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BUS AND TRUCK SECURITY AND HAZARDOUS MATERIALS LICENSING

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

OCTOBER 10, 2001

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ONE HUNDRED SEVENTH CONGRESS

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BUS AND TRUCK SECURITY AND HAZARDOUS MATERIALS LICENSING

WEDNESDAY, OCTOBER 10, 2001

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m. in room SR–253, Russell Senate Office Building, Hon. John B. Breaux, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM LOUISIANA

Senator BREAUX. The Subcommittee will be in order. I thank our witnesses for being with us this morning, and Senator Cleland and other Members will be joining us shortly.

We will begin our hearing with a few opening comments of our Members. This Subcommittee hearing is a continuation of a series of hearings on security in the transportation area that the Subcommittee on Surface Transportation has embarked upon. We will continue to examine the security of both passenger rail systems and transportation systems in general, as well as freight transportation as well. Of particular concern, I think, are reports that terrorists may have been seeking licenses to drive trucks containing hazardous materials.

On October 4, a federal grand jury in Pittsburgh indicted 20 people on charges of fraudulently obtaining commercial driver's licenses, including licenses to haul very dangerous hazardous materials. In September, the Federal Bureau of Investigation arrested an individual linked to Osama bin Laden who had a hazardous materials driver's license issued by the State of Michigan.

While we require employment and criminal background checks for aviation employees, we do not require such background checks for truck drivers who are seeking licenses to haul hazardous materials. We could potentially look at requiring companies that are hauling hazardous materials to create security plans, including verifying the identification of their drivers picking up the hazardous material cargo. We might also need to more closely track the transportation entity, the movement of the most dangerous materials, including the use of electronic tags or satellites.

Other potential steps might include increasing funding for hazardous material handling and training programs, and creating po-

tential federal penalties for the hijacking of trucks carrying hazardous materials, particularly on the interstate system.

These issues surrounding the hazardous materials that truck driver licensing, border enforcement and bus safety are obviously very difficult to solve. There are no easy answers. We want to increase safety and security, obviously, but not jeopardize the convenient travel of American citizens and the free movement of goods that are the livelihood of a strong economy.

With regard to border issues at the Mexican and Canadian border crossings, law enforcement, intelligence, customs, truck safety and immigration functions, all coverage must be better coordinated by the relevant federal agencies, and coordinating the sharing of their information and responsibilities at the border is a very important step of stopping terrorism and making sure that foreign trucks are safe on American roads.

With regard to bus safety, on October 3, the driver of a Greyhound bus was attacked, as we all know, in Tennessee, resulting in the deaths of six passengers. While the attacker was not linked to any terrorist organization, it was an important reminder that our transportation system outside of aviation also is vulnerable.

In 1999, we passed the Motor Carrier Safety Improvement Act following a charter bus accident in Louisiana, outside of New Orleans, on Mother's Day of 1999, in which 22 people were killed. The driver was found to have several medical problems. He had marijuana in his system at the time of the accident, and in my opinion should be behind bars and not behind the wheel of a bus.

Legislation strengthened the enforcement of bus safety by increasing the fines and requiring more monitoring of the motor carriers, but some parts of that legislation along with bus-related parts of TEA–21 in 1998, still have not been implemented by the Transportation Department.

We need to know from the Transportation Department what we have done to address these issues, and what we plan to do in the near future to increase bus safety. We may seek to increase the coordination between bus drivers and the local police departments, create more stringent licensing requirements for bus drivers so they are trained to handle the threats, to create remote check in for buses at airports, and help bus companies better screen their baggage and verify their passenger identification.

In conclusion, it is not clear what type of precautions would be truly effective and possible to implement. It would be a logistic impossibility to have law enforcement check every or even most of the 800,000 shipments of hazardous materials or the millions and millions of truck movements annually. Every conceivable precaution could potentially be defeated, and precautions that made one transportation mode less vulnerable may simply shift the threat to more vulnerable targets.

The goal is to strike a balance between safety and security versus the free flow of goods and people that drive our just-in-time economy. I look forward to the panel members and their suggestions and thoughts, and welcome our witnesses to our Committee, and would recognize our distinguished Republican Ranking Member, Senator McCain, for any comments he might have.

STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

Senator MCCAIN. I want to thank you, Senator Breaux, for having this hearing. It is a very important one. During the past 4 weeks, we have been working in a bipartisan manner to address the Nation's most pressing needs in the wake of the September 11 terrorist attacks. Part of the effort is focused on the survival of the aviation industry, and rightly so. Our Nation, our citizens and our economy cannot afford further deterioration of this critical segment of the transportation industry, and we cannot afford to leave other sectors of our transportation system vulnerable to attack.

As we have noted in previous hearings, transportation systems are the target of 40 percent of terrorist attacks worldwide. That is why it is necessary for the Government to play a key role in assessing potential security threats to our Nation's transportation system. We must ensure that we have taken every reasonable precaution to safeguard critical infrastructure, and that procedures are in place to protect people and property in the event of actual terrorist attacks.

In that effort, this Committee has been conducting a series of hearings to gain information we need to help us evaluate potential security risks and determine how best to respond to those potential risks. In addition to addressing aviation, we have considered rail and maritime security, and today we will be addressing bus and truck security issues.

I am proud of the work conducted by this Committee, and commend the Chairman and the Subcommittee Chairman for holding these important hearings on transportation safety and security.

Again, Chairman Breaux, thank you for holding this hearing. I look forward to hearing from all of today's witnesses, and hearing their recommendations as to how we can best address the security of bus and truck transportation.

Senator BREAUX. Thank you, Senator.

Any comments, Senator Cleland?

STATEMENT OF HON. MAX CLELAND,
U.S. SENATOR FROM GEORGIA

Senator CLELAND. Thank you, Mr. Chairman. Some 9 billion tons of cargo are transported annually by the trucking industry and the passenger buses around America carry some 774 million passengers per year, double the amount of passengers carried domestically by the airlines and rail combined. Given the large dependence of Americans on these means of transportation, Mr. Chairman, I think it is time and appropriate for Congress to dedicate its time and resources to review the vulnerability of these modes of transportation.

I mentioned at last week's hearing on port and rail safety that Anthony Cordesman, a terrorism expert at the Center for Strategic and International Studies here in Washington, said "he expects any future attacks by the terrorists will use different tactics and the next time they attack it will not be using aircraft. It could be mass transit, or it could be public utilities, historical sites, or the media. Tightening security in one area will tend to push terrorists into

other directions, but one act of mass terrorism does not predict the next occurrence."

A balance obviously must be struck between all modes of transportation to ensure all available resources are not overly committed to only one form of transportation. I would like to find out today what the bus and truck industry need and what they need to ensure safety, security, and integrity.

I will say that I have been encouraged to hear individual efforts by trucking companies. There is a trucking company in Georgia—Mr. Wayne Smith of Felton Pearson Company in Georgia handles several types of cargo transports. In order to ensure the integrity of his loads, his driers back up their loaded trailers to other trailers so that access to the cargo by outsiders is virtually impossible. This protective measure seems obvious and easy for any trucking company to do. Mr. Smith also commits his own resources to do criminal background and reference checks on his drivers.

The Department of Transportation I believe has a role here to provide correct centralized access to information on CDL drivers, and I would like to learn more today on how the Department plans to work with the states to gather and provide this information, and what additional resources may be needed in order to meet this goal. I pledge my full efforts to work with all of you to ensure the safest roadways for the traveling public.

Thank you, Mr. Chairman.

Senator BREAUX. Thank you, Senator Cleland, and I welcome our first panel of witnesses, Administrator Joseph Clapp, of the Motor Carrier Safety Administration at DOT, and Administrator Ellen Engleman, Research and Special Programs Administration, also with DOT.

We know that you folks are relatively brand new on the job, and welcome right into the fire, and we hope you have a long and distinguished career at the Department of Transportation—and these are difficult times. You are not responsible for everything that happened for the last 10 years, or even the last 10 months, but this is your duty now, and this is your job, and we want to hear from you as to where you think we are, and where you think we are headed.

Mr. Clapp, you are first.

STATEMENT OF JOSEPH CLAPP, ADMINISTRATOR, MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Mr. CLAPP. Thank you very much, Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear before you today.

Senator BREAUX. Joseph, get that mike real close to you so we can all hear.

Mr. CLAPP. I also appreciate that you favorably reported my nomination to be the first Administrator of the Federal Motor Carrier Safety Administration. I know that when you established this agency in 1999, you did not do so lightly, but rather because you believed it was an important step to improved motor carrier safety. I personally applaud your decision.

I have been asked why I would choose to come out of retirement, a retirement that I frankly thoroughly enjoyed, to accept this appointment. I would like you to know the answer, which is twofold. One is the great respect that I have for Secretary Norman Mineta. He is a great American, as I am sure you know. The other is the admiration I have for the Federal Motor Carrier Safety Administration and what it does.

Very early in my career as a young safety director at that time for Ryder Tank Line, I went through what today we would call a compliance review. The result of that experience was to gain genuine respect for the sincerity and the dedication of the so-called bureaucrats with whom I came into contact from the state level right on through to Washington. More importantly, I can tell you that as result of that review, I was a better safety director and my company was a better company.

FMCSA is focused, as I am now, on continuing to improve motor carrier safety. We will do so with continued emphasis on compliance. We conduct over 10,000 compliance reviews each year now, more than double the level of 2 years ago, when you created this agency. We are working with our state partners to give greater emphasis to the driver's side of the safety equation, and to increase the security of their commercial driver's license systems. At the same time, we expect the states to maintain the very substantial level of roadside vehicle inspections, which are now over 2 million a year.

Meanwhile, the events of September 11 have necessitated an additional focus. The credible threat of terrorism directed toward our transportation system requires that we take deliberate action to prevent, prepare for, and respond to violence. Secretary Mineta has challenged each modal administrator to establish a new definition of normal in transportation security. We must achieve this new level of vigilance while maintaining the mobility that underpins our country's economic strength.

FMCSA's first actions have been directed at the areas of greatest potential risk: hazardous materials transportation and passenger carriage. Right now, virtually our entire field organization is engaged in visiting hazardous materials carriers to review with them the need for appropriate security measures in the light of the new reality. Company officials are asked to assess their operations to identify all potential vulnerabilities and to take immediate steps to tighten procedures. Special emphasis is given to conducting thorough background checks on drivers and being alert for suspicious behavior.

This major effort necessarily means some reduction, as of the moment, in the number of regular compliance reviews that our safety inspectors would otherwise be performing. I believe this is nonetheless the correct priority for our people at this critical time. If we believe there is serious failure on the part of the carrier safety program, we will, of course, respond. Our enforcement partners, I am happy to say, in the states are stepping up security measures as well.

The lead Motor Carrier Safety Assistance Program (MCSAP) agency in each state has been asked to place greater priority on hazmat enforcement at the roadside. In addition, driver-only in-

spections are increased, and states are conducting commercial driver's license information system inquiries on hazmat drivers.

FMCSA has been cooperating with the Federal Bureau of Investigation and other law enforcement agencies to check on drivers with hazardous materials endorsements. In the past 2 years, our agency has substantially increased its scrutiny of state licensing agencies and made recommendations to states to prevent fraud. Last year, we made more than $15 million available to states to evaluate and improve their licensing systems.

Since September 11, over-the-road bus companies and other commercial passenger carriers have actively worked with our agency to heighten security by reviewing baggage and ticketing procedures, and consulting with security professionals. Greyhound is to be particularly commended for its swift response last week, when one of its bus drivers was attacked in Tennessee.

We are continuing to work with the bus industry to ensure that its security needs are met. FMCSA will continue to find ways to improve security in the days ahead. I look forward to working with this Subcommittee to build a safer, more secure motor carrier system.

Thank you, Mr. Chairman and Members of the Committee.

[The prepared statement of Mr. Clapp follows:]

PREPARED STATEMENT OF JOSEPH CLAPP, ADMINISTRATOR, MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee. Good morning. Thank you for the opportunity to testify today on behalf of the Federal Motor Carrier Safety Administration (FMCSA). FMCSA has a critical role in protecting the security and safety of highway transportation, and I am very proud to serve the Administration and our country in these challenging times. I want to express my particular appreciation for the Senate Commerce Committee's recent efforts in the consideration of my nomination.

The Subcommittee on Surface Transportation and Merchant Marine is highly respected for decades of strong leadership in motor carrier safety, from the creation of Motor Carrier Safety Assistance Program (MCSAP)—the foundation of our safety partnership with the states—to the establishment of the FMCSA. I look forward to working closely with the Subcommittee over the months ahead as we take vigorous action to ensure the safety and security of our Nation's highways.

The recent attacks on the World Trade Center and the Pentagon using hijacked airliners remind us all that we must respond to a new kind of terrorism—one that is well financed, well organized, and utterly ruthless. The credible threat of increasing terrorism directed toward our Nation's transportation systems requires that we take immediate action to prevent, prepare for, and respond to violence—the nature and magnitude of which was once inconceivable.

FMCSA employees in our New York office near the World Trade Center were eyewitnesses to the first attack and were evacuated from their building. Our New Jersey staff was quickly on the scene in the Meadowlands helping coordinate the movement of emergency and rescue equipment into lower Manhattan. Members of the New Jersey Motor Truck Association voluntarily brought in thousands of pieces of heavy-duty equipment, flatbeds, refrigerated trucks, cranes, dump trucks, earthmovers, and front-end loaders, to help rescue efforts.

In the hours after the crisis, FMCSA closely collaborated with the Federal Bureau of Investigation and other law enforcement agencies, first to help identify activity related to the events of September 11, then to investigate any other leads that might be related to terrorist activity. FMCSA's Rapid Response team alerted state enforcement officials and transport and hazardous materials associations across the country to be on the alert.

Secretary Mineta has challenged each modal administration to establish a new definition of "normal" in transportation security. We must maintain a new level of vigilance, while maintaining the mobility that underpins our country's economic strength.

Commercial vehicles—buses and trucks of all types—present unique security challenges. There are more than 7.5 million vehicles and approximately 10.5 million holders of Commercial Driver's Licenses (CDLs) widely dispersed throughout the country. Almost 2.5 million of the drivers who have CDLs have an endorsement that allows them to transport hazardous materials. It is relatively easy to acquire a truck or bus, even on a temporary basis, and each vehicle has a large cargo capacity. Trucks and buses are highly mobile with easy access to key national sites and population centers.

Our agency's first actions have been focused on the areas of greatest potential risk, hazardous materials transportation and commercial passenger carriers. FMCSA and RSPA have coordinated their actions.

On September 26, FMCSA directed its credentialed staff in each State's Division Office and every Resource Center to conduct Security Sensitivity Visits to hazardous materials carriers throughout the country to urge heightened vigilance. Companies we meet with are asked to assess their operations to identify all possible potential vulnerabilities—and take immediate steps to tighten procedures.

Particular emphasis is given to conducting thorough background checks on drivers and being alert for suspicious behavior from drivers, including applicants, shippers, consignees or the public. Company officials are being urged to conduct thorough interviews when hiring new drivers and verify U.S. citizenship or immigration documents for employees. Factors such as gaps in employment, frequent job shifts, and criminal history are to be considered.

Companies are asked to review their own security procedures, looking at who has access to their facilities and storage areas, and the adequacy of protection. Carriers are urged to know their business partners, their vendors, their service providers, and their shippers.

FMCSA is urging all carriers to avoid transporting particularly hazardous materials near high population centers, whenever possible, and reinforcing the need to strictly follow en route security measures. We are urging companies to take advantage of technical innovations that can improve security and communication, such as satellite tracking, surveillance systems, and cell phones as well as state of the art locks, seals, alarms, and engine controls.

Enhanced communications systems provide another window of opportunity for companies to tighten security. A good communications network can help detect patterns of activities that when taken alone may not seem significant but when taken as a whole may cause concern. Security messages and training should be regularly and widely provided to employees and should be comprehensive, covering overall company security, specific security procedures, and the employee's personal role in security.

In addition to directly contacting carriers, each FMCSA State Director and Field Administrator has been asked to contact trucking associations and other trade associations involved with hazardous materials. Associations are asked to contact their members and share detailed suggestions for improving security.

Our enforcement partners in the states are stepping up security measures as well. The lead MCSAP agency in each state has been asked to place greater priority to hazardous materials enforcement at the roadside. States are stepping up "driver only" (Level III) inspections and conducting Commercial Driver's License Information System (CDLIS) inquiries on all hazardous materials drivers.

FMCSA has been cooperating with the Federal Bureau of Investigation and other law enforcement agencies to check on drivers who hold licenses to transport hazardous materials. In the past 2 years, our agency has substantially increased its scrutiny of state licensing agencies to root out corruption in commercial licensing. We have been involved in the current investigation of a fraudulent hazardous materials licensing scheme in Pennsylvania.

Even before September 11, states were cooperating with FMCSA in stepped up examination of their licensing procedures. This started when cases of fraud emerged in Illinois and Florida. Last year FMCSA conducted a special review of operations in Illinois and Florida and issued recommendations on specific actions these and all states could take to prevent fraud. State employees and private individuals within states have been our most fertile source of tips on fraudulent licensing schemes. We have encouraged each state to review its procedures and spot test its systems to detect fraud. During fiscal year 2001, FMCSA made more than $15 million available to states to evaluate and improve the systems. A similar level of funding has been requested for fiscal year 2002.

Fraudulent licensing schemes come in many forms—from use of a language interpreter, who actually provides answers to the test taker, to third party testers who pass on the basis of fees paid, to licensing personnel who take kickbacks. FMCSA now reviews a third of the state CDL programs each year to see if they are com-

plying with federal requirements. In this process, FMCSA points out state procedures or practices that may make their programs particularly susceptible to fraud. For example, we discovered that one state gives discretionary authority to a desk clerk to override checks of CDLIS for license applicants without consulting supervisors.

Since the events of September 11, over-the-road bus companies and other commercial passenger carriers and their related trade associations are cooperating with FMCSA to heighten security by reviewing baggage checks and ticketing procedures, consulting security professionals, and, as much as possible, avoiding locations that might pose security risks to passengers.

Last week, at 4 a.m., a disturbed passenger on a Greyhound bus viciously attacked the bus driver causing a crash that tragically took six lives. Although the incident is not believed to be related to terrorist activity, it highlights how we must anticipate what we never before could have imagined. Greyhound is to be highly commended for their quick, aggressive action to suspend operations to ensure further episodes would not occur if terrorism was involved. The Department of Transportation provided Greyhound with appropriate intelligence and security support to expedite its resumption of service.

FMCSA is evaluating the additional measures that will be needed to protect security in the passenger carrier industry.

While the focus of this hearing is security, before I conclude my remarks, I want to underscore for you my personal lifelong interest in motor carrier safety. I believe my background in industry will be an asset in helping the FMCSA meet its safety goals. When I was in the industry and its trade association, I was an early supporter of measures Congress passed into law, such as the Commercial Driver's License, random drug testing, and significant increases in roadside inspections. All are now responsibilities of the agency I now head. I understand the business of this industry which is so vital to this country's well being. A core element of that understanding is the absolute requirement for sharing the highways safely and with due regard to the rights of those who travel alongside commercial vehicles.

I very much hope that I may make a contribution to building a safer and better motor carrier system. To do that, I will engage parties throughout the spectrum, from carriers to truck inspectors, and from safety advocates to safety directors—to listen and to learn. One of my priorities will be seeing that a Commercial Motor Vehicle Safety Advisory Committee is established as soon as possible. I believe an advisory committee could be a real resource for the agency, potentially providing guidance and expertise in matters of security as well as safety.

Again, I look forward to working closely with this Subcommittee in the months ahead, and I would be happy to answer any questions that you may have.

Senator BREAUX. Thank you, Administrator Clapp.

Administrator Engleman.

STATEMENT OF ELLEN ENGLEMAN, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Ms. ENGLEMAN. Thank you, each and every member and staff, for the opportunity to appear before you to talk about this critical topic that faces us and our Nation. I want to express my sincere and personal appreciation to the Committee for the opportunity, and to share with you my sincere sympathy with the families and the victims of the events of September 11.

The possibilities that we now face were driven by a deliberate attack that none of us could have really imagined prior to September 11, and the Research and Special Programs Administration within the Department of Transportation has worked diligently to respond and prepare for our new public safety and security reality.

The RSPA mission has always been focused on public safety. We administer comprehensive and national programs through our offices of Pipeline Safety, Hazardous Materials Safety, and the Office of Emergency Transportation. Our job is to protect people, property, and the environment from harm or damage that would result

from accidents or events that include the result of transportation of hazardous materials from damage of oil or natural gas pipelines, and to respond to emergency transportation issues that result from natural or manmade events.

We traditionally, however, focused on the likelihood of an accidental event, and our job was to minimize the consequences. Fortunately, we have proactively addressed security concerns of all areas under our jurisdiction since September 11. Within 30 minutes of the first attack on the World Trade Center, Transportation Secretary Mineta ordered the activation of the Crisis Management Center, the CMC, which is part of RSPA's Office of Emergency Transportation.

The CMC is in direct communication with emergency responders on a regional basis. Their job is to acquire, assess, and analyze emergency communication and response activities in support of the Secretary. The Center has representatives from all nine transportation divisions, or modes as we call them, which includes FAA, transit, highways, rail, maritime, motor carriers, pipeline, and the Coast Guard. We also have general counsel, public affairs, and intelligence security functions.

We gathered information in real time and created immediate situation reports to the Secretary. The CMC was manned on a 24–7 basis, and has remained fully operational since September 11. In addition, the Office of Emergency Transportation immediately responded to support the federal response plan activities with FEMA, the Federal Emergency Management Agency.

We coordinated, facilitated, and provided, where necessary, all transportation to support FEMA, including the movement of the urban search and rescue teams, personnel, equipment, supplies, including blood and provisions to New York City and the Pentagon sites.

Last, this office directly supported individual activities of the Coast Guard and FAA, Federal Aviation Administration.

On September 11, RSPA's Office of Pipeline Safety immediately issued a security bulletin to over 1,000 pipeline owner operators. OPS personnel made immediate telephone contact with major pipeline operators to ensure that they understood and adhered to the security issues. OPS personnel contacted all the state pipeline safety programs to provide them with security information. On September 14, the Office of Pipeline Safety requested that operators continue to strengthen their security efforts, and that emergency security measures remain in place until further notice. We continue to be in close and immediate communication with the pipeline owner operators.

RSPA's Office of Hazardous Material Safety worked closely with the Federal Motor Carrier Safety Administration and issued a safety alert to ensure that security measures were in place within the hazardous materials transportation community, the manufacturing industries, and the local and state governments.

A working group of representatives from several of the Department's operating administrations are conducting an assessment for the security of hazardous materials. I am pleased to announce that last night we received final approval and review of our proposed hazmat reauthorization proposal that will be sent over today by

Secretary Mineta. We look to reauthorize the DOT hazmat program to increase inspection authority and to look and demand any requirements for security and safety.

Last, RSPA is focused on risk and vulnerability assessment. We need to identify and are identifying our current procedures, authorities, determining necessary improvements, refinements, and responses to public security and safety issues. We are reviewing all current regulatory and administrative tools that we can use to increase security.

We have issued a broad agency announcement for research and development of transportation infrastructure security technologies, and are an integral participant in the total National Infrastructure Security Committee. RSPA's Volpe National Transportation Systems Center is an acknowledged leader in transportation security and analysis, and has a leadership role in developing physical security-related programs currently involved with the Federal Transit Administration, the Bureau of Printing and Engraving, and even the U.S. Capitol Police.

The Transportation Safety Institute in Oklahoma has been developing critical safety and education training programs for multimodal application, and is specifically reviewing all programs to incorporate and develop security applications.

While I have highlighted what RSPA has been doing since September 11, many of our daily activities in promoting public safety have not changed. With 2.1 million miles of pipeline, and over 800,000 shipments of hazardous material every day, as Senator Cleland said, 4 billion tons annually, RSPA's role in pipeline safety and packaging and shipping of hazmat materials is critical. Many hazardous material shipments may be innocent paint, or aerosol containers. However, for those materials that would provide for a harmful platform, we will work closely to ensure that these shipments are identified, labeled, packaged, prepared for shipment, and shipped in a safe manner.

We share regulation for nuclear materials transportation with the Department of Energy. We work with the Federal Aviation Administration to keep unauthorized hazardous material shipments out of passenger aircraft. We cooperate with the Federal Motor Carrier Administration on development of minimum requirements for driver's licenses for commercial vehicles and authorizations to transport hazardous materials. However, issuing commercial driver's licenses is a function of the individual states, and under federal motor carrier rules.

My personal commitment as a member of this administration and as a Navy Reserve officer is quite simple—not on my watch—and that is what we are doing each and every day.

Each RSPA employee is dedicated to the safety and security of the American public. We are continuing to evaluate and implement additional measures, and we will continue to work with pipeline, hazardous material, and the emergency transportation communities towards those mutual goals. We offer our full support to this Subcommittee and to the Committee as a whole, and thank you again for the opportunity to begin this discussion to protect the American people.

[The prepared statement of Ms. Engleman follows:]

PREPARED STATEMENT OF ELLEN ENGLEMAN, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Thank you for the opportunity to appear before you on this critical topic of concern for our entire Nation. I want to express my appreciation to the Members of this Committee for their interest and to share with them my sincere sympathy for the families and friends of the victims of the tragedy of September 11th. The possibilities we now face are driven by a deliberate attack that most could not have imagined prior to September 11th. The Research and Special Programs Administration (RSPA) has worked diligently to respond to the events of September 11 and prepare for our new reality concerning public safety and security.

The RSPA mission has always been focused on public safety. RSPA administers a comprehensive, national series of programs through the offices of pipeline safety, transportation of hazardous materials and the office of emergency transportation. Our job is to protect people, property and the environment from harm or damage that would result from accidents or events resulting from the transportation of hazardous materials, from damage by oil or natural gas pipelines and respond to emergency transportation issues resulting from natural or manmade events.

Our safety programs traditionally focus on the likelihood of "accidental" events in order to minimize the consequences when incidents occur. Fortunately, RSPA has also proactively addressed security concerns for all areas under our jurisdiction.

In less than 30 minutes after the first attack on the World Trade Center, Transportation Secretary Mineta ordered the activation of the Crisis Management Center (CMC) which is part of RSPA's Office of Emergency Transportation. The CMC is an inter-modal communication center that is in direct communication with regional emergency responders to acquire, assess and analyze emergency communication and response activities in support of the Secretary. The CMC includes representatives from all 9 transportation modes, including Federal Aviation, Transit, Highways, Rail, Maritime, Motor Carriers, Pipelines, and Coast Guard, as well as general counsel, public affairs and intelligence/security functions. We gathered information in "real time" via our AIM (Activation Information Management System) reporting system and created immediate hourly (sometimes more often) situational reports for the Secretary. The CMC was immediately manned on a 24/7 basis and has remained fully operational since September 11th.

In addition, the Office of Emergency Transportation immediately responded to support ESF–1 (Emergency Support Function under the Federal Response Plan) activities with the Federal Emergency Management Agency (FEMA) and coordinated, facilitated and provided, when necessary, all transportation support for FEMA. This included movement of the urban search and rescue teams and other personnel, equipment, supplies, including blood and provisions, to the New York City and Pentagon sites. Lastly, this office directly supported individual activities of the Coast Guard and Federal Aviation Administration.

On September 11th, RSPA's Office of Pipeline Safety (OPS) immediately issued a security bulletin to over 1,000 pipeline owner/operators. OPS personnel made immediate and individual telephone contact with all major pipeline operators to ensure that communication was open and viable between our offices and that they understood and adhered to the security issues. Additionally, OPS personnel contacted all of the state pipeline safety programs to provide them with security information. On September 14, RSPA's Office of Pipeline Safety amended the security bulletin and requested that the operators continue to strengthen their security efforts and that emergency security measures remain in place until further notice. RSPA is pro-actively working with the pipeline industry to increase security awareness and individual measures and continues to be in close and immediate communication with pipeline owner/operators.

Responding to the increased level of transportation security, RSPA's Office of Hazardous Materials Safety, in coordination with the Federal Motor Carrier Safety Administration, issued a hazardous materials safety alert to ensure that adequate security measures are in place when transporting hazardous materials. This alert was distributed throughout the hazardous materials transportation community, manufacturing industries and state and local governments. The office also established an intermodal working group composed of representatives from several of the Department's operating administrations. The working group is conducting a multi-modal assessment of the existing security measures in place for the transportation of hazardous materials by all modes to see which ones may need to be strengthened or revised.

Last, RSPA is focused on risk and vulnerability assessment, identifying current procedures and authorities and determining necessary improvements, refinements and response to public security and safety issues. We are reviewing all current regu-

latory and administrative tools that can be utilized to support increased security responsibilities, have issued a Broad Agency Announcement for Research and Development of Transportation Infrastructure Security Technologies and are an integral participant in the Department's intermodal National Infrastructure Security Committee. The Volpe Transportation Center, a key member of the RSPA team, is an acknowledged leader in transportation security analysis and programs. The Volpe Center has a leadership role in developing programs related to physical security issues for the Federal Transit Administration, the Bureau of Printing and Engraving and the U.S. Capitol Police prior to and in concurrence with the events of September 11th. The Transportation Safety Institute in Oklahoma City has been developing critical safety education and training programs for multimodal application and is specifically reviewing all programs to support security issues.

These are just a few highlights of what the Research and Special Programs Administration has been doing since the September 11th terrorist attack on America. Many of our daily activities in promoting the public safety have not changed since September 11th. With 2.1 million miles of pipeline and over 800,000 shipments of hazardous material every day, equaling 4 billion tons annually, RSPA's role in promulgating rules and regulations concerning pipeline safety and the packaging and shipping of hazmat materials is critical. It must be noted, that from a security perspective, many of the shipments classified as hazardous materials may be as innocent as paint or aerosol containers. However, for those materials which would provide for a harmful platform, RSPA works closely to ensure that hazardous material shipments are identified, labeled and packaged for shipment in a safe manner. For instance, we share regulation of nuclear materials transportation with the Department of Energy. We work with the Federal Aviation Administration to develop measures to keep hazardous materials out of passenger aircraft. We cooperate with the Federal Motor Carrier Safety Administration on the development of minimum requirements for commercial drivers licenses and drivers authorized to transport hazardous materials. However, RSPA is not responsible for issuing commercial drivers licenses. This is a function of the individual states in adherence to Federal Motor Carriers rules.

My personal commitment and that of each RSPA employee is to the safety and security of the American public. RSPA continues to evaluate and implement additional measures and will continue to work with the pipeline, hazardous material and emergency transportation communities towards those mutual goals. We offer our full support to this Subcommittee and the Committee as a whole and we thank you again for the opportunity to meet with you today and respond to your questions, concerns or comments.

Senator BREAUX. Thank you very much, both administrators, for being with us.

If you look at all that you have on your plate, Mr. Clapp, you may continue to wonder why you came out of retirement. My staff and I sent you a list of things that Congress, when we did the Federal Motor Carrier Safety Administration, said we want you to do meaning your office. While the Motor Carrier Office had been dealing with highways, Congress felt we ought to have a separate agency to deal particularly with safety, and that time Congress ordered a number of studies and rulemakings, regarding jobs to be completed by the Federal Motor Carrier Safety Administration.

I have got 2½ pages of things that Congress said needed to be done, commercial vehicle driver identifier, national uniform system of permits for interstate motor carriers transporting hazardous materials, regulations dealing with the transportation of hazardous materials, trying to improve the flow of driver history, very important, medical certificates to make sure that people who drive commercial vehicles have an updated medical certificate.

My information tells me that none of them have been completed. Now, I know you are brand new, and you were not here when we did all of this, but it is your office, and what can you tell this Committee and this Congress, and I hate to say it, but that is deplorable. What is your expression on why it has not been done?

Mr. CLAPP. Well, thank you, Senator. I believe we have replied for the record with respect to where each rulemaking called for by MCSIA stands. The review that I have been able to do since last Thursday when I first joined the agency convinces me that every one of the rulemakings is, in fact, in progress in one way or the other. They are certainly not all final, and I agree with you about that.

In general, what has happened at the agency with respect to rulemaking is the creation of a dedicated division within the agency for the purpose of carrying out the rulemaking activity. These folks are solely dedicated to that purpose. They have created—and I believe my first official act will be to create a directive, that they have created a handbook which lays out all the procedures.

Senator BREAUX. You do not need a handbook. You need a hammer. I mean, really, you need to get in there and break some china. You have got to tell them that these things are incredibly important. These medicals, that situation in New Orleans, when we had the hearings, we had 22 people die, and the gentleman that was driving a bus at that time should never have been behind the wheel.

He was high on marijuana, he was taking Benedryl, and could not see straight. He was suffering from congestive heart failure and bad kidneys. He had gotten out of the hospital less than 8 hours before he went to work and killed 22 people, and so Congress as a result of that created your administration, and we requested updated medical certificates on people who drive commercial vehicles.

You have been there since Thursday. This is not your fault, but I would say, do not go back and publish a manual. Go in there and call them in and say, what are you going to do and when are you going to do it, and Congress is going to be all over me and all over us if it is not done. It is not a manual that needs to be issued, it is strong leadership and direction. Do you disagree with that?

Mr. CLAPP. I agree with it completely. As a matter of fact, Senator, you also created and put in place a Regulatory Ombudsman. That person is on board. That person meets weekly with all of the people involved in rulemaking, and it is a team process at this point, and we also have installed a tracking system for the rulemaking. In fact the new medical procedures, the medical form, is a final rule that was issued last year. The kind of guidance that is given to physicians examining drivers now is much more direct and much more easily understandable than the guidelines that were in existence at the time of that bus accident, which I am absolutely sure broke your heart, as it broke mine, to read about it and see what happened.

I could not agree with you more, and I agree with you on the leadership.

Senator BREAUX. What can you tell this Committee and the Congress about the situation in Pennsylvania? Just this October 4, the federal grand jury in Pittsburgh returned 16 indictments, and I think the same grand jury has also returned 20 separate indictments, charging 20 individuals from a number of states, basically for buying commercial licenses allowing them to carry hazardous materials on the highways of this country.

The people named in the indictment, not to cast any unnecessary concepts about who they are and where they are from, but almost all of them are from the Middle East, and are Iraqi refugees in this country, every single one of them, and I am sure they are decent people trying to become American citizens, but it raises the concern when you have 16 indictments, all Iraqi refugees, all receiving permits to carry hazardous materials in this country.

Now, those licenses are issued under the authority of the Department of Transportation. Can you assure the American public that changes are in place that can help the states do a better job in this particular area? I mean, obviously, if you had someone illegally selling licenses, and that is always a problem, however in this time of extra needed security, what actions can we at the Federal Government help states do to prevent this from ever happening again?

Mr. CLAPP. That is a good question, Senator. In fact, the agency has been quite active since fraud cases became known. For example, in Illinois and in Florida, FMCSA pulled together an expert panel that went through those cases. As a result, they have issued a series of recommendations to all the states for ways in which they can tighten up, and must tighten up, their CDL processes, including those for hazmat.

The two most common issues that are found are the ones that apparently were involved here, wherein somebody was essentially selling licenses, that is to say, fraud, and the other is the utilization of interpreters for folks who cannot take the test in English. That is a vulnerability which has to be addressed. Both of those states have, in fact, taken action to address that. Many other states, as a matter of fact, have also prepared action plans for deficiencies found in their operations, and our agency follows up to see that those time lines are met.

In addition, we audit the states at least once every 3 years, or more often if a problem is found with respect to the compliance. Our own people have been sent back to school to learn more about the way those compliance reviews should be and must be conducted, and additionally have also contracted for systems help to deal with the systems sides of those reviews.

Senator BREAUX. Well, thank you, Mr. Clapp. You are brand new, and I want to repeat that. You have been here since Thursday.

Mr. CLAPP. I am getting old fast.

[Laughter.]

Senator BREAUX. You have been here since Thursday, so obviously everything that has been done or not done properly is not your responsibility in the past, but we need strong leadership in this position. That is why Congress created the administration you are in charge of. We want to work with you to make sure that these things get done in a timely fashion.

Our Ranking Member, Senator Smith.

STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman, for holding this hearing. This is the second that we have held on surface transportation security. Last week we addressed maritime and rail security, and

I appreciate your leadership on these important issues. I would ask that my opening statement be included in the record.

Senator BREAUX. Without objection.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Last week, our Subcommittee held a hearing on Rail and Maritime security. Today, we will focus our attention on motor carrier security issues, including the driver's licensing process for transporting hazardous materials.

Bus and truck transportation safety and security involve a wide range of complex issues and vulnerabilities. For example, we all were saddened to learn of the recent attack on a Greyhound bus driver that resulted in a fatal crash in Tennessee. The first reports had many of us wondering if the attack was linked to terrorist acts. The FBI quickly concluded that the act was criminal, but not an act of terrorism. But clearly, this incident has added to our already heightened sense of concern over transportation safety and security.

As we discussed last week, 40 percent of terrorist attacks worldwide are targeted at transportation. It is the duty of all of us to ensure that every reasonable thing is being done to prevent further disruptions to the transportation of passengers and cargo.

I want to welcome two new Department of Transportation (DOT) Administrators who will testify today. This marks Administrator Clapp's first appearance before our Committee. In fact, Administrator Clapp was officially sworn in just last Friday. He holds the distinction of serving as the first Administrator of the department's newest agency, the Federal Motor Carrier Safety Administration (FMCSA).

Today is also Administrator Engleman's first appearance as the Research and Special Programs (RSPA) Administrator, although she has had the chance to appear before us once before during her confirmation hearing in June. Administrator Engleman was sworn in just two weeks ago.

I am going to go out on a limb and forewarn the Administrators that they will likely face tough questioning today. Many of us have been very frustrated over the lack of timely rulemakings on the part of both of your agencies. This Committee will be very interested to hear how you plan to lead your agencies to help improve upon that less than stellar rulemaking performance.

I look forward to hearing from our witnesses on what steps the bus and truck industries have taken, and what additional steps will be proposed, to ensure the safety and security of both cargo and passengers in our Nation's transportation system.

Senator SMITH. Mr. Clapp, in looking with the Chairman at a long list of people who have gotten fraudulent licenses to move this material, where did that occur? Was this one individual selling it to these people?

Mr. CLAPP. Good morning, Senator. Were you referring to the same case in Pennsylvania? From what I understand, my information has been more limited than I would like because of the fact that it is an ongoing grand jury investigation, but my impression of that is that it was one individual. I could be wrong.

Senator SMITH. And have the people who acquired these licenses been arrested?

Mr. CLAPP. They have been—again, I know what I know, which is that they have been indicted. I cannot vouch for whether they have all been arrested.

Senator SMITH. On the buses, are you contemplating a procedure to check baggage and screen passengers before people get on buses?

Mr. CLAPP. We are contemplating those procedures, along with many other things. That is part of it. We have had two meetings in the last 2 weeks with folks from the bus industry to review what can be done and what would be required to achieve various levels of security.

We are all, of course, having to struggle with this new balance between economic development, personal and economic mobility, and security. In the case of the bus industry, as you can well imagine, those are the folks that serve the hinterland, and they do not all come through a large central terminal like Reagan National Airport, so the problems are similar, but in some ways they are much more daunting.

We are continuing to ask those folks for additional specific recommendations, and of course, you will hear from them later this morning.

Senator SMITH. Mr. Clapp, I wonder if you have a mechanism to ensure that state procedures for hazardous material licensing or transportation of these, have you got a procedure to evaluate the states right now that you pursue?

Mr. CLAPP. The states' procedures for——

Senator SMITH. For verifying the standards they have to meet currently.

Mr. CLAPP. Yes. The states issuing commercial driver's licenses, including the various forms of endorsement, of which hazmat is one, have to meet standards that are put out by this agency, yes.

Senator SMITH. Are there any states that are not doing that?

Mr. CLAPP. Senator, not that I am aware of right now, but that, of course, is part of our ongoing oversight of the states.

Senator SMITH. Are you contemplating additional standards, or adding some things to this licensing procedure that you are going to require of the states?

Mr. CLAPP. In the light of September 11, and with regard to hazardous materials, that is certainly a possibility, one of many.

Senator SMITH. As far as you know, all of the people who obtained these fraudulent licenses from Iraq, are they all arrested and in custody, or moved out of this country?

Mr. CLAPP. I do not know that for certain, Senator.

Senator SMITH. Thank you, Mr. Chairman.

Senator BREAUX. I would suggest you follow that case very closely. Senator Cleland.

Senator CLELAND. Mr. Chairman, I would like to ask a few questions and then submit the rest of my questions for the record, please.

Mr. Clapp, I know there has been some problems with issuing commercial driver's license regulations. When do you think we could expect these regulations to be issued?

Mr. CLAPP. Thank you, Senator. We have three rulemakings in progress with respect to implementing the additionally, frankly, assistance you provided for us in MCSIA, the 1999 Act. The first rulemaking having to do with being those violations which occur in, for example, a personal automobile, something other than a commercial vehicle, which in the past did not make it onto the driver's record, that rulemaking has gone out. The comment period has closed, and we expect to have the final rule by the end of the year.

Another rulemaking combined some 14 other different items that were touched on in MCSIA, for example, the elimination of masking of certain types of violations from the record, or from a state being allowed to permit a hardship license for the operation of a commercial motor vehicle, and a number of other issues, including

sanctions on the states for failure to live up to the standards they are supposed to.

That notice of rulemaking has gone out. The comment period I think closes before the end of this month, and it is our plan to have that rule—and I hope I do not misspeak, but I think the final rule should be out early next year. That will be combined with the final piece, which is to combine the requirement for the medical certificate actually to be combined with the CDL.

Senator CLELAND. I understand that the USDOT has asked state and local agencies to increase their inspection of driver's documentation, including a review of all hazmat licenses issued within the past 2 years. I have been told by my state, the Georgia Department of Motor Vehicle Safety, that we are experiencing some problems in Georgia. I am sure similar agencies across the Nation are having difficulties complying with this request because of apparently incomplete databases for hazmat licensing that can be used nationwide.

Do you have any idea what efforts you are undertaking in the DOT in general to ensure that state and local agencies have the information needed to check the validity of hazmat licenses?

Mr. CLAPP. Senator, our request to the states specifically post-September 11, was to have our motor carrier safety action program partners—which in most states are the law enforcement the highway patrol folks—that perform 2 million plus inspections each year, which include vehicles and drivers, to try to do absolutely as many vehicle and driver inspections of vehicles transporting hazardous materials at this time, as well as to do a great many driver—only checks.

In addition, we shared with the FBI, at their request, the entire centralized data list of licenses that have hazardous materials endorsements. I am not, frankly, aware of the specific question that you just asked, and if you do not mind, I am going to ask that we get back to you on that.

Senator CLELAND. That will be fine.

Ms. Engleman, the USDOT administers the emergency preparedness grants program which helps state and local governments train police and firefighters to respond to an emergency involving hazardous materials.

Certainly, we have come over the last few weeks to a new appreciation of our police and firefighters as first responders. Currently, this emergency preparedness grants program is funded at $12 million, but that amount of money can train only about 123,000 emergency personnel a year. That is out of a pool of some 3 million, and so we are not making much of a dent there.

I also understand that grants to local governments are small, ranging from about $100,000 to $300,000. In fact, I read in the Washington Post last week that Washington, D.C. is supposed to have a fire department team to respond to a chemical or biological attack, but its members rarely train, and are used instead for routine fire-fighting.

I have learned that over the last 2 years there has been a surplus of funds for this program totalling about $15 million. Do you know whether or not the Department has asked for full access to the surplus in order to fund its fiscal year 2002 budget request?

Ms. ENGLEMAN. Thank you, Senator, for the question. In response, the grant program that you reference is part of the Office of Hazardous Material Safety, and is a key partnership role that we have with the states. The amount of money you reference is actually around $12 to $14 million is capped, if you will, by the authorization for the original grant program, which I believe dates back to 1991.

The fees, in reference to the surplus that you identified, are the additional fees that have resulted from the collection from carrier fees that we charge. The carrier fees are based on carriers who transport poisonous materials, flammable materials, explosives and the like. The fees range from about $250 to $2,000, and that is what generates the income to provide for those grants.

In reference to your question, as to the surplus itself, we do not have access to that surplus, if you will, because we are limited by the statutory authority for the grants. The grant program is a terrific program, because it leverages our resources, and while we may only directly work with approximately 120,000, that is actually a leverage, because many of the folks we work with are organizations that then continue to have the information flow, the education, the training, and the like, and that training is based on planning and emergency response training.

Senator CLELAND. I am informed by staff that the authorization for that program has expired, therefore the limitations do not apply any more, but we would like for you to submit for the record what you would need from the Congress in order to access the surplus funding for fiscal year 2002.

Thank you very much, Mr. Chairman.

Senator BREAUX. Thank you, Senator.

Senator Ensign.

STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman.

Ms. Engleman, I have a few questions, and I know that the NRC is mainly responsible for setting the regulations with regard to the shipment of radioactive materials. However, after September 11, I think that all of us are taking a fresh look at the way that any type of hazardous, whether they are radioactive or other types of hazardous materials are shipped across our highways, our railways, in light of that, and I have a quote that was from a report back in the 1980's at the direction of the NRC.

At the time, they had not recommended strengthening regulations because—I will read this quote. It says, "it has not been a pattern of terrorist groups in the past to kill large numbers of people or cause large numbers of lingering death. Terrorist groups have typically used violent means to make a political statement. Terrorists want a lot of people watching, not a lot of people dead."

Obviously, things have changed, and in the past the actual shipment, because they were going through places and maybe the types of shipments, or where they would be, this threat was not taken as seriously as maybe it is taken today. In light of that, does your agency need more authority on regulating with the NRC the shipment of, let us say, especially radioactive waste, and also, should

we put in that, because if one of these things is, some kind of an explosive device is put on any of these shipments that goes through a highly populated area, obviously it causes that much more damage.

Terrorist activity does not have to necessarily kill. It could be very disruptive, let us say, in Chicago, going through some of the heavily traveled freeways. You shut those things down, and you would shut them down for a long time. What that would do just to the City of Chicago—I guess the question is, do we need armored, or do we need armed personnel traveling with some of these shipments? Do you need more regulation? I guess what are you doing overall to look at this situation?

Ms. ENGLEMAN. Thank you, sir. The scenario you propose is, indeed, what I would call one of the scary ones.

What we are working on is both intermodally within the Department of Transportation, as well as interagency, because many of our activities are in conjunction with, for instance, the Department of Energy and others. We immediately put together a task force which has been meeting daily, by the way, with daily reports on progress to determine where we were as far as administration and regulations, what we could do, and what we should be doing, in other words, to determine the strategic gaps we need to fill.

Some of the items that you suggested are on the table, if you will, as part of the portfolio of possibilities. What we are trying to determine at this point is the best response, not the reactive or first response. I think it is critical that we continue to balance security and safety with mobility and economic vitality, and that critical balance is what we are focused on right now to ensure that we present a final recommendation that is not quick fix, but a long-term solution that can incorporate our needs of our daily lives.

Senator ENSIGN. One of the reasons that I brought this up, and I would like you to consider when you are studying this, is that Senator Murkowski was reported in the press the other day about his feeling that something like Yucca Mountain is needed more now because of the nuclear waste being stored at facilities around the country.

But if that nuclear waste is at various facilities around the country, that is not nearly as vulnerable to causing the kind of damage as if that nuclear waste is being shipped through large cities, and in your discussion with the other agencies, I would request that this be a topic of conversation, because what you were just talking about, balancing, I think that we do need to study the risks versus what the rewards would be for having it in one place, and is it in fact a greater risk to allow some of these shipments of some of these hazardous materials, more than keeping it on site and keeping it guarded where it is.

Ms. ENGLEMAN. Yes, sir, and indeed that is the focus of the group that Secretary Mineta has formed, which we have called the National Infrastructure Security Committee, and this is, as I said, intermodal, and has outreach to the other agencies. I will certainly take those suggestions back to the Committee, and I actually believe we are working on several of those possibilities now.

Senator ENSIGN. Mr. Chairman, I want to thank you, and I have some other questions I will submit in writing.

Senator BREAUX. Thank you very much, Senator.
Senator Snowe.

STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Mr. Chairman.

Mr. CLAPP AND MS. Engleman, Mr. Clapp, your office issued some security talking points with respect to transporting hazardous materials, and also more than 400 field officials have been visiting various sites of motor carriers that are responsible for the delivery of hazardous waste.

My question to you is this. Many of these recommendations and talking points are suggestions, or recommendations. I would like to have a clearer picture on exactly what has changed with respect to regulations that are being put in place that would be mandates, as opposed to suggestions, ones that you have identified that are so serious, so important in the aftermath of what occurred on September 11, there must be requirements.

For example, on commercial driving licenses, why should there not be a mandate for requiring of motor carriers a criminal background check, rather than just being suggested? Obviously, not only what occurred in Pennsylvania, but also, a Boston taxicab driver also had a commercial driver's license for hazardous materials as well, and then they followed up with his roommates in Detroit, and they also had driver's licenses to transport such materials and to drive commercial trucks, so obviously the system needs to be rectified, and I am just wondering what issues you have determined are so critical that they should be mandates rather than suggestions?

Mr. CLAPP. Good morning, Senator. Good question. Prior to September 11, and in my case prior to last Thursday, the regulations on the Federal Motor Carrier Safety Administration and RSPA as well were primarily aimed at preventing accidents that could create the loss of life and injuries. Much less focus before September 11 had to do with things that are caused on purpose instead of accidents. It is a whole new ball game after September 11.

It was our agency's view, and to the great credit of my predecessor, who is with me today and continues to be our Acting Deputy Administrator and Chief Safety Officer, to immediately put our field force to work going to the carriers face-to-face and reviewing what you have correctly identified as not only compliance with Federal regulations, but also rather specific recommendations.

Now that the name of the game—that is bad terminology, but anyway, what we have to do is security as opposed to safety. In addition to that, we are working with the task force that my colleague had described with you today with regard to what has to be done for the future with respect to improved transportation security. In that regard, of course, we also expect to be involved with the Transportation Security Agency, which I understand the Senate is in the process of considering right now.

All of those things are on the table, and additional recommendations for regulations and other actions on our part, will come out of that in the very near future.

Some regulations already apply with respect to securing the vehicle, attending the vehicle, et cetera, depending on the degree of hazard. It is not as though there are no regulations in place now. There are regulations in place now, but in addition, we thought it was very advisable to get out in the field. Frankly, the report I am getting back is 100 percent cooperation on the part of not only the carriers that we have gone to see who are actually anxious for the information and the exchange, but also cooperation from our state law enforcement partners.

Senator SNOWE. But will you be making recommendations in the future about what should be mandates? How soon are we talking about here? Would not some of these issues be crystal clear? I mean, why not have expanded background checks, make that a requirement, criminal background checks, obviously identify the lapses in the system. I realize they were obtained fraudulently, but there obviously were not any checks and balances in the system.

Some of those 20 people were from seven different states, so how were they able to obtain those licenses? Apparently, we do not have the checks and balances in our system to prevent that.

I think there are some things that ought to be done immediately, especially when we are talking about transporting hazardous materials, and in terms of the training as well, and the security clearances should be much more stringent and rigid than they are currently, and I would hope that we could move to put those mandates in place immediately.

Why is that not possible?

Mr. CLAPP. Thank you, Senator. Well, I suggest that is what we are doing, but just to address one example of that which seems clear, for example, is the expanded, perhaps criminal background checks for persons applying for hazmat endorsements.

It may well be that it is a different type of background check than what we would normally think of as a criminal background check. For example, the persons, again, who, for want of a better term, appear to be of Middle Eastern origin who are involved, had no criminal records whatsoever. I am sorry, I am speaking of the hijackers at this point—had no criminal record, so it is probably going to wind up being a different type of background check than the one that first comes to mind, and we need to work those out.

Senator SNOWE. But many of them had expired visas.

Mr. CLAPP. Exactly.

Senator SNOWE. Again, so it gets back to another problem, another dimension to the problem, but if there had been some probing one would have discovered that, and that gets back to the sharing of information. Do you have a database for all of these individuals who have possessed these licenses, and driving hazardous materials?

Mr. CLAPP. The national commercial driver's license system is the national database for that, yes, and frankly, Senator, I appreciate your suggestions. This is a new time in the world for all of us, and frankly we would like to have them.

Senator SNOWE. Thank you.

Senator BREAUX. Thank you, Senator Snowe.

While Senator Rockefeller is getting ready, let me ask a question or two to Ms. Engleman. Let us talk about the trans-Alaska pipe-

line that somebody shot a hole in, either intentionally or accidently, but regardless we had a rupture, with an estimated 6,800 barrels, or 285,600 gallons of oil that were spilled. Are you familiar with that incident, I take it?

Ms. ENGLEMAN. Yes, sir. I was on duty when the call came in.

Senator BREAUX. What I am interested in is not so much actually what happened, as why it took so long? What is your information? Number one, are we supposed to have monitoring systems on the trans-Alaska pipeline? We are supposed to have automatic shutoff valves and leak detection systems that are supposed to automatically give us information that something is wrong somewhere, and where it is wrong.

This incident was discovered by a helicopter. It appears the system did not work.

Ms. ENGLEMAN. No, sir, I do not believe the system did not work, per se. As you know, there are hundreds of miles of pipeline in the Alaska pipeline, and the leak was detected fairly quickly by the overflight of the helicopter. I do not have a working technical familiarity with all of the safety valves and procedures that are involved in the Alaska pipeline, but I will be more than happy to get back additional information to you on that.

Senator BREAUX. Is it not a fact that the leak continued for several days after detected? That seems to be engineeringly unacceptable.

Ms. ENGLEMAN. Sir, if I may, as I said, interestingly enough I was working at the CMC, the Crisis Management Center when that call came through. The reason that the leak continued is that first of all the FBI was not able to immediately secure the area.

The person in question was shooting. There were some issues as to whether there were other people involved in trying to secure the area to allow the TAPS personnel to have a safe environment to go in, so that was the initial issue of being able to secure the area to provide the repair. The repair equipment and supplies were onsite and immediately available.

The pipeline, when the area was secure, was shut down. However, the continuation of the leak was based on the pressure within the pipeline. There was a small hole about, less than 1/2 inch, and yet because of the pressure within the pipeline, it did spew out and cause the spillage as you indicated. Fortunately, the ground was frozen and it was in a dry creek area, and so the containment of the spill, we were actually able to recover a significant amount of it, and will continue on our cleanup activities.

I am very proud of the pipeline staff that works for the Office of Pipeline Safety at RSPA, because of their capability and immediate communication with us at headquarters, and also through the regional offices were working with the Joint Pipeline Office in Alaska and working concurrently with their activities for it.

I do believe the responsiveness to this incident was immediate and direct, and as quickly as the event would allow, given that there were additional security issues for the field personnel themselves. I am happy to say that as of 7 a.m. on Sunday morning the pipeline was permanently repaired, and that we are finishing up and continuing to work on cleanup activities.

Senator BREAUX. I appreciate the difficulties, because it was a criminal situation and they had to secure the area. The fact is after several days it continued to leak. Is there not, to your knowledge remote automatic shutoff valves to shut down the pipeline when it has been ruptured? Don't those things occur automatically, just as if a well blows out it is an automatic shut valve? What happened there?

Ms. ENGLEMAN. Sir, it is my understanding that even with the shutoff of the pipeline something which is called residual flow occurred, which was the product within the pipeline itself will continue to flow, and that there is pressure within the pipeline that caused the product around the leak to continue to spill. This is part of my education in learning more about the technical aspects of it. However, from a security perspective, this is another part of the larger wakeup call we as a Nation have received as far as the security and safety implications.

Senator BREAUX. It is a serious concern. The possibility that if somebody could take a 30–06 rifle and shoot holes through the Alaska pipeline resulting in multiple oil leaks, will not only damaging the environment, but shutting off a critical supply of oil to the Lower 48.

Ms. ENGLEMAN. Yes, sir, that is a vulnerability, and it is a significant vulnerability that we are addressing, and literally daily communication and planning procedures with TAPS, with the Alaska pipeline personnel, and our own office.

Senator BREAUX. I would like to get a report from your office as to exactly what happened, and particularly in the continuing oil flow for several days after it was discovered, and why the automatic system did not work better.

Senator Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. I do not know to whom I address the question, so I will just ask it. In West Virginia, part along the Ohio River part along the Kanawah River, we have a lot of chemical plants, with an issue of security.

West Virginia has a lot of security to worry about. The Coast Guard visited and I think the plants took that as doing something about security. The fact is that they are all incredibly vulnerable from the Ohio River, and probably are not doing very much about it. When I asked what they were doing about security, are people getting in and out of your gates, they said, generally speaking—not all of them are increasing their security by about one, from two to three.

Now, I do not know whether that is two to three over 24 hours, or two to three over 8 hours, or whatever, but my point is that you are dealing with plant managers who are engineers, they are trained as engineers. They report to people who are in distant places, because we do not have a lot of headquarters in West Virginia, and they have to get budgets for what they do.

I asked them, can you take action before you get budget approval? They said yes, but then we have to justify it, and if you know sort of the mentality of a plant manager who is probably

going to be around for 2 or 3 years and then move on, maybe even to some place like Louisiana—perish the thought.

[Laughter.]

Senator ROCKEFELLER. My general impression, to be very honest, is that they were not really up on security, that they were not really focused on it, and that their capacity to deal with it in the future was not energized, so my question to you is not just about trucks, vehicles, rental, whatever, getting in and out, but what do you do—and here I think I also speak for John Breaux from Louisiana.

What are you doing, if anything, with the chemical industry? They strike me as an industry very much subject to potential attack, and very much sort of structured, in terms of how their organizations are run, not to deal with effectively.

Ms. ENGLEMAN. Sir, if I may respond on behalf of the hazmat office, we work very closely with the American Chemistry Council, for instance, which represents about 95 percent of the producers of hazardous material, which would include such manufacturers as you referenced, and working with them to work on security identification issues, especially since September 11.

I have also tasked the Transportation Safety Institute, which is based in Oklahoma City, which is in charge of——

Senator ROCKEFELLER. Let me just stop you there. You say you work very closely with the American Chemical Association. What does that mean? I know hundreds of American trade associations, and the relationship between what I or you might discuss with them and what happens along the Ohio River could be a decade. When you say you have done that, I check it off the list, but what do you talk to them about, and what do they say they would do? What is their state of awareness?

Ms. ENGLEMAN. Thank you, sir. The relationships we have with the trade associations both, and the individual manufacturers, is a part of what we have, is a COHMED program, which is a cooperative hazardous material education program, and when we say we work with them closely, that means truly monthly, weekly, sometimes daily, direct communication with the personnel.

Our staff has a high level of degree of personal relationships with the members. It is not just attending conferences or workshops and the like, but actually day to day direct activity many times, and one of the things we have done since September 11 is to be in personal communication with these organizations, and to help them to determine what their current security alert status is, what their strategic gaps are, and to support them as we identify our own.

So we are looking to find a mutual response that will support the security goals, and yes, be balanced by the individual needs for economic vitality and the differences of cost versus the need, which is a part of any business decision from a private sector entity, of course, but we are working to deliberately and in a dedicated fashion to determine strategic gaps, and to help our partners in industry and local and state government to fill those gaps.

Senator ROCKEFELLER. Well, let me be more specific. I asked them if any of their security at the gates, which is your territory, for going in and coming out. I asked if any of them carry sidearms, and they said no, and I asked don't you think they should, and most of them said no, and that just struck me as interesting. It is

sort of getting into the point of a generic interest in increasing security as opposed to the specific actions required to have it mean anything.

If the National Guard and the airports now have something at their side or over their shoulder, that makes a difference, and so do you get into that level of specificity with them, or is it kind of a general sense of contact. Are CEO's and people in the upper levels that can make these decisions, or will make them, or will not make them.

If they send their public relations people, the Government relations people, they are often more or less helpless in the entire process. They do not have much to say about what goes on, so who are you talking to?

Ms. ENGLEMAN. Thank you, sir. Through our——

Senator ROCKEFELLER. I understand you have not been here a long time, and I am a nice person.

[Laughter.]

Ms. ENGLEMAN. I know you are, sir, and as a 2-week veteran I will do my best to respond to your question, if I may, in three parts.

First of all, what you have identified truly is our new reality from post September 11 versus pre-September 11, when we again were based on the accidental release of hazardous material, rather than the deliberate release of hazardous materials, so all of our safety precautions prior to 9/11 were based on the safety/accident response, versus a deliberate act. Having our wakeup call, we are now looking at it in a totally new fashion for all of our activities.

Second, when you asked them, who do we work with, the hazardous materials staff in our organization, the professional level of expertise is very significant as to their personal relationships, as well as former relationships. We are working with field personnel, we are working with the individual general managers, as you say, it is not just a formal-level meeting with the CEO's and the like. However, I do have great faith in the industry partners and their organizations to help get the message down all the way to the troops, if you will.

And third, if I may respond, some of the suggestions you make are on the table, and when I say on the table, we are looking at the alpha on for what type of security arrangements need to be done, what is the real-life applications and implications of some of these suggestions.

Again, we do not want to be first to market with these ideas, but best to market and determining long-term solutions that still meet the immediate needs.

Senator ROCKEFELLER. Thank you.

Senator BREAUX. Mr. Clapp, Ms. Engleman, thank you very much for being with us. Again, you both are brand new on the job, and so the things that we are pursuing are not things that you all have really dealt with, but there are some things that need to be done, and need to be done in a very urgent manner.

The situation in Pennsylvania is too much to be a coincidence. Sixteen fraudulently listed commercial licenses enabled people to carry hazardous material in this country. On October 4 they were indicted, and I hate to think what would happen had we missed

them. The people who worked to get them ought to be congratulated, however we should have a system that raises flags.

Thank God they were caught, arrested and indicted, and off the highways of this country. That is an incredibly serious situation. I just think it is not a coincidence.

So thank you all very much. We will now hear from industry, and invite up the first panel, Mr. Duane Acklie, Chairman of the Board of American Trucking Association, Mr. Peter Pantuso, President and CEO of American Bus Association, Mr. Keith Gleason, Director of the Tankhaul Division of the Teamsters, Lieutenant Paul Sullivan, Massachusetts State Police, Joan Claybrook, President of Public Citizen, and Program Co-chair for Advocates for Highway and Auto Safety, and Mr. Ralph Sheridan, President and CEO of the American Science and Engineering, Inc.

Ladies and gentlemen, we thank you for coming, and if we can clear the room as quickly as possible so the next panel can take their seats, Mr. Acklie, on behalf of the truckers we have you first on the list. We would be glad to hear from you again.

STATEMENT OF DUANE W. ACKLIE, CHAIRMAN OF THE BOARD, AMERICAN TRUCKING ASSOCIATION

Mr. ACKLIE. Thank you, Mr. Chairman. I am Duane Acklie. I am Chairman of Crete Carrier Corporation in Lincoln, Nebraska, and also the Chairman of the American Trucking Association.

Mr. Chairman and Members of the Committee, we thank you for your interest in this very important subject. There were certain statements made by the Chairman and Members of this Subcommittee, and we can only tell you that we agree with all of those statements, and we take this matter extremely seriously.

I would also tell you, we were very proud of our industry after the cowardly terrorist attacks, when we saw our drivers there with the policemen and the firemen and the rescue efforts, and what our members did throughout the Nation in volunteering their services to transport medical supplies, food and so forth, for the rescue efforts.

The day after the attack, I drove to Kansas City from Lincoln because there was no airline service, and I will tell you I saw flags on many of the trucks, and it only gave us a good indication that we really have a committed industry to this Nation.

I have prepared testimony that has been passed out to all of you, and I will try to focus on what our industry has been doing, and what it will continue to do, three suggestions that we have to you, and will try to cover anything that might be helpful to you.

I would first like to say, when this came up, that the American Trucking Association established a web site to be able to communicate to the members of our industry the importance of security, the importance of taking another look at security.

In addition to that, for almost 20 years we have had a Safety and Security Council which has focused on many of the same things that we have talked about today, and it is something our industry has always taken very seriously. In large part we took it seriously because it affects our pocket books in cargo theft, and we took it seriously because of our commitment.

Let me first tell you that the carriers that belong to the American Trucking Association have always and continue to do background checks, available through the systems that is available to them. We do not think it is always enough, and I will get into that with my three recommendations.

We also design and designate specific drivers for specific types of loads. In other words, there is a high security if it is a hazmat load. We study these and route them. We also are instructing and continue to instruct our drivers not to stop at roadside to give assistance unless it is a case of clear emergency, because by stopping, they subject themselves to the hijack.

We also emphasize to all trucking employees, not only drivers, that to stay alert and to remain aware of their surroundings at all times, especially when transporting hazmat. We have established at ATA the last couple of years, and work with the various states, a watch program. Most of our vehicles in all of our companies, 5,000 to 6,000 vehicles are equipped with Qualcomm, so we have satellite, and we can immediately, if we see a situation out there that is suspicious, we can immediately report that, and we do report it.

We also advise drivers transporting hazmat to certainly avoid the highly populated, and I mentioned give them specific routing, verify seal integrity to make sure the cargo is intact, checking to make sure that the cargo has not been tampered with, or something additional put on the truck. In our own company, we use what we call an enforcer seal. It is one basically, unless you take a torch, you cannot cut off, and it has been used by a lot of the industry where it comes around the rods that open the door, and the two doors basically cannot be taken or opened without a torch.

We also are advising our drivers, supervisors, and managers, and we have all done this, on any suspicious shipments, any suspicious contact that we have, and we are also asking them to report immediately any suspicious activity to local communities, and to the local law enforcement agencies.

In regard to this, criminal background checks, particularly on those hauling hazmat, seems to us to be very important. One of our recommendations to you is on criminal background checks, we do the very best we can, we get a DAC report, those things, but the national crime database is not available to us. We believe—in our own family we are also in the banking business. We can get that information on our employees if they are employed by a bank, but we cannot get that information if they are employed by a truck line, and so we would like to see the access to the national crime information database.

We would also like to say to you that we believe that we need increased criminal penalties and fines for cargo theft, a uniform statistical reporting on cargo theft, and also the funding to allow this to be done.

Some 20-plus years ago I was asked to testify, or to visit with a group in regard to cargo theft, and I said to them at that time, if one of our bank drive-ins was robbed of $2,000 I would have—and I will ask just a few more minutes, if I may, to finish, please—I would have two to three FBI agents immediately. If we had a

cargo theft amounting to hundreds of millions of dollars, it would take several days before we got any response from the FBI.

The FBI does a wonderful job, but they certainly do not have the resources, and it has not been given any priority. I know today they have so many commitments, but I would have to tell you that as we get back to normal, it is one of those things that we need to do, and I suspect on security we will never get back to normal, but we must have the funding to allow the Bureau to take a look at the various things that are necessary to investigate that theft.

In addition to that, I asked our own people in regard to the, before I came here, the trucks crossing the border, and also the stops that are being made by state agencies now to check them. They all agree that what is being done should be done. We are seeing particularly heavy emphasis on our trucks crossing from Mexico into the United States. We are also seeing many of our drivers who are stopped for no reason other than just to check. They all believe that this is proper, and they are doing the proper thing, but we believe that there is technologies under development that can help that, and I set that forth in my statement.

In addition, of course, those are the three things we think need to be done to improve security. The databases, of course, for criminal checks, of potential drivers and drivers, something very important. Many years ago, before the Congress outlawed the polygraph, we used the polygraph to check every driver, and I will tell you that it was very effective.

We had a driver who came to us that had a number of years driving for a very good trucking company, and it showed deception. The polygraph examiner went back later and did some checking on that, and found out that person was wanted for murder, but that device was taken away from us. We do not have a national database, and we would ask you to please do something about it.

Senator BREAUX. Please summarize, Mr. Acklie, if you can.

Mr. ACKLIE. I am pleased with what this Subcommittee is doing. The American Trucking Association and the trucking industry stand ready to do anything they can to help.

Thank you.

[The prepared statement of Mr. Acklie follows:]

PREPARED STATEMENT OF DUANE W. ACKLIE, CHAIRMAN OF THE BOARD, AMERICAN TRUCKING ASSOCIATION

I. Introduction

Good morning Mr. Chairman and Members of this Subcommittee. My name is Duane Acklie, and I am Chairman of Crete Carrier Corporation, a trucking company based in Lincoln, Nebraska. I am also Chairman of the American Trucking Associations, Inc. (ATA), with offices located at 2200 Mill Road, Alexandria, Virginia 22314. ATA is the national trade association of the trucking industry. Through the affiliated state trucking associations, affiliated conferences and other organizations, ATA represents more than 30,000 trucking companies based throughout these United States. I sincerely appreciate the opportunity to speak to this Subcommittee today on behalf of ATA.

Mr. Chairman, in the wake of the September 11 attacks, the U.S. trucking industry has continued to work hard to support America's goals of keeping our country and our economy moving forward. I am very proud of this industry's efforts to keep America moving. In fact, on the morning of September 11, while the members of ATA staff were able to view from the windows of the ATA building the smoke rising from the attack on the Pentagon, from the opposite side of the ATA building in Alex-

andria, Virginia, they were able to see trucks on the Capital beltway continuing to move America.

As Members of this Subcommittee know, motor carriers are a critical component of the United States' economic strength, with 9 billion tons of freight transported by intercity and local trucks, representing 68 percent of the total domestic tonnage shipped. The trucking industry generates revenues of $606 billion annually, equaling almost 5 percent of our GDP, and a figure that represents nearly 87 percent of all revenues generated by our Nation's freight transportation industry.

As in all other sectors of our country's economy, the horrific attacks have heightened security concerns in the trucking industry, and even more so after it was recently reported by the FBI that some suspected terrorists had obtained commercial driver's licenses (CDLs) to operate large trucks. It appears that motor carriers involved in transporting hazardous materials (hazmats) may have been, or may be, targeted for hijackings or theft for use in potential acts of terrorism. Obviously, this is a major concern to our industry, and I commend you for holding this hearing today to identify ways to address these very real threats.

In my testimony today, I will communicate ATA's longstanding involvement in trucking security issues, including issues associated with the transportation of hazmats and sensitive military freight. I will also recommend several potential legislative improvements to enhance security in the trucking industry.

II. ATA's Involvement in Transportation Security and Related Issues

Security

ATA and its members have long been actively involved in providing safe and secure transportation of goods on behalf of customers and their consumers. Since 1982, ATA has maintained a Council of members dedicated to advancing security and loss prevention issues. The name of this organization has undergone numerous changes since its inception, and today is known as the Safety & Loss Prevention Management Council (Safety Council). The Safety Council has two committees, the Security Committee and the Claims and Loss Prevention Committee, that have addressed many trucking security issues, including driver and vehicle security, cargo security, and facility security. The committees consist of security directors, many of whom are former law enforcement personnel, from a broad array of America's leading motor carriers. The committees publish guidelines and educational materials to assist motor carriers enhance the security of their operations.

In addition to the security issues, ATA has also been very active in ensuring the safe and secure transportation of hazmats and sensitive military freight.

Hazardous Materials and Military Freight

As the Subcommittee is aware, in order for a truck driver to transport hazmats for a motor carrier, that driver must obtain a valid CDL and a hazmats endorsement. Both the CDL and the hazmats endorsement qualification are set forth in federal regulations. However, the respective licensing and testing is done by the individual state. Thus, the hazmats licensing for drivers is beyond the control of motor carriers. However, the transportation of hazmats must comply with the federal hazmats regulations, which are adopted and enforced by the states. Therefore, motor carriers involved with transportation of hazmats do work with the states, and their respective permit and registration programs if applicable, to increase transportation safety and prepare for incident emergency response.

Certain classes of hazmats are more highly regulated than others. For instance, high-level nuclear wastes from power plants are closely monitored by several federal agencies, including the Department of Energy (DOE) and Department of Transportation (DOT). Transportation of this material is highly regulated, and motor carriers involved in its movement are pre-screened and approved by DOE. In fact, the trucking industry played an integral role in the development of the Commercial Vehicle Safety Alliance's (CVSA) Level VI enhanced radioactive transporter inspection criteria, which is specifically designed to afford a high level of driver, vehicle, and load scrutiny prior to the truck leaving the shipper's facility.

Military shipments are another category of specific concern. Military shipments of Security Risk Category I and II, Arms, Ammunition and Explosives (SRC I & II, AAE), are highly regulated, as are lesser Class I explosive shipments of the Department of Defense (DOD). Prior to transporting these materials, motor carriers must be approved by the DOD, and after approval, they are closely monitored. Drivers are carefully selected and must successfully complete security background checks. Motor carrier terminals must meet certain levels of security as prescribed by the Military Traffic Management Command (MTMC). And, shipments of SRC I & II AAE must be transported directly from point of origin to destination with minimal delay.

Since October 2000, ATA has worked closely with MTMC through ATA's Government Traffic Policy Committee (prior to October 2000, the now-defunct Explosive Carriers Conference of the ATA performed that task) on a number of issues regarding safety and security of DOD shipments. Deliberations continue on MTMC's newest policies and procedures for transportation of SRC I & II AAE, including the recently proposed standards for motor carrier terminals. ATA has provided MTMC valuable information on possible security concerns and related solutions. The trucking industry views these measures as paramount to the safe and efficient transportation of these materials, and will continue to work with MTMC to see that AAE shipments securely arrive at their proper destination.

ATA is also working with Sandia Laboratories in the gathering of information for its Department of Justice (DOJ) study entitled the "Chemical Plant Vulnerability Assessment Project." This study, which examined the vulnerability of chemical plants that produce chemicals of mass destruction to terrorist attack and included the transportation chain, was presented to the ATA Safety Council's Hazardous Materials Committee in September 2001. ATA's Committee Members provided information to Sandia Laboratories earlier in the year concerning transportation security issues of these types of hazmats.

The safe, efficient and secure movement of hazmats is of great importance to the trucking industry. Through work with DOT, CVSA, MTMC, Sandia Labs, and a multitude of associations whose members are major producers of chemicals and hazmats, ATA and its members have demonstrated that secure transportation of hazmats is a primary concern. ATA will continue to work with interested parties to ensure transportation of hazmats remains one of the safest transportation activities in the world.

International Land Borders

As the Members of this Subcommittee are probably aware, on September 11, ports of entry at our international land borders were put on Level 1 Alert, resulting in extreme crossing delays on, and severely hampering delivery of, parts and equipment for just-in-time deliveries at manufacturing operations.

It is important to note that high-security environments are not new for motor carriers that participate in cross-border operations with Canada and/or Mexico. The trucking industry has established security controls in their operations in conjunction with manufacturers, brokers and with federal law enforcement agencies. For instance, the trucking industry, in a joint effort with U.S. Customs, developed in 1995 the Land Border Carrier Initiative Program (LBCIP). This program was designed to counter the smuggling of illegal drugs via commercial land carriers and land conveyances. The LBCIP provides background information on drivers and trucking companies moving cargo across the U.S. Southwest border. According to U.S. Customs, over 1,000 trucking companies are approved and participating in this program and over 6,000 drivers have been certified by Customs (via background checks) to participate in the program. In return for participating in the LBCIP, motor carriers are able to expedite the movement and clearance of their goods through a program known as Line Release.

Joint industry-government efforts, such as the LBCIP and others, like the Business Anti- Smuggling Coalition (BASC), have allowed the trade community and law enforcement agencies to share information and improve security for cross border trucking operations. Such joint efforts will continue to work well into the future to eradicate the flow of illegal cargo entering the United States.

III. The Trucking Industry's Support in the Aftermath of September 11th

Assistance in Relief Efforts

In the immediate aftermath of September 11, the trucking industry worked around the clock in support of the relief efforts in New York and Washington by delivering critical cargo to the rescue workers and assisting in the coordination efforts. For example, the Federal Emergency Management Agency worked closely with the New Jersey Motor Transport Association to coordinate truck efforts in and around New York City. Emergency responders and trucking executives coordinating the recovery applauded trucking for its rapid response after the attacks.

As part of their support efforts, trucking companies delivered all types of supplies and equipment to the attack sites including medical supplies, earth moving equipment, communications equipment, emergency generators, mobile lighting trucks for nighttime rescue work, respirators, coveralls, protective gloves, blankets, and thousands of pounds of food and drinks. In addition, many dump truck drivers showed up to volunteer their services working 12-hour shifts.

Additional Security Measures Taken by the Trucking Industry

Motor carriers throughout the trucking industry took a number of measures to increase the security of their operations immediately following the attacks. Some motor carriers have re-evaluated their overall security procedures for pick-up and delivery, for their service locations, terminals and loading-dock facilities, for dispatch operations to vehicles in cities and on the road. In addition to requesting their personnel to be extremely alert and to report any suspicious activity to law enforcement personnel, other examples of actions taken include:

- Initiating new background checks through systems available to motor carriers;
- Designating specific drivers for specific types of loads and studying the specific routes to be used;
- Instructing drivers not to stop or render assistance except in the case of a clear emergency, and alerting drivers of possible ploys to obtain vehicles for hijacking purposes;
- Emphasizing to all trucking company employees, not only drivers, to stay alert and remain aware of their surroundings at all times, especially when transporting hazmats;
- Advising drivers transporting hazmats to, whenever possible, avoid highly populated areas, and use alternate routes if feasible to avoid such areas.
- Verifying seal integrity at each and every stop. Notifying central dispatch immediately if the seal is compromised.
- Advising drivers to notify supervisors/managers of any suspicious shipments, and if deemed necessary, to contact local police or law enforcement authorities to request inspection of shipment under safe practices.

These are just a few of the measures that trucking companies around the country took to enhance their operational security for not only on-the-road operations, but also at terminals and other facilities.

ATA Work with DOT and Other Federal Agencies

In addition to the emergency relief efforts that many ATA members have made, and the additional security measures that have been taken as mentioned above, ATA staff has also worked closely with federal officials to collect information requested by the federal government, and to disseminate critical security-related information to trucking companies throughout the country. For example, in the hours and days immediately following the attacks, DOT officials turned to ATA staff to provide information on trucking company security programs. ATA was more than happy to share the requested information with DOT officials. Bush Administration officials also requested that ATA provide information on diesel fuel supply and pricing throughout the country. Once again, ATA staff delivered the information. ATA also assisted the DOT in communicating information to hazmats transporters throughout the country on the agency's upcoming security sensitivity visits. In fact, ATA established an emergency information clearinghouse on its website, that it continues to update as additional information becomes available. ATA continues to stand ready to assist DOT, the FBI, and any other government agency that needs assistance in these unprecedented times.

IV. Legislative Remedies to Increase Security in Trucking

Relying on the expertise of its members, ATA is recommending the following specific legislative proposals to enhance the security of goods being transported by motor carriers.

Criminal Background Checks

While ATA and its members did not envision the evil wrought on September 11 when the ATA Board of Directors in 1999 directed the ATA staff to pursue cargo theft deterrence legislation that would enable motor carriers to obtain criminal background information on all current and prospective employees, such legislation would be an effective step in addressing the threats we now know await.

The possibility of a truck being used as a weapon of mass destruction, while unthinkable before, is now a reality. In fact, as I mentioned earlier, the FBI's investigation has determined that several detainees suspected of involvement had fraudulently obtained CDLs. Numerous other industries with employees who have a demonstrated impact on public security or are in a position of public trust have been authorized by statute to access national crime information databases to search criminal history records corresponding to fingerprints or other identification infor-

mation. The list includes federally chartered banks and credit unions through the American Bankers Association, child care providers, nuclear facility operators, nursing facilities, home health care agencies, and airports. Motor carriers are a glaring omission.

A scenario in which a truck driver or motor carrier warehouseman could wreak the same level of destruction as the September 11 perpetrators wrought through air transport means is no longer hard to imagine. Yet, although ATA has sought authorization from Congress to allow motor carriers to conduct criminal background checks of employees and potential employees, the trucking industry remains without this basic tool. Many of our responsible members use what services are currently available through outside vendors to conduct cumbersome county-by-county criminal background checks. However, all agree that it is simply not feasible to conduct a nationwide check under the present scheme. ATA stands willing to work with this Congress to enact legislation that would enable motor carriers to access national crime information databases to conduct nationwide criminal background checks. Moreover, ATA supports federal efforts to enhance interoperability and communications between various federal criminal history and immigration databases, which would assist in screening out potential threats.

Cargo Theft

It is no secret that cargo theft losses in our country have a severe economic impact on the trucking industry, the shipping public, businesses of all sizes and on consumers. The losses being suffered by our industry from pilferage, theft and hijackings continue to be substantial, with figures ranging from $10 billion to $12 billion annually. Therefore, for a number of years the trucking industry has looked for various means to reduce and control the losses caused by such illegal acts.

The lax penalties associated with, and insufficient resources devoted to, cargo theft have made it increasingly appealing to criminal elements as a source of funding. Further, some of the goods carried on behalf of America's producers and manufacturers may be diverted for sinister purposes. While, in ATA's view, the costs to the economy of cargo theft were significant enough to justify enactment of cargo theft legislation back in 1999, the security need, as highlighted by recent events, overshadows any monetary costs.

In addition to allowing motor carriers to conduct criminal background checks, ATA stands ready to work with Congress on a legislative proposal that would: (1) increase the criminal penalties and fines for cargo theft; (2) require uniform statistical reporting on cargo theft; and (3) provide increased funding local, state, and federal multi-jurisdictional task forces that have proven effective in combating cargo theft. Further, in view of the possible threat posed to the public by stolen commercial motor vehicles, the legislation should establish a mechanism within DOT to allow for immediate, around-the-clock reporting of the theft. DOT should establish a toll-free hotline to receive reports from motor carriers of commercial vehicle thefts and then disseminate that information to federal, state, and local law enforcement personnel nationwide on a timely basis. Today, no such mechanism exists.

In other words Mr. Chairman, secure cargo means peace of mind. ATA looks forward to working with the Members of this Subcommittee to improve the ability of motor carriers to get the information they need about potential employees, and in arriving at a solution to help eliminate the high cost that cargo theft represents to our Nation's economic wellbeing.

Now, I would like to turn your attention to two other specific areas in which the trucking industry plays crucial roles: international cargo movements, and commercial driver's licenses.

Border Infrastructure for International Cargo Movements

We would also ask the Subcommittee to look at technologies under development that can facilitate enforcement efforts while at the same time expedite the movement of cargo across our borders. One such system being designed presently by U.S. Customs is the International Trade Data System (ITDS). The ITDS concept is simple: Traders and carriers submit commercially based, standard electronic data records through a single federal gateway for the import or export of goods. As a single information gateway, ITDS distributes these records to the affected federal trade agencies, such as U.S. Customs, INS, and the DOT, for their selectivity and risk assessment. In standardizing the process, ITDS reduces the confusion and complexity of international trade, and speeds the processing of goods, equipment and crews across our borders. ITDS also benefits the government by providing more current and accurate information for revenue, public health, safety and security activities, and statistical analyses, as well as significantly reducing data processing development and maintenance costs.

We would urge the Subcommittee to look at infrastructure needs of our ports of entry, in conjunction with other Senate Committees and Subcommittees with oversight of border agencies, to establish appropriate levels of human resources in addition to investments in technology infrastructure, such as the ITDS. Both Canada and Mexico, our largest and second largest trading partners respectively, play a critical role in our economic wellbeing through our economic interdependence. We cannot overlook the critical link that motor carriers play in the success of our increasing trade flows within North America. Therefore, we must continue to find solutions that will continue to allow us to move the legal commodity flows among our three Nations, while at the same time improve our security relationships between the trade community and law enforcement agencies at our borders.

Commercial Driver's License Issues

With the full support of the motor carrier industry, the U.S. Congress, DOT and the states have been instrumental in establishing a generally successful CDL program. However, the fact that suspected terrorists have illegally obtained CDLs with hazardous materials endorsements should be a wake up call for all of us.

While the federal and state governments have done a good job putting the regulations, programs, and information systems in place to administer the program, the level of effort to actively monitor and oversee the personnel charged with administering the program has not been sufficient. The suspected terrorists illegally obtaining CDLs, and the number of recent CDL-related scandals in several states, is evidence that more oversight is needed, particularly as it relates to CDL testers and examiners. More federal personnel should be dedicated to program evaluation and oversight, possibly including dedicated federal CDL program personnel in each state. The states licensing agencies should also consider increasing their program oversight staffs, to work in greater cooperation with federal CDL oversight personnel. Congress should consider authorizing additional DOT positions for this function, and should also consider establishing a dedicated (and state matching) CDL grant program to provide additional financial assistance to states for greater program oversight.

An additional and more specific security-related issue concerning the CDL program is the collection and use of a driver's Social Security Number (SSN) by state licensing agencies. As part of the federally-required and state administered CDL program, state licensing agencies are required by DOT to collect SSNs on the CDL application. And, many states use the driver's SSN as the driver's state license number on the CDL document. The SSN is one of several ways that states uniquely identify truck drivers, which is an important aspect of the CDL program. With identity theft apparently playing a role in the recent attacks, ATA believes that the industry, the states and the federal government must consider ways to safeguard and even enhance personal identification methods. Clearly, however, we should not make it more difficult for the industry and the states to track the identities of truck drivers—which is what would occur if recently sponsored legislation on SSNs was passed by the Congress. ATA stands ready to work with DOT and the Congress to enhance truck driver identifiers, and calls upon Members of Congress to reject legislation that would do away with SSNs as personal identifiers on driver licenses.

V. Conclusion

Mr. Chairman, ATA members understand they are entrusted with the secure transportation of goods that keep America moving forward. Law enforcement has frequently been a strong ally in ATA's longstanding efforts to ensure the security of cargo on America's highways and across our international borders. We look forward to continued cooperation with those authorities charged with securing our Nation against future terrorist threats. ATA understands the role trucking must play to ensure our national security in this newly changed landscape. The trucking industry asks that Congress consider its proposals which will allow the trucking industry to better fulfill its role to safely and securely transport our Nation's freight. I am pleased that this Subcommittee and the full Commerce Committee have expressed strong interest in advancing our industry's security proposals.

Senator BREAUX. Thank you very much. Mr. Pantuso.

STATEMENT OF PETER PANTUSO, PRESIDENT AND CEO, AMERICAN BUS ASSOCIATION

Mr. PANTUSO. Thank you, Mr. Chairman, for your leadership in convening this meeting today. The American Bus Association is the national trade association for the private intercity motorcoach in-

dustry. Nearly all of our members provide charter services, tour services, sightseeing, commuter, and approximately 100 of our members provide intercity regular route scheduled service.

Our operator members are large and small. Most of them operate fewer than five motorcoaches in the country. They provide local, regional, national services, and they are saddled with a variety of operational challenges. The motorcoach industry and the companies we represent provide services to 774 million passengers a year, and while compiling the best safety record of any mode of commercial transportation, and at the same time providing affordable transportation and public transportation to more than 4,000 communities in the United States.

Since the September 11 terrorist attack on the United States and a criminal assault on a Greyhound bus last week, members of the ABA have worked hard to instill a greater sense of security to our customers. ABA members have increased security in and around their bus facilities and terminals, they have used additional personnel, they are doing additional surveillance, adding cameras, looking at baggage coordination.

The ABA staff and representatives from some of our bus companies have met with FMCSA officials. We met with Administrator Clapp, as he noted. We formed a security committee as part of our Bus Industry Safety Council, and while we do not know the full extent of the security needs of the motorcoach industry in the U.S., we know that the motorcoach industry is part of a ground transportation networking system, and we believe that a federally funded task force of the ground transportation providers, both public and private, should be formed to undertake research responsibilities and report those findings back to Congress and to the administration.

The bus industry is a fluid system. It is very accessible from many, points. Bus companies provide services in and out of terminals, and they all have different security challenges than operators providing charter services, tour services, or sightseeing. It will be almost impossible to apply a one solution fits all to the industry, when it comes to security.

It is readily apparent to me and to the industry that the bus transportation system will also require some federal financial support to ensure that the traveling public is protected from attacks of any type. The use of a bus as a weapon of mass destruction may not be likely. The larger threat is that a bus could serve as a target for terrorist activities.

As I noted earlier, the industry is one of small businessmen and women. No bus operator has the wherewithal to fund a host of security upgrades, which will add financial pressure to an industry that is already reeling from the sharp declines in travel and in tourism. Since September 11, many charter and tour operators have reported business losses to the association and to other motorcoach associations of between 20 and 80 percent. None of the security fixes that we have been able to identify in the very short term, and that we have studied, could be called easy, quick solutions, or inexpensive.

The Federal Government should provide some financial aid to States to develop a competitive grant program that private, over-

the-road bus companies could apply for, and to enhance security in their operations, there should be a nationwide bus transportation support program which would look at system-wide or industry-wide approaches.

The security issue in our industry can easily be divided into three categories. There are bus operations, bus facilities, and buses themselves. Company employees and bus terminal vendors might be subject to background and criminal security checks. Commercial drivers' licenses serve in the role of security checks. Now it focuses only on safety.

There is a need to do training to train bus drivers and to train other transportation personnel to recognize and respond to security threats. An industry task force could also compile best practices for countering terrorist threats to the industry, but again, the development of any best practices is further complicated by the fluid nature of bus operations and facilities.

When we talk about facilities, or we talk about terminals in the motorcoach industry, especially in rural parts of the country,in many cases they are little more than stops, or gas stations, or drug stores, or storefronts. Most bus passengers on charters, tours, commuter shuttles, sight-seeing, make numerous stops on their journey, and any security practice will need to be flexible if we are to include as many types of bus operations as possible.

Larger terminals may require secured waiting areas for ticketed passengers. There may be a national communication system from the bus to law enforcement officials, and besides these steps, the issue of use of equipment to screen passengers and to screen luggage placed on board coaches should be addressed and examined.

Again, there are over 4,000 communities served by intercity buses, and as I said, many of the stops are storefronts, or stops along the side of the road. Many of the storefronts have immediate street access through multiple doors and gates. The cost, the dimension, the weight of a traditional terminal-style scanner may be inappropriate for most locations and for most customers.

Another approach that could be implemented is an identification or a trip itinerary for all passengers. Most companies currently do not have such a system in place, and this would be a prime area for immediate federal assistance and investment. Other possibilities could be protecting the driver area, or installing engine kill switches on buses to immobilize them when the switch is activated.

In light of the threats that have taken place on the United States just a month ago, it seems almost trite to say that these and other issues should be decided quickly. The intercity bus industry will do everything it can to assist during this time of crisis. We look forward to working with the administration, and we certainly look forward to working with this Committee.

Thank you very much.

[The prepared statement of Mr. Pantuso follows:]

PREPARED STATEMENT OF PETER PANTUSO, PRESIDENT AND CEO, AMERICAN BUS ASSOCIATION

Mr. Chairman and Members of the Subcommittee, my name is Peter J. Pantuso and I am the President and CEO of the American Bus Association. The ABA would like to thank you Mr. Chairman for your leadership in convening this hearing and we appreciate the opportunity to testify on this urgent matter. The ABA is the na-

tional trade association for the intercity motorcoach industry. It is comprised of approximately 3400 member companies that operate buses and provide related services to the motorcoach industry. Our members operate 40–45 foot touring style coaches with baggage bays under a passenger compartment. Nearly all of the operator members provide charter, tour or commuter service and some 100 of ABA member companies provide regular route scheduled service. The American motorcoach industry is large, diverse and ever changing. Our operator members are large and small; provide local, regional and national services; and are saddled with a variety of operational challenges. Greyhound, the largest scheduled service member provides service to 2,500 destinations and 25 million passengers a year. Coach USA, the Nation's largest motorcoach company operates over 4,000 coaches, while most of the industry operates fewer than 10 motorcoaches. DOTS Motorcoaches, one of our smaller members provides service to and from Daytona Airport. Still other members provide service to communities with no other form of intercity transportation. Another 2,500 ABA members include representatives of the travel and tourism industries, and the manufacturers and suppliers of products and services for the motorcoach industry.

All together, ABA members provide all manner of bus service to 774 million U.S. passengers annually. A number that is more than double the number of passengers carried by all the U.S. airlines and Amtrak combined. In fact, we move more people in two weeks than Amtrak moves in a year. We move this many passengers while compiling the best safety record of any mode of commercial transportation. Last year there were three fatalities on intercity buses. The country's intercity bus industry provides affordable public transportation to over 4,000 communities nationwide. The bus industry is a critical link in the Nation's transportation chain. Since the September 11th attack on New York City and Washington, D.C. our members have provided service from airports to other destinations including service to Amtrak and commuter rail stations as well as to other bus terminals; aiding military mobilization by providing transportation to military personnel under contract with United States armed forces; emergency transportation service for police and fire rescue efforts in New York City and free motorcoach service to those who wished to attend the memorial services for the fallen New York City police and fire fighters. These services are provided primarily by an industry of small businessmen and women.

Since the September 11th terrorist attack on the United States and the criminal assault on a Greyhound bus in Tennessee on October 3rd, members of the ABA have worked hard to enhance the safety of the traveling public and instill a greater sense of security in our customers. ABA members have increased security both in and around bus terminals though the use of additional personnel, greater use of surveillance cameras, baggage coordination programs to match passengers with baggage, providing buses with the ability to communicate threats to terminals or offices and, in Greyhound's operations, the use of hand held sensing devices three of its larger terminals. In addition, the industry is taking steps to evaluate the need and desirability of further security measures.

The week after September 11th saw the ABA staff begin an intensive series of discussions to review bus operations from a security standpoint. These discussions led to meetings including representatives from bus operators and Federal Motor Carrier Safety Administration (FMCSA) officials. In the 4 weeks since the attack ABA has formed a security committee within the Bus Industry Safety Council (BISC) to evaluate security measures now in use by one or more carriers for their fitness for any segment of the industry. I would like to focus my testimony on ABA's preliminary assessment on the state of the industry's security and how it may be improved in the shortest possible time.

Let me begin with one inescapable fact. We don't know the full extent of the vulnerability of the bus transportation system or fully understand what it would take to close the gaps in the security net. While criminal activity such as that on the Greyhound bus on October 3rd is troublesome but fortunately rare, I am aware of no incident in which a bus in the United States has been used for terrorist activity. Nor has any law enforcement official ever informed ABA of such a threat. However, the bus industry's sterling safety record does not justify complaisance.

While we do not know the extent of the security needs of the United States motorcoach industry; we do know that the motorcoach industry is part of the ground transportation network and in the case of the scheduled service fixed route operations, the industry generally provides operator access to facilities and terminals. For that reason, I believe that a federally funded task force of the ground transportation industry—intercity and metro transit, charter and tour operators, manufacturers, labor, federal transportation and security officials and law enforcement personnel—should be formed to undertake this responsibility. The task force should have a mandate to report to the Congress and the Administration on the state of

the service transportation system and should identify areas where security can be improved throughout the ground transportation system.

Assessing the threat will not be easy. The bus industry is a fluid system accessible from many points. Bus companies providing scheduled service out of terminals will have different security challenges than operators that provide charter and tour service that take pre-formed groups sightseeing, boarding passengers at schools or clubs, and both types of operators will have different problems from those operators who pick up passengers on street corners or hotel lobbies providing commuter service or airport shuttles. It goes without saying that it will be impossible to apply one security solution to the entire industry.

It is readily apparent to me that the bus transportation system will require federal financial support to ensure that the traveling public is protected from attacks of any type. This is so for at least three reasons. First, as I stated earlier, the industry is one of small businessmen and women. In some years, the profit for the entire industry does not reach $40 million dollars. No bus operator has the wherewithal to fund a host of security upgrades. Second, heightened security concerns will add financial pressure to an industry already reeling from the sharp downturn in travel and tourism brought on by the events of September 11th. Since the attacks, in the sightseeing, charter and tour portion of the industry, it is estimated that customers may have cancelled about 500,000 trips a day and approximately 20,000 jobs in that segment of the industry have been lost or idled. Most charter and tour operators report losses of between 20 and 80 percent of their pre-September 11th revenue. Moreover, the fall season is "peak" season for most of our members that operate charter and tour service. It is a time when seniors frequently travel. Without the cushion the autumn brings, many companies will be out of business in January and February when there are no tours and there is no money in the bank and cash flow is non-existent. (By contrast however, the scheduled service business seems fairly level as compared to pre-September 11th levels). While the regular route segment was not hurt as badly by the September 11th attacks and the October 3rd event, these actions may cause decreases in that segment as well. Third, none of the security "fixes" that we at ABA have studied can be called easy, cheap or quick.

With these facts in mind we have some preliminary recommendations for the Committee. To begin, the federal government should provide some financial aid. I see the need for two types of support. First, I recommend the establishment of a security program similar to the federal Motor Carrier Safety Assistance Program (MCSAP). This program would provide money to the states for a competitive grant program that private, over-the-road bus companies could apply for to enhance security in their operations. Second, I recommend that there be a nationwide bus transportation support program, which would focus on funding the system wide approaches, like those I will suggest for the bus industry.

In speaking for and of the bus industry, I believe the security issue can be usefully divided into three categories: bus operations, bus terminals and the buses themselves, with my initial focus on fixed route scheduled service. I begin with bus operations because this is the largest category of issues and it also encompasses parts of the other categories. An issue that should be studied is whether there is a need to strengthen security practices relating to bus and transportation facility employee recruitment. Company employees and bus terminal vendors might be subject to criminal background and security checks. Related to this is the issue of whether identification cards should be required of employees and inspected by security personnel. Many companies have indicated that they are beginning this process, in part to provide added comfort to their customers. A third issue is whether the process of obtaining a Commercial Drivers' License (CDL) should also include security checks and the information shared with state and federal law enforcement officials.

The need for training of bus and other transportation personnel to recognize and respond to security threats is another matter that should be considered in the security review we propose. There has been no formal or industry-wide training in the area of threat recognition, particularly vulnerable areas or evacuation procedures. Such training could be available to everyone in the industry including owners, safety directors, drivers, mechanics, transportation police officials, as well as reservation clerks, and baggage handlers.

The industry task force also needs to address the compilation of the best practices for countering terrorist threats. We must know what practices have worked for those Nations and transportation facilities that have dealt with such problems. Best practices would give us some idea of how security could be enhanced in what circumstance; namely, whether security would be enhanced by uniform policies concerning weapons on buses; controls on package express service; rules for access to airports by motorcoach shuttle operators or the use of passenger manifest lists to

identify passengers (*e.g.,* Greyhound's TRIPS program) utilizing intercity regular route service.

The development of best practices is further complicated by the fluid nature of bus operations and facilities. Some terminals are little more than stops at gas stations, drug stores, etc. Most bus passengers are on charters, tours, shuttles or commuter trips. Any security practices will have to be flexible to include as many types of operations as possible. We need to work cooperatively with all transportation modes to determine these practices and give their use the widest possible distribution. The federal government must play a critical role here by not only creating the task force we are proposing, but also funding efforts at which there can be exchanges of ideas on these matters.

One area that warrants particular concern is the vulnerability of transportation terminals. In addition to training terminal personnel, thought should be given to providing terminals with emergency communications capabilities tied to law enforcement agencies. Larger terminals may require secured waiting areas for ticketed passengers. One approach may be to have a system of "wanding" the passengers and their carry-on baggage in these areas. These areas would also be off-limits to those without tickets. The development of best practices guidelines for terminals and for handling baggage and package express would be of some help.

Besides these steps in terminal security, the question of the use of equipment both to screen passengers and to screen baggage placed on board motorcoaches should be addressed. Although it is an issue that should be examined, there are reasons why metal detectors may have limited usefulness in the bus industry. First, there are over 4,000 communities served by intercity buses, many of which have gas stations, drug stores, or hotel lobbies that also serve as bus terminals. Second, most terminals have immediate street access through multiple doors and gates. Third, the cost, dimensions and weight of such scanners make them inappropriate in most terminals. It may be that alternative security measures, along the lines of those described above, will be more effective in bus terminals. Another issue for consideration is the use of bomb sniffing dogs in and around the largest terminals.

The use of the bus as a weapon of mass destruction (WMD) may not be likely. Larger commercial vehicles with larger compartments for storage are more likely to be used as WMDs. The larger threat is that the bus could serve as a target for terrorist activities. Besides the issues of driver documentation and baggage handling, another issue is whether the bus itself needs to be made safer. One strong possibility is a communications system in each bus that would allow the driver to tie into police, emergency or mobilization efforts with a communication that provides automatically the location of the bus. The ABA agrees with the Commercial Vehicle Safety Alliance (CVSA) that such communications systems would be effective in preventing or limiting bus hijackings and other incidents. The technology for such a system exists, but vendors have not found it cost-effective to develop the system itself. Another technological issue that may yield some benefit is the use of cameras on buses, perhaps with remote monitoring. federal leadership in developing this system is needed.

Another approach that could be implemented is a wider installation of a system like the Greyhound TRIPS system, which provides name identification and trip itinerary for all passengers. Currently, Greyhound has a system in place to collect passenger names in locations that account for 85 percent of its passenger traffic, but few, if any, of the carriers that interline with Greyhound have such a system because the infrastructure costs are too high. This would be a prime area for an immediate federal investment.

Two other possibilities that appear to require some research are efforts to enhance motorcoach safety. This may be possible by protecting the driver by compartmentalizing the driver area. Research into the possibility of the installation of an engine "kill" switch on buses to immobilize them when the switch is activated should also be undertaken. The feasibility and use of such technology and the possible re-engineering of buses are expensive and longer-term ideas. Again, federal cooperation will be required for our industry if any of these ideas prove worthy.

The issue of research is one that crosses all lines in our quest to make travelers' safer. There are advantages to the federal government funding research into or facilitating the dissemination of promising security applications to the transportation modes. New applications such as detectors that are effective against non-metal weapons and plastic explosives and the use of biometric identification systems are now available. Whether such devices are appropriate or necessary is an issue for resolution, as well as the issue of whether off-the-shelf baggage scanners and metal detectors would be effective. In addition, the quest for security should be ongoing. The bus industry taskforce I mentioned earlier or an office within FMCSA could be

required to coordinate and facilitate the dissemination of the research to the terminal operators, bus operators and law enforcement agencies who will need it.

The federal government should also begin to look at ways in which bus transportation can supplement air transportation, particularly given the delays now inevitable in air travel. Some ideas from the perspective of the bus industry are: essential bus service, similar to essential air service, to rural communities; and expansion of existing federal preemption of state controls over bus operations to reach the operation of regular route services within a state; MCSAP or FTA security grants or small business administration loans to operators to make security upgrades; or the federal government underwriting the "war risk" clause in bus operators' insurance policies, which is being used to cancel bus operators' insurance and ending service. Another way to allow buses to supplement existing service is the establishment of a communications link between localities needing service. Regulatory barriers should not now stand in the way of expeditiously offering new motorcoach services that the public may demand.

In light of the terrorists' attacks on the United States just a month ago, it seems almost trite to say that these, and other issues, must be decided quickly. There is nothing more important to the national interest today. The intercity bus industry will do everything that it can to help the country through this crisis. Working together with the federal government and the other modes of transportation, I have every confidence that we will provide security for the American traveling public. Again, Mr. Chairman, thank you for the opportunity to be here. I will answer any question the Members of the Committee have for me.

Senator BREAUX. Thank you, Mr. Pantuso.

Mr. Gleason.

STATEMENT OF KEITH GLEASON, DIRECTOR, TANKHAUL DIVISION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. GLEASON. Good morning, Mr. Chairman, Members of the Subcommittee. My name is Keith Gleason. I am Director of the Tankhaul Division for the International Brotherhood of Teamsters. On behalf of our president, James Hoffa, I want to thank you for the opportunity to be here today to discuss the important topic of safety and security in the trucking industry.

While hazardous cargo is prevalent in all sectors of the trucking industry, with more than 800,000 shipments each day, my testimony will focus on the tankhaul sector. It accounts for only 5 percent of cargo transport in the United States, but its loads of chemicals, explosives, petroleum products, liquified gases, and poisons are some of the most dangerous and volatile on our Nation's highways. Even the media has picked upon that—recent news accounts of detailed attempts by purported terrorists attempting to obtain hazardous material transport permits.

While that may be true, there is much potential for somebody to merely steal a truck, than to go through the process of obtaining the proper commercial driver's license and hazardous material endorsements, although that route itself is fairly easy to follow. Example: the Teamsters Union conducts a 4-hour course for a commercial driver's license for drivers in hazard awareness training in preparation for a driver to take a written test to obtain a hazardous endorsement. Most companies merely put their drivers in a room and show them a 1-hour video, which does not even address security issues.

It is clear from the events of last month that training for the hazmat endorsement should be more rigorous and contain a segment outlining security procedures, where the driver ought to be aware of his surroundings to secure his truck and to adequately park and take other special precautions to keep his load from be-

coming a weapon for a terrorist. That might also require a review of the route taken by tankhaul trucks.

A recent trip to Houston reminded me of another serious problem in our industry. A good percentage of our chemical loads are preloaded. That is, they are loaded at a plant, then transported some 5 to 10 miles away by city drivers to a holding lot or staging area, where they sit, 50 to 100 tanks, not secured, sitting in an unattended, unfenced lot, waiting for long haul drivers to pick up their loads.

Carriers need to implement better security at their terminals and holding lots. In fact, on that trip I talked to the drivers—it was just a week ago—and I asked them if there in fact were loaded chemical trailers sitting in the lot. They told me that they were. I asked them if they were attended. They said they were not. I asked if they had fifth-wheel locks, or fifth-wheel pinlocks on the trailers, and they looked at me like, we never do that, so it is something that really needs to be addressed.

Drivers must also be alert. Some trucks are electric start, where a key is needed, where other trucks are air-start. You do not need a key. You just push a button. Of course, many drivers do not lock their cabs.

How many of you have seen a truck dispensing its 10,000 gallons of gas at a service station, the driver is at the back of the truck, opening the fill cap to a lid on a 30,000 gallon underground tank, which, by the way, is not secure either, and the cab door is wide open. All someone would have to do is take off with the truck, or worse yet, light a flare and toss it at the opening of the underground tank. The tank truck holds as much gasoline as a commercial airliner, and the potential for destruction is great.

Last week, the Federal Motor Carrier Safety Administration issued an alert to hazmat haulers, calling on them to develop a transportation security plan. It recognized that the employee is the first line of defense in security, but can also be a security risk. That is true.

The tankhaul industry has undergone dramatic changes in the last 5 years. Unprecedented mergers and acquisitions by the major carriers have caused the industry to become dominated by a few large tank carriers. The driving population for the most part is not characterized by owner operators. That means that many companies are relying on drivers that they do not know.

Unionized companies are good at screening people to make sure they have the proper license and endorsement. In most cases there is a probationary period, and with high wages and good benefits there is experience that comes with longevity, because that person is working toward a 25 or 30-year pension, but it is more difficult to capture and screen the universe of owner-drivers who are, more often than not an employee of the tank carrier.

Another area of concern is port truck drivers. The Teamsters Union is trying to organize them. They are some of the lowest paid drivers in the country. Many of them are recent immigrants who can barely scratch out a living hauling the containers from our Nation's ports. The turnover rate is extremely high, and right now they are all owner-operators. They have no employer, per se, to check their driving record, to question their employment history

and experience, or to confirm that they have valid licenses, permits, or other documentation. They drive into the ports, pick up a container, perhaps one loaded with hazardous materials, and then proceed on to their destination, we hope. That situation is ripe for compromise.

Another segment I mentioned earlier is the less-than-truckload carriers. These carriers consolidate smaller shipments into one trailer. While they may be only carrying a few drums of hazmat, it does not take much to cause a serious with the accident. The Teamsters is therefore working with the Motor Freight Carriers Association, which represents union trucking companies, to form a labor-management task force to examine safety and security issues in that segment of the industry.

Finally, we cannot afford to neglect our borders, particularly given the administration's push to allow Mexican trucks to travel beyond commercial zones into the interior of the United States. Of the 4 million trucks that crossed the U.S.-Mexican border in 2000, less than 1 percent were inspected. Twenty-five percent of those Mexican trucks are carrying hazardous material. A small number of inspectors and lack of permanent inspection facilities is even more cause for concern since the events of September 11.

The DOT's Inspector General has repeatedly recommended a minimum of 140 inspectors at the border crossings. We sit here without a transportation appropriations bill passed that would provide a source of funding for additional inspectors and facilities, when in 2½ months a Mexican truck carrying toxic chemicals or explosives could be traveling anywhere in the United States. That makes no sense at all.

It would be wrong to allow thousands of untrained, unregulated, uninspected, inexperienced drivers to travel the highways of our country when we are just beginning to figure out how to improve the safety and security of our own industry. In fact, with the concern raised recently regarding the minimum wages the baggage inspectors are paid, how is it that Mexican drivers who make an average of $1 to $2 an hour would be safe to enter our borders and travel our highways?

In summary, Mr. Chairman, the trucking industry was deregulated in the early 1980's. As a result, the tank truck industry was impacted the hardest. Today, in a nonregulated industry, shippers set the rates they pay for the shipment of their loads, leaving carries to compete for the business on an uneven playing field. Consequently, this results in carriers competing on the backs of the employees. Of the approximately 100,000 tank truck operators driving on our Nation's highways, the vast majority are underpaid and overworked. As a result, these drivers do not have the time nor the proper rest, let alone the time that is necessary for safety precautions that must be taken in the transportation and delivery of the products they haul.

I urge this Committee, Mr. Chairman, to not only investigate the safety measures that must be implemented in the industry, but also the regulatory measures that need to be implemented that would assure that our Nation's drivers are more highly compensated, experienced, and trained in all aspects, including safety and security, while performing their very dangerous jobs.

Thank you very much for having the opportunity to testify.
[The prepared statement of Mr. Gleason follows:]

PREPARED STATEMENT OF KEITH GLEASON, DIRECTOR, TANKHAUL DIVISION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. Chairman and Members of the Subcommittee:

My name is Keith Gleason and I am Director of the Tank Haul Division of the International Brotherhood of Teamsters. On behalf of our General President, Jim Hoffa, I want to thank you for the opportunity to appear here today to discuss the important topic of safety and security in the trucking industry. The events of September 11th should cause all of us to take a different look at the everyday procedures that we use to transport cargo, especially hazardous materials, and to make sure that dangerous loads do not fall into the hands of those that can do harm to the people of the United States.

While hazardous cargo is prevalent in all sectors of the trucking industry, with more than 800,000 shipments each day, today I would like to concentrate on the tank haul sector. While it accounts for only about 5 percent of truck cargo transport in the U.S., its loads of chemicals, explosives, petroleum products, liquefied gases and poisons are some of the most dangerous and volatile on our highways. That's not to say that we should not be concerned about the few drums of hazmat that may be contained in a less-than truckload trailer. The Teamsters Union, however, believes that many of the same safety and security procedures should be adopted industry-wide, and I will attempt to give you some suggestions from a truck driver's viewpoint.

Currently, there are about 10,000 Teamster members in the Tank Haul Division, employed at 159 different companies. The liquid, gas and dry bulk transport industry has undergone dramatic changes in the last 5 years. Unprecedented merger and acquisition activity by the major companies has caused the industry to become dominated by a few large tank carriers. Its driving population has become one characterized by owner-operators as carriers attempt to build in flexibility and de-unionize the workforce. That means that many companies are relying on drivers that they don't know, instead of employee drivers who often times are a more stable workforce with higher pay and less turnover.

Recent news accounts have detailed attempts by purported terrorists to obtain hazardous materials transport permits. We believe that there is as much potential for someone to merely steal a truck than to go through the process of obtaining the proper commercial drivers license (CDL) and hazardous materials endorsement—although that route itself is fairly easy to follow. The Teamsters Union conducts a 4-hour course for drivers in hazard awareness training in preparation for a driver to take a written test to obtain his hazmat endorsement. Some companies merely put their drivers in a room and show them a 1-hour video. That video does not even address security issues. But it is clear from the events of last month that training for the hazmat endorsement should be more rigorous and contain a segment outlining security, where the driver is taught to be aware of his surroundings, to secure his truck and load adequately when parked, and to take other special precautions to keep his load from becoming a weapon for a terrorist. That might also require a review of routes taken by tank haul trucks and other carriers hauling hazardous materials that takes them away from population centers, for example.

A trip to Houston last week reminded me of another problem in the industry. A good percentage of chemical loads are pre-loaded. That is, they are loaded at a plant and transported, sometimes 5 to 10 miles away by city drivers, to a holding lot or staging area, where they sit, 50 to 100 tanks, often in an unattended, unfenced lot, waiting for long-haul drivers pick up the loads. That particular practice should be reviewed and carriers should implement better security at their terminals and holding lots.

Some trucks are electric start, where a key is needed, while other are air start. You don't need a key. You just push a button. Of course, many drivers don't lock their cabs, especially when they are preparing to unload or running into a bathroom at the local service station. How many of you have seen the tank truck dispensing its 10,000 gallons of gas at the service station? The driver is at the back of the truck opening the fill cap lid to a 30,000 gallon underground tank, which by the way isn't secure either, and the cab door is flung open. All someone has to do is take off with the truck or worse yet, light a flare and toss it. That tank haul truck holds as much gasoline as a commercial airliner and in some cases even transports jet fuel to airports. It's easy to figure out what the results could be.

Many other hazardous material classifications, including chemicals such as chlorine, pose a potential threat as well. Chlorine is a common chemical transported by truck that is both an irritant and an asphyxiant. If a load of chlorine were ignited, it would pose a significant health threat to the nearby population as well as presenting a gas hazard for emergency responders. Other chemical loads could be dumped into a reservoir or other water supply, and liquid gas loads like oxygen and hydrogen could be ignited near population centers.

The potential for destruction is great. But how do we combat this possibility? Let's start with the driver. The Federal Motor Carrier Safety Administration (FMCSA) last week issued an alert to trucking companies carrying hazardous materials, calling on them to develop a transportation security plan. It recognized that the employee is the first line of defense in security, but can also be a security risk. Unfortunately, owner-operators dominate the tank haul industry. Unionized companies are good at screening people to make sure they have the proper license and endorsement. In most cases there is a probationary period. And, with high wages and good benefits, there is experience that comes with longevity, because that person is working toward a 25 or 30-year pension. The same cannot be said for owner-operators, who can hire their brother-in-law, cousin or a friend to drive their truck one day. Let me make it clear that I am not suggesting that owner-operators necessarily pose a greater security risk. What I am saying is there is less control, less frequent contact with the carrier, and greater turnover. It would be difficult to capture and screen that universe of drivers.

Most trucking companies require drivers to disclose their criminal records on employment applications. Therefore, those with serious convictions cannot get jobs driving even if they have a CDL and hazardous materials endorsement. Of course, anyone that is likely to commit a terrorist act isn't going to volunteer that information readily. Even with criminal background checks, it is difficult, if not impossible, to check the record of a recent immigrant who hasn't been in the country very long. Certainly, any suspicious applicants should be carefully scrutinized, but to subject a 10 or 20-year driver with a spotless employment record to a criminal background check is not only a waste of time, but also a waste of precious law enforcement resources. Quite frankly, it would be almost impossible to perform thorough criminal background checks on the universe of drivers that carry hazmat.

Let me mention a couple other areas of concern. One is where the Teamsters Union is actually trying to organize drivers—in the ports. I know that the Subcommittee heard testimony last week on port security, but one security issue that was not addressed was that pertaining to the movement of containers out of the port terminals. Port truck drivers are some of the lowest paid truck drivers in the country. Many of them are recent immigrants who can barely scratch out a living hauling the containers from our Nation's ports. The turnover and bankruptcy rates are extremely high, and right now they are all owner-operators. They have no employer, per se, to check their driving record, to question their employment history and experience, or to confirm that they have valid licenses, permits or other documentation. They drive into the ports, pick up a container, perhaps one loaded with hazardous materials, and then proceed onto their destination, we hope! Similar to low paid airline security screeners, the situation in the ports is ripe for compromise and, in fact, is putting the public at risk. During March 2001, the FMSCA placed additional emphasis on the safety of shippers of hazardous materials. The FMSCA conducted 4,822 inspections at among other locations, dockside, intermodal facilities and roadsides and found 1,112 violations (a 23 percent violation rate) of federal hazmat regulations. In addition, during 2000 in the Oakland-San Francisco area, the Coast Guard working with the Federal Railroad Administration inspected 39 intermodal containers and found 15 violations. The situation there is ripe for compromise. We're trying to bring some stabilization to this segment of the industry, but it hasn't been easy.

Another segment that I mentioned earlier is the less-than-truckload carriers. These are carriers that consolidate many smaller shipments into one trailer load. While they may only be carrying a few drums of hazmat as a portion of their entire manifest, it doesn't take much to poison a water supply or cause a spill that requires large areas to be evacuated. The Teamsters Union is working with the Motor Freight Carriers Association, which represents our six biggest union trucking employers, to form a Labor-Management Security Task Force to examine safety and security issues in that segment of the industry. It's a bigger job in some ways, because these smaller amounts may not get the attention they deserve. They do, however, add up to almost half a million shipments a year for the MFCA companies.

Finally, we cannot neglect our borders. Terrorists have already been caught trying to smuggle explosives into the United States from Canada in a plot to bomb a major U.S. target during the Millenium celebration. While I am unfamiliar with the

amount of hazardous materials that move between the U.S. and Canada, I am certain that a fair amount does. This poses an additional threat to the United States. Now, greater scrutiny of cargo coming from both Mexico and Canada has caused even longer lines of trucks waiting at the borders. While this may be an inconvenience to those manufacturers waiting for "just-in-time" deliveries, we cannot and should not relinquish our sovereign right to protect our borders from dangerous cargo.

Better border security calls for a greater inspection presence at both borders, particularly at the U.S.-Mexico border where 25 percent of the trucks crossing into the United States from Mexico carry hazardous materials. The emergence of chemical plants in the Maquiladora region has increased hazmat traffic from Mexico to the U.S. significantly. While the focus on Capitol Hill recently has been on the safety of Mexican trucks, it is clear that the attention must now be on what they carry and who is driving them. The current restriction on Mexican trucks to travel only into the U.S. commercial zones is in danger of being lifted by this Administration, despite overwhelming opposition to that action by both Houses of Congress.

The U.S. only inspects 1 percent of the Mexican trucks crossing into the United States. The small number of inspectors and the lack of permanent inspection facilities is even more cause for concern since the events of September 11. The Department of Transportation's Inspector General has repeatedly recommended a minimum of 140 inspectors at the border crossings. We sit here now without a Transportation Appropriations bill passed that would provide a source of funding for additional inspectors and facilities, and we're potentially two and one-half months away from a Mexican truck carrying toxic chemicals, explosives or other volatile hazardous materials being able to travel anywhere in the United States. That makes absolutely no sense at all.

Even more frightening is the fact that the database to identify Mexican drivers is severely underpopulated. There is no way to verify the driving record of most Mexican drivers. Add to that the fact that CDLs can be purchased or fraudulently obtained fairly easily in Mexico. I would also suggest that hazardous materials endorsement requirements are severely lacking in that country as well.

The Teamsters Union does not believe that it would be prudent to allow thousands of additional hazmat carrying trucks to roam the country while we wrestle to get a handle on how to improve the safety and security of our own trucking industry. The Administration is dead wrong to continue to push to lift the current moratorium on Mexican trucks. I would further maintain that if Mexico's President, Vicente Fox, is such a good friend of our President, then he should respect the security issues that the U.S. government is dealing with today and will not continue to push this issue at this time.

Mr. Chairman, the FMCSA has made several good recommendations for improving security in the trucking industry. The Teamsters Union and its member drivers stand ready to assist in this effort. I would encourage all employers in the transportation industry to involve your employees in formulating your new safety and security plans. Make your employees feel a part of what you are trying to accomplish. They are the first line of defense and are the eyes and ears of your security network. They can be valuable allies in this fight to avert further terrorist activities in the United States.

Thank you for the opportunity to testify here today, and I will answer any questions the Subcommittee may have.

Senator BREAUX. Thank you very much.

Lieutenant Paul Sullivan is next.

STATEMENT OF PAUL SULLIVAN, LIEUTENANT, MASSACHUSETTS STATE POLICE, COMMERCIAL VEHICLE ENFORCEMENT DIVISION

Lieutenant SULLIVAN. Mr. Chairman, thank you for holding this hearing on the important issue of bus and truck security and hazmat licensing. I will confine my remarks to the problems that we are experiencing in the enforcement field with the licensing problems as they relate to hazardous materials vehicles.

Now, as a representative of the 10,000 certified inspectors that Mr. Clapp referred to as assisting his 400 agents in the field, let me say that we do not hold ourselves out as intelligence experts,

but we do have concerns about the CDL program in this country, how the driver first acquires his license, and what information is available about him when he is operating on the highway is critical to those in law enforcement. While there is much we can learn from face-to-face interaction with the drivers, we also need as much information about his driving history to make an appropriate decision for either safety or security reasons.

Let me also interject here what we advocate today on behalf of law enforcement is equally important to the bus and truck industry as well. In a very real sense, motor carriers and bus companies are the first line of defense, and can only make judgments about hiring a particular driver based on timely and accurate information.

In my written statement, I have commented at length about the weaknesses of the CDL program that unfortunately extend across the board. This, of course, includes the hazardous materials and passenger endorsements. The reason for the weakness is structural. Although there are minimal national standards, there is still too much flexibility among the states in terms of how they administer the program.

We at this time need more than recommendations. Key components of the CDL programs are the testing and examination procedures which in some states are administered by a third party examiner without strictly uniform procedures covering the qualifications and activities of these examiners. It is not too difficult to imagine what problems might result, such as the recent case where drivers obtained hazardous materials licenses when they should not have been able to do so.

Another key component of the CDL program is how the data on the driver, once he has entered the system, is shared among the state licensing and law enforcement agencies. A recent pilot program in my own State of Massachusetts pointed out these weaknesses only too clearly. As is often the case today, the technology is there to address the problems. The question is how to apply it or make it apply so law enforcement can make sure that an unsafe or undocumented driver is not operating on our highways.

I think we need to look at the solutions to these problems in the short and the long term. In the short term, it should be mandatory that the state licensing examiners perform a criminal background check on anyone applying for a CDL to haul hazardous materials and/or passengers. CVSA, the organization that I am currently president of, manages a special program with the Department of Energy for the safe transportation of radioactive shipments, and in the contract as mandated by the Secretary of Energy a criminal background check is performed on all drivers of these shipments.

We also need to consolidate our databases to either supplant or augment the commercial driver's license system. As part of the new effort, a new watch list for CDL drivers with hazardous materials and passenger endorsements will be created. It would track persons on national, state, and FBI wanted lists, and send a red flag to commercial vehicle enforcement personnel when such drivers are encountered at the roadside.

In the long term, the CDL program needs to be restructured. There is a need to institute more rigorous and uniform federal standards for testing, examination, administration, and data collec-

tion and dissemination. The pilot CDL self-assessment program in Massachusetts has given us some very specific examples of where the data collection and dissemination programs need to be reformed, and we also call for the implementation of the commercial driver's license provisions of the Motor Carrier Safety Improvement Act of 1999. They must be accelerated.

Also, commercial vehicle enforcement activities need to be on par with the motor vehicle administration policies in each state. Safety and security must outweigh customer convenience. These two functions need to be balanced and integrated as much as possible to ensure seamless program administration and implementation.

In my written statement, I comment at length about the use of technology to enhance security and safety with respect to the CDL program. I believe this technology can be implemented now, and can be the driving force behind needed institutional reforms and border safety strategies.

In conclusion, Mr. Chairman, I want to stress that the very nature, structure, and mission of the Commercial Vehicle Safety Alliance, which is uniformity, reciprocity, safety, compatibility, allows us to take collective action to train for and implement whatever new procedures are necessary to deal with the current national emergency and protect our highways and the traveling public.

Thank you.

[The prepared statement of Lieutenant Sullivan follows:]

PREPARED STATEMENT OF PAUL SULLIVAN, LIEUTENANT, MASSACHUSETTS STATE POLICE, COMMERCIAL VEHICLE ENFORCEMENT DIVISION

I. Introduction

Mr. Chairman and Members of the Committee, my name is Paul Sullivan and I am a Lieutenant with the Massachusetts State Police, Commercial Vehicle Enforcement Section. Recently, I was elected as President of the Commercial Vehicle Safety Alliance, an organization of commercial vehicle enforcement agencies and industry representatives in the U.S., Canada, and Mexico.

We thank you for holding this hearing on bus and truck security and haz-mat licensing issues. I will confine my oral statement to the primary issue you have asked me to address—the licensing issue and problems as they relate to hazardous materials transporters. In the statement submitted for the record, I also have touched on other issues affecting the changing role of truck and bus safety and security enforcement in light of the tragic events of September 11. And I have commented on possible steps to make our borders and the country more secure through a better use of technology.

The roles of motor carrier safety enforcement agencies have changed in the last several weeks, primarily due to the assignment of officers to various security details and toward efforts to identify and protect potential terrorist targets.

I also preface my remarks this morning by saying that the other members of the enforcement agencies that belong to CVSA and I, do not hold ourselves out as intelligence experts. But, the very nature, structure and mission of the Alliance, which includes industry representation, allows us to take collective action to learn, train for, and implement whatever new procedures are necessary to deal with the national emergency and protect our highways and the traveling public. With approximately 10,000 CVSA Certified Inspectors all over North America, we can mobilize a large community on short notice and stand ready to work with the Congress and the Administration to implement any measures deemed appropriate to enhance the security of our transportation network and those who drive on it.

Before discussing the specifics on the licensing issues, I want to point out that since the FBI notification of the potential hazardous materials transportation threat, my state and all U.S. enforcement jurisdictions have been conducting an increasing number of Level III inspections (driver-only) of hazardous materials haulers, especially those near fuel farms and in densely populated locations. In addition to a CDL check, these inspections include a more than usual interview of the driver.

If, based on these actions, we feel it is warranted we do a crosscheck of the FBI's NCIC database. We also are providing what assistance we can to help the Federal Motor Carrier Safety Administration's Security Sensitivity Visits with respect to certain hazardous materials transporters.

II. Licensing Issues

We don't know all of the specific details regarding those individuals who fraudulently obtained CDLs in Pennsylvania to haul hazardous materials. We understand that the FBI investigation is still taking place. But, no matter what kind of a program is in place, dishonesty and fraud on the part of administrative personnel are always possible. The only thing any of us can do at this point is to examine the entire CDL structure and address those weaknesses that result in someone obtaining a CDL who should not be driving a commercial vehicle on our highways whether for highway safety or national security reasons.

The primary tenet of the Commercial Drivers License program, which was fully implemented in 1992, is that each commercial driver—nationwide—have only one license and one driving record. In large part, this goal has been achieved. But as we now know, this goal is much too limited and does not meet current needs, especially in terms of what we must now do to address national security needs.

A. Examination And Testing Weaknesses—Discussion

The CDL Program is a national program and, as such, needs leadership and direction at the federal level. The CDL Program's primary focus to date has been on the administrative side, making sure customer lines are short and people are able to receive licenses with limited effort and intrusion. With few exceptions, in most states, the agencies administering commercial vehicle licensing are not the enforcement agencies (the lead MCSAP agencies). Since the enactment of the CDL law, the states, despite some federal requirements, have largely been able to execute their own approaches to implementing the various components of the CDL Program. The result has been inconsistencies in testing, examination, administration and ultimately—data.

The current requirements for federal endorsements to the CDL: double/triple trailers, passenger, tank vehicle, and hazardous materials provide only basic guidelines on knowledge areas and suggestions for additions to the knowledge and skills tests. There are requirements for the knowledge and skills tests, but, once again, they are guidelines and address the minimums. For testing procedures, methods and examiner qualifications, they are even less prescriptive. Although there is much commonality in content, CDL licenses vary from state to state, especially in format and layout and how they meet the tamperproof requirement. To add to the confusion, states are allowed to implement their own endorsements and restrictions to the CDL if they so choose.

The CDL knowledge and skills test requirements provide a performance benchmark for what is to be expected of a new commercial driver and there are efforts to tighten this up. On this point, however, there is a disconnect between the knowledge and skills tests and the training and instruction being delivered at the driver training schools. Because the tests don't necessarily reflect the real world, training schools often have difficulty in structuring their curricula—do we teach to pass the test or teach to operate the vehicle? Additionally, there are some variances around the country for delivering the skills and road tests because of physical facility limitations. And, in many cases there are valid reasons for this. However, the location of facilities sometimes seems to be determined by economics more than safety. We also feel that the federal guidelines on the various endorsements do not go far enough to properly gauge whether a driver can, or should be, driving these types of vehicles, especially a newly licensed CDL driver.

Thus, the CDL problems primarily exist: (1) in the ways the tests are administered, (2) the examiners, and (3) the aftermath of the license issuance as it relates to data collection, judicial actions and information sharing among jurisdictions, which will be discussed in more detail in the post-testing section of this statement.

The states, federal government, industry, and the Congress have had a heightened awareness of some inadequacies in the system, most of which are known quantities and led to many of the CDL-related provisions in the Motor Carrier Safety Improvement Act of 1999. More resources have been allocated to deal with these issues at both the state and federal levels and the federal government has begun to take a more visible role. Unfortunately, many of the MCSIA provisions have not yet been implemented and most of the deficiencies remain.

For specific recommendations addressing the above licensing weakness in the CDL program, especially with respect to hazardous materials endorsements, see Section IV.

B. Post-testing program weaknesses lead to safety and security weaknesses—Discussion

The process and administrative inconsistencies do not ensure the safety and security we need, particularly in light of the September 11 events and in the days since. These inconsistencies manifest themselves in ways that degrade safety and security. Evidence of this fact is found in a pilot project the Commonwealth of Massachusetts just completed with CVSA with funding support provided by FMCSA. This project, the CDL State Self Assessment, evaluated compliance with laws and regulations governing the issuance and management of commercial driver licenses through analysis of data in our information systems. It also measured the linkage between the records of licensing and enforcement actions to records of commercial drivers' crashes. The following are a few examples of results from the Massachusetts pilot:

- Some states are posting fewer than 50 percent of the serious and disqualifying convictions sent to them by Massachusetts via CDLIS.
- License numbers are improperly transcribed more than 10 percent of the time on inspections and citations.
- There were uneven responses from driver history queries requested from other states (ranged from 53 to 95 percent in the states checked).
- The Commonwealth achieved much lower conviction rates for the most serious (and most dangerous) violations than for less serious violations.
- The 1 percent of drivers who were driving while suspended accounted for 5 percent of at-fault crashes.
- Drivers who were convicted of serious offenses were involved in at-fault crashes almost 40 percent more often than the baseline drivers were.

These results indicate: (1) problem drivers are getting involved in more crashes than the average driver, and (2) much of the data necessary to identify these drivers is not making its way through the system. CVSA hopes for continued support from FMCSA to conduct more Self-Assessments with the states in order to gather more data and to help our members identify areas that focus their resources more effectively.

The world has become more reliant on technology. As a result of compartmentalized and non-uniform approaches in CDL processes, administration, and technology application, effective data collection, exchange and utilization have become problematic. The information systems and linkages that have been set up to gather and distribute this data (and at a minimum level) are patched together and not as robust as they need to be for several reasons:

Information technology is not what it should be.

1. There is not a single source that is able to consolidate and distribute all information on commercial drivers. The information resides in multiple systems, and a human does the only actual integration of sources. This could be a police officer by the side of the road or in an inspection station, or a judge making a sentencing decision, or by a company making an employment decision.
2. The number of information systems and linkages, as well as the multiple data entry and format approaches, results in
   - less reliability and accuracy of the data;
   - opportunity for errors and for intrusion; and
   - more costs for maintenance and upkeep.
3. The ability of accurate and timely data to be transmitted over such systems is not acceptable, both from a systems and communications perspective

Administrative weaknesses abound.

4. The CDL administrative processes and requirements are not uniform across the states, thereby leaving open too many opportunities for error and unwanted penetration, as well as oversight difficulties (especially for Third Party Testing and Examination)
5. Legal obstacles exist to accessing certain pieces of information on individuals, most notably for privacy protection purposes. This limits the ability of people who could use the information for important security uses, such as potential employers, from having access to critical safety and security information.
6. The number of institutions involved is staggering and is not being coordinated in a manner that puts proper emphasis on safeguards for safety and security

We believe the American Association of Motor Vehicle Administrators has done the best it could in developing recommended standards, procedures, and guidelines for use by licensing organizations in their member jurisdictions, given the fact that these procedures and standards are not promulgated by law or regulation. In fact, except for making sure that state information systems perform core data processing functions, there is no program to either enforce or verify compliance with these AAMVA standards, procedures, and guidelines. The approach to date has not been able to properly service the community's needs for safety and security.

For specific recommendations addressing the above post-testing and information sharing weakness of the CDL program, see Section IV.

III. Other Safety and Security Considerations

A. Increased Role of Motor Carrier Safety Enforcement

As I mentioned earlier, most CVSA enforcement member jurisdictions have undertaken additional responsibilities since September 11 that are over and above the usual motor carrier safety activities. Many are using their personnel to guard airports, water supplies and other federal and state government facilities, not to mention increasing their basic motor carrier safety activities with respect to hazardous materials haulers. As an example of some of the additional initiatives being implemented, many of our members are conducting Level III inspections (driver-only), and, upon enhanced interrogation if it is warranted, cross checking the CDL with the FBI's NCIC database.

B. Better Use of Technology and Federal Agency Information Coordination

In addition to tightening up requirements within the CDL Program, a major tool to ensure greater safety and security of truck and bus transportation will be the use of information technology with respect to the driver, the vehicle, the carrier and its ownership, and the cargo including information on the shipper. Only with technology can we achieve these goals and yet maintain the efficiency of our commercial transportation system.

For the driver, this could mean more consideration for the use of a "smart" CDL to store more than the just the basic information it has to date. A "smart" CDL could include more detailed information on the driver as well as information on the cargo. We also need to make greater use of the biometric identifiers (retina scan, thumbprint, digital photographs, and signature/voice recognition). The costs and, in some cases, reliability of such technologies has thus far been a deterrent to adoption.

Further, consideration should be given to better use of the existing safety and security data, including;

- A method to rapidly deliver easy-to-use, more complete information about the driver to the police officer on the road;
- A method to more easily deliver a complete view of the appropriate safety and security information to a potential employer; and
- It also would be appropriate to deliver more timely, complete, and readable information about a driver's record to judges and prosecutors.

For better information on the shipper, the motor carrier and the cargo itself, the use of an electronic freight bill can be used along with a unique numbering and verification system (such as bar coding) for tracking/tracing capabilities.

For the vehicle, there could be devices installed that would facilitate vehicle identification, tracking and communication. Sensors can be integrated to identify potential security and/or integrity breaches, and communicate in real-time with the driver, carrier and shipper. However, we do need to be sensitive to the fact that information about cargo, origins, destinations, and location of vehicles is considered sensitive business information and needs to be treated with appropriate respect.

To act on security breaches and/or mitigate hazardous materials and other incidents, emergency responders, medical and law enforcement personnel can be connected to this network and be notified in real time of problems and of the necessary equipment and personnel to deploy

All of these technologies, to one degree or another, are being used or have been tested by either the DOD, INS, CUSTOMS, or DOT (FMCSA, FRA, FTA, FAA, RSPA, and FHWA) as well as some motor carriers and shippers who now use electronic freight bills, GPS systems, transponders and other related technologies. It is now important to link these technologies and share the relevant information among appropriate federal and state enforcement agencies for safety and security purposes. The side benefit of such a technology approach would be to facilitate border oper-

ations at land and sea crossings to address the safety and security transportation and immigration concerns revolving around NAFTA.

The issue then arises as to who will have the authority to mandate, or implement, the use of the above technologies, not to mention the coordination and sharing of the information. Perhaps this will be the role of the new Office of Homeland Security? Without a regulatory body such as the ICC, it would appear that FMCSA and the state motor carrier safety enforcement agency personnel as represented in CVSA are the only groups available to reach truck and bus companies as well as the driver for both safety and security purposes.

IV. Recommendations

Based on the above and the collective wisdom of the Alliance members, we offer the following recommendations to the Congress and the Administration

1. Streamline the CDL Program and institute more rigorous and uniform federal standards for testing, examination, administration, data definitions, collection and archival.
2. Commercial vehicle enforcement (the lead MCSAP agency in each state) needs to be at least on an even keel with the Motor Vehicle Administration in the state. Customer convenience is important. And so is safety and security. These two functions need to be balanced and integrated as much as possible to ensure for seamless program administration and implementation.
3. Accelerate implementation of MCSIA commercial driver provisions, but make sure adequate resources are provided to the states and federal government for implementation.
4. Have state licensing personnel perform criminal background checks on the spot on drivers attempting to acquire CDLs with hazardous materials or passenger endorsements. Couple this with a photo ID requirement as well.
5. Create an authoritative information consolidated database (a new national central database to supplant or augment CDLIS) for commercial driver information and provide the means to deliver this information to the appropriate users, enforcement and employers alike.
6. Provide a means for the industry to help police itself by making certain information available to motor carrier employees responsible for making personnel decisions. Encourage motor carriers to investigate new customers, work with and monitor their shipper's practices for ensuring safety and security.
7. Develop a strategy for addressing the security concerns in the rental and leasing business. Anyone can buy materials from a local hardware store and rent a truck at the local gas station to create a situation on the highway that is similar to September 11.
8. Create a "watch list" for CDL drivers with hazardous materials and passenger endorsements. This list would track wanted criminals and others on national, state, and local FBI wanted lists and send a red flag to commercial vehicle enforcement personnel when such drivers are encountered at the roadside. Ideally, it would integrate NCIC data and other FBI and intelligence information relevant to terrorist activities.
9. Provide commercial vehicle law enforcement personnel with the appropriate resources for the technology, training, and personnel to do their job effectively. We are not intelligence experts, but we need to be equipped with the proper knowledge and tools to assist those who are.
10. Implement appropriate measures and provide persons coming in contact with drivers the appropriate training to look for and identify identity and document fraud.
11. Make sure the Homeland Security Office has strong representation from the transportation sector and is afforded the proper authority, in consultation with state and local authorities, to implement appropriate measures to protect our transportation network against future terrorist acts.
12. Implement a surface transportation technology safety and security strategy for entry into the country through seaports and land crossings that address both prevention and response and include the monitoring of hazardous materials and passenger movements and mitigating problems in the event of an incident or attack. Such a strategy would include:

    - Verification/certification of load and driver at the time of departure and throughout the shipment lifecycle;
    - Integrate biometric identifiers with the CDL and provide technologies with reading capability to enforcement. Work with industry to develop a

strategy for providing this capability to consignees—to verify load and driver at the time of arrival

- Monitoring and tracking capability of vehicles and drivers enroute to the fleets and shippers;
- Exception-based reports to law enforcement in the event of a security breach, package integrity problem (i.e. hazardous materials release), and if a driver strays from the intended route of travel;
- Integrate emergency response and automated collision notification information (E–911) in the event of an incident or accident; and
- Wireless network and centralized data center for real-time data capture and communications capability—access made available on a need to know basis to both industry and enforcement

13. Develop and implement a nationwide public education and outreach campaign to make people more aware of these issues and how best to deal with any problems they may encounter. The same should be done for those involved in the transportation industry.

We understand that there are clear economic ramifications to what we are suggesting and that many competing ideas are on the table. We also understand that as a Nation we have to be measured in our responses. Along with the airline industry, the truck and bus industries are the lifeblood of our economy. Most drivers who hold a commercial driver's license truly are professionals and as such, should be treated with the respect and dignity they deserve. As a Nation we need to do more to protect and promote this professionalism. Tightening up the CDL Program is a very big and important first step.

Thank you Mr. Chairman and Members of the Committee. CVSA appreciates the opportunity to be invited to present our views and suggestions. It is our strong belief that the most effective way to increase both transportation safety and security on our Nation's highways is to focus on those who are most able to effect change—the drivers and law enforcement personnel on the ground in cooperation with motor carrier management and, hopefully, shippers.

Senator BREAUX. Thank you. We will take Mr. Sheridan next.

STATEMENT OF RALPH F. SHERIDAN, PRESIDENT AND CEO, AMERICAN SCIENCE AND ENGINEERING, INC.

Mr. SHERIDAN. Thank you. Since the cold war, we functioned as the world's policeman with relative impunity from homeland attack. We have not protected the police station, however, and today we are just beginning to understand the consequences of our vulnerability in terms of economics, and in particular to the transportation sector.

A formerly discounted theory of well-financed, well-trained terrorists committing their lives en mass to accomplish their mission is today's horrific reality. Aviation was simply the vector of choice for that event. It could have easily have been an attack on a military base here or overseas. It could have been an attack on another federal building. It could have been a breach at a port, or a border, or an attack on a highly visible corporate facility such as in the entertainment industry.

Regular highway cargo and air freight could also have been involved. The delivery mechanism for achieving mass destruction could have been a sea container going in transit and intermodal by rail or highway with a global positioning device activated on it that could be activated by a cell phone and detonated at will by a terrorist. This is one horrific nightmare for which we are woefully unprepared.

We all recognize that the transportation sector is a crime-ridden environment, which makes it more vulnerable to a terrorist breach.

The latest facts from the National Cargo Security Council indicate that we lose some $12 to $15 billion a year in cargo theft. We believe, however, that there are important advances in technology that can be applied to this national security challenge, and help restore trust in the flow of commerce in the transportation sector.

Today, X-ray scanning technology exists to inspect quickly and nonintrusively trucks and sea containers, to examine the contents for explosives or weapons of mass destruction based on radioactive materials. American science and engineering is delivering this technology to ports and borders around the world. Other companies also have an array of technologies that may have application for port and border protection, and for truck security.

AS&E technology was developed during the cold war to scan a Russian missile in a railroad car leaving a Russian missile factory, to count the warheads and the size of the rocket motor, to determine whether it complied with the terms of the INF treaty. This technology was further enhanced and developed for Lockheed for scanning Trident missiles for the Navy for quality control.

In the mid-1990's, this technology was funded by the Department of Defense for the counterdrug technology program, initially for deployment on the Southwest border for scanning trucks.

Today, we have nine fixed-site systems on the border between California and Texas, and 16 mobile truck x-ray systems. Another six mobile truck x-ray systems will be delivered between now and the end of March to U.S. Customs, again for scanning trucks.

In addition, here in Washington the Federal Protective Service has a mobile x-ray system that scans all of the trucks entering into the Ronald Reagan Building to protect against a 1993 type World Trade Center bombing. We have deployed for the U.S. Navy a mobile x-ray system in Bahrain at the U.S. Naval Base that scans all the trucks coming on that base to protect against an El Qabar type truck bombing.

AS&E uses two types of x-ray technology simultaneously, transmission x-rays, which are traditional. They penetrate the cargo and they show density. The second, Z Backsatter, which is our proprietary patented technology, has two functions. One is the identification of organic materials, specifically drugs and explosives, and second the photographic quality of sharp and form for ease in object identification of contraband, weapons, or trade fraud, which is very important in identifying weapons.

This technology is now being deployed extensively in the Middle East by our allies to detect weapons and explosives, to protect against an attack by extremists Islamic elements. It is used in South Africa, the United Kingdom, and Hong Kong to protect against cigarette and alcohol smuggling, illegal alien smuggling, and other forms of trade fraud, and in Mexico the Attorney General's Office has 10 mobile search x-ray systems stopping trucks at highway checkpoints looking for drugs, weapons, and stowaways, so this technology is deployed today, and is very possible to use.

Why is this of value? The events 4 weeks ago prove that we are woefully unprotected from sophisticated terrorist programmed attacks. The public and business, their confidence has reached a new low point. Insurance companies are suggesting that they will not cover the transportation sector for acts of terrorism. A great oppor-

tunity exists for a Government-industry partnership to diminish the vulnerability of transportation infrastructure to terrorist crimes.

There is a collateral benefit from improved transportation security. Seaports and land borders are havens for criminal activity and smuggling and cargo theft. By tightening the portals of our country, we will also address associated transportation crime, drug-smuggling, and trade fraud, which costs this country tens of billions of dollars each year.

I have three recommendations. First is to commit bold funding for the deployment of nonintrusive inspection technologies at ports, borders, and truck weigh stations, with a long-term goal of 100 percent confirmation of the contents of trucks and containers. Inspection technologies could be integrated with information technology with video surveillance of container loading, and industry shipper participation in verification so we know what is in those containers.

We would also fund additional R&D to enhance the effectiveness and speed of these technologies, with the goal of reducing the hassle factor to the transportation sector.

Finally, sanitize ports and borders by instituting background checks on all personnel having routine access, with the intent of weeding out criminal elements. Coast Guard Commander Steven Flynn, who is an expert on homeland defense and cargo transportation, stated that we can have no integrity—let me restate this. He stated that if there is no integrity in the transportation infrastructure, security, there will be no flow of commerce.

There are already suggestions this week by Attorney General John Ashcroft that we are vulnerable to additional attacks. No one knows what is actually in sea containers arriving in our country. We are clueless as to the threats breaching the Canadian border. It is time to make strong and fundamental changes that will protect the integrity of our borders against committed terrorists and restore the flow of commerce.

Thank you.

[The prepared statement of Mr. Sheridan follows:]

PREPARED STATEMENT OF RALPH F. SHERIDAN, PRESIDENT AND CEO, AMERICAN SCIENCE AND ENGINEERING, INC.

Mr. Chairman and distinguished Members of the Subcommittee:

On September 11, 2001, a new form of global terrorism evaded the existing aviation security regimen in three airports, rendering obsolete previously held strategies for counter terrorism protection. The formerly discounted theory of well-financed, well-trained terrorists committing their lives en masse to accomplish their mission is today's horrific reality. Aviation was simply the vector of choice for that event. The delivery mechanism for achieving mass destruction could have been a sea container going intermodal by rail or highway. Regular highway cargo and airfreight could also have been involved. While the transportation infrastructure is enormous, we also know that it is a crime-ridden environment, which makes it more vulnerable to a terrorist breach. There are, however, important new advances in technology that can be applied to this national security challenge.

Today, X-ray scanning technology exists to inspect, quickly and non-intrusively, trucks and sea containers to examine the contents for explosives or weapons of mass destruction based on radioactive materials. American Science and Engineering is delivering this technology to ports and borders around the world. Other companies also have technologies that may have application for port and border protection. AS&E's technology was developed originally for Cold War application to scan missiles through railcars to confirm compliance with the INF treaty process. Later, it was applied to the scanning of Trident missiles to assure quality compliance. In the

1990's, this technology was funded for the specific application of truck examination to detect drugs crossing the southwest border. Today, there are 9 AS&E fixed site inspection systems along the Mexican Border and 16 MobileSearch™, truck mounted systems, deployed by U.S. Customs to scan for drugs. In addition, here in Washington a MobileSearch system scans all trucks entering the Ronald Reagan Federal Office Building to protect against a 1993 type World Trade Center bombing. This technology is also stationed at the U.S. Naval Base in Bahrain scanning all trucks entering the base in search of explosives.

AS&E uses two technologies simultaneously to inspect cargo—traditional transmission X-rays that penetrate the cargo and show density. The second, Z® Backscatter, has two functions: (1) the identification of organic materials, specifically drugs and explosives, and (2) the photographic quality of shape and form for ease in object identification of contraband, weapons or trade fraud.

This technology is now being deployed extensively in the Middle East by our Allies to detect weapons and explosives that could be used by extremist Islamic elements to attack governments. It is also used for detection of trade fraud, cigarette and alcohol smuggling, and illegal stowaways in South Africa, the United Kingdom and Hong Kong. In Mexico, the Attorney General's Office has invested in 10 MobileSearch systems to stop trucks at highway intersections looking for drugs, weapons and stowaways.

Why is this of value? The events of 3 weeks ago prove that we are woefully unprotected from sophisticated terrorists' programmed attacks. The public is demanding that we protect them. Insurance companies are suggesting they will not cover transportation sectors for acts of terrorism. A great opportunity exists for a government/industry partnership to diminish the vulnerability of the transportation infrastructure to terrorist crimes.

Recently, U.S. Coast Guard Commander Stephen Flynn wrote in the New York Times that "We must find a way to reduce the potential of our global transport lifelines to be conduits for terrorism. There needs to be a far greater international cooperation in policing transnational flows of people and goods."

There is a collateral benefit. Seaports and land borders are havens for criminal activity in smuggling and cargo theft. By tightening the portals to our country, we will also address associated transportation crime, drug smuggling and trade fraud, which costs this country billions of dollars each year. Clearly, implementation of mass screening programs for cargo will be expensive. There is, however, a clear benefit—the reduction of smuggling and cargo theft that plagues this industry.

The technology is available and demonstrated. The benefit is not only in restoring public trust, but also in hardening our borders and ports against terrorist acts. The shipping and cargo industry also stands to benefit greatly by the reduction in cargo crime, which is a huge drain on our economy and directly affects the pocketbooks of all Americans. I ask this Committee to consider three recommendations:

1. Commit bold funding for the deployment of non-intrusive inspection technologies at ports, borders, and truck way stations with a long-term goal of 100 percent confirmation of the contents of trucks and containers. Inspection technologies should be integrated with information technology systems, video surveillance of container loading, and industry shipper participation in verification.
2. Fund additional R&D efforts to enhance the effectiveness and speed of these and new technologies to reduce the hassle factor on the transportation sector.
3. Sanitize ports and borders by instituting background checks on all personnel having routine access with the intent of weeding out criminal elements.

Recently, Attorney General John Ashcroft warned of potential additional attacks. No one knows what is actually in sea containers arriving in our country. We are clueless as to the threats breaching the Canadian border. It is time to make strong and fundamental changes that will protect the integrity of our borders against committed terrorists.

Thank you.

Senator BREAUX. Thank you, Mr. Sheridan.

Ms. Claybrook.

STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, AND PROGRAM CO-CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Ms. CLAYBROOK. Thank you, Mr. Chairman, for the opportunity to testify. I am testifying on behalf of Advocates for Highway and Auto Safety, a coalition of consumer health, safety and law enforcement organizations and insurance companies and Public Citizen, and I will submit some items for the record to shorten my statement.

Recent events have tragically brought to light the terrible cost of lax oversight, uneven or weak enforcement, and gaps in the protective regulations that we need. We have learned again that the Nation's safety interests and our security interests are inextricably intertwined.

With all due respect to Mr. Clapp, I must say that this is not something new. We have 5,000 people a year killed on the highway in large truck crashes. Two years ago, this Committee created the agency he now heads. It was the wakeup call, it seems to me, to the Federal Government that this should be a priority, and using a manual as their major effort it seems to me is useless unless it has one entry which says, action now.

We put at risk our firefighters, our police, our health care assistants when we do not take account of the safety and security needs of this Nation, and creating an advisory committee is also to me a big waste of time. There used to be a Federal Truck Safety Advisory Committee that had mostly truckers on it, and it resisted all the regulations, many of which we have detailed in our written testimony, that are so desperately needed.

According to a report on chemical terrorism by the Agency for Toxic Substances and Disease Registry of the CDC, rather than creating and transporting weapons, terrorists are very likely to exploit regulatory vulnerabilities in commercial and private transport of hazardous chemicals, which provide ready-made weapons, including explosives, poisons, and nuclear materials.

Potentially harmful industrial chemicals such as chlorine and ammonia are widely available for use in farming, manufacturing, water processing, and other purposes, and can be purchased through the Internet anonymously, on the web from sites like chemdeals.com by commercial carriers. Certain chemicals are exempt from federal requirements concerning placarding, shipping papers, and emergency telephone numbers, when they are delivered within 150 miles of a farm, or, for certain chemicals that are transported in amounts below certain thresholds.

For example, the 4,000 pounds of ammonium nitrate fertilizer that was used to destroy the Federal Building in Oklahoma City was only one-quarter the amount that is exempted in our current rules, a whopping 16,090 pounds, and that is when it is used for intrastate travel. Shippers of agricultural chemicals have lobbied the Congress before for additional exemptions, and we appreciate the support of this Committee in opposing that.

It turns out that in addition to lax oversight concerning the purchase of chemicals, there are very few checks on who may open shop as a commercial carrier for hazardous materials, or who may

obtain a license to become a commercial driver, including for the transport of hazardous materials.

In general, our current safety policies make it too easy to gain motor carrier operating authority, too easy to obtain and keep a commercial driver's license, too easy to qualify for driving or transporting hazardous materials which can be used for terrorist actions, and too easy to mask violations contained in past driving records and motor company carrier operations.

Monitoring of activities is also very difficult, because data acquisition and retrieval at both the federal and state levels about past motor carrier operations and the commercial driving records of operators of large trucks and buses is poor, unreliable, or nonexistent, despite repeated direction by the Congress to the Department of Transportation and to the states to quickly build sound databases on company and driver performance.

In fact, news reports have disclosed that some members and associates of the terrorist network responsible for the events of September 11 obtained commercial driver's licenses, including hazardous material endorsements, by both legal and illegal means.

There are also shockingly few checks upon where trucks carrying hazardous materials may drive, including driving routes that are close to population centers, and there is little data and oversight by the Federal Government and the States about the amounts and location of hazardous materials that are in circulation each day. Despite growing concern and repeated congressional mandates to fill major gaps in the regulations applicable to commercial carriers, the Federal Motor Carrier Safety Administration and its predecessor in the Federal Highway Administration sat on their hands for a decade.

The following partial list of safety regulations with security implications were directed by Congress to be accomplished but DOT is long past the statutory deadlines, some as long ago as 1991, but rather than protect the public it accommodated the trucking industry and other transportation interests.

The agency has failed to complete key rulemakings mandated by Congress. In 1988, the agency was first given a mandate to issue a rule regarding a unique identifier, for example, a fingerprint, to assure the identity of commercial motor vehicle operators. Congress reiterated this goal in 1998, in TEA–21, and directed the Secretary to complete the rulemaking by December 1998, but there has been no action on this issue since 1991.

In fact, we looked through the agency's semiannual regulatory agenda, and for most of these items it says, under consideration.

The Hazardous Materials Transportation Uniform Safety Act of 1990 directs the DOT to adopt safety permit regulations for motor carriers transporting class A or B explosives, liquified natural gases, hazardous materials that are extremely toxic upon inhalation, or highway route-controlled radioactive materials. The deadline for action was November 1991. The agency issued a notice of proposed rulemaking in June 1993, and since has done nothing.

In 1990, the DOT was also directed to institute a nationally uniform system of permits for hazardous materials transportation within 3 years of the conclusion of a study by a working group. The working group issued its report 3 years late, in 1996, documenting

widespread defects in state permitting practices which negatively impact safety. The agency published two notices reviewing the report. It has done nothing else since.

In 1994, the DOT was charged with specifying, by January 1999, the minimum safety information that new or prospective employers must seek from former employers during the investigation of a new hire driver's employment record. In 1998, TEA–21 modified the direction to provide protections for commercial driver privacy. Since the agency's NPRM—that is the notice of proposed rulemaking—in 1996, there has been no further rulemaking to date.

TEA–21 in 1998 allowed DOT 1 year to review procedures by the states to determine whether the current system of new driver training and licensing, which provides very minimal guidelines for the states, accurately measures an applicant's knowledge and skills, and to investigate the benefits of a graduated licensing system which requires on-road experience before a driver is allowed to earn extra endorsements, such as the one for hazardous materials.

An information collection notice was published by the agency in July 1999, but the review required by Congress has not been completed, and therefore has been no further action by DOT.

Other rules that are more recently overdue include a rule disqualifying a driver's CDL if the driver is convicted of a serious offense in a noncommercial motor vehicle. The final mandate for this rule is now over a year late. DOT is also tardy on a rule for new motor carrier entrants, a crucial area here, particularly if you are a terrorist forming a new company, including consideration of a safety proficiency exam to establish minimum requirements for the applicant motor carriers, including foreign carriers, to ensure their knowledge and ability to comply with federal safety standards and require a safety review of their operations.

Under the current system, new motor carriers are able to set up operations by completing a paper application and paying $300, and can remain in operation as long as 18 months before any federal safety review, and often these are done late. We believe that this is an outrageous oversight, and that an on-site safety review should be conducted prior to any grant of operating authority in order to ascertain whether a carrier is able to comply with U.S. safety standards.

In addition, the proposed rules put forward by the administration concerning inspections and tracking data for cross-border trucking with Mexico-domiciled carriers has been widely viewed as wholly inadequate to protect the public from both safety and security risks. Congress has therefore thankfully stepped up and passed the Murray-Shelby amendments, which fill many of the oversight gaps in the DOT rulemaking proposals, and we appreciate the support for that.

As discussed more fully in my testimony, however, some of these measures still do not go far enough, and others should be considered for application by our domestic safety regulatory program, such as the requirement for an initial onsite review by DOT before any operating authority is granted to any new carrier, foreign or domestic.

Other good ideas, such as equipping hazardous materials carriers—with the GPS review technology are also basic improvements which need to be made a part of in the federal regulatory structure.

These are just a few examples of the agency's systematic failures, and there are many more. In short, the agency charged with assuring the Nation's motor carrier safety time and time again has flouted its mandates and ignored crucial deadlines for key safety and security initiatives. Congress must aggressively oversee the agency's near-term rulemaking by reiterating deadlines, ordering Inspector General or General Accounting Office investigative reports, conducting oversight hearings on particular rules, and building the record on the agency's inability to honor the will of the Congress and protect the American public.

If the agency continues to be moribund, Congress should even consider the step of taking this power away from the Department of Transportation. Vital public safety and security interests are at stake, and action on these crucial items I have mentioned today is imperative for both the public, the Congress, and the DOT.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, AND PROGRAM CO-CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Thank you, Mr. Chairman and Members of the Subcommittee on Surface Transportation and Merchant Marine, for the opportunity to testify before you today on the urgent topic of improved transportation safety and security for the people of the United States. My name is Joan Claybrook, President of Public Citizen. Today, I am testifying on behalf of Public Citizen and Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of consumer, health, safety, law enforcement, insurance companies and organizations working together to reduce motor vehicle deaths and injuries on our highways. Both Public Citizen and Advocates have a long history of working with this Committee on improving motor carrier safety.

The tragic events of September 11th have placed needed attention on the fact that a carefully forged intersection of security and safety needs in all modes of transportation is long overdue. This is particularly true in the arena of commercial transportation of freight and passengers by motor carriers. As a Nation, we have been lax in adopting the kinds of stringent policies for safety oversight and approval of domestic motor carrier operations that would provide a ready basis for ensuring both the safety and security of people, cargo and institutions in the U.S. In large measure, many of these shortcomings in safety and security are the direct result of the chronic failures of the Federal Motor Carrier Safety Administration (FMCSA) to fulfill explicit Congressional mandates to conduct rulemaking and issue regulations in a timely manner that would improve federal and state safety oversight and provide important data on motor carrier operations.

In general, our current safety policies also make it too easy to gain motor carrier operating authority, too easy to obtain and keep a commercial driver's license (CDL), too easy to qualify for driving or transporting hazardous materials which can be used for terrorist actions against the U.S. Also, it is too easy to maintain anonymity about past driving records and motor carrier company operations. Data acquisition and retrieval at both the federal and state levels about past motor carrier operations and commercial driving records of the operators of trucks and buses is poor unreliable, or nonexistent despite the repeated direction by Congress to the U.S. Department of Transportation (DOT) and the states to quickly build sound data banks on company and driver safety performance, especially the records on safety oversight reviews, individual vehicle inspections, and traffic and criminal conviction records of drivers holding intrastate or interstate licenses for the operation of commercial motor vehicles. In fact, the FMCSA has failed to issue dozens of safety standards mandated by Congress in seven different statutes since 1988 and is delinquent on almost another dozen. Clearly, Congress must demand immediate action by this agency and its new director, Mr. Cleggs.

These deficiencies in safety regulation can be readily exploited to pose security threats. Under existing regulations, a terrorist organization could set up a new

trucking company in the U.S. or Mexico, and obtain operating authority in the U.S. for an 18 month period without any federal or state safety review or security check simply by paying a fee. Drivers for such a company could obtain CDLs and authority to transport hazardous materials essentially by taking written exams with only a minimal on-the-road test for safety proficiency, with no criminal background check or review for security purposes, and with only the most rudimentary check of the driver's prior three-year state driving record. After obtaining a hazardous materials endorsement in addition to their CDL, these drivers can legally drive semi-trailers carrying up to 80,000 pounds of placarded hazardous materials on nearly all roads and through all cities in the U.S. These materials include common, deadly gases like ammonia, chlorine, arsine, and phosphine, which if released would form a cloud that would cling close to the ground and cover as many as 40 square miles.

The potential danger from hazardous materials is enormous because of the huge amounts transported on a daily basis. According to the most recent figures published by DOT, in 1998 there were an estimated 800,000 daily hazardous materials shipments in the U.S., constituting over 3 billion tons of hazardous materials shipped annually. *The Changing Face of Transportation,* U.S. DOT (2000). Since there is no adequate state or national reporting hazardous materials system, these figures are derived from indirect sources and most likely represent a gross under reporting of total hazardous materials shipments and tonnage. DOT also reported that in 1997 over one-quarter (28.4 percent) of all hazardous materials was transported by truck. *Id.* Likewise, the vast majority (86 percent) of the more than 14,000 annual hazardous materials incidents reported each year between 1993 and 1997 involved highway vehicles, i.e., trucks. *Transportation Statistics Annual Report 1999,* U.S. DOT (1999). Again, due to the inadequacies of the hazardous materials incident reporting system, these figures significantly underreport actual incidents. Thus, shortcomings in motor carrier safety regulations have particular importance with respect to the transportation of hazardous materials.

These serious shortcomings are magnified by even more severe deficiencies at our shared foreign borders with Canada and Mexico. The pending FY 2002 DOT Appropriations bill (H.R. 2299), as passed by the Senate, goes a long way towards imposing more stringent safety controls at our southern border which will naturally assist and improve security procedures. Nevertheless, Congress should consider strengthening several provisions of the legislation which may still allow for abuse and exploitation by Mexico-domiciled motor carriers. In addition, some of the provisions authored by Senator Murray (D-WA) and Senator Shelby (R-AL) directed at improving the southern border, with appropriate strengthening, may also be necessary to consider for application to our northern border with Canada.

Domestic Motor Carrier Safety and Security Deficiencies

Chronic deficiencies in motor carrier law, regulation, and safety oversight practices *simultaneously* erode both highway safety and domestic security needs in the U.S. In most cases, these shortcomings are the result of a persistent failure to act on the part of the Federal Motor Carrier Safety Administration (FMCSA) in response to Congressional directives which, in some instances, stretch back to the late 1980s. Many important safety regulations have not been adopted despite Congressional timetables. These rules, if issued, would provide a solid trunk on which to graft the branches of U.S. security policies in critical areas of need. The following is a brief review of some of the major issues which affect both motor carrier safety and security in the U.S.

Defects In the Current Commercial Driver License (CDL) Program Permit Abuses

It is far too easy to obtain a CDL in the U.S. No training or prior certification of any kind is needed to apply for and obtain a license to operate a truck or bus in interstate commerce. It is even easier in most states to obtain a license to operate a truck or bus solely intrastate. In fact, in some states a chauffeur's license or, in some instances, even an ordinary passenger vehicle operator's license, is sufficient to operate a smaller commercial motor vehicle for hire. Moreover, a not-for-hire rental even of a tractor-trailer is possible in a number of states without having any kind of CDL.

Testing for a CDL requires no instruction and many applicants are self-taught, have prepped with the aid of mail-order courses, or have been given a few lessons by a truck or bus driver they know. No certification of any kind, such as the demonstration of having passed a federally-approved training course, has to be presented to take a multiple choice paper examination for the basic interstate CDL. The driving part of the test is often brief and perfunctory. Many drivers admit that they learn how to operate a truck only through their employment experience. This

results in inexperienced drivers when they first take to the road carrying freight throughout the U.S.

Special endorsements, such as the additional authorization to haul placardable quantities of hazardous materials, are, again, simply "knowledge" tests. The applicant does not need to demonstrate any driving skills, but only answer a set of written questions about hazardous materials transport.

Another key shortcoming of the federal CDL rules is the lack of a requirement for a commercial license for drivers operating trucks less than 26,001 pounds gross vehicle weight. There are millions of single-unit trucks weighing between 10,001 and 26,000 pounds operating in interstate commerce with drivers who have no CDLs, are not subject to mandatory drug and alcohol testing, and for whom the states often have patchy, unreliable driver records of traffic and other violations and convictions.

The time has come for the U.S. DOT to place more rigorous requirements on the ability to obtain and renew a CDL. Specifically, Advocates and Public Citizen support extending the CDL requirement to vehicles weighing between 10,001 and 26,000 pounds. This action would trigger the application of the same data collection requirements for larger truck commercial license holders which are currently in development pursuant to Congressional direction in both the Transportation Equity Act for the 21st Century of 1998 (TEA–21) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

Let me turn now to other areas of safety oversight which directly affect the kind of information and approval procedures that are needed to increase the safety and security of the American people.

Both Safety and Security Needs Require the Use of a Commercial Driver Unique Identifier

Advocates and Public Citizen believe that there is a crucial, unmet need for absolutely secure, reliable, continuing identification of drivers to prevent unauthorized, illegal uses of the interstate CDL. A question lurking in the background is whether such a unique identifier ought also to be required even for licenses allowing intrastate-only commercial motor vehicle transportation. The Truck and Bus Safety and Regulatory Reform Act of 1988 directed the Secretary to issue regulations not later than December 31, 1990, establishing minimum uniform standards for a biometric identification system to ensure the identity of commercial drivers operating vehicles weighing more than 26,000 pounds. In 1998, Congress subsequently amended the requirement in TEA–21 to remove the mandate that commercial drivers specifically shall have biometric identifiers and substituted the requirement that CDLs contain some form of unique identifier after January 1, 2001, to minimize fraud and illegal duplication. The Secretary was directed to complete regulations on this new legislative mandate by December 9, 1998 (180 days after enactment). However, there has been no action on this issue and the agency lists it as "Next Action Undetermined" in its latest semi-annual regulatory agenda.

The Previous Employment Records and Safety Performance History of New Commercial Drivers Are Still Not Being Provided to Employers

The Hazardous Materials Transportation Authorization Act of 1994, directed the DOT Secretary to specify the minimum safety information that new or prospective employers must seek from former employers during the investigation of a driver's employment record. However, the FMCSA has issued only a notice of proposed rulemaking in 1996 and Congress, in the 1998 TEA–21, gave the provision a new statutory deadline of January 1999. Congress also modified the rulemaking charge to the Secretary to include protection for commercial driver privacy and to establish procedures for the review, correction, and rebuttal of inaccurate records on any commercial driver. The new TEA–21 provision went so far as to also protect previous employers against liability for revealing safety performance records in accordance with the regulations issued by the Secretary.

Unfortunately, this crucial regulation which has both major safety and security applications has received no further rulemaking action since 1996, and the FMCSA has missed the deadline for completing rulemaking by almost 2 years. In addition, many trucking companies have demonstrated an unwillingness to supply such information even under a "hold harmless" provision in federal law. The FMCSA should immediately issue a final rule to require that prospective employers request such information and that previous employers transmit that information under penalties for refusal. A collateral issue is whether revelation of any services problem posing a threat to others should be shared with all enforcement and security oversight authorities after the individual has the opportunity to rebut any accusations. In light of recent events, and the published reports that alleged terrorists sought to obtain

CDLs and hazardous materials endorsements, criminal background checks for CDL applicants, and additional, appropriate security investigation of CDL holders who seek hazardous materials endorsement, should be required as part of the FMCSA final rule.

Performance-Based Commercial Driver License Testing and Training Would Provide Important Data on Operator History, Qualifications, and Competence

TEA–21 required the Secretary to complete not later than one year following enactment of the bill, that is, by June 9, 2000, a review of the procedures established and implemented by the states pursuant to federal law governing the CDL to determine if the current system for testing is an accurate measure of an applicant's knowledge and skills. The review also required the FMCSA to identify methods of improving testing and licensing standards, including the benefits of a graduated licensing system (allowing for expanded driving privileges over time). A notice proposing an information survey was published in the Federal Register on July 19, 1999. However, the review mandated by Congress to be completed more than a year ago remains undone and there has been no further published action on the graduated licensing survey.

Advocates and Public Citizen believe that this issue has important security implications for the safety of the American people. As indicated earlier in this testimony, applicants can easily take a CDL test in many states with no required instruction and little actual driving experience, pass the test, and be awarded a CDL for unrestricted truck operation in interstate commerce. We are strong supporters of mandatory driver entry-level and special endorsement training to secure a CDL, to transport of hazardous materials, and to operate Longer Combination Vehicles and school buses. We believe that drivers should not only receive federally-required training, but also undergo lengthy periods of restricted driving privileges to determine their safety and competence. A graduated licensing program with mandatory training certification from recognized, federally-approved driver training institutions as a prerequisite for gaining a CDL not only would provide for better, safer drivers, but it also would provide sustained information on every CDL candidate at each stage of training, certification, and graduated licensing.

Serious Offenses by Commercial Drivers in Non-Commercial Motor Vehicles Need To Be Recorded and Accessed By Enforcement Authorities

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) directs the Secretary to issue regulations by December 9, 2000, providing for the disqualification of an applicant for a CDL if the driver has been convicted of a serious offense in a non-commercial motor vehicle resulting in license revocation, cancellation, or suspension, and of a drug or alcohol offense involving a non-commercial motor vehicle. The FAA was long chastised for not enacting similar rules for pilots as well. The final regulation must specify the minimum disqualification period.

A notice of proposed rulemaking was issued on May 4, 2001. A final rule on this mandate is now more than nine months overdue. In combination with current state practices that mask or expunge driver violations after only a few years which under this statutory requirement would disqualify a commercial driver, driver conviction records for CDL holders are patchy and incomplete. Most states maintain official driving records for only three years and many states regularly mask or expunge a commercial driver's record for convictions which otherwise would have triggered CDL suspension or disqualification. Having complete, long-term records of commercial driver violations in both commercial and non-commercial vehicles would provide necessary information about serious offenses, including criminal offenses, committed by current or potential CDL holders or about applicants who previously had CDLs that they allowed to expire for a time without immediate renewal.

There Currently are No New Motor Carrier Entrant Requirements that Test a Company's Safety Proficiency and Fitness to Carry Freight or Passengers

As was pointed out in the beginning of this testimony, it is far too easy for carriers to apply for and be granted interstate operating authority to haul freight and passengers in the U.S. The Secretary is directed in the MCSIA of December 1999 to require through regulation that each owner and each operator granted new operating authority shall undergo a safety review within the first 18 months after the owner or operator begins motor carrier operations. This timeframe for evaluating the safety of all new motor carriers is triggered by a requirement for the Secretary to initiate rulemaking to establish minimum requirements for applicant motor carriers, including foreign motor carriers, to ensure their knowledge of federal safety standards. The Secretary is also directed to consider requiring a safety proficiency examination for motor carriers applying for interstate operating authority.

The FMCSA has continued since enactment of the MCSIA in December 1999 to award new operating authority to applicant motor carriers without any safety fitness evaluations. Also, there has been no rulemaking to establish minimum requirements for new entrants to demonstrate their safety knowledge and no public consideration of the need for a safety proficiency test. The FMCSA, however, has proposed the 18-month safety review for Mexico-domiciled motor carriers in its proposed rulemaking of May 3, 2001, to implement the North American Free Trade Agreement. The requirements for domestic new carriers should be no less than for Mexican new entrants.

Essentially, motor carriers can presently gain domestic operating authority without any evaluation of the operating history of the company, of the drivers in the company's employ, or the quality of its safety management and equipment. Only the payment of federal fees is necessary. The key question here is whether evaluation of the company and its safety practices should occur after it already has operated for up to a year and a half, or whether a safety fitness evaluation and other information which also could have security value should be a threshold requirement before any award of operating authority is granted.

The Murray-Shelby provisions included in H.R. 2299, now in conference, would require both initial and subsequent safety evaluation of foreign carriers to ensure that they have adopted adequate safety practices before they are even allowed to operate on U.S. roads. Advocates and Public Citizen believe that Congress should consider requiring an initial safety evaluation of domestic carriers as well, including successful performance on a safety proficiency examination, as a basis for considering awards of conditional operating authority. Permanent operating authority should be made contingent upon a subsequent acceptable onsite safety review after a year-and-a-half of operating under an award of temporary operating authority.

In this regard, we believe that, at a minimum, the prior history of a company which may have been previously incorporated but went out of business should be investigated at the time that an application for operating authority is submitted. Moreover, a preliminary safety evaluation of the company and its drivers should be accomplished before temporary operating authority is granted for a maximum of a year and a half. Following that period, a second, complete safety fitness review should be performed to determine if the company should be awarded permanent operating authority. Also, a safety proficiency test should be mandatory at the time of initial operating authority application. All of these prudent and reasonable actions were directed by Congress but continue to languish at FMCSA. If the agency would implement these rules, both the safety and the security of motor carrier operators would be significantly improved.

Exempted Quantities of Highway Transported Hazardous Materials are Too Generous and Could be Used to Harm the United States

The Research and Special Programs Administration (RSPA), a modal administration within U.S. DOT, issued a final rule in January 1997 conforming most intrastate shipper and carrier hazardous materials transportation to the federal Hazardous Materials Regulations. This action was directed by Congress in the Hazardous Materials Uniform Transportation Safety Act of 1990. However, RSPA adopted broad exemptions in its final regulation to respond to concerns about the burdens of hazardous materials transportation compliance for intrastate agricultural interests, especially for farmers. We believe that these exemptions, whatever their merit when first adopted, need Congressional review to determine if they require modification. Let me cite some of the reasons.

In its final rule, RSPA provided extensive exemptions for agricultural motor carrier hazardous materials transport, including waivers of requirements for shipping papers, placarding, emergency telephone numbers, and hazardous materials training for motor vehicle transport of hazardous materials within 150 miles of a farm. Moreover, specific exemptions were also granted in the rule for intrastate-only transportation by farmers of maximum quantities of certain hazardous materials, including 16,094 pounds of ammonium nitrate fertilizer in bulk packaging, 502 gallons of certain liquids or gases, and 5,070 pounds of other kinds of agricultural products. Other exemptions were permitted for small quantities of what are often flammable fuels and gases, or toxic chemicals, as incidental "materials of trade" used in the course of daily business. RSPA also allowed non-specification cargo tanks and bulk packaging of certain weights to be exempted from federal requirements governing hazardous materials transport in order to reduce economic burdens. In order to further reduce such burdens, RSPA permitted, without restrictions, additional packaging exemptions to be enacted at the discretion of the states and issued a further notice delaying the effective date of compliance from July to October 1998 to facilitate state legislative action to enact such exemptions.

It is necessary to re-examine these exemptions from hazardous materials transportation requirements, including the maximum permitted amounts of hazardous materials and "materials of trade" which both directly and indirectly can be used to inflict damage at specific targets in the U.S. If you recall, about 4,000 pounds of ammonium nitrate fertilizer was used to destroy the federal building in Oklahoma City. This is only one-quarter the maximum amount currently exempted under RSPA regulation. Not only are these items susceptible to being used as weapons against people and institutions, but the data system at the state levels for documenting the purchase and movement of these hazardous materials by highway is exceedingly poor and unreliable.

The FMCSA has Failed to Implement a Congressionally Mandated Safety Fitness Permit for the Transportation of Certain Hazardous Materials

In this connection, I would also like to point out that the same 1990 federal hazardous materials legislation directs the Secretary to adopt stronger federal motor carrier safety permit regulations for motor carriers transporting Class A or B explosives, liquefied natural gases, hazardous materials that are extremely toxic upon inhalation, or highway route-controlled radioactive materials in both intrastate and interstate commerce. Most importantly, the law allowed permits to be granted only on the basis of a carrier successfully completing a safety fitness finding for carrying these hazardous materials. A less than "Satisfactory" rating on the safety test would automatically result in the denial of the permit application. Implementation of the permit program would also produce a reliable data bank of information on the operations of motor carriers transporting these specific hazardous materials.

The deadline for final regulations was November 16, 1991. A notice of proposed rulemaking was issued on June 17, 1993, but the FMCSA has since taken no further action. The topic is listed in the agency's most recent semi-annual regulatory agenda (May 14, 2001) as "Next Action Undetermined." This long overdue rulemaking needs to be completed expeditiously to ensure that a hazardous materials safety fitness requirement weeds out motor carriers that are unable to comply with the important federal requirements for safely transporting the specific hazardous materials specified in the 1990 legislation. Congress should re-examine whether the list of what are considered "high-risk" hazardous materials should be expanded to include other hazardous materials, especially those which might be used to threaten or harm Americans.

Furthermore, Advocates is convinced that appropriate regulation of hazardous materials transportation should include a requirement that hazardous materials carriage must be limited to trucks equipped with Global Positioning System (GPS) technology that permits real-time location tracking of hazardous materials loads. Moreover, holders of CDLs with a hazardous materials endorsement should have biometric identifiers and be required to use computerized smart cards in order to access and operate vehicles carrying hazardous materials.

In addition, current routing regulations for non-radioactive hazardous materials highway transportation are too sketchy and inadequate. The federal requirements do not require states even to have highway routing criteria for non-radioactive hazardous materials and they continue to allow loads of hazardous materials to be transported on most roads and through major metropolitan areas across the Nation regardless of population or traffic density. In fact, the burdens imposed on the states by the Federal Highway Administration to justify alternative, diversionary routes for public and environmental protection have a chilling effect on the willingness of state and local public authorities to tell trucking concerns hauling hazardous materials to use longer, safer routes. Congress should place much tighter restrictions on the routing of hazardous materials transported by trucks and direct the states, pursuant to Congressionally directed federal regulations, to ensure uniform action throughout the Nation, to adopt safer alternate routings for certain kinds of hazardous materials which will lower the risks of spills or of terrorist actions which can adversely affect sensitive environmental areas and dense population centers.

A National Uniform System of Permits for Hazardous materials Carriers is Urgently Needed to Enhance Safety and to Improve Reporting and Data Collection

The Hazardous Materials Transportation Uniform Safety Act of 1990 directed the Secretary to institute a nationally uniform system of permits necessary for motor carrier transport of hazardous materials. The date of the final regulation was linked by Congress to a report of a working group on what actions were needed to accomplish this. The group, however, issued its recommendations 2½ years late on March 15, 1996, which was more than 5 years ago.

Despite the fact that the report documents widespread defects in state permitting practices that directly affect the safety of and data on hazardous materials move-

ments by motor vehicle, two notices reviewing the report have been issued to date, in 1996 and in 1998, without any indication of agency willingness to institute the uniform permitting system directed by law 11 years ago. No further action has been taken by the FMCSA to date. It is clear from an examination of the report that there is no reliable national database of information about the number of hazardous materials shipments, the quantity of what is transported, its nature, or its exact origins and destinations. State permitting practices do not currently keep complete, long-term records accurately indicating these and other facets of hazardous materials transportation. The national uniform permitting system is long overdue for implementation by DOT. Congress should consider the need to place more stringent data collection and retrieval requirements on intrastate-only highway transport of hazardous materials, especially any continuing exemptions for certain quantities of specific materials.

Data Systems Identifying Motor Carriers and Drivers at Both the State and Federal Levels are Unreliable and Incomplete

Congress has recognized in both TEA–21 and in the Motor Carrier Management Information System (MCMIS) that motor carrier data systems are incomplete and inadequately linked among states, and between the states and the federal government. Timely, accurate information on motor carriers, including inspection results, Out of Service Orders, carrier and driver violations either do not exist in many cases or cannot be retrieved quickly by one state from another state.

Congress may want to consider accelerating the program of data collection and analysis improvements that it called for in Section 225 of the MCMIS. The advent of a central data repository with rapid access by both safety oversight and security authorities is crucial to protecting the welfare of the American people. Currently, the legislation calls for primary responsibility in setting up the state system of data collection and reporting, and communication of those data to the federal government, to be vested in the National Highway Traffic Safety Administration (NHTSA). Although NHTSA is very knowledgeable about the creation and operations of data systems, current resources at the agency and the amount of funding originally authorized in Section 225 may not enable rapid development and implementation of the data system. The provision presently has no timeline for putting the data system in place. Advocates believes that a deadline is necessary for getting the system up and running, and that $5 million each year is not sufficient for ensuring rapid acceleration and implementation.

Border Commercial Transportation Safety and Security

Advocates and Public Citizen believe that U.S. cross-border motor carrier freight and passenger transportation must be subjected to a far higher level of intense, detailed security oversight to ensure U.S. domestic safety against potential terrorist threats. Implementing enhanced border security oversight simultaneously involves onsite motor carrier fitness evaluation. There is no bright line separating motor carrier security concerns from safety issues.

Motor Carrier Safety Fitness and Driver Checks Proposed in H.R. 2299 Should Apply to Mexico-Domiciled Carriers Only Operating Within the Border Zone

It is crucially important that the pending Murray-Shelby provisions in H.R. 2299, requiring more rigorous motor carrier safety evaluations, be enacted into law as soon as possible. The Murray-Shelby provisions provide for full safety reviews performed on-site for all Mexican carriers applying to operate beyond the border commercial zones, with a required finding of "Satisfactory" before conditional authority is granted and again before granting permanent authority. This avoids the pitfalls of the current FMCSA proposed rules which require only paper applications to determine whether a Mexico-domiciled motor carrier is granted operating authority without any actual on-site safety evaluation.

However, this section as well as others in the bill apply a number of important safety requirements with security implications only to Mexican carriers operating beyond the current commercial zones. Without on-site safety reviews for all Mexico-domiciled carriers, it is impossible for safety and security authorities to determine the legitimacy of the companies applying for commercial zone-only operating authority.

For example, another section of the Murray-Shelby provisions requires electronic verification of every Mexico-domiciled motor carrier driver's license status and validity at border crossing points, but only for carriers operating beyond the border zone. Congress should extend this policy and practice to cover all foreign drivers of all Mexico-domiciled carriers crossing into the U.S. Additionally, much more careful coordination and verification of licensure is needed with the government of Mexico to validate a driver's Licencia Federal de Conductor before a driver attempts to cross

into the U.S. Advocates and Public Citizen are concerned with drivers presenting at border checkpoints fraudulent Mexican licenses that have been forged or exchanged. The U.S. should also work with the Mexican government to adopt for Mexican licenses an unambiguous driver identifier, such as a biometric identifier, to ensure license validity and non-exchangeability. In addition, insurance coverage should be verified at the border.

There are other examples of requirements in the Senate-passed DOT Appropriations bill dealing with motor carrier inspection and driver checks that Congress may want to consider extending to Mexico-domiciled carriers operating only within the border zone. These include the Commercial Vehicle Safety Alliance (CVSA) decal, the requirement for a distinctive registration number of Mexican motor carriers, and the U.S. insurance requirement. Right now, these provisions apply only to those Mexico-domiciled carriers that will operate outside the border zone.

Congress Should Consider Directing the FMCSA to Rescind Operating Authority of Foreign Motor Carriers that Have Serious Safety Violations

Congress should also strengthen the Murray-Shelby provisions to require that certain specified, serious violations involving dangerous or illegal operations by a foreign motor carrier will result in a lifetime exclusion from grants of U.S. operating authority. For example, transporting undeclared, highly toxic, radioactive, or explosive hazardous materials, using drivers with no valid Mexican driver licenses, or transporting hazardous materials or passengers without insurance could be regarded as violations so serious as to bar a company for life from operating in the U.S. A difficulty with enforcing such a prohibition, of course, is that a company may dissolve but re-incorporate with essentially the same managers, practices, and drivers as before and begin to engage in the same abuses that triggered the original ban on its operating authority.

These recommendations are the minimum steps necessary to gain uniformity in coverage of Mexico-domiciled motor carriers. They will ensure improved data gathering and verification procedures for both enhanced safety and security of Mexico-domiciled motor carriers. Furthermore, measures such as those addressing driver license validation and unique driver identifiers, may also be necessary to implement at our northern border with Canada.

Foreign Motor Carrier Transportation of Hazardous Materials is Poorly Enforced and Oversight By Federal Authorities Must Be Strengthened

Let me know turn to a pressing issue of public safety and security that Congress may need to evaluate in depth. Strengthened safety and security measures are especially imperative in the area of hazardous materials transportation across both our northern and southern borders. Unfortunately, we have systemic weaknesses in our oversight and control of hazardous materials movements across our borders.

It has been well-documented for many years that Mexico-domiciled motor carriers chronically fail to adhere to U.S. hazardous materials transportation regulations with regard to proper containerization, shipping papers accurately portraying the materials being hauled, and correct display of required placards. Also, Mexico-domiciled carriers repeatedly attempt to transport hazardous materials that cannot be brought into the U.S. by truck or cannot be legally disposed of here. According to information from the Commercial Vehicle Safety Alliance, the FMCSA, and the U.S. General Accounting Office, past inspections at the U.S. southern border have shown that the overwhelming majority of Mexico-domiciled carriers are not complying with Environmental Protection Agency, RSPA, and FMCSA requirements for transportation of approved hazardous materials in the border zone. Also, any hazardous materials carriers which appear to have proper shipping papers and placards are often waved through border check points without inspectors actually verifying that the materials on board match shipping papers or external placards, or that there is not other, illegal hazardous materials or contraband being transported.

This is especially worrisome because the proposed FMCSA paper certifications do not require Mexico-domiciled motor carriers to demonstrate that they are knowledgeable about, and actually able to comply with, U.S. hazardous materials regulations. At no point in the proposed application process does a Mexico-domiciled carrier have to attest that it intends to carry hazardous materials. If, subsequent to a grant of temporary operating authority, a carrier decides to transport hazardous materials, nothing compels the carrier to reveal that fact right away.

Moreover, the application process has no requirement that the carrier, if subsequent to a grant of operating authority begins to carry hazardous materials, immediately notify the FMCSA to demonstrate its knowledge of the considerably more demanding requirements for doing so. This is a major safety and security shortcoming in the application process. Advocates and Public Citizen also point out that

if a foreign motor carrier registers with the RSPA to carry hazardous materials, as is currently required, the form is used only for the purpose of collecting federal hazardous materials transportation fees - it does not ask for any demonstration by a carrier that it is knowledgeable about the requirements for, or is proficient in, the safe transport by highway of hazardous materials. In addition, this registration with the RSPA is not sent to the FMCSA.

This means that the FMCSA can become aware of a carrier's decision to carry hazardous materials only when: (1) the foreign carrier has one or more of its trucks undergo inspections; (2) the carrier undergoes a later safety compliance review which, for new entrants, can be up to 18 months following an initial award of operating authority; or, (3) the foreign carrier files an updated MCS–150 carrier census form every two years, a requirement only recently adopted by the FMCSA.

As for the last mentioned action, acknowledging hazardous materials transportation on a census form only flags the agency of the bare-bones fact that the carrier now transports hazardous materials. The acknowledgement does nothing more than simply note a change in services. Even then, there is no requirement directing the foreign carrier separately to demonstrate its proficiency in and knowledge of the safety requirements for transporting hazardous materials. It is therefore crucial that at the initial point of contact with a Mexico-domiciled motor carrier applying for U.S. operating authority (i.e., the preliminary on-site safety evaluation called for in the Murray-Shelby provisions in H.R. 2299), each applicant carrier attest to its intention to carry hazardous materials and demonstrate its proficiency in understanding and applying U.S. laws and regulations packaging and transporting hazardous materials. In addition, any motor carrier deciding to transport hazardous materials after an initial award of temporary operating authority or a final award after the 18-month probationary period, must be required to re-apply immediately for a new award of operating authority.

If such a carrier fails to make such an application and is found to be transporting hazardous materials without specific operating authority to do so, its rights to operate in the U.S. should be immediately terminated and it should be penalized. A renewed award of operating authority should be contingent upon satisfactory testing of a carrier's proficiency in safely transporting hazardous materials and a full inspection of its facilities, equipment, drivers, and management practices for transporting legal hazardous materials in the U.S. These requirements should be made part of the completed rulemaking by the Federal Highway Administration to implement the hazardous materials federal safety permit system originally directed by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990.

I would like to emphasize again that many of these considerations for improved safety and security should be scrutinized for application to Canadian motor carriers as well.

Mexico and Canada Must Share Inspection and Security Oversight Responsibilities

It is clear that most of the security oversight apparatus that needs to be implemented at our borders, including personnel, procedures, and facilities, naturally interface with motor carrier safety oversight actions. Both facilities and personnel can share certain surveillance and safety oversight responsibilities that often will simultaneously provide both security risk appraisal and safety evaluation of motor carrier cross-border traffic. This points up the unarguable need for the rapid construction and operation of fixed inspection stations at every U.S. border crossing point both in Mexico and in Canada as well in order to conduct full (Level 1) inspections and detailed security checks. Also, it is obvious that the criticisms of both the U.S. Department of Transportation Office of the Inspector General and the U.S. General Accounting Office about the lack of motor carrier inspectors being on-duty at most border crossing points during all hours of open border point operation have to be met with quick action to ensure that no truck or bus comes across our border without being inspected both by Customs officials and motor carrier safety inspectors.

I also would like to emphasize here in closing that the task of simultaneously improving both safety and security at our borders and inside the U.S. cannot be a unilateral task undertaken only by the U.S. Foreign governments sharing borders with the U.S. need to dramatically strengthen their systems of validating the motor carriers and commercial drivers incorporated and licensed in Canada and Mexico both to guarantee their safety fitness and to ensure that freight and drivers that are found to be security risks are not granted permission to conduct motor carrier operations. To date, the government of Mexico, in particular, has chronically failed to hold up its end of the bargain in establishing its own demanding safety approval regime to ensure that only safe commercial vehicles and drivers reach our southern border asking for entry into the U.S.

The Dangers of Nuclear Waste Transportation Must be Addressed

On September 12, Energy Secretary Abraham suspended Department of Energy nuclear shipments, acknowledging that radiological shipments are potential terrorist targets.

If the proposal for a geologic repository at Yucca Mountain, Nevada moves forward, a large number of commercial nuclear waste shipments will take place over a period of approximately 30 years, constituting the largest nuclear waste transportation project in history. The shipments would number between 30,000 and 100,000, depending on if the mode of transportation is road or rail.[1] Because a rail line to the site does not exist and the cost of building it would be approximately 1 billion dollars, it is likely that the casks will travel by highway, necessitating the larger number of shipments. Although the Department of Energy (DOE) has not released the exact transportation routes, studies by the State of Nevada and the DOE disclose that 43 states would be directly impacted.

A report by DOE showed that 109 communities with populations over 100,000 would be affected by shipments, increasing the threat of a terrorist attack in an urban setting.[2] Also, as part of the 1986 Environmental Assessment for the Yucca Mountain repository site, the DOE conducted a study that found that a severe accident in a rural area involving a high-speed impact would be devastating. They calculate that it would be difficult to fight fire involving fuel oxidation that would contaminate a 42-square-mile area, require 462 days to clean up and cost $620 million

In reality, because the transportation casks have never had full-scale testing, no one knows the true consequences of an accident or attack. The Nuclear Regulatory Commission (NRC) sponsored a study in 1987 by the Lawrence Livermore National Laboratories. This study, commonly referred to as the "Modal Study," used computer modeling to predict cask responses to accident conditions. The study was inadequate and the conditions that were used in the computer analysis did not represent real-life scenarios.[3]

The NRC is planning to update the 1987 spent fuel transportation study. This study should fully explore the risk associated with different types of potential attacks, including high-impact accidents involving various types of fuel. As the state of Nevada told the NRC in 1998, "It is imperative that the Commission factor into its regulations the changing nature of threats posed by domestic terrorists, the increased availability of advanced weaponry and the greater vulnerability of larger shipping casks traveling across the country."

In March 2000, the NRC released a study prepared by Sandia National Laboratory, "Reexamination of Spent Fuel Shipment Risk Estimates," that updates the baseline 1977 study on radioactive material transports. The report is very optimistic about the risk for nuclear accidents and says that the older study overstates the potential risk. However, the new report does not even discuss risks associated with some type of terrorist attack on a nuclear shipment and it underestimates accident probability and consequences. Sandia also prepared this report without permitting stakeholder comments on the draft.

In short, to assure the safety and security of the public, Congress should instruct the DOE and the NRC to take account of all potential risks and their full consequences in evaluating and regulating the transport of nuclear waste.

The Impact on Firefighters and Police of Motor Carrier Safety and Security Deficiencies

Finally, Mr. Chairman, we want to say a word about the firefighters and police who must deal with safety and security problems. The world now knows the enormous sacrifice these brave individuals make when disasters occur because of their incredibly brave response in New York and the terrible deaths and injuries they suffered. What the public may not know is that this kind of personal sacrifice occurs every day all over the United States in large communities and small. But the cost and burden on our state and local officials to respond to emergencies involving individuals intent on causing harm or with access to hazardous materials must be considered as the Congress and the Department of Transportation makes decisions about what precautions to require in granting operating authority in the United

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[1] "Risky Transit—The Federal Government's Risky and Unnecessary Plan to Ship Spent Nuclear Fuel and Highly Radioactive Waste on the Nation's Highways and Railroads," A report by the Nevada Agency for Nuclear Projects found at *http://www.state.nv.us/nucwaste/news2001/nn11313.pdf* (10–05–01).

[2] "Nevada Potential Repository Preliminary Transportation Strategy Study 2," TRW Environmental Safety Systems, Inc (DOE's management and operations contractor for Yucca Mountain project), February 1996.

[3] "Shipping Container Response to Severe Highway and Railway Accident Conditions," prepared by Lawrence Livermore Laboratory in 1987.

States and at the border, in driver licensing, in hazardous materials permitting, and in the imposition of penalties to deter future misbehavior. Often times these individuals, many of whom are volunteers, do not receive adequate training to cope with these sorts of emergencies. Moreover, many of the departments are understaffed and lack adequate equipment for coping with an accident involving hazardous materials. Finally, they are put at greater peril when the vehicles they are dealing with have not been properly placarded. If we take precautions to prevent the problems we are discussing today, our fire fighters and police will be exposed to far less personal and unnecessary risk, as of course will the public. Often when these risks occur one by one across the country and not in one massive tragedy, they escape public and press attention and, unfortunately, government willingness to be the federal cop on the regulatory beat, fully enforcing the law. As you consider your responsibilities in preventing future tragedies, be they large disasters or affecting a small number of people each day, we urge you to remember that 5,300 Americans are killed each year by large trucks on our highways, and that without strong safety and security measures that we know should be adopted, we are inviting terrorists and short-sighted individuals to wreck harm on innocent people.

That completes my testimony. I am prepared to respond to any questions that you or other Members of the Subcommittee may have.

Senator BREAUX. Thank you, Ms. Claybrook, and thank all members of the panel for being with the Committee this morning, and your testimony. I think, Ms. Claybrook, in following up on your concerns about the Department of Transportation and the Motor Carrier Safety Administration, I also hope they got the message that this Committee was telling them that their actions are totally unacceptable.

Administrator Clapp has just been there since Thursday, but he has a terrific job on his hands to get these things moving. What we have now is totally unacceptable. In fact, I think with regard to the patch quilt type of operation we have among the States, that there ought to be some federal standards in issuance of these commercial driver's licenses. Apparently, from Mr. Sullivan's testimony and others, there is a huge amount of flexibility among the various states as to how they set their requirements for the right to have a commercial driver's license in the state.

Can I have your thoughts, and I almost hate to say we ought to have another federal requirement, because we have yet to implement the ones we passed 2 years ago so adding more, if they do not implement them, I do not know what the heck we are going to do. Perhaps we ought to consider the requirement that there be background checks, criminal background checks on people who drive on the interstate highways, particularly when you are driving a hazmat truck loaded with something that is potentially very dangerous.

We could have all the safety requirements we want, but behind all safety is a driver. A truck can be as safe as we can possibly make it, and Mr. Sheridan can provide all the scientific information about what is in the cargo, but ultimately it goes back to the driver, his qualifications, his ability, his training or her training in all of these instances to determine whether that is a safe means of transportation. He or she is the captain of the truck, the captain of the ship, just like the captain of a plane or the captain of a ship transporting passengers.

So the question is, and I did not realize this, but apparently there is not a federal requirement for a criminal background check. Is there a federal requirement on drug-testing, could I have some comments on this, Mr. Pantuso?

That classic case in New Orleans—and I keep going back to it. I do not want to, but it is the obvious—this person should not have been driving a bus. If they had had a criminal background check, a medical check, a drug check, he would not have been there, and maybe 22 people would not have lost their lives. What is wrong with having a federal requirement that these things be done before someone gets a commercial driver's license?

Mr. PANTUSO. Absolutely nothing, Mr. Chairman. It is something we would support. We supported it in our testimony, and you heard others here support it, especially in view of the New Orleans accident. There is also an issue of collecting data and collecting information on the driver. There may not be a criminal problem. It may be something that has blemished the driving record, and that blemish should follow the driver and follow his CDL wherever he or she goes.

Senator BREAUX. Staff is telling me there is, in fact, a regulation in place, in effect for drug-testing for drivers now. Mr. Acklie.

Mr. ACKLIE. Yes, Mr. Chairman, there is.

Senator BREAUX. Does everyone have to follow it regardless of what state they are in?

Mr. ACKLIE. At the time they get the CDL, of course, they have to have, and at the time of employment they have to have, and there is random tests also that are administered, so they try to catch it.

Apparently what happened in the case that you referred to is that person probably had the check and did not get caught on a random check, so it probably goes to retesting.

Mr. PANTUSO. Again, Mr. Chairman, it goes to the issue sharing information among juridictions and agencies. It goes to the liability concerns the carriers have in sharing with one another. In the situation of the driver in New Orleans, he did fail a drug test with another company that he was not working for but applied to work for, and that information was never passed on to Custom Coach, the company that ultimately had the accident, so there is a gap in the information-sharing that needs to be plugged.

Ms. CLAYBROOK. One of the things the Congress gave this agency was the responsibility of doing this, but also gave the employers liability protection so that they could communicate information about past records. Without liability protection, employers do not do this. I think it is a two-sided issue here. In addition to the drivers, of course, it is the companies. The companies have an enormous responsibility here to make sure that they keep track of the drivers, and that the drivers are safe, and the records of the drivers.

Senator BREAUX. Mr. Acklie, on that point Ms. Claybrook is making, suppose someone comes to your company and applies for employment. You ask him if he is a terrorist and he checks the box that says no, you than ask him if he is a criminal and he checks the box that says no. Is there any way, or requirement, that your company can get information that he has a previous history of perhaps being fired from other trucking companies, or has been in trouble? How do you check?

I mean, it is easy to check the box no, I am not a bad guy, but then again no one is going to admit that he is any of these things.

How would an employer looking at an individual to be hired know that this individual does not have a history, in fact, of drug abuse and/or criminal record, or had been fired three or four times from a previous employer?

Mr. ACKLIE. Mr. Chairman, that is really a good question. It really comes to the crux of a lot of what needs to be done. First of all, there really is a very difficult time to do that, because we can do the local checks and so forth, but as I said, we cannot access the federal database, even though if we ran a home for children, and so forth like that, you can check the database of employees, and the bank employees and so forth. We cannot access.

What we do is, we check DAC, which is a commercial service that tries to check for us, and you also have the employers, sir, who, basically the information we can get from another employer is eligible for rehire or not eligible for rehire. Basically, everybody is scared to give somebody else—because they are afraid to be sued, and so basically if you come to our company, what you are going to get is, you are going to get if we have discharged somebody for—let us say, if they were on the random violation, and we found they were using drugs, we will say not eligible for rehire, but it is such a thing that we are all scared. We do need that legislation. We do need to be able to access that criminal database, and what you said is exactly right.

Senator BREAUX. Mr. Gleason, give me some thoughts from the Teamsters. The driver is a real key in all of this, knowing he is a good, competent, trained driver that has not had a history of criminal record, and of course obviously, in trying to find all of this information, you also have individual rights that need to be protected, but also the public has a right to be protected and a right to expect that people who are handling hazardous cargo or large trucks, buses, or airplanes, or ships or anything else, are people that are qualified, trustworthy to do so. What are the Teamsters thoughts on this?

Mr. GLEASON. For initial background checks we find most of our carriers do perform background checks. They are pretty extensive. I think they continue to perform those background checks.

Senator BREAUX. Pull that mike just a little bit closer.

Mr. GLEASON. They continue to perform those background checks once an employee is hired and serve a probationary period.

What we do find that is a problem is a lot of the carries that they hire owner-drivers that are not their employees, and are not insured through the carrier, which there are not necessarily any background checks performed.

Senator BREAUX. I saw that point in your testimony, and observed what you were saying about the owner-operator situation. Would the Teamsters support or not support, or do you know right now, what Mr. Acklie is suggesting? When a bank hires individuals, or a children's home hires individuals, that they are able to get information from all of their previous employers about their history to help them in determining whether they are a suitable employee for them. Is your inclination to support that type of ability to get that information or not?

Mr. GLEASON. I think there needs to be serious discussion with respect to how the background checks would be performed, what

criteria would be used. There is concern with respect to what kind of criminal information would this qualified driver, who would have access to the information, how the employer or potential employer could use that information.

For example, if you have got a driver, let us say you are talking about doing background checks and a driver has been employed for 10 or 15 years with a carrier, that carrier goes out of business, he is reemployed some place else, the guy has an impeccable driving record, and somebody looks at a criminal background check, maybe 20, 25 years previously he had had a conviction for shoplifting, how is that type of background information going to be used against this employee, so we would have a concern with what criteria we would use in developing a background check.

Senator BREAUX. It seems to me there is a potential for people who are getting commercial driver's licenses, it would seem that employers of individuals in the transportation industry that have had to dismiss an employee, for instance, for a violation of a DWI or something associated directly with the job, that the capacity to put that information into a national system should exist. So when someone else looks to hire that person, they can type in John Breaux's name, and a history of his previous employment. If I were to be fired because of one of these things, at least it would come up on the Internet, and I would say, look, that is a red flag. I am going to find out about this person a little bit further.

If he was a truck driver and was fired because of a DWI, is this the type of person I want to hire? I mean, I am not sure that is possible, to get that kind of information, but it seems that today, in the day of computers, that it would be helpful.

Mr. GLEASON. With respect to drivers that are discharged because of positive test results for either drug or alcohol use on the job, or off the job, if they are convicted and ultimately lose their job, when the CDL licensing requirements were adopted several years ago they were supposed to, and in fact they do, once you have tested positive, your CDL privileges are supposed to be suspended, and prior to being reemployed, somewhere else, the federal agency is supposed to be in control of when you get your driving privileges back.

Quite frankly, that enforcement portion of the law has not been effective. They just have not policed it the way they need to police it.

Senator BREAUX. Ms. Claybrook, you had a comment.

Ms. CLAYBROOK. I was just going to say that you have directed the Motor Carrier Safety Administration and its predecessor agency, to develop a unique identifier for drivers, like a fingerprint, so that there could not be confusion over finding the records of drivers. The data systems that you have directed be improved have not been improved.

There is another directive that has not been carried out; to check the noncommercial driving records. That is, if you are caught for DWI in your car and you have a commercial driver's license, that you can check against that, so there are a number of directives you have already given the agency to undertake this.

I would also like to say that there needs to be better coordination between the Motor Carrier Safety Administration and RSPA, be-

cause the only way that the Motor Carrier Safety Administration can become aware of a carrier's decision to carry hazardous materials is if they undergo an inspection, or the carrier has a later compliance review, but in fact, if a carrier never says they are going to carry hazardous materials and then changes its mind, it then notifies RSPA, who never notifies the Federal Motor Carrier Safety Administration, so there are lots of communications and data issues and record issues that have been inadequately carried out by this agency that I think would solve a lot of the problems that you have.

There is another requirement in TEA–21 of 1998 to create a motor carrier safety information system, which they have done, but it is totally inadequate at this time.

Senator BREAUX. Well, you heard the first panel. I was asking Mr. Clapp, I have got 2½ pages of things that Congress required that have not been done. Some of these things we required them to do the last time I think address some of the concerns we have today.

Ms. CLAYBROOK. Exactly right, and even though they were not designed purely for security, when you improve safety, you improve security. They are totally intermixed, so these requirements, if they were carried out, we would have a far safer transportation system.

Senator BREAUX. Mr. Acklie, Ms. Claybrook in her testimony says that under existing regulations a terrorist organization could set up a new trucking company in the U.S., or in Mexico, and obtain operating authority in the United States for a year and a half period, without any federal or state safety review or security check, simply by paying a fee. Is that possible?

Mr. ACKLIE. What I think she was referring to is, before they are analyzed for the safety of that organization, but keep in mind you do not even have to apply. In the Oklahoma situation, if you remember, the people just went and rented a truck and they drove it, and that is all there was to it, so we not only have, Mr. Chairman, the situation where there is some time lapse now—it can be as long as 18 months.

I think the Federal Highway Administration—excuse me, the Federal Motor Carrier Safety Administration attempts to do is to get somebody out there immediately, but the statute I think gives them, or the regulations give them 18 months to do it, but they attempt to get on a new carrier. They get out there almost immediately, sir.

Senator BREAUX. What were you referring to, Ms. Claybrook?

Ms. CLAYBROOK. I was referring to the fact that you could, before there is any safety evaluation of a company, an on-site inspection or anything else, a company could apply for and get the authority to enter in the trucking business, up to 18 months and sometimes longer. If they are not inspected on a timely basis, which often is the case, you can operate without any safety review by the Federal Government, and you can carry hazardous materials, so I think that this is a situation which needs to be corrected.

In the testimony that we gave on the Mexican trucks, we urged that there be on-site safety reviews in Mexico before you get the first authority to operate in the United States. We believe the same should apply to companies in the United States, and for the Mexi-

can companies, that is in the Murray-Shelby bill. It requires that. I think that should be required as well for U.S. companies.

I would say one other thing, Mr. Chairman, and that is that in the creation of the Federal Motor Carrier Safety Administration legislation of 1999, you put in a requirement for certified motor carrier safety auditors to help expand the capacity of the Federal Motor Carrier Safety Administration, and we were very concerned about this, because we were concerned about third parties doing the Federal Government's job, but in view of the lax enforcement and the long time that it has taken, we believe that that section should be fully implemented. It is one of the other rulemakings that has not yet been completed by the agency.

Senator BREAUX. Mr. Sheridan, I am really interested in the things you have talked about from the science standpoint, and I am sure there are other companies that do similar things, and I am sure you think you do them the best, but thank you for being with us.

Basically, the technology can allow us to take a look, particularly at containers, and determine whether there are explosives in containers. I mean, I have always been fascinated in a sense by how difficult it is, when you have a large ship coming into the Port of New Orleans or the Port of Long Beach, or any of our major ports, which literally has maybe a couple of thousand containers on it, I mean, there is almost no way for us with any degree of certainty to know what is in each one of those containers without opening them up and doing a physical inspection, and I take it that science is moving in the direction of allowing us to have a better degree of security about what is in containers, either on trucks or on ships, that move around our country.

Mr. SHERIDAN. That is correct, Senator. In the case of looking for explosives, we are looking for at least 200 pounds of an ammonium nitrite fuel oil type explosive, because that is the critical mass necessary to have true destructive power as a truck bomb.

Senator BREAUX. And that technology from what I understand can work regardless of the mode of transportation, whether it is a train, whether it is a truck, whether it is a boat, or what-have-you?

Mr. SHERIDAN. That is correct, and there are some other complementary technologies. Ancore is a company that can detect specifically for the presence of certain types of explosives, but it is a nonimaging technology, so it winds up being single-purpose. We can detect both explosives and at the same time look for drugs, or look for weapons.

Senator BREAUX. How would you quantify the extent of the use of this modern, 21st-Century technology with regard to its utilization? It is a hard thing to say 100 percent coverage will be every truck, plane, and ship having this sophisticated detection system in place. I mean, that is not possible. How much of it is being used? Is it just beginning to be used?

Mr. SHERIDAN. It is just beginning to be used today. Her Majesty's Customs has a goal of scanning every truck coming off a ferry. Why? Because they have a problem with both illegal aliens and with cigarette smuggling. Cigarette smuggling is costing them $4 billion a year, and they have something close to 50,000 illegals coming into the country.

Here in the U.S., we are scanning less than 5 percent of the containers coming across the border from Mexico. That is truly insufficient.

Senator BREAUX. How much is it?

Mr. SHERIDAN. Less than 5 percent, and it varies from port of entry to port of entry. For seaports, it is less than 1 percent of all containers are inspected coming into seaports today.

Your question was, it is possible to scan all containers? The answer today is no, but what you can begin to do is create a program where you only scan those where you do not is in the contents. Customs has a program called the BASC program, which is the Business Antismuggling Coalition, where they work with shippers such as Mattel, such as Delco, Sara Lee, where they do the inspection and certify that the contents of the container are as shown on the manifest, and those get expedited clearance so you do not have to focus on those. You only have to focus on the containers where you do not know their origin, or they are suspect.

Countries such as Peru, interestingly enough, are very aware of this problem, and they, before President Fujimori lost his position, they wanted to inspect all containers outgoing and attach an electronic image of what was in the container with the manifest, so when they got to Miami, or they got to Long Beach, they would receive expedited clearance. That is what we are talking about over the long term.

Senator BREAUX. Well, it is a gigantic undertaking, to be able to know what is coming into our ports from around the world.

There is a story today in the London Times of intelligence agencies across the world examining Osama bin Laden's multimillion pound shipping interests. He maintains a secret fleet under various flags of convenience, allowing him to hide his ownership and transport goods, arms, drugs, and recruits with little official scrutiny.

Three years ago, nobody paid much attention to a crew unloading a cargo from a rusty freighter tied up to the dock in Mombasa, Kenya. The freighter was part of Osama's merchant fleet, and the crew was delivering supplies for the team of suicide bombers who weeks later blew up the U.S. embassies in Kenya and Tanzania Osama's shipping interests came open at the trial of the bombers, but until now, security services have been slow to track down even how many vessels he operates.

It really points out the seriousness nature of our port security and shipping security, and you know, your drivers who pick up a container, pick up cargo from a port not knowing where it is coming from, are clearly at risk until we get a better handle on all of this.

Mr. SHERIDAN. Internationally, Senator, Nigeria has just announced it intends to go to 100-percent inspection of sea containers. Why? Because smuggling is so high going into their country, and Saudi Arabia, the Port of Jedda, they inspect 100 percent by hand. They are soon going to be moving to x-ray inspection.

Senator BREAUX. Well, of course, smuggling illegal cigarettes is one thing. Smuggling tons of explosives for terrorist purposes is quite another.

Well, I think this panel has been very good. I appreciate very much your suggestions. I think you and your industry are doing an

excellent job of trying to move towards better drivers, safer drivers, and more inspections.

I think one of the things we have seen is a lack of movement on the part of our own Government just in keeping what we required them to do the last time we addressed these issues, and that certainly has to change, and will change.

So thank you very much for working with the Committee, and this Subcommittee will stand adjourned.

[Whereupon, at 12 noon, the Subcommittee adjourned.]