

Conference Substitute

The conference adopts the House approach. The conference also adopts the House approach found in Sec. 4213 of the House bill, which permits imprisonment, under Title 18, if an employer knowingly and willfully allows an employee to operate a CMV out-of-service.

SEC. 4103. PENALTY FOR DENIAL OF ACCESS TO RECORDS

House Bill

Sec. 4106.

This provision creates the new section, 521(b)(2)(E), which creates a financial penalty to dissuade any uncooperative carriers or shippers from denying or impeding FMCSA's legitimate access to records.

Senate Bill

Sec. 7109.

FMCSA investigators have broad authority to inspect and copy motor carrier and shipper records and most carriers and shippers readily grant access to requested records. Some, however, deliberately impede the investigative process by refusing to set an audit date, or, after setting a date, by ordering investigators off the premises, occasionally with a show of force. Others take a more subtle approach, feigning illness or declaring an emergency during the audit, pleading inability to produce records because of the absence of key personnel, or delivering documents at a pace designed to prolong the audit beyond the time available to the investigator. While investigators can issue an administrative subpoena for documents, refusal to comply requires the agency to file an action in Federal court to enforce the subpoena. This process, though effective, is relatively slow and labor-intensive, and the cost to a carrier or shipper who does not seriously contest the action is minimal. This section would create a financial penalty to dissuade uncooperative carriers and shippers from denying or impeding FMCSA's legitimate access to records.

Conference Substitute

The conference adopts the Senate approach, with the inclusion of the House penalty amounts.

SEC. 4104. REVOCATION OF OPERATING AUTHORITY

House Bill

No comparable provision in House bill.

Senate Bill

SEC. 7116.

This section would authorize the Secretary to suspend the registration of a motor carrier, a freight forwarder, or a broker for failing to comply with safety regulations established by the Secretary. In addition, the Secretary would be required to revoke the registration of a motor carrier that has failed to comply with Federal safety fitness requirements. The Secretary also would be required to revoke the registration of a motor carrier whose operations are an imminent hazard to public health or property. In order to suspend or revoke a registration, the Secretary must give prior notice to the registrant.

Conference Substitute

The conference adopts the Senate approach.

SEC. 4105. STATE LAWS RELATING TO VEHICLE TOWING

House Bill

Sec. 4136.

This section permits states to create laws requiring towing companies to have prior written consent by the property or the property owner or lessee be present at the time the vehicle is towed.

Senate Bill

Sec. 7129.

This section permits states to create laws requiring towing companies to have prior written consent by the property or the property owner or lessee be present at the time the vehicle is towed. Also, the Secretary of Transportation must conduct a review of Federal, State, and local regulations relating to tow truck operations and conduct a study to identify issues related to the protection of consumer rights and identify potential remedies.

Conference Substitute

The conference adopts the House and Senate provisions to allow states to make laws requiring towing companies to have prior written consent or require the property owner or lessee to be present during a tow. The conference also agreed to require the Secretary of Transportation to study the issues relating to consumer protection of those who are towed and potential remedies.

SEC. 4106. MOTOR CARRIER SAFETY GRANTS

House Bill

Sec. 4102.

Subsection (a) of this section reauthorizes MCSAP, with a number of changes. In addition to increases in authorized funding levels, the program would be amended to require the States to include five new requirements in their annual commercial vehicle safety plans: the implementation of performance-based activities, the establishment of a program ensuring accurate, complete, and timely motor carrier safety data is collected, reports, and corrected if incorrect, States including in their training manuals, for all drivers' licensing examinations, information about best practices for safely sharing the road with trucks and cars, enforcing the registration requirements of section 13902, of title 49, United States Code, by removing from service vehicles that are unregistered or operating beyond the scope of their registration, and States conducting highly visible traffic enforcement programs in locations or corridors that have been identified as having a high incidence of truck crashes.

Subsection (b) of this section details the new activities, such as enforcement of non-commercial motor vehicles when behavior of the drivers increases the risk of crashes, which States can use funds provided under the MCSAP. The Committee intends this new MCSAP authority to be used in direct relation to conducting highly visible roadside enforcement activities in high crash corridors. Subsection (c) of this section authorizes funding for the MCSAP. This funding is for the basic grant program, high priority grants, and the new entrant program. This bill does not continue the incentive program for MCSAP.

Subsection (d) of this section provides FMCSA the authority to provide grants without a matching requirement to the States to conduct safety audits of new entrant motor carriers. This subsection also increases the current amount of MCSAP funding available for high priority activities to 10 percent of the total funds authorized. In addition, this subsection also allows the Secretary to use up to \$15,000,000 each fiscal year to conduct safety audits of new entrant motor carriers described in subsection (c). *Senate Bill*

Sec. 7107.

This section provides language that ensures that inspections on motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious hazard. It will provide that the training manual for the licensing examination to

drive a motor vehicle of the State will include information on best practices for driving safely in the vicinity of motor vehicles. It also provides that the State will suspend the operation of any vehicle found to be operating without registration or beyond the scope of its registration. Under this section there are grants for activities carried out in conjunction with an appropriate inspection of a CMV to enforce Government or State regulations, including regulating commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at ports, or at other specific locations and for the detection of unlawful presence of controlled substance in a commercial motor vehicle or on any occupant of the vehicle. These grants are also for enforcement of State traffic laws and regulations designed for the safe operation of commercial motor vehicles. The Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments. This section authorizes the following amounts from the Highway Trust Fund to carry out section 31102:

™ 2006	\$193,620,000
™ 2007	\$197,490,000
™ 2008	\$201,440,000
™ 2009	\$205,470,000

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The conference adopts the House section (a) State Plan Contents and adds a modified version of the Senate's paragraph (U) regarding the location of bus inspections. The conference adopts the House section (b) Use of Grants to Enforce Other Laws with a modification of paragraph (c)(2). The conference agrees the states may not use more than 5% of the base amount the state receives for non-commercial motor vehicle enforcement. The state must maintain its level of inspection effort equal to the average amount from FY 2003, 2004, and 2005.

The Conference supports the use of new technologies, such as the Hazmat Trucking Enforcer, that enable inspectors to conduct inspections in a more effective manner. The Committee notes that States must be in substantial compliance with a number of requirements under 49 U.S.C. 31102 as a condition of receiving MCSAP funding, including requirements to deploy technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs under 49 U.S.C 31102(b)(1)(A), as amended.

SEC. 4107. HIGH PRIORITY ACTIVITIES AND NEW ENTRANTS AUDITS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7107.

As under current law, up to \$15,000,000 for each FY 2006 through 2009 of MCSAP grant funds could be set aside for high priority activities that improve commercial motor vehicle safety and are national in scope. The section would require that at least 80 percent of funds set aside for high priority projects be awarded to State and local agencies. Although DOT has broad discretion to determine the details of the program, the Secretary would be required, at a minimum, to focus on reductions in the number and rate of fatal accidents involving CMVs. The Secretary is also required to designate up to \$29,000,000 for audits of new entrant motor carriers and can withhold these funds from a State or local government that is unable to use government employees to conduct these audits. Should they be unable to do so, the Secretary would be authorized, but not be required, to expend the funds directly to carry out new entrant audits in those jurisdic-