

**STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR
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BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
INFRASTRUCTURE, SAFETY, AND SECURITY
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
*SURFACE TRANSPORTATION REAUTHORIZATION: EXAMINING THE SAFETY
AND EFFECTIVENESS OF OUR TRANSPORTATION SYSTEMS***

JUNE 3, 2014

Mr. Chairman, Ranking Member Blunt, and Members of the Subcommittee, thank you for inviting me to testify today on the Federal Motor Carrier Safety Administration's (FMCSA) progress in implementing the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Department of Transportation's (DOT) reauthorization proposal – the Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act (GROW AMERICA).

Since FMCSA's establishment in 2000, the number of lives lost in large truck- and bus-related crashes has decreased 26 percent, from 5,620 in 2000 to 4,183 in 2012. While this represents significant progress, more must be done. We are committed to reducing the number of crashes, injuries and fatalities involving commercial motor vehicles (CMV).

MAP-21

Overall, FMCSA is working hard to implement many of the commercial motor vehicle safety provisions of MAP-21. To date, the Agency has implemented twenty provisions of MAP-21 and has issued three Notices of Proposed Rulemaking (NPRM); including proposals to mandate Electronic Logging Devices and to establish a Drug and Alcohol Clearinghouse. MAP-21 gave the Agency important tools to improve CMV safety and remove unsafe operators from the Nation's highways. The Agency's plan aligns with three core principles: **raise the bar to enter the motor carrier industry; require high safety standards to remain in the industry; and remove high-risk carriers, drivers, and service providers from operation.** MAP-21 supports these core principles and our Agency's important safety initiatives.

Electronic Logging Devices

MAP-21 included a provision mandating the use of electronic logging devices (ELD) for any driver required to keep a record of duty status (RODS) under the HOS regulations. The Agency published a supplemental notice of proposed rulemaking (SNPRM) on March 18 that would establish: (1) minimum performance standards for ELDs; (2) mandatory requirements for use of the devices by drivers required to prepare RODS; (3) requirements concerning HOS supporting documents; and (4) measures to ensure that the mandatory use of ELDs will not result in harassment of drivers by motor carriers or enforcement officials. The ELD requirements will

improve HOS compliance by reducing the likelihood of falsification of drivers' duty status records, thereby decreasing the risk of fatigue-related crashes attributable to HOS non-compliance. The public comment period runs through June 26.

Drug and Alcohol Clearinghouse

MAP-21 provided explicit authority for the Secretary to create an electronic repository for positive alcohol and controlled substances test results. In response, on February 20, FMCSA published a NPRM to establish the Commercial Driver's License Drug and Alcohol Clearinghouse for all CDL holders. The proposed rule would require employers of CDL drivers and service agents to report positive test results and refusals to test to the Clearinghouse and thus will improve both driver and employer compliance with DOT's alcohol and controlled substance testing program. Employers would be required to check the Clearinghouse to make sure current and prospective employees do not have drug and alcohol violations that would prohibit them from performing safety sensitive functions, such as driving CMVs. We solicited comments on this rule through May 21. Ultimately, the Clearinghouse will improve roadway safety by making it easier to determine whether a truck or bus driver is prohibited from operating a CMV for failing to comply with Federal drug and alcohol regulations, including mandatory testing.

Coercion

On May 13, FMCSA published NPRM to adopt regulations that prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate CMVs in violation of certain provisions of the FMCSRs – including drivers' hours-of-service limits and the CDL regulations and associated drug and alcohol testing rules – or the Hazardous Materials Regulations (HMRs). In addition, the NPRM would prohibit anyone who operates a CMV in interstate commerce from coercing a driver to violate the commercial regulations. This NPRM includes procedures for drivers to report incidents of coercion to FMCSA and rules of practice the Agency would follow in response to allegations of coercion and describes penalties that may be imposed on entities found to have coerced drivers. This proposed rulemaking is authorized by section 32911 of MAP-21, amending the Motor Carrier Safety Act of 1984.

Compliance, Safety, Accountability

The Compliance, Safety, Accountability program, or CSA, is FMCSA's compliance model to improve CMV safety and reduce large truck and bus crashes, injuries, and fatalities on our Nation's highways. MAP-21 included statutory revisions and additional authorities needed to improve the CSA model. For example, MAP-21 provided the Agency with flexibility to allow an investigator to display credentials in writing rather than in person. This clarifies FMCSA's authority to conduct off-site enforcement interventions – to formally demand that a motor carrier provide records without having to travel to the motor carrier's business location. This has been vital to expanding FMCSA's and our State partners' enforcement efforts to include off-site reviews and investigations, increasing our ability to provide effective safety oversight on a larger portion of the industry than before.

Household Goods Provisions

With regard to household goods transportation, MAP-21 authorized FMCSA to assign all or a portion of the penalties it receives from noncompliant moving companies to the aggrieved shipper. The Agency formed a working group to examine how to implement this new authority. A second provision granted the Agency authority to order moving companies to return household goods held hostage. FMCSA is aggressively using this new authority to protect consumers and ensure compliance with the Agency's regulations. Recent enforcement efforts resulted in significant civil penalties against moving companies involved in fraudulent activities, and also resulted in revocation of the operating authority registration of some of carriers due to their egregious violations.

Minimum Training Requirements for Entry-Level CMV Operators

MAP-21 directed the Agency to issue final regulations to require training for entry level CDL applicants. The Agency's rulemaking must address knowledge and skills for safe operation and other issues. Last year, the Agency held public listening sessions on this issue. These sessions provided the Agency with substantial information about training for entry level CDL applicants. The Agency will soon engage the services of a convener to assess the feasibility of conducting a negotiated rulemaking to implement this important MAP-21 provision.

Miscellaneous Rule Text Changes in Provisions of MAP-21

The Agency addressed numerous MAP-21 provisions in an omnibus final rule on October 1, 2013. This largely ministerial rulemaking action ensured that the regulations were aligned with the new statutory requirements. Most notable among the changes were the new financial security requirements for brokers and freight forwarders. As required by MAP-21, FMCSA amended its regulations to require a \$75,000 surety bond or trust fund for brokers and extended the surety bond or trust fund requirement to freight forwarders for the first time.

National Registry of Certified Medical Examiners

In April 2012, FMCSA issued a final rule as required by a previous statutory amendment, reaffirmed and modified in MAP-21, to establish a National Registry of Certified Medical Examiners (National Registry). The National Registry requires all Medical Examiners (ME) who conduct physical examinations for interstate CMV drivers to: complete training on FMCSA's physical qualification standards; pass a certification test; and demonstrate competence through periodic training and testing. It requires motor carriers and drivers to use only those MEs listed on the National Registry. On May 21, all CMV drivers whose medical certification has expired must use MEs on the National Registry for their exams. To date, there are more than 25,000 MEs on the National Registry with more in the pipeline. I emphasize that drivers' medical certificates remain valid until their expiration date, which may be up to 2 years following the date of the medical exam. We commend the healthcare community for working with the Agency to stand up this program, which we believe will significantly improve highway safety.

Passenger Carrier Safety

FMCSA continues use of its MAP-21 authorities to strengthen the safety of passengers throughout our Nation who ride buses. In 2013, as part of an overall motorcoach safety initiative, we dispatched more than 50 specially trained investigators to conduct in-depth reviews of the safety management practices of the 250 most at-risk motorcoach companies during “Operation Quick Strike.” As a result, we removed 52 unsafe bus companies and 340 vehicles from the road. During the second phase of the initiative FMCSA investigators visited more than 1,300 carriers with minimal inspection history or data with the Agency. As a result, we identified more than 240 for follow-up investigations. Now we train all investigators to use the enhanced investigative techniques employed during Operation Quick Strike, and we have conducted evaluations and gap analyses with an eye toward how best to maintain an intensified level of oversight on the passenger carrier industry.

Registration Requirements

MAP-21 strengthened the registration requirements for motor carrier operating authority registration and included new authority for safety registration, including a mandatory USDOT number for anyone operating a CMV in interstate commerce. These new authorities have helped, and will help, the Agency to continue its crack down on carriers that commit safety violations and then change their company identity, or “reincarnate.” This growing and disturbing practice poses a real enforcement challenge to FMCSA’s investigators and commercial law enforcement officers nationwide. Under MAP-21 FMCSA can withhold, suspend, amend or revoke a motor carrier’s registration if the carrier fails to disclose its adverse safety history or if a motor carrier, employer, owner or operator does not disclose a relationship involving common ownership, management, control, or familial relationship to any other motor carrier, employer, or owner operator.

Additionally, MAP-21 directed the Agency to establish a written proficiency exam for new operating authority registration applicants to test their knowledge of the safety regulations, applicable commercial regulations, and regulations relating to accessibility for disabled persons. This test will help ensure that companies understand these regulations before beginning operations. This year, we conducted listening sessions across the country to gather input on this issue.

Agricultural Exemptions

MAP-21 included two provisions applicable to operating CMVs for agricultural purposes. The first exempts CMV drivers from the Federal hours-of-service (HOS) rules when transporting agricultural commodities and farm supplies within a 150 air-mile radius from the source of the commodities or the distribution point of the supplies. The second exempts the operation of “covered farm vehicles” by farm and ranch operators, their employees, and certain other specified individuals from most of the Federal Motor Carrier Safety Regulations (FMCSRs), including those pertaining to commercial driver’s licenses (CDL) and driver physical qualifications (medical) requirements. These self-executing statutory provisions took effect on October 1, 2012. The Agency published a Federal Register notice on October 1, 2012, to ensure motor carriers and enforcement officials were aware of the two statutory exemptions included in

MAP-21. The Agency requested that States immediately take action to put into place policies and procedures to provide the regulatory relief provided by MAP-21, and to follow up with the appropriate amendments to their laws and regulations to reflect the statutory exemptions in MAP-21. In March 2013, FMCSA published a final rule to conform the FMCSRs to the statutory provisions in MAP-21. States have until March 14, 2016, to adopt compatible regulations to maintain eligibility for Motor Carrier Safety Assistance Program grants.

The GROW AMERICA Act

The GROW AMERICA Act will support millions of American jobs repairing and modernizing our roads, bridges, railways, and transit systems. It will ensure that American businesses can compete in the global economy and increase access to opportunities for all Americans. The Act builds upon the gains achieved in MAP-21 for commercial motor vehicle safety and will further empower State and local communities through more streamlined and efficient grant programs, will build on FMCSA's unprecedented motorcoach safety achievements, and will ease economic stress on long-distance truck and bus drivers by ensuring they receive fair compensation for the hours they work.

Improvements to the Motor Carrier Safety Grants

GROW AMERICA will streamline and consolidate five FMCSA safety grant programs into a single formula program – a change that will dramatically increase administrative efficiencies for FMCSA and its State partners. The grant programs affected would be the Motor Carrier Safety Assistance Program (MCSAP) Basic and Incentive; New Entrant; Border Enforcement; Performance and Registration Information Systems Management Program (PRISM); and Safety Data Improvement. The restructuring would allow the use of MCSAP funds to enforce household goods regulations. State participation in PRISM, Safety Data Improvement and New Entrant would become mandatory. Additionally, the proposal would restructure the Commercial Vehicle Information Systems and Networks (CVISN) program allowing greater flexibility for advanced technology solutions, and it would eliminate core and expanded funding caps.

Motorcoach Safety

FMCSA is committed to raising the bar for safety in this highly competitive and rapidly changing industry by employing more effective investigation methods and strengthening the Agency's oversight authorities. Last year, FMCSA shut down more than 100 unsafe bus companies that put passengers at risk, and we significantly increased public education and awareness on safe motorcoach travel.

GROW AMERICA would expand the locations where States may require motorcoach inspections to include en route locations where food, shelter and sanitation for passengers can be provided. The proposal also grants FMCSA jurisdiction over passenger carrier brokers, requiring them to register with the Agency. This proposal would help prevent unsafe bus companies from reorganizing as unregulated brokers and ensure transportation through authorized carriers only. The GROW AMERICA Act will also prevent unscrupulous motor carriers from skirting FMCSA enforcement actions by clarifying authority for criminal

prosecutions of persons who knowingly and willfully violate imminent hazard out-of-service orders, which are issued to prevent the death or serious physical harm to the public.

Driver Compensation

Many over-the-road truck and bus drivers are compensated by the mile or on a fixed-rate-per-load basis. As a result, drivers often are not paid for extended periods of time spent waiting at shipper or receiver facilities for shipments to be loaded or unloaded. Similarly, over-the-road motorcoach drivers are often compensated in a manner other than an hourly wage. This pay structure may create pressures to exceed HOS limits, risk driver fatigue, and jeopardize highway safety. The proposal provides the Secretary of Transportation authority to adopt rules to require motor carriers to compensate drivers for detention time and other non-driving work periods at a rate that is at least equal to the Federal minimum wage. The proposal would not amend the Fair Labor Standards Act (FLSA); this pay would be in addition to that required under FLSA.

Conclusion

Thank you, Mr. Chairman and Ranking Member Blunt, for the opportunity to discuss the Federal motor carrier safety programs. We look forward to working with you to improve safety, reduce crashes, and save lives on our Nation's highways.