

STATEMENT OF
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BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
REGARDING MOTOR CARRIER SAFETY AND MEXICAN TRUCKING OPERATIONS

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Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Federal regulatory program applicable to the safe operation of motor carriers. It is my understanding, that we will not be discussing the Administration's recent trucking deregulation initiative today. I know that you plan future hearings on this important bill. First, I will briefly address the nature and extent of this important Federal program, as well as our recent efforts to combine the resources available to the Federal, State, and local authorities in the area of motor carrier safety.

Nature of the Federal Program

The Federal Highway Administration (FHWA), through its Bureau of Motor Carrier Safety (BMCS), is responsible for the regulation and enforcement of Federal requirements relating to the safety of operation and equipment of commercial motor carriers engaged in interstate or foreign commerce, and the safe transportation over the Nation's highways of hazardous materials. These Federal requirements, included in the Federal Motor Carrier Safety and Hazardous Materials Regulations, cover a wide range of functions, such as the identification of hazardous materials, the procedures

and container specifications for safe transport, and other safety requirements regarding driver and vehicle documentation, package labeling, vehicle placarding, cargo and equipment standards, driver qualifications, and hours of service.

Enforcement of these Federal requirements is achieved through several activities. One of these activities is the unannounced roadside inspection of vehicles, drivers, and cargo. This is performed by BMCS personnel with the assistance of State and local enforcement officials. The BMCS personnel also perform accident investigations and inspections of commercial vehicles and drivers involved in accidents.

Another vital enforcement activity involves the safety audit of records and equipment conducted at the motor carriers' offices and terminals. Carriers are selected for safety audits from among 216,000 carriers of record pursuant to a neutral selection criteria developed annually by BMCS, as part of the annual safety management audit program plan. The safety audit selection criteria identifies carriers in need of attention based on evidence of noncompliance resulting from roadside inspections, other investigations, accident experience, and indicators such as failure to report accidents over long periods of time. Carriers are also selected by generic class, such as hazardous waste haulers or bulk hazardous materials transporters, with or without evidence of noncompliance.

The results of the roadside inspections, investigations, and audits are documented in an investigator's report which is used in

the processing of criminal and civil enforcement cases. The BMCS is also authorized to declare vehicles and drivers out-of-service if the safety of the traveling public is imperiled. Moreover, the results of the above described activities are also factors in determining the carrier fitness ratings which are furnished to the Interstate Commerce Commission (ICC), the Department of Defense, and upon written request, to insurance companies, shippers, and the public.

The Federal inspection and compliance activities have been, of necessity, targeted at the worst offenders, thereby maximizing the amount of improvement that can be accomplished within our personnel and resource limitations.

Motor Carrier Safety Assistance Program

In recognition that motor carrier safety and hazardous materials safety are mutual responsibilities of the Federal and State Governments, we have concentrated our expanded resources in the area of State grants, rather than attempting to expand the Federal presence. The Motor Carrier Safety Assistance Program (MCSAP) is a vital part of this effort. The MCSAP, authorized by the Surface Transportation Assistance Act (STAA) of 1982, is a cooperative endeavor between the Federal Government and States to promulgate and enforce uniform Federal and State safety and hazardous materials regulations applicable to all commercial motor vehicles and their drivers. One of the criteria a State must meet in order to qualify for an implementation grant is that the State

adopt and enforce the Federal Motor Carrier Safety Regulations or similar State rules that are compatible with these Federal regulations. The objective of the program is to reduce truck and bus involvement in collisions by minimizing the hazards associated with large commercial motor vehicles on the Nation's highways.

Fiscal year 1985 is the first full year of the MCSAP. Forty-nine States are participating in the program, 28 in the implementation phase. The principal implementation activity will focus in the area of recruitment, hiring, and training of State enforcement personnel. In order to ensure national uniformity, existing State enforcement personnel in addition to those recruited as the direct result of MCSAP are being trained in the National Driver Vehicle Inspection Procedures utilized in roadside inspection activity. A total of 1,500 officers are anticipated to receive training during this fiscal year. A cadre of 490 man years of MCSAP funded personnel activity is expected to perform 300,000 inspections over and above the inspections that would be performed by the statutorily required State levels of activity. Cumulatively, the existing Federal and State, plus the added federally sponsored MCSAP activity, is expected to double the number of drivers and vehicles inspected in fiscal year 1985.

We currently are evaluating the State plans for fiscal year 1986. Fifty-one States and territories have applied for funding, 37 in the implementation phase. The projected funding for fiscal year 1986 is the same as received in fiscal year 1985 and is expected to reflect a slight increase over the fiscal year 1985

activity, primarily attributable to increased learning and efficiency of the current MCSAP sponsored personnel.

State grantees are also participating in the development of a Management Information System to compile improved roadside inspection and enforcement data. As States implement this data information system, the States and Federal agencies will be able to factor State inspection reports into safety management audits selection criteria. Therefore, the tens of thousands of State inspections will provide a larger data base on carrier noncompliance than FHWA presently is using for interstate carriers and give the States a similar capability for intrastate operations.

Truck Size and Weight

I would like to offer a brief progress report on the implementation of the size and weight provisions of the STAA of 1982 and the amendments to those provided by the Tandem Truck Safety Act of 1984. The most visible indication of the impact of the 1982 Act is the increasing number of doubles operations observed in the East since passage of the Act. After significant initial controversy and litigation, things seem to be settling down, and we are hearing of very few problems in actual operations. The States are working cooperatively with the industry to provide additional network miles or access where requested. Most of these additions are being provided under State law and authority, and we have not been involved.

There remain persistent problems in California with regard to access for 48-foot semitrailers which cannot meet the 38-foot kingpin restriction which is established by California State law. Although CALTRANS estimates that less than 1 percent of the vehicles in interstate operation are impacted by the provision, it has remained controversial and is the subject of litigation in the Federal Court in Sacramento.

Several States in the East have been slow to work out access problems mainly due to coordination with local jurisdictions, but considerable progress is being made. Overall, I feel that the provisions of the Act are widely followed. I am very pleased to report that our very close monitoring has turned up no safety problems arising from the introduction of the large vehicles. There are some problems establishing the grandfather lengths for semitrailers, but after several rounds of rulemaking, the dimensions have been resolved to the satisfaction of the States and industry in approximately 35 States. We will enter another round of rulemaking to establish the dimensions in the remaining States.

I would now like to describe several specific problems related to our enforcement of the motor carrier safety regulations which are of interest to this Committee.

Mexican Trucking Operations

The Motor Carrier Act of 1980, as amended, and The Bus Regulatory Reform Act, as amended, imposed financial

responsibility requirements on most commercial motor vehicles operated on the Nation's highways. However, enforcement of these requirements in the case of foreign carriers, especially Mexican carriers, was and is obviously difficult to address. The BMCS has worked closely with the ICC and the U.S. Customs Service concerning the enforcement of regulations promulgated under both Acts as they pertain to Mexican motor carriers operating motor vehicles in the United States. Also, the ICC promulgated rules under section 226 of the Motor Carrier Safety Act of 1984 that require certain Mexican motor carriers to apply for, and receive, a certificate of registration before entering the United States and limits them to serving commercial zones contiguous to the border. As of September 6, the ICC had issued 42 of these certificates of registration.

The BMCS and ICC have developed and held training programs for Customs personnel. Currently, we are in the process of establishing dates for the training of additional Customs personnel. The assistance and cooperation of these agencies in obtaining compliance by foreign carriers with the Federal financial responsibility requirements will prove to be very helpful.

We are aware that concern has been expressed about the possible effects of Section 226 of the Motor Carrier Safety Act of 1984 on economic interests on the U.S. side of the border. The Department and the ICC have made every effort to make certain that the new limits on Mexican trucking operations do not unduly and

inadvertently disrupt the flow of cross-border commerce.

Consistent with this, the ICC rules specifically excluded from the new certification requirements the Mexican-owned and based for-hire carriers that carry industrial cargoes into the U.S. commercial zones along the border. This exclusion removed a major concern that had been expressed about the potential adverse effect of section 226 on the ability of the U.S.-owned plants in Mexico ("maquiladoras") to transport their products across the border.

We have also been sympathetic to the concerns of U.S. border interests that the boundaries of the ICC commercial zones, within which virtually all Mexican trucking is now confined, may not reflect accurately the economic realities of the highly interdependent border region. It was with this in mind that the Department supported the recent petition of the counties of the Rio Grande Valley to the ICC to reshape their commercial zones into a single integrated zone of greater extent so that U.S. businesses would not be injured by the effort to limit Mexican trucking operations to the border region. The Department is prepared to support similar petitions from other border communities if they make sound economic sense and would not unduly compromise our ability to enforce the law.

Through this flexible approach, we believe that we have been able to alleviate the major concerns that border interests have expressed about section 226. We view the actions I have just described as relatively minor adjustments to what are essentially economic regulations, and as being completely consistent with the intent of the law.

However, we understand that certain concerns persist, and that S. 1252 has been drafted to address them. Before commenting on the issues raised by S. 1252, let me state that we do not appear to be in fundamental disagreement with the authors of S. 1252 about the objectives we are seeking with respect to Mexican trucking operations in the United States. We agree that, because of Mexico's severe treatment of U.S. truckers seeking to operate across the border, Mexican truckers should have no more access to the United States than is absolutely necessary to serve the commercial interests of U.S. businesses along the border. We also agree that any Mexican vehicle operating in the United States must be adequately insured and safe.

In this respect, we have some serious concerns about the approach taken in the current version of S. 1252, particularly relating to safety. The bill would exempt foreign motor carriers operating foreign-built equipment from the safety requirements applicable to U.S. carriers and U.S.-built equipment. It proposes that the Secretary study and establish new safety standards for foreign motor carriers, taking into consideration standards of the country of the motor vehicle manufacturer, the financial burden that would be incurred by foreign motor carriers to meet U.S. safety fitness standards, and the detrimental economic impact of any such burden on cross-border commerce. In effect, the bill would have us establish a dual safety standard -- one for U.S. carriers and equipment and a lesser one for foreign carriers and equipment. We simply do not see the rationale for establishing

such a dual system, nor how it would help us achieve our objective of making certain that Mexican trucks are just as safe as U.S. trucks when they are operating in the United States. As currently drafted, the bill substitutes a test of financial burden for safety considerations, which we believe unnecessarily compromises the U.S. public interest.

The bill also proposes to replace the current border commercial zone limits on certain foreign motor carrier operations with broader commercial authority by defining those limits in terms of Customs port of entry boundaries, extending up to a maximum of 100 miles inland from the international boundary. The ICC regulations already afford communities the opportunity to petition for expansion of commercial zones, and as our support for the Rio Grande Valley coalition's commercial zone petition to the ICC indicates, the Department is not wedded to the existing definitions of commercial zones to define those limits. In any reformulation of those zones, however, we must be careful not to grant greater access to the United States for Mexican truckers than is warranted or to make these zones so large as to make enforcement of the law impossible.

On other matters raised in S. 1252 -- the ability of Mexican truckers to acquire insurance to cover only the periods of time they would actually be in the United States and possible exemptions from the requirement for certificates of registration for automobiles and light trucks used for commercial carriage --

the Department has not yet developed a position. We would be pleased to continue to work with the Committee to address these and the other issues raised in S. 1252.

Motor Carrier Insurance Shortfall

We have heard numerous motor carrier complaints about both the lack of availability of liability insurance and significant increases in premium rates. The problem appears to be widespread throughout the insurance industry. Recent news reports indicate that most of the professions and many businesses, including trucking companies, are experiencing steep premium increases and difficulty in acquiring liability insurance.

The motor carrier industry's dilemma stems from the problems encountered by the insurance and reinsurance industries. The insurance industry is presently facing a capacity shortage. This shortfall, we believe, is real. In past years, the insurance industry has been able to invest its funds at high interest rates. When liability awards in other underwriting areas reached new highs and interest rates fell, the insurance industry suffered losses it is now trying to recover. This problem has been worsened by existing worldwide economic conditions and the strong position of the U.S. dollar in the world market.

The insurance industry is generally opposed to the higher mandated levels of financial responsibility that became effective January 1, 1985. They claim that the marketplace was working adequately at the lower interim levels and that there is no

evidence available that supports the need for higher levels. Recently, the BMCS requested specific loss information from the insurance industry. One of the Nation's largest insurers submitted a 7-year history of accidents that resulted in paid claims or the establishment of loss reserves (the reservation of funds for expected future claim payments) in excess of \$1 million each. During this 7-year period (1978-84), the company received claims from 22 accidents, each of which involved \$1 million or more in settlements or reserves. Fourteen of those 22 involved commercial motor vehicles subject to Federal regulation.

The insurance industry also perceives a problem with future liability claims for "environmental restoration" whereby, under section 30 of the Motor Carrier Act of 1980, motor carriers would be liable for costs incurred to clean up spills of hazardous materials. The industry is concerned about possible future court decisions involving long-term residual damage. Insurers have told BMCS personnel that the insurance industry does not know what "environmental restoration" is. Because of this perceived problem, based on an unknown, the industry is very reluctant to insure a motor carrier for \$5 million or more. The reinsurance industry is equally as hesitant.

Prior to the passage of the Motor Carrier Act of 1980 and today, claims resulting from releases of hazardous materials into the environment were paid under the "property damage" portion of a motor carrier's policy. When the required coverage was \$1 million, the insurance industry was willing to take a chance

and "live" with the term "environmental restoration." Now that the required level is \$5 million, the industry is not willing to take that chance.

As you can see, this problem is not simple. However, we are aware of it and are currently studying it in order to develop solutions. This issue needs to be addressed. We would be happy to work with the Congress in this task.

Conclusion

In order to better meet and deal with the many complex and difficult issues involving motor carriers, I have begun to institute a number of changes in the way FHWA handles truck issues involving safety, reciprocity, sizes and weights, the designated system for larger vehicles and related matters. This week a newly created position of Associate Administrator for Motor Carriers was filled by the swearing in of Mr. Richard Landis, a former senior official with the Arizona Department of Public Safety. Last April the field staff involved in motor carrier safety matters was reorganized and reporting channel streamlined. A plan for reorganizing or regrouping of truck related functions at Headquarters is under consideration. These and other actions will improve our ability to focus on truck and bus issues and work cooperatively with the industry to reach resolution where possible.

This concludes my prepared statement. I would be pleased to respond to your questions or provide additional material for the record to clarify or amplify the steps that we are taking to further improve our motor carrier program.