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STATEMENT OF

OLIVER W. KRUEGER ASSOCIATE DIRECTOR

RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE JOINT HEARING OF THE

SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION

COMMITTEE ON GOVERNMENT OPERATIONS

AND THE

SUBCOMMITTEE ON TELECOMMUNICATIONS,

CONSUMER PROTECTION, AND FINANCE,

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ON

GAO'S REVIEW OF THE FEDERAL HIGHWAY ADMINISTRATION'S

MOTOR CARRIER SAFETY ENFORCEMENT ACTIVITIES

Madam Chairwoman, Mr. Chairman, and Members of the Subcommittees:

We appreciate the opportunity to be here today to discuss certain aspects of our review of motor carrier safety enforcement activities and our observations regarding the organization of the Federal Highway Administration's (FHWA) Bureau of Motor Carrier Safety.

Our review was performed at the FHWA's Bureau headquarters and at four of its nine regional offices. We reviewed in

13 states¹ the enforcement activities of 25 federal motor carrier safety investigators, and we examined the records of about 1,600 safety audits performed by these investigators in fiscal years 1981 and 1982.

At the outset, we believe that an understanding of our work's focus is important. We did not attempt to evaluate the quality of the individual safety audits which the Bureau's investigators perform. Rather, our review was directed at the extent of the Bureau's oversight of the processes and procedures used to (1) carry out its safety enforcement mission and (2) oversee the activities of its field staff. In our opinion increased oversight of the safety audit processes and procedures has the potential to improve motor carrier safety. A recent FHWA organization change may increase the Bureau's ability to perform program oversight. Within the context of the Bureau's management responsibilities, we analyzed

- how carriers are selected for safety audits,
- how carriers are rated in terms of their compliance with federal safety regulations,
- what courses of action are taken based on the safety audits,
- how the civil penalty process is carried out, and
- the organizational relationship between Bureau headquarters and its field staff in managing the above functions.

In addition, we reviewed the Bureau's implementation of the newly established Motor Carrier Safety Assistance Program; the proposal

¹Arkansas, Delaware, Illinois, Maryland, Michigan, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, and West Virginia.

to transfer the Bureau from FHWA to the National Highway Traffic Safety Administration (NHTSA); and the establishment within FHWA of an associate administrator's position for motor carrier safety.

Since we have not yet finalized our report, the issues we discuss today should be considered tentative.

SUMMARY OF RESULTS

Although the Bureau has a process to select, rate, and identify actions based on audits, we found differences in the manner in which (1) safety investigators were selecting carriers for audit, developing ratings, and identifying actions to take based on audit results, and (2) enforcement cases were being processed. Two factors that may have a bearing on these differences are that the Bureau has not provided specific guidance to its field staff regarding how the process should be carried out, and that Bureau headquarters did not have direct control over its field staff. A March 22, 1985, organizational change gave it line authority over its field staff.

The differences in how the safety audit activities are being performed does not necessarily mean that the activities are not being carried out properly. However, the differences raise questions about the extent of the Bureau's oversight of the motor carrier safety enforcement program, including its guidance to the field staff. We discussed our preliminary findings with Bureau headquarters officials responsible for the program and they generally concurred.

We also found that the Bureau has made progress in getting the state grant program operational but has not yet developed program elements and activities that we believe would help ensure

an adequate state enforcement program. In addition, we believe that, in considering the Bureau's proposed transfer from FHWA to NHTSA and in evaluating the new associate administrator's position in FHWA, issues dealing with organizations and missions of the two agencies need to be addressed.

BACKGROUND

The Bureau of Motor Carrier Safety administers a national program to enforce laws and establish regulations governing the safe operation of interstate commerce along the nation's highways. The federal motor carrier safety regulations governing the interstate transport of passengers and property include driver's qualifications to operate the motor vehicle, maintenance records to ensure the vehicle operates safely, accident reports to identify unsafe carriers, and hours of service records to ensure that carriers are not having drivers operate vehicles beyond the hours established as safe.

A director is in charge of the Bureau. The Bureau is comprised of a headquarters staff responsible for overall program administration, policy, and guidance, and a field staff that is responsible for performing the safety audits. In fiscal year 1984, Bureau field staff numbered 191 of which 94 were full-time investigators who had safety audit responsibility for about 204,000 interstate motor companies and about 4 million commercial vehicles.

CARRIER AUDIT SELECTION PROCESS

To focus the small number of investigative staff on those motor carriers most warranting safety audits, the Bureau developed

in 1982 a uniform system for selecting carriers for audit by specifying selection criteria and annually distributing to field offices a priority list of carriers meeting the criteria. Carriers are rank-ordered on the list based on criteria that includes factors such as accident rates, prior audit results, and whether the carrier has been previously audited. In fiscal year 1984, for example, Bureau headquarters placed about 31,600 carriers on the priority list based on their meeting one or more of the criteria and on the significance of specific criteria used.

The Bureau provided but did not specifically require safety investigators to follow the list's priorities. It also allowed investigators to investigate third party complaints and accidents associated with carriers even if they did not appear on the priority list. The four Bureau regional field offices we visited used the list differently and relied on varying regional criteria and judgment in deciding which carriers to audit. For example, the Albany, New York Regional Office instructed its safety investigators to select carriers for audit from the list, but specific selection was left to the discretion of the investigators. Using the headquarters list, the Homewood, Illinois Regional Office, on the other hand, weighted the headquarters criteria and subsequently developed its own list broken down into a high priority list and a secondary priority list. Investigators were instructed to audit all the carriers on the high priority list and as much of the secondary priority list as possible.

By using different methods of selecting motor carriers from the priority list for audit, some regional offices may not be selecting those carriers most warranting attention, while others

may have identified improved means to select carriers for audit. Bureau headquarters does not oversee the implementation of the list, and as a result it is not aware of potential selection differences or identified selection process improvements.

CARRIER SAFETY RATINGS

After completing audits of selected carriers, the investigators prepare a motor carrier safety rating. Bureau instructions provide that field safety investigators should rate the carrier's overall compliance with the regulations as either satisfactory, conditional, or unsatisfactory. The investigators also are required to rate the carrier's compliance with individual parts of the regulations (driver qualifications, vehicle maintenance, etc.) as either acceptable, marginal, or unacceptable. However, Bureau guidance on overall and individual ratings does not provide criteria to help the investigators decide between rating categories.

While we did not attempt to verify the accuracy of the ratings, our analysis showed that the records of safety audits performed during fiscal years 1981 and 1982 by the 25 investigators indicated a wide variance among the overall ratings recommended by individual investigators.

One safety investigator, who conducted 41 safety audits during the 2-year period, recommended an overall satisfactory rating 98 percent of the time and never recommended an unsatisfactory rating. In rating compliance with specific regulations, the investigator never gave an unacceptable rating and seldom gave a marginal rating. In contrast, another safety investigator recommended an overall satisfactory rating 12 percent of the time, a

conditional rating 72 percent of the time, and an unsatisfactory rating 16 percent of the time. On 3 percent of this investigator's 109 audits, he rated compliance with one or more of the individual regulations as unacceptable.

While in both cases the safety investigators might have prepared the ratings in accordance with the general criteria, the differences we noted may indicate that the investigators may need more specific criteria. Bureau management has not looked into the reasons for the differences.

Differences also occurred between a carrier's overall rating and its compliance with individual parts of the regulations. On some audits one investigator rated compliance with individual parts of the regulations exactly the same but gave the carriers different overall ratings. For example, on two carrier audits, the investigator rated compliance with all the individual regulations examined as acceptable, but he recommended an overall satisfactory rating for one carrier and an overall conditional rating for the other carrier.

Bureau headquarters officials evaluate the results of each safety audit using information from the audit report and assign a final overall safety compliance rating of either satisfactory, conditional, or unsatisfactory. This rating is one of the criteria used to select carriers for the next year's audit selection priority list.

Although the Bureau has no procedures for changing ratings, the Bureau sometimes revises a carrier's safety rating to show that carrier compliance has improved without another safety audit being performed. For example, the Bureau has changed a carrier's

conditional or unsatisfactory rating based on the carrier's sending a letter to the Bureau explaining correction of violations and improved compliance. The changes in the overall ratings were made without audit verification that the stated corrections or improvements were made.

A carrier with a conditional or unsatisfactory safety rating would meet one of the factors to be included on the next year's selection list. However, a carrier with an unsatisfactory rating that is changed to conditional or satisfactory, may not appear on the future priority list or will receive a low priority ranking, which may reduce its chances of being audited.

ACTIONS TAKEN AS A RESULT OF AUDITS

Another example of the differences involves the actions taken as a result of audits. At the conclusion of a safety audit, an investigator must determine what action to take. The Bureau encourages its investigators to work with the carrier to achieve compliance with the federal motor carrier safety regulations. When investigators believe that a carrier will not willingly comply with the safety regulations, they can initiate enforcement measures, including formal action that includes fining the carrier. Headquarters instructions do not specify the criteria that should be considered in determining what course of action should be taken. As a result, the action the safety investigator chooses is judgmental.

We found differences in the actions taken by individual investigators. For example, three investigators always initiated an enforcement case against carriers with unsatisfactory ratings, and one investigator always scheduled a reaudit for carriers with

such a rating. Another investigator initiated an enforcement case 40 percent of the time and took no action 60 percent of the time in cases of overall unsatisfactory ratings.

Safety investigators chose to take no action against carriers receiving conditional ratings anywhere from 0 to 87 percent of the time. Nine of the 25 investigators took no action most of the time, and 4 investigators always took some action. In another situation, 12 of the investigators initiated enforcement cases against carriers with conditional ratings from 2 to 25 percent of the time. Thirteen investigators never took enforcement action against carriers with conditional ratings.

Safety investigators most often chose no action when rating a carrier satisfactory. However, two investigators on two different audits gave carriers satisfactory ratings, yet they initiated enforcement cases against the carriers.

ENFORCEMENT PROCESS AND HANDLING OF CASES

The Bureau's process for fining carriers does not appear to ensure uniform handling of enforcement cases. Specifically,

- the regional and field offices do not comply with FHWA's processing standards for ensuring timely handling of enforcement cases,

- the Bureau does not have criteria for ensuring that assessed fines are consistent with the severity of the violations found, and

- the Bureau does not adequately document justifications for assessed fines.

FHWA guidelines specify time frames for processing civil cases. Processing times varied among the four regions we reviewed

and frequently exceeded FHWA standards. For example, although the standard for referring a motor carrier civil case to a regional office counsel is 90 days, the standard was exceeded from 20 to 84 percent of the time in the four regions for the 485 cases we reviewed. In addition, the average processing time for the civil cases for the four regions was 201, 211, 218, and 404 calendar days with a range for the four regions being from a low of 8 days to a high of 1,045 days per case. We did not attempt to assess the impact of these processing times.

Our 1977 review,² and subsequent Department Inspector General and General Counsel, and National Transportation Safety Board reports criticized the Bureau's lack of criteria for setting initial and final assessments. In addition, the reports found inconsistencies between penalties and the safety significance of violations. These reports recommended that FHWA develop guidelines that related penalties to the severity of the violation. However, the subsequent guidance developed by FHWA's Chief Counsel provides general criteria for relating fines to severity of the violations. The guidance provides that initial and final assessments should bear a relationship to the nature, extent, and gravity of the violation committed, and treatment of similar cases. It also advises FHWA attorneys to consider the violators' compliance record, ability to pay, and ability to continue business. However, in our opinion, the guidance could be enhanced by providing more specific types of actions based on the number and severity of the violations. For example, it could provide a

²The Federal Motor Carrier Safety Program: Not Yet Achieving What the Congress Wanted (CED-77-62, May 16, 1977).

range for the proposed fine in cases when one or more drivers are not properly licensed or qualified to operate a specific vehicle or transport hazardous material.

In addition, a 1979 Department Inspector General report and a 1980 General Counsel study found that FHWA does not usually document its reasons for assessments. Subsequent to these studies, FHWA required that a file be created for each claim which includes a complete set of evidence, including review memoranda, litigation reports, and compromise memoranda. However, the guidance does not specify what the memoranda and reports should contain to explain the bases for the recommended action. In the 549 case files we examined, documentation did not always exist, and when it did, it often did not adequately identify the justification for the action taken.

Documentation would provide the Bureau with a basis to evaluate the action taken by the attorneys and decide whether more specific direction to the attorneys might be needed.

BUREAU ORGANIZATIONAL OVERSIGHT

The field staff are located in each of the nine FHWA regional offices and in each state. Within each FHWA regional office, the Bureau has an Office of Motor Carrier Safety that is responsible for providing technical direction and guidance to safety investigators and ensuring Bureau policies are carried out. Most of the safety investigators are located in state offices. The investigators are under the supervision of a senior investigator called an officer-in-charge. Until the March reorganization, the officer-in-charge reported to the FHWA state division administrator, who in turn reported to the FHWA regional office administrator.

The Office of Management Planning within the Department's Office of the Secretary in a September 1981 report on the Bureau said that the Bureau's organizational structure appeared to inhibit effective delivery and control of certain motor carrier safety activities. The report said that although the headquarters staff is responsible for overall administration of the motor carrier safety program, it does not have commensurate line authority over field personnel charged with the program's implementation and success. The report further stated that the procedure is cumbersome and time consuming because of the organizational structure, which makes it difficult to attain a reasonable level of uniformity in the program.

The report concluded that the organizational structure diminished control over program activities and identified options for possible organizational changes to address the findings. The organizational structure had not changed until the Administrator, FHWA, made the March 22, 1985, change.

Bureau officials in headquarters told us that the previous organizational structure did not permit them to direct or supervise the safety investigators' activities; therefore, it affected their ability to direct inspection resources and activities.

The way in which carriers are selected for audit, safety ratings are developed, action is determined based on audit results, and enforcement cases are handled appears to be an indication of a problem the Bureau has had in managing its regional field staff of safety investigators. The new change, however, established line authority between the Bureau and its field staff. This change has the potential to address these problems.

STATE GRANT PROGRAM

The Surface Transportation Assistance Act of 1982 established the Motor Carrier Safety Assistance Program to make grants to states beginning in fiscal year 1984 to (1) develop or implement programs to enforce federal safety regulations or (2) develop and enforce state regulations that are compatible with federal motor carrier safety regulations.

The program was authorized for 5 years, with maximum funding of \$150 million for fiscal years 1984 through 1988, and has the potential to assist efforts materially in motor carrier safety enforcement. Funds appropriated for fiscal years 1984 and 1985 were \$8 million and \$14 million, respectively. FHWA has made progress in getting the program operational by successfully informing states of the program, reviewing state grant applications, and awarding grants to 46 states and territories. However, FHWA's program appears to lack some elements of sound management which we believe should be part of a comprehensive federal program.

Specifically, the Bureau has not developed goals and objectives to guide the implementation process; defined federal and state roles and responsibilities to assure that states are working towards a common purpose; or developed a program monitoring mechanism. Also, program information needs have not been established.

Without these program elements in place, the Bureau does not appear to have a basis to evaluate program performance, be assured that the overall intent of the program is being achieved and that resources are being used most effectively. This information would be needed for the Bureau to adequately justify continuing the program beyond its currently authorized 5 years.

Bureau officials agreed that these program elements were important and needed and indicated that they would be addressed in the near future. These officials advised us that since they did not obtain (1) program funding until after the beginning of fiscal year 1984 and (2) additional staff to implement the program, they emphasized getting the program operational during the first year at the expense of overall planning.

The Bureau has contracted for a study to determine its program information needs. It expects the study and any resulting action to be implemented in fiscal year 1986--the third year of the program.

PROPOSED AND RECENT ORGANIZATIONAL CHANGES

As part of its fiscal year 1986 budget submission, the Department has proposed transferring the Bureau of Motor Carrier Safety from FHWA to NHTSA. In addition, the Administrator, FHWA, established an associate administrator position for motor carriers and established line authority for the Bureau over its field staff.

It is important that any assessment of the proposed transfer focus on (1) the differences in the missions of FHWA and NHTSA and (2) the dissimilarities in the field structure and geographic locations of the two organizations.

Mission differences

Although the missions of the Bureau and NHTSA are safety-related, their emphasis is different.

--NHTSA is responsible for reducing highway accidents and the deaths and injuries that result from them. The agency carries out its mandate through improving the safety characteristics of motor vehicles and through a national safety

program conducted in cooperation with state and local governments, industry, and private safety organizations. The agency is authorized to issue motor vehicle standards based on specified levels of performance and investigate possible safety defects in vehicles and direct their recall and repair without cost to consumers.

--The Bureau, on the other hand, is responsible for administering the federal regulations governing the safe operation of interstate commerce along the nation's highways.

Because each of their distinct missions are important, the Department should ensure that such transfer be accomplished in a manner that allows each mission to be fully maintained.

Field structure and locations

The field organizations of the Bureau and NHTSA as they now exist are not compatible in terms of geographic locations. The Bureau's field staff of 191 are dispersed throughout 75 field locations in 9 regional offices and state locations, whereas NHTSA has about 100 personnel operating out of its 10 regional offices and 2 field offices. Six offices have the same locations. Any merging of the two organizations must give careful consideration to and plan for lines of communications and reporting channels that provide effective control and supervision for both staffs.

Associate Administrator position

Independent of the suggested transfer of the Bureau, the Administrator, FHWA, on March 22, 1985 established an associate administrator position for motor carriers that elevated the motor carrier safety function to a comparable executive level within

FHWA as other program functions. The change has the new associate administrator reporting directly to the Administrator, FHWA. Previously, the Bureau was under the Associate Administrator for Safety, Traffic Engineering and Motor Carriers.

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This completes my statement. We would be glad to respond to your questions.