared statement of Ms. Gerard follows:]

PREPARED STATEMENT OF STACEY L. GERARD, ACTING ASSISTANT ADMINISTRATOR/CHIEF SAFETY OFFICER, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

Mr. Chairman, I am Stacey L. Gerard, the Acting Assistant Administrator/Chief Safety Officer of PHMSA, the Pipeline and Hazardous Materials Safety Administration of the Department of Transportation. With me is Robert McGuire, PHMSA's Associate Administrator for the Office of Hazardous Materials Safety. Thank you for this opportunity to discuss with you the Department's ongoing efforts to improve the safe and secure transportation of hazardous materials.

Before I begin, I would like to note an important milestone. This is the first appearance of an official of the new Pipeline and Hazardous Materials Safety Administration before your Committee. Our new organization reflects the Department's longstanding commitment to the safety of our Nation's pipeline infrastructure and our continuing emphasis on the safety and security of commercial shipments of hazardous materials by all modes of transport. The importance of this new organization is underscored by the fact that our regulatory authority for safety covers 28 percent of the ton freight moved annually in the United States.

PHMSA's Office of Hazardous Materials Safety is responsible for a comprehensive, nationwide program designed to protect the Nation from the risks to life, health, property, and the environment inherent in the commercial transportation of hazardous materials.

Hazardous materials are essential to the economy of the United States and the well-being of its people. Hazardous materials fuel automobiles, and heat and cool

homes and offices, and are used for farming and medical applications and in manufacturing, mining, and other industrial processes. More than 3 billion tons of regulated hazardous materials—including explosive, poisonous, corrosive, flammable, and radioactive materials—are transported in this country each year. There are over 800,000 daily shipments of hazardous materials moving by plane, train, truck, or vessel in quantities ranging from several ounces to many thousands of gallons. These shipments frequently move through densely populated or sensitive areas where the consequences of an incident could be loss of life or serious environmental damage. Our communities, the public, and workers engaged in hazardous materials commerce count on these shipments being safe and secure.

Safety continues to be Secretary Mineta's highest priority, and it is the first priority for the hazardous materials safety program. Overall, the safety record for the transportation of hazardous materials is excellent. Over the past 10 years, 221 fatalities were caused by incidents involving hazardous materials in transportation, and half of those were due to a single event, the Valujet tragedy in 1996. While every casualty is one too many, in the context of 800,000 daily shipments, this is a remarkable record.

Since 9/11, we have moved aggressively to recognize and address security issues associated with the commercial transportation of hazardous materials. In the wrong hands, hazardous materials could pose a significant security threat. Hazardous materials in transportation are frequently transported in substantial quantities and are potentially vulnerable to sabotage or misuse. Such materials are already mobile and are frequently transported in proximity to large population centers. Further, security of hazardous materials in the transportation environment poses unique challenges as compared to security at fixed facilities. Finally, hazardous materials in transportation often bear clear identifiers to ensure their safe and appropriate handling during transportation and to facilitate identification and effective emergency response in the event of an accident or release.

Hazardous materials safety and security are two sides of the same coin. Congress legislated its intent that "hazmat safety [was] to include hazmat security" when it enacted the Homeland Security Act of 2002. Section 1711 of that act amended the federal hazardous materials transportation law to authorize the Secretary of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce" and to provide that the Hazardous Materials Regulations "shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate." DOT shares responsibility for hazardous materials transportation security with the Department of Homeland Security. The two departments consult and coordinate concerning security-related hazardous materials transportation requirements to assure that they are consistent with the overall security policy goals and objectives established by DHS and that the regulated industry is not confronted with inconsistent security regulations promulgated by multiple agencies.

PHMSA's hazardous materials transportation safety and security program is focused on four principal areas. First, we have in place comprehensive regulations for the safe and secure transportation of hazardous materials. Second, we help shippers and carriers understand the regulations and how to comply with them. Third, we identify those persons who refuse or neglect to comply with safety and security requirements and stop their illegal activities. Finally, we assist the Nation's response community to plan for and respond to hazardous materials transportation emergencies. Throughout the remainder of my testimony, I will highlight actions we have taken in all of these areas to enhance hazardous materials transportation safety and security.

Regulations Development

The Hazardous Materials Regulations—or HMR—are designed to achieve three goals:

(1) To ensure that hazardous materials are packaged and handled safely during transportation;

(2) To provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and

(3) To minimize the consequences of an incident should one occur.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard and reducing the probability and quantity of a hazardous material release. We collect and analyze data on hazardous materials—incidents, regulatory actions, and enforcement activity—to determine the safety and security risks associated with the transportation of hazardous materials and the best ways to mitigate those risks. Under

the HMR, hazardous materials are categorized by analysis and experience into hazard classes and packing groups based upon the risks they present during transportation. The HMR specify appropriate packaging and handling requirements for hazardous materials, and require a shipper to communicate the material's hazards through use of shipping papers, package marking and labeling, and vehicle placarding. The HMR also require shippers to provide emergency response information applicable to the specific hazard or hazards of the material being transported. Finally, the HMR mandate training requirements for persons who prepare hazardous materials for shipment or who transport hazardous materials in commerce. The HMR also include operational requirements applicable to each mode of transportation.

In 2003, we published a final rule to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. At a minimum, the security plan must address personnel security, unauthorized access, and en route security. For personnel security, the plan must include measures to confirm information provided by job applicants for positions that involve access to and handling of the hazardous materials covered by the plan. For unauthorized access, the plan must include measures to address the risk that unauthorized persons may gain access to materials or transport conveyances being prepared for transportation. For en route security, the plan must include measures to address security risks during transportation, including shipments stored temporarily en route to their destinations. The final rule also included new security awareness training requirements for all hazardous materials employees and in-depth security training requirements for employees of persons required to develop and implement security plans.

We continue to seek ways to assure the security of hazardous materials shipments. For example, we are working with DHS to examine ways to enhance the security of rail shipments of materials that are classified as Toxic by Inhalation (TIH). Under the HMR, TIH materials are gases or liquids that are known or presumed on the basis of tests to be toxic to humans and to pose a hazard to health in the event of a release during transportation. TIH materials play a vital role in our society, including purifying water supplies, fertilizing crops, providing fundamental components in manufacturing, and fueling the Space Shuttle. TIH materials pose special risks during transportation because their uncontrolled release can endanger significant numbers of people. Because of the importance of ensuring their safe and secure transportation, TIH materials are among the most stringently regulated hazardous materials. DHS and DOT are examining the feasibility of specific security enhancements, including potential costs and benefits. Security measures being considered include improvements to security plans, modification of methods used to identify shipments, enhanced requirements for temporary storage, strengthened tank car integrity, and implementation of tracking and communication systems.

In addition to a new focus on security issues, PHMSA's hazardous materials regulatory program has recently finalized regulations in a number of important areas. For example, in December 2004, we amended the HMR to prohibit the transportation of primary lithium batteries and cells as cargo on board passenger aircraft. Primary lithium batteries and cells pose an unacceptable fire risk for passenger aircraft.

Further, we amended the incident reporting requirements in the HMR to improve the usefulness of data collected for risk analysis and management by government and industry. The new incident reporting regulations include a requirement for carriers to report undeclared shipments when they are discovered.

International Standards Harmonization

The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international transportation requirements to the greatest extent possible. Harmonization serves to facilitate international transportation while helping to assure the protection of people, property, and the environment. The HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of international standards applicable to air or vessel transportation of hazardous materials or the Canadian hazardous materials standards. In this way, carriers are able to train their hazmat employees in a single set of requirements for the classification, packaging, communication of hazards, handling, stowage, and the like, thereby minimizing the possibility of improperly transporting a shipment of hazardous materials because of differences in national regulations.

Basic requirements of the HMR and these international standards are based on the United Nations Recommendations on the Transport of Dangerous Goods. Indeed, most national and regional regulations, such as the European road and rail regulations, are based on the UN Recommendations, as are the regulations of some of our largest trading partners, including Mexico, Canada, and Japan. DOT represents the United States at meetings of international standards-setting organizations concerned with the safe transportation of hazardous materials with the goal of promoting a uniform, global approach to the safe transportation of hazardous materials. Our participation is essential to ensure that U.S. interests are considered in the development of the standards issued by these organizations.

We recently completed a rulemaking to harmonize the HMR with international standards applicable to the transportation of hazardous materials by air and vessel and to the transportation of radioactive materials. We are currently engaged in rulemaking to harmonize HMR cylinder requirements and requirements applicable to the transportation of infectious substances with international requirements.

Outreach and Training

Developing rigorous safety regulations that protect the public and workers engaged in hazardous materials commerce is critical to safe transportation. But regulations cannot be effective if shippers and carriers do not understand them. Therefore, we invest significant resources to help shippers and carriers know the regulatory requirements and how to comply with them. Our comprehensive hazardous materials website and Hazardous Materials Information System allow easy access to vital hazardous materials data and information by industry, the public, DOT employees, hazardous materials workers, and federal and state agencies. We also operate a toll-free hotline service every day from 9:00 a.m. until 5:00 p.m.; the hotline answers over 130 calls per day. We hold training workshops, and we develop and provide industry and the public with many publications and training modules.

Since 9/11, PHMSA's hazardous materials outreach and training program has devoted substantial time and effort to assisting shippers and carriers to comply with the new security plan requirements and to generally enhance hazardous materials transportation security. To assist hazardous materials shippers and transporters in evaluating security risks and implementing measures to reduce those risks, we developed a security template for the Risk Management Self-Evaluation Framework or RMSEF. RMSEF is a tool we developed through a public process to assist regulators, shippers, carriers, and emergency response personnel to examine their operations and consider how they assess and manage risk. The security template illustrates how risk management methodology can be applied to security issues. We also developed a Hazardous Materials Transportation Security Awareness Training Module directed at law enforcement, industry, and the hazmat community. The training module is computer-based, posted on our website and is available free of charge on CD–ROM. To date we have distributed over 68,000 copies of the training module. In addition, we have developed security information, including a sample security plan, to assist farmers to comply with security plan requirements. Finally, PHMSA's outreach staff has conducted numerous training sessions to assist the regulated community to understand and comply with hazardous materials transportation security requirements.

Enforcement

Although training and education are valuable tools for enhancing compliance, there will always be people who, through ignorance, negligence or as a result of knowing or intentional actions, do not comply with the hazardous materials transportation safety regulations. Compliance enforcement efforts are thus key to PHMSA's efforts to reduce incidents that result from unsafe operations by companies or individuals who ship or transport hazardous materials or who manufacture or test hazardous materials containers and packagings. PHMSA enforcement specialists at our headquarters and five regional offices conduct 1,900 inspections annually of hazardous materials shippers, freight forwarders, container manufacturers and packaging requalifiers. Since the implementation of new security requirements in the HMR, our inspectors have conducted nearly 700 inspections in which the company was required to have a security plan. To date, 57 percent of the companies are in full compliance. We are aggressively enforcing against those who are not. Our sister DOT operating administrations—the Federal Aviation Administration, Federal Motor Carrier Safety Administration, and Federal Railroad Administration—together with the United States Coast Guard, also conduct modal inspections of shippers and carriers. To further leverage our resources, we conduct joint inspections with other federal agencies and states.

Emergency Response

Despite best efforts, accidents will occur. We have a responsibility to reduce the consequences of transportation accidents involving hazardous materials. Thus, we play a major role in assisting the emergency response community to plan for and respond to hazardous materials transportation incidents. Every 4 years, PHSMA and our partners in Canada and Mexico publish an updated version of the Emergency Response Guidebook. We developed the Guidebook for use by "first responders"—those public safety personnel first dispatched to the scene of a hazardous materials transportation incident, such as fire fighters, police, and emergency services personnel. The Guidebook provides first responders with a guide for initial actions to be taken in those critical first minutes after an incident to protect the public and to mitigate potential consequences. The Guidebook has been widely hailed as the single most valuable reference for initial response to hazardous materials emergencies. We work with our Canadian and Mexican partners and with the emergency response community and hazardous materials industry to assure its continuing accuracy and utility. To date, we have published and distributed over 2.1 million copies of the 2004 edition of the Guidebook for first responders and others responsible for handling hazardous materials transportation emergencies in the U.S. The Guidebook is also globally recognized and in addition to the English, French and Spanish editions produced by the U.S., Canada, and Mexico, it has been translated into Chinese, Dutch, German, Hebrew, Hungarian, Japanese, Korean, Polish, Portuguese, Russian, Thai and Turkish.

We also operate a planning and training grants program to assist local responders at hazardous materials incidents. The possible consequences of a serious incident, even if unlikely, require that all communities develop response plans and train emergency services, fire and police personnel to assure an effective response. The importance of planning and training cannot be overemphasized. To a great extent, we are a nation of small towns and rural communities served by largely volunteer fire departments. In many instances, communities' response resources already are overextended in their efforts to meet routine emergency response needs.

Our Emergency Preparedness Grants program provides assistance to states, territories, and Indian tribes, and, through them, to local communities. Planning grants are made for developing, improving, and implementing emergency plans. Training grants provide for training public sector employees to respond to accidents and incidents involving hazardous materials. Planning and training grants are funded through registration fees paid by the hazardous materials industry. Since the program's inception, grantees have developed or updated an average of 3,759 plans per year with HMEP planning grant funds. Grant program funds have been used to train over 1.7 million first responders and to compile over 43,000 local hazardous materials response plans.

Hazardous Materials Program Reauthorization

You invited me here today specifically to discuss reauthorization of the hazardous materials transportation safety program. We hope that the Committee's proposal will include the proposals submitted in prior years by the Administration, as did S. 1072 in the 108th Congress. For example, we urge you to consider reallocating responsibilities for sanitary food transportation among the Departments of Health and Human Services, Agriculture, and Transportation to ensure that each aspect of the food transportation safety mission is made the responsibility of the most qualified agency. Similarly, to address the problem of undeclared hazardous materials shipments in the mail, we support measures to provide authority for the United States Postal Service to collect civil penalties and recover costs and damages for violations of its hazardous materials regulations.

In addition, we would support revisions to the terms under which exemptions from the HMR may be granted. The exemptions program permits shippers and carriers to take advantage of new technologies and improved business methods by applying for permission to deviate from existing regulatory requirements. Applicants for exemptions must demonstrate that the new technology or improved way of doing business maintains a safety level equivalent to current regulatory requirements. The exemptions program provides an opportunity for the testing and evaluation of technological improvements in a real-world transportation environment. Exemptions that result in demonstrated safety and efficiency benefits are frequently converted into regulations of general applicability. We suggest a provision to change the term "exemption" to "special permit;" we believe that this change appropriately conveys that hazardous materials transportation conducted under what are now termed exemptions is required to be conducted in accordance with the terms and conditions established by PHMSA. In addition, revising the effective period for which a renewal of a special permit may be issued from two years to four years will eliminate

a great deal of unnecessary industry and government processing time and will enable PHMSA staff to focus attention on significant special permit issues rather than routine renewals.

We hope you will also consider measures to enhance our ability to enforce the hazardous materials regulations and to take swift action to identify hidden shipments and remove unsafe shipments from transportation. Hidden hazardous materials pose a significant threat to transportation workers, emergency responders, and the general public. Moreover, it is likely that terrorists who seek to use hazardous materials to harm Americans will move those materials as hidden shipments. Expanding our inspection authority to permit an enforcement officer to open and examine packages suspected to contain a hazardous material will help us to address the pervasive problem of undeclared hazardous materials shipments in transportation. Authorization for enforcement officials to remove packages from transportation if the package poses an imminent safety hazard or to issue emergency orders to stop unsafe practices that present an immediate threat will materially enhance our ability to prevent unsafe movements of hazardous materials and possible accidents resulting from such unsafe movements. And increasing the maximum civil penalty from $27,500 to $100,000 for each violation will provide us with the flexibility to assess appropriately high civil penalties in cases involving significant non-compliance with the regulations and especially those resulting in death, serious injury, or significant property or environmental damage.

We do not support proposals to revise the registration fee program that funds the Emergency Preparedness Grants program. Specifically, we are concerned that a cap on the maximum annual registration fee, when coupled with the significant increase to the grant program being considered by both the Senate and the House, may require us to modify our current two-level fee structure and impose substantial registration fee increases on small entities. We are also concerned that reductions in the authorization levels for elements of the grant program may limit our ability to administer that program effectively.

Finally, we request that you consider our proposal to reduce the area of overlap between DOT's regulation of hazardous materials transportation and the Occupational Safety and Health Administration's (OSHA's) regulation of worker protection. The Hazardous Materials Transportation Uniform Safety Act of 1990 gave OSHA duplicative regulatory authority over hazardous materials training, handling criteria, registration, and motor carrier safety. In consultation with OHSA, we propose to correct the extent of shared DOT/OSHA jurisdiction by eliminating dual jurisdiction over handling criteria, registration, and motor carrier safety. DOT and OSHA would retain their respective jurisdiction over employee training, and OSHA would retain its jurisdiction over the occupational safety or health protection of employees responding to a release of hazardous materials.

Conclusion

We look forward to working with the Members of this committee and with Congress to enhance the safe and secure transportation of hazardous materials. At the same time, we will continue to evaluate and implement additional safety and security measures, and we will continue to work with the hazardous material transportation community and our federal, state, and local partners to maximize the contribution that hazardous materials make to our economy while minimizing their safety and security risks.

Thank you again, Mr. Chairman, for the opportunity to appear today and respond to your questions and concerns.

Senator LOTT. Thank you very much, Ms. Gerard.

I would like to ask some questions. And I'd like to ask my colleagues to—let's keep our questions to 5 minutes, and we'll do a second and third round, if need be.

First, Mr. Mead, thank you for the job you do as Inspector General of the Department of Transportation. I think you do, in that position, what Congress intended when we created it in the first place a few years ago.

Now, let me ask you the big question right up front. In your opinion, what could Congress do in this reauthorization that would have the most immediate impact on improving safety in our highway transportation systems?

Mr. MEAD. I'd have to say a primary seatbelt law. I think the best way to approach that is through incentives. And, as I said in my statement, I know it's very controversial, but I think the helmet laws—they're proven to be effective.

Senator LOTT. What, now?

Mr. MEAD. Motorcycle helmet laws.

Senator LOTT. The law?

Mr. MEAD. And I know they're controversial. I guess it—people see it as interfering with their personal freedoms, and all that. But when you have a 60 percent increase in fatalities since 1998, that speaks volumes.

So those are the two. And household goods, I didn't mention that, because that's not really a safety item. Commercial driver's license fraud, that's something that we just need to be a lot more forceful with. If we can't keep people that get licenses fraudulently off the road and stop them from driving these big rigs, we're going to be——

Senator LOTT. All right, let me ask you the next question, then. What is the status of fully opening the border with Mexico to Mexican trucks? And can we do this in a way that is efficient and also effective in protecting safety?

Mr. MEAD. Yes, we can. And I think Motor Carriers has their resources in place, the equipment in place at the border. In other words, they're standing ready. But there are two major issues that are stopping the opening of the border. One is that, under the law, we have to be able to inspect, onsite in Mexico, Mexican trucking companies. And there is no agreement with Mexico to do that yet. And No. 2 is, they have to agree on HAZMAT background investigations with Mexico. Those two things haven't been done. A third item is, I think we ought to have all the states where Mexican trucks can operate enforcing the rule that if a Mexican truck is there illegally, it gets put out of service.

Senator LOTT. This household-goods issue, I know there's been a tremendous increase in the complaints filed. And, frankly, I'm a little surprised that there are not existing laws, state or federal, that would better enforce the rights of the consumers that have been, you know, offended by all of this. I presume you've had a chance to look at the provisions that the House included in their bill. Do you think they are basically the type of provisions we need to include in our bill to deal with the fraud in this household-goods moving industry?

Mr. MEAD. Yes, sir. I would add that there is a provision in there on putting them out of business for a 6-month period. You might extend that period. Second, the period of imprisonment, normally for an extortion-type crime the per-count maximum is more than just 2 years. The other thing of key importance here is that the state attorney generals need to be empowered to enforce the Federal regulatory regime.

Senator LOTT. Dr. Runge, on the primary safety—seatbelt issue, you know, they're—my state, unfortunately, has the lowest usage in the Nation—63 percent, I think. And I think that there's no question that there's evidence that it does help to save lives and reduce the injuries, although, you know, Senator Stevens and I, and maybe some of the other Members of the Committee, come

from states that really don't like the idea of the Federal Government telling us we've got to wear seatbelts, we've got to wear helmets. It's—I don't know what—just, sort of, "We don't like the Federal Government doing that," sort of a—maybe a libertarian attitude, although I think that the attitude has been improving some. And I think part of what we need to do is a better job of education.

Now, the Senate in my state did pass a primary safety-belt law, 45 to 7, which was overwhelming, but, unfortunately, in the House, the bill was opposed by the Speaker, and the Transportation Committee Chairman did not see fit, at the time, to go forward, although an incentive of $9 million, in my poor state, is not insignificant. I've always been opposed to safety requirements that penalize states, "Do something we tell you, or we're going to take money away from you." But you flip that—and I think Mr. Mead referred to that—if you give them an incentive, "You do a better job, and, you know, then you'll get some reward in that area." So, that is what you're proposing here, isn't it, what the Administration is proposing, that you specify that if you do have these primary safety-belt laws, or if you meet certain standards on improved safety results or reduced fatalities, you get the incentives? Is that accurate?

Dr. RUNGE. Yes, sir, that's precisely our vision. And with this incentive, we really wanted to make it a significant incentive. We wanted to make it real money. I've been out and testifying at the invitation of several state legislatures, and I can tell you that the opportunity to gain extra funds to apply for any highway safety purpose really does represent a true incentive. Mississippi, 9 million. Missouri has one on the table right now; it's about 18 million. Tennessee passed their bill last year, 16 million. Illinois passed their bill the year before; that would be 31 million in incentives. So it does make a difference, sir.

Senator LOTT. All right. What percent of the safety funds would have the flexibility that you referred to? For instance, I think the best safety program of all is one that builds safer bridges and wider highways and flatter roads. That's what led to my own father's death on the highway—narrow, hilly, two-lane road, and he topped the hill and got hit head-on. So that's the ultimate safety, you know, incentive. What is that percentage that you're—did you have one in mind?

Dr. RUNGE. Well, we proposed $600 million over the life of the bill, which is about two-tenths of 1 percent, for the primary belt incentives, and there are other incentive programs——

Senator LOTT. You mentioned a specific percentage—or you suggested a percentage—that could be used for other than pure, traditional safety measures, like——

Dr. RUNGE. That's correct.

Senator LOTT.—bridges.

Dr. RUNGE. Yes, all of those funds would be flexible. Now, I—there's a small caveat to that, and that is that we ask every state to do a comprehensive analysis of its safety problems using their own data. So what's a safety problem in Alaska is very different from what it is in Mississippi or South Carolina, so we want every state to apply their own traffic safety data to find out where their problems are. If it's a hotspot, if it's a dead-man's curve, if it's a bad hill and a narrow road, that's hazard mitigation that those

funds could be used for. If a state has a problem—particular problem with impaired driving, then those funds can be used for that. It really depends on what the Governor and the Department of Transportation and the Governor's Highway Safety Office decide are their problems, and those funds then would be flexed to meet those problems.

Senator LOTT. Well, let me just ask you one other area. You did not address another area that is a serious contributor to traffic fatalities, injuries, and deaths—and that's drunk driving. What are we going to do about that?

Dr. RUNGE. Well, that was—since I had 5 minutes——

Senator LOTT. Yeah.

Dr. RUNGE.—Senator——

Senator LOTT. Well, I've already used up my 5 minutes, too, and I——

[Laughter.]

Senator LOTT. My colleagues are allowing me to go a little bit over time. And we'll be flexible now that——

Dr. RUNGE. Thank you.

Senator LOTT.—we've got your testimony on record.

Dr. RUNGE. We have actually effected the first decrease in impaired-driving fatalities in 5 years, and the largest decrease in the impaired-driving fatality rate in a decade. Now, that's not a victory, because we're still losing over 17,000 people a year to alcohol impairment; 15,000 of those have blood-alcohols over .08, and 50 percent of those drivers involved in those crashes have blood alcohols greater than .16. So, we realize that we're not dealing with social indiscretions here; we're dealing with people who have substantive medical alcohol problems.

And we have taken a four-point strategy to deal with that. We're working with—in the states—one is continued high visibility enforcement, so—to keep people who are socially responsible being responsible. And that has led to a pretty rapid decrease in the numbers of drivers with low blood-alcohol levels involved in fatal crashes. That's the good news.

The second one was that we're working with the court systems. We're trying to get DWI courts into the jurisdictions across the country that have the biggest problems with impaired-driving crashes. And we have resource prosecutors now. We're working to have resource prosecutors in every state who will help prosecutors with this very complex law.

The third point is working with the medical community to actually do screening and referral for alcohol problems on every patient that they see, asking a simple question, "How many drinks do you drink when you sit down to have some drinks?" And, surprisingly, the folks at NIAAA tell us that's a pretty reliable indicator of people with alcohol problems. If you drink four or more drinks at a sitting, then you probably ought to get an evaluation.

Now—and, actually, the fourth point here, the thing that has made probably the biggest decrease in an impaired-driving, overall—impaired-driving deaths, overall—is increased safety-belt use. And we enjoyed an 80 percent belt-use rate last year, and I have to admit that a lot of our—there's some spillover effect into impaired driving when potential victims are buckled up.

So, that's our strategy.

Senator LOTT. Thank you.

Senator Inouye, thank you for your patience, and feel free to take whatever time you need, sir.

Senator INOUYE. I thank you very much, Mr. Chairman. I can only stay for a moment, but I'd like to ask some general questions, and they can respond.

I'd like to ask the panel, What is the appropriate level of funding for the Motor Carrier Safety Assistance Program and for border-safety enforcement? So whoever can answer that can submit that in writing.

Ms. Sandberg?

Ms. SANDBERG. Yes. Senator, the current levels that we have for the Motor Carrier Safety Assistance Program is authorized—or outlined in the Administration's SAFETEA proposal—are adequate for that program. That includes a number of functions beyond the basic MCSAP levels. As you know, the basic MCSAP formula is a formula that denotes how much goes to each state for the Motor Carrier Safety Assistance Program. Those amounts for 2006, for example, would be about 134 million. However, if you look at the total rolling up, the commercial driver's license programs, the high-priority funding that we request, and some of those others, it approaches to 180 million for those programs.

Senator INOUYE. Thank you. I listened very carefully to the response to our Chairman on the primary safety-belt law bonus. Hawaii has had one for 19 years now, and, under this provision, we get nothing, because we have been behaving ourselves. But——

[Laughter.]

Senator INOUYE.—if you have not, you receive a bonus. Is that fair?

Dr. RUNGE. Actually, Senator Inouye, thanks for raising that issue. Hawaii would, under our proposal, receive $1.9 million for being the servant first to the field. The difference in our proposal is that—in that we only have a given amount of money in this pot, we wanted to make sure that the servants who we really need to come late to the field are adequately incentivized to do so. So we set a number of five times their Formula 402 Fund to actually be a real incentive. But recognizing that we wanted, also, to reward states that did, in fact, make those gains, we set a number of 2.5 times.

Now, obviously, we would love to work with the Committee to address those inequities, and I think it really is an inequity, the parable notwithstanding. But there is only a certain amount of money, and we want to make sure that states who have not yet come are adequately incentivized.

And, by the way, congratulations to Hawaii. You've been leading the Nation in belt use now for several years, with about 95 percent.

Senator INOUYE. Thank you very much.

I listened to testimony that Mexico has refused to let us examine trucks on their property. Do we permit those trucks to come in?

Mr. MEAD. No. But you actually asked two questions. The answer to the first one is, there has been no agreement with Mexico relative to letting U.S. officials inspect onsite in Mexico. The answer to the second question is, no, because that allowing us to do

that is a precondition to the opening of the border to the interior United States, not to the border zone, right around the border. Trucks can go there now.

Senator INOUYE. Now, they get into the border zone, and you've indicated that hundreds go beyond that.

Mr. MEAD. Yes, they can go beyond that. I used to think, Senator, that there was some kind of fence around these commercial zones, but there isn't. They can just keep on going. And they do. And the point I was making in my statement was that we ought to have a law in every state that you can't do that, and if you're caught doing it, your truck's going to be put out of service immediately.

Senator INOUYE. How successful have you been?

Mr. MEAD. Actually, there's been quite a bit of progress in the last few years, but there are still five states that have not adopted that rule, and 10 of 14 that we reviewed, who adopted the rule, were not prepared to place vehicles out of service. There's some confusion out there, and I think that needs to be cleared up.

Senator INOUYE. Have the border states adopted rules of that nature?

Mr. MEAD. Yes, I believe so.

Senator INOUYE. Sir, you indicated that there were 2,000 moving companies involved in fraudulent activities?

Mr. MEAD. No, I said that we've—my office has individually, on its own, prosecuted 25 of them involving 8,000 victims. Almost every day——

Senator INOUYE. Are these fly-by-nights or nationally-known companies?

Mr. MEAD. Fly by-nights. What happens sometimes, the consumer will call up one of the more well-established firms, get a quote, "It's going to cost you $6,000, sir, to make this move." They go out and get another estimate. One of the estimates comes from a fly-by-night firm. They say, "We'll do your—we'll make the move for $1700." They say, "That sounds good to me." They sign on the dotted line. The moving company comes and gets their goods, and then, when you get to your destination, they say, "You want your goods, that move just cost you $12,000."

Ms. SANDBERG. Senator, if I may, also one of the provisions that we've requested in the reauthorization proposal is to strengthen enforcement on household-goods brokers, because people will hold themselves out as a broker, and then they're not going to be the one that actually shows up to do the move, and so there's this kind of bait-and-switch that occurs. So it gives us the ability to go after those individuals that actually fraudulently hold out some kind of a price to the individual, and then they're not the ones that actually move them.

Senator INOUYE. Do these movers have special licenses to do so?

Ms. SANDBERG. If they're moving in interstate commerce, they are required to register with our agency and follow all of our rules and regulations.

Senator INOUYE. Then these fly-by-nights have no license.

Ms. SANDBERG. Some of them do register with us, and that's why we are going after them. If they haven't registered with us, we also go after them if they're moving in interstate commerce.

Senator INOUYE. What is the appropriate hours of operation for a truck driver, or service for a truck—12 hours, 18 hours, 6 hours?

Ms. SANDBERG. Our current rule, sir, is that truck drivers would have a 14-hour workday, which is an on-duty period. Of that 14 hours, they're allowed to drive up to 11 hours. And then the requirement is, is that, after their 14 hours hits, they're required to take 10 hours off duty.

The objective of the rule was to get the truck drivers onto a regular 24-hour cycle so that there's more a Circadian rhythm. Under the old rule, truck drivers could expand their workday infinitely, based on taking off-duty breaks throughout the day, as they called it off duty. But, oftentimes, they were sitting at loading docks. So our new rule now requires that those 14 hours be 14 consecutive hours, and they're allowed to drive 11 within that.

Senator INOUYE. Does medical research support that one can drive for 11 hours safely?

Ms. SANDBERG. The research that we had when we wrote the rule would indicate that drivers can safely drive within that period of time.

Senator INOUYE. Something must be wrong with me.

[Laughter.]

Senator INOUYE. We hear much about teenagers. And there are certain areas that suggest that you shouldn't have more than one teenager in a car. And that a teenager should have an adult in the car. What about that? Should we have that in the law?

Dr. RUNGE. Senator, the most important thing—there are actually two very, very important things we can do to help curb teen driving deaths in this country. About over 8,000 people were killed last year involving a teen driver. There is a very effective method, as you suggest, called "graduated licensing laws." And the two things that we know from very good data are that fatalities go up as you add teenagers to the vehicle of an inexperienced driver. There's about a 25 percent higher fatality rate for teens that have one teen passenger. And if you add three or more, it goes up 400 percent.

Also, nighttime driving restrictions are very effective. If you look at the graduated licensing laws in North Carolina and Michigan, for instance, they had a 25 percent decrease in crashes among teens after their graduated licensing law was put into effect. I believe Kentucky saw a 33 percent decrease. So if you have nighttime driving restrictions, and teen passenger restrictions, as well as a sufficient period of supervised driving that is with a parent, not just a driver's ed teacher, then we believe that's a very effective way to go.

Senator INOUYE. So you've indicated that we know what the problem is.

Dr. RUNGE. We know what some of the problem is. And, actually——

Senator INOUYE. Do you have any solutions, legislative solutions, that we can get involved in?

Dr. RUNGE. That's a very good question. We were very much trying to focus our grant programs and our incentive programs in this bill toward the biggest pieces of the pie chart. This is an area that states really don't disagree with much. I mean, if you read the

clips, you do see certain state legislators who complain that they want their 16-year-old to be able to transport all their other children to school, which is the worst possible practice. People will advocate for bad practices, but the states, themselves, I think know that graduated licensing is effective. And I just—I question whether or not we need another incentive from Congress for that purpose. Certainly, if you state a preference for that in SAFETEA, that would be welcomed by us.

Senator INOUYE. I thank you very much.

Thank you, Mr. Chairman.

Senator LOTT. Thank you, Senator Inouye. And I look forward to continuing to work with you to get this language drafted in a way that we can all be supportive and that can give these people the authority they need to do their job.

Senator Pryor?

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

Senator PRYOR. Thank you, Mr. Chairman. And I want to thank you for your leadership on this, and the questions that you've asked. I'd like to follow up on moving fraud.

Back when I was the attorney general of my state, we would get complaints on this fairly regularly. Sometimes we could do something to help, and sometimes we couldn't. In fact, when this issue came up in preparation for this hearing, we were talking to our staff, and this has happened to three members on our staff, just moving to and from DC, in fact, in one case a couple got held hostage for bubble-wrap. The company didn't disclose this, but they charged them $1500 for bubble-wrap. And so, this is a problem that we see, and it recurs.

And I think that one issue, and I think you all touched on this a moment ago, is that this area really is like a regulatory orphan. There's really not anyone who's really on top of this issue. And you all mentioned, a few moments ago, about how we could maybe help with these rogue movers. And I believe it was you, Ms. Sandberg, who talked about making sure the states have an active role in this. I'd like to hear from you on how that should be shaped. How should we structure that, for example, the state attorneys general would have the ability to enforce federal law?

Ms. SANDBERG. We have been working with the National Association of Attorneys General to figure out how best to do that. Some of what we've been doing—most attorney generals' offices in this country have a consumer-protection division.

Senator PRYOR. Right.

Ms. SANDBERG. And so, we're focusing on those consumer-protection divisions as a way to enforce.

But we feel that the most important rule—because this is a bit of an orphan. We're a safety agency. This is something we inherited when the ICC Termination Act occurred, and it's the one financial regulation we still have, but we take it seriously. We think that consumer education is probably one of the most important things we can do. And we're working with state attorneys general's officers across the country to educate consumers in how they can be better informed before they engage a mover.

So, for example, one of the most frequent fraudulent things that we're seeing occurring right now is, people go onto the Internet—seems to be a big tool that everybody wants to use—and there are places where you can go in and get a rate quote from a mover. That's the absolute worst thing somebody could do, because the only way a mover can really tell you what it's going to cost to move your goods is to come out to your house, look at the size of your house, look at how many household goods you actually have, and give you a quote in person.

And so, there are a number of things like that that we're doing to educate consumers. We actually just had an increase in funding last year to do more consumer outreach. We're putting some new websites up specifically for household-goods consumers.

And then the second piece is a piece that we request that you put in your reauthorization proposal, which gives state attorneys general the opportunity to enforce our federal regulations.

Senator LOTT. Could I inquire?

Senator PRYOR. Sure.

Senator LOTT. Is that in the Administration proposal, that last part?

Ms. SANDBERG. The authority to enforce?

Senator LOTT. Yes.

Ms. SANDBERG. Yes, it is.

Senator LOTT. For the attorneys general.

Ms. SANDBERG. Yes.

Senator LOTT. OK, good.

Mr. MEAD. Yes, I think—I'd like to add to that—I think that—you asked about structuring it—I think that actually it is an orphan left over from the Interstate Commerce Commission. Back then, consumers had a place to go, and their complaints could get individually handled.

But one way of structuring it would be similar to the way the Motor Carrier Program currently runs commercial driver's licenses. States enforce those, and they pull the licenses. Although I think the concern of the moving companies would be that every state shouldn't be authorized to come up with an individual rule regime of its own. You'd want some standardization, I would think.

Senator PRYOR. Senator Lott, my guess is this is like most other industries we'd see in the consumer protection division in my office back in Arkansas. That would be that 95 to 99 percent of the operators out there are totally legit, they're playing by the rules, and they're doing exactly what they're supposed to do. But it's the 1 percent, 2 percent, 3 percent that do not play by the rules. I mean, we don't know the exact number. But they're out there, and some of these people are just absolutely ripping folks off. And so, yeah, I want to work with the Committee, and I want to work with you on this, and make sure that we get the right structure in this bill. It sounds like we may have it already.

As I understand it, the Federal Motor Carrier Safety Administration only has about 10 inspectors. Is that right? And that's an increase, as I understand it, but, still, you only have about 10.

Ms. SANDBERG. Yes.

Senator PRYOR. And my guess is that's not nearly enough. Am I right on that?

Ms. SANDBERG. What we've done is, we had one, as the Inspector General said. We've asked for increase in funding that went up to 10 full-time. And we actually trained 37 additional safety investigators. So it's kind of ancillary duties, but they assist us with our strike-force activities.

Right now, we're focusing a majority of our activities in four states where we receive the most complaints and had the most problems. Those states are California, New York, New Jersey, and Florida. But we do, as complaints come in—we have a new triage protocol inside FMCSA, and this has just been put in place since I've been there. We take complaints into a master database. If it's one instance of a hostage-goods, where the instance, like the Inspector General commented, we actually will then work with the Inspector General's Office, state law enforcement—because, oftentimes, state law enforcement wants to get involved—and the attorney general's office from that state to go after that company. Then we also look for patterns of violations from other companies. And those are the cases that I was talking about in my testimony, the 100 cases that we've already done this year, and we anticipate we will have over 300 cases that we will have gone after, this year alone, which is a significant increase, because last year we did maybe 30.

Senator PRYOR. Good.

Mr. MEAD. Yes, I'll tell you, you know, it's a good thing they gave them—you gave them 10 people and they fixed their phone line up. Until a year ago, you'd call—a consumer would call up to complain that they were ripped off, and it would say—the recording would say, "Sorry, the mailbox is full."

Senator PRYOR. Yes.

Let me ask you, Mr. Inspector General, if I can, how many complaints do they get every year? About 3,000? Am I correct on that?

Mr. MEAD. I've got a list here——

Senator PRYOR. You know, 300 is a lot of prosecutions you talk about, but about——

Mr. MEAD. Well, we get one about—we have an inspector general hotline.

Senator PRYOR. Right.

Mr. MEAD. We get one, I'm advised, about once every day.

Senator PRYOR. OK.

Mr. MEAD. In 2001, Motor Carriers—the Motor Carriers—Ms. Sandberg was—her office received about 2,000. In 2002, about the same number. In 2003, it went up to about 3,000. In 2004, it went up to 3,600.

Senator PRYOR. Do you think the incidents are increasing, or just the complaints you're receiving are increasing?

Mr. MEAD. I think it's becoming an increasing problem. And——

Senator PRYOR. That's my guess, too.

Mr. MEAD.—my office has about 450 people in it. My office—we can pursue criminal sanctions, although it's a very contorted process, because we're using other statutory schemes, other than one directly tailored to this. And I don't think that the civil enforcement regime that Administrator Sandberg was referring to has—is robust enough, powerful enough, at the present time.

Senator PRYOR. Thank you, Mr. Chairman. I look forward to working with you on this, because I think this is an important problem.

Senator LOTT. Thank you, Senator Pryor.

Senator Lautenberg?

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

Senator LAUTENBERG. Yes, Mr. Chairman, I'm going to take some of my time to just introduce part of the statement that I was prepared to give. And I would ask unanimous consent that the full statement be included in the record and that the record be kept open in order to pose questions in writing——

Senator LOTT. Without objection——

Senator LAUTENBERG.—and ask for a prompt response.

Senator LOTT.—it will be included in its entirety, and the record will be kept open for any questions you may want to submit, beyond what you ask.

[The prepared statement of Senator Lautenberg follows:]

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

Mr. Chairman,

It's been more than a year and a half since TEA–21 expired, and we still don't have a long-term blueprint for transportation. Every day that has gone by, millions of Americans have sat stuck in traffic . . . and thousands have been involved in accidents. Since TEA–21 expired. much-needed new roads have not been built, and important safety measures have not been implemented.

My interest in making our roads and highways safer goes back several decades. During my first three terms in the Senate, I wrote the bills to increase the drinking age from 18 to 21 . . . establish .08 as the blood alcohol standard for drunk driving . . . and ban triple-trailer trucks from the Interstate Highway System.

I'm proud that all three of these measures became law.

They have made our roads and highways safer for my grandchildren and everyone else who travels on our roads and highways. And according to safety experts, these laws have saved thousands of lives.

In 2003, 42,643 people died in traffic crashes. While great progress has been made to reduce the epidemic levels of death on our roads since the 1970s and 1980s, the raw numbers of victims continues to increase each year.

As our country grows and more drivers use our roads, fatalities will continue to increase—unless we adopt effective strategies to address highway safety risks. We must continue our efforts to prevent drunk driving. Each year, some 17 thousand people die in alcohol-related crashes—one death every 31 minutes. Most of these deaths involve a higher-risk drunk driver—that is, one who is a repeat offender or above the .15 blood alcohol threshold, which is almost twice the legal limit.

Senator DeWine and I will soon re-introduce our bill to crack down on higher-risk drunk drivers. Now that all states have a .08 blood alcohol law in place, and social drinkers have done their part, we must adequately address the problems posed by higher-risk drivers. They are responsible for most of the deaths; they should be held accountable, and dealt with effectively.

We also must deal with the increase of truck traffic on our roads. While large trucks have a fairly good safety record with respect to the numbers of miles they travel, 1 in 8 fatalities on our roads involved a large truck.

Now the Administration expects truck traffic to double in the next 15 years. New Jersey will see a good share of that growth, as traffic to the port of New York and New Jersey continues to increase. While we welcome the economic growth this traffic represents, it also raises the potential for deadly highway crashes. This underscores the need for effective truck safety strategies.

One strategy is to stem the growth of truck size and weight. In 1991, Congress banned triple-trailer trucks. And in 2003, this Committee voted to extend that ban to the National Highway System roads—keeping more of our roads safer and freezing in place current state truck length limits. I hope Members of the Committee will see the wisdom of again voting for safety.

I look forward to working with colleagues to get these important highway safety provisions incorporated into the reauthorization bill.

And I look forward to hearing from the witnesses today on these important issues and others—including important consumer protections in the movement of household goods, and hazardous materials regulation.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you.

We're looking at the need to prepare for substantially more traffic on our roads. And, Mr. Chairman, I commend you for trying to move this process along. We need that highway bill, desperately, and the transportation resources that it produces.

I want to talk about safety, my interest in making our roads and highways safer goes back several decades. And during my first three terms, before I was a freshman, I wrote bills to increase the drinking age from 18 to 21. Purportedly, we save almost a thousand lives a year doing that.

As an example of what I experienced, I was at a rodeo in a western state, and a lot of young people there were drinking beer and walking around with it. And I walked up to a police officer, and I said, "Well, sir, do you know what the minimum drinking age is?" And he, "Yes, sir. It's 21." I said, "These kids don't look like they're 21." He said, "I do traffic, Mister, that's my job."

[Laughter.]

Senator LAUTENBERG. Anyway, it tells you something about what could happen by way of lifesaving if we could get more teeth into the enforcement of that law.

We established .08 as a blood-alcohol standard for drunk driving, and it was a tough job. But, Dr. Runge, you made mention of the fact that the standards for the chronic problem drinkers have to be dealt with. And we have legislation that we're going to be introducing very shortly to try and get that into place.

And part of what I have also done is to ban triple-trailer trucks from the interstate highway system.

And I'm proud that all three of these measures became law. One law that I wrote, in that period of time, was to put helmets on motorcycle riders. And, Mr. Mead, you and I have had many moments when we've sat across tables some distance from one another, like this, and I looked at your testimony and saw confirmation of the fact that when those helmets are on there's a substantial ability to save lives. And based on what you've said here, it's about 30 percent; in 2003, 3,661 motorcyclists died, and approximately 67,000 injured in a highway crash. NHTSA estimates that the helmets saved the lives of 1,158; approximately 30 percent of those that would have died, didn't, thank goodness, because they were wearing helmets. And, Mr. Chairman, I have great respect for you, and how independent people like to be of Big Brother Government. When I think of the simple thing of raising the drinking age from 18 to 21, two of my kids, who were in college at the time, they said, "Dad, you're a real spoiler." And friends of mine who used to smoke, when we wrote the No Smoking in Airplanes legislation, said, "What am I supposed to do? Why are my rights being infringed upon?" Well, red lights infringe upon people's rights. And you have to have laws to conduct an orderly society.

And so, I think that it's critical that we address these problems, as you are today, Mr. Chairman. In 2003, 42,000 people died in traffic crashes. Now, that's a static number over the years, even though, the population has grown; thusly, the percentage is smaller. But 42,000 people in one year, that's a lot of people to lose. We lost 58,000 in Vietnam over a 10-year period. The county was heartbroken. And while great progress has been made to reduce the epidemic levels of death on our roads, the raw numbers continue to increase.

And so, Mr. Chairman, we've got to continue doing what you're doing here today. And I commend this excellent panel, we have here to provide us with the information and let us figure out what the political fallout's going to be, but help us to do the job in improving road safety throughout our country. It's not a real tough job.

So, I thank you, Mr. Chairman.

Senator LOTT. Thank you, Senator Lautenberg.

Ms. Sandberg, let me come back to you and talk a little bit more about this—the Department's hours-of-service rule. That ruling was stricken down by a court. What was the basis for their ruling? What did they say the reason was why they struck it down?

Ms. SANDBERG. The reason that the court struck down the rule was, they said that we did not adequately address the driver-health issue. They basically——

Senator LOTT. Driver health?

Ms. SANDBERG. That's correct. There's a underlying statute that says that Motor Carrier, when we look at our regulations, need to consider driver health. The agencies always looked at driver health in a very—kind of more macro level. The court said we needed to look at it more micro. For example, in the past, we looked at our rules impacting driver health as if it created death or serious injury. The court said we needed to look at more specific things, such as, Did it increase hypertension? Did it increase back injuries?

Senator LOTT. So the court actually said you should—you didn't go far enough.

Ms. SANDBERG. That's correct.

Senator LOTT. Yes. Now, though, you are asking the Congress to ratify the rule that you had developed. Is that correct?

Ms. SANDBERG. That is correct.

Senator LOTT. OK.

What is the status of the large-truck causation study? And what are the study's primary—preliminary findings?

Ms. SANDBERG. The large-truck crash causation study, we completed collecting all the crashes last year, and that's actually a partnership project with us and the National Highway Traffic Safety Administration. We're getting ready to release the first large group of data sets from that study, in May of this year. Once those individual data sets are released, then we will work with various panels to look at specific segments.

I can tell you, overarchingly, in seeing some of the data, that it appears that the driver is a primary issue that we need to focus on in the future.

Senator LOTT. I don't want to overdo the household-goods enforcement area. I think that Senator Pryor made a good point. The

bigger, more traditional carriers, most of the carriers, do a very credible and reputable job. However, when you have examples like with—that you refer to and what he referred to, the extra cost for the bubble-wrapping or, you know, jacking up the—that's outrageous. And it's—you know, you can't tolerate that. But it sounds like there's a little—there's a gap here, and I'm not sure we yet have figured out exactly how we're going to be able to fix that problem.

You have a limited number of people that are working on it. You try to work in your office, Mr. Mead, to resolve these complaints. But where is the enforcement, and what is the enforcement? Are we saying that, "Well, the attorneys general are going to handle this?" Well, I do think that the companies that—reputable companies have a response to that, a complaint about that, "Good gravy, we're going to have to comply with 50 different sets of regulations?" We need some sort of a universal—you know, it just sounds like there's no clear place where you go to get a remedy. And yet some of this stuff, where they say, "OK, we're going to charge you $1,700," then they say, "Oh, no, it's going to be 10,000," you know, somebody ought to be able to call them up and say, "No, you're not going to do that, period. Now what's the next question?" Well, but what's the answer, for now.

Ms. SANDBERG. If I may address a couple of issues. First, the Administration's proposal, I think, strikes a bit of a balance. We have been working with the American Moving and Storage Association in trying to craft something. They represent the good movers, the people that are doing business right. And we want to make sure that whatever proposal we craft doesn't penalize good movers, as you state, Senator. But we still need to make sure that we have the ability to reach the bad ones.

The Administration's proposal asks that state attorneys general only be able to enforce the federal regulations. And that prevents states from having 50 different sets of regulations that they're out there enforcing, which is the point that General Mead made.

Senator LOTT. Well, we are working on this language right now, and we are going to have some by next week. So, any input that you're going to make, you need to do it right away.

Ms. SANDBERG. We're more than——

Senator LOTT. Any further input.

Ms. SANDBERG.—happy to work with your staff.

Senator LOTT. Mr. Mead, did you want to add anything?

Mr. MEAD. Yes, I think, for the time being, for the foreseeable future, until we're able to send a very clear, unambiguous message to these people that they're going to get in trouble if they engage in this type of behavior, that Motor Carriers needs to have some dedicated people, my office needs to have some dedicated people, and I think you need to empower the state attorneys general to take action. But the big caveat there is, the states have to be circumscribed so they can't come up with their individual rules. Otherwise, you're going to cut into, as Ms. Sandberg, pointed out, the good—you'll be catching the good companies along with the bad.

Senator LOTT. Thank you very much.

In my part of Mississippi, down on the Gulf Coast, we have a lot of "Jerards" and "Gerards." Which are you?

[Laughter.]

Ms. GERARD. I'm "Jerard."

Senator LOTT. "Jerard," OK, good. You've been Americanized completely in your pronunciation, then.

Ms. GERARD. Unfortunately.

[Laughter.]

Senator LOTT. Under the Norm Mineta Act that you referred to in your testimony that created, I guess—or divided PHMSA into these—or the Act—set up two different things, the Pipeline and Hazardous Materials Safety Administration and the Research and Innovative Technology Administration. You know, obviously, this is an area we haven't asked a lot of questions about today, but we've been having some problems in this. I've worked on pipeline safety in the past. Of course, we have hazardous-materials problems now. In fact, an incident just yesterday, I believe, in California, perhaps, a train derailment. And we're going to have to pay attention to this. And you're—you know, your agency is going to be on the point of this. So what are you doing to get a better focus on a mission? And it sounded to me like an awful lot of people have an oar in your water. We've got a lot of different people to have responsibility, and maybe we need to get a little bit better focus about who's actually in charge of this area.

Ms. GERARD. Well, I think the Department is considering what the intent of Congress was in establishing the new agency, and we're working actively within the Department to bring a tighter focus on the division of labor and what the agenda for the program should be. So I think you'll see some progress forthcoming in the very near future.

Senator LOTT. The Pipeline and Hazardous Materials Administration administers planning and training grants. Some would argue that the current level of funding for planning grants is redundant, as the communities have long since developed plans, and what we need, in effect, is more emphasis on training to deal with these problems. How do you respond to that?

Ms. GERARD. I believe that we're satisfied with the level of funding that has been proposed.

Senator LOTT. Do you propose to give—at least have more flexibility on how much is used for planning and how much is actually used for training?

Ms. GERARD. I think that we're prepared to entertain concepts in that direction.

Senator LOTT. Yes. Well, I've seen, over the years, when you're dealing with the Federal Government and engineers and planners, that they plan and plan and plan and plan, and lots of money is wasted on it, and we never get around to training or doing things. So I hope that we will look at some language that, maybe, will give a little more flexibility in that area.

Ms. GERARD. All right, we'd be happy to work with you on that, sir.

Senator LOTT. Well, thank you very much for your testimony. We'll look forward to working with you as we develop the language that we will bring before the full Committee in a week or so, and then put it in the SAFETEA bill, which may become the TEA–LOU bill. But, whatever it is, I hope we get it done soon.

Thank you very much for your testimony. The hearing is adjourned.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Mr. Chairman, thank you for holding this hearing today to discuss important issues of safety on our nation's roadways. I look forward to hearing about the progress our federal agencies are making in enhancing the safety and security in transportation. Chairman Lott, congratulations on your new assignment. I look forward to working with you on several issues under this Subcommittee's jurisdiction.

Mr. Chairman. as you know, travel over long highways is a way of life in Montana. As I like to say, we have a lot of dirt between light bulbs in Montana. Protecting and strengthening infrastructure is critical to economic success, and I look forward to Congress delivering the President a highway reauthorization bill this year. Today's hearing is one important step in that process.

There are a few priorities that I would like to highlight this morning. First, there are two grant programs under the National Highway Traffic Safety Administration that I am a strong supporter of: the Alcohol Impaired Driving Countermeasures Programs, and Occupant Protection Incentive Grants. Funding from both of these programs, however, should be made available to all states. Many states, including Montana, may have difficulty qualifying for these grants. But reducing drunk driving and encouraging seatbelt use is a national priority, so I believe that all states should be able to participate in these programs.

I look forward to reviewing the new title and working with the Chairman and Ranking Member to make sure it provides alternate ways for states to qualify for a small amount of these funds. States should be incentivized to meet performance criteria and show improvement over time, not excluded from the program. Ensuring that states like Montana can have access to minimal funds will contribute to the priorities of reducing drunk driving and increasing seatbelt use.

Second, I believe it should be the policy of the Department of Transportation to promote the deployment and use of integrated, interoperable emergency communications equipment and systems to enhance hazardous materials transportation and safety. For years. public safety officials have been calling for interoperable communications. With thousands of hazardous materials shipments occurring each day in our nation's transportation system, interoperable emergency communications is critically important. I will work with Members of this Committee and my colleagues on the other side of the aisle to include interoperable emergency communications systems as an eligible item under the HazMat safety and security grant program this Committee will fashion for highway reauthorization legislation.

Finally, I remain committed to some common sense, reasonable exemptions from the hours of service regulations for agriculture and utility workers. In 1995, Public Law 104–59 granted farmers and retail farm suppliers a limited exemption from DOT limitations on maximum driving time in transporting agricultural commodities or farm supplies within a 100-mile radius of a final distribution point. This legislation recognized the special needs of rural America, understanding that drivers employed by farm retailers generally operate locally, delivering and applying crop inputs. Much of their time is spent waiting at the field or the farm store loading and unloading their trucks. In short, farm retail drivers stay in a local area and return to their homes each night to sleep. The work of these crop input suppliers is essential to the nation's farmers, who often have short windows of time to plant and harvest their crop around changing weather patterns. The agricultural exemption is seasonal, applying only during designated months throughout the year as determined by each state. Every state has now taken this action, and to my knowledge this exemption has not had any impact on public safety.

The utility service workers hours of service exemption ensures all utility service vehicle activities qualify for the exemption, and prevents DOT from diminishing the exemption in the future. Investor-owned utilities and cooperatives also qualify for the exemption. Including this language is critical to keeping the nation's utility infrastructure safe, secure and reliable, especially in times of disaster. Both of these hours of service exemptions were accepted during Committee consideration last

year, and I look forward to working with the Chairman to see them included again this year.

Again, Mr. Chairman. thank you for holding this hearing today, and for your work on this issue. I look forward to hearing from today's witnesses.

PREPARED STATEMENT OF CYNTHIA HILTON, EXECUTIVE VICE PRESIDENT, INSTITUTE OF MAKERS OF EXPLOSIVES

Interest of the IME

The IME is the safety and security association of the commercial explosives industry. Our mission is to promote safety, security and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. Commercial explosives are transported and used in every state. Additionally, our products are distributed worldwide, while some explosives, like TNT, must be imported because they are not manufactured in the United States. The ability to transport and distribute these products safely and securely is critical to this industry.

Background

The transportation of hazardous materials involves producers and distributors of chemical and petroleum products and waste, transporters in all modes, and manufacturers of containers. The Department of Transportation (DOT) estimates that upward of 800,000 shipments and as many as 1.2 million regulated movements of hazardous materials occur each day in the United States. This represents over 10 percent of all freight tonnage transported. The production and distribution of hazardous materials is a trillion-dollar industry that employs millions of Americans. In the explosives industry alone, the value of our shipments is estimated in excess of $1 billion annually.[1] As a major export, the transportation of hazardous materials contributes positively to our trade balance. These products are pervasive in the transportation stream and in our society as a whole.

While these materials contribute to America's quality of life, unless handled properly, personal injury or death, property damage, and environmental consequences can result. To protect against these outcomes, the Secretary of Transportation (Secretary) is charged to "provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce by improving" regulation and enforcement.[2] These regulations are to provide for the "safe transportation, including security," of hazardous materials in commerce.[3] The Secretary's authority to accomplish this mission is embodied in the Hazardous Materials Transportation Act (HMTA).[4]

In 1990, the HMTA was significantly amended for the first time. Subsequently, amendments were added in 1992, 1994 and, most recently, in 2002. Among other things, this hearing proposes to look at the Administration's most recent proposals to amend the HMTA. We are concerned that a number of the Administration's proposals will limit DOT's ability to fulfill its mission to protect workers and the public. Additionally, the Administration has not been willing to address issues about the continued relevancy of its Emergency Preparedness Grants Program, especially since the events of 9/11. These issues are the focus of this statement.

Interested Parties for Hazardous Materials Transportation

IME is a participant in the Interested Parties for Hazardous Materials Transportation (Interested Parties), a coalition of 40 industry and safety associations representing shippers of all hazard classes and carriers of all modes, as well as package manufacturers and public safety agencies. The mission of the Interested Parties is to advance national, uniform standards for the transportation of hazardous materials that will support the safety, including security, and efficiency of this vital economic activity.

The Interested Parties organized in 1995 specifically to address issues related to the reauthorization of the HMTA. Based on our expertise, we have presented recommendations to strengthen key provisions of the 1990 statute to Congress. Regrettably, a number of our recommendations have gone unheeded. Currently, the Interested Parties has identified five categories of concern which cover 11 issues. The Ad-

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[1] Explosives Manufacturing, 2002 Economic Census, U.S. Department of Commerce, December 2004, ECO2–31I–325920 (RV).

[2] 49 U.S.C. 5101.

[3] 49 U.S.C. 5103(b)(1).

[4] 49 U.S.C. Chapter 51.

ministration's proposal, as reflected in "SAFETEA", partially addresses only one of these issues. I am taking the liberty of attaching a white paper prepared by the Interested Parties which addresses these issues and describes the current position contained in the Administration's proposals, the House's H.R. 3, and last year's Senate bill, S. 1072.

The remainder of our comment will highlight a few of these critical issues.

DOT Jurisdiction to Regulate the Transportation of Hazardous Materials

The HMTA directs the Secretary to implement the law through the hazardous materials regulations (HMR). In order to fulfill its regulatory mission to protect the public and the environment, DOT must have authority to regulate a diverse community of interests and must constantly manage the tension between safety, security and efficiency in the transport of these materials. Three issues should be addressed to restore and clarify DOT's regulatory authority to that which was intended by the 1990 amendments.

§ 5107—DOT–OSHA Sharing Jurisdiction

A formatting error was made in the 1990 amendments that inadvertently granted the Occupational Safety and Health Administration (OSHA) shared jurisdiction with DOT over hazardous materials "handling", registration and motor carrier permitting. Concern over the jurisdictional sharing of these regulatory matters, especially regulatory authority over "handling", has repeatedly frustrated reauthorization attempts. (A history of this formatting error is attached.) Our concern over the shared handling jurisdiction is driven by the need for national uniformity to ensure safe, secure and efficient hazmat transportation.

The HMTA has no preemptive effect over other federal agency authorities. While "handling" is not defined in the HMTA, a common sense reading of the word invokes a number of OSHA rules on the books today that if OSHA had the resources to enforce would undermine transportation safety, potentially harming workers and the public. These include, for example, requirements for:

- rectangular, rather than point-on-point, oriented placards which have not been recognized by DOT, or in the international community, since 1980;
- approval of certain materials and containers prior to transportation by the Hazardous Materials Regulations Board, an entity abolished by DOT in 1975; and
- cargo tank shut-off valves that were amended by DOT in 1999 creating substantial differences with comparable OSHA rules issued in the early 1970s. [5]

The point is that OSHA has failed to update any transportation requirements since 1990 except emergency response. More to the point, in all these years, OSHA has not sought to exercise its newly endowed shared authority.

Concern about these regulatory conflicts is compounded by the fact that the Occupational Safety and Health Act allows states to issue rules that are "more stringent" than OSHA requirements. This possibility so concerned DOT that, even as it was supporting OSHA's claim to shared handling authority before the Occupational Safety and Health Review Commission, the Department argued that the sharing of regulatory authority granted by the formatting error "pertains only to the non-preemptive effect of DOT requirements on OSHA's regulations. Section 5125 of [HMTA] continues to define the preemptive effect of the HMR on state, local government and Indian tribe requirements." [6]

While we would hope that Congress would simply correct the formatting error, we recognize that such a solution is highly unlikely. In an effort to bring this matter to a close, DOT proposed, in 2001, language to eliminate dual jurisdiction and to clarify lines of regulatory authority by amending § 5107(f)(2) to establish OSHA regulatory and enforcement authority for hazmat employee training (never a matter in dispute) and the occupational safety or health protection of employees responding to releases of hazardous materials. In meetings with DOT in January of this year, the Department still professes to support this language as an acceptable solution. We hope the Subcommittee will accept DOT's amendment to § 5107(f)(2) as well.

§§ 5102–5103—DOT Retraction of Jurisdiction

SAFETEA introduced a new issue affecting DOT's regulatory jurisdiction—an issue potentially much more threatening to the safety of workers and the public

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[5] It is also worthy to note that, because of OSHA's shared authority, the agency was invited by DOT to participate in a regulatory negotiation on this rule. OSHA declined. This alone speaks volumes to OSHA's intent to effectively exercise its shared jurisdiction.

[6] *Reich* v. *Yellow Freight*, OSHC Docket 93–3292. Brief of the U.S. DOT, March 15, 1996, page 7, footnote 1. DOT's interpretation has yet to be tested in a court of law.

than the risks of shared jurisdiction previously described, given OSHA's current enforcement posture and its lack of regulatory initiatives. The §§ 5102–5103 issue is about eliminating federal jurisdiction and oversight, with some exceptions, over the transportation of a number of hazardous materials while they are being loaded, unloaded or handled, which elimination will be detrimental to the safety and health of workers and the public.

Since the HMTA was first enacted in 1971, DOT has had jurisdiction over the loading, unloading and handling of hazardous materials incidental to transportation. SAFETEA proposes to eliminate this language from § 5102 as it pertains to the regulation of persons who perform these functions. DOT argues that the change is merely editorial and the words unnecessary because "transportation" is defined in the HMTA to include "loading, unloading or storage incidental to the movement" of hazardous materials. However, these words appear in other sections of the HMTA and the "transportation" definition does not include "handling", undermining the argument that the proposed change is "editorial." But, more importantly, DOT is pursuing a controversial rulemaking—HM–223—that would limit the applicability of its rules concerning loading, unloading and temporary storage of hazardous materials to these activities *only if* they are performed by a carrier or in the presence of a carrier. This is a sea change from current regulatory practice in which the applicability of DOT's rules is determined by the function performed, not by who employs the person performing the function. We support the retention of the "loads, unloads, handles" language of current law. We believe that this language is more appropriately placed under DOT's regulatory authority in § 5103, as DOT proposed to place other phrases from § 5102 describing its regulatory authority. We also support adding the word "handling" to the definition of "transportation." There are a number of reasons the Subcommittee should consider and support our position. All have a root in worker safety.

First, we think DOT's determination in HM–223 not to regulate certain loading, unloading and handling activities is bad for worker safety. It creates voids in areas of attendance, blocking and bracing freight, proper filing/closing of transportation containers, incident reporting, security requirements and training. The clearest evidence of the extent of the safety void is that there is a significant difference in the number of chemicals covered by OSHA Process Safety Management (PSM), the Environmental Protection Agency's (EPA) Risk Management Plan (RMP) requirements and those covered by DOT's HMR requirements. In addition, the threshold quantities for determining regulatory applicability often differ between these three regulatory programs. In contrast to the list of 800 hazardous chemicals subject to the HMR, there are only 137 chemicals subject to the PSM requirements and only 77 acutely toxic chemicals and 63 flammable gases and highly volatile flammable liquids subject to the RMP requirements. In addition, no other agency has the manpower to enforce DOT's requirements. Concern about worker safety is what has prompted the National Transportation Safety Board (NTSB) to object to HM–223 on a number of occasions, concerns that are now joined by the Small Business Administration.

Second, DOT's own data shows that hazmat loading, unloading and handling present safety concerns. Just in the last 5 years, over one-fourth (14 of 53) of all hazmat transportation fatalities were due to exposure during loading or unloading. Again, NTSB has repeatedly issued recommendations to DOT to address these safety issues, not to walk away from them.

Third, the regulatory void DOT has created does not expand other federal agencies' ability to regulate. However, it does opens the floodgate to the vast array of non-federal entities, localities, fire marshals and the like, that are anxious to move into this arena. If DOT's jurisdiction is vacated, there would be no way of stopping any local authority from intervening in these areas. No other federal agency has DOT's preemptive authority. It has been a cornerstone of the HMTA that lack of national regulatory uniformity in transportation undermines safety.

Fourth, the Subcommittee should consider the impact of striping "loading, unloading and handling" authority from the statute on its own jurisdiction. If hazmat worker safety issues arise because of the gaps or, eventually, multiple inconsistent non-federal rules, created by the loss of this authority from the statute, we believe this Subcommittee would not want to defer action to others. There should be no question that you would want to retain jurisdiction over aspects of transportation that have been in the Commerce Committee since the early 1970s.

We have heard that those opposed to our recommendations for §§ 5102–5103 allege that the language will overturn DOT's HM–223 rulemaking, and will frustrate OSHA's ability to regulate in these areas. Our recommendations will not do that. First, HM–223 was issued with the "load, unload, and handles" in the statute. Second, these changes do not alter OSHA's "shared" authority in § 5107, although we

hope as previously noted that this issue be otherwise addressed. Third, even if Congress accepts our recommendation for the addition of statutory language in § 5103 to the effect that DOT regulate persons who perform hazmat functions, HM–223 will not be overturned because the Supreme Court reaffirmed last year that OSHA is not barred from regulating worker safety in areas that other agencies choose not to exercise their statutory authority to regulate.[7] While HM–223 remains a sensitive issue, concern for worker and public safety should dictate the legislative response to the issue of DOT's continued statutory jurisdiction over hazardous materials loading, unloading, temporary storage and handling.

ATF–DOT Jurisdiction (S. 1072 Section 4463)

One other issue specific to the transportation of commercial explosives deserves to be mentioned. In 2003, this Subcommittee became engaged in an attempt by the Department of Justice's (DOJ) Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to use its Title 18 authority to regulate commercial explosives transportation. The result was an embargo by all carriers of all commercial explosives. Shortages of airbags threatened to shutdown automotive manufacturing and there existed the possibility that fireworks would not be available for 4th of July celebrations. The DOJ/ATF action even prompted an international dispute with the Government of Canada. DOT and the Department of Homeland Security (DHS) invested enormous resources to push DOJ/ATF back.[8] As a result, DOT proposed an amendment to clarify 18 U.S.C. language that was used by ATF in its attempt to regulate commercial explosives transportation. The Senate proposed a version of this language in S. 1072, highway act reauthorization legislation passed last year. DOJ was furious about DOT's proposal and, while it could not force DOT to remove the provision, it did force DOT to send language to the Hill to narrow it.[9] We strongly recommend that the Subcommittee retain the Senate's position on this issue to expand the Title 18 exception to include and provide coverage for DHS authority and to resist efforts to restore the "regulated by" language as suggested by the Administration. This language is problematic because DOJ/ATF used it to set themselves up as the arbiter of whether DOT's rules were "sufficient" to trigger the Title 18 exception.

Preserve Regulatory Uniformity

The 1990 reauthorization of the HMTA enhanced DOT's ability to ensure uniform requirements for the transportation of hazardous materials by codifying DOT's administrative interpretations and procedures implementing the preemption provisions of the law. In 1996, however, the U.S. Court of Appeals for the DC Circuit overturned a DOT preemption determination for reasons not supported by legislative, judicial or administrative precedent. This legal action threatens to reverse decades of administrative practice and undermine the vitally important authority of DOT to promote safety and efficiency in hazardous materials transportation.

The DC court ruled that the preemption authorities of the HMTA could not be applied independently by DOT when making determinations of preemption. For example, the court was considering a challenge to DOT's preemption of state requirements under its 49 U.S.C. 5125(a)(2) "obstacle" test authority. The court rejected DOT's use of this authority, noting that DOT had failed to exercise its authority under 49 U.S.C. 5119, uniform motor carrier permitting, which it felt was a more appropriate preemption test. SAFETEA proposes to rectify this aspect of the court's decision by clarifying that each preemption authority is independent in its application. Congress should support these aspects of the Administration's proposal that would reaffirm DOT's historic authority to determine the preemption of non-federal requirements, in accordance with statutory criteria.

Another aspect of the DC court's decision, which is not addressed by the Administration's proposals, was a challenge to DOT's application of an internal consistency test that considered the burden on commerce if a particular non-federal requirement was replicated in other jurisdictions. The court found that DOT could not apply such an analysis. Again, the court's decision was contrary to legal precedent. The Supreme Court has ruled that "the practical effect of [a state] statute must be evaluated not only by considering the consequences of the statute itself, but also by con-

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[7] *Chao* v. *Mallard Bay Drilling, Inc.* (00–927) 534 U.S. 235 (2002).

[8] DOT/DHS rules to effect 18 U.S.C. 845(a)(1) were issued in February and May 2003. In the rush to address the international aspect of this issue, DOT/DHS failed to address the transportation of explosives by persons authorized by the Government of Canada *from* the United States to Canada. ATF still maintains that it is a violation of Title 18 if such drivers receive explosives in the United States unless permits have been obtained from ATF. (See letter to Cynthia Hilton, IME, from Mark Siebert. ATF, March 29, 2005.)

[9] Secretary Norman Mineta letter to conferees, enclosure, comments on H.R. 3550 and S. 1072 as passed, June 22, 2004, page 10.

sidering how the challenged statute may interact with the legitimate regulatory regimes of other states and what effect would arise if not one, but many or every, state adopted similar legislation."[10] Congress should further strengthen DOT's authority to ensure uniform regulations of hazardous materials transportation by clarifying that DOT is authorized to consider such burdens on commerce when evaluating applications for preemption determinations.

Hazardous Materials Fee Issues

The 1990 amendment to the HMTA instituted a fee to be paid by shippers and carriers of placarded hazardous materials to fund the Emergency Preparedness Grants Program (EPGP). The purpose of the EPGP is to cover the "unfunded" federal mandate that states develop emergency response plans and to contribute toward the training of emergency responders. Industry has contributed, through hazmat registration fees, over $155 million during the life of the grants program.[11] Since the events of September 11, 2001, we question whether or not the EPGP is the most efficient way to plan for hazmat emergencies or to deliver hazmat training to the response community, especially in light of other viable alternatives to address these needs.

We have, for a number of years, called for more accountability in the EPGP and more evidence of coordination among all federal initiatives to ensure that all resources are used as efficiently and effectively as possible. We are not alone in our concern. In FY 2003, DOT conducted a Program Assessment Rating Tool (P.A.R.T.) evaluation of the EPGP for the Office of Management and Budget which found the program to be only moderately effective.[12] Even then, some of the data used to support the program evaluation is questionable. For example, the EPGP claimed at that time that it was the "*only* federal program that provides funds to assist communities in planning for and responding to hazardous materials incidents." (Emphasis added.) This is not true. In documents supporting DOT's FY 2006 budget request, the Department admits for the first time that this program, at most, provides "funds that might not otherwise be available" to localities for training and planning for hazardous materials incidents.[13] Still, DOT's characterization of the EPGP would have one believe that the funds are limited to planning and training for transportation-related hazmat incidents only. There is no such limitation.[14]

The EPGP also claims, as its FY 2005 accomplishment, that it will provide support to update and develop at least 3,000 emergency plans.[15] This claim is more realistic than EPGP's claim to support the completion of 3,700 emergency plans which it perpetuated in each of its budget requests between FY 2003 and FY 2005. The incredulity of this claim still warrants oversight. Congress intended that the planning grants portion of the EPGP be used to "develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act" (EPCRA).[16] EPCRA requires state coordinating commissions (SERC) to designate Local Emergency Planning Committees (LEPC) which were charged to develop localized plans for chemical emergencies. So, it should come as no surprise that PHMSA sets as a measure of the impact of the EPGP a number of these emergency plans to be developed and updated. What is surprising is the target number of plans to be completed or updated. First, EPA estimates that the current number of LEPCs is about 3,500.[17] Each LEPC prepares one plan, so at most 3,500 plans would need support. Second, LEPCs were in existence before the inception of the EPGP. EPCRA was enacted in 1986 and has required LEPCs to have "complete" plans in place. Once an LEPC's plan is "complete," based on acceptance by the LEPC's SERC, LEPCs are not required to "re-complete" these plans each year, although they are required to annually "review" their plans. Third, EPA last surveyed LEPC compliance in between October 1999 and February 2000.[18] At that time, the Agency found that approximately 45 percent of responding LEPCs had completed plans and another 10 percent mostly complete. Furthermore, 24 percent of LEPCs had incorporated counter-terrorism measures into their emergency response plans.

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[10] *Healy* v. *the Beer Institute*, 491 US 324 (1989).
[11] FY 1992–2004, HMRP, DOT, November 30, 2004.
[12] P.A.R.T., ID 10001123, *http://www.whitehouse.gov/omb/budget/fy2005/pma/transportation.pdf*, page 56 and 62.
[13] FY 2006 PHMSA Budget Submission, page 80.
[14] 49 U.S.C. 5116(a) 7(b).
[15] FY 2006 PHMSA Budget Submission, page 81.
[16] 49 U.S.C. 5116(a)(1)(A).
[17] http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/epcraOverview.htm
[18] *1999 Nationwide LEPC Survey*, George Washington University for EPA. May 17, 2000. *http://yosemite.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/lepcsurv.pdf/$File/lepcsurv.pdf*

Using these percentages, it would appear that 1,600 would be a more accurate projection of the number of emergency plans to be completed, not 3,000.[19] Furthermore, it is unlikely, given EPA's assessment of "completed" and approved plans, that any significant portion of these plans are being reopened and revised.

Finally, DOT allows EPGP planning grant funds to be used to reimburse state/territory/tribal grantees to attend semi-annual workshops. Allowable expenses include travel, hotel, per diem, and a once a year conference registration charge of $300/attendee. The spring workshop is one week long. When queried, DOT could not account for what portion of the planning grant was used by grantees for these expenses, nor exactly how many persons participated in these semi-annual workshops. If just one individual from each of the roughly 70 grantees sought total reimbursement for these two workshops, the cost could easily exceed 3 percent of the planning grant for these events alone. Clearly, the continued need and usefulness of the "planning" portion of the EPGP, even at the funding level provided by current law, is extremely questionable.

In its oversight capacity, the Senate Commerce Committee, as part of its highway act reauthorization legislation last Congress, included a provision that would have required DOT to exercise better technical oversight and evaluation of the EPGP, to gather information from grantees and subgrantees to gauge performance. and to report these results to the public.[20] We are encouraged by this commitment because our efforts in the past to address EPGP shortcomings with DOT have not been satisfactory. We only hope that the level of oversight promised by the Senate will be included in any highway act reauthorization legislation and that it will include a complete accounting of EPGP funds distributed and their use, not the type of anecdotal "successes" that comprised so much of DOT's 1998 report to Congress on this program.

Despite these fundamental flaws and questionable value of the EPGP, we have not objected to full-funding of the EPGP at the statutory cap of $12.8 million plus administrative expenses. However, we are opposed to increasing outlays from the account to augment current grants. The hazmat fee program was never intended nor could it be expected to generate the amount of funds necessary to meet the needs of communities or first responders for planning or training for transportation-related chemical, biological or radiological incidents. DOT's hazmat registration fees are not the only source of financial assistance available to states to support emergency preparedness and response and the safe and secure transportation of hazardous materials shipments. Congress has already provided more comprehensive, direct sources of funding for emergency response planning and training. A report prepared by the staff of the then Select Committee on Homeland Security shows that the Federal Government provided $28.6 billion from 2001 through 2005 to enhance the ability of state and local governments and first responder to prevent, prepare for, and respond to acts of terrorism and other emergencies.[21] While these funds are not dedicated to hazardous materials planning and training, these activities are an allowable use of the assistance. The majority of these funds are used to assist communities to address chemical, biological, and radioactive incidents. Planning and training to respond and recover from these hazardous materials releases, whether accidental or intentional, is the same. The Select Committee's evaluation of federal funding sources did not even bother to include the $12.8 million available through the EPGP, a mere 0.04 percent of available funds. Yet, in the last Congress, the Senate Commerce Committee's highway act reauthorization legislation included provisions that increased the funding of the EPGP, and thus the hazmat fees, by 70 percent—from $12.8 million to $21.8 million. Even if DOT charged every current registrant the maximum currently allowed by law, $5,000, the hazmat registration fee program would provide only $196.5 million: still, less than 1.0 percent of the monies available to hazmat planning and training from other sources. We do not believe that the hazmat registration program would ever generate this level of revenue because smaller carriers would simply chose not to transport hazardous materials. Finally, many states assess their own hazardous materials transportation fees. States garner upwards of $20 million a year from these fees.[22] For these reasons,

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[19] Not all LEPCs responded to the latest EPA survey. Even assuming that every one of the non-respondents had no plan, together with those known to have no plan or an incomplete plan, the number of plans needing completion would be 2,500, still significantly under the 3,700 estimate provided for FY 2002–04.

[20] S. 1072 revision to 49 U.S.C. 5116(k). 108th Congress.

[21] *An Analysis of First Responder Grant Funding*, Select Committee on Homeland Security, April 2004, Appendix 3.

[22] Biennial State Hazardous Materials Transportation Fees, DGAC, December 2000.

it is important that the Subcommittee continue to cap the amount of hazmat fees that can be transferred to the EPGP account at $12.8 million.

The Senate Commerce Committee's S. 1072 amendments raised a new issue with regard to the assessment of hazmat registration fees. The 1990 amendments to the HMTA added a program for training trainers of private sector hazmat employees.[23] This program was *not* added at the behest of industry. The program was authorized to be funded from general revenues at $3 million per year.[24] The Committee's amendments to S. 1072 included provisions to increase the appropriation for this program from $3 million to $4 million per year, to expand the scope of this training program to include direct training of hazmat employees, and to change the funding source from general revenues to the hazmat registration fee. These changes are without justification. The HMTA is clear that hazmat employers are responsible for the training of hazmat employees. Yet, this program is of no benefit because the training provided is limited to that offered by non-profit hazmat employee organizations, organizations that are unlikely to be relied upon to provide the specific and specialized training each company is liable to provide to address its own unique hazmat environment. Any potential hazmat employee who availed themselves of such training from a third-party non-profit training organization would still have to be trained in his employer's hazmat operations. As a result, industry has never advocated for a federal appropriation for this training option. Furthermore, these funds are not needed to spur interest in companies/organizations providing training. There are a number of companies that engage in this training already. The real issue with private sector training is assessing how good third-party training is. Rather, than throw money at "train the trainer" programs, the Subcommittee should consider rewriting this section of law to require commercial training programs to obtain some form of accreditation. There are accreditation programs in existence. At minimum, the Subcommittee should not make the funding of this program an authorized use of hazmat fees.

In sum, the private sector has accepted its obligation to provide training to its hazmat employees, the EPGP should not be reauthorized without a serious reassessment to the need to continually pour millions of dollars into the funding of EPA's emergency planning programs, and, given the plethora to other viable alternatives to address the needs of the response community, the EPGP is at best inconsequential, but more realistically, a program that has outlived its relevance and usefulness.

Conclusion

The transport of hazardous materials is a multi-billion dollar industry that employs millions of Americans. This commerce has been accomplished with a remarkable degree of safety, in large part, because of the uniform regulatory framework authorized and demanded by the HMTA. Within the Federal Government, DOT is the competent authority for matters concerning the transportation of these materials. We, therefore, strongly recommend the Congress act on the recommendations of the Interested Parties as it considers the reauthorization of the HMTA.

Thank you for your attention to these issues.

ATTACHMENTS

HAZARDOUS MATERIALS TRANSPORTATION ACT REAUTHORIZATION

49 U.S.C. CHAPTER 51

The transportation of hazardous materials is vital to the economy. Given the safety and security issues surrounding these activities, hazmat transportation requires a strong federal presence to ensure uniformity of regulation which protects the public, facilitates compliance, and provides for the efficient movement of these essential materials.

As Congress considers the reauthorization of federal hazardous materials transportation law (FHMTL) the following issues should be addressed:

Retain DOT Jurisdiction over Hazardous Materials

Clarify DOT's Jurisdiction to Regulate Hazardous Materials Transportation

The commercial transportation of hazardous materials is highly regulated under national uniform standards which account for a commendable safety record despite moving millions of tons of material over 1.2 million times a day. Statistics show that, of the estimated 5,900 deaths and about 5 million injuries to workers each

[23] 49 U.S.C. 5107(e).
[24] 49 U.S.C. 5127(b).

year in America, on average, less than 10 deaths and 30 major injuries are attributable to a release of hazardous materials in transportation. A formatting error in 49 U.S.C. §5107 unintentionally imposed overlapping jurisdiction on OSHA and DOT with respect to hazardous materials transportation, undermining the statute's goal of regulatory uniformity. The erosion of a single-source, uniform regulatory framework confounds industry efforts to comply and may be exacerbated by the fact that the Occupational Safety and Health Act allows differing state requirements. To rectify this problem, DOT has proposed a compromise whereby it would retain authority over handling criteria, hazmat registration and motor carrier safety, and OSHA would regulate the protection of employees responding to a release of hazardous materials. OSHA would continue to share jurisdiction with DOT for hazmat employee training, as was the original intent of Congress. Any additional expansion of OSHA's overlapping jurisdiction must be resisted because it would greatly complicate industry's ability to comply with different safety standards.

Source: IP recommendation.

Status: SAFETEA—Administration proposal silent on this issue. Secretary's June 2004 conference letter reproposes its compromise from the Department's 2001 bill that we "can live with." As a secondary issue, the Administration's bill proposes language to clarify jurisdiction between DOT and ATF. Secretary's June 2004 conference letter weakens that language, making DOT jurisdiction dependant on regulatory exercise. Support SAFETEA provision.

H.R. 3—§5107(f)(2)—House bill eliminates the shared jurisdiction over hazmat registration and motor carrier permitting, but retains shared jurisdiction over "handling" which disrupts national uniform requirements on "handling" that OSHA, or OSHA-approved states would regulate. Does not go far enough.

S. 1072—§5107(f)(2)—Senate bill retains the clerical error. Oppose.

Preserve DOT Jurisdiction to Regulate Loading, Unloading and Handling of Hazardous Materials Incidental to Transportation

Current law at §5102 defines "transportation" of hazardous materials to include "loading, unloading or storage" of material incidental to movement, and it defines hazmat employees who perform regulated functions to include the loading, unloading and handling of these materials. Despite clear statutory authority to regulate hazardous materials loading and unloading, the Administration's hazmat reauthorization proposal struck DOT's statutory authority to regulate hazmat employees who load, unload or handle hazardous materials when it transferred the list of functions that subject hazmat employees persons to the hazardous materials regulations from §5102 (Definitions) to §5103 (Regulatory Authority). DOT has recently finalized controversial regulations (judicial and administrative appeals are pending) stating that it chooses not to exercise its statutory authority to regulate certain loading, unloading or handling functions incidental to the transportation of hazardous materials. Now DOT is attempting to validate that regulatory action by striking its statutory authority. Irrespective of the disputed merits of DOT's regulatory action, by striking this authority, DOT precludes the opportunity to regulate if circumstances warrant. The phrase "loads, unloads, or handles hazardous material incidental to transportation in commerce" should be preserved in §5103.

Source: Administration proposal.

Status: SAFETEA—Administration proposal drops "load, unload, handle" language from §5102(3) when it moves other text to §5103. Oppose dropping of language but support moving entire §5102(3) text to §5103.

H.R. 3—§5102(3)—House bill does not change current law.

S. 1072—§5102(3) & §5103(b)(1)(A)—Senate bill adopts Administration proposal to strike "load, unload, handle" language from current law. Oppose.

Recognize Federal Hazardous Materials Transportation Law Security Authority

Congress recognized that hazardous materials transportation safety and security cannot be separated in the 2002 amendments to FHMTL. DOT has exercised that authority in rules requiring security plans and training. The 2002 amendments, however, missed references to safety and security that, given current rules, should be added to the statute. These references would clarify current security authority under the law. *(Sections 5101, 5103, 5106 and 5107.)*

Source: IP recommendation.

Status: SAFETEA—Administration proposal is silent.

H.R. 3—House bill is silent.

S. 1072—Senate bill is silent.

Preserve Regulatory Uniformity

Reaffirm DOT's Preemption Authority

The 1990 reauthorization of the HMTA enhanced DOT's ability to ensure uniform requirements for the transportation of hazardous materials by codifying DOT's administrative interpretations and procedures implementing the preemption provisions of the law. In 1996, however, the U.S. Court of Appeals for the DC Circuit overturned a DOT preemption determination for reasons not supported by legislative, judicial or administrative precedent. This legal action threatens to reverse decades of administrative practice and undermine the vitally important authority of DOT to promote safety and efficiency in hazardous materials transportation. Congress should support those aspects of the Administration's proposal that would reaffirm DOT's historic authority to determine the preemption of non-federal requirements, in accordance with statutory criteria.

An aspect of the court's decision, which is not addressed by the Administration's proposals, was a challenge to DOT's application of an internal consistency test that considered the burden on commerce if a particular non-federal requirement was replicated in other jurisdictions. The DC court found that DOT could not apply such an analysis. Again, the court's decision was contrary to legal precedent. The Supreme Court ruled in *Healy* v. *Beer Institute*, that "the practical effect of [a state] statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other states and what effect would arise if not one, but many or every, state adopted similar legislation." Congress should further strengthen DOT's authority to ensure uniform regulations of hazardous materials transportation by clarifying that DOT is authorized to consider such burdens on commerce when evaluating applications for preemption determinations.

Source: IP recommendation.

Status: SAFETEA—Administration proposal addresses the independent authorities issue, but is silent on the burden on commerce issue.

H.R. 3—House bill addresses the independent authorities issue, but is silent on the burden on commerce issue.

S. 1072—Senate bill addresses the independent authorities issue, but is silent on the burden on commerce issue.

Support Uniform Registration/Permitting of Hazardous Materials Motor Carriers

In 1990, Congress provided authority for DOT to eliminate the burden of dissimilar, redundant, non-federal registration/permitting programs unilaterally imposed on hazardous materials transporters. DOT has not utilized this authority. State and local representatives have developed a program to replace the more than 40 existing state permitting programs with the "Uniform Program", similar to the SSRS base state registration program. The Uniform Program is being implemented in 7 states and is endorsed by the transportation industry and the CVSA. States benefit by retaining their existing fee authority, reducing the permit processing workload, ensuring that only safe carriers transport hazardous materials, preserving state enforcement authority, and providing a safe harbor from preemption challenges. Industry benefits from a significant paperwork reduction. Congress should reaffirm its 1990 commitment to streamline state-based hazardous materials registration/permitting and establish a deadline by which DOT must implement the Uniform Program.

Source: IP recommendation.

Status: SAFETEA—Administration proposal silent on this issue.

H.R. 3—§ 5119, new § 5128(d)—House bill makes § 5119 "mandatory", but reopens to debate the issue of what would be an appropriate program of uniform forms and procedures and weakens existing preemption authority over non-participating state permit schemes. DOT already convened such a working group, in which 23 states participated and industry had a consultative role—another working group is not necessary. While the House bill provides $1 million per year to work on the Uniform Program, the funds are misdirected to the working group instead of the participating states to cover administrative costs until the program is implemented nationally and as incentive grants to states to join the compact. Oppose.

S. 1072—§ 5119 & § 5109—Senate bill makes no change to § 5109 and still leaves § 5119 permissive. Preemption language compromised. Preferable to the House. Oppose.

Oppose Emergency Waiver of Preemption

The Administration's proposal would grant DOT new authority to immediately waive preemption to allow "state, local, and tribal governments to regulate hazardous material transportation" in the event of a "possible" terrorist threat. The consequences for safety and security that could result from turning over hazardous materials transportation in a terrorist emergency to local hands is tremendous, not to mention the potential to wreak havoc in America's economy. Given other authority in HMTA to grant preemption waivers, issue exemptions and even impose emergency orders; and emergency authority in other federal statutes, most notably, the Transportation Security Administration's § 101(a) "National Emergency Responsibilities" authority under the Aviation and Transportation Security Act, this new "waiver of preemption" authority is rendered unnecessary.

Source: Administration proposal.

Status: SAFETEA—Administration proposal. Oppose.

H.R. 3—House bill does not include. Support.

S. 1072—§ 5125(g)—Senate bill adds Administration proposal. Oppose.

Support Uniform Motor Carrier Credentialing

Reform USA Patriot Act Background Check Procedures

The USA PATRIOT Act requires background checks of drivers transporting hazardous materials. TSA has begun implementing this mandate through a decentralized fingerprint-based state licensing program that does not completely fulfill the security mandate. This decentralized implementation is inefficient, time consuming, and cost prohibitive for many drivers. Moreover, the failure to inform motor carriers as to the results of the background checks is an intolerable security breach that undermines the security purpose of the entire program. Congress needs to:

- Require that a federal entity, not the States, implement a name-based background check.
- Ensure drivers are subject to only one *federal* background check. Currently, drivers may be subjected to multiple separate background checks administered by the Department of Defense, FAA, ATF, U.S. Postal Service, and other federal programs. Federal background checks should be harmonized to the maximum extent possible and duplicative checks should be eliminated.
- Preempt separate state and local background checks. National security is a federal interest and the state issuance of CDLs already is subject to federal standards and oversight. Moreover, separate state background checks do not enhance security as drivers from other states may operate motor vehicles in all states.
- Ensure that DOT (not HHS or DOJ) retains exclusive authority to designate hazardous materials, including those materials that trigger the background check requirements.
- Ensure that the motor carrier receives timely notice of a driver's disqualification or HME revocation.

Source: IP recommendation.

Status: SAFETEA—Administration proposal silent on this issue. Secretary's June 2004 conference letter addresses only treatment of Mexican and Canadian drivers.

H.R. 3—House bill silent.

S. 1072—§ 5103a(b)(c)—Senate bill adopts DOT authority to determine list of hazmats.

Recognize Appropriate Limits to Enforcement Authority

Oppose Tripling of Civil Penalties

We oppose a provision of the Administration's bill that would nearly triple civil penalties from $32,500 to $100,000 for each hazmat violation. DOT currently can levy the maximum civil penalty for each violation and each day the violation occurs, which has proven to be sufficient for the vast majority of violations, as evidenced by DOT's historic penalty actions. If the maximum civil penalty cap is raised, the higher penalty should be imposed only in cases involving egregious violations that cause death or grievous bodily injury from the release of hazardous material.

Source: Administration proposal.

Status: SAFETEA—Administration proposal. Oppose.

H.R. 3—§ 5123(a)—House bill increases civil penalty ceiling to $50,000, but allows fines up to $100,000 for aggravated causes. While we can live with the principle of a tiered penalty for egregious violations, we still believe that the penalty caps are too high.

S. 1072—§ 5123(a)—Senate bill adopts Administration proposal. Oppose.

Require Rulemaking for Inspection, Investigation, and Emergency Orders Authority

In the past, the Administration has proposed expanding DOT's inspection, investigation and emergency orders authority. Industry disagrees that expanded emergency orders authority is necessary. Moreover, industry is very concerned that the likelihood that fully compliant packages of hazardous materials could be damaged during inspection. Industry also is concerned with undue delay of time-sensitive materials, and the potential for harm if packages are opened in an inappropriate manner or location. Initially, DOT agreed to address these issues through notice-and-comment rulemaking, i.e., the new statutory provisions would not be self-implementing. A requirement that the expanded authorities not be implemented until DOT issues rules is crucial to industry.

Source: Administration proposal.

Status: SAFETEA—Administration proposal removes requirement for rulemaking that was in the 2001 bill. Oppose.

H.R. 3—§ 5121(e)—House bill includes a rulemaking, but also allows DOT to issue "guidance" prior to completing the rulemaking. Oppose.

S. 1072—§ 5121(e)—Senate bill adopts industry proposal. Support.

Recognize Appropriate Limits to State Enforcement Authority

Enforcement of hazardous materials regulations for motor carriers relies in part upon state participation. Most state enforcement actions are based on a "strict liability" standard, rather than the existing federal "willfully" or "knowingly" standards. As such, the strict liability standards are subject to preemption under the HMTA. The Administration's bill removes all preemptive limitations to state enforcement authority. The HMTA should be amended to affirm a state's right to establish enforcement systems based on strict liability standards as long as the penalties do not exceed reasonable limits, such as $1,000 per violation. States establishing penalties that exceed such limits should be required to adopt the federal "willfully" or "knowingly" standards to impose those penalties. This accommodation appropriately balances the interests of States and the regulated community.

Source: Administration proposal.

Status: SAFETEA—§ 5125(j)—Administration proposal. Oppose.

H.R. 3—House bill does not address. Support.

S. 1072—§ 5125(j)—Senate bill overturns any limits to state enforcement authority. Oppose.

Preserve Limits to Hazmat Fees

Revise Hazmat Registration Fees

Along with other funds now available to establish and maintain hazardous materials response capabilities at the state and local level, a registration fee capped at a $750 level per annum would generate sufficient revenue to support the DOT grant program. DOT should also have authority to waive all but the $25 administrative fee for small businesses that would otherwise be eliminated from the hazmat registration program because the current statutory registration fee floor of $250 presents an economic hardship for small businesses. This recommendation does not alter or otherwise affect separate authority for DOT to assess and collect an administrative fee that allows it to process registrations.

Source: IP recommendation.

Status: SAFETEA—Administration proposal silent on this issue. Secretary's June 2004 conference letter in opposition is not to the increased size of the grant program but only to the limitation on the maximum fee that can be charged per registration. Oppose any increase in the size of the grant program.

H.R. 3—§ 5108 & § 5128—Except for lower registration fee floor, oppose House provisions to double amount of grants and to set statutory maximum fee at $3,000 instead of $750.

S. 1072—§ 5108, § 5107, § 5128 & § 4428—Oppose Senate provisions. The Administration opposes these changes.

Other Issues of Concern

Oppose Unnecessary Increased Record Keeping Requirements

We oppose the Administration's proposed extension from 1 to 3 years of the amount of time that copies of the shipping papers must be retained. There is no evidence that the existing 1 year record retention requirement of shipping papers has been inadequate. This provision adds administrative expense without an associated safety or security benefit.

Source: Administration proposal.

Status: SAFETEA—Administration proposal. Oppose.

H.R. 3—§ 5110(d)—House bill adopts a 2- rather than a 3-year retention standard. Oppose.

S. 1072—§ 5110(c)—Senate bill adopts Administration proposal. Oppose.

Oppose Limitless Aggravated Violation Authority and Unnecessary Addition of "Reckless"/"Recklessly" Liability Standard

The Administration's bill would establish a new criminal penalty for "aggravated violations," which carries a 20-year maximum term of imprisonment. This new penalty would apply to violations that result in a "release" of hazardous material, no matter how inconsequential. The Administration's definition of "aggravated violation" is simply too broad. The charge of an "aggravated violation" should be limited to persons who in the commission of a separate felony also cause a hazardous material release that results in death or grievous bodily injury.

The Administration's bill also proposes to apply a "reckless" liability standard to all modes of hazmat transportation. A "reckless" standard is recognized by courts as a state of mind more blameworthy than "negligence," but substantially less than "willful." The HMTA already recognizes this standard in aviation where passengers ride above cargo. However, this standard should not be used to lower the burden of proof for criminal cases for shippers and carriers and their employees in all other modes of cargo transportation.

Source: Administration proposal.

Status: SAFETEA—Administration proposals. Oppose.

H.R. 3—§ 5124(a) & (d)—House bill suggests a compromise to the Administration proposal for aggravated violations that would allow criminal sentences up to 10 years in cases involving a release that results in death or bodily injury. Preferred to the Administration proposal. House bill includes the Administration's "reckless" provisions. Oppose.

S. 1072—§ 5124(b)—Senate bill adopts the Administration proposal for aggravated violations with 20 year sentences. Oppose. Senate bill does not include the "reckless" provisions. Support.

Oppose Expansion of the Definition of Hazmat Employee to Include Employees for Companies That Do Not Accept Hazmat Shipments

The Administration's proposal adds the term "rejects" as a hazmat function, effectively expanding the class of persons subject to the HMR to include employees of carriers that have made a conscious business decision not to transport hazardous materials. The Administration argues that this expanded authority is necessary to identify undeclared hazmat shipments; however, even carriers that accept hazardous materials find it virtually impossible to identify undeclared HM. Hazmat awareness training will not assist in the discovery of undeclared hazmat. At best, training allows employees to identify declared shipments, *i.e.*, shipments complying with DOT's hazcom requirements. In short, this policy will not prevent undeclared shipments from getting into the transportation stream and will impose an unreasonable burden on carriers who have a "will not carry" policy. DOT already has adequate authority to address the problem of undeclared hazmat shipments (*see* 49 U.S.C. § 5104 (prohibitions), § 5123 (civil penalties), and § 5124 (criminal penalties)).

Source: Administration proposal.

Status: SAFETEA—§ 5103(b)(1)(A)—Administration proposal. Oppose.

H.R. 3—House bill silent.

S. 1072—§ 4466—Report on applying hazmat regulations to persons who reject hazmat. Compromise. Prefer House.

Clarify Security Sensitive Information

The Administration's bill gives the Secretary authority to withhold security-sensitive information. While we support the objective, we have suggested amendments to enhance the Administration's proposal by clarifying the specific types of information intended to be protected by this provision; and aligning the Administration's language with what is already in the Homeland Security Act preempting state law.

Source: Administration proposal.

Status: SAFETEA—§ 5121(f)—Administration proposal needs to be strengthened to preempt state law.

H.R. 3—House bill silent.

S. 1072 § 5121(i)—Administration proposal needs to be strengthened to preempt state law.

Restore Special Permit Authority

Much of the innovation in the hazardous materials regulations is accomplished through "exemptions." The term "exemption" gives an erroneous impression that hazardous materials transportation under an exemption is being carried out without regulation, and the term "special permit", an historic term used to describe these variances, will appropriately convey that such transportation is required to be conducted in accordance with terms and conditions set by DOT. Also, Congress should change the maximum effective period of a special permit from 2 years to 4 years. This change would eliminate a great deal of unnecessary industry application time and Government processing time involved in the present 2-year renewal process. The increased maximum effective period of time will have a positive impact on safety. It will enable PHMSA staff to avoid time-consuming processing of routine renewals and instead focus attention on more significant special permit issues. If safety issues are subsequently identified, PHMSA has authority to revoke or modify special permits as needed.

Source: IP recommendation.

Status: SAFETEA—Administration proposal is silent.

H.R. 3—House bill addresses these issues, but allows for the 4-year term of the permit only on renewal. New special permits would have to be limited to 2 years.

S. 1072—Senate bill addresses these issues, but allows for the 4-year term of the permit only on renewal. New special permits would have to be limited to 2 years. Prefer Senate to the House.

Clarify Criteria for Hazmat Planning & Training Grant Eligibility and Allocation

49 U.S.C. § 5125(g) precludes states from assessing fees on the transportation of hazardous material unless the fees are "fair" and "used for a purpose related to the transportation of hazardous material." While Congress requires states to certify that they are in compliance with the emergency planning provisions of the Emergency Planning and Community Right-To-Know Act of 1986 to be eligible for a grant, there is no requirement that states certify their compliance with § 5125(g). Congress should clarify that states assessing fees in violation of federal hazmat law do not qualify for a grant.

In 1990, Congress instituted a federal registration fee program, the proceeds of which are used for grants to states to assist in hazmat planning and training. When evaluating state applications for grant moneys, and in allocating limited grant funds among the applicants under 49 U.S.C. 5116(b)(4), DOT must determine a state's "need" by considering, among other things, "whether the state . . . imposes and collects a fee on transporting hazardous material [and] whether the fee is used only to carry out a purpose related to transporting hazardous material." DOT never has implemented this statutory requirement, claiming that the intent of Congress is unclear. Congress should clarify that DOT's determination of "need" for purposes of calculating grant awards should be reduced for states maintaining a fee related to transporting hazardous material.

Source: IP recommendation.

Status: SAFETEA—Administration proposal silent on these issues.

H.R. 3—The House bill addresses these issues.

S. 1072—The Senate bill is silent on these issues.

HISTORICAL SUMMARY OF DOT/OSHA OVERLAP

• 1970: To avoid duplicative regulations, Congress enacted the Occupational Safety and Health Act with a provision at section 4(b)(1) that allows OSHA regulations to be preempted when "other agencies issue regulations that affect the occupational safety and health of workers."

• 1975: Enactment of the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633, the first statute to comprehensively regulate the transportation of hazardous materials. Section 106 of this public law, then 49 U.S.C. 1805, was entitled "Handling of Hazardous Materials" and contained subsections (a) "Criteria," which authorized DOT to set criteria necessary for handling such materials including personnel training and qualifications, (b) "Registration," an optional mandate for DOT, and (c) "Requirement," a provision effective only if DOT implemented subsection (b). Section 106 made no mention of OSHA.

• 1990: First substantive amendments to the HMTA, Pub. L. 101–615. including revisions to 49 U.S.C. 1805, Section 7 of this public law, also titled "Handling of Hazardous Materials" repealed subsections (b) and (c) of Pub. L. 93–633, retained subsection (a) "Criteria," with no change, added new subsection (b) "Training Criteria for Safe Handling and Transportation," revised subsection (c) "Registration," which mandates registration, and added new subsection (d) "Motor Carrier Safety Permits." Subsection (b)(3), entitled "Coordination of Emergency Response Training Regulations," called for coordination with OSHA "under this subsection." Subsection (b)(3) closed by noting, "no action taken by the Secretary [of Transportation] pursuant to this section" shall preclude OSHA regulation. All legislative history indicates that both italicized words were meant to read subsection. In short, this history makes clear that the term "section" in the second sentence was an error. There is absolutely no reference in hearings, floor debate, or summaries of the 1990 amendments that Congress acted with knowledge to grant OSHA shared jurisdiction over the entirety of hazardous materials "handling", let alone "motor carrier permits" and "hazardous materials registration." Had the word "subsection" been used, only the "training" of hazmat workers would have been open to "shared" duplicative regulations.

• 1994: Congress recodified transportation law. Congress was explicit that the recodification should result in no substantive change in the law. The recodification of the HMTA split the 1990 version of U.S.C. 1805 into 49 U.S.C. Sections 5106 "Handling criteria," 5107 "Hazmat employee training requirements and grants," 5108 "Registration," and 5109 "Motor carrier safety permits." Section 5107(f)(2) picked up the second reference to OSHA from the former Sec. 1805(b)(3), but now referenced OSHA regulation with respect to Sections 5106, 5107(a)–(d), 5108(a)–(g)(1) and (h), and 5109. While the scope of the error was now clear, its impact was not.

• 1996: *Secretary of Labor* v. *Yellow Freight Systems, Inc.* OSHRC Docket No. 93–3292, July 31, 1996. The impact of the error was first felt when an administrative law judge under the OSHA Review Commission, upon reading recodified Subsection 5107(f)(2), concluded that virtually no hazardous materials regulation by DOT could be deemed an "exercise" of jurisdiction over occupational safety and health within the meaning of 4(b)(1) of the OSH Act, thereby allowing duplicate coverage of the same workplace hazards by both OSHA standards and DOT regulations.

• 1997: Original DOT proposal to reauthorize the HMTA. The 1990 Act expired in 1998. The original Administration bill, that passed the Senate, corrected the error in § 5107(f)(2) by striking the referenced provisions of §§ 5106, 5108, and 5109. Subsequently, the Administration, bowing to pressure from DOL/OSHA/Labor, tried to amend the Senate-passed bill to retain the error. The legislation died at the end of the 105th Congress.

• 2001: DOT proposes a different approach to resolve the jurisdictional overlap created by the error in § 5107 by acknowledging that in addition to training, OSHA shares jurisdiction over hazmat employees that engage in emergency response. While this approach does not "correct" the error, it narrows OSHA's virtually unrestrained "handling" authority, to a defined area of "emergency response." DOT and DOL endorsed this compromise. Industry was willing to accept it as a way to move beyond this issue and to fully address HMTA reauthorization. The legislation died at the end of the 107th Congress.

• 2003: In the context of TEA–21 reauthorization, Congress included provisions to reauthorize the HMTA although the Administration had not submitted a reauthorization proposal. DOT's position on the reauthorization was to support the compromise presented in 2001. In the meantime, DOT has issued a final rule, HM–223 "Applicability of the Hazardous Materials Regulations." HM–223 was intended to clarify the regulatory jurisdiction of various federal agencies with respect to DOT. The rule addresses the "typographical" error by stating that DOT was choosing not

to regulate in areas that OSHA had regulated irrespective of whether there was language in the law or not. In short, the section 4(b)(1) preemption is never triggered. It remains to be seen how OSHA authorized states may take advantage of the shared jurisdiction authority to impose requirements that are different or additional to federal requirements frustrating national and international regulatory uniformity and undermining hazardous materials transportation safety and security. Neither the Senate nor the House have held hearings to allow these facts to come forward or to receive testimony on the nearly dozen other new issues that have arisen over HMTA reauthorization in this Congress.

• 2004: DOT issues the Administration's views on the TEA–21 reauthorization bill specifically addressing the "long-standing error" in § 5107. The Administration's position continues to support the compromise articulated in 2001. The House passes legislation, H.R. 3550, that partially addresses the 1990 error. The legislation dies at the end of the 108th Congress.

• 2005: As TEA–21 reauthorization gets underway in the 109th Congress, DOT declines to submit revised reauthorization proposals citing concern that new proposals would duly delay congressional action. DOT maintains that its position on the error is the compromise articulated in 2001. The House passes legislation, H.R. 3, that partially addresses the 1990 error.

CORPORATE TRANSPORTATION COALITION
Bowie, MD, April 4, 2005

Hon. TED STEVENS,
Chairman;
Hon. DANIEL K. INOUYE,
Co-Chairman; and
Hon. TRENT LOTT, Chairman of the Senate Subcommittee on Surface Transportation and Merchant Marine,
Senate Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Chairman Stevens, Co-Chairman Inouye and Chairman Lott:

On behalf of the Corporate Transportation Coalition (CTC), I am writing to express our views on several issues before the Committee and the Subcommittee as you address reauthorization of federal motor carrier programs.

The Corporate Transportation Coalition is an alliance of associations and companies representing the transportation interests of the food, manufacturing, distribution, construction, retail, and service industries. CTC's members utilize truck fleets and drivers as an integral part of their business operations. Collectively, CTC members' companies employ tens of thousands of drivers and operate commercial vehicles in a wide range of operations. These encompass virtually every type of fleet and vehicles of every size.

Driver Hours of Service

Since January 2004, the rules under which interstate motor carriers operate permit 11 hours of driving time within a 14-hour period from the time a driver begins work, after the driver has been off-duty for a period of at least 10 consecutive hours. Unlike the "old" rules, however, taking off-duty time during the course of the day does not extend the daily tour of duty period. In other words, under the current rules, a driver may not drive after the 14th hour from clocking in, until he or she has had at least 10 consecutive hours off-duty. It does not matter how much off-duty time may have been taken during the course of the 14-hour period.

We believe this inflexible 14 hour tour of duty has a detrimental effect on highway safety and drivers' health and wellbeing in that it provides a disincentive for drivers to take lunch and other needed rest breaks during the course of their workday. The 14-hour rule also has the unintended consequence of increasing the number of driver layovers, meaning that drivers more frequently sleep away from home. Studies cited by the Federal Motor Carrier Safety Administration suggest that drivers who return home every day experience fewer fatigue related serious crashes than those who sleep on the road.

In addition, the reduction in operational flexibility occasioned by the consecutive 14-hour rule has resulted in some companies being forced to hire additional drivers. Again, based on data cited by the agency, this would appear to have the effect of increasing rather than reducing crashes, due both to the increase in inexperienced new drivers and additional trucks on the highways.

The 14-hour rule also has productivity and cost impacts. Many CTC companies engage in short-haul operations. It is interesting, to say the least, that FMCSA's

own research associates driver fatigue problems with the *long-haul* operation of tractor-trailers. Yet the cost burden of the consecutive 14-hour rule falls not on these higher-risk operators, but on short-haul fleets, for whom no significant risk has been identified.

Moreover, unlike some other segments of the "trucking industry", most CTC companies derive little or no offsetting economic benefit from the additional hour of driving time provided in the new rules. The increase in allowable driving time from 10 to 11 hours generally provides an economic benefit to long-haul carriers only. There is no corresponding offset for short-haul operations in which drivers spend considerable time in non-driving tasks.

For these reasons, CTC urges the Committee to seek to amend the consecutive 14-hour rule to permit a driver to "extend" his or her 14-hour tour of duty by up to two hours by taking off-duty rest breaks during the course of the workday.

Fuel Surcharges

Section 4139 of H.R. 3 as passed by the House on March 10 would require that shippers, carriers and intermediaries pay fuel surcharges to the motor carriers they use. Purchasers of transportation services would be required to utilize a minimum fuel surcharge standard established in law.

CTC believes Section 4139 represents government intervention into motor carrier pricing not seen since the days of comprehensive economic regulation of trucking under the old Interstate Commerce Commission. The provision would, in effect, impose price setting, and control over private contracting, through congressional edict.

Moreover, Congress previously eliminated tariffs and undercharge claims based on those tariffs, yet Section 4139 establishes a similar legal trap for shippers, carriers and brokers. The surcharges would be based on a complicated formula for determining fuel costs and mileage for each shipment, and would vary depending on where the freight is tendered.

This opens up nearly unlimited opportunities for lawsuits alleging underpayment of surcharges.

Section 4139 repudiates 25 years of motor carrier deregulation and the need to limit frivolous lawsuits.

We urge the Committee to work toward passage of a highway bill that supports private enterprise and the free market and rejects government regulation of prices and interference in private contracting.

Single State Registration System

The Single State Registration System (SSRS) is a means by which 38 participating states collect fees, ostensibly for "registration of insurance" from for-hire motor carriers. This program, which is a holdover from the days of intrusive economic regulation under the Interstate Commerce Commission, has long since ceased to serve any public policy purpose and has become merely a means for states to collect fees. The program should be repealed. Moreover, it should not be replaced with any system requiring motor carriers to file proof of financial responsibility with any state or pay fees in connection with such filings.

In particular, CTC is opposed to any "replacement system" that would include private motor carriers, or require private motor carriers to file proof of financial responsibility in any state or with the federal government, or pay any fee in connection with such filings.

Such a provision, were it to become law, would amount to significant new tax and regulatory burden on private carriers, many of which are small businesses. We would further note that Congress has conducted no hearings or debate on proposals to replace the SSRS with a system that would extend these tax and regulatory burdens to private carriers or others.

Thank you for this opportunity to express our views on these issues before the Committee.

We request that this letter be included in the record of the hearing titled "Highway, Motor Carrier, and Hazardous Materials Transportation Safety, and Transportation of Household Goods" before the Subcommittee on Surface Transportation and Merchant Marine, April 5, 2005.

Sincerely,

EARL EISENHART,
Executive Director

Signatories

Air Conditioning Contractors of America
American Bakers Association
American Beverage Association
American Frozen Food Institute

Food Marketing Institute
Grocery Manufacturers Association
Independent Bakers Association
International Foodservice Distributors Association
National Association of Wholesaler-Distributors
National Beer Wholesalers Association
National Potato Council
National Ready Mixed Concrete Association
National Retail Federation
Retail Industry Leaders Association
Snack Food Association

April 5, 2005

Hon. TED STEVENS,
Chairman,
Senate Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Senator Stevens:

We would like to extend our congratulations to you on becoming Chair of the Senate Commerce, Science and Transportation Committee. As leaders of public health, safety, and child advocacy groups, and medical organizations, we look forward to working with you on legislative initiatives in the 109th Congress to address the personal and financial losses resulting from motor vehicle crashes. Annually, nearly 43,000 people are killed and 3 million more are injured nationwide at a cost of more than $230 Billion. Motor vehicle crashes continue to be the leading cause of death for children, teens and adults up to age 33 as well as traumatic brain injury resulting in death or permanent disability for thousands of Americans each year. A study by the *Alaska Injury Prevention Center* showed that more than 39,000 Alaska residents, on average, are involved in motor vehicle crashes each year.

The Senate Commerce Science and Transportation Committee has a long, successful history of initiating and passing bi-partisan legislation that has saved thousands of lives, prevented millions of injuries and avoided the loss of billions of dollars in health care and economic costs due to highway crashes. Last year, Republican and Democratic Members of this Committee supported enactment of comprehensive highway and auto safety legislation that was included as Title IV of S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Act of 2003 (SAFETEA). In fact, it was largely the important work of the Senate Commerce, Science and Transportation Committee that put the "safety" into the SAFETEA legislation.

This common sense, life-saving legislation directed the U.S. Department of Transportation to move forward on long-overdue or delayed safety standards and programs to improve passenger car and truck safety, address impaired driving, protect children, and encourage seat belt use. The safety provisions in S. 1072 were the result of a lengthy, bipartisan process that included Committee hearings and input from all interested parties. Furthermore, 44 Republican and Democratic Senators sent a letter on September 13, 2004 to the Senate conferees endorsing adoption of Title IV of S. 1072.

These safety measures have been under consideration by the U.S. DOT for years and in some cases decades, but have not been implemented. Title IV of S. 1072 set goals for government action over the next few years and gave safety agencies maximum flexibility in developing safety standards and other life-saving programs.

The failure to enact Title IV in the last Congress was a major setback to highway and auto safety. We urge you, as the new leader of the Senate Commerce, Science and Transportation Committee, to reprise the safety provisions in Title IV of S. 1072 adopted by the Senate in the last Congress and to make enactment a top priority as part of the surface transportation reauthorization legislation.

On behalf of our organizations, we look forward to working with you to advance highway and auto safety legislation in the coming months that will protect our families, reduce the devastating human and financial toll of highway crashes, and make our roads and highways safer to travel. Your leadership and support for enacting the same safety provisions in Title IV of S. 1072 will have a profound effect on the health and safety of our nation's children, teens and adults for years to come.

Sincerely,

Jacqueline Gillan, *Vice President, Advocates for Highway and Auto Safety*

Georges C. Benjamin, MD, FACP, *Executive Director, American Public Health Association*

Carol Berkowitz, MD, FAAP, *President, American Academy of Pediatrics*
Joan Claybrook, *President, Public Citizen*
Howard R. Champion, MD, *President, Coalition for American Trauma Care*
Jack Gillis, *Director of Public Affairs, Consumer Federation of America*
Robert DeMichelis II, *Legislative Liaison, Brain Injury Association of America*
Stephen W. Hargarten, MD, MPH, *American College of Emergency Physicians*
Sally Greenberg, *Senior Product Safety Counsel, Consumers Union*
Janette E. Fennell, *Founder, KIDS AND CARS*
Andrew McGuire, *Executive Director, Trauma Foundation*
Mary Jagim, RN BSN, CEN, *Emergency Nurses Association*
Clarence M. Ditlow, *Executive Director, Center for Auto Safety*
Rosemary Shahan, *Founder, Consumers for Auto Reliability and Safety*
Ralf Hotchkiss, *Technical Consultant, Whirlwind Wheelchair International*
Anne Canby, *President, Surface Transportation Policy Project*
William Speedy Bailey, *Keiko Injury Prevention Coalition, Safe Kids Hawaii*
Jim Sellers, *Executive Director, Akeela, Inc., Anchorage, Alaska*
Britt E. Gates, *Co-Founder/Chair, The Zoie Foundation*

Advocates for Highway and Auto Safety (April 2005) List of 41 U.S. Senators Support for Including Motor Vehicle Safety Provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act (SAFETEA)

Joseph R. Biden, Jr. (D–DE)
Jeff Bingaman (D–NM)
Barbara Boxer (D–CA)
Sam Brownback (R–KS)
Maria Cantwell (D–WA)
Thomas R. Carper (D–DE)
Lincoln Chafee (R–RI)
Hillary Rodham Clinton (D–NY)
Norm Coleman (R–MN)
Susan M. Collins (R–ME)
Jon S. Corzine (D–NJ)
Mark Dayton (D–MN)
Mike DeWine (R–OH)
Christopher J. Dodd (D–CT)
Elizabeth Dole (R–NC)
Byron L. Dorgan (D–ND)
Richard Durbin (D–IL)
Russell D. Feingold (D–WI)
Dianne Feinstein (D–CA)
Tom Harkin (D–IA)
Tim Johnson (D–SD)
Edward M. Kennedy (D–MA)
Herb Kohl (D–WI)
Mary L. Landrieu (D–LA)
Frank R. Lautenberg (D–NJ)
Patrick J. Leahy (D–VT)
Joseph I. Lieberman (D–CT)
Richard G. Lugar (R–IN)
Barbara A. Mikulski (D–MD)
Patty Murray (D–WA)
Bill Nelson (D–FL)
Mark L. Pryor (D–AR)
Jack Reed (D–RI)
John D. Rockefeller IV (D–WV)
Paul S. Sarbanes (D–MD)
Charles E. Schumer (D–NY)
Olympia J. Snowe (R–ME)
Arlen Specter (R–PA)
George V. Voinovich (R–OH)
John Warner (R–VA)
Ron Wyden (D–OR)

Response to Written Questions Submitted by Hon. Frank Lautenberg to Hon. Annette Sandberg

Question 1. Did your agency contribute to the Department of Transportation's (DOT) 2004 Report on "the Western Uniformity Scenario Analysis?" Do you agree with the findings?

Answer. The Federal Motor Carrier Safety Administration (FMCSA) contributed information used in Chapter VII of the Western Uniformity Scenario Analysis, entitled "Safety."

The Executive Summary to the report states in part, "the Department believes that an appropriate balance has been struck on truck size and weight. . . . The Department does not support [a] piecemeal approach to truck size and weight policy. . . . A regional approach such as the Western Uniformity Scenario could have greater benefits than a series of individual exemptions, but it also could have much more serious adverse consequences unless closely monitored. Unless there were very strong support from state elected officials for a carefully controlled and monitored evaluation of changes in truck size and weight limits such as those in the Western

Uniformity Scenario, the risks of adverse impacts from the unmonitored use of LCVs, the divisiveness that might ensue as the current balance in truck size and weight policy is upset, and the further polarization of this very contentious issue would outweigh the benefits that might be realized. Strong support from elected officials of states within the region for a change in truck size and weight limits has not been evident to date, and there is no compelling federal interest in promoting changes that are not strongly supported by the affected states." FMCSA agrees with this statement.

Question 2. Why does the Administration continue to pursue its new hours of service rule, when a court has already struck it down and called into question the safety basis for the rule? Is it the Administration's contention that this rule is the best possible way to improve motor carrier driver fatigue?

Answer. The United States Court of Appeals for the District of Columbia Circuit vacated the 2003 Hours of Service (HOS) rule on procedural grounds, directing FMCSA to more specifically address the effects on driver health. FMCSA is complying fully with the court's decision and has established a dedicated agency team to reexamine the 2003 rule in order to address the court's conclusion. As you know, Congress (in the Surface Transportation Extension Act of 2004, Part V), provided that the 2003 rule will remain in place until September 30, 2005, or the effective date of a new final rule addressing the issues raised by the court, whichever is earlier.

On January 24, 2005, FMCSA published a Notice of Proposed Rulemaking announcing that it is reviewing and reconsidering the 2003 rule, and requesting public comment on what changes, if any, to the rule are necessary to respond to the concerns raised by the court. The deadline for public comments was March 10, 2005, and FMCSA is reviewing the comments. FMCSA is committed to issuing a final rule by September 30, 2005.

Question 3. In 2003, the Inspector General pointed out serious problems with the accuracy and maintenance of safety data collected by your agency. When will the agency have these problems permanently corrected and when will you post this information again on your website?

Answer. In August 2004, FMCSA restricted public access temporarily to the Analysis and Information (A&I) Online SafeStat Module's Accident Safety Evaluation Area (SEA) and overall SafeStat score. This action was taken because these scores rely on state-provided crash reports that are sometimes of inadequate quality because of the timeliness. completeness, or accuracy of the data. The Accident SEA and the overall SafeStat score will return to the public A&I website when the information provided is deemed to be more reliable. It is important to note that this data was never intended to be relied upon by the public in the manner in which it has been used. The information was designed to be one of many tools FMCSA uses to identify potentially high-risk carriers.

In June 2004, FMCSA developed a methodology to evaluate quarterly the completeness, timeliness, accuracy, and consistency of state-reported crash and roadside inspection data. The methodology compares the quality of state-reported crash and roadside inspection data to standards set by FMCSA. Consisting of five performance measures and one overriding performance indicator, the new methodology assigns each state and the nation a rating of good, fair, or poor for each measure, indicator, and overall rating. For each data quality measure, FMCSA is monitoring the evaluation results to determine when to lift the public access restriction imposed last year.

FMCSA's goal is simple. We must ensure that our data is accurate, timely, and complete and to that end we are working diligently with our state partners to ensure the success of this review.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO STACEY L. GERARD

Question 1. The Administration has recommended increasing civil penalties to up to $100,000 for serious violations of HAZMAT regulations in SAFETEA. Can you explain the justification for this increase?

Answer. At present, the maximum civil penalty for a violation of Federal hazardous material transportation law or the regulations issued there under is $32,500 per violation. The Department considers that an increase to $100,000 per violation is warranted to give the Department additional flexibility to assess high civil penalties in those unusual cases involving significant noncompliance with the law and regulations, especially those violations which have the potential to result in death, serious injury, or significant property damage (including damage to the environ-

ment). This increase would make the maximum civil penalty for a hazardous material violation consistent with DOT's civil penalty for violations of federal pipeline safety law, which contains a $100,000 civil penalty provision.

Question 2. Has your agency and the Department of Homeland Security established an annex to the DHS–DOT Memorandum of Understanding (MOU) characterizing the agencies' working relationship for HAZMAT security?

Answer. On September 28, 2004, the Department of Homeland Security (DHS) and the Department of Transportation (DOT) signed an annex to the DHS–DOT MOU implementing Homeland Security Council (HSC) recommendations on the transportation of toxic inhalation hazard (TIH) materials. The purpose of the annex is to delineate clear lines of authority and responsibility and to specify the commitments to carry out various aspect of the HSC's plan for enhancing the security of TIH shipments by rail. Within DOT, the agencies with primary responsibility for carrying out the annex are the Pipeline and Hazardous Materials Safety Administration (PHMSA); the Office of Intelligence, Security, and Emergency Response; and the Federal Railroad Administration. The annex is considered Sensitive Security Information. A more general annex between DHS and DOT addressing broader aspects of hazardous materials transportation may be considered after we gain experience working with the TIH annex.

Question 3. Has your agency been reviewing HAZMAT security plans or taken any enforcement action against any HAZMAT shipper or carriers for insufficient plans?

Answer. The Research and Special Programs Administration (RSPA) and, since February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) began monitoring for compliance with the security requirements in Title 49, Code of Federal Regulations, § 172.800 et seq., on October 1, 2003. The requirements became final on March 25, 2003 with permissive compliance until September 25, 2003, when compliance became mandatory. The regulations require entities meeting the applicability provisions in § 172.800(b) to have a written security plan, including a written risk assessment. The plan must cover the areas of personnel security, unauthorized access, and en route security. Entities are also required to provide awareness and in-depth security training.

Since the regulations were new, RSPA/PHMSA decided to allow a period of time for entities to gear up for compliance. For inspections conducted from October 1, 2003 through June 30, 2004, inspectors reviewed the steps taken, if any, to comply with the security regulations, documented and discussed non-compliance, but did not recommend that any enforcement action be taken. During this time period, the inspectors conducted 1,241 inspections, of which 748 (60.3 percent) required a security plan to be in place. The inspectors determined that only 320 entities (43 percent) were in full compliance.

On July 1, 2004, RSPA/PHMSA inspectors began enforcing the requirements to have a security plan. Through April 8, 2005, the inspectors have conducted 1,290 inspections. The total number requiring a security plan was 749 (58 percent). The inspectors determined that 423 (56.5 percent) were in full compliance. This represents an increase in compliance of 13.5 percent.

From July 1, 2004 through April 8, 2005, RSPA/PHMSA has initiated 129 civil penalty cases that include at least one violation for failure to develop and adhere to a security plan, and 54 ticket penalty actions for lesser violations involving security training or incomplete security plans.

To our knowledge, all the modes with hazmat responsibility are currently enforcing the HAZMAT security plan requirements.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO HON. JEFFREY W. RUNGE

Roof Crush

Question 1. NHTSA's "Vehicle Safety Rulemaking Priorities and Supporting Research: 2003–2006" indicated publication of a Notice of Proposed Rulemaking to upgrade FMVSS No. 216, "Roof crush," in 2004. Why has the schedule slipped considering the importance of upgrading FMVSS No. 216?

Answer. As the agency was developing a proposal to upgrade the standard, we decided it was important to consider a range of options and tests in order to achieve the most feasible, effective and economical solution. Evaluation of additional possible tests required further research on our part that was not originally scheduled. The NPRM was transmitted on April 25, 2005 to OMB for review. NHTSA expects to publish the NPRM in Summer 2005.

Question 2. Also. why is NHTSA working to improve this standard in light of recent agency statements that the new standard would only save about 40 lives each year?

Answer. A proposal to upgrade roof crush resistance is one part of a comprehensive agency plan for reducing the serious risk of rollover crashes and the risk of death and serious injury when rollover crashes do occur. All countermeasures must work together to help create a driving environment in which rollovers can be avoided and rollover-related fatalities and injuries minimized.

The most effective approach to reduce rollover fatal and serious injuries is to prevent rollover crashes, but when rollover crashes do occur, roof structural integrity is important to ensure that the other safety features, such as ejection mitigation through side curtains, strengthened door latches. and restraint systems all work together to provide optimal occupant protection.

We also believe that future NHTSA work to improve restraints in rollovers and ejection mitigation will work in tandem with this roof crush rulemaking to save more lives.

Question 3. Why would NHTSA not attempt to implement a more effective roof crush standard that saves more lives?

Answer. The agency believes that its proposal will be a most cost effective improvement to roof crush strength. We examined other approaches and found that they weren't more effective, presented technical barriers, and/or were too costly relative to the benefits. In addition, there are other cost-effective countermeasures such as ejection mitigation and advanced restraint systems that could prevent and reduce even more rollover fatalities and serious injuries.

Vehicle Compatibility

Question 4. Has NHTSA monitored the Alliance's adherence to the Agreement to date?

Answer. Annual submissions are provided to the agency by participating vehicle manufacturers regarding the vehicle make/models that meet their commitments. These submissions have been placed in the public docket.

Question 5. Does NHTSA believe that the Alliance is adhering to the terms of the Agreement?

Answer. The agency has no evidence to indicate that the terms of the agreement are not being met.

For enhanced front-to-side self-protection, the agreement requires that by September 1, 2007, at least 50 percent of the participating manufacturers' production will provide improved head protection.

For front-to-front crashes, the agreement requires that by September 1, 2009, 100 percent of the participating manufacturers' light truck production will have geometric alignment.

Question 6. Has the Agreement had the effect of slowing down or stopping NHTSA's rulemaking efforts in the area of crash compatibility?

Answer. No. industry's voluntary agreement has had no effect on NHTSA's rulemaking and research in this area.

NHTSA published an upgrade to FMVSS No. 214 "Side impact protection," as a first initiative in its approach to compatibility, and plans to have a final rule published in 2006.

The agency is continuing research to establish quantifiable, partner protection compatibility metrics for the vehicle front-structure and the potential associated benefits.

Question 7. If implemented as described, will the Agreement result in significant reduction in the number of lives lost in motor vehicle accidents?

Answer. Yes. NHTSA estimates that 700 to 1,000 lives will be saved each year by the agency's upgrade to FMVSS No. 214. While industry's voluntary agreement is not as extensive as the proposed upgrade to FMVSS No. 214. it is an important first step that will incorporate some of the same life-saving countermeasures into the vehicle fleet on a shorter schedule than the mandatory changes to Standard No. 214.

For front-to-front compatibility, agency research has not yet progressed to a stage that potential benefit estimates for various countermeasures can be established.

Ejection Mitigation

Question 8. Why does NHTSA assert that the upgrade of FMVSS No. 214 is part of its plan to address passenger ejections when, in fact, side air bags that will be installed to comply with the upgrade will not be required to deploy during rollovers?

Answer. The upgrade of FMVSS No. 214 is the first phase of NHTSA's three-phase plan to address passenger ejections. The first phase is expected to result in the installation of side curtain air bags in most light vehicles. The second phase would provide containment requirements for those side curtain air bags to mitigate ejections, and provide protection for all occupants, particularly for partial ejections of belted occupants. A third phase would establish performance requirements for the rollover sensors.

Also, it is important to note that not all ejections are due to rollover.

Question 9. Will the rule upgrade require rear-seat occupant head protection? If not, what would prevent rear-seat occupants from being ejected in rollovers or from being severely injured in a side-impact accident?

Answer. FMVSS No. 214 will require rear-seat occupant head protection, if the final rule is adopted as proposed. Head protection will have to be met in the rear seat using two different sized dummies representing a 5th percentile female and a 50th percentile male.

The agency is currently conducting research for rear-seat ejection mitigation containment requirements.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. JEFFREY W. RUNGE

Question 1. How important is it to have states enact laws that effectively deal with a "higher-risk" or "hard-core" drunk driver, who is a first-time offender with a blood alcohol level of .15 percent, almost twice the legal limit?

Answer. High blood alcohol content (BAC) laws are promising, particularly as part of a comprehensive package of state impaired-driving laws. More than 30 states now have this type of law in place, providing increased sanctions for drivers convicted at BAC levels that are well above the state's per se impairment level. These laws vary considerably according to the specific BAC threshold at which they apply and in terms of the severity of the enhanced sanctions. This variation, and the fact that most of these laws are relatively recent, makes generalization of their impact difficult. However, a NHTSA evaluation indicates that high BAC laws can contribute to a strong overall state impaired-driving legislative package.

Question 2. As a doctor, are you familiar with the effects of alcohol on people? How can a person drive with a .15 percent blood alcohol level and think that they are not a danger to the traveling public? Are they likely to become repeat offenders?

Answer. Yes, I worked in an emergency department for 20 years and have seen the results of impaired driving. At the .15 blood alcohol content (BAC) level, people typically suffer a loss of muscle control and balance, and may become sick and vomit. For drivers, this translates to substantial impairment in vehicle control, a reduction in necessary visual and auditory information processing, and a loss of attention to the driving task.

In 2003, the median BAC among alcohol-involved drivers who were killed in crashes was .16 percent, a level unchanged since 2002. This level constitutes serious impairment and it is very likely that a person driving at this level has done so on more than one occasion.

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