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BEFORE THE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

OVERSIGHT OF THE U.S. DEPARTMENT OF TRANSPORTATION'S IMPLEMENTATION OF MAP-21 AND FISCAL YEAR 2015 BUDGET REQUEST FOR SURFACE TRANSPORTATION

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Mr. Chairman, Ranking Member Norton, 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). Enacted on July 6, 2012, MAP-21 provided the Agency with important new tools to improve commercial motor vehicle (CMV) safety and remove unsafe operators from the Nation's highways. And the President's comprehensive four-year reauthorization plan will strengthen them even further.

Safety is FMCSA's number one priority, and while we have realized success in reducing crashes, injuries, and fatalities since the Agency was established in 2000, we must do more. To direct how we will use our resources to save lives, the Agency developed a Strategic Plan guided by a framework shaped by 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. MAP-21 aligns well with these core principles and supports our Agency's important safety initiatives.

Miscellaneous Rule Text Changes in Provisions of MAP-21

The Agency addressed 17 MAP-21 provisions in an omnibus final rule on October 1, 2013. This largely ministerial rulemaking action ensured that the regulations were aligned with the new statutory requirements. Most notable among the changes were the new financial security requirements for brokers and freight forwarders. Pursuant to MAP-21, FMCSA amended its regulations to require a $75,000 surety bond or trust fund for brokers and extended the surety bond or trust fund requirement to freight forwarders for the first time.

Agricultural Exemptions

MAP–21 included two provisions applicable to operating CMVs for agricultural purposes. The first exempts CMV drivers transporting agricultural commodities and farm supplies from the

Federal hours-of-service (HOS) rules. The second exempts operators of farm vehicles by farm and ranch operators, their employees, and certain other specified individuals 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. These self-executing statutory provisions took effect on October 1, 2012.

In October 2012, the Agency published a notice in the Federal Register 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 exemptions. While in and of themselves, these statutory amendments and subsequent Federal Register notice did not require any actions by the States, FMCSA requested that States take immediate action to implement policies and procedures to provide this regulatory relief. On March 14, 2013, FMCSA published a final rule to conform the FMCSRs to the statutory provisions in MAP-21. States will have three years from the rule's effective date, or until March 14, 2016, to adopt compatible regulations.

Drug and Alcohol Clearinghouse

MAP-21 provided explicit authority for the Secretary to create an electronic repository for positive alcohol and controlled substances test results. In response, on February 20, 2014, FMCSA published a notice of proposed rulemaking to establish the Commercial Driver's License Drug and Alcohol Clearinghouse for all CDL holders. The proposed rule would require employers of CDL drivers and service agents to report positive test results and refusals to test to the Clearinghouse and thus will improve both driver and employer compliance with DOT's alcohol and controlled substance testing program.

Employers would be required to check the Clearinghouse to make sure current and prospective employees do not have drug and alcohol violations that would prohibit them from performing safety sensitive functions, such as driving CMVs. We are soliciting comments on this rule through April 21.

Electronic Logging Devices

MAP-21 included a provision mandating the use of electronic logging devices (ELD) for any driver required to keep a record of duty status (RODS) under the HOS regulations. The Agency is preparing a supplemental notice of proposed rulemaking (SNPRM) that would establish: (1) minimum performance standards for ELDs; (2) mandatory requirements for use of the devices by drivers required to prepare 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 would supplement the Agency´s 2011 Notice of Proposed Rulemaking (NPRM) and address issues raised by the U.S. Court of Appeals for the Seventh Circuit in its 2011 decision vacating the Agency´s 2010 final rule concerning ELDs. The ELD requirements will improve HOS compliance by reducing the likelihood of falsification of drivers' duty status

records, thereby decreasing the risk of fatigue-related crashes attributable to HOS non-compliance.

Compliance, Safety, Accountability

Compliance, Safety, Accountability, or 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 bring CSA to fruition. For example, MAP-21 provided the Agency with flexibility to allow an investigator to display credentials 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 efforts to include off-site reviews and investigations, increasing the number of reviews that we conduct.

Passenger Carrier Safety

FMCSA continues to utilize the new authorities granted by MAP-21 to focus on the safety of those who use buses for transportation all across our Nation. We are committed to achieving universally high levels of safety regardless of which bus operator a passenger chooses. Using the first phase of the Motorcoach Safety Initiative known as Operation Quick Strike, more than 50 specially trained investigators were dispatched from April through November of 2013 to conduct in-depth reviews into the patterns and practices of the 250 most at-risk motorcoach companies, as identified using roadside inspection and safety data. As a result, we removed 52 unsafe bus companies and 340 vehicles from the road. In addition, the second phase of the effort involved FMCSA investigators visiting more than 1,300 carriers that had minimal inspection history or data with the Agency. As a result, we targeted more than 240 companies for follow-up investigations.

Last year, we evaluated and enhanced our investigation methods to dig deeper than ever before and uncover dangerous patterns of unsafe behavior and business practices. Now we are training all investigators to use the new tactics we employed during Operation Quick Strike, and conducting evaluations and a gap analysis to identify the methods for maintaining this intensified level of oversight on the passenger carrier industry. Through the gap analysis process, we identified two improvements that we will be proposing as part of reauthorization: (1) expanded locations where motorcoach inspections may occur, and (2) new jurisdiction over brokers of passenger transportation. Under the proposal motorcoaches could be required to stop for routine inspections, provided that the inspection site has adequate food, shelter, and sanitation facilities to accommodate passengers during the inspection process. Current restrictions on en-route motorcoach inspections have proven too restrictive to adequately detect driver and vehicle safety violations. Requiring ticket brokers to register with FMCSA will convey their accountability for ensuring motor carriers they work with are safe. It will also help address the problem of entities providing passenger transportation, skirting FMCSA's jurisdiction by claiming to be mere ticket agents.

Patterns of Safety Violations

In January, FMCSA published a final rule that enables the Agency to suspend or revoke the operating authority registration of for-hire motor carriers that show egregious disregard for safety compliance. The rule implements a previous statutory provision, as amended by MAP-21, which prohibits motor carriers from using common ownership, common management, common control or common familial relationships to avoid compliance or conceal noncompliance or a history of noncompliance. It also authorizes FMCSA to withhold, suspend, amend, or revoke the operating authority registration of motor carriers if they or their officers engage in a pattern or practice of such conduct or of otherwise avoiding compliance with CMV safety regulations.

Registration Requirements

MAP-21 strengthened the registration requirements for motor carrier operating authority and thus will help the Agency crack down on carriers that commit safety violations and then change their company identity, or "reincarnate." This growing and disturbing practice poses a real enforcement challenge to FMCSA's investigators and commercial law enforcement officers nationwide.

Under MAP-21 FMCSA can withhold, suspend, amend or revoke a motor carrier's registration if: (a) 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 for the preceding 3 years, or (b) a motor carrier, employer, owner or operator does not disclose a relationship involving common ownership, management, control, or familial relationship to any other motor carrier, employer, or owner operator.

Additionally, MAP-21 directed the Agency to establish a written proficiency exam for new authority applicants to test their knowledge of the safety regulations, applicable commercial regulations, and regulations relating to accessibility for disabled persons. This test will help ensure that companies understand these regulations before beginning operations. The Agency has begun work on implementing this provision. This year, we will be conducting a series of listening sessions across the country to gather input on this issue. We held the first session in January at the American Bus Association Marketplace in Nashville, TN. The final two sessions will be held this month at the Mid-America Trucking Show in Louisville, KY, and next month at the Commercial Vehicle Safety Alliance Workshop in Los Angeles, CA.

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

MAP-21 directs 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 at the American Bus Association annual Marketplace in Charlotte, NC, and the Mid-America Trucking Show in Louisville, KY, to hear comments on this proposed rule. These sessions provided the Agency with substantial information about the issues regarding 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.

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 requires all medical examiners who conduct physical examinations for interstate CMV drivers meet the following criteria: (1) complete certain training concerning physical qualification standards; (2) pass a certification test; and (3) maintain and demonstrate competence through periodic training and testing. It requires motor carriers and drivers to use only those medical examiners listed on the National Registry. To date, more than 28,000 healthcare professionals from around the country have started the process to be included on the registry and more than 7,000 of them have completed both the training and testing and are listed on the registry. Approximately 1,500 healthcare professionals are currently scheduled to take the examination.

We commend the healthcare community for working with the Agency to stand up this program, which we believe will significantly improve highway safety. The gradual phasing in of the requirements as drivers' current medical certificates expire helps to decrease the likelihood of inadequate capacity during the first full year after the compliance date. Drivers' medical certificates remain valid until the expiration date, which may be for up to 2 years following the date of the medical exam. Therefore, medical certificates issued prior to the May 21, 2014, National Registry compliance date remain valid for up to 2 years and drivers would not need a new medical certificate from a medical examiner on the National Registry until the current medical certificate expires.

Motor Carrier Safety Advisory Committee (MCSAC)

MAP-21 authorized the continuation of the MCSAC until September 30, 2013, and its charter has now been extended an additional two years under the Federal Advisory Committee Act. FMCSA tasked the MCSAC to address a number of timely topics that are of importance to key stakeholder groups and Congress. For example, the MCSAC completed letter reports concerning motorcoach hours of service and entry-level driver training. The MCSAC's deliberations and report on motorcoach hours of service provided an excellent starting point for a public debate about whether there are safety vulnerabilities in the current rule associated with motorcoach operators who do not adhere to certain industry best practices for dispatching drivers. The MCSAC's deliberations and report concerning the MAP-21 provision concerning entry-level driver training also provided thoughtful input for the Agency to consider on this topic, which has generated widespread support among the industry, safety advocates, and the States.

Household Goods Provisions

With regard to household goods transportation, MAP-21 authorized FMCSA to assign all or a portion of the penalties it receives from noncompliant moving companies to the aggrieved shipper. The Agency formed a working group to examine how to implement this new authority. A second provision granted the Agency authority to order moving companies to return household goods held hostage. FMCSA is aggressively using these new authorities to protect consumers

and ensure compliance with the Agency's regulations. Recent enforcement efforts have resulted in significant civil penalties against moving companies involved in fraudulent activities, and have also resulted in revoking the authority of some of the carriers due to their egregious violations.

Fiscal Year (FY) 2015 Budget Request

The FY 2015 President's Budget request of $669 million for FMCSA provides the resources necessary to support nationwide motor carrier safety and consumer enforcement efforts, particularly as they pertain to motorcoach and intercity bus operations. The Budget also requests an increase of 77 FTEs, primarily to support Safety Intervention Programs and Border Crossing programs.

Of the total funding, $316 million will be dedicated enforcement, research, technology, and other Federal programs that reduce serious injuries and deaths resulting from commercial motor vehicle crashes; and $353 million for the Motor Carrier Safety Grants program. The Agency's proposed reauthorization reengineers and consolidates a number of our existing programs will reduce the administrative burden on our grantees and the Agency, allowing savings to be redirected to FMCSA's safety mission. This request bolsters the resources available to award grants that are used to support investigations and interventions in States, identify and apprehend traffic violators, and conduct roadside inspections.

Conclusion

Thank you, Mr. Chairman, for the opportunity to discuss FMCSA's implementation of MAP-21. We at FMCSA look forward to continuing our close work with your Subcommittee to further strengthen our safety authorities through enactment of the President's comprehensive four-year reauthorization plan. We very much appreciate your partnership as we work together to improve safety, reduce crashes, and save lives on our Nation's highways.