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GOVERNMENT

TRUCK SAFETY ACT

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HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1390

TO PROMOTE COMMERCIAL MOTOR VEHICLE SAFETY, TO
PREVENT INJURY TO COMMERCIAL MOTOR VEHICLE OPERA-
TORS, AND FOR OTHER PURPOSES

AND

S. 1400

TRUCKING COMPETITION AND SAFETY ACT OF 1979

JULY 17 AND 18, 1979

Serial No. 96-55

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



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TRUCK SAFETY ACT

TUESDAY, JULY 17, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:35 a.m., in room 235, Russell Senate Office Building, Hon. Howard W. Cannon (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Today the Senate Commerce, Science, and Transportation Committee begins 2 days of hearings on truck safety. In 1978, more than 50,143 people died on our Nation's highways. Thus, 4,202 more Americans died in traffic accidents last year than were killed in battle during the Vietnam war. Also in the period from 1975 to 1977, the National Highway Traffic Safety Administration's statistics show that passenger vehicle fatalities resulting from accidents with combination trucks jumped 18 percent. It is critical that we understand the causes of these accelerating rates of death and injury on our highways. In order to gain this understanding, these hearings will continue the committee's systematic evaluation of highway safety issues.

In these hearings, we intend to particularly focus on S. 1390, the Truck Safety Act, introduced by Senator Percy, and title II of S. 1400, which is the truck safety title of the truck deregulation legislation introduced by Senator Kennedy. Both of these bills would strengthen the power of the Federal Government in the truck safety area. They also would increase the incentives for State cooperation with the Federal Government in enforcing truck safety regulations. These bills also would increase regulation of buses and other heavy duty commercial vehicles. Later this session, the committee intends to hold additional hearings to focus on fuel economy questions, such as uniform truck lengths and truck weight proposals which also impact on truck safety.

This Nation and its economy are highly dependent on trucks to ship goods throughout the country. Approximately 4½ million interstate truck drivers share the Nation's highways with other drivers. It is essential that we assure that this transportation is as safe as possible.

Unfortunately, there is reason to believe that our present truck safety regulatory framework has not proven adequate to meet this challenge. Time after time in the last 5 years intensive roadside inspections in various parts of the country have consistently found widespread noncompliance with Federal truck safety regulations. These violations frequently were extremely serious, affecting major

safety components, and requiring the trucks to be placed out of service until the violations were remedied.

In these hearings, we will examine a number of important issues including:

1. The major causes of truck-related fatalities and injuries;
2. Why the present Federal regulatory scheme has so far failed to assure adequate compliance with Federal truck regulations;
3. How the various Federal agencies responsible for truck safety and the health of trucking employees can improve their coordination of these activities;
4. What actions, if any, should be taken to improve coordination between the Federal Government and State and local governments in the area of truck safety;
5. What level of funding and what funding mechanism should be utilized in the truck safety area; and
6. Should increased penalties be developed to assist enforcement in the truck safety area.

We are fortunate that these and other related questions will be analyzed by a broad spectrum of witnesses drawn from Federal, State, industry, labor and consumer groups.

[The bills follow:]

96TH CONGRESS
1ST SESSION

S. 1390

To promote commercial motor vehicle safety, to prevent injury to commercial motor vehicle operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 1979

Mr. PERCY (for himself, Mr. KENNEDY, Mr. PACKWOOD, and Mr. MAGNUSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote commercial motor vehicle safety, to prevent injury to commercial motor vehicle operators, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Truck Safety Act".

4 SEC. 2. The Congress finds that it is in the public inter-
5 est to enhance commercial motor vehicle safety and to reduce
6 highway fatalities, injuries, and property damage.

7 SEC. 3. It is declared to be the purpose of this Act to
8 further the safety of commercial motor vehicle operations, to
9 promote safe and healthy working conditions in the motor

1 carrier industry, and to assure compliance by all persons sub-
2 ject to this Act with the Federal commercial motor vehicle
3 safety rules and regulations issued by the Secretary.

4 SEC. 4. For the purposes of this Act—

5 (1) the term "Secretary" means the Secretary of
6 Transportation;

7 (2) the term "commerce" means trade, traffic, or
8 transportation within the jurisdiction of the United
9 States between a place in a State and place outside of
10 such State, or which affects trade, traffic, or transpor-
11 tation between a State and any place outside of such
12 State;

13 (3) the term "employer" means any person en-
14 gaged in a business affecting commerce who owns,
15 leases, or operates commercial motor vehicles in con-
16 nection with that business, or assigns employees to op-
17 erate them in commerce, but such term does not in-
18 clude the United States, or any State, or political sub-
19 division of a State;

20 (4) the term "employee" means a driver (includ-
21 ing, for purposes of this Act only, independent contrac-
22 tors), mechanic, freight handler, and any other individ-
23 ual whose employment with a commercial motor vehi-
24 cle carrier directly affects commercial motor vehicle
25 safety.

1 (5) the term "person" means employers and em-
2 ployees, as well as one or more individuals, partner-
3 ships, associations, corporations, business trusts, or any
4 other organized group of individuals who use or oper-
5 ate commercial motor vehicles in commerce;

6 (6) the term "State" means a State of the United
7 States, the District of Columbia, the Commonwealth of
8 Puerto Rico, the Virgin Islands, American Samoa, or
9 Guam; and

10 (7) the term "commercial motor vehicle" means
11 any self-propelled or towed vehicle used on the high-
12 ways in commerce principally to transport people, com-
13 modities, or equipment in commerce.

14 APPLICABILITY

15 SEC. 5. (a) Except as provided in subsection (b) of this
16 section, this Act shall apply to the safety of operation of all
17 commercial motor vehicles over ten thousand pounds GVWR
18 (gross vehicle weight rating).

19 (b) Nothing in this Act shall apply to the operation of
20 any vehicles engaged in farming activities or logging oper-
21 ations as defined by the Secretary.

22 DUTIES

23 SEC. 6. Each employer shall provide vehicles and work-
24 ing conditions that are safe and healthy, and each employer
25 and each employee shall comply with the safety and health

1 standards and rules, regulations, and orders issued pursuant
2 to this Act which are applicable to his own actions and con-
3 duct.

4 REGULATORY AUTHORITY AND STANDARDS

5 SEC. 7. (a) In carrying out the provisions of sections
6 1655 (e) and (f) of title 49, United States Code, in accordance
7 with section 5 of this Act, the Secretary shall establish,
8 maintain, and monitor safety rules and regulations necessary
9 to assure, to the extent practicable, that—

10 (1) commercial motor vehicles be safety main-
11 tained, equipped, loaded, and operated;

12 (2) the responsibilities imposed upon drivers of
13 commercial motor vehicles do not impair a driver's
14 ability to operate safely; and

15 (3) the health and physical condition of drivers of
16 commercial motor vehicles be adequate to enable them
17 to safely drive the vehicles they customarily operate.

18 (b) The Secretary shall regulate the working conditions
19 and operating practices of employees when operating com-
20 mercial motor vehicles and shall establish, maintain, and
21 monitor safety and health rules and regulations necessary to
22 assure, to the extent technology feasibly permits, that such
23 employees will not suffer injury or material impairment of
24 health or functional capacity due to their exposure to such
25 working conditions.

1 (c) All rules and regulations issued under this section
2 shall be promulgated in accordance with section 553 of title
3 5, United States Code (without regard to sections 556 and
4 557 of such title), provided that such rules shall be promul-
5 gated within ninety days of the expiration of the period pro-
6 vided for submission of written data and comments. Such a
7 rule may contain a provision delaying its effective date for
8 such a period (not to exceed ninety days) as the Secretary
9 determines may be necessary to insure that affected employ-
10 ers and employees will be informed of the existence of the
11 standard and of its terms and that employers affected are
12 given an opportunity to familiarize themselves and their
13 employees with the existence and the requirements of the
14 standard.

15 (d) In promulgating, modifying, or revoking rules and
16 regulations under this Act, the Secretary shall not in any
17 material way reduce the protections currently afforded the
18 public and employees operating commercial motor vehicles.

19 (e) The Secretary shall conduct, directly or indirectly,
20 the research, development, demonstrations, and training ac-
21 tivities necessary to develop rules and regulations under this
22 section, to design and develop improved enforcement proce-
23 dures and technologies, and to familiarize all affected persons
24 with such rules, regulations, and orders.

1 RECORDKEEPING, INSPECTIONS, AND INVESTIGATIONS

2 SEC. 8. (a) The Secretary is authorized to require, by
3 regulation issued pursuant to section 553 of title 5, United
4 States Code, that persons subject to this Act establish and
5 maintain such records, and make such reports as are neces-
6 sary to insure compliance with this Act so that reliable infor-
7 mation can be developed concerning health and safety haz-
8 ards, vehicle conditions, employee qualifications, vehicle in-
9 spection, and maintenance practices, and the safe operation
10 of vehicles. In addition, where appropriate, any such regula-
11 tion may prescribe the manner, type, and frequency of exami-
12 nations by medical authorities or other tests, and the results
13 thereof, which shall be provided by the employer to employ-
14 ees exposed to such hazards in order to permit the Secretary,
15 employers, employees, and employee representatives to de-
16 termine most effectively whether the health and safety of
17 such employees is adversely affected by such exposure.

18 (b) The Secretary is authorized, to the extent necessary
19 to carry out his responsibilities under this Act, to conduct
20 investigations and inspections, compile statistics, make re-
21 ports, hold hearings, require by subpoena, or otherwise the
22 production of documents, records, and property, and take de-
23 positions. Investigations and inspections under this subsec-
24 tion may be conducted without notice. Enforcement officials
25 may consult with the employers and employees and their

1 duly authorized representatives, and shall offer them a right
2 of accompaniment.

3 (c) The Secretary shall timely investigate nonfrivolous
4 written complaints alleging that a material violation of any
5 safety or health rule or regulation issued under this Act is
6 occurring or has occurred with the preceding sixty days. The
7 Secretary is not required to conduct separate investigations
8 of duplicative complaints. The Secretary shall timely notify
9 the complainant of his findings. The Secretary shall not dis-
10 close the identity of complainants unless it is determined that
11 such disclosure is necessary to prosecute a violation. If dis-
12 closure becomes necessary, the Secretary shall take every
13 measure to assure that the complainant is not subject to ha-
14 rassment, intimidation, or financial loss as a result of such
15 disclosure.

16 NOTICES, ORDERS, AND PENALTIES

17 SEC. 9. (a) If, upon inspection or investigation, the Sec-
18 retary finds that a violation affecting health or safety exists
19 or has occurred, he shall timely issue a notice of violation.
20 Each notice shall be in writing and shall describe with rea-
21 sonable particularity the nature of the violation found and the
22 section of the Act, rule, standard, regulation, or order which
23 has been violated. The notice shall fix a reasonable time for
24 abatement of the violation, and indicate the appropriate civil
25 penalty, if any, pursuant to subsection (b) of this section. The

1 notice shall indicate that any person issued such notice may,
2 within fifteen days of service, notify the Secretary of his in-
3 tention to contest the matter. In the event of a contested
4 notice, the Secretary shall afford such person an opportunity
5 for a hearing pursuant to section 554, title 5, United States
6 Code, whereupon he shall issue an order affirming, modify-
7 ing, or vacating the notice of violation.

8 (b) Any person who is determined by the Secretary to
9 have committed an act which is a violation of this title of a
10 regulation issued under this title, or who causes a violation to
11 be committed, shall be liable to the United States for a civil
12 penalty not to exceed \$2,500 for each offense: *Provided,*
13 That if the violation pertains solely to recordkeeping, the vio-
14 lator shall be liable for a civil penalty not to exceed \$500 for
15 each offense. If the Secretary determines that a substantial
16 health or safety violation exists or has occurred which could
17 reasonably lead to, or has resulted in, serious personal injury
18 or death, he may assess a civil penalty not to exceed \$10,000
19 for each offense. *Provided, however,* That, except for record-
20 keeping violations, no civil penalty shall be assessed against
21 an employee unless the employee is an operator of a commer-
22 cial motor vehicle and the Secretary determines that said em-
23 ployee's actions constituted gross negligence or reckless dis-
24 regard for safety, in which case he shall be liable for a civil
25 penalty not to exceed \$500. The amount of any such penalty,

1 and a reasonable time for abatement of the violation, shall by
2 written order be determined by the Secretary, taking into
3 account the nature, circumstances, extent, and gravity of the
4 violation committed and, with respect to the person found to
5 have committed such violation, the degree of culpability, any
6 history of prior offenses, ability to pay, effect on ability to
7 continue to do business, and such other matters as justice and
8 public safety may require. In each case, the assessment shall
9 be calculated to induce future compliance.

10 (c) If, upon inspection or investigation, the Secretary
11 determines that a violation, or combination of violation, poses
12 an imminent hazard to public health and safety, he may place
13 a vehicle or employee operating such vehicle out of service
14 pending abatement of the violation.

15 (d) Any person who knowingly and willfully violates any
16 standard, rule, regulation, or order under this Act or who
17 knowingly and willfully makes any false statement or repre-
18 sentation required under this Act shall, upon conviction, be
19 subject for each offense to a fine not to exceed \$25,000, or
20 imprisonment for a term not to exceed one year, or both:
21 *Provided, however,* That if such violator is an employee he
22 shall only be subject to penalty if he is an operator of a com-
23 mercial motor vehicle, in which case he shall be liable, upon
24 conviction, for a fine not to exceed \$1,000.

1 (e) The Secretary shall require any persons served with
2 a notice of violation to post it or notice thereof in such place
3 or places and for such duration as the Secretary may deem
4 appropriate to aid in the enforcement of the Act.

5 (f) The Secretary shall promulgate regulations establish-
6 ing penalty schedules designed to induce timely compliance
7 for persons failing to comply promptly with the requirements
8 set forth in notices and orders.

9 (g) With respect to uncontested actions of the Secretary
10 under this section, all findings of fact, conclusions of law,
11 fines, penalties, and orders shall be conclusive and shall not
12 be subject to review.

13 (h) Any aggrieved person who, after a hearing, is ad-
14 versely affected by a final order issued under this section,
15 may within thirty days petition for review of the order in the
16 United States court of appeals in the circuit wherein the vio-
17 lation is alleged to have occurred or where he has his princi-
18 pal place of business or residence, or in the United States
19 Court of Appeals for the District of Columbia. Review of the
20 order shall be based on a determination of whether the Secre-
21 tary's findings and conclusions were arbitrary or capricious,
22 an abuse of discretion, or otherwise not in accordance with
23 law. No objection that has not been urged before the Secre-
24 tary or his designated agent shall be considered by the court,
25 unless reasonable grounds existed for failure or neglect to do

1 so. The commencement of proceedings under this subsection
2 shall not, unless ordered by the court, operate as a stay of
3 the order of the Secretary.

4 (i) The Secretary may obtain enforcement, including in-
5 junctive relief, of any penalties or orders issued under this
6 section by applying to the United States district court for the
7 district where the violation occurred or where the cited party
8 has his principal place of business or residence. In addition to
9 granting enforcement, the district court may assess an appro-
10 priate penalty for noncompliance and award such further
11 relief as justice and public safety may require.

12 (j) All penalties and fines imposed under this section
13 shall accrue and be payable to the Highway Trust Fund.

14 REPRESENTATION BEFORE THE COURTS

15 SEC. 10. Except as provided in section 518(a) of title
16 28, United States Code, relating to litigation before the Su-
17 preme Court, the General Counsel of the Department of
18 Transportation may appear for and represent the Secretary
19 in all proceedings and in any civil litigation brought under
20 this Act but all such litigation shall be subject to consultation
21 with and the occurrence of the Attorney General.

22 EMPLOYEE SUITS

23 SEC. 11. (a) No employer shall discharge, discipline, or
24 in any manner discriminate against an employee because
25 such employee has filed any complaint or instituted or caused

1 to be instituted any proceeding under, or relating to, any
2 standard, requirement, or regulation issued under this Act, or
3 has testified, or is about to testify, or has participated in any
4 way, in such proceeding.

5 (b) No employer shall discharge, discipline, or in any
6 manner discriminate against an employee for refusing to op-
7 erate a vehicle when such operation would materially violate
8 motor carrier safety regulations, or because of the employee's
9 reasonable apprehension of serious injury to himself or the
10 public due to the unsafe condition of such equipment. The
11 unsafe conditions causing the employee's apprehension of
12 injury must be of such nature that a reasonable person, under
13 the circumstances then confronting the employee, would con-
14 clude that there is a bona fide danger of an accident, injury,
15 or serious impairment of health resulting from the unsafe
16 condition. In order to qualify for protection under this subsec-
17 tion, the employee must have sought from his employer,
18 and have been unable to obtain, correction of the unsafe
19 condition.

20 (c) Any employee who is discharged, disciplined, or in
21 any manner discriminated against in violation of this section
22 shall be entitled to (i) reinstatement to his former position and
23 compensatory damages, and (ii) where appropriate under the
24 circumstances, exemplary damages.

1 (d) Suits to enforce the provisions of this section may be
2 brought in the United States district court in the district in
3 which the employer owns or leases facilities or in the United
4 States district court in the district within which the employee
5 has been disciplined, discriminated against, or has received
6 notice of discharge. No suit may be instituted to enforce such
7 provisions more than six months after written notice of dis-
8 charge is received by the employee concerned, or more than
9 six months after the discriminatory practices have been dis-
10 continued, whichever is later.

11 (e) Whenever an order is issued under this section, the
12 court may assess costs and expenses, including attorney's
13 fees, reasonably incurred in connection with the institution
14 and prosecution of such proceedings.

15 STATE ENFORCEMENT

16 SEC. 12. (a)(1) Any State agreeing to adopt, and to
17 assume responsibility for enforcing, the standards, require-
18 ments, and regulations issued under this Act shall submit a
19 plan which shall be approved by the Secretary if, in his judg-
20 ment, the plan is adequate to promote the objectives of this
21 Act, and the plan—

22 (i) designates the appropriate State motor vehicle
23 safety agency responsible for administering the plan
24 through the State;

1 (ii) contains satisfactory assurances that such
2 agency has or will have the legal authority, resources,
3 and qualified personnel necessary for the enforcement
4 of such rules and regulations;

5 (iii) gives satisfactory assurances that such State
6 will devote adequate funds to the administration of
7 such plan and enforcement of such rules and regula-
8 tions;

9 (iv) provides a right of entry and inspection com-
10 parable to the Secretary's right under section 8(b) of
11 this Act;

12 (v) provides civil penalty procedures, rights, and
13 remedies comparable to those set forth in section 9 of
14 this Act;

15 (vi) requires employers, employees, owners, and
16 lessees of commercial motor vehicles to make all re-
17 ports pursuant to this Act to the Secretary;

18 (vii) provides that such State agency will adopt
19 uniform reporting requirements and use uniform forms
20 for recordkeeping, inspections, and investigations as
21 may be established and required by the Secretary; and

22 (viii) requires registrants of commercial motor ve-
23 hicles to make a declaration of knowledge of the appli-
24 cable Federal and State safety regulations.

1 (2) If the Secretary rejects a plan submitted under the
2 foregoing paragraph, he shall provide the State a written ex-
3 planation of his action and shall permit the State to modify
4 and resubmit its proposed plan for approval.

5 (b) The Secretary shall, on the basis of reports submit-
6 ted by the State agency, and on his own inspections, make a
7 continuing evaluation of the manner in which each State
8 having a plan approved under this section is carrying out
9 such plan. Whenever the Secretary finds, after affording due
10 notice and opportunity for comment, that a State plan previ-
11 ously approved is not being followed or that it has become
12 inadequate to assure the enforcement of rules and regulations
13 issued under this Act, he shall notify the State of his with-
14 drawal or his approval of such plan and upon receipt of such
15 notice, such plan shall cease to be in effect. The State may,
16 however, retain jurisdiction in any case commenced before
17 the withdrawal of the plan whenever the issues involved do
18 not directly relate to the reasons for the withdrawal of ap-
19 proval of the plan.

20 (c) There is hereby authorized to be appropriated out of
21 the Highway Trust Fund for the fiscal year beginning Octo-
22 ber 1, 1980, and each fiscal year thereafter, such sums as are
23 required to provide incentive assistance to States to develop
24 and institute enforcement plans under this section. No State
25 shall receive under this section during any fiscal year grants

1 exceeding 80 per centum of the cost during such year of de-
2 veloping and implementing its plan. The Secretary is author-
3 ized to allocate amounts appropriated under this subsection
4 pursuant to an equitable formula to those States administer-
5 ing plans under this section.

6

SAFETY REPORTS

7 SEC. 13. (a) The Secretary shall make a comprehensive
8 written report to the Congress by July 1 of each year con-
9 cerning his efforts during the preceding calendar year and his
10 current plans to upgrade commercial motor vehicle safety
11 and driver safety and health. The report shall include, but not
12 be limited to, an evaluation of the Department of Transporta-
13 tion's commercial motor vehicle safety programs, an outline
14 of problem areas and appropriate steps to alleviate them, and
15 recommendations for closer coordination and cooperation
16 among agencies of the Federal Government and between the
17 Federal Government and the States to enforce the standards,
18 requirements, and regulations issued pursuant to this Act.

19 (b) Within twelve months of the enactment of this Act,
20 the Secretary shall prepare and transmit to the Congress a
21 written report concerning the advisability of establishing a
22 national commercial driver register, to upgrade commercial
23 motor vehicle safety through improved monitoring of traffic
24 violations and accidents and of multiple State licensing. In
25 the event the Secretary recommends the establishment of

1 such a register, within sixty days of the submission of his
2 report to Congress he shall publish in the Federal Register a
3 Notice of Proposed Rulemaking describing the operation of a
4 pilot project.

5 EFFECT ON FEDERAL LAWS

6 SEC. 14. Nothing in this Act shall be construed to
7 amend or modify the National Labor Relations Act, the Rail-
8 way Labor Act, the Fair Labor Standards Act, or the Occu-
9 pational Safety and Health Act.

10 EFFECT ON INTERSTATE COMMERCE COMMISSION

11 SEC. 15. Nothing in this Act shall diminish the existing
12 functions, powers, and duties of the Interstate Commerce
13 Commission which shall consider the public safety and a car-
14 rier's record of compliance with safety regulations as a prin-
15 cipal criterion in determining whether to confer operating au-
16 thority upon motor carriers pursuant to part II of the Inter-
17 state Commerce Act (49 U.S.C. 301, et seq.)

18 EFFECT ON STATE STANDARDS

19 SEC. 16. Upon application of a State, the Secretary
20 may by rule, after notice and opportunity for a hearing pursu-
21 ant to section 553, title 5, United States Code, exempt from
22 the provisions of this Act (under such conditions as they may
23 impose) a proposed State commercial motor vehicle safety
24 standard or regulation, or a prior existing standard or regula-
25 tion, described in such application, if such standard or regula-

tion (1) does not materially diminish commercial motor vehicle safety or the health and safety of employees, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.

(b) Nothing in this Act shall affect existing hour-of-service regulations of any State applying to commercial motor vehicle operations occurring wholly within that State, unless the Secretary affirmatively finds upon review of a State's hours-of-service regulations that such regulations (1) materially diminish commercial motor vehicle safety or the health and safety of employees, (2) are not required by compelling local conditions, or (3) unduly burden interstate commerce. If the Secretary makes such an affirmative determination, he may require such State to adopt Federal hours-of-service regulations.

(c) Nothing in this Act shall prevent any State safety agency or court from asserting jurisdiction under State law over any safety or health issue involving commercial motor vehicles with respect to which standard, rule, or regulation the Secretary has not addressed under this Act. State agencies and courts shall make every reasonable effort to timely apprise the Secretary of their intended actions in this regard, so that the Secretary may determine whether a like Federal standard is warranted.

1 AUTHORIZATIONS OF APPROPRIATIONS

2 SEC. 17. There are authorized to be appropriated to
3 carry out this Act for each fiscal year such sums as the Con-
4 gress may deem necessary.

5 EFFECTIVE DATE

6 SEC. 18. (a) Except as provided in this section, the pro-
7 visions of this Act shall take effect immediately on the date of
8 enactment.

9 (b) The Secretary shall, by regulation promulgated pur-
10 suant to section 553 of title 5, United States Code, take all
11 steps necessary to bring all orders, determinations, rules, and
12 regulations, into conformity with the purposes and require-
13 ments of this Act as soon as practicable.

14 (c) All orders, determinations, rules, and regulations,
15 issued under section 204(a) (1), (2), (3), (3a), and (5) of part
16 II of the Interstate Commerce Act shall be continued under
17 this Act until such time as they may be modified by the
18 Secretary.

19 (d) Judicial proceedings pending upon the date of enact-
20 ment of this Act shall not be affected by the provisions of this
21 Act.

96TH CONGRESS
1ST SESSION

S. 1400

Entitled "Trucking Competition and Safety Act of 1979".

IN THE SENATE OF THE UNITED STATES

JUNE 25 (legislative day, JUNE 21), 1979

Mr. KENNEDY (for himself, Mr. RIBICOFF, Mr. METZENBAUM, Mr. RIEGLE, Mr. TSONGAS, and Mr. HAYAKAWA) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

Entitled "Trucking Competition and Safety Act of 1979".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Trucking Competition
4 and Safety Act of 1979".

21 TITLE II—COMMERCIAL MOTOR VEHICLE

22 SAFETY

23 PART I—CONGRESSIONAL FINDINGS AND PURPOSE

24 FINDINGS

25 SEC. 201. The Congress finds—

1 (1) that the level of highway facilities and injuries
2 related to commercial motor vehicle operations is un-
3 necessary, unacceptably high, and must be reduced;

4 (2) that the level of property damage related to
5 commercial motor vehicle operations is unnecessary,
6 unacceptably high, and must be reduced;

7 (3) that the present level of fatalities, injuries, and
8 property damage related to commercial motor vehicle
9 operations has a detrimental effect on the economy, as
10 well as on the public safety and welfare;

11 (4) that more comprehensive regulation of com-
12 mercial motor vehicle safety and strengthened enforce-
13 ment would reduce the level of fatalities, injuries, and
14 property damage related to commercial motor vehicle
15 operations;

16 (5) that interested State governments can provide
17 valuable assistance to the Federal Government in as-
18 suring that commercial motor vehicle operations are
19 conducted safely; and

20 (6) that enactment of legislation to strengthen
21 commercial motor vehicle safety regulation and en-
22 forcement is in the public interest.

23 DECLARATION OF PURPOSE

24 SEC. 202. The Congress declares that it is the purpose
25 of this title—

1 (1) to promote the safe operation of commercial
2 motor vehicles operating in or affecting interstate
3 commerce;

4 (2) to assure that all employers, employees, and
5 other persons involved in the provision of commercial
6 motor vehicle services comply with rules and regula-
7 tions governing the safe operation of commercial motor
8 vehicles;

9 (3) to assure that the level of penalties imposed
10 upon violators of rules and regulations governing the
11 safe operation of commercial motor vehicles does not
12 allow for violators to absorb penalties imposed as a
13 cost of doing business;

14 (4) to increase the likelihood of violations of com-
15 mercial motor vehicle safety regulations being detected;

16 (5) to promote national uniformity in the safety
17 regulation of commercial motor vehicle operations; and

18 (6) to simplify the safety regulatory process by
19 consolidating Federal safety authority regarding com-
20 mercial motor vehicle operations in a single agency,
21 the Department of Transportation.

1 PART II—SAFETY ASPECTS OF FIT, WILLING, AND ABLE

2 DETERMINATIONS

3 SAFETY ASPECTS OF FIT, WILLING, AND ABLE

4 DETERMINATIONS

5 SEC. 210. (a) Subchapter II of chapter 109 is amended
6 by adding the following new section:

7 “SAFETY ASPECTS OF FIT, WILLING, AND ABLE

8 DETERMINATIONS

9 “SEC. 10934. (a)(1) In making any determination under
10 this subchapter as to whether a person is fit, willing, and able
11 to provide transportation or other services, the Commission
12 shall seek the advice of the Secretary of Transportation
13 (hereinafter in this section referred to as the ‘Secretary’) with
14 regard to the safety-related aspects of any such determina-
15 tions. The Commission shall be bound by such safety deter-
16 mination of the Secretary, and the Commission may not au-
17 thorize a person to provide transportation or other services if
18 the Secretary determines that, as to the safety-related as-
19 pects of such determinations, that person is not fit, willing,
20 and able to provide those services, and the Commission may
21 not deny a person authority to provide transportation or
22 other services on the basis of considerations within the au-
23 thority of the Secretary under this section, except when the
24 Secretary determines that person is, as to safety-related mat-
25 ters, not fit, willing, and able to provide those services.

1 “(2) The Secretary shall advise the Commission of his
2 determinations with regard to the safety-related aspects of
3 fit, willing, and able determinations in accordance with the
4 provisions of this section.

5 “(3) Nothing in this section shall apply to fit, willing
6 and able determinations by the Commission regarding the au-
7 thority of a person to provide transportation or other services
8 as a broker or water carrier.

9 “(b) In the case of applications to the Commission for
10 new or additional authority, the determinations of the Secre-
11 tary with regard to the safety-related aspects of fit, willing,
12 and able determinations shall be provided to the Commission
13 as follows:

14 “(1) Upon receipt of an application under this
15 subchapter for authority to provide transportation or
16 other services, the Commission shall forward to the
17 Secretary a copy of such application.

18 “(2) Within 60 days of receipt of the application
19 by the Commission, the Secretary shall notify the
20 Commission as to whether, as to matters related to
21 safety, the Secretary determines the applicant fit, will-
22 ing, and able to provide the transportation or other
23 services in question. If the Secretary is unable to make
24 such determination within such 60-day period, he may,
25 within such 60-day period, notify the Commission that

1 he will require an additional period, not to exceed 20
2 days, to make such determination. Failure by the Sec-
3 retary to reply to the Commission within 60 days of
4 receipt of the application by the Commission or, in the
5 case where an extension of time has been secured,
6 within 80 days of receipt of the application by the
7 Commission, shall be construed as a determination by
8 the Secretary that, with regard to safety, the applicant
9 is fit, willing, and able.

10 “(3) The applicant, the Commission, and other in-
11 terested persons may submit information and recom-
12 mendations to the Secretary as to whether, with
13 regard to safety-related matters, the applicant should
14 be considered fit, willing, and able to provide services.
15 If any relevant fact material to the determination of
16 the safety-related aspects of whether the applicant
17 should be considered fit, willing, and able to provide
18 services is in dispute, and resolution of that fact would
19 be aided by the taking of evidence under oath with op-
20 portunity for cross-examination, the Secretary may
21 certify the dispute to an employee of the Department
22 who shall have the power to administer oaths; such
23 employee shall conduct such proceedings as appropri-
24 ate to resolve the dispute and shall recommend a find-
25 ing to the Secretary. There shall be no interlocutory

1 appeal of the finding of the Secretary as to the factual
2 dispute.

3 “(4) With the concurrence of the Secretary, the
4 Commission may authorize an applicant to provide
5 transportation or other services on an emergency basis,
6 for a period not to exceed 80 days, in advance of the
7 Secretary’s determination with regard to safety-related
8 matters, as to whether the applicant is fit, willing, and
9 able to provide such services.

10 “(c)(1) In any case where a person is authorized to pro-
11 vide services under this subchapter, that person shall, with
12 regard to safety-related matters, be deemed fit, willing, and
13 able to provide such services until such time as the Secretary
14 may determine that such person is, with regard to safety-
15 related matters, no longer fit, willing, and able to provide
16 those services. Except when the Secretary determines that
17 the public safety requires the utilization of the authority pro-
18 vided in paragraph (2), determinations may be made under
19 the authority of this subsection only after notice and opportu-
20 nity for hearing, open to participation by all interested par-
21 ties, pursuant to section 554, title 5, United States Code.
22 The Secretary may commence such hearing upon his own
23 motion, or upon the request of an interested party, and shall
24 conduct such a hearing upon the request of the Commission.
25 When the Secretary determines that a person subject to the

1 provisions of this paragraph is no longer, with regard to
2 safety-related matters, fit, willing, and able to provide such
3 services, the Secretary shall request the Commission to sus-
4 pend all or part of the authority of that person to provide
5 such services and the Commission shall immediately order
6 such suspension. Such request by the Secretary shall be ac-
7 companied by a brief written statement, to be issued by the
8 Commission with its order, of the reasons for the Secretary's
9 determination.

10 “(2) In any case where the Secretary determines that
11 the continued provision of services by a person poses an im-
12 minent hazard to public safety, the Secretary shall request
13 the Commission to suspend all or part of the authority of that
14 person to provide such services and the Commission shall
15 immediately order such suspension. Such request by the Sec-
16 retary, to be binding on the Commission, shall be accompa-
17 nied by a brief written statement, to be issued by the Com-
18 mission with its order, supporting the issuance of the order.
19 Persons adversely affected by such order are entitled to a
20 subsequent hearing pursuant to section 554, title 5, United
21 States Code, to be commenced by the Secretary within ten
22 days of issuance of the order. As used in this subsection an
23 ‘imminent hazard’ exists when there is a substantial likeli-
24 hood that serious harm will occur to a member or members of
25 the general public, as a result of the continued provision of

1 services by a person, prior to the completion of an adminis-
2 trative hearing initiated to review whether, as regards safety-
3 related matters, that person is fit, willing, and able to provide
4 services.

5 “(d) Determinations by the Secretary as to whether an
6 applicant is, with regard to safety-related matters, fit, will-
7 ing, and able to provide services, may be reviewed in the
8 United States court of appeals for the circuit in which the
9 applicant has his principal place of business or residence, or
10 in the United States Court of Appeals for the District of Co-
11 lumbia Circuit, if petition for review of such determination is
12 filed within 30 days of such determination by the Secretary.
13 Review of such determination by the Secretary shall consider
14 only whether the determination was supported by substantial
15 evidence or was otherwise not in accordance with law. No
16 objection which was not urged before the Secretary or his
17 designated agent in the course of administrative proceedings
18 may be considered by the court, unless reasonable grounds
19 existed for failure or neglect to do so.

20 “(e) The Secretary is authorized to promulgate regula-
21 tions establishing the basis for the Secretary’s determinations
22 with regard to the safety-related aspects of fit, willing, and
23 able determinations. Such regulations may include the estab-
24 lishment of requirements bearing on the ability of an appli-

1 cant to safely perform services, such as requirements that an
2 applicant—

3 “(1) register with the Secretary, thereby provid-
4 ing notice of his intent to operate;

5 “(2) demonstrate knowledge of, agree to, and pro-
6 vide evidence, including accident and compliance his-
7 tories and out of service ratios, of his ability to operate
8 in compliance with all standards applicable to commer-
9 cial motor vehicle safety promulgated by the Secretary,
10 including hours of service rules, and including rules
11 promulgated pursuant to this Act, the Department of
12 Transportation Act, the Hazardous Materials Trans-
13 portation Act, and sections 831 through 835 of title 18
14 of the United States Code;

15 “(3) carry such documentation as the Secretary
16 may require;

17 “(4) carry adequate liability insurance or enter
18 into comparable bonding arrangements;

19 “(5) designate an agent for service of process; and

20 “(6) carry and display vehicle identification in
21 such form and manner as the Secretary may require.

22 The Secretary may also promulgate such regulations as the
23 Secretary may determine appropriate to assist in the imple-
24 mentation of this section, including rules to require that ap-
25 plications filed with the Commission include such information

1 as the Secretary may require to assist the Secretary in
 2 making determinations as to whether, with regard to safety-
 3 related matters, a person is fit, willing, and able to provide
 4 transportation or other services.”.

5 (b)(1) The provisions of subsection (a) shall be effective
 6 180 days after the date of enactment of this Act.

7 (2) On the date that the provisions of subsection (a)
 8 become effective, the provisions of section 4(e) of the Depart-
 9 ment of Transportation Act (49 U.S.C. 1653(e)), so far as
 10 they require the Secretary of Transportation to report to the
 11 Commission regarding the safety records of persons who
 12 would be subject to the provisions of subsection (a) are super-
 13 seded.

14 (3) The general powers provided to the Secretary of
 15 Transportation in section 222 of this Act are available to the
 16 Secretary of Transportation in his implementation of section
 17 10934 of title 49, United States Code.

18 (c) The index for subchapter II of chapter 109 is amend-
 19 ed by adding at the end thereof the following new item:

“10934. Safety Aspects of Fit, Willing, and Able Determinations.”.

20 PART III—COMMERCIAL MOTOR VEHICLE SAFETY

21 REGULATIONS

22 DEFINITIONS

23 SEC. 220. For the purposes of parts I, III, and IV of
 24 this title—

1 (1) "Secretary" means the Secretary of Transpor-
2 tation;

3 (2) "commerce" means trade, traffic, or transpor-
4 tation within the jurisdiction of the United States be-
5 tween a place in a State and a place outside of such
6 State, or which affects trade, traffic, or transportation
7 between a place in a State and a place outside of such
8 State;

9 (3) "commercial motor vehicle" means any self-
10 propelled or towed vehicle used on the highways in
11 commerce: (A) to transport commodities or equipment,
12 if such vehicle is over 10,000 pounds gross vehicle
13 weight rating or is being used in the transportation of
14 materials found by the Secretary to be hazardous for
15 the purposes of sections 831 through 835 of title 18 of
16 the United States Code or the Hazardous Materials
17 Transportation Act; or (B) to transport passengers for
18 hire;

19 (4) "State" means a State of the United States,
20 the District of Columbia, the Commonwealth of Puerto
21 Rico, the Virgin Islands, American Samoa, Guam, or
22 the Government of the Northern Marianas;

23 (5) "employer" means any person engaged in
24 business who owns, leases, operates, or loads commer-
25 cial motor vehicles in connection with that business, or

1 assigns employees to operate them in commerce or to
2 load them, but such term does not include the United
3 States, or any State, or a political subdivision of a
4 State;

5 (6) "employee" means a driver (including an inde-
6 pendent contractor), mechanic, freight handler, and any
7 other individual whose employment directly affects
8 commercial motor vehicle safety; and

9 (7) "person" means employers and employees, as
10 well as one or more individuals, partnerships, associ-
11 ations, corporations, business trusts, or any other orga-
12 nized group of individuals, who use or operate com-
13 mercial motor vehicles in commerce or who arrange for
14 such use or operation.

15 REGULATORY AUTHORITY

16 SEC. 221. (a) The Secretary shall establish and revise
17 as necessary such rules, regulations, standards and orders as
18 the Secretary determines necessary to assure the safe oper-
19 ation of any class or classes of commercial motor vehicles.
20 Such rules, regulations, standards, and orders shall be pro-
21 mulgated after consideration of their costs and benefits, shall
22 reach their objectives in the least costly manner, and shall be
23 directed toward assuring—

24 (1) that commercial motor vehicles are safely
25 maintained, equipped, loaded, and operated;

1 (2) that the responsibilities imposed upon drivers
2 of commercial motor vehicles do not impair their ability
3 to safely operate those vehicles;

4 (3) that the health and physical condition of driv-
5 ers of commercial motor vehicles is adequate to enable
6 them safely to drive the vehicles they are assigned to
7 operate;

8 (4) that such records and reports are maintained
9 as are necessary to insure compliance with regulations
10 promulgated under this section, including reports re-
11 garding the condition of vehicles, vehicle inspection
12 and maintenance practices, employee qualifications,
13 and hours of service by employees;

14 (5) that persons operating commercial motor vehi-
15 cles meet any requirements, including registration and
16 liability insurance requirements, that the Secretary is
17 authorized to develop under section 10934(e) of title
18 49 of the United States Code as proposed by section
19 210 of this Act;

20 (6) that persons meet such other requirements as
21 the Secretary may establish as bearing on the safe op-
22 eration of commercial motor vehicles; and

23 (7) that persons are advised of the commercial
24 motor vehicle safety regulations they are obligated to
25 follow.

1 (b) All rules, regulations, or standards issued by the
2 Secretary including those establishing, amending, revoking,
3 or waiving compliance with a rule, regulation, or standard
4 promulgated under this section shall be promulgated in ac-
5 cordance with the provisions of section 553 of title 5 of the
6 United States Code. A transcript shall be kept of any oral
7 hearing held by the Secretary. The Secretary may conduct
8 an informal hearing in accordance with such conditions or
9 limitations as he may make applicable thereto, for the pur-
10 pose of resolving any issue of fact material to the establish-
11 ing, amending, revoking, or waiving of a rule, regulation, or
12 standard.

13 (c) The Secretary may, after proceeding in accordance
14 with subsection (b) of this section, waive in whole or in part
15 compliance with any rule, regulation, or standard established
16 under this section, if he determines that such waiver of com-
17 pliance is in the public interest and is consistent with the safe
18 operation of commercial motor vehicles.

19 (d) Any final agency action taken under this section is
20 subject to judicial review as provided in chapter 7 of title 5 of
21 the United States Code.

22 GENERAL POWERS

23 SEC. 222. (a) The Secretary is authorized to conduct,
24 directly or indirectly, such research, development, demon-
25 strations, and training activities as the Secretary considers

1 appropriate to develop rules, regulations, orders, and stand-
2 ards authorized to be promulgated under section 221 of this
3 Act, to design and develop improved enforcement procedures
4 and technologies, and to familiarize all affected persons with
5 such rules, regulations, orders, and standards.

6 (b) In carrying out his functions under this Act, the Sec-
7 retary is authorized to perform such acts including conduct-
8 ing investigations and inspections, compiling statistics,
9 making reports, issuing subpoenas, requiring production of
10 documents, records, and property, taking depositions, holding
11 hearings, prescribing recordkeeping and reporting require-
12 ments, and carrying out and contracting for such research,
13 development, testing, evaluation, and training as he deter-
14 mines necessary to carry out the provisions of this Act or
15 regulations issued pursuant thereto. With respect to the pro-
16 visions of this part, the Secretary may delegate to a State
17 such functions respecting the enforcement (including investi-
18 gations) of the provisions of this part or regulations issued
19 pursuant thereto as he determines necessary to carry out the
20 provisions of this part.

21 (c)(1) To carry out the Secretary's responsibilities under
22 this Act, employees, or agents of the Secretary are author-
23 ized to enter upon, inspect, and examine facilities, equipment,
24 operations, and pertinent records without advance notice, in
25 accordance with the provisions of paragraph (2) of this sub-

1 section. Such employees or agents shall display proper cre-
2 dentials when requested and may consult with employers and
3 employees and their duly authorized representatives in the
4 course of inspections.

5 (2)(A) A warrant under this paragraph shall be required
6 for any entry or administrative inspection (including im-
7 poundment of motor vehicles or motor vehicle equipment) au-
8 thorized by this section, except if such entry or inspection
9 is—

10 (i) with the consent of the employer, employee, or
11 agent of the employer in charge of the business, estab-
12 lishment, or premises;

13 (ii) in situations involving inspection of motor ve-
14 hicles where there is reasonable cause to believe that
15 the mobility of the motor vehicle makes it impractical
16 to obtain a warrant;

17 (iii) in any other exceptional or emergency cir-
18 cumstance where time or opportunity to apply for a
19 warrant is lacking;

20 (iv) for access to and examination of books, rec-
21 ords, and any other documentary evidence which can
22 be easily altered, manufactured or falsified; and

23 (v) in any other situations where a warrant is not
24 constitutionally required.

1 (B) Issuance and execution of administrative inspection
2 warrants shall be as follows:

3 (i) Any judge of the United States or of a State
4 court of record, or any United States magistrate, may,
5 within his territorial jurisdiction, and upon proper oath
6 or affirmation showing probable cause, issue warrants
7 for the purpose of conducting administrative inspections
8 authorized by this section and of impoundment of
9 motor vehicles or motor vehicle equipment appropriate
10 to such inspections. For the purposes of this section,
11 the term "probable cause" means a valid public inter-
12 est in the effective enforcement of this Act or regula-
13 tions issued thereunder sufficient to justify administra-
14 tive inspections of the area, establishment, premises,
15 records, or motor vehicles, or contents thereof, in the
16 circumstances specified in the application for the war-
17 rant.

18 (ii) A warrant shall be issued only upon an affida-
19 vit of an officer, employee, or agent of the Secretary
20 having knowledge of the facts alleged, sworn to before
21 the judge or magistrate and establishing the grounds
22 for issuing the warrant. If the judge or magistrate is
23 satisfied that grounds for the application exist or that
24 there is a reasonable basis for believing they exist, he
25 shall issue a warrant identifying the area, establish-

1 ment, premises, or motor vehicle to be inspected, the
2 purpose of such inspection, and, where appropriate, the
3 type of property to be inspected, if any. The warrant
4 shall—

5 (I) identify the items or type of property to
6 be impounded, if any;

7 (II) be directed to a person authorized under
8 this section to execute it;

9 (III) state the grounds for its issuance and
10 the name of the person or persons whose affidavit
11 has been taken in support thereof;

12 (IV) command the person to whom it is di-
13 rected to inspect the area, establishment, prem-
14 ises, or motor vehicle identified for the purpose
15 specified, and where appropriate, shall direct the
16 impoundment of the property specified;

17 (V) direct that it be served during the hours
18 specified in it; and

19 (VI) designate the judge or magistrate to
20 whom it shall be returned.

21 (iii) A warrant issued pursuant to this section
22 must be executed and returned within 10 days of its
23 date unless, upon a showing by the Secretary of a need
24 therefor, the judge or magistrate allows additional time
25 in the warrant. If property is impounded pursuant to a

1 warrant, the person executing the warrant shall give
2 the person from whom or from whose premises the
3 property was taken a copy of the warrant and a re-
4 ceipt for the property taken or shall leave the copy and
5 receipt at the place from which the property was
6 taken. The return of the warrant shall be made
7 promptly and shall be accompanied by a written inven-
8 tory of any property taken. The inventory shall be
9 made in the presence of the person executing the war-
10 rant and of the person from whose possession or prem-
11 ises the property was taken, if they are present, or in
12 the presence of at least one credible person other than
13 the person making such inventory, and shall be verified
14 by the person executing the warrant. The judge or
15 magistrate, upon request, shall deliver a copy of the in-
16 ventory to the person from whom or from whose prem-
17 ises the property was taken and the applicant for the
18 warrant.

19 (iv) The judge or magistrate who has issued a
20 warrant under this section shall attach to the warrant
21 a copy of the return and all papers filed in connection
22 therewith and shall file them with the clerk of the dis-
23 trict court of the United States for the judicial district
24 in which the inspection was made.

1 NOTICE OF VIOLATIONS; PENALTIES

2 SEC. 223. (a) If the Secretary finds a violation of this
3 Act or regulations, rules, orders, or standards issued pursu-
4 ant to this Act, the Secretary shall issue a notice of violation.
5 Such notice shall be in writing and shall describe with rea-
6 sonable particularity the nature of the violation found and the
7 section of the Act, rule, standard, regulation, or order which
8 has been violated. The notice shall fix a reasonable time for
9 abatement of the violation, specify the appropriate civil pen-
10 alty, if any, and specify the actions the Secretary proposes be
11 taken in order to avoid subsequent similar violations. The
12 notice shall indicate that any person issued such notice may,
13 within 15 days of service, notify the Secretary of his inten-
14 tion to contest the matter. In the event of a contested notice,
15 the Secretary shall afford such person an opportunity for a
16 hearing, following which the Secretary shall issue an order
17 affirming, modifying, or vacating the notice of violation.

18 (b) Any person who is determined by the Secretary,
19 after notice and opportunity for a hearing, to have committed
20 an act which is a violation of this Act or a regulation issued
21 under this Act or a violation of any other regulation adminis-
22 tered by the Bureau of Motor Carrier Safety, or who causes a
23 violation to be committed, shall be liable to the United States
24 for a civil penalty not to exceed \$2,500 for each offense,
25 except that, if the violation pertains solely to recordkeeping,

1 the violator shall be liable for a civil penalty not to exceed
2 \$1,000 for each offense. If the Secretary determines that a
3 safety violation exists or has occurred which could reasonably
4 lead to, or has resulted in, serious personal injury or death,
5 he may assess a civil penalty not to exceed \$25,000 for each
6 offense. Each day of a violation shall constitute a separate
7 offense. The amount of any such penalty, and a reasonable
8 time for abatement of the violation, shall by written order be
9 determined by the Secretary, taking into account the nature,
10 circumstances, extent, and gravity of the violation, the
11 degree of culpability, any history of prior offenses, ability to
12 pay, effect on ability to continue to do business, and such
13 other matters as justice and public safety may require. In
14 each case, the assessment shall be calculated to induce future
15 compliance.

16 (c) With respect to uncontested actions of the Secretary
17 under this section, all finding of fact, conclusions of law,
18 fines, penalties and orders shall be conclusive and shall not
19 be subject to judicial review.

20 (d) The Secretary may require any persons served with
21 a notice of violation to post a copy of such notice of violation
22 or notice thereof in such place or places and for such duration
23 as the Secretary may determine appropriate to aid in the
24 enforcement of this Act.

1 (e) Any person who knowingly and willfully violates any
2 standard, rule, regulation, or order issued pursuant to this
3 Act or who knowingly and willingly makes any false state-
4 ment or representation in a document filed or hearing held
5 pursuant to the authority of this Act shall, upon conviction,
6 be subject for each offense to a fine not to exceed \$50,000 or
7 imprisonment for a term not to exceed 1 year, or both.

8 (f) The Secretary shall promulgate regulations establish-
9 ing a range of penalties designed to induce timely compliance
10 for persons failing to comply promptly with the requirements
11 set forth in notices and orders.

12 (g) The Secretary, acting through the Attorney General,
13 may, for good cause shown, obtain enforcement, including
14 injunctive relief pursuant to rule 65 of the Federal Rules of
15 Civil Procedure, of any penalties or orders issued under this
16 section by applying to the United States District Court for
17 the District of Columbia or for the district where the viola-
18 tion occurred or where the cited party has his principal office
19 or residence. In addition to granting enforcement, the district
20 court may assess an appropriate penalty for noncompliance
21 and award such further relief as justice and public safety may
22 require.

23 (h) If, upon inspection or investigation, the Secretary
24 determines that a violation, or combination of violations,
25 poses an imminent hazard to public safety, the Secretary may

1 order a vehicle or employee operating such vehicle out of
2 service, or order an employer to cease all or part of his com-
3 mercial motor vehicle operations, pending abatement of the
4 violation without prior hearing. Subsequent to the issuance of
5 such order, opportunity for review shall be provided in ac-
6 cordance with section 554 of title 5 of the United States
7 Code.

8 (i) Any aggrieved person who, after a hearing, is ad-
9 versely affected by a final order issued under this section
10 may, within 30 days, petition for review of the order in the
11 United States court of appeals in the circuit wherein the vio-
12 lation is alleged to have occurred or where he has his princi-
13 pal place of business or residence, or in the United States
14 Court of Appeals for the District of Columbia Circuit.
15 Review of the order shall be based on a determination of
16 whether the Secretary's findings and conclusions were sup-
17 ported by substantial evidence, or otherwise not in accord-
18 ance with law. No objection that has not been urged before
19 the Secretary shall be considered by the court, unless reason-
20 able grounds existed for failure or neglect to do so. The com-
21 mencement of proceedings under this subsection shall not,
22 unless ordered by the court, operate as a stay of the order of
23 the Secretary.

1 (j) In any action brought under this part, subpoenas for
2 witnesses who are required to attend a United States district
3 court may run into any other district.

4 (k) In any proceeding for criminal contempt for violation
5 of an injunction or restraining order issued under this section
6 which violation also constitutes a violation of this part, trial
7 shall be by the court, or, upon demand of the accused, by a
8 jury, conducted in accordance with the provisions of rule
9 42(b) of the Federal Rules of Criminal Procedure.

10

STATE REGULATIONS

11

SEC. 224. A State may adopt or continue in force any
12 law, rule, regulation, order, or standard relating to commer-
13 cial motor vehicle safety until such time as the Secretary has
14 adopted a rule, regulation, order, or standard regulating that
15 subject. A State may adopt or continue in force an additional
16 or more stringent law, rule, regulation, order, or standard
17 relating to commercial motor vehicle safety that does not
18 create an undue burden on interstate commerce when neces-
19 sary to eliminate or reduce a local safety hazard, and when
20 not incompatible with any Federal law, rule, regulation,
21 order, or standard.

22

DUTY TO INVESTIGATE COMPLAINTS; PROTECTION OF

23

COMPLAINANTS

24

SEC. 225. (a) The Secretary shall timely investigate any
25 nonfrivolous complaint alleging that a material violation of

1 any rule or regulation issued under section 221 or any rule or
2 regulation issued by the Bureau of Motor Carrier Safety is
3 occurring or has occurred within the preceding 60 days. The
4 Secretary shall timely notify the complainant of findings re-
5 sulting from such investigation. However, the Secretary shall
6 not be required to conduct separate investigations of dupli-
7 cative complaints.

8 (b) Notwithstanding the provisions of section 552 of title
9 5 of the United States Code, the Secretary shall not disclose
10 the identity of complainants unless it is determined that such
11 disclosure is necessary to prosecute a violation. If disclosure
12 becomes necessary, the Secretary shall take every practical
13 measure within his authority to assure that the complainant
14 is not subject to harassment, intimidation, disciplinary action,
15 discrimination, or financial loss as a result of such disclosure.

16 PROTECTION OF EMPLOYEES

17 SEC. 226. (a) No employer shall discharge, discipline, or
18 in any manner discriminate against an employee because
19 such employee has filed any complaint or instituted or caused
20 to be instituted any proceeding under, or relating to, any
21 standard, requirement, or regulation issued under this Act, or
22 any rule or regulation issued by the Bureau of Motor Carrier
23 Safety, or has testified, or is about to testify, or has partici-
24 pated in any way, in such proceeding.

1 (b) No employer shall discharge, discipline, or in any
2 manner discriminate against an employee for refusing to op-
3 erate a vehicle when such operation constitutes a violation of
4 any Federal standards applicable to motor carrier safety, or
5 because of the employee's reasonable apprehension of serious
6 injury to himself or the public due to the unsafe condition of
7 such equipment. The unsafe conditions causing the employ-
8 ee's apprehension of injury must be of such nature that a
9 reasonable person, under the circumstances then confronting
10 the employee, would conclude that there is a bona fide
11 danger of an accident, injury, or serious impairment of
12 health, resulting from the unsafe condition. In order to
13 qualify for protection under this subsection, the employee
14 must have sought from his employer, and have been unable
15 to obtain, correction of the unsafe condition.

16 (c) Any employee who is discharged, disciplined, or in
17 any manner discriminated against in violation of this section
18 shall be entitled to (1) reinstatement to his former position
19 and be made whole for lost compensation and benefits, (2)
20 compensatory damages, and (3) where appropriate under the
21 circumstances, exemplary damages.

22 (d) Suits to enforce the provisions of this section may be
23 brought in the United States district court in the district in
24 which the employer owns or leases facilities or in the United
25 States district court in the district within which the employee

1 has been discriminated against, disciplined, or has received
2 notice of discharge. No suit may be instituted to enforce such
3 provisions more than 12 months after written notice of dis-
4 charge is received by the employee concerned, or more than
5 twelve months after the discipline or discriminatory practices
6 (other than discharge) have been discontinued, whichever is
7 later.

8 (e) Whenever an order is issued under this section, the
9 court may assess costs and expenses, including attorney's
10 fees, reasonably incurred in connection with the institution
11 and prosecution of such proceedings.

12 EFFECT ON OTHER FEDERAL LAWS

13 SEC. 227. Nothing in this Act shall be construed to
14 amend or modify the National Labor Relations Act, the Fair
15 Labor Standards Act, the Occupational Safety and Health
16 Act, or the Hazardous Materials Transportation Act.

17 PART IV—GRANTS TO STATES

18 GENERAL

19 SEC. 240. Under the terms and conditions of this part,
20 and subject to the availability of funds, the Secretary is au-
21 thorized to make grants to States for the development or
22 implementation of programs for the enforcement of Federal
23 standards applicable to commercial motor vehicle safety and
24 compatible State standards.

1 GRANTS TO STATES TO DEVELOP ENFORCEMENT

2 PROGRAMS

3 SEC. 241. The Secretary is authorized, under such
4 terms and conditions as the Secretary shall require, to make
5 grants to States to assist them in developing programs to
6 enforce Federal standards applicable to commercial motor ve-
7 hicle safety and compatible State standards.

8 APPLICATIONS FOR GRANTS TO IMPLEMENT

9 ENFORCEMENT PROGRAMS

10 SEC. 242. (a) A State may submit an application for a
11 grant from the Secretary to assist that State in implementing
12 programs for the enforcement of standards applicable to com-
13 mercial motor vehicle safety if that application provides that,
14 before receipt of a grant under this part, that State will
15 adopt, and assume responsibility for enforcing, as State
16 standards, such Federal commercial motor vehicle safety
17 rules, regulations, orders, and standards promulgated pursu-
18 ant to section 221 of this Act as the Secretary shall specify,
19 so that violations of those standards as of the date of receipt
20 of the grant may be prosecuted by State officials in State
21 courts or administrative bodies.

22 (b) An application for such a grant shall set forth the
23 State's proposed program for the implementation of stand-
24 ards applicable to commercial motor vehicle safety and shall
25 also include information to enable the Secretary to make the

1 findings, set forth in section 243, prerequisite to the approval
2 of a grant for assistance in enforcing standards applicable to
3 commercial motor vehicle safety.

4 APPROVAL OF ENFORCEMENT GRANTS

5 SEC. 243. (a) The Secretary is authorized to approve an
6 application submitted pursuant to section 242 and make a
7 grant to an applicant in the whole amount requested or in
8 part if, in the Secretary's judgment—

9 (1) that application provides for the applicant
10 State's adoption and enforcement of Federal commer-
11 cial motor vehicle safety rules, regulations, orders, and
12 standards, as required by section 242(a);

13 (2) the applicant State has developed a program
14 to promote the enforcement of Federal standards appli-
15 cable to commercial motor vehicle safety which in-
16 cludes such aspects as the Secretary shall specify or
17 may authorize. The Secretary may require, among
18 other things, that an application contain—

19 (A) designation of a State agency responsible
20 for enforcing compliance with the Federal stand-
21 ards applicable to commercial motor vehicle
22 safety;

23 (B) satisfactory assurances that such agency
24 has or will have the legal authority, resources,
25 and qualified personnel necessary for the enforce-

1 ment of such rules and regulations, including a
2 satisfactory system of penalties (including penalty
3 levels) to enforce violations;

4 (C) satisfactory assurances that such State
5 will devote adequate funds to the administration
6 of such program and enforcement of such rules
7 and regulations;

8 (D) a requirement that employers, employ-
9 ees, owners, and lessees of commercial motor ve-
10 hicles make all reports required by the Secretary
11 under this Act to the State agency;

12 (E) provision that such State agency will
13 adopt uniform reporting requirements and use uni-
14 form forms for recordkeeping, inspections, and in-
15 vestigations as may be established and required
16 by the Secretary;

17 (F) a requirement that registrants of com-
18 mercial motor vehicles make a declaration of
19 knowledge of applicable Federal and State safety
20 regulations; and

21 (G) provision for certification of and for edu-
22 cational programs to be made available to person-
23 nel involved in certain motor vehicle operations,
24 such as hazardous materials operations.

1 (b) The Secretary shall not approve any grant applica-
2 tion under this section which does not provide that the aggre-
3 gate expenditure of funds of the State and political subdivi-
4 sions thereof, exclusive of Federal funds, for commercial
5 motor vehicle safety programs will be maintained at a level
6 which does not fall below the average level of such expendi-
7 tures for its last two full fiscal years preceding the date of
8 enactment of this section. However, where the Secretary
9 finds that an applicant State (including political subdivisions)
10 has reduced the costs of its commercial motor vehicle safety
11 program without reducing service levels, the applicant State
12 shall be entitled to make a proportionate reduction in the
13 amount of revenues required to be expended by the State by
14 the first sentence of this subsection.

15

FEDERAL SHARE OF COSTS

16 SEC. 244. By grants authorized under this part, the
17 Secretary shall not reimburse any State an amount in excess
18 of $66\frac{2}{3}$ percent of the costs incurred by that State in that
19 fiscal year in the development and implementation of pro-
20 grams to enforce commercial motor vehicle standards. The
21 funds of the State and political subdivisions thereof which are
22 required to be expended under subsection 243(b) shall not be
23 considered to be part of the non-Federal share. The Secre-
24 tary is authorized to allocate, among the States whose appli-
25 cations for grants have been approved, those amounts appro-

1 priated for grants to support such programs pursuant to such
2 criteria as the Secretary may establish.

3 AUTHORIZATIONS

4 SEC. 245. To assist the States in developing and imple-
5 menting programs to enforce regulations applicable to the
6 safe operation of commercial motor vehicles there is author-
7 ized to be appropriated an amount not to exceed
8 \$50,000,000 in each of the fiscal years 1981, 1982, and
9 1983. The Secretary shall use appropriated funds authorized
10 by this section to reimburse to States the Federal pro rata
11 share of costs incurred. Grants made by the Secretary pursu-
12 ant to the authority of this part shall be for periods not to
13 exceed one fiscal year, ending at the end of a fiscal year.

The CHAIRMAN. Our first witness today is Senator Percy, who long has been a leader in regard to truck safety questions. Senator Percy, we are glad to have you here with us today and you may proceed.

STATEMENT OF HON. CHARLES H. PERCY, U.S. SENATOR FROM ILLINOIS, ACCOMPANIED BY ARTHUR ROSE

Senator PERCY. Mr. Chairman, thank you very much. I'd like to introduce a member of my staff, Skip Rose, who has worked with the staff of this committee on truck safety legislation.

It is a distinct pleasure to be with you this morning and I wish to commend the abiding interest which the Commerce Committee has devoted to addressing the ever-increasing problem of deficient trucking safety, and the speed with which you convened these hearings. It was less than 2 weeks ago that we were together as the President introduced his trucking legislation. To have a hearing convened today certainly shows great dispatch.

The Truck Safety Act was introduced jointly by myself and my good friends and distinguished colleagues, Senators Kennedy, Packwood, and Magnuson. I would like to commend these three cosponsors for the specially keen interest they have displayed in eliminating the slaughter that now plagues our highways.

The Truck Safety Act is designed to combat an urgent and life-threatening problem now running rampant on America's highways. Our roads are plagued by what appears to be an epidemic of unsafe trucks which daily threaten the lives and health of the motoring public and of truck drivers, and are contributing to the destruction of our roadways. The state of our highways is horrendous. Each year more Americans are killed on the road than were killed during the Vietnam war.

The war caused such trauma—every weekend we were inundated with young people—the campuses and the cities were in an uproar over the war. Where's the concern now about a slaughter that's even greater on our highways? The rapid response of your committee in now addressing itself to this problem is very much appreciated by all of those who have been touched by a tragedy on the highways.

Trucks have contributed disproportionately to this record. Hardly a day passes that a traveler does not see the horrifying wreckage of a big rig crashed on the side of a highway.

In recent years, improper truck maintenance, unfit equipment, overloading, and often unreasonable driving schedules have contributed to the creation of severe hazards over the roads. Truck accidents and fatalities have increased at an alarming rate.

In 1978, over 17,500 Americans were killed in accidents involving trucks and buses. That's nearly 35 percent of all highway fatalities for the year. Heavy trucks, those vehicles over 26,000 pounds, alone were responsible for 5,075 deaths. This is an upswing of 53 percent from 1975.

In my own State of Illinois, truck accidents have skyrocketed in the last 4 years. Since 1975 the number of vehicles involved in fatal accidents has increased a whopping 99 percent.

Heavy trucks pose particularly severe hazards to automobiles and their occupants. In a fatal accident involving a heavy truck

and a passenger car, 97 percent of the deaths are to the occupants of the car.

An unfit truck can exact horrifying human tolls. For example, in 1976, in Valley View, Ohio, a tractor-semitrailer barreled down a steep grade approaching a stop light at the bottom of a hill. Unable to stop or slow down, it ploughed into 10 cars parked at the intersection. The collision triggered explosions and fire. Eight people were killed and 15 more seriously injured. Subsequent investigation by the National Transportation Safety Board revealed that, prior to the accident, the truck's brakes were wrongly adjusted and partly inoperative, making it impossible to stop. Proper maintenance and inspections would have detected this problem.

This rash of truck accidents has rendered truckdriving one of the most dangerous occupations in America. The truck is a driver's job site, the road his workplace. They are both replete with hazards. In 1978, fatalities to occupants of heavy trucks numbered 1,010, a 41-percent increase over 1975.

Vehicle maintenance, the importance of which was so vividly demonstrated in the DC-10 crash in Chicago, is deteriorating severely. In 1978, the Bureau of Motor Carrier Safety inspected 26,000 vehicles in a series of roadside spot checks. Amazingly, over 42 percent of the vehicles they inspected were deemed imminently hazardous and were immediately ordered off the road until repaired. This is a shameful record.

In the future, we can only expect economic pressures to encourage a deterioration in maintenance. Fuel prices are going to continue to escalate, the profit crunch will be much greater. We have skyrocketing maintenance costs, and the tendency to let this maintenance slide by is very great indeed.

Inadequate law enforcement is largely to blame for this shoddy record. Federal and State authorities currently lack the manpower and the funds to deal adequately with the burgeoning number of heavy trucks. As a result, thousands of rigs zoom down the highways in bad repair, overloaded, and unsafely driven, because their operators and owners know that the odds of being stopped are about as good as finding a gas pump without a line.

The Federal Government has only 158 officials to inspect them. Shortcomings in present truck safety statutes add to this problem of inadequate enforcement. Outmoded and antiquated laws now bind the hands of the authorities, rendering them nearly helpless even when they do find violations. This bill aims to redress these shortcomings, and to strengthen the hand of safety authorities.

Civil fines can be an effective deterrent to safety violations. However, at present, civil penalties can only be assessed against a driver or a company for a failure to keep proper paperwork. For any other violations, such as failing to maintain safe brakes, full-scale criminal prosecutions are required. Since the Justice Department generally accords these cases little or no priority, many of them are dismissed and the violators escape punishment.

Moreover, the maximum amount of fines for safety violations has not been revised since 1957. The present maximum fine of \$500 for even the most serious violation is wholly inadequate and absolutely no deterrent whatsoever. After the tax writeoff, the \$250 fine in net costs is just nothing to a trucker.

The Federal enforcement effort would be greatly enhanced with the aid of a potentially strong ally, the truckdrivers themselves, who are concerned about the health and safety of their job site. Many drivers would be quick to point out safety violations, but today they find themselves fired or punished if they do so. The Interstate Commerce Commission now provides no protection for these whistleblowers. The employee protections offered in S. 1390 would encourage drivers to participate actively in the overall safety effort.

By encouraging States to assist the Federal truck safety enforcement effort, we could tap another valuable resource efficiently and economically. Each of the 50 States now has an in-place program for the enforcement of highway safety. The State of California alone has more truck inspectors on the job than BMCS has to patrol the entire country. But there's currently no incentive for the States to participate in such a Federal program. No funding exists for that purpose.

Historically, Congress has taken a keen interest in protecting the health and safety of America's workers. The Occupational Safety and Health Act protects nearly every worker in America, with the notable exception of truckdrivers. Truckdrivers were exempted from OSHA because it was felt the Department of Transportation already had the authority to regulate trucking industry safety practices and no additional coverage was necessary.

However, experience has shown that more stringent occupational protections are urgently needed for truckdrivers. Driver fatalities are on the rise and working conditions inside the cab of trucks are also deteriorating. Vibration, exhaust fumes and extreme temperatures all pose a risk to the health of the driver and to the safety of the motoring public. New measures are urgently needed to protect this country's truckdrivers. It is inexcusable that protections accorded truckers lag so far behind those offered to other workers. The Secretary of Transportation should be encouraged through legislation to regulate and actively monitor the workplace of truckdrivers.

S. 1390 constitutes what I believe to be a truly fair and effective approach to combatting the dangerous decline in trucking safety. In formulating this legislation we have worked extremely closely with various members of the trucking industry, both labor and management, and Government. The Truck Safety Act will go far in cleaning up this mess on our highways.

Senator Kennedy has introduced title II of S. 1400, as part of his bill to deregulate the trucking industry. I commend him for his concern in this area of truck safety and for his boldness in addressing it.

S. 1400 takes a similar approach as S. 1390. It would enable DOT to regulate all commercial vehicles over 10,000 pounds, significantly upgrade fine levels, expand civil penalty authority, protect trucking employees from retribution for reporting safety violations, and provide incentives to the States to aid in truck safety enforcement. However, significant differences do exist between the two bills.

For instance, S. 1400 offers no protection for the health of truck-drivers. As I stated earlier, this is a vital area where attention needs to be paid.

Second, S. 1400 would grant the Secretary of Transportation authority, along with the Interstate Commerce Commission, to grant or revoke operating authority on safety grounds.

While the practical effects of this proposal need to be evaluated, the threat of revocation could potentially be an important deterrent to safety violations.

S. 1400 also would authorize significantly higher fines than would S. 1390. While our bill would impose a maximum \$10,000 civil fine for serious violations, S. 1400 would require \$25,000. Criminal violations would carry a \$25,000 fine under S. 1390, and \$50,000 under S. 1400.

S. 1390 would provide that in order to qualify for Federal funds the State must, among other conditions, accord any person assessed a fine carefully drawn rights and remedies. S. 1400 has no such requirements.

S. 1400 also gives the Secretary of Transportation broad discretionary powers to exempt particular carriers from compliance with Federal regulations. No such exemption would be authorized under S. 1390. In fact, I feel there should be absolutely no such exemptions.

I'm confident these differences should not be difficult to resolve for the two bills agree largely on the two substantive matters. I look forward to working with Senator Kennedy and members of this committee in order to construct the best and strongest truck safety package we can devise.

I thank you, Mr. Chairman, for your invitation to appear before the committee. I'd like to say in conclusion that we have worked very closely with a number of trucking associations and driver representatives. We haven't wanted to bring a bill here that had not been run through them, fully aired with them and discussed with them. We and they have made concessions in certain areas so that we could get together and bring a bill to the committee on which we have a unity of opinion. The American Trucking Associations have endorsed S. 1390, as have the International Brotherhood of Teamsters and PROD. So we stand united now, drivers as well as truckers, in saying truck safety should have a very high priority. For that reason, again, we commend you and members of the committee and, Senator Warner, we are happy to have you join us this morning to give high priority to this matter.

The CHAIRMAN. Well, thank you very much, Senator Percy.

Your legislation doesn't contain specific dollar authorization levels. Title II of S. 1400 authorizes \$50 million for fiscal years 1981, 1982, and 1983. Do you have any views as to what the proper dollar level ought to be?

Senator PERCY. Originally, our bill authorized \$100 million. We have talked with knowledgeable authorities in this field. It is their general feeling that this is probably one of the most cost effective investments that we can make. We are grossly underfunded now in this whole area and the general feeling was that something closer to \$100 million would be required.

We simply decided in S. 1390 to indicate that "such funds shall be provided as are deemed necessary" and I presume that hearings would be held on that particular subject. But my own judgment is that probably closer to \$100 million would be required.

The CHAIRMAN. You would utilize the Highway Trust Fund as a funding mechanism. Why do you believe that would be the appropriate method rather than utilizing general revenues?

Senator PERCY. Well, I must frankly say, Mr. Chairman, that I have long felt that the Highway Trust Fund ought not to be just designated for the single purpose of highway construction. It's so heavily subsidized for just one element of transportation. I have really through the years favored abolishing the Highway Trust Fund and creating a Transportation Trust Fund. I just feel these accumulative funds with the huge surpluses they have should be diverted to many things. I even proposed diverting funds out of that for alcohol abuse and training as it affects drivers. There's an excess in there, and I just don't think we need all that we're piling up in those funds. These funds are most readily available, and they certainly pertain to highway matters. If you can divert for mass transit, which are not highway, the Highway Trust Fund ought to be used then for safety on the highways.

The CHAIRMAN. What is your rationale for the exemption that you have in your bill for the logging vehicles, the farm vehicles, commercial vehicles below 10,000 pounds gross weight?

Senator PERCY. Let me just check with counsel on that. Would it be all right to have Skip Rose comment on that?

Mr. ROSE. Certain classes of highway vehicles involved in farm activities are now exempted from Federal regulations by the DOT. Our bill would continue that exemption by allowing the Secretary of Transportation to determine which vehicles would be exempt from safety regulations. It's felt that any additional safety regulations would be excessive and unnecessary for certain vehicles, namely off-highway, in logging and farming operations.

The CHAIRMAN. As I read your bill, I don't think there's that flexibility, though, is there? Don't you provide an outright exemption for those various classes? For example, the farm vehicles, the logging vehicles, the commercial vehicles below 10,000 pounds gross weight, I thought you provided a specific exemption for that.

Mr. ROSE. Vehicles under 10,000 pounds are exempted from this bill, yes. That is because we felt that a huge number of trucks would be over 10,000 pounds, and the most dangerous trucks are those heavier vehicles over 10,000 pounds. For the farming and logging vehicles, the exemption reads "as defined by the Secretary," so that there is some leeway and flexibility there.

The CHAIRMAN. Is it your feeling that they do not need to be regulated to be safe? Is that the idea?

Mr. ROSE. No, sir. That is certainly not the idea. It is just as important that they be safe as it is for vehicles over 10,000 pounds. However, we felt we didn't want to stretch the resources of the DOT in this area at this time. Perhaps in the future, and maybe now, regulating vehicles under 10,000 pounds would be something we would want to consider.

The CHAIRMAN. Senator Percy, you have limited the civil fines to truckdrivers to only \$500 and then there must be a finding of the

Secretary of gross negligence or reckless disregard for safety. In addition, unlike their employers who would be subject to a \$25,000 fine and 1 year in jail, the drivers would be subject to only a maximum of \$1,000 fine and that only if there's a finding of a knowing and willful violation.

What is your rationale for that disparity in the penalties? The driver is the one that's really in the position to know if a truck is or is not in safe condition, isn't he?

Senator PERCY. We attempted in this bill to establish penalties that were effective deterrents, not tools for harassment. The question is, what fine is an adequate deterrent? Obviously, today a maximum \$500 fine for truckers is no deterrent whatsoever. It's cheaper just to take the chance and let the truck keep running without repairs. A greater deterrent would be to take that truck out of circulation for a day or 2 or 3 days for the repair. They lose money on that. So that this fine ought to be stiff for the trucker, who can write it off as a business expense.

The driver is subject many times to dismissal. The driver is also subject to a docking of pay for violations. Our feeling is that another penalty on top of that does not have to be as large. Furthermore, it's not a business expense to them, and it cannot be deducted.

So the level we have set for the truck drivers we feel is an adequate deterrent. It would sock them and sock them pretty hard, but nowhere near what the fine would have to be to be a real deterrent for the trucking companies.

The CHAIRMAN. I find some difficulty with that. I don't know whether something is deductible as a business expense should enter into this consideration in any way, shape or form here in a matter that involves safety. I would think that the driver is in the position to know if that truck is not safe and if you impose enough of a penalty on him he's not going to drive and some other driver isn't going to step in and drive it either, and they are the ones that are really in a position to know whether the vehicle is or isn't safe it seems to me.

Senator PERCY. The problem right now is, from a practical standpoint, the driver is not at all protected. Many times companies will find some reason to get rid of that driver. They've got other drivers they can replace them with. So there's a tendency for the drivers, even though they know there's a safety hazard in a truck, not to report it to the trucking company because they will just get known as a guy who can't get along.

That's why we very carefully built in protections for the whistle-blowers. We went through this, Mr. Chairman, in the Government Affairs Committee with months of debate on how to structure protection for whistle-blowers in the civil service. We have drawn upon that practical approach to try to find a way to protect the driver who will blow the whistle and who will say, "This truck must be taken off the road and repaired."

The CHAIRMAN. Now I agree with you and I support you on that, but it seems to me that the way to encourage a whistle-blower is not by imposing a smaller fine. You ought to get it up to the point that he's going to be anxious to come in and point out those defects that exist because it's going to penalize him and he needs to do

something to get that truck off the highway. Is this a matter of compromise?

Senator PERCY. I think many times a \$100 fine to an employee is equivalent as a deterrent to a \$10,000 fine to a large trucking company. A \$100 fine for an individual is quite a large amount. You hate to pay a \$5 parking fine. \$100 can be an awful lot. I would urge that the committee take whatever testimony you can to find out what an adequate deterrent is for employees. If this is not an adequate deterrent, then let's raise it.

The judgment of the framers of the bill and my cosponsors is that this is an adequate deterrent on both sides, an adequate deterrent for the employer and an adequate deterrent for the driver.

The CHAIRMAN. You point out that S. 1390 would go beyond the administration's proposal with respect to employee health standards. What are the health aspects of your proposal?

Senator PERCY. The situation is ludicrous today when you know that a certain amount of this slaughter is attributable not to the physical condition of the vehicle but to the working conditions of the employee. Fatigue sets in. Exhaust fumes are in the cab. Working conditions many times are crowded. To exempt truck drivers who are potentially able to wreck such damage upon the motorists and themselves from OSHA type protections is just not understandable.

Therefore, we built in a very strong provision here for a protection of the driver. The drivers feel some of their working conditions in the cabs and on the highways are unbearable and they are the ones most adamantly pushing for protections. It's very seldom these days that you get a group of people asking for there to be regulation.

Mr. Chairman, as you know, I have worked very long and hard on deregulation. We worked together on airline deregulation. The need for deregulation is evidenced in the Regulatory Reform Act that I introduced and that the Senate passed last year. But when I held a regulatory conference in Chicago with Charlie Schultz talking on behalf of deregulation across the board, Dr. Hendrie of the NRC was there also to talk about places where we need to tighten regulation. We need to tighten it in the nuclear field. And we need to tighten regulation in areas of truck safety.

It would be foolish for us to think we can further deregulate here when both truckers and drivers and motorists all are now saying, "Do something about this slaughter on the highway."

The CHAIRMAN. Well, now, as I read your legislation, you would increase DOT's responsibility for the health of the truck drivers. Do you think DOT has more expertise in that area than OSHA? You mentioned OSHA a minute ago.

Incidentally, that's about the only time that I've ever heard OSHA favorably mentioned.

Senator PERCY. Well, in this case, we do think DOT is equally qualified to do this and should have such authority. As long as they have the overall safety problem, why bring another Federal regulatory agency in? Why not have them take care of the truck as well as the driving conditions and the health standards for drivers? FAA has jurisdiction over the health of airline pilots. You don't

have OSHA take care of that. And I think also in this case DOT should have jurisdiction in this area.

The CHAIRMAN. A little earlier you mentioned OSHA and I thought you were suggesting then that—

Senator PERCY. Only because OSHA has a special exemption in this area, and the DOT now has ambiguous jurisdiction. So you have exempted OSHA from the one area in the trucking industry that would affect the health and safety of drivers—the drivers are totally exempted. There's no specific provision in the DOT Act giving the DOT jurisdiction over the health of drivers. In S. 1400 the administration does not ask for that particular provision. This is a gray area, and there is now a dispute between DOT and OSHA in this area as to who has jurisdiction. It's quite ambiguous now. That's why we wanted to clarify it once and for all.

The CHAIRMAN. The American Trucking Association is recommending development of a commercial driver register. Do you have any feeling on that point?

Senator PERCY. I think it would be something that ought to be very carefully studied. S. 1390 would authorize such a study.

The CHAIRMAN. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

Senator Percy, I wish to join in commending you for working on this problem for so long. As I understand this piece of legislation has been proposed by you for some several years.

Senator PERCY. That's right.

Senator WARNER. I have come to know the trucking industry here in the Senate and from personal knowledge of truckers as individuals and as a class, I think they rank among the highest in America as far as hard working, independent, knowledgeable, and intelligent people, and you come from the private sector. Yet here we have an industry basically with all sides of the industry joined together on this—the truckers presumably, the owners, the trade associations—coming hat in hand to the Congress for \$50 to \$100 million of taxpayers' dollars for more Government regulation.

How did this happen? How did the free enterprise system which you understand so well permit this situation to degenerate to where the only salvation is the Government and the taxpayers' dollar?

Senator PERCY. Well, I think there are several reasons. First of all, caveat emptor is not a universally applicable principle. I never found that in business. I have found it's a good thing to have certain uniform things that everyone must adhere to so that they are a part of the cost structure. In a cutthroat business—and there are a lot of cutthroat elements to the trucking industry—for one to cut corners causes others to cut corners. In safety I think they all now realize that their expenditures have to be on a uniform basis.

Second, the companies don't feel that this is coming with hat in hand to the Government saying, "Give me some of your money." All they're saying is this: "We pay gasoline tax. What are we getting back for it? We're paying far more into that trust fund than we are getting back. It's piling up, piling up, piling up. All we're saying is take a minute part of it, a minuscule part of it, and spend it in such a way that will save the lives of 17,500 people." If you go through the rehabilitation center in Chicago, Senator

Warner—and I invite any member to go through that—there are 15 or 16 floors of people, a high proportion of them mangled in one way or another, unable to move an arm or leg, never able to get out of a wheelchair, simply because of an automobile accident or a truck accident.

The truckers are simply saying, "Give us back a little bit of what we have been paying in through the years in fuel taxes, and spend it in such a way as to improve safety. We can't individually spend it." There's no way a trucking company can spend it. They're saying, "You spend it on our behalf to see that there's uniform recognition that safety is an important element." I think that's the heart of the private enterprise system, to do something collectively we can't do for ourselves—to paraphrase Abraham Lincoln.

Senator WARNER. Well, I accept, for purposes of our discussion, that we have got to do something. It's a deplorable situation and everybody is suffering, and yet you say the intrinsic competitive system in our capitalistic system as it relates to trucking has driven us to this one alternative then.

Senator PERCY. Well, it's a combination of many, many factors.

Senator WARNER. The reason I asked the question is, we have before us the deregulation of the industry as a whole. How does your argument cut to this bigger question of total deregulation or some swing of the pendulum?

Senator PERCY. I would like to think obviously that the competitive enterprise system would work so that ultimately the perfect vehicle or any kind of product would always end up in the marketplace without the hand of Government. We haven't exactly found that was true with the DC-10. We haven't exactly found that was true in the case of the automobile companies who suddenly realized that more mileage was ultimately in the national interest. All my good friends in the automobile business, including my finance chairman who's head of Borg-Warner and made all the transmissions for them, said, "You fellows don't know what you're talking about down there, regulating and telling us we've got to get more mileage for our automobiles." All we kept saying, just as in airline deregulation, is we do think we understand, maybe not the airline business, but the marketplace and we think deregulation is a good thing.

In this case, I think most of the automobile companies were wrong. They can't give away their big gas-guzzlers now. They have delayed introducing all their new models in the competitive system. General Motors can't get rid of the big inventory they've got and there are back orders on all the small cars.

Senator WARNER. Let's go back to trucking.

Senator PERCY. Once in a while the national interest has to prevail and in this case we think even the competitive enterprise system is coming to us and saying, "We think this is a good thing for the Congress to lay down a uniform safety law."

Senator WARNER. But in a sense this, does it not, bear upon the issue before this committee of the measure by which Congress deregulates the trucking industry?

Senator PERCY. Our bill provides no deregulation at all. It addresses just truck safety.

Senator WARNER. I understand that. I was just trying to solicit from you a thought with respect to your frank admission that the tough competition—I think you characterized it as cutthroat—has driven us to this posture. Has that same measure of competition, the cutthroat as you describe it—does that not affect this committee's work in trying to determine the measure of deregulation to impose on this industry or lift for this industry, whichever way you want to characterize it?

Senator PERCY. I would feel the reason that we totally separated truck safety is that I looked at the deregulation of the trucking industry enough to know that it's not quite so simple—the airline field was not simple, but this is far more complex. There are certain things on which we ought to move with dispatch like backhauling. We ought to find a way to eliminate that to the greatest possible extent. Twenty percent of all the trucks on the highway are empty today. In this age of an energy crisis that is unconscionable. The industry should be starting to work with us to find ways to undo that.

But I don't imagine the Congress can move with great dispatch on trucking deregulation. It's far too complicated and every aspect of it has to be looked at. Therefore, I think we can look with dispatch at truck safety where the issue is not so complex, and that's why we separated it out.

Senator WARNER. One last question. Do the statistics reflect any difference between the independent truckers and, say, the fleet operators? In other words, this broad statistic, the percentage of accidents and deaths and so forth, is there any breakout between the independent and the fleet?

Senator PERCY. I think there is a uniformity now, a consensus through the industry of support for safety. We have only gone to those associations that can speak on behalf of their membership. The independent truckers are hard to reach. They came together on one strike, but they are hard to get at on a piece of legislation like this. We have gone, therefore, to the Teamsters in this case and we have worked with them.

Senator WARNER. I guess what I was thinking of is when an individual—and there are increasing numbers now and I think it's a bright side of our American scene—who decide they're going to put their last dollar into a rig and operate that rig and it becomes their home and their castle and their future, and I just wondered if this same high percentage of accidents are occurring from those independently owned rigs.

Senator PERCY. It's a good question and I don't know the answer to that. It would be well for us to try to break it out and see.

My general feeling, just sensing it, is that probably an independent operator has put everything he's got into that truck. He probably is nursing it and taking care of it. He may be far more inclined to repair it and protect his asset than would another driver. So I would tend to think probably, just guessing, maintenance and safety standards are probably better among independents than for the fleets. There's a sense of pride that probably would be missing in a driver who is not sure which truck he is going to have. When you're driving the same truck every day and you know that that's your vehicle, your tendency is probably to

take care of it. But it would be interesting to see figures, and I will see if we can't break them out from DOT.

Senator WARNER. He certainly wouldn't have hanging over him the threat of a loss of job or dismissal. It would be purely economic power.

Senator PERCY. He could lose something more—he could lose his own life.

Senator WARNER. That's true of all truckers, fleet or private. Thank you, Mr. Chairman. Thank you, Senator Percy.

The CHAIRMAN. Just a couple of comments on one of the points you were just making.

The administration would testify that the data collected so far suggests that the safety performance of the ICC regulated carriers and other carriers is comparable. That doesn't get the breakdown.

Senator PERCY. It's comparable?

The CHAIRMAN. Yes. Also, I was going to raise one other point with you. You and I both mentioned there were over 50,000 traffic fatalities. In your statement on the floor I think you said that heavy trucks alone were responsible for 11 percent of those fatal accidents. In 1978, 5,000 of those 50,000-plus Americans were killed in accidents involving heavy trucks.

Now that's only about 10 percent of the total. Why then do you direct your entire bill toward safety with respect to trucks when that's only 10 percent of the total highway deaths in the country?

Senator PERCY. Let's reconstruct those figures. We have 1,000 truckdrivers killed and 17,500 total fatalities involving trucks and buses. There are 5,075 deaths involving heavy trucks.

The CHAIRMAN. You say 11 percent of the fatal accidents were trucks.

Senator PERCY. 50,000 deaths, 5,075 involving trucks alone.

The CHAIRMAN. Involving heavy trucks alone. Now my question is, you're suggesting some very stringent fines and penalties and so on involving trucks, but for no one else, and that only accounts for 11 percent of those deaths on the highways.

Senator PERCY. Well, I think that it's an important 11 percent, though, 5,000 deaths, and you can do something about those.

The CHAIRMAN. The 50,000 is also important.

Senator PERCY. The proliferation of other accidents involve so many causes, so many variations, it's probably much harder to get at it. The trucking industry also is growing rapidly. Those are the most dramatic increases in figures and trucking has deteriorated most sharply. It is a problem that we can attack right now.

I would certainly urge that we continue to determine the cause of the 50,000 fatalities. But trucks constitute a small number of vehicles and are responsible for a large number of deaths. We can dramatically do something about unfit trucks right now and actually see the results. I think it's just as clear as in the case of the 55-miles-per-hour speed limit, which has saved over 40,000 lives. I think here we can show dramatic, quick results on those 5,075.

The cause of the other deaths should be worked on and I'm sure Ralph Nader has been doing a lot of work through the years on it. We have improved the safety over what it would have been. But there's a great deal more driving, far more cars on the highway, and the population continues to go up.

The CHAIRMAN. Thank you very much.

Senator PERCY. Thank you, Mr. Chairman, very much indeed.
[The statement follows:]

STATEMENT OF HON. CHARLES H. PERCY, U.S. SENATOR FROM ILLINOIS

Mr. Chairman and members of the Committee, it is my distinct pleasure to appear before you today concerning S. 1390, the Truck Safety Act. I commend the abiding interest which the Committee has devoted to addressing the ever-increasing problem of deficient trucking safety. The speed with which this Committee has convened hearings on this important matter speaks strongly of its commitment, and of the urgency of the issue. I am particularly grateful to you, Mr. Chairman, and to the other members of the Committee for the earnestness you bring to this matter.

The Truck Safety Act was introduced jointly by myself, my good friends and distinguished colleagues, Senator Kennedy, Chairman of the Judiciary Committee, Senator Packwood Ranking Minority Member of this Committee, and Senator Magnuson, former Chairman of this Committee and now Chairman of the Appropriations Committee, I would like to commend these three co-sponsors for the specially keen interest they have displayed in eliminating the slaughter that now plagues our highways.

The Truck Safety Act is designed to combat an urgent and life-threatening problem now running rampant on America's highways. Our roads are plagued by what appears to be an epidemic of unsafe trucks, which daily threaten the lives and health of the motoring public and of truck drivers, and are contributing to the destruction of our roadways. The state of our highways is horrendous. Each year more Americans are killed on the road than were killed in any year of the Vietnam War. And trucks have contributed disproportionately to this record. Hardly a day passes that a traveler does not see the horrifying wreckage of a big rig crashed on the side of a highway.

Urgent legislative remedies are now required. I believe S. 1390 would go far towards creating a truly effective program of upgrading trucking safety.

Senator Kennedy, in cooperation with the Carter Administration, has also introduced legislation to attack this safety problem. He is to be commended for his recognition of the importance of this issue, and for his concern in addressing it. S. 1400, a bill to deregulate the trucking industry, contains a long title devoted to truck safety. While this bill takes essentially the same approach as the Truck Safety Act, subtle and important differences exist between the two versions which merit close scrutiny. I will analyze these differences in greater detail later in my testimony.

In recent years, improper truck maintenance, unfit equipment, overloading, and often unreasonable driving schedules have contributed to the creation of severe hazards over the roads. Truck accidents and fatalities have increased at an alarming rate.

According to newly compiled figures from the Department of Transportation, of the 50,000 highway fatalities in this country in 1978, 17,578 (or nearly 35 percent) were caused by trucks and buses. Heavy trucks alone were responsible for 11 percent of these fatal accidents, despite the fact that they account for less than 1 percent of vehicles on the road. This is a significant increase, for in 1975 heavy trucks were involved in only 7.8 percent of fatal accidents. While the number of vehicle miles traveled by heavy trucks rose 14 percent from 1975 to 1977, the number of these trucks involved in fatal accidents increased 29.3 percent.

In 1978, 5,075 Americans were killed in accidents involving heavy trucks, an alarming increase of 53 percent over 1975. During the same period, the number of all highway fatalities increased 12.6 percent, of itself a significant climb.

Heavy trucks pose particularly severe hazards to automobiles and their occupants. In a fatal accident involving a heavy truck and a passenger car, 97 percent of the deaths are to the occupants of the car. Per hundred million miles, the involvement of heavy trucks in fatal accidents is 165 percent greater than the involvement of passenger vehicles.

An unfit truck can exact horrifying human tolls. For example, in 1976, in Valley View, Ohio, a tractor-semitrailer barreled down a steep grade approaching a stop light at the bottom of a hill. Unable to stop or slow down, it ploughed into ten cars parked at the intersection. The collision triggered explosions and fire. Eight people were killed, and 15 more seriously injured. Subsequent investigation by the National Transportation Safety Board revealed that, prior to the accident, the truck's brakes were wrongly adjusted and partly inoperative, making it impossible to stop. Proper maintenance and inspections would have detected this problem.

This rash of truck accidents has rendered truck driving one of the more dangerous occupations in America. The truck is a driver's job site, the road his workplace. They are both replete with hazards. In 1978, fatalities to occupants of heavy trucks numbered 1,010, a 41 percent increase over 1975.

A 1976 Wisconsin study showed that truck drivers were 9 times as likely as all other workers to be killed in work-related accidents.

Accident data compiled by the National Highway Traffic Safety Administration, an agency of the Department of Transportation, includes only those truck accidents which are actually reported by the States. Since many accidents go unreported, and since heavy trucks—those vehicles over 26,000 pounds—constitute a small percentage of the total truck population, it is fair to assume that annual accident figures are significantly higher than reflected here.

Another body of data is compiled by the Bureau of Motor Carrier Safety (BMCS), the arm of the DOT responsible for enforcing trucking safety. The latest data indicate that, in 1978, interstate motor carriers of property and passengers reported approximately 35,000 accidents, which resulted in 3,200 fatalities, 34,000 injuries, and \$310 million in property damage. This represents, since 1975, an increase of 43 percent in fatalities, 29 percent in injuries, and a startling 96 percent in property damage. And, according to the Bureau, these figures are understated because a significant number of accidents went unreported.

In a series of Federal road-side spot checks conducted during 1978, over 42 percent of the 26,000 vehicles inspected by the BMCS were deemed "imminently hazardous" and were immediately ordered off the road until repaired. Yet the Bureau was able to inspect less than 1 percent of the 3 million commercial vehicles under its purview. It is reasonable to believe, therefore, that many more unsafe vehicles and conditions go undetected.

I also want to point out that, in my home State of Illinois, truck accident rates have skyrocketed in the last 4 years, according to the Illinois Department of Transportation. For all trucks (including sizes ranging from pickups to combination tractor-semitrailer rigs), the number of vehicles involved in fatal accidents increased 99 percent from 1975 to 1978. Combination vehicles alone, the so-called "big rigs," were involved in fully 10 percent of fatal highway accidents in the State last year.

In 1978 there was a 47 percent increase in the number of combination vehicle accidents on Illinois highways. The figures for all trucks indicate that there was a distressing 116 percent rise in the number of trucks involved in highway accidents.

Inadequate law enforcement is largely to blame for this shoddy record. Federal and State authorities currently lack the manpower and funds to deal adequately with the burgeoning number of heavy trucks. As a result, thousands of rigs zoom down the highways in bad repair, overloaded, and unsafely driven, because their operators and owners know that the odds of being stopped are about as good as finding a gas pump without a line.

Inadequate enforcement is in turn due in large part to shortcomings in present truck safety statutes. Outmoded and antiquated laws now bind the hands of the authorities, rendering them nearly helpless even when they do find violations. This bill aims to redress these shortcomings, and to strengthen the hand of safety authorities.

Civil fines can be an effective deterrent to safety violations. However, at present, civil penalties can only be assessed against a driver or a company for a failure to keep proper paperwork. They are not applicable to any other safety violation, such as the failure to maintain safe brakes or to load the truck within prescribed limits. In these instances, the BMCS can only bring formal criminal prosecutions in court or initiate a time-consuming administrative hearing.

This has proved to be a difficult and ineffective process. For instance, in 1978, BMCS detected over 110,000 safety violations during nationwide road checks of 25,695 vehicles and drivers. Yet Bureau investigators were able to develop only 319 cases warranting court or administrative action. The majority of these cases were not accepted by the Department of Justice for criminal prosecution.

The effectiveness of the Bureau's safety program could be greatly enhanced by expanding civil forfeiture authority to include all types of substantial violations of safety regulations.

Moreover, the maximum amount for fines for safety violations has not been revised since 1957. They are now seriously out of line with fines for violations of other Federal regulations. Low penalties, coupled with the lengthy process of criminal enforcement, do little to discourage future violations. It is imperative that we raise these fines and set realistic time limits for the prosecution of cases and processing of fines.

Concerned truck drivers and trucking employees are often a great boon to trucking safety. Because their lives and health depend upon the safety and fitness of

their vehicles, many such drivers are anxious to point out defects in their rigs. But when these drivers refuse to drive a hazardous vehicle, or report a significant violation to the authorities, many times they find themselves fired or punished as a "reward" for their diligence.

The Interstate Commerce Commission now provides no restraints upon employers who retaliate against these whistle-blowers. The sad result is that trucking employees are extremely hesitant to report even the most flagrant safety violations. The Government has lost a potentially important ally in its fight to protect truckers and the public.

Historically, Congress has taken a keen interest in protecting the health and safety of America's workers. The Occupational Safety and Health Act protects nearly every worker in America, with the notable exception of many of those in the trucking industry. At the time it was argued that, since the Department of Transportation already had authority to regulate trucking industry safety practices, no additional coverage was necessary.

However, experience has shown that occupational protections afforded truck drivers are woefully inadequate. The Federal Government has done little to stem the rapidly rising number of truck drivers killed on the highways. Working conditions inside the cabs of trucks are also deteriorating. Vibration, exhaust fumes, and extreme temperatures all make truck driving a serious risk to driver health, and to the safety of the public.

In light of these hazards, measures are urgently needed to protect this country's truck drivers. It is inexcusable that protections accorded truckers lag so far behind those offered to other workers. The Secretary of Transportation has experience in regulating and monitoring the safety of the trucking industry. He would be the logical and most effective choice to assume responsibility for protecting the health and safety of truck drivers.

Nearly three million heavy trucks roll down America's highways every day. And yet, the BMCS, the lead agency in enforcing trucking safety, has only 158 inspectors and safety officers. Finding the violator in this mammoth haystack is enormously difficult. Clearly, we need to bring far greater resources to bear.

In the name of effectiveness and economy, the individual states should be encouraged to actively assist the Federal effort. Each of the 50 states now has an existing program for the enforcement of highway safety. The State of California alone has more truck inspectors on the job than the BMCS has to patrol the entire country. Clearly, the vastly superior resources and manpower of the states would be a valuable addition to the Federal enforcement effort.

But the Federal Government now provides no funding to the States for this purpose, and thus no incentive exists for them to cooperate. With adequate incentives—for instance, reimbursement for a percentage of the cost of operating strong truck safety programs—much could be done to crack down on speeding, tailgating, sloppy maintenance and overloading.

With proper incentives, States could operate both more permanent and portable weigh scales to prevent heavy loads which are destroying our roadways, and which make vehicles dangerous to drive. Increased enforcement personnel would slow down *all* vehicles, not just trucks, with the result that thousands of lives would be saved.

Without prompt remedial action, the state of our highways will steadily worsen. This bill builds upon and expands past legislation to create what I consider to be a truly effective truck safety program. In drafting this legislation, we have sought to reduce the load on our already overburdened courts. We have tried to alleviate the unnecessary delays that so often plague our regulatory process. And we have sought ways to encourage compliance with safety regulations that do not plunge industry neck-deep in paperwork.

S. 1390 builds upon and focuses the general authority given the Secretary of Transportation to regulate truck safety and the health and safety of truck drivers. It directs the DOT to address those areas which have caused the gravest problems since the Department was created 11 years ago.

To accomplish these goals, S. 1390:

Raises civil fines from \$500 to \$2,500 maximum for each substantial violation and to \$10,000 for serious safety violations.

Authorizes the Secretary of Transportation to regulate the health and safety of working conditions for truck drivers and to ensure that trucks are safely maintained and operated.

Provides for 1 year imprisonment and/or a maximum \$25,000 fine for knowing and willful criminal violations.

Expands Federal truck safety jurisdiction to include all commercial motor vehicles, both interstate and intrastate, over 10,000 pounds.

Authorizes the Secretary to conduct on-the-job inspections and investigations. Protects trucking employees from discipline, discharge, or discrimination for refusing to drive an unsafe vehicle or for reporting safety violations.

Authorizes a uniform reporting system to eliminate excessive paperwork required of trucking firms and truckers.

Encourages States to assist in the enforcement of truck safety by offering them financial incentives with funds appropriated from the Highway Trust Fund.

Allows States to apply for exemptions from particular Federal regulations if their proposed regulations do not diminish safety.

Requires the Secretary to report yearly to Congress concerning his efforts to improve truck safety, and assessing the advisability of establishing a national commercial driver register.

The provisions of this bill would greatly enhance the effectiveness and efficiency of DOT in regulating and enforcing truck safety. Abuse of present regulations has resulted in countless deaths, injuries, and loss of property. This situation will not improve itself. The time to crack down is now. The Highway Users Foundation predicts that, during the next 15 years, the number of trucks on the roads will double. Our highways should not be death traps—they were built for the safe enjoyment and use of all Americans.

This legislation has been greatly enhanced by the diligence and concern of various driver representatives, namely the International Brotherhood of Teamsters and the Professional Drivers Council. From the start, they have provided keen insights and original ideas to protect the health and safety of their members and the motoring public. This legislation would not have been possible without the outstanding contributions of these conscientious advocates who have well-represented their member-employees with diligence and concern.

Likewise, the American Trucking Associations (ATA) is to be highly commended for the outstanding contributions they have made to the development of this legislation. The ATA has displayed a sincere and abiding commitment to upgrading the safety of its industry. The Executive and SCORE Committees of ATA, consisting of many highly dedicated, safety-conscious trucking executives, devoted hundreds of hours to poring over the provisions of this bill. Subsequent ATA endorsement is the result of an immense amount of interchange and consultation. It is a tribute to the ATA to have taken such a bold position of leadership on this important issue. Allow me to turn briefly to the other legislative proposal before this Committee today.

Title II of S. 1400, the Trucking Competition and Safety Act of 1979, would establish a similar safety program to that of S. 1390. This bill would enable DOT to regulate all commercial motor vehicles over 10,000 pounds, significantly upgrade fine levels, expand civil penalty authority, protect trucking employees from retribution for reporting safety violations, and provide incentives to the States to aid in truck safety enforcement. However, significant differences do exist between the two bills.

For instance, S. 1400 would authorize the Secretary of Transportation to concur with the Interstate Commerce Commission on the granting or revoking of operating authority. After reviewing a carrier's safety record, DOT would make a binding recommendation to the ICC.

While the practical effect of creating this duplicative authority needs to be scrutinized, potentially this could be a key step. A real threat of revocation could be a strong deterrent to shoddy safety practices.

S. 1400 also would establish significantly higher fines than would S. 1390. While the penalty for most violations would be the same (\$2,500), penalties for serious violations would be \$25,000 (instead of \$10,000 in S. 1390) and knowing and willful violations would carry a penalty of \$50,000 (instead of \$25,000 in S. 1390).

However, unlike S. 1390, S. 1400 would leave trucking employees liable for the full amount of these fines. Conceivably, a truck driver, with far less resources than a major carrier, could be fined \$25,000 by administrative action.

S. 1400 would also allow the Secretary to waive compliance by an individual carrier if he determines that it would be in the public interest and would not diminish safety. It seems possible that application of this provision may create a pattern of unequal and uneven enforcement which might undermine safety. Further, it seems only logical that if compliance with a regulation can be waived without diminishing safety, then perhaps the regulation itself is superfluous and should be withdrawn.

But most critical is the fact that, unlike S. 1390, S. 1400 would offer no protections for the health of truck drivers—the bill covers safety only. As I stated earlier, the Secretary of Transportation is now responsible for regulating the job site of these workers, but his hand needs to be strengthened in this area.

Upgraded truck safety enforcement is vital for the protection of two parties: the motoring public and truck drivers. In keeping with this charge, it is imperative that the Secretary of Transportation assume responsibility for actively monitoring and regulating the safety and health of America's truck drivers.

I am confident that these differences should not be difficult to resolve, for the two bills agree largely on the most substantive matters. I look forward to working with Senator Kennedy and with members of this Committee in order to come up with the best and strongest truck safety package we can devise.

I thank you, Mr. Chairman, for allowing me to appear before the Committee today.

The CHAIRMAN. Mr. John Hassell, Deputy Administrator, Federal Highway Administration. While you gentlemen are getting organized, I see there's a vote on and I'll go over and vote and return.

[Recess.]

The CHAIRMAN. All right. Gentlemen, if you desire to submit your statements in full for the record and summarize, you may do so.

STATEMENT OF JOHN S. HASSELL, DEPUTY ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION; ACCOMPANIED BY GEORGE PARKER, CHIEF OF THE CRASH AVOIDANCE DIVISION, OFFICE OF VEHICLE STANDARDS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; DR. DONALD R. TRILLING, ACTING DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; AND KENNETH L. PIERSON, DEPUTY DIRECTOR, BUREAU OF MOTOR CARRIER SAFETY

Mr. HASSELL. Thank you, Mr. Chairman; we will read the full statement for the record.

I'm pleased to appear before you today to discuss the administration's interest in improving commercial motor vehicle safety and to detail some of the actions we are taking to further this interest.

Accompanying me today is Dr. Donald R. Trilling, Acting Deputy Secretary for Policy and International Affairs of the Department of Transportation; Mr. George Parker, Chief of the Crash Avoidance Division, Office of Vehicle Standards, National Highway Traffic Safety Administration; and Mr. Kenneth Pierson, Deputy Director of the Bureau of Motor Carrier Safety, Federal Highway Administration.

Mr. Chairman, I appeared before you last fall to discuss truck safety needs generally and S. 2970, a bill introduced by Senator Percy. It's a pleasure to be here again with Senator Percy to discuss truck safety and, as he said, I think we are in basic agreement as to both the problem and the measures needed to get control of the problem.

Since last fall the administration has completed its exhaustive review of the trucking industry and has forwarded to the Congress comprehensive legislation to reform both the economic and safety regulation of that industry. The administration bill would reduce Federal economic regulation when it is no longer needed or useful and strengthen safety regulation, which is in need of improvement. Today, therefore, I am pleased to be able to talk to you about commercial motor vehicle safety in terms of the proposals for safety reforms which are included in our comprehensive legislative proposal.

We are here today because there is considerable and clear evidence that we need to improve Federal commercial motor vehicle safety laws. For example, as to personal injuries and fatalities, motor carrier accidents reported to the Bureau of Motor Carrier Safety of the Department of Transportation increased 42 percent over the last few years, from about 24,000 in 1975 to over 34,000 in 1978. As to property damage, the BMCS has estimated that accidents involving interstate commercial carrier traffic alone resulted in approximately \$300 million worth of damage in 1978.

There is strong reason to believe that this increase in accidents results from widespread noncompliance with safety requirements. For example, in May of 1979, DOT and State law enforcement officials conducted a series of inspections of commercial trucks selected on a random basis in five Mississippi River States. Of the 1,731 trucks stopped and inspected, 753, or 44 percent, were placed out of service because of violations. Mr. Chairman, we do not place vehicles out of service because of minor violations. We are talking here about unsafe brakes and other significant safety hazards. There were many other vehicles stopped during this inspection which had violations not so serious as to require that they be placed out of service. Furthermore, the May inspection was not an unrepresentative incident. In recent years, intensive periodic roadside checks performed over week-long intervals at specific sites throughout the country have resulted in vehicles being placed out of service at rates comparable to those of the inspection I just described.

Mr. Chairman, we are not pleased with this state of affairs. That is why the administration strongly recommends the enactment of our comprehensive trucking legislation, which will not only save consumers billions of dollars in trucking costs through the enactment of our economic regulatory reform proposals, but will also save lives and millions of dollars in property damage by promoting commercial motor vehicle safety.

Before describing our legislative recommendations to improve commercial motor vehicle safety, let me briefly describe some of our current safety activities, which involve several statutes and departmental programs.

Federal highway statutes require that safety be built into the highway physical plant; the Highway Safety Act of 1966 provides financial assistance to States to enable them to upgrade their highway safety programs designated to regulate motor vehicle registration, driver training and licensing, police services, and other aspects of highway operations and control.

Of greatest concern to the committee today, I'm sure, are the activities of the BMCS pursuant to the safety provisions of part II of the Interstate Commerce Act (ICA). Under that statute the Department regulates the hours of service and qualifications of commercial vehicle drivers, the safety of operations, and equipment standards for trucks and buses in the United States engaged in interstate or foreign commerce.

The BMCS' regulations concentrate on operations utilizing vehicles with more than four tires on the pavement and with a gross vehicle rating of 10,000 pounds or more. Our estimates are that something on the order of 50 percent of the commercial vehicles on

the road, or approximately 3 million vehicles are covered by the statute. The 3 million vehicles not covered include dump trucks, service vehicles, transit buses, Government-owned vehicles, personal transportation vehicles, and also include significant long haul intrastate service.

Over the past four decades, the motor carrier safety program has relied on a large degree of voluntary compliance by persons and firms subject to our present safety statutes, and many motor carriers have made significant investments in safety. We have utilized a spot check strategy to identify those firms that could not or would not expend the necessary funds to achieve substantial compliance. More recently, the selection of carriers for audit or investigation has been influenced by complaints from drivers, ex-employees, labor unions, public interest groups, and the general public.

Also, over the last 2 years we have undertaken special programs to (1) identify carriers, since registration is not required of private and exempt commodity carriers; (2) to audit carriers that have not had previous contact with the BMCS; (3) to conduct special road checks of tank vehicles which pose a special risk if transporting hazardous materials; (4) to interest States in adopting the Federal rules; and (5) to provide training to State enforcement officers.

In support of FHWA truck enforcement and safety efforts, research is underway to: (1) develop automatic weighing-in-motion systems that may be easily installed on bridge girders; (2) analyze problems relating to truck ride quality; and (3) investigate highway operation of heavy trucks related to their performance in traffic, for example, accident analyses, aerodynamics, splash and spray, off-tracking, handling, special downgrade control problems, and other pertinent subjects.

All of these activities, of course, are in addition to the many safety activities of the NHTSA, which include the development of vehicle safety standards for new vehicles.

However, we have forwarded comprehensive legislation to the Congress because we believe it would significantly improve our ability to address the commercial motor vehicle safety problem.

There are several elements of our safety legislative proposals that I would like to emphasize to the committee as being of crucial importance.

First, we have long considered one of the most pressing legislative priorities in the motor vehicle safety area to be the need to provide that, as a general rule, all violations of Federal commercial motor vehicle safety regulations should be punishable by civil penalties, and that civil penalty authority should allow for significant fines.

At present, DOT has civil penalty authority only with respect to reporting and filing violations, and even this limited civil penalty authority does not reach private carriers.

Only common, contract, and exempt commodity carriers are subject to these penalties. The present maximum civil penalty is \$500. Substantive violations, by any type of carrier, are punishable only by criminal penalties of from \$100 to \$500 per violation, with special provisions for criminal penalties of up to \$5,000 for record-keeping violations.

Mr. Chairman, it is clear that we need expanded civil penalty authority to conduct an effective motor carrier safety program. Criminal penalties require the establishment, to the satisfaction of a court, that a violation was knowingly and willfully committed, thereby frustrating the imposition of penalties in the many cases where it is extremely difficult to show that a violator knew he was subject to the regulations and that he knew and permitted a particular action or omission to take place.

Further, in many instances, cases may be several years old before they are presented to a judge because of heavy case loads. This kind of enforcement is slow and uncertain, and cannot act as an effective deterrent.

Further, even in the case of a criminal conviction or settlement, present levels of criminal penalties can amount to little more than a routine cost of doing business.

In sum, the current penalty system has not proven to be effective in deterring noncompliance with safety regulations due to low penalty levels, the difficulty of prosecuting criminal cases, and the lack of applicability of civil penalties.

Under the administration bill, the present authority of the Department of Transportation to impose sanctions would be broadened and upgraded to assure an effective program of safety protection.

All offenses, by all classes of carriers, would be made subject to civil penalties. The expanded civil penalty authority would allow more realistic penalties to be assessed for each type of violation.

Our bill would generally set civil penalties for substantive violations at a maximum level of \$2,500 for each offense, while the penalty for each recordkeeping violation will be a maximum of \$1,000. A maximum civil penalty of \$25,000 for each offense could be assessed if the Secretary determines that a safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death.

In assessing these penalties, issues such as the nature and circumstances of the violation, any history of prior offenses and the ability to pay would be taken into account. In each case, the assessment will be calculated to encourage further compliance.

Our bill would also make criminal penalties available, at a maximum level of a \$50,000 fine or imprisonment up to 1 year, or both.

In addition to improving sanctions, we recommend several programmatic and self-enforcing mechanisms to improve surveillance and detection.

If there is only a limited possibility of a violator being detected, even strong sanctions might not be an effective deterrent; stiff fines, if imposed infrequently, can still be absorbed as a cost of doing business.

The most prominent of our proposals to improve surveillance and detection efforts is our proposal to authorize grants to States to expand their enforcement of safety standards applicable to commercial motor vehicle safety.

There are two key aspects of this grant program:

First is the decision to enhance enforcement by authorizing a grant program which is structured so as to utilize the State enforcement personnel already in place and available to detect viola-

tions by intrastate operators, as well as violations by interstate carriers operating in a State. Some recent State efforts to improve motor carrier safety, discussed in the section-by-section analysis of our bill, have shown that State enforcement can be effective.

The second key aspect is the level of funding proposed. Current levels of operational funding for the Federal motor carrier safety program are running at about \$13 million per year and State funding is estimated to aggregate at about \$50 million annually.

The Federal program reaches less than 1 percent of the interstate commercial vehicles and less than 3 percent of the business entities.

State inspection programs vary as to levels of effort and are sporadic. While some States, such as California, have relatively strong enforcement programs, the majority of States maintain infrequent and low level of inspections. And when enforcement actions are infrequent, vehicle operators are encouraged to take the risk of being caught in violation of regulations, as the costs of infrequently imposed penalties can be absorbed as a cost of doing business.

We currently estimate that a national inspection program that annually reaches 5 percent of the vehicles and a safety audit program that annually reaches 10 percent of the business entities represents a level of enforcement that will create a reluctance on the part of employers and employees to assume that violations will be undetected.

There are several particular aspects of our grant program proposal that I want to mention briefly. We propose that Federal grants for enforcement of commercial motor vehicle safety standards not be available to maintain efforts in this area already undertaken by State governments. The purpose of the grant program is to raise the level of enforcement, not to substitute Federal for State dollars.

The Federal share of any grant issued under our bill would not exceed 66⅔ percent of the costs of the program to be supported by the grant. Our bill provides for authorizations of \$50 million annually for each of the fiscal years 1981, 1982, and 1983.

Also, we recommend that any motor carrier program be funded out of the general fund of the Treasury. The safety regulatory function related to the trucking industry has historically been funded from the general fund. Since such a regulatory grant program is, in essence, an expansion of that function, we see no reason why the grant program's funding resources should not be derived from the general fund.

Let me also mention that a key factor that will affect requests for appropriations for the grant program will be the level of success of a 3-year demonstration Federal/State safety inspection and weighing program now underway.

This \$3 million annual demonstration program will be conducted in several selected States and recommendations for appropriations for the grant program will be heavily influenced by the results of the demonstration program. States participating in the demonstration program should be available to participate in the grant program immediately.

This would allow for program continuity, as other States would be likely to take longer periods to develop the tools and resources necessary for participation in the grant program.

As the results of the demonstration program are evaluated in conjunction with other options for improving motor carrier safety, and as the various States develop programs and submit specific applications, consideration will be given to recommending that the program be funded at its full authorization level.

In these times of fiscal restraint, I want to call to the committee's attention two provisions in our legislative proposal which we believe will improve safety compliance, but not require Federal expenditures.

We would vest the Secretary of Transportation with authority to require carriers to maintain a minimum level of liability insurance for personal injury and property damage, as to other than cargo.

Carriers with unsafe operating practices would have to pay higher premiums, assuming that they could even obtain insurance. Thus, liability insurance requirements would act, through the insurance industry, to promote safe practices by commercial motor vehicle operators.

States would continue to value and enforce these minimum insurance requirements through their licensing processes as they do today. In addition, the States could set higher minimum insurance levels than the Federal standards for carriers operating within their boundaries if they desired.

With the exception of the increased involvement by DOT and the possible extension of minimum insurance requirements to carriers not covered now by the Federal standards, this is quite similar to the present system, which has proven effective.

It is logical to have the determination of minimum insurance standards rest with DOT. Insurance costs and insurability standards directly interact with safety performance and as such should be a regulatory tool available to the Secretary.

The other self-enforcing provisions of note are our employee protection and whistle-blower protection provisions. The law should protect persons who refuse to be party to safety violations.

If protections are afforded, for example, to drivers who refuse to drive unsafe trucks, we would expect to hear from drivers as to specific safety problems. Receipt of such reports would complement our own surveillance activities.

We strongly urge the committee to provide for such employee protections and to explore additional possibilities for promoting nongovernment enforcement.

In discussing employee protection, Mr. Chairman, also I note that the administration's proposal would not alter the relationship between DOT and the Department of Labor regarding occupational safety and health matters. We are committed to working closely with OSHA to clarify the application of our respective authorities to particular situations so that employees receive the maximum possible protection without duplication of effort.

The final aspect of our bill which I want to mention in my prepared statement concerns the role of safety in the ICC certification process.

We are not aware, Mr. Chairman, of any group interested in trucking legislation which would not assure that ICC authorized service is provided by safe carriers. Our legislation includes provisions to further that goal by transferring from the ICC to DOT authority to make the safety-related determinations that are now part of the process of obtaining and maintaining ICC operating authority.

We feel this is an appropriate way to assure the vitality of the safety review function in the licensing process. Also, by assuring that only one agency, not two, would have safety authority as to ICC authorized carriers, regulatory consistency would be assured.

Specifically, the ICC has not been actively involved in motor carrier safety matters in recent years. Since the organization of DOT, the safety provisions of part II of the Interstate Commerce Act have been administered by DOT. Further, the Department of Transportation Act provides that the Secretary of Transportation is to report to the ICC as to the safety records of applicants for ICC authority, 49 U.S.C. 1653(e), indicating a congressional belief that, since the transfer of the ICC's safety operations to DOT, the ICC required DOT advice in order to effectively consider the safety aspects of fit, willing, and able determinations. Currently, such advice is not binding on the ICC.

We would further consolidate safety authority in DOT by giving DOT the authority to make fit, willing, and able determinations on the basis of safety-related factors.

The transportation community has come to recognize DOT as the focal point of Federal motor vehicle safety activity and removing the possibility of significant safety actions by the ICC would streamline safety regulatory authority.

Also, as DOT already has a statutory advisory role regarding safety aspects of fit, willing and able determinations, it is expected that DOT's advisory role could be converted to a decisionmaking role with little difficulty.

Before closing, Mr. Chairman, we in the administration want to address a false safety issue that has been raised in the trucking legislative debate. I refer here to allegations that there is a causal relationship between commercial motor vehicle safety and the form of economic regulation of the industry.

A review of the limited amount of relevant data on these issues shows no studies that include the kinds of information necessary to provide a causal link between economic regulation and safety.

More importantly, data collected by the BMCS suggests that the safety performance of ICC regulated carriers and other carriers is comparable.

Mr. Chairman, safety laws are what we need to assure safe motor vehicle operation. We simply cannot understand the logic of claims that economic reforms, such as the removal of commodity restrictions or route restrictions, for example, would adversely affect commercial motor vehicle safety.

Further, as I mentioned earlier, the entry reforms which we have proposed will not permit irresponsible or unqualified carriers to enter the industry. We would retain and revitalize the fit, willing and able entry test, which is the part of the ICC process which is concerned with safety.

And so, Mr. Chairman, we feel that this comprehensive legislation provides the opportunity to decrease the cost of truck regulation while increasing truck safety.

This concludes our statement, Mr. Chairman, and we would be pleased to answer any questions you might have at this time.

The CHAIRMAN. If the administration's program would go into effect, what increase in Federal inspectors and other personnel management programs would be required under your bill, and how large an increase in investigators of truckers' complaints would be necessary?

Mr. HASSELL. At this time we do not expect there to be a significant increase.

We are already organized so as to manage a program of grants to the States, and our existing management capability, which is already deployed, would be utilized in managing these increased grants to the States.

To the extent that the States are bringing their capabilities to bear on the safety issue, it will decrease the need for additional increases in personnel by the Federal staff.

We have been receiving modest increases in personnel over the last few years, and they have provided an increased ability to do roadside checks and oversight activities, and we think that with our existing information on the way the program would operate if enacted by Congress as it is in the legislation, we don't foresee any increase at this point.

The CHAIRMAN. Wouldn't you have to have more people to monitor the State programs if you envision the States upping their safety inspection programs?

Mr. HASSELL. We would use our 4,000 personnel already in the field, Mr. Chairman. We are doing that type of monitoring today with the Federal-aid highway program.

We are a very decentralized organization with a very small staff here in Washington, and we would be able to utilize that resource to do this type of activity which is in our normal routine.

The CHAIRMAN. How many truck safety inspectors does DOT have?

Mr. HASSELL. We presently have 158.

The CHAIRMAN. 158?

How does that compare with the number that you are authorized to have?

Mr. HASSELL. 138 is the onboard staff level.

The CHAIRMAN. 158 is the authorization, then, and 138 are onboard?

Mr. HASSELL. 138 is the onboard strength.

The CHAIRMAN. Did you request more from OMB and, if so, did they turn you down?

Mr. HASSELL. We have authorization for the increase to 158, and we are presently processing papers to have them onboard before the end of the fiscal year.

The CHAIRMAN. Did OMB cut your request last year from the Federal Highway Administration for truck safety in your latest budget request?

Mr. HASSELL. Not that I'm aware of, Mr. Chairman. We asked for increased personnel levels, which they did include in the last budget request.

I'm not familiar, right off the top of my head, with any cuts that they actually made.

The CHAIRMAN. With respect to the authorization level in S. 1400, what was the recommendation to OMB from DOT for the funding level and the percentage of Federal share in the State enforcement program, and how much did OMB cut?

Mr. TRILLING. I think it came out just as it appears in the bill, Mr. Chairman. This was discussed. The numbers in the bill are the numbers.

The CHAIRMAN. That was the funding level requested and there were no cuts made by OMB?

Mr. HASSELL. As far as I know.

The CHAIRMAN. You would know about it, wouldn't you?

Mr. HASSELL. I think so, Mr. Chairman.

The CHAIRMAN. In S. 1400, the administration requested authorization of \$50 million a year over 3 years. Do you believe that money should be equally distributed to each State, or how do you believe that distribution should be carried out?

Mr. PIERSON. We believe that, Mr. Chairman, the funds should be distributed on a formula which includes the amount of truck traffic transiting that State, some consideration for geographic area, and also some consideration for population, which is an index of the level of industrial activity in intrastate commerce.

The CHAIRMAN. Have you developed that formula yet?

Mr. PIERSON. No, sir, we have not.

Mr. HASSELL. One of the features of the legislation calls for a planning program on the part of the State and the development of an effective enforcement planning program. I think this is a key part of what we would be asking the States to do. Because the objective is compliance, I think these programs are a very key part of our proposal.

The CHAIRMAN. A little earlier you said that you found no evidence to support the argument that a lack of economic regulation would have a serious detrimental effect on safety.

Have you examined the Wyckoff study that the Teamsters rely on and, if so, what is your reaction to that?

Mr. HASSELL. Yes, Mr. Chairman, we have taken a look at that study. The data there are basically comparable to the data that we also have.

The statement in the Wyckoff book that we think is very significant is on page 115, where it is stated that: "It is not clear there is a simple causal relationship between economic regulation and safety compliance. It might be that regulated companies are larger, which might cause them to be more responsible." When we examine the data, Mr. Chairman, we stratify them so that we have comparable categories.

There are very small differences in statistical terms between the regulated and the unregulated carriers. Other factors appear to cloud the issue, such as the private and exempt issue versus the owner-operator issue, the age of the driver, the amount of unionization; all of these factors make it very difficult to draw a conclusion,

and I think that the Wyckoff reports all point to this fact is very significant.

The CHAIRMAN. Title II of S. 1400 operates at two-thirds, one-third matching approach in State grant areas for truck safety. Do you think that would be a sufficient incentive to prompt States to adopt and enforce the Federal standards?

Mr. HASSELL. We do, Mr. Chairman. Our experience is that funding ratios at that level have been very attractive to the States. Those States that have presently generated intense public interest in the program will find it very interesting as a way to increase their activity even more. It will serve as a carrot for those States that are not presently involved, and we feel that that level of match will give a very good tradeoff between providing sufficient Federal funds to improve the program and keeping a significant State interest in the program and its efficient and effective management.

The CHAIRMAN. In your statement you described how you were going to have the inspection program reach 5 percent of the vehicles to carry out a safety audit program, and to reach as much as 10 percent of the firms a year.

Do you think that that would constitute adequate coverage to substantially increase compliance by a majority of the trucking firms?

Mr. HASSELL. This goal will substantially increase our activities in the field.

As I noted, we presently are only touching 1 percent of the trucks, and this would be a three-time increase to 3 percent. We are presently touching about 3 percent of the firms, and we would increase it to 10 percent.

As to whether or not it will serve as an adequate level of inspection to insure compliance, I don't think any of us can say that with certainty right now. The magnitude of the increase, though, suggests to us that we should stop at that point and examine our program, rather than just throwing additional resources at a problem that we may not understand.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. The Interstate Commerce Commission will testify tomorrow that DOT has been involved in only a very, very minor way in the ICC hearings as far as safety is concerned, even though the ICC has invited, on occasion, participation.

First, is that allegation true?

Second, is there anything that you cannot do under the present law in terms of intervention with the ICC that you'd be permitted to do under the new bill?

Mr. HASSELL. Senator, the first part of your question as far as our involvement with the ICC process, I will agree it has been minimal.

In fact, we have only formally intervened in seven cases over the last 10 years. That's been the level of our activity, and I don't believe except for two of these cases that any action has been taken.

Senator PACKWOOD. Why is that?

Mr. HASSELL. It demonstrates a combination of problems:

First of all, we are in an advisory role. The ICC role is one primarily of economic regulation, with the safety aspects of the industry having been transferred to the Department of Transportation. The result is a lower level of interest in their proceedings, in the safety part, in the motor carrier industry's activities.

We feel that the suggestion that we are proposing to transfer final authority under fit, willing, and able for safety purposes to the Department is very, very appropriate because we do have the safety activities within the Federal Highway Administration's Bureau of Motor Carrier Safety.

Senator PACKWOOD. Let me carry through. Your answer, in essence, is saying the ICC's principal concern is not safety?

Mr. HASSELL. We've found it to be the case.

Senator PACKWOOD. On occasions when you have wanted to intervene or file your memorandums, you found them less than helpful?

Mr. HASSELL. They have not been responsive on those.

Senator PACKWOOD. OK. I have no other questions.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

We have some other questions we will submit to you and you can respond for the record.

Mr. HASSELL. Certainly, Mr. Chairman.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. S. 1390 would exempt from the safety regulations "any vehicles engaged in farming activities or logging operations as defined by the Secretary." In your view, should the Congress include such an exemption in truck safety legislation, and why?

Answer. We support the inclusion of a farming/logging exemption such as that in S. 1390. This position is consistent with our long standing practices under which we have developed some exemptions from our commercial motor vehicle regulations, such as certain farm to market transportation. 49 CFR Part 391.

Such exemptions have been developed through the regulatory process because we believe that the BMCS can make effective use of its resources by focusing on the safety of commercial motor vehicle operations which make intensive use of the highways, and many farming and logging vehicles do not fit into this category.

On the other hand, the language in S. 1390 has the merit of allowing the Secretary to define "farming" and "logging." This would allow the Secretary to exercise safety jurisdiction over activities which bear a greater resemblance to full time trucking than to farming or logging.

Question 2. Title II of S. 1400 is generally limited to trucks weighing over 10,000 pounds gross vehicle weight rating. For some trucking firms, that could mean that some of their fleet would be included and others might not. Would it make more sense to expand the coverage to include all vehicles in a fleet owned or operated by a firm that owns or operates one or more trucks over 10,000 pounds or, in the alternative, have it also apply to any common or contract carrier operating pursuant to authority by the Federal Government regardless of equipment size?

Answer. Commercial motor vehicle as defined in section 220(3) of S. 1400 would give the Department safety jurisdiction over those classes of vehicles with which we are most concerned. We do not believe that expanding jurisdiction, as suggested in the question, would improve the overall BMCS program.

In fact, as a matter of regulatory practice, the Department has already exempted vehicles of under 10,000 pounds gross vehicle weight rating, unless they are involved in the transport of paying passengers or hazardous materials. Other vehicles under 10,000 pounds have more in common with private passengers vehicles, and safety regulation of their operation is appropriately left to the States.

The approach of S. 1400 would focus BMCS actions on the vehicles which are of greatest safety concern and we continue to support that approach.

Question 3. The United Bus Owners Association has written the Committee to support a broader scope of coverage for the safety legislation. They make two suggestions about which the Committee would like your comments. First, they suggest that the term "commercial motor vehicle" should be eliminated and that the

bill be made applicable to all vehicles in excess of 10,000 pounds, including motor homes, recreation vehicles, etc. Second, they suggest expanding the scope to include all buses engaged in mass transit "without regard to any designation of private carriage or individual (non)payment of fares by each passenger." In this way, private clubs, church groups, and uncertificated carriers engaged in illicit charter operations would also be included. Do you support either of these suggestions? If so, why? If not, why not?

Answer. We believe that the application of these provisions to motor homes and recreation vehicles would severely strain the capability of the Department to enforce safety regulations effectively. The regulatory scheme we have proposed in S. 1400 is one of regulation of commercial activity, not of personal activity. We have developed this legislation to promote the safe operation of medium and large commercial motor vehicles, not the relatively rare or occasional use by an individual of a recreation vehicle, boat trailer, horse trailer, or other vehicle combination which could gross over 10,000 pounds. Placing the latter group within BMCS jurisdiction would increase the number of persons subject to Federal regulation dramatically and would dilute the application of resources.

With respect to the option of including all buses within the scope of the bill, we wish to note that so-called "illicit operations" would be covered by S. 1400 in spite of an operator's use of the guise of a noncommercial operation to operate a commercial charter bus.

We do not interpret our bill as precluding the Department from investigating the financial realities behind the form of a commercial transaction between a passenger and a bus operator, and suggest that the Committee develop report language to that effect should it choose to advance legislation in this regard. We do not favor expanding authority to cover non-commercial transactions involving clubs, church groups, etc. We have designed our bill to focus on the safety problems of medium and large commercial motor vehicles and believe that our resources should be dedicated to that end.

Question 4. The definition of "employer" in S. 1400 differs from that in S. 1390 in that it includes persons who "load" commercial motor vehicles. What is the significance of this difference? In your view, would a shipper who undertakes to load a truck at the shipper's loading dock be responsible for the mechanical condition of the vehicle, even though that shipper does not own, lease, or operate the vehicle?

Answer. Persons who load vehicles can contribute to accidents by failing to tie down cargo, by loading cargo in which freight is stowed in a top-heavy manner, or by loading heavy freight in a way in which it is unstable under certain operating conditions. Therefore, it is not surprising that both S. 1390 (section 7) and S. 1400 (section 221) direct the Secretary of Transportation to establish such regulations as may be necessary to assure that vehicles are safely loaded.

S. 1400 would assure that persons and companies who load vehicles may be held accountable for safety failures resulting from improper loading.

Under both S. 1400 and S. 1390 enforcement of violations is against "persons", including both "employers" and "employees". S. 1390 defines employees, including "freight handlers," in terms of their employment with "a commercial motor vehicle carrier". Thus, under S. 1390, improper loading, if arranged by the shipper rather than the carrier, would not appear to constitute a violation of the Act unless a broad interpretation is given to the word "person". The definitions of "employer" and "employee" in S. 1400 do not allow the possibility of any such distinction between loaders who work for motor carriers and loaders who work for others. Our concern is safe loadings, regardless of who performs it.

Similarly, the civil penalty provisions of S. 1400, unlike those in section 9(b) of S. 1390, do not preclude the possibility of civil penalty enforcement against an employee for improper loading of a vehicle.

However, by requiring that a shipper who loads the vehicle of a motor carrier be held responsible for the safe loading of the vehicle, we do not imply that the shipper would be held responsible for items not under his operational control, such as driver qualifications or vehicle condition.

In addition, we would note that while the two bills differ with regard to safety and health regulations for vehicle operators, under both bills the authority of DOT with regard to workers loading vehicles would be concerned with assuring that the motor vehicle is safely operated. OSHA would remain responsible to the extent of its present authority for the safety and health of employees of either carriers or shippers when engaged in loading activities.

Question 5. Given absolutely no budget constraints, what would be the level of funding necessary for the most effective Federal program of motor carrier safety that would assure a substantial reduction of unsafe vehicles and drivers?

Answer. We currently estimate that a national inspection program that annually audits 10 percent of the firms that would be subject to regulation under Title II of S. 1400 and inspects 5 percent of their vehicles would be adequate to obtain a marked improvement in compliance and a substantial reduction in the numbers of unsafe vehicles and drivers on the highways. The grant program proposed in S. 1400 would allow for this level of enforcement.

Also, we note that S. 1400 provides for enforcement through insurance requirements and employee suits, and that these provisions do not carry budgetary implications.

Question 6. Various individuals in the trucking industry have informally advised the Committee that regardless of the mechanical condition of their fleets, the accident rates stay fairly constant. These people attribute most accidents to poor driving, rather than poor equipment. To what extent are accidents the result of mechanical problems rather than the performance of the drivers? Does this bill do anything to eliminate or reduce poor driving?

Answer. While it is true that the primary cause attributed to commercial vehicle accidents in carrier filed accident reports is driver actions, there is reason to believe that mechanical deficiencies in vehicles are understated in these reports. In many cases, the vehicle deficiency is obliterated in the accident, is unknown to witnesses, is withheld, or is not recognizable to the person reporting the accident. Our experience is that accidents are usually not the result of a single factor, but a number of factors, the absence of any one of which might have prevented the accident.

The bill continues and strengthens DOT authority to regulate driver qualifications, hours of service, and operating practices, as well as the safety condition of the vehicle.

Also, S. 1400 establishes a system of penalties which will enable the Department to effectively prosecute violations by drivers as well as by companies. S. 1390 includes provisions limiting liability and imposing higher burdens of proof in prosecutions of drivers that would tend to focus the enforcement activities of the Department on management. Under S. 1390, no civil penalties (other than record-keeping violations) could be imposed on commercial motor vehicle drivers unless gross negligence is proven.

We have already described to the Committee that effective enforcement requires civil penalty authority, and that criminal enforcement is often not effective because of the difficulty in obtaining convictions. Proof of gross negligence is not measurably easier than proving criminal liability. Further, S. 1390 statutorily limits civil penalties against drivers to \$500, which appears to be a low maximum for gross negligence.

S. 1400 expressly provides that the amount of any civil penalty imposed shall take into account the violator's ability to pay, the degree of culpability and the level of fine needed to induce future compliance. So, S. 1400 would clearly result in the imposition of civil penalties on drivers at levels far lower than those imposed on corporations. Thus, the framework of S. 1400 would enable the Department to act against any type of violator, driver or corporation, in a manner which would induce future compliance.

Question 7. Please describe the most recent BMCS comprehensive spot inspections of trucks and indicate the results.

Answer. The most recent concentrated spot inspections of trucks were held on August 13-17 in New Mexico, Colorado, Wyoming, and Idaho for the 891 vehicles selected for full inspections. These checks resulted in the ordering out of service of 330 vehicle and 144 drivers. These high out-of-service levels are part of a trend that has greatly concerned the public, the industry and the Government.

Question 8. Under what circumstances would DOT prohibit the issuance or extension of operating authority based on its fitness jurisdiction under S. 1400? How often would you expect to use such authority?

Answer. The DOT would effect denial of operating authority in cases in which continuing patterns of serious safety noncompliance can be documented, after administrative and enforcement efforts have not resulted in improvements.

The criteria used in DOT fitness determinations would almost certainly resemble those currently considered by DOT in advising the ICC of an applicant's fitness. Therefore, key factors DOT would consider in a given case could include: the level of violations discovered during audits of the applicant within the last 5 years; levels of violations reported during road checks of the applicant's vehicles performed within the last 5 years; the nature, the extent, and gravity of any violations discovered; the applicant's accident record; the lack of improvement or decline in safety compliance by applicant over the last 5 years, and recommendations of the field staff based on experience in dealing with the applicant.

Question 9. Can the current BMCS staff reasonably be expected to handle the additional responsibility of intervening in ICC licensing proceedings, or are you proposing that the Congress appropriate additional funds for this purpose?

Answer. We believe that the additional responsibilities that S. 1400 would confer upon the Department regarding ICC licensing proceedings can be handled with existing resources when the States begin to conduct some of the field functions.

Question 10. Please describe the status of the State demonstration programs involving truck safety. Which States are involved? What exactly is the FHWA seeking to demonstrate or find out?

Answer. The State demonstration programs are expected to be actively underway this calendar year. The States of Idaho and Utah have recently signed agreements with the FHWA. Also, Alaska and Michigan are engaged in final negotiations.

The program is designed to demonstrate the extent to which benefits can be obtained from expanded State weighing and inspection of interstate and intrastate trucks, and from the adoption by States of consistent safety standards for both intrastate and interstate trucking activities. The program is expected to show that high visibility and active enforcement efforts will effect improvements in truck weight compliance as well as in commercial vehicle safety.

Question 11. How does the Department of Transportation propose that the \$50 million be allocated among the States?

Answer. A proposed formula for distribution of funds for a State grant program has not been worked out as yet. Any such formula would reflect miles of highway, vehicle registrations, levels of commercial vehicle traffic, and levels of economic activity within a State. Of course, distribution of funds under any formula would be contingent upon receipt and approval of applications from qualified States.

Question 12. In the Committee's hearings on the truck safety legislation, S. 1390 and title II of S. 1400, the American Trucking Associations recommended the development of a commercial driver register. Do you have any views in regard to the development of such a register? How much do you think such a register would cost to create?

Answer. Our research to date in conducting the National Driver Register Study mandated by section 204 of the Surface Transportation Assistance Act of 1978 has led us to the view that a modernized and improved National Driver Register (NDR) could encompass many of the objectives that underlie the ATA's proposal for the establishment of a separate commercial driver register. Accordingly, it would appear to be more economical and efficient to meet the ATA's concerns through improvements in the NDR.

There is no way to provide a quick assessment of how much it would cost to establish the independent commercial register proposed by the ATA without a detailed study of the special problems uniquely related to it. For example, since at least some of the data that could be stored in such a register are not currently being collected and recorded by the States, considerable financial burdens would be placed upon the States. Any register that maintains an up-to-date, massive system of records such as the one proposed by the ATA would be extremely expensive, however, both to the States and to the Federal Government.

Question 13. How do you believe such a register should be integrated or otherwise related to the National Driver Register?

Answer. Our NDR Study effects have, to date, led us to the view that many of the purposes of the separate commercial driver register proposed by the ATA could be encompassed by a modernized and improved NDR. How this integration could be accomplished will be better understood upon completion of the study, however. A copy of the final report on this study, required to be issued no later than November 6, 1979, will be sent to you for your information and further consideration.

Question 14. As part of the study in regard to the National Driver Register mandated in the Surface Transportation Assistance Act of 1978, will there be any examination of the feasibility and utility of a commercial driver register? If no, do you believe this issue should be made a part of the report?

Answer. The NDR Study will not separately examine the feasibility and utility of a commercial driver register. Such a separate examination is not within the scope of the matters appropriate to the NDR Study as mandated by the statute or its legislative history. However, as noted in our answers to questions 12 and 13, our NDR Study efforts have, so far, led us to the view that a modernized and improved NDR would meet many of the objectives contemplated by the ATA's proposed commercial driver register.

Question 15. How do the penalty levels that are prescribed in Title II of S. 1400, the Trucking Competition and Safety Act of 1979, compare with other laws dealing with similar safety concerns? On what basis were these penalty levels chosen? What

is your reaction to allowing lesser penalties for truck drivers, as is contemplated in S. 1390?

Answer. The levels of penalties prescribed in Title II of S. 1400 are comparable to those found in recent statutes. The Hazardous Materials Transportation Act of 1974 (49 U.S.C. 1801-1812) provides for civil penalties of up to \$10,000 for each offense by "any person", with each day of a continuing violation considered as a separate offense, and criminal penalties of up to \$25,000, or five years in prison, or both.

The Air Transportation Security Act of 1974 (49 U.S.C. 1471 and 1472) provides for civil and criminal penalties of \$500 for first violations and \$2,000 fines for subsequent violations. If violations are continuing ones, each day constitutes a separate offense. This Act also provides for penalties of up to \$1,000 and/or 3 years imprisonment for forgery of certificates or false marking of aircraft by any person. Falsification of records carries a penalty of \$100-\$5,000 and transportation of hazardous materials aboard an aircraft in violation of this Act is punishable by a fine of up to \$25,000 and/or imprisonment of up to 5 years (49 U.S.C. 1472).

The Rail Safety Improvement Act of 1974 provides for civil penalties of \$250 to \$2,500 for violations of railroad safety rules or regulations (45 U.S.C. 438). This Act further provides that each day of a continuing violation shall constitute a separate offense.

The penalty levels in S. 1400 consist of maximum penalties coupled with critically important guidance as to how they are to be administered. S. 1400 requires that, in assessing penalties for violators, such factors as the nature and circumstances of the violation, any history of prior offenses, and the ability to pay must be taken into account. The bill further requires that the amount of any penalty assessed is to be calculated to encourage future compliance.

We fully expect that this penalty system will generally result in the imposition of lower penalties on individuals than on large corporations. However, we feel that actual decisions on penalty levels are appropriately left to case by case determinations.

We feel that S. 1400 presents an even-handed approach to penalty imposition that will allow us to address minor and serious violations by both large concerns and individuals, all in a manner appropriate to the circumstances of the individual case, and in a manner that will enhance safety.

Question 16. In the Toxic Substances Control Act, in OSHA, and other related safety legislation, are workers faced with the same kind of penalty exposure as in Title II of S. 1400? If not, why not?

Answer. The Toxic Substances Control Act (15 U.S.C. 2601-2629) provides that certain acts by "any person" shall be "prohibited acts" (15 U.S.C. 2614). Section 2615 of this Act provides that violations of the Act, or of regulations promulgated under the Act, by "any person" shall be punishable by civil penalties of up to \$25,000 and/or by criminal penalties upon conviction of up to \$25,000 and/or up to 1 year in prison.

The OSHA Act (29 U.S.C. 658, 659) provides for penalties which apply only to employers.

The Hazardous Materials Transportation Act of 1974 (49 U.S.C. 1801-1812) provides for civil penalties of up to \$10,000 for each offense by "any person", with each day of a continuing violation considered as a separate offense, and criminal penalties of up to \$25,000, or five years in prison, or both (49 U.S.C. 1809).

Lastly in this regard, we note that under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, et seq.) OSHA may directly fine an employee for violating standards in connection with smoking materials.

Question 17. Would you provide us with a short summary of trends in the truck safety area for the last four years, particularly in relation to the number of deaths and injuries in this area and their relationship to vehicle miles traveled?

Answer. Recent years have seen increases in the number of accidents, fatalities, injuries, and property damage. For example, the number of accidents increased by 23 percent from 1975-1977,¹ the number of fatalities by 34 percent, and property damage by 54 percent during that time. During this period truck vehicle miles travelled, a statistic which reflects activity by all trucks, not just those subject to BMCS regulation, increased by 20 percent.

Due to the nature of the vehicle-mile data, precise comparisons of trends between these data and truck accident statistics are not possible. However, despite the inclusion of numerous vehicles not subject to BMCS regulation in the vehicle-mile data, truck accident statistics are increasing at a faster rate than vehicle-miles. This is a disturbing trend which demonstrates the need for a more effective safety program.

¹ 1978 Truck accident and vehicle-mile statistics are not yet available.

TRUCK STATISTICS

	1975	1976	1977
Truck Vehicle-Miles ¹	274,000,000,000	308,000,000,000	329,000,000,000
Accidents ²	24,274	25,666	29,936
Injuries ²	26,374	26,794	31,698
Fatalities ²	2,232	2,520	2,983
Accident related property damage ² (in millions of dollars).....	158.2	183.7	244.0
Drivers:			
Killed ²	351	420	423
Injured ²	6,733	7,237	6,504

¹ Source: DOT National Transportation Statistics.

² Source: BMCS Accidents of Motor Carriers of Property.

Question 18. The Committee has urged that the study on truck lengths and weights required by the Federal-aid Highway Act of 1978 be greatly expedited. Are there any technical reasons why it can't be expedited? When is the earliest possible date that the study can be finalized?

Answer. In response to Section 161 of the Surface Transportation Act of 1978, we have initiated a major study effort to provide the Congress with answers to a broad set of questions related to truck size and weights.

Our current schedule, developed to meet the January 15, 1981 study due date set in Section 161, will allow us to collect essential information, conduct necessary technical analysis, and develop recommendations on truck size and weight limits. Any shortening of that schedule would seriously affect the approach we are taking and perhaps even the reliability of our findings.

As you know, the study requires the participation of the States and other parties having a direct interest in this subject. Furthermore, we have recognized the necessity of ensuring that the study is properly coordinated with the Highway Cost Allocation effort called for in Section 506 of the same Act. These required coordination responsibilities could not be handled adequately if we were to accelerate the study schedule.

We have now completed Phase I of the Section 161 study and are finalizing the study plan. At the present time, we are considering the comments and suggestions received from a large audience of Federal, State, industry, and other interest groups on the details of the issues and methods to be used in the study. We believe the study is progressing at a good pace and assure you that we consider keeping it on schedule a very high priority.

Should the Committee desire it, we would be pleased to advise you periodically on our progress in conducting the study.

Question 19. During the fuel crisis this summer, several States temporarily increased maximum weight and length limits for motor carriers. What were the States involved and what were the increases? How many of those temporary increases are still in effect? How many are scheduled to be rescinded and when?

Answer.

Increased weight limits:

Connecticut—Increased from 73,280 pounds to 80,000 pounds. Still in effect with no expiration date.

District of Columbia—Increased from 73,280 pounds to 80,000 pounds. Expires on October 7, 1979.

Iowa—Increased from 73,280 pounds to 80,000 pounds. Expires on December 31, 1979.

Maryland—Increased from 74,280 pounds to 80,000 pounds. Expired October 1, 1979.

Mississippi—Increased from 73,280 pounds to 80,000 pounds. Revoked on August 9, 1979.

Missouri—Increased from 73,280 pounds to 80,000 pounds. Expired on August 3, 1979.

Virginia—Increased from 79,800 to 80,000 pounds. Expires on April 1, 1980.

Increased length limits:

Connecticut—Increased from 55 to 58 feet. No expiration date.

Iowa—Increased from 55 to 60 feet under same Executive Order increasing weight limits. Expires on December 31, 1979. Attorney General opinion challenges legal authority to increase length limits

North Carolina—Increased from 55 to 60 feet. No expiration date.

Virginia—Increased from 55 to 60 feet. Expires on April 1, 1980.

Maine—Increased from 55 to 60 feet by statute.

Michigan—Increased from 55 to 60 feet by statute.

New Hampshire—Increased from 55 to 60 feet by statute.

Wisconsin—Increased from 55 to 59 feet by statute.

There is legislation pending in the States of Alabama, Florida, and South Carolina for an increase in the length limits from 55 to 60 feet.

Question 20. Does the Administration believe that uniform permissible weights and lengths of motor vehicles should be increased on a permanent basis?

Answer. Whether uniform vehicle weights and size limits should be established, whether there should be an increase or decrease in the present permissible maximum weight for vehicles using the Interstate Highway System, and vehicle length issues are among the subjects of the study mandated by section 161 of the Surface Transportation Assistance Act of 1978. This study is required to be completed by January 15, 1981. We will send legislative recommendations to the Congress on these and other issues when the study is completed.

However, given the critical energy problems facing our country, and recognizing that transportation must play a major role in easing energy problems, the Administration has proposed legislation (S. 1689) to establish, in effect, national minimum weight and length limits for vehicles using the Interstate Highway System during Presidentially declared 90-day fuel emergency periods.

Fuel shortages are a nationwide problem which require a nationwide response. We believe that during a period of fuel emergency, the fuel saving and efficiency benefits to be derived from the establishment of uniform minimum standards on the Interstate system of 80,000 pounds gross vehicle weight (under the "bridge formula" and including all enforcement tolerances) and 60 feet in length will offset the disbenefit of any increased maintenance costs that might be attributable to temporary weight increases. We also note that the temporary Interstate minimums that would be established by S. 1689 will have the important benefit of minimizing the disruptions which a serious fuel shortage can cause in commercial trucking operations.

Question 21. Would there be any adverse safety effects from increasing uniform truck weights to 80,000 pounds and lengths to 65 feet? Does the Department have any specific data on accident rates as related to the size and weight of the vehicles involved?

Answer. The Department does not have probative data that show that no adverse safety effects would be experienced by establishing uniform truck weights of 80,000 pounds and lengths of 65 feet. However, we do have a number of studies which indicate, although not conclusively, that accident rates would not increase. These studies include the following:

1. "Comparison of California Accident Rates for Single and Double Tractor Trailer Combination Trucks," Biotechnology, Inc.—March 1978;
 2. "Safety Comparison of Doubles vs. Tractor-Semitrailer Operations," BMCS/FHWA—November 1977;
 3. "The Severity of Large Truck Accidents" NHTSA—April 1977;
 4. "Triple Trailer Evaluations in Utah," Utah DOT—September 1975;
 5. "Accident Experience of Double Bottoms in California," CHP—April 1973.
- Also, safety questions will be addressed as part of the Department's size and weight studies mandated by the Surface Transportation Assistance Act.

The CHAIRMAN. Next, Mr. R. V. Durham, director of safety and health, International Brotherhood of Teamsters.

All right, sir, you may proceed.

STATEMENT OF R. V. DURHAM, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; ACCOMPANIED BY BARTLEY M. O'HARA, LEGISLATIVE COUNSEL; AND WARREN J. RHEAUME, SAFETY AND HEALTH DEPARTMENT

Mr. DURHAM. Thank you.

My name is R. V. Durham, director of safety and health for the International Brotherhood of Teamsters. I am also president of an 11,000 member local in Greensboro, N.C.

We are appearing here on behalf of the General President Frank E. Fitzsimmons who was unable to be with us this morning.

We appear in support of S. 1390, the proposed Truck Safety Act. While this bill may be improved upon, it is nevertheless a major advancement toward achieving meaningful safety standards for those who work in the trucking industry.

We feel there is a need for this legislation. Last year, over 1,000 truckdrivers were killed in motor vehicle accidents; and the most distressing aspect is that these fatalities are up from over 700 in 1975—a 40-percent increase. This is with only a 22-percent increase in freight deliveries over the 1975-78 period.

Put another way, the existing system is not working. Just this past May, Federal and State officials stopped over 170 trucks throughout the Mississippi Valley in a 72-hour period, and found 44 percent of these units unfit, thus placing them out of service.

In our view, the state of trucking safety is a disaster. In some areas of the industry, there are differing degrees of compliance with existing safety regulations; but overall, the system is in need of change.

That is, in a recently published book,¹ Prof. Daryl Wyckoff found from a survey of over 13,000 truckdrivers that those who are most observant of safety requirements also operate equipment carrying regulated commodities. These conclusions appear as appendix A to our statement.

For our members, we have included in our collective-bargaining agreement that we just negotiated with the industry a number of very important safety provisions.

For example, drivers must be furnished weight tickets. I should mention they have the right to refuse to pull overweights. Tractors must be equipped to allow safe access to the cab and air hoses, and a prohibition on driving so-called cab-under equipment, Mr. Chairman, which I believe you had the opportunity to inspect last year.

A copy of the contract language is attached as appendix B.

Now the important features of this bill.

During your committee's consideration of this bill, we believe there are certain features that should be given careful consideration.

Among them are these:

The economic system of regulation in the motor carrier industry; worker liability; an enforcement program through economic sanctions; timeliness in rulemaking; and the relationship of this bill to existing safety statutes, primarily the Occupational Safety and Health Act.

Economic regulation:

As noted above, the Wyckoff book demonstrates that drivers who haul regulated goods have a better safety record than those who carry unregulated commodities.

As stated there:

Is there a cause-and-effect relationship between economic regulation and safety compliance? The fact that they are associated in a statistical fashion does not

¹ *Truck Drivers in America*, D. Daryl Wyckoff, Lexington Books (1978).

necessarily demonstrate a causal relationship. The association could be accidental. However, given the strength of the data, I doubt this is the case.

Our experience substantiates this relationship.

Thus, for any system of safety regulation to work, it must be contained within a framework of economic regulation.

In other words, for S. 1390 to be effective, it must be administered in connection with a regulated industry.

In fact, we would recommend economic regulation of all commodities in interstate commerce, on the strength of safety considerations above.

Under the worker liability, under section 9 of S. 1390, workers would be subject to civil penalties in cases where the worker's action constitutes gross negligence or willful and knowing violation of a standard promulgated by the Secretary of Transportation.

While we would prefer no liability for workers, we believe this bill represents a spirit of compromise.

However, if worker liability is expanded beyond the terms of the bill, we would oppose the measure.

In our view, workers are already subject to sanctions under existing laws; and in the case of our members, these sanctions are contained in our collective bargaining agreement with the industry.

ICC role in safety:

Under existing law, the Interstate Commerce Commission is charged with using a motor carrier's safety record in determining whether operating authority should be granted.

Under S. 1390, this approach is kept intact. We believe this is one of the most important provisions of the bill because it provides an incentive for carriers to observe safety standards.

Unfortunately, this program has gone unused. To our knowledge, since the creation of the Department of Transportation in 1966, there has not been one case of the ICC invoking the law in this area.

When one compares this inaction with the Mississippi Valley inspection in May, it is quite distressing.

However, with the added impetus of S. 1390, it may spur the DOT and ICC into action.

In addition, we would again emphasize that in order for this provision to be effective, we must have a regulated industry.

Time certain for regulations:

In section 7(c) of S. 1390, the DOT would be required to promulgate rules within 90 days of the expiration of the period provided for submission of written data and comments.

When this is adopted, it will correct a situation at the DOT which, in our opinion, borders on indifference.

That is, in 1974, we filed a petition for a regulation on steps and handholds for over-the-road tractors.

In our petition, we pointed out that driver slips and falls in and around tractors constituted 14 percent of the workmen's compensation claims for motor carriers.

Thus, the need for such a regulation was obvious.

Apparently, DOT thinks otherwise. The regulation is not to go into effect until 1982.

Because these trucks have a useful life of anywhere from 5 to 12 years, we will be well into the 1980's before this rule is fully implemented. For a detailed account of this rulemaking proceeding, see appendix C.

Worker coverage:

Under section 4 of S. 1390, workers in the following crafts would be included: Drivers, mechanics, freight handlers, and other individuals whose employment directly affects commercial motor vehicle safety.

At the present time a number of these workers are covered by OSHA and they are entitled to the benefits of that law.

However, some of these workers, primarily drivers, are not covered by the law because section 4(b)(1) of OSHA precludes its application in areas where another Federal agency is exercising jurisdiction.

In the cases reported thus far, the line between OSHA and DOT is not clear, but the distinctions appear to be based on location of the work station, for example, whether a tractor is parked at a door or in a freight yard. We refer you to appendix D.

Our position is this: Unless workers now covered by OSHA can be guaranteed the same rights under the law contemplated by S. 1390, they should not be forced out of OSHA protection.

Suggested improvements in S. 1390:

As we stated earlier, we support S. 1390; but we believe the bill can be improved, especially with regard to the exemption for vehicles with gross weight ratings over 10,000 pounds—

The CHAIRMAN. Isn't the exemption for vehicles under 10,000 pounds?

Mr. DURHAM. I'm sorry, sir. It's a typo. I'm sorry I read it.

We are asking, Mr. Chairman, that exemption on vehicles under 10,000 be deleted from the bill.

Ten thousand pound exemption:

As presently drafted, section 5(a) of S. 1390 would exempt from coverage vehicles with gross weight ratings under 10,000 pounds.

In our view, this is a serious flaw in the bill.

In 1975, the DOT exempted from its safety regulations lightweight vehicles; and these trucks were defined in much the same fashion as section 5(a) of S. 1390.

If this exemption is made part of the law, it will permanently exempt these vehicles from DOT jurisdiction, thereby creating unnecessary overlap with OSHA or, more practically, foregoing any jurisdiction over these vehicles.

We do not know how many of these vehicles are operating today; but sales of these trucks over the past few years are as follows:

1975	951,710
1976	1,400,947
1977	1,802,692
1978	2,139,644

As you can see, the number has increased from a little under a million in 1975 to over 2 million in 1978.

Thus, a considerable amount of this equipment will be operating without benefit of even a threat of safety standards.

Beyond that, the DOT regulation is even more conservative than S. 1390, for the agency still retains jurisdiction over vehicles used to transport passengers for hire or hazardous materials.

In summary, we advocate deletion of this provision from the bill. Now, the State plans.

We recognize the need for coordinated efforts between State and Federal officials in enforcing safety standards, and so, too, does S. 1390.

However, our experience has shown us that some State officials have used safety standards rather capriciously.

Thus, we would urge the committee to provide adequate checks and balances in order that so-called racket sheriffs will be discouraged from using this law as a revenue-raising measure.

For our part, we recommend DOT review all fines and penalties imposed by State officials under the auspices of this law; or, the bill could be amended so as to foreclose any imposition of penalties by State agencies or courts.

Mission of DOT.

During the course of our comments on S. 1390, we have taken strong exception to the manner in which DOT administered existing Federal safety statutes.

Unconscionable time delays and lack of coordination with ICC on safety enforcements are examples of this.

Beyond that, we are of the view that the entire mission of DOT should be changed.

Since 1966, the agency, with much reluctance, has concentrated on regulating equipment and, to a modest extent, drivers.

However, very little attention has been given to the health of drivers. This is borne out by the fact that the agency does not now nor has it ever employed an industrial hygienist or someone with comparable skills.

If we are going to move in the area of safety and health, the agency must commit itself to preventing accidents and injuries and spend less time giving us reasons why action cannot be taken.

Given the fatality data, this, in our opinion, is not too much to require of the agency.

Moreover, because this law will cover many workers, it must begin with a high quality program for administration.

In conclusion, Mr. Chairman, we appear here today in support of S. 1390, a bill to improve the quality of health and safety of workers engaged in the motor carrier industry.

This bill has many important provisions that will achieve the objectives of reducing the shocking number of fatalities in this area and effective enforcement of safety regulations.

Also, the bill can be strengthened in many material respects so as to insure safety on our Nation's highways.

I appreciate the opportunity to give you our views on this bill. [The attachments referred to follow:]

APPENDIX A

TABLE 10-1.—DRIVER SAFETY COMPLIANCE AND PERFORMANCE, REPORTED BY TYPE OF OPERATION AND REGULATORY STATUS

	Regulatory status			
	Exempt	Private	Contract	Common
Average cruising speed (miles per hour):				
Owner-Operators	62.6	NA	61.0	60.3
Company drivers	63.0	61.7	59.4	58.9
Drivers who regularly use multiple logbooks (percent):				
Owner-Operators	27.4	NA	10.2	11.9
Company drivers	32.1	9.6	4.9	1.8
Drivers who regularly misrepresent logbooks (percent):				
Owner-Operators	44.9	NA	33.6	33.9
Company drivers	39.3	29.4	20.3	4.3
Drivers who regularly exceed 10-hour limit (percent):				
Owner-Operators	43.9	NA	27.2	24.0
Company drivers	46.0	25.1	13.1	2.5
Moving violations per 100,000 miles:				
Owner-Operators	1.3	NA	.7	.8
Company drivers	1.3	.9	.8	.4
Reportable accidents per 100,000 miles:				
Owner-Operators	.7	NA	.3	.3
Company drivers	.2	.2	.3	.2

APPENDIX B

ARTICLE 16. EQUIPMENT, ACCIDENTS, REPORTS

Paragraph 1—Amend first sentence to read:

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition, including but not limited to acknowledged overweight or not equipped with the safety appliance prescribed by law.

4th paragraph—Amend second sentence to read:

Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies, one copy to be retained by the employee and one copy to be made available for inspection by the next driver operating such unit, subject to agreement between the Employer and Local Union.

7th paragraph—Change to read as follows:

All tractors must be equipped as necessary to allow the driver to safely enter and exit the cab, hook and unhook the air hoses. All equipment used as city peddle trucks, and equipment regularly assigned to peddle runs must have steps or other similar device to enable drivers to get in and out of the body.

10th paragraph—Change to read as follows:

All new road equipment regularly assigned to the fleet after July 1, 1973, shall be equipped with air-ride seats on the driver's side, and such seat shall be maintained in a reasonable operating condition.

Add new paragraph 13:

When the Employer weighs a trailer, the over-the-road driver shall be furnished the resulting weight information along with his driver's orders.

Add new paragraph 15:

The Union and the trucking industry agree to establish a committee composed of five (5) members from each side to review the safety aspects of interior dimensions of tractors and tractor sleeping berths; equipping tractors with trailer brake hand valves, placement of fuel tanks; and the use of shock absorbers on the front axles of tractors.

The committee shall confer with appropriate representatives of equipment manufacturers and report to the National Negotiating Committee by April 1, 1980 with recommendations.

Add new paragraph 16:

All company trailers shall be marked for height.

Add new paragraph 17:

No driver shall be required to drive a tractor designed with the cab under the trailer.

Add new paragraph 18:

Road equipment shall have either a speedometer or tachometer in proper working order.

IN ALL SUPPLEMENTS

1. *Leave of absence*

Add:

An employee shall be permitted to take a leave of absence for the purpose of undergoing treatment of an approved program for alcoholism. The leave of absence must be requested prior to the commission of any act subject to disciplinary action. Such leave of absence shall be granted on a one-time basis and shall be for a maximum of sixty (60) days unless extended by mutual agreement. While on such leave, the employee shall not receive any of the benefits provided by this Agreement, Supplements or Riders except the continued accrual of seniority, nor does this provision amend or alter the disciplinary provisions.

2. *To be included in those supplemental agreements which provided for super-seniority of stewards in the 1976-1979 Supplemental Agreement*

If requested by the Local Union in writing within sixty (60) days after the effective date of this Agreement, one steward shall be granted super-seniority for layoff and recall. Any additional application of super-seniority for stewards must be justified as being directly related to the proposed performance of the steward's duties as steward and permitted by applicable law.

3. *Polygraph*

No employee shall be required to take any form of lie detector test as a condition of employment.

4. *Examination and identification fees*

Amend third paragraph to read as follows:

In the event of disagreement between the doctor selected by the Employer and the doctor selected by the Union, the Employer and Union doctors shall together select a third doctor within seven (7) days, whose opinion shall be final and binding on the Company, the Union, and the employee. The Company nor the Union nor the employee will attempt to circumvent the decision. The expense of the third doctor shall be equally divided between the Employer and the Union. Dispute concerning back pay shall be subject to the grievance procedure.

APPENDIX C

STEPS AND HANDHOLDS CHRONOLOGY

May 21, 1974—Advanced Notice of Proposed Rulemaking to 49 CFR, Part 393; Docket No. MC-58 appeared, Federal Register.

September 6, 1974—IBT first submitted comments.

February 15, 1978—Notice of Proposed Rulemaking appeared, Federal Register.

This month—Final Rule to appear in Federal Register.

April 1, 1982—Effective date for high profile COE equipment.

APPENDIX D

OSHA v. DOT Jurisdiction:

—*Consolidated Freightways Corp.* (RevComm No. 10889 (1977)) 5 OSHC 1481.

Fact that BMCS has adopted no regulations concerning truck maintenance, shop safety warrants finding that employer is not exempt from coverage of OSHAct by virtue of 4(b)(1).

—*Wilson Freight Co.* (RevComm No. 13030 (1977))

Interstate trucking company is not exempt from compliance with OSHAct, since DOT's notice of proposed rulemaking expressing intent to regulate entire field of motor carrier safety does not constitute "exercise" of statutory authority within the meaning of 4(b)(1).

—*Lee Way Motor Freight, Inc.* (RevComm No. 10699 (1977)) 40SHC 1968.

DOT regulations directed at over-the-road activities of trucks, not activities at freight terminals, do not exempt freight terminal employees from ACT.

—*Mushroom Transportation Co., Inc.* (RevComm No. 1588 (1973)) 1588 (1973)).

DOT safety regulation 49 CFR 392.20, requiring motor carriers to immobilize unattended motor vehicles precludes application of OSH standard 29 CFR 1910.178(K)(1) by 4(b)(1).

The CHAIRMAN. Thank you very much.

Why do you think it took DOT so long to develop the annual requirements that you said would take effect in 1982?

Mr. DURHAM. Well, there's really no excuse, in my opinion, but these are the problems that we are experiencing in the regulatory-making area.

There's a number of other examples that we could give you.

For example, we negotiated our most recent freight contract for provisions to require drivers to be given a copy of the writeup of the equipment by the driver who made the trip before him. We had been attempting to get that regulation on the books for about 4 or 5 years, and we finally negotiated this in our contract.

Unfortunately in the nonunion segment of the industry, the drivers still do not have that protection.

The CHAIRMAN. You would suggest the removal of that exemption of the under 10,000 pounds. Do you think that should be totally removed, or should a different level be fixed?

Mr. DURHAM. We feel that really the exemption should not be there, and leave it up to the administrative discretion of the DOT and there's no permanent exemption.

We feel that that would be the most appropriate approach.

The CHAIRMAN. You quoted the Wyckoff study and, of course, you heard the administration's position with respect to that.

I'm inclined to agree, from what I've heard and read that the Wyckoff study doesn't necessarily support what you allege it demonstrates.

When you speak of the relationship between economic regulation and safety, are you referring primarily to the requirement under the existing regulation that all carriers be fit, willing and able?

Mr. DURHAM. Well, what I was referring to, Mr. Chairman, is being an owner-operator myself 30 years ago—I know the difference in drivers driving for a carrier and a driver that owns his own piece of equipment, and there are economic motivations there that, in our view, we feel it's been supported by the Wyckoff report, tend to show that a driver is going to take a lot of shortcuts with his own piece of equipment.

Not only in the equipment maintenance area, but in the excessive hours driving over the 60 hours permitted by law, and speeding, and those type safety violations.

The CHAIRMAN. Do you think the two bills before the committee provide adequate enforcement mechanisms to insure safe operations of the independent owner-operators?

Mr. DURHAM. We feel that S. 1390 certainly is a step in the right direction, and we support that.

I'm not so sure that any bill that's pending would take care of all the problems.

One of the significant problems that we have, which is not addressed in this bill, is the size and weights, which is one of the issues that the independents were raising, and we testified, I believe it was last year, on this issue.

There is a need for uniformity on that particular problem. We have some serious problems in the size and weights, namely the

length limits that should be established for the cargo-carrying part of the truck, rather than just overall, causing a safety problem as far as the shortening of the power unit.

The CHAIRMAN. Do you think the Federal Government should preempt the regulation of size and weights?

Mr. DURHAM. Yes; I do.

The CHAIRMAN. Expand a little on your view as to why the driver should have no liability for safety infractions. It seems to me that the driver is in a key position to know whether that truck is in a safe condition.

Mr. DURHAM. Well, we have met with Senator Percy's staff people. We've expressed our views on this primarily under OSHA, which I guess covers 75 to 80 percent of all the workers in this country.

There is no civil penalty against the workers. It's on the basis that the employer-employee relationship will take care of the employees' disregard for the rules and regulations.

Under our contract, we have discipline-discharge provisions provided.

In addition to that, he is out there facing the various State laws that he can face. For example, he's involved in a reckless driving situation, he's not only going to be possibly discharged by his company, but in addition to being disciplined by his company, he is going to be fined by the various State agencies who are investigating.

And we feel like this is kind of triple jeopardy.

Although, as we mentioned in our statement, we prefer no penalties, we feel—and I think this comment was made earlier—that \$500 to a driver is equivalent to \$50,000 or more to a company, as far as hurting that individual, acting as a deterrent to make sure that they clean up their act.

And then there's a lot of truth which was stated by someone earlier, there is a lot of truth, where the driver does not have any protection of a union contract, he is a problem if he starts complaining about that equipment.

Certainly the employer will not discharge him for that reason, but they will find some other reason to get the fellow.

The CHAIRMAN. We are in the second half of a vote. We'll have to recess very briefly.

[Recess.]

The CHAIRMAN. You propose adding smaller trucks to the new law, yet you say that DOT is unable to regulate adequately the larger trucks.

How could it ever regulate the large and the small ones even with the help from the States with additional funds, if this exemption were not put in?

Mr. DURHAM. I would certainly have to concede that certainly it would give them a lot more work to do. I guess that argument can be made. I guess I have a problem exempting everything that's under 10,000 pounds from regulatory control.

I feel like, as I said earlier, that the DOT could use some discretion there without exempting it completely in the bill.

The CHAIRMAN. The administration testified that a national inspection program that reaches 5 percent of the vehicles in the

safety audit program, and that reaches 10 percent of the funds would constitute adequate coverage for a start.

Do you agree with that assessment?

Mr. DURHAM. Well, I guess I could certainly agree that with the comment that was made, that's a 300 percent improvement on the one—well, I think it represents better than a 300 percent improvement.

I guess the point they are making, I would have to agree, and that is that it's not something that's not going to take care of itself overnight, and I don't see how the funds or the manpower could be available to get it to 50 percent.

I think at some point if you get into a point that you can get voluntary compliance that you need—unfortunately, now, the enforcement is so small, and the likelihood of inspection is so remote, that they take their chances, and I think that if you would increase it from 5 to 10 percent, then I think you would start not only correcting the 5 or 10 percent that was inspected and corrected you would get a lot more voluntary compliance. And I think that's what we have to have. There's no way we can police the whole industry completely.

The CHAIRMAN. Do you have any feel from your membership as to whether the lack in the safety requirements on the trucks is something that develops after a driver starts on a trip, for example? Or is it something that's existing when he takes over the truck?

Mr. DURHAM. I would say it's probably both. We have what we call post-trip inspections made by the driver. We have supported a regulation to require post and pre-trip inspection, and the driver can see his records and so forth that I think I mentioned earlier.

Unfortunately, that regulation has been hung up about a year by OMB because it involves paperwork, but I would say the majority of the problems are existent at the time that truck is dispatched. Some problems develop en route, but unfortunately a lot of problems are just overlooked inadvertently, or just deliberately.

The CHAIRMAN. Do you think there ought to be any exception or provision in the law to cover the type of thing that occurs where the condition develops after the dispatch?

I'm talking now about the owner. If the owner has a truck that's supposedly in good shape at the time it's dispatched and then something wrong develops en route the driver doesn't do anything about it while he's en route on the trip and gets picked up by an inspection station, the driver could be penalized and the owner a very, very stiff penalty for something he had absolutely no control over.

Mr. DURHAM. Speaking again of the members that we represent, they are on instructions to call in and, then, of course, the determination is made.

For example, let's assume the speedometer stops working. Okay. It's all right to take that trip to the next point of repair.

Let's assume the air conditioner breaks down. It's OK to take it to the next, maybe, company point of repair.

On the other hand, if a spring leaf is broken, or a tire has gone down, or an air leak, that truck should be pulled off the road and parked immediately. And if that equipment is driven after that

condition develops, our members have faced discipline, where a brake was hanging up and the driver decided to drive it on, and he drove a tire and wore the tire out, and we've had situations like that.

The CHAIRMAN. Let me ask your assessment with respect to the recent inspections that were given so much publicity. I heard from a number of people in my own State that were stopped at the two borders as they came in, that there were a lot of nitpicking-type violations that took place.

Have you had any kind of an assessment from the drivers as to really were those valid inspections, deficiencies that were pointed out in those instances?

Mr. DURHAM. I would say that certainly they were not nitpicking. We have a problem with BMCS not grounding equipment that we feel should be grounded.

For example, one-fourth of the spring leaves has to be broken, unless it's going to interfere with a tire, unless it's the main leaf, before they will ground the truck.

I guess that what I'm saying is that BMCS, when they ground one, it is beyond what should be grounded. There's no nitpicking going on.

The CHAIRMAN. But there were penalties that were imposed, for example, for paperwork violations, as I was told.

Mr. DURHAM. Well, paperwork would involve the driver's logs, for example. We are supporting a change in the rule, and it says that if the driver doesn't have a logbook, he's automatically grounded for 8 hours.

Unfortunately, we have found a lot of drivers in the unregulated sector, the driver just found it to his benefit not to have a current log. That way he would not be out of hours.

Your logging situation gets into your paper work, primarily, and that is the driver's responsibility. He has to keep his log current.

The CHAIRMAN. Mr. Pressler.

Senator PRESSLER. Yes. I would like to follow up on that question. What is the relationship between the truck deregulation bill that this committee has before it, and this bill. If this bill passes, does that mean we can pass the truck deregulation much more easily because the trucks will be safe, the large truck?

Would this bill be an encouragement to the truck deregulation bill? If one bill passed and the other one didn't, would that be bad?

I guess there's a whole series of questions.

What is the relationship between the truck deregulation bill and this bill?

Mr. DURHAM. As I understand it, S. 1390 is kind of kept apart from the deregulation itself, where the administration bill is tied in with it.

We would hope, and we certainly see nothing but good coming out of it, if this bill passed and deregulation did not pass. It's true that the argument of safety would suffer. It's one of the arguments that is being advanced in the deregulation debate.

But personally I would hope that the committee would not turn this bill down if deregulation is not passed.

I think we really are in need of this truck safety bill.

Senator PRESSLER. We need this truck safety bill. The current regulations do not address this—I was wondering if this bill is being offered in anticipation of truck deregulation passing. And if truck deregulation passes, then there wouldn't be, as I understand it, as many regulations on trucks, although maybe those are not safety regulations.

But if this bill did not pass and truck deregulation did pass, what would our situation be in terms of truck safety? The same as it is now?

Mr. DURHAM. We would submit it would be much worse.

Senator PRESSLER. It would be much worse?

Mr. DURHAM. Of course, the view of the Teamsters, I guess, is well known. We have many concerns with deregulation and truck safety, of course, is one of them.

Senator PRESSLER. Most trucks would be exempt from this because of the provision exempting smaller trucks; is that right? So we still have several trucks on the road that would not be affected by this bill. What can we do about those trucks?

Mr. DURHAM. In our statement we asked this committee to consider leaving the exemption out, but we'd certainly, even if it's left in, with the 26,000 pounds and over, GVW and over, is considered the heavy trucks, the truck-trailer combinations. And certainly even with the exemption it would be a big step in the right direction.

We just feel like that with the exemption, once it's written into law, then it's exempted. We would prefer to see DOT have the discretion in that area, presently exempting some 10,000 pounds or less now. They still have control over the hazardous materials and the passenger-carrying vehicles that are under 10,000.

Under this bill as we understand it, that would exempt that also, and we just feel that it's a bad exemption.

Senator PRESSLER. So then your advice would be first to consider this bill independent of the truck deregulation bill and to keep our thinking separate and clear of one from the other?

Mr. DURHAM. Yes, sir.

Senator PRESSLER. Thank you very much, Mr. Chairman, and I thank the witnesses.

The CHAIRMAN. This bill, Senator Percy's bill, also exempts vehicles engaged in farm activities. I assume that would cover vehicles that are hauling the farm-to-market goods. Do you think that those vehicles ought to be exempted?

Mr. DURHAM. Well, no. We, I guess, lost the argument in attempting to reach a consensus. It was our view, and I guess still is, that off the highway—in other words, operations off the highway should be exempt. But once the equipment is on the highway, we feel that it should not be exempt.

You know, whether you're hauling logs or chickens or hauling freight, if that equipment is not safe, it's not safe.

And, you know, we can have some bad situations.

The CHAIRMAN. Kill somebody just as easily if it's hauling a load of chickens or a load of logs, as if it's hauling some other product on the highways.

Mr. DURHAM. Or even running empty. I have personal experience on that in my family. A truck-trailer, even empty.

So I hope I responded to your question. But our feeling is off the highway.

The CHAIRMAN. I'd like to address this comment to Senator Pressler's question that he raised. We've had this issue before, and I would hope that the committee could act on this issue, certainly during this session of Congress.

Whereas on trucking deregulation, we've got hearings right now scheduled until the fall, so it's obvious that we couldn't get a bill out on that issue this year. But I would hope that we could act or do something in this area, if the committee is of a mind to.

Mr. DURHAM. It certainly would be appreciated by our members.

The CHAIRMAN. You made a reference to the cab-under vehicle. Have you negotiated your contracts now so that that kind of vehicle would be precluded?

Mr. DURHAM. Yes, sir, I'm pleased to report that among a number of things we have an outright prohibition on cab-under configurations, and I still feel—and I've expressed that to DOT recently—that they should still move in that area because, unfortunately, there's a lot of drivers that do not have the protection of the Teamster contract, and these trucks are being sold. I was reading recently in Transport Topics where a carrier out in the Kansas area had purchased one, and we view this as a very serious trend in trucking.

This gets back to the other issue, Mr. Chairman, that I mentioned earlier about the truck weights and sizes.

The CHAIRMAN. Are there a substantial number of those kinds of vehicles being sold?

Mr. DURHAM. I understand it's very limited in number. I don't have a running account, but as you can probably appreciate the dialog between the manufacturer and Teamsters has ceased.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

Mr. Bill Scheffer, vice president, Independent Truckers Association.

Is Mr. Scheffer here?

Anyone here representing Independent Truckers?

If not, that will conclude our hearings today. We will have some questions to submit to the various witnesses for the record.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

TRUCK SAFETY ACT

WEDNESDAY, JULY 18, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:38 a.m., in room 235 of the Russell Senate Office Building, Hon. Donald W. Riegle, Jr., presiding.

OPENING STATEMENT BY SENATOR RIEGLE

Senator RIEGLE. Good morning. The committee will come to order. The Senate Committee on Commerce, Science, and Transportation begins its second day of hearings on truck safety. In yesterday's hearing it was again emphasized that the present Federal regulatory programs in the truck safety area are inadequate. Roadside inspections continue to uncover widespread serious noncompliance with Federal truck safety regulations.

Also it was pointed out at yesterday's hearing that deaths and injuries due to truck and bus accidents had been rapidly increasing. The Department of Transportation testified as follows, and I quote them:

We are here today because there is considerable and clear evidence that we need to improve Federal and commercial motor vehicle safety laws. For example, as to personal injuries and fatalities, motor carrier accidents reported to the Bureau of Motor Carrier Safety of the Department of Transportation increased from about 24,000 in 1975 to over 34,000 in 1978. As to property damage, the BMCS has estimated that accidents involving interstate and commercial carrier traffic alone has resulted in approximately \$300 million worth of damage in 1978.

This situation clearly has to be improved, and these hearings are directed to discovering how we might rapidly reverse these trends. Today, we will again be closely examining S. 1390, the Truck Safety Act introduced by Senator Percy, and S. 1400, which is the Truck Safety Title of the truck deregulation legislation which I, Senator Kennedy, and others have cosponsored.

We are fortunate to have witnesses drawn from Federal and State government, industry, labor, and public interest groups to help us analyze this legislation. Our first witness today is Mr. Dan O'Neal, who left the staff of this committee to become a Commissioner of the Interstate Commerce Commission and who is now the Chairman of the Commission. And we are delighted to have you.

Let me say to you and to the other witnesses who are due today, I know you all have lengthy statements. I would ask that you summarize as best you can, so that we don't just have a long recitation of written material. I would hope that we could get right to the essence of the presentations you wish to make, and we will certainly put the entire statements of all of you in the record.

Chairman O'Neal, we are delighted to have you here.

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTER-
STATE COMMERCE COMMISSION; ACCOMPANIED BY L. J.
SCHLOER, CHIEF, INSURANCE SECTION; AND HANFORD
O'HARA, LEGISLATIVE COUNSEL

Mr. O'NEAL. Thank you, Mr. Chairman.

With me on my left is Len Schloer, who is the chief of our section on insurance, and the gentleman on my right is Hanford O'Hara, who is the general counsel.

At the outset, I want to mention that we lost electrical power yesterday at the Commission so we were not able to produce sufficient copies of the statement. We will get those up and make them available as soon as possible, and those in the room who want them other than the committee can call the PIO office, and we'll make them available.

We do have a short statement which I will run through and a longer statement which I would like to submit for the record.

I appreciate the opportunity to appear before the committee on these two bills. The Commission regulation of trucking was originally intended, in part, to correct serious safety deficiencies in trucking operations. Indeed, the Commission held the responsibility for truck safety for several years up until that responsibility was transferred to the Department of Transportation in 1967.

The issue of safety is still considered by the Commission in its review of applications for operating rights authority. The whole structure of economic regulation is, of course, receiving very close attention both up here on the Hill and at the Interstate Commerce Commission, so I don't intend to address those issues here today.

But it is important to observe that safety regulation and economic regulation are closely linked. As measures to lessen economic regulation of the motor carrier industry are being considered, both at the administrative and legislative levels, safety will emerge as an increasingly important issue. This is because the existence of a licensed operator may be an important safety check over motor carriers, and further economic regulation is relevant to safety regulation in the sense that carrier financial performance may have a significant bearing on safety performance.

Thus, if it is determined that economic regulation should be lessened, the chances are good that fitness regulation will have to be increased in order to avoid an increase in highway accidents.

The term "fitness" encompasses more than safety. As used in application proceedings at the Commission, fitness is intended to measure the ability of a carrier to supply transportation service within the limits of public policy restraints placed on a common or contract carrier. In a sense, our fitness inquiry attempts to assess an applicant's responses to those regulatory constraints.

The constraints may include or may relate to safety, pricing, entry, service, and financing. They may take into account, for example, a carrier's compliance with Commission leasing, accounting, or reporting standards; violations the Commission's prohibitions against unauthorized operations; or, of course, an unsatisfactory safety rating from the Department of Transportation.

The longer statement goes into some detail about how the Department of Transportation participates in the operating rights procedure, and I will get into that to some extent later.

The two bills before the committee today take somewhat different approaches to the issues of safety and fitness determination. S. 1390 includes numerous reforms in overall safety regulation and would leave with the Commission its present powers over fitness. Title II of S. 1400, on the other hand, would transfer to DOT all aspects of safety fitness. Without going into the detail contained in the longer statement, I should make a few observations about S. 1400.

First, with regard to making binding DOT determinations of safety, we believe a binding negative determination would be acceptable. However, we do not feel that the public interest would be served by preventing the Commission from making its own negative finding when the subject comes to our attention during a proceeding.

The bill as presently written would appear to allow unfit carriers to slip through the cracks and obtain permanent authority if DOT were not to act promptly. Second, S. 1400 would appear to complicate administrative and judicial procedures by bifurcating the overall determinations necessary in applications for authority.

Also, we see some problems with the proposed suspension procedures and with the transfer of the liability insurance oversight.

Another point which has been raised is that DOT is an agency committed to the transportation modes and, therefore, should not exercise final regulatory responsibilities over the industries which the agency promotes.

In general, S. 1400 has merit in certain respects but is not without some problems. As we've noted, S. 1390, on the other hand, makes no changes in present law insofar as the Commission's safety and fitness responsibilities are concerned. Our view is that while S. 1390 would be acceptable in this respect, and S. 1400, as presently written, would not be entirely acceptable.

The preferable course would be to enact some of the proposed changes in S. 1400 with appropriate modifications. For example, as we noted earlier, the suspension provisions of S. 1400, with appropriate modifications, would be a welcome improvement over present law. We believe that modifications in the safety/fitness area along the lines we suggest would reinforce the powers of both the Department and the ICC to improve safety on the Nation's highways.

That concludes the summary statement, and I will be happy to try to answer any questions that you may have at this time.

Senator RIEGLE. Well, several things come to mind. I have some questions here that I want to put to you, and as I said earlier, we will make your statement a part of the record.

Yesterday, Teamster representatives who appeared here mentioned that the ICC has not invoked its safety authority to limit a carrier's operating authority even once since 1966 which is a long stretch of time. I have also been told in its entire history, the ICC has taken action to revoke operating authority for safety reasons only twice, and I would like something for the record which I will describe now, but I would also like your reaction today to those statistics if, in fact, they are correct.

I would like to have you provide the committee with a list of the actions taken by the Commission during its entire history to limit

the carrier's operating authority for safety reasons, and in those cases, I think it is also important that we know how much time transpired between the time the safety problem was first called to the attention of the Commission and the time that the Commission took action.

But I would like you to give us now, in as complete a sense as you can, exactly what the record has been in regard to safety. And I'm, of course, more interested in what has happened since you've had operating authority rather than before. But I'm interested in both, so I would appreciate your comment.

Mr. O'NEAL. Well, first of all, the Teamsters' statement is not a correct statement. Let me go through briefly what happens in these cases.

There are different levels of applications for operating rights authority. There are applications for emergency temporary authority, and these are generally very short term—30 day authorities. Then there are temporary authorities which tend to run longer—perhaps 180 days, depending on whether there are any extensions. And then there is permanent authority. So there are three levels of authorities that are applied for.

When there is an application for an ETA, our field offices contact the Department of Transportation field offices by phone. All of this is done by phone; there is no written record of this, because with an emergency temporary authority the action must be taken quickly.

Senator RIEGLE. Let me just understand one thing. I assume after the phone call is made, some written record is developed and put in the files.

Mr. O'NEAL. Well, that's right. There is no exchange of paper, but we have a piece of paper. And there would be a notation made of what the reaction from the Department would be. And if the Department indication is that this carrier is unsafe, that is the end of it as far as we are concerned. We are not going to grant authority to a carrier that is unsafe.

In the temporary authority area, it is a little more formal process. It is a little longer term application. There, we send to the Department every day a list of carriers that are applying for authority, and we get back from the Department, hopefully if the thing works right, a checklist that says this carrier is safe or is a conditional operator, or the carrier is unsafe, or they may indicate no record. If there is an indication that the carrier is unsafe, then standard procedure is not to grant temporary authority to that carrier.

Where the difficulties arise is in the permanent authority area. You have the two procedures I've mentioned which are very informal; they are informal in part because they are short term. There is not an Administrative Procedure Act requirement that there be a record, a decision on the record, and the Commission's decision will stand up unless it is determined to be arbitrary and capricious.

So the whole atmosphere is much less formal with respect to temporary authorities. But when you start to move toward the permanent application area where a carrier is obtaining authority, in perpetuity perhaps, although we do have some term grants, then the Administrative Procedure Act applies, and there must be a

formal record. And this has been the cause of the difficulty in our relationships with the Department of Transportation.

The Department has been reluctant to enter these cases in a formal way and support their assertions that a carrier is safe or unsafe.

Senator RIEGLE. Why would that be? Why would they have that reluctance?

Mr. O'NEAL. Well, because their argument has been that it costs them money to enter the case, and it takes time to develop the case. So they are just not eager to do it.

In the last 2 years they've entered seven cases, I believe, in the formal evidentiary way. Now that is not very many when you think that the Commission is now granting somewhere around 1,500 permanent applications a month. Over a period of 2 years, entering seven is not very many of these cases. We have made some efforts here, and frankly they have not been very successful in trying to straighten this out.

I've met with Mr. Bowers, who is the Administrator. We've tried to work out a procedure, but there still remains a great reluctance on their part to get into these cases.

Senator RIEGLE. Let me, if I may, just get to this, because I want to try to have you elaborate on this point. Yesterday—I don't have the hearing record here—but yesterday, when DOT was here, they made the clear suggestion that they felt they had less than a good operating relationship back and forth between themselves and your operation. And I'm just wondering, would that be your observation as well? Do we have some difficulty in terms of that operating relationship back and forth?

Mr. O'NEAL. Well, unfortunately it doesn't seem to be working as well as I would like. I have talked to the Secretary about it, and we had hoped that we would be able to work out a better relationship. Indeed, our Managing Director's office, has been involved in just the last several weeks, with an exchange of memoranda between ICC and DOT on this very point. However, we were not informed during this exchange that a piece of legislation affecting this area was even being thought about or developed within the Department. So that strikes me as a bit of a missing communication.

I understand their reluctance in entering these cases. However, it requires a formal procedure. It doesn't make any difference where you put this procedure. If we put it in the Department of Transportation, if you put it in the Department of Justice, you are still going to have to follow the Administrative Procedure Act. And we have to follow it internally.

If our Bureau of Investigations and Enforcement enters a case, they have to enter the case on the record. They have to abide by the Administrative Procedure Act. So it is really a question of just gearing up to do the job.

Let me run through a few numbers. The latest numbers we have just on temporary authorities and emergency temporary authorities are, in 1977—I wanted to update those numbers, but our computers are down because of the power outage. For the 6-month period ending March 31, 1977, we had 1,964 temporary authorities that came to the Commission. We received from the Department of Transportation 29 unsatisfactory ratings, and those applications

were denied. Also we received 133 conditional indications from the Department for temporary authorities. During that same period, there were 2,055 applications for emergency temporary authority; their were 91 conditional indications from DOT, and 16 unsatisfactory indications.

I want to mention that those numbers are probably very low compared to today. We are now, as far as emergency temporary authority is concerned, probably—well, three or four times as many of them are going through the Commission now as were at that time. So these numbers may give some indication, but are not as updated as I would like to have. We'll try to get some better numbers for you.

Senator RIEGLE. What percent of the trucking operations that are on the road today would be checked in the course of a year's time.

Mr. O'NEAL. Well, we don't do safety checks, road safety checks. That is done by the Department of Transportation. Now we do check the records of regulated carriers, and depending on the size of the carrier, we would run across things like internal records which they have concerning safety operations. And we would share that information with the Department of Transportation.

We try to make accounting checks of these carriers fairly frequently, particularly the bigger ones—about once every 1 or 2 years or so.

Senator RIEGLE. How about with insurance companies? It seems to me that that would be a source of excellent data as to whether or not somebody was experiencing unusually high incidents of insurance claims or what have you.

Mr. O'NEAL. I'm going to ask Len Schloer to comment on that, but one of the things you have to keep in mind here is that many carriers today obtain insurance that has a very high deductible, so unless they have a catastrophic accident, the insurance company may never know that they've had an accident. And all the insurance company would be concerned about is their financial well-being, which again places some emphasis, as I mentioned earlier, on the need for financial stability in these carriers.

Len, do you want to add anything to that?

Mr. SCHLOER. I think the chairman has raised the major point that your larger motor carriers all have private arrangements with their insurance companies whereby they handle their own claims. The figure per claim may go as high as \$200,000 to \$250,000, and the insurance company would have no information or data as to their losses under those amounts. Of course, there aren't that many losses, fortunately, in excess of \$50,000 to \$100,000, so insurance company sources would be very inadequate. Motor carrier's own records which we can go through in our audit procedures would be more valuable inasmuch as they would show the claims they have paid themselves under this deductible arrangement.

Insurance companies basically are concerned with establishing a premium which is on a loss plus basis for your large motor carriers. In other words, if the losses are x dollars, their premium will be x plus the loading percentage. So really the source of information there would be quite limited.

Senator RIEGLE. Let me ask you this, though. If our information is correct, something on the order of 1 percent or less of the carriers on the road actually are looked at or inspected in the course of a year.

Mr. O'NEAL. Are actually looked at—do you mean by the road inspectors?

Senator RIEGLE. Right.

Mr. O'NEAL. Of the Department of Transportation. I would really hesitate to say—

Senator RIEGLE. Well, their indication to us is along those lines, and that seems to me to be really not very good coverage. That would suggest to me that we are really not today carrying out the kind of monitoring function that would allow us to know basically what the situation is out there and to be in a stronger position to detect violations and to act against those before harm is done to the public. Would you feel upset about that kind of statistic, or would that alarm you?

Mr. O'NEAL. I have a sense that probably the numbers of checks are not what they ought to be. I do feel that this administration has made a real effort—a much stronger effort than was made in the past—to do something about truck safety. You are talking about a lot of trucks. There are 17,000 regulated carriers alone with untold numbers of trucks, and there are many exempt carriers, many private carriers—I'm not even sure anybody even knows the real number of trucks on the highways, so the number, 1 percent, does not surprise me. There are a lot of trucks to be checked out there.

Senator RIEGLE. Well, I guess I am more interested in whether you're surprised at that, or as to whether you have a settled feeling about that being a sufficient percentage?

Mr. O'NEAL. No, I would not think it is a sufficient percentage.

Senator RIEGLE. So we've got to boost that.

Mr. O'NEAL. Definitely.

Senator RIEGLE. What do you think would be a more satisfactory percentage to try to achieve.

Mr. O'NEAL. Well, you are certainly never going to achieve 100 percent in 1 year. There would be no way really I could suggest a number. If I were to throw out a percentage, it would be an off the wall number—I would say maybe 5 or 10 percent.

Senator RIEGLE. But that would be a substantial percentage increase.

Mr. O'NEAL. It would be a major increase.

Senator RIEGLE. Let me ask you this. In your testimony, you make a reference to, you say here:

We do not believe that the public interest would be served by preventing the Commission from using its expertise to judge safety issues when these matters come to our attention.

Give us a quick sketch of what the safety capability is within the Commission. I'm wondering what kind of expertise do you have now? How many people are there at the ICC that are specialists in this area?

Mr. O'NEAL. I certainly don't want to suggest that we have a large force that's ready, willing, and able to get into this. But we

do have a number of operations people around the country. We have, I would guess, 300 to 400 in the field.

Senator RIEGLE. 300 or 400 in the field?

Mr. O'NEAL. Yes. Whose job it is to make compliance checks on regulated carriers. But, of course, this is both railroad and motor carriers although many of these people do understand the operations of trucking companies.

Senator RIEGLE. How many of the 200 or 300 would be trucking specialists versus railroad?

Mr. O'NEAL. I would guess probably about 200 would be more oriented toward trucking. They do not now spend a good deal of time looking at safety issues, but they are supplemented, I should say, by the Bureau of Accounts people in the field, as well. And these two groups make periodic checks of motor carriers.

Senator RIEGLE. What do they do if that is not their principal activity? What is their principal activity if checking on truck safety is not their main focus?

Mr. O'NEAL. Well, for example, the accountants would check to see whether the carriers are complying with reporting requirements by the Commission. They would look at their accounting records and insure that they are not including in their costs, elements that shouldn't be there.

Senator RIEGLE. So they've got a lot of things to do.

Here's what we want to get at. I think what we need to pin down is whether or not you've got enough people in the field focused on the safety issue as a principal area of responsibility.

Mr. O'NEAL. No. I don't want to give the impression that we have people who are focusing even a large percentage of their time on safety. But they do pick up through checks of other things, financial—

Senator RIEGLE. But it sounds to me like that is incidental.

Mr. O'NEAL. It is incidental.

Senator RIEGLE. So, really, the question is: Do you perceive a need for a much more concentrated effort that would be directed at safety as the principal focus? And if so, should we be thinking about providing more people to carry out safety activities and budgeting more funds for this purpose? I mean, what are our requirements here, if we were to try to meet this responsibility fully?

Mr. O'NEAL. Well, I have real problems with the idea that there are going to be more people made available. I just don't see that in this budgetary situation.

Senator RIEGLE. Well, let's leave that part aside. I am on the Budget Committee, and I agree with you it's going to be difficult to get additional money granted. But I don't think that is what we ought to be focusing on here in an authorizing committee. In other words, what we've got to establish is the need and to try to make an assessment as to whether our resources as they are now available are sufficient and at least measure the degree of the deficiency and so that that can then go along with every other competing requirement to the Budget Committee and to the Appropriations Committee and see what can be done.

So, let's leave aside for a moment the budget pressures, and let's talk about what you think you need to get this job done in a way that you would feel was sufficient.

Mr. O'NEAL. Well, first, I want to emphasize that there would have to be a change in our charter, I think, before we would actually go out and look more at the safety issues. Now as the Commission—and if the Congress moves in this direction—eases entry into the motor carrier field, I think we are going to feel a need, a greater need, to place greater emphasis on the fitness of the carrier because there won't be financial checks on a carrier, which has some impact on the carrier's safe operations. That will be a natural impetus in that direction.

I would like to think about how many people we are talking about and what sort of different charter the agency might have to have.

Senator RIEGLE. I think that is what we need to have, and I am certainly happy to let you take the time to think about it carefully so that your response is one that is considered and that you feel good about.

But I think what we need to know is your sense or what in addition would have to be done, both in terms of operating authority as well as the followthrough and personnel to take this on as a much more primary kind of responsibility, rather than just a subsidiary.

Mr. O'NEAL. I think I would like to go back to that point in the statement. The only reason we raised it there was, as I indicated, we do pick up incidentally some information about safe operations of a carrier. We may get information at the same time from the Department of Transportation about the safe operations of the carrier; and the way the bill, S. 1400 is drafted, if the Secretary made no determination that the carrier was unsafe, then we would be precluded from not issuing or failing to issue a certificate. We feel we ought to have the discretion to deny an application in the event that our information indicates that the carrier is an unsafe operator.

Senator RIEGLE. I have another matter I want to raise with you that is not directly on the subject that we have been discussing. But we are together in the same room, and it relates to what we are talking about. And that is in terms of the fuel problem and the debate that is going on with respect to trucking deregulation generally.

You have authority today, as I understand it, that would be sufficient to allow you on a short-term basis to suspend the back-haul restraints to allow more commerce to move and use less fuel and to deal with what is obviously the more glaring inefficiency that is built into the trucking system today, at least in my view, and that is you've got trucks coming back, in many cases across country, empty because of the way we have chosen to regulate in this area.

We raised this issue the other day in the hearings here, and there are several of us in the Senate who have a very strong feeling that this would be an excellent time to act in this area. I mean, we've got the thermostats up, we've got the lights down. Your power has been shut off, apparently, either intentionally or

unintentionally. And everybody is being asked to take in their belt. The President, with great fanfare, is really emphasizing energy.

Why not move on this issue? This is an area where you can demonstrate active leadership. Why not just do it. You've got the authority. We are obviously wasting diesel fuel. Why not act on this?

Mr. O'NEAL. This is a huge area, and I want to make it clear that I don't think there is unanimity on what the Commission can do or ought to do in this area. The Commission just recently acted—in the last few days, as a matter of fact—to allow bus companies much greater discretion to move beyond their existing authority to supplant movements by automobile and to carry more passengers.

That action was taken even though we know that there are substantial questions about whether that is going to stand up to judicial review. We have been notified that Greyhound is taking us to court on this very issue, we are going to be fighting this thing out.

I don't want to get too much into the legal question. However, I think there is a substantial legal question, and in the case of the bus companies we haven't gone near as far as I think you are talking about with regard to backhauls.

During the truck strike, one of the things that we thought about was whether the Commission should just open up, entry and deregulate truckload movements around the country. This was a position that was advocated by some of the owner-operators—and I emphasize "some."

We decided against taking that action, for several reasons: One, there were many owner-operators who said that the last thing they wanted was for the Commission to deregulate this area. They felt it would drive down their income and put them out of business. There were also, obviously, very strong feelings expressed by the regulated carriers. It was about the last thing they wanted to see us do.

There was also a question about whether we had the legal authority to do it, very frankly.

In that atmosphere, the atmosphere of the truck strike, we felt that we would be contributing to the problem, rather than contributing to the answer, if we were to take pretty drastic action which would totally restructure the trucking industry overnight. We just felt that would not be a responsible action in that situation.

I think it is also worthwhile to think about the whole issue of empty mileage. The Commission did a study that was completed back in 1977 on empty mileage on interstate highways. It found that about, on the average, 20 percent of the trucks in the United States at any one time on interstate highways are moving without a load. When you look at these statistics more closely, you find certain interesting elements. For one thing, trucks move empty a much shorter distance than they move loaded, which means that carriers are not going to go very far with an empty truck. I doubt very much that there are very many trucks that are moving across this country without a load.

Indeed, I have talked to a number of exempt carriers who want additional authority. They would like to be able to go out and

handle regulated traffic themselves, and they indicate to me that there is no way they would drive a truck across this country empty. They're going to find a load some way, and they do. They usually find one, but it is not always right where they are.

Another interesting statistic: It depends upon the kind of vehicle you're talking about as to what sort of empty mileage it has. If you have a vehicle that will handle only automobiles out of Detroit, obviously that vehicle is not going to be able to haul anything else back into Detroit, because it's just not built for hauling anything else. There are certain parts of the country that are consuming areas and nonproduction areas. Washington, D.C., is a typical example of an area that consumes a lot, but there is not much production around here.

There are a lot of trucks that move out of the area empty. Now, where do they go? Well, they go to Baltimore to find a load; they may go to Richmond. They will go maybe down into the farming areas and pick up an agricultural movement.

Senator RIEGLE. Well, let me ask you this. Rather than take all the time to discuss this question now, because this is clearly off the main line of today's inquiry, but it is vital to the energy issue and to the whole question of trucking and truck regulations.

Has the Commission pulled together an estimate as to the amount of fuel lost per week by empty trucks on the road? Do you have aggregate data like that?

Mr. O'NEAL. We don't have that kind of data.

Senator RIEGLE. Why not?

Mr. O'NEAL. Because we don't regulate all the trucks on the highway, for one thing. It is very difficult to make that kind of determination.

Senator RIEGLE. What would be a more useful function right now? We've got an energy crisis going on, and we're talking about trucking activity as a major component of oil use. The President couldn't possibly have put more emphasis on energy the other day.

We're going to war on this issue internally, and it seems to me that the ICC should have people working day and night to find out exactly what the fuel loss is having to do with regulated and nonregulated trucking so I could decide whether or not I needed to seek additional authorities and make recommendations for legislative changes, to test and find out under existing law what administrative authorities I have.

It seems to me that you've got access—clear in some respects, ambiguous in others—to a part of this problem that is unavailable to most other people. And it would seem to me that that is really where we need some very fast and intensive detective work.

Mr. O'NEAL. Well, I think because we are a very small agency it is partially a question of whether it is worthwhile spending a lot of time and effort to go out and measure how much fuel is being lost. Is that something we ought to be doing, or should we be spending time on looking at our regulations to determine what changes ought to be made, assuming that there is a substantial loss. And that is what we are doing.

Yesterday, the Commission met in conference, and we decided to go forward with a program that will, we hope, provide some incentives for the greater movement of trailers on flatcars. In other

words, let's see what we can do as an agency, to move vans off the highway and onto the railroads for long hauls. We have an indication—and we don't have statistics. We can't tell you how much fuel that's going to save. We could spend a lot of time doing that, but that consumes a lot of time that I don't think is necessary.

Senator RIEGLE. Let me ask you to provide for the committee, if you would—and I would like to have this soon, I would like to have it within the next 2 weeks—I would like to have a careful and full response to the issue of whether or not it makes sense to consider a suspension for maybe a limited period of time of the backhaul restrictions and presumably based on the most complete assessment that you can make within what you have to work with, the full amounts that are involved here, what might be saved, what the problems are, and so forth.

I think we need to have—and I am asking for it from you, and I would like it within the next 2 weeks—an assessment by you on behalf of the Commission as to what the gains and losses would be if we were to move in the direction of some kind of temporary suspension of the backhaul restrictions as they relate to fuel economy.

Mr. O'NEAL. We can give you a ballpark number. Now, I think we're going to have to define terms, though, as to what is a backhaul restriction. The Commission has no restrictions on backhaul. It doesn't exist.

What the Commission does is: It grants authorities to carriers, and if the carrier has no authority to haul a commodity on the backhaul, that, I suppose, can be viewed as a regulatory restraint. But we are not restricting those carriers from hauling.

Senator RIEGLE. Why, I think that is the way it is commonly viewed. And what I want you to try to get at is this 20 percent of the trucks that are moving around empty. And it's easy to say that they are the shorthaul items and therefore they are specialty trucks and so forth. I have heard hundreds of examples of the contrary from independent truckers who make cross-country hauls, or nearly cross-country length hauls, and who were finding that they were coming back empty because of the effect of regulation.

And I think this has to be pinned down. I think this is a responsibility that you have, and I am asking to have this done, and I would like to have it on a timely basis.

Mr. O'NEAL. We will do the best we can to try to put something together.

Senator RIEGLE. I appreciate that.

Senator Warner.

Senator WARNER. I will pass.

Senator RIEGLE. We appreciate very much your testimony today. Thank you.

Mr. O'NEAL. Thank you.

[The statement follows:]

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear before the Subcommittee on Surface Transportation to present the views of the Interstate Commerce Commission on S. 1390, the "Truck Safety Act of 1979" and on Title II of the "Trucking Competition and Safety Act of 1979". The Committee's interest in the issue of trucking safety is timely and appropriate. The issue of safety

is particularly important in view of the ongoing debate over the proper degree of federal regulation over the trucking industry.

Federal regulation of the trucking industry has been pervasive since the passage of the Motor Carrier Act of 1935. In no small part, ICC regulation of trucking was originally intended to correct serious safety defects in trucking operations, which existed at the time of the passage of the Motor Carrier Act. The ICC continued to exercise jurisdiction over issues of safe trucking practices until that jurisdiction was transferred to the Department of Transportation in 1967. While the Commission is no longer responsible for the promulgation or enforcement of safety regulations, we still consider questions of safety in our licensing proceedings and we remain vitally concerned with safety on our Nation's highways.

We feel that the attention to safety is particularly well placed at this juncture in the debate over federal regulation of trucking. While this hearing will not deal with the changes in economic regulation which S.1400 proposes, the whole structure of economic regulation is receiving close examination. While I will not attempt to address those issues here today, it is important to observe that safety regulation and economic regulation are closely linked. As measures to lessen economic regulation of the motor carrier industry are being considered both at the administrative and legislative levels, fitness and safety will emerge as an increasingly important issue. This is so for two reasons. First, the existence of a license to operate is an important safety check over carriers. To the extent that such a check is not exercised as part of the process of economic regulation, it must be exercised through fitness regulation. I believe that most parties to the current debate over the appropriate degree of motor carrier regulation agree on this, nor is anyone seriously proposing to deregulate safety or other important carrier performance criteria. But the fact remains that the burden on the safety program may be higher to the extent that economic regulation is reduced.

Second, economic regulation is relevant to safety regulation in the sense that carrier financial performance may have a significant bearing on safety performance. This proposition is not free from dispute, to be sure. However, there is a respectable body of opinion that economic regulation provides profitability safeguards which remove carrier incentives to shortcut safety regulations relating to hours of service, overloading, and other matters. This is a matter of considerable importance relating to economic regulation which both the Commission and the Congress will be considering in the months and years ahead. However, if it is determined that economic regulation should be lessened in any event, the chances are good that fitness regulation will have to be increased in order to avoid an increase in highway accidents.

The term "fitness" encompasses more than safety. As used in application proceedings at the Commission, fitness is intended to measure the ability of a carrier to supply transportation service within the limits of public policy constraints placed on a common or contract carrier. In a sense, our fitness inquiry attempts to assess an applicant's responsiveness to those regulatory constraints. The constraints may relate to safety, pricing, entry, service, financing or other social or economic goals and may take into account, for example, a carrier's compliance with Commission leasing, accounting or reporting standards; violations of the Commission's prohibitions against unauthorized operations; or, of course, an unsatisfactory safety rating from DOT.

I will next briefly outline how the Commission receives input on safety matters in the fitness inquiry portion of the Commission's application procedure. First, however, it is necessary to understand the different methods by which a carrier may be granted authority to provide transportation services.

There are three different types of authority granted by the Commission under which motor carriers can operate. The first is emergency temporary authority (ETA). Emergency temporary authority is issued for periods of 30 days or less to meet an immediate and urgent need for service due to emergencies, in which time or circumstances do not reasonably permit the filing and processing of an application for temporary authority.

The second type of authority is temporary authority (TA). Under 49 U.S.C. 10928, the Commission may without hearings or other proceedings grant temporary authority for service by either a common carrier or a contract carrier, where there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need. The Commission specifies the length of time for which such temporary authority will be valid, normally not to exceed a period of one hundred and eighty days. A grant of temporary authority does not create any presumption that the carrier will receive a grant of permanent authority at the end of this period. Both types of temporary authority are handled in large measure by our field office.

Permanent authority is the third type of authority under which motor carriers may operate. It involves an application procedure which is more time-consuming than those for temporary and emergency temporary authority, and in which issues bearing upon the application (both fitness and public convenience and necessity) must be decided in an adjudicatory proceeding under the Administrative Procedure Act (5 U.S.C. 554).

The procedure for guaranteeing the safety fitness of a carrier varies with the type of authority sought. The procedure for certifying the safety fitness of an applicant for temporary or emergency temporary authority is as follows: The Commission provides the Bureau of Motor Carrier Safety (BMCS) of the Department of Transportation with a daily list of applicants for less than permanent authority. BMCS analyzes the applicant's files of preventable and nonpreventable accidents, compiles a report and then issues a written recommendation to the Commission. The applicant is rated as either "satisfactory", "unsatisfactory", "conditional" or "no record". If the applicant is rated as unsatisfactory, the Commission will automatically deny its application. The applicant may then file a petition to the denial of its application.

An important difference in the application procedures for emergency temporary authority and temporary authority is that the former is greatly expedited by the use of telephone communication between the Commission and BMCS. The Commission's requests to BMCS for safety compliance checks are made by telephone as are BMCS' responses to the Commission. The temporary authority application process on the other hand is slower. The Commission submits a standard form to BMCS which is basically a checklist. On this form DOT merely checks its safety finding as (1) satisfactory, (2) unsatisfactory, (3) conditional or (4) no record, and returns it to the Commission.

To date, the participation of BMCS in the application process for grants of temporary and emergency temporary authority has generally been satisfactory. BMCS has played a less significant role in determining the safety fitness of applicants for permanent authority. By law, BMCS is required to participate in the proceeding in order to develop the safety record of the applicant. However, over the last two years, BMCS has been involved in only seven cases. This contrasts with BMCS's activity with regard to temporary and emergency temporary authority applications. In the six months ending March 31, 1977, 1964 TAs were handled by the ICC in which 133 received conditional approval by DOT and 29 which received unsatisfactory ratings. During the same period, the ICC handled 2055 ETAs of which 91 received conditional approvals and 16 received unsatisfactory safety ratings.

During the past two years DOT has participated in fitness cases involving three motor carriers. The Commission "flagged" all three of the carriers. National Freight, Inc., of Vineland, N.J., was flagged by decision of January 6, 1977, in No. MC-2860 (Sub-No. 148); and Central & Southern Truck Lines, Inc., of Memphis, Tenn., was flagged by decision of March 30, 1978, in No. MC-113267 (Sub-No. 353).

The Department of Transportation also participated in a major fitness case involving Transamerican Freight Lines, Inc., which had already been "flagged" by decision of September 14, 1976, because of evidence submitted by our Bureau of Investigations and Enforcement (BIE).

The Commission has made final determinations in all three of those cases. The National and Transamerican cases resulted in denials by reason of unfitness, and the Central case resulted in imposition of 3-year terms on the carrier's certificates. BIE also participated in National's fitness case. That denial, however, was predicated on fitness issues apart from safety.

During the two-year period, DOT also informally requested that four certificates held by Navajo Freight Lines be canceled. The Commission afforded DOT an opportunity to present evidence on the matter by decision of September 1, 1978, in No. MC-76032 (Sub-No. 73) et al. The Department filed no evidence but again, by informal memorandum, requested that the certificates be extended for one year only. In view of the informal and unsubstantiated nature of the request, the Commission approved the certificates as requested by the applicant.

¹ Carriers often apply for several grants of authority at one time. When the carrier's safety fitness is called into question in any one of its applications, the remainder are "flagged" or held from further consideration pending resolution of the fitness issue. Recently our regulations have been challenged with respect to the "nexus," or the relevance of the fitness challenge in one case to the circumstances in the others to be flagged. A recent ruling, *Ligon Specialized Hauler, Inc., v. ICC*, No. 77-3202 (6th Cir., November 14, 1978), would seem to require a separate oral hearing on the facts of the nexus issue for each application prior to flagging. The case was remanded to the Commission for further proceedings which are now underway.

In another case, the Commission, by decision of January 4, 1978, in No. MC-114632 (Sub-No. 120), *Apple Lines, Inc., Extension—Lumber*, offered DOT an opportunity to intervene and present evidence on alleged safety violations (because of matters raised in the record). However, the Department did not respond to the Commission's invitation. A certificate was issued to the carrier.

The reason for BMCS' reluctance to participate in permanent authority cases is possibly related to the nature of the proceeding. As earlier, an application for permanent authority, unlike an application for temporary or emergency temporary authority, is a formal adjudicative proceeding under the Administrative Procedure Act. It requires the Commission to make its findings on the basis of substantial evidence. The restrictions of administrative due process apply. Also, the parties have a right to cross-examine where material facts are deemed to be in dispute. Although these procedural safeguards help insure that applicants for permanent authority are treated fairly, they also make participation by BMCS in the process expensive and time-consuming. Nevertheless, we see no reason to believe that these costs will be reduced even if jurisdiction over safety fitness were transferred completely to DOT. Therefore, the only answer seems to be an improved effort by BMCS.

The two bills before the Committee today take a fundamentally different approach toward the issue of safety in fitness terminations. While S. 1390 includes numerous reforms in overall safety regulation, it leaves to the Commission its present powers over fitness in motor carrier license applications. Title II of S. 1400, on the other hand, would transfer to DOT all aspects of "safety fitness"; that is, all determinations relating to safety aspects of fitness criteria involved in the motor carrier licensing process. As the proponents of S. 1400 have indicated, the purpose of this change is to "further consolidate safety authority in DOT by transferring from the ICC its present authority to make fit, willing and able determinations on the basis of safety-related factors. The transportation community has come to recognize DOT as the focal point of federal motor vehicle safety activity and removing the possibility of significant safety actions by the ICC would streamline safety regulatory authority" (Congressional Record, page S8428, June 25, 1979).

The Commission fully agrees with the view that DOT is the focal point of federal motor vehicle safety regulation. However, it is essential that certain factors be kept in mind, both with respect to the concept of transfer in general and the way that it would be accomplished by this bill in particular.

First, as noted earlier, economic regulation and safety regulation are closely related. The Commission endorses the view that economic regulation is not a replacement for safety regulation, but the relationship is an important one to be aware of during deliberations on these subjects.

Another point which some have raised is that DOT is an agency committed to the promotion of transportation modes and therefore should not exercise regulatory responsibilities. The determination of safety fitness is a regulatory responsibility as much as economic regulation is. This issue is not fully focused at present; with the Commission's exercise of economic and fitness regulation, including safety, a carrier must still go through the processes of an independent regulatory agency to operate. But a total shift of safety responsibility to the promotional agency with loss of an economic check may not be wise.

Let me now turn to a discussion of some specific provisions of title II of S. 1400, which I believe will illustrate some of our basic concerns with this proposal. Basically, the bill sets up a procedure for the Secretary to decide whether a carrier is fit, willing and able with respect to safety, which determination would be binding upon the Commission in its ultimate decision on the carrier's application. The Commission would forward the carrier's application for authority to the Secretary, and the Secretary would have 60 days (or 80 days where an extension of time has been secured) to decide the safety fitness issue. The Secretary could approve or disapprove the application, or could fail to act, in which case the failure to act would be construed as a determination that with regard to safety the applicant is fit, willing and able.

We believe that it would be acceptable to enact changes to make the Secretary's negative determination of safety fitness binding upon the Commission in the overall application proceeding. However, we believe there is a problem with eliminating the Commission's oversight over safety matters in those instances where the Secretary determines that the carrier is fit or where he fails to make any determination. Our experience has been that our own efforts, coordinated by our field staff and BIE, have revealed instances where carriers should be denied applications on safety fitness grounds where DOT either did not participate or its determination was affirmative. Safety on the highways is an extremely important matter, and we do not believe that the public interest would be served by preventing the Commission

from utilizing its expertise to judge safety issues when these matters come to our attention. As was indicated in an earlier part of this statement, it is in the area of application for permanent authority that we have had relatively little participation by the Bureau of Motor Carrier Safety. There is no reason to expect that the changes mandated by the bill would substantially reduce the problem of adjudicating safety matters, or reduce the need for independent Commission checks on the process.

What I have just said would be doubly true where the Secretary fails to make a determination under the proposed legislation. A carrier could, under the bill, be determined conclusively to be fit for safety purposes without any determination having been made by anyone.

Under revised section 10934(b)(4), the Secretary's concurrence would be needed for the Commission to authorize emergency transportation. This does not seem to suggest that the Commission needs to obtain concurrence to deny any application for emergency temporary authority or temporary authority, which is good. However, it does seem to suggest a need for concurrence to grant such authority. As was outlined earlier, the Commission's present practice is to seek the concurrence of the Bureau of Motor Carrier Safety in granting ETAs and TAs. This practice works satisfactorily. But to *require* concurrence would be a major administrative bottleneck, since BMCS does not respond in many cases. We frequently find, for example, that BMCS chooses not to respond where it has not record of the carriers performance.

An additional problem is created by the time limits provided in the bill. Under section 103, relating to entry and procedural reform, the Commission would have 90 days after the filing of the application to make a final decision on it; otherwise, the application would be deemed granted. However, under section 210, the Secretary would have up to 80 days after receipt of the application from the Commission to make a safety fitness determination. Quite obviously, the juxtaposition of these time limits could cause administrative problems. At a minimum, we believe the Commission would have to have a reasonable amount of time after the Secretary forwards his determination to ultimately decide the application.² Furthermore, should this measure be adopted, we believe it would be advisable to make the 80-day period run from the filing of the application rather than its receipt from the Commission, and the require the carriers to file a copy of the application with the Secretary or a notice to that effect rather than have the Commission go through the extra administrative step of forwarding it.

Another point to be raised is the problem of unnecessarily bifurcating administrative proceedings. Under the proposal a carrier could easily become involved in a hearing relating to public convenience and necessity and non-safety related fitness matters before the Commission, and also have to be involved in a safety-fitness proceeding before the DOT. It is true, of course, that the appropriateness of hearings on public convenience and necessity before the Commission is a subject of considerable debate both before the Commission and the Congress at the present time. However, these hearings currently are required and it is not clear that the need for such hearings will be eliminated over the longer term future. Thus, economies of time, energy, and professional effort may be conserved by keeping all the related issues in one place.

The bill also provides for a separate judicial review procedure as the Secretary's safety fitness determination with somewhat different procedural requirements than exist for review of Commission orders generally. We can see no reason for such a bifurcated judicial review procedure. We would suggest that if the overall application process were to result in decisions being made by both the Secretary and the Commission, judicial review should await the final determination of the Commission and be consolidated in a single judicial proceeding.

I would like now to turn to a discussion of suspension of motor carrier operating authorities, which would be substantially changed by the bill. Under the new section 10934(c) of Title 49, as the bill would amend it, the Secretary would have the power to determine that, from a safety standpoint, operating carriers are no longer fit, willing and able to provide transportation service. The carrier's operating authority would thus be suspended by the Commission in a response to a binding request submitted by the Secretary.

The bill provides two procedures for suspension—an adjudicatory procedure involving hearings under the Administrative Procedure Act, and in the case of "imminent hazard to public safety", a summary procedure. Under the regular procedure

² We have reservations about the 90-day time limit in any event. However, that is a matter beyond the scope of this hearing, which is confined to the safety aspect of the proposed legislation. We will present our views on that issue as Congress may require.

the Secretary must hold a hearing prior to any suspension of authority, while under the summary procedure the Secretary must hold a hearing on the suspension within 10 days after the suspension order goes into effect.

The Commission believes that some improvements are needed in the area of suspension and revocation of operating authority. Under present law, absent fraud in the original application, a carrier's certificate can be suspended or revoked only after the carrier violates a cease and desist order. As a result, carriers are aware that violations unrelated to fraud in the applications, no matter how willful or egregious, will not result in revocation or suspension in the first instance. Specifically, under 49 U.S.C. 10925(c), in order to revoke a motor carrier's certificate, the Commission is first required to enter a cease and desist order restraining the respondent carrier from demonstrated regulatory noncompliance. The carrier's certificate or permit can be revoked only after we find that the carrier willfully failed to comply with an order requiring compliance.

The two-step procedure just described must be followed in all suspension and revocation proceedings, except in a few instances involving suspensions. 49 U.S.C. 10925 permits the Commission to suspend authority without having issued a prior order where the setting of rates, the filing of tariffs or the conduct of motor carrier brokers if involved. In all revocation and suspension proceedings the prior notice and hearing requirement must be met.

The bill appears to propose a definite improvement over existing procedure, principally in that it eliminates the two-step procedure for suspensions of authority. However, we would suggest several improvements applicable to both procedures proposed in the bill. First, the bill does not cover revocations, and we believe the full-hearing procedure applicable to suspensions could be extended to cover revocations. Second, the bill does not indicate that the Secretary must make any findings relating to the length of suspension, and it may be advisable to incorporate such a requirement. This is especially true with respect to the summary procedure. Third, and perhaps most important, we believe that the improvements in procedure should be expanded also to allow the Commission to invoke them. As noted earlier, we believe it is appropriate for the Commission to have a future role in safety fitness, and the suspension procedure is an important part of safety fitness regulation. Once again I would like to make the point that safety is a critical matter and may become more so in the future, and the Commission's expertise in this area should not be lost.

We would make some further observations regarding the summary suspension procedure, under which the Secretary could remove a carrier from the highways where it poses an imminent hazard to safety. Such a power is appropriate, we believe, to deal with the most serious incidences of unsafe behavior on the highways. However, this is a drastic power, and it is essential that carriers be given some procedural safeguards. The requirement that a hearing be held within 10 days after the suspension is ordered is therefore proper. However, there appears to be no deadline for completing this process, and it may be appropriate for Congress to impose one. In the alternative, it may be advisable to write into the legislation a maximum length of time during which a summary suspension could be imposed. Also, for the same reason expressed earlier, we believe the Commission should have a parallel power to order a summary suspension under appropriate circumstances.

A further problem in S. 1400 may be caused by the proposed transfer of jurisdiction of liability insurance requirements, which is considered to be a matter primarily relating to safety and thus properly considered by the Secretary.

It is true that liability insurance relates somewhat to safety. However, primarily it assures financial compensation for serious personal injuries or property damage resulting from negligent vehicular operations. Liability insurance can be purchased at a price notwithstanding a carrier's safety record. Unlike private passenger car insurance where the rates are established by major classes of risks, motor carrier rates are individually determined based upon the carrier's loss record.

Most motor carriers of any size have deductible provisions in their insurance policies which exclude coverage for claims less than the deductible. It is common for these deductibles to be \$50,000 or greater. The insurance process does not provide any control over safety for those accidents which are within the deductible, nor would insurance companies be in a position to report on accidents in such instances.³ A further item of note is the existence of assigned risk plans in most

³ It must be realized, however, that by reason of the Commission's required insurance filings the insurance company is responsible to the public for any claim up to our minimum prescribed limits of liability. For trucking companies, those limits are \$100,000 per person, \$300,000 per accident, and \$50,000 property damage. The insurance company's responsibility exists notwithstanding any deductible or other limiting provisions in the policy itself. The effect of this is that if the trucking company is unable to pay a liability at or below the deductible amount in the policy, the insurance company is still obligated to pay.

states. Regardless of safety record, a carrier can obtain liability insurance through these plans.

The transfer of liability insurance requirements to DOT would appear to create a duplication of insurance administration and a concurrent duplication of costs because the Commission would of necessity continue cargo insurance requirements.

The designation of process agent requirement should be retained by the ICC. This has no relation to safety, but only to economic regulation. The requirement assures the availability of a person upon whom court orders may be served in any state in which a motor carrier may operate. The court action may relate to any cause of action, such as, failure to pay tire bills, failure to make payments to an owner-operator under lease, etc. For vehicular related accidents, most states have laws which provide that drivers automatically designate the Secretary of State as their process agent when they use the state's roads.

Thus, we believe that liability insurance is closer to economic regulation than safety. Any transfer of liability insurance administration will only increase costs and would not appear to provide any tangible benefits.

In general, S. 1400 has merit in certain respects but is not without some problems, which we have noted above. S. 1390, on the other hand, makes no changes in present law insofar as the Commission's safety fitness responsibilities are concerned. Our view is that while S. 1390 would be acceptable in this respect and S. 1400 as presently written would not be entirely acceptable, the preferable course would be to enact some of the changes in S. 1400 with appropriate modifications. For example, and as noted earlier, the suspension provisions of S. 1400 with appropriate changes would be a welcome improvement over present law. We believe that modifications in the safety fitness area along the lines we have suggested will reinforce the powers of both the DOT and the Commission to improve safety on our Nation's highways.

This concludes my prepared statement. I would be glad to try to answer your questions at this time.

Vice Chairman Brown did not participate in the disposition of this matter.

[The following information was subsequently received for the record:]

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., September 28, 1979.

HON. HOWARD W. CANNON,
Chairman, Commerce, Science, and Transportation Committee, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: In connection with your request that the Interstate Commerce Commission review the effects of deregulation of the motor carrier industry on fuel efficiency, we have made a brief survey of research efforts currently being conducted by other Government agencies addressed to this general subject area.

We have found that a small number of studies are in progress.

Among them a key effort appears to be being pursued by the Department of Energy. It is in the process of developing a contract with an outside consultant intended to address the fuel efficiency implications of the Administration's railroad deregulation proposals set forth in S. 796 and the Administration's motor carrier deregulation proposals set forth in S. 1400. It appears the research effort will attempt to address both the fuel efficiency impact on the individual modes and the effect on possible intermodal shifts of tonnage. It is also believed to be directed to considering the relationship of fuel efficiency to economic efficiency.

However, the details of the proposal are not altogether clear because staff of DOE has not shown willingness to divulge more than sketchy information of the study. ICC has not been consulted in developing the study and based on DOE staff contact, it is perceived ICC will not likely be asked to participate in the research effort as the study is developed.

The Department of Transportation has a more limited study in development concerning fuel efficiency and deregulation. Specifically, the "Effect of Economic Regulation on Fuel-Use Efficiency in Private Trucking Operations" (copy of the RFP attached).

A more comprehensive evaluation of the effect of deregulation on the economy, including its impact on fuel use, is in the initial consideration stage by DOT staff and if developed may hold promise of a more satisfactory evaluation of the fuel efficiency question.

In summary, it appears some worthwhile progress is being made in addressing the question of fuel efficiency and deregulation and that as these activities are pursued they will add considerably to our knowledge of and measurement of the benefits which may accrue.

Sincerely yours,

A. DANIEL O' NEAL, *Chairman.*

Attachment.

THE EFFECT OF ECONOMIC REGULATION ON FUEL-USE EFFICIENCY IN PRIVATE TRUCKING OPERATIONS

STATEMENT OF WORK

Background

Non-transportation companies supplying some or all of their physical distribution needs by private motor carriage fulfill a major role in the nation's transportation system. Not only is it estimated that at least 40 percent (in terms of ton-miles) of intercity truck traffic is carried by private trucking, but this sector of the industry also appears to be growing very rapidly. Informed public policy requires that additional data and information be compiled and developed on private trucking operations, the relevant economic and service factors that compel shippers to initiate and maintain private fleets, and the effect of Federal economic regulation on private carriers' operating and fuel-use efficiency.

The effect of Federal economic regulation on private trucking is, of course, a subject of major interest. For example, recent studies show that private trucks travel empty (or with lower average loads) significantly more often than regulated motor carriers. Questions naturally arise as to what extent this is a result of economic regulation, as opposed to the effect of peak-period and seasonal demand conditions, specialized service and equipment requirements, and directional traffic imbalances. Recent regulatory actions, both those initiated by the Interstate Commerce Commission and those which would follow enactment of the Administration's "Trucking Competition and Safety Act of 1979," have the potential for substantially altering private carrier operations, costs, fuel-use efficiency, and service performance.

Work tasks

Task 1: The Contractor shall analyze the relevant economic and regulatory factors that influence a firm's decision to institute, maintain, or divest itself from private trucking. The Contractor shall also estimate and evaluate the importance of the private trucking sector in the nation's intercity freight transportation system, as well as the competitive implications of private carriage operations on regulated surface freight carriers. The Contractor shall specifically address, but not limit, the analysis to the historical growth of private trucking, projections for future growth under both existing and modified regulatory conditions, the industrial organization of those firms which rely extensively on private carriage, traffic flows and operating patterns of private fleets, and existing and potential levels of fuel efficiency achieved through private carriage. Special attention should be devoted to reviewing—from the standpoint of economic efficiency—the ICC's past and recent regulatory policies regarding private carriage, as well as the potential of the Administration's "Trucking Competition and Safety Act of 1979" for improving operating and fuel-use efficiency.

Deliverables: An original plus four (4) copies of the analysis performed under Work Task 1 shall be delivered to the Contracting Officer's Technical Representative. This report is due two months from the date of the contract.

Task 2: Drawing upon the information developed in Task 1, the Contractor shall develop and test a survey instrument on nine (9) firms with substantial private trucking operations. The instrument shall be developed with the assistance of the Contracting Officer's Technical Representative.

The instrument will address, but not be limited to, the following subjects: (1) the cost savings and/or additional service features attainable from private carriage that are not presently attainable from regulated motor carriers; (2) the effect of economic regulations on management's decision to maintain, expand, or reduce its private trucking operations; (3) the effect of the Interstate Commerce Commission's regulations on labor efficiency, equipment utilization, and fuel use; and (4) the possible economic and regulatory conditions under which for-hire motor carriers could attract and retain potentially divertible private traffic.

Deliverables: An original plus four (4) copies of an analysis of the interviews conducted and their implications for answering the above subject areas is due within forty-five (45) days after the completion of Task 1.

Contractor qualification requirements

The selected Contractor shall have knowledge and proven experience in the following areas:

A thorough knowledge of the economic structure and operating practices of the motor carrier industry.

Experience in analyzing the existing regulatory system, as well as providing policy guidance for changes in that system.

A demonstrated knowledge and background in case-study methodology, and survey design and evaluation.

Contracting Officer's Technical Representative: Laurence T. Phillips, (202) 426-4420, P-54.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., October 9, 1979.

HON. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: This letter supplements my letter of September 28, 1979, in which I furnished information requested by the Committee on Commerce, Science and Transportation at its July 18, 1979, hearing on trucking safety.

At the July 18th hearing, I was asked to provide a list of each adverse action taken regarding carrier authority by the Commission for safety reasons since we assumed jurisdiction over motor carriers in 1935. Virtually all of our summary records and indices from 1935 to 1966 were transferred to the Department of Transportation when it assumed jurisdiction over safety. Therefore, we do not have such records at this time and are not in a position to give a detailed answer for the pre-transfer period.

However, we have maintained records on the relatively few formal proceedings in which DOT, since its creation on April 1, 1967, has intervened in ICC proceedings on the safety issue. I have attached a listing which summarizes the life-cycle of those cases to better present the time element involved. The low number of cases is inadequate to permit computation of a meaningful average time. Moreover, as one might expect, such cases are hotly contested and therefore generally involve one or more appeals from the initial decision.

This attachment also separately lists the instances in which a certificate was issued to a carrier for a period less than that normally issued to the type of carrier involved. Thus, for example, where the carrier is of a type which normally receives a limited-term certificate, such as carriers of explosives, those carriers who receive certificates limited to less than the normal term (five years) are included in the list.

Recently, we took a sample of applications for temporary authority (TA) and emergency temporary authority (ETA) in order to obtain some measure of the number of those applications which have been denied on safety grounds.

Category	Sample size	Denials on safety grounds
Temporary authority	717	0
Emergency temporary authority	3,335	1

The TA sample was comprised of applications filed during January 1979. Of the 717 applications filed, 68 were denials; but none of the 68 was based upon a negative safety determination by DOT. Two samples were taken of ETA's. A review of 2,465 "Information Transfer Forms" on cases handled during May 1979 disclosed no denials on safety grounds. A second sample of 870 ETA requests worked the week of August 6th through 10th indicated the sole instance in which a denial was based on safety grounds.

If you should have any further questions, please contact me.

Sincerely yours,

A. DANIEL O'NEAL, *Chairman.*

Attachment.

PERMANENT APPLICATIONS—DOT (FHA) PARTICIPATION ¹

1967

- (1) No. MC-127877 (Sub-No. 3), *Ewen Brothers, Inc.*
 6/13/67—DOT (FHA) permitted to intervene
 1/8-10/68—Oral hrg
 8/27/68—ID served
 10/7/68—Exceptions by DOT & others
 5/12/69—Div 1 R&O 108 MCC 878.—found unfit
 9/16/69—Appl pet for rec & hrg denied. Ap Div 1.
 2/11/70—Civil Act No. 854 USDC Mont
 6/5/70—Prd reopen on appl pet—set for oral hrg Ap Div 1
 11/12-18/70—Hrg
 1/21/72—ID served
 4/17/72—Excepts by applic (Dot & others replied)
 8/22/72—Div 1 R&O (print)—found unfit.
- (2) No. MCC-6434, *Federal Highway Admin. v. Safeway Trails, Inc.*
 6/25/69—Complaint filed
 9/30-10/2—Hrd.—20 hrs.
 12/8-12/12—Hrd.—50 hrs.
 7/28/70—ID served
 9/17/70—Exceptions def
 9/16/71—E.C. report (113 MCC 815 cease & desist order—30 day suspension)
 10/29/71—Pet of FHA denied E.C. order.
- (3) No. MC-80430 (Sub-No. 81), *Gateway Transportation*
 12/10/70—Pet for extension of term certificate. (Petition—Extension of Term.)
 12/10/70—Memo to DOT
 1/15/71—DOT (FHA) MEMO—Recommend denial McAndrews advised could not act on such simple recommendation
 1/21/71—Detailed memo from McAndrews setting forth basis for denial
 2/1/71—ORB set case for oral hearing
 6/21/71—ORB order—extend certificate 1 year. Because of agreement between carrier & DOT; applicant agrees to consent (court) order; hrg cancelled as unnecessary.
 5/5/72—ORB order. Certif extended 5 yrs. (approval of D.O.T.).

1972

- (3) cont'd—No. MC-73165 (309), *Eagle Motor Line, Inc.*
 12/20/71—Filed
 1/20/72—Publ.
 2/4/72—FHA pet. to int.
 3/10/72—FHA perm. int., all cases flagged (23 cases) Mas
 4/5/72—FHA pet. rgstg cases not be flagged or auth. w/held
 4/7/72—Pet. denied App Div 1
 5/23/72—Application dismissed—Div. 1 report in MC-C-7795 (ICC asserts full jurisdiction over fitness issue).
- (4) No. MC 106644 (133), *Superior Trucking Company, Inc.*
 12/9/71—Filed
 1/20/72—Publ.
 2/17/72—Pet. to int DOT (FHA) & flag.
 3/10/72—Div. 1—FHA perm. int., all cases flagged (13 cases)
 9/27/72—Appl. rgst dismissal
 10/5/72—Applic. dismissed; flag taken off.
- (5) No. MC-112801 (132), *Transport Service Co.*
 12/9/71—Filed
 1/13/72—Publ.
 2/3/72—Republ.
 2/29/72—Pet to int DOT (FHA) & Flag.
 4/5/72—DOT perm. int., all cases flagged (10 cases)
 9/25/72—Hrg. (6 hrs)
 10/25/72—ID served (fit)
 11/24/72—Exceptions DOT

¹ Based on available records.

3/15/73—Div. 1 D&O found fit (srd 3/26/73)
3/15/73—Appl. cleared—certifs to issue.

1973

- (6) No. MC 117610 (Sub-No. 11), *Derrico Trucking Corp.*
8/16/73—Filed
9/27/73—Publ
10/26/73—FHA pet. to int. & flag
11/30/73—FHA perm. int. all cases flagged
2/22/74—Hrg set at N.Y.
4/9/74—MP order entered, (Applic. agreed)
6/5/75—RB No. 3 R&O—found unfit.

1974

- (7) No. MC-F-12190, *National Freight, Inc.—Purchase—Northeastern Trucking Company*²
4/4/74—Applic. filed
5/29/74—Designated oral hrg.
8/23/74—FHA Pet. to int.
9/17/74—Tuggle order. Perm. to int. (Numerous pleadings involving DOT)
8/9/76—Set for Hrg
3/9/77—ID served (May) found fit
4/77—Exceptions—DOT
5/10/77—Asgd Loudon
(12/22/77—Processing stayed Chairman O'Neal).
(8) No. MC-112304 (Sub-No. 80), *Ace Doran Hauling & Rigging Co.*³
4/22/74—Filed
5/3/74—Publ
6/20/74—Republ.
12/4/74—Notice—set for hrg 2/19/75
2/19/75—Hrd 16 hrs
2/25/75—FHA pet. to int. & flag
3/31/75—FHA pet. int.; prcd set for oral hrg on issue of fitness; cases flagged. (13t cases)
5/29-30/75—Hrg
2/4/76—ID served (found fit—3 yr. term)
3/5/76—Effective
4/21/76—Div 1—grants released.
(9) No. MC-128746 (Sub-No. 25) *D'Agata National Trucking Co.*
10/21/75—Filed
11/13/75—Publ.
11/25/75—FHA pet. int. & flag
12/22/75—Div. 1 FHA perm. int., all cases flagged (1 other)
1/7/76—MP
6/8/78—Submitted RB
9/23/78—Dismissed rqst. of applic. (No further DOT participation). Flag dropped.
(10) No. MC-129350 (Sub-No. 51), *Charles E. Wolfe, d.b.a. Evergreen Express*
3/17/75—Filed
4/17/75—Publ.
6/23/75—Set for MP
10/31/75—Submitted RB Recalled
2/11/76—Pet. lv. to intervene FHA
9/20/76—Div. 1 order—FHA permitted to int. own motion reopened—MP referred to Bd.
10/26/76—Pet. subst. by C. M. Burns, d.b.a. Western Trucking (FHA no objection—objects only to Wolfe)
4/11/76—RB order—partial grant.
9/20/76—D1—addtl grant.
(11) No. MC-10761 (Sub-No. 240), *Transamerican Freight Lines, Inc.*⁴
Pet. for removal of term (BIE party).
1/28/76—Pet. lv. int. FHA

² Embraced in MC-11327.

³ By order of June 27, 1974, DOT allowed in Sub-78, but case dismissed at applicant's request.

⁴ Embraces 13 other T.F.L. cases. Carrier flagged by show cause & flagged orders based on B.I.E. participation. Sub-No. 184—fitness cases

8/20/76—FHA perm. int.
 3/04/77—FHA reinstated as party. Hrd.
 9/27/78—ID served (found fit)
 10/31/78—Exceptions filed
 1/29/79—EC dec. served (found unfit) pending app. denied—pet for removal of term denied.

1978

(12) No. MC-113267 (Sub-No. 355), *Central & Southern Truck Lines, Inc.*
 11/25/77—Filed Publ.
 2/21/78—FHA pet. int. & flag
 3/30/78—Div. 1—FHA perm: Hed int. set for oral hrg.
 3/30/78—Show cause order issued in Sub-No. 353 et al. (Stmts. ext. by order of May 2, 1978).
 2/06/79—ID served (found fit—3 yr. term)
 3/08/79—Effective
 6/21/79—Limited term cert. served.

II

HAZARDOUS MATERIALS TERM CERTIFICATES—A COMPARISON

The following carriers were conditionally approved for 1-year term extensions:
 1975—Seco Trucking; Illinois Central Railway Co.; Lynden Transport; United Buckingham; Weaver Brothers; Aqua Gulf Corp.

1976—Lynden Transport; Pennsylvania Truck Lines, Inc.; Gateway Transportation Co., Inc.; Missouri Pacific Truck Lines; Weaver Bros., Inc.; Chemical Haulers, Inc.; Seco Trucking, Inc.; D & L Transport, Inc.

1977—Weaver Bros., Inc.; Gateway Transp. Co., Inc.; Mo-Pack Truck Lines, Inc.; Ringsby Truck Lines, Inc.; Smith & Solomon Trucking Company; Ryder Truck Lines, Inc.; Oil and Industries Suppliers Ltd.; Aero Liquid Transit, Inc. (6 months).

1978—Consolidated Freightways Corp. of Delaware; Gateway Transportation Co., Inc.; Nutrac Corporation; O'Boyle Tank Lines, Inc.; Oil & Industry Suppliers Ltd.; Ringsby Truck Lines, Inc.; Rio Grande Motor Way Inc.

1979—Consolidated Freightways Corp. of Delaware; Gateway Transportation Co., Inc.; Nutrac Corp.; Ozella Harrington (6 months); Red Ball Motor Freight, Inc.; Rio Grande Motor Way Inc.; Ringsby Truck Line, Inc.

Senator RIEGLE. Now let me call Mr. Lawrence Stern, who is the chairman of the Safety Committee on Research and Environment for the American Trucking Association, to come forward at this time.

Mr. Stern, we are delighted to have you, and let me say, as I did to our first witness, that we will make your full statement a part of the record. In the interest of time, I would appreciate it if you could summarize as much as possible so that we can get right to the main things that you wish to emphasize.

We are delighted to have you. Why don't you identify your associates for the record, and begin.

STATEMENT OF LAWRENCE H. STERN, CHAIRMAN, SAFETY COMMITTEE ON RESEARCH AND ENVIRONMENT, AMERICAN TRUCKING ASSOCIATIONS, INC.; ACCOMPANIED BY KENNETH F. STINGER, LEGISLATIVE COUNSEL; AND WILLIAM E. JOHNS, MANAGING DIRECTOR, TECHNICAL SERVICES DIVISION

Mr. STERN. Thank you, Mr. Chairman.

⁵ Mo-Pack was later approved for a full 5 year term.

With me today are Kenneth F. Stinger, the ATA legislative counsel; and on my left, William E. Johns, the managing director of the ATA Technical Services Division.

My personal involvement in the trucking industry spans over 30 years. I am the president of Sterns Transport, Inc., an interstate common carrier, with headquarters in New Jersey.

Let me summarize our detailed written statement, provided for the record.

In reference to truck speed, ATA continues to be a staunch advocate of the 55-mile-per-hour speed limit and for the increased enforcement of the limit. When the national speed limit became law, the number of fatalities of all traffic dropped by 9,527, or 17.6 percent, from 1973 to 1975. Fatalities from truck-involved accidents reported to the Bureau of Motor Carrier Safety dropped 826, or 27 percent. On a percentage basis, the truck record looks especially good when there is improvement, and especially bad in the opposite case, because the numbers involved are small in relation to those for all traffic.

Since 1975, fatalities for all traffic and the number of truck-related fatalities have increased steadily. Part of this increase can be attributed to an increase in traffic. However, ATA attributes most of the problem to the increased vehicle speed—58.3 miles per hour for trucks and cars. In relation to driver safety, the accident reporting system of NHTSA shows a slight increase in truck driver deaths from 1975 to 1976, a 12-percent increase in 1977, and a 5-percent increase in 1978, with a figure of 1,110. The rate of increase has dropped significantly. Combination trucks were the only class of vehicles to register a decrease in the number of occupant fatalities on the interstate system in 1978.

We believe a reduction in the actual number of deaths can only be achieved through better enforcement of speed limits and safety regulation.

I would just like to add that in my over 30 years of experience as an owner of a company, that we have had no fatalities.

As far as vehicle condition is concerned, recent BMCS inspections have resulted in vehicles being placed out of service in a range of 31 percent to 60 percent. The State of New Jersey inspects about 43,000 vehicles per year and places about 23 percent of them out of service.

In a recent BMCS random inspection, 33 percent of the vehicles of regulated carriers were placed out of service compared to 45 percent of the vehicles of carriers classified as exempt and other.

ATA believes roadside inspections are the most effective BMCS program for removing unqualified drivers and defective vehicles from the highways and for improving compliance with equipment regulations.

The bottom line on equipment safety is the extent to which defects are the cause of accidents. BMCS statistics show that 6 percent of truck accidents are caused by defects.

As far as the safety record is concerned, ATA has developed truck safety record data which are appended to our testimony. It discusses some of the problems of exposure measurements and compares the record for all trucks, combinations, and cars, using the accident and mileage of all vehicles as a base.

Combination trucks have a lower percentage of accidents than would be expected. Combinations have a higher percent of fatal accidents than would be expected, considering mileage as the only exposure factor.

Compared with other vehicles combination trucks, operate in a different environment; the combination trucks accumulate 81 percent of their mileage on rural roads.

The combination truck fatality rate is 6.61. This compares favorably with the national rural rate.

If DOT can establish a proper measure of exposure for heavy trucks, the fatal accident rate comparisons may change drastically.

However, as I indicted earlier in my testimony, ATA's primary concern is for a reduction of speed on rural highways to reduce the number of accidents and fatalities.

I will refer now to S. 1390 of the Truck Safety Act and related provisions. Senator Percy has noted that ATA supports S. 1390, but still opposes a few important provisions. We wish to emphasize our appreciation to the Senator and his staff for allowing us the opportunity to express our views, concerns, and recommendations and for giving these consideration in drafting S. 1390.

S. 1400 was introduced on June 18, and there has not been formal action by the ATA Executive Committee to either support or oppose any or all of its provisions. Many of the parts of S. 1400 are similar to S. 1390, and so we can state a trucking industry position that is applicable to such provisions in both bills.

However, there are also major differences, and we can only express viewpoints rather than a formal position on such differences in S. 1400.

I would like to deal first with the three major provisions of concern in S. 1390.

Concerning civil penalties, section 9 of S. 1390 provides for the imposition of civil penalties in varying amounts. S. 1400 has similar provisions, but the penalty range is much greater.

ATA considers the civil penalty provisions inappropriate. It would allow assessment of penalties most frequently for violations of regulations which do not actually impair safety of operation or establish a hazardous situation.

Experience with implementation of the civil penalty provisions of the Hazardous Materials Transportation Act leads us to believe that the focus will be upon just such violations as the provisions of S. 1390 are not focused on serious violations.

The civil penalty provisions of S. 1390 and S. 1400 would be imposed in an inequitable fashion. Carriers which are easily located would be penalized more frequently, yet they generally have substantially better safety records because they already are being inspected more frequently.

ATA has had numerous complaints from motor carriers that some regulators imposing civil penalties seem to not have a good understanding of the safety values of the type of violation for which a civil penalty is being imposed.

We believe that compliance with the regulations developed under the authority of S. 1390 can best be achieved by the government by increased use of the tools now available.

Notification of violation, maintenance of safety record information for continuation of ICC authority, terminal and roadside inspections, imposition of civil penalties for recordkeeping violations, and placing the vehicles and drivers out of service for imminently hazardous conditions.

We believe that inclusion of the civil penalty provisions will not focus enforcement resources upon serious violations.

Mr. Chairman, I would now like to discuss the matter of employee suits as set forth in section 11 of S. 1390 and section 226 of S. 1400. These sections are designed to protect employees from discriminatory action.

ATA reiterates that discharge of or unfair discrimination against any employee resulting from the filing of a reasonable safety complaint is abhorrent to the trucking industry.

The ATA supports protection for employees from such discrimination, but it opposes the provisions in the bill which promote private action employee suits against employers. Employees today have several legal courses of action available if they believe that they have been discriminated against.

Labor contracts provide a protective mechanism. In addition, trucking industry employees are protected from discriminatory action by Federal laws, including OSHA and the National Labor Relations Act.

If there is need for any additional employee protection mechanism, it should be within the Department of Transportation. Such a program would result in more standardized procedure and would provide expert Government personnel to handle these complex complaints in the most efficient and effective manner.

If Congress feels additional protection is needed, we urge consideration of language in the Occupational Safety and Health Act and the Resource Conservation and Recovery Act as an alternative to the proposed employee suit provision.

DOT would be the administering agency.

Insofar as complaints are concerned, ATA's third major concern is section 8(c) of S. 1390, which provides for investigation of nonfrivolous, written complaints by the Secretary.

S. 1400 has a similar provision.

The ATA believes there should be a requirement that employees seek redress from the employer before filing a complaint about a violation.

Second, ATA believes that this section should be amended to allow the Secretary to set priorities for the investigation of complaints. Such a priority-setting amendment would assure the investigation of complaints of major violations on an expedited basis.

There are other ATA concerns about S. 1390. I'm not going into them because they are detailed in our statement.

And in reference to S. 1400, title 2, the informal ATA review on title 2 of S. 1400 is that it presupposes sweeping deregulation of the trucking industry. It is thus much less effective than S. 1390 as a device to actually improve safety.

It would substantially increase the difficulty of identifying major sectors of the trucking industry. It would substantially broaden the exempt segment of the industry.

S. 1400 does not seem to recognize the ongoing safety problems for exempt carriers which will be magnified through deregulation.

Our views on S. 1400 are also detailed in our written statement. However, let me cover just one matter, and that relates to the expanded DOT safety role in certificate proceedings.

Section 210, involving the safety aspects of Fit, Willing and Able Determinations, is an improper approach in ATA's view. The authors of 210 seek to transfer that process from an independent regulatory agency to an executive branch department. This would permit DOT to bind the ICC in its safety decisions. This is no small encroachment upon an ICC authority. The cost involved would be immense because of duplication of functions by DOT; and if Congress is concerned with the safety mechanism at ICC, the rational answer is to upgrade ICC's safety consideration, not establish duplicative requirements in another Federal agency.

In conclusion, let me say that ATA believes that two additional elements are needed for improvement of the truck safety record.

We believe that there needs to be a specific provision for educational activities and increased manpower within the Bureau of Motor Carrier Safety to conduct such activities.

ATA's second recommendation—and a very important one—is for a commercial driver register, and that is detailed in our written statement.

Mr. Chairman, that concludes my remarks. I appreciate the opportunity to testify, and we will try to answer any questions that the committee might have.

Thank you, sir.

Senator RIEGLE. Thank you very much.

Senator Warner.

Senator WARNER. The witness, in his closing remarks, touched on a point that interests me and that is how we properly allocate the responsibilities between the Department of Transportation and the ICC.

As I understand your position, you do not support the more active involvement in the ICC process of the DOT; is that correct?

Mr. STERN. Well, we believe that the ICC has the tools with the DOT to implement all factors that would probably produce better safety on the highways.

Senator WARNER. Well, we've got to be very careful that this responsibility just doesn't fall between the cracks. There doesn't seem to be the coordination between these two agencies that is desirable.

Mr. STERN. Well, I believe that the decision and policy of the ATA is that these matters be kept with the ICC primarily and that DOT beef it up where necessary.

Senator WARNER. I read through your statement, and I judged that you received on June 18 the administration bill. Today is July 18. That is 30 days. I would hope maybe your executive committee would have an opportunity to meet and thus formalize your position on the bill. I think it is very important that the committee know.

Mr. STERN. Well, the bill, of course, did come out after the last meeting of our executive committee. Our executive committee will not reconvene until October.

However, I will bring this to the attention of the committee and the officers of the ATA to see if they can call a meeting to consider that if necessary.

Senator WARNER. I think it is of sufficient importance, and I would urge you to do so.

Thank you very much, Mr. Chairman.

Senator RIEGLE. Thank you, Senator Warner.

Yesterday, Mr. Stern, the Department of Transportation testified that if 5 percent of all motor carrier vehicles were inspected annually and 10 percent of all firms were subjected to safety audits each year, that this in their view would be sufficient coverage to deter all carriers from most safety violations.

Would you agree with that?

Mr. STERN. My personal opinion would be that there should be more than that. I don't believe that would be adequate.

Senator RIEGLE. What would you set as a target?

Mr. STERN. Well, I don't think I'm qualified to set a particular percentage of increase. But I think, Mr. Chairman, it would have to be done on a trial and error basis, as it is increased, to get statistics and see how they relate to the increased activity.

Senator RIEGLE. Would you think that if we were to say that their recommendation was 5 percent of motor vehicles and 10 percent of firms, would you feel that maybe that ought to be at least doubled? Would that be your idea?

Mr. STERN. Yes, I think at least doubled—at least—perhaps a little bit more to start with.

Could I defer that to Mr. Johns?

Mr. JOHNS. Mr. Chairman, last year we submitted a written statement to the committee in which we made the judgement that it would be well for each operator of a tractor and semi-trailer vehicle in this country to feel that there is a potential for inspection at least once a year.

Now, to inspect each vehicle once a year would call for a force of 500 inspectors. At the least, we think there should be 10 percent, but there certainly should be the feeling on the part of the operator that his vehicle is likely to be inspected.

If he doesn't have this feeling, he is less likely to comply with the regulations.

Senator RIEGLE. Since a good portion of the program in both bills relies upon enforcement of the Federal rules by the States, I think it would be helpful for us to know what ATA's experience has been with State safety agencies.

And I'm wondering if the Congress should have faith in the States being able to evenhandedly enforce the rules and in the ability of DOT to oversee the States.

Mr. STERN. Mr. Chairman, I can comment specifically on the State of New Jersey. The State of New Jersey inspects more vehicles—roadside inspection—per year than the whole DOT does in the country. And our statistics, I believe, are such that only 23 percent are being placed out of service.

I might also mention, in talking about New Jersey, the New Jersey State Motor Truck Association has entered in some time ago to an agreement with the State police whereby every commercial vehicle driver who is a nonowner of that particular vehicle is

issued a summons. That summons goes into our State association, and they in turn advise every single owner or truck operator of that particular violation.

It is not done in a manner that we want to persecute or discriminate against a driver, but we want to be aware of what is going on so we can set up proper safety programs.

I will also tell you that the State of New Jersey—very shortly we will have our own insurance company. One of the purposes for that is also related to safety.

We hope to have, once we have our own insurance company, a safety staff within that insurance company that can help the carriers keep their costs down by providing better safety measures.

And I might talk also about State reliability, that our next project in the State of New Jersey will probably be to start our own driver training schools.

I personally feel, in the area of driver education, that there is a lot to be gained. For example, the pool of available, qualified drivers at a busy time in our economy could be very small.

So if a carrier such as I needs somebody, even after indoctrination, we must train them; and it would cost a carrier such as us approximately \$16 an hour to train that particular driver, because in our particular contract, which is part of a national contract, there is no provision for training.

So we believe in New Jersey that if we were to have a driver training school, that we could train our people there in the elements of safety, the elements of alertness, the ability to keep physically fit, that we will be providing one of the greatest means of increasing safety performance inasmuch as only 6 percent or so of those accidents are caused by equipment defects.

And I think this is the area that really has to be addressed very seriously.

Senator RIEGLE. Let me just say that I really appreciate the spirit in which you make those comments and the kind of leadership that I think your statement reflects. And I think it is very refreshing to hear someone like yourself in the private sector expressing that kind of creative and sort of groundbreaking initiative in terms of trying to figure out how we can improve safety in trucking, I am encouraged.

Mr. STERN. In fact, we also have our own safety patrol, Mr. Chairman, and the safety patrol is composed of members of our association. And they in turn, when they see a vehicle that is either tailgating or driving too fast or on the wrong side of a lane or doing something that a professional driver should not be doing that violates safety, even though he isn't caught by or tagged by a trooper, he gets the identification of that particular vehicle and he sends it into the owner of that particular company so that we can bring that particular driver to us and explain to him how he is jeopardizing his life and the lives of others on the highway.

Senator RIEGLE. Let me just ask one more question.

I realize you oppose the civil penalty section of the two bills before us. However, assuming for a moment that there is to be some new civil penalty legislation, I would like your views on the concept of lower levels of both civil and criminal penalties for employees than for trucking firms.

Yesterday we were told that fines, somewhere between \$500 to \$1,000, would be an adequate deterrent for drivers if not for trucking firms. And I'm wondering if you would agree with that?

Mr. STERN. That is a fine of how much for employees?

Senator RIEGLE. Somewhere between \$500 and \$1,000, in that range.

Mr. STERN. Well, Mr. Chairman, I must say to you that I really don't believe that civil penalties, per se, are even warranted or needed.

I think we accomplish more by increasing employer-employee relationships. I don't think it is necessary.

Senator RIEGLE. But let me just stop you.

I understand that, and I know that's your position, but I still want to try to get a judgment from you as to if we're going to have civil penalties established despite your feelings about it, I'm wondering, just on the issue of the size of the penalty as a deterrent. In other words, to the driver of the vehicle to provide a penalty of a size that would perhaps prompt that particular driver to make sure that a violation of one sort or another was not going to occur, would penalties in this range have that kind of deterrent effect?

Mr. STERN. Well, Mr. Chairman, if there are to be penalties, and to give you a direct answer, I believe that would help you in the direction you're going.

Senator RIEGLE. In other words, that dollar range would have sufficient weight to it that that would have a deterrent effect?

Mr. STERN. I most certainly think so. I think using the expression "when you hit someone in the pocketbook," that that would be very adequate if it were necessary to go that way.

Senator RIEGLE. I appreciate your direct response and that in no way offsets what I know your position is, which is clearly that you don't favor moving in this direction.

Let me thank you for your testimony. We've got additional questions that we would like you to respond to for the record.

And as I say, I hope you will continue the personal leadership that it sounds like you are providing in New Jersey to further advance safety in trucking, and I appreciate it.

Mr. STERN. Mr. Chairman, thank you for allowing us to make our presentation.

[The statement follows:]

STATEMENT OF LAWRENCE H. STERN ON BEHALF OF AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and Members of the Committee, My name is Lawrence H. Stern. I am testifying on behalf of American Trucking Association, Inc. (ATA) in my capacity as Chairman of SCORE, the ATA Safety Committee on Research and Environment. SCORE is the top management safety policy committee for the trucking industry. ATA is the national trade association for the motor carrier industry representing all types of motor carriers, with affiliated associations in every State and the District of Columbia. I also hold the position of New Jersey Vice President of ATA.

My personal involvement in the trucking industry spans over 30 years. I am President of Stern's Transport, Inc., an interstate common carrier with headquarters in New Jersey.

With me today are Kenneth F. Stinger, ATA Legislative Counsel and William E. Johns, Managing Director of the ATA Technical Services Division.

ATA appreciates this opportunity to provide testimony on the three matters under consideration by the Committee: the present status of truck safety in the

nation; Senate bill 1390, the Truck Safety Act of 1979; and title II of S. 1400, the Trucking Competition and Safety Act of 1979.

ATA supports S. 1390 by action of the ATA Executive Committee, although there are certain portions of the bill that we oppose. Our support is in keeping with a tradition, established in 1935 of supporting practical and necessary safety legislation. ATA endorsed the safety provisions of Part II of the Interstate Commerce Act which resulted in development of the current Federal Motor Carrier Safety Regulations. Through the years ATA has supported the Bureau of Motor Carrier Safety in its efforts to increase its manpower capabilities for more effective enforcement of the regulations. ATA continues to strongly support the 55 mile per hour speed limit and legislation to increase federal funding for enforcement of that speed limit. For many years ATA has sought legislation to improve the effectiveness of the National Driver Register of the Department of Transportation.

The first part of my discussion will be on the status of truck safety in the nation. In testimony before this Committee in 1978, details of the ATA safety organization and programs were provided. In the interest of time I will not discuss these further, but I want to assure the Committee that our programs are still dynamic. In fact, as part of our safety effort, we are now conducting a national motor truck safety check. We will be happy to furnish additional information to the Committee about our programs on request.

I. TRUCK SAFETY

The most frequently discussed factors in truck safety are: truck speed, driver safety, vehicle condition and safety record.

A. Truck speed

Our support for the 55 mph speed limit continues and is a result of the proven relationship between speed and fatalities. When the national speed limit became law the number of fatalities for all traffic dropped from 54,052 in 1973 to 44,525 in 1975 (Figure from NHTSA's National Center for Statistics and Analysis). This was a reduction of 9,527 or 17.6 percent. For that same time period, fatalities resulting from truck-involved accidents, as reported to the Bureau of Motor Carrier Safety, dropped from 3,058 to 2,232. This was a decrease of 826, or 27 percent. Trucks had a greater improvement in terms of percentages. It should be realized that on a percentage basis the truck record looks especially good when there is improvement and especially bad in the opposite case because of the fact that the numbers involved are small in relation to those for all traffic.

Since 1975, the number of fatalities for all traffic and the number of truck related fatalities has reversed its previous trend and increased steadily. Overall vehicle speed has also increased. A 1978 speed study by 25 states shows that the average speed of all traffic on main rural roads has increased to 58.3 mph. Truck speed has also increased to 58.3 mph. The most recent estimate available to ATA from *Highway Safety Facts* issued by NHTSA shows that the number of total motor vehicle fatalities nationally in 1978 reached 50,145, an increase of 5,620 since 1975, or 12.6 percent. The number of truck related fatalities reported to the Bureau of Motor Carrier Safety for 1977 reached 2,983, an increase of 751 since 1975 or 33.6 percent.

ATA is gravely concerned about the accident picture nationally and especially about the increase in truck accidents and fatalities. Part of this increase can be attributed to an increase in miles of travel for all traffic, and for trucks. With increased exposure there is a greater accident potential. Mileage for all vehicles increased 11 percent from 1975 to 1977. Truck mileage increased 15.1 percent.

ATA attributes most of the problem to increased vehicle speed. There is no doubt about the relationship between speed and fatal accidents. With increased speed accident severity is increased. With increased speed the likelihood of an accident increases because it is more difficult for drivers to make corrections necessitated by an error or a vehicle defect. ATA estimates that 63 percent of the accidents involving a truck and another vehicle are caused by the other vehicle. Thus, increased speed raises the potential for truck accidents caused by other vehicles as well as the potential for accidents caused by truck drivers or their own vehicles.

Mr. Chairman, American Trucking Associations, Inc. continues to be a staunch advocate of the 55 mph speed limit, and for increased enforcement of the limit. During the recent truck strike there were many independents who exerted pressure for increased truck speeds. ATA does not support that proposition. In fact, it is our belief that a major reason for the increase in truck speeds and truck related fatalities is a combination of poor attitudes toward the speed limit and use of overpowered vehicles by many independents.

B. Driver safety

There is a strong concern among management and labor about rising fatality rates for truck drivers in motor vehicle accidents. Data from the National Center for Statistics and Analysis and from the Bureau of Motor Carrier Safety show substantial increases in the number and percentage of such deaths. Fatal Accident Reporting System data shows a 20 percent increase from 1975 (717) to 1976 (862) and a 12 percent increase from 1976 (862) to 1977 (962). Recent DOT estimates for 1978 show a continuation of this reduction in the rate of increase: from 1977 (962) to 1978 (1010) in the overall death rate of heavy vehicle occupants. In fact combination trucks were the only class of vehicle to register a decrease in the number of occupant fatalities on the interstate system in 1978. There is no doubt that truck drivers are safer in an accident than the drivers of other vehicles. Yet a comparison of the 33.8 percent increase in all fatalities involving a truck reported to BMCS from 1975 to 1977 with the 38 percent increase in truck driver fatalities reported by BMCS shows the truck driver increase slightly higher than would be expected. ATA is encouraged by the reduction of the rate of increase, but we believe that an actual reduction in the number of deaths can only be achieved through better speed limit enforcement and increased enforcement of safety regulations.

C. Vehicle condition

ATA has long been an advocate for an increase in the roadside inspection of drivers and vehicles. We have seen this activity decline because of manpower and money limitations of BMCS and because of its concentration on other matters. Now the inspection program has been revitalized and questions are being raised about the safety and maintenance of equipment. Recent BMCS inspections have resulted in vehicles being placed out of service in a range of 31 percent to 60 percent. Questions are also asked about the variation in the range. There are no simple answers to these questions. Inspection methods vary. If BMCS uses a random method of selecting vehicles for inspection the percentage of vehicles placed out of service is lower than if the BMCS inspectors inspect only those vehicles that look bad or sound bad. There are also differences in the criteria for placing vehicles out of service. One inspector may be tougher than another. The state of New Jersey obviously has different criteria than BMCS. It inspects almost twice as many trucks annually as BMCS, an average of about 43,000 per year from 1976 through 1978, and places a lower percentage out of service.

ATA does not agree with some of the BMCS out of service criteria but we fully support the program. It's the only practical way to determine the condition of drivers and vehicles. It's the most effective BMCS program for removing defective drivers and vehicles from the highways and for improving compliance with equipment and maintenance regulations. The trucking industry believes that the great majority of its vehicles are well maintained and in safe operating condition. Those that are not should be removed from service by BMCS.

Recent road check activity based on random inspections of vehicles and drivers by the Bureau of Motor Carrier Safety resulted in 30 percent of vehicles of regulated carriers being placed out of service compared to 45 percent of the vehicles of carriers classified as "exempt" and "other".

The bottom line on equipment safety is the extent to which defects are the cause of accidents. BMCS data shows that 6 percent of truck accidents are caused by defects. A study of 2,923 commercial vehicle accidents in 1975-76 shows vehicle equipment was at fault in 10.8 percent of the cases. A Texas study in 1969 showed a comparable 11.3 percent. For many years it has been the view of traffic safety experts that defect accidents are in a range of 6 percent to 10 percent for all classes of vehicles. The truck experience does not seem to be out of line from previous years or from the accident pattern of other classes of vehicles. However, every effort should be made to improve the situation. One phase of our current national truck inspection program is designed to train drivers, mechanics and safety persons to perform better vehicle inspections.

D. Safety record

There have always been questions about how the truck safety record should be determined. Some believe that the record should be based on registration data but this ignores the fact that trucks are high mileage vehicles and thus have a higher exposure to accidents than other classes of vehicles. Use of a mileage rate is more desirable but by itself does not give consideration to the operating environment of trucks. Heavy trucks, especially tractor semitrailers, are primarily utilized on rural highways and mileages are accumulated on a constant basis throughout the year under a variety of weather and traffic conditions. This is in contrast to the operation of other classes of vehicles which accumulate 54 percent of their mileage on urban streets and travel the most in months of least severe weather conditions. The

Department of Transportation recently held a symposium to discuss the exposure factors that should be given consideration in measuring the truck safety record. This project is ongoing at DOT.

ATA has developed truck safety record data which are appended to our testimony. It discusses some of the problems of exposure measurements and compares the record for all trucks, combinations and cars.

Table I shows three motor vehicle categories: percentage of total registrations, miles, fatal accidents and all accidents. Combinations and all trucks have a higher than expected percentage of fatal and all accidents when measured solely on the basis of registration. The table shows that total miles is a more apt basis for comparison. The percentage of all accidents for all trucks and combinations is less than the percentage of total miles of these two groups.

Additionally the all trucks category has a percentage of fatal accidents less than percent of total miles. Combinations have a higher percent of fatal accidents than their percentage of miles.

The comparison is adverse for combination trucks due to the different environment in which they operate. Combination trucks accumulate 81.05 percent of their mileages on rural roads. Generally higher speeds on rural roads increase the severity of accidents. Nationally the fatality rate for all vehicles, all roads is 3.38 fatalities per 100 million vehicle miles. The rural component of this all vehicle fatality rate ranges from 2.96 to 9.67. The combination truck fatality rate is 6.61. This compares favorably with the national rural rate. The comparison is proper because combination vehicles are essentially rural in character.

If the Department of Transportation is able to establish a proper measure of exposure for heavy trucks the fatal accident rate comparisons may change drastically and will benefit the truck safety image. However, as I indicated earlier in my testimony, ATA's primary concern is for reduction of speed on rural highways to reduce the number of accidents and fatalities.

II. S. 1390, TRUCK SAFETY ACT AND RELATED PROVISIONS

As Senator Percy noted when he introduced S. 1390, American Trucking Association, Inc., supports the bill, but still opposes a few important provisions. We have had the privilege of working with the Senator and his staff for more than a year on this legislation. Many difficult problems have been resolved, but today we will focus our discussion on those key matters which are still of major concern. Nevertheless, we wish to emphasize our appreciation to the Senator and his staff for allowing us the opportunity to express our views, concerns and recommendations, and for giving these consideration in drafting S. 1390.

We have not had a similar opportunity with S. 1400, "The Trucking Competition and Safety Act of 1979". We received a draft of Title II, Commercial Motor Vehicle Safety on June 18 and there has not been time for a full analysis and discussion of its provisions and their potential impact on the trucking industry, nor has there been a formal action by the ATA Executive Committee to support or oppose any or all of its provisions.

Many of the provisions of S. 1400 are similar to provisions of S. 1390 and so we can state a trucking industry position that is applicable to such provisions in both bills. However, there are also major differences and we can only express viewpoints, rather than a formal position, on such differences in S. 1400. Mr. Chairman I would like to deal first with the three major provisions of concern in S. 1390. The ATA is strongly opposed to the civil penalty provisions of Section 9 of S. 1390. Since Section 223 of S. 1400 is similar and has even worse provisions, ATA also strongly opposes those provisions. ATA strongly opposes Section 11 of S. 1390 which provides for unneeded private employee legal action against employers. The ATA also suggests important amendments to Section 8(c) of S. 1390 which requires the Secretary of Transportation to investigate complaints. There are similar provisions on both of these matters in S. 1400.

A. Civil penalties

Section 9 of S. 1390 provides for the imposition of civil penalties in varying amounts for recordkeeping violations, other violations and substantial violations. S. 1400 has similar provisions, but the penalty range is greater and the penalties can be imposed both for each violation and each day that the violation continues.

ATA considers the civil penalty provisions of S. 1390 and S. 1400 inappropriate. The provisions would allow the assessment of penalties most frequently for violations of the regulations which do not actually impair safety of operation or establish a hazardous situation. The provisions are *not* focused on serious violations, but rather on minutia.

For example, under the Hazardous Materials Transportation Act civil penalty provisions motor carriers have paid thousands of dollars in penalties for minor technical violations of shipping paper requirements. Yet such violations have not resulted in an unsafe condition in the transportation movement nor have they resulted in the availability of less information for fire and emergency personnel in the event of an accident. These penalty assessments range upward to \$66,000 in total for one carrier which handles numerous hazardous materials shipments and had several minor violations.

The civil penalty provisions of both S.1390 and S.1400 would also be imposed in an inequitable fashion. Carriers which are easily located would be penalized more frequently, and to a greater extent, than other carriers which do not conduct high visibility enterprises. And yet, the carriers which are the easiest to locate generally have a substantially better safety record because they are already being inspected more frequently and because they already have programs to correct safety violations.

ATA also has had numerous complaints from motor carriers that some regulators imposing civil penalties seem intent on harassment or intimidation or at least they do not have a good understanding of the safety values of the type of violation for which a civil penalty is being imposed. For example, one carrier was penalized \$9,000 for three minor shipping paper violations under the Hazardous Materials Act. These violations were a result of omissions from one shipper which did not impair the safety of the transportation or reduce the amount of information available for fire and emergency personnel.

In contrast, another carrier which had an inoperable remote control valve on a tank truck was fined \$3,000 for the violation. That particular violation is much more serious and yet the shipping paper violation carried the same penalty.

There are hundreds of specific requirements contained in the Federal Motor Carrier Safety Regulations. Violations of many of them would not result in an unsafe condition or impair the safety of vehicle operation in any way. ATA does not feel that civil penalties are justified for such violations. An order for abatement is appropriate. Yet experience with implementation of the civil penalty provisions of the Hazardous Materials Transportation Act, leads us to believe that the focus will be upon just such violations.

There are now four major governmental tools which can be used to assure compliance with Federal Motor Carrier Safety Regulations. We believe that the most effective enforcement tool available to the government at this time is the provision for placing drivers and vehicles out of service if they are found to be imminently hazardous. They are immediately removed from the highway. This is a costly penalty because of the ramifications of tying up the driver and vehicle. Utilization of the driver and vehicle is lost. There are possible expenses for driver meal and motel costs. There are costs for vehicle repair and tow truck services and there is a potential for incurring the ill will of customers due to the delay of freight. This mechanism focuses upon important safety violations, and is more likely to upgrade safety compliance.

Additionally, those carriers which are certificated by the Interstate Commerce Commission (ICC) must have a continuing good safety record and this is a powerful incentive to them to comply with the regulations.

Another major tool of the regulators is carrier notification of violations of the regulations. When a carrier receives such a notification it takes immediate action to correct the defects or problems which have caused the violation.

Terminal and roadside inspections result in notices of violation and they also provide a third strong impetus for safety by establishing a pattern of carrier compliance or non-compliance. When an adverse carrier pattern is discernable it is the basis for forceful action by the regulatory agency. In the past, such action has taken the form of either putting the carrier on notice that it must improve its compliance or legal action will be taken, or as an alternative, the carrier is placed under consent agreement. This latter action is often buttressed by the imposition of civil penalties for recordkeeping violations. Such penalties have been in effect for many years under the authority of the Interstate Commerce Act and is more equitable than the penalties proposed in S.1390 because the recordkeeping penalties are usually imposed after a pattern of violations is established.

In conclusion, we believe that compliance with the regulations developed under the authority of S.1390 can be achieved by the government by increased use of the tools now available: notification of violation, maintenance of safety record information for continuation of ICC authority, terminal and roadside inspections, imposition of civil penalties for recordkeeping violations, and placing vehicles and drivers out of service for imminently hazardous conditions. We believe that inclusion of the civil penalty provision will focus enforcement resources on less serious violations.

B. Employee suits

Mr. Chairman, I would now like to discuss the matter of employee suits as set forth in Section 11 of S.1390 and Section 226 of S.1400. Both of these sections are designed to protect employees from discriminatory action for refusal to engage in an unsafe operation or an operation which violates federal standards applicable to motor carrier safety.

ATA reiterates that discharge of, or unfair discrimination against, any employee resulting from the filing of a reasonable safety complaint is abhorrent to the trucking industry. The ATA supports protection for employees from such discrimination, but it opposes the provisions in these sections which promote private action employee suits against employers. Encouraging private law suits erodes the foundation of good employer-employee safety relations and injects a spirit of distrust in safety communications.

Employees today have several legal courses of action available if they believe that they have been discriminated against for filing a reasonable safety complaint. Many carriers have negotiated labor contracts which provide a mechanism by which such an employee grievance can be heard and the interest of the employee is represented by the duly authorized union. Article 16 of the National Master Freight Agreement sets forth specific language designed to protect employees who are members of the union. These procedures are subject to NLRB jurisdiction. A copy of Article 16 is attached.

In addition to the protection provided by labor agreements, trucking industry employees are protected from discriminatory action by specific provisions of the Occupational Safety and Health Act, the Resource Conservation and Recovery Act, and National Labor Relations Act. It should also be noted that NLRB has jurisdiction over unfair labor practices involving non-union as well as union employees.

ATA sees no justification for adding the provisions proposed in Section 11 or Section 226 to stimulate private law suits. If there is need for any additional employee protection mechanism it should be within the Department of Transportation. Such a program would result in a more standardized procedure and would provide expert government personnel to handle these complex complaints in the most efficient and effective manner.

Attached to our statement are copies of the employee protection provisions of the Occupational Safety and Health Act and of the Resource Conservation and Recovery Act. We urge that the Committee consider the language in these provisions with the DOT as the administering agency as an alternative to the proposed employee suit provisions, if Congress feels additional protection is needed.

C. Complaints

The subject of ATA's third major concern is Section 8(c) of S.1390 which provides for investigation of non-frivolous written complaints by the Secretary. S.1400 has a similar provision.

The ATA believes it is imperative that there be two changes in this provision. First, there should be a requirement that an employee seek redress from the employer before filing a complaint about a violation. Simple equity demands that the employer be made aware immediately of an unsafe situation and have an opportunity to correct it voluntarily. After all, the elimination of unsafe conditions is the object of the legislation, not the filing of complaints. Therefore, prior to filing a complaint for a violation an employee should be required to have demonstrated good faith by notifying his employer of the violation. Then, if no action has been taken to correct the violation, an employee is justified in seeking help from his union, from the Secretary, from a state agency or from any other of several sources available to him.

Secondly, ATA believes that this section should be amended to allow the Secretary to set priorities for the investigation of complaints. Such a priority setting amendment would avoid overburdening the Secretary with many minor complaints. It would assure the investigation of complaints of major violations on an expedited basis. Thus these provisions would allow the marshalling of resources to provide the greatest benefit for employees, employers, and the public.

ATA urges the Committee to consider the plight of the Occupational Safety and Health Administration (OSHA) which is overburdened with complaints alleging non-serious violations and is not permitted by statute to determine which complaints should be investigated and which should not. Recently, the General Accounting Office investigated the OSHA problem and as a result of its investigation has urged Congress to amend the Occupational Safety and Health Act to streamline OSHA authority. A review of the OSHA situation is attached to our statement. It is excerpted from the Occupational Safety and Health Reporter of April 19, 1979.

Mr. Chairman, in concluding my remarks about the provisions of Section 8(c) I want to assure this Committee that the American Trucking Associations, Inc., are in firm agreement that an employee should have the right to complain about violations and there should be provisions protecting this right. But the first step of a safety complaint should involve the employer. If the violation is not corrected the second step should be to another party. Many of our truck operators have already established procedures with authorized unions by which employee complaints can be registered with union representatives and action taken through conferences with the employer followed up by the formal grievance proceedings, as necessary.

D. Other comments

There are two other ATA concerns about S.1390.

One area is that portion of Section 6 which amounts to a general duty clause. The basis of our opposition is the adverse experience the trucking industry has had with the general duty clause in the Occupational Safety and Health Act. Too often, OSHA investigators have utilized such a clause as the basis for citation of employers when there was no regulation to cover a given situation that the investigator might consider a safety hazard. In such situations the employer has had no rules to comply with and no way of knowing that a particular investigator might consider a particular situation as unsafe. The general duty clause is akin to the safety slogans of yesterday which warn to "Be Safe", "Drive Carefully", "Avoid Accidents", etc., but do not tell how or why. The government's safety program should not be based on such a generalized requirement as the general duty clause.

ATA supports the parts of Section 6 which place a specific responsibility on employers and employees to comply with regulatory requirements. The revised rule should read "Each employer and each employee shall comply with the safety and health standards and rules, regulations and orders issued pursuant to this section which are applicable to his own actions and conduct."

Secondly, Section 7(d) states that the Secretary shall not in any material way reduce the protections currently afforded the public and employees operating commercial motor vehicles.

This section, while well intended, could provide a strong obstacle to the development of an effective truck safety regulatory program. We urge that it be deleted from the bill. Section 7(d) could become a source of constant legal challenges to any action by the Secretary promulgating, revising or revoking safety regulations. The concerns raised in Section 7(d) are more appropriately addressed during the rule-making proceedings used by the Department of Transportation under the Administrative Procedures Act in developing safety regulations. This procedure has worked well and should not be tampered with.

III. S. 1400 TITLE II

I would like to present informal ATA views on the provisions of Title II of S. 1400 which do not have similar counterparts in S. 1390 and merit consideration.

Title II of S. 1400 is offered to this Committee in an entirely different context than S. 1390. Title II of S. 1400 presupposes sweeping deregulation of the trucking industry. Even though some of the provisions are similar to S. 1390 the fact of deregulation makes Title II of S. 1400 much less effective as a device to actually improve truck safety.

This is so because Title I of S. 1400 would substantially increase the difficulty of identifying major segments of the trucking industry by removing ICC certificate requirements. It would substantially broaden the exempt segment of the industry. BMCS has for some time been engaged in a special program to identify carriers since registration is not now required of private and exempt carriers. Title I would add to this identification problem those motor carriers which: haul processed food, provide specialized equipment service, carry truckload lots, provide substitutes for rail service, carry shipments of 500 pounds or less, or operate in other areas of trucking which the Commission decides should be exempt from certification requirements.

A. Federal motor carrier safety registration

S. 1400 recognizes the safety identification problem which would exist in a deregulated environment. However, it does not seem to recognize the ongoing safety problems of exempt carriers which will be magnified through deregulation. For example, regulated carriers have a rate of one fatality per 10.9 accidents reported to the Bureau of Motor Carrier Safety. Exempt carriers have a rate of one per 5.09 accidents. Driver condition is a factor in one of 37 accidents for regulated carriers and one of 17 for exempt carriers. "Driver had been drinking" is a factor in one of 244 accidents for regulated carriers and one of 55 for exempt carriers.

Instead, the solution provided under Section 221 is both inefficient and costly. The DOT Secretary would be authorized to require Federal Safety Registration of any class of carriers it deems necessary. That would most probably involve Federal safety registration for private and exempt carriers, including newly deregulated carriers.

Despite the salutary cost benefit language in Section 221, the administrative and enforcement costs of any such a program would be enormous and would sap the limited Federal resources available for safety enforcement. Undoubtedly a Federal safety license plate or identification sticker would have to be prepared and a methodology for distribution developed. Enormous amounts of time would be spent by BMCS and State inspectors checking still another set of credentials required of carriers. New administrative machinery would need to be established to implement such a program, and we seriously doubt any substantial improvement in the current status of truck safety would result.

Moreover, under existing law, private carriers are not required to register with the ICC and DOT, although they are covered by the Federal Motor Carrier Safety Regulations. They have strongly opposed registration in the past and there is every indication they would oppose Section 221.

We do not believe that the registration of private carriers would add materially to enforcement of safety rules for the obvious reason that these carriers are usually easily identifiable because of the non-transportation nature of their businesses. According to the ATA Private Carriers Conference, the majority of combination trucks are operated by private carriers and have a good safety record. On that basis the Conference states that it would be impossible to cost justify any plan which mandated the registration of private carriers.

Finally, we caution this Committee not to move ahead in this area until it has analyzed carefully its possible impact on State motor vehicle registration systems. While we agree that uniformity among the States in registration policy is an important goal, and Federal Safety Registration system needs to be tightly drawn in light of the preemption provisions of the bill. Yet Section 221 is so broadly drawn possible conflicts may develop. For example, under Section 221 the Secretary could require the registration of motor vehicles as well as carriers.

We also caution the Committee to carefully study the registration and identification provisions and the practicality of their application in the real world as a control device for safety of operations of exempt carriers. Through the years the Department of Transportation has been unable to identify and communicate with exempt carriers. We seriously doubt that the provisions of S. 1400 will accomplish the purpose for which it is intended.

B. Expanded DOT safety role in certificate proceedings

Section 210 involving the safety aspects of Fit, Willing and Able Determinations, in ATA's view is an improper approach. Clearly DOT is now required to submit its safety determinations regarding new applicants to the ICC and the ICC is required to consider that information in determining whether to grant new applications.

Probably because of a belief that the ICC's current safety review process is weak the authors of Section 210 seek to transfer that function from an independent regulatory agency to an Executive Branch department through a thinly veiled mechanism permitting DOT to bind the ICC in its safety decisions. In view of the provisions contained in Title I, this is no small encroachment upon the authority of the ICC. Safety determinations in such a deregulated environment could become the key test in determining whether a carrier is fit, willing and able.

The duplicative costs involved would be immense. DOT would have to establish new administrative machinery to make such safety determinations and to hold essentially adjudicatory proceedings. This machinery already exists at the ICC. Carriers would be requested to register by providing a notice of intent to operate with DOT. Carriers already have to file an application for authority which serves as such a notice with the ICC. Carriers would be required to carry DOT vehicle identification and documentation, and they would still have to carry ICC operating authority and ICC vehicle identification numbers.

It seems clear that if the Congress is concerned with the safety review mechanism at the ICC, the rational answer is to upgrade ICC's safety consideration, not establish duplicative requirements in another Federal agency. ATA has no quarrel with upgrading safety considerations in ICC application proceedings.

One final observation. The short time limits placed on DOT's safety review process and the automatic authority grant provisions in Title I, lead to the conclusion that the authors are concerned with these safety provisions only to the extent they do not interfere with quick implementation of the deregulation philosophy embodied in Title I. And yet the competitive factors involved in a wide open entry situation could cause many marginal operators to become less safety conscious, not

more. Economic considerations and safety are intertwined, thus Title I and Title II are to some extent directed toward inconsistent ends. This inconsistency is not easily explained away by simple rhetorical statement to the contrary.

C. Administrative warrants

ATA has no objections to the Secretary's permissive authority to make unannounced inspections of motor carrier facilities and property. No cases have come to ATA's attention wherein DOT officials were refused entry, and therefore ATA questions whether, as a practical matter, the administrative warrant provisions are necessary. If, however, Congress decides to enact such provisions amendments to the "probable cause" definition in Section 222(c)(2)(B)(i) are needed to give meaningful guidance to the issuing judicial officer. The provisions as written make the necessity to visit a court officer more of a nuisance than a legal test for issuance of a warrant.

In sum, ATA views Title II of S. 1400 more as an attempt to quell safety criticism of the Title I provisions of the legislation than to upgrade current Federal truck safety programs. We recommend that S. 1390 remain the primary vehicle for this Committee's deliberations on truck safety as all of the more seriously considered aspects of S. 1400 have been more fully addressed in S. 1390.

IV. CONCLUSION AND RECOMMENDATIONS

Mr. Chairman, our support for S. 1390 is based on the need for uniformity of regulations and increased enforcement activity. The bill provides for these. ATA believes that two additional elements are needed for improvement of the truck safety record.

In years gone by, the Bureau of Motor Carrier Safety had an outstanding program for educating motor carriers and their personnel for compliance with the Motor Carrier Safety Regulations. ATA believes that education is a key element for safety and compliance and that it should be provided by the government. The Bureau curtailed its educational activities because of limitations of manpower and money. Despite the provisions in S. 1390 for increased training and increased enforcement, ATA believes that there needs to be a specific provision for educational activities and increased manpower within the Bureau of Motor Carrier Safety to conduct such activities.

ATA's second recommendation is for a Commercial Driver Register. S. 1390 focuses on employer responsibilities to conduct an effective safety program, but qualified drivers are also an essential part of the total safety effort. Yet S. 1390 does not adequately address the industry's need to identify unqualified drivers.

Since 1961 there has been a National Driver Register which has been of no value to truck operators because the information has not been available to them, and because the information is limited to suspensions and revocations of licenses. The industry needs to have access to a complete driving record and employment history to be able to determine which drivers are unqualified. A commercial driver register would fill these needs. It would strengthen the one driver-one license concept and it would make driver qualification regulations of the Federal Motor Carrier Safety Regulations more effective.

The National Highway Traffic Safety Administration has a study underway of the National Driver Register that may result in its improvement. The National Transportation Safety Board is studying the need for a commercial driver register. S. 1390 has provision for a similar study.

All of these activities are of value, but they are limited in meeting the needs of motor carriers for an effective driver control mechanism. We need provision for a commercial driver register system that assures driver identification and detailed record information similar to that proposed by ATA in the attached document. Such a system would cost several millions of dollars, but its value would be proven in the removal of unsafe commercial drivers from the nation's highways and the resulting savings in lives and property.

Mr. Chairman, that concludes my remarks. I will answer any questions that the Committee might have.

APPENDIX I

REGISTRATION, MILEAGE AND ACCIDENT COMPARISONS OF SEVERAL MAJOR HIGHWAY VEHICLE TYPES, 1977

Simply identifying the average miles driven per vehicle of different vehicle types, or of one type compared to all types boldly points out the noncomparability. On a per vehicle basis, trucks travel many more miles than passenger cars and for that matter than most other highway vehicle types. Therefore percentage of registrations

is not particularly illuminating when examining fatal accident involvement percentages.

From Table I below see that combination trucks in particular, average 50,206 miles in 1977 whereas passenger cars and all vehicles averaged 9,839 and 9,926 respectively. (These figures come from FHWA's Highway Statistics Division Office of Highway Planning: "Estimated Motor Vehicle Travel in the United States and Related Data 1977 and Revised 1976". Miles of travel per vehicle provides a proxy measure for exposure to accident situations yet does not even start to take into account the diversity of road, weather and traffic conditions encountered by trucks—particularly commercial, over-the-road trucks.

TABLE 1.—REGISTRATION, MILEAGE AND ACCIDENT COMPARISONS OF SEVERAL MAJOR HIGHWAY VEHICLE TYPES, 1977

	Percent of registration ¹	Percent of miles ¹	Miles per vehicle ¹	Percent fatal accidents ²	Percent all accidents ²
All trucks	19.87	22.31	11,145	22.1	15.7
Combinations	.85	4.30	50,206	³ 8.1	³ 3.1
Passenger cars	76.43	75.76	9,839	67.4	79.9
All motor vehicles	⁴ 100	⁴ 100	9,926	⁴ 100	⁴ 100

¹ From Highway Statistics Division of FHWA, Table VM-1, November 1978.

² From *Accident Facts 1978* p. 56.

³ These figures are the summation of "Truck Tractor and Semi-Tractor" and "other truck combinations" categories.

⁴ These columns are not expected to sum to 100% as there are both omission and double counting involved, in this selected presentation.

Instead of looking only at fatal accidents, a more inclusive measure of safety is all accident involvement. And so the last column in Table I above was included. (Aside; However, unlike fatal accidents, all accidents do not have a uniform inclusion criteria applied, as in this case they come from 16 state traffic authorities).

A cautionary note is in order here, since the mileage and registration data for Table I above come from Highway Statistics Division of FHWA which are being compared to accident data from Accident facts. The use of more than one source presents the opportunity for definitional, reporting and record keeping nuances to hinge direct comparability.

Combination trucks traveled 4.3 percent of the total miles yet had a lesser 3.1 percent of all accidents. Similarly, all trucks traveled 22.3 percent of the total miles yet had a lesser 15.7 percent of all accidents. The complexion of the issue has dramatically improved—trucks are the villains when less than representative statistics are used with one another.

A final important point to be brought into the discussion which explains the seemingly dismal truck record as measured by fatal accidents is the difference in operations between vehicle types alluded to earlier. Rural, as contrasted to urban, roads are roads which typically have higher posted speed limits. Rural roads have generally been associated with higher than proportionate fatal accident and all accident rate.

The 1977 FARS Annual Report (p. 1) notes that "only 46 percent of the total vehicle miles traveled were in rural areas" yet "58 percent of fatal accidents occurred in rural areas".

APPENDIX II—ARTICLE 16 AMENDMENTS

[Amendments are Printed in *Italic*]

ARTICLE 16

EQUIPMENT, ACCIDENTS, REPORTS

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition *including but not limited to acknowledged overweight* or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate such equipment unless such refusal is unjustified. All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the driver can see the same.

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment.

The term "dangerous conditions of work" does not relate to the types of cargo which is hauled or handled.

Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, before starting his next shift, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. The employee shall receive a copy of the accident report that he submits to his Employer. Failure to comply with this provision shall subject such employee to disciplinary action by the Employer.

Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies, one copy to be retained by the employee and one copy to be made available for inspection by the next driver operating such unit, subject to agreement between the Employer and Local Union. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical departments.

When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working or operating condition, and receives no consideration from the Employer, he shall take the matter up with the officers of the Union who will take the matter up with the Employer.

If the Employer requests a regular employee to qualify on equipment requiring a special license or in the event an employee is required to qualify (recognizing seniority) on such equipment in order to obtain a better job opportunity, with his Employer, the Employer shall allow such regular employee the use of the equipment in order to take the examination.

All tractors must be equipped as necessary to allow the driver to safely enter and exit the cab, hook and unhook the air hoses.

All equipment used as City Peddle trucks and equipment regularly assigned to peddle runs must have steps or other similar device to enable drivers to get in and out of the body.

The Employer shall install heaters and defrosters on all trucks and tractors.

There shall be first line tires on steering axle of road units.

All new road equipment regularly assigned to the fleet after July 1, 1973 shall be equipped with air-ride seats on the driver's side and such seat shall be maintained in a reasonable operating condition.

Newly manufactured over-the-road tractors which are added to the road fleet, subsequent to April 1, 1977, and assigned to road operations on a regular basis shall be air conditioned. The National Negotiating Committees shall designate an Employer-Union Committee which shall undertake to determine the feasibility of converting road tractors to provide air conditioning by April 1, 1980.

The Conference Joint Area Committee may, upon application of either the Employer or the Local Union, waive the installation of such air conditioning equipment as a result of climatic conditions or other standards established by the Committee.

The Employer and the Union together shall create a joint committee of qualified representatives for the purpose of consulting among themselves and with appropriate Government agencies, state and federal, on matters involving highway and equipment safety, and such committee shall meet on a quarterly basis with a schedule to be agreed to by the respective chairmen.

Any complaint arising under this article will be processed through the Conference Area level in accordance with rules and procedures to be agreed upon between the parties. Within sixty (60) days from the signing of this agreement, the Local Union will notify the employer of the representative who will be responsible for these matters.

Add new paragraph 13:

When the Employer weighs a trailer, the over-the-road driver shall be furnished the resulting weight information along with his driver's orders.

Add new paragraph 15:

The Union and the trucking industry agree to establish a committee composed of five (5) members from each side to review the safety aspects of interior dimensions of tractors and tractor sleeping berths; equipping tractors with trailer brake hand valves; placement of fuel tanks; and the use of shock absorbers on the front axles of tractors.

The committee shall confer with appropriate representatives of equipment manufacturers and report to the National Negotiating Committee by April 1, 1980 with recommendations.

Add new paragraph 16:

All company trailers shall be marked for height.

Add new paragraph 17:

No driver shall be required to drive a tractor designed with the cab under the trailer.

Add new paragraph 18:

Road equipment shall have either a speedometer or tachometer in proper working order.

THE RESOURCE CONSERVATION AND RECOVERY ACT

Public Law 94-580
94th Congress



October 21, 1976

As Amended .

by the QUIET COMMUNITIES ACT
OF 1978

PUBLIC LAW 94-580—OCT. 21, 1976

"Subtitle G—Miscellaneous Provisions

"EMPLOYEE PROTECTION

42 USC 6971.

"SEC. 7001. (a) GENERAL.—No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act or of any applicable implementation plan.

Application to
Secretary for
review.

"(b) REMEDY.—Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this Act.

Hearing.

Notice.

Rehiring or
reinstatement of
employee.

Judicial review.

"(c) COSTS.—Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

"(d) EXCEPTION.—This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this Act.

"(e) EMPLOYMENT SHIFTS AND LOSS.—The Administrator shall conduct continuing evaluations of potential loss or shifts of employ-

ment which may result from the administration or enforcement of the provisions of this Act and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.

Request for
investigation.

Hearing.

Information,
availability to
public.

84 STAT. 1603

Pub. Law 91-596

- 14 -

December 29, 1970

62 Stat. 928.

dence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under the subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Establishment;
membership.

Sec. 12. (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason

APPENDIX V

[From the Occupational Safety and Health Reporter]

GENERAL POLICY—GAO SAYS COMPLAINT INSPECTIONS DELAY INSPECTIONS OF SERIOUS HAZARDS

The Occupational Safety and Health Administration's policy of making inspections for virtually all complaints about workplace hazards interferes with its policy of directing its limited resources on workplaces that pose the greatest risk to workers, according to an April 9 General Accounting Office report to Congress.

"Complaint inspections provide limited benefits in protecting workers from serious hazards. Most complaints come from the types of businesses that OSHA would not visit on its own initiative and do not appear to address serious hazards or, in some cases, any hazards," GAO explained.

It continued, "OSHA needs to develop methods for reducing its complaint workload so it can direct more inspections toward high-risk businesses." But GAO also said OSHA and state occupational safety and health offices "need to improve their control over complaint inspections to insure that complaints believed to involve serious hazards are promptly investigated and inspectors look for the serious hazards considered likely to be present in the types of businesses being inspected."

Although Assistant Labor Secretary Eula Bingham announced in May 1977 that OSHA would focus its inspection resources in high-risk industries, GAO said complaints have affected the inspection program by taking away resources from programmed inspections. OSHA data for fiscal 1978 show that complaints made up about 38 percent of all inspections.

But, the reported noted, "OSHA officials in Philadelphia and St. Louis told (GAO) that their workload consisted almost entirely of complaints. According to the Philadelphia area director, the only programmed inspections done by his office were those which demanded immediate attention, such as special investigations of grain elevators. The Pittsburgh area director told (GAO) that his staff works almost exclusively on complaints, which precludes a regular program of inspection."

GAO visited five OSHA area offices and safety and health offices in California, Iowa, and Maryland. In those three states the state governments make inspections under OSHA-approved plans.

In those eight offices visited by GAO, 2,807 complaints were received between October 1977 and March 1978 and only 248 did not result in inspections. GAO's review of these 248 complaints showed that they were not investigated because the complaint was withdrawn, the office lacked jurisdiction, entry to the worksite was denied, the worksite could not be found, an OSHA inspection was already in process at the worksite, and the complaint was considered harassment. GAO said OSHA data for the federal inspection effort show a national backlog of 1,893 safety, 1,750 health, and 796 combined safety and health complaints as of October 1, 1978. The report added that similar data for the states were not available.

COMPLAINTS INVOLVE NONSERIOUS HAZARDS

GAO found that many complaints are not taking OSHA and state inspectors to industries with the most serious health and safety hazards. Of 267 complaints dealing with safety hazards, GAO said only 65 involved industries included in OSHA's high-risk or special emphasis program. GAO added that it was told by OSHA officials "that even though some complaints come from high-risk industries, the hazards alleged in the complaints usually are not serious and are not the type OSHA would look for in a programmed inspection at these worksites."

GAO also discovered that complaints which were not from high-risk industries usually involve small businesses less likely to have serious hazards.

About 70 percent of all complaints received by OSHA during fiscal 1978 were classified as nonserious, according to GAO. Only 1 percent of the complaints were considered a potential imminent danger.

"An OSHA official in Pittsburgh said that the office often is wasting resources on health complaint inspections. For example, one complaint involved fumes from a ketchup processing machine. OSHA believed, before inspecting the workplace, that there was no violation or at most a de minimis notice would be issued. . . . OSHA's inspection found no hazard. A Maryland official told (GAO) that less than one half of all health complaints justify an inspection," the report stated.

At GAO's request, Maryland, California, and Iowa classified the severity of complaints for 170 case files. Based on this retroactive classification, 93 complaints were considered to involve hazards classified as less than serious. Complaints included lack of separate restrooms, slippery floors in the kitchen of a restaurant, inadequate lighting in an office, and dirty restrooms.

"According to a California official, many complaints a nuisance-type complaints dealing with conditions for which there are no standards, such as tobacco smoke. Another California official said that he frequently had to tell the complainant there was no standard covering the alleged hazard," GAO said.

WORKLOAD CAN BE REDUCED

"OSHA needs to establish and implement a system for handling and resolving certain complaints without workplace inspections. This will require obtaining better information on the initial complaint describing the alleged hazard and making decisions on which complaints should be resolved by inspecting the workplace," GAO suggested.

It recommended that OSHA and the states develop more effective criteria for screening safety and health complaints, including guidelines regarding what information should be sought on the initial complaint and for assisting the complainant to identify the workplace conditions. GAO also suggested that OSHA and the states evaluate each screened informal complaint to try to resolve those considered less serious by other than a workplace inspection. OSHA and the states should identify vague health complaints and use cross-trained safety inspectors to obtain additional necessary information, according to GAO's recommendations.

But GAO also said OSHA and the states need to improve their control over complaint inspections to insure that complaints believed to involve serious hazards are investigated promptly and that inspectors look for the serious hazards considered likely to be present in the types of businesses being inspected. The scope and results of prior inspections, as well as how recently they were conducted, should be considered in determining how far beyond the complaint the inspector should go, GAO added.

CONGRESS SHOULD AMEND THE ACT

GAO argued that Congress should amend Section 8(f) of the Occupational Safety and Health Act to give OSHA authority to resolve formal complaints without making inspections at the workplaces unless the complaints involve potential hazards that can cause death or serious physical harm. GAO's proposed amendment would require the Labor Department to notify the employer of the complaint, when it has determined that the complaint is not of a serious nature, and to require the employer to report on corrective actions taken. The Labor Department also would notify the complainant in writing, of the employer's actions, according to GAO's proposal (Reference File, 71:1106).

COMMENTS ON GAO'S RECOMMENDATIONS

GAO was told by OSHA that it is developing instructions prohibiting inspections for complaints that describe no violation of an OSHA standard or no potentially harmful condition. OSHA also said that an existing program directive (200-69) provides area directors with the option of responding to nonformal other-than serious complaints with a letter to the employer (Current Report, December 15, 1977, p. 984). OSHA added that it is considering several options, which it did not describe for GAO, for alleviating the complaint problem while continuing to protect workers.

But GAO argued that Program Directive 200-69 "does not provide the flexibility needed for handling complaints by means other than an inspection. Until OSHA develops a more effective approach to resolving informal complaints considered less than serious without workplace inspections, such complaints will continue to use a disproportionate amount of time and resources."

OSHA also told GAO that it requires full inspections, time and resources permitting, for all complaints classified as serious and that it is considering a requirement that complaint inspections in high-hazard industries include all high-hazard conditions.

REPORT IS AVAILABLE

Single copies of the report, "How Effective Are OSHA's Complaint Procedures?" (HRD-79-48), are available without charge from the General Accounting Office, Distribution Section, room 1518, 441 G St. N.W., Washington, D.C. 20548. Additional copies are available for \$1 each from the GAO, Distribution Section, P.O. Box 1020, Washington, D.C. 20013.

[The following information was subsequently received for the record:]

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., October 26, 1979.

Senator HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: We certainly appreciate your consideration of our proposal for a Commercial Driver Register as evidenced by your request for additional information. ATA has had further discussions about driver registers with persons in our industry and with representatives of state motor vehicle administrations, the National Transportation Safety Board, the Federal Bureau of Investigation and the U.S. Department of Transportation. Our efforts have been directed at getting more detail about the matters of cost and administration so that we can be sure that the needs of the trucking industry and the public for protection from unsafe commercial drivers is in perspective with the capabilities of government to operate a practical, effective Commercial Driver Register program.

This month we heard from a motor carrier that was directed by the National Labor Relations Board to put a driver back to work despite the fact of two convictions in one month for speeds of 68 and 81 mph attained by allowing his vehicle to coast down hill in violation of company rules, state laws and the federal Motor Carrier Safety Regulations applicable to interstate drivers.

In August we heard from a frustrated motor carrier safety director who received information that an interstate driver for his company had received four speeding convictions in the state of Ohio in his truck, within a one year period. The information was correct but neither Ohio or Michigan, the licensing state, had a driver file on these violations.

These cases demonstrate that employers and the responsible federal agencies still have a need for a national system of commercial driver records that is up to date and easily accessible.

Our conversations with state and federal officials convince us that there is major concern by some state officials that a federal Commercial Driver Register will provide federal jurisdiction over licensing authority that has traditionally belonged to the state. There also appears to be strong concern that a Commercial Driver Register will add substantially to the cost and complexity of driver licensing and recordkeeping activities.

These concerns must be weighed against the problem of those unsafe drivers of heavy trucks in interstate operations who are jeopardizing the public and cannot be readily identified for corrective action. We continue to believe that the most effective means of controlling such drivers is through a national Commercial Driver Register, operated by the Federal Government, containing detailed information for every person licensed to operate a vehicle of 10,000 pounds gross vehicle weight rating (GVWR) or above, in commerce. However, it may be more practical to seek a system that is less costly and limits the federal role to avoid overlap with state functions.

We suggest that a federal Commercial Driver Register might be more acceptable from the standpoint of cost and jurisdiction if it is limited to those drivers who operate in more than one state and whose vehicles are of the larger sizes. There are approximately one million, two hundred fifty thousand tractor semitrailers and large single unit trucks of thirty-three thousand pounds GVWR, and above, which operate in interstate commerce.

Because of vehicle size, the high mileages accumulated, and the wide range of conditions under which these vehicles operate there is a greater potential for severe accidents among the drivers of these large vehicles than for any other driver group. This potential necessitates close monitoring of the records of such drivers so that those who are unsafe can be disqualified in accordance with state and federal requirements. The fact of wide ranging operations by such drivers currently enables those who do not operate safely to hide their violations from their employers, the state licensing agency and the Federal Bureau of Motor Carrier Safety.

We ask that consideration be given to the following:

1. Commercial licenses should be restricted to intrastate operations for tractor semitrailers, other combination vehicles and single unit vehicles of thirty-three thousand pounds GVWR or above, unless the drivers of such vehicles are registered with the Federal Commercial Driver Register in which case the driver would be permitted to operate across state lines.

2. States should make an appropriate notation on commercial licenses for those drivers who are registered with the Commercial Driver Register and permitted to operate across state lines.

3. States should charge an appropriate license fee to cover additional costs of registering a commercial driver with the Federal Commercial Driver Register. This

fee would cover the usual licensing costs plus the costs of fingerprinting the individual, the cost of transmitting fingerprints and other pertinent identifying information to the Federal C.D.R., and any additional costs for maintaining a driver record file in connection with the C.D.R.

4. The licensing state would maintain a complete file on each of its drivers registered with the Federal C.D.R.. The file would contain identifying information, record of convictions (or forfeiture of collateral) for moving violations both in state and out-of-state, record of suspensions and revocations of commercial driving privileges and commercial licenses both in state and out-of-state, and accident record information for those accidents which include a conviction or forfeiture of collateral for a traffic violation.

The foregoing would be an integral part of a state's licensing system and so the major licensing costs of camera equipment, license forms, computers, personnel and facilities would be covered by the licensing program for the general driving public. There would be additional costs for fingerprinting, transmitting data to C.D.R., receiving data from C.D.R. or other states and maintaining supplemental driver record information for the interstate commercial driver. Training of individuals to make fingerprints would entail about four hours and there might be a need for two trained persons at each licensing facility. On the assumption of four facilities per state and a cost of \$10 per hour per persons for wages and expenses this training would be \$320 plus time and expenses of the trainer who would presumably be loaned by a local or state police agency. We estimate the total cost for trainees and trainer at \$500.

The cost of fingerprinting is estimated at \$10 per person based on data from the New York Police Department. A fingerprint transmitter could be installed at a facility for a cost of approximately \$5,000.00. However it seems to us that mail service would be adequate for transmitting fingerprints and other identifying information the C.D.R. as we do not consider time to be a critical factor in entering basic information into the C.D.R.

The cost of establishing and maintaining a record would be slightly more for an interstate commercial driver than for other drivers but this would not be significant. The major additional burden on a state licensing agency of establishing records and providing information for a C.D.R. limited to interstate heavy vehicle drivers would be for fingerprinting, record maintenance and record checks. Traditionally the states assess license fees that differ according to the amount of licensing activity involved for a particular class of driver, and they also assess fees for record checks requested by employers and others. Such fees could be imposed in the amount necessary for costs incurred in the processing of interstate heavy vehicle driver licenses.

Our estimate of costs for a state with four license facilities and 20,000 interstate heavy vehicle drivers (assuming that one person might be added to each facility for fingerprinting and other work) is as follows:

Fingerprint personnel (wages and training based on first year needs for 20,000 drivers)—maximum	\$80,500
Fingerprint processing (based on \$10 per licensee, one time cost)—maximum	200,000
Transmittal of records and prints (estimated processing and mailing costs at \$2 per licensee as a one time cost, except for notification of revocation, etc.)	40,000
Additional record information (15 minutes per licensee or \$2.50 per licensee, average of one entry per year)	50,000
Computer programming (one time cost)	2,000

The cost to a state would approximate \$400,000 to establish and conduct an interstate driver license and record system in the first year. Most of the costs would be nonrecurring. The costs could be recovered in their entirety through special licensing fees of \$20 for the licensee's first license and a reduced special fee for renewal licenses. The renewal fee would defray general costs incurred by the state in connection with the C.D.R. program and specific costs of processing driver record information such as traffic violations, accident information, etc. On the basis of the foregoing a state which grants a 4 year license, at a cost of \$5.00 for the general driving public, would set a fee of \$25.00 for the interstate driver of heavy vehicles for the first 4 year license, and a fee of \$15 for renewal licenses based on \$2.50 record information input annually, plus \$5.00 base fee for all licensed drivers.

We do not foresee that the licensing state would incur any non-recoverable costs in connection with federal Commercial Driver Register proposal.

We suggest consideration of the federal responsibility and procedures as follows:

1. Establish within the National Driver Register, a system for recording names and other identifying data for each individual licensed by a state to operate heavy vehicles (tractor semitrailer and other combination vehicles, and single unit trucks of 33,000 lbs GVWR and above) in interstate commerce.

2. Establish an identification system by which licensing of an individual by more than one state can be determined. (This determination can be made with accuracy only through fingerprinting).

3. Advise licensing states of any individual who already holds an interstate commercial driver license in the same or different name.

4. Require cancellation of commercial driver licenses obtained through falsification and maintain a register of such licenses for frequent distribution to state police officials, motor vehicle administrators and other interested parties. Such a register could be sold on a subscription basis to defray costs and would be of greater value to employers if it contained information on suspensions and revocations of commercial licenses.

5. Receive information about out of state traffic violations from state agencies and forward such information to the licensing state or states.

6. Receive requests and fees from employers, prospective employers and other authorized parties for driver license records of interstate drivers of heavy vehicles.

7. Direct state licensing agencies to transmit license record information to authorized parties.

8. Provide information to licensing states about suspensions, revocations and other pertinent data for interstate heavy vehicle drivers licensed by each state.

9. Distribute fees to state licensing agencies as appropriate for number of inquiries made by C.D.R. in response to requests from authorized parties.

10. We strongly support the National Driver Register program and believe that a Commercial Driver Register should be an integral part of it. Our problem with NDR in the past has been that employers have not had access to the NDR data, and, if there had been provision for such access the data would have been too limited. The purpose of the CDR is to provide a system through which an employer can determine if a commercial driver is unsafe before the record reaches the extreme of suspension and revocation. The CDR system would also serve to identify commercial drivers holding more than one license so that the complete driving record of such individuals can be known. Use of personnel, equipment and facilities of the National Driver Register would be the most practical approach for a Commercial Driver Register and we strongly endorse such an approach.

Federal costs of operating a Commercial Driver Register are difficult to project because of the potential for upgrading of the National Driver Register. We do not know the costs of a complete file system for the maintenance of fingerprint cards for one million commercial drivers but we have been advised by a representative of the Federal Bureau of Investigation that a cross-check of identities through use of fingerprints can be made at a cost of approximately \$5.00 per search.

We estimate a potential for up to 1,500,000 commercial drivers transactions annually for a Commercial Driver Register. Such transactions would consist of establishing identities and identifiers for licenses; providing license information to states; providing arrest record information to states and coordinating requests for driver record information among the states. In the course of a year many commercial drivers will not have job changes or traffic violations and so they will not generate any activity in the CDR. Others may have one or more violations or a job change that results in CDR activity. Our judgement is that actions by police agencies, motor vehicle administrators and employers will average 1.5 transactions annually per commercial driver.

Computer personnel indicate that a driver file can be established at a cost of less than one dollar after a computer program has been established. Transactions between CDR and the states are estimated at less than \$1.00 each on modern equipment. At the present time record information is furnished by some states to employers for a fee of \$1.00 to \$5.00, with variations in cost from one state to another and according to the type and extent of information provided.

On the basis of the foregoing we estimate federal costs for a CDR as follows:

Fingerprint identification check (1,000,000 prints first year)	\$5,000,000
Establish driver identifier files (1,000,000 entries first year)	1,000,000
Transactions with states, employers (1,500,000 per year)	1,500,000

First year costs could aggregate \$7,500,000 but this could be reduced by spreading fingerprint checks over a 3 year period to reduce the number of person-hours necessary for such activity in a given year.

Ongoing costs are estimated at \$1,500,000 per year for transactions of all types but does not include fingerprint checks while we estimate at \$50,000 a year maxi-

mum for a cost of \$250,000 a year. Thus, the ongoing cost of CDR annually is estimated at \$1,750,000 annually.

Part of this expense can be defrayed by charges for requests for record information from employers. The costs could also be defrayed by a federal fee per commercial driver to be assessed on the states which could add the fee to the licensing cost.

Information about state charges for driver record information is contained in the enclosed ATA publication "How and Where To Check Driving Records".

It is our hope that the foregoing is helpful to the Committee and that your study and analysis of our proposal will result in establishment of a Commercial Driver Register.

Sincerely,

BENNETT C. WHITLOCK, Jr, *President.*

Senator RIEGLE. Our next witnesses, who we would like to have come forward at this time, are Susan Ginsburg and Paul Poulos, both from the PROD field organization.

Let me say to you that we are running a little behind today as is often the case. I would like to ask you, as I've asked the previous witnesses, that you place your full statement as a part of the record, and I would appreciate it if you could summarize as much as possible and really get to the key points that you want to have us reflect on, so that we can move on into some specific questions.

So if you would want to identify yourselves for the record in whichever order you will proceed to speak.

STATEMENT OF SUSAN GINSBURG, HEALTH AND SAFETY DIRECTOR; ACCOMPANIED BY PAUL POULOS, PROD FIELD ORGANIZER, PROD

Ms. GINSBURG. Yes, Mr. Chairman. Thank you for inviting the Professional Drivers' Council to present testimony on S. 1400 and S. 1390. We are grateful to you for the hearings you held last year on truck safety and for your quick response to the legislative initiative taken by Senator Percy again this year.

My name is Susan Ginsburg. With me is Paul Poulos. We are here on behalf of the approximately 6,000 members of the Professional Drivers' Council, also known as PROD. PROD is a group of rank and file teamsters formed in 1971, which is actively opposing corrupt elements in the Teamsters Union, seeking better enforcement of pension and other laws affecting the well-being and democratic rights of teamsters, and working for badly needed improvements in highway and truck safety.

At hearings the committee held in September of 1978 on S. 2970, a predecessor bill to the two being considered today, we outlined the serious safety and health problems that exist in the trucking industry today. A number of truckdrivers came and spoke about their day-to-day experiences.

The committee is already familiar with the detailed information available on DOT spot check inspections, showing hazardous conditions in nearly 50 percent of the trucks on the road and with DOT data showing ever-increasing truck related highway fatalities. We will therefore limit our testimony today to a discussion of the specifics of the two bills considered by the committee and answer any questions on the subject of truck safety.

In addition, Paul Poulos, PROD's field organizer, would like to present a brief statement about the Carter administration's attempt to tie passage of long overdue truck safety legislation to

trucking industry deregulation in S. 1400. At this time, I would like to just focus on one point of major concern to us, and then answer any questions that you may have.

In PROD's view the two most important elements in the legislation and the ones most likely to bring about long-term improvements in the safety and health problems of the trucking industry are the employee or whistleblower protection provision and second the provision clearly mandating governmental attention to safety and health hazards affecting truckdrivers.

The two bills contain identical whistleblower protection language. Unfortunately the administration bill ignores the problem of workplace hazards to truckdriver health. At this time, I would just like to discuss the whistleblower protections briefly.

Whistleblower protection has become a key element in virtually all legislation affecting public and job safety passed by Congress in the last decade. The provision included in both S. 1400 and S. 1390 would allow an individual to bring suit against an employer who disciplines or otherwise discriminates against him for bringing violations of the Federal truck safety laws to State or Federal enforcement officials. These same or similar remedies are provided to conscientious employees under the Toxic Substances Act, the Federal Water Pollution Control Act, the Surface Mining Act, the Occupational Safety and Health Act, and the Coal Mine Health and Safety Act.

A spokesman for the owners of the larger trucking companies who you heard this morning object because they believe that the provision "while well-intended would stimulate a host of unwarranted legal actions throughout the States." There are practical reasons why this will not occur. A truckdriver who has been fired will be without income. In most cases, any lawyer whom he approaches would have to agree to accept the case on a contingent fee basis. This will automatically reduce the number of actions brought and limit them to attorneys who are reasonably confident that they can win.

Second, the lawyer will quickly discover that the full burden of proof in the case lies with his client and that the full resources for gathering evidence lie with the employer. This will automatically reduce the number of actions brought.

Third, frequently although not always, the lawyer consulted would be a local practitioner who would find himself up against a company with formidable financial resources. This will automatically reduce the number of actions brought.

Fourth, the truckdriver will learn in his initial interview with the lawyer that his case will take months to resolve and will more likely last 2 years. What workingman with a mortgage, car payments, and children can afford such expensive justice? This, too, will automatically reduce the number of actions brought.

For all these reasons, we are convinced that a forecast of a host of unwarranted legal actions is unrealistic. I think that I would just like to address a couple of points also raised by the trucking industry representatives here.

The major issue seems to me to be on the question of civil penalties. It seems to be the feeling of industry that local or road-

side inspections are a sufficient deterrent. I would just like to make a comment about that.

As has been stated here, about somewhere between 40 and 60 percent of the trucks checked are found to have imminently hazardous—or found to be in imminently hazardous condition. This is on the basis of an inspection of less than 1 percent of the vehicles on the road. There should be an incentive for the remaining 99 percent to comply.

Second, with the prospect of a serious penalty, an incentive to comply, it is reasonable to believe that the number of violations found on the trucks that are inspected would be reduced.

And third, the only practical alternative to a civil penalty provision would be a vast increase in State and Federal expenditures for roadside inspections to bring them way above the levels being proposed by the administration, which is approximately 5 percent; 10 percent, including the State efforts.

I don't think that the Federal Government or the States are going to be willing to provide the vast amounts of money that would be needed to essentially perform the inspections that the carriers themselves should be performing. And that kind of an expenditure would certainly not be warranted unless the civil penalty approach was tried. And we will see whether or not it will improve the current record.

I think that is all I would have to say.

Senator RIEGLE. I appreciate your summary, and those are important points, and we will make your full statement part of the record.

Mr. Poulos, why don't we hear from you now. And then I would like to come back and put some questions, if I may, to you and Ms. Ginsburg.

Mr. POULOS. Thank you, Senator.

My name is Paul Poulos. I have been an organizer for PROD for 2 years. Before that I was a teamster driver for some 18 years. I have been both a fleet driver and an owner/operator.

I would like to briefly address the question of the relationship between deregulation and safety, since S. 1400, one of the two bills being considered here today, ties the two together. PROD is strongly opposed to deregulation. Without going into detail about the deregulation, I would like to make two simple points.

First, the need for new truck safety regulation is sufficiently urgent and well documented to be done without further delay. This has been discussed at great length by Susan Ginsburg, PROD's Safety and Health Director. We would like to commend the committee for holding separate hearings on safety in 1978 and again this year.

We think that this is the only sensible approach. We would like to say that deregulation would have a catastrophic effect on highway safety. Moreover, the passage of S. 1390 or a similar bill would not prevent the serious safety problems that would arise in a deregulated industry.

We say this for several reasons which we hope the committee will carefully examine. We have submitted detailed supporting arguments and evidence for the record. At this time, however, we would simply like to briefly state the following:

The increase in competition which deregulation would create would force a large percentage of carriers to cut corners on maintenance, push their drivers beyond the statutory hours restrictions, and otherwise commit safety violations to maintain their profits or simply to survive.

Senator RIEGLE. Let me just stop you at that point. Isn't that currently the problem with the independent truckers? Aren't they already in that squeeze?

Mr. POULOS. Absolutely.

Senator RIEGLE. But if you had deregulation, wouldn't that maybe open up a part of the industry which seems to be much more healthy to them and maybe then allow them to become more healthy and actually allow them to be in a position where they could pay for greater safety?

Mr. POULOS. On the contrary. Increasing the amount of owner/operators and the competition between them reduces the likelihood that they might get a load and perhaps increases the possibility that they might have to run——

Senator RIEGLE. Why do you think they then support it?

Mr. POULOS. I think there's a difference of opinion between owner/operators who do support it and don't. There's a certain few that do and a certain few that don't. I think, by and large, if my appraisal of the situation is accurate, the large majority don't support it.

Senator RIEGLE. The independent drivers do not support deregulation?

Mr. POULOS. That is my assessment of the situation, yes. And I believe it is accurate.

If I may, Senator, I think perhaps the rest of my statement which will be rather brief, perhaps it might answer some of your questions.

Senator RIEGLE. Fine. I want you to go ahead with that. I was inquiring of the committee staff as to what we have in the way of formal statements for or against from various independent trucking groups, so that it would be something more than what you hear or what I hear and what have you, and I'm told that we have expressions of opinion both ways and that we have not by any means heard from everybody either in organized groups or individually that make up the independent trucking sector.

So there clearly are divisions of opinion in terms of what a deregulated environment might be.

Mr. POULOS. In response, perhaps to clarify my statement, I was—or I did attend an independent conference held by independent operators, the Unity Coalition, and those were the views expressed at that time from representatives around the country. Again, I could not at this point in time give you facts with respect to what numbers do or don't, but according to the individuals at that time, they definitely expressed an opinion opposing deregulation.

Senator RIEGLE. Well, I think it is fair to say, and I think you would concur with this, that there are significant differences of opinion. There are other independent truckers who feel very strongly that deregulation does make sense for them.

So you've got a divided opinion. Obviously, we've got to sort through that. But let me have you go ahead, and again I did not say to you at the outset—let me say to you now—I want you to do as I've asked the others to do and that is to summarize as much as possible, and we'll make your full statement a part of the record.

But I really want to try to get at these essential high points that you want to express here.

Mr. POULOS. Well, I think my statement again is brief, and I think it will raise some points and might clarify a few points. We say this for several reasons which we hope the committee will carefully examine. We have submitted detailed supporting arguments and evidence for the record.

At this time, however, we would simply like to briefly state the following:

The increasing competition which deregulation would create would force a large percentage of carriers to cut corners on maintenance, push their drivers beyond the statutory hours restrictions, and otherwise commit safety violations to maintain their profits or simply to survive.

The recent ICC case in MCC 10339, investigating the fate of the employees of the Wolverine Express, provides us with a taste of things to come. Wolverine was acquired by McLean Trucking Co., one of the largest carriers in the industry. The violation of ICC regulations—McLean maintained only the most lucrative runs in the Wolverine operation, dismissing employees and the rest. The general public loss of comprehensive freight delivery systems, and the lives of many families who devoted many years to the industry were painfully disrupted.

Think of what this reveals about the basic motivations, the ruling attitudes, of the carriers in the trucking industry. They place profit above all else. In the case of McLean, it was profit over the ICC regulations. Daily, it is profit over the safety of their employees.

Think of what this attitude, in tandem with the highly competitive deregulated trucking industry, will produce in the future. The minimal job security which presently exists in the industry because of the stability afforded by regulation will vanish. In its place will be the law of the jungle.

Mr. Chairman, before you is a finely drafted employee protection provision in S. 1390. I refer to section 11(b) of that bill. Upon deregulation of the industry, that provision—the key to all improvements in truck safety, in my opinion—that provision will be worthless. The driver will subordinate his interest in safety for his more immediate concern—being a natural ally of highway safety, the driver will become a partner in crime with his employer.

Ask yourself, would you blow the whistle if you thought it meant the loss of your livelihood? Substandard contracts between teamsters and carriers are ratified all the time on the basis of threats which imply that the company might go under.

In a deregulated industry, there would be substance to such threats, and there would be no whistleblowers. Yesterday the DOT stated, and I quote: "The entry reforms we have proposed will not permit irresponsible or unqualified carriers to enter the industry,

but would retain and revitalize the fit, willing, and able entry test, which is the ICC process which is concerned with safety."

This assurance is presumably based on section 10934 of the administration's bill. This section would grant the DOT rather than the ICC, as in the current case, authority to grant, deny, or revoke a carrier's operating authority on the basis of his safety record.

Mr. Chairman, we seriously question the validity of this claim by the administration. Our skepticism is based on the DOT's own admission that it has been—it has only intervened seven times to question a carrier's operating authority on the grounds of safety. The DOT's attempt to blame the ICC's lack of enthusiasm for such interventions is hardly an excuse for its own inaction. The real reason for such a lax commitment to safety on the part of the DOT is the unholy matrimony that exists between the Department and the carriers it is supposed to regulate with respect to safety.

From such wedlock we can hardly expect an offspring by the name of highway safety. Indeed, the bastard child of this parent is the mounting slaughter on the Nation's highways. And we have submitted for the record an appendix and some illustrations of what we feel is the extent of collusion between the DOT and all their inactions and the carriers.

Three, Mr. Chairman, the administration is manipulating the safety issue. Yesterday, the DOT stated, and I quote: "We simply cannot understand the logic of claims that economic reforms would adversely affect commercial motor carrier safety." The reason why should be obvious to all. They do not want to understand.

The 1979 report of the Florida Public Service Commission as well as similar data from other sources is available to the DOT through its voluntary agreements with State enforcement agencies. To my knowledge, there are approximately 50 participating States. All that is necessary, should the DOT so desire, is to request a computer printout of the comparable safety records of inter- versus intrastate carriers and the records of the appropriate State authorities.

On May 24 of this year, in a meeting with the Undersecretary of the DOT, we in fact suggested precisely such a course of action. The DOT refused to follow this course and instead hid behind its formal mandate to regulate only interstate commerce. If the DOT had followed our suggestion, or even honestly reviewed the results of the Wykopf Study, it would not be able to sit in front of this committee and gloss over the differences in the safety records of carriers and in the regulated and unregulated sectors of the public industry.

Instead, they choose to assert without proof that the safety records of both groups of carriers is comparable. Neither the DOT's methods nor its conclusions are credible.

In conclusion, a deregulated would mean that our Nation's highways would be filled with desperate owner/operators and marginal fleet carriers who would constantly falsify logs already called funny books by owner/operators, scrimp on maintenance, and generally evade safety regulations simply to stay in business.

Employees in the industry would be fearful for their jobs and would not use the whistleblower provisions as they're contained in S. 1390. Death on the road would not then abate; it would escalate. Such suffering would be, at least, partially attributable to those

who seek to delay much needed safety legislation or to reduce it to its impotence for the sake of their political manipulations and the pursuit of the truck deregulation.

I would just like to add, Senator, that the administration's concern for competition and the free enterprise system is commendable. However, the costs, I'm afraid, are going to be too high in terms of dehumanizing an industry, the cost in the deaths to drivers, and the cost in additional deaths of thousands of innocent motorists. And the only expression of good faith with respect to maintaining their vehicles by the ATA is expressed in this Committee and not out there on the streets.

I can tell you that drivers have to drive and how they have been discriminated against for refusing to drive unsafe vehicles. It is a different picture than the ATA portrayed here today, and that is a fact.

Senator RIEGLE. Well, we appreciate your testimony. And obviously, it will be given due weight by this member and by others on the committee.

Ms. Ginsburg, let me, if I may, I want to ask a few questions here of you. In your statement, you recommend that the Bureau of Motor Carrier Safety be transferred from the Federal Highway Administration to the National Highway Traffic Safety Administration. I would like you to indicate a little more fully why you believe that such a transfer would improve regulation of truck safety, and why you think that makes sense.

Ms. GINSBURG. Well, I think part of the reason is self-evident in the names of the two agencies we're talking about. The Federal Highway Administration, where the Bureau of Motor Carrier Safety currently resides, is charged primarily with the construction and maintenance of the interstate highway system, roadbuilding, and it has been traditionally run by highway engineers or others with a background in that area.

The Highway Traffic Safety Administration was established to protect the public from unsafe automobiles and unsafe practices on the highways. It seems appropriate that the trucks would also be regulated in that context.

Senator RIEGLE. Let me ask you this: If the Department of Transportation is given the primary authority over the health of truck drivers, what do you think their expertise is in this area? In yesterday's hearings, for example, the Teamsters stated that DOT "does not now, nor has it ever, employed an industrial hygienicist or someone with comparable skills." I would just like your reaction to that.

Ms. GINSBURG. I think that what we're looking at here is a comparison between the relative expertise of OSHA with regard to truckdrivers, and the Bureau of Motor Carrier Safety. I agree with the Teamster criticism of the Bureau's record in this area.

However, it should also be pointed out that the Bureau has never had explicit authority from Congress in this area, and where they have authority, then I think that we would expect to see from them a request for appropriations or authorizations for staffing it appropriately.

The reason for asking such authority for the BMCS is that for the truckdriver, in particular, and not for any other employee in

the trucking industry workplace, the DOT is regulating him in a fairly comprehensive manner. They are setting physical qualifications for the drivers to drive; they are setting hours that they can operate. And it seems appropriate that when they consider these other factors, they also consider the impact of the regulations on driver health and the problems that exist for drivers while they are in the truck on the road.

Mr. POULOS. I would like to add to that, Senator, that drivers have been exempt from the Fair Labor Standards Act where the 40-hour work week is the norm, and drivers are required to drive 60 hours in 7 days, and their week has been extended to 8 days now, 70 hours in 8 days.

In addition, they have no protection with respect to safety in the truck with respect to fumes and vibrations and decibel levels. That is their home for 10 hours, and they are confined to that workplace for 10 hours straight. And those are important considerations, because they affect fatigue, and it is unfortunate that they have not been addressed with any sufficient degree of enthusiasm by any agency.

Senator RIEGLE. Ms. Ginsburg, let me ask you this: The administration yesterday recommended that there be \$50 million authorized per year for the Truck Safety Act, and that this would allow inspection of up to 5 percent of the heavy-duty trucks on the road annually. Do you have any views as to whether that is a sufficient level of inspection, or would you want to recommend some figure other than that?

Ms. GINSBURG. I think that one thing that we should keep in mind is that the inspectors who inspect under the Bureau of Motor Carrier Safety's program that we're talking about here today are the very same people who are charged with inspecting under the Hazardous Materials Transportation Act. And I understand that three Governors have precipitated something of a crisis by saying that they will not permit trucks carrying hazardous materials in their States because the level of inspection is so low.

In that light, I would say that the \$50 million figure is probably low, and would think that the \$100 million figure in the predecessor bill to S. 1390 would be more appropriate.

I think that one thing that concerns me is the fair formula for distribution of that so that the States that are already spending more than the Federal program would not be acquiring more money because they have the expertise to file the grants, et cetera, and leave the others who are behind even further behind.

But given the extremely inadequate current levels, I am not sure that the DOT proposal is adequate.

Senator RIEGLE. Do you want to recommend an alternative percentage to that dollar figure?

Ms. GINSBURG. I was not sure that the administration had said—OK, 5 percent. It's not clear to me that the relationship between their \$50 million and the 5 percent, how that would exactly work, what would be done by the Federal Government and what would be done by State government. They seem not to be asking for additional moneys for Federal inspectors. I am not sure that the \$50 million is really going to do it any kind of reasonable time frame.

Senator RIEGLE. How about percentage of inspection, what percentage of inspection do we have to get to, in your view, before we really are exercising the kind of monitoring here that is going to have the effect that we want?

Ms. GINSBURG. I don't know the answer to that question. I am not sure that anyone does.

I would say that going from a national total, a Federal total, of less than 1 percent to a 5 percent with Federal and national combined to a 10 percent level would be a significant increase. It sounds low to me. But it would be a significant increase.

Ten percent sounds more reasonable to me. If you went to 10 percent and included the civil penalties and the other self-enforcing provisions of the bill, such as the employee protection, then I think you would be in a position to reevaluate the fatality records.

Senator RIEGLE. Mr. Poulos, I asked the staff to do some checking on the Unity Coalition because I wanted to understand a little bit more about who they are. I mean no disrespect to them when I make the comment I am about to make. But I am told by staff that in their view it is a relatively small group and primarily steel haulers and that they are a group that hauled on lease essentially for regulated carriers and therefore would have that rather direct reason to take a dim view of deregulation.

Mr. POULOS. Senator, I don't know where you are getting your information, but it is not accurate. The leader of the Coalition, or the spokesman for the Coalition, does happen to serve in the capacity you suggest. However, there was a largely representative group representing independent owner-operators nationwide, and to single out the characteristic of the spokesman and identify the rest of the group as having the same interest as himself is totally unfair and it is inaccurate.

I would just like to, if I may digress for a moment—

Senator RIEGLE. Well, before you do, I would like you to be a little bit more specific then, because you were there. How many people comprise this Coalition? Because I want the record clear, and I don't want the staff providing information that is less than complete, and I won't tolerate that from a witness, either.

Mr. POULOS. I wasn't aware that I offended you.

Senator RIEGLE. You haven't offended me. I would just like to pin it down. You raised the group; you put them forward here. I would like to know a little bit more about them.

Mr. POULOS. I, again, did not take a physical head count at the meeting. But my estimation of how many independent owner-operators were present at that meeting would be approximately 100. They came from North Dakota, Tex., I believe, Pennsylvania, Maryland, Arkansas, Florida; and, again, they were pretty diffused geographically.

Senator RIEGLE. Are they primarily steel haulers?

Mr. POULOS. The spokesman for the group was.

Senator RIEGLE. How about the rest?

Mr. POULOS. No. Again, independent owner-operators.

Senator RIEGLE. But not steel haulers as a group? You're saying less than half the group would be in the steel-hauling business?

Mr. POULOS. Considerably less than half. I would say perhaps 2 percent of the group were steel haulers at that meeting, or perhaps

even less. Yes, definitely less. Perhaps 10 independent owner-operators were steel haulers.

Senator RIEGLE. What do the others do, I wonder?

Mr. POULOS. They are independent owner-operators. They lease out to carriers.

Senator RIEGLE. To regulated carriers or to whom?

Mr. POULOS. Regulated, exempt sector; both. You might get a different version from Mr. Parker, who is, I believe, the editor of *Overdrive* out on the west coast, who sort of, I think, is a spokesman for that segment of the owner-operators who do favor deregulation.

However, the estimates vary with respect to the size of that group. Talking to Parker you will get one version; talking to other groups you will get another version.

So, again, use your own discretion.

Senator RIEGLE. I think we have covered as much as we can here. But let me say to both of you, we appreciate your testimony.

Ms. GINSBURG. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF SUSAN GINSBURG ON BEHALF OF THE PROFESSIONAL DRIVERS' COUNCIL (PROD)

Mr. Chairman and members of the Commerce Committee, Thank you for inviting the Professional Drivers Council to present testimony on S. 1400 and S. 1390, the two bills concerning truck safety which you are considering today. We are grateful to you for the hearings you held last year on truck safety and for your quick response to the legislative initiative taken by Senator Percy again this year.

My name is Susan Ginsburg; with me is Paul Poulos. We are here on behalf of the approximately 6,000 members of the Professional Drivers Council, also known as PROD. PROD is a group of rank and file Teamsters formed in 1971, which is actively opposing corrupt elements in the Teamsters Union, seeking better enforcement of pension and other laws affecting the well-being and democratic rights of Teamsters, and working for badly needed improvements in highway and truck safety.

At hearings the Committee held in September 1978 on S. 2970, a predecessor bill to the two being considered today, we outlined the serious safety and health problems that exist in the trucking industry today. A number of truck drivers spoke about their day-to-day experiences. The Committee is already familiar with the detailed information available on DOT (Department of Transportation) spot-check inspections showing hazardous conditions in nearly 50 percent of the trucks on the road, and with DOT data showing ever-increasing truck related highway fatalities.

We will therefore limit our testimony today to a discussion of the specifics of the two bills being considered by the Committee, and answer any questions we can on the subject of truck safety. In addition, Paul Poulos, PROD's field organizer, would like to present a brief statement about the Carter Administration's attempt to tie passage of long overdue trucks safety legislation to trucking industry deregulation legislation.

First, let me give a brief summary of the major legislative provisions, and differences between them. Both bills contain these four basic elements: (1) Regulatory authority; (2) enforcement authority; (3) employee or "whistleblower" protection; (4) provisions governing funding and federal-state relations. In addition, the Administration bill, S. 1400, includes a provision for DOT intervention in ICC licensing procedures, not included in S. 1390. S. 1390 also contains one provision not included in the Administration bill, sec. 7b and related sections, providing explicit authority for protecting truck drivers from safety and health hazards in the workplace. There are significant differences between the two bills, but they are not irreconcilable.

In PROD's view, the two most important elements in the legislation—the ones most likely to bring about long-term improvements in the safety and health problems of the trucking industry—are (1) the employee or "whistleblower" protection provision, and (2) the provision clearly mandating governmental attention to safety and health hazards affecting truck drivers.

The two bills contain identical whistleblower protection language; unfortunately, the Administration bill ignores the problem of workplace hazards to truck driver health.

Whistleblower protection has become a key element in virtually all legislation affecting public and job safety passed by Congress in the last decade. The provision included in both S. 1400 and S. 1390 would allow an individual employee to bring suit against an employer who dismisses, disciplines or otherwise discriminates against him for bringing violations or the federal truck safety law to the attention of state or federal enforcement officials. An employee could also bring suit against his employer if he is discharged, disciplined or discriminated against in any other way for refusing to drive a truck when doing so would give rise to material violations of the Truck Safety Act, or could result in serious injury to himself or the public due to the unsafe condition of the vehicle. In the case of work refusal, the employee must first have sought and been unable to obtain a correction of the problem from his employer. In court, the employee would have the full burden of proving that any reasonable man would have done what he did because there was a bona fide danger of an accident, injury or serious impairment of health resulting from the unsafe condition. If the employee is able to prove that his firing was due to a legitimate and unresolved objection to a seriously dangerous condition, he would be entitled to reinstatement in his job, compensatory damages and, where the court considers it appropriate, exemplary damages.

These same or similar remedies are provided to conscientious employees under the Toxic Substances Act, the Federal Water Pollution Control Act, the Surface Mining Act, the Occupational Safety and Health Act, and the Coal Mine Health and Safety Act.

Several criticisms have been made of this provision and alternatives offered. We would like to comment on them and offer some additional suggestions.

First, spokesmen for the owners of the larger trucking companies object because they believe that the provision, "while well intended, would stimulate a host of unwarranted legal actions throughout the states."

There are practical reasons why this will not occur. A truck driver who has been fired will be without income. In most cases, any lawyer whom he approaches would have to agree to accept the case on a contingent fee basis. This will automatically reduce the number of actions brought and limit them to those attorneys who are reasonably confident they can win.

Second, the lawyer will quickly discover that the full burden of proof in the case lies with his client—and that the full resources for gathering evidence lie with the employer. This will automatically reduce the number of actions brought.

Third, frequently, though not always, the lawyer consulted would be a local practitioner who would find himself up against a company with formidable financial resources. This will automatically reduce the number of actions brought.

Fourth, the truck driver will learn in his initial interview with a lawyer that his case will take months to resolve and will more likely last two years. What working man with a mortgage, car payments and children can afford such expensive justice? This, too, will automatically reduce the number of actions brought.

For all these reasons, we are convinced that the forecast of "a host of unwarranted legal actions" is unrealistic.

On the contrary, we think that the legal protections provided by the two bills are absolutely minimal and should be strengthened before final passage of truck safety legislation. This could be done in one of two ways.

One useful suggestion was made last year by a representative of the Federal Highway Administration on behalf of Secretary Adams and the Carter Administration. FHWA Administrator John S. Hassell said,

"We also support the protection of employees provided by section 12 of the bill against retaliatory firing or other discrimination based on their having filed complaints about or refusing to work under unsafe conditions. These basic rights of employees should be fully protected. We would recommend, however, that this protection provide for investigation and administrative enforcement action by the Secretary of Labor, as is the case under many other statutes. The private right of action proposed in S. 2970 should be retained as an alternative course of action—an employee would elect one procedure or the other."

Mr. Hassell was correct in pointing out that whistleblower protection has heretofore been assigned to the Secretary of Labor. Under several States, the Secretary is authorized to sue the employer on behalf of employees who have suffered retaliations.

It was our feeling when the bill was drafted that, given budgetary limitations on the Labor Department, additional responsibilities assigned to the Secretary would not be enforced. A 1977 report by an occupational safety and health advocacy group

reported that in the first six years of OSHA, the Secretary had prevailed in only one court case on behalf of an employee. In addition, the agency was wrestling with a backlog of 800 cases. If the Committee determines that OSHA has improved its record in this area, then a suit handled by the DOL rather than a private attorney would represent a reasonable alternative for employees.

Another addition was devised by the Senate in 1977 when it passed the Coal Mine Health and Safety Act of 1977. There are several parallels between that legislation and the bills being considered here. First, both industries are notoriously unsafe. With over a thousand deaths behind the wheel last year, and a 41 percent increase over a three year period, the trucking industry's record for worker safety is surely comparable to that of mining. Second, both industries were being regulated for safety purposes by agencies other than the Department of Labor at the time new legislation emerged. The Congress, with the Senate taking the lead, chose to transfer the Mine Safety Agency from the Department of Interior to the Labor Department, concluding that only the Secretary of Labor could turn the record of the mining industry around.

A Senate Committee report filed by Senators Ribicoff and Percy in December 1978, recommended that the Bureau of Motor Carrier Safety be transferred from the Federal Highway Administration (FHWA) to the National Highway Traffic Safety Administration (NHTSA). We think this makes sense and ask the Committee to consider amending S. 1390 to provide for such a transfer. If such a transfer, combined with new and clarified regulatory authority over trucking industry workplace safety, does not accomplish a reduction in the annual fatality rate to truck drivers, we will recommend a further transfer of authority from the Department of Transportation to the Department of Labor.

The third parallel is that the Mine Safety Act included a stringent, new set of legal protections for miners discharged or disciplined for reporting safety violations to safety inspectors. The whistleblower protection provision in effect for the nation's miners is tougher than that included in the OSH Act. A special provision was added because presumably a single violation in the mines may be a fatal threat to many people, as numerous mine tragedies have shown. This is equally true for safety violations on the highways, with one additional consideration: victims are usually members of the public as well as the trucking employee himself. In fatal truck crashes, according to the NHTSA, 80 percent of the victims are members of the public.

The additional safeguard included in the Mine Safety Act is a "temporary reinstatement" provision, administered by the Secretary of Labor. It simply means that if an employer fires an employee for reasons relating to a dispute over a mine safety violation, the employee has the right to report it to the Secretary of Labor. Then, if the Secretary of Labor determines that the complaint is not frivolous, he may immediately reinstate the employee in his job on a temporary basis until a full investigation and final determination is made. Under the truck safety bill, the final determination could be made either by a court—as provided for in the two draft bills—or in an administrative proceeding before the Secretary of Labor, as was proposed by the Administration.

Because of the extraordinarily high number of employee fatalities in trucking and because of the even higher number of associated deaths to other motorists, we believe that the legal protections afforded trucking industry employees reporting safety violations or refusing to operate hazardous equipment should be no less effective than those afforded miners and should include a temporary reinstatement provision.

It seems appropriate to emphasize that retaliatory firings or coercive threats of dismissal, discipline or other discrimination, are a daily fact of life for employees in the trucking industry. In testimony last year on this subject, a group of truck drivers described these conditions. Let me give you an example from my own experience at PROD of the type of day-to-day harassment a safety-minded trucking employee regularly encounters. This driver is near the bottom of the board, his runs start on Wednesday, Friday and Sunday. Usually he gets back Friday morning from his Wednesday run, in time to rest 8 hours before his Friday run. But this time he has made a complaint and insisted on a brake repair before taking the truck out. The dispatcher, in a none-too-subtle message to the driver, holds him at the foreign terminal for exactly 13 hours and 45 minutes, instead of returning him home after the required 8 hours rest period. The additional 5 hour and 45 minute wait puts the driver just short of the 14 hour limit on holding a driver at a foreign terminal. After 14 hours, companies pay the driver a 2 hour penalty (\$10.12 per hour). But more importantly, the 5 hour plus wait means that the driver will get home Friday evening instead of Friday mid-day. If he's there by 6 p.m., he can't leave again until 2 a.m. He must have 8 hours off. But by then it is Saturday and the company can

send out a city driver or a casual, which is exactly what happens. The message is: that'll teach you to ask to have your truck fixed.

Although this kind of harassment is hard to prove, a blind man can read it on the dispatch sheets of thousands of trucking terminals across the country. To an individual employee, even if he's the top man on the seniority list, it can happen once a month, twice a month, or more often. Put this account together with copies of drivers' post-trip vehicle safety inspections (unpaid) which show the same complaint reappearing for 2, 3, or 26 days, and you begin to understand the need for tough whistleblower protections in the trucking industry.

But even without the direct testimony of employees on this point, the facts are accessible through common sense. BMCS roadside inspection reports show that over 40 percent of the trucks checked for safety violations are in imminently hazardous condition; light and brake problems are the two most frequent violations. What truck driver would take out a 30,000 to 80,000 lb. vehicle without functioning headlights or brakes if he had the choice? There may be some, but I doubt it.

We have one additional recommendation about this critical provision—that the Committee consider amending it to extend its applicability to employees penalized for complaining about violations of the Hazardous Materials Transportation Act. Thus, a truck driver or dockworker who observes and complains about faulty packaging of hazardous materials, or other violations of the HMTA, would be protected, as would the driver or mechanic who discovers a faulty part in the truck itself.

One final comment about employee and other whistleblower protection provisions. Legal protection for employees seeking to uphold the law are a matter of simple justice. But they are also a matter of simple economics. With approximately 27 million trucks and truck tractors registered in this country and a million or so professional truck drivers at the wheels, even a joint effort by federal and state agencies will never result in inspections or more than a small portion of them. A properly drafted employee protection clause serves as a message from the government—acting on behalf of the public and endangered employees—that the safety laws must be enforced even when a government inspector is not on hand. In the end, employee inspection and employer enforcement will mean a much lower cost and a far better way to maintain adequate safety levels than the development of an ever larger governmental policing force to meet the growing public and workforce demand for safety on the highways and on the job.

Our second major concern is with employee safety and health in the trucking industry. S. 1390 contains explicit provisions relating to occupational health and safety; the DOT's bill does not. We believe that provisions such as those contained in S. 1390 are badly needed.

The problem is not one of principle, but of practice.—In 1971, Congress passed the Occupational Safety and Health Act granting every American man and woman the right to a safe and healthy workplace, one free of recognized hazards. Congress has never retracted this stated principle, although exceptions have been allowed and the Department of Labor (DOL) has been frequently criticized for failing to transform the principle into reality. The fatality record in the over-the-road trucking industry makes clear that the OSH Act has had quite literally no impact on safety practices in the trucking industry. On the contrary, truck occupant deaths have increased by 41 percent since 1975. (Source: NHTSA, Fatal Accident Reporting System). We are not aware of any other industry in the country which lost 1,010 workers due to on-the-job fatal accidents last year. In order to turn this record around and help stop the needless slaughter in trucking, Congress must give clear directions to the Department of Labor and the DOT. This is what S. 1390 attempts to do.

There are two reasons why over-the-road trucking has remained virtually unaffected by the 1971 law. One is a legal ambiguity which arises when the OSH Act and the Motor Carrier Act of 1935 (or Part II of the ICC Act) are placed side by side.

The second reason for the federal paralysis is the lack of will on the part of the two government agencies involved, OSHA and the DOT. Instead, the two agencies have bickered fruitlessly with one another over which is permitted to do what. They have used their inability to arrive at an agreed answer as an excuse to do nothing. The argument has now continued for eight years; it will certainly continue indefinitely if Congress does not put an end to this grotesque waste of government resources.

The legal conflict, as we understand it, stems from preceived ambiguities in the relationship between the OSH Act and the Motor Carrier Act. In 1935 Congress authorized the ICC, and later the DOT, to regulate the interstate trucking industry "with respect to * * * qualifications and maximum hours of service of employees, and safety of operations and equipment * * *." (49 U.S.C. 304). Our understanding

of the law is that in 1935 the Congress was talking about protecting public safety, not granting employee health rights.

In 1970, Congress passed the OSH Act which authorized the DOL to set workplace health and safety standards to protect employees. The Act said, however, that where other agencies were already doing the job, the DOL was to defer to the pre-existing safeguards.

The basic statutes are simple enough, but they have been shuffled, juggled and knotted by agency disputes until any possibility of a common sense understanding of them has been obliterated.

Here are some of the questions in the charade between the DOT and DOL. (1) Did the Congress mandate comprehensive trucking industry employee health and safety protections in 1935? (2) Does the law direct the Federal Highway Administration to regulate trucking industry employees' exposure to toxic chemicals? (3) Should OSHA set safety standards in intra-state trucking? (4) When an OSHA standard is issued regarding a particular chemical compound, such as kerosene or a lead-based spray, does it or does it not apply to trucking concern with both inter-state and intra-state business?

The point is not that these questions cannot or should not be answered, but that the two agencies charged with the responsibility for enforcing the relevant laws have failed to do so in a constructive manner. Congressional directives to OSHA and the DOT are badly needed.

What should such directives include? Here is our suggestion:

The Department of Transportation should have the primary responsibility for promulgating safety and health standards for truck drivers behind the wheel. The Department of Labor should have clear responsibility for occupational safety and health standards for all other locations and employees in the trucking industry—including dockworkers, mechanics, warehousemen, office workers and any other employee in the terminal or corporate headquarters.

Obviously mechanics, dockworkers (who load the trucks) and others, as agents of a company, must comply with DOT safety regulations. But as a class, only drivers and the public should be the beneficiaries of DOT protections. All industry employees, including drivers, mechanics and dockworkers are, and should continue to be, subject to regulation and requirements which affect driver and public safety and health.

Let me explain what we believe would happen if this clarification were made.

First, OSHA would continue to set standards covering industrial substances and practices—such as cleaning and degreasing agents, and spray painting and welding. There is no reason why these should not be applied to the trucking industry, whether in intra- or inter-state commerce. We would not expect DOT to devote highway safety funds to an overlapping analysis of the chemical or procedure in question. The cost of such duplication would be staggering. When developing the standard, we would expect the DOL to have consulted the trucking industry as well as any other interested industries. This would be true for all standards, and for whatever classifications of employees are involved, including truck drivers.

Second, in the case of truck drivers' safety and health, the DOT, including both the NHTSA and the BMCS, do have a special responsibility and existing expertise. The truck drivers' primary workplace is the truck itself and the nation's highways. The BMCS already regulates in the area of driver physical qualifications, hours of service, and other areas with the primary goal of protecting public safety. It should also be required to consider driver health and safety issues connected with equipment operation. NHTSA also sets performance standards for motor vehicles which are critically important to private and commercial drivers alike. For these reasons we recommend that the Secretary of Transportation be given explicit authority to set job safety and health standards for truck drivers when driving a truck. However, when he steps out of the cab into the terminal, he would be protected instead by the industrial workplace standards required under the OHS Act then performing non-driving responsibilities. This division of jurisdiction between the DOT and Department of Labor is both sound and easy to comprehend.

Before I conclude this section, I would like to emphasize just how confused the issue has become, and explain what the do-nothing posture of the administration bill represents in real world terms.

The Congress did foresee that inter-agency conflicts would develop, as agencies sought to expand or defend their territory and as powerful interest groups sought to extend their own influence, both without necessarily responding to Congressional intent. Congress therefore asked the Secretary of Labor to prepare a report for Congress on such inter-agency conflicts and the need for their resolution in legislation. The request was contained in Sec. 4(b)(3) of the OSH Act. The report has been drafted; it has never been submitted to Congress. In 1974, when it was due, a six

month extension was granted by Congress; that, so far as I know, was the last official step taken. I have also been told that OMB returned the draft report to the Secretary of Labor for further work. OMB's complaint was that the report's conclusion that no legislative action was needed was not convincing, in light of the failure of DOT and DOL to reach a signed agreement. No agreement has yet been reached and a Congressional solution is needed.

Does the Administration have a position in S. 1400? An official deeply involved in the drafting of S. 1400 in the Office of the Secretary of Transportation recently told a PROD representative "I think that the Administration position is that the BMCS and OSHA should continue to exchange memos."

Nevertheless, in testimony before the Committee, and in a rulemaking notice issued on March 2, 1978, the DOT has claimed that the 1935 Motor Carrier Act gave the ICC and later the DOT exclusive authority to establish comprehensive health and safety standards to protect all employees in the trucking industry. I hope that the Committee will scrutinize this DOT grab for jurisdiction very carefully in light of the background and suggestions we have provided here today.

One final question remains. Does S. 1390 in its present form actually guarantee an end to the inter-agency disputes? I think it comes close, but further consideration needs to be given on a few points. We would be happy to discuss these with the Committee at your convenience.

In the next part of our testimony, we would like to comment briefly on some of the other provisions in the two bills.

Civil penalties.—We strongly support the use of a system of civil penalties against violators of federal safety and health regulations. This provision has been proposed repeatedly in legislation put before the Congress since 1972. It has the support of the Administrative Conference and has been proposed by two Administrations, by President Ford and now by President Carter. Penalty levels should be high enough to constitute an effective deterrent. We support the penalty levels in S. 1400.

Limited employee liability.—S. 1390 contains an important provision limiting fines that may be imposed on employees who violate federal safety rules. As you know, OSHA imposes no fines on employees. Our own experience has been that where drivers violate safety standards designed to protect them, it is usually because the employer in some manner is coercing or inducing them to do so. Unless it can be shown in any given instance that this is not the case, we do not believe an employee should be penalized. We therefore support the limited liability provision contained in Sec. 9(b) of S. 1390. This limitation should not, of course, apply if the driver is self-employed.

Judicial review.—We also prefer the judicial procedures of S. 1390 for adjudication involving violations of the safety rules. S. 1390 permits a narrow and specific review by the Court of Appeals; S. 1400 proposes a very broad review of administrative adjudication. We support S. 1390 because it will be far less time-consuming and will not overburden the courts. Last year's version of the Truck Safety Act, S. 2970 provided for initial adjudication by the National Transportation Safety Board (NTSB). Because this was opposed by the DOT and other parties, a compromise was sought which would be equally efficient and fair. S. 1390 would permit the DOT to adjudicate violations which would then be subject to limited Court of Appeals review. The more extensive review proposed by the DOT would take an enormous amount of time of government lawyers for each and every case. This is totally inappropriate since the violations in question involve readily determinable mechanical deficiencies. Limited civil penalties for vehicle safety violations simply will not serve as a deterrent unless they are used regularly, predictably and in a timely manner by enforcement authorities.

Separate litigating authority.—Sec. 10 of S. 1390 would transfer litigating authority in civil suits from the Department of Justice to the Department of Transportation, provided that "all such litigation shall be subject to consultation with and the concurrence of the Attorney General." S. 1400 makes no such provision. We favor Sec. 10 because we think it would result in speedier and more frequent prosecution of cases where appropriate. The Department of Justice currently assigns a very low priority to such safety cases—which it regards as glorified traffic violations. Few cases are brought and they move very slowly. Moreover, technical expertise is sometimes needed and that expertise is with the DOT. We hope the Committee will give this suggestion careful and sympathetic consideration. We realize that Justice has an interest in retaining litigating authority, but they have not lived up to their responsibility to exercise that authority when needed.

Uniform truck safety and health standards.—Sec. 16 of S. 1390 and Sec. 224 of S. 1400 describe federal-state relations with respect to the adoption of federal safety standards. S. 1390's provisions also applies to health standards. We support elements of both provisions. Basically, we think that there should be uniform national

minimum truck safety standards, with exceptions where compelling local conditions require more stringent standards or for pre-existing state laws not covered by federal standards. Exceptions should be determined by the Secretary of Transportation. This is appropriate in an industry dominated by interstate traffic which operates on highways populated by interstate travellers. Fortunately, many states have already voluntarily adopted the federal safety rules in whole or in part. There should be no insurmountable practical problem in formalizing and modifying this pre-existing arrangement.

State enforcement programs.—Both bills provide for grants to the States to develop or implement enforcement plans. We support elements of both provisions. Our key concern here is that in supplementing federal enforcement efforts, States provide for civil penalty procedures, rights and remedies equivalent to those provided by the Federal government. Substantially lower state penalties, coupled with less complete complaint and investigation procedures, would reinstate the problems we are seeking to remedy today. Sec. 12(a)(1)(v) of S. 1390 addresses this problem more effectively than S. 1400, which allows the Secretary of Transportation excessively broad authority. We would like to point out that the AFL-CIO and others familiar with the enforcement of the Occupational Safety and Health Act believe that the State programs under that law have been one of the factors seriously undermining its effectiveness, and would oppose any similar system under this bill. We think that State resources are required, but that a uniform federal minimum standard is needed to ensure that State enforcement programs will be effective and equitable.

State funding.—S. 1390 provides that federal grants to States for enforcement programs be made from the Highway Trust Fund and that the federal share provide up to 80 percent of the total cost. S. 1400 limits the federal share to 66½ percent, and authorizes \$50 million for fiscal years 1981, 1982 and 1983, to be appropriated from general revenues rather than the Highway Trust Fund. We think it is appropriate that the funding for truck safety programs come from the Highway Trust Fund. The trucking industry is a prime beneficiary of the fund; effective safety programs should be a condition of government benefits. As I'm sure the Committee is aware, the Highway Trust Fund in 1978 provided \$1.5 billion for six different highway safety programs, including several affecting commercial motor carrier safety—55 m.p.h. enforcement funds for States, school bus driver training, and accident data acquisition, among others.

Commercial driver register.—S. 1390 provides for a report to the Congress on the advisability of establishing a commercial driver register, and further states that if the Secretary of Transportation should favor the idea, he should publish a notice initiating a pilot project. We think that it is inappropriate for the Congress to approve a pilot project before the necessary research is conducted and report made. It is our understanding that NHTSA is exploring this idea through a contract with the North Carolina Highway Safety Research Institute. Further action should await the completion of that report.

Fit, willing, and able determinations.—S. 1400 gives DOT the authority (Sec. 210) to deny, revoke or suspend a carrier's operating license on the grounds that it is not "fit, willing or able" to haul freight. Currently, this authority is vested in the ICC. We would like to support a provision of this sort. Where a carrier repeatedly violates federal safety rules, or does so on a massive scale, it may well be necessary to shut it down temporarily or permanently. However, we think that there are a number of questions which need to be answered before the DOT proposal is adopted. First, although the ICC has this authority currently, it cannot act unless the DOT intervenes in an enforcement proceeding with recommendations regarding the carrier's safety record. DOT signed an agreement with the ICC in 1968 agreeing to intervene where necessary. A 1976 report by the House Interstate and Foreign Commerce Subcommittee on Oversight and Investigations states that,

"Observance of these provisions has not been scrupulous. Although DOT must intervene in reviews of applications for permanent authority for carriers with a poor safety record, it has done so only 12 times in the past 9 years. Of the 12 interventions, 8 occurred before May 1974. From that time until January 1976, DOT intervened 4 more times. In view of the number of applications filed, these interventions are insignificant. The Commission receives about 6,000 applications for permanent authority every year and approves 85 percent. For temporary authority, applications come to about 4,000 a year, with 75 percent approved. DOT is only obligated to notify the ICC that an applicant for temporary authority has a poor safety record, and has done so on numerous occasions, although in the past year its rate of intervention in temporary applications has declined."

In spite of this poor record, the DOT is asking for additional authority. What evidence is there that they will use it? How much will such a monitoring system cost? Will DOT consider the impact of its decision on jobs and other economic

factors? Under what circumstances will it shut down a carrier? How often does it expect to do so? What about the carriers that are not ICC regulated—will they be subject to a government shutdown? These are some questions to which the Administration must provide answers before a decision can be made about Sec. 10934 of S. 1400.

Rulemaking timetable.—Sec. 7(c) of S. 1390 provides a timetable for DOT rulemaking with regard to safety and health standards. We strongly support such a provision. The BMCS taken an extraordinary long time to promulgate even the most uncomplicated rule. PROD has been involved in numerous rulemaking proceedings since it was founded in 1971; not a single such rulemaking has taken less than six years. One proceeding, regarding hours of service, has been in process since 1971 and there are no signs that it will be concluded. The cost of these inefficient, endless proceedings is borne by commercial drivers and the public.

In spite of the length of time BMCS devotes to its rulemaking proceedings, they remain weighted in favor of the trucking industry. For instance, in hearings held last fall around the country on the hours of service rule changes, over 500 witnesses testified; fewer than 50 were truck drivers or their representative. Not a single witness represented the concerns of the average motorist. Clearly the Committee should give some thought to the problem of making DOT rulemaking proceedings more accessible to the nation's truck drivers and others who are directly affected by the rules. What truck driver, for instance, subscribes to the Federal Register? The DOT should be authorized to produce lay language announcements of rulemaking proceedings which companies would then be required to post in trucking terminals for drivers to read. Drivers would then, at least, have an opportunity to make their views known. Funding by the DOT should also be considered where necessary for drivers and others in order to provide a balanced record in rulemaking proceedings.

Together with our testimony presented on September 8, 1978, I think PROD is now on record on most points of concern to us. We would be happy to provide answers as best we can to whatever further questions the Committee may have. PROD has devoted a tremendous effort to proposing solutions to the terrible safety and health problems that exist on the nation's highways and in the trucking industry. As far as we know, the Congress has held no oversight hearings on the motor carrier safety program since truck safety authority was transferred from the ICC to the DOT in 1967.

We are grateful that the Commerce Committee has decided to end the long Congressional silence, to scrutinize the BMCS's record, and that of the trucking industry, and actively to consider long-pending and desperately needed trucking safety and health legislation. We trust that it will be enacted in all due haste.

Thank you very much for your interest.

Senator RIEGLE. Now I would like to invite our next witness to the table, and that is Eric Rasmussen, who is the chairman of the Committee on Motor and Air Carriers of the National Association of Regulatory Utility Commissioners; and he is accompanied by Margo James and Charles Gray.

So, would you all please come forward at this time.

Let me say to you, as you are being seated, that we welcome you to the committee. We are running late this morning, and I am going to ask you to, as much as you can to summarize your testimony. We will make your full statement a part of the record. But I would like to, as quickly as we can, get right to the essence of the points that you want to stress.

STATEMENT OF ERIC RASMUSSEN, CHAIRMAN, COMMITTEE ON MOTOR AND AIR CARRIERS, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; ACCOMPANIED BY MARGO JAMES, DIRECTOR, CONGRESSIONAL RELATIONS; AND CHARLES GRAY, DEPUTY ASSISTANT GENERAL COUNSEL

Mr. RASMUSSEN. Thank you very much.

I would like to note that aside from being an NARUC committee chairman, I am also a commissioner with the Nebraska Public Service Commission, having served since 1969 in this capacity.

NARUC and its membership have consistently supported initiatives designed to improve the safety record of the Nation's motor carriers. In fact, NARUC drafted the proposed Motor Carrier Safety Act of 1969, in response to the rising number of fatalities and severe loss of property resulting from motor carrier accidents throughout the country. The need for such legislation is increasingly apparent as you are no doubt aware from the previous testimony that you have received.

The NARUC believes that a workable safety program for interstate motor carriers requires that the Secretary of Transportation promulgate substantive safety regulations to be adopted and enforced by the States, while leaving such areas as qualification of inspectors, level of inspection efforts, and expenditures of State and Federal money to the discretion of the State agencies designated to administer the program. In light of this position, the NARUC gives its qualified support to title II of S. 1400, while opposing the provisions of S. 1390.

The NARUC supports title II of S. 1400, the Carter administration's bill, to the extent that it establishes the necessary framework for a State-Federal partnership in the enforcement of Federal safety standards promulgated by the Department of Transportation. We believe that title II of S. 1400, including the amendments that we propose in our appendices, provide the framework for such a program. In addition to these amendments, however, the NARUC suggests that a new section be included in title II, establishing a national motor carrier safety advisory committee within the Department of Transportation. This committee would be comprised of 20 members appointed by the Secretary, five of whom being State commissioners, and would advise the Secretary concerning the training, research, safety standards, and development programs which contribute to motor carrier safety programs.

To facilitate this amendment, it is necessary that sections 221(a) of this bill concerning the Secretary's authority to promulgate regulations be amended to reflect the advisory role of this committee. Proposed statutory language concerning the establishment of the committee and section 221 amendments are contained in appendix B.

We have had experience with this type of committee, under the Gas Pipeline Safety Act. The program has worked very well and we had the cooperation of all of the States in the safety inspections. However, with the lack of a committee and the safety inspections for railroads with the FRA we have not had cooperation from the States at the level I think is necessary. We in Nebraska right now are in the program for rail and car inspections. Earlier this month we were certified for that.

I believe that there could have been much better participation on the State level in the rail program if this committee had been established immediately, so that communications would have been more direct between the State and the Department of Transportation.

There are many States right now that are not becoming involved in the rail safety inspections, primarily because of the lack of communication and the lack of understanding in the Department of Transportation.

I would like to add that the NARUC committee has selected specific States to conduct surveys on the shipper, trucker, and regulated trucker responses and attitudes toward deregulation in the first title of S. 1400. At a later date we will have this information available to you for further analysis.

I think that, in the final analysis, that shippers are a very vital factor that should be considered in deregulation of the trucking industry.

In summary, it is the position of the NARUC that title II of S. 1400 can provide a strong framework for a motor carrier safety program which maximizes the use of Federal and State agencies and personnel. By utilizing State officials already engaged in the enforcement of vehicle registration and identification programs and the enforcement of existing State safety standards, Federal standards implemented under this legislation will be monitored and enforced in an efficient, low-cost manner.

We urge the subcommittee to consider our proposed amendments to these bills, and we hope that the spirit of cooperation which has been a primary reason for the success of the pipeline safety program becomes an important aspect of motor carrier safety regulation, as well.

Senator RIEGLE. We appreciate your testimony and your recommendations, and we will consider them.

Now let me ask you this: You give qualified support to S. 1400, but you oppose outright S. 1390. And yet, as far as I am able to tell from your statement, it seems to me that your criticisms of Senator Percy's bill are precisely the ones that you have concerning S. 1400. So I am wondering if you can explain more clearly why it is that you are opposed to S. 1390; I mean, what is the problem there?

Mr. RASMUSSEN. We felt that S. 1400 is more flexible and needed fewer amendments. Also, we felt it was the vehicle that was going to move.

Senator RIEGLE. So, it's not so much a matter of substance, then?

Mr. RASMUSSEN. No, we feel Federal-State cooperation in the interstate motor carrier safety program is much needed.

Senator RIEGLE. One of the concerns that we've heard from many different parties is whether the States can evenhandedly enforce the rules and regulations of the Department of Transportation when they participate in the State enforcement programs. The Teamsters yesterday, as you may know, warned of so-called racket sheriffs who may use this law as a revenue-raising measure, and I am just wondering how effective and fair do you think the States would be in enforcing the regulations?

Mr. RASMUSSEN. Well, presently, I think, you have to get some experience in this field, as we are now obtaining in the rail safety area. We are finding that this experience has been very helpful. Nebraska had no inspections on rail safety prior to the FRA cooperative program. We have had very good cooperation from the rail industry and from the unions since we started. There are rail safety measures right now with the FRA as the one hearing formal complaints. I don't think that in that area we have any danger whatsoever.

Senator RIEGLE. The administration bill authorizes only \$50 million for the States, and then sets a maximum Federal share of two-thirds of total cost.

Now, in contrast, Senator Percy suggested yesterday that closer to \$100 million would be more suitable and that an 80-percent Federal share would provide a better incentive for State participation.

I am just wondering, as a supporter of S. 1400 do you think that its funding levels and the Federal share provisions are going to provide an adequate incentive for the States?

Mr. RASMUSSEN. Well, Senator, I don't think you are going to have an immediate response from the States. It is going to be a wait and see process that you are going to have to go through. The States are going to have to wait and see what the Congress decides to fund this at and what restraints are going to be upon them.

To strike a note of caution, some States may have a better inspection program right now than the DOT would put into it, and I would not like to lessen that.

I have no accounting figures on funding whatsoever, and would not like to establish a figure now. I think you would have much better expertise here that would address that.

But for a startup program, I am sure——

Senator RIEGLE. That the two-thirds would be adequate?

Mr. RASMUSSEN. Whatever the dollar figure they have. I don't have any expertise in that at all.

We presently have a 50-percent working agreement with the Agriculture Department inspections of warehouses, with the FRA, and with DOT for gas pipeline safety.

Senator RIEGLE. I guess I think probably what Senator Percy is concerned about—and that is a concern that all of us would have—and that is with the squeeze being on with proposition 13 fever loose, and if we are going into a recession situation where tax revenues are going to fall at the State and local level as well as the Federal level, is there going to be the money available to pick up new responsibilities. And I know what I am hearing from Governors and local officials, that they're saying, "Look, there may be a lot of good things you have in mind doing in terms of new Federal requirements, but if you're not going to provide the money to carry these things out, you can't assume that the States will be in a position to pick up the ball."

And I am just wondering if what I am hearing is consistent with your sense, or if maybe that is an exaggerated concern when it comes to this issue.

Mr. RASMUSSEN. I can say for Nebraska only, Senator, that we have a staff presently that would not have to be enlarged greatly unless the standards that DOT would set up would be too demanding. And I think the cost of this is going to depend considerably on the demands of DOT to implement this.

Now, this would be difficult to assess at this point. We almost have staff that would be adequate with just a few additions, to open up some type of motor carrier safety program.

Senator RIEGLE. Well, I thank you for your testimony today and for coming some distance to be with us.

Mr. RASMUSSEN. Feel free to submit any questions to our organization. We will answer them on a State level or on the national level as you desire.

Senator RIEGLE. Fine. Thank you very much.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS

Mr. Chairman and Members of the Committee, my name is Eric Rasmussen, and I am Chairman of the Committee on Motor and Air Carriers of the National Association of Regulatory Utility Commissioners, commonly known as the "NARUC". I am also a Commissioner of the Nebraska Public Service Commission and have served in such office since January 1969. Accompanying me today are Margo James, NARUC Director of Congressional Relations, and Charles Gray, NARUC Deputy Assistant General Counsel.

The NARUC is a quasi-governmental nonprofit organization. Our members include regulatory bodies of the fifty States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands engaged in the regulation of carriers and utilities. The mission of the NARUC is to improve the quality and effectiveness of public regulation for the benefit of the American public.

The members of the NARUC appreciate this opportunity to make their views known on S. 1390, a bill to enact the "Truck Safety Act of 1979", and Title II of S. 1400, a bill to enact the Trucking Competition and Safety Act of 1979".

The NARUC and its membership have consistently supported legislative initiatives designed to improve the safety record of the Nation's motor carriers. In fact, the NARUC drafted a proposed Motor Carrier Safety Act in 1969* in response to the rising number of fatalities and severe loss of property resulting from motor carrier accidents throughout the country. The need for such legislation is increasingly apparent. Data compiled by the National Transportation Safety Board indicates that fatalities resulting from motor carrier operations have continued their deadly increase. In 1978, the number of deaths involving heavy trucks increased by 5% over the preceding year.

The NARUC believes that a workable State/Federal safety program for interstate motor carriers requires that the Secretary of Transportation promulgate substantive safety regulations to be adopted and enforced by the States, while leaving such areas as qualification of inspectors, levels of inspection efforts, and expenditure of State and Federal monies to the discretion of the State agencies designated to administer the program. In light of this position, the NARUC gives its qualified support to Title II of S. 1400, while opposing the provisions of S. 1390.

The NARUC supports Title II of S. 1400, the Carter Administration's bill, to the extent it establishes the necessary framework for a State/Federal partnership in the enforcement of Federal safety standards promulgated by the Department of Transportation. We welcome the provisions of Section 222(b) and Part IV of this bill which grant authority to the Secretary to delegate to the States enforcement to Federal safety standards, and which provide financial assistance for State implementation and enforcement efforts.

More particularly, we believe that Section 242(a) of S. 1400 which provides for State enforcement of State adopted standards in State courts or administrative bodies is an important and necessary component of an effective enforcement procedure for these standards.

Our main objections to Title II of S. 1400 concern the definition of "commerce" contained in Section 220(2) of the bill, and continued State regulation of intrastate motor carrier safety under Section 224 of the bill. As drafted, S. 1400 would grant the Secretary authority to prescribe safety standards to be applied to motor carriers operating in intrastate commerce, through the very broad language with which "commerce" is defined. Where Section 220(2) extends the scope of Title II to cover not only interstate transportation but also that which "affects trade, traffic, or transportation between a State and a place outside of such State", it is evident that the State commissions will lose much of their traditionally exclusive jurisdiction over intrastate safety activities. There is no evidence, however, that State regulation of intrastate motor carrier safety has produced a discreditable record. In this regard, we recommend that the language of Section 220(2) be amended as set out in Appendix B of this statement.

* Attached as Appendix A.

In the same vein, we believe that the language of Section 224 of S. 1400 unnecessarily restricts existing State safety jurisdiction. Rather than limiting additional or more stringent State safety regulations to situations involving "local safety hazards", Section 224 should be amended to provide that State regulation may continue in force if such regulations are reasonable, do not constitute an undue burden on interstate commerce, and are required to better protect the public safety. This proposed amendment is also set out in Appendix B.

It has been the experience of the member commissions of the NARUC, based on their participation in the Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 1671 et seq.], that effective enforcement programs can be fashioned which establish true Federal/State partnerships designed to enhance public safety. We believe that the pipeline safety program has been extremely successful in reducing pipeline-related fatalities, and the information collected by the NTBS bears out this belief. Although fatalities resulting from accidents involving heavy trucks increased by 5% between 1977 and 1978, pipeline fatalities during this period actually fell by 25%. It is clear that a safety program based on State and Federal enforcement of Federally determined Standards can be successful, particularly if administered by DOT in a flexible, responsive manner.

We believe that Title II of S. 1400, including the amendments we have suggested, provides the framework for such a program. In addition to these amendments, however, the NARUC suggests that a new section be included in Title II establishing a National Motor Carrier Safety Advisory Committee within the Department of Transportation. This committee would be comprised of 20 members appointed by the Secretary, five of whom being State commissioners, and would consider and advise the Secretary concerning the establishment of motor carrier safety standards, and training, research, and development programs which contribute to motor carrier safety programs. To facilitate this amendment, it is necessary that Section 221(a) of this bill, concerning the Secretary's authority to promulgate regulations, be amended to reflect the advisory role of this committee. Proposed statutory language concerning the establishment of the committee and Section 221 amendments are contained in Appendix B.

We believe that the creation of this committee would provide substantial benefits to the implementation of the motor carrier safety program. An analogous body, the Technical Pipeline Safety Standards Committee created under the Pipeline Safety Act, has performed valuable functions which have in large part contributed to the success of the pipeline safety program. This committee that we are proposing to be established in the motor carrier field would provide a forum wherein experts in motor carrier safety regulation would be able to resolve program disruptions, and potential conflicts, and add their practical knowledge acquired in the field to the more theoretical discussions prevalent in much of our current regulatory proceedings. The regulatory process requires input from those in the trenches, those with the responsibility to implement and enforce Federal regulations, and those with the experience to head off potential problems, clarify confusing instructions, and eliminate bureaucratic tie-ups. We hope that the members of this Committee can agree with our reasoning, and establish this advisory committee as an integral part of this legislation.

Many of our concerns regarding the language of Title II of S. 1400 apply equally to S. 1390. As set out in Appendix C, we believe that similar amendments should be made to the provisions of this bill: (1) the definition of "commerce" in section 4(2) should be changed to restrict the Secretary's jurisdiction to interstate commerce; (2) language establishing the National Motor Carrier Safety Advisory Committee should be inserted in S. 1390, and Section 7(a) should be amended to reflect the requirement that the Secretary consult with this committee prior to establishing safety standards; and (3) section 16(a) should be amended to broaden and preserve existing State authority over the operations of intrastate motor carriers.

In addition, we believe that language should be added to section 12(b) of the bill to grant a State regulatory commission notice and hearing prior to the withdrawal of approval of a State plan by the Secretary. As currently drafted, this section would permit the Secretary to rescind State implementation and enforcement authority without giving the State the opportunity to contest his decision. We believe that the stability of this program will be enhanced if State agencies are given the chance to present evidence of their enforcement efforts in order to prevent the termination of their participation in the program.

Finally, concerning the reporting requirements of section 12(a)(vi) of S. 1390, we prefer the language of S. 1400, section 243(a)(a)(D), which requires that all reports made by employers, employees, owners, and lessees be submitted to the participating State agency. Our suggested amendment to Section 12(a)(vi), set out in Appendix C, reflects this preference. We believe that the effectiveness of State participation in

programs established under S. 1390 will be enhanced by keeping the State agency fully apprised of motor carrier operations.

In summary, it is the position of the NARUC that Title II of S. 1400 can provide a strong framework for a motor carrier safety program which maximizes the use of Federal and State agencies and personnel. By utilizing State officials already engaged in the enforcement of vehicle registration and identification programs, and the enforcement of existing State safety standards, Federal standards implemented under this legislation will be monitored and enforced in an efficient, low-cost manner. We urge the subcommittee to consider our proposed amendments to these bills, and we hope that the spirit of cooperation which has been a primary reason for the success of the pipeline safety program becomes an important aspect of motor carrier safety regulation as well.

This concludes our prepared statement. I will be happy to answer any questions the members of the Committee may have. Thank you for your time and consideration.

Appendix A

NARUC-PROPOSED MOTOR CARRIER SAFETY ACT

Justification

The Highway Safety Act of 1966 (23 U.S.C., Secs. 401 *et seq.*; 80 Stat. 731) provides for grants-in-aid to assist a State in conducting a highway safety program which meets Federal minimum standards. The Governor of the State is responsible for administering the program, including the determination as to which State agencies are to participate therein and receive Federal funds.

The Act is drawn in broad terms and applies to all vehicles that travel the highways.

However, the history of motor carrier safety regulation generally recognizes that motor carrier safety warrants special regulatory attention at both the Federal and State levels to be distinct from general highway safety regulations such as traffic and speed laws and periodic inspection appropriate for automobiles and small commercial vehicles.

The enactment of the proposed Motor Carrier Safety Act would provide Federal grants-in-aid directly to the State commissions in administering their motor carrier safety programs and in enforcing Federal and State safety laws concerning highway transportation. The grants-in-aid would be paid by the Department of Transportation to the State commissions whose safety and enforcement programs meet minimum Federal standards.

Furthermore, the adoption of the proposed Act would provide financial assistance to further implement Public Law 89-170 (79 Stat. 648) which, as amended by the law creating the Department of Transportation, authorized the Department to make cooperative agreements with the various States to enforce the safety laws and regulations of the Federal and State governments concerning highway transportation. Pursuant to Public Law 89-170, the agencies of 48 States have executed cooperative agreements with DOT to enforce such safety laws.

The text of the proposed Act reads as follows:

Text

A Bill

To amend the Interstate Commerce Act to provide assistance to the States in establishing, developing, and administering State motor carrier safety programs to insure the safe operation of commercial motor vehicles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. This Act may be cited as the 'Motor Carrier Safety Act.'

Sec. 2. Part II of the Interstate Commerce Act, as amended, is amended by inserting after section 205 thereof a new section 205a as follows:

Motor Carrier Safety

Sec. 205a(l). *Policy, purpose and assistance to the States.*

(A) The Congress declares that public policy requires measures to reduce the causes of death, injury and damage resulting from the

*83rd NARUC Annual Convention Proceedings, pp. 798-806 (1971). Introduced in 91st Congress as S. 1920 by Magnuson (D-Wash.), H.R. 12149 by Rooney (D-Pa.), and H.R. 12266 by Friedel (D-Md.). Introduced in 92nd Congress as S. 1912 by Magnuson and H.R. 3322 by Rooney.

operation of commercial motor vehicles in interstate or foreign commerce on the Nation's highways, and finds that a program of joint Federal-State cooperation in the enforcement of safety regulations pertaining to such vehicles is needed to achieve this end.

(B) In furtherance of this policy the Secretary is authorized to cooperate with appropriate State commissions in establishing, developing and administering a State motor carrier safety program designed to insure the safe operation of commercial motor vehicles on the highways by regulating the safety of operation and equipment, and the qualifications and maximum hours of service of employees, and in providing for the effective enforcement of such programs.

Sec. 205a(2). Definitions.

As used in this section—

(A) The term 'Secretary' means the Secretary of Transportation.

(B) The term 'motor carrier' means any person operating in commercial service in interstate or foreign commerce on the public highways a motor vehicle with six or more wheels and (i) a gross weight in excess of 10,000 pounds or (ii) designed to transport more than one ton of cargo or more than six passengers including the driver.

(C) The term 'motor carrier safety program' means a range of activities specifically designed to insure the safe operation of motor carriers on the public highways, including qualification and maximum hours of service of employees, and safety of operation and equipment.

(D) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(E) The term 'State commission' means the State department, commission, agency, officer, or official authorized by State law to adopt or enforce regulations governing the safety of operation of motor carriers.

(F) The term 'national organization of the State commissions' means the national organization of the State commissions referred to in sections 202(b) and 205(f) of the Act.

Sec. 205a(3). Federal Assistance for Motor Carrier Safety Programs.

The Secretary is authorized to make grants for the purpose of establishing, increasing and maintaining motor carrier safety programs administered by State commissions to reduce the causes of death, injury and property damage on the highways, and to develop Federal-State cooperation in the conduct of these programs.

Sec. 205a(4). Minimum Program.

The Secretary shall establish by order a minimum motor carrier safety program to be used in determining the eligibility of a State to receive grants under this section. The safety aspect of such motor carrier programs may be based, to the extent the Secretary finds appropriate, on existing motor carrier safety regulations and hazardous material regulations.

Sec. 205a(5) Minimum Motor Carrier Regulations and Enforcement.

(A) The Secretary shall formulate, minimum motor carrier safety regulations, minimum hazardous material regulations and minimum standards for the enforcement of such regulations, after consultation and cooperation with the State commissions, the national organization of the State commissions, and the National Motor Carrier Safety Advisory Committee provided for in subsection 205a(8)(A), which he shall promulgate within two years after this Act takes effect. Five years after this Act takes effect, the State commissions which have adopted regulations at least equal to those minimum motor carrier safety regulations and minimum hazardous material regulations and have established enforcement procedures at least equal to those minimum enforcement standards, may receive grants under this section unless the Secretary finds for good cause shown, and publishes his reasons for

such finding, that a later effective date is in the public interest. The Secretary may, for good cause and after consultation and cooperation with the above parties, by order amend or revoke any such minimum motor carrier safety regulation, hazardous material regulation or enforcement standard established by him under this section.

(B) A State commission may adopt such additional or more stringent safety regulations applicable to motor carriers as are not incompatible with the minimum motor carrier safety regulations and minimum hazardous material regulations promulgated and adopted by the Secretary pursuant to subsection 205a(5)(A), if such regulations adopted by the State commission are reasonable, do not constitute an undue burden on interstate commerce, and are required to better protect the public safety.

Sec. 205a(6). Grant Authorization.

(A) The Secretary is authorized to make grants to State commissions for a period of two years after this Act takes effect in an amount up to 100 per centum of the cost of planning, developing, and establishing minimum motor carrier safety programs in States requiring such assistance, and thereafter, grants in an amount not to exceed 50 per centum of the cost of maintaining and further developing effective and continuing motor carrier safety programs. The Secretary shall make the grants authorized by this subsection only upon application by the State commission. Whenever a State shall have two or more State commissions, as determined by the chief legal officer of the State, the State shall organize a 'Governor's Council' composed of the Governor, or his representative, and one representative of each State commission, each of whom shall have one vote, and decisions of the Council shall be by majority vote. Each grant application shall describe the long range program proposed by the applicant State to carry out the basic purposes set forth in this section and shall be in such form and contain such additional information as the Secretary may require. The Secretary may approve an application for a grant only to State commissions which:

- (1) have a State commission or commissions, and in the event of two or more State commissions, the motor carrier safety program for such State shall be coordinated by and through the Governor's Council;
- (2) have on file with the Secretary an approved motor carrier safety program with regulations, including enforcement procedures, conforming to the purposes and requirements of this section;
- (3) submit an annual work plan satisfactory to the Secretary which shall disclose the total estimated cost of the annual program;
- (4) have regulations which, in the Secretary's determination, do not constitute an unreasonable burden on motor carriers;
- (5) provide assurance satisfactory to the Secretary that Federal funds made available under this section will be so used as to supplement and, to the extent practical, increase the amount of funds that the applicant would make available for motor carrier safety in the absence of such Federal funds; and
- (b) provide assurance satisfactory to the Secretary that its expenditure of State funds not derived from Federal sources, for its motor carrier safety program, will be maintained at a level which does not fall below the average level of such expenditures for its last two full fiscal years preceding the date of enactment of this section.

(B) The Secretary shall not disapprove any State's application under this subsection without first providing the State commission concerned reasonable notice and opportunity in a hearing to present its views. Each State commission receiving a grant under this section shall submit an annual report on its program containing such information as the Secretary requires.

(C) Upon application by the national organization of the State commissions submitted on or before September 30th of any calendar year, the Secretary shall pay out of the funds appropriated pursuant to

this Act, or other available funds, the sum of \$20,000, plus such additional sums as he deems justified, to such national organization, to pay, during the ensuing calendar year, the reasonable cost of coordinating the activities of the State commissions, to assist them in the maintenance and improvement of motor carrier safety programs, and to render assistance to such commissions in other regulatory matters.

(D) Funds authorized to be appropriated for each fiscal year to carry out this section shall be used to aid the State commissions to conduct the motor carrier safety programs approved in accordance with such section and shall be apportioned by the Secretary among the several States on or before January 1 next preceding the commencement of each fiscal year. Such funds for each fiscal year shall be apportioned among the several States in the following manner:

One-half in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census; and

One-half in the ratio which motor carriers use the public highways within the State, based on the reportable miles operated by them in the State for motor fuel tax purposes or on other appropriate criteria, bears to the total motor carrier use of the public highways within all the States;

Provided, That no State shall receive less than one-fourth of 1 per centum of each year's apportionment or \$50,000, whichever is the greater.

(E) On or before January 1 next preceding the commencement of each fiscal year, the Secretary shall certify to each State commission the funds which he has apportioned hereunder to each State for such fiscal year. As soon as practicable after the apportionment has been made for each fiscal year, the State commission of any State desiring to obtain financial assistance shall submit to the Secretary for his approval the State's motor carrier safety program for the use of the funds apportioned for such fiscal year. The Secretary shall act on each State program as soon as practicable after it has been submitted. The Secretary may approve any program in whole or in part. His approval of any program shall be deemed a contractual obligation of the Federal Government for the payment of its apportioned contribution thereto. If a State commission elects not to accept the funds apportioned to it, such funds shall be reapportioned in accordance with the above formula, among the other States whose State commissions are eligible to receive Federal funds under this section.

(F) The Secretary may, in his discretion, from time to time as work progresses make payments to a State commission for the annual program costs incurred by it. These payments shall at no time exceed the Federal share of the program costs incurred to the date of the voucher covering such payment. After completion of an annual program and approval of the final voucher by the Secretary, the State commission shall be entitled to payment out of the appropriate funds apportioned to it of the unpaid balance of the Federal share on account of such program. Such payments shall be made to such official or officials or depository as may be designated by the State commission and authorized under the laws of the State to receive public funds of the State.

(G) State personnel, compensated in whole or in part from Federal funds received under this section, shall be authorized, while engaged in the conduct of the motor carrier safety program, to enforce the safety and economic laws of the State concerning highway transportation.

Sec. 205a(7). *Research, Training and Development.*

In order to encourage training, research and development in the motor carrier safety field, the Secretary is authorized to conduct research and development and in addition is authorized—

(A) to make continuing studies and undertake approaches, techniques, systems, equipment, and devices to improve motor carrier safety;

(B) to enter into contracts with public agencies, institutions of higher education, private organizations and individuals to conduct research, demonstration, or special projects pertaining to the purposes described in this section, including the development of new or improved approaches, techniques, systems, equipment and devices to improve motor carrier safety;

(C) to provide instructional assistance to the States for the programs authorized under this section, and special workshops for the presentation and dissemination of information resulting from research, demonstrations, and special projects authorized by this subsection;

(D) to carry out a program of collection and dissemination of information obtained by the Department or other Federal agencies, State and public agencies, institutions of higher education, or private organizations engaged in projects under this subsection, including information relating to new or improved approaches, techniques, systems, equipment, and devices to improve motor carrier safety; and

(E) to make grants to the national organization of the State commissions, or other national organizations representing State governments or State officials, to pay up to 50 per centum of the costs of providing training to officials or employees of State commissions relative to the conduct of their motor carrier safety programs.

Sec. 205a(8). National Motor Carrier Safety Advisory Committee; Cooperation.

(A) There is established in the Department of Transportation a National Motor Carrier Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, who shall be Chairman, the Federal Highway Administrator, and 20 members appointed by the Secretary, five of whom shall be State commissioners nominated by the national organization of the State commissions. The remainder of the appointed members, having due regard for the purposes of this subsection, shall be selected from among representatives of public and private interests, contributing to, affected by, or concerned with the conduct of motor carrier safety programs, including national organizations of motor carrier vehicle manufacturers, owners, and operators, as well as research scientists and other individuals who are expert in this field. Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

The National Motor Carrier Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department relative to the conduct of motor carrier safety programs. The Committee is authorized (1) to review training, research or development projects or programs submitted to or recommended by it relative to the conduct of motor carrier safety programs and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to the strengthening of such motor carrier safety programs in the public interest; and (2) review, prior to issuance, regulations and standards proposed to be issued by order of the Secretary under the provisions of subsections 205a(4) and 205a(5) of this section and to make recommendations thereon. Such

recommendations shall be published in connection with the Secretary's determination or order.

The National Motor Carrier Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(B) The Secretary shall provide such staff and facilities to the National Motor Carrier Safety Advisory Committee from among the personnel and facilities of the Department of Transportation as are necessary to carry out the functions of such Committee.

(C) The Secretary is authorized and directed to assist, cooperate and consult with other Federal departments and agencies, State and local governments, private industry, the national organization of the State commissions, and other interested parties, in order to carry out the provisions of this section.

Sec. 205a(9). *Administration and Reporting.*

(A) The Secretary shall carry out the provisions of this section through the Federal Highway Administration.

(B) Nothing in this section shall prohibit the Secretary from enforcing any other provisions of the Interstate Commerce Act relating to motor carriers in those States which have not adopted the minimum motor carrier safety regulations and the minimum hazardous materials regulations.

(C) The Secretary shall submit to the President for transmission to the Congress on or before January 1 of each year a report on the activities carried on pursuant to the provisions of this section during the preceding full fiscal year and recommendations for future legislation, if any.

Sec. 3. *Authorization of Appropriations.*

(A) For the purpose of carrying out section 205a(6) of the Interstate Commerce Act, there is hereby authorized to be appropriated the sums of \$ _____ for the fiscal year ending June 30, 1972, \$ _____ for the fiscal year ending June 30, 1973, and for the succeeding fiscal years such sums as the Congress may hereafter authorize. The unexpended balance of sums appropriated under this section for any fiscal year shall remain available for expenditure during the next succeeding fiscal year in addition to amounts otherwise available to carry out this section of such year.

(b) For the purpose of carrying out section 205a(7) of the Interstate Commerce Act, there is hereby authorized to be appropriated to remain available until expended the sums of \$ _____ for the fiscal year ending June 30, 1972; and \$ _____ for the fiscal year ending June 30, 1973.

Appendix B

NARUC PROPOSED AMENDMENTS TO TITLE II OF S. 1400,
A BILL PROPOSING THE TRUCKING COMPETITION AND SAFETY ACT OF 1979

1. Amend Section 220(2) by deleting lines 6-7, page 41.
2. Amend Section 221(a), page 42, line 16, by inserting the following immediately after "shall": ", after consultation and cooperation with State and local agencies and the National Motor Carrier Safety Advisory Committee provided for in Section 225 of this Act,".
3. Amend Section 224, State Regulations, page 54, lines 18-19 by deleting "when necessary to eliminate or reduce a local safety hazard, and when" and inserting ", is reasonable, is required to better protect the public safety, and is" in lieu thereof.
4. Redesignate Sections 225 through 227 as 226 through 228 and insert the following as new Section 225:

"National Motor Carrier Safety Advisory Committee; Cooperation

"SEC. 225.(a) There is established in the Department of Transportation a National Motor Carrier Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, who shall be Chairman, the Federal Highway Administrator, and 20 members appointed by the Secretary, five of whom shall be State commissioners nominated by the national organization of the State commissions. The remainder of the appointed members, having due regard for the purposes of this subsection, shall be selected from among representatives of public and private interests, contributing to, affected by, or concerned with the conduct of motor carrier safety programs, including national organizations of motor carrier vehicle manufacturers, owners, and operators, as well as research scientists and other individuals who are expert in this field. Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

"The National Motor Carrier Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department relative to the conduct of motor carrier safety programs. The Committee is authorized (1) to review training, research or development projects or programs submitted to or recommended by it relative to the conduct of motor carrier safety programs and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to the strengthening of such motor carrier safety programs in the public interest; and

(2) to review, prior to issuance, regulations and standards proposed to be issued by order of the Secretary under the provisions of this Act and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

"The National Motor Carrier Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

"(b) The Secretary shall provide such staff and facilities to the National Motor Carrier Safety Advisory Committee from among the personnel and facilities of the Department of Transportation as are necessary to carry out the functions of such Committee.

"(c) The Secretary is authorized and directed to assist, cooperate and consult with other Federal departments and agencies, State and local governments, private industry, the national organization of the State commissions, and other interested parties, in order to carry out the provisions of this section."

6. Delete Section 16, "Effect on State Standards", page 17, lines 18-25, page 18, lines 1-24, in its entirety, and insert the following in lieu thereof:

"State Regulations

"SEC. 16. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to commercial motor vehicle safety until such time as the Secretary has adopted a rule, regulation, order, or standard regulating that subject. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to commercial motor vehicle safety that does not create an undue burden on interstate commerce, is reasonable, is required to better protect the public safety, and is not incompatible with any Federal law, rule, regulation, order or standard."

NARUC PROPOSED AMENDMENTS TO
S. 1390, A BILL PROPOSING THE TRUCK SAFETY ACT

1. Amend Section 4(2), page 2, lines 10-12 by deleting ", or which affects trade, traffic or transportation between a State and any place outside of such State;" and inserting a semicolon immediately after "State" in line 10.
2. Amend Section 7(a), page 4, line 7 by inserting ", in consultation and cooperation with State and local agencies and the National Motor Carrier Safety Advisory Committee provided for in Section 13 of this Act," immediately after "Secretary".
3. Amend Section 12(a)(1)(vi), page 14, by deleting line 17 in its entirety and inserting "ports required by the Secretary under this Act to the State agency;"
4. Delete Section 12(b), page 15, lines 13-14, in their entirety and insert "issued under this Act, he may, on reasonable notice and after opportunity for hearing, withdraw his approval of such plan and upon receipt of such".
5. Redesignate Sections 13 through 18 as 14 through 19 and insert a new Section 13 to read as follows:

"National Motor Carrier Safety Advisory Committee; Cooperation

"SEC. 13.(a) There is established in the Department of Transportation a National Motor Carrier Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, who shall be Chairman, the Federal Highway Administrator, and 20 members appointed by the Secretary, five of whom shall be State commissioners nominated by the national organization of the State commissions. The remainder of the appointed members, having due regard for the purposes of this subsection, shall be selected from among representatives of public and private interests, contributing to, affected by, or concerned with the conduct of motor carrier safety programs, including national organizations of motor carrier vehicle manufacturers, owners, and operators, as well as research scientists and other individuals who are expert in this field. Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

"The National Motor Carrier Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department relative to the conduct of motor carrier safety programs. The Committee is authorized (1) to review training, research or development projects or programs submitted to or recommended by it relative to the conduct of motor carrier safety programs and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to the strengthening of such motor carrier safety programs in the public interest; and (2) to review, prior to issuance, regulations and standards proposed to be issued by order of the Secretary under the provisions of this Act and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

"The National Motor Carrier Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

"(b) The Secretary shall provide such staff and facilities to the National Motor Carrier Safety Advisory Committee from among the personnel and facilities of the Department of Transportation as are necessary to carry out the functions of such Committee.

"(c) The Secretary is authorized and directed to assist, cooperate and consult with other Federal departments and agencies, State and local governments, private industry, the national organization of the State commissions, and other interested parties, in order to carry out the provisions of this section."

6. Delete Section 16, "Effect on State Standards", page 17, lines 18-25, page 18, lines 1-24, in its entirety, and insert the following in lieu thereof:

"State Regulations

"SEC. 16. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to commercial motor vehicle safety until such time as the Secretary has adopted a rule, regulation, order, or standard regulating that subject. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to commercial motor vehicle safety that does not create an undue burden on interstate commerce, is reasonable, is required to better protect the public safety, and is not incompatible with any Federal law, rule, regulation, order or standard."

[The following information was subsequently received for the record:]

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
Washington, D.C., July 24, 1979.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On July 18, 1979, I had the great privilege to appear before your Committee to discuss the above referenced legislation on behalf of the National Association of Regulatory Utility Commissioners (NARUC). As a result of this appearance, however, I believe some clarification of the NARUC position on these two bills is needed.

I would like to request that this letter be made a part of the hearing record and be included as an addendum to my oral testimony.

The members of the NARUC firmly believe that legislative initiatives are needed to improve the safety records of the Nation's motor carriers. Either of the two truck safety bills under your consideration would go far towards achieving this desirable goal, if amended as we suggested in Appendices B and C of our testimony. However, we prefer the provisions of Title II of S. 1400 because we believe them to be more flexible and feel fewer amendments are needed to lend our support to its provisions. Specifically, S. 1390 does not give the States the right to challenge the Department of Transportation's (DOT) decision to rescind State implementation and enforcement authority; the DOT is given veto authority over State rules more stringent or in addition to the Federal standards; reports are required to be made to the DOT rather than to the implementing State agency; and Section 16(b) would permit DOT to interfere with the States' right to promulgate hours of service regulations.

Thus, if S. 1400 were chosen by the Committee as the vehicle to improve truck safety, we would support its passage if it were amended as set out in Appendix B of our testimony. However, if S. 1390 is selected as the appropriate vehicle, we would also support its passage in order to obtain much needed Federal-State cooperation in the interstate motor carrier safety program, provided the amendments set out in Appendix C of our testimony were made.

We stand ready to assist you in whatever way we can to achieve these worthy objectives. With warm best wishes, I am

Sincerely yours,

ERIC RASMUSSEN,
Chairman, Committee on Motor
and Air Carriers.

Our last witness this morning is Mr. Clarence Ditlow III, who is the director of the Center for Auto Safety, and I am wondering if he is here at this time. I am told he might be delayed. Is there anyone here from that organization.

[No response.]

Senator RIEGLE. If not, I think we will stay here for a bit longer. I'm going to remain for maybe another 5 minutes or so, and in the meantime, we will take a brief recess and see if the witness arrives. If he does, then we will proceed. If not, then whatever statement he was prepared to make, we will insert as part of the record. And we will give him questions to respond to for the record.

So the committee will now stand in recess subject to the call of the Chair.

[Recess.]

Senator RIEGLE. The committee will come to order.

Our last witness this morning is Mr. Clarence Ditlow III, who is the director of the Center for Auto Safety, and we are pleased to have you.

Why don't you proceed.

STATEMENT OF CLARENCE M. DITLOW III, DIRECTOR, CENTER
FOR AUTO SAFETY

Mr. DITLOW. Rather than reading my statement, I will just summarize and ask that the entire statement be placed in the record.

Senator RIEGLE. That will be made a part of the record, and we will appreciate a summary.

Mr. DITLOW. First of all I would explain our background. The Center for Auto Safety has been primarily concerned with automobile safety and that of the general motorist. We were founded by Consumers Union and Ralph Nader, but we are now independent of both.

The striking thing about commercial vehicle safety is the extent to which the average consumer perceives that they are in danger from large trucks. We have been receiving a growing number of complaints from the motoring public and the passenger car occupant about the safety of large trucks, which indeed reflects the statistics we have seen in the past few years. For example, almost 97 percent of all fatalities in truck accidents are the occupants of a car. According to the National Highway Safety Administration, in 1977 we had 2,673 car occupants as compared to 122 truck occupants.

Typical of the consumers that write to us is Mrs. Paré from San Diego, Calif., "Can't something be done about the safety of these trucks. Can't the company that owns them be forced to make them safe."

This legislation to upgrade safety of commercial vehicles is strongly needed. Turning to specific proposals that are under consideration today, we have several suggestions. First, commercial vehicles should be registered, as you cannot keep track of them to form a base for setting effective standards or, indeed, taking administrative action unless you have some sort of registration system.

Second, when you compare the two bills, S. 1390 and S. 1400, there are several things in S. 1390 that are better than S. 1400. For example, the regulation on the drivers' working conditions is a critical condition removed from S. 1400. Fatigue factors are a serious cause of many accidents on the road, and as I stated earlier, it is not so much the driver's safety we are concerned with—although we are, indeed, concerned with that—but the motorist's safety who is involved in an accident caused by a fatigued driver or a driver who has a cab that does not fit the driver. Perhaps he might be distracted because he is cramped up or has some sort of intrusion.

In terms of enforcement, the agency should, indeed, investigate complaints as an aspect of setting enforcement standards, regulations, and orders. To improve enforcement, there are several measures that need to be done.

First of all, there's a need for protection for the whistleblower. In other words, many of the drivers who have complained to us in the past have said that they are afraid to complain to the Government because their identity might be known. We need whistleblower protection, because the driver is forced with the choice of either going out on the road in an unsafe vehicle or losing a job.

In addition, one of the past problems with enforcement has been the fact that there has not been enough enforcement. The Depart-

ment of Transportation should have authority to go into court and to litigate over violations of the standards.

In terms of setting the standards themselves, they should be set by informal rulemaking rather than formal rulemaking. There is simply no need to have standard proceedings drag on for several years when they can be resolved by informal rulemaking in a matter of months.

In terms of the applicability of the standards, we are concerned that setting a limitation of 10,000 pounds for the gross vehicle weight is inadequate. We would suggest that, to the extent lighter trucks are used in the same way as heavier trucks are, that they should be so regulated. For example, there is an inconsistency here. The EPA and the NHTSA will set a cutoff of 8,500 pounds for regulation of light trucks in terms of safety standards. So, if there should be a gross vehicle weight limit, it should be 8,500 pounds.

In terms of the Federal grants to States, both bills correctly recognize that the States may provide a valuable complement to the Federal efforts. But there should be some objective criteria to measure how well the States are doing—perhaps in terms of a reduction of the percentage of vehicles that they inspect that fail. If the programs are so ineffective that they are not receiving the desired results in terms of eliminating unsafe vehicles on the road, then the Federal Government should step back in and do it.

Now those are just a number of the major things we see within the act itself, and I would be glad to answer any questions from our perspective about them.

Senator RIEGLE. First of all, let me thank you for your testimony. Those are useful items which you've raised.

Let me ask you this. The American Trucking Association in their statement argues that the Secretary of Transportation should be allowed—and I want to quote them:

* * * to set priorities for the investigation of complaints. Such a priority setting amendment would avoid overburdening the Secretary with many minor complaints.

I just wonder what your reaction is to their suggestion?

Mr. DITLOW. We're opposed to that suggestion. Frankly, the Secretary should eliminate frivolous complaints. Any other complaints that are above frivolity the Secretary should investigate them. We don't think that the amount of time that is involved in investigating a complaint would be so burdensome that the Secretary could not look into it. This is not to say that every complaint would result in some sort of action being taken, but it will indeed result in the Secretary determining how valid it is and whether action should be taken.

Senator RIEGLE. You have endorsed a specific time frame in which rules are to be issued following the close of the public comment period, and then the agency would be given a further option to delay the effective date for another 90 days. If an agency determined that it was necessary to provide adequate notice to affected employers and employees, do you think that there would ever be situations where the technical complexity of the rulemaking might require more extended time for agency action than you would be providing here with that procedure?

Mr. DITLOW. We think the time periods we've set forth, and frankly, it's been my experience as an administrative lawyer here

in Washington that even where you set hard and fast deadlines like this, if indeed there is a complex issue, that the agency will take an extra 90 days or whatever, and no one will go into court without that, so I think this is indeed reasonable. And to the extent there are more complex cases, the industry and, indeed, the public would defer to the agency's discretion.

Senator RIEGLE. We appreciate your testimony here today, and we thank you for it.

Mr. DITLOW. Thank you.

[The statement follows:]

STATEMENT OF CLARENCE M. DITLOW III, DIRECTOR, CENTER FOR AUTO SAFETY

Mr. Chairman, members of the Committee, thank you for the invitation to comment on legislative proposals to reduce the highway accident toll that results from unsafe commercial motor vehicles or trucks. I am Director of the Center for Auto Safety, a non-profit organization founded by Consumers Union and Ralph Nader in 1970, now independent of both. The Center's principal activities include a broad range of vehicle and highway safety issues.

The level of highway fatalities and injuries associated with operations of commercial motor vehicle operations is indeed unacceptably high, as was amply documented for this Committee in the trucking safety hearings it conducted several months ago. The trucking industry has a large impact on the safety and welfare of the general public; effective safety regulation in this industry would reach many more individuals other than the rather small population of industry employees. In perceiving the poor level of maintenance, inspection, and safety equipment in the big trucks with which they must share the road, private motorists are acutely aware of their own vulnerability should that truck in the next lane for any reason prove unable to stop or steer.

The trucking industry has grown considerably in recent years, and the number of trucks on the nation's highways has jumped commensurately. Heavy-duty truck registrations alone jumped 22% in 1978.¹ Obviously this increases the exposure of consumers in personal passenger vehicles to commercial vehicles that are in unsafe condition because a recalcitrant industry finds it can skirt present federal and state safety requirement with impunity. The increased exposure has resulted in more fatalities. According to the National Highway Safety Advisory Committee, in the period 1975-78, fatalities of heavy truck occupants have increased 41 percent and passenger car occupant fatalities involved in collisions with heavy trucks have increased 38 percent.²

The level of care exercised in the design, maintenance and operation of commercial motor vehicles will have a significant impact on the safety of all who travel the roads. In fact, trucks pose a disproportionate threat to the safety of personal transportation. The National Safety Council reports that tractor-trailers and other combination vehicles account for 1% of all registered vehicles, but comprise 2.5% of all vehicles involved in accidents, and over 7% of all vehicles involved in fatal accidents. Fatal Accident Reporting System (FARS) data indicate that fatal accidents involving trucks, are more likely to involve at least one other vehicle; accidents involving both trucks and passenger cars are far more dangerous to passenger car occupants than to truckers: in 1977 accidents between cars and trucks, 2,673 car occupants died, compared to 122 truck occupants.³

In the last few years, the Center has received a growing number of letters from motorists frightened at sharing the highways with the growing number of trucks. These motorists articulate concerns about the unsafe condition or equipment, the relative size and speed of the trucks, and indicate their desire for protection from them, urging effective inspection, improved design, adequate equipment, and mandatory safety levels. Marie Paré, San Diego, CA, summed it up by saying:

Can't something be done about the safety of these trucks? Can't the company, that owns them, be forced to make them safe?⁴

A contributing factor to the lack of effective safety regulation is the place in the executive branch in which that authority is presently vested. Present trucking

¹ Automotive News 1979 Market Data Book Issue, at 44.

² June 21, 1979, recommendation to the U.S. Department of Transportation, a copy of which is submitted for the hearing record.

³ U.S. Dept. of Transportation, FARS 1977 Annual Report, 20 (Nov. 1978).

⁴ A copy is submitted for the hearing record.

safety regulations are administered by the Federal Highway Administration's Bureau of Motor Carrier Safety. This has the unfortunate result of bypassing the National Highway Traffic Safety Administration, within the Department of Transportation, which has demonstrated capabilities for research, rulemaking, and enforcement in the interest of motor vehicle safety. The entire field of commercial motor vehicle safety regulation should be consolidated and vested in DOT/NHTSA, rather than in the BMCS.

THE LEGISLATIVE PROPOSALS

Regulatory authority

Although both S. 1400 and S. 1390 would grant the Secretary of DOT similar authority to issue rules necessary to assure safe operation of commercial motor vehicles, neither bill squarely addresses the need for registration of all such vehicles. Registration provides key information to the regulatory agency and thus a means to measure both the reach of roadside inspections and the effectiveness of the regulatory system. This is information which BMCS lacks altogether. Furthermore, registration would offer one means by which to contact owners of regulated vehicles, to notify them of or solicit information in aid of agency action relating to their obligations under the regulations.

Despite the evident rewards of comprehensive registration of commercial motor vehicles, neither bill clearly authorizes the Secretary to issue such a regulation. S. 1400 § 221(a) appears to limit registration authority to ICC—regulated commercial motor vehicles. S. 1390 apparently would permit such a regulation. However, in view of the ambiguity, the better approach is to expressly authorize the Secretary to issue such a requirement.

The authorization in S. 1390, § 7(b) for the regulation of drivers' working conditions is a critical omission from S. 1400. Available data indicate that truck driving is perhaps the most hazardous occupation in America, yet it is exempt from the Occupational Safety and Health Act protections. This is an omission with demonstrably grave results not only for drivers, who are jostled by their rigs into fatigue and injury, but also for the rest of the motoring public, for whom the truck driver's shoddy working conditions may well translate into a wreck on the road. The § 7(b) authority is appropriately limited to employees "when operating commercial motor vehicles," thus there is no overlapping of authority between DOT and OSHA regarding any workplace in the trucking industry other than vehicles on the road.

S. 1390, § 7(c) addresses the process of the newly authorized rulemaking in three useful and important ways not tracked in S. 1400. First, it is clearly stated that rulemaking shall be conducted pursuant to the notice and comment provisions of § 553 of the Administrative Procedure Act, and not with reference to §§ 556-57. This will mean the difference between waiting months rather than years for much-needed regulations. Secondly, § 7(c) provides for a specific 90-day time frame in which final rules are to be issued following the close of the public comment period. Thirdly, the agency option to delay the effective date of a rule is limited to 90 days. Each of these provisions will better serve the public interest by permitting expeditious safety regulation of the long-neglected trucking industry.

Enforcement

The provisions in both bills establishing an agency duty to investigate complaints is the crucial first step in marshalling the efforts of any person with knowledge of specific health and safety conditions in enforcing standards, regulations and orders. Protection of the identities of complainants is a necessary corollary if complaints are to contribute at all to the enforcement scheme. In order to maximize the potential of these provisions, it would be best to avoid any requirements, found in S. 1390, that complaints be written. If a driver discovers that his rig has lost its brakes on the road, it is imperative that his phone call to the agency merit investigation on equal footing with written complaints.

The range and severity of enforcement tools proposed by both bills are appropriate to implement the declared purposes of this legislation. The new authority to assess civil penalties is essential to creating responsiveness in an industry which for too long has been permitted to skimp on safety. The stiffer fines of S. 1400 as well as that bill's provision that each day of violation constitutes a separate offense subject to a fine, will promote that legislative goal.

Legislation should incorporate the proviso in S. 1390 precluding assessment of civil fines against an employee, except in instances where the employee is the driver of a vehicle who is found to have acted with gross negligence or reckless disregard for safety. Note that this proviso ought not be applied to owner-operators leased to large carriers. Such operators are in a very different position from employee-drivers,

since after all they own the vehicle which is subject to safety regulation, and therefore should remain responsible for its compliance.

The S. 1400 provision that the Secretary may require a violator to post the notice of violation should be made mandatory rather than discretionary, in order both to inform employees for their own protection, and to encourage them in vigilant observance of compliance with the safety regulations.

Whistleblower protection

The cornerstone of any legislation ultimately enacted must be the protection of employees of motor carriers. Clearly no sufficient number of government inspectors can be provided to detect the majority of non-complying vehicles operating on the roads. An effective enforcement/deterrent system as envisioned by both bills depends essentially on employees who can best detect the health and safety dangers posed by commercial carriers. Yet employees are extremely vulnerable to a range of discriminatory, retaliatory practices of employers. Without the protections offered by these legislative proposals, drivers and other employees will continually be forced to choose between their lives and their livelihood. Effective prohibition of retaliation against employees observing the regulations requires the proposed provisions for employee reinstatement, backpay and compensatory and exemplary damages. Legal representation is not readily available to a driver out of a job and unable to scrape up money for the retainer. Recourse to the courts, essential as it may be in some instances, is not complete without the opportunity for the award of costs and fees.

Litigating authority

Under present law, litigating authority is committed to the Department of Justice, which has shown too little interest in the prosecution of violations authorized by present law and necessary to the creation of a genuine deterrent. Accordingly, litigating authority relating to cases arising under the commercial motor vehicle safety legislation should be given to DOT, to enable it to assure vigorous enforcement.

Judicial review

The Center recommends the S. 1390 review standard over that of S. 1400. S. 1390, § 9(h) provides for the limited judicial determination of whether the Secretary's findings and conclusions were arbitrary or capricious, or an abuse of discretion. This is vastly preferable to the S. 1400 standard which would permit a detailed, de novo examination of the evidence before the Secretary when a final order was issued. The latter standard invites unwarranted delay and uncertainty of ultimate result, which are antithetical to the declared intent for a truly meaningful penalty system.

Applicability

A failing of both bills is the express exclusion of commercial motor vehicles under 10,000 pounds of gross vehicle weight rating (GVWR). The exclusion bears little, if any, relation to the legislation's purpose, to enhance the safety of commercial motor vehicle operation. Lightweight trucks present no better record of safe operation, maintenance, equipment than do heavy trucks. FARS reports a steady increase in fatal accidents involving pickups and vans, nearly half of which involve a second vehicle.⁵ If any lightweight truck is used in a manner comparable to the heavy trucks covered in both bills, it should be regulated just as would a heavier truck.

S. 1390's further exemption of vehicles simply on the basis that they may happen to be engaged in farming or logging is inconsistent with the important objectives of the legislation. No such exemption should be permitted. Instead, the definition of "commercial motor vehicle" in S. 1390—any self-propelled or towed vehicle used on the highways in commerce—should be carried over into legislation enacted, without exception.

S. 1400—Safety aspects of "fit, willing and able"

The intent to grant DOT the additional authority to bind the ICC by its determination of the safety of an applicant's operations is conceptually a good one. Nevertheless, that grant of authority may well be lost in the context of the regular ICC process. As written, there is in fact no assurance that safety will be translated by DOT into a meaningful component of "fit, willing and able," since a DOT failure to make any report to ICC with respect to a particular applicant is required to be construed as a favorable safety report. DOT need only fall behind in its paperwork to render this elaborate section nugatory. This could be improved by specifying a point in time by which DOT will be required to issue regulations implementing its duties under this provision.

⁵ FARS Annual Report, *supra*, 30.

Federal grants to States

Both S. 1390 and S. 1400 correctly recognize that States may provide a valuable complement to federal efforts to assure safety of commercial motor vehicles. The Center endorses a federal grant program that is keyed to increased safety activity at the state level. The objective of uniformity of safety standards is advanced by the prerequisite to grant approval that states adopt all Federal commercial vehicle safety standards and rules.

Appropriations for grants to states under such a program should be made out of the Highway Trust Fund as provided in S. 1390. By the same token, all civil penalties collected should be paid into the Highway Trust Fund. In this way, the commercial motor vehicle owners, who log many millions of miles more per year than does the rest of the public, will bear a fair share of the costs of an effective safety program.

U.S. DEPARTMENT OF TRANSPORTATION,
NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE,
Washington, D.C., June 21, 1979.

Hon. BROCK ADAMS,
Secretary, U.S. Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: On June 21 the National Highway Safety Advisory Committee adopted unanimously the enclosed resolution concerning heavy duty trucks. It is understood that a large number of independent owner-operators of these vehicles are demanding an increase in the cargo weights they can carry, an increase in the length of their trucks, relaxation of the driving-hour restriction, and permission to exceed the national speed limit law.

The Committee has reviewed and discussed at length the safety affects of such changes at its meetings over the past few years. As you can see from the enclosed resolution, the members are convinced that the current fuel shortage, although a serious matter, is not sufficient justification to accede to these demands. Rather, to meet the increased cost of operating heavy duty trucks appropriate adjustments in freight rates should be made.

Sincerely,

SHEILA D. SIDLES, *Chairperson.*

P.S. You may also be interested in a previous resolution concerning the weight vs. speed issue which I have also enclosed.

Enclosures.

RESOLUTION ADOPTED BY THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE
BY UNANIMOUS VOTE ON JUNE 21, 1979

The National Highway Safety Advisory Committee implores the Secretary to maintain the existing size and weight standards for heavy vehicles (those over 26,000 pounds) and continued adherence to the national 55 mph speed limit by operators of such vehicles.

In the period 1975-78, subsequent to Congressional relaxation of the then existing weight standards, fatal accident data supplied by the Fatal Accident Reporting Systems (FARS) indicate that heavy truck (those over 26,000 pounds) fatal accident involvement has increased by some 47%. Fatalities of truck occupants in such collisions have increased 41% and passenger car occupant fatalities involved in collisions with heavy trucks has increased 38%.

Bureau of Motor Carrier Safety inspections have resulted in a large number of vehicles being placed out-of-service because of safety defects. The latest inspections in five Mississippi River States resulted in over 40% of the inspected vehicles being placed out-of-service.

In view of the service safety impact which will inevitably result from any relaxation of size, weight or speed levels the National Highway Safety Advisory Committee recommends that current size, weight and speed limits be maintained and reiterates its previous recommendation that additional personnel and resources be made available for field inspection by BMCS.

The Committee recognizes and has concern for escalating costs experienced by the commercial fleet. Accordingly it urges that added emphasis be placed upon the need for increasing the availability of diesel fuel and appropriate adjustments in freight rates.

SAN DIEGO, CALIF., *August 27, 1978.*

PUBLIC CITIZEN INC.,
Washington, D.C.

DEAR RALPH NADER: It made me sick when I read the enclosed article! It is taken from a recent Reader's Digest.

When I went out on the road, after that, I never realized there were so many trucks before.

Can't something be done about the safety of these trucks? Can't the company, that owns them, be forced to make them safe?

They speak so lightly of the driver that may lose his life because of the unsafety of these trucks. I thought the drivers were supposed to drive *no more* than 8 hours. Ha! What a laugh that is, according to this article.

I'm sure that they don't drive no 55 miles per hour—hardly anyone else does either!

I hope something can be done.

Sincerely,

MARIE PARÉ.

Senator RIEGLE. The committee stands adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

*Operating too often outside the law
—and with a wink from federal regulatory
agencies—truckers are greatly
endangering lives, and tearing up the
nation's roads at taxpayer expense*

Raising Hell on the Highways

Condensed from NEW YORK TIMES MAGAZINE

ROBERT SHERRILL

AMERICANS are strangely sentimental about the heavy, long-distance tractor-trailer that washes the highways with waves of terrible noise, vibrations and towering arrogance. Truck traffic has more than doubled since 1960. In terms of dollar value, trucks carry about three quarters of our intercity merchandise, and we probably could not do without them; but they are nonetheless one of the great abominations of the Asphalt Age.

Yet they and the men who drive them have a unique attraction for many people. The trucker, one writer put it, is "the new folk hero." Citizens-band radio, once used only by truckers to circumvent the highway patrol, is embraced with gab-

bling bravado by the middle-class motorist. Country-and-western musicians crank out endless variations on the theme of the trucker's lonely road. Movies—at least since Humphrey Bogart and George Raft performed in *They Drive by Night*—keep going back to muscular truck drivers for basic schmaltz.

But whatever pleasure Americans get from indulging themselves in the Romance of Trucking comes at a very high price—in lives lost, dollars wasted and driving comfort surrendered. Moreover, it is an indulgence in the veneer, not in the reality, of trucking. The reality of this \$108-billion industry is that it is dominated not by the individual trucker, not by the owner-operator, but by corpo-

rations owning thousands of rigs each—outfits like McLean and Yellow Freight and TIME-DC.

Theirs is not the jargon of CB radio and neon-lighted truck stops, but of the ledger. And the life they have created for their drivers is often not so much an adventure as an ordeal. "I'd give anything," says Lincoln Merrill of Winston-Salem, N.C., for 17 years a line driver for Roadway Express, "if I could convince the public that truck drivers are forced to be the unwilling participants in all sorts of unsafe practices because our union and the government are in collusion with the trucking companies."

Safety Gap. As trucks have increased their domination of the highways, they have also increased their slaughter. And it is the biggies, those weighing up to 80,000 pounds—about a quarter of the 4 million trucks rolling today—that have an especially wicked kill rate. Government figures show that 7.8 percent of highway fatalities in 1975 involved heavy trucks. In 1976 their share of the carnage moved up to 8.9 percent—an impressive score, considering that these behemoths constitute less than one percent of vehicles on the road. And while all fatalities increased only 2.2 percent between 1975 and 1976, those involving heavy trucks soared 17.1 percent.

When the collision is between a heavy truck and an auto, it's good-by motorist. In 1975, the University of North Carolina's Highway Safety Research Center analyzed 2776

crashes between heavy trucks (weighing more than 24,000 pounds) and autos. The mortality rate was 14 times higher than the rate for auto-auto accidents, and seven of eight times it was the car occupant, not the truck driver, who was killed.

To a degree, this highway slaughter can be blamed on a federal transportation bureaucracy that does little to guarantee the public's safety. If motor-carrier companies operate safe equipment and give their employees safe working conditions—and some do—it is out of corporate benevolence, not out of fear of federal or state sanctions. Jurisdiction over safety in the interstate truck industry is largely in the hands of the Bureau of Motor Carrier Safety. But this "policing" agency, debilitated by lack of funds and buried under a slag heap of superior bureaucracy, can be fairly described as a farce.

Howard L. Anderson, associate administrator for safety at the Federal Highway Administration, is policy boss of the BMCS. He appraises its work: "We have 128 investigators to regulate three million trucks and four million drivers. To do the safety job right would take between 1000 and 2000."

"We take action against only the most flagrant violators," says William Russell Fiste, Jr., head of the bureau's Regulations Division. And even then the bureau does not normally discover these flagrant violators except by accident.

Profit Precedence. Bureau investigators wait at state weigh stations

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and, if they don't like the look or sound of a truck, they will flag it in for an inspection. Kenneth L. Pierson, the bureau's deputy director, says about 80,000 trucks a year get the visual-audible once-over. Of these, about 25,000 to 30,000 receive a full half-hour inspection. About 25 percent turn out to have "imminently hazardous" defects and are impounded until fixed.

How many unsafe trucks slip past the scales without even a glance from federal investigators? Nobody knows. "It's a sampling at best," acknowledges Pierson. "The probability of being stopped, inspected and impounded isn't that great."

Nor is the risk of being punished for violating safety regulations. In a typical year, the BMCS takes no more than 500 to court for lawless behavior, and total fines usually amount to less than \$1 million—hardly enough to frighten an industry whose regulated segment alone takes in well over \$20 billion a year. It is more profitable, some companies feel, to keep rolling and pay petty fines than to take trucks out of operation for safety repairs. Interstate companies running dangerous clunkers can have their licenses revoked by the Interstate Commerce Commission, but that has happened only twice in the last ten years.

Although federal law says no driver can be forced to take out unsafe equipment, drivers have been fired for refusing a clunker (and the Teamsters Union, which has a cozy

relationship with management, does not always fight for their re-employment). Federal law permits a driver 70 hours on the road in eight consecutive days (with 10 hours of actual driving before he gets 8 hours off)—but that law is more than 40 years old, from a time when trucks and traffic were half what they are today.

Driver fatigue is the No. 1 safety problem in trucking accidents where the cause is the physical condition of the driver. An in-depth government investigation of 497 of the more serious truck accidents from 1973 to 1976 showed that physical exhaustion played a role in 32 percent of the cases. A 1972 Department of Transportation study found that after four hours behind the wheel, many truck drivers begin making a number of errors and suffer a decline in alertness. Worse, after nine hours on the road, many drivers are too drained to recover during their usual rest break.

Highways are filled with exhausted truckers. As Bill Berryhill, a 14-year driver out of Hagerstown, Md., says, "It's very common for a driver to be awake 24 hours." Bob Green, a former trucker and now a reporter for *Overdrive*, says that when he was driving he often did the produce trip from Florida to California—3200 miles of steady driving except for a six-hour layover in El Paso. He says others are still pulling similar marathons all over the country, risking lives in pursuit of the buck.

In 1971, a group of Michigan

medical researchers told a Senate labor subcommittee how drivers finally become virtually hypnotized from staring at the roadway. At about the same time, Ralph Nader reported a poll of 1300 truck drivers, almost 80 percent of whom said that taking pep pills to stay awake was "widespread" in their ranks. And 80 percent of the drivers also admitted to having dozed at the wheel despite the pills.

What has happened as a result of these disclosures? Virtually nothing. Drivers are still hallucinating from exhaustion. Pep pills are still being used, though nobody knows to what extent.

Poundage Pays. Over the years, the trucking industry's immutable objective has been to push for bigger and bigger payloads per truck. When the OPEC nations quadrupled oil prices in 1973, the truck lobby saw an opportunity. Patriotism demanded that weight limits be lifted to get greater efficiency per gas gallon. If the load limit was raised ten percent—to 80,000 pounds for both tractor and trailer—seven trucks could haul what eight had hauled before.

But Congress balked, conscious of the increased threat to highway-pavement life and highway safety. It also sought to impose a 55 m.p.h. national speed limit—to help in the fuel crunch. Truckers argued, with impressive theatrics, that they simply couldn't accept such a limit and survive. The pace of commerce would be critically slowed. Then,

with a great show of compromise, the industry offered to accept the unacceptable—if Congress raised the weight limit.

The lawmakers finally went for the swap. The weight increase was included in an omnibus bill and shoveled through in the pre-Christmas rush before adjournment in 1974.

So we're stuck with 80,000-pound trucks—and little or no diminution of truck speeds. (I tested that recently by highway driving at a steady 63-65 m.p.h. for 50 minutes. I was passed by 14 trucks; I passed one.) The new weight burden is not yet nationwide. States that did not permit 80,000-pound behemoths before Congress acted had the choice of taking the new limits or not. Maryland is one of the last barriers to the unobstructed movement of 80,000-pound trucks between Florida and the Northeast. A north-south line of barrier states also exists in the Middle West, frustrating big trucks' unhampered east-west travel. (Pressures from the truck lobby are intense to change that. Meanwhile, the heavies simply move through these barrier states illegally, traveling by back roads where necessary to dodge weigh stations.)

Danger & Decay. The result of increased loads could mean plenty of trouble ahead. To exploit the new 80,000 pounds allowable for the truck as a whole, companies are throwing 12,000 pounds onto the front (steering) axle to go with the permissible 34,000 pounds on the

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middle and rear axles. Yet most drivers agree that anything over 10,000 pounds on the front axle can make steering extremely difficult.

Tire failure and brake failure are the top killers in truck accidents caused by mechanical failure, and two thirds of the tire failures are blowouts on the front. Even with new tires, the heavier front load presents an extra risk of blowouts. With retreads, the risk becomes greater. But the federal transportation bureaucracy, despite repeated pleas from drivers, has not outlawed retreads on the steering axle.

"It's ridiculous," says Teamsters Union safety director Ralph V. Durham. "They won't let interstate buses use retreads because they carry people, but they let a truck use retreads even though the truck, if it has a blowout on a front tire, can go out of control and wipe out the bus."

The heavier weights will also boost costs for highway construction and repairs. The 42,500-mile, \$104-billion Interstate network, still un-

finished and unpaid for, is already suffering serious decay. For the first time, some states are doing serious engineering studies to find out exactly what kind of devastation can result from big-truck traffic; their discoveries are chilling. The Illinois Department of Transportation found that a tractor-trailer only five percent over the maximum permissible weight caused damage equaling that of 10,000 passenger cars.

Even heavier, noisier and more dangerous trucks may be rolling along the highways in the future. Not long ago, a federal task force recommended acceptance, by 1990, of supertrucks weighing 120,000 pounds—50 percent heavier than today's maximum. Before that happens, let's hope the public rebels at having its highways dominated by trucks that operate all too often outside the law, that present special safety problems and that raise their industrial hell at the general taxpayer's expense. The romance of trucking comes at *too* high a price.

CHURCHILL TRUCK LINES, INC.,
CHILLICOTHE, MO.,
July 20, 1979.

Senator HOWARD CANNON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CANNON: Our company is quite concerned about S-1390 which was introduced by Senator Charles Percy, R-Ill. in which it is proposed to strengthen Federal control over truck safety.

While we agree with some of the legislation, there are some items in the Bill which we feel are improper:

1. We think that the civil penalties involved are extremely high and that the application of the standards are entirely too vague and that a more practical approach would be to continue the existing practice of removing unsafe vehicles and drivers from service when such violations are found.

2. We feel that the mandatory complaint provision of the bill which would require the Department of Transportation to investigate all driver complaints no matter how minor is not flexible enough and that the D.O.T. should have authority to investigate complaints in the order of the severity of the hazards involved.

3. We are also strenuously opposed to the provision that would allow employees to sue a carrier for taking action for them reporting alleged safety violations or for refusing to drive an allegedly unsafe vehicle.

We feel a better approach to this would be to give the D.O.T. power to review any employee complaints about such company actions.

Yours very truly,

KENNETH CHURCHILL, *President.*

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., July 25, 1979.

Hon. HOWARD CANNON,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: The American Farm Bureau Federation wishes to comment on the safety provisions of S. 1400 and S. 1390.

Last year, Senator Charles Percy introduced S. 2970 in the 95th Congress. Farm Bureau testified last September on that bill at which time we pointed out that it covered millions of farmer-owned, not-for-hire trucks and other self-propelled farm equipment, under the definitions of "commerce," "employer," and "commercial" motor vehicle. We also pointed out the lack of any significant safety problems connected with highway movements of such farm vehicles and the difficulties that would ensue from the enactment of the bill, including a likely loss of the farm exemptions now contained in Title 49, Part 391, of the motor carrier safety regulations of the Department of Transportation.

Senator Percy has recognized our concerns and has attempted to exclude farm vehicles in Section 5(b) of S. 1390; however, we are not satisfied with the exemption language. We believe it to be too vague and, therefore, subject to either narrow or broad interpretation by the Secretary.

We suggest the following substitute language:

"(b) Nothing in this Act shall apply to vehicles of any kind in their use as a part of a normal farming or logging operation, in the delivery of farm products from the farm to the first buyer, or in the delivery of farm production supplies from the place of purchase or order to the farm."

With respect to S. 1400, it is evident that the authors of this bill, in Part III of Title II, have used the language contained in S. 2970. We, thus, have exactly the same difficulty with the safety provisions of S. 1400 as we had last year with S. 2970. We do not believe it was the intent of the Administration, Senator Kennedy, or the other cosponsors of this bill to remove the farm exemptions in the present motor vehicle safety regulations and to bring millions of farmer-owned vehicles under a safety program designed to improve safety conditions in the commercial trucking industry. Such an action would be impossible to administer and would create great uncertainty among farmers and ranchers without any appreciable public benefit.

We, therefore, request that the proposed substitute for Section 5(b) of S. 1390 be used in marking up this legislation.

We also request that this letter be made part of the hearing record.

Sincerely,

VERNIE R. GLASSON,
Director, National Affairs.

UNITED BUS OWNERS OF AMERICA,
Washington, D.C., July 25, 1979.

HON. HOWARD W. CANNON,
Chairman, Senate Committee on Commerce, Science and Transportation, Dirksen
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As the trade association voice of independent, intercity bus operators, the United Bus Owners of America is appreciative of the opportunity to have met, on July 25, with members of your staff.

Mr. Nagle, my assistant, arranged the meeting with Mr. Ris, who was accompanied by Mr. Jaffe and Ms. Douglass.

With Mr. Nagle were: Mr. C. D. Busskohl, Arrow Stage Lines, Inc., E. 6th & Chambers, Sioux City, Iowa 51101; Mr. Harry L. Eyre, Jr., Eyre's Bus Service, Inc., 15910 Union Chapel Rd., Woodbine, Md. 21707; and Mr. Paul A. Keeshin, Keeshin Charter Service, 705 S. Jefferson St., Chicago, Ill. 60607.

As I believe it was made clear by UBOA's visitors, we support the safety provisions (and only those provisions) of S. 1400.

We anticipate that S. 1400's safety features will be incorporated into S. 1390 as it moves through your Committee. UBOA supports S. 1390, but requests that its impact be broadened. Specifically, we suggest that the bill be cited as the, "Truck and Bus Safety Act" and that Subsection 7 of Section 4 be modified by adding an additional sentence:

"Buses engaged in mass transit will be considered to be moving in commerce without regard to any designation of private carriage or individual (non)payment of fares by each passenger."

Also, we are of the opinion that the term, "commercial" is extraneous in Section 5(a). We believe it should be deleted, thereby making the bill applicable to all vehicles in excess of 10,000 pounds. Such broadened language would require compliance by persons who acquire trucks or buses for motor home conversions, etc.

Finally, we believe legislative history should establish that every person is entitled to be protected from needless injury by heavy vehicles, and that such entitlement is not diminished by the fact the person involved may or may not be a passenger aboard the vehicle in question.

UBOA is convinced that the most glaring inadequacy of present safety law is the omission of the unregulated segment of public transportation, the private club, the church fleet, the uncertificated carrier who is often engaged in illicit charter operations. We would be happy, at a random moment of your choosing, to provide escorts to the bus parking area west of the Capitol where, on any given day, there may be found an abundance of shocking examples of safety violations among unregulated charter buses.

UBOA hopes S. 1390 will be enacted during the present session of Congress, toward which end we will continue to offer our enthusiastic assistance and support.

Sincerely,

WAYNE J. SMITH, Executive Director.

PRIVATE TRUCK COUNCIL OF AMERICA, INC.,
Washington, D.C., August 7, 1979.

Senator HOWARD W. CANNON,
Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR CANNON: While we were unable to testify before your Committee during its recent truck safety hearings, our Board of Directors has nevertheless carefully reviewed S. 1390 and S. 1400.

We trust and hope you and your Committee will give these views full consideration should you take any final action on safety legislation in the near future.

Council objects to the idea in both bills of subjecting to Federal motor carrier safety regulations trucks over 10,000 lbs. operating in intra-state commerce. It opposes the extension of the Federal bureaucracy into matters which are best handled by the States. Even at the present time, the Bureau of Motor Carrier Safety is often unable to enforce its rules with respect to trucks traveling in inter-state commerce.

Council objects to the provisions in both bills that provide for forfeiture proceedings in lieu of criminal penalties. Except under extreme conditions, it is not good practice to allow administrative personnel of the Federal Executive Branch of Government to in effect take on the role of a judge in court to levy and collect fines. We know it is done elsewhere and under roughly comparable conditions, but its effects are so stringent and harsh that it should never be legislated in the absence of overwhelming evidence that almost no other solution could rectify the conditions to which it is directed.

S. 1400 authorizes the DOT in "order an employer to cease all or part of his commercial motor vehicle operations, pending abatement of the violation without prior hearing". Council contends this penalty is extreme and not necessary to deal with a violation.

Council objects to the provision in both bills requiring the DOT to investigate any "non-frivolous" complaint. This is a clear and unwarranted intrusion of government into what is properly the domain of management. Furthermore, the Bureau of Motor Carrier Safety already has authority and responsibility to conduct on-site investigations where violations of safety regulations are suspected.

The provision in both bills that the driver suffer no reprisals for safety violation complaints is unnecessary because present law amply covers such situations. And if there is any problem in the area of employer-employee relationships, it is not fear of reprisal on the part of the driver, but rather in management's difficulty in disciplining a driver who clearly does not follow the Federal safety rules. Management is often frustrated when trying to discipline an unsafe driver because of long, tedious union grievance procedures.

Finally, with respect to S. 1400, Council strongly endorses the provision providing expressly for promulgation of safety regulations "after consideration of their costs and benefits" and to "reach their objectives in the least costly manner". If this were literally carried out, many largely unnecessary rules on the books today would not be there. Cost/benefit analysis is the essence of regulatory reform in Council's view.

S. 1390 includes certain provisions not in S. 1400 about which Council hereinafter comments.

Council opposes providing broader express authority for "health" regulations. As far as private truck operators are concerned, their companies are already subject to OSHA regulations. To involve the DOT in areas where OSHA already governs, creates burdensome and needless overlapping of regulations.

The provision that the DOT shall not in any material way reduce the protection currently afforded the public and employers operating commercial motor vehicles is not needed. Council in no way desires the reduction of such protection which presently exists but it does believe that the public can best be protected by strengthening, not lessening, management's unique ability to accomplish it.

Council objects to the requirement that regulations be promulgated within 90 days of comment closing date, subject to one extension. This is a novel and unusual twist, because the agency's normal propensity is to over-regulate and the faster the better. We are unaware of any need to improve on an activity about which the agency is already remarkably adept. Nor should its hands be tied if new data or revised cost benefit studies come on stream which could give reason to delay final implementation of a rule.

Finally, and most importantly, Council gives positive support to the requirement that DOT shall within 12 months transmit to Congress a report including the advisability of a national commercial driver register. No single act would enhance the cause of truck safety more than opening up the National Driver Register to employers of commercial truck drivers. Indeed, a properly operating National Driver Register would dwarf in importance and effectiveness all other provisions of the two bills. We can rail all we wish against the vehicle and its imperfections but defects and vehicles are the cause of only an infinitesimally small portion of accidents. It is the driver which causes accidents and it is he who must be properly trained and forbidden the use of the highway if his record proves he is a menace to the traveling public.

Respectfully submitted,

JOHN C. WHITE,
Executive Vice President.

STATEMENT OF THE AMERICAN PULPWOOD ASSOCIATION

The American Pulpwood Association (APA) is an organization composed of suppliers and consumers of pulpwood in the United States. Pulpwood is the basic raw material utilized in the manufacture of pulp, paper, and paperboard. The largest portion of our membership is composed of small businesses that deal in, harvest or

transport raw forest products. Because virtually every tract of timber is composed of numerous species of trees with varying applications in the marketplace, our membership is deeply involved in virtually all aspects of logging and log trucking. The products harvested may be used for pulpwood, poles, ties, plywood bolts, etc.

Because it is essential that the products of the forest must move from the forest to a consuming market APA's members are interested in legislation to deregulate the trucking industry. The vast majority of raw wood consumed in the United States today moves by truck from the forest to the consuming mill.

APA SUPPORT FOR ECONOMIC DEREGULATION

We applaud the intent of S. 1400 and S. 1390 to increase competition in the nation's trucking industry. We also understand the concern that the increase in competition, and the reduction of regulatory entry barriers, not be accomplished at the expense of safety on the nation's roadways.

CHARACTERISTICS OF LOG TRUCKING

Pulpwood and log trucking is predominately a short distance operation and is quite generally exempt from Interstate Commerce Commission regulation except in those few instances where it is necessary to cross state lines to get to forest products plants.

Many of the characteristics of log trucking are extremely similar to those of a farmer's "farm to market" trucking operation. In fact, in some regions, farmers frequently haul pulpwood and logs during periods when farming activity is low.

Since trucking in our industry is predominantly free of rate and route regulation, we doubt that the economic deregulation aspects of both S. 1390 and S. 1400 would have any appreciable affect on us and our support for economic deregulation of trucking is based on our belief that the effect on the nation's economy will be beneficial.

EXTENSION OF TRUCK SAFETY REGULATION

We understand that extending truck safety regulation as a companion step to trucking deregulation is contemplated primarily as an effort to quiet the safety concerns expressed by trucking firms now currently regulated, certain labor unions, and representatives of government agencies which should be expected to increase in budget and staff if truck safety regulation were expanded.

From our industry's standpoint, we doubt that additional truck safety regulation is needed or desirable. State regulation is now adequate and effective. Even more important, the economic necessity to keep log trucks in good productive condition serves as powerful motivation to insure safe operating conditions.

Log trucks primarily, for obvious physical reasons, travel over the little used back roads in the forested regions of the country. Logs are a low-value, high-bulk commodity and truck haul distances are kept to all absolute minimum to reduce raw material costs. The exposure to accident potential is, therefore, minimal in comparison with the trucking of high value commodities for long distances at high speeds through the major trucking "corridors" of the nation.

APA POSITION

First, we question the advisability of coupling extension of truck safety regulation with truck rate making and routing deregulation.

Second, if it is found necessary to couple truck safety with economic truck deregulation or extend truck safety regulation as separate legislation, we question whether truck transportation of the raw products of agriculture and forestry should be included.

S. 1390 addresses our concerns as follows:

"Section 5. (b), nothing in this Act shall apply to the operator of any vehicles engaged in farming activities or logging operators as defined by the Secretary."

We support this exemption.

S. 1400 could be easily amended as follows:

"Section 104. Section 10526 is amended by (2) amending paragraph (6) of subsection (a) to read as follows: '(6) transportation by vehicle of property consisting of

* * *

(B) agricultural, forestry, or horticultural or aquacultural commodities.'"

We would also support this type of exemption.

We would be pleased to have an opportunity to work with the committee staff to develop suitable language to fully exempt our industry from the provisions of this legislation.

UNITED EGG PRODUCERS,
Washington, D.C., September 10, 1979.

Hon. HOWARD W. CANNON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CANNON: The United Egg Producers, a national federation of egg marketing cooperatives, wishes to request your assistance in scheduling prompt action on S. 1400, the Trucking Competition and Safety Act of 1979.

As producers of one of the most nutritious and important food commodities in America, the Nation's egg producers are extremely interested in the deregulation of trucking. We depend very heavily on trucking, not only to move our eggs to the marketplace, but also to transport our feed and other supplies. We believe that the trucking deregulation features of S. 1400 would remove the trucking industry from its current regulatory strait jacket and result in substantial savings for both producers and consumers of food products.

However, we oppose Title II of this legislation, the so-called Commercial Motor Safety Title. We feel that Title II would establish a "mini OSHA" and would result in greatly increased government regulation and bureaucratic red tape. Title II offsets some of the benefits in increased efficiency and cost reduction that would be gained under Title I.

We are hopeful that the Congress will take prompt action to deregulate trucking without adding any new OSHA-type bureaucracy.

We ask your assistance in having the Senate Commerce Committee schedule action on this legislation during 1979.

With every good wish, I am.

Sincerely,

ALBERT E. POPE,
Executive Vice President.

PRIVATE TRUCK COUNCIL OF AMERICA, INC.,
Washington, D.C., October 12, 1979.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR SENATOR CANNON: Since our letter of August 7, 1979, we have learned that there is more to Title II of S. 1400 than meets the eye, and we respectfully ask that you and your colleagues on the Committee consider this supplementary statement and make it part of the record of hearings.

Specifically, we understand that, according to interpretation by the Department of Transportation, section 221(a), paragraph (5), of the bill would make applicable to private truck operators, or so-called "private carriers," the registration and other requirements provided for for-hire carriers in the proposed section 10934(e) of title 49 of the United States Code set forth in section 210 of the bill.

That interpretation, which is not readily apparent from the terms of the bill itself, is a matter of grave and objectionable concern to private truck operators.

The Private Truck Council of America, Inc., respectfully and strongly urges that the bill be amended so as clearly to preclude applying to private truck operators the requirements provided for for-hire carriers in the proposed section 10934(e) of the Code.

The interpretation is based on section 221(a) of the bill, which provides that DOT safety regulations "shall be directed toward assuring," among other purposes:

"(5) that persons operating commercial motor vehicles meet any requirements, including registration and liability insurance requirements, *that the Secretary is authorized to develop under section 10934(e) of title 49 of the United States Code as proposed by section 210 of this Act;*" (Italic supplied).

The proposed section 10934(e) of the Code, to which that paragraph (5) refers, authorizes the Secretary to develop such requirements *only for common and contract carriers*, for purposes of determination by the Interstate Commerce Commission as to whether applicants for ICC operating authority are "fit, willing and able" to perform their proposed transportation services.

The Department of Transportation is saying in effect, however, that section 221(a) of the bill incorporates by reference for all operators of commercial motor vehicles—common, contract or private—the authority provided by section 10934(e) for common and contract carriers only.

The proposed sections 10934 (a) through (e) of the Code, set forth in section 210 of the bill and entitled "Safety Aspects of Fit, Willing and Able Determinations," provide that the Secretary of Transportation shall determine whether for-hire carriers applying to the Interstate Commerce Commission for operating authority are fit, willing and able to operate safely.

Section 10934(e), which the Department of Transportation says is made applicable by section 221(a), paragraph (5), to private truck operators, reads as follows:

"(e) The Secretary is authorized to promulgate regulations establishing the basis for the Secretary's determinations with regard to the safety-related aspects of fit, willing, and able determinations. Such regulations may include the establishment of requirements bearing on the ability of an applicant to safely perform services, such as requirements that an applicant—

"(1) register with the Secretary, thereby providing notice of his intent to operate;

"(2) demonstrate knowledge of, agree to, and provide evidence, including accident and compliance histories and out of service ratios, of his ability to operate in compliance with all standards applicable to commercial motor vehicle safety promulgated by the Secretary, including hours of service rules, and including rules promulgated pursuant to this Act, the Department of Transportation Act, the Hazardous Waste Materials Transportation Act, and sections 831 through 835 of title 18 of the United States Code;

"(3) carry such documentation as the Secretary may require;

"(4) carry adequate liability insurance or enter into comparable bonding arrangements;

"(5) designate an agent for service of process; and

"(6) carry and display vehicle identification in such form and manner as the Secretary may require.

"The Secretary may also promulgate such regulations as the Secretary may determine appropriate to assist in the implementation of this section, including rules to require that applications filed with the Commission include such information as the Secretary may require to assist the Secretary in making determinations as to whether, with regard to safety-related matters, a person is fit, willing, and able to provide transportation or other services."

Moreover, section 221(a) of the bill would go beyond a mere authorization of such requirements, since it would provide that DOT operations "shall be directed toward assuring * * * that persons operating commercial motor vehicles meet any requirements * * * that the Secretary is authorized to develop" for common and contract carriers under Section 19034(e) of the Code (*italic supplied*).

Thus, private truck operators, including farmers and other growers, mines and other extractive industries, processors, manufacturers, wholesalers, retailers and other distributors and service industries—enterprises of all kinds, in intrastate as well as interstate commerce—would be subjected to regulations designed for common and contract motor carriers.

They would be required to register with the Department of Transportation, to demonstrate knowledge of, agree to and provide evidence, including accident and compliance histories and out of service ratios, of ability to operate in compliance with DOT regulations, to carry prescribed documentation on vehicles, to carry required insurance or bonding, to designate agents to DOT for service of process, to display DOT-prescribed vehicle identification, and to comply with such other regulations as the Department of Transportation may decide are "appropriate to assist in the implementation of this section."

The enormity of the bureaucracy and of the burdens on agriculture, industry and commerce staggers the imagination.

There is no need to impose such a heavy and costly load of additional regulations and paperwork on the American economy, and it would be especially ironic to do so now in this time of inflation.

The safety regulations already authorized and issued by the Department of Transportation should be made more practicable and more efficiently enforced. Piling on another superstructure of unnecessary new regulations is no solution for any failure to promote and enforce compliance with the comprehensive regulations already promulgated.

Even the Interstate Commerce Commission, which is not noted for advocacy of free enterprise, has rejected proposals for registration by private truck operators desiring to engage in intercorporate transportation, saying "The Commission be-

lieves the potential expense and problems associated with such requirements outweigh potential benefits." (Docket Ex Parte No. MC-122, 44 FR 42838.)

The Private Truck Council of America, Inc., urgently requests that paragraph (5) of section 221(a) be deleted from S. 1400.

Respectfully submitted,

JOHN C. WHITE,
Executive Vice President.

NATIONAL LP-GAS ASSOCIATION,
Arlington, Va., November 6, 1979.

HON. HOWARD W. CANNON,
Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National LP-Gas Association (NLPGA) offers these comments on S. 1390, the Truck Safety Act, now pending before your Committee.

The NLPGA is the national trade association for the LP-gas industry with approximately 4,000 members, including 45 affiliated states. The members of the NLPGA are predominately resellers and retailers of LP-gas (principally propane) and its equipment and appliances to over 18 million installations throughout the United States.

Trucks are indispensable in the transport and delivery of LP-gas from centers of production and terminals to bulk storage plants, and finally to residential, commercial, industrial and farm customers. Most LP-gas customers throughout the nation depend on trucks to deliver their LP-gas either in bulk or cylinders. Accordingly, the LP-gas industry devotes considerable attention to the safe transportation of LP-gas by truck.

TRUCK TRANSPORTATION OF LP-GAS

Shipment of LP-gas by truck from production sources and terminals to bulk plants and to some large volume users is by a vehicle commonly called a "tank truck transport". These vehicles have cargo container capacities generally from 3,500 gallons to 10,000 gallons and are constructed and operated in accordance with the U.S. Department of Transportation regulations. They are owned and operated by common carriers and private carriers. It is estimated that there are approximately 7,000 of these trucks in LP-gas service. Some trucks travel 100,000 miles annually. It is estimated that all of these trucks travel 430 million miles annually. Cargo tanks of these units are generally constructed of high strength steels of the quenched and tempered type and are equipped with safety controls.

The other type of tank truck used in the transportation of LP-gas is the "bulk delivery truck", also known as a "bobtail". These vehicles have cargo containers with capacities from 800 to 3,500 gallons and are used in retail delivery from bulk plant to ultimate consumer. The cargo tanks of these trucks are generally constructed of conventional mild steels and also meet U.S. Department of Transportation regulations. It is estimated that there are 18,000 trucks of this type in operation. These trucks travel a total of nearly 700 million miles in a year's time. A third mode of truck delivery is a standard type truck for cylinder delivery. The total number of trucks so employed is unknown.

LP-gas has been classified as a hazardous material by the Secretary of Transportation and, as such, is subject to regulation, for both interstate and intrastate shipment, under the Transportation Safety Act of 1974, 49 U.S.C. 1801-12, which includes the Hazardous Materials Transportation Act. Under that Act, the Secretary is given the authority to issue regulations which may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including but not limited to, the packing, handling, marking, placarding and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing or containers used in the transportation of hazardous materials. Regulations specifically applicable to the transportation and handling of hazardous materials have been adopted and appear under Title 49 CFR Parts 170-179. The Secretary of Transportation has full rule-making authority under that Act and, as the need has arisen, has used this authority to issue new standards and make changes in existing standards.

Member of this industry are also subject to regulation by the Federal Highway Administration through the Federal Motor Carrier Safety Regulations, Title 49 CFR Parts 390-397, issued pursuant to the Interstate Commerce Act and the Department of Transportation Act. These regulations govern such matters as the qualifications

of drivers, reporting and recording of accidents, hours of service of drivers, and driving and parking rules with respect to hazardous materials transportation.

It is necessary to distinguish between the two preceding groups of regulations, 49 CFR 170-179 and 49 CFR 390-397, to properly address the issue of civil penalties which can be imposed for truck transportation violations. Parts 170-179 authorize civil fines of up to \$10,000 for violations of the hazardous materials transportation regulations. While it is true that the maximum civil penalty for 390-397 violations is \$500, understanding of the effect of the fines is incomplete without further examination. In addition to failure to maintain a daily log, fines can be levied for numerous other violations, e.g., failure to require a driver to be familiar with Part 391 or 397, failure to meet vehicle requirements of Part 393, allowing operation of a vehicle without a medical examination, failure to require a driver to furnish a list of motor vehicle traffic violations each 12 months, etc. Each of these violations, and others, carry a potential civil fine of \$500. Additionally, the \$500 fine is multiplied for each instance of violation. For example, the fine for failure to keep a daily log for 3 months by 3 drivers is: $3 \text{ months} \times 30 \text{ days} = 90 \text{ days} \times 3 \text{ drivers} = 270 \text{ violations}$, each with a \$500 potential fine or \$135,000. In light of the number of violations against which this "multiplier effect" can be imposed, the \$500 fine becomes a substantial deterrent.

On the state level, long-established state law and regulation exists for consumer distribution systems and delivery methods in all states, with further authority residing in local and state agencies governing aspects of the industry. Additionally, many state and local authorities have adopted these DOT regulations in whole or in part.

THE TRUCK SAFETY ACT

As an industry which is dedicated to safe transportation, we note with approval Senator Percy's efforts to improve safety in truck movement. We believe the general trucking reforms contained in his bill will achieve results which are comparable in magnitude to the improvements made in hazardous materials trucking under the Hazardous Materials Transportation Act. Our endorsement of this bill does not extend, however, to provisions in Section 11 concerning employee suits.

Section 11 of S. 1390 provides a new vehicle for employee/employer disputes which is unwarranted. Such disputes can be channeled into existing forums for resolution. Rather than authorizing private action in federal courts, an already over-burdened system, the bill could direct DOT to review the merits of the disciplinary action. If necessary, decisions made on this level could be reviewed by the National Labor Relations Board, an established authority designed to handle such actions. Trucking employees would then be protected by the same rights and procedures as other labor groups. We submit this is a more logical, less expensive, and more functional method of protecting employees' rights.

In summary, we endorse Senator Percy's efforts to improve safety in motor transportation. We believe that on the specific provision with which we differ, the alternatives which we propose, like those advocated by the American Trucking Associations, will provide the same safety benefits but a more practical method of enforcement.

Respectfully submitted,

JOHN H. VALDES,
Director of Legislative Services.

STATEMENT OF DAN V. MARONEY, JR., INTERNATIONAL PRESIDENT, AMALGAMATED TRANSIT UNION, AFL-CIO

On behalf of our 150,000 members, over 24,000 of whom are employed in the over-the-road motorbus industry, I want to thank this Committee for giving the Amalgamated Transit Union this opportunity to express our views on S. 1390 (Truck Safety Act) and Title II of S. 1400 (Trucking Competition and Safety Act, 1979). I, myself, began my career as an employee of the Greyhound Lines, Inc., serving as a motor coach operator, before moving into full-time employment with the Union. I have also served as president of my Local Union, Chairman of the National Council of Greyhound Divisions, and as International Vice-President before my election as International President in 1973. I believe I have, through my own background and personal experience, some knowledge of the safety problems faced by over-the-road bus employees.

The ATU supports S. 1390 and Title II of S. 1400. We favor any positive steps taken by this Congress to advance and improve the safety of the equipment and the workplace, as well as other areas of occupational health for the worker. A commercial motor vehicle—which includes buses as well as trucks—operated over long

distances, is no toy. The intercity bus industry, rather than hauling freight, transports people. The driver and mechanic assume great responsibility for this precious cargo in his or her daily work. Therefore, when an over-the-road bus company employee reports a vehicle as being unsafe, the employee is not only concerned about his own health and safety but that of the riding public, too.

We fully support the so-called "whistleblower" employee protection provision contained in both bills. Occasionally, one of our members may be faced with a serious problem: whether to pull a run with a full load of people with a bus he may believe to have some defects and "take a chance"—especially when the company is running short of equipment at that particular station—or report the bus as unsafe and refuse to drive. This problem usually brings the worker immediately to the attention of a dispatcher or company supervisor whose job depends on his getting the schedules out on time. This problem occurs with some frequency, whether the particular carrier involved is large or small.

Both bills protect the employee who reports safety defects from dismissal or discipline and would allow an employee to sue an employer who discriminates against him for bringing violations of the law to the attention of the Federal or state enforcement officials. Similarly, an employee could sue his employer if he is discriminated against by discipline, discharge, or otherwise, for refusal to operate a motor vehicle when such operation would materially violate motor carrier safety regulations, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The precondition to this protection is that the employee must first have sought correction of the unsafe condition from the company and failed to obtain it. The remedy for the discharged or disciplined employee is reinstatement and compensatory damages, and where appropriate, exemplary damages.

While we fully support the employee protection provisions, we would urge the Committee to take into consideration the fact that the discharged or disciplined worker may not have the resources to retain an attorney and wait for the litigation's outcome some eighteen to thirty-six months down the road. Therefore, we would respectfully suggest that "whistleblower" protection be amended to allow an employee the option of filing the charge with the Secretary, or engaging in private litigation in the federal courts. There is existing precedent for this type of option under federal laws, such as the Fair Labor Standards Act.

We would also advise the Committee that we are opposed to the penalty provisions outlined in § 9 of S. 1390 as they apply to employees who are operators of commercial motor vehicles. We note that the Administration's Bill (S. 1400) contains no such penalty provision. As drafted, statutory fines would be set for those who violate the Act or regulation promulgated thereunder. This would include the driver, except that:

"9(b) . . . no civil penalty shall be assigned against an employee unless the employee is an operator of a commercial motor vehicle and the Secretary determines that said employee's actions constitute gross negligence or reckless disregard for safety, in which case he shall be liable for a penalty not to exceed \$500.00 . . .

"9(c) Any person who knowingly and wilfully violates any standard, rule, regulation, or order under this Act or . . . makes a false statement or representation required by this Act . . . shall be subject for each offense to a fine not to exceed \$25,000 or imprisonment for a term not to exceed one year, or both; provided, however, that if such violator is an employee he shall only be subject to penalty if he is an operator of a commercial motor vehicle, in which case he shall be liable, upon conviction, for a fine not to exceed \$1,000."

Our comment on this provision is that it is unduly harsh on the employee. If, in a rare situation, an intercity bus driver, whether "knowingly and wilfully" or not, took an action which would violate the safety standards in the Act, the employee would be subject to discharge, among other penalties. As many of you know, discharge is often referred to as the "death penalty" in labor relations. Certainly the ATU would never condone such a violation which, in our industry, would threaten public health and safety. But we urge you to consider the real world difficulties of a discharged employee having to face a \$500 or \$1,000 fine, or even a year in jail. Again, we would follow S. 1400 and delete this provision in S. 1390, or, at least, recommend that (1) the Committee place less stringent penalties on vehicle operators if such a provision is adopted or (2) include in § 9(b)'s list of mitigating circumstances the question of whether or not the employee was discharged from employment.

Both bills create a mechanism for states to adopt similar safety provisions for commercial motor vehicle operators. We believe it is imperative that the federal legislation ensure uniformity in the application, interpretation and enforcement of the provisions of this Act. If a state decides to enact safety legislation for commer-

cal motor vehicles, we believe that it should be required to adopt the federal standard.

National standards promoting the health and safety of employees and of the riding public in the over-the-road bus industry should be enacted by this Congress. The ATU, with the few reservations set out above, fully supports the positive steps in this direction taken by S. 1390 and Title II of S. 1400.

We urge early enactment of this badly needed legislation which can only reduce the number of commercial motor vehicle accidents and the number of serious injuries and fatalities which occur annually in the United States.

Thank you.

STATEMENT OF BILL SCHEFFER, VICE PRESIDENT, INDEPENDENT TRUCKERS
ASSOCIATION

Mr. Chairman, my name is Bill Scheffer, and I serve as the national Vice President of the Independent Truckers Association, and largest and only nationwide association of independent truckers in the United States. I also serve as the President of the Pennsylvania chapter of the Independent Truckers Association and we maintain offices in Breezewood, Pennsylvania, a community at the crossroads of the Pennsylvania Turnpike and Interstate 70.

I have had more than 27 years of professional trucking experience as an independent trucker. I have served as the Vice President of the Independent Truckers Association for more than four years. I have operated many kinds of over-the-road equipment, hauling virtually every kind of commodity from coast to coast. I was also an officer of a now almost defunct organization of steel haulers located in Pittsburgh, Pennsylvania, and I have received safety commendations from former President Nixon and former Pennsylvania Governor Shapp. In addition, I am a volunteer fireman and a trained paramedic, so I have had additional opportunities to not only witness accidents but to partake in training that could prevent them both on and off the road.

My association and I are concerned with what appears to be pending legislation that has been introduced which may be at cross purposes, specifically, Title II of the recently-introduced "Carter-Kennedy" Trucking Competition and Safety Act of 1979, (Senate Bill 1400) and Senate Bill 2970, introduced in 1978 by Senator Charles Percy, entitled The Truck Safety Act of 1978.

Inasmuch as I was traveling when news of this hearing reached me, I did not have time to prepare a complete analysis of the two pieces of legislation, subjects of this hearing, so I respectfully request the ability to send an addendum to this testimony.

Undoubtedly, the Committee on Commerce, Science and Transportation will be receiving voluminous testimony covering all aspects of this legislation. Rather then try to analyze everything on such short notice, I would like to zero in on a few major points.

In Section Two of Senate Bill 2970, the proposed legislation assumed that commercial vehicles pose a risk "due to their extensive use and substantial size and weight."

Since most statistics show that heavy trucks are involved in less accidents than their number would indicate, and, in fact, are safer than Highway Patrol or state police agency vehicles, we find this assumption on the part of the legislation to be prejudicial. We would like to know the extent of the research performed by the staff preparing that legislation which would assume that the size of trucks poses a significant factor in accidents.

Everyone wants to reduce accidents, especially truckers, not only because of the loss of life or limb, but also because of the economic hardship any accident causes.

We are pleased, therefore, that the Committee on Commerce, Science and Transportation is opening up a subject of safety which has received scant attention, but should—the hours of service.

Many years ago the federal government set up rules which govern hours of service. They have remained basically unchanged for a generation, and because of this lack of change, the government, therefore, assumed that the rules were sound and based on scientific principles. Thus, the hours of service portion of the safety rules governing interstate truckers, assumed, and still assumes, that a trucker who drives over 70 hours in eight days cannot be a safe driver. Because of extreme weather or road condition, truckers in interstate commerce may be allowed some leeway in their hours of service on any particular day, so long as the maximum number of hours of service in any eight day period are not violated.

We think there is some wisdom in the hours of service requirements, and, although in terms of practicality, log books are frequently referred to as "lie books" or

"funny books," restricting hours of driving obviously does have some merit. We have always questioned, however, the strict rules governing what those hours are, because, again, the rules, virtually unchanged for many, many years, have not taken into consideration the better roads, smoother-riding trucks and more luxurious vehicles which have blossomed in the trucking industry. Obviously, a trucker driving light hours on a smooth Interstate Highway with a long-wheelbased tractor and an air-ride suspension, will not be nearly as fatigued as a trucker of yesterday bouncing along on a narrow, pot-holed road which required more stamina and alertness. Yet the hours of service remain the same for smooth Interstates as well as rocky roads at high altitudes. This unbending rule eliminates driver intelligence and judgement from the scheme of highway safety.

Nevertheless, as noted, there must be a correlation between hours of service and safety.

That is why there is so much controversy among long-haul truckers today, because the federally-mandated 55 mph speed limit cuts productivity among long-haul truckers by more than 25 percent.

As early as 1974, the Department of Agriculture recognized the loss in earning capacity of truckers in its special report to the United States Senate entitled "The Immovable Feast," prepared for the Committee on Agriculture and Forestry.

On page 13 of that report, which we recommend this Committee enter into the documents list, the Department of Agriculture statement said: "Assuming no change other than speed reduction, there is an average reduction in the supply of motor transports of 27 percent to 28 percent. However, because of the impact of the Federal safety regulations discussed on page 12, the reduction is even greater."

In other words, shortly after the 55 mph speed limit was put into effect, the United States Department of Agriculture prepared a special report for the United States Senate which admitted that the speed limit cut trucking's productivity by 27 percent to 28 percent—or more.

Yet no increase in income to compensate truckers for this was manifest. Hence, many truckers either were forced and are forced to break the law, or else they must voluntarily (or involuntarily, to be more accurate) reduce their total income from 27 percent to 28 percent—or more.

As explained in that Department of Agriculture report, cutting the maximum speed limit down by ten miles an hour actually reduces the total miles by a significantly higher amount than the percentage hints at.

Therefore, if a significant increase in accidents has occurred, as suggested by Senator Kennedy in his June 26th statement accompanying his explanation of the Carter/Kennedy legislation, perhaps it could be traced to violations of hours of service . . . hours of service which are mandated by the federal government.

While the federal government may deem the 55 mph speed limit to be safer, no study was performed prior to enactment of that law which showed that the federal government—or any state government, for the matter—took into account the tremendous loss of income to truckers if they adhered to the new limit.

With stricter enforcement of the speed limit a proven fact, due to the higher number of speeding tickets issued, those truckers who were forced to drive more hours would, therefore, become more fatigued, and thus, would be prone to cause accidents.

However, this is merely an assumption, just as the legislation in question assumes that size of trucks trigger accidents, so we must at least temporarily discard this assumption.

It would seem that Senate Bill 2970 is filled with the suggestion and requirement of record keeping, when most, if not all of the very record keeping is done now, either through the ICC, DOT or various law enforcement agencies. Under the section "RECORD KEEPING, INSPECTIONS AND INVESTIGATIONS," the secretary is required to establish and maintain records which, according to our research, are supposed to be already maintained. In short, this section, like much of the legislation, merely rearranges existing priorities but baptizes them under this new proposed legislation. Record keeping is already a tremendous burden on the trucking industry, and many say that record keeping in the federal government is ponderous. This bill would merely add on to the burden without really attacking the main causes of accidents. It is a record-keeping bill, not a safety bill.

Additionally, this legislation provides a tremendous sum of money—at least one hundred million dollars—to provide "incentive assistance" to the states.

Although there are considerably less than half a million long-haul trucks in the country basically involved in the majority of interstate commerce, the hundred million dollars would be a costly funding. If a hundred million dollars is divided into half a million trucks, that is \$200 apiece . . . and that is just for starters.

Additionally, with our highways in need of repair, to tap the Highway Trust Fund to further federalize law enforcement, seems a perversion of the basic reason for the Highway Trust Fund. To take a hundred million dollars from the Trust Fund to train more and more police in order to organize more surveillance on constantly deteriorating highways, seems to be wasteful in the least, unproductive at best. Additionally, highways that are monitored more heavily by police are not necessarily highways that show a reduction in accidents. The presence of police does not necessarily reduce accidents, merely speeding or some other violations.

The vast majority of all highway patrol or state police highway patrolling functions concern speeding, yet, in the March, 1979 *Overdrive* magazine, a detailed report shows that speeding is one of the lowest causes of all highway accidents. In fact, in that same issue of *Overdrive*, part of the most massive federal study ever performed, covering 290,000 drivers and 10,000 accidents, showed that, on four-lane highways, the speed of 68 miles an hour was much safer than 55 miles an hour. That study was confirmed correct by an official of the Department of Transportation as recently as February, 1979.

Other statistics in that article indicate that speeding is almost low man on the totem pole when it comes to being a true cause of accidents.

LEGISLATION AT CROSS PURPOSES WITH CARTER/KENNEDY LEGISLATION

Senate Bill 2970, in Section 17, on page 18, says: "Nothing in this act shall diminish the existing functions, powers, and duties of the Interstate Commerce Commission which shall consider the public safety and a carrier's record of compliance with safety regulations as a principal criteria in determining whether to confer operating authority upon motor carriers pursuant to Part II of the Interstate Commerce Act (49 U.S.C., 301, et seq.)."

Yet on page 20 of Senator Kennedy's June 26th release and explanation, the following is stated: "The transportation community has come to recognize DOT as the focal point of Federal motor vehicle safety activity and removing the possibility of significant safety actions by the ICC would streamline safety regulatory authority. (Emphasis supplied.)"

"As mentioned above, DOT already has a statutory advisory role regarding safety aspects of fit, willing and able determination. Therefore, it is expected that DOT's advisory role could be converted to a decisionmaking role with little difficulty."

Our interpretation of these two sections of these two pieces of legislation suggests that they both cannot operate. One cancels the other. Wouldn't it be better to have less legislation introduced which is contradictory or vague, and merely sharpen the teeth of existing powers, *providing those teeth need to be sharpened?*

In Title II, Sections 201 and 202, it is alleged that "motor carrier accidents reported to the Bureau of Motor Carrier Safety (BMCS) of the Department of Transportation (DOT) increased from 25,666 in 1976 to over 34,000 in 1978."

Lots of people are fond of using statistics to prove a point, and we appreciate it, but to assume that there has been some giant breakdown in communications between drivers and law enforcement, requiring massive federal funding, is, again, an assumption.

On the one hand, there is no real breakdown as to the size or experience of the trucks or drivers, when comparing the 25,666 accidents in 1976 to over 34,000 in 1978.

"Medium" trucks encompass a lot of rental trucks, as do large trucks. Virtually anyone with a driver's license can go in to any HERTZ, AVIS or RYDER truck rental agency and rent a "medium" truck. Where is the breakdown, statistically, that shows that the professional trucker is at fault?

Just as some pretend the speed limit reduced accidents and deaths, so could we, tongue in cheek, pretend that the reason there were so many more accidents in 1978 was because drivers had a suicidal urge brought on by a lack of competence in the Carter Administration. Such a theory would be laughed out of a court, any hearing, as well it should be, yet the federal government is still pretending that the 55 mph limit saves lives and reduces accidents, when all solid evidence shows that the speeding driver is not the cause of the majority or even a significant portion of highway accidents.

Additionally, when a truck—of any size—is "involved" in an accident, the public is led to believe that the truck or trucker is "at fault." Involvement does not dictate responsibility, but this sort of thought process has unfortunately probed the sentence structure of Senator Kennedy's statement of June 26.

Yet if those statistics are correct, and if truck accidents of medium and heavy trucks show a higher involvement rate, there can be shown a number of reasons, not the least of which would be the number of extra hours truckers are forced to devote to the highway. (As noted in *Overdrive* magazine, a trucker who obeys the 55

mph speed limit, is forced to spend 48 more hours driving a month to cover the same miles, plus an additional 40 hours "off duty" not driving or "on duty" not driving, for a total of 88 hours a month more on the highway. That comes to over 1,000 additional hours on the road, so to speak, each year. When it is remembered that the typical trucker can only legally work 3,200 hours a year, driving and being on duty but not driving, it is easy to see that a tremendous fatigue factor must set it. Thus, the 55 mph limit may be indirectly contributing to accidents, though no one in the federal government admits it, even though the Department of Agriculture alludes to the extra time on the road in its report referred to earlier.)

There have been some suggestions that the hours of service be revised so truckers can spend—legally—more hours behind the wheel to compensate for their incomes being cut 25 percent. Would the union representing steel workers encourage that kind of thinking? Highly doubtful, and if the federal government is really serious about real highway safety, then perhaps any sums devoted to saving lives should be devoted in proportion to the areas that encourage accidents, such as the drinking driver or the inattentive or ignorant driver . . . who is the least attacked driver on the highway.

In the state of Arizona in 1976, just one half of one percent of all drivers were judged to have been breaking any speed limit when they got involved in an accident. Yet, 12 percent, or twenty four times as many drivers, got involved in an accident (or, actually, caused an accident) who were found to have failed to yield the right of way. Many other reasons for accidents in Arizona were far more responsible than the speeding driver. Even those who passed a stop sign, at any speed, accounted for many more accidents in Arizona than the illegally speeding driver.

Arizona is typical of many western states, and, in fact, its Interstate system is typical of most states, so those Arizona statistics could be expanded, and we are confident that many other states would show the exact same, or similar results.

For far too long, there has been too much misleading information regarding traffic accidents in the motor truck field, and this we underscore, because, by lumping together rental trucks, garbage trucks, local trucks and the like with the nation's long-haul tractor trailers, the real trucking industry has been given we feel, a black eye.

For this reason, we do applaud the Senate's desire to pinpoint blame and reduce accidents, but before a massive piece of legislation is turned into law, perhaps it is time to start breaking down the classes of trucks and truckers, not only by size, but by many other categories, as well.

To say that "medium and heavy trucks" are involved in more accidents says nothing concrete. Were the medium trucks involved in interstate commerce? If so, how experienced were the drivers? How many were rental trucks? Why doesn't the DOT police rental companies as to competency not only of drivers but of companies who rent the trucks to the public?

And let the federal government find out what insurance companies already know . . . that the independent trucker is a safer trucker, generally, than his company-driver competition. And let the federal government remember that a fraudulent study has been unleashed on the public which unfairly and unscientifically lays the blame for many law violations on the exempt trucker, a study paid for by the railroads, the American Trucking Associations and Teamsters Union. (Yet that study, for over a year, many months before it was even published, in fact has been used over and over to unfairly chastise the exempt hauler.)

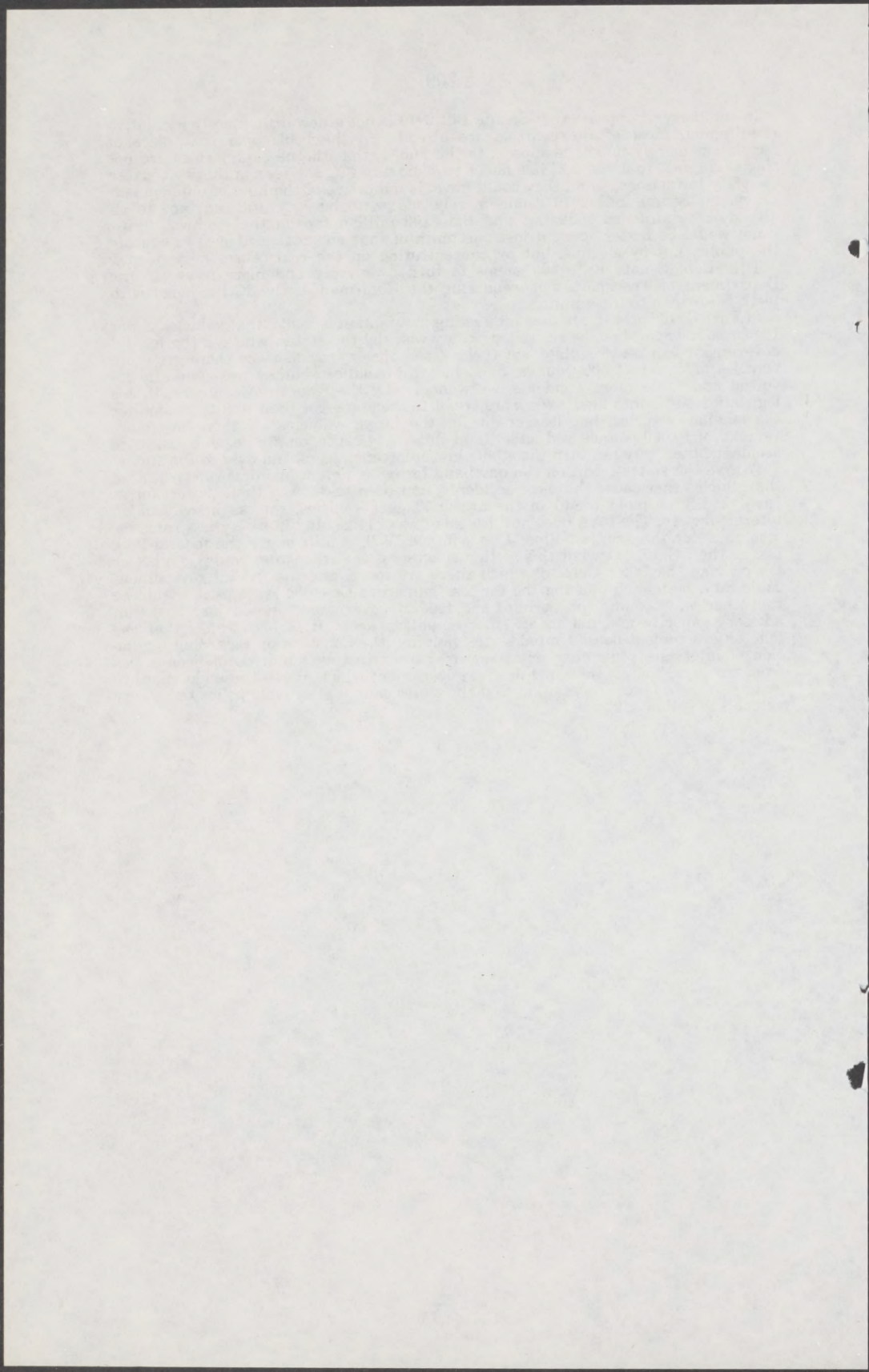
Let the federal government break down the types of trucks not by industry standards of weight classification which have little merit, but by a new classification which can more easily identify who the real culprit is. And if any legislation such as Senator Percy's bill is turned into law, let any suggested fines for violators be administered on any index relating to the truck owner's income. To levy a \$500 fine for some infraction is meaningless if the owner of the truck is a \$500 million per year carrier, but for an independent trucker, such a fine could mean the difference between a profit and a loss for an entire month. If income taxes are based on a sliding scale, so should violations, unless those fines are deliberately designed to force the small trucker out of business. A one-truck operator does not have the financial leverage of a large carrier. Additionally, the one-truck operator is, historically, the target for more roadside checks than his common carrier big uncle, and thus, the small trucker is also more likely to have less safety violations because he is a constant, moving target for local and state law enforcement authorities. However, since the small trucker realizes this, he generally keeps his equipment in better shape than the large fleets. There is little or no equality in trucking in either income, profit or safety checks, and it is sadly ironic that the best truckers are the ones who suffer the most state and local harassment.

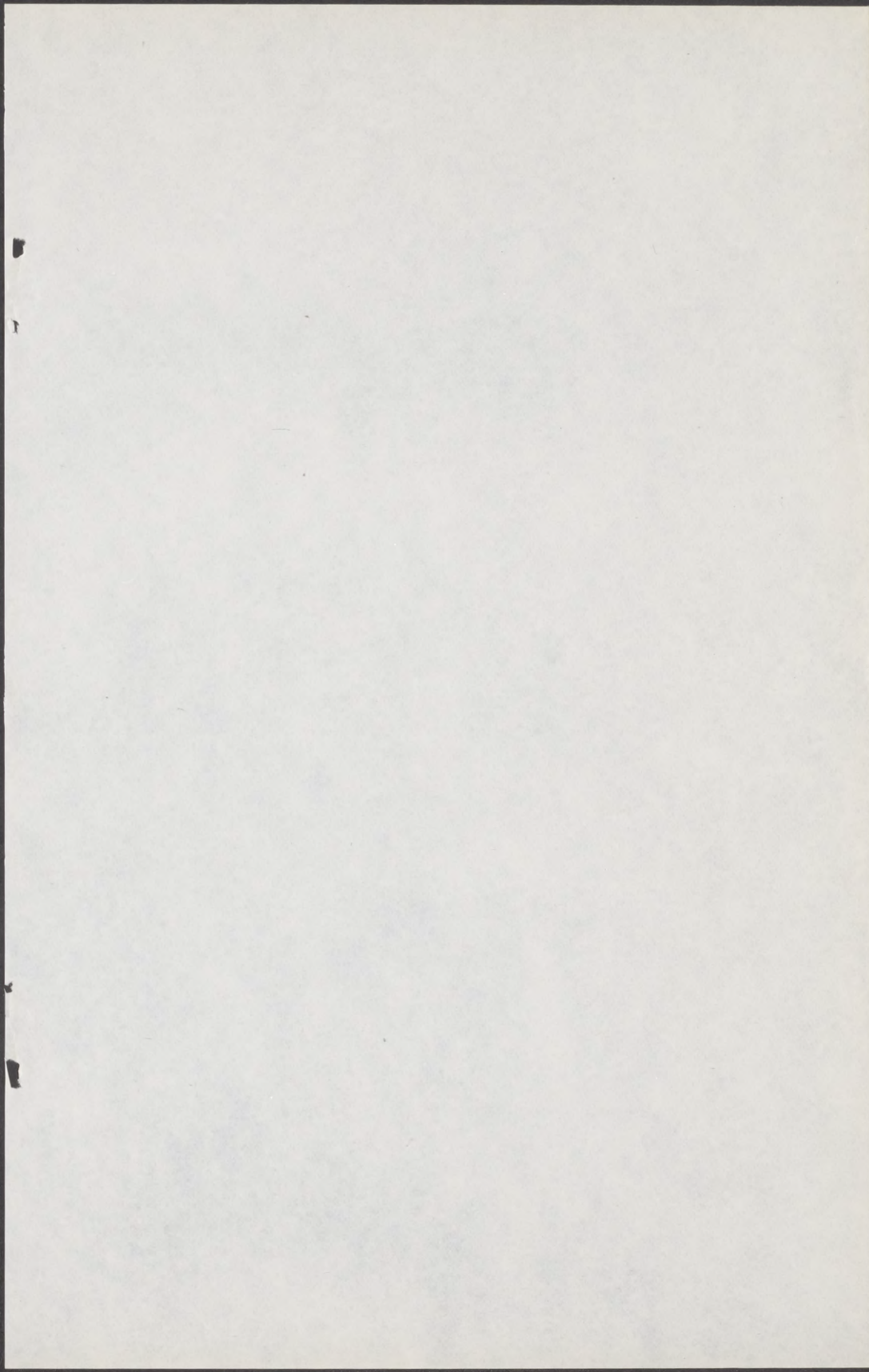
In summary, it appears that Senate Bill 2970 is not a new dish, merely legislative egg-flipping. Most of the controls are already on the books and that piece of legislation merely makes it appear, to the public, that the necessary rules are not there. The fact that the ICC has never revoked any ICC carrier's authority because of safety infractions, when they could have, is indicative of the kind of enforcement prevalent. Senate Bill 2970 would merely add more bureaucratic red tape to an already overburdened industry, and the \$100 million tap on the Highway Trust Fund would be better spent if just one tenth of that amount were used to educate the public, not by slogans, but by concentrating on the real causes of accidents.

Title II of Senate Bill 1400 seems to turn over more and more power to the Department of Transportation, rendering the Chairman of the ICC a judge with teeth filed down to the gumline.

In Part III of Title II, another interesting assumption is made: that vehicles under 10,000 pounds can best be regulated, safety-wise, by the states, whereas the federal government can best regulate, safety-wise, the bigger trucks. Since there are more vehicles of under 10,000 pounds, and since the smaller vehicles are generally involved and cause more accidents, we wonder why the federal government, if this legislation turns into law, gives more credit to the states for their ability to monitor the smaller vehicles, but less credit for the larger vehicles? If there are more vehicles of 10,000 pounds and under, and since they cause, on a mileage basis, more accidents, then why not turn the whole law enforcement problem over to the states?

To give the states credit on the one hand for being able to monitor safety best on the vehicles that cause the most accidents, and then take away their powers (or at least modify or mold them) in the area of bigger vehicles, smacks heavily of an ulterior motive. The FAA does not use this line of reasoning in safety programs for airplanes, for the smallest Piper Cub, vintage 1950, is still under the federal gun, just as the DC-10, but what this section suggests is that the states could do a better job policing the Piper Cubs, of which there are more, and the federal government could do a better job policing the far less numerous DC-10's. Perhaps it should be the other way around, or perhaps the federal government should just be in an advisory capacity and not in an enforcement capacity. It seems strange that the federal government doesn't mind states violating the Constitution regarding regulation of interstate commerce, or in the area of extracting hundreds of license fees from truckers, but yet the same federal government which allows those violations to go unpunished, takes the position that the states cannot effectively police those very vehicles that they tax.





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