

Before the

UNITED STATES SENATE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
OF
THE COMMITTEE on COMMERCE, SCIENCE, AND TRANSPORTATION

STATEMENT OF THE

AMERICAN TRUCKING ASSOCIATIONS, INC.

ON

TRUCK SAFETY

WALTER B. McCORMICK, JR.
PRESIDENT & CEO

AMERICAN TRUCKING ASSOCIATIONS, INC.
2200 MILL ROAD
ALEXANDRIA, VA 22314
703-838-1866

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I. Introduction

I am Walter B. McCormick, Jr., President and Chief Executive Officer of the American Trucking Associations, Inc. The ATA is a federation that includes thousands of dues paying motor carrier members, 50 affiliated state trucking associations, and 14 conferences that represent virtually all segments of the trucking industry.

Our industry has been a leader in the improvement of highway safety. Truck safety, and overall highway safety, is ATA's highest priority as it represents those who move America's freight. Placing a sincere and genuine focus on safety is not only the responsible thing to do for us as a transportation trade group, but it also makes good business sense for our members. Safety really is good business.

Therefore, on behalf of the ATA federation, I would like to thank Chairwoman Hutchison and the members of this subcommittee, for your interest in truck safety, for holding this hearing, and for allowing us the opportunity to testify.

II. ATA Supports Senator McCain's Legislation to Create a Separate Motor Carrier Administration

I begin by applauding Senator McCain for introducing the Motor Carrier Safety Improvement Act of 1999, S.1501, calling for the creation of a separate motor carrier administration to regulate the trucking industry. Fifteen years ago, Senator Ernest F. Hollings had the wisdom to propose a separate motor carrier administration. More recently, nearly every major stakeholder has signed on to this initiative, including the National Private Truck Council, The Owner Operators Independent Drivers Association, and the Commercial Vehicle Safety Alliance. Even the U.S. Department of Transportation's Inspector General has called for the creation of a motor carrier administration to focus exclusively on the motor carrier industry.

It may sound strange for an industry to promote a separate government oversight organization; however, because the trucking industry is interstate in nature, we believe there must be a strong federal agency with the appropriate manpower to effectively ensure the operating safety of thousands of companies nationwide.

The necessity of such an agency is clear. Trucking's impact on the economy is enormous. The numbers show that the trucking industry dominates freight transportation in this country. In 1998, 82 percent of the freight transportation bill in this country went to trucking. That 82 percent totaled \$346 billion. The remaining 18 percent was split between freight hauled on the rails, in the air, in pipelines, and on the water.

And while these other modes are regulated by separate administrations, the safety and efficiency of the trucking industry is regulated by a small office within the Federal Highway Administration (FHWA), the nation's highway building agency. The trucking industry and the motoring public deserve a federal agency that has truck and

bus safety as its core mission. This would allow an administrator, appointed by the President and confirmed by the Senate, to sit with other administrators from the other modes as an equal.

As I mentioned, this is not a new idea. In fact, Vice President Gore supported such an administration in 1985 when it was proposed by Senator Hollings. At that time, according to the Congressional Record, Senator Hollings said “a motor carrier administration would serve several important functions...it would fulfill the purposes of the Department of Transportation Act relative to transportation policy...safety...improving transportation systems and protecting consumer interests...[and] would provide comprehensive research, planning, and programming that will enable Congress and the Federal Government to make well founded and properly directed legislative and regulatory decisions...”. Now, 14 years later, as our economy has grown even more reliant on trucking, and our highways have become even more crowded, we agree with this committee, with CVSA and others that it is the right time to create this long needed organization to further advance the many motor carrier safety issues before us.

III. ATA Supports Additional Provisions of S. 1501

A. **A Department-Wide Policy on the Privacy Of Electronic Records Could Encourage Motor Carriers to Adopt Safety-Related Technology**

ATA supports the provision in S.1501 requiring the Secretary of Transportation to establish a department-wide policy protecting privacy for any individual or entity utilizing electronic recorders or other electronic performance or location monitoring device. Currently, the agencies within the Department of Transportation have conflicting policies with respect to the use of electronic records for accident investigation and enforcement purposes, and the privacy of truck owners and operators should receive no less protection than the privacy of airplane or train operators.

For instance, the FAA has recognized that to encourage carriers to participate in their Flight Operations Quality Assurance Program, a voluntary program that relies on safety related technology and electronic data, the agency must guarantee that the data generated by this program not be used for routine enforcement purposes. In a press release dated December 2nd, 1998, FAA Administrator Jane Garvey wisely stated that FAA will not use safety data generated in the FOQA program for enforcement action except in egregious cases and “Safety is President Clinton’s highest transportation priority. We encourage airlines to participate in this program, which will provide the FAA with an additional tool to make the world’s safest aviation system even safer.”

FHWA’s policy in this area, however, offers no such guarantee. In addition,

certain FHWA-funded intelligent transportation systems (ITS) programs generate vehicle-tracking data that is being used for purposes entirely unrelated to safety improvement, such as tax collection. Therefore, some motor carriers are discouraged from adopting safety-related technologies for fear of possible self-incrimination or expanded taxation. This inconsistency in department policies is illogical and unnecessary. Hopefully, this legislation will bring greater privacy protection and uniformity to how the Department treats electronic data and will encourage the further adoption of safety-related technology in the trucking industry.

B. We Support Many of the CDL Improvements in S. 1501.

I would like to note for the record that ATA has called for and supports many of the Commercial Drivers License (CDL) improvements now found in S. 1501. When I had the privilege of testifying before the full Commerce, Science and Transportation Committee in April, I outlined ATA's Safety Agenda, an inventory of safety-related legislative and regulatory reforms that we intended to pursue. Commercial Drivers License improvements were high on our agenda and I am pleased to see that they are on yours too.

For instance, there is a substantial need to include on a driver's CDL record all moving violations regardless of whether or not they were committed in a commercial motor vehicle. An unsafe driver is an unsafe driver. States, law enforcement officers and motor carriers need to know a driver's complete driving history—not just a history of serious violations, or violations which occurred in a commercial truck.

Federal law must also be amended to prohibit states from "masking" violations of traffic laws so that they do not appear on a driver's commercial driving record. This practice of removing violations for drivers who attend remedial training classes, or take some other similar action, interferes with the intent of the act that created the CDL. The states that engage in this activity are simply circumventing the requirement to post these convictions on a driver's record. It is critical that this record be complete so that employers, insurers and other state licensing and enforcement agencies can make appropriate and fully informed decisions affecting drivers. These decisions have a direct impact on highway safety.

States must also be prohibited from issuing "special" licenses to disqualified truck drivers. Federal regulations provide specific sanctions for drivers who commit certain violations and forbid them from operating a commercial motor vehicle for a given length of time. However, some states will issue hardship or provisional licenses to these drivers and continue to allow them to drive. This practice contradicts the intent of the law and is unacceptable. Drivers who commit disqualifying offenses should be taken off the road for the appropriate period of time—no exceptions.

C. Better Collection of Data is Necessary to Identify Measures That Will Have the Greatest Impact on Safety.

One of the most important provisions of S. 1501 may be that which calls for a program to improve the collection of crash data, especially with respect to crash causation. Clearly, to identify regulatory and legislative proposals that will have the most impact on safety, we must identify the principal causes of truck crashes and ways to prevent them. To draw a parallel, before proposing a cure one must first identify the ailment. Otherwise, without truly understanding the factors leading to truck crashes, we cannot identify and implement effective countermeasures.

On this note, the Department of Transportation has recently completed some interesting and compelling, albeit limited, research looking at crash causation. Through a contract with the University of Michigan Transportation Research Institute, DOT examined the factors involved in fatal crashes between trucks and passenger vehicles. The findings of the study, released this past April, show that in more than two-thirds of fatal passenger vehicle/large truck crashes, the driver of the passenger vehicle was the only one cited for a related factor contributing to the crash. The physical evidence from these crashes (e.g., pavement gouge marks, location of oil and other fluids from the vehicle) is even more compelling. For instance, in 89% of fatal head-on crashes between a large truck and a passenger vehicle, the passenger vehicle had crossed the centerline into the truck's lane of travel.

In light of such evidence pointing to the causes of many fatal car/truck crashes, ATA has been actively involved in educating drivers of all types of vehicles on how they can safely share the road with trucks. For instance, the industry has supported DOT's "No-Zone" campaign, an education program to enlighten drivers about the size and location of a truck's blind spots. We have also urged state licensing agencies to include information in their drivers' manuals about trucks' unique operating characteristics such as braking distances and turning radiuses.

Further understanding of the causes of truck crashes will provide us with additional opportunities to find and implement effective countermeasures.

IV. ATA Has Concerns With Some Provisions In S. 1501

ATA has met with committee staff regarding S. 1501 to express some concerns with the bill. Let me discuss some of our most critical concerns.

A. Shifting Responsibility for Vehicle Retrofit Requirements to NHTSA Would Not Promote Safety

The proposal to shift responsibility for retrofit requirements to the National Highway Traffic Safety Administration (NHTSA) is ill-conceived. It is apparently based on a notion that NHTSA would issue retrofit rules in a more timely fashion than past efforts by FHWA. The example most commonly cited by critics of FHWA is the conspicuity tape retrofit rulemaking for older truck trailers. These groups are critical of the fact that it took FHWA 6 years to complete a rulemaking requiring older trailers to be retrofitted with conspicuity tape. These groups believe that NHTSA would have completed the rulemaking more quickly. The fact is that while it took FHWA 6 years to complete the retrofit rulemaking, it took NHTSA 12 years to complete the original rulemaking requiring conspicuity material for newly manufactured vehicles.

NHTSA's current methods for writing standards are inconsistent with the way retrofit requirements should be developed. New vehicle standards are written so

manufacturers can design components to meet certain specifications that can be tested in a laboratory or on a test track. The regulations require the components to perform to a certain standard manufacturers can test using special equipment and procedures. Motor carriers do not have the means or equipment to meet these standards nor are they mounting components on brand-new, showroom condition vehicles. The development of standards for these two purposes, new vehicle and retrofit, would take place on separate paths. In addition, NHTSA does not have the staff or infrastructure to enforce retrofit requirements once they were written.

Additionally, NHTSA is not a truck-oriented agency. In fact, less than 5% of its staff is currently devoted to large trucks. Why? There are far more cars on the road, far more car crashes and much more that must be done to make cars safer, especially as cars get smaller. In addition, it is illogical to have trucking regulated by two separate agencies. The ultimate goal of regulation is increased safety through compliance with effective standards. This is a goal that cannot possibly be met if the regulations are too difficult for motor carriers to understand. As it is today, the regulations are far too complex. By subjecting motor carriers to vehicle regulations from two separate agencies, NHTSA for retrofitting vehicles and a Motor Carrier Administration for maintaining them, it would make a bad situation worse.

B. Revoking A State's Authority To Issue CDLs Is Misplaced Punishment

The provision of the bill that calls for rescinding a state's authority to issue CDLs if the state is not in compliance with the CDL requirements concerns ATA. While the trucking industry has long been an advocate of the CDL, we believe this approach to enforcing the CDL program requirements at the State level is a wrong one. In effect, this provision would punish drivers, not the state agency, since the drivers would no longer be able to get licenses from their state. As a result, the state's economy will suffer from a lack of truck drivers to deliver the freight.

It is important to note that the states the bill proposes to penalize are not out of compliance due to an unwillingness to adopt the required procedures. Instead, these states often lack the infrastructure, personnel and data systems to implement the CDL system as required. Sanctioning these states will have little effect on their likelihood of coming into compliance. Therefore, we support the provision of the S. 1501 that provides up to \$1,000,000 each to non-compliant states to fund the changes necessary to bring them into compliance. It is this approach that is more likely to achieve the desired result.

C. Creating A Registry of Medical Providers to Conduct Driver Physicals Will Not Improve the Process.

While we agree that the process for conducting driver physical examinations could stand some improvements, we do not agree with the method S.1501 proposes in order to make these improvements. The biggest problem lies in the fact that some medical examiners are simply unfamiliar with the physical qualification requirements for truck drivers. Others are aware of the requirements, but do not enforce them as diligently as possible since the system does not hold them accountable for doing so. The solution to these two problems is to better educate medical examiners and to hold them at least partially accountable for certifying only those drivers who meet FHWA's strict medical criteria.

We recognize that in proposing a registry of medical examiners to conduct driver physicals, the Senate may be attempting to ensure that only qualified medical examiners perform physicals. But the creation of a registry alone can neither assure that an examiner is knowledgeable and will not necessarily hold an examiner accountable. Instead, a registry will simply limit the number of medical examiners who can conduct these physicals, drive up costs to motor carriers and make it more difficult for drivers, especially those in rural areas, to find examiners who can certify them.

The solution is to improve the flow of information to examiners, to better educate them on the physical qualification requirements and to impress upon them their responsibility to ensure that only qualified drivers are medically certified. We feel that all of these objectives can be achieved through improvements to the form that FHWA requires examiners to complete when evaluating a driver. The form provides detailed instructions to examiners, contains information on the physical qualification requirements and requires physicians to attest to the fact that the driver is qualified. It may interest you to know that FHWA is in the process of revising the medical form to address these issues, and expects to have the improved form in place within a matter of months. We believe the new exam form is certain to improve the way drivers are medically examined and qualified.

V. ATA Also Supports Safety Improvements in Related Legislation

While S. 1501 proposes some real, substantive truck safety improvements, we would like to point out that other legislation currently under consideration has identified additional improvements that we support as well. For instance, S. 1524 introduced by Senator Breaux and S. 1559 introduced by Senator Lautenberg contain some related safety measures that deserve mention in this forum.

A. The Motor Carrier Safety Specialist Act Will Also Improve Truck Safety

S. 1524 recently introduced by Senator Breaux proposes a means to raise the training standards for those who audit the safety records of motor carriers. It will also help standardize the process used by inspectors who conduct these compliance reviews. We support this legislation as improved training of inspectors and standardized procedures are growing increasingly necessary.

Currently, there is no formal training requirement for government or private sector investigators and consultants who conduct compliance reviews. While Federal government inspectors typically complete an initial training program, state inspectors who conduct federal compliance reviews are not required to do so. Private sector consultants who conduct reviews of motor carriers' operations also have no formal training requirement.

While the standards against which carriers are judged during a compliance review are fairly uniform, the procedures for determining if a carrier meets the standards are not. For instance, when sampling records for review no two inspectors may select the same number of records nor will they use the same selection method (e.g., random or targeted). For these reasons, it is important to establish formal training requirements which should, at a minimum, include standard procedures for conducting compliance reviews.

B. The Proposal to Require New Entrants to Demonstrate Their Safety Competence Has Merit

We are aware of a provision in S. 1559 that would require new carriers to demonstrate their knowledge of and compliance with the Federal Motor Carrier Safety Regulations. We are generally supportive of this proposal since there is a need to ensure the safety of the tens of thousands of new motor carriers who are entering the industry each year. The industry is growing at a tremendous rate and we must search for new and innovative ways to ensure that the industry's safety performance continues to improve.

We have some suggestions, however, with how FHWA should implement this mandate if it is ultimately issued. Naturally, completing the task of certifying the safety of all new motor carriers could be quite difficult given the industry's explosive growth. On average, an additional 20 to 25 thousand motor carriers register with the FHWA each year. It is simply unrealistic to expect FHWA to perform an on-site review of each of these carriers' operations, as some have suggested. FHWA currently only has sufficient resources to audit approximately 2% of the existing motor carrier population which translates into about 8,000 motor carrier compliance reviews annually.

As an alternative, we would support an industry-based self-reporting program to assure that new carriers are familiar with the safety regulations and have mechanisms in place to support safe operations.

C. FHWA Should Penalize Any Party In the Transportation Chain Who Induces Carriers To Violate the Safety Regulations

Finally, I would like to bring to your attention Section 109 of S.1559 that gives FHWA the authority to issue fines against anyone who aids, abets or induces a carrier to violate the safety regulations. The purpose of the provision is to penalize shippers or others who require carriers to deliver loads on violation of the hours of service regulations or state speed limits. It also provides a means to enforce against those who are not directly employed by motor carriers but who are nonetheless responsible for violations of the Federal Motor Carrier Safety Regulations.

ATA strongly supports this provision as a means to improve commercial motor vehicle safety. Motor carriers sometimes face great difficulty in meeting the demands of shippers while at the same time complying with the safety regulations. However, the need to comply with the regulations is not of foremost concern for some shippers, since FHWA does not have the authority to enforce against them. Yet, we believe that all parties in the transportation chain should bear responsibility for highway safety and should be held accountable for violating the regulations, or inducing others to do so.

VI. Conclusion

Madam Chairwoman, the time has come to advance the motor carrier safety agenda and truly make a difference. We support a separate modal administration dedicated to the advancement of the many motor carrier safety improvements proposed in S. 1501.

We look forward to working with you and Chairman McCain, Senator Hollings, the members of the Committee, all members of Congress, the DOT, and all reasonable parties involved in making the roads as safe as possible.

Thank you for providing ATA an opportunity to submit this information to the Subcommittee.