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ON

DOT'S NDR ACCESS BILL FOR AVIATION AND RAIL  
BEFORE THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT  
OF THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION  
July 23, 1987

Mr. Chairman, I greatly appreciate this opportunity to appear today to report on the Department's progress on implementing the National Driver Register Act of 1982 (NDR), its relationship to the Commercial Motor Vehicle Safety Act of 1986, and our legislative proposal to use the NDR to obtain additional background information on operating personnel in the airline and railroad industries. With me today are George Reagle, Associate Administrator for Traffic Safety Programs in the National Highway Traffic Safety Administration, and John Eicher of the Federal Highway Administration's Office of Motor Carriers.

We view the National Driver Register, and its computerized list of drivers whose licenses have been suspended, revoked or cancelled due to serious driving violations, as a vital resource in improving safety in the nation's transportation system. Used properly and with discretion, this information can offer added assurance that those who operate the elements of our transportation system demonstrate respect for our safety rules and laws, and are unimpaired by alcohol or drugs.

Your invitation requested information on the current status of compliance with the NDR Act of 1982, legislation that authorized the development and implementation of an improved electronic driver register system. That legislation requires that the NDR's current batch processing system be upgraded to provide a capability for interactive electronic access, and that the system's substantive data be left with the states of record. The NDR will thus become an index that "points" to the states which hold data, and the NDR will no longer maintain substantive data.

The law requires us to conduct a pilot-test and evaluate this new on-line system before we fully implement it. I must stress that it is indeed a new system, for the technology to manage communications among numerous states, each with differing computer systems, equipment and programs, does not exist in a readily available commercial package. A system such as this has never been tried on this scale. We are pushing today's technology.

Nevertheless, in April of 1986 we selected four states--North Dakota, Ohio, Virginia and Washington--to take part in a pilot test of the new system. The operational start-up for the pilot test is on schedule for August 1987, and the results of the pilot-testing will be evaluated and reported to Congress by February 1989. North Dakota, in fact, has already begun operations and is using the instant-access capability of the new system to obtain information from the present NDR. The final rule establishing the procedures NHTSA will follow for the transition from the current system to the new electronic system was published in July 1985.

Meanwhile, we have made a number of improvements in the current NDR to make it work more effectively. These improvements include:

- o Implementation of an overnight service so that states can send inquiries to the NDR over normal telephone lines and receive replies the next day. Twenty-two states are now using this service and several more are expected to be added by the end of 1987; and
- o Joint development with the state of Delaware of an on-line computer connection to the existing NDR file that responds as fast as the planned electronic pointer system, although with less current information. This "rapid response" technology has been operationally tested with excellent results, and several other states have requested this service.

As a result, the states are already identifying problem drivers much faster through the NDR than was possible before 1982, and more states will shortly be able to obtain driver license information in a few seconds.

Now I would like to turn to the relationship between the NDR and the Department's efforts to establish the clearinghouse for the Commercial Driver's License Program (CDL), as required by the Commercial Motor Vehicle Safety Act of 1986. We believe that implementation of this legislation will contribute significantly to highway safety.

Section 12007 of that Act directs that, not later than January 1, 1989, the Secretary must either enter into an agreement for the use of a non-Federal system for the operation of a commercial driver's license information system, or establish such an information system. The system will serve as a clearinghouse and depository of information pertaining to the licensing, identification and disqualification of operators of commercial motor vehicles. In other words, the clearinghouse is to support the efforts of the states to improve highway safety by monitoring the driving records of commercial drivers, so that the states may make informed judgments on whether these individuals should be licensed to drive commercial motor vehicles.

Section 12009 (a)(6) of the Act requires the states, before issuing a license to operate a commercial motor vehicle to any person, to consult with any other state which has issued a commercial driver's license to such person. Section 12009 (a)(20) further requires the states to request information from the new NDR on whether such person: (1) has been disqualified from operating a motor vehicle other than a commercial motor vehicle; (2) has had a license other than a commercial motor vehicle operator's license suspended, revoked, or cancelled for cause in the 3-year period ending on the date of application for such a

license; and (3) has been convicted on any of the offenses specified in §205(a)(3) of the NDR Act.

The states are required by the Commercial Motor Vehicle Safety Act to give "full weight and consideration" to any such NDR information in deciding whether to issue a commercial driver's license to such person. Beginning in fiscal year 1994, a state which fails to observe these rules and other standards for the issuance of commercial driver licenses will have five percent of its highway construction funds withheld.

The clearinghouse is the key to making the CDL Program work; it is absolutely essential to ensuring that each truck and bus driver has only one license. I appreciate the leadership of the Congress and, in particular the House Committee on Public Works and Transportation for this program and other motor carrier initiatives.

The Federal Highway Administration Office of Motor Carriers has lead responsibility for the CDL Program within the Department, including the CDL information system that will serve as a clearinghouse and depository of information for the licensing and identification of commercial motor vehicle drivers, and the disqualification of these drivers. Mr. Richard P. Landis, Associate Administrator for Motor Carriers is directing FHWA's efforts. This effort is also being monitored closely by the Office of the Secretary.

Senior managers and staff of FHWA, NHTSA, and the states are working closely on the development of the clearinghouse to ensure that both the new CDL system and the upgraded NDR will be fully compatible and directly accessible among the states. States are required by the Act to check both systems on the driver's status before issuing a commercial driver's license. We have two

consultant studies under way. Early this year FHWA contracted with a consultant to complete the review of existing state information system so we could determine whether any could serve the functions of the CDL clearinghouse. The NHTSA also is overseeing a contract for a consultant to assess whether NDR software would also be useful in establishing the clearinghouse.

We are working directly with the states to establish the clearinghouse. The states, through the American Association of Motor Vehicle Administrators (AAMVA), have formed a Steering Committee to assist FHWA in directing the consultant's efforts. Motor vehicle licensing and information system officials from 11 states and Ontario serve on the Committee. The FHWA, in cooperation with the Committee, will establish the system requirements and specifications this year. We will begin the final system development and implementation phase next spring in order to establish the clearinghouse by January 1989.

Although we recognize that the Department is ultimately accountable for the establishment and performance of the clearinghouse, the states will have a strong role in its development and implementation. Last week, we sponsored a public workshop in Reston, Virginia, to discuss the results of our initial work on the clearinghouse and to seek suggestions on its development from all the states, the motor carrier industry, the telecommunications industry, and other interested parties. Over 200 people participated in the session (including representatives of 44 states). We received many comments and suggestions that will be helpful in providing additional direction to our efforts.

We are encouraged by the cooperation and support we have received from the states and industry in our initial implementation of the CDL Program. Working together, we are confident that we can meet

the ambitious deadlines established by law and implement the most significant national motor carrier transportation initiative in decades.

Next, Mr. Chairman, I would like to discuss our legislative proposal to allow the NDR to be utilized by the Federal Aviation Administration and individual railroad companies, when reviewing the qualifications of airmen and various railroad operating employees.

Safety performance has improved in both the aviation and railroad industries. This improvement is due largely to tougher safety legislation, more effective FAA and FRA safety regulations, an enhanced oversight and safety enforcement program, and a continuing commitment to safety by the industries themselves.

The Department continues actively to scrutinize specific aspects of the various transportation modes for further potential safety improvement. It is against that backdrop that DOT has sought additional ways to reduce the number of aviation and rail mishaps that can be related to operator error. "Operator error" accounts for well over half of reported accidents. We cannot, as long as operators are human, hope to prevent all mistakes and misjudgments. But we can, by a combination of education, regulation, enforcement and vigilance, reduce those errors. Specifically, we may detect a pattern of behavior regarding drug and alcohol abuse that might make a serious accident more likely.

Nearly every airman and railroad employee possesses a driver's license. It is reasonable to believe that an individual's performance on the highway offers some indication of how that individual might perform operating an aircraft or a train. The thrust of our legislation, therefore, is an extension of the NDR application to commercial motor carriers, but directed toward the rail and aviation industries.

Although there has not been a fatal commercial aviation accident where drug or alcohol use has been found to be the cause, there have been instances where subsequent investigation of a tragedy in the air or on the nation's rail system has revealed repeated motor vehicle violations. While the official report of the Chase, Maryland, rail collision this January has not yet been completed, we believe the driving record of the Conrail engineer who moved his train into the path of an Amtrak passenger train may prove to be an example of what we are trying to accomplish with this legislation. As you will recall, the driving record of the engineer contained a dozen traffic violations, including three that resulted in license suspension. The legislation that we are proposing today is intended to improve the screening process for airmen and rail employees, in order to prevent the accidents that could be avoided if more had been known about an individual's behavior patterns with respect to operating vehicles.

I wish to assure you that in so doing, we would not violate the caveats under which the NDR was established. In both the case of an individual applying for an airman's certificate and for prospective railroad employees that would be covered by the hours of service rules, our bill allows these individuals to request the chief driver licensing official of a state to query the NDR and transmit information regarding the individual to either the FAA or the private railroad company. If Congress passes the bill, the Department would promulgate regulations for the use of this data, as discussed below. The Department is, therefore, merely proposing the continuation of a procedure already established under the NDR Act for the motor carrier industry whereby those people who have responsibility for certifying operator's qualifications may be legally authorized to receive NDR information--if the individual provides his or her consent.

I would also like to point out that our bill does not in any way propose penalties for aviation industry or railroad employees. The nature and degree of action that the FAA or a railroad might take with regard to an employee's certification or qualifications are, we believe, matters best left in the hands of the FAA and the FRA or the railroad industry. We fully expect, however, that if an individual authorizes release of his or her driver's record, it will be examined for, among other things, a record of offenses indicative of drug or alcohol dependence or of patterns of other problems which impact the safe operation of vehicles, rather than single and/or isolated infractions. We further expect that in the case of the railroad's existing employees, rather than a purely punitive approach, the companies would work with them to remedy the dependence or driving problems, ensuring, of course, that the individual does not hold a safety-sensitive position while those problems exist.

A somewhat different procedure is anticipated in the case of the pilots. Presently, the FAA can withhold or suspend an airman's certificate if the applicant fails a medical examination. Part of an airman's periodic examination is a question regarding whether the individual has been cited for alcohol or drug related traffic violations. If the answer is affirmative, the medical examiner will check more closely for a dependency condition.

There is a serious question, however, concerning the self-disclosure by pilots of possible alcohol and/or drug problems without independent verification of the data reported. As you may recall, the DOT Inspector General conducted an audit last year to test the veracity of statements made by airmen on their medical certificates. The review estimated that of 711,648 active airmen medically certified by FAA, approximately 10,300 had their driving privileges suspended or revoked for alcohol-related offenses. Most importantly, the review estimated 7,850 of these airmen did

not report this information to the FAA on their medical applications. These cases cast serious doubt on the integrity of the self-disclosure policy intended to detect them, and FAA intends to tighten its oversight in this area. A rulemaking is in preparation which would propose appropriate enforcement criteria for multiply alcohol-related driving offenses and for failure to report these offenses directly to the FAA.

Based on the proposed amendments, FAA would modify its medical certificate application forms so that applicants would request their NDR records be checked as a precondition for being granted or retaining an airman's certificate. Should the record indicate past problems, one option available to the FAA is further medical examinations. Inasmuch as alcohol and drug abuse are at the heart of many serious traffic violations, refusal to provide access to the NDR record or the disclosure of serious adverse data from the NDR could trigger a more stringent examination--one that could determine whether there is evidence of drug and alcohol abuse sufficient to warrant suspension of a certificate under current regulations. Part of the contemplated FAA rule is planned to deal with withholding airman certificates from applicants with multiple Driving While Intoxicated offenses.

While to some these might seem to be strong measures, we must recognize that those who are going to be put in control of a truck, bus, plane, or train, have been awarded special levels of responsibility. This responsibility applies not only to themselves and their passengers, but to the public at large, all of whom may be at risk for careless behavior, for disregard of safety rules, or because they are impaired.

I would like to stress, further, that the Department is firmly committed to comprehensive substance abuse programs, including prevention, identification, and to employee rehabilitation

programs. In the regulations forbidding alcohol and drug use by railroad employees that went into effect in early 1986, FRA established procedures for individuals to volunteer for drug and alcohol counseling or be recommended by fellow employees. Successful completion of the program entitles the employee to resume working for the railroad. In a case where a railroad employee who is on duty is identified and proven by railroad management to be under the influence, he or she is not provided with the option to be placed in a rehabilitation program.

Similarly, FAA has in place programs for aviators who experience alcohol problems. The programs are highly respected and there are recovering alcoholics who have an excellent safety record flying commercial aircraft today. Opportunity to receive rehabilitation assistance is not only a fair approach, but it is, we believe, given the widespread incidence of drug and alcohol abuse in U.S. society today, one that is absolutely essential. Trained and skilled airmen and railroad engineers are too valuable a human resource to waste.

Mr. Chairman, the NDR and the CDL are both very important safety initiatives. We urge your early and favorable consideration of our bill. I will now be pleased to answer any questions you or other members of the Subcommittee may have.