

**STATEMENT OF THE HONORABLE T. F. SCOTT DARLING, III,
ACTING ADMINISTRATOR
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
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**

***SURFACE TRANSPORTATION REAUTHORIZATION – OVERSIGHT AND REFORM
OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION***

MARCH 4, 2015

Chairman Fischer, Ranking Member Booker, and Members of the Subcommittee, thank you for the opportunity to speak to you today on the Administration's proposal to reauthorize the commercial motor vehicle (CMV) safety program, included in the GROW AMERICA Act.

Safety is the Department of Transportation's top priority. Since the Federal Motor Carrier Safety Administration (FMCSA) was established in 2000, the number of lives lost in large truck and bus related crashes has decreased 24 percent, from 5,620 in 2000 to 4,251 in 2013. While this represents significant progress, more must be done. Every life is precious and the Department is committed to reducing the number of crashes, injuries and fatalities involving commercial motor vehicles.

GROW AMERICA Act

The provisions proposed in the GROW AMERICA Act build on the Agency's three core safety principles: (1) raise the bar to enter the motor carrier industry; (2) require high safety standards to remain in the industry; and (3) remove high-risk carriers, drivers, and service providers from the industry.

The GROW AMERICA Act includes measures that will empower State and local communities to help achieve our shared goals through more streamlined and efficient grant programs. The Act will also build on FMCSA's continued, unprecedented motorcoach safety efforts by expanding locations where inspections may occur and will provide new authority over brokers who arrange passenger transportation. Furthermore, FMCSA proposes to promote safety while also easing the economic stress on long-distance truck and bus drivers, including thousands of small businesses, by ensuring they receive fair compensation for the hours they work.

Motorcoach Safety

Bus travel is increasingly popular because it is a convenient, inexpensive option for many people, including students, groups and families. 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

stepped up its enforcement efforts, shutting down more than 50 unsafe bus companies that put passengers at risk. FMCSA also increased its efforts to educate the public on safe motorcoach travel.

Expands Locations for Motorcoach Inspections: To build on this unprecedented motorcoach safety effort, the GROW AMERICA Act will clarify and expand the locations at which motorcoach inspections may occur. The GROW AMERICA Act will clarify that inspectors may inspect motorcoaches at designated sites equipped with adequate food, shelter and sanitation facilities to accommodate passengers during the process.

Provides Jurisdiction Over Motorcoach Brokers: The GROW AMERICA Act will also provide FMCSA with jurisdiction over brokers of passenger transportation. This provision will enhance FMCSA's ability to prevent unsafe bus companies from reorganizing themselves as unregulated "brokers." Additionally, requiring bus brokers to comply with the DOT's commercial registration requirements will help ensure that they are authorized to operate safely in interstate commerce. The change will also provide greater transparency for consumers who are booking bus travel.

Allows Criminal Prosecution for Unscrupulous Carriers: Finally, the GROW AMERICA Act will take stronger steps to prevent unscrupulous motor carriers from skirting FMCSA enforcement actions by allowing for criminal prosecution of a person who knowingly and willfully violates an imminent hazard out-of-service (OOS) order issued to prevent the death or serious physical harm to the public.

Safety-Based Improvements to Compensation for Long-Distance Truck & Bus Drivers: 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 while waiting for shipments to be loaded or unloaded at shippers' or receivers' facilities. Similarly, over-the-road motorcoach drivers are often not compensated through an hourly wage. As a result, they often face pressure to drive beyond hours-of-service limitations as a matter of economic necessity, risking driver fatigue and jeopardizing highway safety in the process. The GROW AMERICA Act addresses these problems by providing the Secretary authority to issue regulations that would require motor carriers to compensate drivers for detention time and other similar non-driving work periods at a rate that is at least equal to the Federal minimum wage.

Improvements to the Motor Carrier Safety Grants

The GROW AMERICA Act will also streamline and consolidate FMCSA safety grant programs – a change that will reduce redundant grant application submissions, reviews, awards approvals, vouchering and oversight time, and thus increase dramatically efficiencies not only for FMCSA but for its State partners. Among other changes, the Motor Carrier Safety Assistance Program (MCSAP) will be restructured to include the current New Entrant and Border Enforcement grant programs. While the high-priority program will continue under MCSAP, the current safety data improvement grant program will be absorbed into the high-priority program to avoid duplication. In addition, the Commercial Vehicle Information Systems and Networks (CVISN) grant program will be replaced with a new Innovative Technology Program, and additional flexibility will be

available to address eligible activities under the Commercial Driver's License program improvement grant program.

As a condition of full MCSAP funding, every State will be required to participate in the Performance and Registration Information Systems Management Program (PRISM) within three years of enactment, thus expanding the number of States that can suspend or revoke the vehicle registration of carriers subject to FMCSA out-of-service orders. States will also gain the ability to use MCSAP funds to conduct reviews of household goods carriers, brokers, and freight forwarders, protecting the public from predatory practices. The Act will provide a new minimum Federal share of 85 percent, a funding level applied to each of FMCSA's grant programs. The Agency will also have the ability to withhold incremental amounts of MCSAP funding for State non-compliance with grant conditions, rather than being required to withhold either the full amount or none at all. This added tool will allow FMCSA to address compliance issues while allowing States sufficient funds to continue critical safety activities.

MAP-21 Implementation and Other Priorities

FMCSA is working to implement the provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21), as well as advance core safety initiatives including the Compliance, Safety, Accountability (CSA) program, and hours-of-service (HOS) research.

Compliance, Safety, Accountability

CSA is the cornerstone of FMCSA's compliance model to improve CMV safety and reduce large truck and bus crashes, injuries, and fatalities on our Nation's highways. CSA consists of its Safety Measurement System (SMS) to identify companies for enforcement interventions, a wide array of interventions that target carriers' safety performance and compliance problems, and a new methodology (to be proposed in future rulemaking) to determine the safety fitness of motor carriers.

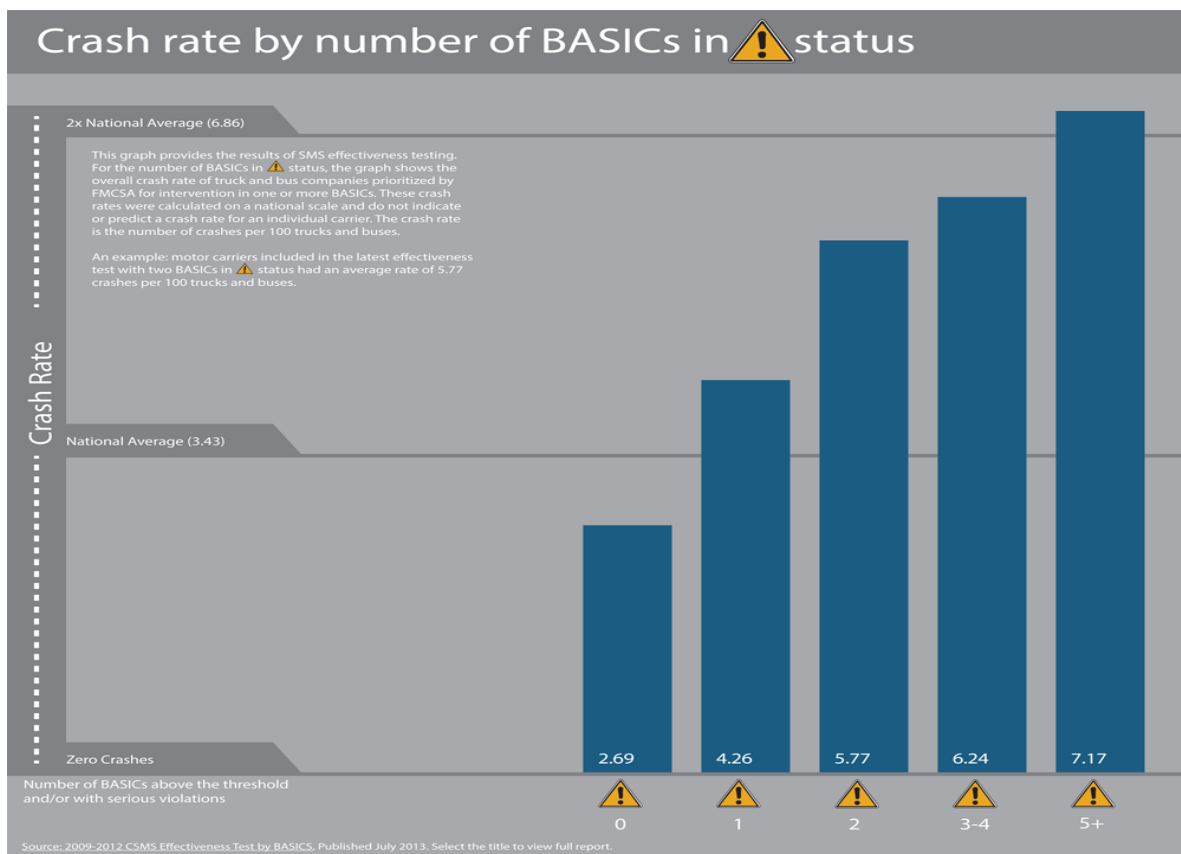
Given the size of our Federal workforce and the very limited resources of our State enforcement partners relative to our regulated population, it is imperative that we apply our resources efficiently. The Agency, therefore, utilizes SMS to identify noncompliant and unsafe companies to prioritize them for enforcement interventions. FMCSA continues to improve SMS to identify those motor carriers that pose the greatest risk to safety. Our responsiveness to industry, safety advocates, oversight agencies and Congress continually prompts new and revised policies, reports, and changes to the SMS. Last year, we announced changes to our adjudicated violations process. Since August 2014, motor carriers and drivers have been able to request updates to their data through the DataQs process to reflect when the driver or carrier is found not guilty or a violation is changed or dismissed in court.

This spring, the Agency will announce additional changes to SMS. These changes will strengthen our ability to identify companies for investigation before they are involved in a crash. We will publish these changes in the Federal Register and provide the public an opportunity to comment before finalizing.

Recently, we announced the results of our crash weighting research, which addressed the feasibility of using a motor carrier’s role in crashes as an indicator of future crash risk. The study considers the use of police accident reports in determining crash accountability and the reliability of using crash involvement or crash weighting as an indicator of future crash risk. We are currently receiving comments on this issue and will determine next steps based on that feedback. We published the notice in January, and the comment period runs through March 25.

We continue to work toward publication of a proposed rule that would increase the use of inspection data in making safety fitness determinations for motor carriers. The Safety Fitness Determination proposal will include a fixed, non-relative failure standard and will take into account recommendations for larger amounts of data to make accurate determinations of a carrier’s fitness to operate.

Importantly, as is shown by the figure below, carriers identified as having one or more areas above the established thresholds in SMS have crash rates significantly higher than carriers that aren’t identified. As the number of Behavior Analysis and Safety Improvement Categories (BASICS) over threshold increase, so does the crash rate.



The issue of data sufficiency has received a lot of attention recently. Based upon studies completed by the Agency and independent researchers, the SMS is effective at identifying carriers that are engaging in behaviors likely to cause a crash. FMCSA, our State partners, the

Government Accountability Office (GAO), the Office of Inspector (OIG), and the National Transportation Board (NTSB) all share a common goal of finding the most effective tools for identifying high risk carriers and taking appropriate enforcement actions. While we all share that goal, we have also had clear differences over specific methodologies for prioritizing a carrier as higher crash risk and for taking action. For example, a February 2014 GAO study recommended that the Agency revise the SMS to account for what it sees as data limitations. The GAO developed a methodology that only considers carriers that have at least 20 inspections or 20 vehicles and eliminates the use of safety event groups. That approach runs counter to the goals of SMS, which identifies dangerous violation patterns much earlier. The overwhelming majority of motor carriers – more than 90 percent of our regulated population – *never reach* the 20 observation level during the relevant measurement period. Under GAO’s approach to SMS, the safety performance of all these companies would be simply ignored. The public demands a proactive approach, rather than waiting for 20 –observation – or a crash – before we intervene.

The SMS is effective at identifying carriers that are more likely than others to crash because the carriers are engaging in risky behaviors. The Agency is working hard to intervene with those carriers exhibiting high risk behaviors in the most efficient manner possible and to engage the companies before they have a crash.

Hours-of-Service

Due to the importance of driver fatigue as a safety risk, we issued new rules regarding drivers’ hours of service in 2011. The final rule required truck drivers who use the “34-hour restart” provision to maximize their weekly work hours to limit the restart to once a week and to include in the restart period at least two nights off duty from 1:00 to 5:00 a.m., when our 24-hour body clock needs and benefits from sleep the most. The provision was included in response to research showing that drivers who routinely work overnight schedules and sleep during the daytime tend to “switch their sleep clocks” on weekends while they are with their families, doing errands, and so on. As a result, they often get only one night of sleep during the 34-hour break – which research shows is insufficient to eliminate fatigue – before climbing back into the truck Sunday evening.

The rule was structured with flexibility such that each driver would use the restart based on his or her specific schedule for the week which would establish the point at which the driver would determine whether a 34-hour restart was needed, and if so, when it would begin and end.

As mandated by MAP-21, the Agency conducted a field study which expanded upon the results of the laboratory-based study relating to CMV driver fatigue. This research was conducted between January and July 2013, and not as an aspect of our regulatory process. MAP-21 did not require the study to address the impact of the new rule on the volume of truck traffic during daytime hours. However, the Agency is not aware of study results or data that suggests the 2011 rule forced drivers to shift their work schedules from nighttime operations to daytime operations.

On December 16, 2014, the Congress enacted the Consolidated and Further Continuing Appropriations Act, 2015, which included provisions restoring the pre-2013 restart rule, pending further study of the post-2013 rule. In particular, the once-a-week limitation on the use of the restart and the requirement for two nights off duty were suspended until the end of this fiscal

year. FMCSA issued a notice in the Federal Register on December 17 suspending the 2013 restart provisions. Those restart provisions have no force or effect from the date of enactment of the Appropriations Act through the period of suspension, and have been replaced with the previous restart provisions that were in effect on June 30, 2013. FMCSA notified motor carriers and commercial drivers, and trained thousands of State Motor Carrier Safety Assistance Program grant recipients, and other law enforcement personnel on these immediate enforcement changes.

The Agency selected the Virginia Tech Transportation Institute (VTTI) to conduct the study mandated by Congress. We have worked diligently to reach out and recruit potential drivers from all segments of the trucking industry as the statute requires. VTTI has a solid national reputation for conducting vehicle-related safety and driver fatigue research. VTTI pioneered the use of naturalistic driving studies and has successfully carried out similar FMCSA projects for the past 10 years. As required by Congress, the study methodology is now undergoing review by the DOT Office of Inspector General. This driver restart study is the largest naturalistic study of its kind that FMCSA has ever undertaken. We anticipate releasing the findings later in the year.

Electronic Logging Devices

MAP-21 included a provision mandating the use of electronic logging devices (ELD) for those CMV drivers who are required to keep a record of duty status under the HOS regulations. FMCSA is preparing to issue its final rule on ELDs this fall. The ELD rule will require CMV drivers who are now required to keep a record of duty status under the HOS regulations to maintain these records electronically. ELDs will automate HOS tracking, making it easier for drivers to log hours and more difficult to conceal violations of the hours-of-service rules. Once promulgated, the rule will help businesses cut paperwork and will increase the efficiency of law enforcement personnel and safety inspectors. The rule will also ensure that the devices are not used to harass drivers. By improving HOS compliance, ELDs are expected to prevent approximately 1,400 crashes, 20 fatalities, and more than 400 injuries each year, with a net economic savings of close to \$450 million.

National Registry of Certified Medical Examiners

In May 2015, FMCSA will celebrate the first anniversary of the full implementation of the National Registry of Certified Medical Examiners (National Registry). As mandated by SAFETEA-LU and MAP-21, the National Registry rule requires all Medical Examiners (ME) who conduct physical examinations and issue medical certifications 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. Currently, all CMV drivers whose medical certification expires must use MEs on the National Registry for their examinations.

Between May 2014 and November 2014, more than 2.4 million examinations of commercial motor vehicle drivers were conducted by healthcare professionals on the National Registry. We anticipate receiving data for December 2014 and January 2015 by the end of March. The National Registry has been a great success. To date, we have reached our goal of 40,000 certified MEs on the National Registry. Drivers can now find MEs throughout the nation who can competently perform their medical examination. Any physician or other qualified medical professional (such as a physician's assistant or an advanced practice nurse) licensed by a State to

conduct physical examinations can be listed on the National Registry if they are trained, tested, and certified.

With the help of the OIG and our State law enforcement partners, we have identified and prosecuted uncertified MEs and others who have committed fraud or otherwise abused the physical qualifications process.

We are preparing to issue a follow-on “National Registry 2” rulemaking that will require MEs to submit the medical certificate information for CMV drivers to FMCSA on a daily basis. The Agency will then be able to promptly transmit medical certificate information electronically to the State Driver Licensing Agencies for the CDL holders. This will dramatically decrease the chance of drivers falsifying medical cards and will lessen the amount of paperwork required currently.

Drug and Alcohol Clearinghouse

To further prevent crashes, we must ensure that CDL holders are sober and drug-free. We published a 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 DOT 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 the Clearinghouse database with positive drug and alcohol test information on CDL holders. This information would remain in the Clearinghouse for a requisite period of time after the CDL-holder completes the return-to-duty rehabilitative process, which allows the driver to become re-qualified to operate a CMV. Once the Clearinghouse is fully implemented, employers would be required to conduct pre-employment searches in the repository as part of the hiring process for CDL drivers and annual searches on current employee drivers. The final rule is in development and is scheduled to be published later this year.

Entry-Level Driver Training Requirements

MAP-21 directed the Agency to issue final regulations to require entry-level training for drivers who require a CDL and for those upgrading from one class of CDL to another. The Agency’s rulemaking must address knowledge and skills for safe operation and other issues. In 2013, the Agency held listening sessions and asked our Motor Carrier Safety Advisory Committee (MCSAC) to provide recommendations on ELDT. These sessions and the MCSAC gave the Agency substantial information about training for entry-level CDL applicants. In August, the Agency engaged the services of a convener to assess the feasibility of conducting a negotiated rulemaking (Reg Neg) to implement this provision. The convener recommended that the Agency proceed with a Reg Neg on ELDT. In February, the Agency announced the appointment of 26 stakeholders to participate in the negotiated rulemaking committee. Known as the Entry-Level Driver Training Advisory Committee (ELDTAC), the Committee held its first meeting last week, on February 26-27. The Department plans an accelerated Reg Neg to reach consensus among these key stakeholders so that we can issue a Notice of Proposed Rulemaking (NPRM) by fall 2015 and a final rule by 2016.

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, Chairman Fischer and Ranking Member Booker, for the opportunity to discuss Federal motor carrier safety programs. We look forward to working with you on enacting the next surface transportation bill to improve safety, reduce crashes, prevent injuries, and save lives on our Nation's highways.