

Approved May 5, 1990
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~am~~ p.m. on March 20, 1990 in room 519-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Senator Lana Oleen
Senator Nancy Parrish
Sgt. Terry Maple, Kansas Highway Patrol
Ms. Jacque Oakes, Kansas Independent Automobile Dealers Assn.
Mr. Samuel Thomson
Mr. Al Maxwell, Kansas Corporation Commission
Mr. Teri Graham, Federal Highway Administration
Captain Michael Kuhn, Kansas Highway Patrol
Ms. Mary Turkington, Kansas Motor Carriers Association

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on SB-534 concerning time period when lighted lamps are required.

Senator Lana Oleen, co-sponsor of SB-534, briefed the Committee on contents of the bill. (See Attachment 1)

Senator Nancy Parrish, co-sponsor of SB-534, briefed the Committee concerning the bill.

Sgt. Terry Maple, Kansas Highway Patrol, testified in support of SB-534. (See Attachment 2)

Ms. Jacque Oakes, Kansas Independent Automobile Dealers Association, testified in favor of SB-534. (See Attachment 3)

Mr. Samuel Thomson, Manhattan, Kansas, testified in support of SB-534. (See Attachment 4)

Committee discussion and questioning followed.

The hearing on SB-534 ended.

SB-534 was then taken up for Committee discussion and action.

A motion was made by Representative Dillon that SB-534 be recommended favorable for passage and be placed on the Consent Calendar. The motion was seconded by Representative Wilbert. Motion carried.

The next order of business was a hearing on SB-489 concerning the regulation of motor carriers.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S Statehouse, at 1:30 ~~am~~ p.m. on March 20, 1990

Mr. Al Maxwell, Kansas Corporation Commission, testified in support of SB-489. (See Attachments 5 and 6)

Mr. Teri Graham, Federal Highway Administration, testified in support of SB-489. (See Attachment 7)

Captain Michael Kuhn, Kansas Highway Patrol, testified in favor of SB-489. (See Attachment 8)

Ms. Mary Turkington, Kansas Motor Carriers Association, testified in support of SB-489. (See Attachment 9)

Committee discussion and questioning ensued.

The hearing on SB-489 ended.

The next bill taken up for Committee discussion and action was SB-486 concerning automobile brokers under the Vehicle Dealers' and Manufacturers' Licensing Act.

Chairman Crowell suggested a technical amendment be made by striking Lines 35 to 37 on Page 11, as they are a duplicate of Lines 38 to 40 on Page 11 of SB-486.

A motion was made by Representative Empson to strike Lines 35 to 37 on Page 11 of SB-486. The motion was seconded by Representative Shore. Motion carried.

A motion was made by Representative Allen to amend SB-486 concerning what constitutes "incidentally performed". (See Attachment 10) The motion was seconded by Representative Gross.

A substitute motion was made by Representative Roenbaugh that SB-486 be recommended favorable for passage. The motion was seconded by Representative Dillon.

A motion was made by Representative Gross that SB-486 be tabled. The motion was seconded by Representative Lacey. Motion failed 13-6.

On the substitute motion to report SB-486 favorable for passage, motion carried on a voice vote.

The meeting was adjourned at 2:45 p.m.


Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 3-20-90

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
JACK TIERCE	Topeka	Ks Cong Comm
Al Maxwell	"	"
Alec Creighton	"	" " "
Eric Withkoski	"	" " "
Terry Myple	Topeka	Ks Hwy Patrol
SAM THOMSON	MANHATTAN	Citizen For 534
Michael Kuhn	Topeka	KANSAS Highway Patrol
May Sawaport	TOPEKA	Ks Motor Carriers Assn
TERI GRAHAM	TOPEKA	FEDERAL HIGHWAY ADMIN OFFICE OF MOTOR CARRIERS
Tom Whitaker	Topeka	Ks MOTOR CARRIERS ASSN
Mary E Turkington	Topeka	Kansas Motor Carriers Assn
Dave Carlson	Topeka	Ks Ind Auto Dealer Assoc
Jacquie Oakes	Topeka	Ks. Ind. Auto. Dealer Assoc.
Lee Eisenhauer	Topeka	Ks. L.P. Gas Assoc
Phoebe May	Roeland Park	Interested Citizen
Ed De Soignie	Topeka	Kansas Contractors Assoc.
Mike Shopp	Topeka	Ks Automobile Dealers Regulation Coalition
PAT BARNES	Topeka	Ks Motor Car Dealers Assoc
Kevin Allen	Topeka	Ks. Motor Car Dealers Association
Chuck Storn	"	ILBA
Opel Wright	Topeka	Ks Credit Union League
Dirk Bbemendaal	Grand Rapids, Mich.	Amway Corporation
Denny Adams	Willota	Eagle
J Thomas	"	"

oleen 1

LANA OLEEN
SENATOR, 22ND DISTRICT
RILEY AND GEARY COUNTIES



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN: GOVERNMENTAL ORGANIZATION
VICE-CHAIRMAN: CONFIRMATIONS
LABOR, INDUSTRY AND SMALL
BUSINESS
MEMBER: ASSESSMENT AND TAXATION
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HOUSE COMMITTEE ON TRANSPORTATION & UTILITIES

March 20, 1999

Dear Chairman Crowell, Vice Chairman Wilbert and Members of
The Committee:

I appreciate the opportunity to appear before you today
in support of SB 534.

I was first approached by a constituent, regarding the
changing of the current statute because of safety factors.
His theory seemed sound, so I gave it the road test through
the late summer and fall months. I literally saw (or
didn't see) his expressed concerns. The safety is not
one of viewing the pavement; it is one of being seen
clearly by other motorists at dusk and dawn.

Since introduction of the bill this session, both Senator
Parrish and I have had numerous comments by individuals
regarding the proposed extra hour of head lamp usage.
Their consensus is that it makes good sense. When the
sun is up, the lights are off; when the sun is down, the
lights are on - - - none of this half-hour confusion!

I, too, believe it makes good sense, and I ask your
favorable consideration and action on SB 534. Thank you.

Att. 1

Maple 2

SUMMARY OF TESTIMONY

Before the House Committee on Transportation

March 20, 1990

Senate Bill 534

Presented by the Kansas Highway Patrol

Sergeant Terry L. Maple

Appeared in Support of Senate Bill 534

The Kansas Highway Patrol supports Senate Bill 534. Senate Bill 534, if passed, would change the required time that vehicle head lamps need to be lighted (1/2 hour after sunset to 1/2 hour before sunrise changed to sunset to sunrise).

The Patrol supports this legislation due to the safety aspect involved.

During the twilight time, the lighted lamps might not be a necessity for a vehicle driver to see other traffic, but it is a definite safety measure which would make the vehicle more visible to oncoming drivers.

Motorcycles manufactured after January 1, 1978 are now required to display lighted head lamp and tail lamp at any time they are operated on a highway as a safety measure for visibility.

For the reason stated above, the Patrol asks your favorable consideration of Senate Bill 534.

Att. 2

KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

1115 WESTPORT SUITE E • MANHATTAN, KANSAS 66502 • 913-776-0044



DATE: March 20, 1990

TO: HOUSE COMMITTEE ON TRANSPORTATION

SUBJECT: SENATE BILL 534

Mr. Chairman and Members of the Committee:

My name is Jacque Oakes, and I am here representing the Kansas Independent Automobile Dealers Association. I am appearing in favor of this bill.

As car dealers, we are always concerned with anything that can help public safety. We believe that turning on headlights at sunset and off at sunrise would be less confusing. It is hard to remember whether the half hour designation goes before or after the sunset or sunrise.

Headlights are turned on at those hours only to make the vehicle more noticeable rather than to light the road. The National Safety Council recently stated that a bright blue or a bright yellow car is the most visible on the highway. Of course, a combination of bright blue and bright yellow would be the best. But car dealers will tell you that grey, white, and navy are the most popular colors, and they definitely become a blend with the pavement.

This bill would clear up the confusion in everyone's memory as to when to turn on headlights, and would make the public more safe by longer use of headlights.

Thank you for your time.

Individually we struggle to be heard—Collectively we cannot be ignored.

A + t. 3

SENATE BILL 534
Testimony of Samuel S. Thomson, Originating Constituent.

I appreciate the opportunity to appear before this body in support of SB 534.

I will begin with the notation, a picture is worth a thousand words, and ask each of you to do the same thing I asked of SENATOR OLEEN.

I Checked the Capital Journal this morning and SUNSET tonight will be 6:34PM. Set your alarm for 25 Minutes later and step outside to see just how dark that time of day is and how many colors of vehicles blend with their surroundings.

Now wait 10 Minutes until 35 Minutes after sunset and you will have the time most Judges and Prosecutors want to wait for a ticket to be issued, to allow for timepiece error.

Next set your alarm for 5:50 AM tomorrow and do the same observation, 5:54 being the Judicial leeway time and 5:59 being the 30 minutes before sun rise.

In addition I would like to see some consideration to the wording of the STATUTE to use the terms SUN UP AND SUN SET. I was always told that sunrise was the beginning of light, sun barely visable, and sunup was when the sun is totally above the horizon. Sunset being when the sun was on the horizon and sundown the last light. I now realize they are all synonymous, being defined as when the half - ball is visable on horizon. Law Enforcement uses Weather Agency official times, but, this little wording change may add a little extra margin of saftey.

Senator Oleen has discovered that EIGHT other states, including Nebraska, have adopted similar legislation and Indianna has adopted a reversal of the before and after. Before sunset and after sunup.

We believe this Change makes for a safer vehicle operation at the busiest time of day and the worst light condition.

Att. 4

STATEMENT
BY THE
KANSAS CORPORATION COMMISSION

In support of Senate Bill No. 489 which amends K.S.A. 66-1,109 and K.S.A. 66-1,129 to make Kansas law compatible with federal laws and regulations and allows Kansas to continue its participation in the Federal Department of Transportation's Motor Carrier Safety Assistance Program (MCSAP)

Presented to the House Transportation Committee, Representative Rex Crowell, Chairman; Statehouse, Topeka, March 20, 1990.

Mr. Chairman and Members of the Committee:

My name is Al Maxwell. I am the Transportation Division Administrator for the Kansas Corporation Commission (KCC). I am here today representing the Commission in support of Senate Bill No. 489.

I would like to thank this Committee for the opportunity to testify today.

INTRODUCTION

The proposed amendments to K.S.A. 66-1,109 and K.S.A. 66-1,129 will make Kansas law compatible with federal laws and regulations. These amendments are designed to allow Kansas to continue its participation in the Federal Department of Transportation's Motor Carrier Safety Assistance Program (MCSAP) and enhance public safety on Kansas highways.

The net effect of the proposed amendments, taken together, is: (1) to bring several categories of carriers under the Commission's safety regulations, but not subject them to the economic regulations (i.e., obtaining a certificate or license) or to insurance filing requirements; (2) to provide for uniformity between Kansas and federal laws and regulations; and (3) to provide further clarification of certain statutory language.

EXPLANATION OF AMENDMENTS

Specifically, the amendments to K.S.A. 66-1,109 would establish which carriers are not required to obtain a certificate, license or permit from the Commission or file rates, tariffs, annual reports or insurance with the Commission. K.S.A. 66-1,109(b) as amended clarifies the reference to the phrase "25 miles beyond the corporate limits of a city or village" to refer to the city where the private motor carrier is domiciled.

The specific amendments to K.S.A. 66-1,129 are as follows:

The existing language in K.S.A. 66-1,129(a) giving the Commission the authority to suspend, revoke or amend certificates has been moved to "New Section 1" under Senate Bill No. 489 (see page 1) and has been revised to clarify the Commissions authority. Also new language has been added to K.S.A. 66-1,129(a) which would make it clear that the KCC safety regulations apply to almost all motor carriers. This would bring several now unregulated motor carriers under the Commission's jurisdiction as to safety.

K.S.A. 66-1,129(a)(2) has been amended to provide further clarification of that language, the minimum age requirement for intrastate drivers would not change.

K.S.A. 66-1,129(a)(3) would allow the Commission, by regulation, to make the age requirement for interstate drivers consistent with federal regulations. (The federal requirement is 21 years of age in most instances, the proposed amendment would simply allow enforcement of those requirements in Kansas.)

In K.S.A. 66-1,129(b) the reference to registered gross vehicle weight has been changed from 12,000 to 10,000 and the wording changed to make Kansas regulations uniform with federal regulations.

The new subsection (c) lists the types of motor carriers that would still be exempt from safety regulations. The language in the preamble to subsection (c) means only intrastate carriers are exempt from the safety regulations. Interstate carriers in Kansas are already subject to the federal safety regulations. The current condition of the law has led to the situation where only federal officials can enforce the federal regulations in Kansas; the change in Kansas law would mean Kansas law enforcement officials could also enforce the federal regulations applicable to interstate carriers.

FISCAL IMPACT

Federal officials will advise that the fiscal impact of not enacting these changes could be the loss of federal funds from the Motor Carrier Safety Assistance Program (MCSAP).

It is difficult to estimate at this time if these changes will lead to a significantly increased number of KCC hearings for motor carrier safety violations. At this time there are no plans to add special investigators to the KCC Staff. The Highway Patrol is the primary enforcer of these regulations.

No new carriers are required to obtain a certificate, license or permit.

Should the proposed amendments be adopted, it may be appropriate for the Commission to allocate or reallocate some funds to inform the motor carrier industry about the changes in the law.

The Kansas Corporation Commission supports the legislative proposal under Senate Bill No. 489. We ask that you recommend this bill for passage. We would be happy to respond to any questions you may have.

EXHIBIT "A"
(S.B. 489)

The intrastate carriers currently not covered by the Kansas Motor Carrier Act, that would now have to comply with safety requirements are generally described in K.S.A. 66-1,109 subsections (a), (b), (d), (f), (m), (n), (o), (q), and (r).

(a) Transportation by motor carriers wholly within the corporate limits of a city or between contiguous cities.

(b) Private motor carriers who operate within a radius of 25 miles of a city.

(d) Persons operating without common carrier authority, under an exception in the present law for providing service in an area when no common carrier is accessible.

(f) A new vehicle dealer when transporting property to or from the dealer's place of business.

(m) Transportation of sand, gravel, slag stone limestone, crushed stone, cinders, etc.; ready-mix concrete trucks.

(n) A vehicle used exclusively for the transportation of solid waste.

(o) The transporting of vehicles used solely in the custom combining business.

(q) Transportation by taxi or bus companies. (A lot of other exceptions operate in conjunction with this one.)

(r) A vehicle being operated with a dealer license plate.

Graham

Senate Bill 489

Mr. Chairman and Members of the Committee:

I am Teri Graham, Officer-in-Charge of the Office of Motor Carriers, Federal Highway Administration. I appear here this afternoon as a proponent of Senate Bill 489.

As a condition for Motor Carrier Safety Assistance Program (MCSAP) funding, the Surface Transportation Assistance Act of 1982 requires a state to adopt and assume responsibility for enforcing safety requirements compatible with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

Kansas has been found to have several groups of motor carriers which have been exempted from the safety requirements. All of these motor carriers are presently subject to the Federal Regulations if they operate in interstate commerce. However under existing Kansas law, these same motor carriers cannot be regulated for safety by the State while operating within Kansas, even though they are on an interstate trip. Uniformity of motor carrier safety laws nationwide is pertinent to the industry.

Att. 7

Kansas is second only to California in the number of variances between State laws and Federal regulations, and between the two States, comprise over 70% of the total variances nationwide. The State of Florida was in a comparable position with Kansas last year and chose not to act, which resulted in their elimination from the program.

If the state fails to bring the exempted groups of motor carriers under the safety regulations, it is highly probable that all future MCSAP funding will be terminated. The total MCSAP budget for the current grant year 1990 is in excess of 1.4 million dollars, with approximately \$900,000 being the Federal share. This is money that is used exclusively to enhance safety upon our states highways.

Kansas has a motor carrier safety program which we can all be proud of, even though it does not include all groups of motor carriers. The program has been recognized nationwide as a leader in several areas of MCSAP. The Federal Highway Administration's Office of Motor Carriers wants the State of Kansas to remain in the MCSAP, but only with the passage of Senate Bill 489 can this be assured.

Mr. Chairman, at this time, I would be pleased to respond to any questions that you or any members of the Committee may have.

Teri L. Graham
Office of Motor Carriers
Federal Highway Administration
444 S. E. Quincy, Room 240
Topeka, Kansas 66683
(913) 295-2555

**ACHIEVING COMPATIBILITY OF STATE
AND FEDERAL SAFETY REQUIREMENTS**

**A Report to the
Secretary of Transportation**

**Commercial Motor Vehicle Safety
Regulatory Review Panel**

DRAFT (10/16/89)

COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

Thomas D. Larson, Chairman
(Federal Highway Administrator)

John P. Eicher, Vice-Chairman
(Director, Office of Program Management)

--- MEMBERS ---

John M. Allen
Former Commissioner
Arkansas Transportation Commission

Lieutenant Colonel James E. Daust
Bureau of Field Service
Michigan State Police

R.V. Durham
Director, Safety and Health Department
International Brotherhood of Teamsters

Betty Easley
Assistant Secretary of State
State of Florida

Robert J. Forman
Robert Forman Associates

Vincent J. Graber, Sr.
Chairman, Assembly Standing Committee
on Transportation
New York State Assembly

Paul R. Henry, Deputy Administrator
Transportation Safety Section
Office of the Oregon Public
Utility Commissioner

Douglas R. Lax
Director of Safety and Security
Grace Distribution Services, Inc.

Stephen P. Murphy, Sr. Vice President,
and Secretary
Yellow Freight System, Inc.

David F. Norcross
Myers, Matteo, Rabil and Norcross

Thomas C. Schumacher, Jr.
Executive Vice President
California Trucking Association

Richard P. Schweitzer
Zuckert, Scoutt and Rasenberger

Melvin H. Smith
Director, Division of Traffic Safety
Illinois Department of Transportation

Lawrence H. Stern, President
Sterns Transport, Inc.

Joseph S. Toole, Executive Director, CMVSRP
(Special Assistant to the Federal Highway Administrator)

TABLE OF CONTENTS

	<u>Page</u>
Summary and Recommendations.....	i
Chapter 1. Introduction.....	1
Purpose and Scope.....	1
Background.....	3
Study Approach.....	5
An Inventory of State Requirements.....	5
<u>Chapter 2. Status of State Requirements.....</u>	11
Compatibility of State Requirements.....	11
Industry Exemptions or Gaps in Authority.....	14
Buses.....	14
Farm and/or Forestry.....	14
Straight Trucks and Other Vehicles.....	17
Driver-Related Exemptions.....	18
Driver Age Requirements.....	20
Hours-of-Service Requirements.....	20
Multiple Driver-Related Exemptions.....	20
Overall Observations on the Status of State Requirements....	22
Achieving Compatibility: Where do we go from here?.....	24
Options for Achieving Compatibility.....	26
Option Selection.....	32
<u>Chapter 3. Strategy for Achieving Compatibility.....</u>	33
MCSAP Program.....	33
Background.....	33
State Responsibilities.....	33
Guidelines for State Review and Certification.....	35
Purpose and Scope.....	36
Guidelines for Analysis.....	36
Preemption of State Requirements.....	39
The Process of Preemption.....	39
Time of Preemption and MCSAP Decisions.....	40
Federal Actions.....	42
<u>Chapter 4. Future of the Motor Carrier Safety Assistance Program..</u>	44
The MCSAP in the 1990's.....	45
<u>Appendices</u>	
Appendix A: Summary of Safety Panel's Initial Findings and Responses Received From Governors	
Appendix B: Resolutions of the Safety Panel	

List of Table and Maps

Table 1	Key Dates--Activities of the Safety Panel.....	6
Map 1	Compatibility of State Requirements.....	12
Map 2	Industry Exemptions or Gaps in Authority.....	15
Map 3	Driver-Related Exemptions.....	19

SUMMARY AND RECOMMENDATIONS

The Commercial Motor Carrier Safety Regulatory Review Panel (Safety Panel) has prepared this report in response to Sections 207, 208, and 209 of the Motor Carrier Safety Act of 1984 (Public Law 98-554). A major goal of the Act is to achieve compatibility between State and Federal motor carrier safety requirements affecting interstate motor carrier operations. The Act required the Secretary of Transportation to establish the Safety Panel to analyze State and Federal motor carrier safety requirements. This report provides the Secretary with the results of the Safety Panel's review of safety requirements affecting interstate motor carrier operations.

State and Federal motor carrier safety programs have evolved in a decade of significant change within the motor carrier industry. With partial economic deregulation of the motor carrier industry in 1980, concerns arose that highway safety could decline amidst new, competitive pressures and structural changes within the industry. There followed several Federal initiatives directed at increasing the compatibility and uniformity of State requirements affecting interstate motor carriers: Congress established the Motor Carrier Safety Assistance Program (MCSAP) under the Surface Transportation Assistance Act of 1982 to address the need for a nationally uniform motor carrier safety program; the Department of Transportation conducted a comprehensive review of the uniformity of State motor carrier taxation and regulation as mandated under Section 19 of the Motor Carrier Act of 1980; and the Safety Panel was established to review the compatibility of State safety regulations as required under the Motor Carrier Safety Act of 1984. These activities were followed by another major uniformity initiative, the Commercial Driver's License (CDL) Program established under the Commercial Motor Vehicle Safety Act of 1986. Against

this backdrop of legislative actions aimed at uniformity, the Safety Panel has viewed its role and responsibility in a broader context of the need for greater compatibility of Federal and State safety requirements and improving the overall effectiveness of emerging State safety programs.

The Safety Panel initially inventoried and reviewed over 70,000 individual State motor carrier safety requirements affecting interstate carriers. Based on this initial comparison, the Safety Panel found that State and Federal safety requirements affecting interstate motor carrier operations have more in common than they do in diversity. The Safety Panel decided to concentrate on the broad, cross-cutting effects of the State safety requirements, particularly those considered less stringent in order to identify and eliminate major differences. Currently, 32 States have safety requirements affecting interstate motor carriers that are compatible with Federal requirements. The remaining incompatible jurisdictions have differences that can be grouped into several key areas: industry exemptions or gaps in authority; driver requirement differences; and two have not adopted any of the major Federal requirements. Earlier this year, the FHWA sent a letter to the Governor of each State and the Mayor of the District of Columbia informing them of the areas of incompatibility that the Safety Panel identified. The analysis in this report reflects the findings of the Safety Panel from February 1989 (see Appendix A for additional information), recent **changes** by State legislatures that bring their motor carrier safety laws into **compatibility**, and other information available to the Safety Panel through the MCSAP.

In the course of its review the Safety Panel considered four different approaches to achieve compatible State safety requirements: (1) a

continuous detailed review and preemption of individual requirements; (2) a broad review of State requirements with preemption; (3) modification of the MCSAP to include, as a condition of grant acceptance, an annual State review and certification of compatibility using guidelines recommended by the Safety Panel, coupled with negotiated deadlines for resolving major differences in requirements; and (4) the formation of a working group to build a consensus among States to implement compatible requirements. The Safety Panel recommends the MCSAP approach based on its effectiveness. The MCSAP approach would provide program continuity and strengthen existing State regulatory review and certification processes.

The Safety Panel recognizes that the process to eliminate differences must not be too rigid, but specific deadlines for achieving compatibility are necessary to measure progress of States. Currently, the MCSAP requires a continuous, annual review of individual State requirements and State agreements to adopt and enforce compatible safety requirements as a condition of grant acceptance. The Safety Panel recommends that an annual, comparative review should be conducted by each State using the guidelines in this report. The FHWA would accept (or reject) the States' analysis and certification of compatibility. Where differences remain in State requirements, States should enter into agreement with FHWA to replace them with requirements that are compatible with Federal safety regulations. If States fail to make adequate progress within a specified time period, then FHWA should preempt the State requirements following the procedures outlined in Section 208 of the 1984 Act and deny MCSAP funding to the State if compatibility is not achieved.

Key actions in the process of achieving compatibility will be the timing of preemption and the denial of MCSAP funds. Both actions would be

triggered by a determination that a State has incompatible safety requirements. The actions and their timing will depend on the type of regulation being addressed, participation in MCSAP, the status of the MCSAP agreements to eliminate differences in requirements, and the overall compatibility of the State's motor carrier regulations. (Timing of these actions is discussed in detail in Chapter 3.) Generally, the Safety Panel envisions that the FHWA would provide opportunity for notice and comment on preemption, issue a determination to preempt State requirements and deny MCSAP funds if compatibility was not achieved through preemption.

The Safety Panel recommends that the FHWA establish procedures for States to review, analyze, and certify compatibility of safety requirements as envisioned under the 1984 Act. The FHWA would issue regulations which would incorporate the continuous review activities outlined in the 1984 Act and identify the preemptive procedures and deadlines to avoid preemption. A State would follow the procedures and guidelines as outlined in the final rulemaking when analyzing its requirements. States participating in MCSAP should comply with the procedures through the grant administration process. Those States not participating in MCSAP should review and analyze their regulations annually and submit the certification to the FHWA Division Office. The Safety Panel recommends that July 1992 should be the effective date for preemption for those individual State requirements identified in this report. Intrastate differences are not subject to preemption although MCSAP funding may be reduced or eliminated for incompatibility under current requirements (the Safety Panel was mandated to examine only interstate regulations). The State regulatory review procedures would fulfill the process of continuous review of individual State requirements envisioned for the Safety Panel. Thus, the Safety Panel has completed its major

responsibilities under the 1984 Act, and its charter may be sunsetted with the transition to MCSAP. The MCSAP once reauthorized in 1991, would continue to be the primary mechanism for monitoring and insuring State compatibility with Federal safety requirements. The Safety Panel believes that MCSAP should be expanded in the next decade to satisfy this new role and become the focal point for all Federal motor carrier safety activities. To accomplish this, the Safety Panel recommends that the Program should be reauthorized at \$100 million annually well above its current funding level.

The Safety Panel believes that the procedures recommended in this report will place greater reliance on MCSAP and the States to resolve intergovernmental motor carrier safety issues. Before MCSAP most States did not have comprehensive motor carrier safety programs, and the Federal Government held the dominant role in the area of ensuring the safety of interstate motor carrier operations. The MCSAP was originally viewed as a program for roadside inspections. State activities have been expanded to include safety and compliance reviews, drug interdiction, and driver licensing, in large part due to new national initiatives. The Safety Panel believes that its recommendations will help strengthen the Federal-State partnership for motor carrier safety. The Safety Panel's believes that the States should expand the scope of their activities under MCSAP during the next decade to include all facets of motor carrier safety. The Safety Panel recommends that the Federal Government increase its financial commitment for the program to \$100 million annually to help support this objective. In the months ahead, the transportation community will debate the future direction of the Nation's highway program. Motor carrier safety should remain a national transportation priority.

CHAPTER 1

INTRODUCTION

PURPOSE AND SCOPE

A major goal of the Motor Carrier Safety Act of 1984 (Public Law 98-554) is to achieve greater uniformity among States' motor carrier safety requirements affecting interstate motor carrier operations. In 1985, the Secretary of Transportation established the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to assist the Federal Highway Administration (FHWA) in achieving this goal. The 1984 Act required the Secretary to establish the Safety Panel to review the compatibility of State motor carrier safety regulations with the Federal safety regulations.

This report provides the Secretary with the results of the Safety Panel's review of State and Federal motor carrier safety requirements. It includes information on the Safety Panel's approach for reviewing State requirements affecting interstate motor carrier operations, and the status of the State requirements. It also describes the Safety Panel's recommendation for relying on existing State activities for adopting and enforcing compatible requirements under the MCSAP and achieving compliance by the few States not participating in MCSAP. The procedures and guidelines to be used to implement the recommendation are also described.

The 1984 Act provides the Secretary the authority to review and preempt State requirements. Effective October 30, 1989, a State may not have in effect or enforce a safety law or regulation affecting interstate motor carrier operations if the Secretary determines that the State requirement is incompatible with Federal safety requirements. The Secretary may extend the effective date to October 30, 1991, as allowed under section

208(h) of the Motor Carrier Safety Act of 1984 and as amended by the Truck and Bus Safety and Regulatory Reform Act of 1988.

The Secretary must complete a two-tiered process for determining whether a State requirement affecting interstate motor carrier operations is incompatible with Federal safety requirements. First, the Secretary must determine whether each State motor carrier safety requirement:

- (1) has the same effect as;
- (2) is less stringent than; or
- (3) is additional to or more stringent than Federal requirements.

A State safety requirement that has the same effect as Federal requirements is compatible. A State requirement that is less stringent is incompatible and may not remain in effect or be enforced.

A State requirement that is more stringent than a Federal requirement must meet a second test. The requirement may not be in effect or enforced, if the Secretary determines that:

- (1) there is no safety benefit associated with the more stringent State law or regulation;
- (2) the State law or regulation is incompatible with Federal requirements; or
- (3) enforcement of the State law or regulation would be an undue burden on interstate commerce.

The 1984 Act directed the Safety Panel to follow this same two-tiered process when reviewing State and Federal safety requirements. It also directed the Secretary to "give great weight to the corresponding determination made by the Safety Panel" (section 208(c)(5)(a) of the Motor Carrier Safety Act of 1984). The Safety Panel has completed its review, and the results are presented in this report.

BACKGROUND

With enactment of the Motor Carrier Act of 1980, Congress largely deregulated the motor carrier industry from an economic standpoint. It opened entry into the industry and eliminated many other restrictions and requirements on interstate motor carrier operations. The industry became more competitive, and concerns arose that highway safety might be degraded as competition increased and the structure of the industry changed.

Congress established the MCSAP under the Surface Transportation Assistance Act of 1982. It is a Federally funded program administered by the States. Under MCSAP, States inspect vehicles and driver records, train their personnel in the safety requirements, and promote public awareness about commercial motor vehicle laws and safety. The States provide a 20 percent match for the Federal funds and, as a minimum, must fund their motor carrier activities comparable to 1981 and 1982 State spending levels. States now conduct approximately 1.2 million roadside inspections annually as opposed to 159,000 inspections in 1984.

As a condition for MCSAP funding, the 1982 Act requires a State to adopt and assume responsibility for enforcing safety requirements compatible with the Federal Safety regulations. The MCSAP represents one of several initiatives in the 1980s directed at increasing the compatibility and uniformity of State requirements affecting motor carriers. Under section 19 of the Motor Carrier Act of 1980, the Department of Transportation and the Interstate Commerce Commission completed a study which (1) identified differences in State requirements for fuel, sales and ad valorem taxes, and other fees imposed on motor carriers; (2) examined alternatives to the requirements; and (3) recommended ways to reduce the burden imposed on interstate motor carriers.

As an outgrowth of the study, the FHWA funded a comprehensive effort by the National Governors' Association (NGA) to develop uniform motor carrier regulation and taxation procedures for adoption by the States. In 1984, the NGA established the Working Group on State Motor Carrier Procedures. Its work led to the NGA's adoption of eight recommendations on how the States could reduce administrative burdens on motor carriers.

Since their adoption in 1985, the NGA has concentrated its efforts on working with States to implement four key recommendations: form State motor carrier advisory committees; join the International Registration Plan (IRP); participate in base State fuel tax agreements; and establish a one-stop operation for handling all the State's requirements for taxation, registration, and operating authority of motor carriers. Progress has been mixed. Forty States have formed motor carrier advisory committees, 40 are participating in the IRP, 3 are participating in the Regional Fuel Tax Agreement, 14 are participating in the International Fuel Tax Agreement, and 13 have one-stop operations.

The regulatory review activities of the Safety Panel under the Motor Carrier Safety Act of 1984 emerged as the next uniformity initiative. The 1984 Act required the Safety Panel to review the compatibility of State motor carrier safety regulations with the Federal safety regulations. While the section 19 study and the NGA Working Group concentrated on the differences among State taxation, economic and registration requirements, the Safety Panel (like MCSAP) concentrated on the differences among State safety requirements. These initiatives--MCSAP, the Section 19 study, the NGA working group, and the Safety Panel--were followed by another major uniformity initiative of the 1980s, the Commercial Driver's License Program. Under the Commercial Motor Vehicle Safety Act of 1986, the FHWA established

minimum Federal standards in 1988 for States to follow when testing and licensing commercial drivers. The program was established to ensure that each driver of a commercial motor vehicle has only one driver's license and is qualified to operate his or her vehicle. All drivers must be tested and licensed under the new standards by April 1992.

In completing its review of the compatibility of State and Federal safety requirements, the Safety Panel has viewed its role and responsibility in the broader context of need for greater uniformity among State requirements. Uniform, compatible safety requirements are important to facilitate interstate commerce, improve the efficiency of safety enforcement activities, and reduce the burden on interstate motor carriers. The results of the Safety Panel's work as documented in this report are intended to complement other initiatives underway.

STUDY APPROACH

An Inventory of State Safety Requirements

The first task in this study was to identify State safety laws and regulations affecting interstate motor carrier operations. Shortly after enactment of the 1984 Act, the FHWA requested the States to submit copies of their laws and regulations to the FHWA (see Table 1). The FHWA used the information provided by the States to compile a detailed inventory of State safety requirements affecting interstate motor carrier operations. The data base contained records of 70,000 State requirements with the corresponding Federal safety requirements.

The Federal Motor Carrier Safety Regulations (FMCSRs) are delineated in ten major parts of Title 49 of the Code of Federal Regulations (CFR) 49 CFR 390-399. The Federal safety requirements may be grouped into three

TABLE 1

KEY DATES--ACTIVITIES OF THE SAFETY PANEL

October 30, 1984	President Reagan signs the Motor Carrier Safety Act of 1984, directing the Secretary of Transportation to establish the Safety Panel.
January 10, 1985	The FHWA requests appropriate laws and regulations from States.
April 30, 1985	State laws and regulations are due to the Secretary and Safety Panel from the States.
June 18, 1985	Secretary of Transportation, Elizabeth Dole signed the charter establishing the Safety Panel.
September 5, 1985	The Safety Panel meets. Secretary Dole administers oath of office to panel members. The FHWA staff reviews: (1) Safety Panel's responsibilities, (2) the Safety Panel's Charter, and (3) proposed research contract to compile and analyze State laws and regulations.
January 21 & 22, 1986	The Safety Panel meets. Research contract is underway. The consultant discusses the study plan and schedule. The FHWA staff summarizes the Federal Motor Carrier Safety Regulations.
April 30, 1986	The FHWA and consultant complete analysis of 70,000 State safety requirements. Approximately one-half of the State requirements have the "same effect," i.e., are compatible with Federal requirements.
July 1 & 2, 1986	The Safety Panel meets. The FHWA and consultant discuss progress in preparing abstracts of State motor carrier laws and regulations.
July 28 & 29, 1987	The Safety Panel meets. The consultant presents abstracts of State laws and regulations. The Safety Panel directs FHWA to: (1) concentrate on "less stringent" requirements which have broad, cross-cutting effect on State safety requirements, and

(2) summarize the major differences in each State. (See Appendix B.)

December 2, 1987

The Safety Panel meets. The Panel approves analysis of State requirements and directs FHWA to prepare letters to Governors with findings.

May 5, 1988

The Safety Panel meets. The Panel decides to integrate safety regulatory review activities into MCSAP. (See Appendix B.)

February 24, 1989

The FHWA sends a letter to each Governor and Mayor of the District of Columbia reporting its initial findings. Approximately one-half of the States have requirements that are compatible with Federal safety requirements. Where differences exist among the other States, the Panel requests the States' views on specific recommended changes in the requirements.

June 15 and 16, 1989

The Safety Panel meets. The FHWA staff summarizes responses to letters and the Panel reviews the working draft of the report to the Secretary.

categories of standards: vehicles, drivers, and hazardous materials transportation.

1. Vehicle Standards

The FHWA establishes regulations for parts and accessories necessary for safe operation of commercial motor vehicles in interstate commerce. A motor carrier cannot operate any commercial motor vehicle unless it is in safe and proper working condition, and has the required parts and accessories. The requirements include standards for axles, brake and steering systems, frame and frame assemblies, tires, lights, and other parts and accessories. Buses are required to meet special standards and features for the safe transportation of passengers.

Drivers are required to conduct a walk-around inspection of the vehicle to ensure that it is in a safe operating condition before driving it. Also every driver must prepare a post-trip inspection report and list any defects with the vehicle. Carriers are required to properly maintain and routinely inspect vehicles and to maintain appropriate records.

2. Driver Standards

More than 5.5 million people drive trucks and buses in interstate and foreign commerce. Federal safety regulations require interstate drivers of these vehicles to be in good physical health, at least 21 years of age, able to operate the vehicle safely, and to maintain a safe driving record.

Federal safety requirements prohibit a commercial motor vehicle driver from:

- o being under the influence of alcohol;
- o consuming alcohol while on duty; and
- o consuming alcohol or being under the influence of alcohol within 4 hours before going on duty.

Federal requirements also prohibit a driver from being on duty while using controlled substances such as heroin, marijuana, amphetamines or narcotics, and/or other habit-forming drugs.

Interstate drivers and motor carriers must comply with the Federal hours-of-service requirements. For example, a driver may not operate a commercial motor vehicle after he or she has driven for 10 hours, or has been on duty for 15 hours (following 8 consecutive hours off duty). A driver must keep a record (or log) of duty status for each 24-hour period.

3. Hazardous Materials

The Research and Special Programs Administration (RSPA) regulates the transportation of hazardous materials. The regulations cover classification, packaging, handling, incident reporting, and placarding requirements applicable to the transportation of hazardous materials. The FHWA enforces the regulations for motor carriers transporting hazardous materials or waste.

The Safety Panel did not consider State requirements which do not correspond with the Federal safety regulations, such as those requirements traditionally under States' purview including registration, tariffs, permits, application fees, penalties and violations, and general traffic procedures. The Safety Panel did not review the compatibility of State hazardous material requirements and RSPA's regulations.

It is difficult to judge whether a particular State safety requirement (1) has the same effect as, (2) is less stringent than, or (3) is more stringent than a Federal requirement. The judgment is based on the applicability of the requirement and its relationship to the scope and definition of other requirements.

Based on the initial comparison of each State requirement with the corresponding Federal safety requirement in the data base, the Safety Panel found that:

- 43 percent of the State requirements had the same effect as the Federal safety requirements;
- 34 percent were less stringent;
- 6 percent were more stringent;
- 16 percent of the regulations had no comparable Federal requirement; and
- 1 percent applied only to intrastate carriers (thus were not subject to the Safety Panel's review).

While the Safety Panel was pleased to find that 43 percent of the State requirements were compatible with the Federal requirements, the review

proved to be a laborious exercise. Compiling the inventory resulted in some multiple counting of the effects of major differences. For example, if the State adopted the Federal safety requirements to apply only to for-hire carriers, the exclusion of private carriers permeated through all the individual requirements.

Upon reviewing the results in July 1987, the Safety Panel decided it would concentrate its efforts on the broad, cross-cutting effects of the State safety requirements, particularly those State requirements considered less stringent than the Federal safety requirements in order to identify and eliminate the major differences. The Safety Panel requested the FHWA staff to summarize the differences and identify specific changes needed in each State.

In February 1989, the FHWA sent a letter to the Governor of each State and the Mayor of the District of Columbia informing them of areas where there might be incompatibility between the State requirements and the Federal safety requirements. Where areas of incompatibility were identified, the States were asked for their comments on these initial findings. The Safety Panel used this information to summarize the status of the State requirements presented in Chapter 2.

CHAPTER 2
STATUS OF STATE REQUIREMENTS

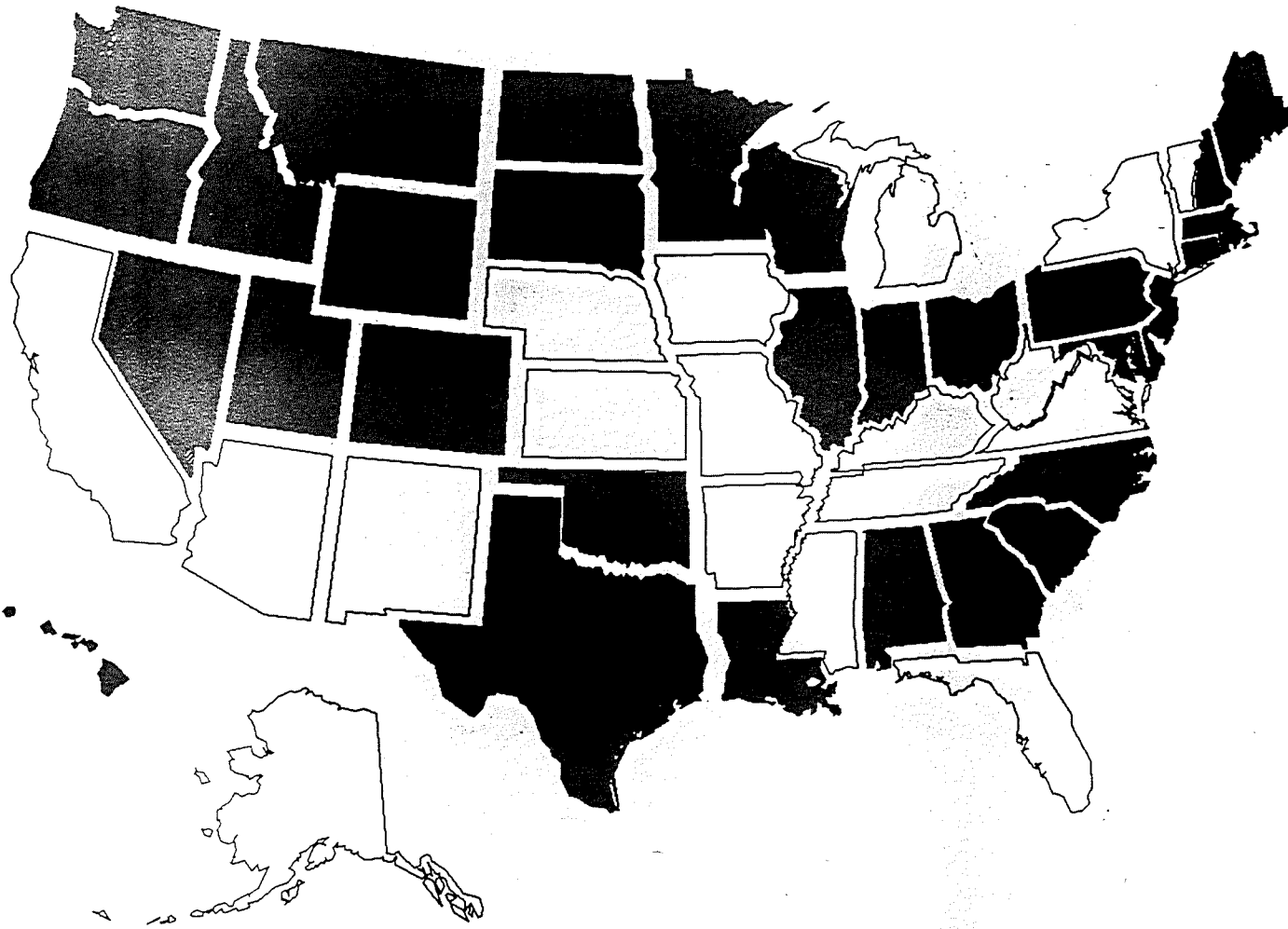
In the 1980s many States have adopted safety requirements affecting interstate motor carrier operations that are compatible with Federal safety requirements. In 1984, the first year of MCSAP, 12 States had motor carrier safety requirements that were compatible with Federal standards. Now, 32 States have safety requirements affecting interstate motor carrier operations that are compatible with Federal safety requirements.

Three national maps illustrate the status of State requirements. Map 1 illustrates the overall status of State requirements. Maps 2 and 3 highlight those areas where State motor carrier safety requirements affecting interstate motor carrier operations are not compatible with Federal safety requirements. This analysis reflects the responses from the Governors to the Safety Panel's February 1989 letter, informing them of areas of incompatibility. It also reflects recent changes by State legislatures to bring their interstate motor carrier safety laws and into compatibility and other information available to the FHWA through MCSAP (see Appendix A for additional information).

COMPATIBILITY OF STATE REQUIREMENTS (Map 1)

Thirty-two States have safety requirements affecting interstate motor carrier operations that are compatible with the Federal safety requirements. The majority of these States have adopted and enforce all the Federal safety requirements (49 CFR 390-399). Several States in this group have not

MAP 1 - COMPATIBILITY OF STATE REQUIREMENTS



Legend

- compatible
- not compatible

adopted requirements for the Notification and Reporting of Accidents (Part 394), Transportation of Migrant Workers (Part 398), and Employee Safety and Health Standards (Part 399).

The remaining States have safety requirements affecting interstate motor carrier operations that are not compatible with the Federal motor carrier safety requirements. These States have different exemptions (by industry or type of vehicle) and/or driver-related exemptions that are different from the Federal safety requirements (minimum driver age, hours-of-service regulations, and other driver-related requirements).

Two States (Delaware and Pennsylvania) have a weight threshold higher than the 10,000-pound threshold specified in the Federal regulations as their only area of incompatibility. The Safety Panel gave States latitude on the compatibility of their weight threshold requirements pending the outcome of the FHWA's rulemaking on the weight threshold used in defining a commercial motor vehicle. If the FHWA decides not to change the weight threshold after reviewing public comments, States with different weight exemptions may be considered not compatible.

Alaska and the District of Columbia have not adopted the Federal safety requirements (49 CFR 390-399), and do not have laws, rules, regulations, standards, or orders that are compatible with the FMCSRs.

New Mexico, in its first year of MCSAP implementation, has been enforcing the Federal safety requirements under a cooperative agreement. In July 1989, New Mexico enacted legislation which provides the State authority to promulgate requirements comparable to the Federal safety requirements. New Mexico officials have informed the FHWA that they expect the State will issue regulations compatible with the Federal requirements, effective January 1990.

INDUSTRY EXEMPTIONS OR GAPS IN AUTHORITY (Map 2)

Thirteen States do not have or enforce safety requirements for certain portions of interstate motor carrier operations within the State. In some cases, State legislatures have not enacted legislation that provides a State agency the authority to regulate specific industry segments. This creates a gap in the State agency's authority to regulate interstate motor carrier operations. In other cases, a State agency has provided an exemption in its regulations.

Buses:

For-hire interstate bus operators are subject to Federal safety requirements. A bus is defined in the Federal safety regulations as a vehicle operating in interstate commerce on a public highway that is designed to transport more than 15 passengers.

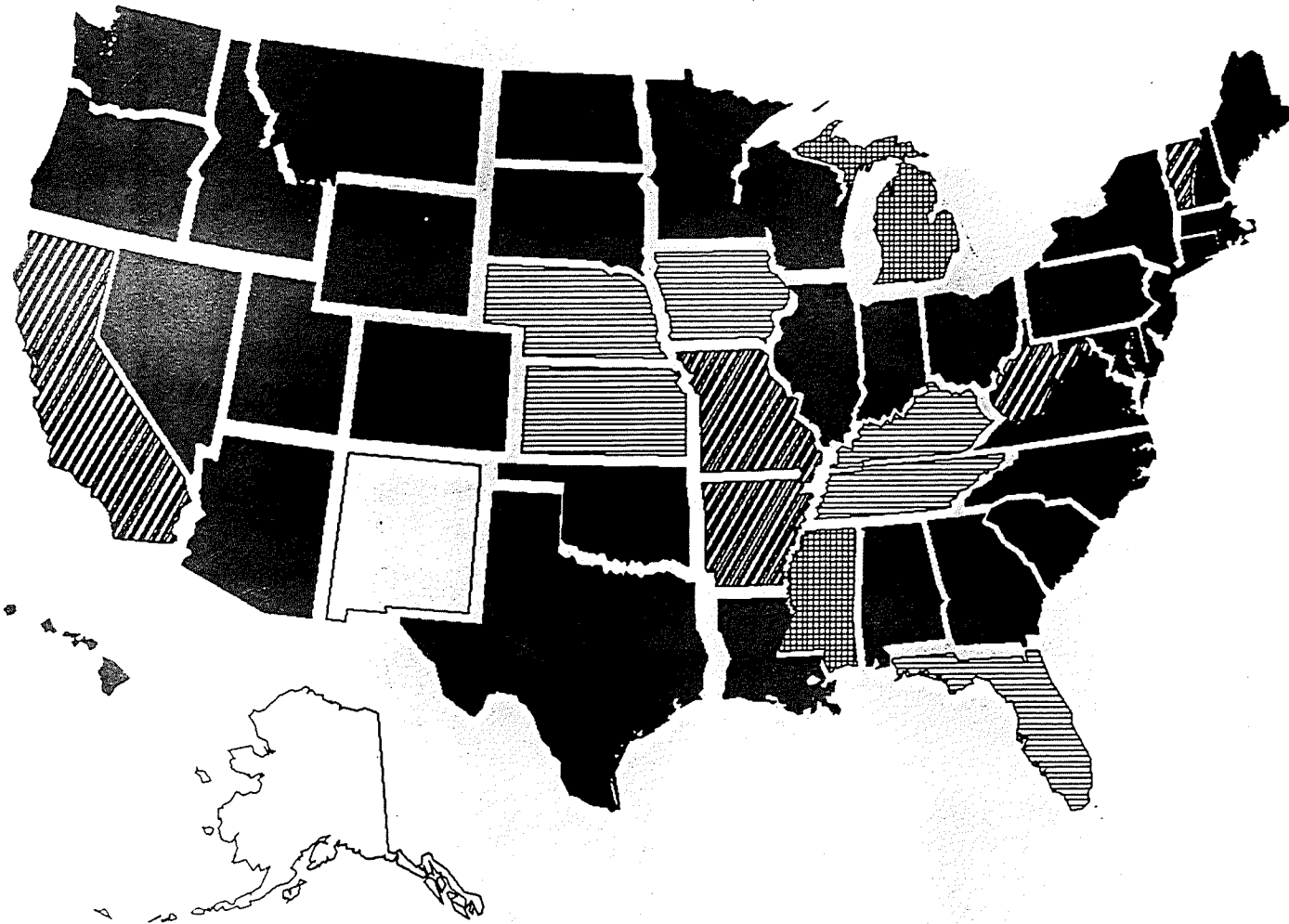
Michigan does not have safety laws or regulations for exclusively interstate passenger carriers operations; i.e., nonresident interstate motor bus carriers engaged in regular-route, charter, or tour operations.

Mississippi does not have legislative authority to regulate chartered bus operations.






Farm and/or Forestry:

Federal safety requirements define a commercial motor vehicle as a vehicle operating in interstate commerce on a public highway, that (1) has a gross vehicle weight rating (GVWR) of 10,001 pounds or more, (2) is designed to transport more than 15 passengers, or (3) is used to transport hazardous materials in a quantity requiring placarding under Federal hazardous materials regulations (49 CFR 390). Vehicles transporting agricultural

MAP 2 - INDUSTRY EXEMPTIONS OR GAPS IN AUTHORITY



Legend

-  buses
-  farm and/or forestry
-  straight trucks and/or other vehicles
-  not compatible
-  no exemptions or gaps

and/or forest products that meet the definition of a commercial motor vehicle are subject to Federal safety requirements.

Federal regulations also state that a driver of a commercial motor vehicle must be in good health, at least 21 years of age, able to drive the vehicle safely, and have a safe driving record (49 CFR 391). A driver of a vehicle transporting agricultural and/or forest products that meets the definition of a commercial motor vehicle is subject to the Federal safety requirements.

Florida exempts from the safety requirements carriers transporting farm or forest products to from farm-to-first market.

Iowa exempts from the Federal safety requirements persons operating an implement of husbandry or pickup to transport fertilizers and pesticides in those persons' agricultural operations. Iowa also exempts from certain safety requirements retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering those products to farm customers within a 100-mile radius of their retail place of business.

Kansas exempts vehicles used to service, repair, or transport instruments of husbandry within 100 miles of the place of business and vehicles used to transport water for home or livestock consumption from the Federal safety requirements. Kansas does not regulate vehicles transporting grain to a storage place or elevator within a 50-mile radius (if the vehicle has an "ad valorem situs" registration in Kansas). Kansas exempts from Federal requirements owners of livestock, producers of farm products, or the motor vehicle of a neighbor used on the basis of exchange/barter. Kansas exempts transporters of vehicles used solely in the custom combining business when transported by persons engaged in such business. Kansas also exempts other types of vehicles (and their drivers) from selected Federal safety requirements (see Appendix A).

Kentucky exempts private carriers in farm-to-market agricultural operations operating during daylight from the parts and accessories requirements. Kentucky also exempts vehicles transporting primary forestry products from the harvest area to mill or processing facility within 50 air-miles from the parts and accessories requirements.

Missouri exempts vehicles (and their drivers) weighing 42,000 pounds or less if the vehicles are designated for farm use (by the letter "F" on the license plate) from the Federal safety requirements. Missouri exempts trailers (and their drivers) if they are towed by vehicles with an F plate (except vehicles transporting fertilizer). Missouri also exempts vehicles (and their drivers) weighing 60,000 pounds or less that transport solid waste and vehicles transporting propane tanks which weigh 50 pounds or less from the safety requirements.

Nebraska exempts farm trucks (and their drivers) weighing 32,000 pounds or less, liquid petroleum and liquid petroleum gas tanks weighing less than 3,500 gallons, fertilizers and agricultural chemical application, and distribution equipment in units with a capacity of 3,500 gallons or less from the Federal safety requirements. Nebraska also exempts drivers of farm registered vehicles from selected safety requirements.

Tennessee exempts vehicles (and their drivers) which transport materials for farm purposes from the FMCSRs.

Straight Trucks and/or Other Vehicles:

These vehicles and their drivers are subject to the Federal safety requirements if the vehicles being operated meet the definition for a commercial motor vehicle.

Arkansas exempts wreckers from all safety requirements and pole trailers from brake requirements during daylight hours. Arkansas also exempts vehicles (and their drivers) involved in transportation of gravel, rocks, dirt, bituminous mix materials, rip-rap, quarried and crushed stone, and similar materials from the safety requirements.

California has not adopted safety requirements for two-axle straight trucks transporting non-hazardous materials. Also, California does not prohibit regrooved tires on the steering axles of a bus and has no requirements pertaining to the exhaust system discharge location.

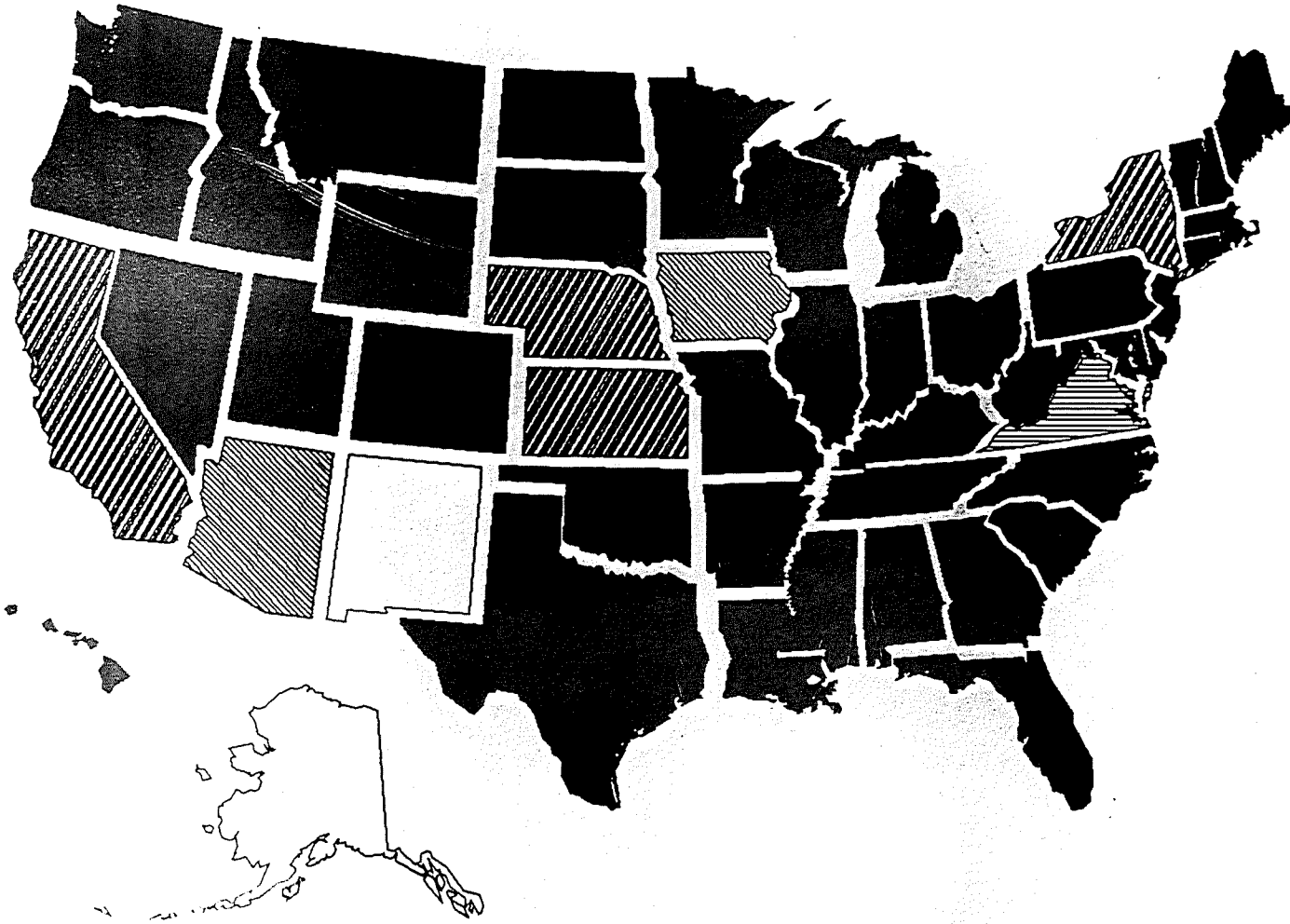
Vermont exempts carriers of non-hazardous materials from the safety requirements. Vermont passed legislation to allow adoption of Federal regulations for all cargoes including non-hazardous materials. Pending the results of public hearings, this legislation will become effective and will be fully implemented.

West Virginia exempts straight trucks of private carriers transporting excavating equipment from the Federal safety requirements. West Virginia also exempts for-hire carriers transporting U.S. mail or newspapers from the safety requirements.

DRIVER-RELATED EXEMPTIONS (Map 3)

Seven States have driver-related exemptions which vary from the Federal safety requirements. These include differences in requirements regarding minimum driver age and hours-of-service.

MAP 3 - DRIVER-RELATED EXEMPTIONS



Legend

- diagonal lines (top-left to bottom-right) driver age (only)
- horizontal lines hours-of-service
- diagonal lines (top-right to bottom-left) multiple differences
- white not compatible
- black no differences

Driver Age Requirements:

Federal driver qualification requirements specify a minimum age of 21 years for a driver operating a commercial motor vehicle in interstate commerce (49 CFR 391.11).

Arizona has regulations that specify a minimum age of 18 years for a commercial motor vehicle driver.

Iowa exempts retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering these products to farm customers within a 100-mile radius of their retail place of business from the 21-year-old age requirement.

Hours-of-Service Requirements:

Federal safety regulations require that a driver cannot operate a commercial motor vehicle after having driven for 10 hours, or having been on duty for 15 hours (following 8 hours consecutive off duty). They also state that a motor carrier cannot allow or require a driver to drive after being on duty for more than 60 hours in any 7 consecutive days, or after being on duty more than 70 hours in any 8 consecutive days. In addition, a driver is required to keep a record of duty status for each 24-hour period.

Virginia does not require certain interstate drivers to maintain records of duty status.

Multiple Driver-Related Exemptions:

Four States have safety requirements which are different from the Federal safety requirements pertaining to multiple driver-related exemptions, driver's minimum age, and/or hours-of-service requirements.

1. Driver qualification requirements:

Federal safety requirements specify that a driver of a vehicle meeting the definition of a commercial motor vehicle is subject to the driver qualification requirements.

Nebraska provides exemptions for drivers of farm registered vehicles from all driver qualification requirements and from a driver's record-of-duty status.

New York exempts drivers of vehicles transporting non-hazardous materials from the driver qualification requirements.

2. Medical requirements:

Federal safety requirements state that an individual is considered not physically qualified to drive a commercial motor vehicle if he or she is an insulin-using diabetic or epileptic or has a cardiovascular disease known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

Kansas does not prohibit insulin-using diabetics, epileptics, and individuals with cardiovascular diseases from driving commercial motor vehicles. In addition, Kansas' safety requirements specify a minimum age of 18 years for all drivers.

3. Driver qualification files:

Under Federal safety requirements, a motor carrier must maintain a driver qualification file with information on each driver's medical certificate, license to operate a commercial motor vehicle, and other

information on the driver qualifications or employment. Federal safety requirements also prohibit unauthorized drivers from operating commercial motor vehicles. Federal regulations prohibit a driver from being under the influence of alcohol and establish 0.04 percent as the level of alcohol concentration in the blood at which a driver is deemed to be driving under the influence of alcohol.

California does not require motor carriers to maintain driver qualification files for drivers operating in interstate commerce. California does not prohibit unauthorized drivers from operating a commercial motor vehicle. California's safety requirements do not prohibit a driver from consuming alcoholic beverages within 4 hours prior to going on duty. California has not established a 2-hour ceiling of added driving time during adverse weather conditions and allows a carrier to dispatch drivers and vehicles when adverse weather conditions are known to exist.

OVERALL OBSERVATIONS ON THE STATUS OF STATE REQUIREMENTS

Based on its review of the compatibility of State and Federal safety requirements affecting interstate motor carrier operations, the Safety Panel finds:

1. States have made progress in the 1980s to adopt and enforce safety requirements affecting interstate motor carrier operations that are compatible with Federal safety requirements. Thirty-two States have safety requirements affecting interstate motor carrier operations that are compatible with the Federal safety requirements.

2. Alaska and the District of Columbia do not have motor carrier safety requirements that are compatible with Federal safety requirements. New Mexico has been enforcing the Federal safety requirements under a cooperative agreement while in its first year of implementation on FY 1989 using MCSAP. In July 1989, New Mexico enacted legislation which provides the State authority to promulgate requirements comparable to the Federal safety requirements, which should make it compatible with the Federal requirements effective January 1990.
3. Thirteen States do not have or enforce safety requirements for certain portions of interstate motor carrier operations in the State. These States provide exemptions for or do not have the authority to regulate certain industries. Two States (Michigan and Mississippi) provide exemptions for chartered buses. Seven States (Florida, Iowa, Kansas, Kentucky, Missouri, Nebraska, and Tennessee) provide exemptions for agricultural and/or forestry-related operations. Four States (Arkansas, California, Vermont, and West Virginia) exempt straight trucks and/or other vehicles from the Federal motor carrier safety requirements.
4. Seven States (Arizona, California, Iowa, Kansas, Nebraska, New York, and Virginia) provide exemptions for interstate motor carrier operations from various driver-related requirements. These States have a lower minimum driver age, different hours-of-service regulations, and differences in other driver-related requirements.
5. The process to eliminate differences between State and Federal safety requirements will not happen overnight due to the frequency of States' legislative sessions. For example, in 1989 a bill was introduced in Mississippi to give the State the authority to regulate chartered buses. It did not pass, but State officials expect to reintroduce it during Mississippi's next legislative session in January 1990. Most legislatures meet for approximately 3 to 5 months each year. Seven States (Arkansas, Kentucky, Montana, Nevada, North Dakota, Oregon, and Texas) have legislative sessions every other year.
6. South Dakota has interstate motor carrier safety requirements that are compatible with the Federal requirements, but is not currently participating in MCSAP. Florida received MCSAP implementation grants during FY 1987-88, but has not participated recently. The District of Columbia received MCSAP development grants during FY 1986-87, but did not participate in in FY 1988-89. Recently, District of Columbia officials expressed interest in applying for development funds for FY 1990.

ACHIEVING COMPATIBILITY: WHERE DO WE GO FROM HERE?

It is difficult to judge whether a particular State safety requirement (1) has the same effect as, (2) is less stringent than, or (3) is more stringent than a Federal requirement. Both the analysis of State safety requirements and the objective of achieving compatibility are complicated by several factors:

- o there are thousands of individual State safety requirements affecting interstate motor carrier operations that have varying degrees of differences in comparison to Federal safety requirements;
- o State and Federal Governments continuously change their safety requirements to respond to changes in public policy and technology affecting vehicle design, operating practices, and enforcement techniques;
- o the motor carrier industry is composed of a diverse group of entities with varying degrees of importance to the economy of States and localities;
- o States can have different levels of interest in motor carrier safety from the Federal Government;
- o States adopt the Federal safety requirements differently;
- o different State agencies administer the motor carrier safety requirements; and
- o there are limited resources available for motor carrier safety.

Of these seven factors, the first two present the greatest difficulty to conducting a continuous, rigorous analysis of motor carrier safety requirements. When compiling the inventory of requirements, the FHWA identified approximately 70,000 State and 1,300 Federal requirements. Many State safety requirements have subtle differences in comparison to the Federal requirements. A detailed comparison of State and Federal requirements to identify areas of incompatibility has been an enormous undertaking. An inventory of requirements provides a benchmark for comparative analysis, a one-time glimpse of a changing set of requirements.

Changes in the requirements are often driven by the other five factors cited above. A diverse motor carrier industry competing within a State and lobbying for its special needs affects the way the requirements are adopted or changed. State agencies often have authority to change or interpret requirements administratively, and enforcement activities may be scattered among several organizations within a State. Changes to safety requirements generally are the result of new technology for enforcement or vehicle design, more complete knowledge of accidents and their causes, improvements in safety-related data, new research results, or larger public policy issues; recent examples include front brakes, on-board recorders, and drug testing.

Each State, like the Federal Government, balances its interest and emphasis on motor carrier safety with other needs and policies. State governments do not always embrace national uniformity because a State's sphere of influence and concern rest primarily within its borders. The States are more inclined to act on matters that directly affect their citizens. The independence in State actions and perspectives will continue to influence the resolution of the uniformity issue. Many States believe that discretion and exceptions beyond Federal requirements are necessary even though motor carrier safety regulations affecting interstate operations are already established by the Federal Government.

States adopt the Federal safety requirements differently. Some States adopt the Federal safety regulations intact as of a particular date or with all future amendments. Other States adopt selected portions of the Federal safety regulations or provide specific exemptions when enacting legislation or issuing their motor carrier safety regulations. In some cases, the State provides an exemption because the industry or group is already exempt from other State requirements. A few States adopt regulations "not in conflict"

with State requirements or, if a conflict does exist, enforce "the more stringent" requirement. States also periodically readopt the requirements and sometimes may change the form or scope of their adoption.

The results of the Safety Panel's analysis presented earlier depict the effects of the differences in the States' adoption of the safety requirements. Failure to adopt specific parts of the Federal safety regulations or to establish weight classifications has generally been a State agency decision, so the agency could change the requirement administratively (without legislation). Farm and industry exemptions generally are the result of State statute, so a legislative change usually is needed. Sometimes products are important to the State's economy and may be protected by strong influences within State legislatures. When one State develops a new exemption or requirement and alters the status quo, it may precipitate changes in other States. Thus, a unique solution to a problem within one State disrupts efforts nationally and can threaten a balance established through such programs as MCSAP.

When examining thousands of ever-changing, detailed requirements in order to identify their differences, it is easy to overlook a more significant attribute of the aggregate set of regulations--their commonality. As apparent from the results of the Safety Panel's analysis presented earlier, State and Federal safety requirements affecting interstate motor carrier operations have more in common than they do in diversity.

OPTIONS FOR ACHIEVING COMPATIBILITY

The Safety Panel has examined four different approaches to achieve compatible State safety requirements. It assessed the four options with the following objectives in mind:

- o to provide to interstate motor carriers and safety enforcement officials a uniform set of safety standards applicable nationwide;
- o to enhance the effectiveness of the enforcement of motor carrier safety requirements;
- o to ensure a continuous regulatory review of State safety requirements affecting interstate motor carrier operations in a cost-effective manner;
- o to minimize Federal intrusion into State affairs and preserve the interests of the State and the Federal Governments in improving highway safety; and
- o to complement other uniformity initiatives.

This portion of the report reviews the four options:

- Option 1: Detailed Review
- Option 2: Broad Review
- Option 3: MCSAP Approach
- Option 4: Working Group

The Safety Panel selected the MCSAP Approach for further examination (see Chapter 3).

OPTION 1: Detailed Review

Under this option the Safety Panel and the Secretary would review, line by line, all State and Federal safety requirements affecting interstate motor carriers; i.e., 70,000 State requirements in the data base. The Safety Panel completed a "snapshot review" of broad, crosscutting requirements which has proved more manageable. Under this option, the Safety Panel and the Secretary would continually review all of the requirements. The Safety Panel would review every change in State requirements whenever a State modifies its requirements and submits them to the Safety Panel. The Safety Panel and the Secretary would complete the two-tiered analysis for each requirement, and the Secretary would decide whether each State requirement should remain in effect and be enforced. The

State could request the Secretary to waive his determination if it wanted its requirement to remain in effect.

The Safety Panel embarked on a line-by-line review of the State requirements initially, but found it to be unworkable due to the large number of requirements and their subtle variations. It is both a labor and resource intensive process, and it is doubtful whether the Secretary and the Safety Panel could keep pace with the changes in State and Federal safety requirements. While this approach may be considered comprehensive, it would duplicate existing administrative procedures under MCSAP. If taken to the extreme, the Secretary would have to decide on the compatibility of thousands of detailed requirements.

The Safety Panel would also annually review changes in State and Federal safety requirements. It could undermine the progress made under MCSAP and disrupt further efforts to achieve uniformity. States may react negatively to punitive Federal action by withdrawing from the MCSAP. The level of overall safety enforcement activities by States could decline.

OPTION 2: Broad Review

This approach would provide a means of managing the large quantity of regulations without sacrificing the goal of overall State compatibility. It would focus on the broader issues that make numerous States incompatible (rather than all individual State requirements) and would attempt to resolve major differences between Federal and State requirements. This approach, while being voluntary, also could include punitive action if the States do not make adequate progress or are unresponsive to the Safety Panel's recommendations.

However, it would simplify the safety regulatory review process presented under Option 1. By focusing on the broad effects of requirements it would be more discriminative than Option 1 and perhaps less arduous. State reaction may be the same. As in Option 1 a continuous effort to review and preempt State requirements would duplicate MCSAP program management activities and would risk a negative impact on MCSAP achievements in compatibility.

OPTION 3: MCSAP Approach

This option would merge the most advantageous features of Option 2 with the current administrative program requirements of MCSAP. It would include a State review and certification component. It would preserve the option to determine that a State requirement may not be in effect or enforced. Under this option, the Safety Panel would build on the review of broad-based, crosscutting requirements and the results of the letters sent to the Governors by using MCSAP as a means of pursuing the Safety Panel's recommended changes in State requirements.

A continuous, annual regulatory review would be done by States under MCSAP. Currently the FHWA requires a State to demonstrate a good-faith effort to adopt and enforce both interstate and intrastate requirements that are compatible with Federal safety regulations as a condition of MCSAP grants. Using this option the FHWA would consider only the State's interstate requirements for purposes of implementing the conditions of the Motor Carrier Safety Act of 1984.

One of the existing conditions for MCSAP funding is that the State must certify that it has or will adopt commercial motor carrier and highway hazardous materials safety rules and regulations which are compatible with

the Federal safety regulations and the Federal Hazardous Materials Regulations. States must submit to FHWA a copy of the State law or regulation adopting the Federal safety regulations or a copy of compatible State rules, including current amendments and any State exceptions or exemptions to the rules (49 CFR 350.15).

This provision would be strengthened by identifying guidelines for States to use to review the compatibility of their safety requirements affecting interstate motor carrier operations and Federal safety requirements. The good-faith effort would be strengthened by establishing deadlines to resolve major areas of incompatibility within the framework of each individual State's legislative calendar to help provide State officials flexibility in meeting the deadlines.

This approach would convert the review of individual requirements from a regulatory process into a program initiative and assign responsibility for completing the review of specific requirements to State officials who have regulatory knowledge specific to individual States. This option is appealing because it eliminates redundant, continuous review procedures now required under the 1984 Act and MCSAP, thereby reducing the resource requirements that would otherwise be dedicated to it. It would complement MCSAP by expanding its overall authority and improve the effectiveness of the review and certification process through direct contact between State and Federal officials responsible for safety enforcement. It could allow additional time to correct major areas of incompatibility without sacrificing current program initiatives or major gains in uniformity already achieved through MCSAP.

OPTION 4: Working Group

The Safety Panel would assume a new role under this option. Working as a forum for the States to achieve compatibility, the Safety Panel would provide a strong leadership function in building consensus among the States to implement compatible requirements. This option would be similar to the role played by the NGA Working Group on State Motor Carrier Procedures in achieving uniformity of State motor carrier registration and taxation provisions. In order to achieve the consensus-building objective, the Safety Panel would expand its representation of State officials or otherwise seek the direct participation of more States in its activities. Continuous review of State requirements by the Safety Panel would be on a regular basis. It would emphasize consensus building among State and Federal officials.

While this approach would provide a mechanism for discussing and evaluating major differences among Federal and State requirements, the time horizon for doing so would be considerable. A working group would be both resource and time consuming, duplicating MCSAP grant administration procedures. It could eventually lead to greater compatibility since solutions to compatibility issues would be generated by State officials. It is the least intrusive option since preemption is subordinated. In order to implement the option, changes could be needed to the Motor Carrier Safety Act of 1984 in order to redefine the Safety Panel's structure, membership and responsibilities.

OPTION SELECTION

In May 1988, the Safety Panel reviewed these four options and decided to use Option 3 (MCSAP approach) to achieve compatibility in State and Federal requirements. States have made significant progress in achieving compatible interstate motor carrier safety requirements under MCSAP. State and Federal safety requirements have more in common than they do in diversity. States are required to certify the compatibility of their safety reports as a condition for a MCSAP grant. Option 3 will strengthen the State regulatory review and certification processes under MCSAP.

CHAPTER 3

STRATEGY FOR ACHIEVING COMPATIBILITY

The Safety Panel recommends that the States should have the major responsibility for reviewing the compatibility of State and Federal safety requirements affecting interstate motor carriers. The States should analyze and certify the compatibility of their requirements annually to FHWA, modeled after the certification that States complete under MCSAP. A State participating in MCSAP should analyze its requirements and complete the certification as part of the MCSAP grant application. The Safety Panel believes that the FHWA also should require non-MCSAP States to analyze their requirements and certify their compatibility annually to the FHWA.

The Safety Panel recommends that the States, through a MCSAP good-faith effort, should work aggressively to eliminate incompatible requirements no later than July 1992 (see Appendix A). The Safety Panel also recommends that the FHWA should take the necessary steps to preempt incompatible safety requirements that are not removed or replaced within the deadlines.

This chapter summarizes the States' current responsibilities under MCSAP and the guidelines all States should follow in analyzing the compatibility of their safety requirements affecting interstate motor carriers. It presents the Safety Panel's recommended timetable for States to achieve compatibility and describes the procedures that FHWA would use to preempt incompatible safety requirements as directed by the Motor Carrier Safety Act of 1984. It also discusses the Safety Panel's views on the relationship of preemption and the denial of MCSAP funding as well as the Federal actions necessary to implement these recommendations.

MCSAP PROGRAM

Background

The Surface Transportation Assistance Act of 1982 authorized the MCSAP program to provide funds for States to enforce motor carrier safety requirements compatible with Federal requirements. As a condition for MCSAP funds, a State must certify it has motor carrier safety and hazardous materials rules and regulations that are compatible with Federal requirements or demonstrate its efforts to adopt and enforce compatible requirements.

Currently, 48 States and 3 territories are actively participating in MCSAP. They inspect vehicles and driver records, train their personnel in the safety requirements, and promote public awareness about commercial vehicle laws and safety. The FHWA distributes about \$47 million to the States in MCSAP grants by a formula based on road mileage, vehicle miles of travel, number of commercial vehicles, population, and fuel consumption.

State Responsibilities

To receive MCSAP funds, a State develops a State Enforcement Plan delineating both its program of motor carrier safety activities and identifying the State office(s) responsible for administering and enforcing the safety requirements. States submit their plans to FHWA along with a certification that they have compatible intrastate and interstate safety requirements. The FHWA reviews the documents prior to the beginning of the fiscal year in October. If a State does not have compatible requirements, the FHWA requires a State to demonstrate a good-faith effort to correct the areas of incompatibility. Once negotiations are completed, the FHWA and State sign a grant agreement.

GUIDELINES FOR STATE REVIEW AND CERTIFICATION

Purpose and Scope

The Safety Panel recommends that each State should annually analyze and review its safety requirements affecting interstate motor carriers using the guidelines in the Motor Carrier Safety Act of 1984. For States participating in MCSAP, this would occur when the State Enforcement Plan is prepared. A State would identify all of its interstate motor carrier safety requirements which (1) have the "same effect" as Federal requirements, (2) are "less stringent" than Federal requirements, or (3) are "more stringent or additional" than Federal requirements. A State would determine if its "more stringent" requirements have a "safety benefit," do not create "an undue burden on interstate commerce," and are otherwise compatible with Federal safety requirements.

Based on its experience in reviewing State and Federal safety requirements, the Safety Panel recommends that a State's analysis should focus on the broad applicability of the safety requirements and their effect on motor carrier safety. The documentation should be simple and brief. The analysis should examine the State's overall motor carrier safety program and its enforcement activities, describe any differences in the State and Federal safety requirements, discuss the changes it intends to make, and identify specific steps that State officials will take toward achieving compatible requirements (with a timetable of key deadlines). The State's analysis would provide the basis for identifying and correcting areas of incompatibility. The analysis results would be included in the grant agreement.

Guidelines for Analysis

The guidelines recommended by the Safety Panel are designed to provide some flexibility in interpreting safety requirements and definitions affecting interstate motor carrier operations. This is necessary because some States have written their own laws rather than adopted, in whole, the Federal safety requirements. The State, in preparing its review, should consider all related State laws and their effect on enforcement of the motor carrier safety regulations.

1. The requirements and definitions should include:

Applicability

- The requirements should apply to all segments of the motor carrier industry including common, contract, and private carriers of property and for-hire carriers of passengers.

Definitions

- descriptions of items consistent with those in the Federal safety regulations, e.g.,: a commercial motor vehicle is a vehicle operating in interstate commerce on a public highway, that (1) has a gross vehicle weight rating (GVWR) of 10,001 pounds or more, (2) is designed to transport more than 15 passengers, or (3) is used to transport hazardous materials in a quantity requiring placarding under Federal hazardous materials regulations (49 CFR 390).

Driver Qualifications

- require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record,
- prohibit drug and alcohol abuse,
- require a motor carrier to ensure that a driver is medically qualified, and
- require a motor carrier to establish an anti-drug program with testing of drivers prior to employment, periodically, based on reasonable cause, after reportable accidents, and by random selection.

Driving of Motor Vehicles

- prohibit possession, use, or driving under the influence of controlled substances (while on duty), and
- establish 0.04 percent as the level of alcohol in the blood at which a driver is considered under the influence of alcohol.

Parts and Accessories Necessary for Safe Operation

- require operational lights and reflectors,
- require systematically arranged and installed wiring, and
- require brakes working at acceptable performance level.

Hours of Service

- prohibit a motor carrier from allowing or requiring any driver to drive:
 - more than 10 hours following 8 consecutive hours off duty,
 - after being on duty 15 hours,
 - after being on duty more than 60 hours in any 7 consecutive days, or
 - after being on duty more than 70 hours in any 8 consecutive days.
- require a driver to keep a record-of-duty status for each 24-hour period. The driver and motor carrier must retain the records.

Inspection and Maintenance

- prohibit a motor vehicle from being operated when it is likely to cause an accident or a breakdown,
- require the driver to conduct a walk-around inspection of the vehicle before driving it to ensure that it can be safely operated,
- prepare a driver vehicle inspection report, and
- require an annual motor vehicle inspection.

Hazardous Materials

- require a motor carrier or a person operating a commercial motor vehicle transporting hazardous materials to follow the safety and hazardous materials requirements.

2. Determining whether State requirements affecting interstate motor carriers are "less stringent" than the Federal requirements:

"Less stringent" requirements represent either gaps in the State requirements in relation to the Federal ones as summarized under #1 or State requirements which are less restrictive than the Federal requirements.

- a. An example of a gap is when a State does not have the authority to regulate the safety of for-hire carriers of passengers or has the authority but chooses to exempt the carrier.
- b. An example of a less restrictive State requirement is when a State allows a person under 21 years of age to operate a commercial motor vehicle interstate.

3. Determining whether State requirements affecting interstate motor carriers are "more stringent" than the Federal requirements:

"More stringent" requirements are more restrictive or inclusive in relation to the Federal ones as summarized under #1. For example, a requirement that a driver must have 2 days off after working 5 consecutive days. The State would demonstrate that its more stringent requirements:

- a. have a "safety benefit," for example, result in fewer accidents or reduce the risk of accidents;
- b. do not create "an undue burden on interstate commerce," e.g., do not delay, interfere with, or increase the cost or the administrative burden for a motor carrier transporting property or passengers in interstate commerce; and
- c. are otherwise compatible with Federal safety requirements.

A State must adopt and enforce in a consistent manner the requirements referenced in the guidelines in order for the FHWA to accept the State's certification that it has compatible safety requirements affecting interstate motor carrier operations. The requirements are considered of equal importance.

PREEMPTION OF STATE REQUIREMENTS

Preemption means that a State may not have in effect or enforce a State law or regulation that is incompatible with Federal safety requirements. The shortcoming of preemption as defined in the 1984 Act is that it simply makes the State requirement unenforceable, but does not require a State to replace it with compatible requirements. A benefit of the MCSAP approach is that it provides a mechanism to replace incompatible requirements. The Safety Panel recommends that upon reaching agreement with FHWA to resolve the difference, the State could have up to 3 years to adopt and enforce compatible requirements. If the State has not adopted compatible requirements as agreed, the FHWA could preempt the incompatible State requirements, deny continued MCSAP funding, or both. The Safety Panel

further recommends that all incompatible requirements shown in Appendix A should be subject to preemption no later than July 1992. States are encouraged to replace the preempted requirements pertaining to interstate motor carrier safety with requirements that are substantially similar to and consistent with Federal requirements. The States are encouraged to enforce compatible requirements.

Process of Preemption

The FHWA would follow the procedures for preemption in Section 208 of the 1984 Act as summarized below.

- o The Secretary will review the State requirements, decide which requirement may warrant preemption, and complete a rulemaking to preempt the requirement(s). A preemption determination will consider whether:
 - the State safety regulation has the same effect as, is less stringent than, or is additional to or more stringent than the Federal requirement; and
 - additional or more stringent regulations have a safety benefit, are incompatible with Federal requirements, or enforcement of the regulation would be an undue burden on interstate commerce.
- o Through the rulemaking the Secretary will consider public comment on whether to preempt the State requirement.
- o The Secretary will issue a notice of determination on preemption of the regulation and notify the State, in writing, of the determination.
- o Any person, business, or State may petition the Secretary for a waiver from a determination and the waiver shall be granted as expeditiously as possible if the petitioner demonstrates to the satisfaction of the Secretary that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.
- o The Secretary may grant or deny the waiver after affording the petitioner an opportunity for a hearing on the record.
- o The Secretary may consolidate rulemaking procedures.

- o Upon the Secretary's decision on a determination on preemption of a petition, any person, business, or State may seek judicial review by the U.S. District Court of Appeals for the District of Columbia or the circuit in which such entity resides or has its principal place of business.
- o A U.S. District Court of Appeals may uphold or overrule the Secretary's determination, grant or deny the petition, or grant appropriate relief.
- o Any decision by a U.S. District Court of Appeals is subject to review by the U.S. Supreme Court.

Time of Preemption and MCSAP Decisions

The Safety Panel recommends that the States should remove or replace current incompatible requirements no later than July 1992. The FHWA should preempt incompatible requirements which are not corrected by July 1992. The FHWA would provide notice and opportunity for comment on proposed preemption actions, consider the comments it receives, and notify the State(s) whether the requirements are preempted. The Safety Panel recognizes that the FHWA's determination of incompatibility through the preemption process may trigger a decision to deny MCSAP funding. The Safety Panel recommends that the FHWA use the following criteria and deadlines for preemption and deciding whether to continue MCSAP funding:

(1) Present Areas of Incompatibility

If a State does not correct present areas of incompatibility by July 1992, then the FHWA should preempt the State requirements (see Appendix A). The Safety Panel recommends that the FHWA initiate preemption parallel to the MCSAP agreement process, so preemption will become effective by the recommended deadlines (if a State fails to resolve the differences). The Safety Panel also recommends that the FHWA withhold MCSAP funding upon preemption, unless the preemption creates compatibility. If preemption does not result in compatibility, the State should adopt compatible requirements before the FHWA restores MCSAP funding.

(2) New Federal Requirements

When the FHWA establishes new Federal safety requirements in the FMCSRs, the Safety Panel recommends that the FHWA allow the States 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements affecting interstate motor carrier operations. The FHWA should stipulate the deadline when issuing future Federal safety requirements.

(3) New State Requirements (Less Stringent)

If a State changes an existing compatible requirement making it less stringent than a Federal safety requirement, then the FHWA should preempt the State requirement. The MCSAP funding should be immediately jeopardized.

(4) New State Requirements (More Stringent)

If a State changes an existing compatible requirement making it more stringent than a Federal safety requirement, then the State must determine under "second tier test" why the requirement should not be preempted. If the FHWA does not accept the State's determination, then the FHWA should preempt the State requirement and withhold MCSAP funding upon preemption (unless the preemption creates compatibility).

(5) Non-MCSAP States

The Safety Panel recommends that the FHWA follow the principles outlined in numbers 2, 3, and 4 above when deciding the timing of preemption. That is, these States should adopt compatible requirements within 3 years from the effective date of a new Federal requirement; if the State changes an existing compatible requirement making it less stringent than

a Federal safety requirement, then the FHWA should preempt the State requirement; if a State changes an existing compatible requirement making it more stringent than a Federal safety requirement, then the State must determine under "second tier test" why the requirement should not be preempted. If the FHWA does not accept the State's determination, then the FHWA should preempt the State requirement.

Federal Actions

The Safety Panel recommends that the FHWA establish procedures for States to review, analyze, and certify compatibility of safety requirements as envisioned under the 1984 Act. The FHWA should issue a Notice of Proposed Rulemaking which will incorporate the continuous review activities outlined in the 1984 Act and identify the preemptive procedures. A State would follow the procedures and guidelines as outlined in the rulemaking when analyzing its requirements. States participating in MCSAP should comply with the procedures during the grant application process. Those States not participating in MCSAP should review and analyze their regulations annually and submit the certification to the FHWA Division Office. Intrastate differences are not subject to preemption although MCSAP funding may be reduced or eliminated for incompatibility under current requirements (the Safety Panel was mandated to examine only interstate regulations).

While the Secretary's authority to preempt State requirements is effective October 30, 1989, the Safety Panel has not identified any State requirement which should be preempted immediately. The Safety Panel recognizes that the States have worked actively and cooperatively through MCSAP to achieve compatible requirements. The FHWA has entered into

agreements with States to eliminate the remaining differences among State requirements. While the Safety Panel believes that this process should continue, it should be modified in the short term to include a more rigorous State review of safety requirements imposed on interstate motor carriers, coupled with deadlines for achieving compatibility and preemptive action if differences cannot be resolved through MCSAP expeditiously. The Safety Panel recommends that the effective date for preemption should be no later than July 1992.

CHAPTER 4

FUTURE OF THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Based on its experience and the recommendations contained in this report, the Safety Panel expects the States to strengthen their role in motor carrier safety in the future. An expanded MCSAP program, including the analysis and certification activities discussed in Chapter 3, should serve as the impetus. The Motor Carrier Safety Act of 1984 directed the Safety Panel to evaluate the need for additional Federal assistance to the States to enable the States to enforce the Federal regulations and to determine other methods of furthering improving motor carrier safety. The Safety Panel believes the Federal Government should expand its financial commitment to motor carrier safety through the MCSAP. This chapter presents the Safety Panel's view of the future of the MCSAP and the changing roles of the State and Federal Governments in managing the program.

The MCSAP was initially authorized in the Surface Transportation Assistance Act of 1982. The goals of the program are to reduce commercial motor vehicle accidents and adopt improved, uniform safety regulations by encouraging the development and implementation of State motor carrier safety programs. The MCSAP has been reauthorized through 1991 under the Commercial Motor Vehicle Safety Act of 1986.

Until recently the State activities funded under MCSAP have focused primarily on roadside vehicle inspections. States have increasingly been conducting carrier safety reviews, another integral part of the Federal program. Twenty-two States conducted reviews in 1988, where only one State conducted reviews in 1984. This progression, to a larger State role in these activities, is an outgrowth of the States taking a stronger interest

in motor carrier safety and greater Federal resources available to States to conduct the work. Increasingly, the Federal/State partnership is expanding through more emphasis on education and training of State officials regarding all aspects of State and Federal motor carrier safety regulatory functions.

The MCSAP in the 1990's

The MCSAP is financed by the Highway Trust Fund. In FY 1989, \$60 million is authorized to implement the program, although \$47 million is the actual amount available due to the funding of the Commercial Driver License grant program. States are required to provide a 20 percent matching share of the total MCSAP program amount. The program authorization will expire in 1991.

The Safety Panel has a vested interest in assuring that the MCSAP continues well into the next decade. The Safety Panel believes that the procedures recommended in this report are not only necessary to fulfill the requirements of the 1984 Act, but will be instrumental in moving the State and Federal Governments toward a more efficient and effective motor safety program by providing a common basis for enforcement. Moreover, the new procedures will reinforce the trend towards shared intergovernmental responsibility for motor carrier safety. Significant progress has been made in developing comprehensive State motor carrier programs using MCSAP grants. The Safety Panel's recommends that the MCSAP should be continued well beyond 1991, so that the continuous review and analysis requirements of the 1984 Act are met. Further, the Safety Panel believes that the scope of the MCSAP should continue to be expanded to encompass all areas of motor carrier safety and that Federal spending should be increased to \$100 million annually to support this approach. The Safety Panel believes that,

without an expanded financial commitment to the operational aspects of the highway system such as motor carrier safety, States may be unwilling to take on added responsibilities. The growth in support for motor carrier safety and the MCSAP program that occurred during the 1980's could erode, particularly if highway capital investment is increased in the next decade but investment in the operational aspects is not.

APPENDICES

**Appendix A: Summary of Safety Panel's Initial Findings
and Responses Received from the Governors**

Appendix B: Resolutions of the Safety Panel

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State (Region)	Safety Panel's Findings in February 1989 letter to Governors	Governors' Responses
Alabama (4)	AL: compatible with major requirements.	AL: Governor Hunt replied (3/30/89). Agrees with findings.
Alaska (10)	AK: has not adopted compatible safety requirements.	AK: Governor Cowper replied (6/02/89). Preparing legislation to adopt compatible safety requirements.
Arizona (9)	AZ: 1) exempts vehicles (and their drivers) under 20K declared weight*, and 2) has 18-year minimum driver age requirement for intrastate drivers. --- Additional finding since February 1989 letter to Governor --- • AZ allows the carrier to declare vehicle weight (loaded) when registering it (rather than using manufacturer's gross vehicle weight rating referenced in Federal requirements).	AZ: Governor Mofford Replied (6/07/89). 1) Supports increase in gross vehicle weight rating to 26,000 lbs. (re: FHWA notice (2/17/89). AZ will take no action to change its threshold until FHWA decides whether to modify Federal threshold. 2) Plans to modify minimum age requirement for commercial motor vehicle drivers operating in interstate commerce to 21 years of age.
Arkansas (6)	AR: 1) exempts wreckers (and their drivers) from all requirements (and pole trailers from brake requirements during daylight hours). 2) exempts wreckers and vehicles and drivers involved in transportation of gravel, rocks, dirt, bituminous mix materials, rip-rap, quarried stone, crushed stone, and similar materials.	AR: Governor Clinton replied (5/30/89). Introduced legislation in 1989 to eliminate exemptions identified by Safety Panel, but it was not enacted. Expect to reintroduce legislation in next session (January 1991).
California (9)	CA: 1) has not adopted requirements for two-axle straight trucks transporting nonhazardous materials; and 2) does not require motor carriers to maintain driver qualification files (although may not be needed due to CA Comm Driver License requirements). --- Additional findings since February 1989 letter to Governor --- • Does not establish a ceiling of 2 hours added driving time during adverse weather conditions & allows dispatch when adverse weather conditions are known to exist. • Does not prohibit regrooved tires on the steering axle of a bus. • Does not prohibit unauthorized driver or passengers. • Does not prohibit driver from consuming alcoholic beverages within 4 hours prior to going on duty. • No requirement pertaining to exhaust system discharge location.	CA: Commissioner Hannigan replied, CA Highway Patrol (3/31/89). 1) State's financial resources too limited to add all two-axle commercial vehicles. CA wants to negotiate with FHWA. 2) 1988 CA Assembly Bill 2706, Chpt 1586, requires commercial drivers to give prospective employers a 10-year driving record history and requires CA Highway Patrol to conduct biennial inspections. CA law (AB 2706) also requires inspectors to ensure all motor carriers have obtained and are maintaining mandatory driver record information.
Colorado (8)	CO: compatible with major requirements.	
Connecticut (1)	CT: compatible with major requirements.	
Delaware (3)	DE: compatible with major requirements, although Delaware exempts vehicles (and their drivers) under 26,000 lbs.*	

8-57

*The FHWA does not expect a State to modify its weight threshold pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State (Region)	Safety Panel's Findings in February 1989 letter to Governors	Governors' Responses
Florida (4)	FL: FHWA denied MCSAP funding for FY 1989 (October 26, 1988) because State legislature adopted incompatible <u>intrastate</u> safety requirements. --- Additional finding since February 1989 letter to Governor --- * exempts farm or forest products from farm-to-first-market.	
Georgia (4)	GA: compatible with major requirements.	GA: Governor Joe Harris replied (3/06/89). Agrees with findings.
Hawaii (9)	HI: compatible with major requirements.	HI: Governor John Waihee replied (3/22/89). Agrees with findings.
Idaho (10)	ID: compatible with major requirements.	
Illinois (5)	IL: compatible with major requirements.	
Indiana (5)	IN: compatible with major requirements.	
Iowa (7)	IA: exempts persons operating an implement of husbandry or pickup to transport fertilizers & pesticides in those persons' agricultural operations. --- Additional findings since February 1989 letter to Governor --- * exempts retail dealers of fertilizers, petroleum products, and pesticides to farm customers within a 100-mile radius of their retail place of business.	IA: Governor Branstad replied (5/31/89). Removing this exemption would drive up farmers' costs and could negatively impact State's economy. Legislation to remove the exemption would be lobbied against and most likely fail.
Kansas (7)	KS: 1) exempts operations within 25 miles of a commercial zone or municipal limits. 2) allows insulin-using diabetics and individuals with cardiovascular diseases to drive commercial motor vehicles. 3) has 18-year minimum driver age requirement. --- Additional findings since February 1989 letter to Governor --- (<u>exemptions as included in KS Statutes Annotated 66-1, 109</u>) * exempts vehicles used for servicing, repairing, or transporting instruments of husbandry within 100 miles of place of business. * exempts solid waste vehicles. * exempts vehicles transporting grain to a storage place or elevator within 50-mile radius (if the vehicle has an "ad valorem situs" registration in KS). * exempts vehicles used to transport water for home or livestock consumption. * exempts mail trucks. * exempts motor vehicles carrying tools or materials belonging to owner used for repair, building, or construction. * exempts new vehicle dealers when transporting property to and from place of business of dealer.	KS: Governor Hayden replied (6/06/89). 1) did not address directly in letter; however, directed affected State agency to review rules and regulations to achieve compatibility with Federal safety requirements. 2) KS allows insulin-using diabetics and individuals with cardiovascular diseases the opportunity to appear before a medical board and present evidence to appeal this license denial. 3) did not address directly in letter; however, enacted Kansas Uniform Commercial Driver's License Act, consistent with the provisions of the Commercial Motor Vehicle Safety Act of 1986.

*The FHWA does not expect a State to modify its weight threshold pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

85-8

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State (Region)	Safety Panel's Findings in February 1989 letter to Governors	Governors' Responses
Kansas (7) --(Continued)	<ul style="list-style-type: none">• exempts transporters of sand, slag, stone, limestone, crushed stone, cinders, calcium chloride, bituminous or concrete paving mixtures, blacktop, dirt or fill material to a construction site, highway maintenance, construction project, or other storage facility, and exempts ready mix concrete trucks.• exempts owners of livestock or producers of farm products or the motor vehicle of a neighbor on the basis of exchange/barter.• exempts persons operating motor vehicles used to transport property to a common carrier pickup point or final destination when no common carrier is accessible.• no gvw or distance restrictions on farm vehicle drivers.*• exempts all operators, except local wrecker carriers & motor carriers of passengers (does not include motor carriers of passengers operating as part of a general transit system), operating within a commercial zone.• exempts private motor carriers operating within a radius of 25 miles beyond the corporate limits of a city or village or between territories designated as commercial zones.• exempts any bus company operated exclusively within any city or within 25 miles of the point of its domicile in a city.• exempts transporters of vehicles used solely in the custom combining business when transported by persons engaged in such business.	KY: Governor Wilkinson replied (5/19/89). Preparing legislation to eliminate exemptions identified by Safety Panel.
Kentucky (4)	KY: exempts from parts and accessories requirements -- 1) private carriers in farm-to-market agricultural operations driven during daylight hours; and 2) transportation of primary forest products from harvest area to mill or processing facility within 50 air-miles.	
Louisiana (6)	LA: compatible with major requirements.	MD: DOT Secretary Trainor replied (3/13/89). Agrees with findings.
Maine (1)	ME: compatible with major requirements.	MI: Governor Blanchard replied (5/26/89). Revising regulatory language to clarify their authority to regulate passenger carriers.
Maryland (3)	MD: compatible with major requirements.	
Massachusetts (1)	MA: compatible with major requirements.	
Michigan (5)	MI: does not have authority to regulate passenger carriers.	
Minnesota (5)	MN: compatible with major requirements.	

8-59

*The FHWA does not expect a State to modify its weight threshold pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State (Region)	Safety Panel's Findings in February 1989 letter to Governors	Governors' Responses
Mississippi (4)	MS: exempts chartered buses and transporters of U.S. mail. --- Additional finding since February 1989 letter to Governor --- • Has commercial zone exemption for all motor carriers.	MS: Program Manager Bennett, MS Pub Service Comm, replied (3/31/89). The Commission will reintroduce Mississippi House bill 884 during next legislative session to give MS authority to regulate chartered buses. MS currently exempts transporters of US mail on intrastate moves only. MS: Executive Director Jenkins, MS Dept Energy & Transportation replied, (4/05/89). Bill 884 will be reintroduced in next legislative session.
Missouri (7)	MO: 1) exempts vehicles (and their drivers) under 12,000 lbs.* 2) exempts vehicles (and their drivers) of 60,000 lbs. or less transporting solid waste; 3) exempts vehicles (and their drivers) 12,000 lbs. or less when vehicles are designated for farm use (by letter F on license plate); 4) exempts trailers (and their drivers) when towed by vehicles with F plate (except vehicles transporting fertilizer), and transporting propane tanks 50 lbs. or less.	
Montana (8)	MT: compatible with major requirements.	
Nebraska (7)	NE: 1) exempts farm trucks (and their drivers) 32,000 lbs. or less, LP, LPG tanks less than 3,500 gallons, fertilizer & agricultural chemical application, and distribution equipment in units with a capacity of 3,500 gallons or less; and 2) exempts drivers of farm registered vehicles from: a. All of Part 391 (driver qualifications), b. Section 395.8 (driver's record of duty status), and c. Section 396.11 (driver vehicle inspection reports).	
Nevada (9)	NV: exempts drivers of farm vehicles under 20,000 lbs. from driver qualification requirements. --- Change in findings since February 1989 letter to Governor --- compatible with major requirements.	NV: Director Teglia, NV Dept of Motor Veh & Pub Safety, replied (3/28/89). The Feb 1, 89 temporary adoption by NV Dept of Mot Veh & Pub Safety eliminates all incompatible issues and NV is now fully compatible with Federal requirements. NV: intends to take necessary action to make the adoption permanent. NV: Note: Per FHWA staff, NV passed temporary legislation 2/89 making NV compatible with Federal regulations until the time when permanent regulations are expected to be in place (late 1989).
New Hampshire (1)	NH: compatible with major requirements.	
New Jersey (1)	NJ: compatible with major requirements.	
New Mexico (6)	NM: 1) enforcing the Federal safety requirements under a cooperative agreement (safety program in 1st year of implementation in FY 1989 using MCSAP); and 2) expects legislation to be introduced early this year in order to formally adopt the Federal safety regulations.	NM: Gov. Carruthers replied (4/14/89). Enacted New Mexico Motor Carrier Safety Act (effective 7/1/89). Provides State authority to promulgate requirements comparable to Federal safety requirements. NM: Note: per FHWA staff, NM expects to adopt safety regulations (compatible with Federal safety requirements) by January 1989.

09-8

*The FHWA does not expect a State to modify its weight threshold pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State (Region)	Safety Panel's Findings in February 1989 letter to Governors	Governors' Responses
New York (1)	NY: 1) has not adopted driver qualification requirements for drivers of vehicles transporting nonhazardous materials. 2) requires at least 24 consecutive hours off in a calendar week & prohibits driving after 60 hours driving time in a calendar week (Sunday - Saturday)	NY: Gerald Crotty, Secretary to Governor Cuomo, replied (3/31/89). Senate Bill 2440 would amend laws not compatible with Federal requirements. Legislature is expected to approve in the near future. NY: Commissioner White, NY DOT, follow-up reply (4/10/89). Comm. White anticipates quick legislative action on Senate Bill 2440 to amend current laws with respect to driver qualifications. NY: <u>Note:</u> Per FHWA staff, Bill 2440 died in 1989 session of legislature.
North Carolina (4)	NC: compatible with major requirements.	
North Dakota (8)	ND: compatible with major requirements.	
Ohio (5)	OH: compatible with major requirements.	
Oklahoma (6)	OK: 1) has 18-year minimum driver age requirement; and 2) exempts drivers of farm vehicles under 26,000 lbs. from driver qualification requirements. --- Change in findings since February 1989 letter to Governor --- compatible with major requirements.	OK: ZLT Thomas, OK Highway Patrol, replied (3/21/89). The OK Dept of Public Safety is currently proposing to the OK State Legislature an adoption resolving differences with Federal regulations, as identified by Safety Panel findings. OK: <u>Note:</u> per FHWA staff, OK passed legislation and adopted regulations which correct the differences cited by the Safety Panel.
Oregon (10)	OR: compatible with major requirements.	
Pennsylvania (3)	PA: compatible with major requirements, although PA exempts vehicles (and their drivers) under 17,000 lbs.*	PA: Deputy Secretary Zogby, PA DOT, replied (4/10/89). Governor Casey recently established a Motor Carrier Advisory Committee. PA DOT will solicit the Committee's comments & recommendations regarding Safety Panel findings.
Rhode Island (1)	RI: has 18-year minimum driver age. --- Change in finding since February 1989 letter to Governor --- Compatible with major requirements.	RI: Governor DiPrete replied (3/10/89). Legislation currently before State Assembly to change state minimum age to meet Fed requirements. RI: <u>Note:</u> per FHWA staff, RI Bill H6831 Sub A became effective 6/27/89. This bill requires interstate drivers to be 21 years of age and is compatible with Federal regulations.
South Carolina (4)	SC: compatible with major requirements.	
South Dakota (8)	SD: has compatible safety requirements, but is not participating in MCSAP.	
Tennessee (4)	TN: exempts farm vehicles (and their drivers) from all requirements.	
Texas (6)	TX: 1) the FHWA cut off MCSAP funding (May 24, 1988) because the State legislature delayed enforcement of the requirements until September 1, 1989; 2) has 18-year minimum driver age requirement (plans to change in January 1989); 3) does not require drivers to read and speak English; and 4) exempts trailers less than 15K from brake requirements at speeds 30mph or less. --- Change in finding since February 1989 letter to Governor --- compatible with major requirements.	TX: <u>Note:</u> Per FHWA staff, TX adopted rules effective October 1, 1989, which correct the differences cited by the Safety Panel.
Utah (8)	UT: compatible with major requirements.	

*The FHWA does not expect a State to modify its weight threshold pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

19-8

SUMMARY OF SAFETY PANEL'S FINDINGS: COMPATIBILITY OF STATE REQUIREMENTS

State (Region)	Safety Panel's Findings in February 1989 letter to Governors	Governors' Responses
Vermont (1)	VT: does not have safety requirements for non-hazardous material carriers.	VT: Governor Kunin replied (4/18/89). Senate Bill #70 introduced to amend laws to allow adoption of Federal regulations for carriers transporting <u>all</u> cargoes (not hazardous materials). Vermont has begun implementation of its FY 89 MCSAP Enforcement Plan and is currently enforcing motor carrier safety standards relating to hazardous materials. <u>Note:</u> Per FHWA staff, (6/28/89), VT passed Senate Bill #70 on May 1, Governor Kunin signed on May 30, and Bill will become effective and will be fully implemented pending the results of public hearings.
Virginia (3)	VA: exempts vehicles (and their drivers) under 26,000 lbs.* --- Additional finding since February 1989 letter to Governor --- • Does not require records of duty status for a driver who drives in interstate commerce wholly within the State if motor carrier maintains time records.	VA: Secretary of Transportation & Public Safety, Watts, replied (3/20/89). VA supports 26,000 lbs. (letter stated that the trucking industry did also).
Washington (10)	WA: compatible with major requirements.	
West Virginia (3)	WV: exempts straight trucks of private carriers transporting excavating equipment, and for-hire carriers transporting U.S. mail or newspapers.	WV: Governor Caperton replied (5/01/89). He stated that WV cannot modify the necessary regulations until appropriate WV statutes are amended or repealed (Title 150, Legislative rule, Public Service Commission, Series 9; per M.C. General Order No. 64 (dated May 31, 1988)). Gov. is requesting that the WV Dept of Highways, the WV Dept of MV, the WV Dept of Public Safety, and the Public Service Comm. study the Safety Panel's report and make recommendations as to which, if any, of the applicable statutes should be amended or repealed, and what further action is necessary or desirable.
Wisconsin (5)	WI: compatible with major requirements.	WI: Governor Thompson replied (3/27/89). Agrees with findings.
Wyoming (8)	WY: 1) does not have driver qualification and hours of service requirements; and 2) has 18-year minimum driver age requirement. --- Change in finding since February 1989 letter to Governor --- Compatible with major requirements.	WY: Director Ayers, WY Highway Patrol, replied (3/27/89). The WY Pub Serv Comm has been furnished with Fed requirements regarding driver qualifications, to include minimum age commercial interstate drivers. <u>WY: Note:</u> Wyoming readopted Federal regulations effective on July 5, 1989 (per FHWA staff).
District of Columbia (3)	DC: 1) received development grants during FY 1986-87, but has not participated recently; 2) has not adopted compatible safety requirements.	DC: <u>Note:</u> per FHWA staff, DC has expressed interest in applying for development funds for fiscal year 1990.

*The FHWA does not expect a State to modify its weight threshold pending the outcome of the FHWA's rulemaking on the weight threshold used for defining a commercial motor vehicle.

8-62

Appendix B
(Resolutions of the Safety Panel)

R E S O L U T I O N

of the

COMMERCIAL MOTOR VEHICLE SAFETY
REGULATORY REVIEW PANEL (SAFETY PANEL)

The Safety Panel endorses the concepts embodied in Option 3 of FHWA's April 18, 1988, draft paper entitled "Options for Achieving Compatibility of State and Federal Motor Carrier Safety Requirements." The Safety Panel makes this endorsement with the belief that it is the most practical and effective means of achieving the objective of the Motor Carrier Safety Act of 1984.

Further, the members believe there is a continuing role for the Panel to provide oversight of this process to assure that compatibility is, in fact, achieved.

With this guidance, the Panel directs the FHWA to further develop this option for the Panel's consideration and bring to it, the plans necessary for implementing the option.

Adopted May 5, 1988

RESOLUTION OF THE
COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

Regarding the Analysis of the
States' Adoption Provisions

The Safety Panel requests the Federal Highway Administration to further examine the provisions which States have used for adopting the Federal Motor Carrier Safety Regulations (FMCSRs). The "adoption provisions" should be evaluated to determine if they have the broad effect of making those States' laws and regulations more or less stringent than the FMCSRs.

The FHWA is requested to present its analysis to the Safety Panel in a written narrative which clearly and concisely explains the problems which exist in each State. Because of the nature of these "adoption provisions," it is not anticipated that this analysis will focus on individual regulatory requirements, but rather only address those provisions which affect a multiplicity of requirements.

This analysis should not be limited to simply the "adoption provisions" if there are other broad statutory or organizational issues within the State that affect their governance of the motor carrier industry. These may include limits on the authority of some agencies in the State or conflicts that may appear among State agencies. The analysis should explain and clarify these relationships within the State regulatory framework.

The analysis should be in such a form that it could be provided to States for their review and consideration. As such, it should include recommendations for actions that would correct the problem in the State. The FHWA is encouraged to work with the States in the development of this analysis; however, no analysis should be considered final until it is presented and approved by vote of the Panel.

The Panel recognizes the magnitude of this task, but urges that FHWA move to secure the resources that are necessary to address all States by the end of 1987. The Panel believes that its work will be severely impaired if this analysis is not completed expeditiously.

Approved July 29, 1987
Washington, D.C.



FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

OFFICE OF
ADMINISTRATOR

July 31, 1987

IN REPLY REFER TO
HOA-1

TO: Members of the Commercial Motor Vehicle Safety Regulatory
Review Panel

I want to thank you all for your active participation in the
July 28-29, 1987, Safety Panel meeting in Washington, D.C.

Enclosed is the final version of the statement which was discussed
by the Panel on Thursday. As I noted, we plan to distribute the
statement to groups and individuals that are likely to be impacted
by or interested in the activities of this Panel.

I have also enclosed the two resolutions which were adopted by the
Panel. Yesterday the staff met with Dynamac to develop approaches
for addressing the issues identified in the resolutions. After we
have developed our thoughts further, we will be sending you a
summary of our plans.

Again, thank you for your patience and guidance. Although we are
all more aware of the complexity of the task, I am personally
optimistic of our ability to complete it.

Sincerely yours,

Joseph S. Toole
Executive Director, CMVSRP

Enclosures

RESOLUTION OF THE
COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

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States' Adoption Provisions

The Safety Panel requests the Federal Highway Administration to further examine the provisions which States have used for adopting the Federal Motor Carrier Safety Regulations (FMCSRs). The "adoption provisions" should be evaluated to determine if they have the broad effect of making those States' laws and regulations more or less stringent than the FMCSRs.

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Approved July 29, 1987
Washington, D.C.

STATEMENT FROM THE
COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

From Their July 28-29, 1987 Meeting in
Washington, D.C.

In 1985, the Commercial Motor Vehicle Safety Regulatory Review Panel was formed to address the important issue of uniformity among States laws and regulations affecting truck and bus safety. The Motor Carrier Safety Act of 1984 directs the Safety Panel to evaluate all State laws and regulations to determine if they are more, less or of equal stringency to counterpart Federal Motor Carrier Safety Regulations (FMCSRs). It should be noted that the Panel's charge affects those laws and regulations pertaining to interstate motor carrier operations, and does not include States' requirements over intrastate activities.

The preliminary analysis of over 70,000 State requirements indicates that nearly 26,000 or 36 percent are "less stringent" than the corresponding FMCSRs. According to the Act, these State requirements which are determined to be "less stringent" could be preempted.

State provisions which were enacted to adopt all or part of the FMCSRs have caused the greatest concern thus far in the Panel's review. Adoption provisions can be very simple, providing for the full adoption of the FMCSRs and all subsequent amendments. However, the Panel has found that such simple and complete adoptions are rare among the States.

Many States adopted the FMCSRs as of a specific date and, therefore, they do not include any subsequent changes made to the Federal regulations. Others have adopted these regulations with certain exceptions or waivers, such as only applying to for-hire carriers and not applying to private carriers. The provisions are further complicated by the existence in many States of multiple agencies with responsibilities for motor carrier safety. In some States, one agency has adopted one set of regulations while another agency has adopted a different version.

There is no doubt that a great deal of confusion and frustration could be avoided by revising these adoption provisions. By being aware of this, the Panel sincerely hopes that States will begin examining their adoption provisions and take whatever action is needed to remedy these problems. The Panel also believes that the efforts to compile a comprehensive description of each State's regulatory and statutory provisions relating to motor carriers needs to be continued. To assist the Panel, the FHWA has been asked to work with the States to further examine these provisions and provide each Governor with the Panel's preliminary findings.

Mar 20

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Presented to the House Transportation Committee;
Rep. Rex Crowell, Chairman; Statehouse, Topeka,
Tuesday, March 20, 1990.

Supporting Senate Bill 489 which proposes
revisions in policies and procedures at
the Kansas Corporation Commission.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here today with Tom Whitaker, our Governmental Relations Director, representing our 1,525 member-firms and the highway transportation industry to express our support for Senate Bill 489.

Senate Bill 489 proposes major changes in Commission policy and procedures.

The bill, with the exception of the nine categories listed on pages 5 and 6, brings all other vehicles now exempt under K.S.A. 66-1,109 under the Commission's safety rules and regulations which govern intrastate transportation in Kansas.

The nine categories which appear on pages 5 and 6 of the bill, currently are subject to the DOT federal safety rules and regulations when such transportation crosses a state line.

Our industry has worked with representatives of the Commission staff, with Teri Graham, the officer-in-charge of the federal DOT, and with representatives of the Kansas Highway Patrol, to develop the proposed language which appears in this bill.

It is our understanding that failure to revise the application of our Kansas safety rules and regulations would jeopardize the substantial federal funds our state receives to implement our Motor Carrier Safety Assistance Program (MCSAP) administered by the Kansas Highway Patrol.

Under the proposed legislation, the Kansas Highway Patrol could obviously enforce the safety rules and regulations of the Commission on those vehicles which would be brought under the Commission's safety jurisdiction.

We also wish to point out that the bill would make the minimum age requirements for every driver of a motor carrier operating in interstate commerce consistent with federal motor carrier regulations.

Our industry strongly supports the work of the MCSAP program and consistently has supported uniformity, where workable, in rules and regulations governing the operation of motor truck vehicles. Our concern for the safe operation of all vehicles on streets and highways is well known.

For these reasons, Mr. Chairman and members of the Committee, we support Senate Bill 489 as it appears before you. Tom and I will be pleased to attempt to respond to any questions you may have.

####

PROPOSED AMENDMENT TO S.B. NO. 486

For the purpose of this subsection, incidentally performed shall include the act of referring persons to a new vehicle dealer licensed in accordance with the provisions of the vehicle dealers and manufacturers licensing act if:

(1) The referring person does not participate in the actual negotiation of the terms for the purchase of a new motor vehicle other than having an agreement with a licensed new vehicle dealer that the price will not exceed a certain range over a new vehicle dealer's invoice price; and

(2) all deliveries and payments for such vehicles are handled directly by the new vehicle dealer.

except that soliciting or referring buyers for new motor vehicles shall not include incidentally performed acts as defined in subsection (ff) of K.S.A. 8-2401, and amendments thereto.