S. HRG. 113–627

# OPPORTUNITIES AND CHALLENGES FOR IMPROVING TRUCK SAFETY ON OUR HIGHWAYS

## HEARING

BEFORE THE

## SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY

OF THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JULY 29, 2014

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# CONTENTS



WITNESSES



APPENDIX

# OPPORTUNITIES AND CHALLENGES FOR IMPROVING TRUCK SAFETY ON OUR HIGHWAYS

**TUESDAY, JULY 29, 2014**

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND
MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 3:10 p.m. in room SR–253, Russell Senate Office Building, Hon. Richard Blumenthal, Chairman of the Subcommittee, presiding.

## OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Good afternoon, everyone. I am going to call the hearing to order and apologize, first of all, for a little late start. We just finished a vote, and I am sure we will be joined by other colleagues for this very important hearing.

Today, this subcommittee is focused on safety, particularly as it relates to trucks on our Nation's roads and highways. This issue is something that I have cared about deeply throughout my career, and I appreciate Senator Blunt's commitment as well. I know he has been very, very focused on issues relating to safety.

There may be some issues that divide us but there is so much more that we have in common, and that is why we are having this hearing. That is why we are joined by witnesses who are really experts on this topic from across a wide spectrum of the Administration, safety advocacy, law enforcement, the trucking industry, and the men and women who drive trucks.

I am eager to hear their testimony and decide what we can do to reduce the fatalities and the injuries on our roads.

There have been a lot of headlines lately, and you have probably seen about Tracy Morgan, who was seriously injured in a crash in early June involving a large truck, which also severely injured a Connecticut resident, but this hearing today is not about one person, Tracy Morgan, or anyone else.

It is about the 4,000 people who are killed each year in truck crashes and nearly 100,000 each year who are injured, and there are reasons to be concerned. According to NHTSA, truck crash injuries increased by 40 percent from 2009 to 2012.

So, the rules that have recently been implemented are front and center. I support these rules. I believe they are a step in the right

direction, and I believe we should keep them in place, because as one 2005 study conducted by FMCSA demonstrated, under the old rules, 65 percent of drivers reported feeling drowsy while driving, and 48 percent admitted to falling asleep while driving at the same point during the previous year.

If we are going to make any changes, they ought to be with the proper facts and review of this committee. I strongly caution against discarding years of careful analysis in addition, while doing it on a strictly spending bill.

The 2013 rules were designed to prevent truck drivers from being forced to work too many hours, becoming exhausted and endangering themselves and other drivers on the road. That has to be our continuing goal.

I am open to hearing the views of my colleagues as well as the experts before us, and I think what we share here is a common commitment to safety. The best way of doing it is the path that we ought to choose, and for now, I would stay with the rules that we have before us, which seem to be working, and we should allow to work before we consider changing or appealing them.

With that, thank you to Senator Blunt for being here, the Ranking Member, and I turn to him.

**STATEMENT OF HON. ROY BLUNT,**
**U.S. SENATOR FROM MISSOURI**

Senator BLUNT. Well, thank you, Chairman. Thank you for holding this hearing today, since I think the first hearing we had was on intermodal freight transportation, as you stepped up and became Chairman of this subcommittee.

You and I both, I think, have a complete commitment to doing the best we can to ensure that our transportation system is the best one for safety on the highway, the best one to let our economy prosper, to let people have jobs and job opportunities, make all of that work in the best way, all those things on trains, trucks, ports, all are important parts of what we are talking about here.

We are glad to have this panel here. Ms. Ferro, thank you for your service. This may be the last time you appear in this particular job, but your commitment both in Maryland and now at the Federal level have been significant, and thanks for the dedication you brought to this job.

Certainly, as the Chairman mentioned, the safety of the truck traffic and all our traffic has gotten a lot of attention in recent days. Senator Collins on the Appropriations Committee did offer an amendment that was approved in a bipartisan vote that would suspend restrictions on the ability of drivers to restart their weekly on duty time under hours-of-service rules.

I think the best argument to be made there is it puts more people on the road during the daylight hours, and maybe the second best argument to be made is I am not sure the proper research was ever done to think of the other implications of those new rules, but I am sure we will be talking about those rules today.

The new restart provisions state that "A restart period must include two back to back periods from 1 a.m. to 5 a.m." Now, I am not a 1 a.m. to 5 a.m. guy. My mom and dad were dairy farmers.

I am a 5 a.m. to whatever time it takes after that to get things done.

Not everybody is best suited for every job. That is maybe one of the things we need to consider. Just because I would not want to be on the road from 1 to 5 a.m., it is not the busiest time on the road. Some people may choose to decide that is the best time to do the work that they need to do and they want to do.

The bipartisan amendment that was in the Transportation Housing and Urban Development provision merely suspends the two restrictions on the restart time until FMCSA could adequately study the effects of what both of these restrictions are.

Certainly, we want to look at the testimony today. We want to listen to the testimony and ask the questions that we need to ask to be sure that our safety rules really do provide more safety, that they are reasonable, that families and individuals whose lives are lost, families whose lives are always impacted, are getting the most protection that we can give with the safety rules that we have.

Clearly, we are talking a lot right now as we finish up this particular week in the Congress about transportation funding, how important it is that we meet our obligations. It is one of the things that from the very start the Federal Government was thought to be an important partner in, one of the things specifically mentioned in the Constitution—road building, Post Offices, and Post roads.

We want to be sure that we are doing that in the best way we can, and one of the best ways to do that is to have hearings and ask questions and try to see that legislation follows up on the information that we achieve.

Again, Chairman, you have been particularly vigorous in pursuing the potential for this subcommittee, and I am glad to be working on it with you, Senator Booker and others.

Thank you.

Senator BLUMENTHAL. Thank you very much, Senator Blunt. I am going to introduce the witnesses and then ask them to make their opening statements.

We are very grateful to Anne Ferro for being here today. She is the Administrator of the Federal Motor Carrier Safety Administration. In fact, the longest serving administrator in its history. She was appointed by President Obama in 2009.

I join Senator Blunt in expressing my regret that this is probably your last appearance before this committee, and wish you well in your future work.

Joan Claybrook is a witness who really needs no introduction. She is Co-Chair for Advocates for Highway and Auto Safety, and a frequent participant in our work and hearings. She is the former President of Public Citizen. Prior to becoming President of Public Citizen in 1982, she was Administrator of the National Highway Traffic Safety Administration in the Department of Transportation.

We are honored also to have David Palmer, Major David Palmer, of the Texas Department of Public Safety. Major Palmer is the former President and Board Member of the Commercial Vehicle Safety Alliance, which is an international organization that enforces commercial motor vehicle safety laws, and he is currently a major with the Texas Department of Public Safety, where he over-

sees Texas Highway Patrol Division's Highway Safety Operations Center.

Mr. William "Jack" Dawson is a freight driver with UPS. Mr. Dawson is a professional truck driver in Dallas, Texas, where he drives for UPS. He has been a professional driver for 32 years, and he is currently a member of Teamsters Local 745. He trains new employees in areas of safety precautions and driver improvement.

Dave Osiecki is the Senior Vice President of Public Policy and Regulatory Affairs at the American Trucking Associations, and he has been in that position since January 2010.

He served as Vice President for Safety, Security and Operations at the American Trucking Associations, and he is instrumental in working with the ATA Safety Taskforce to develop a progressive 18 point agenda to further improve safety on our Nation's highways.

We are honored and grateful that all of you are with us today. We will begin with Ms. Ferro, Administrator Ferro.

**STATEMENT OF HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

Ms. FERRO. Mr. Chairman, Ranking Member Blunt, thank you both for your kind recognition of my service and for the opportunity to be here today to talk about the progress that we have made in raising the bar for truck safety.

The primary mission of FMCSA is to reduce crashes, injuries, and fatalities involving large trucks and buses. It is a mission our employees, our law enforcement partners, and stakeholders across the Nation engage in and strive to achieve every single day.

We know that one life lost is one too many, and the more than 4,000 people who die each year on our roads due to truck and bus related fatalities is unacceptably high.

One of the most important steps this agency has taken has been to implement a new hours-of-service rule for truck drivers. While most drivers and carriers put safety as their number one priority, the fact remains that some are subject to exceptionally demanding work schedules, especially compared to working limits of the average American and compared to working limits in some other transportation safety sectors.

For truck drivers, our rule took common sense and reasonable steps to put limits on the most extreme schedules. Most important is that this rule is projected to save lives and prevent approximately 1,400 crashes and over 500 injuries. Even if we use modest estimates of fatigue as a factor in crashes, this rule is expected to assist in saving over 400 lives per year.

Now, some have said the rule is causing harm to trucking companies, and yet the truth is we have not seen documentation of that. In fact, truck tonnage is at an all time high. Since 2009, freight shipments in the for-hire trucking industry have increased 30 percent, and trucking profitability is on par for record setting profits this year.

When I became administrator nearly 5 years ago, I set the foundation for a safe operating environment for trucking, starting with a performance based enforcement platform that we call "Compliance Safety Accountability" or CSA, moving to a ban on truck and bus drivers texting or talking on handheld cell phones, an im-

proved hours-of-service rule, and measures that close loopholes that allow unsafe drivers and unsafe companies to avoid being held accountable to important safety standards.

All of this work was done in partnership with stakeholders that are at this very table, and using the best available data.

Our work has been greatly enhanced by MAP–21, which added clear requirements for electronic logging devices, improved hours-of-service compliance through those logging devices, a clearinghouse for drivers who test positive for drugs and alcohol, and a strengthened registry of certified medical examiners.

While these steps are important to improving safety, we need to recognize that the economic pressures on trucking companies and drivers often reward the ones that push the limits. That is why we have been researching two closely related issues, the impact of driver detention time and driver compensation on safety outcomes.

Many drivers, in fact most drivers' compensation is tied to the number of miles they drive, and excessive waiting times associated with loading and unloading can negatively impact a driver's schedule, their earning potential, and certainly interfere with the driver's ability to complete deliveries and complete that pay cycle.

In short, it creates an economic incentive for drivers to drive beyond the legal limits, drive beyond their physical limits, and in some cases, drive tired when they are least safe.

For FMCSA, it comes back to safety. In fact, the dedicated, well-trained professionals who are operating commercial vehicles across our country deserve to be fairly compensated for all the hours they are working, not just when the wheels are in motion.

That is why the GROW AMERICA Act includes a proposal to ensure that drivers are compensated for all on duty time.

Mr. Chairman, again, I want to thank you for the opportunity to join you today for this important subject. In our view, achieving safety every trip, every time, takes all of us. For that, I am looking forward to answering any questions you might have today. Thank you.

[The prepared statement of Ms. Ferro follows:]

PREPARED STATEMENT OF HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

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 and 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 pro-

posed 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.

Senator BLUMENTHAL. Thank you. Ms. Claybrook?

## STATEMENT OF JOAN CLAYBROOK, CO-CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Ms. CLAYBROOK. Thank you very much, Mr. Chairman. It is a pleasure to be here with you and the Subcommittee. I have my full statement which I would like to submit for the record, along with some other documents.

Senator BLUMENTHAL. Without objection.

Ms. CLAYBROOK. Thank you very much. I am representing today Advocates for Highway and Auto Safety, which is a coalition of insurance companies and consumer organizations. I serve as the Co-Chair.

Advocates has been involved in the issue of motor carrier safety for 25 years, and for good reasons. Truck crashes are serious, deadly, and costly problems to families, our health care system, and to our economy.

Government data and statistics illustrate the emotional and economic toll that large truck crashes take on the American public. They killed 3,921 people and injured another 100,000 people in 2012 at a cost of more than $99 billion, and truck crash deaths and injuries are climbing.

The death toll caused by truck crashes is equivalent to a major airline crash, every single week in this country, and we know that Congress would not put up with a major airline crash every single week in this country.

So, we think you need to take some steps to improve truck safety. The death toll caused by truck crashes and the transportation crisis that results should never be tolerated by our elected leaders or by the Department of Transportation. And for the public, it is a nightmare.

In almost all truck/car crashes, it is the car occupants who are killed or severely injured 96 percent of the time. These victims reside in every state across the country.

I would like to take a minute to introduce two parents and a young woman to this committee who are here to personally support improving truck safety. Larry Liberatore's teenage son, Nick, was killed on June 9, 1997 on his way to Six Flags Great Adventure in New Jersey. A tired trucker ran over his car when he was on the shoulder of the highway. Larry is a Board Member of Parents Against Tired Truckers.

Marchelle Wood's daughter, Dana, and a girlfriend were returning to college on October 15, 2002 on I–95, and swerved to avoid hitting a deer, coming to a stop in the right lane. They were killed moments later by a tired trucker who ran over their car, even though no one was in the left-hand lane.

Morgan Lake is a truck crash survivor. Last July, she was on the Chesapeake Bay Bridge and was hit from behind by a distracted driver. The impact pushed her car over the bridge railing, and it plunged into the water. She freed herself from the car and swam to a bridge pillar, and thankfully, she is here to tell us the story of surviving this horrific crash.

My testimony this afternoon will focus on three campaigns that would jettison truck safety and undermine progress in reducing truck crashes, deaths and injuries. First, they include the attack on safety reforms incorporated by the Obama administration in the 2011 hours-of-service rule.

Second, the ongoing problems with the credibility and reliability of the DOT comprehensive truck size and weight study, and third, special interest legislation to preempt states and force them to allow longer combination trucks.

Another concern is the weakening of important motor carrier truck safety provisions in the Administration's GROW AMERICA Act, explained in detail in my written statement.

First, fatigue. Truck driving is one of the most dangerous occupations in the United States, and truck driver fatigue is a major factor. Commercial drivers are exempt from maximum hours and overtime requirements of the Fair Labor Standards Act, amazingly, since 1938, governing compensation for all other employees working more than 40 hours a week.

In 2003, the Federal Motor Carrier Safety Administration changed the hours-of-service rules. However, rather than addressing driver fatigue for better working conditions, the rule dramatically increased working and driving hours.

This was accomplished by allowing a so-called "restart provision," which permits drivers to restart their 60 to 70 hour driving limit at any point during the work week by taking 34 hours off duty.

The trucking industry enthusiastically embraced this change because it increased the maximum work week to an amazing 82 hours and reduced the off duty rest time available for drivers to one day and 10 hours.

The startling decline in driver sleep and increase in driver fatigue was documented in a 2006 FMCSA survey of truck drivers. It showed that nearly two-thirds of the drivers surveyed, 65 percent, admitted to driving while tired, and nearly half, 48 percent, reported they actually fell asleep behind the wheel while driving in the previous year.

However, the safety reforms were finally adopted by FMCSA after 9 years of consumer and safety litigation. In 2011, the HOS rules, which were only implemented a year ago, in 2013, had two positive changes that included an once per week limit on the use of the 34-hour restart. That is you could not use it every 5 days, you had to wait 7 days, on average, reducing the maximum work week from 82 hours to 70 hours. These changes were reasonable.

Also, the agency adopted a requirement for two consecutive overnight off-duty periods between 1 and 5 a.m. to assure the rest will contain two nighttime periods to permit a driver to obtain the most restorative type of sleep, and these changes ensure driver flexibility to meet the demands of the freight business while preparing for the rigors of driving these long hours. This applies, I want to emphasize, only to those drivers who have maxed out on their 70 hours. So, this provision applies not to all drivers, but just to a small percentage of drivers.

Unfortunately, even these minimal common sense safety improvements are under attack, and as we have already heard, Senator Collins offered an amendment which would remove these rules by the appropriations bill.

That is opposed by Advocates, consumer health and safety groups, law enforcement, labor, truck crash victims, as well as several large trucking companies and DOT.

Instead, we strongly support an amendment that strips the Collins' amendment rule change in the bill that is sponsored by Senator Cory Booker of New Jersey. We thank you so much, Senator, for doing that. It is supported by a number of other Senators, including the Chairman and Senators Boxer, Durbin, Brown, Feinstein, Gillibrand, Hirono, Menendez, Markey, Murphy, Rockefeller, Schatz, Schumer, and Warren.

Second, another large truck issue that threatens public safety is the relentless and aggressive push by corporate trucking and shipping interests to increase truck size and weights, and it is unending. They stand alone in their support for bigger, longer, heavier trucks, because the American public certainly does not.

Attached to my testimony is a public opinion poll series over the last 19 years that show consistent and strong opposition.

In MAP–21, Congress required the Secretary of Transportation to conduct a comprehensive study of truck size and weight issues including safety performance and infrastructure impact of trucks

that would be bigger or heavier than the current size and weight configurations.

This critical study will influence Federal and state transportation policy for years to come. It will affect working conditions for truck drivers, law enforcement, national freight and intermodal investments, clean air, fuel economy, and the public health and safety of our families.

Criticisms by Advocates and others were recently validated and endorsed by a 51 page report issued in March by the Peer Review Committee of the National Academy of Sciences on the initial phase of the DOT study, and a summary is attached to my testimony.

The NAS complains that the study relies on selective voluntarily supplied data from the trucking industry that has a clear economic interest in the outcome, but ignores significant earlier DOT studies that show increased crash risks associated with these trucks.

This study plans to extrapolate the operation and performance of big rigs in sparsely populated rural states to evaluate trucks in congested urban areas as well, which does not make any sense.

Furthermore, DOT is basing the entire national bridge analysis on an unpublished study by the District Government here in Washington on truck size and weight, not peer reviewed and hardly representative of bridges throughout America.

Because these and many other flaws are so significant and the study lacks adequate transparency, at this time we recommend that the study be stopped until Congress and the public are assured that corrections are made, the findings are unbiased, unimpeachable, and unchallengeable, and we appreciate the assistance of you, Mr. Chairman, and other Senators, including Senator Booker, on this effort.

Finally, longer truck trailers. I would like to state our absolute opposition to any proposal which would dramatically overturn and alter existing national freight policy by forcing states to allow 33 foot trailers, which segments of the trucking industry are pushing. It will result in longer and more dangerous double or tandem rigs exceeding 85 feet in length or with three trailers, 115 feet in length. These are trains on our highways. Currently, 39 states do not allow these longer trailers, and they should not be forced to pay for wasteful infrastructure and upgrades to accommodate them.

So, Mr. Chairman, we deeply appreciate your having this hearing. Truck deaths and injuries are climbing, and we need action. Thank you very much.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK, CO-CHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Good afternoon Chairman Blumenthal, Ranking Member Blunt, and Members of the Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee of the Senate Committee on Commerce, Science and Transportation. Thank you for inviting me to testify before you today. I am Joan Claybrook, Consumer Co-Chair of Advocates for Highway and Auto Safety (Advocates) and former Administrator of the National Highway Traffic Safety Administration.

Founded in 1989, Advocates is a coalition of consumer, health and safety groups and major insurance companies working together to promote safety on our roads and highways by advocating for laws and regulations that prevent crashes, save lives and reduce injuries. Advocates is a unique coalition dedicated to improving

traffic safety by addressing motor vehicle crashes as a public health issue. One of our major safety priorities is the unnecessary and unacceptable death and injury toll caused by truck crashes. I appreciate being invited to testify before you today on the opportunities and challenges for improving truck safety on our highways.

**Introduction**

Advocates has been involved in the issue of motor carrier safety and truck driver hours of service regulations for 25 years, and with good reason. Truck crashes are a serious, deadly and costly problem to families, our health care system, and to the economy. Government data and statistics illustrate the emotional and economic toll of large truck crashes on the public. Large truck crashes killed 3,921 people and injured another 104,000 in 2012.[1] Over the past decade (based on the most recent available data from 2003 through 2012), large truck crashes have claimed, on average, the lives of over 4,000 people and injured nearly 100,000 each year.[2] This is equivalent to a major airplane crash every week all year long. In the past ten years a total of 44,204 people have been killed and nearly one million people have been injured in crashes involving large trucks.[3] Despite declines in the overall fatality and injury statistics during the 2008–2009 recession, fatalities and injuries in large truck crashes have experienced increases every year since 2009. The fatality total has increased by 16 percent and the number of people injured has increased by 40 percent since the low point in 2009.[4] Of the people killed in crashes involving large trucks in 2012, 73 percent were occupants of other vehicles, 18 percent were occupants of large trucks, and 10 percent were non-occupants (pedestrians, pedal cyclists, etc.).[5] The annual cost to society from crashes involving commercial motor vehicles is estimated to be over $99 billion.[6]

Advocates is gravely concerned with the recent increases in truck crash deaths and injuries as these numbers continue their march toward a return to pre-recession levels. Unfortunately, several deeply flawed U.S. Department of Transportation (DOT) initiatives as well as adoption of special interest rollbacks in safety regulations will only contribute to the mounting death and injury toll unless changes and course corrections are implemented. My testimony this afternoon addresses several of these major issues related to commercial motor carrier regulation and truck safety policy, including the attack on the safety reforms incorporated in the 2011 hours of service rule, the on-going problems with the credibility and reliability of the DOT Comprehensive Truck Size and Weight Limits Study and the weakening of important motor carrier and truck provisions in the Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act, known as the GROW AMERICA Act, recently released by the Administration and introduced in the House of Representatives as H.R. 4834.

**Safety Reform of the 34-Hour Restart Rule Under Attack by Special Trucking Interests**

Driving a commercial motor vehicle (CMV) is a challenging, exhausting and dangerous occupation; extremely long work weeks are just one of many factors contributing to this reality. Truck driving continues to be identified as one of the most dangerous occupations in the United States.[7] Nearly 600 drivers of large trucks were killed in 2012 and another 21,000 were injured in truck crashes.[8] More fatal work injuries resulted from transportation incidents than from any other event in 2012.[9] Roadway incidents alone accounted for one out of every four fatal work injuries.[10] Despite these facts, CMV drivers are exempt from the maximum hours and overtime requirements of the Fair Labor Standards Act [11] which govern compensation for employees working more than 40 hours a week. Since 1938, CMV drivers have been limited to driving within the first 60 or 70 hours of their work week (depending on their schedule). Prior to the 2003 final rule, a truck driver who used all 60 or 70 driving hours was not allowed to drive again until their 7 or 8 day work week was

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[1] *Traffic Safety Facts 2012 Data: Large Trucks,* DOT HS 811 868, NHTSA (May, 2014).
[2] NHTSA Traffic Safety Facts, Large Truck fact sheets 2003 through 2012.
[3] *Id.*
[4] *Id.*
[5] *Traffic Safety Facts 2012 Data: Large Trucks, op cit.*
[6] 2014 Pocket Guide to large Truck and Bus Statistics, FMCSA (May 2014).
[7] *National Census of Fatal Occupational Injuries in 2012 (Preliminary Results),* USDL–13–1699, Bureau of Labor Statistics, (Aug. 22, 2013).
[8] *Traffic Safety Facts 2012,* DOT HS 812 032, NHTSA (2014).
[9] Census of Fatal Occupational Injuries Charts, 1992–2012 (revised data), available from *http://www.bls.gov/iif/oshcfoi1.htm.*
[10] Census of Fatal Occupational Injuries Charts, 1992–2012 (revised data)
[11] 29 United States Code § 213(b)(1).

over and a new work week began. This ensured that drivers were provided a full weekend off-duty to rest and recover from the arduous driving schedule.

The 2003 Hours of Service (HOS) final rule, however, instituted the 34-hour restart which allows drivers to restart their 60 or 70 hour driving limit at any point during the work week by taking just 34 hours off duty; this is in comparison with the normal weekend of about 60 hours off for people working a 9-to-5 job. The trucking industry embraced this change because it increases the average maximum work week to 82 hours; more than double the time the average American works. This increase in driving and work hours enabled the industry to realize a huge cost savings by using fewer drivers to move the same amount of freight and eliminating 48,000 trucking jobs.[12] Many drivers are paid by the mile, meaning that if the truck isn't moving, the driver isn't earning. Aside from encouraging truck drivers to drive as long and as fast as possible, the complete opposite motivation from what is needed from a safety viewpoint, this also means that drivers viewed the restart as a way to increase their paychecks. In short, the unrestricted 34-hour restart, as implemented in the 2003 final rule, was a giveaway to the industry that allows motor carriers to cut their bottom line, overwork drivers even more, and in the process convince drivers that it was all for their benefit.

Advocates opposed the unfettered use of the 34-hour restart since it was first adopted in the 2003 HOS final rule.[13] The reason is that the restart provision allows long-haul truck drivers to drive and work more hours, and therefore get less off-duty rest, each week than was permitted before the 2003 HOS rule was adopted. The startling decline in driver sleep and increase in driver fatigue was documented in the results of an anonymous 2006 survey of truck drivers sponsored by the Federal Motor Carrier Safety Administration (FMCSA) which reported:

> About 38 percent of the drivers said they sometimes and 6.7 percent said they often had trouble staying awake while driving. About 13 percent reported that they often or sometimes fall asleep while driving; 47.6 percent said they had fallen asleep while driving in the previous year. Although only 23.4 percent said they often or sometimes felt fatigued while driving, 65 percent reported that they often or sometimes felt drowsy while driving. A third of the drivers reported that they became fatigued on a half or more of their trips.[14]

The survey was conducted after the 2003 HOS final rule was implemented and the unrestricted 34-hour restart provision went into effect. The survey showed that nearly two-thirds of truck drivers surveyed (65 percent) admitted to driving while tired and nearly half (48 percent) reported that they actually fell asleep behind the wheel while driving in the previous year.[15] These self-reports, which most likely underestimate the true extent of the fatigue problem, indicate that many truck drivers were operating vehicles while tired or fatigued under those HOS rules.

Equally troubling is the fact that truck drivers reportedly obtained far less than 7 hours of sleep each night, well below the 7 to 8 hours of sleep the agency had found drivers needed to be alert and to perform the driving task safely. According to the FMCSA:

> The studies of restricted sleep show that over days of mild, moderate, or severe sleep restriction (1) alertness and performance degrade as cumulative sleep debt rises; (2) even mild sleep restriction (loss of less than 1 hour of sleep a day) degrades performance over days. Seven to 8 hours of consolidated night-time sleep in each 24 hours appear to sustain performance over multiple days, if not longer, for most people.[16]

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[12] Regulatory Impact Analysis and Small Business Analysis for Hours of Service Options, FMCSA, Dec. 2002.

[13] Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule, 68 FR 22456 (Apr. 28, 2003).

[14] Hours of Service of Drivers, NPRM (2010 NPRM), FMCSA, 75 FR 82170 (Dec. 29, 2010), *citing* Dinges, D.F. & Maislin, G., "Truck Driver Fatigue Management Survey," FMCSA (May 2006), FMCSA–2004–19608–3968.

[15] *Id.*

[16] 2010 NPRM, 75 FR 82175 (citations omitted). The FMCSA NPRM went on to state that the Virginia Tech Transportation Institute (VTTI) naturalistic driving study of CMV drivers operating under the 2003 rule, measured sleep averaged 6.15 to 6.28 hours (the average includes both work days and days off); the average on work days was 5.6 hours. *See* Hanowski, R.J., Hickman, J., Fumero, M.C., Olson, R.L. & Dingus, T.A., "The Sleep of Commercial Vehicle Drivers Under the 2003 Hours of-Service Regulations," *Accident, Analysis and Prevention,* Vol. 39, No. 6, November 2007, pp. 1140–1145. FMCSA–2004–19608–3977.

This scientific finding about the dangers of restricted sleep is troubling because truck drivers were found to get less than 7 hours of sleep each day.[17] This fact is supported by other research that has shown that adults in the general population who reported getting an average of less than 7 hours of sleep a day were more than twice as likely to report nodding off or falling asleep while driving in the previous 30 days compared to adults who received more than 7 hours of sleep.[18] Lack of sleep among truck drivers explains the high levels of driver fatigue and fatigue-related crashes that occur. Advocates has opposed allowing the unrestricted use of a 34-hour restart because the unrestricted 34-hour restart permits drivers to maximize their work hours, up to 82 hours of work and driving on average each week, and contributing to driver fatigue.

Advocates favored rescinding unfettered use of the 34-hour restart because rather than provide workers with needed rest, it in fact increases the hours they can drive and work from 70 to 82 hours a week. However, since the 34-hour restart has not been rescinded, Advocates supports the safety reforms adopted by the FMCSA in the 2011 HOS final rule which were only implemented one year ago in 2013. The reforms included three adjustments to the prior HOS rules: the implementation of a half hour rest break within 8 hours of reporting for duty, and two limitations on the use of the 34-hour restart. Prior to the 2011 final rule, drivers were able to restart their weekly driving hour limits by taking an abbreviated 34-hour off-duty period at any point in their schedule. The unfettered use of the restart enabled drivers to work and drive an average maximum work week of 82 hours. The 2011 final rule modified the 2003 HOS rule by requiring that at least 168 hours (7 days) elapse from the start of one 34-hour restart before the next restart can be taken. The other safety reform requires that each 34-hour restart include two time periods between 1 a.m. and 5 a.m. Both of these reforms to the restart option ensure that long-haul truck drivers have additional opportunities to rest and recover from their prior work week of 60 or 70 hours of driving, and additional hours of other work, before getting behind the wheel for the start of their next long work week.

The FMCSA included an explanation of the necessity and benefits of these changes in the 2011 final rule:

> Because research has shown that long weekly work hours are associated with a higher risk of crashes, sleep loss, and negative health effects, the rule also limits the use of the restart to once a week, which, on average, will cut the maximum work week from 82 to 70 hours. The provision allows drivers to work intensely for one week, but will require them to compensate by taking more time off in the following week. Research has long demonstrated that daytime sleep is shorter in duration and lower in quality than nighttime sleep. The rule requires any driver working long enough to need a restart to take off at least 34 consecutive hours that include 2 periods between 1 a.m. and 5 a.m., the window of circadian low. This provision will give those drivers who both routinely work at night and put in very long work weeks an opportunity to overcome the chronic fatigue that can build up when working nights.[19]

Driver fatigue plays a significant role in a substantial number of truck crashes. In the 2011 HOS final rule, the FMCSA relied on the estimate that 13 percent of large truck crashes were due to fatigue. The Agency supported this estimate in its response to comments during the regulatory process when it identified that the Regulatory Impact Analysis (RIA) for the 2000 Notice of Proposed Rulemaking (NPRM) used a 15 percent estimate. The RIAs for the 2003 and 2007 rules also used a 15 percent estimate in the sensitivity analyses. Furthermore, the National Transportation Safety Board (NTSB) observed that "truck driver fatigue may be a contributing factor in as many as 30 to 40 percent of all heavy truck accidents."[20]

The FMCSA's estimate is based on an analysis of the Large Truck Crash Causation Study (LTCCS) in which it found that truck driver fatigue was coded as a factor in 13 percent of all crashes.[21] In 2012, there were 317,000 police reported motor ve-

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[17] 2010 NPRM, 75 FR 82176 ("In the Virginia Tech Transportation Institute (VTTI) naturalistic driving study of CMV drivers operating under the 2003 rule, measured sleep averaged 6.15 to 6.28 hours (the average includes both work days and days off); the average on work days was 5.6 hours." Citing Hanowski et al.).

[18] "Unhealthy Sleep-Related Behaviors—*12 States, 2009,"* Centers for Disease Control and Prevention, MMWR vol.60/No.8, p. 236 (March 4, 2011); Adults who reported obtaining less than an average of 7 hours of sleep per 24-hour period also showed a 39 percent increase in the likelihood that they would unintentionally fall asleep during the day at least once in the prior 30 days compared to adults who obtained more than an average of 7 hours of sleep.

[19] Hours of Service of Drivers, Final Rule, FMCSA, 76 FR 81134; 81135. (2011 Final Rule).

[20] 2011 Final Rule, 76 FR 81169.

[21] Hours of Service Rule, Regulatory Impact Analysis, FMCSA, (Dec., 2011).

hicle crashes involving large trucks, including 3,464 fatal crashes, 73,000 injury crashes, and 241,000 property damage only crashes.[22] At 13 percent involvement rate (one in eight crashes), fatigue was likely a factor in as many as 41,000 crashes. This is likely a conservative estimate considering that fatigue is notoriously hard to identify short of a confession or direct observation of a sleeping driver, something the agency acknowledged in the final rule when it noted that "fatigue is difficult to determine after the fact".[23] Because their jobs are on the line, drivers will rarely acknowledge they were sleeping or fatigued when driving. Regardless, the sheer scale of the problem is clear evidence of the impact improvements in driver fatigue can have on safety and saving lives.

Moreover, at the direction of Congress in section 32301 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, the FMCSA recently completed a field study of the restart provisions in the 2011 final rule. The findings of the study were conclusive that restarts with two or more nighttime periods, as required under the 2011 HOS final rule, helped to mitigate fatigue when compared with restarts with only a single nighttime period as had previously been allowed. The study found that drivers using 34-hour restarts with only one-nighttime period:

- Exhibited more lapses of attention, especially at night.
- Reported greater sleepiness, especially toward the end of their duty cycles.
- Showed increased lane deviations at night and in the morning and afternoon.
- Slept predominantly during the day.
- Worked predominantly during the night.
- Drove longer hours and typically at night.[24]

In summary, the once-per-week limit on the use of the 34-hour restart, on average, cuts the maximum work week from 82 to 70 hours. This is still a lengthy work week which is nearly double the total work hours of the average American. The provision also still enables drivers to alternate extended work weeks with shorter work weeks, providing truck drivers with the flexibility necessary to meet the demands of today's freight industry. Similarly, the requirement to take two overnight off-duty periods between 1 a.m. and 5 a.m. ensures that if a driver uses the 34-hour restart to extend the work week beyond the 60- or 70-hour driving limit (depending on their work schedule) the rest period will contain two night-time periods to permit the driver to obtain the most restorative type of sleep. A minimum of two night-time periods is needed to prepare him/her for the rigors of the extended work week and the demanding job of safely operating a commercial motor vehicle weighing 80,000 lbs. on our highways shared with other motorists.

On June 5, 2014, the Senate Committee on Appropriations held a Markup of the Transportation, Housing and Urban Development (THUD) Appropriations Act for 2015,[25] during which Senator Susan Collins (R–ME) introduced an amendment which prohibits the DOT from enforcing the safety reforms adopted by the FMCSA in the 2011 HOS final rule.[26] The amendment passed despite opposition from Advocates and child, truck and highway safety groups, labor, truck crash victims, law enforcement, consumer, medical and public health organizations as well as several large trucking companies and U.S. DOT. The Collins Amendment, Section 133 of the THUD bill, would not only undermine the safety reforms to the 34-hour restart that the expert agency, the FMCSA, has determined improve public safety on our highways, but it would also usurp the jurisdiction of the authorizing body, the Commerce Committee and this Subcommittee, by legislating a substantive change in Federal law on an appropriations bill. We oppose Section 133 of the Senate THUD bill on both safety and jurisdictional grounds and support the Booker Amendment which would retain a study of the 34-hour restart and strike the anti-truck safety provisions from the Senate THUD bill. This amendment, which was introduced by Senator Cory Booker (D–NJ) on the Senate Floor on June 18, 2014, is co-sponsored by Senators Richard Blumenthal (D–CT), Barbara Boxer (D–CA), Sherrod Brown (D–OH), Richard Durbin (D–IL), Dianne Feinstein (D–CA), Kirsten Gillibrand (D–

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[22] 2014 Pocket Guide to large Truck and Bus Statistics, FMCSA (May, 2014).

[23] 2011 NPRM, 75 FR 82176.

[24] Field Study on the Efficacy of the New Restart Provision for Hours of Service, FMCSA (Jan., 2014).

[25] Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill, 2015, S. 2438.

[26] Section 133 would temporarily suspend enforcement of the hours of service regulation related to the restart provisions that went into effect on July 1, 2013 and directs the Secretary to conduct a study of the operational, safety, health and fatigue aspects of the restart before and after July 1, 2013. S. Rep. 113–182 (June 5, 2014).

NY), Mazie Hirono (D–HI), Edward Markey (D–MA), Robert Menendez (D–NJ), Christopher Murphy (D–CT), Jay Rockefeller (D–WV), Brian Schatz (D–HI), Charles Schumer (D–NY) and Elizabeth Warren (D–MA). The THUD bill was pulled from consideration on the Floor on June 19, 2014.

Opponents of the recent changes to the HOS restart provisions have claimed that the new limitations force drivers to take a break when they aren't tired and then, following the break, force them back on the road all at the same exact time. These assertions are patently false and have no factual basis. First, the HOS rules do not govern sleep, but merely ensure that carriers must provide drivers with ample time for drivers to obtain needed rest. Second, the HOS provisions do not specify when a restart must be taken or when a driver must return to duty following a restart. The rule requires only that any restart taken must end no earlier than 5:00 a.m. at the end of the 34-hour restart period, but the rule does not require or suggest that a driver must start operating at that exact moment.

Furthermore, the rule does not state in any way, shape, or form that drivers must all take their restarts at the exact same time on the exact same day. Restarts occur on different days of the week. If the claims of the rule's opponents were accurate, that would mean that all 5.6 million commercial motor vehicle drivers operating in the U.S., across the myriad of industries they serve, would all be maximizing the use of their hours, would all be on the exact same schedule, and would all be returning to duty at the same time and same day of the week all year long. This just does not happen; this is not the way the system works. The fact is the restart limitations only affect a relatively small percentage of drivers, those operating on the most extreme schedules, and it is those drivers who need and benefit from the 34-hour restart safety reforms in order to be able to perform their jobs properly and to drive their long hours safely.

Due to the high levels of fatigue self-reported by truck drivers since the 34-hour restart was adopted, the increasing number of truck crashes, deaths and injuries that are occurring as the economy recovers, and the increasing level of freight tonnage being shipped by truck, the reasonable safety reforms to curb the negative impact of the 34-hour restart are essential to protect the travelling public and the safety of truck drivers on our highways. No other mode of freight transportation comes close to causing the mortality and morbidity toll of truck crashes. It is not acceptable, agreeable or reasonable that special trucking interests are asking the public, professional truck drivers and lawmakers to accept these enormous losses as a cost of doing business in moving freight by trucks across our country.

**Serious Problems Plague the Credibility and Reliability of the DOT Comprehensive Truck Size and Weight Limits Study**

The American people are clearly opposed to having larger trucks on the highways besides them. A May 2013 public opinion poll by Lake Research Partners found that 68 percent of Americans oppose heavier trucks and 88 percent of Americans do not want to pay higher taxes for the damage caused by heavier trucks.[27] Attached to my testimony is a summary of public opinion polls that show the high-levels of opposition to bigger, heavier trucks that the American public has steadily maintained over the past 19 years. I request that this document be placed in the hearing record. In MAP–21, Congress required the Secretary of Transportation to conduct a comprehensive study of truck size and weight issues (Study) including the safety performance of trucks that would be bigger or heavier (or both) than current truck size and weight configurations.[28] This Study is intended to advise Congress and the American people about whether allowing larger trucks on the highway is a wise policy choice. That is why we are so concerned about the incredibly inadequate manner in which this Study has been conducted to date. The Study has run into serious problems in its approach and methodology; these issues cannot be ignored and must be resolved before the Study is completed.

The Study is being conducted by the Federal Highway Administration (FHWA), a modal Administration within the DOT. The Study ran into problems from the outset when the FHWA did not publish a public bid notice or issue an open public request for proposals (RFP), but rather sent the contract terms and solicitation to a select group of just four contracting companies. While not exactly a "no-bid" contract, the letting of the contract and restricting the pool of consultants was not a transparent transaction. Moreover, the contractor selected through this closed bid process came with a built-in bias against existing truck size and weight limits. The

[27] Memo Re: Increasing the legal weight for trucks in the U.S., Lake Research Partners (May 7, 2013), available at *http://www.trucksafety.org/images/sts2013/sts2013-lr-memo-tsc.pdf*.

[28] Section 32801, Pub. L. 112–141 (Jul. 6, 2012).

general contractor selected has previously performed studies for several states and, in each and every instance, found that the states could and should increase truck size or weight limits, or both, on state roads. The contractor's reports also promoted and encouraged increases in Federal size and weight limits.[29] The prior history and record of the contractor on these specific issues should have immediately raised red flags. The contractor's clear track record of support for increases in truck size and weight at the state level should have disqualified the company from consideration as the general contractor for the Study.

Criticism of the Study plan has also come from the National Academy of Sciences (NAS) Peer Review Committee on the Comprehensive Truck Size and Weight Limits Study. The NAS established a Peer Review Committee at the request of DOT after safety groups demanded an outside review of the DOT study plan and implementation of the Study. We believed it necessary to have an independent review of, and check on, the work performed by the Study contractor and the FHWA supervisory staff by outside experts. Then-Transportation Secretary Ray LaHood agreed. The NAS Peer Review Committee was asked to file two reports, one after the initial phase of the Study and another after the Study is completed but still in draft form.

The report on the initial phase of the project was issued by the NAS Peer Review Committee in March 2014 and it critiqued the approach taken by FHWA and its contractor in the Study plans and literature searches (desk scans) in each of the five subject matter areas that are part of the Study.[30] While such initial phase reports are usually only a few pages in length, the NAS Peer Review Committee issued an extensive 51-page report (NAS Report) on the initial phase of the Study finding numerous and serious problems and errors in the work performed.[31] The entirety of the criticisms and problems found by the Peer Review Committee in the NAS Report are too extensive to list here. I will provide some examples taken from the NAS Report's review of the Highway Safety and Bridge subject matter areas. A more complete summary of all the NAS Report criticisms of the Study are attached to my testimony, which I also request be submitted for the hearing record.

With regard to Highway Safety, the NAS Report pointed out that the Study plan and the desk scan for the Highway Safety area neglected, without any explanation, to include a number of pertinent and well-known studies by credible researchers on truck crash severity and brake defects, including case-control studies that are the most valuable means of controlling for driver experience and driving records in analyzing crash risk.[32] Moreover, the Study plans and desk scans also inexplicably ignored the FHWA's own previous study of truck size and weight issues conducted in 2000 which concluded that longer combination vehicles have a statistically significant (11 percent) higher crash rate than single-trailer trucks.[33]

The NAS Report also pointed out that while the desk scans included references to regulations in foreign countries that permit longer combination vehicles (LCVs), "the review of safety research does not cover studies of the effectiveness of such regulations in mitigating hazards associated with larger trucks."[34] These are just a few of the criticisms raised in the NAS Report in the safety area. The Study plans and desk scans also failed to identify a more recent analysis that indicates that double-trailer trucks have about a 15 percent higher fatal crash rate than single-trailer combinations, and that single-trailer trucks with six or more axles have an extremely high fatal crash rate compared to the overall single-trailer truck fatal crash involvement rate.[35] The type of omissions noted in the NAS Report indicates a distinct and seemingly deliberate pattern of overlooking safety information and data that show the negative aspects of longer, heavier trucks while including all information that might be considered favorable to longer, heavier trucks.

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[29] Study of Impacts Caused by Exempting the Maine Turnpike and the New Hampshire Turnpike from Federal Truck Weight Limits, June 2004; Northern Minnesota/Northwestern Wisconsin Regional Freight Plan, Nov. 2009; I–15 Corridor System Master Plan Freight: Trucks, June 2011; I–70 Dedicated Truck Lanes Feasibility Study Phase 2 Report, High Productivity Vehicle (HPV) Scenario Guidance 2011.

[30] The five subject matter areas consist of: Highway Safety and Truck Crash, Bridge Structure, Pavement, Modal Shift, Enforcement and Compliance.

[31] Review of U.S. Department of Transportation Truck Size and Weight Study, First Report: Review of Desk Scans (NAS Report), National Academy of Sciences, Transportation Research Board (March 31, 2014).

[32] NAS Report, pp. 35–36.

[33] Comprehensive Truck Size and Weight Study (2000 DOT Study), FHWA–PL–00–029, vol. III, p. VIII–5, U.S. Department of Transportation (August, 2000).

[34] NAS Report, p. 33.

[35] An Analysis of Truck Size and Weight: Phase I—Safety, Multimodal Transportation & Infrastructure Consortium (Nov. 21, 2013).

Advocates has criticized the reliance of the Study on voluntary industry-supplied data provided by selected segments of the trucking industry because it introduces bias into the Study data analysis. Voluntary data and information cannot be independently verified and likely exclude unfavorable negative data and information that proponents of longer, heavier trucks may not wish to provide. Moreover, the source of the data and information is a stakeholder with a strong economic interest in the outcome of the Study and therefore, the use of voluntary industry-provided data is unacceptable.

In addition, Advocates is concerned with the use of a static "snapshot" of freight tonnage, ignoring estimated future increases in truck freight shipments. This assumption allows the Study to conclude that heavier/larger trucks, which carry more freight, will make fewer trips and result in fewer trucks on the road. This is a false premise. The number of registered trucks in the U.S. has continually increased, including after each past increase in truck size and weight limits.[36] FHWA confirms this trend documenting that the number of large trucks increased by nearly 42 percent between 1987 and 2002, and that the vehicle miles traveled (VMT) by large trucks increased by 50 percent over the same time period.[37]

For the Study, the FHWA has adopted a "no forecasting policy" with regard to future freight tonnage shipped by truck. This decision contradicts the FHWA's own estimate of a significant increase in shipments—a *63 percent increase in truck freight by 2040.*[38] Therefore, the Study is at complete odds with what will occur in the real world—there will be more large trucks, not fewer large trucks, carrying freight in the future, and that an appreciable percentage of those truck trips will be made by heavier and/or larger, longer truck combinations depending on the analysis of the Study. This fact cannot and should not be ignored in the analysis of the Study. In addition, since the estimated increases in freight demand also predict that trucking will be the predominant mode for most of the increases in freight movement—and trucking is, comparatively, the most dangerous mode from a safety standpoint—the shift to larger/heavier trucks may exacerbate the significant safety losses already incurred in trucking operations.

Failure to take expected growth of freight into account is unrealistic and objectionable and will severely damage the validity of the Study, limit its use as a policy tool, and provide misleading results to Congress.

Additionally, the Study is using crash and operating data on LCVs currently conducted in sparsely populated, rural states and carried out under special controls and restrictions. This data cannot be readily transferred or extrapolated for application to more densely populated states and urban areas as the 2000 DOT Comprehensive Truck Size and Weight Study clearly pointed out.[39] Yet, this is exactly what FHWA intends to do in the Study. The safety performance of extra-long double and triple-trailer trucks operating in a state like Wyoming should not, indeed cannot, be used to support conclusions about the safety performance of these gigantic rigs operating in densely populated, more urban states in the eastern United States.

The NAS Report also identifies many other problems in its review of the bridge structure desk scan, and validates criticisms made by Advocates and many others that the methods employed in the Study are not objective or comprehensive. For example, the NAS Report:

- Points out that the bridge desk scan "does not include a comparative evaluation of alternative methods of assessing bridge costs of changes in size and weight limits[,]"[40] and "does not review the results of past studies of the effects of changes in truck traffic on bridges."[41]
- Concludes that the references supplied in the desk scan "appear to be primarily those that are necessary to support a predetermined plan of analysis"[42] rather than a search for pertinent and related data and information on bridge structures.
- States that the "principal risk of changes in [weight] limits is that the bridge inventories will decay more rapidly than expected[,]"[43] yet the bridge desk scan

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[36] "Bigger, Heavier Trucks Just Means More Trucks That Are Bigger and Heavier," Advocates for Highway and Auto Safety (Dec. 2013).

[37] Freight Facts and Figures 2011, p. 32, Table 3–7, FHWA Office of Freight Management and Operations, FHWA–FOP–12–002 (Nov. 2011).

[38] Freight Facts and Figures 2012, p. 9, Table 2–1, FHWA Office of Freight Management and Operations, FHWA–FOP–13–001 (Nov. 2012).

[39] 2000 DOT Study, vol. III, p. VIII–6.

[40] NAS Report, p. 11.

[41] *Id.*

[42] *Id.*

[43] *Id.,* p. 12.

"does not identify methods or data sources to support estimates of the impacts of changes in [weight] limits on bridge barriers, medians barriers, or railings."[44]

It appears that the Study authors do not feel the need to review or document how they plan to estimate bridge deterioration costs that result from any specific change in truck weight limits. Perhaps they have a preconceived view which is not supported in the desk scan or maybe they are making it up as they go along. The lack of transparency in the process prevents us from knowing the answer to this conundrum.

The final example I will mention of the problems in the bridge desk scan critiqued in the NAS Report is the fact that the Study authors plan to base the entire national bridge analysis on the 2010 District of Columbia Department of Transportation (DCDOT) truck size and weight study. However, as the NAS Report points out, that particular study is unpublished. It is unknown just how the analysis performed for an urban jurisdiction with fewer than 300 bridges will apply to and affect the national bridge inventory of over 600,000 bridges. Since the DCDOT truck size and weight analysis is unpublished, it is unknown if the methodology used in that analysis, even with modifications, has been tested and would be successful at producing an accurate analysis and national estimate. In short, it is ludicrous for a national, and supposedly comprehensive, truck size and weight study to rely on a bridge study conducted in an urbanized city and an unpublished and unverified means of analysis for a critical and essential portion of the Study.

The NAS Peer Review Committee Report made the following over-arching points about deficiencies of the Study:

- The available methods of analysis for use in the Study have "significant weakness" which have not been addressed.[45] The use of these compromised methods will impact the ability of the study to predict the results of changes in truck size and weight regulations and the Study conclusion will be of limited use in crafting future policy.
- The Study has been conducted in a backwards fashion, with the Study plans and methods of analyses determined before the desk scan review of available research and information was performed, stating that "in most cases the selection of methods appears not to have been a consequence of the desk scans."[46] This calls into question the bias on the part of the Study team to rely on predetermined methods.
- Each of the five desk scans, which are supposed to be the foundation of the Study, was lacking in at least one of three main elements; survey of current methods and synthesis of state of the art, identification of data needs and data availability, and synthesis of past results. "None of the desk scans fully provides all three of these elements."[47]
- Inadequate time to complete needed evaluation and development of appropriate methods and data. "The constrained schedule imposed by the congressional study charge may have precluded a more systematic approach to evaluation and selection of methods."[48]

In summary, the FHWA should not complete the current truck size and weight Study, and Congress should not consider, debate or adopt any changes whatsoever in Federal truck size and weight laws, unless and until the DOT eliminates all known and inherent biases, implements major revisions in the approach and methodology, uses only statistically valid data, and adopts essential corrective actions that allow a thorough public review of all draft technical studies, reports and public comments. This Study will influence Federal and state transportation policy, working conditions for truck drivers and law enforcement, national freight and intermodal investments, clean air and fuel economy goals, and the public health and safety of our families for decades to come. Because the flaws are so significant and the process lacks adequate transparency, at this point in time Advocates recommends that the Study be stopped until Congress and the public are assured that corrections have been made, a new unbiased contractor has been selected to manage the Study, and that the findings are unbiased, unimpeachable and unchallengeable.

Mr. Chairman, over the past year I have had the honor of being a member, appointed by Secretary of Transportation Ray LaHood, of the National Freight Advi-

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[44] *Id.*
[45] *Id.,* p. 2.
[46] *Id.,* p. 1.
[47] *Id.,* pp. 1–2.
[48] *Id.,* p. 1.

sory Committee (NFAC),[49] which was established to assist in the development of a national freight strategic plan and which is comprised of representatives from the trucking, shipping, aviation, rail, labor, elected officials, academia, ports, environmental and safety communities. The NFAC was charged with making policy recommendations to the Secretary of Transportation concerning freight movement to advance safe and efficient freight transportation through intermodal solutions. As part of our deliberations, we highlighted, as a high priority, the need for research of future forecasting that considers changes in demographics, buyer behavior, manufacturing practices, and other factors that could restructure current freight supply and demand patterns. The complexity of players and stakeholders, as well as the interdependencies involved in modern supply chains was also fundamental to our considerations. Of utmost importance was the projected steep increase in freight demands expected to take place by 2040. Additionally, we stressed the need for improvements in data collection. In fact, in our recommendations submitted to Secretary Foxx on June 12, 2014, we wrote, "The lack of sufficient funding and lack of access to industry raw or complete data has persistently undercut the timeliness and completeness of freight data as a basis for public and private sector decision-making."[50] In contrast to the efforts of the Advisory Committee, the DOT appears content with using data in its analyses of freight issues that ignore real world conditions. In addition, DOT has taken few steps to upgrade its data systems and tear down the silos within DOT that could result in significant improvements in the coordinated use of transportation data, particularly with regard to freight policy.

**The DOT Reauthorization Bill, GROW AMERICA Act**

The Department of Transportation (DOT) surface transportation reauthorization legislation, the GROW AMERICA Act,[51] introduced in the House as H.R. 4834, has a number of provisions related to motor carrier safety that Advocates supports including: Section 5102, Motor Carrier Operations Affecting Interstate Commerce, which clarifies the scope of out-of-service orders; Section 5104, High-Risk Carrier Reviews, which focuses enforcement on the highest risk motor carriers; and, Section 5302, Jurisdiction Over Brokers of Motor Carriers of Passengers, which extends certain aspects of the FMCSA's regulatory jurisdiction to brokers of carriers of passengers.

Advocates also supports Section 5506 which would allow the DOT Secretary to determine whether to issue regulations to govern non-motor carrier contractors that exercise operating control over motor carrier operations. To the extent that non-motor carriers exercise control over motor carrier operations, they should be regulated and subject to violations, fines and penalties for failure to adhere to safety regulations, especially since contractors may have little or no experience regarding commercial motor vehicle operations. However, the provision as written, only states that the Secretary "may" issue such regulations while Advocates believes that the Secretary "should" be required to issue regulations to clarify that contractors are subject to the same safety and regulatory requirements when exercising control over motor carrier operations.

I would like to focus my testimony on three important statutory changes that have been proposed by the U.S. DOT in the GROW AMERICA Act which Advocates opposes.

First, Advocates opposes amending 49 U.S.C. § 31144(g)(1)(A) and (g)(1)(B) to delete the mandatory requirement that new entrant motor carriers receive an initial safety review within a reasonable period of time. Just two years ago, Congress established the requirement in Section 32102 of the MAP–21 law to mandate that safety reviews of new operators must be conducted within 12 months for new freight motor carriers and within 120 days for new passenger-carrying motor carriers or intercity bus companies. There is an important public safety rationale for this requirement. While new entrant carriers should be permitted to enter the industry, since their safety performance is unknown, they should be subject to a timely safety review so that unsafe motor carriers are not able to operate for extended periods of time without any safety review. The National Transportation Safety Board (NTSB) has expressed concerns with delays in new entrant safety audits for more

[49] Notice of Establishment of National Freight Advisory Committee (NFAC or Committee) and Solicitation of Nominations for Membership, 78 FR 11727 (Feb. 19, 2013).

[50] Recommendations to U.S. Department of Transportation for the Development of the National Freight Strategic Plan, NFAC, p. 15 (June 12, 2014).

[51] Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act (GROW AMERICA Act), DOT proposed reauthorization legislation, available at *http://www.dot.gov/sites/dot.gov/files/docs/DOT__surface__reauth-FINAL.pdf.*

than a decade.[52] The NTSB has raised this concern as recently as two years ago in a report of a crash which killed four people and injured 58 when it stated:

> The report notes that new entrants need not demonstrate their capability to operate safely before they begin carrying passengers, but the safety check must occur within 18 months of the commencement of operations. In 18 months, however, a carrier with two 50-passenger buses running two trips a day could have carried more than 100 thousand passengers before having its first safety examination; and the motor carrier involved in this accident operated for 22 months before its first safety check.

The public would be appalled if airlines could carry passengers before demonstrating their ability to do so safely. Query why a motor carrier should be allowed to carry passengers before demonstrating its safety fitness.[53]

In proposing to change the word "shall" to "may" in Section 5105 of the GROW AMERICA Act, New Entrant Safety Audits, DOT would make such initial safety reviews discretionary, rather than mandatory. Adopting the proposed change would mean that an initial safety review could be conducted at any time or not at all. Weakening the requirement that was just enacted into law two years ago is detrimental to highway safety, is not justified with factual arguments by DOT and should be rejected.

Second, Advocates opposes the changing of long-standing existing law, 49 U.S.C. § 31136(a)(4), regarding the standard for safety regulations. Current law requires that, among other things, minimum safety regulations issued by the DOT shall ensure that "the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators." This has been the law since first enacted in the Motor Carrier Safety Act of 1984,[54] and it has a well-established meaning that has been interpreted by the courts. The DOT proposes to replace the words "deleterious effect" with "significantly adverse effect" which clearly appears to raise the legal bar on challenges to Federal regulations that impact the physical and medical condition of drivers.

This change is specifically intended to bar the courtroom door to truck drivers and others who are concerned about the impact that Federal regulations have on the physical and medical conditions of commercial drivers. It is not a technical amendment but one clearly aimed at making it significantly more difficult for concerns about driver working conditions to be raised in the context of Federal regulations. We believe it is proposed in response to the well-founded claims raised in the HOS lawsuits that pointed out the deleterious effect of long work hours on drivers. If enacted into law, it will shield the Federal regulations from challenges based on the medical evidence which shows that commercial drivers could be negatively affected, physically or medically by a proposed regulation. The result of the wording change will be to lower the effective level of protection afforded commercial drivers for physical and medical conditions under Federal regulations since challenges under section 31136(a)(4) would be limited to only the most extreme situations. This does a disservice to truck drivers who have a difficult and physically demanding job in one of the most dangerous occupations, and it should be rejected by Congress.

Third, Section 5512, regarding Pre-Authority Safety Audits (PASA) of Mexican motor carriers,[55] proposes to eliminate the requirement, which has been in effect for more than a decade, that a percentage of the PASAs and other safety-related reviews for Mexican motor carriers that wish to operate in the United States must be conducted in Mexico at the headquarters or operations hub of the motor carrier. Safety reviews and compliance reviews need to be conducted at the motor carriers' headquarters so that in addition to reviewing the books and records of the motor carrier, Federal safety inspectors can also inspect the carriers' maintenance facilities and the condition of available equipment. By permitting Mexican motor carriers to have safety reviews conducted at "any location" selected by the FMCSA, this may well mean that foreign motor carriers may not necessarily have on-site inspections or safety reviews conducted at the carrier's home-base facility as is done for U.S. domiciled motor carriers. While this may ease the burden on DOT inspectors, it may

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[52] Highway Accident Report: Collision of a Greyhound Lines, Inc. Motorcoach and Delcar Trucking Truck Tractor-Semitrailer Loraine, Texas June 9, 2002, NTSB Report HAR–03/01, p. 37, "The Safety Board concludes that by conducting safety audits up to 18 months after carriers begin operation, the FMCSA potentially allows unsafe carriers to operate without oversight and without the benefit of the educational and technical assistance that the FMCSA provides during the safety audit."

[53] Accident Report: Motorcoach Roadway Departure and Overturn on Interstate 95 Near Doswell, Virginia, May 31, 2011, NTSB Report HAR–12/02.

[54] Motor Carrier Safety Act of 1984 (MCSA), Pub. L 98–554 (1984).

[55] Audits and compliance investigations of Mexico-domiciled motor carrier.

not adequately ensure that the safety and procedures of foreign motor carriers will be adequately reviewed and inspected. This is especially troublesome as the three-year cross-border pilot program of Mexican trucking operations in the U.S. nears its end and a decision about the opening of the southern border becomes more imminent. DOT has not provided any adequate justification for recommending this major change.

Finally, I would also like to state our firm opposition to any proposals which would dramatically overturn existing national freight policy by forcing states to allow 33 foot trailers resulting in longer and more dangerous double or tandem rigs exceeding 85 feet in length, or three trailers exceeding 115 feet in length. Longer trucks are inherently more dangerous to passenger cars. The sheer size of these longer trailers—which adds at least 10 feet to the length of current double or tandem rigs—has far reaching and significant implications for the safe use of highways, bridges and ramps. This change could also open the door to triple-trailer trucks using three 33 foot trailers, which would be well over 115 feet long, compared to the average length of a family car, which is only about 16 feet long. These excessively long trailers threaten motorists sharing the road with trucks due to the "crack the whip" effect, in which small changes in steering by the tractor are amplified and cause large swaying effects (side-to-side motion) in the last trailer behind the truck cab. Longer trailers will also result in more off-tracking, in which the rear trailers cross into adjacent lanes and interfere with oncoming traffic as well as traffic headed in the same direction of travel. They can also swing into opposing lanes on curves and when making right-angle turns. Moreover, bigger trucks never result in fewer trucks despite industry's claims. Over three decades of research and real world experience show that allowing bigger, heavier trucks always results in more trucks on the road. Currently 39 states (AL, AK, AR, CA, CO, CT, DE, GA, HI, IL, KS, KY, LA, ME, MD, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI) do not allow these longer trailers and they should not be forced to pay for expensive, wasteful infrastructure rebuilding to accommodate these oversized rigs on Interstate and freeway on-and off-ramps. Furthermore, industry-funded research which is being used to support increasing the size of trailers is neither objective nor unbiased. There have been no independent, peer-reviewed research and studies conducted on the operational and safety issues associated with the use of 33 foot trailers. Congress would never consider allowing a new drug on the market for public use solely based on one industry-sponsored study. Neither should the motoring public be used as human test subjects to conduct this research on longer trucks. We need look no further to see the destruction that can result in crashes involving current double-trailer trucks than the April 11, 2014, crash in Orland, California, when a Federal Express double-trailer combination truck crashed into a Silverado Stages motorcoach carrying 48 passengers, mostly high school students traveling to visit a college; the crash injured dozens and killed ten people including five teenagers.[56] We strongly urge you to oppose any increases to Federal truck length policy. It is unsafe, not supported by data and unacceptable to the public.

Mr. Chairman, the Senate Committee on Commerce, Science and Transportation led by this Subcommittee has drafted and enacted some of the most significant life-saving motor carrier laws that are protecting motorists and commercial drivers from death and injury. The FMCSA reauthorization provisions adopted in MAP–21 under the Subcommittee leadership of the late Senator Frank Lautenberg resulted in advancing overdue and needed reforms and improvements in truck and bus oversight and enforcement. With truck crash deaths and injuries climbing these past few years, it is critical to continue this legacy and address the unfinished truck safety agenda.

We look forward to the opportunity of working with Members of this Subcommittee to meet the challenges of enacting commonsense and cost-effective truck safety measures in the MAP–21 reauthorization bill. This concludes my testimony and I am prepared to answer any questions the Subcommittee Members may have.

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[56] 48 People Involved in Bus and FedEx Truck Crash on Interstate 5, CBS SF, Mercer, B., Apr. 11 2014, *http://sanfrancisco.cbslocal.com/2014/04/11/48-people-involved-in-bus-and-fedex-truck-crash-on-interstate-5–1-still-missing/*.

***19 Years of Public Opinion Polls and the Response is Always the Same—***
**Consistent, Convincing and Compelling Opposition to Increasing Truck Size and Weight Limits**

**2014**

- 73 percent of Illinois residents and 77 percent of Missouri residents oppose increasing the national cap on truck weight from 80,000 to 97,000 pounds.
  *Source: SMART Heavy Truck Survey Series, March 2014*
- 80 percent of residents of the West Virginia 3rd District and 69 percent of Wisconsin residents oppose increasing the national cap on truck weight from 80,000 to 97,000 pounds
  *Source: SMART Heavy Truck Survey Series, May 2014*

**2013**

- 68 percent of Americans are opposed to heavier trucks.
- 88 percent of Americans oppose increased taxes to pay for damage caused by heavier trucks.
  *Source: Lake Research Partners Poll, May 2013*
- 75 percent of Kentucky residents oppose increasing the national cap on truck weight from 80,000 to 97,000 pounds.
- 78 percent of the residents of the Illinois 3rd District and 74 percent of the Pennsylvania 9th District oppose increasing the national cap on truck weight from 80,000 to 97,000 pounds.
- 72 percent of the residents of Kansas 1st and 2nd District, the Iowa 3rd District, and the Colorado 4th District oppose increasing the national cap on truck weight from 80,000 to 97,000 pounds.
  *Source: Poll taken 2013, SMART Heavy Truck Survey Series, May 2014*
- 74 percent of the residents of the Indiana 4th District and the Missouri 8th District oppose increasing the national cap on truck weight from 80,000 to 97,000 pounds.
  *Source: Poll taken 2013, SMART Heavy Truck Survey Series, March 2014*

**2011**

- 74 percent of Americans oppose the trucking industry's efforts to have Congress change the current law and allow heavier trucks on the roads.
  *Source: Lake Research Partners Poll, April 2011*
- Nearly three quarters of registered voters oppose increasing the national cap on truck size from 80,000 to 97,000 pounds.
  *Source: Hart Research Associates, April 2011*

**2008**

- 66 percent of Americans oppose changing the current law and allowing trucks carrying heavier loads on U.S. highways. *"Support for the measure is anemic (only 16 percent favor the efforts.) Opposition is deep and transcends gender, age, political identification, and region."*
- Eight out of ten (82 percent) Americans feel trucks pulling double or triple trailers are more dangerous than those pulling just a single trailer.
  *Source: Lake Research Partners Poll, May 2008*

**2004**

- By 77 percent to 16 percent, the public opposes increasing truck weight limits.
- 80 percent of Americans believe that trucks with two or more trailers are less safe than trucks with a single trailer.
  *Source: Lou Harris Poll, June 2004*

**1998**

- By 71 percent to 21 percent, a majority of the American people are willing to pay higher prices for goods in exchange for tougher truck safety standards.
  *Source: Lou Harris Poll, April 1998*

**1996**

- 88 percent of Americans oppose allowing bigger and heavier trucks on the highways.
- 80 percent are fully convinced that "trucks pulling two or more trailers are less safe than trucks pulling only one trailer."
  *Source: Lou Harris Poll, May 1996*

Compiled by the Truck Safety Coalition, July 2014.

**National Academies of Sciences (NAS) Peer Review Committee Report on the FHWA Comprehensive Truck Size and Weight Study Desk Scans**

**Highlights of NAS Report Criticisms**

**NAS Report Summary**

1. The desk scans (literature review) were performed to support the selected study methods rather than serving as the basis for the selection of an analysis method, which is the an established research practice. The desk scans often appear to be unrelated to the previously selected methods and serves little purpose other than to provide support for the previous determinations made in the study process.

a. "in most cases the selection of methods appears not to have been a consequence of the desk scans; that is, the scans were not on the critical path of the study." (P. 1 of NAS Report)

2. The disconnect between the desk scans and study plans appears to be a first example of bias or failure of the study to be conducted properly, and may also reflect the tight schedule.

a. "The constrained schedule imposed by the congressional study charge may have precluded a more systematic approach to evaluation and selection of methods." (P. 1)

3. Even where the method selected is the best available on-the-shelf choice, no evaluation or comparison is made with other methods to support the decision to use the selected method, which may be a further indication of bias.

a. "Nevertheless, even in cases where the best practical method is evident, comparisons with alternatives are advisable in order to demonstrate the superiority of the method selected." (P. 1)

4. The NAS Report cited three elements that the desk scans were missing which should be included in the final report as follows:

a. "a synthesis of experience in applying alternative methods of estimating each category of effect of changes in truck characteristics, leading to an assessment of the current state of understanding of the impact and needs for future research, data collection, and evaluation". (P. 2)

b. "a critical synthesis of quantitative results of past prospective and retrospective estimates of each category of effect." (P. 2)

c. "explain the sources of the differences between the new USDOT estimates and those of past studies". (P. 2)

5. None of the desk scans contained all three of the elements which the NAS Peer Review Committee deemed necessary for the study to obtain "full value from past work." This shows a lack of completeness and is again evidence of bias.

a. "None of the desk scans fully provides all three of these elements." (P. 1–2)

6. The highway safety desk scan was lacking a method synthesis. The safety method synthesis which did appear incorrectly in the project plan lacked citations of the methods used. (P. 2)

7. The NAS Report states the mandated timeline may be affecting the availability of optimal modeling approaches and data sources in a negative manner by forcing the use of only those methods that are readily available rather than developing better, optimal methods of study were a longer time-frame considered an option.

a. "In none of the five major analysis areas of the USDOT study was the Committee able to fully identify modeling approaches or data sources omitted from the desk scans that would be clearly superior to those selected by the USDOT study team (according to the descriptions of proposed analyses in the project plans) *and that would be available for use within the congressionally imposed study deadline."* (P. 2, emphasis added)

8. The methods being used have significant weaknesses and uncertainties which can have large consequences for the predicted net impact. These methodological weaknesses were identified over a decade ago and have not been addressed, revised or improved over the intervening years.

a. "The primary difficulties in projecting the consequences of changes in truck size and weight limits are that *the available methods have significant weaknesses and that uncertainties that* are small in absolute terms (*e.g.,* with regard to changes in truck traffic volume and distribution resulting from a change in regulations) *can have large consequences for the net impact of the regulatory*

*change.* For these reasons, the 2002 [National Academy of Sciences] Transportation Research Board [TRB] committee that reviewed past truck size and weight studies concluded that "it is not possible to predict the outcomes of regulatory changes with high confidence" (TRB 2002, 3). *The desk scans do not show that this shortcoming of such studies has been greatly reduced.* The recommended syntheses would be a means of conveying the uncertainties in the USDOT report." (P. 2–3, emphasis added).

**NAS Report Introduction**

1. The NAS Report specifically highlights the constraints on the study as a result of the congressional timeline.

a. "USDOT faces significant time and resource constraints in completing the CTSW study." (P. 5)

**NAS Report General Observations**

1. The NAS Report characterized the study plans as a "missed opportunity" and found that two elements were incomplete in most of the desk scans.

a. "*However, as a whole, the scans represent a missed opportunity.* Two elements that are incomplete in most of the desk scans would have been most useful in conducting the CTSW study: *(a)* identification of alternative methods, tools, and data for estimating impacts of changes in size and weight regulations that might have been applicable in the 2014 study or in future USDOT evaluations of these regulations and *(b)* syntheses of past studies that indicate reasonable ranges of values for impact estimates and allow comparison of the 2014 study's estimates with those of past studies." (P. 7, emphasis added.)

2. The NAS Report states that the study contractor appears to have formulated the study plans first and conducted the literature review (desk scans) second, which is the reverse of the normal procedure of searching for all relevant and available studies, data and information prior to making determinations about the best methods to be used. The desk scans evidence numerous flaws. The basis for selecting certain referenced works in the desk scans but not including other relevant studies is unclear. Many works cited are not relevant and there is a failure to reference the primary research literature, especially in the highway safety desk scan (P. 35). This is further evidence of pervasive bias and lack of objectivity and acceptable research practices. The desk scans appear to be little more than a document dump rather than a search for all applicable research on each topic in support of developing an approach. In many cases, the desk scans omitted critical research while including numerous unrelated works.

a. "In most cases, the desk scans do not appear to have been instrumental in developing the study team's analysis plans but rather to have been prepared *after* the plans had been decided on." (P. 7, emphasis added)

3. The NAS Report indicates that the time constraints of the study may have forced the approach taken in the desk scans. However, this may be a convenient cover for the contractor's selection of pre-determined methods. Had the recommendations of the previous NAS/TRB study (2002) been undertaken many of these shortcomings in the desk scans and project plans could have been addressed.

a. "This outcome of the desk scans may have been inevitable, given the compressed time span of the study, which would have necessitated early selection of analysis methods. If an ongoing Federal program of monitoring and evaluation of trucking regulations, as recommended by the 2002 TRB truck size and weight study (TRB 2002, 6), had been in place, the priorities and analysis alternatives for the 2014 study could have been established at the outset." (P. 8)

4. The desk scans should have included a synthesis of findings from past studies which would help identify "which uncertainties [in estimated impacts] critically hinder decision making on the regulations" (P. 8), and provide comparisons for findings of current study.

5. The study needs coordination between subject areas, fails to explain the structure of the overall study, and does not ensure datasets used in multiple areas are used consistently (like weigh in motion data which is used in four areas; bridge, pavement, modal shift, enforcement).

a. "an overall or crosscutting desk scan and plan for the CTSW study are needed to ensure that the work is coordinated and to allow interested parties to understand the structure of the study." (P. 9)

b. "For example, weigh-in-motion (WIM) data are needed in the bridge, pavement, modal shift, and enforcement analyses. None of the desk scans contains

a complete discussion of WIM data quality issues relevant to the study or of the accuracy of weight data required for each of the study analyses." (P. 9)

**NAS Report Comments on Individual Desk Scans**

*Bridge Structure*

1. Thoroughness:

a. The desk scan is missing a comparison of alternative methods, especially disconcerting in light of previous NAS/TRB findings that methods in previous studies could not produce satisfactory results. Without such a comparison, the contractors are set to repeat the failures of the previous study.

i. "The desk scan does not include a comparative evaluation of alternative methods of assessing bridge costs of changes in size and weight limits. This omission is especially unfortunate if the conclusion of the Committee that conducted the 2002 [NAS] TRB truck size and weight study (TRB 2002, 3) that 'the methods used in past studies have not produced satisfactory estimates of the effect of changes in truck weights on bridge costs' is accepted." (P. 11)

b. References selected appear to only support the pre-selected method of analysis rather than being a summary of available methods, data, etc. in support of the selection of an optimal method. Another example of bias.

i. "The references selected for inclusion in the bibliography appear to be primarily those that *are necessary to support a predetermined plan of analysis* for the CTSW study." (P. 11, emphasis added)

c. The desk scan ignores relevant past studies.

i. "The desk scan does not review the results of past studies of the effects of changes in truck traffic on bridges." (P. 11)

d. The desk scan does not identify data resources and methods for carrying out all of the analyses that are required by statute.

i. "The desk scan does not identify resources for carrying out each of the MAP–21 required analyses related to bridges in the CTSW study. Estimates of the costs to the public of the bridge impacts of changes in truck traffic (*e.g.,* costs of traffic disturbance of bridge closings and bridge construction) and assessment of the owners' abilities to recover their costs are presumably being carried out in other tasks of the CTSW study; methods of conducting such estimates are not discussed in the bridge desk scan (although some of the references cited may contain estimates of these costs)." (P. 12)

e. In addition, the desk scan did not identify methods or data sources to support related analyses of impacts on barriers, medians, or railings. (P. 12)

f. The District of Columbia Department of Transportation (DCDOT) study, which is to serve as the basis for the bridge analysis, is unpublished and there is no summary in the desk scan. DC is a small largely urban region with a limited number of bridges.

i. "The desk scan describes a 2010 truck size and weight study conducted for the District of Columbia Department of Transportation (DCDOT) as (p. 18) 'a basis of this study.' *The DCDOT study is unpublished, and the absence of a summary of it in the desk scan appears to be a significant omission."* (P. 12, emphasis added.)

g. The desk scan did not cite all major relevant sources that are applicable or describe the shortcomings of the data. (P. 12) These omissions are not explained.

2. Missing Literature, Studies, Models or Data:

a. The desk scan is missing in-depth reviews of studies of deterioration, while other cited studies aren't clearly related to the topic.

i. "The desk scan lacks in-depth review of studies of causes of deck deterioration, deck deterioration modeling, and deck deterioration quantification. The relevance to the CTSW study of some of the references on decks cited in Section 3.3 of the desk scan is unclear." (P. 14)

b. The desk scan review regarding fatigue is focused on fatigue vulnerability and not on expected change in fatigue life due to increased truck loads.

c. The review of methods and results of past estimates of bridge shear effects is insufficient.

d. The resources cited for Cost Allocation Study Methods and Methodology appear insufficient to execute the analyses planned.

3. Interpretation of Literature Reviewed:

a. The desk scan appears to misinterpret at least two of the cited studies. At least one of which could offer an alternative analysis method which should have been compared with the selected analysis method.

4. Conclusions:

a. "Desk scan lacks synthesis of analysis methods or of results of past estimates concerning the effects of changes in size and weight limits." (P. 15)

*Pavement*

1. Thoroughness:

a. A more systematic review of certain topics would have reinforced creditability of estimates and ensure that alternative methods were not overlooked. The errors and omissions of the desk scan noted below reflect either incompetence on the part of the contractor or willful omission in support of pre-selected methods.

i. No citation of cost model being used and no comparison with alternative models.

ii. No review of the data required for the modeling or alternative data sources, and no discussion of shortcomings of the data and method which could affect reliability of impact estimates.

iii. Pavement sections identified for use in the analysis may not be appropriate or may be outdated.

1. "many LTPP [long-term pavement performance] sections [which the study plans to use] are more than 20 years old or were special test sections, and therefore they may not be typical of current practices." (P. 18)

iv. Studies and programs noted in the project plan do not appear in the desk scan.

v. There is no discussion of the selected pavement model program in terms of its known drawbacks and limitations, a standard feature of good research and scientific method. No comparison with alternative models.

2. Missing Literature, Studies, Models or Data:

a. The committee indicated that there is research which is ongoing and will not be available in time for the study.

b. This ongoing research should have been cited to indicate limitations of present model and likely future improvements.

3. Interpretation of Literature Reviewed:

a. One-third of the desk scan is devoted to wide tire research while the model selected for analysis is unable to quantify wide tire impacts. No discussion of this contradiction is included. The industry is moving towards increased use of wide tires and the inability of the model selected for the analysis to address this is a serious problem.

4. Conclusions:

a. While the NAS Report concludes that the method selected is "reasonable", it is not necessarily the correct, the most appropriate, or even the best available method. The NAS Report points out the following problems with the desk scan:

i. Synthesis of past studies is cursory.

ii. Desk scan needs synthesis of alternative methods to compare with selected method of analysis.

iii. Desk scan needs synthesis of estimates of impacts.

iv. While the model selected for the analysis appears correct, its success will depend on the selection of sample pavements not being biased.

v. Desk scan mentions other analysis methods as a backup but provides no indication that these alternative methods are workable.

*Modal Shift*

1. Thoroughness:

a. The models selected have weaknesses which were identified in the prior truck size and weight study (FHWA 2000). The congressional timeline or bias may be leading the contractor to use a sub-optimal method.

i. "The diversion projections of the mode shift models are not compared in terms of their utility or credibility for their intended applications. This omission is especially important in view of the limitations of the Intermodal Transportation and Inventory Cost (ITIC) model chosen for use in the CTSW study." (P. 23)

1. No discussion/comparison of previous results, reliability, uncertainty, or projections with outcomes.

2. Problems with the ITIC model noted previously in the 2000 USDOT study.

3. The committee notes that the time schedule of the study prevents development of an aggregate econometric model.

4. No discussion of the suitability of the ITIC model to perform the analyses proposed.

ii. More mode choice models, beyond those only used in past truck size and weight evaluations, must be reviewed. Alternative methods have been overlooked.

1. No overview of fundamental concepts of modal diversion beyond previous studies of truck size and weight.

2. Desk scan is not comprehensive.

a. The scan includes hardly any sources from the academic literature, which is unfortunate since recent studies on logistics analysis may help inform the ITIC model.

3. Desk scan lacking in discussion and references for effect of limit changes on volume of freight traffic.

a. NAS Report notes an ongoing research project which may review the ITIC model and will be ready at the end of 2014.

iii. Methods of estimating the effects of mode shift on other areas of the study (safety, cost, pavement, etc.) are not adequately covered.

1. Effects on infrastructure not covered by that topic analysis must be addressed (for example changes to rail yards, transfer facilities).

2. Effect on cost responsibilities to shippers, carriers and consumers.

3. Effect on fuel efficiency: need to examine bottom-up vs. top-down analysis which has been shown to have problems.

4. Effect on environment focused only on greenhouse gases but not on other particulates.

2. Missing Literature, Studies, Models or Data:

a. The NAS Report points out a number of studies which were not referenced in terms of alternative models and estimates of various effects.

3. Interpretation of Literature Reviewed:

a. The desk scan contained inadequate comparisons of ITIC model and alternative models, or potential shortcomings of ITIC model.

b. Limitations and assumptions used in the ITIC model must be addressed.

4. Conclusions:

a. Limited synthesis of the literature.

i. Desk scan needs a synthesis of alternative methods, reliability and applicability to establish the state of the art.

ii. Desk scan needs a summary of past results for comparisons with current study findings.

iii. Desk scan must support selection of the method rather than desk scan supporting a pre-selected method. Yet another example of the impact of bias.

1. "The committee's overall impression of the desk scan is that its intent is to justify a prior decision about the method to be used in the CTSW study. There is not a logical flow from literature review to synthesis to conclusion. The desk scan represents more a listing of reports and literature, followed by a conclusion that is likely based on availability of models, time to complete the study, familiarity with the methods, and budget." (P. 29)

*Highway Safety*

1. Thoroughness:

a. The desk scan fails to document and support the methods selected and does not account for problems with the data and the influence of other regulations upon the safety of large trucks.

i. Alternative methods proposed in the project plan are not documented completely in the desk scan.

ii. While the desk scan discusses regulations in other countries, no review of studies of the effectiveness of these regulations is provided.

iii. NAS Report warns against comparing the safety of alternative configurations with special rules against current fleet without such rules for policy analysis.

iv. NAS Report advises that in light of past research, the safety analysis must account for the driver's influence on crash risk. Desk scan should describe the design of past studies that have measured this effect.

v. No citation of the models to be used in the analysis or the sources for input to these models.

vi. No examination of impact of regulatory changes on work zone safety.

2. Missing Literature, Studies, Models or Data:

a. The NAS Report notes at least 6 relevant studies are not cited by the desk scan, one of which specifically notes "brake defects may be a more serious issue with increased weight" and another which shows that "crash injury is higher in double or triple trailer than in single trailer crashes." (P. 35) Since these studies all indicate the negative impact of larger trucks, their omission is indicative of bias.

b. The desk scan completely fails to include the safety findings of the 2000 FHWA comprehensive truck size and weight study which found that in nationwide use multiple-trailer configurations would have an 11 percent higher fatal crash rate than single trailer trucks.

3. Conclusions:

a. The desk scans fails in a number of areas, providing no justification or explanation for the selected methods or assumptions made.

i. Fails to address critical methodological issues, and some observations are "open to debate". (P. 36). Findings regarding methods (models and data) should be separated from results of past safety studies.

ii. Desk scan should have cited the basis for any findings presented to allow the reader to judge the strength of the finding.

iii. Synthesis of alternative methods and comparisons of findings would be helpful. No critique of the alternative case-control method and no justification for not considering this alternative. The case-control method is the gold standard for this type of study.

iv. Safety analysis must consider the impact of all effects of regulatory changes (on traffic volume, traffic distribution, enforcement, work zones etc.) on overall safety rather than limiting the safety analysis exclusively to changes in average crash involvement rates by configuration.

*Enforcement and Compliance*

1. Thoroughness:

a. Missing discussion of future enforcement using new and emerging technologies.

2. Missing Literature, Studies, Models or Data:

a. Insufficient sources for examining cost and effectiveness of enforcement.

b. More detailed discussion needed of limitation of data sources.

c. No description of how data limitations will be addressed.

d. No sources for "potentially important categories of enforcement costs" (inspection times, replacing scales).

e. No discussion of economic research on optimal fine levels.

3. Interpretation of Literature Reviewed:

a. The NAS Report is concerned that that the contractor incorrectly concludes that compliance with trucks size and weight laws should be viewed as a cost

to the industry. And although not specifically mentioned in the NAS Report, the contractor falsely assumes that there would be complete compliance with any new regulatory regime.

i. "The desk scan uncritically reports a statement of the 2002 [NAS/]TRB truck size and weight study (TRB 2002) that rigorous weight enforcement could increase overall truck shipping costs." (P. 41)

ii. "The proceeds of illegal activities should not be regarded as benefits to society in benefit-cost analysis of enforcement programs (Trumbull 1990)." (P. 41)

4. Conclusion:

a. A synthesis of results from prior studies is not presented.

Senator BLUMENTHAL. Thank you.

Major Palmer?

**STATEMENT OF MAJOR DAVID PALMER, PAST PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE**

Major PALMER. Mr. Chairman, Ranking Member Blunt, members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance to testify.

My name is David Palmer, and I am a Major and commissioned law enforcement officer with the Texas Department of Public Safety, and a past President of CVSA.

The Alliance represents state, provincial, and Federal commercial vehicle safety officials responsible for the enforcement of commercial motor carrier safety laws in the United States, Canada, and Mexico.

CVSA has a number of recommendations for improving truck and bus safety. Uniformity and consistency in enforcement are essential cornerstones of an effective program. It is imperative that the enforcement community be provided clear and enforceable regulations, and exemptions must be minimized.

Changes to regulations when necessary need to be science based and data driven. Further, much can be done to streamline the current grant process—eliminating redundancies in the administrative process, allowing state personnel to focus our resources on program delivery rather than administration.

In addition, we must be given the tools to effectively enforce those regulations and the funding that is commensurate with the responsibilities.

As inspectors and law enforcement officers, it is critical that we have clear enforceable regulations in order to have uniform and effective enforcement. The recent effort to suspend enforcement of a portion of the hours-of-service regulations while a study is conducted is an example of practices that needlessly complicate the regulations and enforcement. As a law enforcement officer, if I do not understand the rules, I cannot enforce them properly.

The hours-of-service regulations are complicated enough to enforce as it, and the nearly constant change and uncertainty in the rules undermines enforcement. Further, every time the regulations change, we have to spend time and resources re-training our officers and inspectors, taking them out of the field, and diverting scarce resources from other tasks.

With approximately 13,000 CVSA-certified inspectors in the field, organizing and delivering training in all 50 states is a significant task. This is particularly wasteful considering that after the study,

the provisions may be upheld, resulting in a new round of training and even more confusion for both industry and enforcement.

CVSA does not oppose conducting a study. Regulations should be written to maximize safety while not overburdening enforcement or our Nation's critical commercial vehicle industry, but the appropriate time to make any changes is after sound research has demonstrated a need and not before.

While we recognize the hours-of-service regulations must be written in a manner that meets the Nation's safety needs and is respectful of the needs of the trucking industry, meeting these needs by shifting the burden to the enforcement community is not a responsible solution.

Another example of a policy that has resulted in additional burden on the enforcement community is the covered farm vehicle exemption included in MAP–21. Exemptions often compromise safety and always complicate enforcement, and should therefore only be granted in extreme cases.

The covered farm vehicle exemption was intended to exempt a large portion of agricultural vehicles from Federal safety regulations. However, the exemption language left a lot open to interpretation. The end result is an exemption intended to provide relief to the agricultural community, which has created confusion, inconsistency, and frustration, both for industry and enforcement. Most importantly, we do not know its impact on safety.

Much can be done to improve CMV safety. The regulations must be clear and enforceable. The states must be given funding commensurate with their responsibilities. New and expanded responsibilities mean improvements in safety, but only if we are able to effectively implement those policies.

Grant programs must provide states with flexibility, allowing us to meet our responsibilities through creative state specific solutions.

The administrative burden associated with grant applications and reports should be minimized, allowing the states to focus on our mission. We believe there are a number of opportunities to streamline the grants, providing relief to the states.

We must have accurate data on which to build our programs and to access safety technologies and systems that help us meet our goal of saving lives, preventing crashes, and taking the unsafe carriers off the road. Simply put, we must ensure that the state enforcement agencies are given the tools we need to succeed.

We look forward to working with this committee, FMCSA, and the motor carrier industry to meet our shared goal of reduced deaths and injuries on our Nation's roads.

I look forward to answering your questions, and I want to just say thank you.

[The prepared statement of Major Palmer follows:]

PREPARED STATEMENT OF MAJOR DAVID PALMER, PAST PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE

Chairman Blumenthal, Ranking Member Blunt, Members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance (CVSA) to share our thoughts on "Opportunities and Challenges for Improving Truck Safety on our Highways".

My name is David Palmer and I am testifying here today in my role as a past President and Board Member of the Commercial Vehicle Safety Alliance. CVSA is an international organization representing State, Provincial, and Federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States (U.S.), Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing Federal, State, Provincial and Local truck and bus regulatory, safety, and enforcement agencies together with industry representatives to solve problems. Every state in the U.S., all Canadian Provinces and Territories, the country of Mexico, and all U.S. Territories and possessions are CVSA members. The ultimate objective of what CVSA strives for is to save lives.

The Federal Government entrusts the states with the responsibility of enforcing the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs). To meet that responsibility, Congress provides funding to the states, through the Motor Carrier Safety Assistance Program (MCSAP) and a number of other focused safety grant programs. The states use these funds to conduct enforcement activities, train enforcement personnel, purchase necessary equipment, update software and other technology, and conduct outreach and education campaigns to raise awareness related to CMV safety issues. The funds are used, in part, to pay the salaries of more than 13,000 full and part time CMV safety professionals. These people conduct more than 3.4 million CMV roadside inspections, 34,000 new entrant safety audits, and 6,000 compliance reviews each year.[1] The goal of these programs, which are administered by the Federal Motor Carrier Safety Administration (FMCSA), is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The programs seek to identify safety defects, driver deficiencies, and unsafe motor carrier practices and remove them from the Nation's roadways.

The good news is that the program works. The benefits of the MCSAP are well documented, and every dollar invested in the State programs yields a big return for taxpayers. According to research and figures from FMCSA, CVSA estimates that the MCSAP has an estimated benefit to cost ratio of 18:1. Every roadside inspection conducted yields an estimated $2,400 in safety benefits. And, of course, effective enforcement of the FMCSRs helps save lives every day, keeping dangerous vehicles and unqualified drivers off the Nation's roads. In 2001, the number of registered large trucks and buses was just over 8.6 million. Since then, that number has grown 35 percent, to 11.6 million in 2010. Despite this increase, the number of fatalities due to crashes involving large trucks and buses has gone down 27 percent. The number of CMV crash-related injuries also decreased over that time frame by 30 percent.[2] These improvements in CMV safety were achieved, in part, through investments in the MCSAP.

While the program is effective in reducing crashes and saving lives, there is more work to be done. Ensuring clarity in the regulations, providing adequate funding for and improving the efficiency of the grant programs, and establishing policies that allow states and industry to take full advantage of technology will help prevent crashes, minimize injuries, and save lives, ultimately making our Nation's roadways safer.

**Ensuring Clear and Enforceable Regulations**

Uniformity and consistency are essential cornerstones of an effective program. Despite this fact, however, there are a number of policies and practices that complicate the program, undermining uniformity and consistency, and detracting from the efficiency of the MCSAP. Confusion and inconsistencies create more work for the enforcement community, as well as industry. Inconsistencies and exceptions within the regulations require more training and create more opportunities for mistakes to be made, which in turn require additional resources to address.

*1. Improving the Regulatory Framework*

The foundation of an effective regulatory enforcement program is quality, uniform, and consistent enforcement activities. It is imperative that those subject to Federal regulations understand their responsibilities and that those tasked with enforcing the safety regulations can do so effectively to ensure the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America. Over time, additional regulatory authority, coupled with changes to

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[1] *Federal Motor Carrier Safety Administration 2012–2016 Strategic Plan.* Federal Motor Carrier Safety Administration. May 2012.

[2] *Large Truck and Bus Crash Facts 2010: Final Version, FMCSA–RRA–12–023.* Federal Motor Carrier Safety Administration. August 2012.

the industry and technological advancements can result in inconsistent, outdated, and redundant regulatory language. With each year come additional requirements from Congress, aimed at advancing CMV safety. In addition, FMCSA receives and responds to petitions for changes to the FMCSRs from the CMV community. As Congress and FMCSA work to improve CMV safety, unintentional inconsistencies can slowly work their way into the regulatory framework. These inconsistencies can lead to confusion among both the regulated and enforcement communities.

To address this, CVSA supports requiring FMCSA to conduct a full review of the FMCSRs every 5 years, in collaboration with CVSA and industry, geared towards reducing, enhancing, and streamlining the regulations, eliminating outdated or duplicative regulations, clarifying those that need adjustment, etc. While this puts additional administrative burden on FMCSA, the benefits and savings that will accrue across the country for enforcement, industry, and the public justify the endeavor.

Furthermore, work is needed to bring the safety regulations in line with regulatory guidance, interpretations, and policy memos issued by the agency. At times, FMCSA issues guidance documents to correct technical errors in published rules or to clarify vague regulatory language within the safety regulations while improvements to the regulations make their way through the rulemaking process, which can take years to accomplish. However, the number of full rulemakings that can make it through the agency in any given year is limited by staff and funding, and a number of higher profile rules tend to push simple technical changes back in the queue. As a result, disconnects develop between written regulations, regulatory guidance, interpretations, and policy. Regular review and updating of the FMCSRs and HMRs would help to reduce these disconnects, providing an established process for identifying and resolving inconsistencies in policy, bringing the regulations in line with published guidance.

With regards to the various petitions for changes to the FMCSRs from the CMV community to FMCSA, CVSA supports requiring that petitions be published in the *Federal Register* upon receipt and that the agency subsequently publish a notice of action taken on each petition. This would benefit both the agency and the regulated community, allowing for input early in the process, addressing potential issues before they become problems. It will notify those interested in CMV safety and the FMCSRs of areas of interest to others in the regulated CMV community, which can foster conversation that could lead to solutions and consensus building. FMCSA would benefit from input it receives in response to petitions, which could help inform the agency's thinking on the requested changes. FMCSA could put a process in place similar to that found in 49 USC § 31315(b)(4), which provides for notice and comment on exemption requests received by the agency.

*2. Exemptions*

In general, exemptions from Federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. First and foremost, safety regulations exist to protect those who use our Nation's roadways. The FMCSRs and HMRs exist to ensure that those operating in the transportation industry are equipped to do it safely. Furthermore, every new exemption is an opportunity for confusion and inconsistency in enforcement, diverting scarce resources from other activities and undermining the program's effectiveness.

We recognize that there may be instances when exemptions could be appropriate and also not compromise safety. In those instances, 49 USC § 31315(b) already provides a mechanism for those in industry to obtain an exemption through FMCSA. This process includes providing for an equivalent level of safety, requiring that the exemption *"would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption."* In addition, exemptions obtained through this process are limited to a maximum of two years (subject to renewal), which provides oversight to ensure that safety is not compromised, as well as an opportunity to eliminate exemptions that have not maintained an equivalent level of safety. This is the proper model.

In contrast, exemptions obtained through legislation do not always include safety considerations and are difficult to remove once established. Because a process exists for industry to pursue exemptions through an administrative process, CVSA opposes the inclusion of exemptions from Federal safety regulations in legislation. At the very least, when exemptions are included in legislation, CVSA supports requiring the inclusion of a "safety clause" as a part of any exemption statutorily enacted, similar to that in 49 USC § 31315(b), providing for an equivalent level of safety, as well as language that would allow for the elimination of the exemption if an equivalent level of safety cannot be demonstrated.

Another approach could be to require that, before any legislative exemption from Federal safety regulations goes into effect, a pilot program be conducted to evaluate

the safety impacts of such an exemption. The exemption would then go into effect automatically, unless the pilot program demonstrates that an equivalent, or enhanced, level of safety has not been achieved. Going forward the exemption would be monitored on a routine basis, to ensure that an equivalent level of safety is maintained over time.

*3. Hours of Service Regulations*

The hours-of-service (HOS) regulations for commercial drivers are arguably the single-most important regulation to the motor carrier industry, sitting at the confluence of safety and productivity. As evidence of the importance of these rules to the public, there have been over 50,000 comments to the rulemakings on this issue over the last 10 years, as well as numerous studies and research to improve safety on our Nation's roads.

The HOS regulations are important because of their clear correlation with safety. HOS violations are, by far, the most often cited violations by inspectors during roadside inspections. HOS violations represent seven of the top 13 violations documented during roadside inspections thus far in 2014, including the number one violation. These seven violations represent 41 percent of the total driver violations documented. We also know that drivers who are cited roadside with an HOS violation are 45 percent more likely to be in a future crash than the average driver.[3] In addition, driver factors and fatigue are significant contributors to large truck and bus crashes. In nine out of 10 instances, driver factors have some level of contribution to the crash.[4] This data indicates how important these rules are to safety, and why we need to be measured in our approach to dealing with them.

Recently, there has been an effort to temporarily suspend enforcement of a portion of these regulations while their impacts and efficacy are evaluated. CVSA opposes any efforts to temporarily suspend enforcement of any portion of the regulations. The HOS regulations are first and foremost safety regulations, not efficiency or productivity regulations. While the regulations certainly should and need to take into account the economic impacts to the industry that is not what they are principally designed to do. Legislating temporary changes to the HOS rules creates significant uniformity and consistency problems across the country. The impact of such an approach will create unnecessary upheaval for the states and cause significant operational and budgetary impacts on their enforcement efforts.

The HOS regulations are already complicated to comprehend and enforce and any change requires that the states retrain their inspectors. With approximately 13,000 CVSA-certified inspectors in the field, organizing and delivering training in all 50 states is a significant task. Each state is structured differently, and the resources needed to develop and deliver training are significant. Temporarily suspending enforcement of a regulation not only takes inspection personnel away from their routine enforcement duties, which impacts on their target enforcement goals in the State Commercial Vehicle Safety Plans (CVSP), but it also requires the expenditure of unplanned resources, which impacts on State budgets. Add to this any information technology (IT) changes, such as software modifications, and additional training to accommodate rule changes increases the resource commitment. All for a temporary change that could very well result in no permanent change to the regulations after the review is complete.

In addition, constant change causes confusion for both industry and enforcement. Compliance and the determination thereof are nearly impossible because the rules have changed so often over the last 10 years, and have become so complicated that no one can keep pace with the changes. This constant back and forth also has resulted in a number of narrow interpretations on exceptions and exemptions, further complicating enforcement and undermining uniformity.

While there certainly have been legitimate concerns raised by the regulated industry on the impacts of the new rules, the Administrative Procedures Act is there for a reason and it needs to be followed. The importance of these rules cannot be understated, and to make changes without the appropriate analysis of their impacts or without providing appropriate due process and adequate time to implement them is irresponsible policy.

There has not been a comprehensive analysis of the safety impacts of the newly (2013) enacted regulations, nor has there been any analysis comparing the existing regulations versus the previous regulations. To enact temporary changes without having a full understanding of these impacts through an open and transparent proc-

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[3] *Predicting Truck Crash Involvement: A 2011 Update.* American Transportation Research Institute. April 2011.

[4] *Report to Congress on the Large Truck Crash Causation Study.* Federal Motor Carrier Safety Administration. March 2006.

ess is not in the best interests of the public. We need to be data driven and fact based in our decision making. To this end, CVSA supports a comprehensive study on the safety and operational impacts of the HOS regulations, during which the current rules should remain in place. Once this analysis has been completed, only then would it be appropriate to consider any changes or adjustments through the rulemaking process. The rules are designed to help keep all drivers safe, both commercial and other road users, and it is our job to protect them.

*4. Electronic Logging Devices*

The rulemaking currently underway at FMCSA on electronic logging devices (ELDs) for HOS compliance provides another example. There has been a significant amount of attention paid to ensuring that the new regulations take into account the needs of industry, in order to ease the burden. However, the regulations must be written with all end users in mind, including the enforcement community. CVSA strongly supports the use of ELDs for HOS compliance enforcement. However, if the regulations are not clear and designed to be enforceable, they will not be effective. One of the key considerations is the transmission of the HOS compliance data from the driver to the inspector. If inspectors cannot easily and reliably retrieve data from ELDs roadside the devices are of little value. To that end, in our comments to the docket, CVSA recommended that, prior to implementation, FMCSA conduct a comprehensive study of current State technology/communication capabilities for CVSA-certified inspectors and identify what steps would be necessary to ensure that all certified inspectors will be able to access data roadside in an effective, efficient, and secure manner. This study should be completed and made publicly available prior to the agency issuing a Final Rule. The ELD rulemaking has the potential to improve HOS compliance and enforcement, but only if the inspectors are given the tools they need to properly utilize the devices. This fact must be a consideration in the development of the Final Rule.

*5. Truck Size and Weight Limits*

There have been efforts recently to make changes to the current Federal truck size and weight restrictions. To address this, Congress included in the Moving Ahead for Progress in the 21st Century Act (MAP–21) a requirement that the U.S. Department of Transportation (DOT) conduct a Comprehensive Truck Size and Weight Limits Study.[5] As required in MAP–21, the study will provide data on accident frequency and evaluate factors related to accident risk for vehicles that operate in excess of size and weight limits. DOT is also directed to evaluate the impact to the infrastructure in states that allow a vehicle to operate in excess of size and weight limits. Additionally, DOT is instructed to look at a number of specific vehicle configurations, as well as existing programs and research throughout the world. Further, Congress directed DOT to look specifically at several factors, including the impact of various changes to restrictions on safety and enforceability. CVSA was a strong advocate for such a study during the reauthorization discussion prior to passage of MAP–21. DOT is currently in the process of conducting the study and any changes to the Federal size and/or weight limits prior to its completion would be premature. In MAP–21, Congress recognized the need for additional research into several specific areas before changes to the Federal CMV size and weight limits are considered. CVSA opposes any changes to Federal CMV size and weight limits until the study mandated by Congress in MAP–21 has been completed.

CVSA recognizes that the discussion on commercial vehicle size and weight limits is much broader than just safety considerations. There are environmental, quality of life, productivity, economic competitiveness, and impacts to infrastructure, such as roads and bridges that must also be considered. CVSA understands that once the study has been completed, it is possible that changes will be made to the current limits. In these instances, CVSA supports ensuring that any change in policy is enforceable and based on objective, scientific evidence. Changes to the current limits must be clearly defined so that both industry and enforcement understand what is permitted. Further, policy should be written with enforceability in mind, ensuring that states have the funds and tools necessary to do their job effectively.

**Maintaining Effective and Fully Funded Grant Programs**

With each new transportation bill, the states are tasked with additional enforcement and oversight responsibilities. At the same time, the motor carrier industry continues to grow. It is imperative that states have the funds necessary to effectively develop and implement their CMV safety programs. Flexibility within the safety grant programs is also a key consideration, allowing states to meet their re-

[5] Moving Ahead for Progress in the 21st Century Act of 2012. Pub. L. No. 112–141. § 32801.

sponsibilities through creative, State-specific solutions. There are also a number of streamlining recommendations that will improve the efficiency of the grant programs.

*1. Providing Adequate Resources*

As discussed above, the MCSAP, as administered by the states, has been successful in reducing crashes, injuries, and fatalities on our Nation's roadways, despite a steady increase in the number of CMVs operating on those roads. In order to maintain this downward trend in CMV crashes and fatalities, the MCSAP must be adequately funded.

According to FMCSA, the agency regulates approximately 500,000 active interstate motor carriers, including 12,000 passenger carriers, and seven million active commercial driver licensees (CDL holders). The State and Local agencies that receive MCSAP funding are responsible for ensuring that those 500,000 motor carriers, vehicles, and drivers are operating safely. Furthermore, the CMV enforcement landscape is constantly evolving and changing as Congress and FMCSA work to refine and improve the FMCSRs and HMRs.

The MCSAP will only continue to be successful if it is adequately funded. New and expanded responsibilities mean improvements in safety, but only in so much as the states are able to effectively implement those policies. It is critical that Congress and FMCSA ensure that, as new programs are created and new responsibilities are assigned, funding is provided to the states, avoiding any unfunded mandates. Otherwise, funds are spread thinly across programs, reducing effectiveness across the board.

For example, changes made in MAP–21 set a more aggressive timeline for conducting Safety Audits on new motor carriers, placing additional demands on the states conducting the audits. In addition, the program has become more rigorous over the years, with additional requirements on tracking, reviewing, and conducting the Safety Audits. While these changes are considered valuable, when combined with the decreasing buying power of each dollar, the end result is that it costs states more to implement the program each year. Meanwhile, the number of carriers entering the industry each year is increasing, and therefore the demand for New Entrant Safety Audits, continues to grow.[6] In order to meet that growing demand and ensure the success of the New Entrant Safety Assurance Program, it is critical that the states are provided with funding commensurate with program demand.

To help ensure that states receive the funding necessary to fully meet their responsibilities, CVSA recommends increasing the Federal grant match for several of the current grant programs. This will reduce the burden on states, while helping to ensure effective oversight of the motor carrier industry. At the very least, moderate increases in funding levels are necessary to keep pace with inflation, as stagnant funding levels result in decreased buying power year to year.

While adequate funding is imperative to an effective MCSAP, we recognize that the issue of funding for the Federal transportation program is a complicated one, with no easy solutions. Future funding for the MCSAP is directly tied to the long-term solvency of the Highway Trust Fund. CVSA supports ongoing efforts to identify sustainable, long-term revenue sources to address the Highway Trust Fund solvency, in order to ensure stability for the MCSAP.

In the event that no new revenue is available, CVSA urges Congress to ensure that MCSAP grant funding is not reduced, but remains at the levels set by MAP–21. According to a report completed for FMCSA in 2007, the average "cost" (including wages and benefits) of a State safety inspector was estimated at $66,052.51.[7] This means that for every $1 million invested in the MCSAP, 15 jobs are created or maintained. Conversely, every $1 million reduction in MCSAP funding results in jobs lost or positions unfilled at the State level. When states see a reduction in their MCSAP funding, resulting in jobs lost, their programs are reduced and fewer inspections, compliance reviews, and safety audits are conducted, reducing the safety benefit of such activities discussed above and undermining years of improvement in CMV safety.

*2. Improving Program Flexibility*

One way to improve the MCSAP is to provide states with additional flexibility in how they spend their Basic MCSAP grant funds. CVSA believes that explicit language limiting how a state can spend grant funds in statute, regulation, or FMCSA policy should be minimized. Instead, the statutory and regulatory construction, as

[6] *Notice: New Entrant Safety Audit Assurance Program Operational Test.* FMCSA–2013–0298. Federal Motor Carrier Safety Administration. September 4, 2013.

[7] *Roadside Inspection Costs.* Federal Motor Carrier Safety Administration. October 2007.

well as policy from FMCSA, should focus on setting broad parameters, program elements, goals, and expected outcomes for a program and, by using the annual CVSP as the mechanism for monitoring and evaluation, allow the states to determine how best to meet those expectations. For example, CVSA supports increasing the funding cap on traffic enforcement activities not associated with an inspection from five percent to ten percent. This will allow states to allocate their resources as they see fit, giving them additional flexibility to address State-wide or regional issues, such as speeding or aggressive driving, more effectively.

As another example, in 2010, FMCSA issued a policy memorandum to State Program Managers. In the memo, FMCSA advised the states that the recently completed Large Truck Crash Causation Study, completed in 2006, indicated that driver behavior is more likely to be the cause of a CMV crash than any other factor. As such, the agency instructed states to focus their inspection efforts on drivers. They instructed states to increase the number of Level III (driver-only) inspections to "meet or exceed the national average of 30 percent of all inspections performed."[8] In this instance, instead of prescribing rigid and prescriptive parameters across the board that may not make sense for every state, CVSA believes it would have been more productive and efficient for FMCSA to identify the issue—the need for increased focus on drivers—and instructed the states to account for how they plan to address this challenge in their CVSP. As part of this issue identification, the agency should supply data and research to the states substantiating the problem area. At the end of the CVSP year, FMCSA and the states could then evaluate how effective the states' strategy or strategies were with respect to reducing crashes relating to driver behavior and performance.

Another program that could be improved with increased flexibility is the Commercial Vehicle Information Systems and Networks (CVISN) program. CVISN is a collection of information systems and communications networks intended to support State CMV safety operations. The CVISN network provides a series of mechanisms through which parties engaged in motor carrier safety and regulatory enforcement (States, Federal agencies, industry, etc.) can exchange and use information electronically.[9] In order for this network to function effectively, states must achieve a level of parity and integration in the systems they are using to gather and transmit safety data. To meet this need, the CVISN grant program was established, in part, to provide funds for states to update their information technology capabilities. There are two levels of CVISN deployment—Core CVISN and Expanded CVISN. The states are at varying levels of achieving full Expanded CVISN deployment.

CVSA supports expanding and updating the items that are eligible for reimbursement under the CVISN grant program, as well as the overall direction of the program. Currently, eligibility within the CVISN program is too narrow in its scope and needs to be expanded. States are often denied CVISN grants for projects that they believe will be valuable to motor carrier safety simply because the activity or initiative did not fit within the existing CVISN model. However, technology moves quickly and many of the technologies and ideas that were identified as priorities when the CVISN program was created are now considered standard or obsolete. For instance, use of laptops, communications to and from the field, and even uploading files to Federal systems from SAFETYNET are all fairly standard. Simply put, the CVISN program has not kept pace with technological advancements, and therefore, needs to be modernized in order to keep pace with current and future technological trends. Rather than focusing on specific technology and narrow scopes of use, the goal should be a performance-based approach to enhancing the use of technology, in order to obtain a greater level of safety. Expanding reimbursement eligibility provides states with the flexibility they need to fully leverage State and Federal dollars to implement and enhance effective CMV safety programs.

*3. Streamlining the Grant Management Process*

In addition to expanding program flexibility, CVSA has a series of recommendations for improving the grant management process, which will remove inefficiencies, reduce administrative burdens, and free up much needed resources for enforcement activities.

As part of the application process for Basic MCSAP grant funds, states are required to complete an annual CVSP. These plans document how the state has met their safety goals for the past year and how Basic MCSAP grant funds for the coming fiscal year will be spent. FMCSA reviews these plans and uses them to evaluate

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[8] *Memorandum: Fiscal Year 2011 Commercial Vehicle Safety Plan.* Federal Motor Carrier Safety Administration. April 8, 2010. *http://www.fmcsa.dot.gov/documents/safetyprograms/MCSAP-Planning-Memo-508.pdf*

[9] *Frequently Asked Questions,* Federal Motor Carrier Safety Administration. Accessed 7/31/13

a State's progress and adherence to FMCSA policy. CVSPs are due towards the end of the Federal fiscal year and must be approved by FMCSA prior to a state receiving Basic MCSAP grant funds for the coming year. However, there are administrative burdens and other issues that impact the effectiveness of the CVSP process and the timely disbursement of grant funds. While FMCSA has made some strides recently to improve this process and reduce the administrative burden on states, more can be done.

One major concern the states have with the administration of the MCSAP grant program is the inconsistency, year to year, region to region, and state to state. FMCSA is constantly revamping the process, perhaps in an effort to improve it. However, the end result is confusion and unclear expectations for the States. Without consistency, the states cannot properly plan for their annual CVSP and grant application submission. Formatting requirements change year to year, material that was acceptable one fiscal year is no longer acceptable the next, the timeline for the grants process changes frequently, etc. This results in constant upheaval for the states, and they end up diverting much needed resources away from other efforts, as they are constantly adapting, redoing, and adjusting their process to meet the ever changing needs of FMCSA.

CVSA supports streamlining the CVSP submission process. States are spending a significant amount of time administering the grants rather than doing the work the grants are supposed to be paying for. Such activities include resubmitting information, such as standard text about the agency requesting the funds, contact information, miscellaneous numbers and figures concerning the number of inspectors, inspections, etc., and the amount being requested. To address this issue, CVSA recommends that FMCSA model the CVSP submission process on the electronic submission process used by the Federal Highway Administration (FHWA) for collecting the states' annual Size and Weight Enforcement Plans. FHWA's program is designed so that states can access previous years' plans as a template, updating only the items that have changed. Further, the system is done entirely online, through a secure online portal. Replicating this approach within FMCSA's grant process would provide FMCSA with more up-to-date information, while reducing the workload on the states. Earlier this year, FMCSA began working on such an approach, in collaboration with the states and we look forward to making progress on this matter. In addition, the states are asked to provide FMCSA with data and statistics that FMCSA already has access to in other reports and databases. States should not be asked to spend quality time compiling information to which the agency already has access.

Another significant concern states have with the MCSAP is the constant delay and lack of consistency in the timing of funding disbursement. There are a number of factors that contribute to these delays and result in complications for the states. The annual delays in the Federal budget and appropriations processes are one contributing factor. The Federal fiscal year begins October 1, and many grant programs are set to that date. However, Congress rarely completes their funding bills by this date, delaying the disbursement of funds to the states. Even more frequently now, Congress relies on temporary continuing resolutions, which results in states receiving their funds late, and in installments. This unpredictable, piecemeal approach to funding makes planning and management of State programs difficult.

This issue is further complicated by the fact that many states do not follow the Federal fiscal calendar (most start July 1), complicating the reporting and tracking process. States also believe that once funds are available, the grant review and approval process takes far too long, further delaying receipt of funds for safety programs. For the most part, states have two years to spend their MCSAP funds. However, the two year timeline begins at the beginning of the Federal fiscal year, regardless of when funds are actually made available. As a result, states often receive their funds well into the time-frame of the grant and run the risk of not being able to spend the appropriated funds responsibly before the grant expires, possibly forcing the states to return funding that was dedicated for enforcement and inspection activities as identified in their CVSP. To address this, CVSA recommends adjusting the period of performance for all grants so that the "clock" on a grant only begins once the funds have been allocated to the State.

CVSA also supports increasing the transparency and accountability within the MCSAP grant process. When applying for Federal funds, states are given strict deadlines and parameters they must meet in order to qualify and receive funds. However, there are no established deadlines for FMCSA, in terms of their grant review process. CVSA recommends setting grant application review deadlines for FMCSA. One approach would be to model the program timing requirements after the State and Community Highway Safety Formula Grant Program, commonly referred to as the 402 grants, administered by the National Highway Traffic Safety

Administration (NHTSA). The 402 grant program has a clear timeline in place. State applications are due to NHTSA by July 1 of each year, and the agency has 60 days to review and respond. Using this model would, at least for the Basic MCSAP grants, ensure that once funding is authorized by Congress, the agency is prepared to disburse the funds immediately, helping to reduce delays in funding disbursement. In addition to the review deadline, more consistency is needed in the grant review process. Grant applications are not all reviewed by the same panel(s), resulting in inconsistencies from one grant request to another, complicating the process for states.

In addition, CVSA recommends adjusting the period of performance for grants and CVSPs, moving to a more long-term, three or five year, cycle. Under this model, CVSPs would be due at the beginning of each cycle, with annual updates in between. These changes would benefit both the states and FMCSA, reducing the workload by requiring comprehensive CVSPs less frequently. This approach would also provide more accurate data on the effectiveness of the program, as larger data sets help to normalize any anomalies that might occur within a single year. In order to accommodate the unpredictability of funding disbursement due to delays that can occur in the appropriations process, the period of performance on grant funds should begin once the funds have been awarded to the State, rather than setting the cycle on Federal fiscal years.

Finally, as mentioned above, FMCSA uses the CVSPs to evaluate a state's performance over the past year. This includes reviewing changes in crash, fatality, and injury rates within the state. FMCSA uses this information to help determine grant award amounts to the states. However, the method by which the data is currently compiled does not take into account that certain portions of the CMV population are outside government oversight and the enforcement community's authority, such as statutorily exempted vehicles like agricultural carriers operating under the Covered Farm Vehicle exemption created in MAP–21. Simply put, states should not be penalized for crashes, fatalities, and incidents that occur in segments of the industry that they have no authority over. If a state does not have authority and, as a result, cannot exercise proper due diligence to improve safety within a sector of industry that is exempted, it is unreasonable to include that sector in any evaluation of the state's performance. CVSA supports removing non-regulated crash, fatality, and injury rates from the criteria used to determine grant award amounts for Incentive and other funds. This relatively small adjustment to how data is collected would have a tremendous value to the states.

**Maximizing Program Effectiveness Through Technology**

As budgets continue to tighten and technology continues to advance, it is imperative that those in the safety and enforcement communities take full advantage of technological advancements that improve safety and demonstrate a net benefit to society.

*1. Data and Information Technology Systems*

Uniform, timely and accurate data is the cornerstone of the MCSAP. Enforcement personnel, along with State and Federal agencies, use information on a motor carrier's past performance to help prioritize motor carriers for roadside inspections and compliance reviews. Performance data from the CMV industry is used to identify trends and problem areas, and to craft enforcement and education initiatives to target specific safety problems. Data is not only used to evaluate whether or not enforcement is being conducted uniformly, but also to determine whether or not a particular safety program or concept is successful. Data is used to determine whether enforcement funds are being used in the most efficient, effective manner possible. In order to effectively and efficiently perform these activities, the states and the Federal Government must be able to rely on the data being compiled in the various systems being accurate and as uniform as possible, in order to make comparisons. Currently, however, redundant, overlapping IT systems and outdated software applications result in inconsistencies in the data being collected by the states and FMCSA, undermining the safety programs and strategies being built upon them. These data challenges hinder the inspection process and create extra, unnecessary work for industry and enforcement alike.

For example, the Motor Carrier Management Information System (MCMIS) is the main system for which all the data collected from State and Federal agencies for FMCSA is housed, including inspection, crash, compliance reviews, safety audits, carrier information and history and numerous other data sets. Other programs, such as Safer, Query Central, and State CVIEW systems, as well as the Compliance, Safety, Accountability (CSA) program, extract the data from MCMIS to run their programs. Developed in the 1980s, MCMIS is almost 30 years old. As the program

ages, it becomes harder and more expensive to make software and program changes. The system can simply no longer meet State and Federal data needs.

Another program very much in need of updating is Aspen, which is the program used to collect inspection data during a roadside safety inspection. Aspen was created in the early 1990s and has had few major updates since its development. Most of the changes have been small enhancements and, as a result, users are becoming more frustrated by the system's limitations.

In addition to relying on outdated, insufficient, and inefficient systems, FMCSA has become too focused on new software development and is distracted by too many competing priorities. As a result, updates and improvements to the primary data collection and management programs on which everything rests are constantly delayed and the states are forced to use outdated and cumbersome legacy systems. In 2009, for example, FMCSA was reviewing the Aspen program and taking input on necessary improvements. However, the update was cancelled so the agency could focus on developing the CSA program. Now, the agency is focused on creating the Unified Registration System (URS) program, yet another priority, and still many of the improvements discussed in 2009 have not been implemented.

FMCSA's IT program lacks focus and direction. Were FMCSA to focus on setting parameters and functional specifications, rather than software development, the program would improve tremendously. FMCSA should be managing the system and software development process, rather than doing the actual programming. The agency needs to clearly identify challenges and solutions, as well as addressing State needs, and establish a clear path forward to meet those needs. FMCSA must take a step back and completely reevaluate its development process and how it prioritizes IT projects.

To improve the quality of data collection, transmission and analysis, CVSA encourages Congress to call for a study of the agency's IT and data collection systems. The study should include an evaluation of the efficacy of the existing systems and programs and their interaction. It should identify redundancies and explore the feasibility of consolidating data collection and processing systems. The study should evaluate the ability of the programs and systems to meet the needs of FMCSA, both at headquarters and in the State offices, as well as equally the needs of the states themselves. The study should investigate improving any and all user interfaces. The study should take into account the systems' and programs' adaptability, in order to make necessary future changes in an easier, timely, and more cost efficient manner. In addition, the study should explore the necessity and feasibility of increasing the agency's IT budget, to bring it in line with other Federal programs.

*2. Promoting Safety Technology*

Technology can also improve safety from the industry side. According to data from FMCSA, in 2011 alone, CMVs were involved in nearly 130,000 crashes, resulting in just over 4,000 fatalities and injuring another 80,000 people.[10] With the forecasted growth in population and the corresponding increase in movement of freight and passengers, truck and bus traffic on our roadways will only continue to rise. To help reduce CMV related crashes, fatalities, and injuries, CVSA supports legislation and policies that encourage the deployment of safety technology proven, through independent research, to improve CMV safety, either through preventing crashes or mitigating the severity of crashes. Taking full advantage of technologies that can assist in anticipating and preventing crashes will help reduce fatality and injury rates. The National Transportation Safety Board (NTSB) has repeatedly called for deployment of safety technologies on both commercial and personal vehicles to help reduce crashes and save lives. In fact, NTSB has called on the NHTSA to establish performance standards and mandate deployment of collision avoidance technologies on CMVs in its annual 'NTSB Most Wanted List.'

**Conclusion**

The State agencies, in collaboration with FMCSA and industry, are working to make the Nation's roadways safer by reducing crashes, injuries and fatalities related to CMVs. In order to do this, it is imperative that the enforcement community be given clear, enforceable regulations that have been developed based on sound data to improve safety. Exemptions and exceptions must be minimized and changes to the regulations, when necessary, should be science-based and data-driven. Further, a great deal can be done to streamline the current grant process, eliminating redundancies and unnecessary administrative process, allowing State personnel to focus more of their time and resources on the program itself, rather than its admin-

[10] *Motor Carrier Safety Progress Report (as of September 30, 2012),* Federal Motor Carrier Safety Administration.

istration. In addition, states must be given the tools they need to effectively enforce those regulations. States need funding that is commensurate with the responsibilities they've been tasked with, not just to run the day to day program, but to fully equip and train their inspectors. This includes making sure states have access to the latest technologies that will help advance and streamline their programs. Industry should also be encouraged to deploy advanced safety technologies that can help prevent and mitigate crashes.

It is important to note that CVSA and the states work very closely with FMCSA on these issues. The agency will sometimes engage the states to seek input on various aspects of the MCSAP in an attempt to understand where problems exist to help make improvements. For the last several years CVSA has provided numerous comments to the agency regarding the grant program processes and procedures. We appreciate their willingness to listen; however, the unfortunate fact is there still are significant improvements that are necessary and challenges hampering program efficiency and effectiveness.

Despite these challenges, the MCSAP continues to be extremely effective at reducing the number of crashes, injuries, and fatalities on our Nation's roadways and the states have worked diligently to best leverage funds while the size of the regulated industry and the number of responsibilities continues to grow. In 1983, about the time the MCSAP was established, there were 27,000 carriers and 2.2 million drivers that hauled six billion in tonnage. That year there were 5,491 CMV-related fatalities, at a rate of 0.352 fatalities per 100 million miles. In comparison, in 2011, more than 525,000 carriers and 3.1 million drivers hauled 9.4 billion in tonnage. There were 4,206 CMV-related fatalities in 2011, or a rate of 0.136 fatalities per 100 million miles. While there have been a number of success stories contributing to this decline over the last 30 years, the MCSAP has clearly been a major factor in improving CMV safety.

Senator BLUMENTHAL. Thank you very much.

Mr. Dawson?

## STATEMENT OF WILLIAM G. "JACK" DAWSON, ON BEHALF OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. DAWSON. Chairman Blumenthal, Ranking Member Blunt, and members of the Subcommittee, my name is Jack Dawson. I have been a professional truck driver for 32 years.

For the last 15 years, I have been working for UPS in Dallas, Texas, where I currently serve as space and visibility driver trainer for new employees, post-accident drivers, and annual re-training. I am also chief shop steward for Teamsters Local 745 and the co-chair of the Comprehensive Health and Safety Committee.

I am representing the 1.4 million members of the International Brotherhood of Teamsters, especially the 600,000 members who work on America's highways. Today, I will concentrate my testimony on hours-of-service, truck size, weight, and driver training.

Immediate attention on driver fatigue and hours-of-service regulations has been extensive since the Tracy Morgan accident. Here in the Senate, there has been an attempt to suspend two key components of the regulations.

Let me say as a driver, those two provisions limiting the 34-hour restart to once per week and requiring two consecutive 1 a.m. to 5 a.m. rest periods go a long way in preventing fatigue.

Actually, the Teamsters Union went to court over driving time and the 34-hour restart provision. In fact, the Union felt so strongly that the 34 hours did not provide adequate rest, that a majority of our members covered through a MOU with our employers are not subject to the 34-hour restart provision.

Other Teamsters' members like me, however, do operate under the restart provision, but if it is used once a week, every 168 hours, it goes a long way in combating driver fatigue.

Without this limitation, the driver's hours can be increased from the current 70 to 80 hours per week, twice the normal 40 hour work week, and the 34-hour restart is 14 hours short of the normal weekend that most workers have off to rest and tend to personal business. Imagine returning to work on Sunday afternoon instead of Monday morning. That is what truck drivers face with the 34-hour restart.

Suspending the consecutive rest periods of 1 a.m. to 5 a.m. is an equally dangerous step. Studies have shown that back-of-the-clock work is more tiring and can lead to cumulative fatigue. The consecutive rest periods are designed to give drivers rest during their regular circadian rhythm. We oppose suspending the rest period and restart provisions.

The Teamsters Union supports the Safe Highway and Infrastructure Preservation Act or SHIPA. This legislation essentially takes a snapshot of what states currently permit and freezes those weights and lengths. We believe this action will improve safety and protect our infrastructure.

The total stopping distance for an 80,000 pound truck traveling at 65 miles an hour is 525 feet, compared to 316 feet for a passenger car. Imagine judging those distances in congested traffic. Bigger, heavier trucks cause greater wear on highways; likewise, entrance and exit ramps are not designed for longer, heavier trucks, and it may cause issues for drivers attempting to get up speed in order to merge.

Thirty-three foot trailers will only add to safety concerns. Side swipes are the second most common accident at UPS. Those extra ten feet increase blind spots, further aggravating the problem.

The claim that increasing truck weights will result in fewer trucks on the road is unfounded. Each time there has been an increase in truck weight, truck traffic has grown, as shippers take advantage of cheaper rates and divert freight from rail to trucks.

Due to a shortage of qualified drivers, safety standards and training have been on the decline. I see many companies are just trying to put a body in the seat. They want the CDL certified driver but without the proper training. Companies are buying vehicles with automatic transmissions and telling new drivers they can operate these rigs like cars, but these are not cars, they are vehicles with distinct stopping and maneuvering characteristics.

At UPS, we are fortunate enough to have a strong training program for our new drivers, and we have a discretion on how long that training period link should be. My job now is to train new hires. All of these guys have previous driving experience but some find the safety training too difficult and drop out. The classroom training is 20 hours and up to a week on the road with a trainer teaching defensive driving techniques to keep them out of accidents.

Not all companies have this type of dedication to safety and training, but it should be mandatory. The driver shortage is definitely affecting the quality of applicants. These days we are seeing younger drivers with limited experience being hired.

In conclusion, the IBT is committed to keeping our drivers and all others with whom they share the road safe. This committee can

help and lead the way as you develop transportation policies that recognizes and addresses the challenges ahead.

The Teamsters Union looks forward to working with you to help grow a transportation network that meets the future needs of this country, move freight efficiently, and reduce the risk of accidents and improve the safety of our Nation's highways.

Mr. Chairman, thank you for the opportunity to appear here today, and I will be happy to answer any questions from you or other members of the Subcommittee.

[The prepared statement of Mr. Dawson follows:]

PREPARED STATEMENT OF WILLIAM G. "JACK" DAWSON,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Chairman Blumenthal, Ranking Member Blunt, and Members of the Subcommittee:

My name is William G. "Jack" Dawson. I have been a professional truck driver for 32 years. For the last 15 years, I have been an employee of United Parcel Service (UPS) in Dallas, Texas where I currently serve as a shop steward for Teamsters Local 745 and as a safety trainer for new employees, post-accident drivers, and annual training in the Smith System for Driver Improvement. I am here today representing the 1.4 million members of the International Brotherhood of Teamsters (IBT), particularly some 600,000 members who daily perform jobs along America's roadways. These hardworking men and women deserve to have a workplace that is as safe as any office in America yet, they must contend with crumbling roads, long hours, bigger trucks, increasing congestion, insufficiently trained drivers, and in many cases poor compensation—all of which add pressure to an already stressful occupation. In order to protect all individuals who utilize American roads, Congress must commit itself to providing safe, reliable highways by passing a long-term, 6-year transportation reauthorization bill that addresses these issues and those outlined below.

Due to a lack of proper investment, American highways are crumbling. Poor road conditions lead to delayed shipments and lost economic opportunities. We are falling behind in the global economy and cannot afford to allow our infrastructure to degrade any further if America is to stay competitive. A 6-year bill will provide the certainty necessary to help rebuild our roads and bridges and improve safety. Reauthorization must also consider policy issues that improve highway safety and protect those who travel our Nation's roads.

**Hours-of-Service Regulations**

Commercial Motor Vehicle operators endure many pressures while driving and already work long hours. We cannot afford to add to driver fatigue by rolling back hours-of-service regulations which were carefully crafted over the course of more than two decades of rulemaking, several court challenges, thousands of pages of research and studies on proper sleep habits, rest periods, fatigue, and the best ways to ensure that truck drivers operate safely on our highways. No stakeholder is entirely satisfied with the final rule, but with any regulation, the Federal Motor Carrier Safety Administration strived to strike a fair balance that maintains a safe work environment for drivers and yet isn't overly burdensome to the operations of motor carriers. Initially, the Teamsters Union had gone to court over the increase in driving time from 10 to 11 hours and took issue with the 34-hour restart provision. In fact, the union felt so strongly that 34 hours did not provide adequate rest, that a majority of our members covered under our National Master Freight Agreement (NMFA) are not subject to the 34-hour restart provision. A Memorandum of Understanding was signed by the signatories to the NMFA that prohibits those companies from subjecting their drivers to the restart provision. With that exception, other Teamster members do operate under the restart provision, but its use once a week versus continually goes a long way in combating driver fatigue.

We have seen recently the effects of exhaustion by pushing drivers to the limits of the hours-of-service regulations. The high-profile accident in June which injured actor-comedian Tracy Morgan brought to the public's attention the danger of tired sleep deprived truck drivers operating 80,000 lb. rigs on our highways. The driver of a Walmart tractor trailer fell asleep and rammed into the limousine bus carrying Morgan and his entourage, causing 1 fatality and seriously injuring the actor as well as 3 others. Despite countless other fatal accidents involving fatigued drivers,

this one accident shined a spotlight on the issue of compliance with HOS regulations and driver fatigue. The driver admitted that he had been awake for the previous 24 hour period and that he fell asleep just prior to hitting Morgan's bus. According to the National Transportation Safety Board's (NTSB) preliminary report, the truck driver was just 28 minutes shy of the maximum 14-hour on-duty period when the collision occurred and had he reached his destination, likely would have exceeded his maximum on-duty limit.[1]

Four days earlier, during a subcommittee markup, Senator Susan Collins (R–ME) offered language to the FY 2015 Transportation HUD Appropriations bill which would suspend two critical elements of the HOS regulations that help mitigate driver fatigue, especially cumulative fatigue. Unfortunately, the Collins amendment was adopted in committee. One provision suspends the current limitation on the use of the 34-hour restart provision, while the other suspends the mandated two consecutive 1 a.m. to 5 a.m. rest periods. Limiting the restart to once every 168 hours plays a key role in holding down the number of hours that a driver can work in a week. Without this limitation, the number of hours that a driver can work is increased from the current 70 hours per week to 80 hours per week—twice the number of hours that most Americans work in a week's time. And the 34-hour restart is 14 hours short of the normal weekend that most workers have off to rest, recuperate and tend to personal business. Most of us cherish our weekend—those 2 days off that we can spend with our families but imagine returning to work on a Sunday afternoon instead of Monday morning. That's what truck drivers face with the 34-hour restart.

What you may not know about truck drivers is that it is exceedingly difficult to have any sort of normal schedule. When we aren't on the road where we are away from our homes and families, we may still be on call. At UPS, when I am not acting as a trainer, I am subject to duty as a driver in a group called the "extra board." I am required to be available to answer the phone at midnight, 5 a.m., 10 a.m., 1 p.m., 6 p.m., and 8 p.m. should I be needed to complete a run. These schedules don't exactly allow for stability and the long hours we drive can wear you down. The one tool we have at our disposal to combat the type of exhaustion that causes accidents is the hours-of-service regulations. I cannot imagine why anyone would want to suspend rules which are in place to ensure the safety of everyone on the road by mitigating truck driver fatigue.

Today, our roads are more congested than ever. Drivers have less time to make critical decisions on changing lanes and shorter distances to slow down or stop. Drivers must be more alert, and driving in congested traffic is more stressful and tiring. Yet, without the limitation on the restart provision, drivers can be forced to work longer and longer hours, putting their safety and that of the public at greater risk. The Teamsters Union strongly opposes this proposed change in the current restart provision.

Suspending the required consecutive rest periods of 1 a.m. to 5 a.m. is an equally dangerous step. Numerous studies have shown that back-of-the clock work is more tiring and can lead to cumulative fatigue. This consecutive rest period requirement is designed to give drivers rest when their body clock tells them they need it most—during their regular circadian rhythm. Those advocating for suspending this part of the regulation have argued that more trucks will be on the road during daylight hours when roads are more congested. That would suggest that every truck driver would start his truck at 5:15 a.m. and hit the road simultaneously. For the most part, work and delivery schedules vary. Not all truck drivers start their work day at the same time. In addition, while there is less automobile traffic at night, there are also many trucks pulled off the side of the road, in truck plazas, and at rest stops, with drivers asleep, mostly because their body clock is telling them that they are tired. The 1 a.m. to 5 a.m. provision is an important element in defeating cumulative fatigue, and DOT should have ample time to study the effects of these regulations, enacted one year ago, before any changes are implemented that diminish highway safety.

**Truck Size and Weight**

In 2012 it is estimated that more than 3,802 fatalities involving trucks occurred.[2] That number is unacceptably high and the United States cannot afford further compromising safety by increasing the lengths and weight of commercial vehicles. In-

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[1] National Transportation Safety Board (NTSB), *Highway Investigation Preliminary Report* (NTSB, 2014), *http://www.ntsb.gov/investigations/fulltext/HWY14MH012_preliminary.html.*

[2] National Highway Traffic Safety Administration (NHTSA), *Fatality Analysis Reporting System: Fatal Crashes by Vehicle Type* (Washington, D.C.: NHTSA, 2014), *http://www.fars.nhtsa.dot.gov/Vehicles/VehiclesAllVehicles.aspx.*

creased truck size and weight not only causes greater wear on highways but also stress on drivers who need greater stopping distances which are hard to judge and perform on congested roadways. Likewise, entrance and exit ramps are not designed for longer, heavier trucks and may cause issues for drivers attempting to get up to speed in order to merge.

Map–21 authorized a Comprehensive Truck Size and Weight study to examine the effects of bigger heavier trucks on highway safety and the infrastructure. That Comprehensive Study is underway, and Congress should not be entertaining any individual state or highway exemptions or piecemeal special interest exemptions until it sees what the results are. To preempt this study Congress would be turning its back on a study that it authorized. For these reasons, the Teamsters Union opposes the exemptions for Idaho, Wisconsin and Mississippi included in the House-passed FY 2015 Transportation HUD Appropriations bill, and they should be soundly rejected by the Senate.

While considering ways to improve highway safety, this Committee must also meet the challenges of rebuilding our deteriorating highway and bridge infrastructure and meet our country's transportation needs of the future. The issues of truck size and weight play a central role in that decision-making process. Proponents of heavier trucks claim that adding a sixth axle will mitigate highway pavement damage. While that may be true if the axle is employed properly, a sixth axle does nothing to alleviate the increased weight on our Nation's bridges, half of which are more than 40 years old with one-in-four classified as structurally deficient or functionally obsolete.

The claim that increasing trucks weights will result in fewer trucks on the road is unfounded. Each time there has been an increase in truck weight, truck traffic has grown, as shippers take advantage of cheaper rates and divert freight from rail to trucks. Our current highway system is not designed for bigger heavier trucks. These trucks need longer merge lanes to get up to speed, redesigned on-and-off ramps to accommodate longer combination vehicles, and greater stopping distances on a highway network that becomes more congested every day. The total stopping distance for an 80,000 lb. truck traveling at 55 mph is 335 feet compared to 225 feet for a passenger car. At 65 mph, that stopping distance for a truck increases to 525 feet versus 316 feet for an automobile. As you can imagine, it is very difficult to judge those distances in congested traffic.[3]

The trucking industry has used its influence in the state legislatures to increase both truck weights and trailer lengths on non-federal highways. That in turn has led to demands from frustrated state residents, who don't want to share their local roads with bigger trucks to increase truck size and weight on the interstate system, so that big truck traffic can be diverted from state roads that aren't equipped to handle it.

The Teamsters Union continues to support the *Safe Highways and Infrastructure Preservation Act,* or SHIPA. This legislation extends the current state and Federal weight limits on the Interstate system to the non-Interstate highways on the National Highway System and prohibits further increases. The legislation recognizes and protects the states' existing grandfathered rights to allow certain differences in truck axle and gross weights than the maximum weight allowed in Federal law. It essentially takes a "snapshot" of what states currently permit and freezes those weights and lengths. We believe this action will improve safety and protect our infrastructure investment.

**Comprehensive Truck Size and Weight Study**

The Teamsters Union, along with other safety community stakeholders, has been working with the Department of Transportation to address significant deficiencies and weaknesses in the process and methods used to conduct the Comprehensive Truck Size and Weight study mandated by MAP–21. This study to determine the impact of longer heavier trucks on safety and infrastructure will be the authoritative document on this issue for the next decade. It will guide many of the policy decisions that Congress makes in this area for years to come. For that reason, we have asked that significant issues raised by the Transportation Research Board Peer Review Committee and us be immediately addressed before the study moves forward.

Unfortunately, the provision mandated that the study be completed in a two-year period. The last truck size and weight study took six years to complete, and so, from the beginning, DOT was under extreme time limitations to finish the study. As a result, the agency has taken numerous shortcuts that have added to the questionable process and expected results.

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[3] National Safety Council's Defensive Driving Course for Professional Truck Drivers.

DOT has failed to meet mandatory deadlines imposed by Congress on dozens of regulatory proceedings and other studies. Why the agency has chosen this particular study to meet its deadline requirements is questionable.

The DOT study is not considering the effects of Turnpike Doubles or Rocky Mountain Doubles on our highways. These are the most common longer combination vehicles on our highways, especially in the east. Instead, DOT is examining triple trailers which operate in a limited number of states (13) in the west under very different driving and highway conditions than in other parts of the country, especially the east coast. You can't compare driving on Interstate 95 in Virginia or the Capital Beltway where there are exits every mile and heavy congestion with a four-lane highway in Montana where traffic is lighter and exits are more spread out. Yet, the data gathered in the study may be used to potentially justify longer, heavier trucks. Another issue is that there has been no attempt to obtain input from drivers. Who better knows about the operation of these trucks than the drivers themselves?

The study is also taking a static picture of freight volume and not accounting for the enormous freight increase projected for the future. The Federal Highway Administration predicts a 48 percent freight tonnage increase by 2040. And the study is predicated on the false assumption that bigger, heavier trucks will mean fewer trucks on the highway. The more freight you can put on one truck, the cheaper it becomes compared to rail and other modes. More freight will be diverted to trucks, which means more, not fewer trucks on the road. Historically, that's exactly what has happened every time there has been an increase in truck size and weight.

**Vehicle Stability Systems/Advanced Safety Technologies**

While avoiding fatigue in drivers and preventing bigger, heavier trucks from operating on our Nation's roads is important to ensuring highway safety, it is equally important that the vehicles truck drivers operate have the necessary safety equipment installed. Equipping trucks with the latest safety technologies will eventually help reduce truck crashes. Brake Stroke Monitoring Systems, Vehicle Stability Systems, Lane Departure Warning Systems and Collision Warning Systems are all devices that can help drivers avoid accidents. However, it is important to provide the proper training so that these systems are not a distraction to the driver, that the driver understands the warning signal(s), knows what evasive action to take, and the driver does not overcompensate or defeat the assistance of the device. These systems must be used for the purpose for which they are designed and not as a tool to harass the driver.

**Training**

Due to a shortage of qualified drivers, safety standards and training have been on the decline. From what I have seen, many companies are just trying to put a body in the seat—they want the CDL certified driver without the proper training. These companies are outfitting vehicles with automatic transmissions and telling new drivers to operate the rigs like a car—but these aren't cars, these are vehicles with long stopping distances that are complicated to maneuver.

At UPS, we are fortunate enough to have a strong training program for our new drivers. And our local union gives us discretion as to how long that training period length should be. Additionally, we require all drivers to have a retraining period annually. Most of my time lately has been spent working with new hires. All of these guys have previous driving experience but many drop out after a day of training because they think it's too hard. Our training program includes 16 to 24 hours, depending on skill level, behind the wheel with the trainee teaching them defensive driving techniques to keep them out of an accident. Not all companies have this type of dedication to safety and training, but it should be mandatory.

Expanded training for all motor carriers helps to promote safe roads and there should be money available to properly train the drivers who transport goods and people. The Administration's bill, The *GROW AMERICA Act,* establishes a grant program that provides funds for commercial motor vehicle driver training which the Teamsters wholeheartedly support as a necessary means to increase the number of safe truck drivers on the road.

**Detention Time**

The driver shortage may also be derived from the poor compensation and working conditions that truckers receive. The Bureau of Labor Statistics estimates that the average yearly salary for a full time truck driver is $36,970. When considering the long, stressful, and erratic work schedules these drivers have, the compensation drivers collect may not be enough to attract new drivers to the industry. Detention times especially may cut into the pay a truck driver receives. The prospect of drivers waiting long periods to have their trailers loaded or unloaded at shipping and receiving facilities is becoming more the norm rather than the exception. For the most

part, Teamster drivers are compensated for the time they are left waiting, and for that reason, detention time is not as prevalent in the union trucking sector. Unfortunately, that is not the case with owner-operators or non-union drivers. The longer they wait, the more time they lose in on-duty time, which can then effect the time they have left to drive. Drivers then feel pressured to drive beyond their Hours-of-Service limits, risking highway safety by driving fatigued. Those fatigued drivers are then sharing the road with our members. A Government Accountability Office study from 2011 indicated that about 80 percent of the drivers who are "detained" indicated that detention time impacts their capability to comply with Hours-of-Service regulations.[4]

Reasons for detention time vary, from lack of sufficient loading facilities to products not being ready for shipment. Whatever the reason, drivers suffer the consequences—reduced driving time and lost revenue for drivers and carriers.

The Teamsters Union was pleased that the Administration's bill, the *GROW AMERICA Act,* attempts to address the problem of detention by authorizing the Secretary to require property and passenger motor carriers to compensate drivers under certain circumstances for on-duty (not driving) periods at no less than the minimum wage. This may encourage shipping and receiving facilities to create better efficiencies, but it doesn't fully solve the problem. Those drivers that are independent owner operators, for example, have no employer to pay them for detention time. These are sometimes the drivers who experience the longest delays. Especially in the ports, whether they are misclassified independent owner-operators or employees of motor carriers, drivers line up and can wait for hours to pick up a container. While we are encouraged by the Administration's proposal, the Teamsters Union would suggest that the Administration find some way to cover all drivers including independent owner-operators and that the Secretary "shall", not "may" by regulation require motor carriers to compensate drivers at not less than the minimum wage for detention time.

**Hair Testing**

Improving truck safety includes keeping drivers who are unfit for duty off the road which includes testing drivers for substance abuse. The method of drug and alcohol testing using hair presents some interesting challenges for the trucking industry. While not necessarily linking the use of drugs and alcohol to impairment, it does give prospective employers the opportunity to identify those prospective drivers that may show a proclivity to abuse drugs. For that reason, we could support the use of hair testing for drug use in pre-employment testing if the science supports this method of testing and is certified by the Department of Health and Human Services. Since there are numerous questions about racial bias, hair color bias, effect of hair treatments, privacy issues and certain patented processes for testing, we would strongly oppose any end-around approval of this method of testing by congressional action, without the express approval of this method by the agencies designated to properly review and evaluate this testing procedure through the regulatory process.

**Mexico Cross-Border Trucking Pilot Program**

Out of concern for roadway safety in the United States, the International Brotherhood of Teamsters has consistently been opposed to broadly opening our Nation's highways to Mexico domiciled trucking companies until we can be assured that Mexican trucks and drivers meet U.S. safety standards and can operate safely on our highways As the Mexican Cross-Border Trucking Pilot Program approaches a three-year statutory limitation in October, the IBT is concerned about the data collected during the program's duration and the potential use of the data in justifying an opening of the border to all Mexico domiciled motor carriers. In the three years of the pilot program, the Federal Motor Carrier Safety Administration (FMCSA) has had difficulty obtaining the number of participating companies and data the agency originally indicated would be necessary for accurate results. The DOT Inspector General estimated that at least 46 carriers would be needed to obtain a target of 4,100 inspections within 3 years to provide a statistically valid analysis of program participants' safety performance. With only three months to go in the study, there are only 13 participants, mostly very small carriers with one or two trucks and one or two drivers. This is not a representative sample of the Mexican trucking industry. And, while FMCSA has exceeded the number of inspections needed by approximately 1,000, 84 percent of the inspections come from only 2 trucking companies.

[4] Government Accountability Office, *Commercial Motor Carriers: More Could Be Done to Determine Impact of Excessive Loading and Unloading Wait Times on Hours of Service Violations* (DC: Government Accountability Office, 2011), *http://www.gao.gov/assets/320/315297.pdf.*

Before we grant Mexican trucking companies broader operating authority, FMCSA and Congress must ensure that statistically valid data supports that action.

The Teamsters Union is also very concerned about the provision in the *GROW AMERICA Act* that removes the requirement that certain safety audits and compliance investigations of Mexico-domiciled motor carriers be conducted on-site in Mexico. While we can appreciate the DOT's concern for safety of its personnel, in light of State Department travel warnings and alerts for the safety and security of Agency personnel, an on-site visit can reveal much more about the safety culture of a motor carrier than simply reviewing a stack of paperwork. Maintenance and repair facilities can be examined, for example, along with personal observations that agency personnel can make seeing drivers and their trucks first hand. The fact that the lives of agency personnel may be in danger by conducting on-site visits to Mexico-domiciled motor carriers perhaps answers another question as to why U.S. motor carriers have not taken advantage of the reciprocity of the pilot program. This suggested shortcut does nothing to enhance the safety of Mexico-domiciled carriers and drivers.

**Minimum Insurance for Motor Carriers**

For too long, the minimum insurance for motor carriers has remained at $750,000. Since that standard was passed 34 years ago, the minimum insurance would need to be increased to $4.4 million to keep up with the inflation of medical costs and property damage. Accidents involving motor carriers and passenger vehicles can easily reach into the millions of dollars. The Teamsters support a bill introduced by Rep. Matt Cartwright to raise liability coverage to $4,422,000 and index it to inflation of medical costs to prevent any future degradation of value.

**National Hiring Standard for Motor Carriers**

The Teamsters Union has serious concerns about legislation that has been introduced in the House of Representatives, H.R. 4727, to create a National Hiring Standard for Motor Carriers. While we appreciate the concern and frustration that shippers and brokers experience in different states in determining what constitutes a safe motor carrier, the legislation is overly broad in that it imposes no liability at all for negligent selection of a motor carrier or "a claim or cause of action *related to* negligent selection under state or Federal law, which seems to broaden the potential scope of the exemption from liability. We are not aware of any situation in which Congress has simply banned states from imposing liability where there is no corresponding Federal remedy for the potential injury. While there are insurance coverage mandates in most states, there can be and are circumstances in which coverage either doesn't exist or is inadequate. We fail to see how this legislation would contribute to any increase in motor carrier or highway safety. Merely relying on the Department of Transportation's (DOT) safety rating system in hiring a motor carrier should not necessarily excuse anyone from liability in the event of an accident. DOT has many other data bases that provide information concerning the safety record of motor carriers that can be utilized

**Safety Standards for Commercial Motor Vehicle Drivers**

The primary mission of the FMCSA is to prevent Commercial Motor Vehicle (CMV)-related fatalities and injuries. There should be a reasonable expectation that the regulations, especially regulations designed to improve the safety and health of workers/drivers and the public not have an adverse effect on drivers. While there are many provisions of the Administration's *GROW AMERICA Act* that we support, the Teamsters Union disagrees with the Administration's proposal to change the minimum safety standards regulations regarding the physical condition of motor carrier operators. The Administration claims that "virtually all occupations have some deleterious effect on the physical condition of those employed and the effects of the job are often difficult to separate from the effects of personal behavior, aging or even genetic disposition," are at odds with the position of most competent health and safety experts. Most experts agree that virtually all occupations have work-related hazards that have the potential to cause work-related illnesses or injuries, if such hazards are not eliminated or controlled. Any rulemaking to control such hazards must consider factors such as age, genetic disposition, etc., to ensure that the rule is protective for most exposed workers. The change to the CMV safety standard language requiring that the work not have a "significantly adverse effect on the physical condition of the operators" does very little to eliminate the debate on the issue. How is "Significantly adverse effect" defined? This is a solution in search of a problem. And this proposed change will cause many to think that the standard is significantly less stringent.

**Financial Reporting**

The IBT also disagrees with the Administration's repeal of financial reporting in the motor carrier title of the *GROW AMERICA Act*. One section of the financial reporting form includes maintenance and vehicle parts costs. The expenditures that carriers make on maintaining their fleet may be indicative of their attention to vehicle safety.

It is unreasonable to claim that reporting is overly burdensome and insufficiently useful. The reporting requirements were just revised to eliminate quarterly reporting so the carriers already received significant relief. Also, we and others use the annual reports to assess the state of the industry over time. It's the only valid, continuous data source that tracks carrier performance available to the public since deregulation. The reports can be manually completed online in a matter of minutes and are not arduous due to technological improvements. All Class I motor carriers capture these data at least annually as part of routine data collection and much, such as miles driven info, is often legally required by other reporting systems anyway (vehicle use tax, etc.). The problem is the data is not available online to the public as it should be—it's an access issue if it is not being used. The data is valuable to a whole range of users, from academics to insurance companies, and does not expose any trade secrets as it currently stands—it has undergone numerous revisions over time to eliminate that possibility. Furthermore, motor carriers can request confidentiality (competitive harm) if necessary and there are several exemptions that have already been thoroughly vetted by FMCSA and rulemaking. We believe that FMCSA should beef up enforcement and make the data more useful to the public.

**Motor Carrier Safety Advisory Committee**

The Teamsters Union supports the provision in the *GROW AMERICA Act* that codifies the obligation of the DOT Secretary to maintain the Motor Carrier Safety Advisory Committee (MCSAC). This committee, established by provisions in SAFETEA–LU, has allowed stakeholders to provide significant expertise to the DOT on a variety of issues. The current makeup of the Committee is balanced, and this provision identifying specific stakeholders to be represented on the panel will ensure that all sectors of the industry have a voice in advising the Department on vital motor carrier safety issues.

**Conclusion**

Our members, through collective bargaining, receive better, extended training, more favorable duty periods, and the ability to refuse to operate a vehicle that is not in a safe operating condition which ultimately reduces risks and increases safety. In fact, a 2012 study entitled Safety Performance Differences between Unionized and Non-union Motor Carriers concluded that Union Membership has a positive impact on safety and results in fewer crashes compared to non-union carriers. Clearly, the IBT is committed to keeping our drivers and all others with whom they share the road safe. This Committee can help lead the way as you develop transportation policy that recognizes and addresses the challenges ahead. The Teamsters Union looks forward to working with you to help grow a transportation network that meets the future needs of this country, moves freight efficiently and reduces the risks of accidents and improves the safety of our Nation's highways.

Senator BLUMENTHAL. Thank you, sir.

Mr. Osiecki?

## STATEMENT OF DAVID J. OSIECKI, EXECUTIVE VICE PRESIDENT AND CHIEF OF NATIONAL ADVOCACY, AMERICAN TRUCKING ASSOCIATIONS

Mr. OSIECKI. Chairman Blumenthal, Ranking Member Blunt, Subcommittee members, I am Dave Osiecki, Chief of Advocacy for the American Trucking Associations. ATA, as you may know, is the largest trade association for the trucking industry. We represent more than 30,000 carrier members. Thanks for this opportunity, and I would ask that my full statement be made part of the record.

Senator BLUMENTHAL. Without objection.

Mr. OSIECKI. Thank you. The trucking industry places safety at the top of its priority list. Our industry actually spends more than

$7.5 billion annually on safety, and that investment is making a difference.

Over the past decade, the number of large trucks involved in fatal crashes has dropped by 17 percent, even with the industry operating an additional 2.7 million trucks, operating an additional 54 billion miles. More trucks, billions more miles, fewer crashes.

As mentioned at the outset, however, over the last three years, we have seen increasing crashes over the historic lows in 2009 during the recession. We must refocus our efforts to maintain the longer term positive safety trend.

Refocusing our collective efforts, industry, Federal, and state efforts require a better lens through which to view safety. That lens must better focus on the primary causes of truck involved crashes and our collective investment must center on countermeasures aimed at those primary causes.

There has been tremendous focus by government on hours-of-service rules in recent years, despite the fact that fatigue causes about ten, perhaps less than ten percent of truck crashes. Significant truck safety improvements will require greater focus on the cause of the other 90 plus percent of crashes.

Driver error causes most crashes. I think we have probably all heard that. More specifically, driver mistakes and driver misbehaviors, by both professional drivers and passenger vehicle drivers. In fact, car drivers contribute significantly to truck crashes.

If the regulatory enforcement and safety program lens is focused properly on the most common mistakes and misbehaviors by all involved in the safety equation, big safety gains are achievable.

The leading factor in crashes, that is the most common misbehavior causing both car and truck crashes is vehicle speed. Yet, our regulatory and enforcement apparatus largely turns a blind eye. In 2006, about 8 years ago, ATA and another safety group petitioned FMCSA and NHTSA to issue a rule electronically limiting the top speed of large trucks. Neither FMCSA nor NHTSA has issued a proposed rule requiring speed limiters.

In lieu of working on the hours-of-service regulation, in 2010, ATA lobbied FMCSA and DOT to first focus on implementing electronic logging devices industry-wide. They chose not to.

While the rulemaking process is now underway on ELDs, it will be several years until full implementation. We would like an electronic logging device rulemaking yesterday, and it will address the misbehaviors of some drivers exceeding the driving limits.

NHTSA's upcoming vehicle based stability control rule for new large trucks is another rule that will save lives because it will mitigate driver mistakes. We hope that rule is forthcoming sooner rather than later.

Shifting to enforcement, FMCSA's 2013 program effectiveness report found that on road traffic enforcement activity, that which focuses on truck driver misbehaviors, is at least four times more effective at preventing crashes than roadside vehicle inspections. Those focus mainly on vehicle components and defects. Vehicle defects cause less than 10 percent of crashes.

In almost 90 percent of the Federal/state on-road traffic and on-road enforcement activity under MCSAP is directed to vehicle inspections. More effective traffic enforcement activity, that activity

directed toward unsafe driving behavior by commercial drivers, represents only 10 percent of the MCSAP on road traffic enforcement activity. This type of enforcement has declined dramatically over the last 4 years. Again, the lens needs a better focus in our view.

Quickly, turning to technology. It is clearly a big part of the safety solution in our view. Properly focused rules and enforcement can achieve only so much. Accelerated adoption of active safety technologies in both trucks and cars can lead to even larger highway safety improvements—collision mitigation, active braking systems, exception based video camera technologies and others hold great promise.

Trucking fleets are adopting many of these, and adoption can be accelerated with meaningful incentives. This is an idea on which ATA and CVSA are fully aligned. We hope and trust FMCSA agrees.

Mr. Chairman, thank you for the opportunity to offer our views on how the safety lens should be better focused to improve truck safety. We can do more. We know that. It needs to be the right "more." Better targeted rules, even more effective enforcement, and more quick deployment of active safety technologies. That will result in meaningful safety gains.

Thanks, and I look forward to your questions.

[The prepared statement of Mr. Osiecki follows:]

PREPARED STATEMENT OF DAVID J. OSIECKI, EXECUTIVE VICE-PRESIDENT AND CHIEF OF NATIONAL ADVOCACY, AMERICAN TRUCKING ASSOCIATIONS

**Introduction**

Chairman Blumenthal, Senator Blunt, members of the Subcommittee, my name is Dave Osiecki, and I am the Chief of National Advocacy for the American Trucking Associations (ATA). ATA is the national trade association for the trucking industry and is a federation of affiliated State trucking associations, conferences, and organizations that together have more than 30,000 motor carrier members representing every type and class of motor carrier in the country. Thank you for the opportunity to testify.

Today, I will speak about the trucking industry's safety record and measures ATA supports to continue the industry's long-term, positive safety trend. I will also talk about a fundamental change in the government's approach to truck safety enforcement that is needed to make further, significant gains in truck safety. To bring about further meaningful improvements will require an acknowledgement of the principle causes of truck crashes and a commitment to making appropriate countermeasures the highest priority.

In addition, I will discuss some of the trucking industry's views on regulatory issues such as hours of service, electronic logging devices, and FMCSA's safety monitoring, measurement, and enforcement prioritization system: *Compliance, Safety, Accountability* (CSA). These issues have been the focus of much attention recently, so it is important to clarify the industry's views on them. Finally, I will discuss some of the many industry–supported safety initiatives, such as the recently proposed drug and alcohol clearinghouse.

**The Industry's Safety Commitment and Safety Record** [1]

The trucking industry places both driver safety and public highway safety at the top of its priority list each and every day. In fact, ATA conservatively estimates the trucking industry spends at least $7.5 billion per year on safety. As a result, the industry has an impressive safety record and is near its safest point in history. For example:

[1] 2012 is the most recent year for which such data are available.

- The truck-involved fatality rate has decreased 74 percent since 1975, the first year the U.S. Department of Transportation (DOT) began keeping records.[2]
- From 2002 to 2012, the number of truck-involved fatalities fell by 21 percent and the number of truck-involved injuries fell by 20 percent.[3]
- From 2002 to 2012, the truck-involved fatality rate per 100 million vehicle miles traveled dropped 37 percent [4]
- In actual numbers, there were 1,018 fewer fatalities in 2012 than in 2002—very good progress in light of the trucking industry operating 2.7 million additional trucks and 54 billion more miles in 2012 (compared to 2002).[5]
- The truck-involved injury rate has decreased 59 percent since 1988, the first year USDOT began keeping records.[6]
- Over the past decade alone, the truck-involved injury rate dropped by 31 percent.[7]

Despite these long-term trends and safety accomplishments, the trucking industry knows it can continue to improve its highway safety performance, and works daily to reduce its share of the larger crash problem on our highways.

*Note:* The Federal Highway Administration (FHWA) implemented an enhanced methodology for estimating registered vehicle miles traveled by vehicle type beginning with data from 2007. As a result, involvement rates may differ, and in some cases significantly, from earlier years.

**Some May Try to Distort Trucking's Safety Record**

Despite the industry's safety accomplishments, industry critics continue to use selective figures in an attempt to paint a far different picture. Sometimes they do so to justify inappropriate or unnecessary policy changes. Here's an example:

Like the stock market, highway safety trends can rarely be depicted with straight lines. There is always some short term variability. Looking at the long term, however, it is clear to see what is taking place. However, industry critics choose a portion of that period, 2009—2012 as an example, in an attempt to create a different perception.

As the chart below reflecting truck related fatalities over the last decade shows, focusing on the most recent three years is misleading since the drop in truck related fatalities from 2007–2009 was unusually steep (in part due to the economic recession) and since a selective focus on the three years since then ignores the long term safety picture.

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[2] *Large Truck and Bus Crash Facts 2012,* Trends chapter, Tables 4, page 7, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf.*

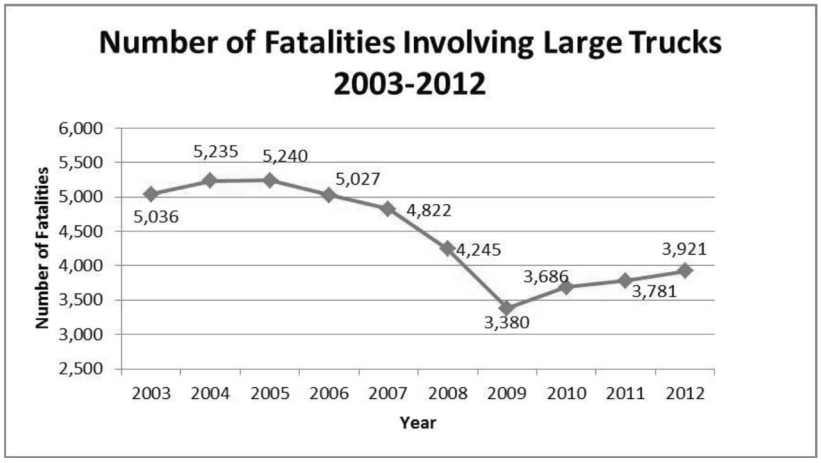
[3] *Large Truck and Bus Crash Facts 2012,* Trends chapter, Tables 4 & 7, pages 7 and 13, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf.*

[4] *Large Truck and Bus Crash Facts 2012,* Trends chapter, Tables 4, page 7, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf.*

[5] *Ibid.*

[6] *Large Truck and Bus Crash Facts 2012,* Trends chapter, Tables 7, page 13, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf.*

[7] *Ibid.*




The suggestion that the recent figures point to some sort of truck safety crisis is not only wrong, as demonstrated by the trucking industry's long term safety record, but ignores what the National Highway Traffic Safety Administration has said about these figures:

> *"Note that the number of fatal crashes involving large trucks is relatively small, so such variability in the number of fatalities is not unexpected."* [8]

The focus on large truck related fatalities alone ignores the fact that the long term drop in truck-related fatalities has occurred despite the increase in exposure. To accurately measure whether or not roadways are getting "safer" from one year to the next, analysts must put raw crash numbers in the context of some exposure measure, such as miles driven (*e.g.,* crashes per 100 million vehicle miles traveled). This is the generally accepted measure used by highway safety professionals. For example, it would be foolish to contend that trucks operating in Delaware are somehow safer than those operating in California because there are fewer truck crashes in Delaware. There are far more trucks traveling many more miles in California than in Delaware. To make a meaningful comparison, we must compare these states in terms of miles driven.

This sort of comparison from year to year on a national level reveals some meaningful and significant observations. Specifically, though the *number* of truck-related fatalities has dropped 21 percent over the past decade (2002—2012), the decline in the large truck fatality *rate* is even steeper. Moreover, from 2002—2012 the truck-involved fatality rate per 100 million vehicle miles traveled dropped 37 percent.[9]

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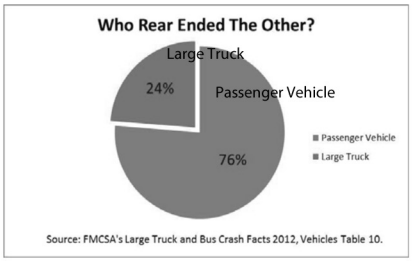
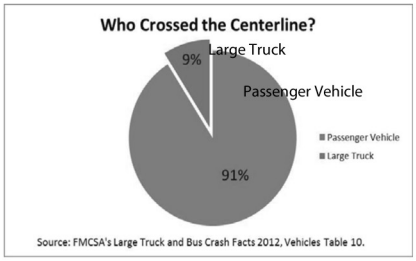
[8] 2012 Motor Vehicle Crashes Overview, National Highway Traffic Safety Administration, Washington, D.C. 2014, *http://www-nrd.nhtsa.dot.gov/Pubs/811856.pdf.*

[9] *Large Truck and Bus Crash Facts 2012,* Trends chapter, Tables 4, page 7, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf.*


Also, according to a recent FMCSA report,[10] consistent with other research on the subject,[11] 70 percent of fatal crashes involving a large truck and a passenger vehicle are initiated by the actions of passenger vehicle operators. For instance, large trucks are three times more likely to be struck in the rear in two-vehicle fatal crashes.[12] Also, in 91 percent of fatal head-on collisions between a large truck and a passenger vehicle, the passenger vehicle crossed the median into the truck's lane of travel.[13] Moreover, large trucks have an overall crash rate almost half that of other vehicles.[14]




Some may also try to distort the long-term truck safety picture by telling Congress and the public that large trucks are over-involved in fatal crashes. Such statements are purposefully misleading. When large truck crashes occur they are generally more severe than light vehicle crashes, due to size and weight differences between large trucks and passenger vehicles. *Trucks are not more likely to be involved in a crash,* but when such a crash does occur it is slightly more likely to result in a fatality. This is the case not because trucks are less safe, as some would have you believe, but due to simple Newtonian physics.

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[10] *Financial Responsibility Requirements for Commercial Motor Vehicles,* See Footnote 2, page xii, Federal Motor Carrier Safety Administration, Washington, D.C., January 2013. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Financial-Responsibility-Study.pdf*

[11] *Relative Contribution/Fault in Car-Truck Crashes,* American Trucking Associations, Arlington, VA, February, 2013.

[12] *Traffic Safety Facts 2012 Data: Large Trucks,* National Highway Traffic Safety Administration, *http://www-nrd.nhtsa.dot.gov/Pubs/811868.pdf*

[13] *Large Truck and Bus Crash Facts 2012,* Vehicle chapter, Tables 9, page 60, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf.*

[14] *Large Truck and Bus Crash Facts 2012,* Trends chapter, Tables 4, 6, 7 9, 10 11, pages 7–21, Federal Motor Carrier Safety Administration, Washington, D.C. *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-Bus-Crash-Facts-2012.pdf*

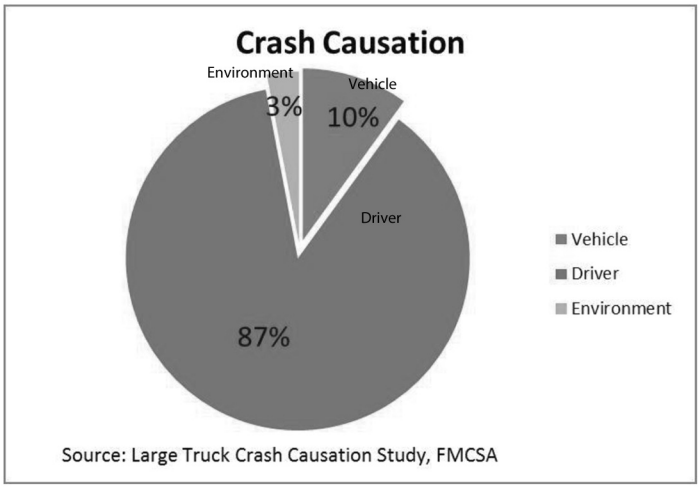
The long-term improvement in truck safety is due, in part, to industry-supported initiatives. For example, ATA was an early advocate of mandatory drug and alcohol testing, the commercial driver's license program, a ban on radar detectors in trucks, and the recently proposed clearinghouse of drug and alcohol test results. The industry continues to promote additional regulatory initiatives that will improve safety, such as the mandatory use of electronic logging devices to track hours of service compliance, the mandatory use of speed limiters on trucks, stability control systems on new trucks, and a national system to alert employers of drivers' moving violations in a timely fashion.

ATA also supports and promotes the voluntary adoption and use of cost-beneficial active safety technologies such as collision mitigation systems, active braking technologies and video-based systems designed to address driver behavior issues.

**Continued Improvement Requires a Focus on Crash Causation**

Continued improvements in truck safety require an understanding of the causes of truck crashes and a clear, determined focus on appropriate countermeasures. Specifically, according to multiple studies, data, and other indicators, the vast majority of large truck crashes are the result of driver behaviors and errors. Only a small percentage of large truck crashes are attributable to vehicle defects.

FMCSA's Large Truck Crash Causation Study, for example, found that driver error was the "critical reason" behind 87 percent of crashes studied.[15] Similarly, the *Unsafe Driving* BASIC in FMCSA's CSA Safety Measurement System, which captures moving violations and other unsafe driving behaviors, is the measurement category with the strongest correlation to crash risk. A recent FMCSA study found that, on average, fleets with high scores [16] in this category have 93 percent higher future crash rates than fleets with low scores.[17]




Given this knowledge, it is not surprising that other FMCSA data, specifically the agency's Safety Program Effectiveness Measurement reports, shows that on-road traffic enforcement activity is far more effective at preventing future crashes than standard roadside vehicle inspection activity. The latter typically involves a vehicle inspection to detect component defects and a review of driver's paper work (*e.g.,* hours of service records of duty status) and credentials (*e.g.,* license and medical examiner's certificate). The former, traffic enforcement, consists of on-road monitoring of unsafe driver behavior (*e.g.,* moving violations) coupled with some form of inspection activity (*e.g.,* a "walk-around" inspection of vehicle components). *FMCSA's data reflects that for every 1,000 traffic enforcements 12.05 crashes are prevented compared to 2.7 crashes per 1,000 standard roadside inspections. Similarly, .41 lives are*

[15] *Report to Congress on the Large Truck Crash Causation Study,* Federal Motor Carrier Safety Administration, Washington, D.C., November 2005, *http://ai.fmcsa.dot.gov/ltccs/data/documents/reportcongress_11_05.pdf.*

[16] High scores in this context means above the threshold for enforcement intervention selection which, for most carriers, is set at the 65th percentile.

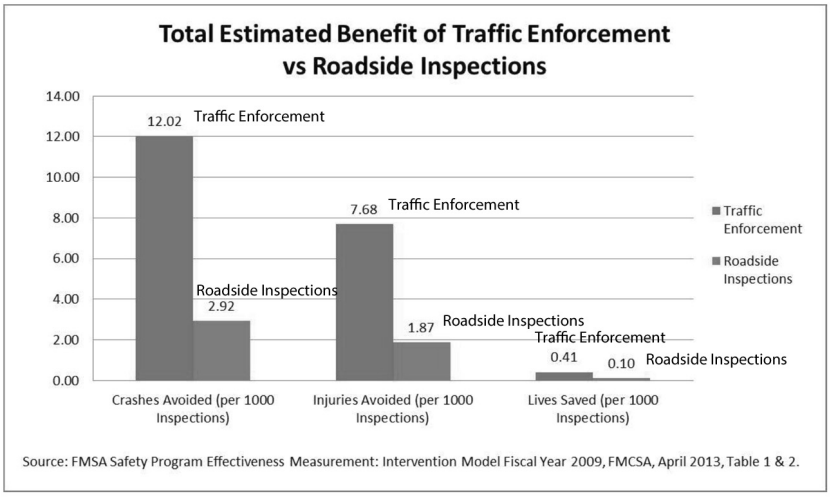
[17] Below CSA enforcement intervention selection thresholds.

*saved per 1,000 traffic enforcements compared with only .09 lives per 1,000 roadside inspections. In other words, traffic enforcements are more than four times more effective at preventing crashes and saving lives.* [18]

The following table, taken from the FMCSA effectiveness report, shows the breakdown of crashes and injuries avoided and lives saved by roadside inspections and traffic enforcements respectively.

**Table 7. Program Effectiveness: U.S. Domiciled vs. Non-U.S. Domiciled Carriers, FY 2009**

| Types of Benefits | Estimated Benefits: U.S. | Estimated Benefits: Non-U.S. | Estimated Benefits per 1,000 Interventions: U.S. | Estimated Benefits per 1,000 Interventions: Non-U.S. |
|---|---|---|---|---|
| Crashes Avoided Due to Roadside Inspections | 6,768 | 1,375 | 2.70 | 4.91 |
| Crashes Avoided Due to Traffic Enforcements | 8587 | 201 | 12.05 | 11.13 |
| ***Total Crashes Avoided*** | ***15,355*** | ***1,576*** | ***4.77*** | ***5.29*** |
| Injuries Avoided Due to Roadside Inspections | 4,324 | 878 | 1.72 | 3.14 |
| Injuries Avoided Due to Traffic Enforcements | 5486 | 128 | 7.70 | 7.11 |
| ***Total Injuries Avoided*** | ***9,810*** | ***1,006*** | ***3.05*** | ***3.38*** |
| Lives Saved Due to Roadside Inspections | 229 | 47 | 0.09 | 0.17 |
| Lives Saved Due to Traffic Enforcements | 290 | 7 | 0.41 | 0.37 |
| ***Total Lives Saved*** | ***519*** | ***54*** | ***0.16*** | ***0.18*** |




Given this compelling data, it's logical to place more emphasis on traffic enforcements than on roadside inspections. However, figures available on FMCSA's website demonstrate that traffic enforcements only comprise a small portion of field enforce-

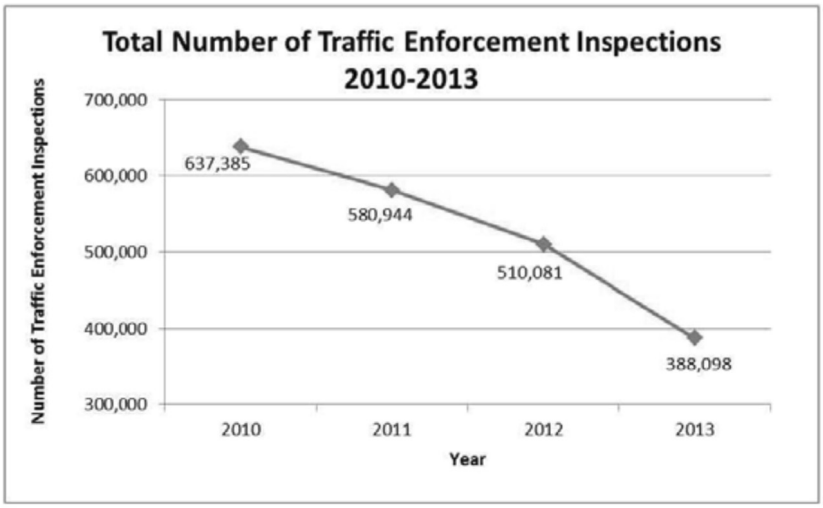
[18] *FMCSA Safety Program Effectiveness Measurement: Intervention Model Fiscal Year 2009,* FMCSA, April 2013, Page 10, *http://ai.fmcsa.dot.gov/CarrierResearchResults/PDFs/13-039-Intervention-FY-2009.pdf.*

ment interventions. For instance, in Fiscal Year 2013, traffic enforcements represented only 10 percent of all such activities. Further, this same website (screenshot shown below) reflects that the portion of field enforcement activity devoted to traffic enforcements has been declining dramatically, despite FMCSA research finding that it is more than four times more beneficial. For instance, the number of traffic enforcements in FY 2010 totaled 637,385, but dropped a whopping 39 percent to 388,004 in FY 2013. This is disturbing for a number of reasons, including the fact that traffic enforcement violation data feeds the CSA *Unsafe Driving* BASIC. As mentioned above, this BASIC has the strongest correlation to future crash risk of any CSA measurement category. Fewer traffic enforcements means less data in the *Unsafe Driving* BASIC which, in turn, hampers FMCSA's oversight efforts.

FMCSA's program effectiveness document points out that the "*evaluation provides FMCSA and State MCSAP partners with a quantitative basis for optimizing the allocation of safety resources in the field.*" This statement is true, but it appears as though FMCSA and its state partners have not actually used the evaluation for this purpose. If the agency and states had done so, we would have observed an *increase* in traffic enforcement activity, not a *decline.* This troubling decline begs the question: "How many lives would not have been lost if traffic enforcement activity had remained constant or increased over the last several years?"

**Traffic Enforcement Activity Summary**

| Activity Summary | FY 2010 | | | FY 2011 | | | FY 2012 | | | FY 2013 | | | FY 2014 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Fed | State | Total | Fed | State | Total | Fed | State | Total | Fed | State | Total | Fed | State | Total |
| Number of Traffic Enf. Inspections | 2,121 | 635,264 | 637,385 | 7,552 | 578,392 | 580,944 | 7,768 | 508,313 | 510,081 | 916 | 387,188 | 388,098 | 485 | 252,150 | 252,635 |
| With Moving Violations | 15 | 234,830 | 234,845 | 18 | 214,720 | 214,738 | 39 | 197,548 | 197,587 | 12 | 202,910 | 202,922 | 21 | 134,232 | 134,253 |
| With Drug & Alcohol Violations | 0 | 1,286 | 1,286 | 0 | 1,215 | 1,215 | 0 | 1,172 | 1,172 | 0 | 964 | 964 | 0 | 550 | 550 |
| With Railroad Crossing Violations | 0 | 400 | 400 | 2 | 383 | 385 | 0 | 359 | 359 | 2 | 327 | 329 | 0 | 195 | 195 |
| With Non-specified State Law/Miscellaneous Violations | 2,106 | 427,765 | 429,871 | 2,538 | 383,638 | 386,176 | 1,741 | 326,217 | 327,958 | 902 | 194,228 | 195,130 | 466 | 123,932 | 124,398 |
| Number of Traffic Enf. Violations | 2,228 | 779,647 | 781,875 | 2,667 | 696,641 | 699,308 | 1,846 | 605,447 | 607,293 | 935 | 436,476 | 437,411 | 494 | 284,389 | 284,883 |
| Moving Violations | 15 | 243,279 | 243,294 | 19 | 222,609 | 222,628 | 42 | 203,731 | 203,773 | 12 | 209,877 | 209,889 | 23 | 139,457 | 139,480 |
| Drug & Alcohol Violations | 0 | 1,553 | 1,553 | 0 | 1,458 | 1,458 | 0 | 1,393 | 1,393 | 0 | 1,205 | 1,205 | 0 | 655 | 655 |
| Railroad Crossing Violations | 0 | 401 | 401 | 2 | 384 | 386 | 0 | 360 | 360 | 2 | 330 | 332 | 0 | 196 | 196 |
| Non-specified State Law/Miscellaneous Violations | 2,213 | 534,414 | 536,627 | 2,646 | 472,190 | 474,836 | 1,804 | 399,963 | 401,767 | 921 | 225,064 | 225,985 | 471 | 144,081 | 144,552 |




It is clear from this data that FMCSA and its state partners have a substantial opportunity to improve truck safety through a more effective allocation of enforcement resources. However, seizing on this opportunity will require difficult choices and a willingness to challenge traditional approaches to enforcement. A shift from roadside inspections to more traffic enforcement will have personnel and structural impacts at the state level. For instance, since many state officials who conduct vehicle inspections don't have traffic enforcement authority, their livelihoods may be threatened. Further, since some of the lead state commercial motor vehicle enforce-

ment agencies don't have traffic enforcement responsibility, they will have to either yield resources, or entire management of the state's commercial motor vehicle enforcement program, to another state agency. However, it is clear from the data that these difficult steps that must be embraced and implemented in the interest of further reducing crashes and saving lives.

Improvements in truck safety are also encumbered by program prioritization. Though the principle causes of crashes are known, FMCSA's priorities and resources are not always well aligned with them. For example, because the leading factor in crashes is vehicle speed, in 2006 ATA and Roadsafe America petitioned the National Highway Traffic Safety Administration (NHTSA) and FMCSA to require that speed limiters be set on all commercial motor vehicles over 26,000 lbs. In late 2010, over four years later, NHTSA granted the petitions and agreed to conduct a rulemaking to require that limiters on new vehicles be set. FMCSA later announced it would conduct a companion rulemaking, presumably to require that limiters be set on existing vehicles and to prohibit device tampering. However, neither agency has issued a proposed rule to address this leading cause of crashes, and eight years have passed since ATA and Roadsafe America petitioned them to do so.

In contrast, over the past four years FMCSA has spent more time, energy and resources on the hours of service (HOS) rulemaking than any other. Yet, by the agency's own admission, changes to the HOS rules recently imposed will prevent less than 1 percent of truck involved fatalities.[19] Given this relatively modest benefit, the agency justified the rulemaking by making the speculative claim that the new rules will improve driver health and longevity.

**Necessary Steps for Continued Improvement**

In evaluating ways to further improve truck safety, FMCSA should consider the primary causes of truck crashes and appropriate countermeasures, including those advocated by the trucking industry. For instance, since the vast majority of crashes are caused by driver error and since moving violations are strong predictors of future crashes, ATA has long called for a national system to promptly notify employers of drivers' convictions for moving violations. Such employer notification systems (ENS) are available in some states, like California, but not in all. Accordingly, ATA has urged implementation of a *national* system. In MAP–21, Congress mandated that FMCSA develop a plan for a national system.

Similarly, since the late 1990s ATA has urged FMCSA to establish and deploy a national clearinghouse of drivers' positive drug and alcohol tests and refusals. Such a database would close an existing loophole that allows drivers who violate the drug and alcohol regulations to evade the consequences of their actions by merely obtaining employment elsewhere. As a result of a MAP–21 requirement, FMCSA recently proposed to establish a national clearinghouse, a decade after the agency's report to Congress said that a database of this sort was feasible and would be beneficial.[20]

ATA has proposed a number of other beneficial safety initiatives as well. For instance, ATA supports the use of more effective hair tests to meet FMCSA drug testing requirements, broader third party access to FMCSA's Pre-Employment Screening Program (PSP), and the aforementioned speed limiter mandates. Each of these initiatives is supported by data demonstrating crash reduction efficacy.

**ATA's Views on Current Regulatory Issues**

Given the context of this hearing, it is appropriate to offer ATA's views on other truck safety issues. In particular, I will focus on the following:

- Hours of Service
- Compliance, Safety, Accountability
- Electronic Logging Devices

*1. Hours of Service*

As discussed above, ATA has been critical of FMCSA's continued focus on changes to the hours of service regulations. Operating under the previous hours of service regulations, the number and rate of truck involved crashes, injuries and fatalities all declined dramatically. Accordingly, ATA advocated for retention of those rules rather than the changes FMCSA implemented in 2013.

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[19] 2010–2011 Hours of Service Rule Regulatory Impact Analysis, Federal Motor Carrier Safety Administration, Washington, D.C., December, 2011, page 6–7 (102), *http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/2011_HOS_Final_Rule_RIA.pdf.*

[20] *A Report to Congress On the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results To the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder,* Federal Motor Carrier Safety Administration, March 2004, Pg. 2.

It is important to point out that ATA supports five of the six main components of the rules, including the 11-hour limit on driving time per shift, the maximum 14-hour driving window, the minimum off-duty period of at least 10 consecutive hours, the cumulative (or weekly) on-duty time limits, and the mandatory rest break provision. ATA's only quarrel is with the restrictions recently placed on use of the restart provision. These restrictions are unwarranted, have unintended economic impacts, and may actually increase risk. For instance, a recent FMCSA study shows that drivers operating under the new restart rules are more likely to operate during the daytime, when the risk of vehicle interaction and crashes is higher.[21] For these reasons, ATA supports legislation to suspend enforcement of the recent restart restrictions pending a study of their unintended safety and economic impacts.

ATA also supports the current Government Accountability Office review of the Congressionally-mandated FMCSA field study of the restart rules and the agency's regulatory impact analysis used to justify the new rules. This independent, third-party review is welcomed by ATA.

Lastly, ATA feels strongly about the need for additional flexibility in what are commonly called the "split sleeper berth rules." Given FMCSA's recent research on this issue, ATA is optimistic that FMCSA is willing to conduct a pilot program and perhaps consider reasonable changes to this part of the rules.

*2. Compliance, Safety, Accountability*

Since its inception, ATA has been publicly supportive of the *objectives* of CSA and has worked cooperatively with FMCSA to address concerns with the program. ATA believes in a data-driven approach to identifying unsafe operators and focusing FMCSA's limited resources on those that pose the greatest safety risk. Unfortunately, ATA has serious apprehension about CSA's ability to accurately identify the least safe motor carriers.

Many of ATA's concerns were recently highlighted by the Government Accountability Office's report *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers.*[22] The study confirmed many shortcomings of the program including: a dearth of data which results in a great majority of motor carriers not being scored; a lack of a statistical correlation between the vast majority of regulatory violations and crash risk, and the fact that small carriers are far more likely to be negatively impacted by CSA. Moreover, GAO found that CSA is an imprecise tool that cannot accurately identify an individual fleet's crash risk, and that until deficiencies are addressed, it is inappropriate to pursue a rulemaking to tie safety fitness determinations to CSA safety measurement system scores.

These limitations are of great concern to the trucking industry because third parties (*e.g.,* shippers, brokers, insurers, banks, etc.) use publicly available CSA scores to make important business decisions. In these cases, inaccurate scores can have serious business implications. As such, ATA supports and is advocates removing CSA scores from public view until peer reviewed research confirms a strong statistical correlation between individual fleets' scores in each BASIC and future crash risk.

Additionally, ATA believes that CSA should only include crashes that were caused by commercial motor vehicle drivers. Intuitively, if a driver did not cause and could not have prevented a crash from happening, the occurrence is not indicative of his/her employer's safety management controls. Unfortunately, CSA currently considers all crashes, regardless of fault. FMCSA responded to this concern by conducting a study of the efficacy of using police accident reports to make crash accountability determinations. Though the study and its peer reviews are complete, FMCSA has delayed its release. ATA calls on FMCSA to release the results of their analysis and to immediately begin work on identifying and removing from CSA crashes not caused by commercial drivers.

*3. Electronic Logging Devices*

ATA supports FMCSA's efforts to mandate electronic logging devices (ELDs) for all drivers required to maintain records of duty status. ELDs are the most reliable and accurate way to track compliance with the HOS regulations. ATA applauds FMCSA on the February publication of its Supplemental Notice of Proposed Rulemaking on this matter and encourages the agency to work toward swift publication of a defensible final rule.

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[21] *Field Study on the Efficacy of the New Restart Provision for Hours of Service,* Federal Motor Carrier Safety Administration, Washington, D.C. January, 2014.

[22] *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers,* Government (Washington, D.C.: Government Accountability Office, February 2014), *http://www.gao.gov/assets/670/660610.pdf.*

Overall, ATA is pleased with the agency's proposal and has provided a few suggestions for improvement. Among others, ATA warned FMCSA of the potentially chilling effect on voluntary early adoption should FMCSA proceed with its proposed two-year period for grandfathering of existing equipment. ATA suggests allowing existing, compliant, Automatic On-Board Recording Devices (AOBRD) to be used for the remainder of the service life of the vehicles in which they are installed. ATA also feels the proposed supporting documents requirements are excessive and unnecessary given the accuracy with which ELDs automatically track driving time.

Finally, ATA urges FMCSA to explore ways that the agency can actively promote voluntary ELD adoption through the use of incentives. Given the known benefits of ELD use and recognizing that a mandatory adoption is still several years away, incentives for voluntary adoption are appropriate.

**Conclusion**

Mr. Chairman, thank you for the opportunity to offer our views on how we can further improve truck and highway safety. As I mentioned at the beginning of my testimony, the trucking industry is justifiably proud of its commitment to safety and long-term safety record. However, continuation of this trend will require an acknowledgement of the principle causes of truck crashes and a commitment to implementing appropriate countermeasures to address them. Moreover, it will require the agency to prioritize its action based not on political or other interests, but on sound safety benefit data.

In addition to making choices about policy priorities, FMCSA and its state partners must confront the tough decisions and fundamental organizational changes needed to embrace a more effective enforcement program in the field. Specifically, to leverage additional safety benefits from funding of on-road enforcement programs, FMCSA and state partners will need to place additional emphasis on traffic enforcement activities. Doing so may impact state organizations, but is ultimately necessary is order to achieve the greatest safety dividends from limited enforcement resources.

Senator BLUMENTHAL. Thank you very much, Mr. Osiecki.

I want to say that we have put your full statement in the record, and it contains a great deal of very important and useful information, and I thank you for it. I am going to recommend to my colleagues that they read the full statement because there is a lot of very significant data.

I join you in the hope that there will in fact be better rules concerning speed and electronic logging devices. I think we can agree that whatever the cause or however many crashes and fatalities and injuries are caused by driver fatigue, whether it is 10 percent or 90 percent, every one of those crashes, every one of those deaths and injuries is too many.

Mr. OSIECKI. Absolutely.

Senator BLUMENTHAL. In that spirit, I hope that you will agree that these hours-of-service regulations that were adopted in 2013 or became effective on that date will continue to be in effect even as we gather data on how effective they have been.

Mr. OSIECKI. I would be happy to respond to that if you would like for me to respond.

Senator BLUMENTHAL. Please.

Mr. OSIECKI. I think it is important to point out at the outset that we support five of the six components. In fact, we actually support a third of the sixth component, and that is the restart. We can talk about those five major components of the rules that we do support if you would like. But, in terms of the legitimate goal of the government to try to reduce fatigue related crashes at night during these 1 a.m. to 5 a.m. hours that we are talking about, versus the offsetting potential crashes during the daylight hours because truck traffic is being pushed, not being forced, into day-

light hours. The result of these rules is pushing truck traffic into the daylight hours—there is an offset there.

The question is what is that offset. Are there actually more crashes during the day than the fatigue crashes that are potentially being prevented. That is our concern.

Senator BLUMENTHAL. We have just heard testimony from a number of our experts here as to the importance of that component of the hours-of-service rule in preventing crashes, testimony from Mr. Dawson about their need and effectiveness, and from Ms. Ferro.

Let me ask Ms. Ferro, in issuing these rules, my understanding from your testimony is there was a great deal of fact gathering, scientific analysis, and other research and data driven consideration that in fact led the courts to uphold these rules as being rational and factual based; is that correct?

Ms. FERRO. Mr. Chairman, that is correct. It was a very robust rulemaking with regard to over 80 scientific studies that we reviewed, at least 50 that we cited in our regulatory evaluation, sleep lab studies specific to the 1 a.m. to 5 a.m. and the benefits of two nights rest over one, and extensive public listening sessions, as well as analysis of over 20,000 comments. It was an extremely robust process, and as you say, research based, scientifically approached.

Senator BLUMENTHAL. You have heard Major Palmer emphasize the importance of consistency.

Ms. FERRO. Yes, sir.

Senator BLUMENTHAL. And enforceability of regulations. Is there a public interest in continuing these regulations even as more data and experience is gathered?

Ms. FERRO. It is very much in the public interest, for the reasons Major Palmer identified in terms of uniformity, consistency of enforcement, from the perspective of ensuring that the focus on minimizing the risk of fatigue related crashes is upheld while additional analysis is completed.

Senator BLUMENTHAL. I have said that the purpose of these regulations is to take tired truckers off the road, not take trucks off the road, and to protect truckers as well as the public in general.

Mr. Dawson, let me ask you what these regulations mean to you and your fellow drivers who really are on the front line, so to speak, in preventing accidents or crashes that are indeed avoidable.

Mr. DAWSON. Mr. Chairman, I would say in my experience, any time you have more rest or more opportunity to be at home and get your rest, especially in those critical 1 a.m. to 5 a.m. periods, it is essential to getting your proper rest and not being fatigued when you are on duty trying to do your job.

Senator BLUMENTHAL. Without these rules, is there pressure on truckers from perhaps their employers?

Mr. DAWSON. Absolutely, Mr. Chairman.

Senator BLUMENTHAL. How does that pressure get expressed?

Mr. DAWSON. It would get expressed in your dispatches where, when your 34 hours are up, they could just run you right back out on the road, on another run, put you back on duty. You would not have the hours-of-service to protect you. They could discharge you

in some instances, at some jobs, if you did not follow through with those.

I think the protection that the hours-of-service offers a driver against those things is very important.

Senator BLUMENTHAL. Ms. Claybrook, is that consistent with your experience?

Ms. CLAYBROOK. Yes, it is, Mr. Chairman. I would like to correct something that was said by the American Trucking Associations. The purpose of this rule is not to reduce nighttime crashes.

The purpose of this rule is for drivers, and it is not all drivers, the drivers who reach the maximum of 70 hours of driving, that when they take their 34-hour restart, that they have two nights where they can get rest/sleep, that is, so they can get the kind of sleep that you get which is better than when you sleep during the daytime.

So, first, it affects a small number or a modest number of drivers. Second of all, the purpose is so you get sleep at night, not to prevent crashes at night.

Another issue that has been raised by the trucking association is that all these trucks will come back on the road at 5 a.m. and 6 a.m. in the morning when kids are going to school, and yet, this is the first time I have ever heard the trucking association ever be concerned about children being killed in truck crashes. There are over 200 children killed every year in truck crashes, and 9,000-some children injured.

First of all, I think it is a false assumption or assertion, and second of all, I would love to work with the trucking industry on reducing truck crashes, and particularly children being harmed, but this is not an example where children are likely to be harmed.

Senator BLUMENTHAL. Mr. Osiecki, I am going to make sure that you have an opportunity to respond. My time has expired and I want to be sensitive to the time of my colleagues. I am grateful to all of my colleagues.

I am a co-sponsor with Senator Booker, by the way, Ms. Claybrook.

Ms. CLAYBROOK. Yes, and thank you so much.

Senator BLUMENTHAL. Grateful to Senator Nelson, Senator Fischer, Senator Ayotte, and Senator Blunt for being here today. I am going to turn to Senator Blunt, and if he is still here, go to Senator Nelson.

Senator BLUNT. Thank you, Chairman. Ms. Claybrook, I heard you say you would like to work with the trucking association for safety for children. I think I heard you say that two sentences after you said something like this is the first time you had ever heard the trucking association say they cared about whether children were hurt by trucks or not.

I would think those two things probably do not work out very well together. I am sure nobody here wants children to be hurt by trucks. I am also sure that if you put more people on the road at 5 in the morning, more people are going to be on the road when kids go to school. I just do not think there is any way you can argue against that.

I am sensitive to Mr. Dawson's point that people who are working different shifts all the time get into a rest pattern that is sig-

nificant. A lot of people work the night shift all the time, so somehow they have figured out how to sleep during the day, and have done that for a long time.

Mr. Osiecki, I heard your safety efforts. What are the best safety things that you think can be done that are not being done now or need more focus?

Mr. OSIECKI. Thank you, Ranking Member Blunt. There is not a person in this room, there is not a person in the trucking industry that wants to harm somebody when they operate. Drivers are professionals. They attempt to do their jobs moving America's freight as safely and efficiently as possible, and the folks that I represent, I know that.

Now, in terms of responding to your question, as I indicated in my oral remarks, we really need to not minimize the smaller types of problems in our industry, but we have to maximize our resources and our efforts, and maximizing our resources and our efforts really leads us to the technology solutions that I mentioned earlier, safety technologies, that address unintentional mistakes, sometimes unintentional misbehaviors, and sometimes there are misbehaviors that truck drivers and car drivers undertake willfully.

But technologies, the ability to have enforcement focus on those misbehaviors, and to the extent they can, the mistakes. But that is tougher, and we need rules that really will make a difference.

The electronic stability control rulemaking that NHTSA has been working on for several years will save, according to NHTSA, at least three times as many lives as the hours-of-service rules.

In terms of priorities, that rule should have come first. That rule should be out there. We should be living under that rule for new trucks. There are a host of other examples I can discuss, but I will leave it at that for the time being.

Senator BLUNT. Major Palmer, in your opinion, what is the most effective tool of law enforcement for preventing truck related crashes? I am going to let you answer that. It could be stopping trucks on the road. It could be safety inspections. I am just wondering what you think the most effective tool is to work on this topic.

Major PALMER. Yes, sir. That is an excellent question. What it is, it is difficult to identify from an enforcement perspective one thing that is the solution to the big problem. It is a comprehensive program, what it takes.

For example, each state, including Texas, obviously where I am from, we have a comprehensive enforcement program to try to address commercial vehicle safety issues, and highway safety issues as a whole, which includes all vehicles on the highway.

So, it is partly roadside inspections of commercial vehicles. It is inspections at fixed facilities, which sometimes are different, that are a different environment than at roadside.

It also is a comprehensive program, such as our compliance review program, to be able to look at motor carriers that have a propensity to have safety issues, and it is also an aggressive traffic enforcement program that does not necessarily just focus on commercial vehicles.

Statistically speaking, 70 percent of the commercial vehicle related crashes, the primary contributing factor tends to go back to the non-commercial vehicle.

For example, in Texas alone—I cannot speak off the cuff on most states—in Texas alone, in 2013, all of these citations and warnings were not uploaded to FMCSA because they were not done on an inspection report.

We did, in addition to all of our activities that we did as part of our commercial vehicle enforcement program, issued a little over—in 2013, a little over 900,000 traffic enforcement citations, and a little over two million warnings. Those are the ones that did not get uploaded to FMCSA as a part of inspection.

So, to answer your question, sir, it really is a comprehensive program of a lot of different areas that we try to look at, because one area alone is not going to get us where we need to be.

One of our primary focuses in Texas and along with all the other states is to ultimately reduce these fatalities and these serious injury crashes. It does not matter whether it is one life or 100, we do not want to lose one. Every life that we can save is a victory from our perspective.

Senator BLUNT. That 70 percent number, is that a national number or a Texas number?

Major PALMER. We have looked at it from a Texas perspective, and it works for Texas, but I have also seen some things that it has been used on a broader perspective as well.

Senator BLUNT. Just one last question, Ms. Ferro. I think I have in my notes somewhere I noticed, I do not see it in front of me right now, but there is no differentiation in the statistics of truck related accidents, whether the trucker was at fault or not. When you used that big number, that is just the number of total accidents involving a commercial truck; is that correct?

Ms. FERRO. Senator Blunt, that is correct. It is an aggregate crash number.

Senator BLUNT. Do you have anything that verifies the Major's sense that this is more than the 70 percent number?

Ms. FERRO. We have. The dataset was done through the large truck crash causation analysis about eight to ten years ago, so it is not as current as we would like it to be. I believe, and I will follow up for the record, it was 35 percent attributable to the professional driver in fatalities, and closer to 45 to 50 percent in all crashes.

[FMCSA reply:]

According to the Large Truck Crash Causation Study, the critical reason was assigned to the large truck in 55 percent of the crashes (Note: this includes single vehicle crashes). In large truck crashes involving one truck and one car, the critical reason was assigned to the large truck in 44 percent of the crashes. In crashes involving fatalities, the critical reason was assigned to the large truck in 28 percent of those crashes.

Ms. FERRO. So, 35 to 40 on fatalities and higher attributable or about 50/50 in injury and tow away crashes.

Senator BLUNT. Quite a bit of difference.

Ms. CLAYBROOK. Senator Blunt, can I comment on that? Would you mind?

Senator BLUNT. I am out of time.

Senator BLUMENTHAL. We will come back to you. Thank you.

Senator BLUNT. Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you very much, Senator Blunt. Senator Booker?

**STATEMENT OF HON. CORY BOOKER,**
**U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Thank you very much. I first want to thank the Chairman and the Ranking Member, two gentlemen that are really pragmatic, constructive, and with clarity, have thought about these issues. I appreciate both of your leaderships and how you are addressing what is the end, which is to keep our highways safe.

If I can very quickly just turn again to hours-of-service. First of all, Mr. Osiecki, I really appreciate your testimony because you had a lot of very constructive data based ideas about how to keep our highways safe.

When I was mayor, I used to have a saying, "In God we trust, I am a man of faith, but everybody else bring me data."

What I do not want to fall in the trap of is when it comes to safety initiatives, having tyranny of or, I would rather have the liberation of the and, do them all. That is why I want to get back to the hours-of-service just real quick because I think there is a substantive question that was put on the table.

I know these efforts were brought about through—when I look through all the data and the studies, there is so much sound evidence that you all went through, and the 20,000 comments, to all that, but a point of assertion has been put on the table that if we persist with these rules, it is going to force more people into the daytime traffic, thus, making it more congested, and thus, creating more crashes.

All I am asking is very objectively, is there any data yet to make that statement or that assertion or that possibility true? I would love the Honorable Ferro and Honorable Claybrook quickly to give answers because I want to jump on to the next issue.

Ms. FERRO. Sir, there has been no data presented to us that demonstrates that fact, nor does anything in the rule limit the ability of the industry to set its schedules as it deems necessary to satisfy the freight demands of its customers.

Senator BOOKER. OK.

Ms. CLAYBROOK. The Collins' amendment does have a study included, but it also eliminated these provisions, so it was sort of a contradiction, that is you cannot do a study if you do not have provisions in effect.

Our position supports what you would do, leave the provisions in effect but conduct a study, and I think that is fine.

Senator BOOKER. So, removing the restrictions and doing a study. What are you actually studying to see if there is any substance and fact to——

Ms. CLAYBROOK. That is right. The other thing to point out is in addition to there not being a requirement as to when the truckers have to come back on the highway it only affects maybe 15 percent of the truck drivers, those who have maxed out on the 70 hours.

Senator BOOKER. That is where I want to jump in, because it is a small portion, it is those that have maxed out. There has been a tremendous decline—this is where Mr. Dawson, I think, can get

my last answer in—there has been a tremendous decline in income for drivers.

A few decades ago, unionized truck drivers made about $44.83 an hour. This is a solid middle class job, well compensated drivers, and I know from truck drivers in the port area they are grueling hours they are putting in. We are talking about 70/80 plus hours with a little bit, as you said, a truncated weekend.

Today truck drivers are lucky though to make half of that. One study by Rutgers found independent contractors in New Jersey reported earning less than $10 an hour.

So, truck accidents are on the rise while wages are on the decline, and we are now paying the folks responsible for moving our goods and services very low salaries. These men and women have now pushed themselves in order to make enough money to provide for their families. They have pushed themselves through hour limits in order to try to make ends meet.

Under conditions like this, it is no wonder that a recent FMCSA study that was cited found an astounding 65 percent of truck drivers reported that they sometimes feel drowsy.

So, if we want our roads to be safer, I believe we need to start compensating these folks in a way that they can make means meet without pushing themselves to the limits of human exhaustion; just so they can meet the minimum basic needs to keep their family above the poverty line.

So, Mr. Dawson, do you agree with my assessment, given your years of experience as a driver, and can you provide me any insight about the issue of drivers' wages in this context of safety and if so, in your opinion, what steps can Congress and key stakeholders in the trucking industry take to address this compensation issue?

Mr. DAWSON. I think one of the key components in the income as far as the detention time, I can tell you when I was working for a private carrier, we had a program where you picked up your freight, and you picked it up for $1 a 1,000, so if you were there and you picked up 46,000 pounds, that is what you made if it was 1 hour or 15 hours that you were there picking it up.

I can also add to that, Senator, that when I went to work from a private carrier to an unionized carrier, I got a $26,000 raise that day. So, there is quite a difference in the Union and the non-Union sector.

I think the detention time and the wages are a key component in getting qualified candidates and good experienced drivers that are going to stick with it and not drift in and out of the industry.

Senator BOOKER. So, higher pay might make the people pushing fatigue less? Higher pay might make this idea that drivers have to push further to make enough money to support their family less?

Mr. DAWSON. Absolutely, sir. It would reduce the push factor that you are talking about to make the ends meet at home if the wages were higher, then you would not have the need to exceed the hours-of-service.

Senator BOOKER. I would continue but the chairmanship has passed, I think, to Kelly Ayotte, and I was told by my staff that I am going to yield to Senator Fischer.

[Laughter.]

Senator BOOKER. My dear friend, and give you the chairpersonship as well of the Committee. No, Senator Blumenthal is back.

[Laughter.]

Senator BOOKER. I exceeded my allotted time, so if you would like to reprimand me, you may. I know Senator Fischer is eager to go.

Senator BLUMENTHAL. I appreciate your graciousness in yielding just as I was coming in, and appreciate your patience with a quick visit I had to make with someone who came. Senator Fischer?

**STATEMENT OF HON. DEB FISCHER,**
**U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. Mr. Chairman, I hope you also heard that I declined the chairmanship. I wanted you to take note of that.

[Laughter.]

Senator BLUMENTHAL. I noticed the emerging anarchy that was——

[Laughter.]

Senator FISCHER. You stepped back in at just the right time; yes. As a member of the Nebraska legislature, I served as Chair of the Transportation and Telecommunications Committee. Every year, we would have hearings on safety issues. Those were always very emotional hearings. We would have the families of accident victims there, so I just would like to recognize those families and express my condolences to you.

I also want to thank our drivers and truckers. Everyone here is looking for ways that we can make our roads safer. That is the purpose here. I think we are all united in that purpose as we do move forward in looking to make our highways safer.

Administrator Ferro, after a recent hearing at which Secretary Foxx testified, I submitted a question for the record on the impacts of the hours-of-service rules, and unfortunately, the answer I received was less responsive than I was hoping for, so I am going to try again and see how you do on the answer, and maybe you can clear some things up for us.

What specific plans does your agency have to measure and confirm the speculative health benefits that FMCSA proposed as part of its hours-of-service cost/benefit analysis, and also what do you have to study and evaluate the safety impacts of that additional daytime driving that many of us believe is the result of those restart rules?

Ms. FERRO. Senator, thank you for giving us another chance to answer the question for you. I appreciate the opportunity.

With regard to health benefits and minimizing the health impact of the rules we put in place, health impact on drivers and their ability to operate safely, we incorporated and analyzed and assessed an extensive body of data, as well as a more recent survey and set of surveys conducted by the National Institute of Occupational Safety and Health.

So, in the body of research on which we based part of this rule, which is the restart provision, is this whole concept of excessively long work hours and their impact on a driver's chronic health conditions, and thus the ability to operate safely.

So, there is a full set of research I will be happy to provide with regard to that specific rule.

[The information referred to follows:]

In our regulatory analysis, the Agency determined that the changes to the hours of service rule would yield not only safety benefits in lives saved but also long-term benefits to driver health, mainly in the form of increased life-expectancy. The FMCSA is exploring a number of approaches to more precisely assess the impact of the rulemaking on the long-term health of commercial motor vehicle drivers and the operations of the motor carrier industry. However, because those benefits were expected to be realized over a period of decades, it is difficult to estimate their effects in the brief time since the hours-of-service rule went into effect in 2013. Recently, we have engaged in several conversations regarding these issues with industry organizations, Congressional staff, and safety advocates. FMCSA has also engaged the National Institute for Occupational Safety and Health in discussions related to conducting a longitudinal study of commercial motor vehicle operators to monitor driver health. We are also working with the Government Accountability Office to identify methods and data sources that could help us monitor the new hours of service provisions on driver health and daytime driving. Evaluating possible increases in daytime driving is also difficult because there are no clear baseline (*i.e.,* pre-2013) data against which to measure the current level of daytime driving, which is not really known.

Ms. FERRO. Going forward, we have several efforts underway. The first is a very specific contract with the National Academy of Sciences to examine the broad spectrum of fatigue and health impacts of the condition of operating heavy duty vehicles, and identifying the best data sources, new data sources, new mechanisms for data collection, as well as existing resources that we might not have known to tap into.

There is a third component, and I apologize for taking so long, which is that we have reached out to all the stakeholders to say we all have core questions we want to know about this rule. There is a very robust study proposed in Senator Collins' amendment that Ms. Claybrook indicated is best exercised with the current rule in place in order to capture the full data.

We also see that there are many sources of data that industry has and we are encouraged that industry may be interested in sharing, which is really aggregated on board fleet management device data that gives us a better sense of what hour of driving an incident might occur, and compare apples to apples, not apples to oranges.

Senator FISCHER. Which I believe Mr. Osiecki is recommending as well, to have some of that electronic data to be provided on board. You had mentioned earlier, sir, a number of programs that you are implementing in trying to improve safety, which as I said, we are all trying to do here.

If you could elaborate on those and also you looked like you wanted to respond to Senator Booker when he was asking a question of some other witnesses with regard to the daytime hours, so I will give you an opportunity to respond to that as well.

Mr. OSIECKI. Thanks. Thank you, Senator. If I may, I will answer the second one first and then get back to the first one. In terms of Senator Booker's question about truck traffic being shifted to the daytime hours, FMCSA's study, commonly known as the "restart study," issued in January 2014, January of this year, I would point the Committee to Figures 5 and 6.

Figures 5 and 6, and it is very difficult to see, but they demonstrate that the two or more night sleepers under the new restart compared to the one night sleepers, it demonstrates, those two charts, that the truck traffic is more distributed through the daytime hours between 8:00 a.m. and approximately 8 p.m. at night, so it is in FMCSA's own study. We have also provided some data, some information to the Administration taking a look at that.

Now, with respect to your first question, there are a lot of ways to answer that because there are a lot of things going on in the industry, I will address it from the technology standpoint.

There are lane departure warning systems. There are collision mitigation systems. There are active braking systems. More recently and very recently, these onboard camera systems that are not designed to view the truck driver in a negative way, but designed to capture the environment of what is going on in near crashes and crash events to determine what happened, whether that is an opportunity to coach the professional driver or in a lot of cases, to get the professional driver off the hook given what has happened.

Those are improving safety. There is demonstrated evidence that those systems work in addition to all these other sort of vehicle based technologies that alert the driver and so forth.

Senator FISCHER. Thank you very much. Thank you, Mr. Chair.

Senator BLUMENTHAL. Thank you, Senator Fischer. Senator Ayotte?

**STATEMENT OF HON. KELLY AYOTTE,**
**U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. I want to thank the Chairman. I wanted to ask you, Mr. Osiecki, in terms of—I really appreciate the hard work that our truck drivers do. I think it is important to point out—I have met a lot of them in my state, and a lot of them own their own business and are small businesses, independent operators as well that are working pretty hard.

They are competing against rail and other things, so it is an important job and it is highly competitive. Frankly, one of the concerns they have raised with me is that it is becoming more and more costly to own your own business and to be a smaller operator in this context, with not only some of the things that are being issued that we are talking about today, but also some of the new technology that is being required.

Would you not agree it is harder for the smaller operators in this context?

Mr. OSIECKI. I think there is when there are mandated technologies, I think that is the case. Much of what I was speaking about was voluntarily adopted technologies, and incentives to drive that voluntary adoption.

Folks who have worked around this and FMCSA for years know it takes many, many years, in fact, it takes decades, when you implement a new mandated technology, on new equipment, it literally takes two to three, sometimes four decades for the entire fleet to turn over. So, incentives to drive voluntary adoption is one way to do that.

Now I will sort of put an asterisk on, we do support the mandated electronic logging devices, and there may be some difference in the industry on that point, but the cost is coming down on those.

Senator AYOTTE. Thank you. I wanted to ask Administrator Ferro, I know you are leaving soon, so thank you for all your work at the agency, appreciate it. When you last appeared before this committee on the hours-of-service rule, you had testified that based on a FMCSA study, essentially there was evidence that more trucks, larger trucks, would be on the road during the daytime hours, because of the new hours-of-service rules.

Do you dispute that?

Ms. FERRO. I spoke to the logic that we used to analyze what that might be, looking at the 15 percent impact, and identifying that by virtue of the logical analysis, about 250,000——

Senator AYOTTE. So, by logic, we are going to have more large trucks on the road during the daytime?

Ms. FERRO. Well, in fact, the follow-up point on that is that 250,000 is barely a drop in the bucket when you look at the 10 million——

Senator AYOTTE. Have we fully analyzed—as I understand it, we have not fully analyzed, and that is one of the purposes of the Collins' study, to have a full analysis of what will be the impact during daytime hours in terms of truck traffic, and as you and I have talked about in the past, we already do have evidence that more accidents occur during the daytime hours because of the congestion that is natural during the daytime hours in and of itself.

So, I think one of the things that I know the chairman and others have said, the study of this has been robust, it has been scientific, but it strikes me that we have not answered a fundamental question that is important in terms of people's safety, which is if we change the restart rules in the way they have been proposed, how many more trucks will be on the road during those daytime hours, what will be the safety impact of having those trucks, more of them on the road during the daytime hours.

To delay the rule while we understand that question to me seems logical, because if we know that there is more congestion during the daytime and more likely evidence there are more accidents during that period, would we not want to know before we go forward with this exactly what the public safety impact is about the added truck traffic during that period?

It seems to me we have all been talking about science and data, but it is important for us to have that science and data before we implement a very significant rule that could in fact, we do not know, have the unintended consequence of actually creating more public safety issues.

I think that is really where the Collins' amendment is coming from, and I fully support it. I think it makes logical sense. The feedback that I have heard from this rule which we have talked about before, I know the Collins' amendment will also analyze the economic impacts of this rule, but I know we have heard a lot of discussion today about why not just go forward with the rule.

Well, this is a fundamental question that we should have answered, it seems to me, for the American people, before we go forward with a pretty significant rule change.

Ms. FERRO. If I might comment, just for purposes of clarification, the final rule was issued in December of 2011 and went into effect a year ago. So, the full rule is underway.

Senator AYOTTE. Right. I do not know why we went forward with a rule without having those questions answered, and it seems to me the Collins' amendment, from having received the feedback of the concerns that people have that are legitimate concerns, strikes the right balance. It suspends the rule until we know the answer to that very important question of how much more daytime traffic, what will be the impact in terms of potential accidents during the daytime.

To me, the fact that we issued this rule before we actually had the clear answers to those very important questions is something that should not have happened.

So, I think what the Collins' amendment does is really restart where we should be until we have those answers, and then if the answers are there is not a public safety impact, then you certainly are in a position where the rule can be reissued.

Ms. FERRO. Thank you for clarifying. There is a public safety impact of rolling back this rule. The rule today that is in place today, based on the scientific evidence, based on analysis, based on an enormous amount of public input, is projected, is currently expected to be saving lives, reducing crashes, and that is based on the health benefits, the analysis through the sleep lab studies, and the field study that Dave Osiecki mentioned actually was referencing traffic patterns prior to July of 2013, as Congress had mandated we analyze.

Senator AYOTTE. When you were last—I know my time is up—when you were last before this committee and I asked you about the field study in particular and the number of drivers that were analyzed, as I understand it, my recollection is it was 21 or so over—you can tell me—106 drivers over 21 hours.

Ms. FERRO. 106.

Senator AYOTTE. We think about the number of drivers on the road across this country, 106 drivers over a 21 day period; correct?

Ms. FERRO. That is correct.

Senator AYOTTE. I am doing this off the top of my head. I remember it. That is not that many when you think about how many drivers are on the road. Most importantly, what I wanted to point out was when you were last before this hearing, you had agreed and you had said to me when we had this discussion about the study, that your agency was constrained from doing the kind of broader, naturalistic analysis that they are going to be doing going forward.

Ms. FERRO. That is right.

Senator AYOTTE. So, if you were constrained in doing that kind of analysis, I think one thing we are in agreement on around this room is that the Collins' study as proposed is quite comprehensive. This would allow us to have this information to understand the full impact of particularly the daytime traffic as a result of this rule, and to really suspend what I think is—I know from my constituents—I have said before, not only have I heard from truck drivers but I have heard from wholesalers of groceries that this is going to cost them millions and millions of dollars, and their concern that

it will actually add to the impact of potential safety concerns during the day.

We need to understand these answers. So, I wanted to just express that I appreciate Senator Collins' leadership on this. I think her amendment makes a lot of sense. It is unfortunate that we did not have this information before the rule was actually issued and implemented.

Senator BLUMENTHAL. Thank you, Senator Ayotte. Just to clarify before I call on Senator Scott, the rule that we are discussing here has been in effect for one year; correct?

Ms. FERRO. That is correct.

Senator BLUMENTHAL. There are studies underway about its effectiveness; correct?

Ms. FERRO. That is correct.

Senator BLUMENTHAL. The Collins' amendment insofar as it requires additional study would produce perhaps additional data, but it goes beyond the study to actually roll back the rule.

Ms. FERRO. Let me clarify. There are efforts underway, including meetings with stakeholders, to identify the data sources to answer the questions, many of which again Senator Ayotte very clearly outlined, moving forward.

We have a fatigue research and analysis body of work being done through the National Academy of Sciences. Our full intent is to be able to take advantage of aggregated data from onboard fleet management devices with the help of industry and other sources to analyze the day to day impacts.

Senator BLUMENTHAL. My understanding is you will be receiving data from the states as well that can be used in this work.

Ms. FERRO. We routinely, through our motor carrier assistance grants system and crash reporting, violation reporting, roadside inspection work, collect data and use that to analyze the effects of our work; that is correct.

Senator BLUMENTHAL. So, it sounds like there is a very robust, intensive, active, energetic effort underway to assess the effectiveness of the rules while they are in effect now.

Ms. FERRO. That is absolutely correct, Mr. Chairman.

Senator BLUMENTHAL. Mr. Scott—Senator Scott? Sorry.

## STATEMENT OF HON. TIM SCOTT, U.S. SENATOR FROM SOUTH CAROLINA

Senator SCOTT. Thank you, Mr. Chairman. Thank you, panelists, for being a part of such an important hearing as we discuss safety and the trucking industry.

Frankly, I will tell you that as I was watching you all on TV, this was a long robust conversation on a number of topics, hours-of-service being one priority, and certainly safety being another.

Over the last couple of years I have had the opportunity to meet with the ATA president, Phil Byrd, who is from my home town of North Charleston, and talk with him a lot about the safety issues and the progress being made.

I believe we find ourselves in the position where we have seen significant progress made over the last several years and certainly look forward to seeing more progress made as we know it is impor-

tant. We are talking about saving lives, and that is really job number one.

I do have a couple of questions, Administrator Ferro, for you. I spent too much time in the insurance industry, to tell you the truth, nearly 25 years. I am only 30 years old, so since I was 5 years old.

[Laughter.]

Senator SCOTT. It was not that funny. Anyway, for the last couple of decades, I have spent my professional life owning an insurance agency, and was interested in the correlation perhaps between higher limits and fewer accidents, and if in fact the rulemaking that we see coming forward speaks to any real evidence of that correlation.

I will read the question to you to start the conversation between the two of us. I understand that currently more than 99 percent of commercial vehicle accidents are easily covered under the current insurance requirements, yet you have initiated a new rulemaking to raise these requirements, these limits.

Will your rulemaking include any kind of assessment of the financial impact the increased requirements would have on small businesses? First question.

How do you feel raising truck insurance limits would help fulfill the mission of the agency, which of course is to reduce crashes, injuries and fatalities involving larger trucks and buses?

My question really comes from having limited exposure, albeit most of mine was on the private sector side, on the everyday family cars and only about 10 to 12 percent of my time was spent on commercial insurance, commercial vehicles, so not a lot of exposure there.

I was unaware of any specific studies that created a correlation on increasing the limits of liability and reducing fatalities, the crashes or the incidents, frankly.

I know as a small business owner who had employees that when the rulemaking and/or legislative/regulatory environment increases the thresholds of my coverage, it takes more money out of our pockets to do more things for safety and for employee retention.

So, my question is: was there any analysis on the impact the rulemaking would have on small businesses, and/or on businesses overall?

Ms. FERRO. Well, Senator Scott, the first step in the rulemaking process actually will be just what you are describing, the analysis component.

With regard to financial responsibility limits or I should say minimums for the commercial vehicle industry, truck and bus, those limits—the minimums were set by Congress 30 years ago and prevail today. The minimum is still $750,000 for a trucking company. It goes up depending on if you are carrying passengers as a passenger carrier or carrying hazardous materials as a trucking company, but again, the minimum is $750,000 for your basic trucking provider.

When Congress introduced those minimums, it was done in the context of deregulation and with an expressed appreciation for the impact that risk-based insurance might have on safety behaviors from their customers. In other words, if you minimize risk, you are

likely to be a good cover, and you are going to have more reasonable rates, and I think it is probably practiced the same on the private side.

So, in those 30 years, there has been no change in those minimum levels. At the same time, the premium rates have actually not changed either. They have actually softened a bit. Consumer Price Index, Medical Price Index, all of those components have gone up significantly.

So, through MAP–21, Congress directed the agency to analyze, to look at, and report back to Congress on those minimum levels of insurance, if they were adequate, and provide recommendations, and then look every 4 years at those minimums, starting with the report you just referenced.

In our analysis, we recognize that for all the factors I just identified, it is appropriate for the agency at this time to press forward on an anticipated or—it is called an "ANPRM," it is a something proposed rulemaking, and I am forgetting the term—sorry—advanced notice of proposed rulemaking.

So that we can ask the audience of insurance providers, the litigation world, medical, stakeholders from industry, and the victim side, all to weigh in on and provide us data and information to determine what those next steps should be before moving on to a notice of proposed rulemaking. So, the first step will be an ANPRM within the next 30 to 60 days.

Senator SCOTT. Thank you, ma'am. Mr. Osiecki, let me turn to you, basically with the same question, different stream of consciousness, as we think through—as we analyze the information on risk versus reward, so we are talking about carrots and sticks.

You create a stick that says if you raise the thresholds the companies will become more prudent and more responsible, their drivers, but my assumption is that is already happening.

I would love to hear your perspective on the impact of higher limits on (a) the business system itself, and (b) whether or not that would be an impediment to more incidents.

Mr. OSIECKI. Thank you, Senator. I guess I would like to start off by reiterating the Volpe study, the Volpe Transportation Systems Center study that FMCSA sponsored and recently put out, did indeed highlight that 99.9 percent of the crashes and costs of those crashes for which trucks were responsible for, the 30 percent that the Major highlighted earlier, are covered under the existing limits.

So, 99.9 percent. There is only one-tenth of one percent that are not covered. So, the question really becomes what is our mission in raising the limits. Is there a link to safety? I will tell you that there is almost a dearth or void of research that links insurance limits, minimum insurance limits, to safety outcomes.

Now, getting to the part of your question about business impacts and the market, the market will clearly be impacted dramatically if the limits are upped dramatically. If it goes from $750,000 to $1 million, maybe not so much. Some are talking about $750,000 minimum to perhaps $4 million or even higher.

That will dramatically change the cost of insurance. It will dramatically change the number of players in the truck insurance marketplace, of which there are only a handful to begin with.

So, it really becomes a very difficult question for the industry to deal with, particularly if there is no link to improved safety outcomes. There is a lot more to be said on that, but I guess we are heartened by the fact that the first step will be an advanced notice of proposed rulemaking as opposed to a proposed rule.

Senator SCOTT. A final question, Mr. Osiecki, on the issue of traffic enforcement activities versus roadside inspections, and what will move us in the right direction. I would like to hear your comments on what are the types of programs or initiatives that you feel would be most effective at saving lives on our Nation's highways.

At the end of the day, as we have said, the lifeblood of our economy really is in those vehicles. As we see the lifeblood of our economy moving through those vehicles and at the same time we are looking for ways to reduce casualties and catastrophic occurrences in an attempt to save more lives, help me see a path forward, and if you are aware of any other programs or initiatives that might be helpful.

Mr. OSIECKI. It is really about getting the biggest bang for your safety buck, and the safety buck is Federal dollars, state dollars, and industry dollars. In terms of the traffic enforcement activity versus roadside inspection activity, the MCSAP program, the motor carrier safety assistance program, is about a $200 million per year Federal/state grant program, and the vast majority of that money goes toward roadside vehicle inspections, focused on vehicle related defects and components, as I mentioned earlier.

Now, there is a driver component to that. That driver component, typically paperwork, license, and so forth, so there is a driver piece. Let me be clear.

But in terms of the actual benefit, traffic enforcement, according to FMCSA's own analysis, is at least four times more effective. Traffic enforcement is stopping a commercial driver for speeding, or an unsafe lane change, those types of unsafe behaviors.

If that is four and a half times more effective than roadside vehicle inspections, why are we spending 90 percent of our MCSAP dollars on roadside inspections. It really should be a different balance. I am not here to tell you what the balance should be, but we do feel strongly that the balance should be more effective—more balanced toward the more effective countermeasure, that is traffic enforcement.

Senator SCOTT. Thank you. Mr. Chairman, appreciate the time.

Senator BLUMENTHAL. Thanks, Senator Scott. I have a few follow-up questions. First of all, I was surprised to see in your testimony, Ms. Ferro, that there is no test now for sleep apnea; is that correct?

Ms. FERRO. Yes, sir. There is no requirement that a driver be tested for sleep apnea to hold a CDL; that is correct.

Senator BLUMENTHAL. Should there not be one?

Ms. FERRO. The process of assessing a driver's qualifications, medical qualifications, for holding a CDL, is something that we call the "DOT physical." That happens at a minimum every 2 years, sometimes more frequently, depending on the driver's health condition.

Over the years, the agency, working with our medical review board and expert panel, medical panels, that they have appointed or I should say asked for feedback from, we have consistently identified key elements within the guidance to be looking at when they are carrying out—a medical examiner is carrying out the DOT physical.

That includes respiratory conditions, and that brings me back to obstructive sleep apnea, which is considered among the respiratory conditions that a medical examiner is expected to assess.

If in that medical examiner's line of practice, their protocols help them identify that a driver warrants further screening, then those medical examiners will likely refer that driver for further screening.

It is not a requirement today. The requirement is that the medical examiner ensure that driver meets the qualifications to be safe and alert behind the wheel.

Senator BLUMENTHAL. Well, you have given me a very full answer, but I am asking you——

Ms. FERRO. Should it be.

Senator BLUMENTHAL.—as to whether it should be required? Frankly, I would think it is kind of basic. I am saying it as a layman, not as an expert. I would be interested in other expert views.

Ms. FERRO. Right.

Senator BLUMENTHAL. Given the history of some crashes, and those——

Ms. FERRO. Fatigue.

Senator BLUMENTHAL. Those include railroad crashes, I would think it should be part of whatever medical certificate is required.

Ms. FERRO. Our medical review board and safety advisory committee would recommend the same. Consequently, we will be, adhering to congressional mandate, taking the next steps to develop a rulemaking on obstructive sleep apnea starting with a notice that asks a series of questions to gather additional data and assess whether a rulemaking is the right next step, but it can only be done through a rulemaking.

Senator BLUMENTHAL. Do any of our witnesses disagree with the proposition that sleep apnea ought to be tested before someone is permitted to drive commercially?

[No response.]

Senator BLUMENTHAL. The record will show there is no objection or no disagreement.

Let me ask you, because I think you have made some very good points, Mr. Osiecki, about speed limits and electronic logging devices. We do not have a representative of the National Highway Traffic Safety Administration here, but your organization has petitioned for a rulemaking in that area.

Mr. OSIECKI. Yes.

Senator BLUMENTHAL. Has there been a response? Again, I would agree with you that there ought to be.

Mr. OSIECKI. Yes, Mr. Chairman. In 2010, NHTSA responded to our petition as well as to the petition of another safety advocacy group. There were two of us in 2006 that petitioned. They said they would go forward with a rulemaking. That rulemaking was origi-

nally anticipated to occur in 2012, and unfortunately, it has not yet been proposed.

Now to be fair, it is our understanding that it is being worked on and it is being worked on in conjunction with FMCSA, I believe, and perhaps the administrator could comment.

So, it is moving. I think in our view it is moving at a snail's pace. Speed is the biggest factor, causation or contributing factor to car and truck crashes. If we want to make a difference, it is kind of like the old gentleman who said why do you rob banks? That is where the money is. The way to address safety and reduce crashes, you go to where the big numbers are.

Senator BLUMENTHAL. Well, I appreciate your point. I might add that one of my grievances about Federal agency and Federal rulemaking is that it has been too laggard, too lengthy in time, and that pertains to a variety of Federal agencies and Federal rulemakings. I appreciate your raising that point.

I might ask you also since we are on the subject of rulemaking, perhaps you can tell us a little bit more about electronic logging devices.

Mr. OSIECKI. Certainly. The electronic logging devices is, as it sounds, a technology that allows truck drivers to electronically capture their hours-of-service. They are very accurate for driving time limits. There is still a driver input or manual input into the device for when they are working but not driving.

Overall, they are effective at what they do. Initially, they were costly. They were in the $1,000 to $1,500 range. They are coming down in price, which is good.

As I testified, we would prefer to see a final regulation yesterday with an implementation date. It is going to take some time. It will still be at least three to 4 years before that mandate kicks in, and we would like to see incentives to drive the voluntary adoption, because the voluntary adoption will slow down the closer we get because of the potential changes in performance specifications.

Senator BLUMENTHAL. And that is a method of making sure that the rules, whatever the rules are, are enforced effectively and consistently.

Mr. OSIECKI. Yes, sir.

Senator BLUMENTHAL. Let me ask you, Major Palmer, I think you spoke very well to this point, but I just want to make sure I understand it. You made the point about variation in rules and consistency and reliability in effect in rulemaking being very important to enforcement. As a law enforcer myself before I came here for quite a few years, that point hit home to me.

So, it seemed to me that point would argue strongly in favor of not rolling back or retracting rules already in effect while their effectiveness is under study in case they might have to be re-imposed again, but leaving them in effect so that they can continue to be enforced, so that folks on the highways could continue to rely on them, even as their effectiveness is studied.

Am I interpreting correctly your view?

Major PALMER. Yes, sir, Mr. Chairman, that is what we want. What we would prefer is not to have to deal with retraining and readjusting for something that could be temporary.

You know, it is not our position to get involved in the choice of what the rule is. As you know, it is our job to enforce what is in place, and all we are asking from an enforcement perspective is to maintain the rule that has been in effect for a year until those studies are completed, and that way, whatever changes are going to be made can be made at one time.

Senator BLUMENTHAL. Thank you. That completes my questions. Senator Blunt?

Senator BLUNT. Thank you, Chairman. On the other side of that one year, of course, if we find out a year from now that it does put a lot more people on the highway at a time when the highway is already clogged up, that is another year of that.

We will see how this all works out. Clearly, this is going to be dealt with by the House and the Senate, and Senate appropriations bill. We will see if it stays there.

Mr. Osiecki, my understanding is like with just a normal car or truck with a sync system—I was talking to an insurance person about this the other day—you can connect that sync system to their monitoring system for the people they have insured, and based on your driving behavior, they will give you a better rate.

So, I am assuming that if a sync system from a normal car, somebody at a distant location can tell if I am starting or stopping too fast, or if I am driving too fast, I guess that same information, kind of information is available if you have the electronic logging system.

Mr. OSIECKI. It is, Senator, and many fleets have that today. The safety manager, safety director, sitting at their computer, at their desk, get real time alerts with hard braking events, perhaps steering out of context events, those types of things. They can directly intervene with the driver through a message or if not, intervene with a message to stop, intervene with a message to pull over and contact us.

So, that is there and there is a benefit from these vehicle-based technologies, and it is being used again in the industry fairly widespread. I would like to see it more widely used. They are costly, however.

Senator BLUNT. That was my other question. You mentioned cost. This is from the independent owner/operator out there in his own truck looking for work, that has always been their concern, that they could not quite afford to compete at that level of equipment, but I assume that has gotten quite a bit less expensive.

Mr. OSIECKI. Yes, it is kind of like the cell phone scenario where the cell phone cost goes down and the real cost is in the over the air or the monthly charge. That scenario has played out in trucking as well.

Technology device costs have come down. The cost is over the air. Those are still real.

Senator BLUNT. Those are still real costs to the independent operator.

Mr. OSIECKI. Yes they are, sir.

Senator BLUNT. That would explain some of their reluctance, or hey look, I am a safe driver, look at my record, why should I have to have a logging system. I am of the view that you are, that if there is a way to monitor this—liability is something that nobody

should want to just run to embrace. You want to do everything you can not to have that liability.

Ms. Ferro, I think since 2003, highway fatalities involving trucks decreased?

Ms. FERRO. Up through 2009, 2009 was the lowest year on record, and they have crept up since that time.

Senator BLUNT. They have gone up a little bit since that time?

Ms. FERRO. Yes, sir.

Senator BLUNT. Do you have a reason for that? Do you know why that would be the case, if they would have decreased for six or 7 years and then they crept back up a little bit?

Ms. FERRO. We attribute part of it to the intensifying traffic on our roadways. Let me preface that by saying that is part and parcel why we are working today to get better data that incorporates fleet management device data with crash data and incident data, so we can better analyze when crashes are happening, why they are happening, and the net effect of the range of measures that have been taken.

But at the end of the day, economic growth and the intensity of pressure on the industry to deliver and the growing traffic volumes all, we feel, have contributed to those increasing crash rates.

Senator BLUNT. So, does traffic volume become a factor in trying to figure out your regulations for drivers, delivery and other things, if traffic volume is one of the concerns here?

Ms. FERRO. How the vehicles are being operated in the traffic is at the source of our concern. How the driver is behaving, how the company is managing the equipment and the driver, and the other demands in the supply chain that are putting pressures on that driver.

A real compounding factor in driver pressure and driver stress is detention time. We touched on it a little bit with regard to compensation. At the end of the day, the time that a driver is sitting is unpaid time, and it is putting pressure on that driver to complete the delivery of that load.

Until we can address this detention time issue, if it is unpaid by the shipping industry, if it is unpaid by the employer, then it is free to everybody and they do not care to tighten it up.

So, the impacts of that also absolutely, as our economy grows and detention time grows, those kinds of things do impact a driver's ability to be safe, because they are pressing legal and physical limits to get that load completed, to get on to their next destination.

Senator BLUNT. Do you have a sense of what the 2013 numbers are going to look like, in terms of fatalities?

Ms. FERRO. In terms of fatalities? We are watching them closely.

Senator BLUNT. You have those numbers. You are now going back and trying to analyze them over the last six months?

Ms. FERRO. And we are trying to get to the point where it is a robust dataset. Traditionally, the data, the crash data, both fatal, injury and tow away crash data that we gather, that is reported through the states, takes 20 to 24 months before we are satisfied that we have 100 percent of the crash data in.

I have been fairly criticized by my staff in the past for getting out of the box too early on some of the data because it does change over time.

So, we are watching. We are looking at the first six months of the hours-of-service rule transition between July and December of last year, and watching closely as to when we will be close to 100 percent of the data, crash data, from the states, which we expect will be at least another six months, just for that particular period.

I will be pleased to report back. I apologize, I will not be here. I know the agency will be very committed to reporting back as we continue to monitor that.

Senator BLUNT. Now easy for you to say, right, since you are going——

Ms. FERRO. Bittersweet, I might add.

Senator BLUNT. Exactly.

[Laughter.]

Senator BLUNT. I am sure that is right. One last line of questions. Every transportation company has to do drug and alcohol testing. That is pretty broadly based, I believe, 50 percent within the course of a year, 50 percent of their drivers have to be tested.

Ms. FERRO. That is correct, 50 percent of their drivers need to be tested for drugs and then alcohol is 10 percent, randomized.

Senator BLUNT. Randomized. Then if they have results that are positive, there is some point where that number goes down to 25 percent, if it is less than 1 percent over 2 years, I believe it is.

Ms. FERRO. Yes. I think you are speaking to the authority of the agency, if the overall rate of positive testing is significantly below that threshold that you identified, the random population size can be reduced.

So, after 2 years of surveys, we are identifying that it is lower. It has continued to come down or stayed low. I want to say it is below an 1 percent threshold for testing positive.

So, the agency is assessing all the different components of what it would mean if in fact we lowered the random population from 50 to 25 percent, but those are factors that are under review today, so it would be premature for me to comment beyond that. In fact, the discussion is underway.

Senator BLUNT. Mr. Osiecki, do you have anything you want to say about that?

Mr. OSIECKI. Senator, the trucking industry has tried really hard to get its drug testing positive rate below that 1 percent. We have tried all different types of things, moving to various types of testing. 2011 was the first year in which our industry dropped below that sort of magic threshold of one percent. 2012, we do not yet know the data although the Administrator just indicated that it may be below that threshold again.

That really brings the question if all of the other modes, FAA, Federal Railroad, Federal Transit, if they have already reduced their industry's random population from 50 percent to 25 percent, why wouldn't the trucking industry be in that same category, particularly since this was set up as an incentive based program many years ago.

So, we essentially met the incentive as I understand it, and we are not being rewarded, as I understand it.

Senator BLUNT. You met the incentive that was in the initial incentive package, that if you can keep below one percent for 2 years, then you have to do fewer samples, but you still have to report.

Mr. OSIECKI. That is correct; yes, sir.

Senator BLUNT. Well, it does seem to me that if you change the incentive after you go through the process, then you cannot expect the process to be quite as cooperative the second time.

Whether we are evaluating what the new incentive should be or we are evaluating what the facts are that the second year produces would be something I would be very interested in, and I will let you respond now or for the record on that, either one.

Ms. FERRO. Thank you, Senator. I will respond for the record, but I do want to reinforce, we are looking at all of those questions today, and as Mr. Osiecki indicated, we have not released the final number. I probably let that cat out of the bag, that is too late.

Please know this is a very serious topic and we are taking all factors into consideration, so we will follow up more clearly on the record.

[The FMCSA Response follows:]

Pursuant to 49 CFR 382.305(f), the FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire motor carrier industry. All information used for this determination is drawn from the controlled substances management information system (MIS) reports required by 49 CFR 382.403. In order to ensure the reliability of the data, the Administrator may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. If the Administrator determines that the data received under the reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent, the minimum annual percentage rate for random controlled substances can be reduced from 50 percent to 25 percent of all driver positions.

FMCSA is currently analyzing data from 2011, 2012, and 2013 to make an informed decision on whether or not to maintain or lower the annual random controlled substances testing rate for calendar year 2015. In the event the FMCSA Administrator decides to change the minimum annual random controlled substances testing percentage rate, the Agency will publish notice of the change in the Federal Register. Any new testing rate would be effective starting January 1, 2015.

Senator BLUNT. Well, it should be, and again, if you are going to set an incentive for the industry to meet, and here is the incentive that you are trying to achieve, you cannot then go back later and say well, OK, you met the incentive, you met the requirements, we do not think that is the right reward, because they still are going to have to report, the question is how many people they have to check, and then if it goes back up, I assume it works the other way.

Thank you, Chairman.

Senator BLUMENTHAL. Thank you, Senator Blunt, for those excellent questions. I want to thank the panel. Before we close, there are a couple of issues, and I was going to ask Ms. Claybrook whether you had any kind of closing comments on some of the issues that Senator Blunt has just raised.

Ms. CLAYBROOK. Well, thank you very much, Mr. Chairman. I would just like to mention there were no studies that supported the old restart provision. So, now there is concern that there are no studies that have evaluated the change that Senator Collins is trying to remove.

In fact, she wants to study it, but if you remove those provisions, they are not going to be able to be studied. So, it is very hard to evaluate what kind of change is going to occur if you do not have the changes in place to study.

So, that is the reason we support your co-sponsorship of the Booker amendment which says let's leave them in place, they have been in for a year, it is very complicated to change them at this moment because the industry has already started to implement them, and let's study them even further.

What we do have scientific data about, however, very clearly, and a lot of study has been done, is on the hours-of-service nighttime shifts, daytime shifts, and the importance of getting nighttime sleep. So, there is no question about that, as far as I know. Those studies are very, very robust and substantial.

So, in our view, in the safety advocates' view, the real issue is that the restart should be eliminated. We think the whole restart concept of allowing people to restart their hours with only a weekend—part of a weekend off after driving 70 hours a week is much too little.

Further, I would say the real problem here, and it goes to Senator Booker's concern about the payment, the pay that the drivers are getting, is they are not paid overtime. They drive 11 hours a day and can work up to 14 hours. They do not get paid overtime. They have an incentive to drive as fast as they possibly can because they are paid on the basis of the number of miles that they travel, so the whole system is kaflooey, if I can say it that way, because it has an incentive to drive faster and it does not protect the drivers.

In addition, the whole issue that Ms. Ferro raised of a driver having to sit and wait for the freight to be loaded and unloaded is not paid time. Drivers can be required to wait up to 3 hours.

So, you are talking about 11 hours of driving and three hours of waiting, and then 10 hours to sleep, and then they start that process all over again, up to 70 hours a week of work, and then they get 34 hours off.

That is inhumane in our view. There is a large turnover among drivers because of low pay and difficult hours, and advantage is taken of the drivers.

I would like to also just comment if I could briefly on the issue of 70 percent of the truck crashes are caused by the car drivers. The fact is that 96 percent of the time the car drivers are dead, and dead men do not talk.

So, when the police come to investigate the crash, naturally the truck driver is going to say well, it was not my fault because they want to retain their jobs, and we understand that. The people who were involved in that crash on the other side, the car drivers, they are deceased or badly injured and are not able to comment or explain. The police do not have the time to do a full fledged investigation. They are moving traffic. Sometimes traffic is backed up for hours as a result of these truck crashes.

So, the studies that have been done on this, I think, have been inadequate and minimal. I do not know, I think you agree with that.

Ms. FERRO. Minimal; yes.

Ms. CLAYBROOK. Minimal. So, I think that number is not a number that should be used. I would like to say that I agree with the ATA about having more technology in vehicles, but that does not in any way in my view undermine the need to correct the hours-of-service rules.

They are two different issues. They are both really important. We completely support technology improvements, but I will say the technology is costly for the smaller independent truckers, and they do not like them and they oppose them.

The final thing I would like to comment on, if you do not mind one more minute, is the insurance. The insurance number of $750,000 is totally inadequate for a major truck crash, and insurance is designed to protect the people who are harmed. It is not designed necessarily to assure there is going to be more safety. There are other things that can be done to do that, as we have discussed at this hearing.

Insurance should be at least brought up to inflation numbers, which would bring it up to several million. One of the problems is that a lot of truck companies, the big truck companies, do have more insurance, which is great, but smaller companies do not, and so if you happen to be hit by a small truck company, you are never going to get the kind of compensation you deserve.

With Mexican trucks coming into play, they only have to meet our minimum rules, which is $750,000, and you will never be able to get more than that, if there is a major truck crash caused by a Mexican truck.

So, I think the rules need to be changed and the minimum insurance level should be substantially increased to several million, four or five million.

Senator BLUMENTHAL. Thank you. We are going to allow the record to remain open. I know that some of our witnesses may want to respond to points that have been made by other members of the panel.

We are going to keep the record open for a week—I am sorry, 2 weeks. The Judiciary Committee is a week. I guess lawyers can talk quicker or write quicker. Maybe they do not have as much to say. That is not true, definitely.

So, thank you very, very much. It has been an excellent panel. I want to thank my colleagues, particularly Senator Blunt, for their really excellent participation and their differing points of view on this panel and among us as colleagues, but I think what we have in common is the goal of increasing safety on our roads, and we have explored some areas where I think we have very definitely common ground, and where the Federal Government can play a more constructive role.

Again, thank you so much and I look forward to working with every one of our members of the panel in exploring and advancing these areas. Thank you. The hearing is adjourned.

[Whereupon, at 5:04 p.m., the hearing was adjourned.]

# A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO HON. ANNE S. FERRO

*Question 1.* During the hearing, the American Trucking Associations argued that states should be focusing more of their MCSAP resources on traffic enforcement instead of roadside inspections. Do you agree with this statement? If not, please explain why.

Answer. As an Agency, we would not agree with this argument. Currently, there are approximately 500,000 law enforcement officers nationwide who conduct traffic enforcement on the Nation's highways. Only about 12,000 of these officers are qualified to conduct inspections on commercial motor vehicles. As a result, it is imperative that these resources, funded through the Motor Carrier Safety Assistance Program (MCSAP), are used for this purpose. Data from MCSAP officers conducting inspection demonstration that 20 percent of the trucks operating on our highways have a mechanical condition so severe that the vehicle must be placed immediately out-of-service. We must maintain a strong inspection presence with the certified officers while encouraging states to use their other highway safety resources to conduct traffic enforcement. To achieve this end, FMCSA is working with the International Association of Chiefs of Police (IACP) to encourage more law enforcement to conduct traffic enforcement and to develop and deploy training aimed at getting law enforcement qualified and comfortable pulling over a commercial motor vehicle for a traffic enforcement stop.

In addition, flexibility within the MCSAP program already exists. FMCSA's MCSAP program permits the states to request the use of more MCSAP funding for traffic enforcement if the state can document a problem that needs this solution.

*Question 2.* The American Trucking Associations (ATA) support changes that would stop enforcement of current hours of service (HOS) rules. Does all of the trucking industry support ATA's position? What have other trucking companies said about the rules? What administrative steps can you take to address these concerns?

Answer. Based on discussions between the senior leadership of FMCSA and the ATA on May 8, 2014, the ATA's primary concerns about the HOS rule are the 2013 changes to the 34-hour restart provision. Specifically, ATA expressed concerns about limiting the use of the 34-hour restart to once every 168 hours, and requiring that the restart include two nighttime periods between 1:00 and 5:00 am.

FMCSA does not believe that all segments of the industry support the ATA's position because the Agency estimated that the changes to the 34-hour restart impacted approximately 15 percent of drivers. Many of these drivers work the most intensive schedules and prior to July 1, 2013, they could average more than 80 hours of work per week. No other segment of the transportation industry is allowed to work such grueling schedules. With the implementation of the rules on July 1, 2013, the average work week for these drivers was limited to approximately 70 hours.

Other segments of the industry are concerned primarily about the December 2011 final rule requirement for the 30-minute rest break during the work day. For certain segments (*e.g.,* livestock, and carriers transporting specific types of freight for the Departments of Defense and Energy) that are not covered by the short-haul exceptions to the 30-minute break rule, the Agency has granted limited 2-year exemptions based on its authority under 49 U.S.C. 31135.

On December 16, 2014, the Congress enacted the Consolidated and Further Continuing Appropriations Act of 2015, which contained a provision that suspended enforcement of certain provisions of the 34-hour restart. FMCSA issued a notice in the Federal Register on December 17—effective the date of the law's enactment—suspending the requirements regarding the restart of a driver's 60- or 70-hour limit with which drivers were required to comply beginning July 1, 2013. The restart provisions have no force or effect from the date of enactment of the Appropriations Act through the period of suspension, and are replaced with the previous restart provisions that were in effect on June 30, 2013. FMCSA notified motor carriers, commer-

cial drivers, State Motor Carrier Safety Assistance Program grant recipients and other law enforcement personnel of these immediate enforcement changes.

*Question 3.* How do the HOS regulations for truckers differ from other modes of transportation (*i.e.,* rail and aviation)?

Answer. It's difficult to compare the modes because the Federal Aviation Administration (FAA) and Federal Rail Administration (FRA) both have monthly limits and FAA has annual limits. Neither has a "restart" per se.

| | On-Duty/Driving or Flight Time Limits | Weekly Limits | Restart or Time Off-Duty Required per week | Monthly Limits | Yearly Limits |
|---|---|---|---|---|---|
| FAA* | 9–14 Flight Duty Period (FDP)/8–9 flight | 60 FDP/168 | 10 hours before FDP/Eight uninterrupted sleep** | 100 hrs Flight/190 FDP | 1,000 flight time |
| FRA/Freight | 12/12 –must have 10 hours off-duty in previous 24 hour period | Requires time off after 6 consecutive days on-duty | 48 hours after 6 days on duty/72 hours after 7 days on duty*** | 276 hours on duty | None |
| FMCSA | 14/11 | 60/7 or 70/8 | 34-hour restart every 168 hours with two nighttime periods | None | None |

*FAA may approve alternative fatigue management programs
**Previous rule required 24 hours off per 7 day period
***49 U.S.C. §21103 allows employees to work a seventh consecutive day if they must do so in order to return to their home terminal

*Question 4.* Administrator Ferro, as you know, the Department is currently conducting an extensive truck size and weight study. As part of that study, DOT is looking at whether adding weight to a truck could cause the truck equipment such as brakes or tires or suspensions to wear out faster and thereby make the heavier trucks more dangerous. That seems like a very important safety factor and I know the law enforcement community has cited this as one of its major concerns. It is my understanding that CVSA recently completed a joint data collection effort with FMCSA to see if there is any correlation between the weight of a truck and out of service violations due to bad brakes or other equipment problems. Can you tell us the results of this effort? Do you believe this to be a serious safety issue?

Answer. FMCSA has been working cooperatively with both the Commercial Vehicle Safety Alliance (CVSA) and the Federal Highway Administration (FHWA) in a Heavy Vehicle Data Collection Effort. This 3-year data gathering activity was initiated by CVSA in January 2012 and data collection will continue through January 15, 2015. The effort is focused on gathering Level 1 vehicle inspection data on commercial straight trucks and tractor-semitrailer combination vehicles. Preliminary analysis conducted at the 30-month point indicates that the vehicle out-of-service rate for vehicles that had been issued weight citations is higher than the national average for all vehicles, and a complete analysis will be conducted at the conclusion of the data collection period. FMCSA believes that commercial trucks need to be operated and maintained in a safe condition at all times, which includes proper inspection, repair, and maintenance of all vehicle braking systems. As a data driven Agency, we will obviously take an objective view of the result of this research before making a declarative statement on truck size and weights.

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## Response to Written Question Submitted by Hon. Richard Blumenthal to Hon. Anne S. Ferro

*Question.* Truck driver fatigue is a serious problem in the transportation sector and is too often the cause of horrific crashes and needless fatalities. The Federal Motor Carrier Safety Administration's (FMCSA) hours of service regulations help to ensure that truck drivers have an opportunity to get adequate rest and are less tired when they get behind the wheel, thus preventing dangerous fatigue-related trucking accidents on our roads and highways. FMCSA recently instituted revised hours of service regulations that became effective on July 1, 2013. The new rules include a number of important safety provisions, but some have recently been working to stop enforcement of the specific changes.

The new regulations require that after hitting the limit on hours in a week, a driver must rest for 34 consecutive hours—or "re-start"—and this time period has two conditions: (a) it must include at least two consecutive periods from 1:00 a.m.

to 5:00 a.m.—time when the circadian rhythm demands rest most; and (b) it can only be taken after a full week (or 168 hours from the beginning of the driver's last re-start). Many have claimed that preventing enforcement of these two provisions would be a "small" and "reasonable" change to the current safety regimen.

If the new rules were changed and these two provisions were effectively repealed, how would safety on our roads and highways be compromised? How many more hours in a seven-day week would a driver be able to drive than under the current system? How many more hours in a month would a driver be able to drive than under the current system? How many more hours in a calendar year would a driver be able to drive than under the current system?

What other information should Congress consider as changes to the new regulations are debated? What problems could arise if Congress changes the rules through legislation instead of allowing FMCSA to address these issues through the regulatory process?

Those working to stop enforcement of the new safety provisions have claimed that the new rules will prevent truck drivers from driving during nighttime hours and will lead to an increase in the number of truck drivers on the road during morning hours. Do the new hours of service regulations prevent truck drivers from driving during nighttime hours? Have the new regulations led to an increase in highway traffic during morning hours? If all drivers affected by the new rules began driving after 5:00 a.m., how would daytime traffic congestion on our roads be affected? How would nighttime traffic on our roads be affected?

Some claim that the provisions in the new rules were implemented before proper research, data and analysis were conducted on their potential impact. What research did FMCSA conduct in support of these changes? What positive safety impacts has FMCSA discovered since the rules became effective? What further research and analysis is FMCSA conducting to evaluate the ongoing effectiveness of the new rules? What data does FMCSA rely on to carry out these analyses? What challenges, if any, does FMCSA face in obtaining data that could help in evaluating the new rules?

The "re-start" concept was first instituted in hours of service regulations that were made effective in 2003. If the changes to the hours of service rules that were recently made effective in 2013, *i.e.,* the two consecutive 1:00 to 5:00 a.m. rest periods and the 168-hour waiting period between re-starts, are scaled back, then the hours of service regulations will essentially return to where they were in 2003. What scientific research and analysis were conducted before the re-start provision was first instituted in 2003? What specific research and analysis were conducted to ensure that daytime congestion did not increase after the re-start became effective? What specific research and analysis were conducted to ensure that daytime fatalities and injuries did not increase?

Answer. FMCSA acknowledges that the 2013 change in the restart provision of the hours of service (HOS) rule affected night-time drivers primarily with the 1:00–5:00 a.m. requirement. However, the rule did not force nighttime drivers to shift their schedules to daytime operations other than satisfying the two nighttime off-duty periods. The rule did not prevent carriers and drivers from setting their own schedules nor did it restrict drivers from being on the road during any time of the day. The impact on daytime driving is difficult to estimate because there are no baseline (*i.e.,* pre-2013) data against which to measure the current level of daytime driving, which is not really known. The information about daytime driving and traffic congestion are more anecdotal than statistical. Although the Agency has heard criticism that the new rule discriminated against nighttime drivers and forced them to drive during the day and in prime rush hours, we are not aware of any evidence to support this claim.

In assessing the impact of the 2013 changes in the HOS rule, the Agency estimated that only 15 percent of interstate drivers would be required to change their work schedules to comply with the new requirements. Our information indicates that this group relied routinely on the use of the 34-hour restart to work in excess of 80 hours per week. Only those drivers who were working more than 70 hours per week are affected by having their work limited to an average of 70 hours per week, which is still nearly double the national standard of a 40-hour work week.

In our regulatory analysis, the Agency determined that the changes to the hours of service rule would provide $280 million in safety benefits from fewer crashes, with 19 lives saved per year. And the rule provides $350 million (primary estimate discounted at 7 percent) in savings from improved driver health. The benefits of the rule are not speculative. They have been validated through long-term scientific studies of the relationship between increased sleep (for sleep-deprived groups, like truck drivers) and increased life expectancy. Allowing FMCSA to address this issue

through the regulatory process would allow a scientific, data-driven outcome that considers the views of all relevant stakeholders.

Prior to finalizing the 2013 rule, FMCSA held six public listening sessions, an online question and answer forum and carefully considered approximately 21,000 comments that were also submitted from drivers, carriers, and industry associations.

The 2011 final rule lists 80 sources of scientific research and data considered by the Agency and the Regulatory Impact Analysis cited nearly 50 scientific sources. All of this was on top of hundreds of studies regarding fatigue and hours of work that were considered in past HOS rulemakings. Additionally, the Agency ordered the conducting of a third-party naturalistic field study that measured fatigue among CMV drivers. The study concluded the current 34-hour restart provision is more effective at combatting fatigue than the previous version. In the study, researchers measured sleep, reaction time, subjective sleepiness and driving performance, finding that drivers who began their work week with just one nighttime period of rest, as compared to the two nights in the updated 34-hour restart break exhibit the following conditions:

- More lapses of attention, especially at night;
- Greater sleepiness, especially toward the end of their duty periods; and
- Increased lane deviation in the morning, afternoon, and at night.

Despite this research, on December 16, 2014, the Congress enacted the Consolidated and Further Continuing Appropriations Act of 2015, which contained a provision that suspended enforcement of the 34-hour restart. FMCSA issued a notice in the Federal Register on December 17—effective the date of the law's enactment—suspending the requirements regarding the restart of a driver's 60- or 70-hour limit with which drivers were required to comply beginning July 1, 2013. The restart provisions have no force or effect from the date of enactment of the Appropriations Act through the period of suspension, and are replaced with the previous restart provisions that were in effect on June 30, 2013. FMCSA notified motor carriers, commercial drivers, State Motor Carrier Safety Assistance Program grant recipients and other law enforcement personnel of these immediate enforcement changes. For further information see FMCSA's Federal Register notice: *www.fmcsa.dot.gov/regulations/hours-service/hours-service-drivers.*

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO HON. ANNE S. FERRO

*Question 1.* In your evaluation of the potential impacts of the 2011 Hours of Service rules, which specific metrics or studies did the Federal Motor Carrier Safety Administration (FMCSA) use to assess the impacts of daytime driving due to the schedule shifts caused by the restart provisions?

Answer. In assessing the impact of changes in the hours of service rule, the Agency estimated the percentage of interstate drivers that would be required to make changes to their work schedules in order to comply with the new requirements. The Agency estimated that the changes to the 34-hour restart would impact approximately 15 percent of interstate drivers. Our information indicated that this group routinely relied upon the use of the 34-hour restart to work in excess of 80 hours per week. The changes to the 34-hour restart forced them to reduce their average work week to approximately 70 hours. FMCSA acknowledges that the change in the restart provision primarily affects night-time drivers with the 1:00 a.m.–5:00 a.m. requirement. However, the rule does not force nighttime drivers to shift their schedules to daytime operations other than satisfying the two nighttime periods off-duty. 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. The impact on daytime driving is difficult to estimate because there are no baseline (*i.e.,* pre-2013) data against which to measure the current level of daytime driving, which is not really known. Based on information provided to us by industry and others during development of the HOS rule, the information about daytime driving is more anecdotal than statistical.

*Question 2.* Please provide a detailed status update on the Government Accountability Office (GAO) recommendations provided in the GAO report entitled "Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers." When does FMCSA anticipate closing out these recommendations?

Answer. FMCSA responded to the GAO report on April 3, 2014, and explained the Agency's significant concerns regarding its findings and proposed metrics. FMCSA

disagrees with the GAO recommendation that the Agency should "Revise the SMS methodology to better account for limitations in drawing comparisons of safety performance across carriers." The U.S. Department of Transportation (DOT) has significant concerns and unresolved disputes regarding GAO's findings and analysis metrics, and DOT previously responded to GAO regarding its report. Most notably, the data sufficiency level that GAO recommends for SMS would limit FMCSA to overseeing just the largest motor carriers, leaving approximately 90 percent of the motor carrier industry outside of the Agency's monitoring and enforcement programs.

In addition, GAO's metric focuses on those carriers that have already had a crash. The FMCSA uses SMS to prioritize its enforcement resources and proactively intervene early and quickly to identify unsafe compliance patterns before crashes occur. The assumption that a motor carrier that has no crashes during a limited observation period also has no crash risk, irrespective of demonstrated poor on-road performance and safety compliance across multiple inspections, is incorrect. The GAO's analysis runs contrary to recommendations given to the Agency by the National Transportation Safety Board, which has urged the Agency to take significant action on motor carriers identified by SMS as having unsafe compliance patterns before a crash takes place.

A number of independent reports have confirmed the effectiveness of SMS, including reports by the University of Michigan Transportation Research Institute, the American Transportation Research Institute, and FMCSA's own analysis of SMS. These studies validate that SMS is reliable for its stated purpose and objective of prioritizing carriers for interventions. Most importantly, since FMCSA's implementation of SMS in December 2010, overall violation rates have decreased by 14 percent and driver violation rates have decreased by 17 percent, the most dramatic decreases observed in over a decade.

FMCSA remains committed to considering further changes to SMS provided such changes improve the Agency's ability to proactively identify unsafe motor carriers for interventions before a crash. Recently, the Agency made significant changes to SMS's public display in response to stakeholder feedback. This new version, released on August 4, 2014, consolidates information from multiple sites into an easy-to-use interface, clarifies the relationship of Behavior Analysis and Safety Improvement Categories (BASIC) to crash risk, and increases focus on SMS as a prioritization tool.

Regarding GAO's second recommendation on FMCSA's safety fitness determination (SFD), a notice of proposed rulemaking (NPRM) is currently under development—scheduled for publication in early 2015. GAO recommended that the Agency ensure that any determination of a carrier's safety fitness account for limitations in the data. FMCSA concurred with the GAO recommendation, which was consistent with the Agency's publicly-stated position. As a result, the SFD NPRM will reflect the requirement for sufficient data.

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## Response to Written Questions Submitted by Hon. Deb Fischer to Hon. Anne S. Ferro

*Question 1.* I have heard from Nebraska truckers who are concerned about the CSA program. In our June hearing, Senator Thune asked you about the GAO and the OIG reports and how FMCSA is implementing the recommended changes to the CSA program. You said that you were "utilizing the recommendations from both agencies in continuing to improve the CSA program." Can you give us a more specific status update on implementing these changes?

Answer. FMCSA responded to the GAO report on April 3, 2014, and explained the Agency's significant concerns regarding its findings and proposed metrics. FMCSA disagrees with the GAO recommendation that the Agency should "Revise the SMS methodology to better account for limitations in drawing comparisons of safety performance across carriers." The methodology suggested by the GAO would result in a prioritization scheme that assesses the safety risks of only 10 percent of the industry while leaving the Agency with no prioritization scheme for the majority—90 percent—of active interstate carriers. The GAO methodology is reactive and inconsistent with recommendations from NTSB in that GAO prioritizes carriers that have had crashes, rather than proactive, by identifying carriers that are at an increased risk of having a crash by virtue of their pattern of safety violations observed during roadside inspections.

FMCSA remains committed to considering further changes to SMS provided such changes improve the Agency's ability to proactively identify unsafe motor carriers for interventions before a crash. Recently, the Agency made significant changes to

SMS' public display in response to stakeholder feedback. This new version, released on August 4, 2014, consolidates information from multiple sites into an easy to use interface, clarifies the relationship of Behavior Analysis and Safety Improvement Categories (BASIC) to crash risk, and increases focus on SMS as a prioritization tool.

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With regard to the OIG report, FMCSA responded to the Office of the Inspector General on February 27, 2014, concurring with all 6 recommendations. Since issuance of the report, the Agency has officially closed the following four recommendations with documented action fulfilling the intent of the recommendations:

- *MH–2014–032–A02—Implement Process for Deactivating DOT Numbers—Closed 4/09/2014*—In March 2014, FMCSA began deactivating USDOT numbers of carriers and intermodal equipment providers that did not complete their biennial update by the filing deadline.
- *MH–2014–032–C01—Update Carrier Safety Measurement System (CSMS) Requirements Document—Closed 8/15/2014*—FMCSA provided an updated document.
- *MH–2014–032–C02—Develop and Implement Process for Managing CSMS System Documentation—Closed 7/30/2014*—FMCSA provided documentation on the process for managing the CSMS System.
- *MH–2014–032–C03—Develop and Implement Configuration Management Policy—Closed 7/28/2014*—FMCSA provided a Configuration Management policy, dated May 6, 2014, which included change management and testing.

FMCSA continues its work on the remaining two recommendations; their status is described below:

- *MH–2014–032–A01—Issue Updated DataQs Guidance* – FMCSA is preparing to issue its updated DataQs guidance in the Fall of 2014 to reflect implementation of its new adjudicated citations policy that became effective on August 23, 2014.
- *MH–2014–032–B01—Develop Comprehensive Plan to fully implement CSA Program in remaining States*—In advance of the final phase of a national CSA rollout slated for 2015, on June 5, 2014, the Agency launched a Continuous Improvement Initiative: (1) to gather information and conduct analysis on how the existing program elements are working, especially CSA Prioritization and Interventions, and (2) to recommend modifications to coincide with the final phase of the national rollout that align various information technology system releases with other FMCSA initiatives. Under this effort, FMCSA is also considering input from the other sources: Office of Inspector General, Government Accountability Office, the National Transportation Safety Board, an independent peer evaluator, the Federal Aviation Administration, and the Motor Carrier Safety Advisory Committee.

*Question 2.* Regarding your truck safety grant program—the Motor Carrier Safety Assistance Program—can you explain why traffic enforcement inspections are more effective than roadside vehicle inspection at reducing crashes?

Answer. An inspection conducted as a result of traffic enforcement includes focused attention on observed vehicle deficiencies and driver behaviors. Therefore, it is expected that it would be more effective in identifying problems and requiring correction before a crash can occur. This has been confirmed through the Agency's effectiveness studies. Additionally, when an inspection occurs because of traffic enforcement for a high risk behavior or condition—such as speeding—this has been shown to have an even greater effect on the reduction of crashes.

*Question 2a.* Can you also detail why traffic enforcement inspections have gone down by 40 percent over the last 4 years given their effectiveness in relation to vehicle inspections? What is FMCSA doing in the MCSAP program to reverse that trend?

Answer. SAFETEA–LU provided states the authority to conduct traffic enforcement activities without accompanying inspections. Based on this, FMCSA began encouraging states to conduct more traffic enforcement activities without necessarily conducting the accompanying inspection based on the knowledge that the most important step was stopping the unsafe behavior or condition. As a result, the Agency

now has a force multiplier of 500,000 law enforcement officers who are stopping unsafe vehicles and drivers to supplement the 14,000 officers who are certified to conduct comprehensive driver and vehicle inspections. As a result, the number of unsafe vehicles and drivers that are stopped as part of the national commercial motor vehicle enforcement program has grown significantly. FMCSA is working with states to capture the non-inspection traffic enforcement data, so that it can be included in future reporting and analysis. This will more accurately reflect the activities conducted by states.

FMCSA also makes traffic enforcement activities a specific element of the MCSAP High Priority grant program and in FY 2013 awarded funds to support over 250,000 traffic contacts by State and local law enforcement agencies. To support this effort, FMCSA has been producing training videos for non-MCSAP officers to increase their skills and knowledge for conducting traffic enforcement stops on trucks.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO MAJOR DAVID PALMER

*Question 1.* During the hearing, the American Trucking Associations argued that states should be focusing more of their resources on traffic enforcement instead of roadside inspections. Do you agree with this statement? If not, please explain why.

Answer. This is a complicated issue that cannot be answered with a simple yes or no. We agree that traffic enforcement is a critical piece of each State's commercial vehicle safety program. However, it is just that, a piece. A State's commercial vehicle safety program is comprised of a number of aspects, including roadside inspections, traffic enforcement on commercial vehicles, compliance reviews, safety audits, targeted strike forces, educational activities and even traffic enforcement on non-commercial vehicles—the private citizens operating dangerously around commercial vehicles. The appropriate level for each activity will likely vary from state to state and will change over time within any given state.

States need more flexibility in how they spend their resources, not more restrictive parameters. Rather than prescribing what percentage must be spent on traffic enforcement versus roadside inspections alone, Congress and FMCSA should focus on setting broad parameters, program elements, goals, and expected outcomes for a program. Then, we should use a State's knowledge and expertise through their Commercial Vehicle Safety Plan as the mechanism for monitoring and evaluation to ensure the crash reduction targets are being met. Simply saying states should focus more on traffic enforcement ignores the complexity and diversity of each state's CMV safety program.

*Question 2.* Do you agree that crash investigations and their subsequent reporting is often times poorly conducted, and consequently can serve as an unreliable source of data for determining crash causation?

Answer. No, we do not believe crash investigations and reporting is being done poorly. However, we do agree that, in their current form, they are an unreliable source of data for determining crash causation and fault. The unreliability does not come from poor or faulty investigations and reporting from the states, but rather from the variability in how crashes are reported and what is reported state to state. States have different policies and protocols in terms of what is required to be part of the report, which results in inconsistencies in the data, when trying to compare from one jurisdiction to the next. The larger issue here is the fact that most crashes do not get investigated or reported by law enforcement official(s) who are CVSA Certified or have been trained to investigate commercial vehicle crashes. This exacerbates the uniformity conundrum. Lastly, in many states the investigating officer does not determine fault in the crash, they report the facts, and in Texas' case, the factors believed to have contributed to the crash. The determination of fault is left to be determined by the insurance companies and/or the courts.

*Question 3.* Major Palmer, during your testimony, you mentioned the enforcement challenges associated with the changes to the hours of service rules proposed in the Senate THUD Appropriations bill. Could you elaborate on those concerns?

Answer. We see a number of challenges associated with the proposed temporary suspension of a portion of the current hours of service (HOS) rules. Legislating temporary changes to the HOS rules creates significant uniformity and consistency problems across the country. The impact of such an approach will create unnecessary upheaval for the states and cause significant operational and budgetary impacts on their enforcement efforts.

The HOS regulations are already complicated to comprehend and enforce and any change requires the states to retrain their inspectors. With approximately 13,000 CVSA-certified inspectors in the field, organizing and delivering training in all 50

states is a significant task. Each state is structured differently, and the resources needed to develop and deliver training are significant. It would also require the expenditure of unplanned resources, which impacts on State budgets. Add to this any information technology (IT) changes, such as software modifications, and additional training to accommodate rule changes increases the resource commitment. In addition, temporarily suspending enforcement of a regulation takes inspection personnel away from their critical enforcement duties. Equally concerning, we could go through all of this for a temporary change that could very well result in no permanent change to the regulations after the review is complete.

Constant change causes confusion for both industry and enforcement. Compliance and the determination thereof are nearly impossible because the rules have changed so often over the last 10 years, and have become so complicated that it is exceptionally difficult to keep pace with the changes. This constant back and forth has also resulted in a number of narrow interpretations on exceptions and exemptions, further complicating enforcement and undermining uniformity.

We need to be data driven and fact based in our decision making. To this end, CVSA supports a comprehensive study on the safety and operational impacts of the HOS regulations, during which the current rules should remain in place. Once this analysis has been completed, only then would it be appropriate to consider any changes or adjustments through the rulemaking process. The rules are designed to help keep all drivers safe, both commercial and other road users, and it is our job to protect them.

Furthermore, to our knowledge, there is not a safety-related, science-based justification that has been presented for changing the current HOS rules. We are not aware of a comprehensive analysis of the safety impacts of the current regulations, nor has there been any analysis comparing the existing regulations versus the previous regulations. While we agree that regulations should be written with industry needs in mind, the fact remains that they are safety regulations, not efficiency regulations and changes should be made based on a demonstrated need and clear, science based data. While the Alliance opposes any efforts to temporarily suspend enforcement, CVSA supports calls from industry to evaluate the rules to determine if changes are necessary or warranted.

There is one final challenge that is more administrative in nature. Technically, states do not enforce the Federal Motor Carrier Safety Regulations (FMCSRs). Instead, they enforce their own State laws and, as part of the MCSAP program, the states agree to make their own rules mirror the Federal ones. States are given up to three years to adopt changes made to the FMCSRs. This is because the states adopt the changes through different mechanisms and, depending on the method, time is necessary. For example, states that adopt through legislation have to wait until the next State legislative cycle to bring the matter up. It's difficult to determine how a temporary change that is intended to be immediate will work in practice, given the process necessary for the states to adopt changes to the Federal rules.

*Question 4.* The Administration has proposed a consolidation of the grant programs. Can you tell us more about the administrative hurdles within the MCSAP grant process?

Answer. There are number of administrative challenges with the current MCSAP grant process, which are outlined in detail in our written testimony. In summary, the process is overly prescriptive, with insufficient accountability requirements placed on FMCSA. The two most significant challenges are the unpredictability of the program and the micromanagement by FMCSA.

States continue to be frustrated with the inconsistency, year to year, region to region, and state to state. FMCSA is constantly revamping the process, perhaps in an attempt to improve it. However, the end result is confusion and unclear expectations for the states. Without consistency, the states cannot properly plan for their annual Commercial Vehicle Safety Plan (CVSP) and grant application submission. Formatting requirements change year to year, material that was acceptable one fiscal year is no longer acceptable the next, the timeline for the grants process changes frequently, etc. Often, the results of a grant application depend more on who is reviewing the application, rather than the content. Grant applications are not all reviewed by the same panel(s), resulting in inconsistencies from one grant request to another, complicating the process for states. All this results in constant upheaval for the states, and they end up diverting much needed resources away from other efforts, as they are constantly adapting, redoing, and adjusting their process to meet the ever changing needs of FMCSA.

In addition, funding disbursement is unreliable, making it difficult for states to plan. There are a number of factors that contribute to these delays and result in complications for the states. The annual delays in the Federal budget and appropriations processes are one contributing factor. The Federal fiscal year begins Octo-

ber 1, and many grant programs are set to that date. However, Congress rarely completes their funding bills by this date, delaying the disbursement of funds to the states. Even more frequently now, Congress relies on temporary continuing resolutions, which results in states receiving their funds late, and in installments. This unpredictable, piecemeal approach to funding makes planning and management of State programs difficult. This issue is further complicated by the fact that many states do not follow the Federal fiscal calendar (most start July 1), complicating the reporting and tracking process. States also believe that once funds are available, the grant review and approval process takes far too long, further delaying receipt of funds for safety programs.

In addition to the challenges caused by inconsistency, there is a lack of transparency and accountability within the MCSAP grant process when it comes to FMCSA. When applying for Federal funds, states are given strict deadlines and parameters they must meet in order to qualify and receive funds. However, there are no established deadlines for FMCSA, in terms of their grant review process. CVSA recommends setting grant application review deadlines for FMCSA, possibly modeled on the State and Community Highway Safety Formula Grant Program, commonly referred to as the 402 grants, administered by the National Highway Traffic Safety Administration (NHTSA). The 402 grant program has a clear timeline in place and using a similar model would, at least for the Basic MCSAP grants, ensure that once funding is authorized by Congress, the agency is prepared to disburse the funds immediately, helping to reduce delays in funding disbursement.

*Question 5.* Major Palmer, in your testimony, you mentioned IT needs. What steps are necessary to improve data collection and transmission? What benefits would that have?

Answer. Uniform, timely and accurate data is the cornerstone of the MCSAP. Enforcement Personnel, along with State and Federal agencies, use information on a motor carrier's past performance to help prioritize motor carriers for roadside inspections and compliance reviews. Performance data from the commercial motor vehicle industry is used to identify trends and problem areas, and to craft enforcement and education initiatives to target specific safety problems. Data is not only used to evaluate whether or not enforcement is being conducted uniformly, but also to determine whether or not a particular safety program or concept is successful. Data is used to determine whether enforcement funds are being used in the most efficient, effective manner possible. In order to effectively and efficiently perform these activities, the states and the Federal Government must be able to rely on the data compiled in the various systems to be as accurate and as uniform as possible, in order to make comparisons. As technology continues to advance, we will become even more reliant on the data being inputted into various systems. Because of this, it is critical that the data is being processed and transmitted accurately.

Currently, however, redundant, overlapping information technology (IT) systems and outdated software applications result in inconsistencies in the data being collected, undermining the safety programs and strategies being built upon them. These data challenges hinder the inspection process and create extra, unnecessary work for industry and enforcement alike.

As an example, the Motor Carrier Management Information System (MCMIS) is the main system for which all the data collected from State and Federal agencies for FMCSA is housed, including inspection, crash, compliance reviews, safety audits, carrier information and history and numerous other data sets. Other programs, such as SAFER, Query Central, and State CVIEW systems, as well as the Compliance, Safety, Accountability (CSA) program, extract the data from MCMIS to run their programs. Developed in the 1980s, MCMIS is almost 30 years old. As the program ages, it becomes harder and more expensive to make software and program changes. The system can simply no longer meet State and Federal data needs.

In addition to relying on outdated, insufficient systems, FMCSA has become too focused on new software development and is distracted by too many competing priorities. As a result, updates and improvements to the primary data collection and management programs on which everything rests are constantly delayed and the states are forced to use outdated and cumbersome legacy systems.

All this undermines safety—for example, a driver's license could have been suspended. However, because of system incompatibility, the Commercial Driver's License Information System (CDLIS) may show one status, while the Nlets system, used by law enforcement, may show a different status. Depending on which system is accurate and which is accessed, it's possible that an unqualified driver, whose license has been suspended, will be stopped, inspected, and then allowed to continue driving.

Simply put, FMCSA's IT program lacks focus and direction. Were FMCSA to focus on setting parameters and functional specifications, rather than software develop-

ment, the program would improve tremendously. FMCSA should be managing the system and software development process, rather than doing the actual programming. The Agency needs to clearly identify challenges and solutions, as well as address State needs, and establish a clear path forward to meet those needs. FMCSA must take a step back and completely reevaluate its development process and how it prioritizes IT projects.

CVSA believes it is necessary for Congress to call for an independent study of the Agency's IT and data collection systems. The study should include an evaluation of the efficacy of the existing systems and programs and their interaction. It should identify redundancies and explore the feasibility of consolidating data collection and processing systems. The study should evaluate the ability of the programs and systems to meet the needs of FMCSA, both at headquarters and in the State offices, as well as equally the needs of the states themselves. The study should investigate improving any and all user interfaces. The study should take into account the systems' and programs' adaptability, in order to make necessary future changes in an easier, timely, and more cost efficient manner. In addition, the study should explore the necessity and feasibility of increasing the Agency's IT budget, to bring it in line with other Federal programs.

Once completed, FMCSA will have a clear path forward and can begin implementing the recommendations developed in the report. The result will be better data quality and improved use of that data by both enforcement as well as the regulated industry. It will improve safety and efficiency in the field. States and FMCSA will have current and reliable data to help make decisions and industry will have a greater level of confidence in the data and the programs that are built upon it.

*Question 6.* As you know, the Department is currently conducting an extensive truck size and weight study. As part of that study, DOT is looking at whether adding weight to a truck could cause the truck equipment such as brakes or tires or suspensions to wear out faster and thereby make the heavier trucks more dangerous. That seems like a very important safety factor and I know the law enforcement community has cited this as one of its major concerns. It is my understanding that CVSA recently completed a joint data collection effort with FMCSA to see if there is any correlation between the weight of a truck and out of service violations due to bad brakes or other equipment problems. Can you tell us the results of this effort? Do you believe this to be a serious safety issue?

Answer. In recent years, there has been a significant amount of interest by many in industry to advocate in the U.S. Congress for increasing the legal weight limits for trucks, and to a lesser extent, for changes to truck size limits. As a result of this increased level of interest, many questions have arisen. With CVSA's commitment to commercial motor vehicle safety and enforcement, it is important for CVSA to take a leadership role in helping to shape the policy debate on what issues are to be considered for changes currently being contemplated to truck size and weight policy in the United States. To help reach this goal, and after a review of available literature indicated safety data was lacking, CVSA's Executive Committee instructed their Size & Weight Committee to work with DOT officials to develop a safety data collection program. The Heavy Vehicle Data Collection Effort is one means with which we believe the Alliance can further inform the debate on this issue.

The data collection effort, which began in January 2012, is designed to collect safety data from roadside inspections on vehicles exceeding certain weight levels. The goal is to gather data that will help us determine what impact, if any, heavier vehicle weights have on a vehicle's structural components, motor carrier safety violations, and overall safety. By gathering this data, the Alliance will be able to get a sense for whether or not there are any correlations between higher vehicle weights and specific motor carrier safety violations, particularly those with out-of-service conditions. CVSA partnered with the Federal Highway Administration and the Federal Motor Carrier Safety Administration on the effort, with the agencies agreeing to conduct the data analysis.

In order to participate in the study, CVSA asked that inspectors conduct their inspection activities per their standard operating procedures. When inspectors identify a vehicle that is over the allowable axle, axle group, or gross vehicle weight or if the vehicle is operating under a special weight permit, the project guidance asked that they flag the inspection report for inclusion in the study. The project asked that inspectors distinguish between permitted vehicles (*e.g.,* operating legally) and those overweight illegally, in order to better understand the data.

Initially approved for one year, the study been extended twice, and is now set to run through January of 2015. Participation in the study is voluntary and is open to U.S. jurisdictions able and willing to participate. CVSA encouraged all member jurisdictions to consider participating in the study in order to produce an adequate

data sample. By the end of the second full year, 30 states were participating in the study, having conducted nearly 10,000 inspections under the study. The majority of the inspected vehicles under the study were non-permitted combination vehicles, which also represent a majority of the vehicles operating on Interstate highways.

The data collected suggests a correlation between vehicle equipment violations and overweight vehicles. After two years, vehicles included in the study had an out of service rate of 36.63 percent, well above the national average of about 20 percent. Not surprisingly, brake violations accounted for the largest portion of the violations identified as part of the study, followed by alignment and tire issues. These types of violations increase the likelihood of a vehicle not being able to stop in a timely manner, or not having full control of a vehicle in the event of an emergency stop or maneuver, especially in inclement weather.

The data collected also suggests a correlation between vehicle defects, particularly related to braking systems, and weight, and therefore safety. As more force is required to stop or slow a vehicle in the same distance and time as the weight of the vehicle increases, it is important that the vehicle components, particularly the brakes, be in proper working order to reduce the potential for crashes. Again, braking defects were the most common type of violation cited under the study, which suggests that heavy vehicles do tend to create additional wear on braking components.

The study will continue through January of 2015, at which point CVSA will determine what next steps are most appropriate. DOT is currently working on assembling the final two year report, which we will provide, once completed.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO WILLIAM G. "JACK" DAWSON

*Question 1.* Some have argued that drivers get used to working at night and the 2 rest periods of 1am to 5am are actually disruptive to those drivers. Do you have any practical experience driving at night? What effect have nighttime rest periods had on you?

Answer. In my current position as a trainer for UPS, my work takes place largely at night which means I typically sleep during the day, but on my days off I switch to a night time sleep schedule because I find that it leaves me more rested than my daytime sleep patterns.

Additionally, as I stated in my testimony, when I am not acting as a trainer, I am subject to duty as a driver in a group called the "extra board." I am required to be available to answer the phone at midnight, 5am, 10am, 1pm, 6pm, and 8pm should I be needed to complete a run. Because of the erratic nature of the extra board, a regular schedule does not really exist for drivers. The one tool we have at our disposal to combat the type of exhaustion that causes accidents is the hours-of-service regulations. Allowing drivers to have two rest periods from 1am to 5am where they can sleep at home in their own bed instead of their cab is not unreasonable and helps promote rest during one's natural circadian rhythm.

*Question 2.* You mentioned in your statement that some Teamster members are subject to the 34-hour restart and some are not, and that you, in fact, are subject to the restart. What has been your experience with it? Do you think it provides sufficient rest?

Answer. While I know that there have been efforts in Congress to roll back the 34-hour restart, I believe these efforts are misguided. The 34-hour restart causes minimal disruption to a drivers work week as we are still able to work up to 60 hours in 7 days or 70 hours in 8 days but we are given the opportunity to take a day and a half off every week when we need it.

While it would be preferable to have a longer period of rest available as truck driving is a stressful and exhausting job, the regulations are effective in their current form. Any opportunity you have to be at home with family instead of on the road helps you recuperate from the cumulative fatigue created by driving long hours on America's increasingly congested roadways.

*Question 3.* You mentioned that prior to working at UPS, you drove for a private carrier and often experienced detention time while waiting for a trailer to be loaded or unloaded, and that detention time is not as prevalent in the unionized less-than-truckload sector. Can you explain why that is the case?

Answer. When I worked for a non-union carrier, during load up I was paid $1 per 1,000 pounds with loads typically ranging from 6 to 20 tons. I often waited up to 12 hours to receive a load which meant that for my detention time, I was frequently paid between $1 and $3.33 per hour, well under minimum wage. However, detention time under a union contract is paid at or considerably above minimum wage so the

shipper or receiver paying for that time has an incentive to keep detention times low.

*Question 4.* Recent reports show that the trucking industry is facing an increasingly large shortage of drivers. What are some of the reasons for this shortage?

Answer. I think in much of the industry, the issue is a pay shortage rather than a driver shortage—if you pay people enough, there will be people willing to perform the job. The other issue is that you have a tough job with plenty of disadvantages and very few perks. As a driver, we often work 70 hour weeks which is nearly twice the average American work week but our compensation does not reflect this. Likewise, we are often away from home for extended periods of time making family life difficult. Moreover, the job is demanding and we are constantly maneuvering our rigs to avoid accidents. There are many jobs in which the pay is equal to ours but doesn't require as much time, training, or responsibility. When you factor in the pay for all that you have to do, the job isn't very desirable. Commercial driving also comes with its own set of hazards. In 2012, according to FMCSA, in crashes involving large trucks, 697 occupants of those trucks were killed (the highest number since 2007).

From my perspective, unlike much of the industry, UPS does not have as much of a problem attracting applicants because UPS is the top of the industry in terms of pay. However, UPS is also the most rigorous in their training program which presents other hiring challenges. The number of road drivers at the UPS freight facility in Dallas, TX where I work is 156. In the past 10 years, our facility has hired only 5 people, in the last 8 weeks, however, UPS has set out to fill 20 new positions. So far, we have hired 30–35 people at this point. About 15 of those hires no longer work for UPS. Of that 15, half have not made it through the safety training and the other half were let go because they didn't want to do the work. Even with reducing the age and experience requirements, UPS freight is having trouble attracting dedicated, qualified drivers. The commitment UPS makes to safety training may seem tedious and unattractive to hirees but it is necessary for keeping our roads safe.

*Question 5.* You have previously driven twin-28 foot trailers. Do you have concerns with allowing even longer twin-33 foot trailers on the road? If so, why?

Answer. I am fortunate that I have never had to drive twin 33's as they are prohibited in Texas, but driving twin 28's is difficult enough to control in traffic. As a driver, I am constantly practicing safety techniques to keep me from colliding with other vehicles. When you add an extra ten feet to the truck, your stopping distance increases as does your blind spot which makes preventing accidents all the more difficult.

Moreover, the roads were not built to accommodate bigger, heavier trucks—adding to the size and weight of the trucks increases wear and tear on roads. Then, too, entrance and exit ramps on America's highways are not long enough to accommodate the increased trailer lengths. This can create dangerous situations when these larger, heavier trucks are attempting to get up to speed and merge onto highways.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO COMMERCIAL VEHICLE SAFETY ALLIANCE, ON BEHALF OF MAJOR DAVID PALMER

*Question 1.* We have heard that states face significant administrative challenges in obtaining and administering Motor Carrier Safety Assistance Program (MCSAP) grant funds. Can you provide examples of these challenges?

Answer. There are a number of challenges associated with administering the MCSAP program, which as you know supplements State funds invested in commercial motor vehicle (CMV) safety and enforcement. There is excessive red tape and process, micromanagement of funds, inconsistencies in the process, and a lack of reliability in terms of the funding schedule.

The red tape and unnecessary process has steadily increased over the past few years. The grant application process itself is cumbersome and involves many layers of review. However, one of the biggest concerns is the inconsistency. Every year the process changes, what's required of the states changes, what is deemed acceptable in the plan or an eligible expense under any given program can change. Approved expenses even vary depending on who reviews the grant applications, meaning that an expense approved in one state would be rejected in another. It's impossible to properly plan for, and the states end up reinventing the wheel each year with their application and spending inordinate amounts of time and resources administering the grants. It's to the point now where some states simply do not apply for some grants because it's not worth the energy required or the unnecessary and unreason-

able scrutiny. Unfortunately, states are turning away potentially lifesaving Federal assistance.

As Texas examples of micromanagement and a lack of understanding of state enforcement requirements and practices, the Federal Motor Carrier Safety Administration (FMCSA) determined standard issue Tasers and long guns, rifles and shotguns, issued to our grant funded commercial

vehicle enforcement (CVE) troopers are not eligible expenditures under any FMCSA designated grants. It is quite perplexing, and frustrating, that FMCSA chooses not to fund all of the required equipment necessary for MCSAP or Border Enforcement Program funded CVE officers, even though they will fund the trooper's required side arm (hand gun). Additionally, FMCSA has refused to fund portable breath alcohol testing (PBT) devices under our Border Enforcement Program grant even though one of their own regulations, 49 CFR § 392.5, provides various restrictions and prohibition on alcohol use when operating a CMV. Finally, although less significant but clearly representative of many of the states' concerns, FMCSA questioned why our MCSAP Grants captain needed a cellular phone as part of his duties. Unfortunately, the mere question reflects FMCSA's lack of understanding, and points directly to the micromanagement of a State's CMV program, which required unnecessary additional justification.

Another major concern states have with the MCSAP program is the constant delay in funding disbursement. There are a number of factors that contribute to these delays and result in complications for the states. The annual delays in the Federal budget and appropriations processes are one contributing factor. The Federal fiscal year begins October 1, and many grant programs are set to that date. However, Congress rarely completes their funding bills by this date, delaying the disbursement of funds to the states. Even more frequently now, Congress relies on temporary continuing resolutions, which results in states receiving their funds late, and in installments. This unpredictable, piecemeal approach to funding makes planning and management of State programs difficult. This issue is further complicated by the fact that many states do not follow the Federal fiscal calendar (most start July 1), complicating the reporting and tracking process. States also believe that once funds are available, the grant review and approval process takes far too long, further delaying receipt of funds for safety programs. As a result, states often receive their funds well into the time-frame of the grant and are not able to spend the appropriated funds responsibly before the grant expires, forcing the states to return much needed funding that was dedicated for enforcement and inspection activities as identified in their Commercial Vehicle Safety Plan (CVSP).

While a reasonable amount of oversight is, of course, necessary and appropriate, a manageable, consistent and uniform program is essential. There are a number of changes that could be made that would alleviate the burden on states and free up time for FMCSA as well. We make several recommendations in our written testimony. In addition, the Commercial Vehicle Safety Alliance (CVSA) is currently working with FMCSA to find additional solutions to these challenges and looks forward to working with the Committee to ensure that these changes take place, allowing the states to focus on doing the work of the grant programs, rather than administering them.

*Question 2.* In your written testimony you note that there are "a number of policies and practices that complicate the [MCSAP] program, undermining uniformity and consistency, and detracting from the efficiency" of the program. Can you provide examples of guidance or policy documents that create confusion and possible suggestion on how they can be fixed?

Answer. This is a critical issue that gets very little attention. The foundation of an effective safety program is quality, uniform, and consistent enforcement activities. As stated in my testimony, if an inspector does not understand the regulations, he/she cannot effectively enforce them. States and industry need clear, concise and enforceable regulations. Challenges include inconsistent and outdated regulations, complications that come with exemptions, and changes to the rules that do not take into account the impacts to the states and enforcement.

New regulations, coupled with changes to the industry and technological advancements can result in inconsistent, outdated, and redundant regulatory language. With each year come additional requirements from Congress, aimed at advancing CMV safety. In addition, FMCSA receives and responds to petitions for changes to the Federal Motor Carrier Safety Regulations (FMCSRs) from the CMV community. As Congress and FMCSA work to improve CMV safety, unintentional inconsistencies can slowly work their way into the regulatory framework. These inconsistencies can lead to confusion among both the regulated and enforcement communities.

Further complicating the matter is the fact that, technically, states do not enforce the FMCSRs. Instead, they enforce their own State laws and, as part of the MCSAP program, the states agree to make their own rules mirror the Federal ones. States are given up to three years to adopt changes made to the FMCSRs. This is because the states adopt the changes through different mechanisms and, depending on the method, time is necessary. For example, states that adopt through legislation have to wait until the next State legislative cycle to bring the matter up.

Interpretations and regulatory guidance can also create challenges. Essentially, when issues arise in the field that need to be addressed quickly, FMCSA issues an interpretation or guidance or policy memo to let inspectors know what the short term solution is. It's important that the agency be able to do this, because the rulemaking process is a long one. These documents are generally intended to address technical errors in published rules or to clarify vague regulatory language within the safety regulations. As these interpretations, guidance documents and memos are issued, the goal is to ultimately ensure the regulatory language is then brought up to date. However, the number of full rulemakings that can make it through the agency in any given year is limited by staff and funding, and a number of higher profile rules tend to push simple technical changes down in the queue. As a result, disconnects have developed between written regulations, regulatory guidance and interpretations, leaving industry and enforcement wondering which position is the "correct" one, resulting in inconsistent enforcement.

For example, there is inconsistency in the regulations regarding when a driver whose license has been suspended should be disqualified by an inspector. The original regulation (FMCSR § 383.51) states that a driver whose license has been suspended must be disqualified, regardless of the reason. However, later, FMCSA added an interpretation (FMCSR § 383.51—Question 6), indicating that the agency was in the process of undergoing a rulemaking (FMCSA–00–7382) to change this, so that only those drivers whose licenses have been suspended for a safety related reason should be disqualified. The rule was completed in 2002, and the definition of "disqualification" was updated in FMCSR § 383.5. However, the corresponding sections in FMCSR § 383 and § 391 were not updated, and still contain interpretations that reference a rule that was completed more than a decade ago. This has resulted in inconsistencies in the enforcement of driver disqualifications.

To address this issue, CVSA supports requiring FMCSA to conduct a full review of the FMCSRs every five years, in collaboration with CVSA and the affected industry, geared towards reducing, enhancing, and streamlining the regulations, eliminating outdated or duplicative regulations, clarifying those that need adjustment, etc.

Exemptions are another way that enforcement is complicated. Exemptions can, at times, compromise safety, and they always complicate enforcement. We recognize that there may be instances when exemptions could be appropriate and not compromise safety. In those instances, 49 USC § 31315(b) already provides a mechanism for those in industry to obtain an exemption through FMCSA. This process includes providing for an equivalent level of safety, requiring that the exemption *"would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption."* In addition, exemptions obtained through this process are limited to a maximum of two years (subject to renewal), which provides oversight to ensure that safety is not compromised, as well as an opportunity to eliminate exemptions that have not maintained an equivalent level of safety. This is the proper model.

In contrast, exemptions obtained through legislation do not always include safety considerations and are difficult to remove once established. Because a process exists for industry to pursue exemptions through an administrative process, CVSA opposes the inclusion of exemptions from Federal safety regulations in legislation. At the very least, when exemptions are included in legislation, CVSA supports requiring the inclusion of a "safety clause" as a part of any exemption statutorily enacted, similar to that in 49 USC § 31315(b), providing for an equivalent level of safety, as well as language that would allow for the elimination of the exemption if an equivalent level of safety cannot be demonstrated.

Regulations must also be enforceable. Regardless of the intent of a new rule or requirement, if there is not a way to enforce it roadside, it is not going to be an effective regulation. The current electronic logging device (ELD) rulemaking is an example of a good concept that, if not executed properly, will not have its intended results. There has been a significant amount of attention paid to ensuring that the new regulations take into account the needs of industry, in order to ease the burden, but very little time spent on how the enforcement community will access the devices and incorporate them into the inspection process. If inspectors cannot easily and reliably retrieve data from ELDs at roadside the devices are of little value. The ELD

rulemaking has the potential to improve hours of service (HOS) compliance and enforcement, but only if the inspectors are given the tools they need to properly use the devices. This fact must be a consideration in the development of the Final Rule.

Far too often, the impact to the enforcement community is not taken into consideration. The ongoing effort to temporarily defund a portion of the HOS rule is a good example. The HOS requirements are first and foremost safety regulations, not efficiency or productivity regulations. However, we strongly agree that the regulations must be written in a manner that meets the needs of the trucking industry as well. But pushing the burden from industry to the enforcement community is not a responsible solution. A temporary suspension of a portion of the regulations will require that we retrain all 13,000 CVSA-certified inspectors, which is no small feat. In addition, while they're being retrained, for the second time in as many years on the HOS rules, they cannot be out in the field. Retraining would also require the use of additional resources that had been slated for other expenses, not to mention the cost of updating software and other administrative activities associated with changes in regulation.

In addition, constant change causes confusion for both industry and enforcement. Compliance and the determination thereof are nearly impossible because the rules have changed so often over the last 10 years, and have become so complicated that no one can keep pace with the changes. This constant back and forth also has resulted in a number of narrow interpretations on exceptions and exemptions, further complicating enforcement and undermining uniformity.

CVSA has no objection to examining the regulations and making sure the right rules are in place, we only ask that any changes to current regulations be conducted after the research has been completed and not before.

*Question 3.* The Commercial Vehicle Safety Alliance (CVSA) supports increasing the funding cap on MCSAP grant funds to provide additional traffic enforcement activities to address safety concerns including aggressive driving or speeding. Do you believe these activities are more effective uses of state safety dollars than roadside inspections?

Answer. Traffic enforcement is a critical component in any State's comprehensive CMV enforcement program. Each State's program is constructed, in collaboration with FMCSA, to meet a State's individual needs and includes things like roadside inspections, weigh station inspections, compliance reviews, safety audits, and yes, traffic enforcement on both CMVs and non-CMVs. There is no one solution to the Nation's traffic safety challenge. While reasonable Federal oversight and guidance is important, each state has individual needs and challenges that are only known and understood by them, and therefore can only be addressed by that state.

Furthermore, it should be noted that in the data cited by the American Trucking Associations in their testimony, the traffic enforcement being referred to is being *conducted in conjunction* with a roadside inspection. We are not aware of any analysis that has been done to determine how much value each activity brings individually when they are being conducted together.

We are not opposed to states conducting more traffic enforcement activities if they believe that is a strategy that will work to drive down crashes in their state. As I mentioned in my testimony, another important point is there is a lot of traffic enforcement activity on commercial vehicles that currently is not being accounted for in the FMCSA statistics. This is because a roadside inspection does not accompany many of the traffic infractions cited by law enforcement, the MCSAP, appropriately, does not require this information to be made available to FMCSA.

Also, a note of clarification regarding the Alliance's recommendation related to increasing the cap on MCSAP grant funds to provide additional traffic enforcement activities. This recommendation does not pertain to traffic enforcement on CMVs, instead, it is specific to the amount of traffic enforcement a state can do on non-CMVs. The current program caps the amount states can spend on traffic enforcement on personal vehicles at 5 percent. CVSA is seeking an increase in that cap, to allow states who choose to do so to spend up to 10 percent of their Basic MCSAP funds targeting individuals who drive unsafely around CMVs, recognizing that, often, it is the drivers operating around the CMVs that create dangerous conditions and cause crashes.

In Texas, we are constantly evaluating our programs and making adjustments based on the needs we see in our state and I know my colleagues in the other states do the same. Our purpose is to reduce crashes and fatalities and get the dangerous motor carriers, vehicles and drivers off the road and we are committed to doing that. In order to do it effectively, states need more flexibility to create CMV enforcement programs that suit their own unique needs, not more prescriptive requirements from FMCSA. CVSA's recommendation to increase the non-CMV traffic enforcement cap is part of a larger argument for more flexibility for the states. CVSA opposes any

efforts to dictate to the states what portion of their MCSAP funds *must* be spent on any particular activity.

*Question 4.* The Compliance, Safety, Accountability (CSA) program provides inspection and safety data about carriers to the Federal Motor Carrier Safety Administration. Can you please describe how individual safety enforcement organizations use the data to enhance safety? Do you have concerns about the reliability of the data or the absence of data for many carriers?

Answer. The goal of the roadside inspection program is to target high risk carriers and get dangerous vehicles and carriers off the road. CSA was designed to serve as a screening tool for enforcement, to better target time and resources on carriers that are more likely to have safety issues. However, it is merely one tool in the toolbox, so to speak, that enforcement uses to identify which vehicles they need to inspect or what carriers to visit for a compliance review. To that end, it is a useful tool. It provides inspectors and investigators with a snap shot of the motor carrier's performance. Other factors including observed driver behavior, such as speeding or changing lanes without a signal, visual vehicle defects, such as missing signage or a visibly flat tire on the vehicle, contribute to an inspector's decision to stop a vehicle. In addition, inspector experience factors in, meaning that an inspector's interaction with a particular carrier might factor into their decision to pull a vehicle aside for inspection. If, for example, the inspector knows from experience that a certain company has a history of hours of service violations, while another motor carrier has a proven safety track record and rarely demonstrates problems, the inspector is more likely to focus on the former carrier.

While there are indeed data sufficiency issues, because there are a number of factors that go into an inspector's selection decision, those issues are not a major concern for the enforcement community. However, work should continue to improve the amount of data in the system.

Finally, on the subject of data reliability, CVSA does not believe that there is a data reliability issue. The data being collected roadside is, to a great extent, uniform and credible data. FMCSA's own reviews of the states' data quality performance routinely put most states in the "green" category. Further, the data being collected is not being challenged at a high rate. In fact, inspection data is barely being challenged at all. From 2010 through June of 2013, of the 12.5 million inspections conducted, less than 1 percent were challenged through the DataQs process. This demonstrates that, with few exceptions, the violations being documented roadside are accurate.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO DAVID J. OSIECKI

*Question.* In your written testimony you note that Compliance, Safety, Accountability data does not provide a strong statistical correlation between the score and future crash risk. How can the Federal Motor Carrier Safety Administration improve its data set and methodology?

Answer. ATA's many concerns with FMCSA's Compliance, Safety, Accountability program can be broadly categorized as follows: data sufficiency, system accuracy, and crash accountability.

*Data sufficiency:* Every study conducted on CSA to date has recognized the dearth of data used to measure motor carriers. CSA currently has enough data to score 18 percent of motor carriers in at least *one* Behavior Analysis & Safety Improvement Category (BASIC). Even fewer are scored in *most* categories and very few in *all* categories. This creates vast discrepancies in the way motor carriers with scores are compared to those without.

*System accuracy:* Many organizations have studied this relationship and all have come to similar conclusions: while some BASIC scores correlate closely to crash risk, other exhibit weak, negative, or indiscernible relationships. This is a departure from the intent of the program. Throughout the CSA methodology are references stating that the intent of the system is to identify behavior that leads to crashes. With some BASICs, this is impossible.

This inaccuracy is the result of the fundamental methodological dysfunction which pervades the model. It begins with flawed assumptions regarding the relationship between regulatory violations and crash risk, continues with concerns about the veracity of the data being provided to FMCSA by its state partners and ends with the unaccounted for regional enforcement disparities which can have significant impact on motor carriers scores depending on the region in which the motor carrier operates.

Furthermore, even in categories that exhibit a positive correlation to crash risk (on average), thousands of exceptions exist. Specifically, many motor carriers have poor BASIC scores but low crash rates. Unfortunately, these otherwise safe carriers are being erroneously labeled as unsafe. Conversely, and perhaps more importantly, unsafe carriers may have a poor safety culture cloaked by good BASIC scores (*i.e.,* good scores but high crash rates).

*Crash Accountability:* Currently, CSA collects, analyzes and displays all motor carrier accidents, regardless of fault or preventability. This is counter-intuitive. If a driver for a motor carrier did not cause an accident and could have done nothing to prevent it then it is clearly not indicative of a company's safety culture and should not be used to measure safety or compliance.

In other words, non-preventable crashes should not be used to target fleets and fleets as more likely to cause crashes.

ATA has been focused on providing appropriate, pragmatic suggestions for improvement of CSA. Below is a listing of ideas ATA feels will create a more effective and equitable safety measurement system.

1. *Acquire more data:* FMCSA must take a strategic approach to gathering data on a greater percentage of the industry. Moreover, the agency must work with its law enforcement partners to move resources from the interstate highway system and other areas where fleets are inspected repeatedly, to those areas where they are not. Doing so will help gather data on more fleets, especially those whose safety performance is unmeasured.
2. *Measure safety performance based on relative risk of crash involvement:* In several categories carriers scores do not bear a positive statistical relationship to crash risk. In fact, FMCSA cannot demonstrate a statistical relationship between the vast majority of violations used to score carriers and crashes. The agency defends this practice saying they are measures of "compliance." Since the highest priority should be on preventing crashes and saving lives, the system should focus on violations that have a statistical correlation to crash risk. Further, the goal should be to identify fleets that are most likely to be involved in a future crash.
3. *Adjust the methodology to account for regional enforcement disparity: Where* a motor carrier operates can have as big an impact on an SMS scores as *how* a motor carrier operates. While ATA would agree that state law enforcement agencies should maintain the prerogative to focus on regulations that address the unique challenges of their state, doing so creates unfairness in SMS. Motor carrier scores should be normalized based on a carrier's operational presence in a particular state, as measured by millions of miles traveled through violation weighting. For example, violations could be weighted to account for any disproportionate use in a particular state, based on national averages.
4. *Create dynamic peer groups:* CSA is a system that scores motor carriers relative to their peers as measured by exposure (*e.g.,* size of fleet or number of inspections). However, when a motor carrier exposure measure changes, the resulting shift in "safety event" (peer) group can produce drastic swings in CSA percentile scores. This is not because the fleet's performance has changed necessarily, just that the point of reference has changed to a different group of "peers." This can be a significant problem for motor carriers who operate near a peer group threshold. To correct this problem and provide more meaningful scores, FMCSA should implement a system that compares motor carriers only to those with relatively similar numbers of inspections instead of assigning them a group based on arbitrarily designated static bounds. Rather than comparing a fleet against others with up to 100 inspections (101–200, and so on), it should always compare the fleet against others that have, for example, between 10 more and 10 fewer inspections. Doing so will ensure a more reliable point of reference.
5. *Remove crashes not caused by the motor carrier:* FMCSA should remove from the system those crashes that a motor carrier did not cause or could not have prevented. Moreover, these crashes should not be displayed in the system nor used to measure carrier performance.
6. *Remove CSA scores from public view:* Until the aforementioned changes can be made and all SMS BASIC scores can reliably predict the crash risk of individual motor carriers relative to those of similar operations, CSA scores should be removed from public view.

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