

**STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR
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BEFORE THE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
*IMPLEMENTING MAP-21: PROGRESS REPORT FROM U.S. DOT MODAL
ADMINISTRATORS***

MARCH 14, 2013

Mr. Chairman, Ranking Member DeFazio, and Members of the Subcommittee, thank you for inviting me to testify today on the Federal Motor Carrier Safety Administration's (FMCSA) progress in implementing the Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 provides the Agency with important new tools to improve commercial motor vehicle (CMV) safety and remove unsafe operators from our roads.

Safety is FMCSA's number one priority and while the Agency has realized great success in reducing crashes, injuries, and fatalities, there is more to be done. Every life is precious and even one fatality is one too many. To direct how we will use our resources to achieve greater success in saving lives, the Agency developed a Strategic Plan guided by a framework shaped by three core principles to: **raise the bar to enter the motor carrier industry; maintain high safety standards to remain in the industry; and remove high-risk carriers, drivers, and service providers from operation.** MAP-21 aligns well with these core principles and supports a number of our Agency's important safety initiatives.

Already, the Agency has started taking advantage of a number of MAP-21 provisions. Just two weeks ago, for example, FMCSA used the new authority granted under section 32110 of MAP-21 to revoke the operating authority of a passenger carrier that had refused to produce its safety records during the course of a safety investigation. Other examples of FMCSA's steps to implement MAP-21 include revising our agreements with States to reflect the changes to the Agency's CMV safety grants, increasing enforcement penalties for unsafe property carriers, and clarifying the application of certain CMV rules on the agricultural community. The Agency is also developing two new rules to codify a number of similar provisions in MAP-21. As we continue to implement the CMV safety provisions of this Act, I would like to focus my testimony on a few of MAP-21's key provisions.

Agricultural Exemptions

MAP-21 includes two provisions applicable to the operation of CMVs for agricultural purposes. The first provides a statutory exemption from the Federal hours-of-service (HOS) rules for certain CMV drivers engaged in the transportation of agricultural commodities and farm supplies. The second provides a statutory exemption from most of the Federal Motor Carrier Safety Regulations (FMCSRs), including those pertaining to commercial driver's licenses (CDL)

and driver physical qualifications (medical) requirements, for the operation of covered farm vehicles by farm and ranch operators, their employees, and certain other specified individuals under specific circumstances. These statutory provisions are self-executing and took effect on October 1, 2012.

In order to notify the public of these provisions, the Agency published a notice in the Federal Register last October, alerting motor carriers and enforcement officials about these exemptions. Additionally, the Agency worked with the U. S. Department of Agriculture to make the agricultural community aware of these provisions. As we speak, FMCSA is developing a final rule to conform the FMCSRs to the statutory provisions in MAP-21.

While these statutory amendments do not, in and of themselves, require any actions by the States, FMCSA has requested that States take immediate action to put policies and procedures in place to provide this regulatory relief. Once the Agency completes a final rule to conform the FMCSRs to these provisions, States will be required to adopt and enforce compatible safety regulations as a condition of receiving Motor Carrier Safety Assistance Program funding. States will have three years from the rule's effective date to adopt compatible regulations.

Drug and Alcohol Clearinghouse

MAP-21 provides explicit authority for the Secretary to create an electronic repository for positive alcohol and controlled substances test results. This new Clearinghouse will improve both driver and employer compliance with DOT's alcohol and controlled substance testing program, providing employers with important information about drivers before they hire them.

The Agency is developing a rulemaking that would require employers of CDL holders and service agents to report positive test results and refusals to test to the Clearinghouse. Prospective employers, acting on a CDL driver's application and with his or her written consent, would query the Clearinghouse for information about the driver prior to hiring the applicant to drive CMVs.

Compliance, Safety, Accountability

Compliance, Safety, Accountability, or CSA is FMCSA's compliance model to improve CMV safety and ultimately reduce large truck and bus crashes, injuries, and fatalities on our nation's highways. CSA enables the Agency to identify high risk motor carriers and achieve improved levels of compliance with Federal commercial motor vehicle safety and hazardous materials regulations. Additionally, through increased operational efficiencies, CSA is enabling FMCSA and its State safety enforcement partners to identify and address compliance and safety deficiencies of a larger segment of the motor carrier industry than we did previously with less interruption to motor carriers' business operations. Developed with an unprecedented level of stakeholder input, analysis, and planning, the Agency recently implemented enhancements to our Safety Measurement System (SMS) that reflect input collected from the comments of more than 19,000 carriers and 2,900 law enforcement personnel.

MAP-21 includes a number of statutory revisions and additional authorities needed to bring CSA to fruition. For example, MAP-21 provides the Agency with flexibility to allow an investigator's credentials to be displayed in writing rather than in person. This will allow FMCSA and its investigators – with clear statutory authority to conduct enforcement interventions – to formally demand that a motor carrier provide records without having to travel to the motor carrier's business location. This is vital to expanding FMCSA's and our State partners' enforcement repertoire to include off-site reviews and investigations and will increase the number of reviews that we conduct.

Electronic Logging Devices

MAP-21 included a provision mandating the use of electronic logging devices (ELD) for any driver regulated by the HOS regulations. Currently, the Agency is preparing a supplemental notice of proposed rulemaking (SNPRM) that would establish the following: (1) minimum performance standards for ELDs; (2) mandatory requirements for use of the devices by drivers required to prepare handwritten records of duty status (RODS); (3) requirements concerning HOS supporting documents; and (4) measures to ensure that the mandatory use of ELDs will not result in harassment of drivers by motor carriers and enforcement officials. This rulemaking supplements the Agency's 2011 Notice of Proposed Rulemaking (NPRM) and addresses issues raised by the U.S. Court of Appeals for the Seventh Circuit Court in its 2011 decision vacating the Agency's 2010 final rule concerning ELDs. The ELD requirements will improve HOS compliance, thereby decreasing the risk of fatigue-related crashes attributable to HOS non-compliance.

In 2012, FMCSA held two public listening sessions to solicit information, ideas and comments on ELDs and the issue of driver harassment. Specifically, the Agency sought public comment on what factors, issues, and data it should consider as it addresses the distinction between productivity and harassment. These listening sessions were held March 23, 2012, at the Mid-America Trucking Show in Louisville, Kentucky; and on April 26, 2012, at the Commercial Vehicle Safety Alliance meeting in Bellevue, Washington.

Registration Requirements

MAP-21 helps the Agency crack down on carriers that commit safety violations and then change their corporate identity slightly, or "reincarnate", so that they can either continue operating after being placed out of service, avoid paying civil penalties, or otherwise avoid the regulatory consequences of poor safety performance. This growing and disturbing practice poses a real enforcement challenge to FMCSA's investigators and to commercial law enforcement officers nationwide.

MAP-21 expressly authorizes the Secretary to withhold, suspend, amend or revoke a motor carrier's registration if the carrier fails to disclose its adverse safety history or other material facts on its application or if the applicant is a successor or closely related to another company with a poor compliance history within the preceding 3 years. MAP-21 also authorizes the Secretary to withhold, suspend, amend, or revoke the registration of a motor carrier, employer, owner or operator if the Secretary determines that there is a failure to disclose any relationship

involving common ownership, management, control, or familial relationship to any other motor carrier, employer, or owner operator.

MAP-21 grants the Secretary new authority to deny operational licenses to private motor carriers and express authority to refuse to issue the USDOT number if the applicant company is, or was, a close affiliate or successor to a motor carrier that is not or was not fit, willing, and able to comply with the regulations. The registration provision will require motor carriers to update their registrations within 30 days of a change of certain essential information, as well as quarterly for the first two years of operation for a motorcoach operator. The Agency plans to implement this provision as part of an omnibus rulemaking that will capture a number of self-executing MAP-21 provisions.

Finally, MAP-21 directs the Agency to establish a written proficiency examination for all new applicants to test their knowledge of the safety regulations, applicable commercial regulations, and regulations relating to accessibility for disabled persons. This provision will improve familiarity with these regulations before beginning operations. The Agency has begun work on implementing this provision.

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

MAP-21 directs the Agency to complete its proposed rule to require behind-the-wheel and classroom training for persons who must hold a CDL to operate CMVs in interstate commerce. The Agency's rulemaking will consider the effectiveness of CMV driver training in reducing crashes, the appropriate types and levels of training, and related costs. On January 7, 2013, FMCSA held a public listening session at the American Bus Association annual Marketplace in Charlotte, NC, to hear comments on this proposed rule. The Agency will hold a second listening session on entry-level driver training next week, on March 22, at the Mid-America Trucking Show in Louisville, KY.

National Registry of Certified Medical Examiners

In April 2012, FMCSA issued a final rule as required by a previous statutory requirement, reaffirmed and modified in MAP-21, to establish a National Registry of Certified Medical Examiners (National Registry). The National Registry will improve highway safety and driver health by requiring that medical examiners be trained and certified so they can determine effectively whether a CMV driver is medically fit under FMCSA's standards. The National Registry will require that all medical examiners who conduct physical examinations for interstate CMV drivers meet the following criteria: (1) complete certain training concerning FMCSA's physical qualification standards; (2) pass a test to verify an understanding of those standards; and (3) maintain and demonstrate competence through periodic training and testing. Once the National Registry is fully implemented by May, 2014, FMCSA will require that motor carriers and drivers use only those medical examiners listed on the National Registry and will only accept as valid medical examiner's certificates issued by medical examiners listed on the National Registry.

Household Goods Provisions

With regard to household goods transportation, MAP-21 authorizes FMCSA to assign all or a portion of the penalties it receives from noncompliant moving companies to the aggrieved shipper. The Agency has formed a working group and is examining how to implement this new restitution authority. A second provision authorizes the Agency to be able to order moving companies to return household goods held hostage. The Agency has implemented the provision and has already ordered a noncompliant moving company to return hostage goods to an aggrieved shipper.

Conclusion

As you can see, FMCSA is working hard to implement MAP-21. These provisions will enhance our enforcement efforts and program delivery capabilities. Mr. Chairman, we look forward to continuing our close work with your Subcommittee in our efforts to improve safety, reduce crashes, and save lives on our Nation's highways.

Thank you for the opportunity to discuss FMCSA's implementation of MAP-21. I would gladly answer any questions you may have.