

The International Brotherhood of Teamsters

Testimony on Truck Safety

Before the

Subcommittee on Surface Transportation
United States Senate

On September 29, 1999

International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, D.C. 20001

Madam Chair and Members of the Committee:

The International Brotherhood of Teamsters represents hundreds of thousands of workers who make their living on our nation's roads, whether they are interstate highways or city streets. Department of Labor statistics show that these transportation workers are employed in one of the most dangerous of all occupations, and the Teamsters Union is very much committed to making their workplace as safe as any other jobsite.

We have taken a serious interest in the work that Congress and, in particular, this Committee has undertaken to address the problems that have been identified in recent months at the Office of Motor Carriers and Highway Safety (OMCHS). The fact that safety compliance reviews have decreased, Level 1 inspections are down, and prosecutions are at a 10-year low, while fatalities involving commercial trucks has remained somewhat stagnant over the last few years, points to the fact that changes must be made to improve the functions of the agency. The Teamsters Union has testified before the House Transportation and Infrastructure Subcommittee on Ground Transportation (3/25/99) and the Senate Commerce, Science and Transportation Committee (4/27/99) concerning the focus of motor carrier safety programs and the organizational structure of the OMCHS.

Now, as this Subcommittee moves forward with hearings concerning the legislation that Senator McCain has introduced, S. 1501, the Motor Carrier Safety Improvement Act of 1999, we are pleased to have the opportunity to share our views on this legislation and to suggest additional ways that motor carrier safety can be improved.

MOTOR CARRIER SAFETY ADMINISTRATION

The discussion over the future of the Federal Highway Administration's (FHWA) Office of Motor Carriers (OMC), which is responsible for monitoring the operation of commercial motor vehicles and their drivers, is not new. It first began in the 1980's when the Ranking Member of this Committee, Senator Ernest Hollings, introduced legislation to create a new motor carrier administration. His purpose was to promote organizational efficiency and enhance the effectiveness of motor carrier safety. While no further action was taken on this legislation, it is clear that the problems plaguing the OMC in the 80's still remain.

This was most evident last fall when the Department of Transportation's (DOT) Inspector General (IG), Kenneth Mead, released the findings of an investigation into activities of the OMC aimed at rallying the trucking industry to oppose a proposal by House Transportation Appropriations Subcommittee Chairman Frank Wolf to transfer the OMC to the National Highway Traffic Safety Administration (NHTSA).

The activities criticized included drafting and editing opposition letters for the American Trucking Associations (ATA) and individual motor carriers to send to Congress and contacting heads of large trucking firms to urge them to voice their opposition to the proposal with Senate Majority Leader Trent Lott (R-MS). In the end,

the IG concluded that these activities fostered “at a minimum an appearance that the OMC does not have the arms length relationship called for between government safety regulators and the industry.” These actions are unacceptable, and the Teamsters Union has stated on numerous occasions that the incident itself shakes the confidence of all of us who rely on the OMC to effectively carry out its functions in overseeing the motor carrier industry and enforcing important safety regulations.

Since the release of the IG report, the Teamsters Union has reviewed several proposals to restructure or reform the OMC, including proposals to transfer the agency in whole or in part to NHTSA, to create a new administration, or to elevate the role of the OMC within the FHWA. During Congress’ early debate in exposing the problems of the OMC, we concentrated our efforts on ensuring that reforms are made within the agency to better target the bad carriers and bad drivers and strengthen enforcement mechanisms, rather than focus on where the OMC should be housed.

Now that those problem areas have been identified and real solutions have been proposed, the Teamsters Union believes that the right approach to improving motor carrier safety is the establishment of a separate administration. Senator McCain’s bill would create that new administration, which in our view is appropriately named the Motor Carrier Safety Administration. We believe that safety must be the primary mission of this agency, and it is certainly logical to include safety in its title.

We also support Senator McCain’s recommendation for an Administrator who is appointed by the President, and subject to confirmation by the Senate. Strong leadership is crucial for the success of an agency that has squandered the public trust. Unfortunately, the organizational structure offered in S. 1501 doesn’t go far enough. What a new administration needs to function properly is a logical division of the core responsibilities of the agency. The agency should be properly segmented to provide leadership and accountability in key areas. Missed deadlines, policy missteps and overall disarray that have infected the performance of the OMC cannot be allowed to continue in the new Administration. In addition, the public has a right to know who is responsible for specific functions of the agency. The Teamsters Union therefore suggests that the Committee closely examine H.R. 2679, the House companion bill to S. 1501, which we believe offers the appropriate structural and organizational framework for a new Administration. It requires that the Deputy Administrator be appointed by the Secretary, with the approval of the Senate, and creates new positions for a Chief Safety Officer and a Regulatory Ombudsman – all of which are essential to improving the performance of the new Administration.

RECOMMENDATIONS FOR STRENGTHENING MOTOR CARRIER SAFETY

In addition to structural reforms, the Committee must address other problems within OMC. If you look at the enforcement activities of the agency in the last few years, you will find that compliance reviews have fallen by 30 percent since FY 1995 (the latest information available), even though there has been a 36 percent increase in the number of motor carriers over this period. According to the IG in a second Audit Report, Report

Number: TR-1999-091, *Motor Carrier Safety Program*, nearly 250 high-risk carriers that were recommended for a compliance review in March 1998 did not receive one. Also in FY 1995, 1,870 motor carriers received a less-than-satisfactory rating. From October 1, 1994 through September 30, 1998, 650 of those same carriers have had over 2,500 crashes resulting in 132 fatalities and 2,288 injuries. Currently, there are about 6,000 motor carriers operating with a less-than-satisfactory rating that received those ratings from October 1995 through September 1998.

In addition, Level 1 inspections (a 27-step process) have fallen off in favor of Level 2 (walk-around) and Level 3 (driver only) inspections. And while the federal government has prosecuted trucking companies for flagrant violations in a few highly visible cases recently, statistics show that prosecutions by the federal government have dropped to the lowest level since 1989. In FY 1998 alone, only 11 percent of the more than 20,000 violations cited by safety investigators resulted in fines, and were settled for 46 percent of the dollar amounts initially assessed. The average settlement per OMC enforcement case was \$1,600. According to the IG, this is little more than “a cost of doing business” for motor carriers.

The IG concluded that the “OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations, and that the OMC enforcement program did not adequately deter compliance.” To address these problems, the IG made several recommendations aimed at ensuring compliance with Federal Motor Carrier Safety Regulations and improving the effectiveness of the Motor Carrier Safety Program. Specifically, the IG recommended that the FHWA Administrator:

- Strengthen its enforcement policy by establishing written policy and operating procedures to take strong enforcement action against motor carriers with repeat violations of the same acute or critical regulation. Strong enforcement actions would include assessing fines at the statutory maximum amount, the issuance of compliance orders, not negotiating reduced assessments, and when necessary, placing motor carriers out of service.
- Remove all administrative restrictions on fines placed in the Uniform Fine Assessment program and increase the maximum fines to the level authorized by the Transportation Equity Act for the 21st Century (TEA-21).
- Establish stiffer fines that cannot be considered a cost of doing business and, if necessary, seek appropriate legislation raising statutory penalty ceilings.
- Implement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements are completed.
- Establish criteria for determining when a motor carrier poses an imminent hazard.
- Require follow-up visits and monitoring of those motor carriers with a less-than-satisfactory safety rating, at varying intervals, to ensure that safety improvements are sustained or if safety has deteriorated that appropriate sanctions are invoked.
- Establish a control mechanism that requires written justification by the OMC State Director when compliance reviews of high-risk carriers are not performed.

- Establish a written policy and operating procedures that identify criteria and time frames for closing all enforcement cases, including the current backlog.
- Require applicants requesting operating authority to provide the number of commercial vehicles they operate and the number of drivers they employ and require all motor carriers to periodically update this information.
- Revise the grant formula and provide incentives through the Motor Carrier Safety Assistance Program grants for States to provide accurate, complete and timely commercial vehicle crash reports, vehicle and driver inspection reports and traffic violation data.
- Withhold funds from the Motor Carrier Safety Assistance Program grants for those States that continue to report inaccurate, incomplete and untimely commercial vehicle crash data, vehicle and driver inspection data and traffic violation data within a reasonable notification period such as one year.
- Initiate a program to train local enforcement agencies for reporting of crash, roadside inspection data including associated traffic violation.
- Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.
- Obtain and analyze crash causes and fault data as a result of comprehensive crash evaluations to identify safety improvements.

While the Teamsters Union believes that these recommendations are a good step toward improving motor carrier safety, it's up to the OMC, or the new Administration, to implement them. We must question whether that will ever happen given the OMC's poor track record in executing recommendations from past reports. It is important to note that six other General Accounting Office and IG Audit Reports regarding the Motor Carrier Safety Program dating back to 1991 made similar recommendations. Thankfully, S. 1501 addresses our concern by requiring the Secretary of Transportation to implement the safety improvement recommendations included in the IG report. The Secretary is also required to report to the Senate Commerce, Science and Transportation Committee and the House Transportation and Infrastructure Committee beginning 90 days after the date of enactment of the bill, until all of the recommendations have been implemented.

The Teamsters Union, however, would suggest two additions. First, we ask the Committee to include language in S. 1501 to require all new-entrant owners and operators to attend and *pass* an educational program that covers, at a minimum, safety, employee training, size and weight, and financial responsibility regulations administered by the Secretary prior to being granted the authority to conduct business on our nation's roads. This will ensure that new entrants have the knowledge to comply with the Federal Motor Carrier Safety Regulations rather than merely checking-off a box on the application form, as is currently the case.

The Teamsters Union also requests that the Committee include language in S. 1501 to direct the newly established Motor Carrier Safety Program to require carriers to re-register every five years. This was mandated under the Interstate Commerce Commission Termination Act of 1995, but was never implemented by the OMC. This is crucial as the volatility of the industry causes many carriers to go out of business while

new carriers enter the market everyday. In addition, many carriers grow to the point where Class III new entrants have become Class I carriers. Without re-registration, the OMC has no way of really tracking the growth of these carriers.

NAFTA CROSS-BORDER TRUCKING

Madam Chair, if this committee is committed to improving motor carrier safety through the proposals that we are discussing today, then we must not ignore the possibility of the pending invasion of unsafe and unqualified drivers coming across our border from Mexico under the NAFTA cross-border trucking provisions. While we would assume that the increased funding levels in S. 1501 would filter down to the border states and bolster a rather lackluster inspection and enforcement regime, as outlined in the Audit Report of the DOT Inspector General, Report Number: TR-1999-034, *Motor Carrier Safety Program For Commercial Trucks at U.S. Borders*, there is no certainty of that occurring, especially with the recent track record of the OMC.

Neither can one simply throw additional money at a problem and expect a solution. And while Congress should not micromanage a federal department or agency, there are a number of directives that a new agency can be given to help ensure that it addresses the most serious threat to the future safety of our highways, that of unsafe Mexican trucks and unqualified drivers undoing whatever gains the Congress intends to make with the creation of the new agency.

One such directive is contained in H.R. 2679, the House Transportation and Infrastructure Committee's version of the Motor Carrier Safety Act of 1999, which calls on the Secretary of Transportation to develop and implement appropriate staffing standards for Federal and State motor carrier safety inspectors in the international border areas. In developing standards, volume of traffic, hours of operation of the border facilities, types of commercial vehicles and cargo, and delineation of responsibility between federal and state inspectors would be some of the issues to be considered. This goes directly to the findings of the IG audit report which noted that "Mexican trucks entering the U.S. through Arizona, New Mexico and Texas are unlikely to be inspected because those States' border crossings do not have sufficient inspectors on duty during all commercial operating hours, and some border crossings do not have any inspectors assigned." The report concluded, "that the placement of adequate inspection resources at the southern border is an essential control mechanism to better ensure that Mexican trucks comply with U.S. safety regulations." The provision in the House bill also provides the Secretary with an enforcement mechanism to ensure that the levels of staffing required by the standards are deployed.

While we have mentioned organization and structure of the new agency as important to its success, the creation of an Office of International Affairs within the new agency is another area where the McCain bill is less adequate than its counterparts. The importance of possibly integrating another four million commercial motor vehicles from Mexico onto our highway system and assuring a high level of safety in this country

warrants a separate office to oversee this major facet of motor carrier safety. The House bill contains such a provision and we strongly support its creation.

In addition, the Teamsters Union is very concerned with evidence that suggests that Mexican motor carriers are operating outside of the currently permitted commercial zones. In fact, a letter sent to Senate Transportation Appropriations Subcommittee Chairman Richard Shelby from the DOT's IG (see Attachment 1) shows that Mexican motor carriers are currently operating beyond the commercial zones of the four border-states, irrespective of the fact that they are not authorized to do so. Specifically, the letter states that in 1998 roadside inspections were performed: (1) beyond the commercial zones on 68 Mexican motor carriers, and were performed more than once for 11 of those carriers; (2) on the 68 Mexican motor carriers at least 100 times in 24 states not on the U.S.-Mexico border, outside of the commercial boundaries, including Montana, Missouri, Kansas, Louisiana, North Dakota, Nevada, and Oregon; and (3) on the 68 Mexican motor carriers outside the commercial zones but within the four border states more than 500 times. This information was obtained from the OMC's Management Information System. What disturbs us is that the DOT knew these Mexican carriers were operating illegally in the U.S. and that no enforcement actions, such as assessing fines and penalties or revoking these carriers' operating privileges in commercial zones, were taken against them. We therefore urge the Committee to include in S. 1501 language to ensure that such actions are taken in the future (see Attachment 2).

In the last few weeks since the disclosure of these illegal operations by Mexican carriers, the DOT has inferred that it has no authority to regulate Mexican trucks operating in foreign-to-foreign commerce. Therefore, according to statements made by "unnamed" DOT officials, Mexican trucks can traverse the United States if traveling directly to Canada. This as yet "unofficial" policy of the DOT is totally unacceptable and is counter to the Administration's decision not to open the border to unsafe Mexican trucks for the safety and protection of the American public.

DOT staff has proffered 49 U.S.C. Section 13906 and 49 C.F.R. Section 387.321 which provides that foreign motor carriers may only transit the U.S. if they provide certain financial security which is *accepted* by the Secretary, in support of their position. But since the Secretary does not and cannot register motor carriers to operate beyond the commercial zones because of the serious safety concerns, he should not accept evidence of financial security from the same motor carriers, thereby permitting them to operate a vehicle on roads throughout the U.S.

Furthermore, DOT's position is in direct conflict with its own representation to the U.S. Court of Appeals for the D.C. Circuit that it would "not approve applications by Mexican carriers seeking to provide cross-border trucking services into the United States pending the outcome of ongoing consultations on safety issues between the two countries." (Order of Jan. 21, 1997, No. 95-1603, *International Brotherhood of Teamsters v. Secretary of Transportation, United States of America*). Only after a determination is made that Mexican trucks are fit for operation on U.S. highways are they to be granted unlimited access to the border States. That determination has not yet been

made, and, in fact, no one denies the fact that Mexican trucks are still prohibited from entering these states beyond the commercial zones.

It is therefore ludicrous to now suggest that these trucks, while unfit for entry into the border States, should be allowed unlimited nationwide access to U.S. highways for the purposes of traveling to Canada. Such a policy would seriously endanger the lives of all highway users and cannot and should not be tolerated by this Committee and this Congress.

COMMERCIAL MOTOR VEHICLE ADVISORY COMMITTEE

The Teamsters Union is pleased that S. 1501 authorizes the newly established Motor Carrier Safety Administration to create a Commercial Motor Vehicle Advisory Committee. This Committee, which we believe should be entitled the Motor Carrier Safety Advisory Committee, given the nature of this bill, will ensure that the new Administration is more receptive to the diverse interests represented by the motor carrier community. After all, participation in developing rulemakings, coordinating educational programs, and discussing pending and future initiatives and other activities should not be limited to industry representation.

It is important to mention that the concept of establishing such an advisory committee is not new. Years ago, a committee existed within the FHWA but was disbanded over disagreements among the members. Similarly, the Federal Railroad Administration (FRA) has created the Railroad Safety Advisory Committee (RSAC), under the leadership of FRA Administrator Jolene Molitoris. And the Occupational Safety and Health Administration has formed the National Advisory Committee on Occupational Safety and Health (NACOSH). The NACOSH was established under Section 7(a) of the OSHAct of 1970 to advise the Secretaries of Labor and Health and Human Services on matters related to administration of the Act.

Like RSAC and NACOSH, S. 1501 requires that the Committee be structured in a way that would ensure the new Administration does not fall victim to the same type of influence from the industry as currently exists at the OMC. Specifically, the Committee would be comprised of individuals affected by rulemakings, including representatives of labor, industry, safety advocates, manufacturers, and safety enforcement officials, but no one interest would be permitted to constitute a majority of the Committee. It should be noted, however, that unlike RSAC and NACOSH there is no term limit for Committee members.

Also unlike RSAC and NACOSH, the role of the Committee is limited to assisting the Secretary in the timely completion of ongoing rulemakings by utilizing negotiated rulemaking procedures. S. 1501 should not stipulate that all current rulemakings must be resolved through negotiation. Negotiated rulemakings only work when the stakeholders have a reasonable belief that a consensus can be reached on the issues. In certain circumstances, negotiated rulemakings do work but that process should be decided on a case-by-case basis, not mandated by Congress.

In contrast to S. 1501, the House companion bill allows the Committee to advise, consult with and make recommendations to the Administrator on all matters relating to activities and functions of the new Administration. Not all policy matters are necessarily decided in rulemakings, and this approach better allows all parties to have input on a broad range of activities of the new Administration.

HOW THE OMC CONDUCTS ITS RESEARCH

Finally, the Teamsters Union has long been concerned with how the OMC conducts its research. For example, since 1996, the OMC has awarded over \$8 million to the ATA and its consultants to perform research on various issues, including driver fatigue and graduated licensing. What concerns us is that this research often serves as the basis for future rulemakings governing the trucking industry.

Such was the case with the Driver Fatigue and Alertness Study (DFAS), which was intended to provide non-biased research on drivers' hours of service. Instead, its conclusions "coincidentally" benefited the industry by justifying their arguments for allowing truck drivers to drive more consecutive hours with less rest. Thankfully, a peer review panel saw through ATA's attempts and discredited the DFAS, stressing that it "suffered from poor design and inappropriate statistical approach to address the objectives."

The OMC and several Members of Congress would probably argue that these funds were earmarked for ATA in appropriations bills and thus it is the responsibility of the agency to carry-out these congressional directives. This is not however entirely true. We refer to a Federal Register notice published in July 1999 that seeks public comment on a proposed survey to be conducted by the ATA's Transportation Research Institute (TRI) on the development of a graduated or provisional Commercial Drivers License program (CDL). Specifically, the notice states:

"Conference Report 104-286 to accompany H.R. 2002 to the DOT Appropriations Bill directs the FHWA to contract, during FY 1996, with the ATA's TRI to perform applied research to address a number of highway safety issues, such as driver fatigue and alertness, the application of emerging technologies to ensure safety, productivity and regulatory compliance, and commercial drivers licensing, training and education. The amount allocated was to be not less than \$4 million. A survey of industry opinion pertaining to a graduated CDL is one of these projects under the congressionally-mandated cooperative agreement with the TRI."

However, upon reading Conference Report 104-286 we found the following:

"In fiscal year 1994, the Congress continued its participation in the development of an aggressive research agenda by directing the FHWA to undertake three projects totaling \$1,750,000: truck loading and unloading as a possible contributor to driver fatigue; technology to automate commercial vehicle roadside inspection; and guidelines for the inspection and maintenance of wheels and bearings. In fiscal year 1995, the Congress identified three additional studies, totaling \$2,500,000, for the implementation in the same fashion with TRI: the use of 'smart cards' to facilitate compliance with motor carrier safety rules; medical requirements associated with commercial vehicle operation; and electronic truck and intermodal information systems...The

conferees therefore reiterate the direction to FHWA to use unobligated balances to make grants to, enter into cooperative agreements or contracts with, or use any existing technical support services agreements with TRI, in amounts totaling not less than \$4,000,000 to conduct the **six** studies referenced above...”

Once again, Congress intended these funds to cover six specific studies (truck loading and unloading as a possible contributor to driver fatigue; technology to automate commercial vehicle roadside inspection; guidelines for the inspection and maintenance of wheels and bearings; ‘smart cards’ to facilitate compliance with motor carrier safety rules; medical requirements associated with commercial vehicle operation; and electronic truck and intermodal information systems). What it did not intend was for the OMC to provide ATA with unlimited resources to conduct numerous studies on a broad range of topics, like graduated CDLs. The fact is that the OMC has contracted with the ATA for at least 18 studies/projects since 1996, as follows:

Fatigue Research: \$1,080,000
Conference on Technological Countermeasures to Fatigue: \$40,000
International Industry Conference of Fatigue: \$118,000
Operating Practices on Commercial Driver Alertness: \$1,000,000
Ocular Dynamics as a Predictor of Fatigue/Pilot Napping Study: \$300,000
TRI and NPTC Safety Promotion and Compliance Workshops: \$280,000
Recommended Management Practices for Driver Training and Evaluation: \$172,000
Pilot Test of Fatigue Management Technologies: \$1,654,000
Survey of Emerging ITS Technologies: \$430,000
Graduated Licenses Survey: \$243,000
Driver Wellness Program: \$520,000
Truck Stop Fitness Facility Utilization Study: \$200,000
Survey of Scheduling Practices and Their Influence on Driver Fatigue: \$509,000
How to Drive/No-Zone: \$301,000
Sleep Apnea Prevalence and Severity: \$1,008,000
Heavy Vehicle Brake Use and Maintenance: \$188,000
ITS Industry Champion: \$25,000
Driver Acceptance of In-Vehicle Technologies: \$130,000

Given this information, the Teamsters Union requests that the Committee examine H.R. 2679 and include its bill language to require the Motor Carrier Safety Administration to comply with Section 1252.209-70 of Title 48, Code of Federal Regulations (which deals with conflicts of interest) in awarding any contract for research. This is crucial to ensuring that unethical practices of the past do not carry over to the new Administration.

CONCLUSION

The Teamsters Union believes that S. 1501 will go a long way toward strengthening motor carrier safety. The bill emphasizes better enforcement of current regulations, the importance of increased inspections and compliance reviews and the need for significant improvements to the Motor Carrier Safety Program.

Again, we appreciate the opportunity to present our views on truck safety, and look forward to continuing to work with Chairman McCain, Ranking Democratic Member Hollings, Senator Hutchison and members of the Subcommittee on this important legislation as it moves through the Senate.