

STATEMENT OF THE HONORABLE SAMUEL K. SKINNER  
SECRETARY OF TRANSPORTATION

before the  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

concerning  
MANDATORY ALCOHOL AND DRUG TESTING IN THE TRANSPORTATION INDUSTRY

June 15, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO BE BEFORE THE COMMITTEE ONCE AGAIN, TO ADDRESS AN ISSUE OF THE UTMOST SIGNIFICANCE TO ALL AMERICANS -- THE ASSURANCE THAT OUR TRANSPORTATION SYSTEM, BE IT AIRCRAFT, TRAINS, MOTOR VEHICLES, OR WATERBORNE VESSELS, IS IN THE HANDS OF OPERATORS WHO CAN DO THEIR BEST AND WHO ARE NEITHER UNDER THE INFLUENCE OF ALCOHOL NOR USERS OF ILLEGAL DRUGS.

WHEN I APPEARED HERE FOR CONFIRMATION HEARINGS, I STRESSED THE INSIDIOUS EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES ON AMERICAN TRANSPORTATION, AND I STATED THAT COMBATTING THIS WOULD BE AMONG MY HIGHEST PRIORITIES. MY FIRST MONTHS IN OFFICE HAVE CONVINCED ME THAT WE HAVE NOT OVERESTIMATED THE PROBLEM, AND IT MUST BE ADDRESSED EVER MORE FIRMLY. IF, AND I STRESS "IF" BECAUSE WE DO NOT YET HAVE THE FACTS, THE EXXON VALDEZ GROUNDING WAS CAUSED BY MISUSE OF ALCOHOL, THIS WILL BE ONLY THE MOST RECENT, MOST GRAPHIC EXAMPLE OF OUR CHALLENGE.

THIS COMMITTEE AND ITS LEADERS HAVE BEEN IN THE FOREFRONT OF THE DRIVE TO FORCE CHANGE WHERE CHANGE MUST COME, AND TO ENCOURAGE THE

MANY VOLUNTARY EFFORTS BETWEEN EMPLOYEE AND EMPLOYER, SUCH AS OPERATION RED BLOCK, THAT ARE AT THE CORE OF TRUE CHANGE. I AM MINDFUL, AS IS THE COMMITTEE, THAT VERY LEGITIMATE AND SIGNIFICANT ISSUES OF EMPLOYEE PRIVACY AND CONFIDENTIALITY ARE CENTRAL TO TAKING STEPS IN THIS AREA. I AM THE "EMPLOYER" OF ALMOST 99,000 AGENCY EMPLOYEES AT DOT, AND I AM EVER AWARE OF THE EMPLOYEE'S INTEREST.

IT WAS THIS COMMITTEE THAT ORIGINATED TOUGHER NEW PENALTIES FOR DRUNK DRIVING CONVICTIONS IN THE MOTOR CARRIER INDUSTRY, THAT APPLIED ENFORCEMENT DIRECTLY AGAINST INDIVIDUALS VIOLATING THE FEDERAL RAILROAD SAFETY ACT, AND THAT ACTED SWIFTLY TO OPEN THE NATIONAL DRIVER REGISTER FOR EMPLOYER AND AGENCY CHECKS OF THE DRIVING RECORDS OF THOSE WHO WOULD OPERATE AIRCRAFT AND LOCOMOTIVES. YOU DESERVE CONGRATULATIONS.

WE ALL RECOGNIZE THAT MORE CAN BE AND MUST BE DONE. THE COAST GUARD, FOR EXAMPLE, HAS ALREADY DRAFTED STATUTORY CHANGES TO TIGHTEN THE MERCHANT SEAMAN LICENSING PROCESS, AND I HAVE SUBMITTED THEM FOR REVIEW WITHIN THE ADMINISTRATION. LAST WEDNESDAY I TRANSMITTED THE COAST GUARD'S PROPOSAL TO GAIN DIRECT ACCESS TO THE NATIONAL DRIVER REGISTER.

THE FEDERAL RAILROAD ADMINISTRATION IS LABORING TO PRODUCE THE VOLUME OF REGULATIONS THAT WILL IMPLEMENT THE "RAIL SAFETY IMPROVEMENT ACT OF 1988". THIS LANDMARK SAFETY LEGISLATION WAS A

DIRECT PRODUCT OF THE BIPARTISAN EFFORTS OF SENATOR EXON'S SUBCOMMITTEE IN THE LAST CONGRESS. THE FAA HAS JUST RELEASED ITS PROPOSED RULE TO USE THE NATIONAL DRIVER REGISTER TO VERIFY DRUNK DRIVING RECORDS OF AIRMEN AND DENY LICENSES OR RENEWALS WHERE APPROPRIATE.

THE QUESTION BEFORE THIS COMMITTEE TODAY IS WHETHER SPECIFIC STATUTORY MANDATES ARE NOW NEEDED, NUMBER ONE, TO SUPPORT THE RANDOM DRUG TESTING MEASURES ALREADY IN PLACE IN THE RAILROAD, AVIATION, MOTOR CARRIER, AND OTHER MODES AND, NUMBER TWO, TO EXTEND TESTING MEASURES TO COVER ALCOHOL. I APPRECIATE BEING ASKED TO PROVIDE MY VIEWS, BECAUSE I AM THE ONE ULTIMATELY RESPONSIBLE FOR ISSUING DEFENSIBLE RULES.

YOUR LETTER OF INVITATION SPECIFICALLY ASKED ME TO ADDRESS THE NEED FOR LEGISLATION SUCH AS S. 561, WHICH WOULD MANDATE BOTH ALCOHOL AND DRUG TESTING IN THREE MAJOR MODES, AND WHETHER OTHER MODES SHOULD BE COVERED. HAVING REVIEWED THE CURRENT AUTHORITIES UNDER WHICH OUR RULES WERE ISSUED, I THINK OUR STATUTORY AUTHORITY FOR THE RAIL, AVIATION, AND MOTOR CARRIER RULES IS BROAD AND STRONG -- I THINK WE'LL WIN OUR CASES ON THE RANDOM DRUG TESTING RULES JUST AS WE WON ON THE FRA POST-ACCIDENT RULE. THE FACTS JUSTIFY OUR RULES, AND THE COURTS WILL SEE THAT.

ON THIS SUBJECT, YOU MAY KNOW THAT I RELUCTANTLY ADVISED CHAIRMAN DINGELL THAT I COULD NOT RECOMMEND TO THE PRESIDENT THAT HE SIGN THE HOUSE BILL IN ITS CURRENT FORM, BECAUSE IT WOULD REQUIRE US TO

START ALL OVER AGAIN ON OUR DRUG AND ALCOHOL RULES AFTER BEING UPHELD IN THE SUPREME COURT. WE, AS A NATION, CAN'T AFFORD THAT.

YOUR LETTER ALSO SOUGHT MY VIEWS ON THE ISSUE OF EXTENDING OUR TEST MEASURES TO ALCOHOL. THE REQUIREMENT CONTAINED IN S. 561 TO ISSUE RULES WITHIN ONE YEAR THAT MANDATE RANDOM ALCOHOL TESTING COULD PRESENT A PROBLEM. THE HERCULEAN EFFORT BY THE SIX DOT AGENCIES IN 1987-88 TO ISSUE THE NEW DRUG RULES DID NOT INCLUDE ALCOHOL. NOW WE NEED TO REVIEW THE ADEQUACY OF OUR ALCOHOL RULES. WHATEVER THE FINDINGS IN THE VALDEZ CASE, THAT SITUATION MAKES CRYSTAL CLEAR THAT WE MAY NEED TO UPGRADE THE LICENSING AND OTHER CONTROLS WE HAVE ON ALCOHOL MISUSE.

I HAVE DECIDED THAT WE MUST STEP FORWARD AND ADDRESS THE ISSUE OF ALCOHOL MISUSE IN TRANSPORTATION NOW. I AM COGNIZANT OF THE COMPLEXITY OF THE SUBJECT MATTER, OF THE COMPLICATED HUMAN MOTIVATIONS THAT ENTER INTO THIS PROBLEM, AND OF THE OVERARCHING NEED TO PROCEED WITH FULL JUSTIFICATION AND CARE, NOT WITH RIGHTEOUSNESS OR VINDICTIVENESS. BUT WE NEED TO START, AND I HAVE JUST DIRECTED MY LAWYERS TO PREPARE AN ADVANCE NOTICE OF PROPOSED RULEMAKING THAT WILL LET US EXPLORE WHAT MORE NEEDS TO BE DONE AND HOW BEST TO DO IT.

THIS IS NOT A STEP LIGHTLY TAKEN. DOT HAS HAD ALCOHOL MISUSE RULES ON THE BOOKS THAT SEEM TO HAVE WORKED FAIRLY WELL FOR YEARS. THE COAST GUARD'S MANDATORY POST-ACCIDENT ALCOHOL TESTING BEGINS IN DECEMBER. I AM CONFIDENT THAT THE GREAT MAJORITY OF

TRANSPORTATION WORKERS DO NOT AND WOULD NEVER IMPAIR THEIR ABILITIES TO CARRY OUT THEIR DUTIES BY MISUSE OF ALCOHOL. BUT IT IS MY CONSIDERED JUDGMENT THAT THE ALCOHOL PROBLEM NEEDS TO BE REVISITED IN AN EXPLORATORY RULEMAKING.

I HAVE ORDERED AN "ANPRM" BEFORE ISSUING SPECIFIC PROPOSALS BECAUSE I BELIEVE WE NEED TO GATHER MORE FACTS AND VIEWPOINTS BEFORE WE LOCK OURSELVES INTO A SPECIFIC APPROACH. THE COMPLEXITIES OF A TESTING PROGRAM FOR ALCOHOL ARE VERY DIFFERENT FROM THOSE OF A DRUG TESTING PROGRAM. ALCOHOL IS NOT, AFTER ALL, AN ILLEGAL SUBSTANCE. AND THE METHODOLOGIES FOR ALCOHOL TESTING DIFFER FROM THOSE OF DRUG TESTING. A LOT MORE THOUGHT NEEDS TO GO INTO THE IDEA OF EXTENDING RANDOM TESTING TO ALCOHOL, AND I AM MAKING IT A HIGH PRIORITY TO GET NEEDED INFORMATION. ALCOHOL HAS A RELATIVELY SHORT PERIOD OF MANIFESTATION IN THE BODY, FOR EXAMPLE, MAKING RANDOM TESTS LESS LIKELY TO UNCOVER A CONDITION CONSTITUTING LEGAL IMPAIRMENT. THE METHODOLOGIES TO COUNTER SUBSTANCE ABUSE ALSO HAVE VARYING EFFECTIVENESS, AND OUR ANPRM WILL EMPHASIZE THE APPARENT GREATER VALUE OF EDUCATIONAL AND TRAINING TECHNIQUES IN COMBATTING ALCOHOL ABUSE, AS WELL AS THE IMPORTANCE OF FOLLOW-UP TREATMENT AND MONITORING OF PERFORMANCE FOR INDIVIDUALS RETURNED TO DUTY FOLLOWING REHABILITATION.

A LOT OF PEOPLE WOULD LIKE TO ACT MORE SWIFTLY. THE HOUSE BILL, FOR EXAMPLE, WOULD MANDATE RANDOM ALCOHOL TEST RULES JUST 90 DAYS AFTER ENACTMENT OF THE BILL. I LOOK AT THE LONG TERM, AND I KNOW

THAT TO DEVELOP ANY PROGRAM THAT WILL ACHIEVE ITS OBJECTIVES AND WITHSTAND LEGAL CHALLENGE REQUIRES MORE CARE AND CONSIDERATION.

WITH THIS IN MIND, MR. CHAIRMAN, I WOULD SAY THAT THE TIMEFRAME FOR ISSUING FINAL ALCOHOL TESTING RULES APPEARS TOO RESTRICTIVE TO PERMIT US TO DEVELOP THE KIND OF ADMINISTRATIVE RECORD THAT IS NECESSARY. SPECIFYING THE FIVE CIRCUMSTANCES FOR ALCOHOL TESTING MAY ALSO LEAVE INSUFFICIENT FLEXIBILITY TO DEVELOP A FULLY JUSTIFIED RULE. IN MY MIND, IT IS MOST IMPORTANT TO COMMIT THE TIME AND EFFORT NEEDED TO DO THE JOB RIGHT, AND I SEEK THE COMMITTEE'S SUPPORT FOR FLEXIBILITY RATHER THAN AN UNYIELDING STATUTORY MANDATE.

I AM ADVISED ALSO THAT THERE MAY BE OTHER ASPECTS OF THE BILL THAT NEED ATTENTION. FOR EXAMPLE, LANGUAGE WAS ADDED LAST YEAR TO A SIMILAR BILL THAT WOULD HAVE PERMITTED US TO HONOR OUR INTERNATIONAL OBLIGATIONS WHEN IT COMES TO THE MANDATORY RANDOM TESTING. THE BASIC PROBLEM IS THAT SOME OTHER COUNTRIES DO NOT PERMIT THEIR EMPLOYERS TO UNDERTAKE THE KIND OF TESTING WE CALL FOR, AND THAT WE NEED THE FLEXIBILITY TO ADOPT RULE CHANGES THAT SOLVE THIS PROBLEM.

IN MY VIEW, MR. CHAIRMAN, MY WORKING RELATIONSHIP WITH THE COMMITTEE HAS BEEN EXCELLENT, AND I HOPE YOU WILL PROVIDE ME THE NEEDED FLEXIBILITY TO DO A GOOD, THOROUGH JOB ON OUR ANPRM. IN THIS VEIN, LET ME TAKE THE TIME TO THANK YOU ALL FOR THE RAPID AND FAVORABLE ACTION YOU HAVE TAKEN ON ALL THE PRESIDENT'S NOMINATIONS

TO THE DEPARTMENT OF TRANSPORTATION. HAVING THE DEPUTY SECRETARY, A GENERAL COUNSEL, AND TWO ASSISTANT SECRETARIES ABOARD ALREADY, AND ANTICIPATING HAVING AN FAA ADMINISTRATOR AND TWO MORE ASSISTANT SECRETARIES SOON, MAKES MY JOB A LOT SIMPLER AND MAKES THE WHOLE DEPARTMENT A LOT MORE RESPONSIVE TO CONGRESS.

MR. CHAIRMAN, THIS COMPLETES MY PREPARED STATEMENT, AND I WOULD BE PLEASED TO TAKE ANY QUESTIONS YOU OR OTHER MEMBERS OF THE COMMITTEE MAY HAVE.