STATEMENT OF PATRICE M. KELLY
ACTING DIRECTOR OF THE OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE
U.S. DEPARTMENT OF TRANSPORTATION
before the
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES
hearing on
"PLANES, TRAINS AND AUTOMOBILES: OPERATING WHILE STONED"

JULY 31, 2014

Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee:

I appreciate the opportunity to appear before you to discuss the potential impacts on commercial transportation of recent state and local legislation that allow recreational and medical marijuana use. The transportation industry drug and alcohol testing program for commercial operations is a critical element of the Department of Transportation's (DOT) safety mission. Pilots, truck drivers, subway operators, mariners, pipeline controllers, airline mechanics, locomotive engineers, motor coach drivers and school bus drivers – among others – have a tremendous responsibility to the public, and we cannot let their performance be compromised by drugs or alcohol. Today, I will provide you with a brief history of our program, the scope of its application, and finally, an explanation of our policy regarding the use of marijuana for medical or recreational purposes by individuals who work in federally-regulated transportation industries.

The DOT drug and alcohol testing program was first established in 1988 following the Department of Health and Human Services' (HHS) development and implementation of drug and

alcohol testing for federal employees. The DOT program was initiated in response to transportation industry fatal accidents that occurred due to illegal drug use. In 1991, Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (OTETA), which required the DOT to expand the application of its program to include mass transit, and modify its regulations to address the statutory requirements.

The DOT program always has required transportation industry employers to have drug and alcohol testing programs that require their employees to be removed from performing safety-sensitive duties immediately if they have violated drug and alcohol testing rules. Throughout the history of our program, and consistent with Congress' direction in OTETA, we have relied on HHS for its technical and scientific expertise for determining the types of drugs for which we may test, the testing methodology we must use in our program, and the integrity of the HHS' certified laboratories in testing the specimens and reporting results. As a result of OTETA, we are limited to testing for the controlled substances included in HHS' Mandatory Guidelines. Currently, those substances include Schedule I, illegal drugs, and Schedule II, legally prescribed drugs, as set forth in the Controlled Substances Act. The drugs and classes of drugs for which we test are: cocaine, opiates, amphetamines, phencyclidine, and marijuana. The mere presence of these drugs in an employee's system at or above the threshold levels set by HHS for the Federal Drug-Free Workplace Program, if reported as positive by a Medical Review Officer, is a violation of our drug testing program and requires employers to take immediate action to remove the employee from performing safety sensitive duties until that employee successfully completes treatment and additional testing.

Specifically, an employee who tests positive or refuses to submit to testing cannot return to the performance of safety-sensitive functions for any DOT-regulated employer until that

employee successfully completes the return-to-duty process. This includes an evaluation by a Substance Abuse Professional, successful completion of any recommended education and/or treatment, and a negative result on a return-to-duty test. To ensure the employee remains in compliance once he or she returns to work, the DOT requires that the employer continues to monitor the employee through unannounced drug testing conducted under direct observation. The rate and length of time at which the employee is subject to this testing is determined by a Substance Abuse Professional and may range from a minimum of 6 tests in 12 months, to any number of tests over a 5-year period.

Currently, there are approximately 5 million DOT-regulated safety-sensitive employees that are subject to our drug and alcohol testing program. These include approximately 3.9 million employees regulated by the Federal Motor Carrier Safety Administration; 450,000 employees regulated by the Federal Aviation Administration; 111,300 employees regulated by the Federal Railroad Administration; 290,000 employees regulated by the Federal Transit Administration; 190,000 employees regulated by the Pipelines and Hazardous Materials Safety Administration; and 150,000 employees regulated by the U.S. Coast Guard. Although the U.S. Coast Guard is no longer a part of the DOT, it continues to follow the Department's drug and alcohol testing program requirements through a Memorandum of Understanding.

The Department's policy on the use of Schedule I controlled substances has remained unchanged since our program began in 1988: there is no legitimate explanation, medical or otherwise, for the presence of a Schedule I controlled substance (such as marijuana) in an employee's system. With respect to marijuana use specifically, we have repeatedly cautioned Medical Review Officers against considering "innocent" ingestion and exposure defenses by individuals. In 2000, the DOT amended its regulations to specifically prohibit Medical Review

Officers from considering "innocent," or unknowing, ingestion and exposure defenses as legitimate medical explanations from individuals who test positive for Schedule I controlled substances. In December 2009, following the Department of Justice's issuance of guidance for Federal prosecutors in states that enacted laws authorizing the use of "medical marijuana," we issued a reminder to our regulated entities that under the DOT drug testing program, medical marijuana use authorized under state or local law is not a valid medical explanation for a transportation employee's positive drug test result.

Although there has been recent movement by some states to allow recreational use of marijuana by their citizens, the DOT program does not, and will not, authorize the use of Schedule I controlled substances, including marijuana, for any reason by any individual conducting safety-sensitive duties in the transportation industry. In December 2012, we issued a notice explaining that state and local government initiatives allowing the use of recreational marijuana will have no bearing on the Department of Transportation's drug testing program, nor any individual subject to such testing. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana and continue to perform safety-sensitive duties in the federally regulated transportation industries.

Chairman Mica, this concludes my testimony. I would be happy to answer any questions you or your colleagues may have.