

**STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR
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U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
INFRASTRUCTURE, SAFETY, AND SECURITY
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
“OPPORTUNITIES AND CHALLENGES FOR IMPROVING TRUCK SAFETY ON OUR
HIGHWAYS”**

JULY 29, 2014

Mr. Chairman, Ranking Member Blunt, and Members of the Subcommittee, thank you for inviting me to testify today on the importance of safety in the trucking industry. At the Federal Motor Carrier Safety Administration (FMCSA) we are committed to reducing the number of crashes, injuries and fatalities involving commercial motor vehicles (CMV). The number of lives lost in large truck- and bus-related crashes has decreased 26 percent since 2000, from 5,620 to 4,183, in 2012. Injuries decreased from an estimated 166,000 to 126,000 during that same time period. While this represents significant progress, we must do more to bring these numbers down.

FMCSA’s Safety Mission

We have identified several serious truck safety trends that drive up these numbers, and we are concerned with all of them. Our data show that almost one-fifth of these fatalities were truck occupants. In many of these crashes, the truck driver was not wearing a seat belt. Working together to educate drivers and the motoring public, we can encourage them to engage in safer driving behaviors. We want all drivers and the people with whom they share the road to get home safely, and companies want their employees to operate safely. To do that, we must make the industry safer.

FMCSA oversees the safety operations of more than 500,000 interstate motor carriers, as well as the estimated 4 million active commercial driver’s license (CDL) holders who operate hundreds of billions of combined miles each year. The vast majority of these operations are crash-free. Mr. Chairman, it is our obligation to focus on those operators that present the highest risk on our roads. To accomplish this, we depend heavily on our State partners supported through our grant programs and collaboration with the motor carrier industry and safety advocacy groups, in adherence with our 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. As I will elaborate in my testimony today, the Agency’s implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) aligns well with these priorities. To date, the Agency has implemented more than twenty provisions of MAP-21, which gave the Agency important tools to improve CMV safety and remove unsafe operators from the Nation’s highways. We have promulgated a number of rules that allow us to take action against drivers and companies that violate our safety rules.

Investment in Crash Avoidance Technologies

One way to achieve increased safety is to invest in crash avoidance technologies. FMCSA and our colleagues at the National Highway Traffic Safety Administration (NHTSA) and the Department's Intelligent Transportation Systems Joint Program Office have worked closely together to research and evaluate new technologies to help large trucks and buses avoid crashes. Technologies such as Electronic Stability Control (ESC) systems prevent crashes and save lives. NHTSA estimates these systems could prevent 40 to 56 percent of untripped rollover crashes and 14 percent of loss-of-control crashes. The NHTSA proposal to require ESC on heavy vehicles would prevent as many as 2,300 crashes, nearly 900 injuries, and up to 60 fatalities.

Compliance, Safety, Accountability

Compliance, Safety, Accountability (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 formally request records in writing without the previous restriction of having to display credentials 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.

Additionally, we are focusing on a number of improvements to the Safety Measurement System (SMS) to strengthen the identification of unsafe companies and prioritizing them for enforcement interventions. Launched in December 2010 as part of the Agency's CSA program, SMS uses roadside inspection and investigation data to prioritize high risk motor carriers for interventions before crashes occur. Recently, we released a new study that confirmed that the SMS is more effective at identifying both truck and bus companies for targeted enforcement than the system it replaced. In this study, FMCSA compared the crash rates of those carriers identified for intervention with those without identified compliance and safety problems. Companies that the SMS identified as high-risk for future crashes had a future crash rate of more than double the national average. Going forward, FMCSA will use this data to flag companies for interventions by the Agency—which include roadside inspections, warning letters and onsite investigations—that will lead to improved safety and fewer crashes.

FMCSA continues to improve how SMS works in order to identify motor carriers posing the greatest risk to safety. Our responsiveness to industry, safety advocates, oversight agencies and Congress brings about new policies, reports, and changes to the SMS. Recently, we announced changes to how we handle adjudicated violations. For inspections occurring on or after August 23, 2014, motor carriers and drivers will be able to request updates to their data to reflect when the driver or carrier is found not guilty or a violation is changed or dismissed in court. These changes are part of our continued effort to improve the quality of our violation data.

We expect to complete our “crash weighting” research soon, which will address several questions on the feasibility of determining the role of the carrier in the crash. The study looks not only at the process to conduct this type of evaluation, but also the ultimate impact on the information on the Agency’s ability to identify carrier’s at risk of future crashes. Additionally, we are working towards publication of a proposed rule on Safety Fitness Determination that would increase the use of inspection data in making safety fitness determinations for motor carriers.

Passenger Carrier Safety

FMCSA continues to use its MAP-21 authorities to strengthen the safety of passengers who ride buses throughout our Nation. 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.

National Registry of Certified Medical Examiners

Another aspect of our safety program is our newly implemented National Registry of Certified Medical Examiners. As of May 21 of this year, only medical examiners listed on the National Registry can conduct physical examinations of commercial drivers. This ensures that these drivers can operate safely and be healthy while on the road. To be listed on the registry, medical examiners must complete a training course and pass an exam to show that they understand our medical standards and understand the physical demands of driving a CMV when certifying a driver’s health.

Currently, there are more than 32,000 certified medical examiners on the Registry with many more scheduled to take the exam. We expect to have more than 40,000 certified by the end of the year. The National Registry builds on FMCSA’s 2008 final rule merging the medical certification process with the Commercial Driver’s License (CDL) issuance and renewal process, requiring that CDL holders provide proof of their medical qualifications to the State licensing agencies.

Obstructive Sleep Apnea

Another issue of concern in the area of driver health is obstructive sleep apnea (OSA). FMCSA plans to address OSA through a formal rulemaking process, but only after collecting and analyzing the necessary data and research. Presently, we are gathering data, but have no immediate plans to move forward with a rulemaking. At this time, a sleep apnea test is NOT

required to obtain or renew a medical certificate. The Agency has asked our Motor Carrier Safety Advisory Committee and our Medical Review Board to provide recommendations to address sleep apnea, but that is just one part of what will be an extensive data-gathering process.

Hours of Service Rules and Fatigue Management

Fatigue is a leading factor in large truck crashes and a significant safety issue overall. The hours-of-service (HOS) regulations for truck drivers were updated in 2013 based on extensive research and data to ensure that drivers have the off-duty time they need to be alert behind the wheel. There is also an education component to preventing fatigue associated with drivers' activities when they are off-duty and the irregular schedules they are subjected to in order to meet the demands of shippers and receivers.

In recognition of the impact of fatigue on highway safety, FMCSA and its Canadian counterparts led a consortium of government, insurance, and motor carrier agencies in developing the North American Fatigue Management Program (NAFMP). The NAFMP is designed to address the issue of driver fatigue among CMV operators and contains valuable information and tools that can be applied across all modes of transportation. The program contains information on fatigue management education for drivers and their families, carriers, shippers, and receivers. It contains additional information on sleep disorder screening and treatment, trip scheduling, and fatigue management technologies. Available in English and French, the NAFMP allows for more effective fatigue countermeasures and a comprehensive fatigue management approach.

The revised hours-of-service (HOS) rules for truck drivers went fully into effect on July 1, 2013. This revised rule includes two modest changes to the optional 34-hour restart – first, limiting the restart to once a week, and second, requiring a driver to have two overnight periods off duty from 1 a.m. until 5 a.m. Only those drivers working more than 60 hours in 7 days or 70 hours in 8 days are affected by the changes, by having their work limited to a maximum average of 70 hours per week. This is still nearly double the national standard of a 40-hour work week. The once a week limit is designed to prevent cumulative fatigue in drivers working the maximum number of hours week after week, and the 2-overnight periods recognize that a 34 hour break with just one overnight period does not provide adequate opportunity for restorative sleep. Both provisions were well supported by scientific research. The rule improves safety by reducing driver fatigue.

Public input was a major part of this rule. Before it became final, FMCSA held 6 public listening sessions and carefully considered approximately 21,000 formal docket comments, many submitted by the CMV industry, particularly drivers and carriers. This was after years of research and public input from industry and safety advocates. The rule in place today lists 80 sources of scientific research and data the Agency reviewed and considered, all of this on top of hundreds of studies regarding fatigue and hours of work that were considered in past HOS rulemakings, including research on the appropriateness and value of a “restart.” In August 2013, the U.S. Court of Appeals for the District of Columbia Circuit upheld the new HOS rules (except for the application of the 30-minute rest break requirement for short-haul drivers), after twice overturning previous versions.

As noted, the 2011 final rule included two changes to the 34-hour restart, which impacts less than 15 percent of drivers who work the most extreme schedules of up to 70-hours per week. The changes limit use of the restart to once every 168 hours (or seven days) and require that the restart include two nighttime periods from 1 – 5 a.m. when science tells us our bodies demand sleep the most. We based this requirement on the extensive body of research that shows the consequences of long work hours on driver health and the correlation between long weekly work hours and a higher risk of sleep loss and crashes. Scientific review concluded generally that long work hours were associated with poorer health, increased work-related and non-work related injury rates, increased illness, a greater risk of unhealthy weight gain, cardiovascular disease, and other ailments.

Mr. Chairman, let me emphasize that a driver is never required to use the 34-hour restart. Drivers have always been required to cease operations when they run out of time. Such a restart is necessary only if a long-haul truck driver wants to work longer than 60 hours in 7 days or 70 hours in 8 days. Less than 15 percent of long-haul truck drivers – those who work the most extreme schedules – are impacted by the current rule. Those averaging 70 hours per week or less are NOT affected by the changes to the restart because they would never work the number of hours that would require them to use the restart. However, any carrier that previously allowed or required its drivers to average up to 82 hours per week, an amount allowed under the previous rule, must now cease this practice.

We have heard criticism that the new rule discriminates against nighttime drivers and forces them to drive during the day and in prime rush hours. We have seen no evidence to support this claim. The rule does not prevent carriers and drivers from setting their own schedules, nor does it restrict drivers from being on the road during any time of the day. Whatever the limits on driving and work hours may be, if the motor carrier and driver plan their schedule so tightly that the driver can barely complete the run legally, then problems with completing runs inevitably will occur. That fact cannot support any rollback of the current rule.

Independent studies have shown that daytime sleep is less beneficial than nighttime sleep, and that drivers who have two overnight rest periods are more alert and safer than drivers who get just one overnight period. Largely for this reason, we are concerned about legislative efforts to increase, even temporarily, the number of hours a truck driver could work from the 70-hour maximum on the books today. Removing the rest requirements could expose the public to greater risk every time they are on the road. The final rule would save 19 lives and prevent approximately 1,400 crashes and 560 injuries each year—a significant safety benefit.

HOS Field Study

Due to the importance of driver fatigue as a safety risk, we continue to research several issues related to hours-of-service. Following the MAP-21 mandate, FMCSA completed the *Hours-of-Service Field Study*, which examined the effectiveness of the new HOS rule, including the modified 34-hour restart provision. Released to Congress earlier this year, the results show that having at least two nighttime rest periods from 1 – 5 a.m. helps to lessen fatigue. Specifically, this naturalistic field study found that drivers whose weekly duty cycles were preceded by a restart break with one nighttime period as compared to a restart break with two or more

nighttime periods – had more lapses of attention, reported greater sleepiness and showed increased lane deviation.

Detention Time & Split Sleep

We are researching two other issues closely related to driver hours of service: driver detention time and split sleep. Most of us agree that detention time, or excessive waiting times associated with loading or unloading cargo, can negatively impact a driver's schedule and interfere with that driver's ability to complete deliveries within the hours-of-service regulations. We have completed phase 1 of the study, which will provide us with a better understanding of the scope of detention times throughout the industry. Meanwhile, we are continuing with phase 2, which will look closely at the safety impacts of detention time.

During many of the listening sessions we held for the hours of service rulemaking, we heard that drivers desire greater flexibility on some of the hours of service provisions, such as split sleep, which divides the 10-hour off-duty period into two separate rest periods. As a result, later this year, we will begin a pilot program to collect data on the impacts of split sleep. The field study will measure the impact of split sleep periods on driver alertness and sleep quantity. We have begun discussions with our colleagues from the American Trucking Associations, the National Association of Small Trucking Companies, the Owner Operator Independent Drivers Association (OOIDA), and potential technology providers for this study effort.

Electronic Logging Devices

Closely related to HOS is our electronic logging device rulemaking, another MAP-21 requirement. In March, we announced our proposal to require motor carriers to use electronic logging devices to improve the quality of logbook data and improve compliance with HOS rules. This proposed rule would address how the Agency ensures that the use of ELDs does not result in increased driver harassment by carriers to break the law, help businesses cut unnecessary paperwork, and increase efficiency for law enforcement personnel and inspectors who review drivers' logbooks. Analysis shows that electronic logging devices would help reduce crashes by improving compliance with HOS rules. The comment period ended on June 26, and we are currently reviewing more than 1,700 comments that we received. We also received more than 11,300 letters from individuals who signed The AnnaLeah & Mary Stand Up for Truck Safety Petition. A copy of the petition is included in FMCSA's rulemaking docket concerning electronic logging devices: <http://www.regulations.gov/#!documentDetail;D=FMCSA-2010-0167-1177>. We are working to finalize this important rule as expeditiously as possible.

Drug and Alcohol Clearinghouse

To further prevent crashes, we must ensure that drivers are healthy, sober and drug-free. We published the Notice of Proposed Rulemaking (NPRM) on the Drug and Alcohol Clearinghouse (Clearinghouse) to implement the MAP-21 provision on this subject. The Clearinghouse would require truck and bus companies (and other entities responsible for managing drug & alcohol testing programs) to report verified positive drug and alcohol test results, test refusals, negative return-to-duty test results and follow-up testing. This information would populate a repository

with positive drug and alcohol tests by CDL holders. Once implemented, employers would be required to conduct pre-employment searches in the repository for all new CDL drivers and annual searches on current drivers. The comment period for the rule closed on May 21.

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.

Coercion Rule

On May 13, FMCSA published an 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 Federal Motor Carrier Safety Regulations – including drivers' HOS limits and the CDL regulations and associated drug and alcohol testing rules – or the Hazardous Materials Regulations. 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. The comment period closes on August 11.

GROW AMERICA

In May, President Obama and Secretary Foxx proposed the GROW AMERICA Act– a four-year, \$302 billion transportation bill that will help us tackle our infrastructure deficit while improving safety and providing the reliability that our partners at the State and local level need. Our plan will ensure the solvency of the Highway Trust Fund and will boost funding for highways, transit, and rail. It will invest \$5 billion in four more years of our TIGER grant program, which supports innovative, sustainable, multimodal solutions to regional transportation challenges. At FMCSA, GROW AMERICA would help us streamline our grants processes to improve the efficiency of our grantees.

One of our biggest Agency goals in GROW AMERICA is to address driver compensation. Many over-the-road truck and bus drivers are compensated by the mile or on a fixed-rate per load. As a result, they are not paid for extended periods of time spent on-the-clock when they are detained by waiting for shipments to be loaded or unloaded at shippers' or receivers' facilities. Similarly, over-the-road motorcoach drivers are often compensated in a manner other than an hourly wage. Truck and bus drivers deserve to earn at least the Federal minimum fair hourly wage for all on-duty time. Failing to pay them for time they spend working, but are

detained waiting for shipments may increase the pressures they face, thereby, jeopardizing their safety and the safety of others by speeding and driving tired or beyond the hours of service as a matter of economic necessity. Furthermore, these dedicated, well-trained professionals deserve to earn a livable, hourly wage and be compensated fairly for their time and contributions to the vitality of the American economy.

Finally, we propose allowing for the criminal prosecution of a person who knowingly and willfully violates an imminent hazard out-of-service order and operates after FMCSA has shut them down.

We hope these changes will make it easier for all of our stakeholders, from drivers and carriers to enforcement partners to work together toward our shared safety goals.

Conclusion

Thank you, Mr. Chairman, Ranking Member Blunt, and members of the Subcommittee, for allowing me to speak to you today on these important issues relating to truck safety. We must all work together to create the safest trucking industry possible. Together we can make a difference for safety.