

INSURANCE INSTITUTE FOR HIGHWAY SAFETY

June 15, 2005

The Honorable Annette M. Sandberg
Administrator
Federal Motor Carrier Safety Administration
400 Seventh Street S.W.
Nassif Building, Room PL - 401
Washington, D.C. 20590-0001

Hours of Service of Drivers
Docket No. FMCSA-2004-19608, formerly FMCSA-1997-2350
Electronic On-Board Records for Hours-of-Service Compliance
Docket No. FMCSA-2004-18940, FMCSA-2004-17286

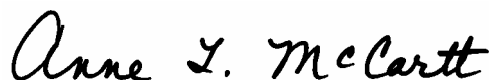
Dear Ms. Sandberg:

Enclosed please find the statement by Kenneth M. Mead, Inspector General of the U.S. Department of Transportation, "Reauthorization of TEA-21 Safety Programs." This statement, presented to the Senate Committee on Commerce, Science, and Transportation on April 5, 2005, recommends actions that should be undertaken by the Department of Transportation to make progress in reducing highway crashes. Recommendations are based on audits and criminal investigations conducted by the Office of the Inspector General.

One of the nine recommendations is increased enforcement of egregious violations of hours-of-service regulations. According to Inspector General Mead, there will always be unscrupulous trucking companies and drivers who "view FMCSA's fines for Hours of Service and log book violations simply as a cost of doing business." Noting that the courts have directed FMCSA to review its decision to rescind a proposed electronic onboard recorder requirement, Inspector General Mead termed these devices "key evidence for enforcement efforts."

Inspector General Mead's statement provides further evidence that reform of truck drivers' work rules is meaningless without an effective enforcement system including an electronic onboard recorder requirement.

Sincerely,



Anne T. McCartt, Ph.D.
Vice President, Research

cc: Docket Clerk, Docket No. FMCSA-2004-19608/18940/17286

**Before the Committee on Commerce, Science, and Transportation
Subcommittee on Surface Transportation and Merchant Marine
United States Senate**

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Expected at
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Reauthorization of TEA-21 Safety Programs

**Statement of
The Honorable Kenneth M. Mead
Inspector General
U.S. Department of Transportation**



Mr. Chairman and Members of the Subcommittee:

Thank you for inviting us to testify today as the Subcommittee begins deliberations on the reauthorization of the safety programs in the Transportation Equity Act for the 21st Century (TEA-21). You have asked us to discuss highway and motor carrier safety, hazardous materials safety, and household goods transportation fraud.

Our testimony today will draw from our body of audit work and criminal investigations. We also want to advise the Subcommittee that we have several safety audits under way, including one on alcohol-impaired driving and another on implementation of the Motor Carrier Safety Improvement Act of 1999, which was required by Congress.

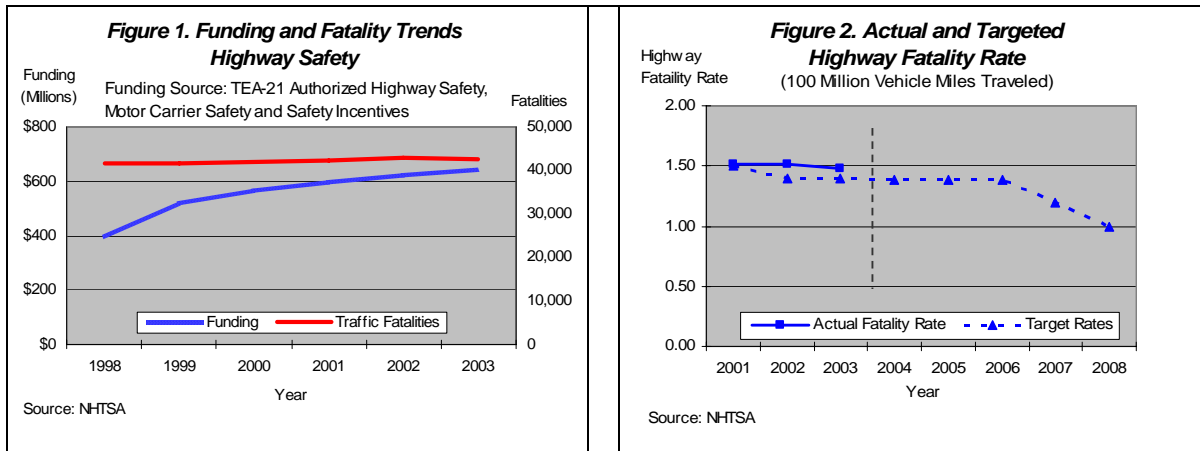
Given the challenges they have faced, two agencies dealing with highway safety—the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA)—have, overall, made good progress. Specifically, the highway fatality rate has decreased 6.3 percent, from 1.58 deaths per 100 million vehicle miles traveled in 1998 to 1.48 in 2003, the most recent year for which figures are available.

The absolute number of deaths has increased 2.8 percent, from 41,501 in 1998 to 42,643 in 2003. The number of large-truck-related fatalities decreased in every year from 1998 to 2002 but increased slightly in 2003. But the number of highway vehicle miles traveled increased 9.8 percent from 2.6 trillion to 2.9 trillion in the same period. This explains why the fatality rate has decreased as the absolute number of deaths increased.

These successes can be attributed to the increased attention given to highway safety, including Congress' creation of FMCSA in 1999; its passage of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in 2000; NHTSA's attention to seat belt use and potential vehicle and equipment safety defects; and FMCSA's efforts to increase enforcement and complete important rulemakings.

Funding for highway safety improvement increased more than 50 percent during the five-year period from 1998 to 2003. But the fatality trends have essentially flattened during that period (as Figures 1 and 2 illustrate).

The Department has established a goal to reduce the overall highway fatality rate to one death per 100 million vehicle miles traveled by 2008. Meeting the Department's goals will require a decrease in 5 years that is almost twice the decrease that was accomplished in the previous 11 years.



While they will be difficult to achieve, accomplishing the Department's goals would save about 31,000 lives between 2004 and 2008, assuming that vehicle miles traveled remain constant. This would lower annual deaths by an average of about 6,200 lives, a significant decrease in the more than 42,000 annual deaths. Acting on the following items will help the Department to achieve these goals.

- Use covert methods to reveal Commercial Drivers License (CDL) fraud and ensure that truck drivers who obtained their CDLs from examiners suspected of fraud obtained their licenses properly.** We have found far too many CDL fraud schemes—in 23 states—and identified more than 8,000 drivers who had obtained their CDLs through state employees or “third-party examiners” suspected of fraud. Although some of these drivers were retested, FMCSA should require states to ensure that all of those drivers are properly qualified. We have recommended that FMCSA also require states to adopt effective CDL counter-fraud methods, including covert test methods, which includes having police officers pose as applicants. These methods have been successfully used in Pennsylvania and Georgia, and should be required in all states.

We have also recommended that when corrupt examiners are caught, the holders of CDLs approved by those examiners be retested. FMCSA officials recently advised us that they are assessing whether it has the regulatory authority to order states to use covert counter-fraud methods and retest suspect CDL holders. If FMCSA determines that it does not have the authority, it should seek that authority from Congress.

- Strengthen state enforcement of laws that bar Mexican trucks from operating in the United States without proper authority.** These trucks can now operate in the United States in only limited ways, primarily in the commercial areas along the border. Mexican companies seeking to operate in the United States under new privileges granted by the North American

Free Trade Agreement (NAFTA) are required to obtain operating authority from FMCSA. The agency will grant operating authority only to those Mexican companies that meet detailed safety-related requirements. Opening of the border has been delayed. But even before the border has opened, records indicate that state inspectors have already found more than 100 Mexican trucking companies operating illegally in the interior United States.

In August 2002, FMCSA issued an interim final rule requiring state inspectors to place out of service any commercial vehicle operating without authority or beyond the scope of their authority. However, in January 2005, we reported that gaps still exist in implementing and enforcing this rule. Five states still need to adopt rules to enforce operating authority, and some of the states that have adopted the rules are not placing trucks out of service when found operating without authority, because operating without authority is not one of the Commercial Vehicle Safety Alliance's (CVSA) North American Inspection Standards out-of-service criteria.

CVSA is an association of state and Federal officials responsible for the administration and enforcement of motor carrier safety laws. According to CVSA, the term "out of service" is intended to refer to vehicles that "by reason of its mechanical condition or loading would likely cause an accident or breakdown." Training and guidance for state officials on the operating authority issue is also a problem.

In its response to our January 2005 report, FMCSA stated that it will continue to communicate with all states and encourage timely adoption and full enforcement of its August 2002 rule, which it considers to be clear and unambiguous. However, if this issue continues to present an obstacle to implementation of the rule, FMCSA will need to take further action to ensure that, notwithstanding CVSA's view of when vehicles may be placed out of service, the states consistently implement FMCSA's rule.

- **Increase enforcement of egregious violations of Hours of Service regulations.** Hours of Service regulations are aimed at preventing accidents caused by fatigued commercial drivers. The regulations prescribe a limit on the number of hours that a commercial driver can be behind the wheel. Simply put, the key provision in the regulations currently in effect limit consecutive hours of driving time to 11 hours, and this regulation expires in September 2005. The previous limit was 10 hours.

The Subcommittee should know that regardless of the limits in place, there will be unscrupulous operators who will violate the rule and drive 20 consecutive hours or more. We have conducted criminal investigations

of egregious cases in which trucking company officials have been prosecuted for systematically forcing their drivers to drive well in excess of the limits.

In one case, a California trucking company that repeatedly had been fined by FMCSA for Hours of Service violations was involved in an accident in Arizona that killed a father and son and injured six other people. The company, its two owners, and 11 employees have been indicted on Federal criminal charges. The indictments charge that the company had encouraged its drivers to falsify their log books. Our investigation disclosed that the driver involved in the Arizona fatality had been behind the wheel for 19 hours, and that his log book falsely reflected he was in the sleeper berth at the time of the accident.

Unscrupulous trucking companies and drivers view FMCSA's fines for Hours of Service and log book violations simply as a cost of doing business. Current penalties and enforcement methods can be further strengthened to deter this offense. We note that at one time, FMCSA proposed that all trucks be required to have onboard electronic devices that would record driving time and provide key evidence for enforcement efforts. FMCSA rescinded that proposal, but the courts have directed FMCSA to review the decision to rescind it. If ultimately FMCSA does not require recorders, it needs to develop additional strategies to deter Hours of Service violations. For example, one way would be to eliminate FMCSA's distinction between a missing or incomplete log book and possessing a false log book, which carries a fine up to 10 times higher than a missing log book. Another would be to eliminate an FMCSA policy that restricts inspectors' use of data from a trucking company's GPS or onboard recording device to check for Hours of Service violations during compliance audits.

- **Refocus funds to reduce drunk driving.** Driving while under the influence of alcohol continues to be one of the largest highway safety problems in the nation, with an estimated 40 percent of all highway fatalities (more than 17,000 deaths in 2003 alone) considered to be alcohol-related. We agree with the Administration's proposal to focus new funding resources on up to 10 states that have an especially high number of alcohol-related fatalities.
- **Increase the use of seat belts.** NHTSA and the states have been effective in increasing the national seat belt use rate from 70 percent in 1998 to an estimated 80 percent in 2004. The number of states with primary seat belt laws increased from 19 in 1998 to 21 (plus the District of Columbia and Puerto Rico) in 2004. NHTSA estimates that for each 1 percent increase in

seat belt use, 270 deaths and 4,400 serious injuries are prevented each year. A key tool in this effort is the primary seat belt law, which allows police to stop and ticket a motorist solely for not wearing a seat belt. We agree with the Department's proposal to reward states that enact the primary seat belt law or show significant improvement in their rate of seat belt use.

- **Increase the use of motorcycle helmets.** Annual deaths from motorcycle accidents increased 60 percent, or by 1,367 deaths, from 1998 to 2003. This is one of the few areas where there is still “low-hanging fruit” that can advance progress toward achieving safety goals. In 2003, only 20 states, the District of Columbia, and Puerto Rico require helmets for all riders. In four states that repealed helmet use laws for adults—Arkansas, Texas, Louisiana, and Kentucky—motorcycle operator deaths increased (in August 2004, Louisiana re-enacted a universal helmet law).

In a crash, a helmet-less motorcyclist is 40 percent more likely to suffer a fatal head injury and 15 percent more likely to suffer a nonfatal injury than a helmeted motorcyclist. In 2003, 3,661 motorcyclists died and approximately 67,000 were injured in highway crashes in the nation. NHTSA estimates that helmets saved the lives of 1,158 motorcyclists in 2003, and that if all motorcycle operators and passengers had worn helmets that year, another 640 lives would have been saved.

In addition to lives lost, a key issue in the debate over helmet laws are the medical costs that could be avoided with helmet use. One NHTSA study estimated that in 2002 motorcycle helmet use resulted in \$1.3 billion in savings. An additional \$853 million would have been saved if all motorcyclists had worn helmets. Another NHTSA study of motorcycle accidents in Missouri, New York, and Pennsylvania estimated that without a mandatory helmet law, inpatient medical costs for brain injuries would be almost twice as much.

- **Detect vehicle and equipment defects more effectively.** In September 2000, Congress held hearings to determine why NHTSA, Firestone, and Ford did not identify tread separation defects sooner to prevent the numerous deaths and injuries associated with Ford Explorers equipped with defective Firestone tires. During the hearings, Congress noted that the data available to NHTSA's Office of Defects Investigation (ODI) were insufficient, and that ODI did not use the data it did possess to spot trends related to failures in these tires. To address these concerns, Congress passed the TREAD Act in October 2000.

Its purpose was to create new equipment standards and ways for the automobile industry and the Department to discover safety defects more

quickly. NHTSA has implemented all of the TREAD Act's 22 requirements, and completed a new safety defects system called the Advanced Retrieval (Tire, Equipment, Motor Vehicle) Information System (ARTEMIS). This system was created to analyze the large volume of early reports of defects from manufacturers and consumers, to identify defects that require further investigation and possible recall. In a 2002 audit we reported that ODI received an average of 34,000 complaints a year directly from consumers, and manufacturers received an even larger number.

In September 2004, we reported that ARTEMIS had cost and schedule overruns early in its development. In addition, the computer system cannot yet link deaths to an alleged defect, or identify relationships between disparate categories of information, such as a consumer complaint and the filing of a warranty claim.

Until these capabilities are implemented, analysts will not be able to fully utilize the information to help them find safety defect trends and subtle relationships in the large volume of data it receives. NHTSA is working to improve the system and has set milestones for adding the analytical capability and for completing training of staff to use the system by October 2005. It is important that the agency follow through on implementing those capabilities and that it determine the reasons why the number of vehicle recalls has been increasing. According to NHTSA, the number of vehicle recalls, whether voluntarily or by action of the government, has increased from 265 in 1995, to 541 in 2000, and to 602 in 2004.

- **The creation of the Pipeline and Hazardous Materials Safety Administration is a good opportunity for this new agency to have an effect similar to that of FMCSA.** PHMSA faces three imperatives. One is to focus attention on safety and security for the more than 3 billion tons of regulated hazardous materials that move nationally in more than 292 million shipments each year. Hazardous materials is an area where safety and security intersect in significant ways. PHMSA must develop new ways to identify vulnerabilities of hazardous materials shipments to negligence, intentional violations, and terrorist attack. The intersection of safety and security was particularly evident in the train derailment in South Carolina in January 2005 that leaked chlorine, killing nine people and injuring hundreds. While preliminarily attributed to human error, the train derailment also has revealed security vulnerabilities involving manually controlled switches.

A second imperative for PHMSA is to coordinate hazardous materials regulatory issues with other agencies in the Department of Transportation and coordinate hazardous materials security issues with the Department of

Homeland Security (DHS). In the past 5 years, success in achieving Department-wide objectives to facilitate hazardous materials regulatory issues has been limited, due primarily to each modal administration separately administering its hazardous materials program. Coordinating hazardous materials security issues with DHS is never more evident than with the responsibility to secure the U.S. transportation system and protect its users from criminal and terrorist acts, especially in the area of hazardous materials safety oversight and enforcement. A third imperative for PHMSA is to lead and coordinate efforts to complete eight outstanding hazardous materials-related mandates and 23 outstanding hazardous materials-related National Transportation Safety Board recommendations throughout the Department that are long overdue. One outstanding recommendation is to act with the Federal Railroad Administration to create fracture resistance standards for rail tank cars carrying dangerous chemicals such as chlorine.

- **Protect consumers from fraud perpetrated by unscrupulous household goods moving companies.** Although it is not safety-related, household goods moving fraud is a serious problem, with thousands of victims who have fallen prey to these scams across the country. Typically, an unscrupulous operator will offer a low-ball estimate and then refuse to deliver or release the household goods unless the consumer pays an exorbitant sum, often several times the original estimate. In one case, for example, a New York husband and wife in their seventies were quoted a price of \$2,800 to move their household goods to Florida. Once the movers had loaded about half of the goods, the foreman advised the couple that unless they paid the new price of \$9,800 they would never see their property again. Fearing that the moving crew might physically hurt them, the couple paid the vastly inflated price.

Since 2000, our office has investigated allegations of fraud associated with approximately 8,000 victims, involving more than 25 household goods moving companies. FMCSA data reflects that since 2001, consumers have filed over 10,000 official complaints via its hotline against household goods movers, including about 2,500 complaints that accuse movers of overcharging, providing misleading and inaccurate estimates, and other serious tariff violations.

Until this year, FMCSA had dedicated one full-time investigator for household goods complaints. Because of Congressional concern over the increase in fraud, FMCSA received an increase in funding in FY 2004 to hire 10 additional investigators. It has also cross-trained other safety inspectors to support its household goods investigation efforts. FMCSA's

goal is to conduct 300 investigations by the end of FY 2005, compared to just over 30 conducted in FY 2004. Clearly, this is an area where stronger sanctions and authorities are needed to leverage the limited resources available to respond to the steadily increasing volume of complaints of fraud and abuse in the household goods moving industry.

The House version of TEA-21 reauthorization (H.R. 3), which passed last month, contains important provisions to strengthen enforcement in this area, including greater civil penalties and ensuring that states have the authority to take enforcement action, under Federal regulations, against a company operating in interstate commerce. Also, significantly, H.R. 3 creates a specific Federal felony of holding goods hostage and sets 2 years imprisonment per count as the maximum penalty, but this is relatively low for a felony. We recommend that the maximum penalty be at least 5 years imprisonment, to fall in line with most other Federal felonies, given the underlying nature of the crime, which really is extortion.

This concludes our testimony. Thank you for inviting us to testify here today. We would be glad to answer any questions that you have.