

**STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR
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BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
INFRASTRUCTURE, SAFETY, AND SECURITY
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
U.S. SENATE**

***MAKING OUR ROADS SAFER: REAUTHORIZATION OF THE MOTOR CARRIER
SAFETY PROGRAM***

JULY 21, 2011

Good afternoon Mr. Chairman, Ranking Member Wicker and Subcommittee Members. Thank you for this opportunity to speak to you today about reauthorization of the motor carrier safety program. I appreciate the Subcommittee's steadfast dedication to making our Nation's roads as safe as possible by ensuring that only the safest motor carriers and commercial motor vehicle (CMV) drivers operate over our roads, and providing enhanced enforcement tools to the Federal Motor Carrier Safety Administration (FMCSA) and its State partners.

As Secretary Ray LaHood has said many times, "Safety is my number one priority. Nothing else even comes close." FMCSA's 2011-2014 Strategic Plan, for which we are now seeking public comment, is based on a strategic framework that is shaped by three core principles: **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.** In preparing technical assistance for legislative policy proposals for motor carrier safety, the Department paid close attention to suggested provisions that advance one or more of our three core principles.

With the help of SAFETEA-LU, we have achieved significant success in reducing crashes, injuries, and fatalities over the past six years, but no one can dispute that additional efforts are necessary to achieve our paramount goal of safety in motor carrier transportation. The Agency must be strategic in its use of resources to target identified compliance weaknesses and correct them. Through the technical assistance, we strove to close statutory gaps that place unsafe carriers, drivers and vehicles outside our grasp. At the same time, our goal was to ensure a level playing field without over-regulating the industry. We believe that these changes, taken together, and increasing Agency efficiency and effectiveness, will dramatically increase motor carrier safety without unduly burdening States or industry. I would like next to discuss our key technical assistance for reauthorization policy proposals.

CSA Proposals

For nearly seven years, FMCSA has been working to develop a new enforcement business model, which we call Compliance, Safety, Accountability or CSA. We have undertaken this with an unprecedented level of stakeholder input, analysis, and planning, including public

meetings, webinars, over 350 live presentations, numerous meetings with Congressional staff and the National Transportation Safety Board (NTSB), and a 30-month/9-State Operational Model Test. Through this process, FMCSA worked with our partners to develop a new and improved enforcement model. CSA allows FMCSA to more effectively and efficiently target poor safety performers and take the necessary steps to either improve that performance or get the carrier off the road.

We have included in our technical assistance a number of statutory revisions and additional authorities needed to bring CSA to fruition. For example, we are requesting 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 display credentials and formally demand that a motor carrier provide records, without traveling 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.

We also provided language to update the requirement, adopted in SAFETEA-LU, that the Agency perform compliance reviews on motor carriers rated as category A or B for 2 consecutive months under the Agency's old SafeStat measurement system. Under CSA, the Agency replaced SafeStat with a new, more accurate carrier safety metric and established our Safety Measurement System (SMS), which uses more data, and completes a more targeted assessment of the carrier. The Agency is committed to continuing to prioritize the carriers with the highest safety risk. However, we need to use the new, improved metrics rather than the category A or B system to identify problem carriers.

As the centerpiece of CSA, the Agency is currently developing a proposed rule to revise its procedures for issuance of motor carrier safety fitness determinations. We anticipate issuing that proposed rule by the end of 2011. Longer term, FMCSA anticipates adopting comparable safety fitness determination procedures for individual drivers, and we have proposed a new statutory section to grant express authority for that rule. This authority would strengthen FMCSA's ability to identify high-risk commercial drivers and to remove them from service.

The final CSA policy proposal would help ensure that the roadside enforcement data, which takes on heightened importance under CSA, is based on nationally uniform criteria for selecting vehicles for roadside inspections. Consistency in State-operated inspection selection systems is vital to preserving the integrity of the SMS. The FMCSA's language would, therefore, authorize FMCSA to withhold a portion of a State's Motor Carrier Safety Assistance Program (MCSAP) grant funds if the State's inspection selection system does not use a methodology FMCSA has approved.

Reincarnated/Affiliate Carrier Proposals

In recent years, FMCSA has witnessed a disturbing practice – carriers that commit safety violations and then slightly change their corporate identity or “reincarnate” to either continue operating after being placed out of service, avoid paying civil penalties, or to otherwise avoid the regulatory consequences of poor safety performance. More recently, unsafe carriers, particularly motorcoach companies, have attempted to avoid FMCSA enforcement by creating closely affiliated entities under common operational control. Our investigations have found that

these companies quickly shift customers, vehicles, drivers, and other operational activities to an affiliated company when FMCSA places one of them out-of-service. These practices of “reincarnating” as a supposedly new motor carrier or simultaneously operating affiliated companies to circumvent Agency enforcement actions result in the continued operation of high-risk carriers and create an unacceptable safety risk to the traveling public.

Our policy proposals would confront this problem from a number of angles. First, the technical assistance would expressly authorize the Secretary to withhold, suspend, amend, or revoke a motor carrier’s registration if the carrier failed to disclose its adverse safety history or other material facts on its application, or if the Secretary found that the applicant was a successor or closely related to another company with a poor compliance history within the preceding 5 years. Another proposed section would amend existing law to authorize the Secretary to withhold, suspend, amend, or revoke the registration of a motor carrier, employer, or owner or operator if the Secretary determined that: (i) there was a common familial relationship to avoid compliance or to mask non-compliance; or (ii) the company engaged in a pattern or practice of avoiding compliance or masking non-compliance within the preceding 5 years. Both of these proposals would require that, before taking action on such carriers’ registration, the Secretary provide the carrier due process in the form of notice and an opportunity for a proceeding.

Second, the Secretary would also be authorized to take steps, after notice and an opportunity for a proceeding, against individual officers, directors, owners, chief financial officers, safety directors, or other persons who exercise controlling influence over the operations of a motor carrier, if those persons intentionally, knowingly, or recklessly engage in a pattern or practice of violating CMV safety regulations or assist companies in avoiding compliance or concealing non-compliance. Sanctions against such individuals would include a prohibition on associating with other motor carrier companies, including temporary or permanent suspension of any individual registration and a temporary bar on association with any registered motor carrier. A related proposal would increase the current civil penalty ten-fold, up to \$5,000 per violation, for attempted evasion of motor carrier regulations.

Third, FMCSA’s policy proposals would clarify that a uniform, Federal legal standard applies to determinations of whether one motor carrier is liable for the acts of a predecessor or closely related carrier. Under this Federal standard, the Secretary would be authorized to determine, after notice and an opportunity for a proceeding, that the officers, financial arrangements, equipment, drivers, and general operations of the company were closely related to those of another motor carrier. The Agency’s technical assistance lists 12 factors for consideration and includes a limited, express preemption of State law that is narrowly restricted to Federal motor carrier regulations. Application of the Federal standard would not affect State corporation laws, such as debtor/creditor rights, taxes, tort liability, director and officer liability or other rights between private parties. The Agency is very mindful that it is proposing a limited intrusion into what is traditionally State authority. However, without this Federal standard, the Secretary lacks clear authority to prevent unscrupulous motor carriers from using State corporation laws to avoid Federal penalties and out of service orders.

Finally, some of the Agency’s registration proposals would also assist in identifying and tracking reincarnated carriers by authorizing the Secretary to refuse a USDOT number to

applicants that are not fit, willing, and able to comply with applicable regulations. In addition to granting the Secretary new authority to deny operational licenses to private motor carriers, the USDOT number provision would grant the Secretary 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 Secretary would also be authorized to revoke or suspend the USDOT number on these grounds. Again, such a determination would require notice and an opportunity for a proceeding. The registration provision would also require motor carriers to update their registrations annually, as well as within 30 days of a change of certain essential information.

Imminent Hazard Orders

The FMCSA has current authority to place a motor carrier, vehicle or driver out of service immediately if the Agency determines that regulatory violations create an imminent hazard to safety. The Agency's policy proposals include a number of modifications to this emergency authority. Currently, imminent hazard orders apply expressly to operations of CMVs in interstate commerce. The Agency's proposal would clarify that such orders also apply to the intrastate operations of such interstate carriers.

In addition, the technical assistance, if adopted, would require that the Secretary revoke the operating authority registration of *any* motor carrier determined to constitute an imminent hazard. Under current law, operating authority is revoked for only passenger carriers, not for property carriers, determined to constitute an imminent hazard.

Finally, the proposal would partially harmonize the two Acts of Congress that granted the Secretary imminent hazard authority by redefining "imminent hazard" in one section of the United States Code to encompass hazards other than those dealing with hazardous materials. As a result, the Secretary will have the authority under section 31310 of title 49, United States Code, to disqualify any driver whose continued operation of a CMV substantially increases the likelihood of death, serious injury or illness, or a substantial endangerment to health, property, or the environment.

Driver Penalty Provisions

Through our work developing CSA, FMCSA confirmed that focusing on the motor carriers can advance safety only to a certain point. To take the next significant step, we need to focus on drivers. We want to make being an unsafe driver impossible. To this end, our proposal would require the State licensing agencies to take action against commercial driver's license (CDL) holders based on a Federal disqualification, regardless of whether the same offenses would lead to action on the CDL under State traffic laws. This would result in unsafe CDL holders having their State-issued licenses suspended or revoked by the State following a Federal disqualification. This change is necessary because States are not currently required to take certain actions against a driver's CDL if the individual has been disqualified by FMCSA from operating a CMV. To assist the Agency, we need Congressional affirmation that disqualifications imposed by FMCSA must be reported in the CDL Information System (CDLIS).

The proposal also includes a requirement to disqualify an individual from operating a CMV when that individual has not paid a civil penalty or complied with a settlement agreement resulting from a Federal enforcement action. This would apply to all drivers of CMVs, whether they hold a CDL or not.

Currently, the Secretary is required to disqualify a driver for driving a CMV when the driver's CDL is revoked, suspended or canceled. The Secretary is not authorized to disqualify such a driver, however, if the underlying offense that led to the revocation, suspension or cancellation occurred while the individual was operating a non-CMV. This means that a CDL holder whose license was suspended following a DUI in his personal vehicle, but who continued to operate a CMV during the suspension, would not be subject to disqualification. Our policy proposal would plug this regulatory hole. Under the proposal, we would disqualify an individual from operating a CMV for 1 year for the first violation, and for life for committing two or more such violations.

The Secretary is required to establish programs to improve CMV driver safety and may access the safety data and driving records of drivers who hold a CDL. Drivers who drive CMVs that weigh less than 26,001 pounds or that transport less than 16 passengers, however, do not need a CDL. To close an existing information gap, we need authority to access safety data and driving records of non-CDL holders who operate CMVs. We included such a proposal in our submission.

Penalty Provisions

To ensure compliance with our regulations, the Agency needs to make penalties for non-compliance significant enough that they are not simply a cost of doing business. To this end, we recommend several increases to existing minimum penalties, including:

- Raising the minimum penalty per day for general reporting and recordkeeping violations from \$500 to \$1,000.
- Changing the minimum penalty for passenger carriers operating without the necessary registration from \$2,000 per violation, and \$2,000 for each subsequent day of violation, to a flat minimum penalty of \$25,000. A \$25,000 minimum penalty would be the same as the current minimum penalty for transporting household goods without operating authority registration, and certainly passengers are more important than cargo.
- We also propose a new penalty of \$10,000 per violation for operating without required registration.
- The proposal also calls for an increase from \$20,000 to \$25,000 for transporting hazardous wastes without the necessary registration.

Even in the face of the best regulations, there remain carriers that consciously choose to defy the requirements. As a result, we suggest that the maximum penalty for continuing to operate after an unfit safety rating be increased from \$11,000 to \$25,000. Our current authority applies to drivers and not the motor carriers. This loophole needs to be closed.

In this same vein, we also propose raising the penalty for violating an imminent hazard out of service order from \$16,000 to \$25,000. These out of service orders are issued only where the

continued transportation presents a substantially increased likelihood of serious injury or death, and a motor carrier's violation of such orders obviously poses a grave safety risk. We need the authority for stronger penalties to ensure that these carriers do not continue to do business illegally and unsafely while under such a serious order.

Under our current penalty structure, motor carriers with sufficient capital can take corrective action, pay their penalty and not otherwise be impacted by the enforcement action. We would like to see a greater impact to the operations of unsafe carriers. To that end, the proposal would prohibit carriers from operating for at least ten days if they receive an unfit or unsatisfactory safety rating. This provision would increase the consequences to motor carriers that allow their safety performance to deteriorate to the point of becoming unfit, and would encourage carriers to address safety problems earlier, to avoid this rating.

In addition, as noted previously, we recommend increasing the penalty for evading compliance through reincarnation, and we would also expand the scope of the penalty to apply to evasion of the Hazardous Materials Regulations and statutes. This additional penalty is necessary to deter rogue motor carriers, and those who assist them, from, for example, re-registering under a different identity after issuance of hazardous materials and other safety violations and enforcement orders or imposition of civil penalties.

Taking legal action against unsafe motor carriers is often complicated by the fact that they disobey subpoenas or requirements to produce witnesses or records. As a result, we have proposed that motor carriers that fail to provide access to records and equipment in response to investigators' demands be placed out of service. Our proposal includes new authority for the Secretary to suspend, amend or revoke the registration of a motor carrier, broker or freight forwarder for failing to obey an administrative subpoena.

However, despite our legal actions and penalties, some carriers continue operating unsafely, sometimes with unsafe drivers and/or unsafe vehicles. To combat this, we seek express authority for FMCSA and authorized State grant officials to impound or immobilize commercial motor vehicles. This provision would give the Agency an additional enforcement tool when motor carriers refuse to comply with out of service orders, and continue operating vehicles that are safety risks to the vehicle's passengers, the traveling public, and the driver.

While one of the Agency's key goals is to remove unsafe carriers, drivers and vehicles from the roadways, we do recognize that some carriers or drivers make honest mistakes. Our proposal, therefore, includes clarifying language that would allow the Agency, even for violations relating to transportation of household goods, to accept lesser amounts of money, suspension of penalties, payment over time or investment in training or other activities or equipment to improve regulatory compliance. Such strategies are additional tools that can be used to improve motor carrier compliance with applicable rules, to promote the public interest and to respond with enforcement flexibility as justice requires. We do not want to put a carrier out of business; we want them to comply.

Registration

As noted in my earlier remarks regarding reincarnated carriers, the Agency is proposing to revamp some of its motor carrier registration provisions. Under the jurisdictional structure FMCSA inherited from the Interstate Commerce Commission, only for-hire motor carriers are subject to a statutory requirement to register with the Secretary. Other motor carriers, including private carriers operating equally large motor vehicles, are not statutorily required to register. To enhance the Agency's authority to ensure the safety of private motor carriers before they begin operating, we offered technical assistance that would require *all* motor carriers that operate CMVs subject to FMCSA's safety jurisdiction to apply for and receive a USDOT number before beginning operations.

As explained above, under FMCSA's technical assistance proposal, the Secretary would be authorized to refuse a USDOT number to any carrier if the motor carrier is unfit, unwilling or unable to comply with the Federal Motor Carrier Safety Regulations or the Hazardous Material Regulations. The proposed language would also authorize the Secretary to revoke or suspend a USDOT number if the Secretary determines that a motor carrier is unfit, unwilling, or unable to comply with the requirements or refuses to submit to a new entrant safety audit.

The Agency is completing its Unified Registration System rulemaking that would consolidate the existing operating authority registration (or MC Number) and its USDOT number systems. However, FMCSA is currently limited by statute to charging a maximum fee of \$300 for registration. The costs associated with registering and vetting new carriers exceed the \$300 cap. Our technical assistance would allow the Agency to increase this fee to cover the costs of processing the registration.

Medical Programs

The Agency has made significant strides in the past three years with rulemakings related its medical programs, including a proposed National Registry of Certified Medical Examiners and the requirement for medical certificate information on the CDL driver's record. To make the next large step forward in this area, we offered assistance that would require States to develop and maintain the capacity to receive electronic copies of the medical certificates prepared by certified medical examiners for each CDL holder who intends to operate in interstate commerce. The availability in the State database of an electronic report prepared by the certified medical examiner will greatly reduce the incidence of fraudulent medical examination reports.

The DOT policy proposal would make available up to \$1,000,000 in each of fiscal years 2013 and 2014 to help the States pay for the information technology improvements needed to receive medical examiners' reports. The funding is front-loaded to ensure that the States upgrade their driver information systems by the time the National Registry of Certified Medical Examiners and associated requirements become operational.

The Agency receives several hundred applications for vision and diabetes exemptions each year. Medical exemption requests currently must be published in the Federal Register, but the number of these requests, and the requirement for not one, but two, publications in the Register creates administrative and financial burdens for FMCSA. As a result, we suggest publishing these notices on a dedicated FMCSA Web site. Using the internet will be simpler and cheaper for the

Agency, will produce quicker results for applicants and will improve public access to these exemption requests. A statutory change is needed to effect this program improvement.

The FMCSA would also like to make improvements in the delivery of information regarding medical exemptions to roadside law enforcement. Our proposal would require MCSAP agencies to transmit exemption information to their roadside enforcement staff. This will ensure that enforcement officers have the means to verify any exemption claimed by a driver stopped at roadside and reduce the opportunities for fraud.

Household Goods Provisions

The Agency's technical drafting assistance includes additional provisions relating to household goods transportation. One proposal would allow persons injured by unscrupulous moving companies to seek judicial relief to compel the companies to release household goods held hostage. A second proposal would authorize FMCSA to assign all or a portion of the penalties it receives from non-compliant moving companies to the aggrieved shipper. FMCSA also recommends that the Agency be authorized to order moving companies to return household goods held hostage.

Drug and Alcohol Clearinghouse

Another significant set of Agency proposals would authorize the establishment of a national controlled substances and alcohol Clearinghouse. The provision would clarify the Secretary's authority to conduct a rulemaking and authorize funding for an electronic repository for records on alcohol and controlled substances testing of CMV operators. This new Clearinghouse would improve both driver and employer compliance with DOT's alcohol and controlled substances testing program and would provide employers important information about drivers before hiring them.

Miscellaneous

The DOT policy proposals include a variety of additional, miscellaneous recommendations including:

- A representative from a nonprofit employee labor organization would be added to the Motor Carrier Safety Advisory Committee.
- The Unified Carrier Registration Plan would be restructured to limit DOT's participation and to operate as a not-for-profit corporation.
- The current statutory provision allowing motor carriers to submit proof of qualification as a self-insurer in lieu of the bond, insurance policy or other security would be eliminated. FMCSA has determined that the self-insurance program does not further motor carrier safety, and administration of the program for the fewer than 50 motor carriers that participate is unreasonably burdensome and costly to taxpayers.
- Existing authority under the Motor Carrier Safety Improvement Act of 1999 to include a proficiency examination would be broadened to include tests on new entrant carriers' knowledge not only of safety regulations, but of applicable commercial regulations and regulations relating to accessibility for disabled persons. By granting the Secretary authority to develop an examination covering these areas to administer to applicant motor carriers, knowledge of and compliance with these regulations will be increased.

All of these changes will have significant impacts on the Agency's resources and programs.

Grant Program Changes

We could not complete our safety mission without our State partners who are the boots on the roadways through our grant programs. In this policy proposal, FMCSA identified ways to improve the efficiency and effectiveness of our grant programs. We focused on streamlining the Agencies' grant programs, improving the States' flexibilities in applying for FMCSA financial assistance and increasing the Agency's flexibilities in using funds to maximize their safety impact. Through reauthorization, FMCSA is seeking to consolidate 10 existing grants into 3 umbrella grant programs. These changes will not only improve the flexibility of the funding, but will also ease the administrative burden on States in applying for Federal financial assistance by allowing States to apply for multiple projects in one application, if they choose to do so. This structure will also allow the Agency to be responsive to new initiatives and priorities by allocating discretionary funds based on expected improvements to safety.

The 3 umbrella grant programs set forth in our policy proposal on grant programs are: CSA Grants, Driver Safety Grants, and Safety Data and Technology Grants.

The CSA Grants would provide funding primarily to State and local law enforcement agencies to continue successful enforcement programs and promote new motor carrier programs that improve the safety of the industry and protect consumers. The CSA umbrella grant program would continue to provide formula grants for the MCSAP Basic and Incentive grants so that the States would be confident that their cornerstone safety initiatives would be maintained. In addition, the proposal would allow the Agency to provide discretionary grants for New Entrant safety audits, border enforcement, safety data improvement and other high priority programs to address National safety priorities. The CSA program would also include new Agency funding priorities such as household goods enforcement and hazardous materials safety and security. The requested flexibility in these grants programs is essential because enforcement priorities can change due to national events, such as 9/11, which drove the need for increased security reviews, due to the development of new technologies, such as electronic on board recorders, or as the result of new safety initiatives, like distracted driving. The CSA program goals would allow the Agency to target the funding appropriately in a dynamic environment.

The second umbrella grant program, Driver Safety Grants, is intended to prioritize driver issues by directing funds specifically to programs that impact commercial drivers. Similar to CSA, Driver Safety would consist of existing program goals, such as continued funding for CDL programs and systems, including covert and overt fraud investigation, and CMV operator training. It would also include new initiatives, such as prioritized funding for CDL coordinators and funding for States to notify employers of their drivers' CDL violations.

The Safety Data and Technology grant program, the third umbrella grant program under our policy proposal, is intended to provide financial assistance to promote the efficient and effective exchange of CMV and CDL data among the States. Tying vehicle registration to carrier safety data and maintaining a consistent national IT infrastructure improves the quality and safety value of roadside inspections and assists law enforcement officers in targeting unsafe vehicles and drivers.

The proposed changes to our grant programs will allow the States to request the funds they need for other initiatives based on where the State stands with its safety initiatives. In addition, this model rewards the best/safest States by allowing them to request funding for new initiatives that will make a difference in their State.

To assist the States, we have suggested changes to the match requirements to create more consistency between the grant programs; we suggested that unused MCSAP formula grant funds be redistributed after August 1 to States that can use the funding; and we requested a change in the Maintenance of Effort requirements for MCSAP Basic and Incentive. Under SAFETEA-LU, the maintenance of effort level changed annually – creating an increasing obligation for the States in a time of economic duress. To this end, we suggest that the levels be established once at the start of the authorization period and remain constant. In addition, we have provided language that would provide the Agency authority to waive maintenance of effort requirements for a period of 1 year and in limited circumstances such as a natural disaster or economic hardship.

To maximize the flexibility of the States, we have also suggested that the States be allowed to request redistribution of awarded funds under each umbrella grant program, provided that the State shows that it is unable to expend funds within 12 months prior to expiration and the State has a plan to spend funds within the remaining period of expenditure on programs with comparable safety benefits.

These changes will allow both the Agency and the States to be more responsive to safety issues and problems, while simplifying the administration of the grants. As a result, these changes make the programs more effective and allow them to be implemented more quickly.

Closing

As you can see, FMCSA has thoughtfully considered gaps in its statutory authorities and ways to enhance its enforcement efforts and program delivery capabilities. Mr. Chairman, we look forward to continuing to work closely with the Subcommittee in its reauthorization efforts to make significant strides to improve safety, reduce crashes and save lives.

I thank you for the opportunity to discuss our policy proposals. I would gladly answer any questions at this time.