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## **Motor Carrier Safety: Oversight and Reauthorization Legislation**

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# Motor Carrier Safety: Oversight and Reauthorization Legislation

## Summary

The Federal Motor Carrier Safety Administration (FMCSA) seeks to promote the safety of about 670,000 federally-registered truck and bus companies. During the last three years, FMCSA has focused much of its attention on security concerns associated with hazardous materials (hazmat) transportation, congressional directives to audit the safety practices of new motor carriers seeking permanent operating authority and Mexican-domiciled carriers entering the United States, and the issuance of regulations seeking to improve the commercial drivers license (CDL) program and new hours of service requirements. Congress is considering legislation that would reauthorize various federal surface transportation programs, including funding for the operation of the FMCSA and the various state motor carrier safety and CDL grants that it administers. Key questions being debated are: What level of funding should be authorized to continue these activities? What programmatic or regulatory changes might improve truck and bus safety?

Although about 4,900 people die in roughly 420,000 police-reported crashes each year involving large trucks, various fatality and injury rates involving these vehicles have generally improved slowly but steadily over the long term. Numerous factors contribute to this trend, including investment in safer equipment and drivers, improved regulations and licensing procedures, and the auditing and inspection work of some 10,000 state and local enforcement officers and 1,000 FMCSA employees. FMCSA's goal is to reduce the fatality rate of crashes involving large trucks to 1.65 fatalities per 100 million miles of truck travel by 2008 from the latest measured rate of 2.3. Reaching this goal would require one of largest decreases in this fatality rate ever obtained and would be difficult in view of the improvement in rates already achieved.

The House-passed (H.R. 3550) and the Senate-passed (S. 1072) surface transportation reauthorization bills include similar proposals to enhance motor carrier safety. These bills seek to strengthen the enforcement powers of the FMCSA, authorize a new grant program to improve state CDL efforts, establish a Medical Review Board to provide advice on driver physical standards, and continue funding for various state and federal information systems and communication networks (called CVISN) that support safety and regulation of the industry. The Senate bill seeks to expedite FMCSA's responses to past federal statutes and congressional directives, establish a working group to improve the national CDL program, and freeze current federal length limits of commercial motor vehicles operating on federal-aid highways. Compared to S. 1072, H.R. 3550 authorizes for FY2005-2009 slightly more funds for FMCSA's administrative operations, but less funds for MSCAP grants. H.R. 3550 also authorizes a substantially larger program intended to encourage motorists to share the road safely with commercial drivers and vice versa. Both of these bills would authorize roughly the same amount of funds for various state safety grants and for CVISN. This report will not be updated.

## **Acronyms and Abbreviations**

AAMVA – American Association of Motor Vehicle Administrators  
ATA– American Trucking Associations  
BTS – Bureau of Transportation Statistics  
CDL – Commercial Drivers License  
CMV– Commercial Motor Vehicle  
CRASH – Citizens for Reliable and Safe Highways  
CVISN – Commercial Vehicle Information and Systems Networks  
CDLIS – Commercial Drivers Licensing Information Systems  
CVO – Commercial Vehicle Operations  
CVSA – Commercial Vehicle Safety Alliance  
DOT – Department of Transportation  
FARS – Fatality Analysis Reporting System  
FMCSA – Federal Motor Carrier Safety Administration  
FMCSR – Federal Motor Carrier Safety Regulations  
FTE – full time equivalent  
ITS – Intelligent Transportation Systems  
MCSAP – Motor Carrier Safety Assistance Program  
MCSIA – Motor Carrier Safety Improvement Act of 1999  
MOA – Memorandum of Agreement  
NTSB – National Transportation Safety Board  
PATT – Parents Against Tired Truckers  
PRISM – Performance Registration Information Systems and Management  
TEA21 – Transportation Equity Act for the 21<sup>st</sup> Century

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# Motor Carrier Safety: Oversight and Reauthorization Legislation

The Federal Motor Carrier Safety Administration (FMCSA) is the primary federal agency seeking to promote truck and bus safety. FMCSA's enforcement activities, regulations, and grants continue to receive much attention. Congress is considering legislation that would reauthorize various federal surface transportation programs, including funding for the operation of the FMCSA and its various grant programs. Some of the key questions being debated are: What level of funding should be authorized to continue FMCSA's activities? What programmatic changes might be instituted to improve these activities? And, what regulatory actions might be implemented to further improve commercial vehicle safety? Congress is also continuing to conduct oversight regarding the accomplishments of FMCSA and the challenges it faces.

The purpose of the report is twofold: to provide background information useful in understanding the functions and operations of the FMCSA, and to analyze selected issues that are being considered in the debate over reauthorization of the federal motor carrier safety program. The report considers FMCSA's mission, key activities, selected challenges and concerns, and its current budget. A working knowledge of each of these topics is useful in analyzing the reauthorization issues of future funding and direction for the agency and the grants that it administers.

The report also presents highlights of the current reauthorization debate pertaining to: funding for improvements in the commercial drivers license (CDL) program; possible changes to truck size and weight limits; initiatives to improve FMCSA's medical review and driver qualification program; efforts to reduce FMCSA's regulatory backlog; whether federal support of "Share the Road" activities to reduce passenger vehicle and truck crashes should be continued or increased and how the program might be strengthened; and opportunities to improve data and information systems critical to program implementation. These issues are analyzed because they are the subject of congressional legislation, and are of fundamental importance to the future federal role in commercial vehicle safety. A discussion of various provisions of the key reauthorization bills (H.R. 3550, as passed by the House, and S. 1072, as passed by the Senate), is integrated into this report.

## Truck Safety Statistics

According to the Bureau of Transportation Statistics (BTS) of the U.S. Department of Transportation (DOT), commercial vehicles haul 60% of the nation's domestic freight as measured by weight and 62% as measured by value. The industry's contribution to the gross domestic product is estimated at more than \$240

billion annually.<sup>1</sup> Given the importance of this industry to the economy, and given that trucks are over represented in fatal crashes, it is not surprising that there is a sustained interest in continuing to improve the safety record of these vehicles and their operators. Also, there continues to be interest in further improving the safety record of the commercial bus industry.

In the United States, roughly 4,900 people die and 130,000 are injured each year in some 420,000 police-reported crashes involving large trucks (gross vehicle weight rating greater than 10,000 pounds). About 11% of the people killed in U.S. motor vehicle incidents each year are involved in crashes with large trucks. Of these fatalities, about 14% typically are occupants of a large truck, 79% are occupants of another vehicle, and the remainder are mostly pedestrians.<sup>2</sup> Operating a commercial truck is the fourth most dangerous occupation in the United States—roughly 800 commercial drivers die each year in traffic crashes out of several million that are actively operating each year, according to Bureau of Labor Statistics data.<sup>3</sup> FMCSA claims to have jurisdiction over six million commercial drivers, but the exact number of active drivers is unknown.

Nevertheless, the historical trend of various normalized safety rates of key fatality statistics involving large trucks has been gradually improving, (see **Table 1**). These measures include the number of fatal crashes per 100 million miles traveled (total number of fatal crashes involving large trucks per 100 million of large truck vehicle miles traveled), vehicle involvement rate per 100 million miles traveled (number of large trucks involved in fatal crashes per 100 million large truck vehicle miles traveled), and the total fatality rate per 100 million miles traveled (total number of fatalities involved in large truck crashes per 100 million large truck vehicle miles traveled).

There has also been a general decline in various large truck-involved injury rates (e.g., total injury rate per 100 million miles traveled).<sup>4</sup> Large trucks also have a lower crash rate than other vehicles, and the percentage (roughly 2%) of truck drivers involved in fatal crashes who were estimated to be intoxicated is much less than the percentage (22%) of passenger drivers involved in fatal crashes who were estimated to be intoxicated.<sup>5</sup>

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<sup>1</sup> FMCSA News Release, August 21, 2003.  
[<http://www.fmcsa.dot.gov/contactus/press/2003/082103.asp>]

<sup>2</sup> National Highway Traffic Safety Administration. Traffic Safety Facts 2002–Large Trucks. p. 2.

<sup>3</sup> U.S. Department of Transportation. FMCSA. Budget Estimates Fiscal Year 2005. p. 10. The number of commercial drivers that are actively operating is unknown.

<sup>4</sup> National Highway Traffic Safety Administration. Traffic Safety Facts 2002–Large Trucks. p. 1.

<sup>5</sup> American Trucking Associations. Important Statistics on the Trucking Industry. Jan 31, 2003. p. 3, and National Highway Traffic Safety Administration. Traffic Safety Facts 2002 – Large Trucks. p. 3.

**Table 1. Large Truck<sup>a</sup> Fatal Crash Statistics, 1975 - 2002**

Year	Fatal Crashes	Vehicles Involved	Occupant Fatalities	Total Fatalities	Vehicle Miles of Travel <sup>b</sup>	Fatal Crash Rate <sup>c</sup>	Vehicle Involvement Rate <sup>c</sup>	Total Fatality Rate <sup>c</sup>	Registered Vehicles
1975	3,722	3,977	961	4,483	81,330	4.6	4.9	5.5	5,362,369
1976	4,184	4,435	1,132	5,008	86,070	4.9	5.2	5.8	5,575,185
1977	4,843	5,164	1,287	5,723	95,021	5.1	5.4	6	5,689,903
1978	5,405	5,759	1,395	6,356	105,739	5.1	5.4	6	5,859,807
1979	5,684	6,084	1,432	6,702	109,004	5.2	5.6	6.1	5,891,571
1980	5,042	5,379	1,262	5,971	108,491	4.6	5	5.5	5,790,653
1981	4,928	5,230	1,133	5,806	108,702	4.5	4.8	5.3	5,716,278
1982	4,396	4,646	944	5,229	111,423	3.9	4.2	4.7	5,590,415
1983	4,615	4,877	982	5,491	116,132	4	4.2	4.7	5,508,392
1984	4,831	5,124	1,074	5,640	121,796	4	4.2	4.6	5,401,075
1985	4,841	5,153	977	5,734	123,504	3.9	4.2	4.6	5,996,337
1986	4,785	5,097	926	5,579	126,675	3.8	4	4.4	5,720,880
1987	4,813	5,108	852	5,598	133,517	3.6	3.8	4.2	5,718,266
1988	4,885	5,241	911	5,679	137,985	3.5	3.8	4.1	6,136,884
1989	4,674	4,984	858	5,490	142,749	3.3	3.5	3.8	6,226,482
1990	4,518	4,776	705	5,272	146,242	3.1	3.3	3.6	6,195,876
1991	4,097	4,347	661	4,821	149,543	2.7	2.9	3.2	6,172,146
1992	3,825	4,035	585	4,462	153,384	2.5	2.6	2.9	6,045,205
1993	4,101	4,328	605	4,856	159,888	2.6	2.7	3	6,088,155
1994	4,373	4,644	670	5,144	170,216	2.6	2.7	3	6,587,885
1995	4,194	4,472	648	4,918	178,156	2.4	2.5	2.8	6,719,421
1996	4,413	4,755	621	5,142	182,971	2.4	2.6	2.8	7,012,615
1997	4,614	4,917	723	5,398	191,477	2.4	2.6	2.8	7,083,326
1998	4,579	4,955	742	5,395	196,380	2.3	2.5	2.7	7,732,270
1999	4,560	4,920	759	5,380	202,688	2.2	2.4	2.7	7,791,426
2000	4,573	4,995	754	5,282	205,520	2.2	2.4	2.6	8,022,649
2001	4,451	4,823	708	5,111	207,686	2.1	2.3	2.5	7,857,674
2002	4,183	4,542	684	4,897	214,530	1.9	2.1	2.3	7,927,280

**Sources:** Federal Motor Carrier Safety Administration, using Federal Highway Administration and National Highway Traffic Safety Administration data

<sup>a</sup> A large truck is a truck with a gross vehicle weight rating of 10,001 pounds or more.

<sup>b</sup> Millions.

<sup>c</sup> Per 100 Million Vehicle Miles Traveled.

Many factors have been cited as contributing towards the improvement in the overall safety of the motor carrier industry: substantial financial investments and commitments to safety from many in industry, an increased number of vehicle and driver inspections and traffic enforcement efforts by state commercial motor vehicle inspectors and other safety officers, thousands of compliance reviews conducted on many carriers that FMCSA judged to be in need of additional attention, improved information systems to prioritize auditing and inspections, use of the disqualification provisions of the CDL program (discussed below), and continued drug and alcohol testing.<sup>6</sup>

Based on the historical rate of progress in improving highway safety, and the anticipated level of federal safety resources likely to be available during the next few years, FMCSA faces a substantial challenge in meeting its overall safety goal—to reduce the fatality rate of crashes involving large trucks from the latest measured rate of 2.3 fatalities to 1.65 fatalities per 100 million miles of truck travel by 2008. As shown in **Table 1**, improvements in normalized safety performance measures historically occur gradually over many years. In the motor-carrier safety arena, improvements in safety rates, as measured by fatalities per 100-million miles of truck travel, are incremental in nature, and have averaged about 3% per year since 1996, the base year DOT uses in calculating safety improvements.<sup>7</sup> Quantum improvements in such a short time (e.g., the 29% improvement that would be needed to reach DOT's 1.65 fatality-rate goal by 2008 would require about a 4.8% decrease each year, a rate of improvement that has not been sustained over time (since 1975), and one that would be difficult to reasonably expect based on historical rates of improvements and the progress in safety made in recent years.

Nevertheless, as discussed throughout this report, there remain many opportunities to further reduce death and injury associated with crashes involving commercial motor vehicles. There are costs associated with each of these opportunities.

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<sup>6</sup> FMCSA is required to conduct an investigation (compliance review) of carriers for which specified complaints have been filled.

<sup>7</sup> As stated by the FMCSA Administrator before the National Truck Driving Championships and North America Inspectors' Championship Awards Banquet, Columbus, Ohio, August 23, 2003, "The FMCSA is committed to achieving the U.S. Department of Transportation's highway safety goal – reducing the fatality rate in all motor vehicle crashes by 41 percent from 1996 to 2008. As part of the overall departmental safety goal, FMCSA's goal is to reduce commercial vehicle crash fatalities to 1.65 fatalities per 100 million miles of truck travel."



## FMCSA's Mission, Budget and Concerns

### Overview of the FMCSA

FMCSA was established by the Motor Carrier Safety Improvement Act of 1999 (MCSIA), P.L. 106-159.<sup>8</sup> This agency became operational on January 1, 2000, and assumed almost all of the responsibilities and personnel of DOT's Office of Motor Carrier Safety.<sup>9</sup> FMCSA issues and enforces the Federal Motor Carrier Safety Regulations (FMCSR), which govern many aspects of specified commercial trucking and bus operations, including the interstate operation and maintenance of commercial vehicles, and which specify requirements that must be met by drivers of these vehicles.<sup>10</sup> FMCSA also conducts compliance reviews of truck and bus companies and safety assurance audits of new entrants into the industry. FMCSA participates with the states in a partnership that annually results in roughly 3- million truck and bus inspections, 7,000 to 13,000 compliance reviews, (i.e., detailed audits of carriers, the results of which sometimes lead to enforcement action), and more than 19,000 new-entrant safety audits, (i.e., reviews of the safety management systems and initial operating performance of new motor carriers (see **Appendix A**).<sup>11</sup>

FMCSA's workload, current priorities, regulatory agenda, and authorities are influenced substantially by MCSIA, as well as other laws (see below), and executive branch directives. As specified by MCSIA, FMCSA is to consider the assignment and maintenance of safety as its highest priority. Consistent with MCSIA, a regulatory ombudsman to expedite rulemakings relevant to commercial motor vehicle safety has been named. FMCSA's Administrator is required to submit to Congress a long-term strategy that must include a schedule and annual plan for achieving specific safety goals enumerated by MCSIA.<sup>12</sup> FMCSA's performance plan is submitted to Congress as part of the annual budget process.

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<sup>8</sup> During various hearings held during the first session of the 106<sup>th</sup> Congress, a number of organizations, including DOT's Inspector General, the General Accounting Office, and many industry associations raised a variety of concerns regarding the effectiveness of the federal truck and bus safety program. In response to these concerns, Congress created the FMCSA.

<sup>9</sup> DOT's Office of Motor Carrier Safety, which operated from October 9 through December 31, 1999, replaced the Office of Motor Carriers of the Federal Highway Administration of the DOT.

<sup>10</sup> Regulated entities should not rely on the information and specifications contained in this report, but should instead consult official and applicable regulatory documents and requirements.

<sup>11</sup> The number of new entrant safety audits is likely to increase as FY2004 appropriations are obligated and as state officials are trained and hired to conduct these audits. See **Appendix A**.

<sup>12</sup> The areas pertain to crash statistics, enforcement and compliance programs, research, and enforcement. The law assigns the responsibility for submitting the plan to the DOT Secretary.

FMCSA's programs also are substantially influenced by the funding levels and authorities specified in MCSIA and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA21). In those acts, the Secretary of Transportation is authorized funds to conduct, oversee, or help implement various initiatives promoting commercial motor vehicle (CMV) safety. Those initiatives include the Motor Carrier Safety Assistance Program (MCSAP—which provides grants to states to help them enforce commercial motor carrier safety regulations and hazardous materials transportation regulations), the Performance and Registration Information Systems Management (PRISM – a grant program that seeks to provide state licensing agencies the ability to condition the granting of commercial vehicle registration to safety performance), various CMV information systems and data analysis activities, and the Commercial Vehicle Operations (CVO) component of the national Intelligent Transportation Systems (ITS) Program.<sup>13</sup> The responsibility for conducting these activities has been delegated primarily to the Administrator of the FMCSA.

FMCSA's regulations and enforcement activities substantially influence the activities of the motor carrier industry; and FMCSA's grants, policies, and regulations affect various state enforcement programs and procedures. New motor carrier safety regulations issued by FMCSA are often adopted administratively into state code or are approved by state legislators and then enacted into state code. Primarily since the early 1980s, federally-administered MCSAP funds have provided much of the funding used by many states to finance their motor carrier safety programs. (The MCSAP funding is typically a 80% federal / 20% state cost-shared match, although some projects or activities are funded at a 100% federal share.) FMCSA's databases contain a wealth of information on specific drivers and companies that is used to help target many federal and state compliance reviews (or audits); and FMCSA's safety ratings influence many shipper decisions regarding which carriers receive their business to transport property. In addition, the FMCSA conducts much of the research leading to revised safety, regulatory, and enforcement strategies.

FMCSA, the newest of the DOT modal administrations, is an evolving organization that faces numerous challenges. For FY2004 FMCSA has an appropriation for about 1,020 employees. Not only has FMCSA increased its staff size rapidly during the last few years, but the agency (partly in response to congressional directives) has expanded the scope of its responsibilities and objectives. During the last three years or so, some 270 employees were added to its roster to enforce the safety regulations at the Mexican border. Many new administrative support staff (e.g., in the areas of contracts, personnel, and budget) were added in order to allow the agency to become independent from the Federal Highway Administration, which housed motor carrier safety responsibilities for many

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<sup>13</sup> According to FMCSA, the PRISM program seeks to: link safety fitness to vehicle registration at the state level. "The PRISM program includes two major processes - the Commercial Vehicle Registration Process, and the Motor Carrier Safety Improvement Process (MCSIP), which work in parallel to identify motor carriers and hold them responsible for the safety of their operation. The performance of unsafe carriers is improved through a comprehensive system of identification, education, awareness, safety monitoring and treatment." See [[http://www.fmcsa.dot.gov/español/prism\\_sp\\_main.htm](http://www.fmcsa.dot.gov/español/prism_sp_main.htm)]

years. Adjusting to this rapid growth and incorporating new staff into a new federal agency remains a challenge.

As a result of the events of September 11, 2001, FMCSA implemented new security-oriented activities focusing on motor carriers transporting hazardous materials (hazmats) and providing guidance and technical assistance regarding security measures. With respect to the federal role in promoting the security of hazmat highway carriers, the specific missions and objectives of the FMCSA, as contrasted to those of the Transportation Security Agency of the Department of Homeland Security have not been clearly delineated or formalized in a memorandum of agreement (MOA) or understanding. With respect to the need for such an agreement, Admiral Loy (then Administrator of the Transportation Security Administration) stated: “We cooperate extensively with DOT and the modal administrations, and value the degree of cooperation that we receive as we work together to secure the transportation systems. We will continue to assess the need for MOAs for the future.”<sup>14</sup> On the other hand, given the role of the DHS at the border, and given its role in promoting the security of the highway transportation of hazardous materials and motor carriers in general, a more careful delineation of responsibilities, opportunities for synergistic efforts, and identification of funding needs and capabilities might prove beneficial to both departments.

Likewise, the preparation for opening the southern border to allow Mexican-domiciled truck carriers to operate beyond the commercial zone (about 20 miles into the United States) required the agency to issue several substantive rulemakings and to intensify outreach efforts to Mexican enforcement officials, drivers, and bordering states. If and when the border formally opens to allow substantially increased truck transportation beyond the commercial zone, an intensified inspection and audit program targeting Mexican-domiciled carriers is likely to continue for many years, depending on the number of companies that actually engage in these operations.

Congress has substantially added to FMCSA’s responsibilities and thus to the challenges that the agency faces. In MCSIA and other statutes, Congress directed the agency to issue regulations that were intended to improve the state CDL programs and to revise the hours-of-service regulations. Now that these regulations have been issued, FMCSA faces the continuing challenge of ensuring that these requirements are properly implemented. As discussed in **Appendix A**, in MCSIA, Congress also added new responsibilities and a substantial workload by requiring the FMCSA to conduct the New Entrant Safety Assurance Process (a new carrier audit and monitoring program). Any new responsibilities and authorities specified in a reauthorization statute would likely add to the management challenges facing the FMCSA.

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<sup>14</sup> Testimony of Admiral James Loy, Administrator, Transportation Security Administration, U.S. Department of Homeland Security. Before the Senate Committee on Commerce, Science, and Transportation, September 9, 2003.

## FMCSA's Budget

**Table 2** displays the personnel resources and budget of the FMCSA and its immediate predecessors for FY1998 through FY2004. The FMCSA appropriation historically consists of two primary components: FMCSA administrative expenses (including operations) and research; and financial assistance provided primarily to the states to conduct various truck and bus safety programs, including state grants and information systems. Most of the funds used to conduct FMCSA activities are derived from the Federal Highway Trust Fund. For FY2004, these funds are derived from the following allocation specified in the P.L. 108-199 (which includes the annual DOT Appropriations Act): \$175 million for administrative expenses under the FMCSA limitation on administrative expenses account, \$111.5 million for various other programs and activities under the FHWA miscellaneous appropriation (including \$47 million for southern border inspection facilities not included in **Table 2** below); and \$189 million for motor carrier safety grants and information systems. For FY2005, FMCSA is requesting a budget of \$455.45 million, consisting of \$228.45 million for its administrative operations and various safety and regulatory activities, and \$227 million for state motor carrier safety grants.

**Table 2. Federal Motor Carrier Safety Administration  
Obligation Limitation (\$000s) and FTE**

Fiscal Years	Full time equivalent employees (FTE)	Motor Carrier Administrative Expenses & Research	Border Enforcement Program	Motor Carrier Grants & Information Systems	Total
1998	678	56,572		84,825	141,397
1999	569	59,026		100,000	159,026
2000 <sup>a</sup>	613	76,058		105,000	181,058
2001	663	92,365		176,611	268,976
2002 <sup>bd</sup>	816	109,735	45,166	205,896	360,797
2003 <sup>cd</sup>	962	116,500	[59,577]	188,765	305,265
2004 <sup>de</sup>	1,026	175,031		188,879	363,910

Source: FMCSA and 2004 DOT Appropriations Act.

<sup>a</sup> The Motor Carrier Safety Improvement Act of 1999 established the Federal Motor Carrier Safety Administration.

<sup>b</sup> R&T funding (\$4 million) under FHWA in FY2002. Border Enforcement Program includes \$19.3 million in FY2002 Emergency Supplemental funding.

<sup>c</sup> Border Enforcement Program funded under FHWA's, Administrative Takedown, Sec. 104(a)(1)(A).

<sup>d</sup> Border Infrastructure funding of \$68.3 million in FY2002, \$46.7 million in FY2003, and \$47 million in FY2004 is not shown in the amounts above, because those amounts are included in FHWA's appropriation.

<sup>e</sup>\$64.5 million in FHWA's account transferred to FMCSA, this amount is not included in Table 2.

**Administrative and Research Expenses.** These are the funds used by FMCSA to conduct its core activities. Some of the activities or expenses that are funded include the new entrant program, a hazmat permit/inspection program, household-goods moving enforcement, rent, administrative infrastructure, personnel compensation and benefits, and other related staff expenses. Also included are funds for outreach efforts to help educate the commercial motor vehicle industry about the federal safety regulations; and monies to advance truck and bus standards and oversight, including funds to establish a medical review board to assist FMCSA in improving the physical qualification regulations and review or certification program for commercial drivers.<sup>15</sup> This account also helps pay for the information systems used by the agency to oversee the safety of motor carriers. For FY2005, FMCSA is proposing an administrative and research budget totaling \$228.45 million, including funds for an initiative to better educate consumers on their responsibilities and rights when moving and provide help in selecting a reputable household-goods carrier; funds to test samples of hazardous materials in transportation to verify their correct classification; and increased funds for research and technology. The budget includes \$16.4 million for the federal portion of the New Entrant Safety Assurance Program.

**Grants to States.** These funds are used primarily to pay for the MCSAP, border enforcement activities, and for CDL improvement grants. Under MCSAP, some 10,000 state and local law-enforcement officers conduct roughly 3.0 million roadside inspections per year of trucks and buses that are reported to FMCSA. For FY2005, FMCSA is proposing a \$227 million grants program: \$168 million being used for the MCSAP, \$33 million used for border inspection/enforcement grants, and \$26 million used for CDL and PRISM activities.

## **Illustrative Concerns Regarding the FMCSA**

Various interest groups have expressed a wide range of views on the performance, policies, and regulations issued by the FMCSA. Some suggest that the agency's enforcement program is too lax, others think it is too vigorous. Some assert that the agency has been too slow in issuing key safety regulations, others complain that they are over regulated. In view of the high visibility of its activities, and its substantial impact on carrier operations, it is not surprising that FMCSA has numerous critics. For example, Joan Claybrook, representing the truck safety views of Public Citizen, as well as Advocates for Highway and Auto Safety (Advocates), and the Truck Safety Coalition, a partnership of Citizens for Reliable and Safe Highways (CRASH) and Parents Against Tired Truckers (PATT), maintains that

Despite repeated promises by FMCSA to significantly reduce truck-related deaths and injuries on our highways and chart an improved course to enhance

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<sup>15</sup> Funds are used to reduce the number and severity of crashes involving commercial trucks and buses and hazardous materials (HAZMAT) incidents by increasing compliance and enforcement with the FMCSR and the HAZMAT regulations and to implement a new HAZMAT permit program, to improve the security of trucks and buses transporting hazardous materials, to help improve enforcement of regulations pertaining to household goods carriers and to maintain a national Consumer Complaints and Safety Violation Telephone Hotline.

motor carrier safety, and despite increases in funding and resources for the new government agency, the traveling public remains the victim of an underachieving, and at times, indifferent agency. The annual death toll from truck-related crashes is the equivalent of 26 major airplane crashes every year. FMCSA adopted a goal in 1999 to reduce truck deaths and injuries by 50 percent over 10 years. That goal will not be achieved.<sup>16</sup>

This spokesperson also asserted that FMCSA delays or disregards congressional mandates for long-overdue and vital safety rulemakings. She has stated: “Unsafe motor carrier companies and drivers continue to violate safety rules and threaten the safety of the traveling public yet are insulated from effective federal oversight by FMCSA’s failures to act.”<sup>17</sup>

On the other hand, other groups have praised FMCSA for its stewardship of several key commercial vehicle safety programs. The American Trucking Associations (ATA) has noted support of the MCSAP, which “..has had an impact by improving truck condition; the Commercial Driver’s License (CDL) program has contributed by raising the bar for driver entry into the industry; and the implementation of voluntary drug testing by the industry, followed by a mandatory federal drug and alcohol testing program, has also contributed in a positive way.”<sup>18</sup>

However, ATA has:

- stated to Congress that DOT has not yet established a Motor Carrier Safety Advisory Committee as was authorized in MCSIA. This organization has recommended that this advisory committee be required by statute and be authorized for a minimum of at least five years;
- recommended that Congress direct the Secretary of Transportation to equitably apply and enforce laws and regulations designed to ensure the safe condition of all regulated equipment, including intermodal chassis and trailers;
- recommended that FMCSA should improve its motor carrier compliance review targeting system; and
- sought language directing the Secretary to prioritize all federal driver and vehicle-related research so that the majority of funds support research in the most-common cause of accidents — human factors.<sup>19</sup>

In addition, several groups have raised substantial concerns regarding the new hours-service regulations. Various industry groups predict that these rules will

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<sup>16</sup> Joan B. Claybrook. Prepared statement before the Senate Committee on Commerce, Science, and Transportation. June 10, 2003.

<sup>17</sup> Ibid.

<sup>18</sup> Douglas G. Duncan. Prepared statement of the American Trucking Associations before the Senate Committee on Commerce, Science, and Transportation. June 10, 2003.

<sup>19</sup> Ibid.

increase operating costs, decrease productivity, or reduce driver income. Some groups assert that the rules were not designed to reduce driver fatigue and thus fail to meet the requirements Congress set for this rule. On the other hand, many in the motor carrier industry generally support the changes made in the new hours-of-service regulations, especially when these are compared to the changes originally proposed by FMCSA several years ago.

## **Reauthorization Legislation Regarding Funding for FMCSA's Programs and Various Safety Issues**

As previously indicated, TEA21 includes authorization for the various motor carrier safety programs that are conducted or overseen by the FMCSA. The funding authority for these programs expired at the end of FY2003 and was extended for five months by P.L. 108-88 through February 2004, was extended for another two months through April 2004 by P.L. 108-202, and was extended for another two months through June 2004 by P.L. 108-224. Congress continues to debate the specifics of a reauthorization bill that would set the funding level and scope and nature of various surface transportation programs for the next five to six years. With respect to the federal role in motor carrier safety, the reauthorization process has historically been used to accomplish several purposes: to set new authorization levels for various FMCSA activities and grants, to provide new policy directions regarding the federal role in commercial vehicle safety, and to address various truck and bus safety concerns.

During hearings associated with the current reauthorization debate, many issues have been raised. These include How much money should be authorized for FMCSA's operations and for the MCSAP? How much money might be authorized to help state CDL programs, or more specifically, to ensure that the states are able to pay for CDL program changes to meet new requirements set by MCSIA and FMCSA? How could the information system underpinning the CDL program be modernized and how much would that cost? Should federal truck size and weight standards be changed? What might be done to address the regulatory backlog facing FMCSA and what new regulations, if any, might be pursued to further improve commercial motor vehicle safety? How could the "Share the Road" program be improved to further reduce the frequency and severity of truck/passenger vehicle crashes? How might MCSAP enforcement strategies be changed to realize increased improvements in commercial motor vehicle safety? How could the physical qualification standards and medical certification process for commercial drivers be improved? What data and information system challenges does FMCSA face and how might these be met?

Although it is beyond the scope of this report to analyze each of these issues in detail, some insights into the scope and nature of each issue are presented below. For each topic, the key issue of concern is identified, and several policy options are listed. Particular attention is given to how each issue is addressed in the two key surface transportation reauthorization bills – S. 1072, passed by the Senate, and H.R. 3550, as passed by the House.

## Funding of FMCSA and the Grants It Administers

With respect to funding for the next reauthorization cycle, the key policy issue is: What is the appropriate level of funding that will be authorized to pay for FMCSA's administrative/operations expenses and the motor carrier safety grants that it administers? There are two aspects to this issue: the existing administrative cap governing FMCSA's administrative expenses and the amount of funding for various FMCSA activities or programs.

**Administrative Limitation of Expenses.** MCSIA (P.L. 106-159) specified that an amount equal to up to 1/3 of 1% of a portion of the federal aid highway program could be used to finance FMCSA's motor carrier safety administrative/operations expenses and research. Given the substantial growth in FMCSA's staff, primarily during the last few years to meet the inspection workload at the southern border, and given new responsibilities and challenges that the agency faces, staying under this limitation of contract authority has proven difficult for the appropriators. According to the House Appropriations Committee, this takedown mechanism has proven inflexible, does not allow for coverage of FMCSA's basic administrative expenses, and does not allow the agency to respond to changing national needs.<sup>20</sup> FMCSA also maintains that the funding cap restricts its ability to conduct its assigned responsibilities.

Although the cap originally was incorporated into the MCSIA to limit FMCSA's expenses, the practical reality is that the administrative cap has been exceeded in recent years. In fact, this funding limitation was increased for FY2002 and FY2003 by a general provision in the respective DOT appropriation acts. The TEA21 Extension Acts effectively eliminated the administrative takedown for FMCSA's appropriation for the first nine months of FY2004 and substituted contract authority for administrative expenses.<sup>21</sup>

As part of the reauthorization process, it is likely that the administrative limitation or cap will be replaced by a specific amount of funds authorized for FMCSA's administrative/operations expenses. In the Senate-passed reauthorization bill, the current administrative limitation or cap is eliminated, and (as shown in **Table 3**) the following amounts of funding authority are specified:

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<sup>20</sup> U.S. Congress. House. Committee on Appropriations. Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004. House Report 108-243. p. 76.

<sup>21</sup> Personal communication with FMCSA, 2004.



**Table 3. Authorized Funding Levels in Senate Bill, S. 1072**  
(in millions of dollars)

	2004	2005	2006	2007	2008	2009
Administrative and Operating/ Research Expenses of the FMCSA	202.9	206.2	211.4	217.5	222.6	228.5
State Grants <sup>b</sup>						
Border Enforcement	32	33	33	34	35	36
PRISM	4	4	4	4	4	4
CDL and Driver Improvement	22	22	23	23	24	25
MCSAP <sup>c</sup>	186.1	189.8	193.6	197.5	201.4	205.5
CVISN	25	25	25	25	25	25

**Source:** Senate passed bill, S. 1072.

<sup>a</sup> Includes \$6.75 million for the medical review program (see discussion in later section)

<sup>b</sup> Most of the funds will be allocated to states; some funds will be intended for use by FMSCA for national purposes of benefit to state programs.

<sup>c</sup> Includes up to \$29 million per year for new entrant audits.

Likewise, in House-passed H.R. 3550 the administrative cap is eliminated and (as shown in **Table 4**), the following funding amounts are authorized.

**Table 4. Authorized Funding Levels in House  
Bill, H.R. 3550**  
(in millions of dollars)

	2004	2005	2006	2007	2008	2009
Administrative and Operating/ Research Expenses of the FMCSA	196	208	215	221	226	232
State Grants						
Border Enforcement		32	32	32	32	32
PRISM		4	4	4	4	4
CDL Program Improvement		22	23	23	24	25
MCSAP <sup>a</sup>	168	187	185	190	195	200
State Data Improvement Program		3	3	3	3	3
CVISN		22	22	22	22	22

**Source:** H.R. 3550.

<sup>a</sup> Includes up to \$15 million for new entrant audits.

**Funding Levels.** One of the most important decisions that is made in the reauthorization process, at least from the vantage point of the states receiving federal grants, is how much money will be authorized to promote commercial motor vehicle safety. Many in industry, and in the enforcement community and the safety community, at large, favor increasing federal funding to better address motor carrier safety challenges. For example, the Commercial Vehicle Safety Alliance (CVSA)—an international association of state, provincial, and federal truck and bus law enforcement agencies along with representatives from industry in the United States, Canada, and Mexico—seeks, among its various objectives, increased funds for several safety activities that will impact state programs. This organization seeks additional funds to improve the effectiveness and efficiency of state motor carrier safety programs (e.g., to improve training of local enforcement officers conducting enforcement, to pilot test improved enforcement and compliance strategies, and to strengthen the CDL program.)<sup>22</sup>

In contrast, industry support for increased funding varies: with some who assert that there is an adequate level of enforcement already, while others seek increased enforcement against non-compliant motor carriers and drivers.

## **Improvements in the Commercial Drivers License (CDL) Program and Other Driver Licensing Issues**

States issue drivers licenses for operators of commercial buses and trucks. To avoid losing a portion of their federal highway funds, states must follow specified federal minimum standards regarding numerous aspects of the licensing process, including testing of drivers, checking of records, and disqualification of drivers. The CDL regulations are intended to ensure that commercial drivers meet certain requirements. For example, CDL drivers must have only one license at a time, pass the skills and knowledge test requirements necessary to obtain a CDL, and be subject to at least a uniform set of disqualification penalties for specified serious traffic safety violations. With respect to federally-funded CDL activities, a key issue that Congress is considering is: How much money should be authorized to help the states improve their commercial licensing programs?

During the last five years, various reports and audits have identified various problems with some state CDL activities and have set forth numerous recommendations to improve the administration and implementation of these activities. For example, concerns have been expressed that some states were not rigorously adhering to all of the federal standards, were not always carefully monitoring their programs, and were not timely transmitting conviction notices of violations that can affect the status of a driver's CDL. Partly in response to the concerns and recommendations raised, Congress started to substantially increase funding to improve the CDL program. Including funds authorized in TEA21 (section 31106) and other appropriated monies, the FMCSA's recent funding for CDL enhancement activities is as follows: \$11 million for FY2001, \$15 million for FY2002 and \$17.3 million in the Supplemental FY2002 Appropriations, slightly less

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<sup>22</sup> Personal communication with CVSA, 2003.

than \$11 million for FY2003, and \$22 million appropriated for FY2004, and a similar amount requested in FY2005.<sup>23</sup> These funds are used for many purposes, including to correct deficiencies or make improvements in state CDL programs and to reduce fraud in the CDL application process. Not all of these funds were provided directly to the states as grants, but some funds were used to support contracts and cooperative agreements intended to result in products useful to all of the states or to help FMCSA conduct its CDL responsibilities. These funds were appropriated to FMCSA on a year-to-year basis, partly because TEA21 does not provide separate contract authority for a specified CDL improvement program.<sup>24</sup>

In order to improve CDL efforts, and to meet the CDL programmatic requirements specified in the Motor Carrier Safety Act of 1999 (P.L. 106-159), as well as the FMCSA regulations issued pursuant to that act, the states have requested continued financial assistance from the FMCSA.<sup>25</sup> Many in the driver licensing community also seek to improve the security and accuracy of both commercial and non-commercial driver licenses.<sup>26</sup>

As shown in **Tables 3 and 4**, the Senate-passed bill as well as the House-passed bill authorize the following amounts for CDL and driver improvement program grants: \$22 million for FY2005, \$23 million each for FY2006 and FY2007, \$24 million for FY2008, and \$25 million for FY2009. (The Administration's reauthorization proposal recommended identical amounts for these years.) FMCSA seeks to use these funds to: improve state control and oversight of licensing agencies and testing facilities operated by third parties (non-state employees); develop management control practices to detect and prevent fraudulent testing and licensing; support state efforts to conduct verification of information regarding Social Security Numbers and information pertaining to the Bureau for Citizenship and Immigration

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<sup>23</sup> Written communications from FMCSA, 2003.

<sup>24</sup> Beyond the \$1 million per year provided for driver improvement activities.

<sup>25</sup> Information on FMCSA regulations can be found at [<http://www.fmcsa.dot.gov/rulesregs/fmcsrhome.htm>]

<sup>26</sup> State licensing officials want to ensure that the information on any driver license is correct, cannot easily be forged, and is based on information obtained from legally valid documents. Many licensing officials want to ensure that any licensed driver has a license from only one state at a time, each driver has only one driving record, and states can readily exchange information as necessary. This proposal to establish a "one driver, one record, one license" system for all drivers, one modeled after the CDL, has been discussed for years. To implement such a proposal would require substantial changes to the driver licensing system in each of the states.

Legislation was introduced in the 107<sup>th</sup> Congress to encourage the states to implement steps to improve the security of licenses by preventing the manufacture, distribution, marketing, sale, procurement, or use of altered or counterfeit driver's licenses, and to establish the "Driver Record Information Verification System," which is intended to provide states with instant and reliable access to driver licensing and record information for a variety of purposes. It remains uncertain, especially given many other safety priorities, whether new funds will be made available to substantially improve state driver licensing activities pertaining to the non-commercial driver.

Services for CDL holders; and maintain the central depository of information regarding Mexican and Canadian driver convictions in the United States.<sup>27</sup> These funds would be made available to the FMCSA and the states on a contract-authority basis, thus these monies would be made available to the states unless otherwise reduced by an obligation limitation or other mechanism as part of a subsequent legislative act.

Given the strong support for improving the CDL program among many in industry, the enforcement community, and driver licensing agencies, there does not appear to be any substantive opposition to creation of a separate grant program to assist state and federal efforts to improve the CDL program. But, some critics could question whether it is necessary for the Federal Highway Trust Fund to continue to help finance efforts to improve state CDL programs. When a state issues a CDL or renews a CDL, that state typically collects a fee.

On the other hand, advocates of federal support to accelerate improvements in state CDL programs point out: 1) Depending on state law or practice, it may not be possible to channel these license fees back into a state's CDL or driver-licensing program; 2) The federal grant may indirectly help reduce costs to individuals paying CDL license fees; and 3) The federal grant helps improve the uniformity and quality of the overall national CDL program.

## **Modernization of Commercial Drivers Licensing Information Systems (CDLIS)**

Closely related to the previous topic is the issue of whether the Commercial Drivers Licensing Information Systems (CDLIS), which is the backbone of the CDL program, should be modernized with federal funds. The American Association of Motor Vehicle Administrators (AAMVA) owns the CDLIS programming code, and owns and operates AAMVANet, the network over which CDLIS is transmitted. This system links the states with each other and with a central data pointer system and enables the exchange of information about commercial drivers. The system was developed in the late 1980s to help implement the requirements of the Commercial Motor Vehicle Safety Act of 1986 and subsequent acts that affect the licensing of commercial drivers. There is support among many of the state motor vehicle administrators for modernizing the CDLIS. This interest is driven, in part, by advances in computer technologies and information systems, increased security concerns pertaining to driver licenses, new requirements that Congress and FMCSA have imposed on state CDL programs, as well as interest in using an improved CDLIS to be an evolutionary platform for an all-driver (commercial as well as non-commercial operator) pointer system.

The proposed modernization has several components, including reconfiguring CDLIS using modern database tools and improving the network infrastructure to ensure data security. According to AAMVA, in addition to making needed

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<sup>27</sup> Annette Sandberg. Prepared statement before the Senate Committee on Commerce, Science, and Transportation. June 10, 2003.

improvements to ensure that CDLIS retains system integrity and usefulness, such changes would enable better handling of the requirements of an all-driver pointer file, should that system be implemented in the future. Total costs for development of CDL II (modernization of the CDLIS) are estimated by the AAMVA at \$36.2 million to be allocated during the next six fiscal years.<sup>28</sup>

The modernization of CDLIS is only one of many objectives that might be addressed with the monies authorized from the separate funding provision intended to improve the CDL program that is proposed in both the Senate- and the House-passed versions of the bill. As this provision is now crafted, there appears to be some flexibility for either the FMCSA or for the state licensing administrators (with FMCSA approval), to use some of the funds authorized to begin the modernization of CDLIS. Thus, it becomes a question of priorities as to if, when, and to what extent the CDLIS might be modernized using federal funds.

H.R. 3550, at Section 4125, entitled “Commercial Driver’s License Information System Modernization,” directs the DOT Secretary to publish a comprehensive national plan—developed in consultation with representatives of the motor carrier industry, state safety enforcement agencies, and state licensing agencies—to modernize the CDLIS. The Secretary is authorized to issue grants to help states improve their CDLIS in a manner that is consistent with the national plan. That bill authorizes \$6 million per year for this activity for FY2005-FY2009. The Senate bill does not set aside a specific amount of funds for CDLIS modernization, but emphasizes that the Secretary shall give priority to the use of CDL grant funds to achieve compliance with the requirements of MCSIA.

## **Truck Size and Weight Standards**

Should current truck size and weight limits be changed? Should the current limits be extended to cover the National Highway System? Federal and state regulations and laws affect truck size and weight limitations.<sup>29</sup> As detailed on the hearing briefing web page of the House Transportation and Infrastructure Committee:

The regulations have important economic consequences because trucking accounts for four-fifths of expenditures on freight transportation in the United States, and trucking costs are influenced by truck size and weight. Size and weight limits have a significant impact upon highway construction and maintenance costs and the convenience and safety of highway travel. The regulations affect international commerce as well because the U.S. limits differ from those of Canada and Mexico, and because containers shipped in international trade often are not consistent with U.S. regulations.<sup>30</sup>

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<sup>28</sup> Written communication from AAMVA, 2003.

<sup>29</sup> According to the FHWA, federal weight limits apply only to the interstates, but federal length and width restrictions apply to both the interstates and a set of roads called “primary highways,” which the states designate as being capable of handling commercial vehicles. The interstates and the primary highways constitute the national network of highways.

<sup>30</sup> [<http://www.house.gov/transportation/>] from hearings held on July 9, 2002.

The American Trucking Associations and the Association of American Railroads have agreed to support continuation of the existing federal statutory provisions pertaining to truck weight and size specifications.<sup>31</sup> In its reauthorization proposal, the Administration did not propose to change existing federal truck size and weight specifications. In contrast to this position, some seek to extend the current federal truck size and weight regulations to vehicles operating on the National Highway System. Questions of safety; economic competitiveness and productivity of the motor carrier industry; highway maintenance costs; and states' rights immediately arise when truck size and weight issues are debated. Many believe that current size and weight limits specified in federal law will not be changed as a result of the reauthorization process. Given the contentiousness of the issue, they point out that there is likely to be no consensus on any comprehensive or far reaching proposal to change the status quo.

The Senate bill, however, proposes that with certain exceptions and limitations, a state may not prescribe or enforce a regulation of commerce that allows operation on any segment of the National Highway System, including the Interstate System, of a "restricted property-carrying unit" (any trailer, semi-trailer, container, or other property carrying unit that is longer than 53 feet) unless that operation is detailed on a list to be published by the Secretary. Thus, this bill, according to the committee, would have the impact of: "...freezing current length limits of motor vehicles operating on federal-aid highways, taking away states' authority to set length standards of vehicles on roads that are part of the 150,000 mile National Highway System."<sup>32</sup> Some in industry oppose this provision; in fact, some want less restrictive existing standards to govern truck size and weight limitations. The House bill does not propose to change federal truck size and weight limits.

## **New Regulations and the Regulatory and Reporting Backlog**

Much of FMCSA's substantive regulatory agenda, at least for the last 15 or so years, has been set by Congress or has been prompted by requests for rulemaking on various subjects or court challenges or decisions. On several occasions various Members of Congress, as well as many interest groups, have voiced concerns about the limited progress (or lack thereof in some cases) that FMCSA or its predecessor made in responding to some congressional directives or requests.<sup>33</sup> For example, critics point out that the FMCSA (or its predecessor) has frequently not met congressional deadlines for studies and new safety regulations pertaining to a variety of areas.

On the other hand, FMCSA points to a substantial number of important final rulemakings, many of which were required by Congress, that have been issued during the last two or three years. For example, during the last few years, FMCSA has issued substantially revised requirements for state CDL programs, new hours-of-

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<sup>31</sup> Statement of ATA and AAR, June 25, 2003.

<sup>32</sup> [<http://www.commerce.senate.gov/newsroom/printable.cfm?id=205587>]

<sup>33</sup> See previous section of report dealing with concerns that have been expressed regarding FMCSA.

service regulations, new requirements to be met by Mexican-domiciled carriers before operating vehicles beyond the commercial zone, and new audit requirements for new entrants into the industry.<sup>34</sup> Some, but not all, recent final (or interim final regulations) include:

TITLE: Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used In Interstate Commerce; Interim Final Rule; RIN 2126-AA52; FMCSA-2000-7017; (68 FR 47860, August 12, 2003); and

TITLE: Transportation of Household Goods; Consumer Protection Regulations; Interim Final Rule; RIN 2126-AA32; FMCSA-97-2979; 68 FR 35064;

TITLE: Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement; Interim Final Rule; RIN 2126-AA70; FMCSA-2001-11117; (68 FR 23844, May 5, 2003).<sup>35</sup>

FMCSA, itself, has recognized opportunities to improve its rulemaking process. The FMCSA Administrator testified that the absence of a consistent funding source for rulemaking causes starts and stops in a process that requires a consistent level of effort for timely completion of new rules and their supporting analyses.<sup>36</sup> In recent budgets the agency has asked for dedicated funding to improve its rulemaking capabilities (and medical review and certification program); about \$9.4 million is now included within the base operations account for this activity.

The Senate bill would impose a financial penalty on FMCSA if it did not make steady progress in issuing final regulatory decisions and delivering other requested reports to Congress. If a specified number of backlogged regulatory actions or studies are not completed, the bill requires that \$3 million a year for up to three years be transferred out of FMCSA's administrative account. Further, the bill provides that these transferred funds would be used to pay MCSAP officers to conduct additional compliance reviews. It remains uncertain exactly what impact such a transfer might have on encouraging the agency to issue final regulations or deliver requested reports by a date certain. Progress on issuing regulations is partly dependent on approval from entities (such as the Office of Management and Budget and the Office of the Secretary) beyond the control of FMCSA. The House bill does not address the issue of regulatory backlog. Both bills, however, would require FMCSA to conduct new rulemaking activities to implement various responsibilities.

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<sup>34</sup> The new CDL rule includes new disqualifying offenses for commercial drivers and prohibits masking of convictions/deferral programs. In addition, certain major offenses and serious traffic violations in passenger vehicles and other non-CMV's will count the same as if they occurred in CMV's towards CDL disqualification.

<sup>35</sup> [<http://www.fmcsa.dot.gov/contactus/press/speeches/umabod.asp>]

<sup>36</sup> Annette Sandberg.

## “Share the Road” Issues

Almost all of FMCSA’s appropriation for its administrative or operating program, probably 99% or more, is focused on activities that are intended to improve the safety of the commercial carrier, driver, or vehicle. Likewise, almost all of the MCSAP funds are allocated towards educational activities or enforcement aimed at the safety of the commercial driver or the commercial vehicle.<sup>37</sup> Given the important role that operators of passenger vehicles play in many commercial vehicle (large truck and bus) crashes, it is worthwhile to ask: Should increased MCSAP or FMCSA administrative funds be used to enhance public education efforts and state and local enforcement activities intended to reduce the role that passenger car drivers play in commercial vehicle crashes? Does the legislative basis of MCSAP need to be changed to allow or ensure that a more comprehensive approach is pursued so that enforcement resources are more appropriately allocated to all causes of crashes involving commercial vehicles?

Some state law enforcement officials would favor the increased use of MCSAP funds to enhance enforcement against all passenger and commercial drivers who adversely affect commercial vehicle safety. Some favor this change provided that the activity is conducted under the supervision of a state’s lead MCSAP agency (which oversees the entire state program and manages funds), and that accountability is ensured for resources used to promote truck or bus safety. Many state MCSAP managers first want to ensure that there are sufficient funds available to fund the core MCSAP. Some, without traffic enforcement authority, may be reluctant to share limited MCSAP funds with policing authorities who are able to pursue passenger or non-commercial vehicles adversely affecting commercial motor vehicle safety. With respect to this issue, the Commercial Vehicle Safety Alliance recommended:

Traffic enforcement against the passenger car around trucks is something that should be tested in a pilot program to ensure uniform collection of violation data and provide a way to measure its effectiveness. We suggest that this pilot program be undertaken in conjunction with the National Highway Traffic Safety Administration.<sup>38</sup>

However, the ATA maintains that strong, visible speed enforcement aimed at commercial vehicle drivers, as well as other motorists, needs to take on a much greater role in the MCSAP program. ATA asserts:

Additionally, since speeding and other unsafe driving behaviors of non-commercial drivers play an even greater role in truck-involved crashes than do the actions of the commercial motor vehicle driver, the MCSAP program must

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<sup>37</sup> During the last few years prior to FY2003, FMSCA reports that it has allocated roughly \$300,000 to \$750,000 on share-the-road activities from its appropriation. The amount spent by MCSAP states is unknown, but is believed to be a small amount. In FY2003, the agency did not use any funds from its appropriation for share-the-road activities, but used \$500,000 transferred from NHTSA for this purpose.

<sup>38</sup> Peter Hurst. Prepared statement of the Commercial Vehicle Safety Alliance. Before the Senate Committee on Commerce, Science, and Transportation. June 10, 2003.



also include traffic enforcement efforts aimed at unsafe motorist behavior. This funding should be in addition to the money provided for traditional MCSAP enforcement activities.<sup>39</sup>

Likewise, according to ATA President Bill Graves, “If we all insist on increased visible traffic enforcement for cars and trucks, especially for speeders, then we will continue to see the numbers move in the right direction.”<sup>40</sup> On the other hand, there are some that would consider a set aside and dedicated program to be too much federal interference in state allocation of resources.

Although the “share the road” program has been supported by many safety organizations, some have questioned its effectiveness. The current national public information and educational program is generally not underpinned by a strong enforcement component conducted simultaneously by each state. Congress is considering ways to improve or redesign current federal efforts to reduce the role of passenger-vehicle drivers in crashes involving large trucks or buses. Both the Senate-passed bill and the House-passed bill would allow states to use MCSAP funds to pay for the enforcement of traffic safety laws and regulations against passenger vehicle operators when necessary to promote the safe operation of commercial motor vehicles. But, in neither bill, as part of the core MCSAP, is there money set aside to ensure that state MCSAP officers use federal funds to issue traffic violations to non-commercial vehicle drivers who adversely affect the safety of commercial motor carriers. Under both bills, it would be left up to MCSAP agencies, with perhaps some FMCSA encouragement, to decide the amount of MCSAP funds that would be used to enforce traffic safety regulations affecting commercial vehicle (e.g., whether or not to use MCSAP funds to pay for activities in which the non-commercial motorist is cited for failing to yield right of way or for aggressively driving around a commercial truck or bus operator.)

The Senate bill authorizes increased funding for the public information or educational component of the “share the road” program. More specifically, for FY2004, the bill authorizes \$250,000 for FMCSA’s “share the road” activities and \$750,000 for NHTSA’s work in this area. (In TEA21, Congress set aside \$500,000 per year to ensure that funds were spent on helping to educate the public on how to share the road with commercial carriers.) S. 1072 also allows the use of MCSAP funds to pay for the enforcement of state traffic regulations designed to promote the safe operation of commercial motor vehicles, including against operators of noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.

H.R. 3550 differs from the Senate bill in several ways. The House bill requires each of the MCSAP states to conduct comprehensive and highly visible traffic enforcement and commercial vehicle enforcement inspection programs at high risk locations. Under more specified conditions, the House bill also allows MCSAP funds to be used to pay for the enforcement of state traffic regulations designed to promote the safe operation of commercial motor vehicles, including against operators

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<sup>39</sup> Douglas G. Duncan. Prepared statement of the American Trucking Associations.

<sup>40</sup> Transport Topics. August 4, 2003:6

of noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.<sup>41</sup>

H.R. 3550 also authorizes for FY2005-FY2009 a \$4 million per year “share the road” program to be administered by the FMCSA and NHTSA. One of the specific components of the program is “...to promote enhanced traffic enforcement efforts aimed at reducing the incidence of the most common unsafe driving behaviors that cause or contribute to crashes involving commercial motor vehicles and passenger vehicles.”<sup>42</sup> If the House provisions were incorporated into the reauthorization statute, it would likely prompt FMCSA and NHTSA and many state or local enforcement officers to substantially increase attention to the role of non-commercial drivers in crashes involving large trucks and buses and would authorize about an 8-fold increase in resources dedicated to address this safety challenge. The Senate bill would authorize a much more modest effort in this area.

## **Physical Qualifications and Medical Examination of Commercial Drivers**

For many years FMCSA has issued and enforced physical qualifications and medical examination requirements for commercial drivers. It is widely recognized, however, that there remain opportunities to improve these standards and strengthen compliance with these regulations. For example, the National Transportation Safety Board (NTSB) has conducted numerous investigations of crashes involving commercial vehicles and has issued a series of recommendations intended to improve the medical review and certification process that now applies to commercial drivers. In fact, NTSB has judged these recommendations so important that they have been placed on its “Most Wanted” list. The Board has concluded that flaws exist in the medical certification process for commercial vehicle drivers.<sup>43</sup> NTSB has recommended that FMCSA develop a comprehensive medical oversight program which ensures that qualified individuals perform medical examinations of commercial drivers, that the examiners are educated about relevant occupational issues, and that a tracking mechanism be established to review prior driver applications for medical certification.

In its FY2004 appropriation, FMCSA received \$6.5 million to undertake major changes to its physical standards and medical examination regulations and associated activities. In FY2003, FMCSA’s budget allocated less than \$1 million of contract funds for its medical program and supported a staff of about six people at FMCSA headquarters and other staff in the field offices who help implement the program. In general, FMCSA seeks to increase the medical oversight of drivers and improve its

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<sup>41</sup> Provided that “... the number of roadside safety inspections conducted in the State is maintained at a level at least equal to the average number conducted in the State in fiscal years 2001, 2002, and 2003; except that the State may not use more than 5 percent of the aggregate amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles...”

<sup>42</sup> Section 4019, see [<http://www.house.gov/transportation/>].

<sup>43</sup> [www.nts.gov](http://www.nts.gov)

medical certification process. In so doing, FMCSA maintains that these actions will address many of NTSB's concerns in this area. It should be recognized that these changes would require several years to be implemented and would depend upon successful implementation of significant new regulations. Funding for this activity would be continued within the base program in the FY2005 budget request at about the \$6.5 million level.

H.R. 3550 requires the FMCSA Administrator to establish a five-member Medical Review Board to provide the agency with recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research. S. 1072 includes much the same language regarding FMCSA's medical program, but the Senate-passed version of the reauthorization bill is more prescriptive in terms of directing FMCSA's future medical review and regulatory program. In doing so, it appears that the Senate bill seeks to implement legislatively the thrust of NTSB's recommendations in this area. For example, S. 1072 specifies that the DOT Secretary shall establish, review, and revise: medical standards for CDL applicants and holders, requirements for periodic physical examinations of such operators, and requirements for notification to the chief medical examiner if CDL applicants or holders fail to meet applicable standards. In the Senate bill, \$6.75 million per year for FY2004 through FY2009 would be set aside for FMCSA's medical review program.

## **Data, Information Systems, and Analysis Challenges**

FMCSA seeks to use data, information systems, and analysis to identify carriers for audit, support rulemakings, and improve its operations. More specifically, data collected across the country by federal and state personnel from roadside inspections, crashes, compliance reviews, and filing or reporting requirements provide a national perspective on the performance and operations of commercial carriers and assist in determining future compliance activities and regulatory priorities and policies.<sup>44</sup> The agency's appropriation for FY2004 includes about \$32 million for such motor carrier safety information systems and activities and about \$40 million is requested for FY2005.<sup>45</sup>

A longstanding and continuing issue pertaining to federal (and state CMV) compliance and regulatory programs is the timeliness, accuracy, and completeness of the inspection, crash, and motor carrier census data that underpin these activities. FMCSA is heavily dependent on state and local data regarding inspections and crashes involving commercial motor vehicles and uses much data submitted by industry. For many years, FMCSA (and its predecessors) have recognized that there are opportunities to improve the information collection and processing systems which help guide the agency. DOT's Office of the Inspector General recently issued a report pertaining to FMCSA's safety-status measurement system. The report found lack of updated census data for 42% of active carriers, incorrect recorded information on many carriers, missed reports for an estimated 1/3 of the large commercial trucks

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<sup>44</sup> Annette Sandberg.

<sup>45</sup> Personal communication with FMCSA, 2003.

involved in crashes annually, and late reporting of crashes.<sup>46</sup> FMCSA states that it is unable to identify or match 14% of the interstate trucks and buses involved in reported crashes with the responsible motor carriers. FMCSA's goal is to reduce to 5% the non-match rate. FMCSA states that the percentage of fatal crashes reported to the agency is about 85%.<sup>47</sup>

In order to address these and other challenges, FMCSA conducts a variety of programs and activities. For example, FMCSA is supporting various crash data improvement programs to improve data accuracy and completeness. States also spend MCSAP dollars trying to improve their data and information systems and the conveyance of data to FMCSA's national data bases. The funds provided in both FMCSA's administrative/operations account as well as the MCSAP grants are used to address some of the data and information systems issues discussed above. Experience shows that significant improvements in data take time, often require state cooperation, and often require substantial funds.

Funds to improve data systems often have to compete against many other possible uses of these funds. The amount of funds that are actually allocated to this use will have important bearing on the ability of the FMCSA and the states to address various data, information systems, and analysis challenges. The House-passed bill authorizes for FY2005-FY2009 a separate \$3 million per-year program for grants to states to improve the accuracy, timeliness, and completeness of commercial vehicle safety data reported to DOT. Although this is a relatively small amount of money within the context of FMCSA's total budget, funds used for this purpose could expedite transmission of improved data to FMCSA, especially if these funds were allocated to those states that face difficulties in this area. The Senate-passed bill does not specify a separate allocation for data and information systems, but FMCSA's administrative/operations funds and other state grant monies authorized in both the House and Senate bills could also be used to improve data and information systems.

## Conclusion

During the next few years, FMCSA faces numerous challenges, many of which would require substantial time and resources to resolve. Most observers would agree that these challenges include substantially improving driver physical qualification regulations and strengthening FMCSA's medical review program, implementing a more meaningful New Entrant Safety Assurance Program that does not adversely affect implementation of other FMCSA safety responsibilities, helping states improve their CDL programs by wisely allocating scarce funds to reduce numerous technological challenges and institutional constraints, continuing to improve data and information systems that underpin FMCSA's operations, monitoring and promoting the safety of Mexican-domiciled carriers going beyond the commercial zone, and improving various public safety outreach and traffic enforcement programs, including

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<sup>46</sup> USDOT. Office of the Inspector General. Improvements Needed in the Motor Carrier Safety Status Measurement System. MH-2004-034. February 13, 2004, p. iii.

<sup>47</sup> Personal communication with FMCSA, 2004.

those seeking to reduce the frequency and severity of truck/passenger vehicle crashes.

FMCSA's ability to address these and other challenges will be heavily dependent upon the amount of funds authorized as well as the legislative directives and authorities prescribed in a reauthorization statute, as well as the leadership exercised by the agency and the support FMCSA receives from the states and industry. There are signs that an improved foundation for action are on the horizon. Key reauthorization proposals provide for a continuation of increased funding to improve FMCSA's operations and for state-conducted commercial vehicle safety activities like MCSAP and the CDL program. Many of the provisions of the Senate and House bills are generally consistent with most of the objectives proposed in the Administration's reauthorization initiative. The leadership at FMCSA, with DOT support, has been able to finalize many new rulemakings and lay the foundation for several new programs. And finally, although federal/state relationships in motor carrier safety change over time, there now appears to be a relatively strong spirit of cooperation.

On the other hand, skeptics can doubt whether the recent pace of FMCSA rulemaking will continue, and whether funds authorized in a reauthorization bill will be adequate to ensure that all states come into compliance with the CDL requirements specified in MCSIA and its implementing regulations. Others also may be concerned that the number of new entrants applying for operating authority may overwhelm the auditing capabilities of the FMCSA and the states, and that implementation of the new entrant program may adversely affect the conduct of some other key safety responsibilities (see **Appendix A**).

## Appendix A. The New Entrant Safety Assurance Process<sup>48</sup>

As part of MCSIA, Congress required the Secretary of Transportation to establish regulations specifying minimum requirements for motor carriers seeking federal interstate operating authority. This requirement, which substantially increased FMCSA's workload, is implemented through the New Entrant Safety Assurance Process. The foundation of this process is FMCSA's review of the safety practices and performance of all new entrants operating in interstate commerce. The agency intends to evaluate three key areas—knowledge and applicability of safety regulations, safety management systems, and safety readiness—of some 45,000 (perhaps as many as 50,000) new carriers entering the motor carrier industry each year. Trying to review each of these companies within the 18 month time limit specified in MCSIA is proving to be one of the largest tasks ever pursued by the agency. Because this program is attracting substantial congressional interest and funding, it is important to discuss this initiative in detail.<sup>49</sup>

The initial experience with the new entrant program shows that this audit process is labor intensive. The conduct of an audit can typically take 2 to 4 hours. During 2003, some 45,500 new entrants started the process to obtain permanent operating authority; and FMCSA, working with many of the states, was able to audit some 12,000 new carriers.<sup>50</sup> From April 2003, when the audits began, through March 2004, a total of about 19,300 safety audits were conducted by federal and state employees. Thus, the first year of experience ended with FMCSA amassing a substantial backlog of new entrants that must be reviewed within 18 months according to MCSIA. As explained below, this backlog is expected to increase for at least a few years or perhaps longer. If the economy improves and vehicle miles traveled by trucks increases, the number of new entrants applying for operating authority may well increase significantly.

The conduct of the new entrant program has also created another challenge for the FMCSA. Especially since the early spring of 2003 when the number of new entrant audits conducted began to increase significantly, the number of compliance reviews, and consequently the number of enforcement cases, that were conducted by FMCSA decreased significantly in order to focus more on new entrant audits. Many experts consider the conduct of compliance reviews one of the most important functions of the agency (or the states) because this in-depth, on-site review of records and operations can reveal safety management control problems and safety violations that need to be addressed.

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<sup>48</sup> This section is based primarily on extensive discussions with various FMCSA officials, 2003 and 2004.

<sup>49</sup> For FY2004, Congress appropriated \$28.4 million for the new entrant program, including \$24.9 million for grants to the states to conduct new entrant audits.

<sup>50</sup> FMCSA data, 2003.

The new entrant audit program is viewed as a federal/state cooperative activity. Federal employees conducted about 53% of the new entrant audits during 2003. From January 2004 through March 2004, FMCSA employees conducted 41.5% of the new entrant audits. State participation has been limited by the availability of federal funds (roughly \$7.3 million in FY2003).<sup>51</sup> The agency indicated that the five-month extension (October 2003 through February 2004) of TEA21 authorities did not provide sufficient contract authority to fully implement the new entrant program. The recently passed two month extension (March 1 through April 2004) of TEA21 authorities specified in P.L. 108-202 allowed FMCSA to obligate up to 7/12ths of the funds provided in the FY2004 appropriation for new entrants.<sup>52</sup> FMCSA, however, did not obligate funds for the new entrant program during this period. Congress passed another two-month extension covering the period through June 2004, after which FMCSA allocated grant funds for the FY2004 new entrant program. During early May 2004, FMCSA had allocated \$17.2 million of funds to the states to conduct new entrant audits.

During 2003 and thus far during 2004, essentially all (99% or more) of the new entrants reviewed met the new entrant safety audit requirements successfully (i.e., they passed the safety audit.) If these new carriers continue to operate safely, at the end of the 18-month review period, FMCSA will grant them permanent registration/operating authority. FMCSA is now in the process of considering major changes to its audit program with the intention of strengthening the pass/fail criteria to better differentiate among carriers. In other words, FMCSA may “raise the bar” on what is required to pass the audit. FMCSA is considering prohibiting carriers found to have serious safety deficiencies in critical areas from continuing to operate under their provisional authority. More specifically, FMCSA is considering the option of revoking the provisional authority of such a carrier and possibly pursuing an enforcement action against that carrier, as the agency judges appropriate. Such a programmatic change would be pursued through a rulemaking activity and would convert the new entrant program into more of an enforcement-oriented activity than it currently is. Such a change would probably add to the value of the program in terms of promoting compliance, but it also would add to its complexity and thus add to the backlog of unaudited carriers and the workload on the FMCSA, especially if followup compliance reviews are conducted on those new entrants that failed the safety audit.

Congress provided the FMCSA with a “safety value” regarding implementation of the New Entrant Safety Assurance Program. Section 210 of MCSIA states that the DOT Secretary shall phase in the requirements of the new entrant program in a manner that takes into account the availability of certified motor carrier safety auditors. FMCSA has not yet used this provision to temper its goal of auditing all new entrants within the 18-month time frame specified by Congress. If this program becomes too resource consuming, FMCSA may decide to limit the number or types of new entrant carriers that receive an audit. Some have suggested that it might be

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<sup>51</sup> This amount was not specifically appropriated but was administratively collected from various sources including high priority funds and monies left over from states not using their full MCSAP apportionment.

<sup>52</sup> Personal communication with FMCSA, 2004.

worthwhile to conduct a comprehensive assessment of the financial and safety costs and benefits of the new entrant program.

Both the House- and the Senate-passed reauthorization bills provide the authority for the Secretary to use MCSAP funds to encourage the states to conduct new entrant audits. H.R. 3550 allows the DOT Secretary to allocate up to \$15 million per year to the states to conduct new entrant audits; S. 1072 allows up to \$29 million per year for this purpose.

In sum, based on the number of new entrant audits conducted during the first year of the program, it is highly unlikely that FMCSA working with the states will be able to audit the large number of new entrants applying for permanent operating authority within the time frame specified by Congress and without adversely affecting the compliance review responsibility of the agency. However, if the states continue to conduct a greater number of safety audits, it may be possible for the federal work force to increase its compliance review activities.