STATEMENT OF JOAN CLAYBROOK

PRESIDENT, PUBLIC CITIZEN

ON BEHALF OF

**PUBLIC CITIZEN,
CITIZENS FOR RELIABLE AND SAFE HIGHWAYS (CRASH),
PARENTS AGAINST TIRED TRUCKERS,
AND ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

BEFORE THE SURFACE TRANSPORTATION AND MERCHANT MARINE SUBCOMMITTEE

SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

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

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

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

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

More recently, as stated in the U.S. Department of Transportation Performance Plan for Fiscal Year 2004, the agency has adopted a new goal of also reducing the rate of truck crash fatalities from the baseline of 2.8 deaths per 100 million truck miles traveled (MTMT) in 1996 to no more than 1.65 deaths per 100 MTMT in 2008. While we regard this as an admirable – and extraordinarily difficult goal – to be achieved in only a few years given the most recent rate of 2.4 deaths per 100 MTMT, there are serious questions about the intent of the Department and the FMCSA is choosing this new safety goal. Our concern is the fact that, under the right circumstances, given rapid growth in truck mileage accrued on an annual basis over the next several years, the rate of truck deaths using this exposure measure could continue to decline, even if only slightly, while the number of actual fatalities could increase. We believe that the Department and the FMCSA need to reach both fatality reduction goals, as well as to make sure that they are compatible, but certainly not to abandon the target of dramatically reduced numbers of truck-crash related deaths in favor of only a better death rate as the achievement of its safety policies. This approach could be used to mask the fact that more people really died in a given year than in the prior year even though the rate of deaths was slightly better. NHTSA measures and publicizes both qualities.

No one in Congress, government, industry or the general public would ever accept as a reasonable goal 26 air plane crashes a year that are finally cut only in half after 10 years and no one would accept excuses from the airlines that the skies are safer for passengers who fly because, even though more people died each year, the rate of deaths per air mile of travel decreased. The attached chart shows that FMCSA has yet to reach any annual benchmarks that would indicate the agency has made progress and is on the right course. There have been only marginal decreases in truck deaths in the last three years, the fatality rate is essentially static, and

there are additional, worrisome increases in truck crash injuries. I want to stress that it is especially disturbing that the slight decline in overall deaths in truck-related crash involvements has been offset, according to the National Highway Traffic Safety Administration's early Fatal Analysis Reporting System assessment, by an increase in the fatalities of truck occupants in these collisions from 704 deaths in 2001 to a preliminary figure of 712 deaths in 2002, an increase of 1.2 percent.

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

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

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

Increasing Truck Size and Weight Will Imperil Public Safety

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

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

perform an outside review of the draft of the Special Report.

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

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

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

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

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

standards implemented by the states to improve the safety of vehicles operating under the permit system.

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

These brief observations do not exhaust the full extent of the defects in this study. As an indication of the scientific weakness of the study, the Special Report recommends that trucks found after protracted operational experience to have shortcomings, including safety deficiencies, be withdrawn from service. This recommendation, however, is a further indication of the lack of credibility of the Special Report since no known truck configuration placed into service has ever been withdrawn from use, including some of the most unstable combinations, such as triple-trailer combinations composed of three short trailing units on single axles. Currently, 16 states allow triples and no state that has allowed their operation has banned them.[2]

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

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

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

Recommended Actions:

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

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

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

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

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

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

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

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

Federal law requires that all vehicles, including those operated in the U.S. by foreign nationals to conduct trade, must be certified by the manufacturer as built in compliance with U.S. safety standards. Certification of compliance with the Federal Motor Vehicle Safety Standards (FMVSS) applicable at the time of manufacture is not just a mere technicality, but an important safety protection. A number of major safety regulations have been adopted and implemented by the National Highway Traffic Safety Administration (NHTSA) since the late 1980s such as anti-lock brakes for trucks and buses, automatic brake (slack) adjusters, a requirement for rear underride guards, and, among other things, safer emergency exits for buses.

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

The FMCSA has proposed a two-year "grace period" for these vehicles. The agency

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

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

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

Recommended Actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of split sleeper berth rest time with drivers suffering repeated interruptions during their off-duty rest periods.

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

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

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

This proposal to control excessive driving hours with EOBRs is discarded in the final HOS rule. The FMCSA, in a startling turnaround, states that it in fact didn't get around to reviewing the merits of any of the recorders that it proposed certifying as compliant with the EOBR provision in the 2000 notice of proposed rulemaking. Accordingly, the agency states that it needs to study the issue some more because it didn't do what it was supposed to do. No specifics are provided on how this research would be conducted, who would perform it, what its goals would be, when it would be completed, and how precisely it would be brought into play with respect to the contours of the final regulation just issued. A large percentage of the industry, cutting across all types of highway transportation including passengers, general freight and hazardous materials regularly use various types of electronic on-board recorders to monitor both vehicle functions and driver hours-of-service compliance. In the meantime, the agency will fall back to relying on the paper logbooks that have been maintained for decades, logbooks that are widely and systematically falsified by trucking officials and drivers, a hand-written record of duty time that is regularly referred to as the "comic book" by drivers who know how to mask violations and conceal or lose documentation, such as receipts for tolls, lodging, food, and fuel, creating a paper trail that would show regulatory violations.

So, next year the American people and truck drivers face on our highways a new regulation forcing drivers to work and drive even longer hours than ever before, allowed to have

little rest and effectively no layover before being required to drive again, and to continue to exceed even the excessive limits on driving time allowed under the new rule without any accurate means adopted by our government to show whether these drivers are obeying the law.

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

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

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

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

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

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

Unfortunately, the agency has seen fit to allow domestic carriers to be awarded operating authority without undergoing any initial safety evaluation, just as it has decided to allow border-zone-only Mexico-domiciled motor carriers to be registered without a prior safety audit. A safety audit for U.S. carriers under the interim final rule issued by the FMCSA will only be performed after-the-fact, up to 18 months after the U.S. business is given operating authority. The FMCSA actually notes in the interim final rule that it might not even meet the 18-month

statutory deadline for conducting safety audits, thereby providing itself with a loophole for not meeting its statutory obligation, in direct contradiction of the express legislative intent of Section 210. I should emphasize that the safety evaluation will not be a comprehensive compliance review that results in a safety rating. As a result, the new entrant approval process put into effect by FMCSA <u>will still allow domestic motor carriers to operate indefinitely without any assigned safety rating!</u>

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

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

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

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

The FMCSA should be directed to conduct an "exit" safety evaluation of each new

motor carrier after 18 months of operation. If a carrier fails this evaluation, a full safety compliance review should be triggered that results in an assigned safety rating.

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

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

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

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

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

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

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

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

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

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

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

Hazardous Materials Transportation Safety Oversight Is Dangerously Inadequate.

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

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

No motor carrier seeking to start hauling hazmat should be able to make this kind of major shift in its transportation services without the FMCSA knowing about it. A motor carrier should not only be required to notify the FMCSA immediately that it is beginning to haul hazmat by having to register with RSPA, but each carrier should have to apply to the FMCSA for

additional operating authority for hazmat carriage. This application should include a safety audit of the motor carrier's operations and a proficiency exam specifically for the purpose of testing the carrier's knowledge of and capability to comply with the federal hazmat regulations.

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

Truck drivers, after obtaining a hazmat endorsement for the commercial drivers' license (CDL) by merely passing a written exam, can legally drive tractor semi-trailers carrying 80,000 pounds of placarded hazmat throughout the U.S. This underscores the crucial need for a secure and reliable identification of hazmat drivers to prevent dangerous and unauthorized persons from transporting hazmat. The Truck and Bus Regulatory Reform Act of 1988 directed the Secretary to issue regulations by December 31, 1990, establishing minimum uniform standards for a biometric identification system to ensure the accurate identification of drivers. DOT took no regulatory action in response to this mandate. As a result, in 1998 Congress directed that CDLs contain some form of unique identifier after January 1, 2001, to minimize fraud and illegal duplication. Once again, there has been no action on this issue. As a result, Public Citizen, CRASH, and PATT sued FMCSA on this and four other rules on which no action had been taken for unreasonable delay. FMCSA settled the lawsuit agreeing to specific deadlines for action on each of these rules. For hazmat minimum standards for drivers, the agency agreed to issue the rule by March 30, 2004. If FMCSA fails to meet the deadline, under the settlement, the court will be called on to force the agency to do so. In light of changed circumstances concerning the safety transport of hazmat transported across the U.S., Congress should direct the Secretary to accelerate the development of a unique identifier, at least for commercial drivers with hazmat endorsements. This biometric or other unique security identification would dovetail with the background criminal and driving record checks for hazmat licensure and endorsements that soon will come into play as a result of Section 1012 of the USA PATRIOT Act, Title X, Pub. L. 107-56 (Oct. 26, 2001).

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

have taken prohibited routes or have evaded safety inspections or weigh stations.

With regard to hazmat routes, the current routing regulations for non-radioactive hazardous materials highway transport are too general and inadequate. The federal requirements do not require states even to have highway routing criteria for these hazmat shipments, and many states continue to allow loads of hazmat to be transported on most roads and through major metropolitan areas across the nation regardless of population or traffic conditions. Even worse, the burdens imposed on the states by the Federal Highway Administration (FHWA) to justify alternative, diversionary routes for public and environmental protection have a chilling effect on the willingness of states and local public authorities to tell hazmat carriers to use longer, safer routes. Congress should require the states to adopt non-radioactive hazmat routing criteria instead of leaving this action to state option.

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

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

- The RSPA deleted most of the major requirements of a proposed rule that would arguably improve enforcement oversight of hazmat security after receiving negative comments from the trucking industry (see specific aspects below).
- The RSPA will require offerors and carriers of hazmat to have security plans, but will not prescribe what the plans must contain, will not review and approve them before adoption, and will not keep any on file at the agency.
- The RSPA will require employee hazmat training, but will not specify any training requirements.
- The RSPA will not require hazmat offerors or carriers to verify the accuracy of information supplied by job applicants who will handle or transport hazmat.
- The RSPA has rejected changing any of the current types or level of hazmat requiring placarding, in order to increase hazmat transportation security, based on the more stringent definitions of hazmat used by the Bureau of Alcohol, Tobacco, and Firearms.
- The RSPA makes no mention of the longstanding Congressional statutory mandate to institute a federal permitting system for specific types of hazmat explosives, toxic-by-inhalation agents, and highway route-controlled radioactive substances.

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

- The RSPA has ruled that mixtures of ammonium nitrate and fuel oil, like that used to blow up the Murrah federal building in Oklahoma City in 1995, are not a sufficient security risk when transported in commerce to warrant detailed employee background checks for those workers handling or transporting such mixtures.
- The RSPA has also ruled that it will not change the types or quantities of hazmat requiring placarding to place more stringent requirements on transporting toy caps, signal devices, flares, and distress signals (either combustible or explosive) in less than 1,000 lbs. quantities; the agency judged that such hazmat does not present a significant security threat involving their use during transportation for a criminal or terrorist act.

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

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

- Requirement for motor carriers already registered with the agency to maintain a copy of that current registration certificate on board each motor vehicle transporting hazmat.
- Requirement for shipping papers to show the name and address of both the consignor (origin) and of the consignee (receiver) and for the shipping papers to show the shipper's U.S. DOT Hazmat Registration number.
- Requirement that shipper and carrier of certain highly hazardous materials develop and implement hazmat transportation security plans.
- Requirement that hazmat shippers and carriers assure that their employee training includes a security component.

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

- RSPA states that security measures cannot adversely affect the efficient transportation of hazmat or impose excessive economic burdens on the hazmat transportation industry.
- The agency deleted a requirement that a copy of current hazmat registration be on board each vehicle. RSPA accepted the industry's position that the certificate is no proof of security clearance for the hazmat carrier because "in no case is any background investigation conducted before registering an applicant, or even investigation to ensure that the applicant is a bona fide company legitimately engaged in the offering for transport and/or transporting hazardous materials." RSPA does not mention any consideration for future rulemaking to propose such required background checks of hazmat carrier applicants.
- RSPA deleted a requirement that shipping papers have current hazmat registration number because of industry opposition.
- Although RSPA believed the proposal had merit it rejected in the final rule a requirement that shipping papers have name and address of both consignor and consignee.
- Although RSPA adopted a requirement for security plans for both offerors of hazmat and

carriers of hazmat there are no required elements for the plans in the final rule, shippers and carriers can use any risk model they like, and the agency will not review the plans for adequacy before the time of their adoption. RSPA also strengthens language in final rule as compared with the proposed rule to reduce the liability of a shipper or carrier if a terrorist action happens despite their compliance with the terms of the final rule.

- RSPA weakened a requirement for employers who are shippers or carriers to confirm information provided by job applicants who would handle or transport hazmat. RSPA weakens the final rule by changing the employer's responsibility from "verify" to "confirm" that information supplied by job applicants is accurate and agrees with industry comments that "verify" is too stringent. Moreover, RPSA "do[es] not expect companies to confirm all of the information that a job applicant may provide as part of the application process." A question here is whether this meets the letter and spirit of the U.S. PATRIOT Act.
- RSPA requires that employee hazmat training contain a security component but will not specify what to require.

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

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

- It requires persons offering for transport or actually transporting hazmat to develop and implement security plans, but the rule relies on the existing regulations concerning the types and amounts of hazmat and Centers for Disease Control "select agents."
- RSPA considered and rejected consideration of the application of the more stringent definitions of 'hazmat' used by the Bureau of Alcohol, Tobacco, and Firearms. RSPA nonetheless concluded that its present threshold amounts for placarding of certain radioactive materials, explosives, and agents toxic by inhalation are sufficient to control any security risk of their improper use. This means that the agency required placarding and the use of a security plan to these smaller amounts of hazmat regulated by BATF.
- The agency makes no mention of the hazmat motor carrier federal permitting requirements Congress adopted in 49 U.S.C. § 5109 for specific types of hazmat that have never been implemented despite a clear statutory command enacted 10 years ago.
- RSPA concludes in the interim final rule that mixtures of ammonium nitrate and fuel oil, like that used to blow up the Murrah federal building in Oklahoma City in 1995, "do[es] not meet the definition of a Class 1 material under the HMR" and that they "generally do[es] not pose a sufficient security risk when transported in commerce to warrant detailed employee background checks."
- RSPA also has decided throughout the interim final rule that it will not review or disturb the current threshold quantities of different hazmat requiring placarding, such as toy caps, signal devices, flares, and distress signals less than 454 kg (1,000 lbs.). As a result, the agency states that it has judged that "[w]hen shipped in amounts that do not require placarding, such shipments do not pose a security risk when transported in commerce

sufficient to warrant detailed employee background check requirements at this time" and they "generally do not present a significant security threat involving their use during transportation for a criminal or terrorist act."

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

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

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

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

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

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

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

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

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

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

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

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

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

Another key shortcoming of the federal CDL rules is the lack of a requirement for a commercial license for drivers operating trucks that are less than 26,001 pounds gross vehicle weight. There are millions of single-unit trucks weighing between 10,001 and 26,000 pounds operating in interstate commerce with drivers who have no CDLs, who are not subject to mandatory drug and alcohol testing, and for whom the states often have patchy, unreliable driver records of traffic and other violations and convictions. This class of trucks comprise large single-unit delivery trucks, such as beverage trucks, large single-unit trucks used for interstate (primarily regional) movement of certain combustibles, small tankers used for propane delivery,

single-unit regional moving vans, and many other single-unit trucks transporting a wide variety of cargo. Single-unit trucks are responsible for nearly a third of all truck-related fatalities and pose a significant safety problem. Overall, more than 40 percent of severe to fatal injuries each year in truck-related crashes are the result of single-unit truck collisions, according to FMCSA.

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

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

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

Little more than a year ago, the U.S. Department of Transportation's Office of the Inspector General (OIG) released its detailed audit on the federal and state administration of the Commercial Driver License (CDL), *Improving the Testing and Licensing of Commercial* Drivers, MH-2002-093, May 8, 2002. In general, the OIG found that federal standards and state control over the issuance and follow-up oversight of the CDL were not sufficient to defend against the threat posed by individuals who seek to fraudulently obtain CDLs. The current federal standards do not adequately address how the states should verify the eligibility of CDL applicants, and the states themselves do not fully implement the existing federal standards to adequately monitor third-party testers. The OIG found with regard to the last mentioned issue of third-party testers that 23 states did not require these examiners to annually take the driving skills test administered by the third-party testers.

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

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

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

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

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

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

The consequence of this FMCSA January 2003 revision is far-reaching. Convictions for serious offenses by CDL holders in non-CMVs that would have systematically resulted in disqualification periods for CDL holders will now trigger disqualification only if the convictions result in suspension or revocation. This means that what had been adopted as a federally uniform system of removing offending CDL holders from the highways has effectively become a highly uneven system of disqualification that depends on individual state practice. If, for example, a CDL holder is convicted for one, two, or even three disqualifying offenses, but the

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

state that issued the CDL does not require suspension especially after the first or second convictions, this CDL holder can continue to drive in interstate commerce.

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

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

Recommended Action:

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

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

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

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

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

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

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

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

We also strongly support the other part of Section 4005 in the Administration's bill establishing a national registry of appropriately trained medical examiners that lists the certified preferred providers for conducting the physical qualification medical examinations for commercial motor vehicle drivers. This kind of national list of trained health care providers certified to conduct the physical examinations will finally put an end to the multiple abuses under the current system that sometimes result in unqualified drivers nevertheless being given a pass to continue to operate trucks and buses in interstate commerce. For example, a famous insider joke among commercial drivers concerns "doctor shopping" – which, under the current FMCSA regulation also includes an advanced practice nurse, a physician's assistant, and a chiropractor. If you can't find a health care provider to pass you the first go-around, you have a good chance if you keep trying.

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

Unfortunately, there are also health care providers who override the criteria of the regulations and nevertheless certify a driver even though technically that driver failed some part of the exam. There also are providers who do not conduct a thorough physical, failing to test in

required health areas, so that certification is provided on the basis of an incomplete exam.

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

Recommended Action:

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

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

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

Using bogus research claims, the trucking industry and even the FMCSA has kept up a steady drumbeat of claims that most fatal crashes involving large trucks and small passenger vehicles are primarily the fault of or are somehow caused by the drivers of the cars, pickup trucks, vans, and sport utility vehicles. But in a General Accounting Office (GAO) report released at the end of May 2003, the GAO states that subsequent research by the FMCSA showed that, at most, only 35 percent of fatal passenger vehicle – large truck collisions are attributable to passenger vehicles traveling in the No Zone.[3]

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[3] *Truck Safety: Share the Road Safely Program Needs Better Evaluation of Its Initiatives*, U.S. General Accounting

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

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

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

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

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

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

Office, GAO-03-680, May 2003.

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

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

As a result of these abuses of the public trust and the findings of the GAO in its recent report showing a decade of bankrupt agency and industry attempts at "educating" the public and thus classifying light vehicle drivers as the prime offenders in truck-car crashes, we have formed our own recommendations for reauthorizing the program that are directly supported by the results of the May 2003 GAO report and its own recommendations.

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

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

FMCSA Reauthorization

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

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