

STATEMENT OF JOHN HASSELL, DEPUTY ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, BEFORE THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION, UNITED STATES SENATE, REGARDING COMMERCIAL MOTOR VEHICLE SAFETY, JULY 17, 1979.

Mr. Chairman and members of the Committee:

I am 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 Don Trilling, Acting Deputy Assistant Secretary for Policy and International Affairs at DOT.

Mr. Chairman, I appeared before you last Fall to discuss truck safety needs generally and S. 2970, a bill introduced by Senator Percy. Since that time 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 (BMCS) of the Department of Transportation (DOT) 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 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 designed 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 4 decades, the Motor Carrier Safety Program has relied on a large degree of voluntary compliance by persons and firms subject to the statute, 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, e.g., accident analyses, aerodynamics, splash and spray, off-tracking, handling, special down-grade 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 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 (i.e., paperwork 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 recordkeeping 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 non-compliance 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 one year, or both.

In addition to improving sanctions, we recommend several programmatic and self-enforcing mechanisms to improve surveillance and detection of violations. 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 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 enforce violations by intrastate operators, as well as violators by interstate carriers operating in a particular 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 annum 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 an 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 go undetected.

There are several particular aspects of our grant program proposal that ought to be mentioned. 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 sixty-six and two-thirds 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 also 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 three-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 whistleblower 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 non-government 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 which is 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 this issues shows no studies that include the kinds of information necessary to prove 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 bizarre 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.

This concludes my prepared statement, Mr. Chairman. Mr. Trilling and I would be pleased to answer any questions you might have at this time.