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FAST ACT IMPLEMENTATION: MOTOR CARRIER PROVISIONS

(115–45)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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May 18, 2018

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Highways and Transit
FROM:	Staff, Subcommittee on Highways and Transit
RE:	Subcommittee Hearing on "FAST Act Implementation: Motor Carrier Provisions"

PURPOSE

The Subcommittee on Highways and Transit will meet on Tuesday, May 22, 2018 at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to "FAST Act Implementation: Motor Carrier Provisions". The purpose of this hearing is to receive the views of the Administration and motor carrier stakeholders regarding the implementation of various motor carrier provisions passed in the *Fixing America's Surface Transportation Act* (FAST Act, P.L. 114-94). The Subcommittee will hear from the Federal Motor Carrier Safety Administration (FMCSA) as well as representatives of the bus industry, the Livestock Marketing Association, the Commercial Vehicle Safety Alliance, and the Truck Safety Coalition.

BACKGROUND

On December 4, 2015, the President signed H.R. 22, the FAST Act into law. Title V of the FAST Act reauthorizes the programs of the FMCSA through fiscal year 2020. It also required 20 rulemaking actions with respect to motor carrier safety, of which FMCSA has completed 14 of these required actions.

Improves Motor Carrier Safety

The FAST Act increases funding for and consolidates FMCSA grant programs, which support states' efforts to improve commercial motor vehicle safety, regulate the qualifications of commercial drivers, and assess the fitness of motor carriers to operate in interstate commerce. The FAST Act streamlines grant program requirements to reduce administrative cost and regulatory burdens on the states.

The FAST Act incentivizes the adoption of innovative truck and bus safety technologies by authorizing FMCSA to give credit or improved safety scores to motor carriers that utilize

such technologies, and accelerates the implementation of safety regulations required by law. It also authorizes hair testing as a method to detect the use of drugs and alcohol by commercial motor vehicle drivers, but only after the U.S. Department of Health and Human Services establishes federal standards for hair testing.

The FAST Act also requires the Secretary of Transportation to establish a process to collect data on the causes of delays in goods movement, which impacts driver detention, and requires the U.S. Department of Transportation Inspector General (IG) to provide recommendations to Congress on ways to mitigate such delays.

Reform of the Compliance, Safety, and Accountability Program

The FMCSA primarily relies on the Compliance, Safety, Accountability (CSA) program to track unsafe truck and bus companies and prioritize them for enforcement. The FAST Act requires a thorough review and reform of the program, to ensure that CSA analysis is reliable for the public and for enforcement purposes. Specifically, the FAST Act requires the FMCSA Administrator to commission the National Academies of Sciences, Engineering, and Medicine (NAS) to study the CSA program, analyze its methodologies, evaluate the sufficiency of its data, and review concerns raised by the Government Accountability Office and the IG. The NAS report was released on June 27, 2017, a copy of which can be found here.

The FAST Act requires the FMCSA Administrator to develop a corrective action plan based on the report and to submit that plan to Congress and the IG. The deadline for submission was October 25, 2017. To date, Congress has not received the plan.

The IG is required to review the corrective action plan and certify that it is responsive to the report's findings. Until the IG can make such certification, the FMCSA is required to remove the CSA scores from public view. Enforcement and inspection data reported by states and enforcement agencies will remain available for public view.

Regulatory Reforms

The FAST Act reforms the regulatory process by requiring FMCSA to use the best available science and data on various segments of the motor carrier industry when developing rulemakings, and by establishing a process under which the public or the industry can petition FMCSA to revise or repeal regulations if they are no longer current, consistent, and uniformly enforced. It further requires FMCSA to review its regulatory guidance and enforcement policies every five years to determine if they need to be updated or eliminated. The FAST Act extends the duration of administrative exemptions from Federal Motor Carrier Safety Regulations from two to five years, provides a mechanism for their renewal, and establishes a process for applicants to submit revised applications for exemptions if they are denied initially by FMCSA.

Provides Opportunities for Veterans

The FAST Act awards grant priority to programs that train veterans for careers in the motor carrier industry and reduces regulatory barriers faced by veterans seeking employment as commercial truck and bus drivers. It also eases the medical certification process for veterans that

drive commercial motor vehicles by enabling medical professionals at the U.S. Department of Veterans Affairs medical facilities to issue medical certificates to such veterans.[1] Finally, the FAST Act establishes a pilot program for veterans and reserve members younger than 21 years of age and who received training during their service in the military to drive certain commercial motor vehicles in interstate commerce.

WITNESS LIST

Panel I

The Honorable Ray Martinez
Administrator
Federal Motor Carrier Safety Administration

Panel II

Mr. Dale Krapf
Chairman
Krapf Transportation

Mr. Mike VanMaanen
Owner
Eastern Missouri Commission Company
on behalf of Livestock Marketing Association

Captain Christopher Turner
President
Commercial Vehicle Safety Alliance

Ms. Jennifer Tierney
Board Member
Citizens for Reliable and Safe Highways
on behalf of Truck Safety Coalition

[1] P.L. 115-105 expanded this to include other medical professionals, not just physicians.

FAST ACT IMPLEMENTATION: MOTOR CARRIER PROVISIONS

TUESDAY, MAY 22, 2018

1HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2167, Rayburn House Office Building, Hon. Sam Graves (Chairman of the subcommittee) presiding.

Mr. GRAVES OF MISSOURI. The subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any point.

And I want to say good morning to everybody and welcome all of our witnesses for being here today. I look forward to having a very productive discussion about the various motor carrier issues facing the industry.

And I am very happy to welcome Administrator Ray Martinez to the committee for the first time. I know all Members on both sides are very interested to hear from Mr. Martinez on a number of issues that are before the agency.

As many of you know, Fixing America's Surface Transportation Act, or FAST Act, was the first long-term surface transportation reauthorization bill in a decade and included a number of reforms to laws governing the safety and oversight of commercial motor vehicles. Specifically, the FAST Act increased funding for and consolidated motor carrier grant programs and streamlined programs to reduce administrative costs and regulatory burdens on the States.

Something I am very proud of that was important to a number of committee members was that the FAST Act reformed the Compliance, Safety, Accountability program, the CSA program. We heard loud and clear the concerns from the industry, the Government Accountability Office, and the DOT [Department of Transportation] inspector general, and the committee is going to continue to look closely and monitor closely these reforms as FMCSA [Federal Motor Carrier Safety Administration] implements them.

In addition, the FAST Act reformed the regulatory process by requiring FMCSA to use the best available science and data on various segments of the motor carrier industry when developing rulemakings and establishing a process under which the public or the industry can petition FMCSA to revise or repeal regulations if they are no longer current or consistent or uniformly enforced.

Finally, the FAST Act provided opportunities to veterans by easing the process for individuals who are currently serving in either

the armed services or Reserve components to find employment in the trucking industry. And it also established a pilot program for veterans and Reserve members younger than 21 years of age who received training during their service in the military to drive certain commercial motor vehicles in interstate commerce.

Our witnesses are going to offer their feedback on the implementation of various motor carrier provisions of the FAST Act as well as a number of other issues that are facing the industry today.

I want to thank you again, all of you, for appearing today. I know it takes time out of your schedules to be here, and we look forward to hearing your testimony.

With that, I will turn to Ms. Norton for her opening statement.

Ms. NORTON. Thank you very much, Chairman Graves. I very much appreciate this hearing, especially at this time when we have a new Administrator, Administrator Martinez, whom I am pleased to welcome.

I particularly appreciate this hearing, as well, Mr. Chairman, because in June of 2017 I wrote and requested a hearing because of the upcoming release—it hadn't yet been released, but there was considerable interest in the release—of the National Academies of Sciences, Engineering, and Medicine's study of the FMCSA's compliance and safety program.

So I think that what you are doing today is certainly in keeping with what my concerns have been. And, clearly, your calling this hearing today shows that you, Mr. Chairman, have the same concerns. And I appreciate your using this hearing, now that we have a new Administrator, for us to assess where we are on the very vexing issue of the increase in the number of people who lose their lives because of truck accidents.

Usually, we are able to do something in our country when we see things going up and then we gradually take action and the problem begins to decrease. But there has been an almost 30-percent increase in the number of fatal truck and bus crashes in the last almost 10 years since 2009. With the new Administrator, with these figures showing no movement, this hearing is especially timely so that we can understand where we are and can move forward more rapidly.

The major concern I have, Mr. Chairman, is with the safety fitness determination rule. The agency has been working on this rule for more than a decade in order to get a better system to track the safety record of motor carriers. So I understand the difficulty of the issue, but the timespan becomes unacceptable in light of what we are seeing with the increase in truck and bus fatalities.

I note that 85 percent of carriers do not have a safety rating, and if you look more closely at these figures, it shows that 40 percent of the ratings are more than a decade old, which means that they are probably not a good indicator of the carriers' current level of safety. So we are really behind, even where we have been doing better.

To the credit of the trucking industry, that industry has asked for years for a bright-line safety test that would be developed by the agency. That effort, of course, is currently underway at the FMCSA to evaluate its underlying data and analysis model, to look at its algorithms. But that is what you have been doing, or that

is what the agency has been doing for 10 years. I say time is up and that the time has come for ensuring that the agency responsible for ensuring truck and bus safety actually issues safety ratings.

I have long advocated a more robust commercial truck and driver training, for more commercial truck and bus training. There seemed to have been agreement, but I was disappointed that we did not get exactly what I wanted in the final rule.

Congress first directed the Department of Transportation to develop training standards for commercial motor vehicles a quarter of a century ago. In 2016, the FMCSA did issue a new rule based on the recommendations of a negotiated rulemaking. Now, negotiated rulemaking is a very good way to proceed. However, the agency failed to advance a critical recommendation that proceeded from that rulemaking: to require a minimum number of hours behind the wheel training.

Mr. Chairman, this is graduation season. In order to graduate from college or high school, you have to have a number of hours. That is how we know whether you are educated in the subject, whether you are trained. I don't see how we can fail to require the same for people who get behind the wheel of the biggest vehicles on the road.

I want to commend Administrator Martinez for his efforts, the efforts of the agency in implementing the electronic logging device rule. We call it ELD. That mandate that Congress did pass in MAP–21 [Moving Ahead for Progress in the 21st Century Act], the bill before the FAST Act. I particularly note that you, yourself, Mr. Martinez, mentioned the ELDs and called them lifesaving technology. I believe that the committee entirely agrees with you.

I am disturbed by claims that ELDs are the cause of major disruptions in the trucking industry. Let's look at what they do. The requirement to move to electronic timekeeping does not make any change in the underlying duty rules. A driver is legally allowed to drive for the same amount of time whether tracking hours electronically or on paper. The difference, of course, in having an ELD means a driver must completely and fully comply with Federal limits. I am not sure, therefore, what the objection should be.

I strongly support the ongoing dialogue. It is the way to proceed, in my judgment, among the U.S. DOT and Congress toward the collaboration that has moved us this far.

I note that we do not have representatives from the American Trucking Associations, the Owner-Operator Independent Drivers Association, or labor. We do not have a shipper witness. I believe that complex motor carrier safety regulatory issues warrant robust discussion in Congress with all stakeholders represented. Hearings where a wide swath of industry is left off the agenda amount to a missed opportunity.

I ask unanimous consent to include in the hearing record submissions from stakeholders not able to sit at the witness table for today's hearing. Could I have a consent for that, Mr. Chairman?

Mr. GRAVES OF MISSOURI. Without objection.

[A statement from the Advocates for Highway and Auto Safety is on pages 101–131.]

Ms. NORTON. Finally, I would like at this time also to welcome Jennifer Tierney, who will be on the second panel, and other volunteers from the Truck Safety Coalition in the audience today.

Thank you for this hearing.

Mr. GRAVES OF MISSOURI. I will now turn to the chairman of the full committee, Bill Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman.

And thanks to Administrator Martinez for being here. You have been, I guess, I figure, about 3 months on the job, but I know you have vast experience in this industry. And so, again, welcome. We are glad you are here today, as well as all the witnesses.

One of the goals of the FAST Act was to provide the motor carrier operators with some regulatory relief while also maintaining a very high level of safety, and I think we are moving significantly in that direction. So I appreciate what the folks are doing over at the FMCSA in making that progress.

So, again, looking forward to hearing from you today, Administrator. But, in addition, I would also like to welcome one of our stakeholders that is going to testify, Mr. Dale Krapf from Pennsylvania, who operates motorcoach and schoolbuses throughout Pennsylvania.

Welcome. It is good to have you here and your vast experience and knowledge about operating out there in the real world and having to deal with inside the beltway and the impediments we put up, sometimes wrongly, to do things and it affects your business negatively.

But I am looking forward to hearing from all our witnesses today. Thank you, Mr. Chairman, for holding this hearing, and I yield back.

Mr. GRAVES OF MISSOURI. Thank you, Mr. Chairman.

I will now turn to the ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thanks, Mr. Chairman.

It is certainly an important subject. I think that we could have had a more diverse panel representing trucking interests and the people who work in the industry, but it is what it is.

I thank Mr. Martinez for being here. I think this is the first hearing we have had him. And he has a lot of challenges ahead.

You know, we had 12 people die every day in large-truck crashes in 2016. That is 4,371 deaths in 1 year. Now, imagine if we had a fraction of that in aviation or some other critical public transportation sector. We need to deal with this.

I mean, there is potentially technology in the future that will help. I have seen the driver-assist Uber truck, the Tesla truck, and others. They are not self-driving, but they can do driver-assist. So there may be some technological fixes out there. But there are certainly other fixes which relate to training, as enumerated by the ranking member, to fatigue, which is an extraordinary problem, and other issues.

And there are a few things pending that I am concerned about.

I mean, first is we had a recent amendment on the FAA bill regarding exemptions from liability for brokers because there is no reliable data out there from FMCSA. I have raised concerns about the CSA with several Administrators. We did put a mandate in the

FAST Act that this be reviewed and corrective action be taken so that we can have meaningful and accurate safety data out there for anyone who wants to hire a company or a driver. And they can look and say, whoa, I don't think I want to hire that one, but, oh, this one, triple-A-plus, great. So we need to get that done.

The other issue there would be that part of the reason for that exemption is because more and more litigation—they are looking for anybody, somewhere, who can pay the catastrophic costs of a large-truck accident. You know, in 1980, Congress set the level at $750,000 for insurance. Now, if we just pegged that to CPI, it would be $2 million, except that the DOT itself says that it is more a relationship to medical costs, and so it should be more like $3 million, if it were indexed for medical costs since 1980.

And, again, for lack of that and a meaningful CSA score, we are having Congress attempt to push through liability exemptions and other things. We have to get this stuff done.

Then the other issue that causes, I think, a lot of problems in the industry is detention time. You know, if you study economics, there is something called an external diseconomy. I dump my waste out the back door into the river; someone else has to clean it up. You know, if someone else has to pay for it, that is an external diseconomy. I saved money; I dumped it out the back door.

So we have some warehousers and others who are receiving goods or ports where the drivers have no predictability. And they are on the clock. And, wow, I am sitting here waiting to get—well, we don't care. Sorry. You are going to sit there 5 hours. We are busy right now. We don't schedule you. We didn't make accomodation for you. Except that drivers have to move on to another delivery and make a living.

So, you know, they are often confronted with getting paid, moving goods by the load, or, you know, not getting adequate rest, which could mean a violation of rest and duty time, which can lead to accidents.

I asked for an IG [inspector general] study. We didn't get too much done because there is no reliable data. Another mandate of the bill was that your agency mandate a rule where truck drivers would report detention so we could put together a database.

The other good thing about that would be, if it became a public database, then you could actually have a market-based solution, in part because drivers could say, "I am never taking a load to that place. Everybody has to wait 5 hours. I am not going there." And that could cause some corrective action on the part of some of these receivers of the freight.

But the IG study did say that a 15-minute increase in average time loading or unloading at a facility increases the expected crash rate by 6.2 percent. Wow. That is an extraordinary thing that could be avoided with more efficiency in the system.

But, you know, when someone who doesn't care to be efficient because it would cost them a little money, you know, and they no longer get penalized, like we used to do, and say, wait a minute, if you make that driver sit there for 2 hours, you are going to pay for their time—that was what detention pay was, and it went away with deregulation.

So we have created some problems in the whole chain of delivery and efficiency of the system that I think we need to deal with. I mean, you know, people say, oh, we can't have any more rules, they all have unintended consequences. But there are also unintended consequences of totally repealing rules, as I have just described with the detention time problem and other things.

So thoughtful rulemaking that does not unnecessarily impede the industry but actually facilitates the improvement of the industry could help us deal with the driver shortage, could help us deal with safety issues. I mean, there is a lot that could be done here beneficially.

So I look forward to hearing from the Administrator and the other witnesses.

Thank you, Mr. Chairman.

Mr. GRAVES OF MISSOURI. All right.

Today, we are going to have two panels of witnesses.

And I want to again welcome the Honorable Ray Martinez, who is the Administrator of the Federal Motor Carrier Safety Administration.

I would ask unanimous consent that his full statement be included in the record.

And, without objection, that is so ordered.

And since your written testimony is going to be included as part of the record, the committee would request that you limit your testimony to 5 minutes.

With that, Mr. Martinez, we appreciate you being here.

TESTIMONY OF HON. RAYMOND MARTINEZ, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Mr. MARTINEZ. Thank you very much, Chairman Graves, Chairman Shuster, Ranking Members DeFazio and Norton, and members of the subcommittee. Thank you very much for inviting me to testify about FMCSA's work.

FMCSA's primary mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. We regulate more than half a million interstate motor carriers and nearly 4.7 million active holders of commercial driver's licenses.

Our commercial Motor Carrier Safety Assistance Program supports 13,000 State law enforcement partners, who conduct 3.5 million commercial motor vehicle inspections each year.

We thank Congress for the FAST Act changes that streamlined our grant programs and increased funding levels, providing critical resources so that our State enforcement partners and other grantees can carry out important safety work every day.

We have seen much success, but much more remains to be done. Highway fatalities increased from 2015 to 2016 in all segments, including crashes involving large trucks and buses. So our work, Mr. Chairman, continues.

Since beginning my tenure with FMCSA in February of this year, we have engaged with our industry and safety partners, working consistently to maintain the safest transportation system possible. One of the ways FMCSA is working toward these goals is helping industry transition to ELDs to address hours-of-service compliance and driver fatigue.

The ELD rule requires most drivers to use ELDs to record information about their hours of service. Full enforcement of the rule began April 1st of this year, and we are seeing some preliminary results. Of the nearly 300,000 driver inspections conducted since April 1st, less than 1 percent of drivers inspected have been cited for failing to have an ELD when they were required to have one.

The FMCSA is also working to address the unique needs of the agricultural industry, and we have heard a lot from that sector. For example, the agency has issued two 90-day temporary waivers from the ELD rule for agriculture-related transportation.

FMCSA has worked to ensure that our partners and stakeholders understand the requirements surrounding the use of ELDs. Since 2017, we have conducted more than 550 outreach events regarding ELD requirements nationwide, with more events planned in the future.

Mr. Chairman, I would also like to mention the efforts the FMCSA is making to help military members and veterans transition to civilian life. We thank Congress for working with the FMCSA to reduce those administrative barriers. These efforts include options such as allowing States to waive the skills test for military personnel with appropriate experience.

Additionally, we are finalizing a rulemaking to establish a training program for qualified providers at the Department of Veterans Affairs to become certified in conducting commercial drivers medical examinations. We are working to implement an "under 21" driver pilot program to allow drivers with certain military training to operate commercial motor vehicles in interstate commerce. The FMCSA believes these rulemakings will produce better trained and qualified commercial motor vehicle drivers.

And, finally, FMCSA is moving toward encouraging innovation, one of Secretary Chao's top priorities, with our work with our partners on automated driving systems.

The Motor Carrier Safety Advisory Committee met recently to discuss highly automated CMVs [commercial motor vehicles] and will issue recommendations later this year. We are working with NHTSA [National Highway Traffic Safety Administration], Federal Highway Administration, the Federal Transit Administration, as well, to develop comprehensive plans to better manage Department initiatives related to automated vehicles.

The FMCSA recently released a request for comments about regulations that could be a barrier to the safe testing and deployment of these technologies on public roads. The comment period ended on May 10th, and we are reviewing the information that was received.

Engaging the community through outreach activities with industry, safety advocates, driver organizations, and the motoring public is ongoing.

Mr. Chairman, the public expects a safe, efficient, and reliable transportation system. With your continued support, FMCSA employees, our partners, and stakeholders will continue sharing this commitment to maintaining safety for all road users.

I would be happy to answer any questions that you may have.

Mr. GRAVES OF MISSOURI. Thank you, Mr. Martinez.

We will now turn to the chairman of the full committee, Bill Shuster, for questions.

Mr. SHUSTER. Thank you, Mr. Chairman.

You talked a little bit about the—in the FAST Act, we created a military pilot program, and you mentioned that a little bit. Can you tell me how far along you are? Are we starting to see the effects of it, or is it still in the planning process?

Mr. MARTINEZ. Yes. Much of what we do—and, again, I am 3 months on the job, just about—involves a lot of data gathering before these programs can be launched.

I have been assured that the pilot will be stood up by early next year. And what it would look to do is to provide the opportunity for military personnel between the ages of 18 to 21, with appropriate training, to transition very easily into the commercial side.

Currently, we are completing an information collection process. And we will need to get Office of Management and Budget approval to collect additional data during the pilot program. Because it is a pilot program. We hope to gather additional information from that to see if this could actually be expanded to a larger population.

Mr. SHUSTER. Well, again, there is a driver shortage out there. As you move forward, any way we can be of help to you with OMB, we certainly want to.

Because, as I said, there is a driver shortage, and that is the next question. What are the things that you may be able to do, what are the things that maybe we need to do to improve that? My understanding was there is a 50,000 to 75,000 shortage of drivers and that number is going to continue to grow.

Mr. MARTINEZ. Right. And one of the things that—I do believe it is worth—I think this pilot program is an excellent first step, because the logic is simple: Look at some of those younger drivers.

The difficulty is that, if you look at the broader population, younger drivers are involved in a higher percentage of crashes, injuries, and fatalities in the general population. That doesn't necessarily mean that in a segment—for instance, military personnel, who have training, who have discipline, that they might be able to certainly put that type of general data aside.

So expanding the population of potential drivers, I think, is one way to look at it. The other thing is to look at what is happening with drivers out there, what is the quality of life that these drivers have. Driving in the commercial sector has always been a very difficult job, and are we making this harder, or are we making it something that people could look forward to and say, this is a good career, not just a job on a temporary basis?

Mr. SHUSTER. Right. Well, I know we had a roundtable a couple months ago talking about autonomous trucks, and, of course, the fear for many out there is that it is going to displace drivers. Well, the folks that I have been talking to in the trucking industry said you are talking about 40 or 50 years before that happens.

And the idea that you can take the toughest—and you tell me if your experience is different from mine. But from what I hear, the toughest drivers to get are those that have to do the long haul, have to leave home for weeks at a time and drive long stretches of road. It is monotonous. And with autonomous vehicles, you can reduce the amount of drivers on those stretches. And then when

you pull into a city—Pittsburgh or New York or Los Angeles—when the truck pulls off the road, there is a group of drivers there at some facility that can take it the final mile, the toughest part of the haul, and, also, they can be home at night, or most nights.

So is that something that you perceive it the same sort of way?

Mr. MARTINEZ. We are very excited about the prospects and the possibilities of fully autonomous vehicles and what that would bring. Of course, any change will have some levels of disruption.

But, from our perspective, you know, we are looking at, what would that add to the safety environment? It is all about safety. And we believe that there are some real possibilities there for both improving safety, efficiency, and the economy.

That said, I must say that, while, as you said, we might look at 40, 50 years for a fully autonomous vehicle, I am excited about all the additional safety measures that are being added to trucks on a daily basis because of these developments in technology.

And that, by the way, ties into the previous question. It is making the job a little bit easier for those drivers, because you have this additional technology that is available today, that is being incorporated today, that is helping them on the road and making it safer.

Mr. SHUSTER. All right. There are lots of technologies going out there. And I just want to make the point, I always try to make this point, is that, although we have seen, I think, an uptick a little bit in accidents and fatalities in the trucking industry, but over a long period of time I think the numbers stay pretty consistent that 75 percent of the accidents that truck drivers are in are not their fault. It is the traveling public that cuts them off or whatever.

So, again, the folks in the industry are doing a good job. They can do better, but I think that all these new technologies certainly can help to make it even safer out there.

So thank you very much.

Mr. GRAVES OF MISSOURI. I will turn to Ranking Member Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. Martinez, you will perhaps recall I mentioned in my opening remarks my concern that the agency does not have a reliable, easy-to-read system to verify the safety of a motor vehicle. This has been a long-outstanding issue.

And the agency is 7 months late in submitting an action plan that Congress required in the FAST Act. This was made even more urgent because of recommendations by the National Academies of Sciences, Engineering, and Medicine, and I mentioned their study, as well, in my opening statement.

When will Congress receive the action plan required by the FAST Act? Remember, the FAST Act, I think, was passed 3 years ago.

Mr. MARTINEZ. Thank you.

That is correct. The report, I believe, was due December 17 of last year. You can imagine my disappointment in assuming this position in February and seeing that that had not been submitted. I can tell you that, as we speak today, it is in final departmental review, and I hope that that will be forthcoming.

But that said, we have been directed——

Ms. NORTON. Well, you hope that it will be forthcoming, Mr. Martinez? It is in final review. If it is in final review, you should be able to tell us when you expect it to be final.

Mr. MARTINEZ. And I don't have a date for when that would be made available.

What I will say is that we have not waited for that study to be put forward. We are moving. We have fully accepted the National Academies of Sciences, Engineering, and Medicine's recommendation, and we are moving forward with their recommendations.

Ms. NORTON. So you are now in the process of implementing the recommendations of the National Academies of Sciences, Engineering, and Medicine?

Mr. MARTINEZ. That is correct. We have accepted those recommendations. We have started with having initial public meetings to continue to gather input into the corrective action plan.

We have contracted with the National Academies of Sciences, Engineering, and Medicine, in fact, to continue for them to provide guidance to us, because we think that that is something that was sorely needed at the FMCSA.

Ms. NORTON. Well, I do appreciate that. It does seem that you have the information in hand to proceed, and not waiting in a bureaucratic fashion——

Mr. MARTINEZ. Right.

Ms. NORTON [continuing]. For that endpoint is important to us.

Last year, the agency withdrew a proposed safety fitness determination rule that had been developed by the prior administration.

Now, this rule is what I thought all of us are always after. It cut through all of the confusing data, all of the technical stuff, to provide a bright-line safety test by assigning a "safe" and "unsafe" rating. That is what the public and the industry want and expect the Government's truck and bus safety regulator to produce.

Are you committed to issuing a final rule? We call it the safety fitness determination rule, SFD. And what is the timeline for that rule so that we can all understand what is safe and what is not safe?

Mr. MARTINEZ. Well, I think that would be helpful. This goes back to the old adage of "bad data in gives you bad data out" and, in fact, for an agency like ours, may often result in greater confusion, in misplaced enforcement efforts, and perhaps litigation.

I think it is critical at this time to focus on making sure that we are gathering the right data for analysis. And that involves preliminarily speaking with industry representatives, safety advocates, and third parties like the National Academies of Sciences, Engineering, and Medicine——

Ms. NORTON. Do you operate on the basis of a timeline, Mr. Martinez? They have been doing that all along. So, unless you have a timeline, I don't know how we can expect that the public will understand what is safe and what is not safe. I would like to get some understanding from you of what at least the timeline is.

Mr. MARTINEZ. And I can't give you a hard date for when something——

Ms. NORTON. All right. Mr. Martinez, I can understand that you are new, but could I ask you that you get to the chairman a timeline? I am not even asking you for a date.

Mr. MARTINEZ. Yes, ma'am.

Ms. NORTON. I am asking for a timeline, because I think this critical information going to the public is so important.

Finally, let me ask you about the fatalities I think all of us on both sides have been discussing. There has been a compelling case made to mandate automatic emergency braking as a way to prevent the increase in these deaths. Now, this technology has been commercialized a long time ago and is mandated in trucks in the EU [European Union] and, I understand, will be in every car by 2020.

That is very important, that the industry is ahead of the Federal Government. Why can't we mandate this automatic emergency braking to indicate to the industry we understand what they are about and they should get to it even more rapidly?

Mr. MARTINEZ. Well, those are areas that, of course, especially with emergency—with the braking systems, that we are evaluating. I will say this: That, as was referenced earlier, some of the great advances are already occurring in industry, and they are incorporating new technologies across the board that are improving safety, regardless of mandates.

So that is an area that we would be happy to work with Congress and work with the industry to continue to study to see what would make sense.

Ms. NORTON. Well, I appreciate your answer, but I also appreciate the industry is going ahead and doing it. I think it is a good thing that Congress ought to be very involved, and I think they are doing it for a reason. Nobody wants to be involved in and incur the liability if one of these accidents in fact takes place.

So I thank you very much, Mr. Chairman.

Mr. GRAVES OF MISSOURI. Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

Administrator, thanks for being here.

The first question is, when we did the FAST Act, it established a pilot program for veterans and Reserve members younger than 21. If they were driving heavy trucks in the military, they could now drive heavy trucks out, going through stuff. How is that working out?

Mr. MARTINEZ. We are in the final stages, and, as I have said, the pilot program should be stood up next year. We are in a data-gathering mode right now, and we need at least one approval before we can roll that out.

We think that is going to be helpful, not just because it will add a new population to the driving population, but also the data that we hope to get may inform us and Congress about whether that population can be expanded beyond military.

Mr. HUNTER. So I have data here in front of me. I was well-prepared for this hearing. In 2016, 16- to 20-year-old male drivers were actually less likely to be involved in fatal crashes than their 21- to 24-year-old counterparts. Have you found that?

Mr. MARTINEZ. I am not familiar with that data.

Mr. HUNTER. Are you looking at data like that?

Mr. MARTINEZ. Well, we know the general data in the population of general drivers. But I think, more specifically, we would want to look at those in that age group that have commercial driver's li-

censes and drive intrastate. And that is not information that I currently have.

Mr. HUNTER. So let me ask you, how many States, contiguous States, allow for a commercial driver's license between the ages of 18 and 21?

Mr. MARTINEZ. I don't know that off the top of my head, but that would be relevant information.

Mr. HUNTER. Well, let me answer it for you, Administrator. The answer is all of them. All 48 contiguous States allow for commercial driver's licenses for trucks after you are 18 and between the ages of 18 and 21.

Mr. MARTINEZ. Uh-huh.

Mr. HUNTER. I have a bill called the DRIVE-Safe Act. There is a companion bill in the Senate. And it allows for a pilot program for people ages 18 to 21 to go drive. That is why I am asking this. There is pushback on this, but I don't get why, because, again, all 48 States allow for an 18-year-old to get a CDL [commercial driver's license].

So you can drive from San Diego to Sacramento, which is about 500 miles, but you can't drive from San Diego to Reno, which is just over 500 miles. So it is the exact same distance. And if you overlay California over New York State, it goes all the way down to North Carolina. So you can drive from San Diego all the way up to northern California. It would be like driving from New York City all the way down to North Carolina. But that is illegal, because you cross State lines.

OK. Can you explain that, how that makes sense, just logically, in our minds?

Mr. MARTINEZ. No. And I am not actually familiar with that, and I believe that that is something that deserves exploration.

As a former motor vehicle commissioner both in New York and New Jersey, you know, I will say that those who are in that population who have a CDL would be probably safer than the general population. The problem is the general population of those in that age group are disproportionately involved in crashes, injuries, and fatalities at high rates of speed——

Mr. HUNTER. Let me interrupt you again. I have the stats from 2012 to 2016. For those 4 years and 2016, which is the latest year for NHTSA data, 16- to 20-year-old male drivers are less likely to be involved in fatal crashes than their 21- to 24-year-old counterparts.

Mr. MARTINEZ. I would be happy to see that data. And, frankly, as I stated earlier, we can only move with information that is provided to us or that we can be informed by. That is how we make regulations, and that is how we move forward.

I think that to cut to your question, which I think is an important one, there is a shortage of drivers. There is a population that could easily help in that effort. The question is, you know, can we have some kind of a structured environment, like the military pilot program, where we know we are getting disciplined individuals who have been trained, perhaps go into mentorship programs or something like that, so that it is not the general population that you are dealing with, it is regulated.

Now, I will say kind of what we did as motor vehicle commissioners around the country, where we adopted graduated driver's license programs, where the younger drivers were basically told, you are on a conditional situation and you have to have a certain amount of training, et cetera, before you can drive.

So I think it is worth exploring. We are not unalterably opposed in any way to this. It is something we would be eager to work with Congress, the industry, and safety advocates on.

Mr. HUNTER. Thank you, Administrator.

And I just want to stress one last time, again, you can be 18 or 19 or 20 and drive in any State in the country. You simply can't cross a State line.

So I am not sure what putting more rigor—we all for it, making sure it is safe, and more classes. But, right now, it exists as is. And we have the power in this committee to give people jobs and to make it so you can drive interstate commerce, not just intrastate commerce, and you will be legal when you cross that 1-foot State border.

So thank you very much.

I yield back the balance of my time.

Mr. GRAVES OF MISSOURI. Mr. DeFazio?

Mr. DEFAZIO. Thanks, Mr. Chairman.

Mr. Administrator, I mentioned earlier the issue regarding insurance. And, in fact, I mean, obviously, this predated you, but it came out of DOT in 2014: "Current insurance limits do not adequately cover catastrophic crashes, mainly because of increased medical costs." And the estimate would be that today, that would be about 3 million bucks.

What is your experience with from New Jersey and/or opinion about looking at a review of this 1980 limit?

Mr. MARTINEZ. Yes, it does seem, just looking at it from the outside, that when you see a date of 1980 that that is problematic. We understand the importance of the issue as well. Insurance coverage is about ensuring that, in the unlikely event a crash occurs, those involved are all protected.

Back to 2014, the FMCSA published an ANPRM, an advance notice of proposed rulemaking, with the hopes of collecting information. And what the FMCSA found, unfortunately—and, again, this does predate me—was that much of the relevant information that would inform the agency to move forward was proprietary in nature, and we would not have access to it, and it was not being voluntarily provided.

We do believe that there is relevant information out there, both in the industry and—from the insurance industry, perhaps, but certainly in the commercial motor vehicle industry. And we would be eager to work with Congress on this, should Congress choose to move forward.

Mr. DEFAZIO. So you are saying you can't get the experience data from the industry.

Mr. MARTINEZ. We can't get the——

Mr. DEFAZIO. From the insurance industry.

Mr. MARTINEZ. That is correct. Much of it is proprietary. And, of course, you always have to look at information that is provided to you——

Mr. DEFAZIO. Uh-huh.

Mr. MARTINEZ [continuing]. With some judgment as to whether it is skewed or not.

Mr. DEFAZIO. But I think there is also, though, a kind of—I think there is some data on how many crashes there are and how expensive they were, and this could be looked at through a study.

But, I mean, beyond that, I carry a million bucks for my own personal vehicle, you know, for liability, and I question whether that is enough. I mean, for a large, heavy truck, $750,000, common sense says, eh, that is probably not enough. I mean, sure, crashes are not that likely, but when they do happen, the severity is such that—you know. It is unfortunate, because this is causing a chain of events where now someone hires a lawyer because of a fatality or an injury, and the lawyer says, "Well, it is only 750,000 bucks. Your medical costs are $3 million. Well, we have to go after the truck manufacturer, we have to go after the broker, we have to go"—I mean, we don't have deep pockets here if it isn't a big company and it is an individual driver.

So something, I think, needs to be done here to better protect the public interest.

Mr. MARTINEZ. And, Congressman, I agree with you; it deserves some evaluation. We, I think, have tried this before my time here, and they felt that they didn't have the information on hand to move forward with certainty.

Mr. DEFAZIO. Right.

Mr. MARTINEZ. But that doesn't mean that it is not worth exploring.

Mr. DEFAZIO. OK. Well, if you come up with some innovative ideas on how to move forward on this issue, I would love to chat about it.

Mr. MARTINEZ. Yes, sir.

Mr. DEFAZIO. And then quickly, just back to detention time, because, again, I think this is a root problem for a lot of drivers. There is certainly anecdotal evidence and actual documented evidence about how little many drivers can earn because of their delays either at ports or at—and when they are doing piece rate especially—and at delivery points.

And I think it is also, you know, the likeliest form of incentive or, shall we say—I don't know if you want to say "incentive"—for someone to violate hours of service. Because, hey, I had to sit there 3 hours, and now I have to get this other load, and if I don't get that load, then I get blacklisted because I didn't keep up.

And so, how are we going to move forward on getting, as the DOT inspector general said, reliable, accurate, representative data on the frequency and severity of driver detention, which, prior to you, your agency concurred with, but there doesn't seem to have been any action?

Mr. MARTINEZ. I agree with you on the detention time problem. We have, again, received—in my personal conversations with industry, from the driver level to companies, owner-operators, this is a problem out there, and it does translate into a safety issue.

Currently, the FMCSA will be publishing a request for information from the industry, from drivers, technology vendors, and shippers to better understand the scope and the characteristics of the

detention time, because that is something that we are going to need.

Regrettably, FMCSA doesn't have any real authority or jurisdiction over this. However, as I said, it is a safety issue, because it is an abuse of the drivers, and it is abuse of those operators if they are indeed held up 5, 6 hours, and it becomes a safety issue.

I believe, in an odd way, the electronic logging devices, which have been somewhat controversial, may provide some ray of light here, not for FMCSA but for industry to gather industrywide information to see how widespread is this problem, who is abusing this. And if they were to voluntarily provide that information to FMCSA, we would be happy to review it.

Mr. DEFAZIO. I agree. It seems like the ELD is purpose-built for this. You know, it is an app, essentially, and you just have one category in the app which you hit, which is detention time, while you are sitting there, and when it is over, you click off. And then the company, the individual, whatever, would have reams of data over time.

OK. Thank you.

Thank you, Mr. Chairman.

Mr. GRAVES OF MISSOURI. Mr. Gibbs?

Mr. GIBBS. Thank you, Chairman.

Thank you, Administrator, for being here.

This might have been answered earlier, but I want to just kind of reconfirm it. I have been working to reform the CSA program, because I think it has a lot of issues about fair representation, fair to our motor carriers.

I think, you know, in the FAST Act, the reforms and revisions were supposed to be to Congress by January. I think maybe you answered this, that you don't have a timeline, but you hope to have it soon. Is that right?

Mr. MARTINEZ. On the CSA?

Mr. GIBBS. Yes.

Mr. MARTINEZ. Yes, that is correct. It was supposed to be, I believe, submitted in December 2017.

Coming in in February, I obviously asked what was the delay. It is currently under final review. I don't have a specific——

Mr. GIBBS. OK.

Mr. MARTINEZ [continuing]. Date that it would be issued, but it is not holding us up in implementing recommendations and moving forward with corrections. We have actually contracted with the National Academies of Sciences, Engineering, and Medicine to help guide us to implement these recommendations.

Mr. GIBBS. Well, I would just like to reinforce with you, since you are new in the position, that the program has just been really unfair, where our drivers, our trucking companies have been getting dinged, when it hasn't been their fault, when there is an accident. It hurts their insurance rates, hurts their ability to be hired by other shippers. So I think that that is absolutely necessary.

Also, on another note, I heard from my constituents concerns about the rest periods/hours of service. I know the ranking member has just addressed and asked questions about that. But has FMCSA given any thought to making changes beyond the arbitrary hour limits?

You know, a driver sees congestion—I guess what I am just saying is more flexibility for the drivers when they know they can't get there because there is an accident on the road and they pull off. Do they get flexibility? I am hearing this from my constituents.

Mr. MARTINEZ. Yes, Congressman, the—of course, our priority is always safety, so we look at any of these issues through that lens.

I believe that a great first step has been these electronic logging devices, because now it makes everybody on a level playing field. And we all know, we have to admit that, you know, paper logs were fudged in the past. And now we can say, OK, it is electronic, less susceptible to that, certainly.

Now let's look at hours of service and see whether some modifications—that is, not extending the hours, but providing some flexibility in the current rules.

Mr. GIBBS. Yes.

Mr. MARTINEZ. And I will say that we are engaging with our stakeholders in the regulated community on this, and safety advocates, to say, what would be acceptable?

And I would also add—because you are going to hear later from the enforcement community—we can't make these rules so complicated. Because these are all engagements that occur on the side of the road or in circumstances where it is law enforcement and stakeholders of the regulated community, we have to make sure that there are clear rules, but that provide flexibility.

Mr. GIBBS. Yes. I think "flexibility" is the key word, so I kind of wanted to get a point across.

Speaking of electronic logging devices, has your agency seen any issues where they are not working? And have you been forced to intervene with the manufacturers?

Mr. MARTINEZ. There is a large number of manufacturers and different devices. At present, there are about 370 different devices available, 247 manufacturers.

We have seen some reporting of ELDs that do not work. It has been sporadic. We have not had to deregister anyone as yet, but we are willing to do that should a particular provider or device show that they are not——

Mr. GIBBS. OK.

On another note, how many regulations has your agency rescinded since Secretary Chao has been Secretary?

Mr. MARTINEZ. I don't believe that we have, quote/unquote, "rescinded" any regulations, although that is something that we are always looking to rescind or update.

Of course, rescinding a regulation—to rescind a regulation you have to go through, essentially, the regulation process, so it would be somewhat time-consuming.

But we are always looking for that, because that is what our stakeholders in the industry would look for, the updating of regulations.

Mr. GIBBS. And so you are still planning on examining——

Mr. MARTINEZ. We are constantly reviewing our regulations, yes.

Mr. GIBBS. Thank you.

I yield back.

Mr. MARTINEZ. Thank you.

Mr. GRAVES OF MISSOURI. Mr. Sires?

Mr. SIRES. Thank you, Mr. Chairman.

Thank you, Administrator Martinez, for being here.

Administrator, I have been advocating for years that the Department of Transportation help evaluate and address the problem of undiagnosed obstructive sleep apnea in commercial vehicle operators.

As it stands now, we do not even know how widespread this problem is, because there is no concerted effort to study this frequency in highway transportation operators. We are only made aware of the effects of sleep apnea after a high-profile accident.

I represent Hoboken, New Jersey, and the last accident that happened with the rail in Hoboken, it was found that sleep apnea was part of the cause.

Now, I am just wondering—we don't even do a study on sleep apnea to see the effects on the vehicle operators. Is that something that you would be willing to look into in the future?

Because I know that it was there for a while, that it was going to be done, and there were some comments to withdraw it. But if we don't study it, we don't even know how impactful it is. And now we are starting to find out that in the commuter rail industry it is very prevalent, some of these accidents that sleep apnea is causing.

I know how debilitating it is, because I suffer from sleep apnea, and, for me, sometimes it is difficult.

Mr. MARTINEZ. Thank you for that question. Because I know that, while OSA, obstructive sleep apnea, may be controversial or whether to mandate it or not, the health and well-being of drivers, commercial motor vehicle drivers, is of paramount importance to us. And OSA is a concern. It is one of those factors that is a concern to us, just like, say, diabetes might be.

But the current safety programs that we have—as you know, commercial motor vehicle drivers do have to go through a health screening. Those providers are registered with us. And we enforce with them that they should continue to rely upon their medical training and expertise to determine whether a driver exhibits the multiple risk factors for OSA, because there are risk factors.

And these medical professionals, we believe, should be trained properly to evaluate the individual in front of them to say whether they are a candidate for that.

And I think that is where we stand right now.

Mr. SIRES. So do you think we have the tools to make any kind of decisions on sleep apnea for operators?

Mr. MARTINEZ. At this point, we are relying on the medical training of the doctors and medical professionals that currently do the medical evaluations of the drivers to say, does the driver in front of them show the risk factors for OSA.

I can't inform that. I can't improve what training those medical professionals do, except to encourage them that this is something that is important to CMV drivers and to the FMCSA, that this is something that they should evaluate.

Mr. SIRES. OK. Thank you very much.

I yield back.

Mr. GRAVES OF MISSOURI. The Chair notes the presence of our colleague, Congressman Mike Gallagher.

And we appreciate your interest in this topic, and welcome to the committee.

And, with that, I would ask unanimous consent that Congressman Gallagher be allowed to fully participate in today's hearing.

And, without objection, that is so ordered.

And we will now move to Mr. Denham.

Mr. DENHAM. Thank you, Mr. Chairman.

Mr. Martinez, there has been a lot of discussion not only about ELDs but the F4A amendment. The F4A amendment is called that because, in 1994, Tip O'Neill actually had this as part of the FAA bill. We also call this the Denham amendment because we have passed it five times now into the Senate, and we are getting tired of doing that.

But my basic questions are about the safety as it pertains to meal and rest periods. California and Washington, in their wisdom, have tried to create a patchwork.

If you have more States that continue down this road, if more States continue to add their own meal and rest periods, first of all, how would the trucking companies be able to adhere to a patchwork across the entire country?

And, secondly, what does that do to safety across the country if you are forcing drivers to pull over based on a clock versus based on when they are actually tired and these professionals want to take a break?

Mr. MARTINEZ. Well, thank you. And, as you know, hours of service is one of the things that we struggle with every day, in terms of regulating this community. We have that on a national basis, and that doesn't mean that it is not controversial from time to time, and we are always looking at it.

I can't imagine how much more complicated it would be if individuals States adopted their own meal and rest break and hours of service, if you will. It would highly complicate the landscape, not just for the regulated community, for the companies and the drivers, but also for the enforcement community.

So we certainly deal with this in other areas, which is why we like uniformity. We have uniformity in vehicle maintenance issues, drug and alcohol testing, and health screening of the drivers. Those are national. And I would just be very cautious if we go into that world of having 50 States or more jurisdictions add a patchwork of different rules and regulations.

Mr. DENHAM. So, with the ELDs, electronic logging devices, being implemented across the board and capturing drivers' hours, can you not also use the ELDs to show that you are actually taking a break and verifying that you are taking a break and, hopefully, doing it when you are tired versus when are you stuck on the Golden Gate Bridge or some other bridge across the country that you happen to have that time come up?

Mr. MARTINEZ. Well, that is correct. As was noted earlier by another Member, the ELDs basically are a recording device. We have not changed the hours of service. Basically, it is whatever you would have normally put on your paper log, you now do it on your electronic log.

So that is exactly what would happen. You would log that you are taking your break at such-and-such a time and for such-and-such a reason, if you saw fit.

Mr. DENHAM. Do you anticipate other States are going to follow in California and Washington's footsteps?

Mr. MARTINEZ. I have given up predicting these issues. I would just say, from a regulatory point of view and in my conversations with industry, I know that it would be a complicating factor.

Mr. DENHAM. But, in this case, Federal preemption for interstate commerce is necessary for F4A, for this amendment, meal and rest, for safety concerns, having uniformity across the country.

Mr. MARTINEZ. I think, from the regulatory perspective and I believe from the regulated industry, uniformity is always something that would be sought.

Mr. DENHAM. Thank you.

I yield back.

Mr. GRAVES OF MISSOURI. Ms. Johnson.

Ms. JOHNSON OF TEXAS. Thank you very much, Mr. Chairman and Ranking Member, for holding this hearing. I apologize for being back and forth in more than one committee.

Safety continues to be our top priority, not only here in Congress and at home but also for your Administration, Mr. Martinez. And so I am delighted that you are here today.

As you acknowledged in your testimony, the discussion around highly automated commercial motor vehicles is quickly emerging as a prominent issue in the context of safety on our roads. In fact, I think many would agree that it is difficult to keep up with the pace with which the technology itself continues to evolve.

The AV technologies represent a unique opportunity to improve safety on our roads but also present new challenges as we look to regulate the industry and identify the best framework in which to do so.

I understand that the Motor Carrier Safety Advisory Committee met as recently as October of 2017 to discuss the AV commercial vehicles.

Can you speak more to the level of coordination between your agency and the National Highway Traffic Safety Administration and the Federal Highway Administration and also the Federal Transit Administration to manage these new initiatives as it relates to the AVs? What are the initiatives? And where would you like to see more intra-agency and interagency coordination?

Mr. MARTINEZ. Thank you very much for that question, because, obviously, it is a very forward-looking and future-looking issue of autonomous vehicles and automated driving systems.

And we are working very closely with our sister agencies—the National Highway Traffic Safety Administration, Federal Transit Administration, and Federal Highway Administration—on this.

Most recently, we issued a request for comments from industry and the public on, what do you think of our existing regulations as it relates to possible testing of commercial motor vehicles, automated vehicles, on the roadways?

Most of the general public, when they think about highly automated vehicles or fully automated vehicles, think in terms of passenger vehicles. They are not really thinking of that in the com-

mercial space. And yet we know, as you mentioned, this technology is rapidly developing, and there may be very much a lot of interest from the marketplace. So we have to be ready for it.

The first thing that we are doing, as I said, is asking for questions from the public. We also will be doing two listening sessions this year. And I expect that committee to issue a report helping to advise me this year as well.

Ms. JOHNSON OF TEXAS. Well, thank you.

As you know, I represent Dallas, which is the home of one of the Nation's largest motorcoach operators in the United States, called Greyhound.

Mr. MARTINEZ. Uh-huh.

Ms. JOHNSON OF TEXAS. In your testimony, you speak of the importance of working cooperatively with our industry and safety partners to maintain the safest transportation system possible.

In addition to that, I have one of the largest transportation locals in the country, because we are a major trade area with a lot of truck traffic.

So I would like if you would speak to more of the coordination with industry partners, such as Greyhound, and detail some of the examples of where the industry is doing well and other things that need to be improved.

Because even with the automobile manufacturers I have been in touch with—and they are going to keep up with the market. And so this might hit us faster than we think, and especially in my particular area.

Mr. MARTINEZ. Thank you.

So I will address specific to automated vehicles and dealing with those industry partners. But I will say that we have a very good relationship with the associations of which Greyhound, I know, is a member, so certainly the American Bus Association, United Motorcoach Association, National Association of Motorcoach Operators, International Motorcoach Group. And then we also deal with some of the groups that are not—you know, faith-based organizations that have buses, tour organizers, conference planners, things like that.

In my short time in this position, I have met with Greyhound but also with some of the other major operators. I come from a State, in New Jersey, where we are on a corridor, that 95 corridor, where buses are up and down there all the time, and I will say this: Bus transportation in the United States is safe. I encourage it. And we have a very good working relationship to maintain that level of safety, because it is good for their business, as well, to say, we have, you know, a sterling reputation in safety.

So we will continue that as this technology moves forward. Because, as I said earlier, they are incorporating a lot of this automated technology into their vehicles now. We don't necessarily have to wait for the fully autonomous vehicles. And I think that makes the driving a little bit easier for drivers, and it should make the passengers a little bit more at ease.

Ms. JOHNSON OF TEXAS. Thank you. My time has expired.

Mr. GRAVES OF MISSOURI. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Martinez, thank you for being here.

I understand late last year the FMCSA's online National Registry of Certified Medical Examiners was compromised, and it was forced to be shut down for a period of time while the agency investigated the hack. I was made aware of this when a constituent reached out to my office after being unable to access the registry.

Can you explain to the committee what exactly happened and provide an update on the status of the online registry?

And were there any lessons learned that we can share with other agencies to help prevent other databases from being compromised in the future?

Mr. MARTINEZ. Thank you for that question.

There was an unauthorized attempt to access the National Registry. As it is described to me, somebody attempted to get in the front door, and they got, you know, through the screen door but didn't get into the system itself, so they were not able to access any personally identifiable information, PII. But, nevertheless, that was a clear sign for us that we had to be careful.

All of these types of systems, whether it is in FMCSA or other Federal agencies or in the private sector, unfortunately there is an active community of hackers that are out there. And you don't know exactly what they are going for, but, certainly, personally identifiable information is something that is a primary target.

Currently, we have stood up kind of a manual workaround. It is not ideal, and I know that it is not ideal, because when I went to see my doctor, who actually does this, she complained to me just last week that it is a little bit cumbersome. And I promised her, as I promise you, we want to get this up and running and fully functional as quickly as possible.

It is a great idea. It facilitates doctors participating in this program. But we are not going to stand this up fully until we are assured of the safety. So, currently, we are working with the Department's IT lead and outside vendors to ensure that the next iteration will be safe.

Mr. DAVIS. So when you say "quickly," you got any estimates in time?

Mr. MARTINEZ. I believe it is a matter of months. It will be short term, but we are making progress every day, and we are getting updates every day from our vendors and from our partners at the Department.

Mr. DAVIS. I won't ask you to be any more specific, but can you please keep my office apprised of the progress? And I would encourage you to make the months a smaller amount of months rather than a few extra months.

Mr. Martinez, one of the more positive safety trends I have seen is the decrease in bus-related fatalities over the past 40 years. In fact, since the mid-1970s, we have more than doubled the number of buses on the road, nearly tripled the number of bus miles traveled each year, and yet decreased the number of bus-related accidents by 30 percent. And, in 2016, we had the second lowest number of bus-related accident fatalities since 1975.

What do you attribute this positive trend to?

Mr. MARTINEZ. I believe, as I kind of alluded to in a previous response, a very close working relationship with industry. They know what we are looking for. They are better prepared.

Frankly, you know, as a regulatory agency and working with our State partners, we really don't want to write violations. We would prefer that everybody know exactly what is required. And I believe that that has been adopted by the major carriers, certainly the associations.

So we do training work with all the associations. We work very closely with the operators around the country. And we take it seriously because, obviously, it is not just a commercial motor vehicle, but it is a commercial motor vehicle that is transporting people.

But I believe it is the combination of education, continued enforcement efforts that are uniform, and, I believe, improvements to the vehicles themselves, the engineering and the safety improvements to the vehicles over the years.

Mr. DAVIS. Well, Mr. Martinez, again, thank you for your time. Thanks for being here.

And I will yield back the balance of my time.

Mr. GRAVES OF MISSOURI. Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman, and to the ranking member, for holding this hearing today.

And, Mr. Martinez, thank you for being here.

The Port of Newark I am sure you are familiar with, you know, a key component of the largest seaport on the eastern seaboard, is located in my district. Thousands of trucks carry billions of dollars of goods through there every year. Yet, at this critical port, as across the country, there is a severe shortage of truck drivers. And this is in a city with an 8-percent unemployment rate.

And I know you were previously chief administrator of the New Jersey Motor Vehicle Commission—we still call it the DMV—so you are, no doubt, aware of the State's particular problems in this regard.

I know you have been asked this question about the truck driver shortage in the past, but I would really appreciate if you would speak about it at this point. You know, since you have formerly been head of a State agency that licenses drivers, could you speak to that?

Mr. MARTINEZ. Certainly.

And I am glad that you mentioned, you know, the unique, or somewhat unique—about the Port of Newark there. I was just visiting one of the major transportation companies that operates out of Elizabeth—major trucking companies—just last week. And as I go around the country, I talk to companies and associations, and they are like, "We need more drivers. We need more drivers."

And part of the way—obviously, it is good for the drivers that are currently in the market, because they are getting some incentives to join. One of the incentives that I believe industry is already providing is, "Hey, we are a safe operator. We will work with you in terms of your schedules."

But there is a shortage, and so how do you expand that population? And you put the second piece in there about, if we have folks, particularly younger folks, who are unemployed, we deserve to look at that. I really do believe that deserves a hard look.

Now, we are moving forward with the military driving pilot program, and we hope to get some good information from that that will advise us on how to move forward. But, obviously, if Congress

chooses to go forward, we would like to work with Congress on whatever suggestions you might have.

Mr. PAYNE. OK.

So, in terms of that, I mean, you know, I know it is—get into private industry and businesses. But how do we incentivize opportunities for people to even approach that as a potential career?

Mr. MARTINEZ. Right. Well, one of the things that I just kind of alluded to is some people think that commercial motor vehicle driving is kind of going to be a dying career. It is not. We are going to have commercial drivers for a very, very, very long time, and we need more of them.

And we need to say, even with all this automation that we are talking about, you are not going to have fully autonomous vehicles, you know, next year. Certainly, testing would be occurring. But make that work somewhat more attractive. The pay is certainly good.

I know that some of the major corporations are actually beginning by training, bringing on those younger drivers for intrastate driving, not interstate driving, and starting on smaller trucks, keeping them in training programs, and encouraging them that this is a career, it is not just a job for the summer. And then they realize that they could spend a lifetime in a very, very good career.

Mr. PAYNE. OK. All right. Well, thank you for your time.

And I will yield back, Mr. Chairman.

Mr. GRAVES OF MISSOURI. Mr. Graves.

Mr. GRAVES OF LOUISIANA. Thanks, Dad.

I first want to congratulate you. Secondly, I know you have some strong Cajun blood in your organization, and so the expectations for your agency have significantly increased.

You all maintain the Safety Measurement System score, and that is an important tool to help to inform, I think, a lot of folks about the safety and the ability of different drivers, to point out situations when you have drivers that are unsafe. But I do have a concern in terms of how that score is put together.

The score, as I understand it, how it is put together right now, would include factors that don't have anything to do with the actual drivers, in some cases. You may have infrastructure failure. You may have an at-fault driver that is driving under the influence, that may be going the wrong way down a one-way road, that may actually hit an unattended truck that is parked legally. Yet that will affect the SMS score of a driver.

You are right now working on a demonstration program, the Crash Preventability Demonstration Program, to help, I think, tease out some of those, perhaps, crashes or incidents that don't really inform anyone about the true safety of a driver. Can you give us an update on how that is going?

And I just want to reiterate the importance of this. I think the SMS score is very important, but if we are sending inaccurate information or if we are setting an inappropriate baseline or average, then it is sending distorted information and distorted safety information, which could actually be concerning.

Mr. MARTINEZ. Correct.

And, as I have mentioned before, it is that, you know, what data are we actually using. I think the industry correctly pointed out

that, you know, let's look at this and drill down. And I believe that this crash preventability pilot program has actually been informative to the FMCSA.

We recognize industry's concern about these, quote/unquote, "not preventable crashes." Over 3,700 crashes of that nature have been submitted so far, most of which we determined to be not preventable by the motor carrier. And so that is a fairness.

And I think that what we have done through this project is to say, let's use two scores here, full transparency. So, in evaluating this, we had 1,657 that were deemed not preventable. To your point, something falls from a bridge and hits the truck, or a truck is legally parked and somebody crashes into it, those are not preventable. And so what we do is we provide an alternate score to the company or the driver to say, well, this is what your score would look like with that included and without.

I believe, in total, requests for review were submitted by about 1,300 different companies. So we think this is useful. I think it is a good first step to just be fully transparent. And we will continue the conversation with industry.

Mr. GRAVES OF LOUISIANA. Great. Thank you.

Mr. Chairman, I yield my remaining time to Mr. Babin.

Dr. BABIN. Thank you. Thank you, Mr. Chairman.

And I thank you, Mr. Graves.

I would like to put up a slide on there. I don't know if anybody can see that or not. But this actually is a summary of actions taken to give relief or not from the electronic logging device mandate over the past year.

Last November, I delivered a letter and a speech—by the way, Mr. Chairman, I would like to submit it for the record—asking the administration for a 90-day waiver for all sectors of the trucking industry before the mandate went into effect on December the 18th. Unfortunately, the top one, the answer was "no" for all sectors.

[Congressman Babin's letter to President Trump is on pages 132–134.]

Dr. BABIN. Other sectors have had better luck, Mr. Martinez.

And, by the way, it is good to get to meet you in person, since you and I have spoken on the phone several times.

Other sectors have had better luck. The Motion Picture Association of America, MPAA, doesn't have to worry about ELDs for 5 years. The same with the California private company Rail Delivery Services, as you can see. Other waivers and exemptions have been granted for truck rental companies, package delivery services, cattle and insect haulers. And the list goes on and on.

But there are two pending exemptions down here that I would like for you to see, requests that I strongly support, and a number of my colleagues do as well: OOIDA's [Owner-Operator Independent Drivers Association's] request for a 5-year ELD waiver for small trucking fleets with excellent safety records; and then the Agricultural Retailers Association request to be included with their ag industry counterparts in the 150-aerial-mile exemption.

Is FMCSA going to give them the same good treatment as they gave Hollywood film studios and grant these exemption requests?

And I also would add, is it true that the Motion Picture Association of America—does that include adult films as well?

Mr. MARTINEZ. Well, I don't——

Dr. BABIN. Does it include that industry?

Mr. MARTINEZ. Pardon me?

Dr. BABIN. Does it include that industry as well?

Mr. MARTINEZ. I honestly don't know that, but I would be happy to respond through the Chair, if that information is actually available to us.

Dr. BABIN. All right. Well, if you would respond to that question, I would just ask you about the two pending ones.

Mr. MARTINEZ. Certainly.

And all of these requests for waivers or exemptions are evaluated on their own. And there have been a substantial amount of requests for waivers or exemptions to the rule. Many of these are still pending. It is unfortunate that it is taking time to evaluate them, but they are all evaluated on their own merit, and I hope that we will have answers on all of these shortly.

The one that you refer to from the Motion Picture Association of America—and what you find is that the trucking industry is very, very segmented. Many of them have particular issues and concerns. When looking at a request for a waiver or an exemption, it is geared towards, OK, when will you come into compliance? What is the timeframe for coming into compliance?

So that is one of the threshold questions. And so those who apply for that should come with a reasonable timeframe, or join that with, what are you doing now that currently meets or exceeds existing safety standards that would essentially match what is required by an ELD?

And so, with the motion picture industry—and I am not that familiar with that waiver, but I will tell you that, as I am advised, it is a very unique industry, where the drivers work for multiple companies in the course of a day, using multiple vehicles during the course of a day. They do not drive for much of the day; they are actually working on set.

In order to meet the requirements that we would usually get from an ELD, they actually use a third-party evaluator that, each day, goes through that driver's, that employee's record and says how many hours they were driving, for whom, and such and such.

And with that, also, the industry basically said, we are looking to be compliant, and we hope to do so if we can find a vendor that can work with the particularities of our industry. And I guess that argument was found compelling by my predecessor.

Dr. BABIN. Well, you know, all of our sectors of our trucking industry are unique.

And, Mr. Chairman, can I reclaim my time that I was going to get before it was yielded to me?

Mr. GRAVES OF MISSOURI. No, because we did two—we went way over.

Dr. BABIN. You did? OK. All right.

Mr. GRAVES OF MISSOURI. Mrs. Lawrence?

Mrs. LAWRENCE. Thank you.

My question is on the issue of mandatory driver's training. The Moving Ahead for Progress in the 21st Century Act, or MAP–21,

which was signed into law by President Obama in 2012, required the Federal Motor Carrier Safety Administration to establish minimum training requirements for individuals seeking a commercial driver's license, or a CDL, including behind-the-wheel training.

Safety groups and labor organizations and owner-operators have all expressed support for a mandated number of minimum hours of behind-the-wheel training.

Is your agency currently working on issuing a rule to mandate enhanced driver's training? And, in your opinion, is there a need for mandatory driver's training?

Mr. MARTINEZ. The entry-level driver training rule, as it is called, is an example of what is a labor-intensive but, we think, beneficial process that is called negotiated rulemaking. It has included representatives from the trucking industry, bus, insurance industry, State law enforcement, State licensing agencies, and safety advocacy groups to come to some consensus about how we move forward to both incorporate mandatory training—because we all agree that that would be a good thing in the commercial vehicle space.

The minimum number of hours, which I think is the nut of your question, was not included in the final rule, but we do think that it is important that entry-level drivers obtain this mandatory training. And that is scheduled—we are on target for January of 2020, where CDL applicants will have to obtain entry-level driver training from registered training providers who comply with the FMCSA's training standards. And State driver licensing agencies must confirm completion of that required training before they issue or upgrade a license. I think that is a great first step.

What we heard back during the discussions was that—and this is a lot from the schools and the companies. They say, look, you may get some drivers that are really prepared, so an arbitrary timeframe is not really helpful. Some drivers may require more training; some require very little. And I can tell you, as a motor vehicle commissioner, we see that in the testing, that some people come in very well-prepared and able to pass the exams very quickly, and in other cases it takes multiple tries.

So I think this is a good first step.

Mrs. LAWRENCE. So, to be clear, in 2020, will it be goal, progress training? So if you meet the objectives, you have completed? Or will it be the mandatory number of hours in 2020 that would be mandated?

Mr. MARTINEZ. What is mandated would be that you take the entry-level training from a registered training provider——

Mrs. LAWRENCE. Yes.

Mr. MARTINEZ [continuing]. Not a minimum number of hours.

Mrs. LAWRENCE. Thank you.

Mr. GRAVES OF MISSOURI. Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman.

A couple things. The first I want to touch on—first of all, thank you, Mr. Martinez, for appearing today and for your recent help on issues we have been all working on, especially to do with ELDs and rural trucking.

Please touch a little more on what was brought up a bit earlier with veterans. I mean, veterans need jobs, and we have a trucker

shortage. And so a couple of my colleagues were talking about the differences in the rules.

What I am drilling down to here is the FAST Act created a pilot program where those between 18 and 21 can operate interstate. And my colleague stated really well about how in California you go 500 miles and not cross the State line and you cross six States on the east coast.

So how are things coming, again, for being able to plug those below-21-year-old veterans that may be available for that market, you know, solving veterans jobs and shortage of trucking jobs with others that might have a pretty decent amount of experience in that short amount of time but it may be from the military? How are we doing on implementing that, please?

Mr. MARTINEZ. So, again, this was a congressional mandate, and we welcomed it because I think everybody agrees that those coming out of the military should be able to transition to civilian jobs, and this is a great career for those with the appropriate training in the military.

So we are currently completing our information collection, and we then will have to present that to the Office of Management and Budget for approval on the scenario for how we continue to collect data after the program is stood up.

I am hoping that this program will be stood up early next year and that we will immediately begin getting information on that group. So it will be helpful because we will be able to have military personnel exiting into this new career, and the Government will be able to get data that we can then use to go forward to see whether this can be expanded to others in the population.

Mr. LAMALFA. OK. OK. It was in something called the FAST Act, so I hope we get, you know, fast results. Thank you.

Shifting to the issue—and, again, I thank FMCSA for getting to a relief. Also, one of the good things that was contained in the omnibus was some immediate relief, and then a little longer term, for livestock. And how that runs up against the problematic ELD device, again, for what Mr. Babin was talking about. You know, it just doesn't work so well for rural folks, mom-and-pop, all that.

And so, as we are getting down to the ELD mandate—and he already took a shot at the Hollywood movie folks. And I think he even said something about adult films, but I won't go there. But they are getting their relief; a couple others are.

But, I mean, you know, Mr. Martinez—and, again, you have been very helpful, but just for the record here, you agree that hauling livestock is a heck of a lot different than hauling a lot of other products, you know, whatever inanimate objects might be on a truckload, right? The challenges they face with weather and heat and all that, right?

Mr. MARTINEZ. Indeed. Yes.

Mr. LAMALFA. OK.

So what we have is really three issues here: the driver, the other drivers on the road, and the animals that you have in the trailer.

So, as statistics have shown when we have made this argument in recent months, livestock haulers already have a greater responsibility than a lot of other issues, and so, with that, a very strong,

strong safety record. So we won't debate that either. I think that is pretty clear.

So the current hours-of-service regulation in the ELD mandate, is that even capable of understanding the flexibility that is needed to properly, safely transport livestock, some of it very long distances, you know, from where they are raised to where they need to go?

Mr. MARTINEZ. I will say that we are actively engaged in discussions with the agricultural transport sector and specifically livestock haulers. As you know——

Mr. LAMALFA. But on paper, though, is the mandate—I mean, I appreciate the discussions. I do.

Mr. MARTINEZ. Yes.

Mr. LAMALFA. But when we are getting down to legal terms, words on paper, et cetera, is there flexibility—is there the capability to even understand what that means, that can be flowed out? Is there a rulemaking, regulatory-making, that can flow from that that really takes into account the flexibility that is truly needed when you have animals in a trailer and, you know, the need to get from A to B without having to race ahead of what—you know, because you are hearing these stories now, racing ahead of when that ELD slams the door on you—

Mr. MARTINEZ. Uh-huh.

Mr. LAMALFA [continuing]. Speeding, cutting corners, whatever, because you are going to be in a bad way.

Mr. MARTINEZ. Yes.

Mr. LAMALFA. Do you really think they have the flexibility to do that?

Mr. MARTINEZ. Well, obviously, this is an area that very—in the past, Congress has specifically exempted livestock haulers or certain agricultural haulers from some requirements.

In this instance, of course, FMCSA has provided a waiver through June 18. The livestock transporters specifically have been—enforcement on them has been exempted through the remainder of the fiscal year.

We continue conversations, but we also have specific guidance that will be forthcoming shortly that will provide some additional flexibility to this industry.

And I think that within the current existing regulations, agriculture in general has some exemptions or some rules that they play by that, when we meet with many of these groups, they realize, "Well, you know, I don't even think ELD applies to me."

And so, much of what we have to do is continued outreach and education and flexibility because of the unique nature of their sector. Of course, we are all concerned about safety. They have to share the road; they have to be safe. I believe that, with continued work together, we can get there.

Mr. LAMALFA. So we have that commitment from you on getting to a real solution then.

Mr. MARTINEZ. Yes.

Mr. LAMALFA. OK. Well, I do appreciate it. And, again, you have been very helpful in listening to me and my colleagues on that leading up today. So I appreciate, you know, the breathing room.

And October 1 is great, but that is going to be upon us before we know it too.

So, anyway, thank you very much.

I will yield back, Mr. Chairman.

Mr. GRAVES OF MISSOURI. Mr. Lowenthal.

Dr. LOWENTHAL. Thank you, Mr. Chair.

Mr. Martinez, thank you for being here and sharing with us your thoughts.

You know, I am going to follow back up on an amendment that passed in the FAA bill that preempted my State, California's labor protections for truck drivers that were engaged in interstate commerce.

You know, I come from Washington after serving in the California Legislature, and sometimes I feel that we spend more time here talking about California's labor laws than we did, actually, in California talking about California.

But proponents of the amendment claim that no intrastate drivers, those transporting a load entirely within California, will be affected by this preemption. That is what they said, but I am not sure I really believe this.

In my district, which I represent the Port of Long Beach, every day, truckers transport goods from our ports to inland distribution centers. That goes on all the time. These trips take place entirely within California. But the cargo is from overseas trade, bound for destinations across the country.

So my question is, under the FMCSA's definitions, are these drayage trips considered interstate commerce subject to a Federal preemption or not?

Mr. MARTINEZ. Congressman, that is an interesting question. And I guess, following the logic, I would still say that, because it is completely intrastate, it is not subject to that. However, it is a legal question, and it is one that I would have to——

Dr. LOWENTHAL. Could you get back to me on that?

Mr. MARTINEZ. Through the Chair, I would be happy to do that.

Dr. LOWENTHAL. Because that is really a critical—you know, because those goods are going across State lines, ultimately, and coming from foreign——

Mr. MARTINEZ. I will get back to you through the Chair. Thank you.

Dr. LOWENTHAL. Thank you.

The next question I have is that, a year ago, Ranking Member DeFazio and I both asked Deputy Administrator Jefferson about reported labor abuses in the drayage industry at the ports of Long Beach and L.A. In response to our questions, FMCSA replied that, since the coercion rule went into effect in 2016, only one carrier has been fined for a violation of the rules. One violation out of over 600 complaints.

Administrator Martinez, can you update the committee on the effects of this rule? Have more investigations been completed or more violations found in the past year?

Mr. MARTINEZ. Yes. And it is an area that needs continued work, because our latest statistics indicate that we have received almost 550 coercion complaints. But, as you will imagine, some of them are simply complaints. They don't rise to a level of what would

meet the definition of coercion. We have had some, I would say, enforcement actions, but only in the dozens.

What we do need, frankly, is to better advertise the fact that companies and individuals, drivers, can complain to us through our website, which is FMCSA.DOT.gov. We look for this type of information, and we look for some cases that are ripe for investigation and enforcement action. But we haven't seen those as yet.

Dr. LOWENTHAL. So what you are saying is you have had 550 complaints, that the actual violations out of that were found to be in the dozens maybe. How many——

Mr. MARTINEZ. It is actually 950, sir.

Dr. LOWENTHAL. What?

Mr. MARTINEZ. I'm sorry. It's 950 complaints.

Dr. LOWENTHAL. So, out of 950, 20, 25 or so, in the dozens.

Mr. MARTINEZ. Yes.

Dr. LOWENTHAL. And how many of those were fined?

Mr. MARTINEZ. I don't know what the nature of the enforcement is. I don't have that information, but I would be happy to provide it. It could be any number of——

Dr. LOWENTHAL. Because for those of us on the ground in that area, this seems so incredulous, that there are not more bad actors actually found. You know, drivers in California prevailed in hundreds of complaints before the State's labor commission against port trucking companies. So we have hundreds of them in California and just a handful here at the Federal level. It doesn't make any sense to me.

Mr. MARTINEZ. I agree. And I am interested in this issue, particularly—essentially, in this coercion rule, we are trying to protect the integrity of what we all are working for, to keep the drivers and everybody that shares the roadway safe from being forced to do things that are against the law or against regulation.

So I couldn't agree more, and we are going to remain focused on this. We hope that drivers and companies will report this, and we will investigate them. We will investigate every single one.

Dr. LOWENTHAL. Thank you.

And I yield back.

Mr. GRAVES OF MISSOURI. Thank you.

And, with that, I want to thank you, Mr. Martinez, for being here.

And we will recess for a few minutes just to seat the next panel.

Thank you very much.

Mr. MARTINEZ. Thank you.

[Recess.]

Mr. BOST [presiding]. I would like to welcome our second panel: Mr. Dale Krapf, chairman, Krapf Group; Mr. Mike VanMaanen, owner of the Eastern Missouri Commission Company, on behalf of the Livestock Marketing Association; Captain Christopher Turner, president of Commercial Vehicle Safety Alliance; and Ms. Jennifer Tierney, board member for Citizens for Reliable and Safe Highways, on behalf of the Truck Safety Coalition.

Mr. Krapf will be along shortly.

Since your written testimony has been made a part of the record, the committee requests that you limit your summary to 5 minutes.

And, Mr. Krapf, you are going to be recognized first, if that is all right. So I would like to recognize you for 5 minutes for your opening statement.

TESTIMONY OF DALE N. KRAPF, CHAIRMAN, KRAPF GROUP, INC.; MIKE VANMAANEN, OWNER, EASTERN MISSOURI COMMISSION COMPANY, ON BEHALF OF THE LIVESTOCK MARKETING ASSOCIATION; CAPTAIN CHRISTOPHER J. TURNER, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE; AND JENNIFER TIERNEY, BOARD MEMBER, CITIZENS FOR RELIABLE AND SAFE HIGHWAYS, ON BEHALF OF THE TRUCK SAFETY COALITION

Mr. KRAPF. Chairman Graves, Ranking Members Norton——

Mr. SHUSTER. You want to pull that mic closer to you. It bends down too. There you go.

Mr. KRAPF [continuing]. Ranking Member DeFazio, members of the subcommittee, on behalf of the Krapf Group and the schoolbus and motorcoach industry I proudly represent, thank you for calling this hearing today.

Having just celebrated our 75th anniversary, the Krapf Group is a family owned and operated passenger transportation business established in 1942 by my father, George Krapf, Jr.

Along with representing the Krapf Group today, I am also representing the views of the National School Transportation Association [NSTA] and the United Motorcoach Association [UMA].

The FAST Act contains critical policy elements that have begun to correct regulatory overreach that was suffocating investment, growth, and employment in the schoolbus and motorcoach industry but has done little to improve safety.

A few highlights from my written testimony:

The halting of the former administration's push to increase minimum financial responsibility limits without evidence of inadequacy or understanding of its impact was of the utmost importance. Absent your action, the moves would have devastated both the private schoolbus and motorcoach industries and the public we serve.

Both NSTA and UMA support a provision in H.R. 2120, Buses United for Safety, Regulatory Reform, and Enhanced Growth for the 21st Century Act, introduced by subcommittee member Representative Scott Perry, that would return the establishment of minimum insurance limits to Congress.

CSA reform is another important provision in the FAST Act. We trust FMCSA is incorporating the National Academies of Sciences, Engineering, and Medicine's recommendations, and we seek more opportunities to contribute to the finished product. We hope any new process will represent an accurate, fair assessment of motor carriers and be an effective tool for identifying those motor carriers in need of intervention.

An issue near and dear to my heart relates to how accidents are reported on the Federal level, Federal records, in which the motor carrier contributed nothing to the accident. This happened to my company, and we endured the indignity and the loss of business by the display of erroneous information.

I am pleased to report that, as a result of the passage of the FAST Act, FMCSA finally established a procedure for removing

those crashes that were not preventable by the motor carrier but for which the motor carrier had no fault.

The FAST Act also allowed FMCSA discretion to continue displaying inspection information for motorcoach operation. FMCSA extended that discretion to all passenger carriers, including school-bus operations, in violation of the specifics of the statute.

Congress and industry mutually agree that the current CSA program is flawed and not a valid tool for consumers to make a credible safety evaluation of a particular company, which can lead to unfair and flawed perspectives on that particular company.

My own company has experienced a loss of business because of the unnecessary decision. UMA and NSTA seek this subcommittee's assistance to correct this injustice and move information on passenger carriers from public view until all CSA reforms have been dictated by the FAST Act are completed. This provision is also included in H.R. 2120.

Additionally, we applaud the inclusion of the provision addressing the process of new entrant application. We are pleased to report the process that has previously taken 4 to 6 months, often even longer, has returned considerably to less than 30 days. We hope that this change will result in our industry seeing new life and begin to grow once again. The FAST Act mandates that motorcoaches be afforded equal access to toll facilities and high occupancy lanes. We should seek support from Congress to instruct the Federal Highway Administration to require all public authorities to set out the rates, terms, and conditions for use of the facilities that they applied to public transit and motorcoaches.

Mr. Chairman, Ranking Member Norton, important motor carrier policy enacted in the FAST Act were just in the nick of time. The Nation needs and deserves a thriving passenger carrier industry supported by regulations that actually improve safety. Thank you.

Mr. BOST. Thank you, Mr. Krapf. Mr. VanMaanen, you are recognized for 5 minutes.

Mr. VANMAANEN. Chairman Graves, Ranking Member Norton and members of the subcommittee, thank you for inviting me to testify. We appreciate that perspectives from agriculture were sought regarding the interactions with the FMCSA, which is authorized by the FAST Act. My name is Mike VanMaanen. My family and I own and operate the Eastern Missouri Commission Company, and the Missouri Valley Commission Company, which are located in Bowling Green and Boonville, Missouri. I am testifying today on behalf of the Livestock Marketing Association. LMA represents livestock markets across the United States. Livestock markets serve as a hub together and sell livestock from farmers and ranchers in a competitive bidding environment. I market these livestock to buyers gathering loads to be shipped to the next part of the production chain. This movement is entirely dependent upon the use of a very limited population of highly skilled drivers who tend to be independent on our operators. Rigid hours-of-service requirements do not work well for hauling live animals.

We appreciate the recognition of the Congress and the agency that livestock hauling is unique, and look forward to continuing to work together to find solutions for this targeted segment of drivers.

Livestock auction markets, farmers and ranchers are particularly impacted by the transportation laws and regulations. Many animals not born in the center of the country must be trucked many miles to lush grasslands and feed yards in the Midwest and Southern Plains. These cattle must be shipped quickly and safely. Time is everything for the well-being of the animals being transported. The key is safely hauling live animals, especially in times of great heat and humidity. This is to stop as infrequently as possible and to keep the trailer moving to provide proper ventilation.

The majority of the livestock hauls can be concluded within the timeframe outlined by the hours-of-service regulation. However, unfortunately, for livestock located in or heading to States outside the center of the country, this is not the case. When a driver runs out of time while hauling live animals, they are given the grim prospect of unloading the livestock or leaving them on the trailer for a 10-hour stretch to suffer from the elements, lack of ventilation, and possible injuries. Simply unloading the animals for 10 consecutive hours to rest is also not a good option. First, there is often nowhere to unload them; there are no pen systems available along the major American highways, and owners of the pens, feed yards and livestock markets are extremely hesitant to accept livestock in transit due to liability, staffing, and biosecurity concerns.

Even if a location is willing to take animals, unloading and reloading those animals has a negative impact on their well-being. In fact, it is more stressful than the effect of transport itself.

Our drivers value both motorists and live animal safety. A livestock hauler is forced by nature of their cargo to drive slower and more cautiously than the conventional cargo hauler, because the live animals move throughout the trailer and can be severely injured if the driver turns too suddenly, drives too fast or stops too quickly. Safety is so important to the livestock industry that many livestock haulers have participated in additional specialized training.

Due to all of this, livestock haulers boast a fantastic safety record. National studies show that far less than 1 percent of the accidents involved livestock transporters. With this great track record of safety in mind, American agriculture needs some relief. The current hours-of-service requirements provide a too rigid, one-size-fits-all framework. This, combined with the unforgiving nature of electronic log devices, will result in cattle on the coast and in the Southeast being severely discounted, or even worse, wholly unprofitable to raise. Not only will this lead to farmers, ranchers, and livestock haulers dropping out of business, it will be felt in the very real way by the American consumer trying to put an affordable meal on the table. The hours-of-service framework needs to be changed with respect to live animal haulers. These individuals need more flexibility in order to safely get their live cargo to its destination. The LMA sincerely appreciates the several members of this subcommittee for their assistance and diligent work towards safe and practical solutions for our Nation's livestock haulers.

Thank you.

Mr. BOST. Thank you. Captain Turner, you're recognized for 5 minutes.

Mr. TURNER. Thank you, Mr. Chairman. I want to thank Chairman Graves, Ranking Member Norton and members of the subcommittee for inviting me to participate in today's hearing. My name is Chris Turner and I am in charge of the Kansas Highway Patrol's Motor Carrier Safety Assistance Program [MCSAP] and president of the Commercial Vehicle Safety Alliance, representing State agencies to enforce commercial motor carrier safety regulations in the U.S., Canada, and Mexico.

To start, today's topic is particularly timely given that we are midway through the current highway bill, and I want to thank you for your ongoing commitment to improving CMV safety. And I would also like to thank Administrator Martinez. I have had the opportunity to meet with him recently on several occasions, and I have been impressed with his knowledge, willingness to listen, and commitment to FMCSA's mission of saving lives. We look forward to working with him and his team.

When considering FAST Act implementation, we recognize a growing trend within the agency, and it is a lack of progress on critical issues. While FMCSA has made headway on components of the FAST Act, work remains to be done on a number of key requirements, including finalizing a new MCSAP grant formula, and improvements to the agency's IT and data systems. The issue also affects grants and State programs. Between the appropriation delays and the approval process at DOT, it takes so long for the funds to be disbursed, the States sit idly by, unsure of how much funding they will receive and when. Meanwhile, regulatory activity at the agency, FMCSA's core responsibility, has come to a near standstill, with a growing backlog of rulemaking and petitions. For example, in 2016, FMCSA sent a letter to a member of the broadband service industry indicating that wireless and broadband services qualify under the public utilities hours-of-service exception. CVSA [Commercial Vehicle Safety Alliance] petitioned the agency in May of 2017 to update the regulations making it official. In March of this year, the agency granted the petition. Yet, we are still waiting for the rulemaking to be initiated. And this is for a simple update to a definition.

It is critical to both the enforcement community and motor carrier industry that the Federal safety regulations are clear, that they are effective and enforceable. No matter where you stand on the role of Government and regulation, we should all be able to agree that maintaining the regulations, keeping them current and clear is a necessary and important function.

Because the agency cannot move forward with rulemaking, they have come to rely heavily on interpretations, personalized letters, electronic communications, enforcement guidance, frequently asked questions and other means to provide enforcement and industry with the clarity they need when an issue arises. That is with the expectation that the regulations will be updated at some point in the future. Often, that update never takes place.

I want to be clear that this is not meant as a criticism to the hard-working people at FMCSA. We understand that they face a number of challenges, both internally and externally. A new administration means turnover, new leadership and often a shift in priorities, as well as a pause in the regulatory work as people get up

to speed. And also, implementation of the ELD rule, for FMCSA has been the agency's top priority. And the agency has been plagued with frivolous challenges and meritless exemption requests. But it isn't a new issue, it is one that has been growing steadily over the years, it is ingrained in the culture of the agency and must be addressed.

We need to make sure that FMCSA has the necessary resources, technical staff, authority, and time to meet the agency's core responsibility, maintaining the Federal Motor Carrier Safety Regulations. And we are hopeful that under Administrator Martinez's leadership, we will begin to see a shift in the culture at FMCSA.

And finally, we believe that more can be done to improve the coordination with our North American partners. Commerce does not stop at our borders, and we have long recognized that harmonization between the U.S., Canada, and Mexico benefits industry, enforcement, our economy, and consumers.

As the pace of regulation stalls here in the U.S., our partners continue to move forward, and as a result, the regulations drift further apart. And inconsistencies in the regulations result in inconsistencies in the inspection and enforcement process, creating separate sets of rules for industry to follow. While the regulations in the three countries will never be identical, more can be done to improve the reciprocity and uniformity of CMV safety regulations among the three nations, which will help support the flow of people and goods that fuel our economy.

Thank you. And I look forward to your questions.

Mr. BOST. Thank you. Ms. Tierney, you are recognized for 5 minutes.

Ms. TIERNEY. Good morning, Chairman Graves, Ranking Member Norton, and members of the subcommittee. My name is Jennifer Tierney, and I am a board member for Citizens for Reliable and Safe Highways, as well as one of the millions of Americans whose loved one was killed in a truck crash. I traveled to be here today from North Carolina. My motivation to be testifying before you comes from the loss of my daddy, Jim Mooney, and the goal of preventing families from suffering preventable truck crashes and fatalities and injuries. My dad was in a horrific truck underride crash on a dark, back country road when he crashed into the side of a jackknifed tractor trailer that was blocking the roadway.

Truck crash deaths and injuries have been dramatically rising in recent years. Since 2009, annual truck crash fatalities have increased 28 percent. In 2016, 4,317 people were killed in truck crashes. And early data for 2017 indicates that truck crash fatalities are up another 10 percent. During that same time, truck crashes and resulting injuries have also risen 475,000 and 145,000, respectively.

My comments today will focus on policies that can improve truck safety, and appropriate steps to implementing and enforcing them. The first I would like to touch on is automatic emergency braking. It is a proven technology that leading trucking companies in other countries have been using for years to reduce the number of the crashes their truck drivers are involved in; and also, to mitigate the severity of truck crashes that do occur.

In the United States, some motor carriers have been voluntarily using AEB for at least 10 years and have established, beyond question, its effectiveness and reliability. For example, Schneider National, a major trucking company, experienced a 69-percent decrease in rear end crashes, and a 95-percent reduction in rear end collision claims since it began equipping new tractors in 2012. We urge this subcommittee to consider the benefits requiring this technology can provide.

A final rule requiring the use of speed limiting technology set at 65 miles per hour or lower should apply to all trucks. A recent study out of Ontario found that the incidents of heavy trucks speeding in a crash dropped 73 percent, following implementation of the speed limiter mandate. This study directly debunked the claim that speed differentials would lead to an increase in overall crashes involving big rigs, finding no such evidence of an increase. This lifesaving technology has also been a standard component in most trucks' engine control modules since the 1990s because so many other countries already mandate their use in commercial motor vehicles. As a result, most trucks would not require a retrofit, but would, instead, need to have their speed limiters set. We urge this subcommittee to take action to require speed limiter use by all trucks existing and new.

Truck driving is one of the most dangerous occupations according to the Department of Labor. Currently, there is no minimum requirement for behind-the-wheel training hours. We urge this subcommittee to require FMCSA to modify the entry-level driver training to include a minimum behind-the-wheel training requirement.

Truck underride crashes can be catastrophic. Unfortunately, I know that all too well, because the car goes under the trailer, bypassing the crumple zone and airbag deployment safety features; in severe collisions, the passenger compartment intrusion occurs. A requirement for all trucks and trailers to be equipped with energy absorbing rear and side underride guards would protect car occupants from underride crashes.

We are very grateful today to subcommittee member Representative Cohen, for introducing the Stop Underrides Act, and also to Representative DeSaulnier and other Representatives on the subcommittee who are cosponsors. We are also thankful to Senators Gillibrand and Rubio for introducing the Senate version. This lifesaving legislation will strengthen rear underride guards, mandate side underride guards, and require proper maintenance of these guards. We urge subcommittee members to join this bipartisan effort.

An electronic logging device is a critical safety technological device to ensure compliance of Federal hours-of-service rules. Attempts to delay, weaken or reverse the effort, or to allow exemptions for special industry or special interests to the ELD rule should be swiftly and soundly rejected.

During a time when truck safety is in serious decline, increasing truck size or weight or limiting shipper and broker liability would be steps in the wrong direction. The DOT has not offered significant solutions to address the rising number of truck crashes. At the same time, the administration has already withdrawn two

rulemakings and delayed four, all of which would have improved safety.

Moving forward, I am hoping that members of the subcommittee will prioritize safety and remember that death and injury figures are not merely statistics, but are people, like my dad, who were needlessly killed or hurt in a truck crash.

I thank you for the opportunity to testify before you today, and I am pleased to answer your questions.

Mr. BOST. Thank you. I am going to start questioning now. I will do 5 minutes and then we will go to other Members, each will be given 5 minutes to question.

Mr. Krapf, how many years have you been in the motor—bus business?

Mr. KRAPF. Fifty-one years.

Mr. BOST. OK. I came from a trucking business myself. My grandfather started a trucking business in 1933, and I actually ran that business for 10 years. I loved it for 8. That being said, under the new rules and the—here is a real question that I am concerned about because of the uniqueness of your situation, is there adequate differences allowed for the operation of buses and the uniqueness of yours that has given away with the FMCS or for the Federal motor safety, do you think, like hours of service, as well as the difference between what you do and what a motor carrier would do that is actually an operating truck hauling freight, is there enough adequate——

Mr. KRAPF. Absolutely. There is a huge difference.

Mr. BOST. There is a huge difference. And they keep up with that? I mean, the rules are correct, as far as you are concerned?

Mr. KRAPF. Well, I am not sure that they are all correct. I would have to look into detail. But first of all, our training programs are much more extensive than our counterpart in the trucking industry. For schoolbus drivers in the State of Pennsylvania, I don't know whether it is national or not, we provide 40 hours of training, classroom training, and then another 10 hours of bus training for them to get their license. Plus all the background checks that are required, there is like six or eight background checks that are required as well.

Mr. BOST. And that is because of the children obviously.

Mr. KRAPF. Absolutely.

Mr. BOST. Mr. VanMaanen—I am going to say it right—in your case, you are dealing with livestock. Right now, we are looking at a possible waiver, specifically, because once you pick that livestock up, you have got to move from point A to point B. Is it possible to meet the—we do what is best for the livestock, as well as do what is best to be—to make sure your drivers are safe.

Mr. VANMAANEN. I think there needs to be a little bit of flexibility involved in that. There is a lot of hauls that can be done within the time period of hours of service, but there is also some that extend past that. It would be problematic if we didn't have a grace period at the start or at the end, or some flexibility of a nap time during the haul that I would hate to see a truck get shut down within an hour's worth, or 100 miles of their destination and those cattle would have to sit on that truck for 10 hours or offloaded when they are that close.

Mr. BOST. And I want to ask also, now you deal with livestock and livestock only?

Mr. VANMAANEN. Well, that is correct. Mainly cattle, used to be in the hog-buying business, transported a lot of hogs also.

Mr. BOST. Is there any variance that you can do under the electronic logging system? Are there variances that allow you to be flexible on going from point A to point B, or the amount of hours in service with the electronic system?

Mr. VANMAANEN. I don't think we would complain about the electronic system. We want to be compliant as long as it is built in to give us the flexibility we need to transport our product.

Mr. BOST. But it doesn't do that now?

Mr. VANMAANEN. No, it does not, it does not do that now.

Mr. BOST. Right. And that is the concern that we are having with the fact that——

Mr. VANMAANEN. That is correct. It doesn't have an exempt button or an ag exempt button that can be pushed or it can be, you know, recorded in that direction. So yes, it does not have that flexibility built in.

Mr. BOST. And just a quick statement, because I know what is involved with drivers, I believe that our electronic logging, which is good, and I think that we can use it correctly, but without any ability, and excuse the expression, "common horse sense" that can be used while driving down the road to make sure, for instance, we are not stopping in an unsafe place, because that can increase the amount of accidents by not being able to get to a rest area or a truck stop, and the dangers that exist for four-wheeled vehicles who don't have an hourly requirement to drive underneath the truck quite often is out there as well.

So thank you. My time has about expired, so I will turn it over to Ms. Norton for 5 minutes.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. Krapf, I believe I just heard you say in answer to the chairman's question that there is schoolbus driver training?

Mr. KRAPF. Yes, ma'am, that is correct.

Ms. NORTON. Does that include behind-the-wheel training?

Mr. KRAPF. That does include behind-the-wheel training.

Ms. NORTON. May I compliment you on that, because that is what we have been trying to get for other kinds of training, particularly truck training.

Mr. Krapf, you indicated in your testimony, you spoke of regulatory overreach in the FAST Act. I understand the FAST Act was a very bipartisan bill. And you spoke about it having a negative effect on investment, even employment in the schoolbus and motorcoach industry. And you said it did little to improve public safety—improve safety. But I would like to cite to you two recent examples that I find very troublesome with private schoolbus companies that have had what I think most would regard as preventable accidents, and they are very serious accidents.

As we speak, right at this moment, the National Transportation Safety Board is meeting on recommendations stemming from two schoolbus accidents operated by private schoolbus operators. One killed 12 people, and 6 of them were children. And one of them, the investigators found that the schoolbus driver had a history of seri-

ous health issues, and that in the past 5 years, had been involved in at least 12 crashes or incidents while operating a schoolbus or a personal vehicle. Now imagine somebody like that is driving a schoolbus.

In the second accident, now being considered by the National Transportation Safety Board, the driver had a history of repeated complaints of speeding, aggressive driving, and at least one prior schoolbus accident. Now these two crashes, as you can see by what might have been taken by the authorities in advance, just didn't need to happen, so I am going to ask you, we don't know what the NTSB will be recommending, but I want to know if you will support whatever recommendations they may make for ending these kinds of deaths for children on schoolbuses?

Mr. KRAPF. You are asking if I would support that, whatever the——

Ms. NORTON. If they issue a recommendation aimed at preventing future deaths of school children on schoolbuses, would this be a recommendation you could support?

Mr. KRAPF. Yes, ma'am, it would.

Ms. NORTON. Thank you very much, Mr. Krapf. I know there are others—my colleagues may want to ask questions, so I won't proceed with my next question.

Mr. BOST. Thank you. Congressman Barletta, you are up.

Mr. BARLETTA. Thank you. Mr. Krapf, great to see you again. Thanks for being here. It is always—always enjoy having a fellow Pennsylvanian on the panel.

In your testimony, you mentioned FMCSA improperly assigned a fatality to your publicly viewable record. While these records do not indicate fault, but rather account for your involvement, it sounds like this incident had a significant impact on your business. Could you help this committee understand the consequences of that fatality record?

Mr. KRAPF. I think there are so few fatalities in the busing industry, being 20 annually with 30-plus years of statistics in the motorcoach industry, and 5 in the schoolbus industry annually, again, over a 30-, or 35-year period, that any fatality on your record is a bad indication as you being a poor operator. So when the public, or your customers can go into your record and see that you have a fatality on your record, it is a big blemish, because there are so few of them in our industry.

Mr. BARLETTA. Thank you. I want to switch gears here and talk about an issue that is very important to me, and that is, the safety of our students when they are riding the bus to and from school. I know this is a big priority for Krapf Transportation, and the rest of the schoolbus industry.

Earlier this year, I asked Secretary Chao what the Department of Transportation could do to harden infrastructure at our Nation's schools to protect students. I think we need to include enhanced security measures for schoolbuses in that equation, I think we are leaving them out.

Mr. Krapf, do you agree that schoolbuses need to be included in the conversations that we are having about school safety? And is there anything Congress can do to help you better protect our Nation's students?

Mr. KRAPF. As someone in this industry that transports over 300,000 students per day, Congressman, that is my greatest fear. If we do everything in the school similar to our airports to protect the safety of our students in the schools, then they are—the terrorist or whoever that individual might be, are going to pick the next soft target, and that would be the schoolbus. And that is a huge fear of not only me, but everyone in the industry. Probably if I would have to guess, probably only 20 percent of our buses are behind gated fences. So how easily would it be it for someone to get into a bus overnight and put a bomb underneath the bus or something similar to that? So absolutely, it has to be an extension of the schoolday when transporting in the schoolbuses.

Mr. BARLETTA. I agree. As we look at trying to keep bad people out of our schools, we can't forget where the kids go once they come out of school and they get on that bus. I believe we really need to start having this conversation, including transportation, as well as schoolbuses and making sure these kids—no parent should ever worry about their child once they leave their home. And you know, we are talking about a lot of stuff around here, but the best way to stop this is to not let it happen in the first place. I think we need to start expanding our conversation not only to the schools, but also try to think ahead of what the next soft target would be. I fear that myself, kids sitting on a schoolbus, so thank you. And I hope Congress will begin to heed the call of the American people and start looking at keeping these kids safe when they are in the school. We do a hell of a good job keeping ourselves safe.

Thank you.

Mr. BOST. I want to advise Members that they called votes, but we are going to try to get through, we have two other Members on the panel. Mr. Payne, you are recognized.

Mr. PAYNE. Thank you, Mr. Chairman. This is really for anyone. Mr. Krapf, I was involved in schoolbus transportation prior to me going into public office. And you said you are responsible for 300,000 children on schoolbuses?

Mr. KRAPF. That is correct.

Mr. PAYNE. I was going to mention my 10,000, but never mind.

But in New Jersey last week, a schoolbus was hit by a truck, killing 1 teacher and 1 student, injuring 43 others. And you know, I understand schoolbuses are subjected to rigorous safety regulations at both the State and Federal levels. But most of these regulations are designed to make schoolbuses safer for travel on local roads, not for interstate, highway accidents like last week's. The NTSB has recommended requiring seatbelts on schoolbuses, but as of last week, only six States require them. This seems like an area really ripe for Federal involvement. What are your thoughts, sir? And I would like everyone to weigh in, please.

Mr. KRAPF. First of all, my heart goes out to the families involved in the accident last week. It was a very unfortunate circumstance. All the details are not actually available to the public yet, so I can't speak to that. But as an industry, we are not opposed to seatbelts on schoolbuses. However, we do believe that the seatbelt law should be regulated by each individual State so that where the funding is—the funding for the schools comes from the State, and any seatbelt regulation we would not, as an industry, want it

to be an unfunded mandate. So we think it should be regulated by the State.

In addition to that, as an operator of schoolbuses, since it is the safest ground transportation that we know of in this country, we want as many of the students on the buses as possible because it is the safest mode. One of the statistics I read a few years ago, there is like 850, or 860 students killed going to and from school each day by various other means, whether it is bike, walk, their parents' car, their own car, whereas if they are on schoolbuses there are only 5. So, you know, we are cognizant of that law is going to create additional expense to the schoolbus industry, and we want to make sure that that expense doesn't preclude the safety of our buses.

Mr. PAYNE. Thank you. Sir?

Mr. VANMAANEN. I am not an expert on transporting students. I have served on our local school board and we owned and operated our own business. And I was aware of the statistic that the safest mode of transportation for students is on the schoolbus versus any other way of getting them to and from school, so I commend all schoolbus operators for that.

Mr. PAYNE. Sir.

Mr. TURNER. Thank you for the question. We would first agree that schoolbus transportation is incredibly safe, as is the bus industry as a whole, and congratulate them for their efforts in the safe transportation of children. We would say that each crash, especially in a schoolbus where a risk is heightened, is tragic. And we would support the safety measures as long as they were reliable and they are proven as NTSB's recommendations usually are.

Mr. PAYNE. Thank you.

Ms. TIERNEY. The Truck Safety Coalition represents thousands and thousands of victims and survivors of truck crashes all over the country. So every life is precious, and nobody knows that more than we do, so we would certainly support seatbelts in buses and any other available technology that would save lives, all lives are precious.

Mr. PAYNE. OK. Thank you for your testimony here today. We really appreciate you coming in and giving your perspective on these issues. And with that, Mr. Chairman, I will yield back.

Mr. BOST. Thank you. Mr. Cohen you are recognized for 5 minutes.

Mr. COHEN. Thank you, sir. Appreciate you putting together this panel, Chairman Graves and all, and all the witnesses who testified here.

In 2014, my constituents who are present, Randy and Laurie Higgenbotham, lost their 33-year-old son, Michael, like thousands of others unfortunately have, to the harrowing tragedy that is truck underride: the circumstance wherein all the passengers' safety mechanisms placed in passenger vehicles are effectively rendered null with striking the rear side or front of a semitruck tractor-trailer.

Ms. Tierney, I appreciated your testimony because you testified that you have lost a particular family member to this particular painful type of tragedy. In 2016, truck crash fatalities totaled 4,317, a 28-percent increase since 2009. That same year, the num-

ber of truck crashes totaled 475,000, resulting in 145,000 injuries. Of those injuries, we know some of the most debilitating injuries resulting from truck underride crashes. What can we do to address this problem, especially, should every Member of this Congress support the bill that is just bipartisan in the Senate that has been introduced to mandate the placement of truck underrides?

Yes, ma'am.

Ms. TIERNEY. We absolutely should pass comprehensive underride protection that would strengthen the rear guard standard that we currently have. It would require a side underride guard, and it would study certainly front underride guards, and the maintenance of all those guards that is lifesaving technology. Absolutely.

Mr. COHEN. Based on your time advocating for truck underride, do you think there is any chance the industry would voluntarily self-regulate for the sake of safety in this matter?

Ms. TIERNEY. While some in the industry have, and for them, we are very grateful for that but others have not and probably would not. Therefore, I do believe that a mandate is needed to make sure that the entire industry is doing the safest thing to prevent these catastrophic crashes.

My dad was killed when Michael Higgenbotham was a baby, so this is a problem that has being going on for decades and decades so I do believe a mandate is needed.

Mr. COHEN. Well, I found from my sponsorship and responses I got from a whole lot of folks from the trucking industry has been negative, and harrowing, and that the safety of a potential victim is not of a concern, or something that they think is fiscally within their possibilities.

In 2002, a report was issued by the Technology & Maintenance Council of the American Trucking Associations, entitled "A Brief Look at the Far Horizon." This is 16 years ago, an exploration of what is to come for trucking. It predicted, even anticipated, regulations on the front and side underride.

Mr. Chairman, I ask unanimous consent to enter into the record this particular paper.

Mr. BOST. Without objection.

[The report entitled "A Brief Look at the Far Horizon: An Exploration of What's to Come for Trucking" is on pages 135–158.]

Mr. COHEN. Thank you, sir.

As far as back as 2002, industry was already predicting regulations be promulgated on rear side and front underride. In the report, the American Trucking Associations predicted the underride regulations for straight trucks will come as early as 2005. The report shows that industry even predicted a front and side underride regulation be issued as early as 2006. What other reason would the trucking industry have had as far back as 2002 to be issuing predictive reports about future regulation on truck underrides, if not for the fact they knew people were dying and that lawmakers would take notice?

Ms. Tierney, what evidence is there that side underrides, front underrides, and stronger rear underride guards can increase the

likelihood of preventing passenger compartment intrusion and ultimately fatalities from car and truck collisions?

Ms. TIERNEY. I saw it, and I saw it with my own eyes. I witnessed the rear underride and side underride crash test at IIHS [Insurance Institute for Highway Safety]. It was one of the most profound things I have ever witnessed in my life. Those crash tests were successful in both cases, and they prevented passenger compartment intrusion. They took a crash that most likely would have been deadly or catastrophic, and turned it to an injury where a driver would have walked away. So they absolutely do save lives. And this is an issue that is so long needed and so heartbreaking to people that continue to lose their loved ones in this way. My dad died of massive head injuries, and Jayne Mansfield was probably the most well-known underride crash in this country.

Mr. COHEN. Thank you, Ms. Tierney. I have to admit. I remember when Jayne Mansfield died, and that was like—I remember, I think it was the 1960s, it was that far back. And my staff cautioned me not to mention her name, since you have, I think I can do it. That means that issue is that far back, over 50 years ago, people have died for that reason, and it should have come to the attention, and safety should have been a concern.

Mr. Chairman, I would also like to enter into the record a 2007 report issued by Transportation Research Board of the National Academies, entitled "The Domain of Truck and Bus Safety Research" into the record.

Mr. BOST. Without objection.

[The 151-page report entitled "The Domain of Truck and Bus Safety Research" can be found at the Transportation Research Board's website at http://onlinepubs.trb.org/onlinepubs/circulars/ec117.pdf.]

Mr. COHEN. Thank you, Mr. Chair.

In this 2007 report, a study conducted by the University of Michigan Transportation Research Institute, noted that both front underrides caused particularly fatal results and the properly undesigned front underrides could reduce fatalities by 27 to 37 percent. My heart goes out to all the families who have been affected by these tragic collisions, Marianne Karth, Lois Durso, Ms. Tierney, and especially Randy and Laurie Higgenbotham, whose son, Michael, our constituent, was killed in a truck underride crash in the Memphis area.

There are times when we are called upon to simply do the right thing. I hope any colleagues will consider the Stop Underrides Act and help end needless preventable deaths. It is our constitutional duty to keep the American people safe and taking any action to prevent these deaths is the right thing to do.

I yield back the remainder of my time. Thank you, sir.

Mr. BOST. Thank you. And seeing no others seeking recognition, I would like to thank each of the witnesses for their testimony today. I ask unanimous consent that the record for today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing, and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members, or witnesses, to be included in the record of today's hearing.

Without objection so ordered. If no other Member has anything to add, this subcommittee stands adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

STATEMENT OF ADMINISTRATOR
RAYMOND MARTINEZ
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
FAST ACT IMPLEMENTATION:
MAY 22, 2018
TESTIMONY

Chairman Graves, Ranking Member Norton, and Members of the Subcommittee, thank you for inviting me to testify about the Federal Motor Carrier Safety Administration's work to improve commercial truck and bus safety and implement the Fixing America's Surface Transportation Act (FAST Act). It is an honor to testify today before the subcommittee.

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries and fatalities involving large trucks and buses.

FMCSA was established as a separate administration within the U.S. Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999. For more than 18 years, the 1,100 men and women of FMCSA have worked hard to ensure that freight and people move safely by providing oversight of motor carriers, commercial motor vehicles, and commercial drivers in the United States.

We regulate more than half a million interstate motor carriers. including truck and motorcoach companies, household goods carriers, and hazardous materials carriers and nearly 4.7 million active holders of commercial drivers' licenses.

Through our Motor Carrier Safety Assistance Program, grant funding supports 13,000 State law enforcement partners who conduct 3.5 million commercial motor vehicle inspections each year. We thank Congress for the FAST Act changes that streamlined our grant programs and increased funding level. These changes provide the critical resources necessary for our State enforcement partners and other grantees to carry out important safety work.

We have seen success from our work, but more remains to be done. During 2016, 37,461 people were killed in crashes on the nation's roadways, an increase of about 2,000 over 2015.

Fatalities increased from 2015 to 2016 in all segments of the population—including occupants of large trucks. 4,317 fatalities occurred in crashes involving large trucks, 5.4 percent more fatalities than in 2015, the highest since 2007. Of those fatalities, 722 were occupants of large trucks. So our work, Mr. Chairman, continues.

Since beginning my tenure with FMCSA on February 28, 2018, we have engaged with our industry and safety partners, working consistently to maintain the safest transportation system possible—a system of excellence that includes holding motor carriers accountable, promoting knowledgeable drivers, ensuring that vehicles are well maintained to avoid breakdowns and the attendant roadside hazards, and encouraging innovation to unleash sound technology to advance highway safety.

FMCSA is proceeding on several fronts to accomplish those goals. Among them: our work to help the industry adapt and transition to Electronic Logging Devices (ELDs) to address hours of service compliance and driver fatigue.

The Congressionally-mandated ELD rule requires most drivers previously using paper logs to use ELDs to record information about their hours-of-service, making it easier for drivers to document their hours, and for employers and enforcement officials to review them.

The final rule's first compliance date was December 18, 2017, and full enforcement of the ELD rule began on April 1, 2018. Mr. Chairman, we are seeing results. Of the nearly 300,000 driver inspections that have been conducted April 1, less than one percent of drivers inspected have been cited for failing to have an ELD, when required.

FMCSA also is working to address the unique needs of agricultural industries. For example, the Agency has issued two 90-day temporary waivers from the ELD rule for agriculture-related transportation, and are implementing Congress' direction in our Fiscal Year 2018 appropriations.

FMCSA has invested a considerable amount of time as an Agency to ensure that industry, law enforcement partners, and our stakeholders understand the requirements surrounding the use of this life-saving technology. Since 2017, we conducted more than 550 outreach events regarding ELD requirements around the country, with more outreach efforts planned in the future.

Mr. Chairman, I also would like to mention the efforts FMCSA is making to reach military members and veterans as they transition to civilian life. We have several efforts under way to ease the transition into commercial driving careers, and we thank Congress for its partnership with FMCSA to reduce those administrative barriers.

These efforts include options such as allowing States to waive the skills test for military personnel with experience operating heavy vehicles in the military, allowing certain military personnel to simply "exchange" their military vehicle license for a CDL.

So far, more than 23,000 current and former military have taken advantage of this waiver process.

In addition, FMCSA is working to finalize a rulemaking which would establish a training program for qualified providers at VA to become certified in conducting commercial driver's medical examinations. Veterans, in turn, would have access to a more comprehensive system of health care service as more VA providers become qualified medical examiners.

FMCSA is working to implement an "Under 21" driver pilot program that would allow certain 18-, 19-, or 20-year-old drivers with training and experience in certain military occupations to operate commercial motor vehicles in interstate commerce.

FMCSA believes these rulemakings will go a long way to raising the bar for safety on our roadways by producing better trained and qualified CMV drivers. Taken together, these efforts represent a "win" for military personnel, to more directly use the skills they learned in the military; for industry, to address perennial driver shortages; and for public safety, to allow military drivers to use their heavy vehicle training gained by military service to prepare them to safely operate civilian vehicles.

Finally, Mr. Chairman, FMCSA is moving forward to encourage innovation—one of Transportation Secretary Elaine Chao's top priorities—with our work on automated driving systems.

By leveraging innovative technology to improve CMV safety, we see the potential to save thousands of lives while both improving productivity and limiting the costs associated with crashes.

FMCSA is proceeding in the following ways. The Motor Carrier Safety Advisory Committee (MCSAC) met on June 12th and 13th, 2017, to discuss highly automated commercial motor vehicles. They met in October 2017, and will issue recommendations later this year.

We are also working with the National Highway Traffic Safety Administration, the Federal Highway Administration, and the Federal Transit Administration to develop a comprehensive plan to better manage department initiatives related to automated vehicles, in addition to a research plan.

FMCSA recently released a Request for Comments about FMCSA safety regulations which inadvertently may be a barrier to the safe testing and deployment of these technologies on public roads. We especially encouraged industry leaders and other interested parties to provide comments to the RFC, particularly given the dramatic pace of technology and clear interest in the market.

The comment period ended on May 10 and the Agency is reviewing the information received to incorporate into future plans. We plan to continue engaging the commercial motor vehicle community through public listening sessions, outreach activities, and through meetings with industry, safety advocates, driver organizations, and the motoring public.

Mr. Chairman, the public expects a safe, efficient, and reliable transportation system. With your support, FMCSA employees, partners, and stakeholders will continue to share this solemn commitment to maintaining safety for all road users.

I would be happy to answer any questions you may have.

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Responses to Questions for the Record
Mr. Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
House Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing entitled, "FAST Act Implementation: Motor Carrier Provisions"
May 22, 2018

Questions for the Record

Submitted on behalf of Congressman Mark Meadows (NC-11):

1. **As you are aware, the Federal Motor Carrier Safety Administration (FMCSA) finalized the "Electronic Logging Devices and Hours of Service Supporting Documents: Rule (ELD Rule) on December 16, 2015, in response to the requirements in the FAST Act to reform the CSA and safety tracking for carriers and drivers. As you know, this rule requires the use of ELDs for all trucking companies, beginning after December 16, 2019. There has been opposition to the ELD mandate from small trucking companies, specifically with 50 or fewer employees, in response to the cost burden of these devices.**

    a. **I have heard from some of my smaller carriers that the ELD rule makes not differentiation between "small business" carriers, and one-man, owner-operated businesses. This leaves no distinction whatsoever between businesses with annual revenues of $27.5 million and mere one-man operators of commercial motor vehicles.**

    b. **As you know, the *Fixing America's Surface Transportation Act* (P.L. 114-94, FAST Act) requires FMCSA to, when considering a regulatory impact analysis of a proposed or final major rule issued, "consider the effects of the proposed final rule on different segments of the motor carrier industry…" and to, "use data that is representative of commercial motor vehicle operators or motor carriers, or both, that commercial truck and bus carriers of various sizes and types." (see TITLE V – Administration Reform; Part I –Regulatory Reform).**

        i. **Did FMCSA consider the effect that the ELD Rule will have on the smallest motor carrier businesses?**

        ii. **Has FMCSA issued waivers, as allowed for in the FAST Act, for the smallest motor carriers "for good cause"?**

            1. **If so, how many?**

2. **Has FMCSA considered the impact that the ELD rule has on small motor carriers within the entertainment industry? Specifically, those working in the transportation of choir groups for faith-based functions?**

c. **Many small trucking companies and individual drivers that have one-person operations have reached out to me in regard to the burdensome hourly limits on these businesses, not allowing more than 11 hours of driving time and 14 consecutive hours of on-duty time in any 24-hour period. Once drivers reach that limit, they must pull over and wait 10 hours before driving again. This requirement does not make an exemption for drivers potentially having to pull over for bad traffic, inclement weather, or other unanticipated delays that eat into their 14-hour consecutive hours of driving.**

   i. **Has FMCSA looked into allowing short term rest breaks for drivers than can pause the 14-hour block for drivers?**

Answer. FMCSA's rulemaking process to implement the statutory mandate that the require commercial motor vehicle (CMV) drivers who are required to keep records of duty status (RODS) to use electronic logging devices (ELDs) included an analysis of the impact of the ELD mandate on small businesses. The Agency estimates that 99.1 percent of the motor carriers subject to its regulatory authority are small businesses according to the Small Business Administration's size standards. The Agency focused on developing performance-based technical specifications which provide the opportunity for numerous vendors and service providers to compete and offer low-cost options for the motor carriers to achieve compliance with the ELD rule.

The Agency has not provided exceptions or other forms of relief from the ELD requirements because doing so would permit continued non-compliance with the hours-of-service requirements. And such an action would be contrary to Congressional intent in that very few carriers using RODs would be required to use ELDs.

With regard to small companies working in the transportation of choir groups for faith-based functions, the Agency did not consider the impact of the ELD rule on these carriers. The Agency emphasizes that the ELD rule did not change the HOS requirements for either motor carriers of property or motor carriers of passengers. Substantive issues about the HOS limits raised by motor carriers of property, subsequent to the implementation of the ELD rule, have not been echoed by the passenger-carrier industry because the HOS requirements for the two segments differ significantly.

On the subject of consideration of allowing short rest breaks to pause the 14-hour clock for drivers, the Agency has received petitions for rulemaking from the Owner-Operator Independent Drivers Association (OOIDA) and TruckerNation.org seeking certain revisions to the HOS rules to provide greater flexibility for drivers. Both petitions seek changes to the 14-hour clock and the Agency is currently reviewing those requests.

2: The Moving Ahead for Progress in the 21st Century Act (P.L. 112-141, MAP-21) requires the agency to report to congress on the adequacy of financial security of brokers every four years. In 2014, the agency filed a report but omitted the fact that the new $75,000 bond (up from $10,000) had eliminated 40 percent of the intermediary industry, causing 9,800 small business transportation intermediaries to lose their licenses. It has now been four years since that report. When can we expect FMCSA to comply with its mandate to report to Congress as to the impact of the $75,000 bond, including any "unintended consequences?"

Section 32104 of MAP-21 requires FMCSA to report on the "appropriateness of... the current bond and insurance requirements under sections 13904(f), 13903, and 13906 of title 49, United States Code." Section 13906 includes $75,000 bond requirements for brokers and freight forwarders.

FMCSA briefly addressed the $75,000 broker/freight forwarder bond requirement in its initial April 2014 Section 32104 Report to Congress and indicated that, given the newness of the congressionally mandated $75,000 requirements, it would defer reporting "on the appropriateness of these levels [until] after it has had the opportunity to observe their impacts." The Agency further indicated that it expected "to include an analysis of the limits on brokers and freight forwarders in future reports on financial responsibility."

FMCSA further commented on broker financial responsibility in its 2018 financial responsibility report, which was a joint report under MAP-21 Section 32104 and Section 5517 of the FAST Act. While the report primarily focused on motor carrier financial responsibility, as the 2014 report did, the Agency indicated that it was not aware "of any formal efforts by stakeholders seeking modification of the financial responsibility amount." In its report, the Agency acknowledged that it had not yet formally studied the appropriateness of the $75,000 limit.

While the Agency has not undertaken a formal study, it continues to collect data on the number of FMCSA registered brokers and freight forwarders since the $75,000 requirement took effect in 2013. In December 2013, immediately following the new requirement, the number of brokers and freight forwarders decreased by approximately 9,400 from the previous month for a total of 13,839 active brokers and 925 active freight forwarders. By May 2018, the number of active brokers and freight forwarders has rebounded significantly to 18,873 brokers and 1,536 freight forwarders.

FMCSA would welcome the opportunity to meet with Rep. Meadows's office and constituents to learn more about the impact of the $75,000 requirements. Such engagement would also be very useful for the Agency's continuing efforts to implement MAP-21 Section 32918's broker/freight forwarder financial responsibility requirements. As previously announced in the Fall 2017 and Spring 2018 OMB Unified Agenda, FMCSA plans to issue an ANPRM pertaining to broker/freight forwarder financial responsibility.

3. The FAST Act contained many initiatives intended to increase program efficiency through performance-based planning and the streamlining of project development. In fact, SEC. 11308. PERFORMANCE-BASED PROPOSALS. alone contained many such proposals.

a. As you are aware, "the Administration's goal is to seek long-term reforms on how infrastructure projects are regulated, funded, delivered, and maintained." Furthermore, Executive Order No. 12866 "directed agencies, whenever feasible, to specify performance objectives, rather than behavior, in crafting new regulations." A report from the Government Accountability Office (GAO) states that although "agencies may design their regulations in different ways to achieve intended policy outcomes," agency "officials reported a preference for "performance" designs that establish an outcome..."

i. Do you believe the use of performance based standards across the Department of Transportation, including by FMCSA, will be less prescriptive, as required by Executive Order 12866, while facilitating less costly, safer regulatory outcomes that do not stifle innovation?

ii. What have the outcomes been from implementing performance-based proposals in implementing the FAST Act?

iii. Will your agency continue applying performance-based proposals and standards to implement infrastructure initiatives?

Answer. The Agency embraces performance-based standards to the extent possible. In working with its State partners and the industry, the Agency strives to focus on performance requirements while providing flexibility for those subject to the rules in choosing means for achieving the performance outcomes. The challenge is in providing sufficient detail in the requirements to ensure consistent understanding in the application and enforcement of the rules.

4. Section 8001 of the FAST Act created Title 49 section 70203, which deals with implementation of freight transportation investment data and planning tools, specifically "development of new tools and improvement of existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects."

a. What progress has been made to implement tools for this purpose?

Answer: This question would best be posed to the Federal Highway Administration.

5. Section 5203 of the FAST Act provided new requirements for FMCSA's management of guidance documents.

a. What has been done to implement the new requirements?

Answer: FMCSA established working groups of subject-matter experts to review all of the Agency's regulatory guidance that has been published in the Federal Register to identify guidance which should be retained as guidance, incorporated into the regulations, or withdrawn. Additionally, the Agency tasked its

Motor Carrier Safety Advisory Committee to review the published regulatory guidance and provide recommendations to the Agency. The Agency is currently preparing a series of Federal Register notices which would fulfill the statutory requirement.

Submitted on behalf of Congressman Alan Lowenthal (CA-47):

1. **Administrator Martinez, as you may know, an amendment passed in the FAA bill that would pre-empt state labor protections for truck drivers engaged in interstate commerce. Proponents of the amendment claim that *intrastate* – and by that they mean those transporting a load entirely within California – will not be affected. In my district, every day truckers transport goods from our ports to inland distribution centers. These trips take place entirely in California, but the cargo is from overseas trade, bound for destinations across the country.**

   Under FMCSA's definitions, are these drayage trips considered movements in interstate commerce, even if these drivers never leave the state? And applicable state laws that are pre-empted by the amendment would therefore not apply to those drivers engaged in such movements occurring entirely within a single state?

Answer: The definition of "interstate commerce" in the Motor Carrier Safety Act of 1984, which is the basis for much of the FMCSRs, states:

"(4) 'interstate commerce' means trade, traffic, or transportation in the United States between a place in a State and—(A) a place outside that State ***(including a place outside the United States)****; or (B) another place in the same State through another State or through a place outside the United States." 49 U.S.C. 31132(4).*

So, cargo from abroad that is offloaded at a California port remains in the stream of interstate commerce, and a truck driver delivering that cargo to a point in California is operating in interstate commerce.

2. **Mr. Martinez, a year ago Ranking Member Defazio and I both asked Deputy Administrator Jefferson about reported labor abuses in the drayage industry at the Ports of LA and Long Beach. In response to our questions, FMCSA replied that since the coercion rule went into effect in 2016 only one carrier had been fined for a violation of the rule-one violation out of over 600 complaints. Administrator Martinez, can you update the committee on the effect of this rule?**

   b. **Have more investigations been completed or more violations been found in the past year?**

3. **In California, drivers have prevailed in hundreds of complaints before the state labor commission against port trucking companies. So we have hundreds of successful complaints at the state level, but just a handful at *the* federal level.**

a. How can we be sure this rule is working?

Answer: In order for a carrier's or shipper's action to be a violation of the coercion rule, it must meet the specific criteria outlined below. These criteria may differ from California or other State laws.

- A motor carrier, shipper, receiver, or transportation intermediary requests a driver to perform a task that would result in the driver violating certain provisions of the regulations
- The driver informs the motor carrier, shipper, receiver, or transportation intermediary of the violation that would occur if the task is performed, such as driving over the hours of service limits or creating unsafe driving conditions; and
- The motor carrier shipper, receiver, or transportation intermediary make a threat or take action against the driver's employment or work opportunities to get the driver to take the load despite the regulatory violation that would occur.

In addition to the National Consumer Complaint Database, the Agency has a web page to provide additional information about the rule at https://www.fmcsa.dot.gov/safety/coercion. Complaints concerning coercion can be easily filed online at the National Consumer Complaint Database found at www.nccdb.fmcsa.dot.gov. A recent analysis showed that FMCSA received almost 950 coercion complaints to date and continues to investigate and take enforcement when warranted. There have been dozens of enforcement actions taken since the inception of the rule. However, most of those cases relate to the actions of individual motor carriers. As it relates to shippers forcing carriers to commit violations of the regulations, there have been few complaints to date focusing on this issue.

Submitted on behalf of Congressman Scott Perry (PA-04):

1. Administrator Martinez, the FY 18 appropriations final language gives your agency a date of December 2018 to modify or withdraw the Bus and Lease Interchange rule because the regulation is so damaging to the common practices of leasing and occurs regularly in passenger carrier industry. Can you let us know when the agency will act on this important issue?

Answer: As the Agency has previously indicated [82 FR 27768, June 16, 2017], we intend to publish a notice of proposed rulemaking (NPRM) to revise the 2015 Lease and Interchange final rule and significantly reduce the burdens it would have imposed on motor carriers of passengers. Although some time has passed since our last publication on this subject [82 FR 27768, June 16, 2017], the NPRM is nearing completion and we expect to publish it later this year. The compliance date of the 2015 rule – currently January 1, 2019 – will be extended and ultimately replaced by a new compliance date adopted upon completion of the forthcoming rulemaking. We listened to the industry's requests for reconsideration. Changes are on the way.

2. **Mr. Martinez, has FMCSA received any notification from the trucking industry or enforcement personnel about self-certified ELD devices turning out to be non-compliant?**

   If so, has the agency taken any steps to remove the providers of non-compliant devices from your website, which truckers use as a resource when purchasing ELDs?

   Additionally, has FMCSA conducted any reviews or investigations of service providers that are marketing non-compliant devices?

Answer: FMCSA is closely monitoring complaints received relating to potential non-compliance issues by ELD equipment and vendors. In addition, FMCSA proactively reaches out to vendors when issues are identified through the Agency's monitoring of ELD data transfers. There have been several investigations that have led to vendors correcting their non-compliance issues, and there are currently investigations ongoing. Because the vendors are correcting the issues identified, the agency has not yet had to revoke a vendor's registration. One vendor, to date, has voluntarily revoked their registration, and that vendor is identified on the FMCSA website.

3. **Mr. Martinez, this week marks 180 days since the Owner-Operator Independent Drivers Association (OOIDA) submitted a request to exempt small trucking business with exception safety records from the ELD mandate. While many truckers were disappointed the agency did not make a determination on this application before full implementation of the mandate took place, they are still hopeful to be provided some relief from its costly and burdensome requirements. The agency has already granted several exemption requests for a wide variety of industries, some in only a matter of weeks. Can you provide an update on the agency's six-month consideration of OOIDA's application, as well as a timeframe for a final determination to be issued?**

Answer: The Owner-Operator Independent Drivers Association (OOIDA) requested an exemption from the hours-of-service electronic logging device (ELD) requirements in 49 CFR part 395 on behalf of certain motor carriers considered to be small transportation businesses under 13 CFR § 121.201. After careful consideration, the Agency denied its petition for exemption on June 16, 2018. The exemption petition, as submitted, would not have ensured the requisite level of safety. The Agency notified OOIDA of its decision and will publish a notice formally announcing this decision in the Federal Register.

Submitted on behalf of Congresswoman Brenda Lawrence (MI-14):

1. **Administrator Martinez, FMCSA currently lists on its website several hundred ELDs that are self-certified by the manufacturer as being compliant and conforming with technical specifications outlined by FMCSA and registered with**

FMCSA. It is my understanding that if FMCSA discovers an ELD listed on its website that does not comply with the technical specifications, FM CSA may initiate removal of an ELD model or version from its list by providing written notice to the ELD provider.

During your response to questions at the hearing, you indicated that FMCSA has not removed any ELD devices or vendors from its website, but several investigations have been undertaken. I would offer that this may lead to non-compliance of several devices with FMCSA's technical specifications and. that this does a great disservice to operators, especially independent owner/operators who purchase these non-compliant devices having relied on FMCSA's direct or implied approval.

Could you please provide a more detailed update on where things stand with FMCSA's ongoing efforts to ensure the devices listed on its website are in fact compliant with current law and that they do not allow for work-arounds of the hours of service regulations? Have you received complaints or other information about specific devices? If so, how has FMCSA responded and how long does the investigation require before a determination is finalized?

Answer: FMCSA is closely monitoring complaints received relating to potential non-compliance issues on the parts of ELD equipment and vendors. In addition, FMCSA proactively reaches out to vendors when issues are identified through the Agency's monitoring of ELD data transfers. There have been several investigations that have led to vendors correcting their non-compliance issues, and there are currently investigations ongoing. The length of the investigation varies based on the complexity of the issues identified. Because the vendors are correcting the issues identified, the agency has not yet had to revoke a vendor's registration. One vendor, to date, has voluntarily revoked their registration, and that vendor is identified on the FMCSA website.

Submitted on behalf of Congressman Brian Babin (TX-36):

1. **In my time remaining let me say that I appreciate your commitment and outreach to Members of Congress and other stake holders on ways to modernize and improve hours of service regulations. I have some of my own ideas – like my bill H.R. 5417, the REST Act – to give drivers, if they so choose, an additional three hours of flexibility to avoid traffic, get something to eat, or take a nap without burning through their on-duty time they need to finish their job and get paid. What are the plans though, and what is the timetable for FMCSA to formally begin this process, including public comments, notices, and everything else that goes along with issuing a new or revise regulation?**

Answer: FMCSA has been meeting with stakeholders, organizations and drivers to discuss this important issue. With the adoption of the Electronic Logging Devices we now have the ability to accurately record hours of service of commercial motor vehicle operators and gives us the opportunity to have an open dialogue on the regulations. FMCSA acknowledges the hours-of-service flexibility that would be provided through the implementation of H.R. 5417. The

Agency also notes that it has received petitions for rulemaking from the Owner-Operator Independent Drivers Association (OOIDA) and TruckerNation.org seeking certain revisions to the HOS rules to provide greater flexibility for drivers. Both petitions seek changes to the 14-hour clock and the Agency is currently reviewing those requests.

TESTIMONY

DALE N. KRAPF

CHAIRMAN OF THE BOARD

KRAPF GROUP, INC.

HOUSE TRANSPORTATION AND INFRASTRUCTURE

COMMITTEE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

"FAST ACT IMPLEMENTATION:

MOTOR CARRIER PROVISIONS"

MAY 22, 2018

10:00 A.M.

Chairman Graves, Ranking Member Norton, Chairman Shuster, Ranking Member DeFazio, and Members of the Subcommittee, on behalf of Krapf Group, Inc. (Krapf Group) and the school bus and motorcoach industry I proudly represent, thank you for calling this hearing today and the invitation to testify. This Committee has a long and distinguished record of promoting safety on our roadways, which is an important component in our nation's public discourse on the best practices to achieve safe and efficient travel on our highways while also promoting a thriving passenger carrier industry.

The Krapf Group is a family-owned and operated passenger transportation business established in 1942 by my father, George Krapf, Jr., to provide pupil transportation for local municipalities. Beginning with two school buses, the company has grown, not only in size, but also in scope and diversity. The Krapf Group is now one of the largest private providers of contracted school bus transportation in the nation, with operations in Pennsylvania, Delaware, Virginia, New Jersey and New York. Additionally, the Krapf Group also operates public transit services under contract as well as interstate motorcoach services. The company just celebrated its 75th anniversary. Along with representing the Krapf Group today, I am also representing the views of the National School Transportation Association (NSTA) as its former President, and the United Motorcoach Association (UMA) as its immediate past Chairman.

NSTA is the trade association representing private school bus companies that provide school bus service to school districts under contract. NSTA members provide one third of the nation's school bus service. UMA is North America's largest association of professional bus and motorcoach companies that provide private charter, tour and fixed route services.

According to USDOT statistics, the school bus and motorcoach industries are the safest of all modes of transportation. Motorcoaches and school buses operate in an array of road and highway environments where approximately 37,000 fatalities occur annually, and that number is rising (National Highway Traffic Safety Administration (NHTSA) 2016 data). In the midst of this environment, the school bus industry averages 5 or less occupant fatalities annually and the motorcoach industry less than 20 occupant fatalities; both representing less than 1/10 of 1 % of the annual fatality toll. This remarkable safety record is no small achievement and requires vigilance and safe practices from the men and women that drive, maintain, own, operate and manufacture our equipment, as well as the men and women that enforce traffic safety laws on our Nation's roads and highways. The U.S Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) play an important role in ensuring this safety record continues. I recommend for the Committee's consideration, the findings of an independent review team, appointed by former Secretary of Transportation Anthony Foxx, which made recommendations that would likely lead to a higher degree of industry safety by suggesting that FMCSA assume the role as a "facilitator of safety," similar to the role the Federal Aviation Administration assumed in 1997, which has led to a remarkable reduction in commercial aviation fatalities.[i]

In December 2015, Congress passed the FAST Act. This timely legislation contained critical policy elements that began to correct regulatory overreach that was suffocating investment, growth, and employment in the school bus and motorcoach industry, but doing little, if any, to improve safety. NSTA and UMA thanks this Committee and Congress for this important legislation, which has been critical to the survival and thriving of the passenger carrier industries.

Prior to the passage of the FAST Act, the FMCSA was proposing to raise the financial responsibility limits previously established by Congress, despite the lack of compelling evidence demonstrating current minimum limits were insufficient. With the knowledge that these limits can be used as a barrier to new entrant companies and burden small fleet operating companies, this Committee and Congress wisely directed the Secretary to implement two comprehensive reports before proceeding to change current minimum insurance limits. For the passenger carrier industries, the halting of the Administration's push to raise financial responsibility to unreasonable levels while demonstrating a stark lack of understanding of the impacts on passenger carriers was of the upmost importance. Without your action, the push to quadruple limits would have devastated both the school bus and motorcoach industries. The FAST Act mandated one study under Section 5509 (Section 5509 study) to include: a review of accidents, injuries and fatalities in over-the-road bus and school bus industries, a review of insurance held by over-the-road bus and public and private school bus companies, including companies of various sizes, and an analysis of whether such insurance is adequate to cover claims, an analysis of whether and how insurance affects the behavior and safety record of motor carriers of passengers, including with respect to crash reduction; and, an analysis of the anticipated impacts of an increase in financial responsibility on insurance premiums for passenger carriers and service availability. The provision requires consultation with representatives of the over-the-road bus and private school bus transportation industries, insurers of motor carriers of passengers, and representatives of bus drivers. A second study was also mandated under Section 5517 of the FAST Act (Section 5517) and required an analysis of (1) the differences between State insurance requirements and Federal requirements; (2) the extent to which current minimum levels of financial responsibility adequately cover—(A) medical care, (B) compensation, and

(C) other identifiable costs; and, (3) the frequency with which insurance claims exceed the current minimum levels of financial responsibility. The Section 5517 study was issued in March of 2018; however, to our knowledge the Section 5509 study has not yet been initiated. We trust that FMCSA will take a very deliberate approach when initiating the study as the financial responsibility limits issue remains central to our industries and their future growth in meeting the needs of the public we serve. Please note that both NSTA and UMA support a provision in H.R. 2120, Buses United for Safety, Regulatory Reform and Enhanced Growth for the 21st Century Act (BUSREGS-21), introduced by Subcommittee Member Rep. Scott Perry, that would return the establishment of financial responsibility limits to Congress instead of by agency regulation, similar to every state legislature in the nation.

Supported by a Government Accountability Report,[ii] Congress listened to the industry's concerns regarding FMCSA's much anticipated Compliance, Safety and Accountability (CSA) program, its inadequacies and inaccuracies, and directed the Secretary to reform the program, another important provision in the FAST Act. The first step was to have the program reviewed by the National Academies of Science (NAS). The NAS indeed discovered significant room for improvement and provided extensive recommendations and guidance. The FMCSA has held one stakeholder meeting on the Academy's recommendations last summer but has not held any other dialogue with the passenger carrier industry. Again, we trust that FMCSA is incorporating the recommended reforms and we genuinely hope the industry will have more opportunities to weigh in before a finished product is unveiled. We also hope any new program will represent an accurate and fair assessment of motor carriers and an effective tool for assessing the safety culture of an operator and for those charged with enforcing federal regulations.

An issue near and dear to my heart relates to how accidents are reported on federal records in which the motor carrier contributed nothing to the accident. While one of our Krapf buses was sitting at a red light - a car struck the rear of the bus at a high rate of speed. Unfortunately, the driver lost her life and was later determined to be driving while intoxicated. The Krapf bus that was rear-ended in that incident did not contribute to the accident. Yet, a fatality was assigned to our company's record, posted on FMCSA's website, and was visible to the public for two years. A large part of our identity and success stems from our reputation. A blemish on our outstanding record of safety from the reporting of the accident on the federal records, which was not caused by the Krapf Group, is unwarranted and an inappropriate assignment of fault. I ask each of you to consider the effects of a bureaucratic statement on your record that wrongfully reflects negatively on your company. We had no recourse at the time. I am pleased to report that as a result of passage of the FAST Act, the FMCSA has finally established a procedure for removing those crashes that were not preventable by the motor carrier. I applaud the Congress for their action and FMCSA for quickly adhering to the legislation.

One particular area of disappointment in the FAST Act was that this Committee, and Congress, mandated that information regarding analysis of violations, nonpreventable crashes, alerts, or the relative percentile for each BASIC developed under CSA, must be removed from public view for property carriers until the Inspector General certifies that all recommendations cited by the NAS are complete. This Committee and Congress allowed FMCSA discretion to continue displaying BASIC information for motorcoach operations. FMCSA extended that policy to all passenger carriers, including school bus operations, which NSTA believes violates the specifics of the statute. So, while Congress and industry mutually agree the current CSA program is flawed and not a valid tool for consumers to make a credible safety evaluation of a particular company,

passenger carrier customers continue to be exposed to this erroneous information, which can lead to unfair and flawed perspectives on of a particular company. My own company has experienced a loss of business because of this unnecessary decision. UMA and NSTA seek this Subcommittee's assistance to correct this injustice and remove information on passenger carriers from public view until all CSA reforms, as dictated by the FAST Act, are completed. This provision is also included in HR 2120, BUSREGS-21, Congressman Perry's bill.

We applaud you for including in the FAST Act a provision assessing the Secretary to submit a report of actions the Secretary is taking to ensure that each application for registration under 13902 is processed not later than 30 days after the date on which it was received. This was in response to FMCSA's extreme delays in approving new entrant applications. Over the last ten years, the motorcoach industry has declined in size and scope, including the number of companies in business and the number of motorcoach units. New entrants are vital to growth and survival of the industry and the unreasonably slow approval of applications played a role in this industry contraction. We are most pleased to report that the process that was previously taking four to six months, often even longer, is now considerably less than thirty days. We hope this change will result in our industry seeing new life and begin to grow once again.

The FAST Act mandates that over-the-road buses be afforded equal access to toll facilities and high occupancy lanes. We applaud this Committee and Congress for this provision that serves to further level the playing field so that all vehicles that provide public transportation are treated equally. While school buses do not travel on toll lanes and high occupancy lanes often, they do when providing school field trips, athletic trips and other charter work. NSTA seeks the Committee's support for school buses to be included in this treatment. Toll facilities and high occupancy lanes across the country

routinely treat public transit differently, so it is very difficult for operators to have a clear view of which facilities are toll-free or require reduced or no tolls. We seek support from Congress to instruct the Federal Highway Administration (FHWA) to require all public authorities operating facilities subject to Section 129 to set out the rates, terms and conditions for use of their facilities as they apply to public transportation buses and to over-the-road buses. Neither the industry nor FHWA currently have any means of determining compliance with Section 1411. Additionally, FHWA should identify the public authorities operating Section 129 facilities and responsible for HOV/HOT facilities under Section 166, so that over-the-road bus companies can determine their correct treatment.

Section 5202 of the Fast Act mandates that within each regulatory impact analysis of a proposed or final major rule issued by the FMCSA, the agency should consider the effects on different segments of the motor carrier industry; formulate estimates and findings based on the best available science, use data that is representative of motor carriers that will be impacted by the proposed or final rule; and, consider the effects on motor carriers of various sizes and types. NSTA and UMA commends this Committee and Congress for this provision, as regulations appropriate for trucks are too often inappropriate for motorcoach and school bus operations. Both associations believe that for rules that impact both trucks and buses, a separate cost-benefit analysis should be required for the passenger carrier industry. This provision is also included in HR 2120, BUSREGS-21, Congressman Perry's bill.

The FAST Act also directed the establishment of an advisory committee known as the National Advisory Committee on Travel and Tourism Infrastructure to provide information, advice and recommendations on matters relating to the role of intermodal transportation in facilitating mobility related to travel and tourism activities. The

motorcoach industry is integral to the travel and tourism industry and can provide unique perspectives and insights into the critical role modernized infrastructure connects our economy. Initially, the advisory committee included a motorcoach industry representative, but DOT has recently reduced the size of the advisory committee and no longer includes representation by the industry. UMA seeks this Subcommittee's assistance to press the Department to return a motorcoach industry representative to the Advisory Committee for its important work.

We want to commend the Committee for preserving critical school bus transportation and charter bus protections in the FAST Act. These protections ensure a level playing field for private tax-paying companies like mine which cannot compete fairly with Federally subsidized public transit in those areas.

In many states today, prospective drivers across the nation are incurring very long delays to take their commercial driver's license (CDL) skills test. These delays are frustrating a chronic industry driver shortage, hindering job and industry growth, and impeding our efforts to serve the public. Section 5506 of the Fast Act (Section 5506 report) directed the Secretary to submit a report to Congress providing a state-by-state analysis of CDL skills testing. The Section 5506 report has not yet been finalized. Meanwhile, Rep. Duncan has introduced H.R. 4719, a bill that will require States to execute CDL skills tests by hard deadlines and afford a sure remedy to this current crisis. Both UMA and NSTA support this legislation and seek swift passage of the common-sense reforms contained in H.R. 4719.

I'd like to touch on a few additional issues not directly related to the FAST Act, which are important to the passenger carrier industry. While Congress may soon be considering an infrastructure bill, I would be remiss if I did not mention an important

issue related to funding. The motorcoach and school bus industries support the goal of improving our nation's surface transportation infrastructure and recognizes the need for adequate funding. Currently, motorcoaches pay 7.4 cents per gallon of the 24.4 cents per gallon Federal tax on diesel fuel and school bus operators do not pay any of the diesel tax. The rationale for these exemptions centers on providing essential public transportation while reducing congestion, road wear, pollution and fuel consumption. This rationale is even more compelling today as it directly correlates to both industries' ability to ensure passengers and communities have continued access to safe, reliable, efficient and economical modes of travel. As Congress considers funding options for infrastructure legislation, the total federal fuel tax exemption for school buses and the partial motorcoach fuel tax exemption should be preserved. Should a new funding mechanism be established, provision should be made for an alternative competitive offset for school buses and motorcoaches.

Another issue that is periodically debated here in Congress and in the general public, is the issue of seat belts in school buses. NSTA believes this issue is most appropriately decided at the State and local level, where funding decisions for school bus transportation are made and all ramifications of a decision to mandate belts can be fully examined. School bus transportation is the safest mode of transportation, above all other modes, according to DOT's own statistics. NSTA is dedicated to ensuring this safety record continues and that as many children as possible have access to the extraordinary mode of transportation to and from school. Children who travel to school by walking, bicycle, parents' or friend's car, or driving themselves have crashes and fatalities at far higher rates than in a yellow school bus, with or without belts. NSTA stands with the NHTSA, which over a 30-year period has refused to mandate belts at the federal level due to the fact that it would force more children into more unsafe

modes of transportation as communities are compelled to make difficult budget decisions.

Finally, the 103rd Congress passed the Federal Aviation Administration Authorization Act of 1994 (Aviation Act). The Aviation Act included important reforms providing consumers unfettered access to charter bus providers. These important provisions provided common sense restrictions prohibiting political subdivisions from requiring permits for passenger carriers, leaving regulation of charter buses solely in the federal realm for the sake of interstate commerce. For nearly two decades consumers and charter service providers enjoyed the absence of burdensome filings and expensive fees. Over time, court decisions centering on unintended loopholes in legislative draftsmanship has eroded the original intent of Congress and now industry and consumers alike are facing a panoply of political subdivision permitting schemes that are causing charter bus providers to withdraw from service in certain markets. We call on Congress today to clarify the original intent of the 1994 statute to restore the federal exception that ensures consumers continue to have access to safe, affordable and efficient charter bus transportation.

Mr. Chairman, Ranking Member Norton, the important motor carrier policies enacted in the FAST Act were just in the nick of time. The passenger carrier industry was struggling under the burden of increasing regulation without any positive impact on improved safety. The overwhelming onslaught of regulations was causing the motorcoach industry to dramatically shrink in the number of companies serving the public, their fleet size, and perhaps most alarming, the number of annual passenger trips afforded the public--shrinking by approximately 20% in just a decade.

The Nation needs and deserves a thriving passenger carrier industry supported by regulations that actually improve safety, and do not unduly burden and discourage motor carriers with endless paperwork, placing motor carriers needlessly out-of-business, or place impediments to new entrants that often prove to be the innovators for the next generation of motor carriers. We appreciate the approach of the new administration to further address comprehensive regulatory reform to provide needed relief to the industry.

On behalf of the Krapf Group, the National School Transportation Association, and the United Motorcoach Association, thank you for the comprehensive reforms contained in the FAST Act, your continued support for regulatory reform and this unique opportunity to testify before this Committee. I look forward to answering any of your questions.

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[i] "Blueprint for Safety Leadership: Aligning Enforcement and Risk", Independent Review Team Appointed by Secretary of Transportation Anthony R. Foxx, July 15, 2014.

[ii] In February 2014, the U.S. Government Accountability Office (GAO) recommended FMCSA revise the SMS methodology in CSA to better account for limitations in drawing comparisons of safety performance information across carriers. Additionally, GAO recommended a determination of a carrier's fitness to operate should take into account limitations in available performance information. Federal Motor Carrier Safety Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers (GAO-14-114). GAO was directed by the Consolidated Appropriations Act of 2012 to monitor the implementation of CSA. Actions Are Needed To Strengthen FMCSA's Compliance, Safety, Accountability Program (MH-2014-032). In October 2012, the Chairman and Ranking Member of the House Transportation and Infrastructure Subcommittee on Highways and Transit requested that the IG evaluate FMCSA's CSA program. The objectives were to assess FMCSA's data quality controls and its enforcement intervention mechanisms.

"FAST Act Implementation: Motor Carrier Provisions"

Subcommittee on Highways and Transit

Tuesday May 22, 2018, 10:00 a.m.

2167 Rayburn House Office Building

Washington, DC

QUESTIONS FOR THE RECORD

From: Congressman Scott Perry

To: Mr. Dale Krapf, Chairman of the Board, Krapf Group, Inc.

Q. Mr. Krapf, a few years ago I was questioning a former Federal Motor Carrier Safety Administration (FMCSA) Administrator from the previous administration on whether she viewed promotion of a thriving motor carrier industry as part of the agency's mission. She responded rather shockingly that she did not, and her job was to protect public safety, period. Do you believe the primary federal agency charged with regulating motor carrier safety should also have a mission to promote a thriving motor carrier industry, similar to the FAA?

A. Yes, I do. While we understand the agency's primary mission is to protect public safety, it should also be part of their mission to partner with the commercial motor vehicle industry to promote a thriving motor carrier industry that serves the broader public's need to access affordable and safe travel. This has been part of the Federal Aviation Administration (FAA) mission since its founding, resulting in the United States having the safest aviation record in the world and a thriving airline industry.

An independent review team appointed by then Secretary of Transportation Anthony Foxx in 2014 stated:

"This decrease in [airline] accidents was not achieved through enforcement campaigns and massive increases in regulations. It was achieved largely through voluntary implementation of safety and technology practices, targeted through the exchange of safety information, and fostered by complementary regulatory policies implemented by the FAA."[1]

While FMCSA boasts industry partnerships, the proclamation is largely rhetoric and only seeks association with those within the motor carrier industry that support the agency's pursuit of expansive authority, promulgation of regulations, and the blunt effects of overzealous enforcement action that discourages small fleet operations – the backbone of the passenger

[1] Blueprint for Safety Leadership: Aligning Enforcement and Risk, Independent Review Team Appointed by Secretary of Transportation Anthony R. Foxx to Review the Federal Motor Carrier Safety Administration's Safety Oversight of the Motor Carrier Industry, July 15, 2014.

carrier industry. One need only look at the FMCSA's budget to determine who their real "partners" are: state highway enforcement agencies.

In a nutshell, the FMCSA currently fulfills its mission by funding state highway enforcement agencies' inspection of commercial motor vehicles and those that drive them, identify noncompliance with their regulations, afford no independent adjudication, prioritize those carriers who are unfortunate enough to be caught in the random universe of selection for review, and punish those who fall within an unfortunate scoring metric, often by losing their business, despite the fact they may not pose an imminent hazard or have ever incurred a crash. All too frequently these carriers are small fleet, small business, and minority owned. Critics of FMCSA have accused the agency of trying to destroy the small fleet operator systematically through regulations, enforcement, and punishment.

FMCSA employs few, if any, former passenger carrier safety professionals and has little understanding of the industry it regulates or the public it serves. When the industry recently petitioned the agency for regulatory reconsideration of a misguided regulation, the agency readily admitted, "We obviously did not know how the industry worked."

While the commercial motor vehicle passenger industry safety record has remained strong, the motorcoach industry has contracted over the last ten years with fewer operators, fewer vehicles, fewer passenger served, and fewer new entrants entering the industry.

A declining motorcoach industry means that the travelling public not only represents fewer options for travel, but less safe modes of travel. The FMCSA's current policies do not serve the interest of the traveling public's needs or overall public safety. UMA and NSTA believe the FMCSA should also have a mission to support thriving private motorcoach and school bus industries; otherwise, the agency's current approach will continue to reduce the number of passenger carriers available to the public.

The aforementioned report further states, "Achieving long-term improvement in operator safety depends on the community developing, sharing, and adopting leading safety practices." The FMCSA leadership remains rooted in an "enforcement and punishment culture", exhibiting no indication of adopting progressive recommendations or seeking effective methods of reducing "crashes, injuries and fatalities involving large trucks and buses."

We enthusiastically support section two of your bill, BUSREGS-21 (HR 2120) which would amend the FMCSA mission statement to include not only a priority on safety but fostering an environment for a thriving passenger carrier industry, consistent with the FAA mission statement. This section would amend the agency mission to include: "fostering new and expanding passenger service through industry collaboration, encouraging new entrant applicants by expediting operating authorizations, and identifying passenger carrier drivers as a profession."

Q. Mr. Krapf, as you know, my bill, H.R. 2120, BUSREGS-21, contains a provision that would leave the responsibility for any changes in minimum insurance limits for motor carriers of passengers to Congress, rather than the federal agency. My understanding is that with state

insurance requirements, these are set by state legislatures in all 50 states, and this responsibility is not relegated to state agencies. Can you comment on why this is important?

A. Thank you for this important question. Yes, I, UMA and NSTA believe the responsibility for imposing or changing minimum financial responsibility (insurance) limits should be left to elected Members of Congress. State legislators retain this responsibility in all 50 states as well.

Elected officials are well aware that minimum insurance limits can be manipulated to create a barrier to entry and reduce the number of passenger carriers. As a result of the Bus Regulatory Reform Act of 1982, the public enjoys a wide array of surface passenger carrier services that facilitates economical and safe travel to jobs, careers, education, healthcare, and tourism.

Entrepreneurs desiring to enter the industry often start with one bus. This is how my parents started our company 75 years ago, and we have grown into a multi-state company with thousands of buses. That is still the most common way new passenger carriers enter the business. If insurance limits were burdensomely high, or unobtainable, my parents could not have entered the business.

Hopefully, someone today is starting that small passenger carrier company that one day will be serving the traveling public and employing hundreds.

Only Congress can balance the broad needs of the traveling public with the financial requirements to meet the financial obligations of most accidents, not a bureaucratic federal agency easily influenced by those whose interest is served by creating entry barriers.

UMA and NSTA enthusiastically support Section 4(b) of your bill, BUSREGS-21 (HR 2120) that returns the responsibility for any change in minimum financial responsibility (insurance) limits for commercial motor vehicle carriers of passengers to Congress.

KRAPF GROUP

COMMITMENT | OPEN COMMUNICATION | RESPECT | EXCELLENCE

May 31, 2018

The Honorable Sam Graves, Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
2251 Rayburn House Office Building
Washington, DC 20515

The Honorable Eleanor Holmes Norton, Ranking Member
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
2164 Rayburn House Office Building

RE: Testimony of Dale Krapf
May 22, 2018 Hearing of Highways and Transit Subcommittee

Dear Chairman Graves and Ranking Member Norton:

I ask that this letter be submitted and made a part of the official hearing record for the Highways and Transit Subcommittee hearing held May 22, 2018, on "FAST Act Implementation - Motor Carrier Provisions."

In responding to questioning from Ranking Member Norton, I confused the words "recommendation" with "regulation." This letter serves to clarify my answer to her question. The Krapf Group supports actions and regulations that will improve school bus safety while ensuring that as many children as possible continue to have access to the safest form of transportation available, the yellow school bus. The National Transportation Safety Board serves a very important function to investigate the causes of specific accidents and make recommendations on actions that could prevent those accidents from happening in the future. However, the agency does not have rulemaking authority to implement those recommendations. That authority lies with the regulatory agencies at the Department of Transportation, and in that process, those agencies must look at the totality of the effects of new regulations on all school transportation and the entire population of school children.

The complexities of regulations and the interface of such regulations with State and local school transportation budgets can have the effect of displacing school children from school bus service and exposing them to less safe ways to travel to and from school such as walking, biking, traveling in their parent's car or the least safe, teenagers driving themselves. The Krapf Group, as all school bus service providers, must facilitate the desires of the school districts served and work within their fiscal restraints and public policies.

In my testimony, I stated specifically that children are safer in a school bus, with or without seat belts, than any other mode of transportation, which is supported by DOT statistics and has been cited by the National Highway Traffic Safety Administration in several regulatory statements. The Krapf Group and the National School Transportation Association will thoroughly review NTSB recommendations on school bus safety, as it always has, and determine appropriate responses to those recommendations based on these overriding concerns.

For additional clarification, studies reveal that there is no discernible safety differences in school bus service provided directly by school districts or by private contractors in terms of numbers of crashes, injuries, or fatalities. The recent GAO study on school bus safety crash data trends mandated by the FAST Act bears this out. (School Bus Safety: Crash Data Trends and Federal and State Requirements; GAO-17-209: Published: Jan 12, 2017.) The important task of transporting school children safely in school buses has no proprietorship and school bus professionals routinely share best practices and work together to continue to keep school bus transportation the safest mode of transportation above all others.

Thank you for the opportunity to provide a clarification of my answer.

Sincerely,

Dale N. Krapf

Dale N. Krapf
Chairman of the Board
Krapf Group, Inc.

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FAST Act Implementation: Motor Carrier Provisions

Written Testimony of Mr. Mike VanMaanen, Owner, Eastern Missouri Commission Company on behalf of the Livestock Marketing Association

Provided to the House Committee on Transportation and Infrastructure Subcommittee on Highways and Transit

May 22, 2018

I. Introduction

Chairman Graves, Ranking Member Norton, and Members of the Subcommittee, thank you for inviting testimony about the real-world impacts of the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114-94). Specifically, we appreciate that perspectives from agriculture as a whole and the livestock hauling industry in particular were sought regarding industry's interactions with and regulation by the Federal Motor Carrier Safety Administration (FMCSA), funding for which is authorized by the FAST Act. Vigilant oversight of the regulatory agencies under this Subcommittee's purview is a stated priority to ensure the worthwhile aim of improving the safety of our nation's roadways.

FAST Act reforms to the regulatory process require FMCSA to use the best available science and data to develop rulemakings. Unfortunately, the data upon which several regulations that pre-date the FAST Act—and which greatly impact the trucking industry—was founded are outdated. Reliance on old data oftentimes leads to illogical and inefficient rules. Thankfully, the FAST Act further improves the process under which the public or the motor carrier industry can petition FMCSA to revise or repeal regulations if they are no longer current, consistent, and uniformly enforced.

Although not part of the FAST Act, the Moving Ahead for Progress in the 21st Century Act (MAP-21, P.L. 112-141) included a provision mandating the use of electronic logging devices (ELDs) for those Commercial Motor Vehicle (CMV) drivers who are required to keep a record of duty status under the hours of service (HOS) regulations. This includes many in the farming and agricultural industries. FMCSA is charged with the roll-out of the ELD mandate. The implementation of the ELD rule has caused individuals who raise and sell livestock to take great interest in the regulatory structure surrounding the safe transport of those animals. As such, the industry and FMCSA have begun to work together to seek clarity and understanding as it relates to both the ELD and HOS rules. Rigid, one-size-fits all HOS requirements do not work when hauling live animals. We appreciate the recognition of Congress and the Agency that livestock haulers are a unique and look forward to continuing to work together to find solutions for this targeted segment of drivers.

II. Background

This testimony is provided by Mike VanMannen, owner, Eastern Missouri Commission Company and Missouri Valley Commission Company. Mr. VanMaanen testifies on behalf of the Livestock Marketing Association (LMA), an organization for which he serves on the board of directors. LMA is the leading national trade organization for more than 800 livestock marketing businesses located throughout the United States. LMA represents more than 75 percent of the regularly selling local livestock auction markets in the U.S. Livestock auction markets serve as a hub to gather and sell livestock for farmers and ranchers in a competitive bidding environment. This stimulates economies in local communities and provides farmers and ranchers the opportunity to receive a good price for their livestock. It also facilitates buyers gathering loads of livestock to be shipped to the next part of the production chain.

Mr. VanMaanen joined the livestock marketing business in 1984. His wife Lori and the Angell family have been in the business for three generations. Currently, the family business owns and operates two livestock auction markets located in Bowling Green and Boonville, Missouri. Livestock from across the region are hauled into the markets and sold to the highest bidder each Tuesday and Friday.

III. Impact of Transportation Laws and Regulations on Agriculture and the Livestock Industry

The cornerstone of livestock auction businesses is selling livestock on behalf of farmers and ranchers to buyers who gather loads to be shipped to the next phase of production. This movement drives the economy of Missouri and other states across the country. This movement is also dependent upon the use of a very limited population of highly skilled drivers who tend to be independent owner-operators. While the Agency has safety oversight of more than 500,000 motor carrier companies and 5 million active commercial driver's license holders operating across the nation, it estimates that only 3 percent of trucks on the road are agricultural haulers.

A. Structure of Livestock Hauling Business

Livestock auction markets, farmers, and ranchers are particularly impacted by transportation laws and regulations. Livestock markets serve as a hub and gathering point for more than 40 million head of livestock each year. *See* 2016 Annual Report, Packers and Stockyards Program (available at https://www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf). Livestock, primarily cattle, but also sheep, goats, and others, are trucked to market for sale and then hauled again to the country's highest quality grazing lands and feedyards in the central and southern plains. Livestock do not travel frequently in their lifetimes, but when they do, they can travel significant distances. For example, according to a survey conducted as part of the Beef Quality Assurance program, the mean distance traveled by feeder calves to Texas and Nebraska feedyards was approximately 467.89 miles. This is a significant average given the immense quantity of "local" cattle raised within Texas, Nebraska, and their neighboring states, which need not travel significant distances to arrive at a feedyard.

Many animals, not born in the center of the country must travel great distances. In fact, one quarter of the nation's cow herd is located in the Southeast. Most farmers in this area have small herds, typically fewer than 20 head, and depend upon the services rendered by livestock markets and livestock dealers to gather their small calf crops into marketable groups. These calves must be shipped quickly and safely to grasslands and feedyards in the central and southern plains. The weather and access to feedstuffs in these regions are uniquely suited to successful cattle feeding. Time is everything for the wellbeing of the animals being transported. (Schwartzkopf-Genswein, Ahola, Edwards-Callaway, Hale, and Paterson, 2016) ("From an animal welfare perspective, the total duration an animal is transported is more important than the total distance it travels."). Animals can sustain long distances of travel if they are expediently and carefully transported by skilled drivers.

B. Stopping with Livestock is Impractical

The key to safely hauling live animals, especially in times of great heat and humidity, is to stop as infrequently as possible and to keep the trailer moving to provide ventilation. The trailer environment has been identified as having the greatest effect on animal welfare during transport. (Mitchell and Kettlewell, 2008). In North America, transport trailers are ventilated by perforations in the aluminum walls of the trailer as well as openings in the roof. Consequently, the potential to have poor welfare outcomes is significant if the trailer is not moving, especially under extreme weather conditions. The association between decreased animal welfare and increased transport duration is well established and includes greater in-transit weight loss, lameness, incidence of nonambulatory cattle, and death, as well as increased morbidity in the feedyard upon arrival.

The majority of livestock hauls can be concluded within the timeframe outlined by HOS regulations without significant stops which limit airflow. However, unfortunately, for livestock located in or heading to states outside the center of the country, this is not the case. When a driver "runs out of time" while hauling live animals, they are given the grim prospects of unloading the livestock or leaving them on the trailer for a 10-hour stretch.

Unlike the haulers of non-living products, a livestock hauler cannot merely find a safe place to park for their 10-hour rest and leave the cargo on the trailer. Leaving animals on a trailer to suffer from the elements, lack of ventilation, and probable injury is unacceptable.

Simply unloading the animals for 10 consecutive hours of rest is also not a good option. First, there is often nowhere to unload them. A hauler of live animals cannot simply unload their charges on the side of the road or at a local hotel. There are no pen systems available along major American highways, and the owners of feedyards and livestock markets are extremely hesitant to accept livestock in transport due to liability, staffing, and biosecurity concerns.

With respect to biosecurity, facility and livestock owners, as well as state and federal animal health officials, spend significant time creating and following procedures to minimize risk of animal diseases spreading. This includes laws requiring certain livestock crossing state lines travel with interstate certificates of veterinary inspection that detail where the load came from and where it is going. The trouble with unloading livestock at some waypoint along the trip is that it is almost impossible for a driver to know where they will need to stop in 11 hours with any measure of certainty. These movement documents and the disease traceability programs associated with them are in place to track and prevent contagious disease outbreaks in this country. Every time animals in-transit are unnecessarily unloaded and penned next to other animals in-transit, the risk of disease spread increases.

Furthermore, these locations are rarely equipped to handle and house species other than cattle, providing a challenge to haulers of horses, sheep, goats, and pigs. For those hauling bees and fish, the situation is even more challenging as these animals cannot be unloaded at all while in transit. Additional challenges exist if livestock are to be exported over the road to Canada or Mexico, as stringent trailer sealing and biosecurity measures are required for these exports. This

process would be complicated by a rest period necessitating that the doors to the trailer be opened before they reach their destination across the border.

Even if a location is willing to take animals in, unloading and re-loading those animals has a negative impact on their wellbeing. The act of loading and unloading have been reported to be more stressful (elevated heart rate and stress-related hormones such as cortisol) than the effect of transport itself. (Camp et al., 1981). Animals that are unloaded, "rested," and then re-loaded will not have rested at all. *See* Recommendations for Cattle Transport Duration in the U.S. - Executive Summary. Capable animal handlers, such as livestock transporters, know that loading and unloading is extremely stressful, therefore, it is recommended that handling during these events be conducted slowly, gently, and quietly. (Grandin, 2014). Unloading and re-loading livestock in transit takes significant time. González et al. (2012) reported loading and unloading times for commercially transported cattle to be on average 20 and 30 minutes with maximums of 5 and 3 hours, respectively.

C. Livestock Haulers are Rare, Skilled, and Have a Proven Track Record of Safety

Not just anyone can be a livestock hauler; many see themselves as cattlemen/women first and truckers second. Our drivers are often part of small businesses consisting of an owner-operator or perhaps a few trucks. Their trailers are designed exclusively for the transport of livestock, which means when a driver decides to become a livestock hauler, they are usually unable to haul other types of cargo. As such, there is very little cross-over between the haulers of live animals and the haulers of traditional cargo, which can lead to serious trucker shortages, especially during peak sale seasons.

The drivers that transport our animals work hard to further the interests of motorists and the wellbeing of the animals with which they are charged. Simply put, a livestock hauler is required by the nature of their live cargo to drive slower and more cautiously than a conventional cargo hauler because the live animals being hauled can move throughout the trailer and can be severely injured if the driver turns too suddenly, drives too fast, or stops too quickly. Safety of other motorists, our drivers, and the animals they haul is so important to the livestock industry that many livestock haulers have participated in additional specialized training, including the pork industry's Transport Quality Assurance (TQA) program and the beef industry's Master Cattle Transporter (MCT) program.

Due to all of this, livestock haulers boast a fantastic safety record. For instance, the Large Truck Crash Causation Study, conducted by the FMCSA and the National Highway Traffic Safety Institute, showed that of 1,123 accidents involving trucks hauling cargo, a mere five involved livestock transporters. Similarly, Trucks Involved in Fatal Accidents Factbook 2008, a report conducted by the Transportation Research Institute, shows that of 4,352 trucks involved in fatal accidents, livestock haulers accounted for just 0.6 percent.

IV. Outreach and Enforcement Continue to be a Challenge

Although the discussion surrounding implementation of the ELD mandate has shed light on the specifics of HOS compliance and existing agricultural flexibilities, it has become clear that additional outreach to drivers and law enforcement is still necessary. Because our haulers are often owner-operators, they do not have access to the massive infrastructure and communication advantages of national freight companies. Many of them are independent by nature and are association "non-joiners." Further, the majority of haulers are of an age, from a culture, and drive through remote geographic regions such that are not easily reachable by mediums such as email, websites, or social media. It has become apparent that Agency outreach, although well-intentioned, in the form of webinars or articles in national trucking publications is simply ineffective for reaching this population.

Additionally, many drivers are frustrated by inconsistent interpretations of federal laws and regulations by carrier enforcement in various jurisdictions. Thankfully, just under a year ago, FMCSA clarified in writing that the 150-air mile agricultural commodity exemption does indeed apply to livestock haulers. Unfortunately, confusion in the carrier enforcement community continues to exist with respect to application. It has also become apparent that carrier enforcement requires specific training on what to do with livestock in-transit when a livestock hauler is taken out of service. It is simply unacceptable for live animals to suffer by being left to stand on a hot, stagnant trailer because of driver non-compliance. As such, we would strongly support continued coordination and cooperation between the Agency and industry to create plans for these situations and to troubleshoot issues as they arise. Some states have a head start with the livestock industry and transportation officials already making plans for these situations while others have not broached the topic.

V. Need for Relief

Incompatibilities between the HOS rules and the live animal hauling industry highlighted by the ELD mandate have caused considerable disruption and freight price increases. Many farms and ranches are not within 11 hours of where the animals they raise must be shipped. Live animal haulers can safely travel greater distances than prescribed by HOS if they are allowed to more naturally manage their rest and work times.

The current HOS provide a too-rigid one-size-fits-all framework for transportation that results in live animals being left to stand for 10 hours at a time on trailers leading to significant mortality losses or being unloaded at midway pen systems presenting challenges from logistics, liability, animal welfare, and biosecurity standpoints. The reality is that the current HOS rules and the strict compliance with those regulations made necessary by ELDs will result in cattle on the coasts, in the Southeast, and the rangelands of the Northwest experiencing a regional discount or, even worse, being unmarketable or wholly unprofitable to raise. This will lead to livestock haulers, farmers, and ranchers going out of business. It will also be felt in a very real way by the American consumer trying to put an affordable meal on the table.

The goal of the HOS regulations is to prevent driver fatigue and therefore reduce the number and severity of both fatal and non-fatal accidents. The long record of safe operation by the

agricultural commodity hauling industry is evidence of the seriousness which the industry takes these issues.

VI. Requested Relief

The HOS framework needs to be changed with respect to live animal haulers. These individuals need more flexibility in order to safely get their live cargo to its destination. The LMA sincerely appreciates several members of this subcommittee for their assistance and diligent work toward safe and practical solutions for our nation's agricultural haulers.

The LMA participates in regular conversations with the FMCSA in conjunction with a cross-industry coalition of associations. Through these meetings, the coalition is pursuing a two-pronged approach to relief. First, we continue to explore ways to secure from FMCSA more permanent relief from HOS provisions that are incompatible with live animal hauling. Second, the LMA would also encourage Congress to support a technical amendment and clarification to apply the agricultural exemption found in 49 CFR 395.1(k)(1) to the both the source and destination of a livestock haul to account for unloading and wait time at livestock processing facilities, which can equate to delays of more than 1 hour.

Additionally, LMA and its fellow coalition members would support modifications to the HOS that would allow haulers to "count" rest taken, regardless of when and how much, toward a driver's required rest. Illogically, the current HOS disincentives drivers from stopping to rest when they are tired and in a safe location.

We are confident driver and animal safety can both be preserved and even improved through logical, data-driven modifications to the existing HOS structure.

VII. Conclusion

In the end, agricultural haulers and livestock transporters are sincerely concerned with the impact transportation regulations—both new and old—are having on our country's safe and economical food supply. Rigid HOS requirements do not work for livestock haulers. We appreciate the recognition of Congress and the agency that livestock haulers are a unique and look forward to continuing to work together to find solutions for this targeted segment of drivers. The safety of our roadways is of great importance and it can be coupled with practical solutions to address the need for humane and efficient transportation of live animals.



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

WRITTEN STATEMENT OF

CAPTAIN CHRISTOPHER J. TURNER

KANSAS HIGHWAY PATROL

PRESIDENT

COMMERCIAL VEHICLE SAFETY ALLIANCE

BEFORE THE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

OF THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

ON

"FAST Act Implementation: Motor Carrier Provisions"

MAY 22, 2018

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Introduction

Chairman Graves, Ranking Member Norton and Members of the Subcommittee, thank you for holding this important hearing and for inviting me here today to discuss progress being made by the implementation of the Fixing America's Surface Transportation Act of 2015 and the future of commercial motor vehicle (CMV) safety.

My name is Chris Turner, I am a captain with the Kansas Highway Patrol, and I currently serve as president of the Commercial Vehicle Safety Alliance (CVSA). CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. We represent the state agencies tasked with the responsibility for the administration and enforcement of commercial motor carrier safety regulations in the United States (U.S.), Canada and Mexico. We work to improve CMV safety and uniformity by bringing truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve highway transportation safety 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.

I would like to thank the subcommittee for holding this hearing to discuss the future of CMV safety on our roadways. The topic of today's hearing, implementation of the motor carrier FAST Act, is a timely one, as we are now halfway through the life of the bill and work is beginning in preparation for the next highway bill.

I would also like to take a moment to commend Administrator Martinez. I've had the opportunity to speak with him a number of time since he joined the Federal Motor Carrier Safety Administration (FMCSA) and we at the Alliance are very encouraged by his leadership and look forward to working with him as we move ahead.

The FAST Act included a number of requirements that, once completed, will improve motor carrier safety. The bill included a major overhaul of and increased funding for the Motor Carrier Safety Assistance Program (MCSAP), which is the grant program through which Congress provides funds to the states to enforce the Federal Motor Carrier Safety Regulations (FMCSRs) and ensure that the motor carrier community is complying with federal safety requirements. In addition, the bill included a number of changes to the regulatory processes at FMCSA, directives to reduce redundancies and improve information systems, and a number of necessary studies on relevant CMV-related issues. While significant work has been done in a number of areas, a great deal remains to be done before the bill expires in 2020 and debate begins on the next round of policy and program changes. My testimony will highlight key areas of accomplishment, as well as items that have not yet been completed, and recommendation from the Alliance on how best to move forward.

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Motor Carrier Safety Assistance Program Changes

Congress provides funding to the states through the Motor Carrier Safety Assistance Program to support regulation of the motor carrier industry and enforcement of FMCSRs and the Hazardous Materials Regulations (HMRs). The states use these funds to conduct inspection and enforcement activities, train enforcement personnel, purchase necessary equipment, update software and other technology, and conduct outreach and education campaigns to raise awareness and improve CMV safety issues. The funds are used, in part, to pay the salaries of more than 12,000 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.

Perhaps the most significant provision within Title V of the FAST Act were the changes made to MCSAP. The bill completely rewrote Sections 31102, 31103, 31104 and 31313 of Title 49 of U.S. Code, which are the sections dealing with MCSAP, making a number of organizational and programmatic changes. The goal of the consolidation and reorganization was to reduce the administrative burden for both FMCSA and the states by reducing the number of grant programs and focusing the bulk of the program in the formula grant, which is more quickly administered and more stable than competitive grants. Fewer grant programs means fewer applications for the states to submit and report on and for FMCSA to review and administer, cutting down on unnecessary paperwork and streamlining the grant process.

CVSA strongly supported the changes to MCSAP implemented in the FAST Act. The changes, most of which were effective beginning in fiscal 2017, have provided states with additional flexibility in how they spend their MCSAP grant funds, streamlined the grant application process, eliminated redundancies between overlapping programs and reduced the administrative burden on states, allowing them to spend more time doing the work of the program and less time on administrative activities. This flexibility is critical, giving states the ability to design a comprehensive CMV safety program that utilizes creative solutions to address issues unique to each state, while also meeting all program requirements.

We are just a few years into the reorganization and some pieces of it, such as the move to a multi-year commercial vehicle safety plan, are not yet completed. The states and agency are both still adjusting and adapting to the new structure, processes and requirements, and so it is too early to tell if additional changes are necessary. However, overall, feedback to date has been largely positive. In particular, states are pleased with the additional time given to spend funds after they are awarded by the agency, particularly given the ongoing delays in the appropriations and grant approval processes, which results in states receiving the bulk of their funds as late as June or August in some fiscal years.

Until the overhaul is completely implemented and states have had some time to get used to the new model and evaluate its effectiveness, we are not able to say with certainty if the changes were successful or if additional adjustments are necessary. So many of the components are interrelated and it's not possible to evaluate the whole program with some of the pieces left incomplete.

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One provision in particular that remains incomplete that will have a tremendous impact on the efficacy of the new MCSAP structure is the new MCSAP formula. The FAST Act included a requirement that FMCSA convene a group to evaluate the current MCSAP allocation formula. The group was tasked with recommending a new formula that will better allocate MCSAP funds to where they are most needed. Members for the MCSAP Grants Working Group were selected in March of 2016 and the group met regularly in person and by phone over the course of a year. The group's recommendations were finalized in April of 2017 and submitted to the agency for review. Once the Department of Transportation has completed its review of the recommendations, Congress required that the new proposed formula must also be published in the "Federal Register" for public comment.

Since the group's recommendations were submitted to the agency over a year ago, it is our understanding they have been under review first by FMCSA leadership and then the Secretary's office, but no further progress or updates have been made. Given the significant work that went into this effort, the long process that remains once the Department of Transportation completes their review and the tremendous impact the final formula changes will have on the states, we are very eager to see this process move forward as swiftly as possible. FMCSA will need time to adjust their programs accordingly and states will need to be able to plan for any changes in funding levels based on the new formula. States are currently receiving funds based on an interim formula, which was intended to serve as a short-term place holder. As such, many jurisdictions are reluctant to make longer-term changes to their programs before they know what funding will look like in the future. As a result, innovative programs and technology deployments are being placed on hold.

Motor Carrier Safety Assistance Program Funding

The states' work through MCSAP saves lives every day, keeping dangerous vehicles, and unqualified and unsafe drivers off the nation's roads. According to FMCSA, the agency regulates 524,058 motor carriers, 5.9 million commercial drivers and 12.1 million commercial motor vehicles.[1] The state and local agencies that receive MCSAP funding are responsible for ensuring those motor carriers, vehicles and drivers operate safely. Furthermore, the CMV enforcement landscape is constantly evolving and changing as Congress and FMCSA work to refine and improve the FMCSRs and HMRs. Despite these challenges, MCSAP, as administered by the states, has been successful in reducing crashes, injuries and fatalities on our nation's roadways, in spite of a steady increase in the number of CMVs operating on those roads. New and expanded responsibilities mean improvements in safety, but only to the extent the states have the resources to effectively implement those policies. Recognizing this, Congress included in the FAST Act higher levels of funding for MCSAP and other CMV-related grants. I'd like to take a moment, on behalf of CVSA and its membership, to thank the Members of this Committee for recognizing that fact and for helping to ensure the higher funding levels in the FAST Act.

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[1] "2017 Pocket Guide to Large Truck and Bus Statistics." Federal Motor Carrier Safety Administration. February 2018.
http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts

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While the states are appreciative of the higher funding levels, states experience an ongoing delay and lack of consistency in the timing of funding disbursement, which prevents many from being able to fully capitalize on the increases. There are a number of factors that contribute to these delays and result in complications for the states. Allocation of MCSAP funds are tied to the annual appropriations process, which, as you know, has become more and more delayed each year. If the process worked as it should, appropriations for the fiscal year would be finalized long before October 1 of each year and FMCSA would have time to run the formulas and award funds, in full, at the start of each fiscal year. Instead, continuing resolutions force the agency to disburse the funds in phases until a final bill is approved and the remaining funds can be released. The issue is further complicated by the fact that many states do not follow the federal fiscal calendar (most start July 1), which impacts their reporting and tracking process. When funds do become available, the grant review and approval process takes far too long, further delaying receipt of funds for safety programs. It can take weeks and sometimes months for the agency to get the necessary approvals to award the funds to the states. This unpredictable, piecemeal approach to funding makes planning and management of state programs difficult.

Relying on the appropriations cycle to determine funding levels on a year-to-year basis does not allow the states to plan long-term. State agencies will be reluctant to fill positions, continue enforcement programs or engage in bold new initiatives if they cannot be confident that federal funds will come in a timely manner, at the approved levels. Recognizing that future funding for 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 MCSAP. In addition, we look forward to working with the Members of this Committee and FMCSA to find a way to reduce funding delays caused by the appropriations process and the agency's review in order to provide the states with steady, timely and reliable funding at the authorized levels.

Regulatory Guidance Reforms

Another significant change included in the FAST Act addressed reforms to the agency's regulatory guidance process. Specifically, Section 5203 directs the agency to reform its regulatory guidance process. At times, the agency issues guidance documents or frequently asked questions (FAQs) 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. 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, some never to be published. As a result, a disconnect has developed between written regulation, regulatory guidance, interpretations and FAQs.

To help address these inconsistencies, the FAST Act required FMCSA to conduct a regular review of active guidance documents and routinely incorporate appropriate guidance into the regulations in a timely manner, a requirement that was supported by CVSA. In June of 2016, FMCSA held a meeting of the Motor Carrier Safety Assistance Committee (MCSAC) and tasked the group with reviewing existing regulatory guidance and making recommendations on which documents should be incorporated into regulation,

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what can be eliminated and what other guidance may be necessary. This process, once complete, will help clarify a number of inconsistencies in regulation, helping those subject to the FMCSRs to better understand their responsibilities and allowing those tasked with enforcing the regulations to do so effectively. This, in turn, will help improve the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America. Unfortunately, the recommended changes have not yet been published for notice and comment.

In addition to the recommendations from MCSAC, a number of petitions from CVSA calling for various corrections, updates and adjustments to the FMCSRs sit before the agency, unaddressed. While we recognize that the agency has a number of competing priorities and that many positions have, until recently, been left unfilled, the fact remains that maintenance of the federal safety regulations is FMCSA's core responsibility. Clarity, consistency, uniformity and enforceability are the cornerstones of an effective regulatory framework. FMCSA must find a way to prioritize the day to day maintenance of the regulations, while also meeting obligations set forth by Congress. Allowing this critical responsibility to lapse does a disservice to both industry and the enforcement community and undermines the agency's efforts to improve safety and regulatory compliance.

Petition Reforms

Section 5204 of the bill made changes to the petitions process at FMCSA. The section required the agency to publish petitions received publicly, as well as set up a process for responding to and prioritizing those petitions. CVSA supported the inclusion of this requirement and we would like to commend the agency for quickly responding to the requirements of this section. The agency's website has been updated to include a page for tracking petitions and processes have been put in place that will allow the agency to respond more quickly to petitioners.

These changes will add a new level of transparency to the petition process at FMCSA, allowing CMV stakeholders the opportunity to follow the requests FMCSA is receiving prior to the agency initiating a rulemaking. This will result in better communication among the CMV community and will allow interested parties to weigh in with the agency, either in support of or in opposition to a certain recommendation earlier in the process, giving the agency more information with which to make a rulemaking determination. While we are pleased the agency has followed the requirements, we would encourage more timely maintenance of the site's content. It can take some time for the page to be updated and this lag in information can make it more difficult for other stakeholders to respond, undermining the intent of the Congressional requirement.

Information Technology Programs and Data Quality Improvements

While technology cannot take the place of a robustly funded program built on a clear, sound regulatory framework, it is a critical tool in our efforts to improve safety and, ultimately, reduce crashes, injuries and fatalities on our roadways. As technology and data collection continues to advance and improve, our state programs will only grow in their reliance on data. Congress recognized this fact and included a number of

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provisions in the FAST Act having to do with improving FMCSA's information technology (IT) systems and data quality.

Section 5504 of the bill directed the Comptroller General to conduct a comprehensive analysis of FMCSA's IT and data collection and management systems and to make recommendations on how to improve both the functionality of the systems and the quality of the data collection and analysis. We are pleased that work has recently begun on this initiative in earnest and we look forward to an ongoing dialogue with the agency on this critical initiative.

Another critical component of the FAST Act that should be implemented as quickly as possible is the hardcoding and smart logic requirement in Section 5224. Motor carrier violation data is used to help prioritize enforcement and shape state safety programs. It is imperative that the roadside inspection and enforcement data be as uniform and accurate as possible. While the vast majority of the roadside inspection data collected is sound, implementing the hardcoding and smart logic requirements will help eliminate errors and further ensure uniformity in the roadside inspection and enforcement data collection process. The bill directs FMCSA to develop the necessary functional specifications in consultation with the states. This includes implementing both hardcoding of violations and smart logic within FMCSA's data programs. The specifications must be made available to both public and private developers and must utilize uniform data standards. Unfortunately, to date, little to no progress has been made on this requirement. We are hopeful that under Administrator Martinez's leadership, the agency can complete this task quickly.

Inspector Certification Standards

One requirement we are pleased to say FMCSA addressed very quickly is the requirement in Section 5205 that the agency adopt by reference inspector certification standards set by CVSA. Prior to the FAST Act, FMCSA developed a set of roadside inspector certification standards that conflicted with CVSA's standards. This created an issue for inspectors who had two separate, but similar standards they were required to meet. Requiring FMCSA to adopt CVSA's inspector certification standards helps eliminate redundant work being conducted by FMCSA and reduce confusion. Following passage of the FAST Act, FMCSA acted quickly to meet this requirement and in December 2015 issued a memo addressing the certification policy.

Other FAST Act Studies

In addition to the IT study previously mentioned, the FAST Act included a number of studies and reports of interest to CVSA. Section 5304 required the agency to conduct a review of the efficacy of the New Entrant Safety program. The study has been completed and CVSA is currently reviewing the document and working to determine what next steps and recommendations are appropriate. Section 5306, meanwhile, called for the creation of a working group to evaluate current post-accident reporting requirements and make recommendations on how to improve post-accident reporting, including what additional data elements should be required. The working group was quickly formed and has completed

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its work and CVSA looks forward to working with the agency on next steps. To that end, CVSA has recently formed a new technical committee focused on crash data reporting and analysis.

CVSA has concerns, however, regarding the study conducted to meet the requirements in Section 5510. Congress instructed FMCSA to conduct a study regarding the safety impacts of operating a double-decker motorcoach equipped with an additional exterior baggage compartment on the back of the vehicle. The study, completed in January of this year, included problematic and unrealistic assumptions having to do with the weight of the vehicles when fully loaded and other technical aspects, which we believe undermines the credibility of the study's conclusions. We strongly caution Congress against making any policy decisions based on the results of that study, which does not include real world scenarios and is therefore not realistic in terms of its conclusions.

Exemptions

Another challenge facing the enforcement community is inconsistency in the regulations caused by exceptions, exemptions and waivers. The federal safety regulations help reduce or prevent truck and bus crashes, fatalities and injuries by establishing minimum credentialing and vehicle mechanical fitness requirements to ensure interstate motor carriers and drivers operate safely. The regulations are developed in consultation with enforcement, industry and subject matter experts, and are intended to establish a clear set of rules by which all motor carriers must abide. The states, in partnership with FMCSA, work to enforce those regulations consistently and correctly. In order to become a CMV inspector, an individual must go through rigorous training. Once certified, an inspector must conduct a minimum number of inspections each year to maintain their certification. Inspectors must also attend annual refresher training and are trained after every regulatory update or change. Significant training and continuing education ensure inspectors and roadside enforcement officials fully understand and effectively communicate the regulations they enforce.

Clarity, consistency, uniformity and enforceability are the cornerstones of an effective regulatory framework. Confusion and inconsistencies create more work for the enforcement community and industry. Inconsistencies and exceptions within the regulations require more training and create more opportunities for mistakes, which in turn require additional resources to correct. Unfortunately, however, the FAST Act included a number of legislative exemptions from the safety regulations. CVSA is generally opposed to the inclusion of exemptions in legislation. We recognize there may be instances when exemptions are appropriate and do not compromise safety; however, overall, CVSA believes exemptions have the potential to undermine safety and complicate enforcement. Every new exemption is an opportunity for confusion and inconsistency in enforcement, diverting scarce resources from other activities and undermining the program's effectiveness. While CVSA has no specific opposition to many of the exemptions on an individual basis, complications have already surfaced regarding their implementation.

Problems begin with the adoption of exemptions. While the exemptions were made effective at the federal level upon enactment of the bill, that is not necessarily the case at the state level. The states

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cannot enforce federal laws and regulations, and instead adopt federal regulatory policy into their own state law and code. Some states adopt federal rules by reference, allowing them to automatically adopt federal changes immediately. However, many states do not adopt by reference and must go through either a legislative or regulatory process to make the federal regulatory changes effective at the state level. This process takes time, especially in states where the legislature does not meet annually.

Even in states where adoption is automatic by reference, there is still a delay in the practical implementation of an exemption. Jurisdictions must be made aware of the change and its impacts. In many cases, interpretations and guidance from the federal agency on the parameters and definitions of the exemption are necessary. For example, a number of the exemptions to CMV size and weight limits included in the FAST Act required guidance from the Federal Highway Administration (FHWA). FHWA worked quickly to provide the guidance to the states, but even so, the document was not circulated until February of 2016, which left industry and the enforcement community wondering how the exemptions would work in the meantime and at times creating conflicts during roadside inspections.

Finally, once the exemption has been analyzed and guidance provided, state enforcement personnel must be trained on the new exemptions. Inspectors must be taken away from important enforcement and education efforts and brought into the classroom to be trained on the changes. Practically speaking, this takes time. This guidance and the subsequent training is critical to ensuring the exemption is interpreted and enforced uniformly.

Recognizing these challenges, FMCSA has a policy in place that allows states three years to adopt changes to the FMCSRs. While states work hard to adopt the changes as quickly as possible, the three-year window allows enough time for the states to go through their process and for inspectors to be properly trained. Moving forward, CVSA encourages Congress to consider including an implementation window or some other mechanism that allows other federal agencies enough time to provide any necessary guidance on the exemption and the states enough time to adopt the changes and train inspectors and enforcement personnel. We understand the exemptions are intended to relieve industry of a certain burden, but if the exemption cannot be implemented correctly and consistently, industry and the enforcement community both suffer. CVSA looks forward to working with Congress and our partners in the motor carrier industry to identify a solution to this issue that meets the industry's needs while also allowing for clear, uniform application and enforcement of the regulations.

International Harmonization

Finally, while not specifically addressed in the FAST Act, CVSA encourages Congress to promote a higher level of collaboration between the U.S. and its North American neighbors. Many motor carriers who are headquartered in the U.S. also have operations in Canada and Mexico, and many foreign motor carriers have operations here in the U.S. Efficient, safe movement of people and goods between the three countries is critical to our economic success. Reciprocity and uniformity of CMV safety regulations among the three nations will help support this flow of people and goods. CVSA supports improved international

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coordination, with respect to CMV safety regulations, through increasing efforts between the U.S., Canada and Mexico to advance regulatory reciprocity and uniformity.

Conclusion

The FAST Act included a number of changes that will have a positive impact on the nation's roadway safety and work has been completed or is currently underway to implement a majority of those requirements. This has included a great deal of work on the agency's part and we want to thank them for their ongoing outreach and collaboration as they've completed their work.

As discussed above, while FMCSA has accomplished a number of tasks required by the FAST Act, progress on many of the bill's critical provisions has been slowed by external factors. Implementation of the electronic logging device (ELD) requirement consumed a disproportionate amount of the agency's time and resources. It is an initiative that CVSA fully supported and we worked closely with the agency on implementation. However, the fact remains the agency had little time for other, equally important efforts. We also recognize that the change in administrations resulted in a good amount of turnover in key leadership positions and some work was stalled as vacancies were filled and newcomers were brought up to speed. Now that the initiative is complete and Administrator Martinez is in place, we are hopeful FMCSA will be able to turn its full attention to implementing the remaining FAST Act requirements. As the state agencies responsible for CMV enforcement, we look forward to working with the Members of this Committee, FMCSA, our industry partners and other stakeholders to continue working towards our shared goal of preventing deaths, injuries and crashes on the nation's roadways. We are committed to meeting our mission.

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STATEMENT OF JENNIFER TIERNEY

TRUCK SAFETY COALITION
BOARD MEMBER, CITIZENS FOR RELIABLE AND SAFE HIGHWAYS (CRASH)

ON

"FAST ACT IMPLEMENTATION: MOTOR CARRIER PROVISIONS"

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

MAY 22, 2018

Introduction

Good morning Chairman Graves, Ranking Member Norton and Members of the Subcommittee. My name is Jennifer Tierney and I am a board member of the Citizens for Reliable and Safe Highways (CRASH) Foundation as well as one of millions of Americans whose loved one was killed in a truck crash. I traveled to be here today from my home town of Kernersville, North Carolina, and am pleased to see my fellow North Carolinians on this Subcommittee, Congressmen Meadows (R-NC-11) and Rouzer (R-NC-7). My motivation to be testifying before you comes from the loss of my daddy, James Mooney, and the goal of preventing other families from suffering preventable truck crash fatalities and injuries. My dad was killed in a horrific truck crash on a dark back country road when he crashed into the side of a truck trailer blocking the roadway. The truck, which was in a jackknife position, did not have working lights, reflective tape or underride guards. Since that time nearly 35 years ago, I have served as a volunteer for CRASH which has teamed up with Parents Against Tired Truckers (PATT) to form the Truck Safety Coalition (TSC), whom I am here representing. TSC coordinates thousands of volunteers across the nation who are truck crash survivors as well as families and friends of truck crash victims. Our volunteer network educates the public and lawmakers about data-driven policies to improve truck safety.

Truck Safety is Declining at an Alarming Rate

Unfortunately, I do not have good news to share with you today regarding the status of truck safety on our Nation's roadways. Truck crashes, deaths and injuries have been dramatically rising in recent years. Since 2009, annual truck crash fatalities have increased by 28 percent. In 2016, 4,317 people were killed in truck crashes, and early data for 2017 indicates truck crash fatalities are up another 10 percent. During that same time, truck crashes and resulting injuries have also risen to 475,000, and 145,000 respectively. Despite these worsening trends, key safety initiatives that could both mitigate and prevent truck crashes continue to languish or even worse -- have been withdrawn.

We cannot accept these intolerable figures as the cost of doing business or allow ourselves to fall into complacency when we have available countermeasures to curb this needless carnage. The reality is that the annual truck crash fatality toll amounts to over two dozen commercial airplane crashes each year. Yet, our nation responds to truck crash fatalities and airplane crash fatalities in starkly different ways. Just last month, we tragically experienced the first death in a commercial airline incident in nine years. Newspapers and telecasts covered it, the National Safety Transportation Board sent a team to investigate it, and there was palpable public interest in preventing it from occurring again. Meanwhile, that same day, roughly 1,300 truck crashes occurred, killing 12 people and injuring 400 more (figures based on averages). There was no national coverage, no federal investigation, and no public outcry.

The good news that I do have to share with you is that we have proven solutions that can reduce crashes, prevent injuries, and most importantly, save lives. My comments will focus on the following policies that can improve truck safety and the appropriate steps to implementing and enforcing them.

- **Finalize Rulemakings:**
  - Automatic Emergency Braking
  - Heavy Vehicle Speed Limiters
- **Reinstate Rulemakings:**
  - Increasing Minimum Insurance Levels
  - Sleep Apnea Screening and Testing

- **Modify Rules:**
  - Entry Level Driver Training
- **Promulgate Rulemakings:**
  - Strengthen Rear Underride Guards
  - Require Side Underride Guards
  - Study Front Underride Guards
- **Fully Implement Final Rules:**
  - Electronic Logging Devices
  - Drug and Alcohol Clearinghouse
- **Reject Policies:**
  - Increase Truck Size
  - Increase Truck Weight
  - Limit Shipper and Broker Liability

Finalize Rulemakings:

Automatic Emergency Braking

Automatic emergency braking (AEB) is a proven technology that leading trucking companies and other countries have been using for years to reduce the number of crashes their truck drivers are involved in and to mitigate the severity of truck crashes that do occur. The Truck Safety Coalition as well as other safety advocates filed a petition to initiate a rulemaking that would mandate automatic emergency braking, which the National Highway Traffic Safety Administration (NHTSA) granted in October of 2015. Since then, the agency has taken no further regulatory action. This should change immediately, and I urge Members to require NHTSA to take immediate action for several reasons.

The benefits of AEB technology are well known. In the United States, some motor carriers have been using AEB for at least 10 years and have established beyond question its effectiveness and reliability. For example, Schneider National, a major trucking company, experienced a 69 percent decrease in rear-end crashes and 95 percent reduction in rear-end collision claims since it began equipping all new tractors with OnGuard Collision Mitigation Systems in 2012. Likewise, Con-way (now a part of XPO Logistics) saw reductions in their rear-end crashes after they equipped their trucks with AEB. The company performed an internal study to determine the extent to which a suite of safety technologies (AEB, electronic stability control (ESC), and lane departure warning) installed on the trucks in its fleet reduced the frequency of various types of collisions. They found that trucks equipped with the suite of safety systems had a lower crash rate and frequency of engagement in risky driving behavior compared to vehicles without such systems; these trucks exhibited a 71 percent reduction in rear-end collisions and a 63 percent decrease in unsafe following behaviors.

Yet, data from NHTSA indicates truck crashes continue to increase thus unsafe companies are getting in more crashes at a faster rate than these companies are reducing their collisions. From 2009 to 2016, the number of trucks involved in crashes in which a truck rear-ended a passenger vehicle went up by 82 percent. This shows that while voluntarily adoption is admirable, it is not enough.

In 2012, the European Union (EU) mandated all new trucks to be equipped with AEB beginning in 2015. This was just one more step towards safety that the U.S. can and should take to achieve similar truck safety improvements to the EU. In 2009, the EU experienced roughly 1,600 more annual fatalities resulting from large truck crashes than the U.S., but by 2015, the EU saw approximately 200

fewer people dying in these types of crashes on their roads. Clearly, policymakers are doing something right in the EU to experience such drastic reductions in truck crash deaths.

In addition to experiencing far greater reductions in truck crash fatalities compared to the U.S., the EU may have also benefitted from this technology in mitigating the damage of a terrorist act. Some newspapers reported that automatic emergency braking was engaged during the Berlin truck attack, thus limiting the number of people who could have been killed and injured. Considering the Transportation Safety Administration (TSA) put out an advisory to rental truck companies concerning a rise in vehicle-ramming attacks, I urge this Subcommittee to also consider the national security benefits requiring this technology can provide.

Moreover, the American Trucking Associations (ATA) has voiced support for this technology. The ATA stated that they "strongly recommend that all vehicles (light and heavy) be equipped with forward collision warning and mitigation braking technology." Given the data as well as industry support, we urge this Subcommittee to take action to require all new trucks are equipped with AEB.

Heavy Vehicle Speed Limiters

A final rule requiring the use of speed limiting technology set at 65 mph or lower should apply to all large trucks. There is a plethora of evidence confirming the effectiveness of speed limiters in improving safety. A recent study out of Ontario found that the incidence of heavy trucks speeding in a crash dropped 73 percent following implementation of the Providence's speed limiter mandate. Moreover, the Ontario study directly debunked the claim that speed differentials would lead to an increase in overall crashes involving big rigs, finding no evidence of such an increase. In addition to the promising data out of Canada, the Federal Motor Carrier Safety Administration's (FMCSA) own road-based study found that heavy trucks not using their speed limiters were in twice the rate of highway-speed crashes as those using them.

Moreover, this life-saving technology has been a standard component in most trucks' engine control modules since the 1990s because so many other countries already mandate their use on commercial motor vehicles (CMVs). As a result, most trucks would not require a retrofit but would instead simply need to have their speed limiter set. It should also be noted that numerous American companies use speed limiters voluntarily because it improves their profitability, operational efficiency, and safety. Additionally, speed governed trucks save motor carriers significant money on fuel, and on maintenance costs for tires and brakes, which last longer by limiting excessive speeding that can exacerbate normal wear and tear.

Considering the studies highlighting the benefits and the successful adoption by safety-conscious companies, we urge this Subcommittee to take action to require speed limiter use by all trucks, existing and new.

Reintroduce Rulemakings:

Increasing the Minimum Level of Insurance

The minimum level of insurance of $750,000 has not been increased in the U.S. in nearly 40 years. The fact of the matter is that nothing costs the same today as it did back in 1980, which is why it is absurd that the minimum level of insurance required by trucks per incident has not been increased since then. It has not been adjusted for inflation or, more appropriately, for medical cost inflation. The

results of these decades of inaction are devastating. Families must face the financial impact of under-insured truckers along with the emotional and physical destruction that is wrought by their crashes.

Moreover, minimum levels of insurance were meant to serve as a barrier to entry for unsafe carriers and to shift the burden of oversight from the government to the private sector. Yet, these amounts are currently so inadequate that insurers fail to apply appropriate scrutiny, which allows chameleon carriers to enter the market, with no underwriting, and simply close down and reincorporate under a new name following a catastrophic crash. For the minimum insurance level to serve as a significant incentive for carriers to operate safely as Congress intended, it must be updated to reflect the current realities of the industry. Since 1980, truck weight limits have increased significantly as have speed limits for trucks; the combination of these two changes means that crash severity has increased.

Unfortunately, this issue not only impacts survivors and families of truck crash victims, it affects all taxpayers. Insurance is supposed to address the actual damages caused. When there is insufficient compensation, families are forced to declare bankruptcy or rely on government programs after being financially drained. The costs of healthcare, property, and lost income for all parties involved in a truck crash can greatly exceed $750,000 per event, and all of these costs are much higher today than they were in 1980. The unpaid costs are then passed on to taxpayers. In other words, maintaining the grossly inadequate minimum privatizes profits while socializing the costs of underinsured trucking.

We urge this Subcommittee to require the FMCSA to reinstate its Advanced Notice of Proposed Rulemaking (ANPRM) to increase the minimum financial responsibility requirements for motor carriers. As an alternative, members of the Subcommittee can direct the Secretary of Transportation to take immediate action to index the level to inflation, which can be accomplished without a rulemaking.

Sleep Apnea Screening and Testing

Truck driver fatigue and obstructive sleep apnea (OSA) are major, well-known problems in the industry. OSA is a scientifically proven sleep disorder that causes a brief interruption of breathing during sleep. People with OSA are at risk of becoming fatigued as their body and brain are deprived of oxygen and the restorative effects of sleep. Undiagnosed, this chronic disorder can be debilitating to a driver's health and make him or her a danger to others on the road. It affects approximately five percent of the general population, and up to 50 percent of commercial motor vehicle drivers. In fact, truck drivers who fail adhere to treatment for OSA are five times more likely to get involved in a crash than a truck driver who is on treatment.

We urge the Subcommittee to require the FMCSA to reinstate the rulemaking requiring OSA screening.

Modify Rules:

Entry Level Driver Training

Truck driving is one of the most dangerous occupations, according to the Department of Labor. Currently there is no minimum requirement for behind-the-wheel (BTW) training hours; therefore, the agency is not be able to ensure that commercial driver license (CDL) applicants have had actual time behind-the-wheel to learn safe operations of a truck. Requiring a set number of hours to ensure that a licensee is sufficiently educated in his or her profession is common for far less deadly and injurious jobs, such as barbers and real estate agents. Other transportation-related professions, like commercial

pilots, are required by the Federal Aviation Administration to complete more than 250 hours of flight time – their version of "BTW" training.

We urge this Subcommittee to require the FMCSA to modify the Entry-Level Driver Training rule to include a minimum BTW training requirement.

Promulgate Rulemakings:

Rear and Side Underride Guards

Truck underride crashes can be catastrophic because the car goes under the trailer, bypassing the crumple zone and airbag deployment safety features; in severe collisions, passenger compartment intrusion occurs. A requirement for all trucks and trailers to be equipped with energy-absorbing rear and side underride guards would protect car occupants from underride crashes.

We are incredibly grateful to Subcommittee Member Representative Steve Cohen (D-TN) for introducing the Stop Underrides Act (H.R. 4622) and to the other Representatives on the Subcommittee who are cosponsors. We are similarly thankful to Senators Kirsten Gillibrand (D-NY) and Marco Rubio (R-FL) for introducing the Senate version, S. 2219. This lifesaving legislation will strengthen rear underride guards, mandate side underride guards, and require proper maintenance of these guards. The Truck Safety Coalition and our volunteers call on all Members of Congress to join this bipartisan effort to reduce the unnecessary deaths and injuries that occur because of truck underride collisions.

The safety benefits of rear underride guards are proven and well known. In fact, seven of the eight leading trailer manufacturers have developed rear underride guards that qualify for the Insurance Institute for Highway Safety's (IIHS) ToughGuard rating, which greatly exceeds the proposed federal standard by preventing underride crashes at 100, 50, and 30 percent overlaps at 35 mph.

The NTSB has continually issued multiple recommendations for improved rear underride guards and for side underride protection systems. They identified the need for improved data collection, including vehicle identification numbers to better evaluate trailer design and the impact on safety. Additionally, an advisory committee on Police Accident Reports (PAR) also found that most states did not have a box on their PAR in which to indicate if underride occurred. Absent applicable and available data, policy-makers may fail to identify the true scope of truck underride collisions.

NHTSA reported that large truck rear impacts comprised 22 percent of fatal two-vehicle collisions between large trucks and passenger vehicles during 2016. IIHS crash tests demonstrated that the rear underride guards mandated for trailers by NHTSA in 1998 performed poorly, and that there are available underride guards that far exceed the proposed force requirement by up to 70 percent.

NHTSA has also reported that large truck side impacts -- like the one that killed my dad -- comprised 18 percent of fatal two-vehicle collisions between large trucks and passenger vehicles during 2016. One reason why collisions with the sides of tractor-trailers are hazardous is that there is a large area of the trailer where underride may occur during these collisions. In addition, bicyclists and pedestrians are particularly vulnerable to side underride interactions because of their size and the lack of protection. After ten years of pushing, I was finally able to secure a requirement that reflective tape be placed on tractor-trailers to make them more visible, especially at night. However, side underride guards that can prevent and mitigate these collisions are commercially available and should be standard equipment.

Unfortunately, since granting petitions for rulemaking back in 2014, NHTSA has taken no action, aside from issuing a Notice of Proposed Rulemaking (NPRM) for rear underride guards on trailers and the ANPRM for rear guards for single unit trucks. Additionally, the agency has taken no action to evaluate side underride guards. We urge all Subcommittee members to join us in supporting the Stop Underrides Act to address these preventable tragedies.

Fully Implement Final Rules

Electronic Logging Devices (ELD)

An electronic logging device (ELD) is a critical safety technological device to ensure compliance of the federal hours of service (HOS) rules. In 2018, the requirement that all trucks be equipped with ELDs took effect. Unfortunately, some special interests are arguing that ELDs are cost prohibitive. However, the reality is that they are less expensive than replacing a few truck tires. These attempts to delay, weaken, or reverse the ELD rule should be swiftly and soundly rejected. Similarly, efforts to allow exemptions for specific industries or special interests will adversely affect safety in the short-term and long-term.

Updating the methodology by which HOS are recorded is long overdue. ELD technology will reduce the ability of bad actors to skirt federal regulations by modernizing the practice of logging hours. This rule will also protect truck drivers from being coerced to exceed the hours they are allowed to operate because ELDs automatically record driving time, and therefore truck drivers cannot circumvent compliance by simply writing down false hours. It is important to note that this regulation makes no changes to the existing HOS rules.

Additionally, the ELD mandate will enhance law enforcement officers' capacity to enforce HOS and expedite the process of reviewing a truck driver's logbook. This potential benefit of the ELD rulemaking would be blunted, however, if the agency allows exemptions as it would create confusion for law enforcement officers. The shift from paperwork to electronic logging will save not only time, but also it will produce a benefit or more than $1 billion, according to the FMCSA.

After working for more than two decades to produce a final rule that requires large trucks to be equipped with ELDs, the Truck Safety Coalition opposes any further delay or exemptions to the mandate. There has been ample time for members of the industry to transition from paper logbooks to electronic logging devices. Furthermore, the ELD final rule will save an estimated 26 lives and prevent 562 injuries resulting from large truck crashes each year. We cannot fathom why anyone would direct an agency, whose mission is to promote safety, to consider a five-year delay that would ultimately result in an estimated 130 fatalities and 2,810 injuries.

Drug and Alcohol Clearinghouse

The Commercial Driver's License Drug and Alcohol Clearinghouse rule will greatly enhance safety on our roads as employers will be able to access information regarding the testing history of CMV drivers applying for jobs and identify drivers who have previously failed alcohol and drug tests.

CMV drivers who have violated drug and alcohol testing are currently a major risk to everyone with whom they share the road. Under the soon-to-be-replaced system of self-reporting, many employers were unable to access the necessary information to avoid hiring problem drivers. The establishment of

this new drug and alcohol clearinghouse that requires employers to check current and prospective employees will be a significant step forward for safety.

All too often, a history of repeated drug and alcohol violations is not discovered until a catastrophic crash occurs and a comprehensive investigation ensues. The FMCSA issued a final rule, which will take effect in 2020, and we urge all Subcommittee members to ensure this rule is fully implemented so this will no longer be the case.

Reject Policies

During a time when truck safety is in serious decline, increasing truck size and weight or limiting shipper and broker liability would be steps in the wrong direction.

Truck Size Increase

Increasing the length of double tractor-trailers by five feet per trailer would result in a configuration that is approximately the size of an 8-story building. These massive configurations would be more difficult to operate. For example, double 33s require an additional 22 feet to stop compared to existing twin-trailer configurations. Making it more challenging to brake in a vehicle that requires the length of a football field to stop when traveling 60 mph will not help address the 45 percent increase in truck occupant fatalities. If anything, it may cause that number to rise even more precipitously.

Proponents of the Double 33 proposal have been misleading lawmakers about the costs and consequences of longer tandem trailers. As with past size and weight increases -- coupled with less intermodal efficiencies and increases in freight -- we would likely start to see a greater number of larger trucks on our roads. Our roads and bridges will also suffer from longer and heavier trucks because these bigger trucks will result in greater wear and tear on our already-crumbling infrastructure.

Truck Weight Increase

Those lobbying for pilot programs, state/industry exemptions, or nationwide increases to permit heavier trucks are likewise disseminating questionable claims about how a weight increase will improve safety, reduce congestion, or diminish wear and tear on our roads and bridges. Pilot programs are a piecemeal approach that makes enforcement and compliance more difficult while compelling states with reasonable truck size and weight limits to succumb to pressure for higher weights and longer trucks. The addition of an extra axle will do nothing to mitigate the damage to bridges resulting from the operation of heavier trucks. Moreover, in the event a heavier truck is involved in a crash, the crash severity could be much greater and inflict more damage to the infrastructure.

Shipper Broker Liability

Members should reject all legislative attempts "to enhance interstate commerce by creating a national hiring standard for motor carriers, and for other purposes." Despite sounding pro-safety, this deceptive and dangerous policy will neither "enhance interstate commerce," nor truly "[create] a national hiring standard." In actuality, this policy is a Trojan horse: it disguises the indemnification of shippers and brokers as the creation of a national safety standard. Yet, these "standards" offered contain no safety performance data and unfairly restrict other parties who may have been adversely impacted in a truck crash.

The entire supply chain must be accountable to accomplish safety. The required actions identified by this proposal set a standard for shippers and brokers at such a very low threshold that it would actually serve to reduce safety accountability. The three actions required are so easily attained that many high-risk and chameleon carriers would qualify under this set of criteria.

Per language that has been introduced as an amendment to H.R. 4, the FAA Reauthorization bill, an entity will "be deemed to have made the selection of the motor carrier in a reasonable and prudent manner" if they ensure that the carrier is:

1. registered with and authorized by FMCSA to operate as a motor carrier or household goods motor carrier, if applicable;
2. has the minimum insurance coverage required by Federal regulation; and,
3. does not have an unsatisfactory rating under the current rating or any future safety fitness determination rule.

Policymakers cannot accept bare minimum compliance as a standard of safety lest they intend to promote a race to the bottom. None of the criteria specified above reflect on the current safety performance of a carrier. Consequently, this will lead to low-cost, unsafe carriers being selected, exposing the public to physical and financial risk. It is in everyone's best interest for the safest companies to earn the business.

A carrier or driver that has been given a satisfactory rating at one point in time or has not yet been prohibited from operating cannot be assumed to be currently upholding safe operating practices, especially considering that many ratings are more than 10 years old. Based on the amendment's language, however, a shipper or broker could ignore a carrier's recent performance based data during the selection process so long as that carrier does not have an unsatisfactory rating.

Conclusion

Over the past year, it has become clear that the U.S. Department of Transportation, the current Administration, and even some Members of this Congress have no intention of producing meaningful mandates that will "solve current problems," and every intention of removing regulations for the sake of removing regulations.

As it pertains to the Executive branch, the DOT has not offered a single solution to address the rising number of truck crashes or the fact that driving a truck is constantly one of the deadliest jobs in America. At the same time, this Administration has already withdrawn two rulemakings and delayed four rulemakings – all of which could have improved truck safety.

Concerning Congress, actions thus far belie any sense of urgency to improve truck safety. Bills to allow teenage truck drivers, who have been proven less safe than more experienced drivers, to operate across state lines are this body's "best" response to a perceived driver shortage rather than reforming entry-level driver training or moving away from a pay-per-mile structure. Anecdotes about the effects of ELDs have been given the same stock as data collected by large carriers over several years. Technologies that have been proven through extensive use to improve operational safety of a truck are continually delayed in the rulemaking process, while lawmakers invite lobbyists to pen themselves provisions permitting bigger, more difficult to operate trucks into must-pass spending bills.

Thank you for the opportunity to testify before you today and I am pleased to answer your questions.



STATEMENT OF CATHERINE CHASE

PRESIDENT
ADVOCATES FOR HIGHWAY AND AUTO SAFETY

ON

"FAST ACT IMPLEMENTATION: MOTOR CARRIER PROVISIONS"

SUBMITTED TO THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

MAY 22, 2018



Summary of Statement of Catherine Chase, President, Advocates for Highway & Auto Safety

Fatal truck crashes continue to occur at an alarmingly high rate. In 2016, 4,317 people were killed in crashes involving large trucks. This is an increase of 5.4 percent from the previous year and an increase of 28 percent since 2009. Since 1990, when Advocates first started tracking crashes involving motorcoaches, there have been more than 200 crashes and fires resulting in at least 484 deaths and 4,618 injuries.

The Fixing America's Surface Transportation Act (FAST) represented a missed opportunity for Congress to enact meaningful legislation to address the troubling safety record of commercial motor vehicles (CMVs). There is an unfinished safety agency that Congress must address if death and injuries caused by truck and motorcoach crashes are to be reduced. In order to reach this goal, Advocates makes the following recommendations:

- In order to properly address CMV driver fatigue, Congress must reject efforts to diminish the electronic logging device (ELD) final rule, weaken hours-of-service (HOS) regulations and preempt state rest break laws. The Federal Motor Carrier Safety Administration (FMCSA) must issue a regulation to ensure drivers with obstructive sleep apnea (OSA) are properly treated so they are not a threat to public safety while operating a CMV.
- Teen truck drivers have far higher crash rates than older CMV drivers. Therefore, Congress should not lower the age to obtain a commercial driver's license (CDL) to operate in interstate commerce or endorse efforts to expand the pilot program for members of the armed services established in the FAST Act.
- Congress must oppose any and all changes to federal truck size and weight limits, including mandating double 33 feet trailers, pilot programs and state or industry specific exemptions. Allowing even more massive CMVs on our Nation's roads will not only harm public safety but will also further erode America's crumbling infrastructure.
- Technologies that prevent and mitigate crashes such as automatic emergency braking (AEB), speed limiting devices and underride guards should be standard equipment in all CMVs as the safety benefits of requiring this equipment fleet-wide are incontrovertible.
- Congress should direct FMCSA to amend the final rule requiring entry-level driver training (ELDT) for all CDL candidates to include a minimum number of behind-the-wheel (BTW) training hours to ensure that novice drivers receive adequate training before operating a CMV on public roads.
- All the Compliance, Safety, Accountability (CSA) program safety data must be made available to the public and Congress should direct FMCSA to reinstate the Safety Fitness Determination Rulemaking as well as complete the rulemaking requiring a new entrant proficiency examination.
- NHTSA must complete the overdue safety rulemakings mandated by Congress in MAP-21 without further delay and sufficiently address fire safety in motorcoaches.
- Automated CMVs (ACMVs) must have an operator with a valid CDL in the vehicle at all times. The development of ACMVs in no way warrant the weakening of critical driver safety regulations administered by FMCSA.
- FMCSA should consider requiring carriers using ACMVs to apply for additional operating authority and that drivers operating an ACMV must have an additional endorsement on their CDL to ensure they have been properly trained.

Introduction

Advocates for Highway and Auto Safety (Advocates) is a coalition of public health, safety, and consumer organizations, insurers and insurance agents that promotes highway and auto safety through the adoption of federal and state laws, policies and regulations. Advocates is unique both in its Board of Directors composition and its mission of advancing safer vehicles, safer drivers and safer roads. Advocates respectfully requests that this statement be included in the hearing record.

Fatalities Caused by Commercial Motor Vehicle Crashes Continue to Climb

Fatal truck crashes continue to occur at an alarmingly high rate. In 2016, 4,317 people were killed in crashes involving large trucks.[1] This is an increase of 5.4 percent from the previous year and an increase of 28 percent since 2009.[2] The number of 2016 fatalities in crashes involving large trucks is also the highest since 2007.[3] Additionally, 116,000 people were injured in crashes involving large trucks in 2015, the latest year for which injury data is available. This is a 57 percent increase since 2009.[4] In fatal two-vehicle crashes between a large truck and a passenger motor vehicle, 97 percent of the fatalities were occupants of the passenger vehicle.[5]

Since 1990, when Advocates first started tracking crashes involving motorcoaches, there have been more than 200 crashes and fires resulting in at least 484 deaths and 4,618 injuries including notable and horrific crashes in New Orleans, Louisiana (1999), Atlanta, Georgia (2007), Mexican Hat, Utah (2008), Orland, California (2014) and Palm Springs, California (2016).[6]

The cost to society from crashes involving commercial motor vehicles (CMVs) was estimated to be $118 billion in 2015.[7] The U.S. taxpayer unfairly subsidizes the cost of infrastructure damage caused by bigger, heavier trucks. According to the Federal Highway Administration (FHWA), a truck weighing over 80,000 pounds only pays between 40 and 50 percent of its cost responsibility.[8] The 2007 Transportation for Tomorrow report, mandated by Congress, confirmed that heavy trucks were underpaying their fair share for highway use, that user fee fairness could be achieved through weight-distance taxes, that heavy trucks should pay an infrastructure damage fee, and that the Heavy Vehicle Use Tax—which only contributes one billion dollars annually to the Highway Trust Fund—had not been changed since the early 1980s.[9]

Motor Carrier Provisions in the Fixing America's Surface Transportation Act

The Fixing America's Surface Transportation Act (FAST Act) represented a missed opportunity for Congress to enact meaningful legislation to address the troubling safety record of large trucks and motorcoaches.[10] Instead the legislation included attacks on safety regulations and laws,[11] roadblocks to implementing commonsense regulations,[12] unnecessary studies [13] and the removal of truck carrier safety data from public view.[14] These measures did not advance safety, but represented a significant step backward. When the Subcommittee on Highways and Transit, as well as the full Committee on Transportation and Infrastructure, begins consideration of the next major transportation and infrastructure legislation, Advocates urges you to address the unfinished safety agenda in order to reduce the preventable death and injury toll caused by CMV crashes.

Critical Safety Regulations Under Constant Attack

Despite the rising trend of CMV-related crashes, deaths and injuries, critical federal safety regulations that address driver fatigue, prevent oversized rigs from threatening the safety of all road users and damaging our Nation's crumbling infrastructure,[15] ensure drivers are properly trained and qualified, and take unsafe carriers off the road are continuously being undermined by corporate trucking vested interests that place profits above public safety.

Electronic Logging Devices

Driver fatigue is a well-known CMV safety problem. CMV drivers often operate very long shifts without adequate sleep, on constantly changing schedules that conflict with biological circadian rhythms. In fact, the National Transportation Safety Board (NTSB) has repeatedly cited fatigue as a major contributor to truck crashes and included reducing fatigue related crashes on its 2017-18 Most Wanted List of safety changes.[16] Moreover, self-reports of fatigue, which almost always underestimate the problem, document that fatigue in truck operations is a significant issue. In a 2006 driver survey prepared for the Federal Motor Carrier Safety Administration (FMCSA), "65 percent [of drivers] reported that they often or sometimes felt drowsy while driving" and almost half (47.6 percent) of drivers said they had fallen asleep while driving in the previous year.[17] Fatigue and sleep deprivation, and the associated dangers of falling asleep at the wheel, inattention and loss of alertness, are responsible for 13 percent or more of heavy truck crashes.[18]

One of the most effective tools to help prevent driver fatigue is the use of Electronic Logging Devices (ELD) to record drivers' hours-of-service (HOS). Paper logs are frequently referred to

as "comic books" throughout the industry because of the ease in falsifying actual driving and work time.[19] It is a commonly known practice for a driver to have two sets of log books – one to hand to law enforcement if they are pulled over and one to hand in to the employer to get paid. Moreover, in 2016, over 480,000 violations involving some form of HOS violation were issued to CMV operators accounting for nearly half of all driver violations.[20] The benefits of using an ELD are incontrovertible. The FMCSA estimates that requiring ELDs will save 26 lives, prevent over 500 injuries and avoid over 1,800 crashes annually.[21] In addition, the U.S. Department of Transportation (DOT) estimates the annualized net benefits of adopting ELDs to be over $1 billion.[22] Congress, recognizing the benefits of ELDs, mandated their use as part of the Moving Ahead for Progress in the 21st Century (MAP-21) Act.[23] In 2015, the FMCSA delivered on this Congressional directive and issued a rule requiring the use of ELDs which went into effect in December of last year with a phased-in compliance period that ends in December of 2019.[24]

This commonsense regulation is supported by a wide ranging and diverse group of stakeholders representing carriers, drivers, law enforcement, consumer, public health and safety organizations as well as truck crash survivors and families of crash victims. Despite this broad support and established final rule, a vocal minority continues to object to the use of this technology and is filing meritless applications for exemptions from compliance with the federal law with the FMCSA in a concerted effort undermine the regulation. The common thread among these applications is an attempt to rehash arguments that did not prevail during the comprehensive rulemaking process or that were unsuccessful in overturning the rule in litigation.[25] Advocates strongly urges Congress to reject any efforts to diminish the ELD rule as it will undoubtedly prevent crashes involving tired CMV drivers and save lives.

Weakening Hours-of-Service Regulations

The operations of certain segments of the trucking industry exacerbate the epidemic of driver fatigue, yet they continue to push for further erosion of HOS safety regulations. These attempts fly in the face of conclusions by researchers worldwide, the NTSB, the FMCSA and the National Highway Traffic Safety Administration (NHTSA) which all recognize that unsafe freight transportation practices of long duty and driving hours, backward shift rotation, and inadequate sleep are fatiguing and dangerous.[26] In fact, the American Academy of Sleep Medicine warns that drowsy driving can have the same consequences as driving while under the influence of drugs and alcohol.[27] Studies also consistently show that long working hours per day and per week are related to adverse health effects including obesity.[28] Further, according to a National Academies of Science report, "[a] substantial evidence base supports the fundamental relationship between sleep needs and health risks." The report cites studies that these deleterious health consequences include "an increased risk of hypertension, diabetes, obesity, depression, [heart] attack, and stroke."[29]

Numerous researchers have stressed that long consecutive driving hours, long duty weeks, and inadequate and interrupted sleep are directly related to increased crash risks. In fact, many researchers, as well as the FMCSA, have shown that the risk of having a crash rapidly increases after the 8th or 9th consecutive hour of driving.[30] Research conducted for the FMCSA confirms that crash risk increases as time spent driving increases for drivers from at least the 7th through the 11th consecutive hour of driving.[31] An additional FMCSA study shows that driving towards the end of the 14-hour shift, that is, more than 10 hours after reporting for duty (i.e., during hours 10 through 14 in a driver's work day) increases crash risk reflected in safety-critical events.[32]

The FMCSA, sometimes with Congressional interference, has promulgated several HOS rules that govern when drivers may operate a CMV that have done little to combat fatigue and reduce egregious working and driving hours for truck drivers. In 2003, regulatory changes were made to the HOS rules which resulted in a dramatic and significant increase in the daily and weekly driving and working hours of truck drivers, even in the face of compelling research and evidence that excessive work and driving hours cause truck drivers to be fatigued.[33] In 2011, the FMCSA issued a final HOS rule that was intended to ameliorate some of the safety-negative impacts that the 2003 changes to the HOS rules made.[34] These improvements were meant to reduce the extreme working hours for CMV drivers while increasing the opportunity for meaningful rest during shifts and between extended tours of duty.[35] However, in 2014, at the behest of special interests and despite a disturbing upward trend in large truck related deaths and injuries, Congress suspended enforcement of the modest 2011 reforms and these provisions are no longer enforced by the FMCSA.[36]

After undermining recent safety improvements to the HOS rule, segments of the trucking industry continue efforts to further erode safety requirements by trying to take another "bite at the apple" in attacking the ELD rule. It is critically important to note that use of ELDs in no way alters, amends or changes the existing HOS regulations. This incontrovertible fact cannot be overstated. The ELD rule has brought to light what safety advocates have known and have been saying for decades: certain segments of the industry do not follow the HOS regulations (regardless of its content) and are now confronted by the fact that an objective record of actual

on-duty hours will finally reveal the inhumane working conditions of many of our Nation's CMV drivers.

One such attack on HOS safeguards is legislation which would further erode the HOS rules by eliminating the only mandatory federal rest break for CMV drivers and which would extend the period during which a driver may be behind the wheel, a bill now pending before Congress.[37] At a time when truck crashes continue to rise and accurate enforcement of driver hours can finally be undertaken by law enforcement, HOS regulations must not be further eroded.

Additional Protections to Prevent Driver Fatigue

In 2016, the FMCSA published an advance notice of proposed rulemaking (ANPRM) requesting information regarding the potential benefits of regulatory action to address the safety risks posed by CMV drivers who are afflicted with obstructive sleep apnea (OSA).[38] This regulatory action followed a 2012 joint vehement recommendation by FMCSA's Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) that an OSA diagnosis precludes unconditional certification of a driver and that all drivers should be screened and treated for the condition.[39]

Compelling and consistent research has revealed that drivers afflicted with OSA that is not properly treated are more prone to fatigue and have a higher crash rate than the general driver population. The American Academy of Sleep Medicine (AASM) has found that for individuals with OSA, eight hours of sleep can be less restful or refreshing than four hours of ordinary, uninterrupted sleep.[40] As noted in the ANPRM "undiagnosed or inadequately treated moderate

to severe OSA can cause unintended sleep episodes and resulting deficits in attention, concentration, situational awareness, and memory, thus reducing the capacity to safely respond to hazards when performing safety sensitive duties."[41] In fact, a 2016 AASM study concluded that the rate of serious, preventable crashes was five times higher among truck drivers with OSA that was not properly treated.[42] In contrast, the crash rate of drivers with OSA who received some type of treatment was similar to those drivers without the disorder.[43] Moreover, a study of Swedish motor vehicle drivers published in 2015 found that drivers with OSA had a 2.5-fold higher crash rate.[44] The dangers presented by OSA are not confined to the motor carrier industry, yet they are responded to differently. The Federal Aviation Administration (FAA) considers OSA to be a disqualifying condition unless properly treated.[45]

The ANPRM further notes that individuals inflicted with OSA often are unaware that they have the condition and as a result, the condition is underdiagnosed by medical professionals.[46] In fact, experts estimate that 300,000 to over 1 million CMV drivers have OSA and most of these drivers are undiagnosed and not receiving treatment.[47] In sum, research and objective data shows that untreated OSA can lead to dangerous fatigue and a higher crash rate proving that this public safety threat requires concerted regulatory action from the FMCSA.[48] Yet, in August of 2017 the FMCSA withdrew the OSA rulemaking without providing any credible analysis or reasoning for such an ill-advised course of action.[49] Advocates supports H.R. 3882 sponsored by Representatives Bill Pascrell, Jr. (NJ-9), Eleanor Holmes Norton (DC), Frank Pallone, Jr. (NJ-6) and Albio Sires (NJ-8) which directs the FMCSA to issue a rule to ensure that drivers afflicted with OSA are properly screened during the medical examination and are receiving the medical

treatment they need so they do not become needlessly fatigued while operating a CMV on public roads.[50]

State Law Preemption

Lastly, some corporate trucking interests continue to try to attach a dangerous provision that would preempt state health, safety and labor laws which provide much needed meal and rest breaks to CMV drivers to various bills being debated by Congress. This occurred most recently in legislation to fund the U.S. DOT and its agencies as well as to a separate bill to reauthorize the FAA.[51] Twenty states have such statutes that provide flexibility to an employer as to when these breaks occur which are often a thirty minute meal period or a ten minute rest break.[52] Although such a provision would affect nearly half the states in the U.S., it has yet to be subject to any public hearings in Congress or meaningful debate of its merits or wide-sweeping implications. Advocates opposes efforts to repeal these critical rest protections for drivers because doing so would substantially debase public safety.

Teen Truck Drivers

Congress is currently considering several bills that would allow teenagers to operate CMVs in interstate commerce, although data and research clearly demonstrate these younger drivers are not qualified to drive large trucks.[53] In order to obtain a commercial driver's license (CDL) to drive a CMV in interstate commerce, an applicant must be at least 21 years-of-age and for good reason.[54] Younger CMV drivers have higher crash rates. In fact, CMV drivers under the age of 19 are four times more likely to be involved in fatal crashes, as compared to CMV drivers who are 21 years of age and older, and CMV drivers ages 19-20 are six times more likely to be

involved in fatal crashes (compared to CMV drivers 21 years and older).[55] Furthermore, CMV drivers aged 19-20 are about five times more likely to be involved in police reported injury and fatality crashes per 100 million vehicle miles traveled compared to all other truck drivers age 21 and older.[56] The FMCSA previously declined to lower the minimum age for an unrestricted CDL to 18 as part of a pilot program because the Agency could not conclude that the "safety performance of these younger drivers is sufficiently close to that of older drivers of CMVs[.]"[57] The public overwhelmingly rejected the idea with 96 percent of individuals who filed comments to the federal docket opposing the proposal along with 88 percent of the truck drivers and 86 percent of the motor carriers.[58] Therefore, the pilot program mandated in the FAST Act for veterans of the armed services should not be expanded and further attempts to allow teenagers to operate CMVs in interstate commerce should be summarily rejected by Congress.[59]

Eroding Federal Truck Size and Weight Limits

Federal limits on the weight and size of CMVs are intended to protect both the traveling public and our Nation's crumbling infrastructure. Yet, provisions allowing larger and heavier trucks that violate or circumvent these federal laws to operate in certain states or for specific industries have been consistently tucked into must-pass transportation appropriations bills to avoid public scrutiny.[60] These back room deals not only harm public safety but they impose a hidden tax on all Americans while padding corporate special interest profits.

Increases to current truck size and weight limits pose a grave danger to the public because data reveals that even the current fleet is not properly maintained. Tractor-trailers moving at 60 mph are required to stop in 310 feet – the length of a football field – once the brakes are applied.[61]

Actual stopping distances are often much longer due to driver response time before braking and the common problem that truck brakes are often not in top working condition. In 2016, violations related to tires and/or brakes accounted for ten of the top twenty most common vehicle out-of-service (OOS) violations.[62] In fact, more than one in every five trucks that is inspected is placed out of service for vehicle deficiencies including inadequate brakes that prevent it from continuing to operate.[63]

Overweight trucks also disproportionately damage our badly deteriorated roads and bridges. An 18,000 pound truck axle does over 3,000 times more damage to pavement than a typical passenger vehicle axle.[64] Moreover, increasing the weight of a heavy truck by only ten percent increases bridge damage by 33 percent. This is especially alarming given that one in eleven of the Nation's nearly 615,000 bridges in the National Bridge Inventory were found to be structurally deficient.[65] The Nation's roads continue to receive a grade of "D" from the American Society of Civil Engineers which noted that 20 percent of the nation's highways alone had poor pavement conditions in 2014. This does not include those highways with mediocre conditions and all other non-highway roads.[66]

A few trucking and shipping interests have also relentlessly advocated for a federal mandate requiring the use of 33 feet double trailers, or "double 33s," a truck tractor pulling two 33-foot trailers. This truck configuration would result in a truck-trailer-trailer combination length of at least 84 feet – the height of an 8-story building. This increase the in the size of already monstrous trucks on our highways is opposed by a widespread coalition of motor carriers, truck drivers, law enforcement, first responders, rail interests, safety advocates, truck crash survivors

and families of truck crash victims. A federal mandate for double 33 foot trailer trucks will also preempt state laws in states that do not want double 33s, overriding state legislative decisions to protect public safety. Right now, the federal minimum permits 28 foot trailers and allows states to permit double 33s if they choose to do so, but most states are choosing not to. A federal law requiring double 33s would put insurmountable pressure on states to allow these overly long trucks on their roads at the expense of safety and state infrastructure spending. States are wise to prohibit the use of double 33s because of their impact on roadway infrastructure and their troubling safety record. Double trailer trucks have an 11 percent higher fatal crash rate than single trailer trucks.[67] Moreover, the U.S. DOT Comprehensive Truck Size and Weight Study found that mandating double 33s nationwide is projected to result in 2,478 additional bridges that would require strengthening or replacement resulting in an estimated one-time cost of $1.1 billion.[68]

The DOT has also recommended against altering current federal weight and size limits. Technical reports released in June 2015 from the DOT Comprehensive Truck Size and Weight Study concluded there is a "profound" lack of data from which to quantify the safety impact of larger or heavier trucks and consequently recommended that no changes in the relevant truck size and weight laws and regulations be considered until data limitations are overcome.[69]

Recommendations:

- **In order to properly address CMV driver fatigue, Congress must reject efforts to diminish the ELD final rule, weaken HOS regulations and preempt state rest break laws. The FMCSA must issue a regulation to ensure drivers with OSA are properly treated so they are not a threat to public safety while operating a CMV.**
- **Teen truck drivers have far higher crash rates than older CMV drivers. Therefore, Congress should not lower the age to obtain a CDL to operate in interstate**

commerce or endorse efforts to expand the pilot program for members of the armed services established in the FAST Act.

- **Congress must oppose any and all changes to federal truck size and weight limits, including mandating double 33 feet trailers, pilot programs and state or industry specific exemptions. Allowing even more massive CMVs on our Nation's roads will not only harm public safety but will also further erode America's crumbling infrastructure.**

Advocates Has Consistently Promoted Placing Advanced Technologies in Commercial Motor Vehicles to Save Lives and Prevent Injuries

Advocates has always enthusiastically championed safety technology for CMVs and for good reason. It is one of the most effective strategies for preventing deaths and injuries. During the Congressional debate of MAP-21, Advocates fought for a provision that required the U.S. DOT Secretary to consider placing stability enhancing technology in all motorcoaches.[70] In 2015, the NHTSA issued a final rule requiring electronic stability control (ESC) on most large trucks and motorcoaches, which Advocates supported after working for years to urge Agency action on this issue and filing technical comments to the NPRM issued by the NHTSA in 2012.[71] Advocates continues to push for the placement of proven safety technologies is all CMVs.

Automatic Emergency Braking

In 2015, Advocates, along with the Center for Auto Safety, the Truck Safety Coalition (TSC) and Road Safe America, filed a petition with the NHTSA seeking the issuance of a rule to require forward collision avoidance and mitigation braking systems (F-CAM), also known as automatic emergency braking (AEB), on CMVs with a gross vehicle weight rating (GVWR) of 10,000 pounds or more.[72] These systems alert the driver to an object in front of the CMV such as a motor vehicle and can apply the brakes to stop the CMV if the driver fails to respond.

According to the NHTSA, from 2003 through 2008, large trucks were the striking vehicle in approximately 32,000 rear-end crashes resulting in 300 fatalities and injuring over 15,000 people annually.[73] The Fatality Analysis Reporting System (FARS) indicates that in 2016 more than 1,700 large trucks were involved in fatal crashes where the front end of a large truck is the initial point of impact.[74] In addition, the Agency estimates that fleet wide adoption of advanced AEB systems could save 166 lives per year, a reduction of 45 percent from current annual fatalities resulting from rear-end crashes. The number of injured persons would fall by 8,361 per year, a reduction of 45 percent.[75] The Agency granted Advocates' petition in October of 2015 but has not undertaken any further regulatory proceedings to date.[76] This needless delay is unconscionable when crashes could be prevented and lives could be saved by technology that is available and already in a number of CMVs.

Speed Limiting Technology

In September of 2016, the NHTSA and the FMCSA issued a joint Notice of Proposed Rulemaking (NPRM) to require vehicles with a GVWR of more than 26,000 pounds to be equipped with a speed limiting device.[77] Advocates supports the use of speed limiting devices because crashes involving heavy vehicles are far more deadly when the CMV is traveling at faster speeds. According to the FMCSA, 10,440 people were killed from 2004 to 2013 in crashes where the speed of the CMV likely contributed to the severity of the crash. On average, that is over 1,000 lives lost annually to speeding CMVs.[78]

The safety benefits of limiting the speed of a CMV are indisputable. The NPRM estimates that setting the device at 60 MPH has the potential to save almost 500 lives and prevent nearly 11,000

injuries annually.[79] Along with setting the speed at 60 MPH, all CMVs must be required to be equipped with speed limiting technology in order for the proposed regulation to realize the maximum feasible safety benefits as quickly as possible. The cost of the proposed requirement is expected to be minimal since most CMVs are already equipped with either mechanical or electronic capability to limit the speed of the vehicle. Turning on the speed limiters that are not already engaged, or changing the speed control to the limit required by the final rule, involves only a minor maintenance cost.

Speed limiters are also already widely used in the industry and their implementation is supported by truck drivers. Research shows that the technology is currently being used by 77 percent of trucks on the road in the United States.[80] In addition, a 2007 survey of truck drivers by the Insurance Institute for Highway Safety (IIHS) found 64 percent of drivers were in favor of a truck speed governor requirement.[81]

Although the public safety benefits of requiring speed limiting devices in CMVs is clear and a majority of the current fleet is already equipped with the technology, DOT continues to delay the issuance of a final rule to require this life-saving safety equipment.

Underride Guards

Underride crashes, where a motor vehicle travels underneath the rear or side of a truck trailer, are particularly gruesome and deadly. However, technology is currently available that can significantly increase the chances that an individual can survive these violent events. For this reason, Advocates supports enactment of the Stop Underrides Act of 2017 (H.R. 4622)

sponsored by Representatives Steve Cohen (TN-9), Mark DeSaulnier (CA-11), Richard Nolan (MN-8), David Price (NC-4) and Alan S. Lowenthal (CA-47).[82] This important legislation will require the current federal standards for rear underride guards to be upgraded to meet current industry standards as well as the installation of side and front guards.

In 2015, the NHTSA issued a NPRM to update the standards for rear impact guards that are installed on the rear of trailers. However, the NPRM proposed only to upgrade the federal standard issued 20 years ago,[83] to meet the Canadian standard issued over a decade ago, rather than adopting higher, more stringent standards which are currently available in the marketplace and have been shown to have superior performance capabilities and the potential to significantly reduce occupant deaths and injuries in underride crashes.[84] In addition, the Agency failed to require that single-unit trucks (SUTs) be equipped with underride guards, instead requiring retroreflective tape on the side and rear of SUTs.[85] While requiring retroreflective tape is long overdue, it alone is not a sufficient countermeasure. While retroreflective tape may help prevent some collisions with SUTs, it will not prevent all such collisions and it is the rear underride guard which will prevent or mitigate fatalities and injuries when collisions nevertheless occur. Therefore, in order to properly address the public safety threat posed by rear underride crashes, the Federal Motor Vehicle Safety Standards (FMVSS) that apply to rear underride guards should be updated to meet the optimal standards already in use by industry and should be applied to SUTs as well as trailers.

Side underride crashes where a motor vehicle travels underneath the side of a trailer or a SUT also pose a serious threat to public safety. In May of 2017, IIHS conducted its first testing of

side underride guards that successfully prevented a passenger vehicle from traveling underneath the side of a trailer.[86] These guards have now been proven to be able to save lives and mitigate crashes and thus, should be required as standard equipment on all trailers and SUTs. In addition, front guards that prevent a truck from overriding or traveling over a passenger motor vehicle when the truck strikes the rear of the vehicle have been in use in the European Union for years.[87] Moreover, the NTSB has recommended that both side and front underride guards be placed on CMVs.[88] It is time for this lifesaving equipment to finally make its way onto American roads.

Recommendation:

- **Technologies that prevent and mitigate crashes such as AEB, speed limiting devices and underride guards should be standard equipment in all CMVs as the safety benefits of requiring this equipment fleet-wide are incontrovertible.**

Proper Training for Commercial Motor Vehicle Drivers

The lack of uniform adequate training for candidates wishing to obtain their CDL has been a known safety problem for decades. In 2015, Advocates was appointed by the FMCSA to serve on the Entry-Level Driver Training Advisory Committee (ELDTAC) established to complete a negotiated rulemaking on Entry-Level Driver Training (ELDT) for novice CMV operators.[89] The consensus reached by the ELDTAC, as well as the NPRM issued by the FMCSA in March 2016, included the requirement that applicants for a CDL receive a minimum number of hours of behind-the-wheel (BTW) instruction (BTW hours requirement) as part of the core curricula approved for applicants seeking either a Class A or B CDL.[90] As the FMCSA noted in the NPRM "...BTW training for entry-level drivers is uniquely suited to an hours-based approach because it ensures that driver-trainees will obtain the basic safe driving skills necessary to obtain

a Class A or Class B CDL and to operate their vehicles safely—skills that can only be obtained after spending a reasonable amount of time *actually driving* a CMV" (emphasis added).[91]

However, the Final Rule issued by the Agency in December 2016 removed the BTW hours requirement. Instead, the Rule simply requires that candidates demonstrate to their instructor that they are proficient in performing a series of maneuvers while operating a CMV.[92] Thus, this so-called performance based standard requires no BTW training at all for drivers who can maneuver a truck trailer combination in an off-road setting included in the CDL skills test, exactly the same bar that CDL candidates have always been required to pass while taking the skills test administered by state licensing agencies.

The performance standard in the Final Rule does not ensure that CDL applicants who can pass the state CDL skills test will spend any time actually operating a CMV on public roads with an experienced instructor encountering safety critical situations. This type of real-world training and experience for CDL candidates, which several bodies of experts have determined should be required, is needed in order to enhance the ability of CDL applicants to operate a truck-trailer combination vehicle safely and to avoid crashes. Therefore, Congress should direct the Agency to amend the Final Rule on ELDT to include a BTW hours requirement.

Recommendation:

- **Congress should direct the FMCSA to amend the final rule ELDT for all CDL candidates to include a minimum number of BTW training hours to ensure that novice drivers receive adequate training before operating a CMV on public roads.**

Sufficient Oversight of Carriers

Section 5223 of the FAST Act required safety scores in the Compliance, Safety, Accountability (CSA) program for trucks to be removed from public view. The FAST Act also required the National Academies of Sciences, Engineering and Medicine (NASEM) to study the CSA Program method for evaluating the safety of motor carriers and commercial vehicle drivers.[93] The NASEM study concluded that the method was sound and made several recommendations to improve the CSA Program.[94] Therefore, the public should once again have access to real-time safety data on trucking companies without any further delay. Without full access to this data, the traveling public does not have the ability to fully evaluate the safety record of a carrier and the incentive for carriers to improve their practices is significantly curtailed. While additional improvements to the CSA program are currently being considered, such action does not justify the continued withholding of this data from public view.

In 2016, the FMCSA issued a NPRM to revise the carrier safety ratings procedures in light of adoption of the CSA program. This rulemaking was intended to allow the Agency to better evaluate the safety records of carriers. Advocates supported the Agency's determination to enhance the safety fitness determination (SFD) process, which informs the CSA program, by using on-road safety data to evaluate carriers in addition to an Agency investigation.[95] This update to the SFD program would have significantly enhanced the FMCSA's ability to identify unsafe carriers because it would have enabled the Agency to use data from the carrier's on-road operations, yet the Agency withdrew the rulemaking in August of 2017.[96] Congress should direct the FMCSA to reinstate and complete this critical regulatory action.

In 2009, the FMCSA issued an ANPRM to consider the establishment of a proficiency examination for new motor carriers to ensure such entities, and the persons who are the principal operating officers of the motor carrier, understand the Federal Motor Carrier Safety Regulations (FMCSRs) before being granted operating authority. Congress mandated that the Agency undertake such action in Section 210 of the Motor Carrier Safety Improvement Act of 1999.[97] Advocates supported the Agency's action as the FMCSA currently has no means of determining the actual quality of a new entrant's safety compliance management when the FMCSA accepts the new entrant's registration and awards it operating authority. The Agency only determines the safety quality of a new entrant's operations and regulatory compliance after the new entrant has begun operations, up to 18 months following registration with the Agency and an award of temporary operating authority. As such, Congress should require the FMCSA to complete this critical rulemaking, which is nearly 20 years in the making.

Recommendation:

- **All the CSA program safety data must be made available to the public and Congress should direct FMCSA to reinstate the Safety Fitness Determination Rulemaking as well as complete the rulemaking requiring a new entrant proficiency examination.**

Motorcoach Safety

The Motorcoach Enhanced Safety Act of 2012 included in the safety title of MAP-21 directed Agency regulatory actions on overdue lifesaving measures to improve motorcoach safety.[98] This mode of transportation is affordable, convenient and popularity. According the American Bus Association Foundation, the motorcoach industry in North America provided 596.4 million passenger trips in 2015.[99]

Safety deficiencies identified in countless recommendations and crash investigations by the NTSB have languished for years, even decades, until specific deadlines for Agency action were enacted in MAP-21. However, even now, deadlines for the issuance of a number of final rules and other safety actions required by the law are delayed and statutory deadlines ignored. For example, the statutory deadline for a final standard for motorcoach roof strength and crush resistance was October 1, 2014.[100] The NHTSA currently estimates a final rule will not be issued until August 2018, nearly four years overdue. The rulemaking on anti-ejection countermeasures was also due by October 1, 2014, yet it does not even appear on the Agency's rulemaking agenda.[101]

According to the NHTSA's November 2015 Motorcoach Fire Safety Report, approximately 160 motorcoach fires are reported every year in the United States.[102] In 2014, a motorcoach crash and fire involving high school students on a college trip occurred in Orland, California, killing eight motorcoach passengers as well as the driver.[103] As a result of its investigation, the NTSB made several safety recommendations including calling for more rigorous performance standards for interior flammability and smoke emissions characteristics, installation of a secondary door for use as an additional emergency exit, and equipping motorcoaches with emergency lighting fixtures and interior luminescent and exterior retroreflective material to mark all emergency exits in order to expedite passenger evacuation.[104] Section 32704 of MAP-21 directed the NHTSA to research the causes of motorcoach fires and issue mitigation standards based on such research.[105] The Agency completed the report on its research as noted above and found that some actions could improve motorcoach fire safety.[106] However, the Agency has failed to issue any

prevention and mitigation standards despite the glaring need for these safety improvements that will save lives.

Furthermore, federal inspection data shows that far too many CMVs that transport passengers are operating while in dangerous disrepair. In 2016, the vehicle out of service (OOS) rate for passenger-carrying CMVs was 6.59 percent. Thus, about 1 in every 15 inspections resulted in a passenger-carrying CMV being placed out of service for a vehicle-related problem.[107] Nearly a majority of states (22) have recognized the need to address this public safety threat by requiring that passenger-carrying CMVs be subject to annual inspection.[108] Yet, the FMCSA withdrew a rulemaking in May of 2017 that would have required states to annually inspect passenger-carrying CMVs despite the clear safety concerns presented by poorly maintained motorcoaches.[109] Congress should require the Agency to reinstate and complete this critical rulemaking.

Unfortunately, legislation that will undoubtedly worsen motorcoach safety, the Buses United for Safety, Regulatory Reform, and Enhanced Growth for the 21st Century (BUSREGS-21) Act, is currently pending before the Committee on Transportation and Infrastructure.[110] Advocates strongly opposes this misguided measure as it is nothing more than a compilation of the motorcoach industry's wish list to eviscerate or evade every meaningful commonsense safety regulation enacted by DOT in recent memory. Some of the ill-advised provisions in this bill would exempt motorcoach drivers from future regulations addressing individuals afflicted with OSA, hide safety data on motorcoach carriers including school bus operators and establish unnecessary obstacles to future Agency rulemakings to improve the safety record of the industry.

All of the safety advances noted above are critical as millions of passengers are transported by motorcoaches each year. These delays to ensure occupant protections in a crash or a deadly fire would never be tolerated in any other mode of transportation. It is both a safety and an economic injustice to those who depend on motorcoach travel to ignore these needed basic safety measures.

Recommendation:

- **NHTSA must complete the overdue safety rulemakings mandated by Congress in MAP-21 without further delay and sufficiently address fire safety in motorcoaches.**

Automated Commercial Motor Vehicles Must be Subject to Robust Federal Regulations

Advocates believes that automated technology has the potential to significantly reduce crashes involving CMVs. However, the advent of this technology must not be used as an excuse to eviscerate critical safety regulations administered by the FMCSA. The public safety protections provided by the FMCSRs become no less important or applicable simply because a CMV has been equipped with an automated driving system (ADS). In fact, additional substantial public safety concerns are presented by automated commercial motor vehicles (ACMVs). Automated technology is very much in its infancy as evidenced by the series of fatal and serious crashes that occurred earlier this year involving automated passenger motor vehicles.[111] If those incidents had involved ACMVs, the results could have been catastrophic and the death and injury toll could have been much worse. The most current pressing safety shortcomings associated with automated vehicle technology, which include the ADS properly detecting and reacting to other road users, driver engagement and cybersecurity, are exponentially amplified with an ACMV.

Therefore, ACMVs must be subject to robust federal regulations that place public safety as its highest priority.

There is widespread agreement among a variety of stakeholders including labor groups, industry, driver organizations and safety advocates that, for the foreseeable future, regardless of their level of automation, CMVs and ACMVs must have an operator with a valid CDL in the vehicle at all times. Therefore, Advocates supports the FMCSA's prior conclusion that the FMCSRs require that "a trained commercial driver must be behind the wheel at all times, regardless of any automated driving technologies available on the CMV...."[112]

Human drivers in ACMVs will also need to be alert to monitor not only the standard operations of the truck but also the ADS as well. Therefore, the development of ADSs for ACMVs in no way warrants the weakening of critical safety regulations administered by the FMCSA such as those that apply to driver HOS, licensing requirements, entry level training and medical qualifications.

Lastly, as automated technology develops, the FMCSA should consider several commonsense measurers to help ensure that ACMVs are deployed safely and responsibly. The Agency should consider requiring carriers using ACMVs to apply for additional operating authority and that drivers operating an ACMV must have an additional endorsement on their CDL to ensure they have been properly trained to monitor and, if need be, to operate an ACMV. In addition, the FMCSA will need to consider the additional measures that will be needed to ensure that ACMVs

respond to state and local law enforcement authorities and requirements, and can be properly evaluated during roadside inspections.

Recommendations:

- **ACMVs must have an operator with a valid CDL in the vehicle at all times. The development of ACMVs in no way warrants the weakening of critical driver safety regulations administered by FMCSA.**
- **FMCSA should consider requiring carriers using ACMVs to apply for additional operating authority and that drivers operating an ACMV must have an additional endorsement on their CDL to ensure they have been properly trained.**

Conclusion

Truck crashes continue to occur at an alarmingly high rate. Yet, segments of the trucking industry continue their unending assault on critical federal regulations that protect public safety including rules that protect drivers, provide the public with accurate safety ratings of carriers, finally mandate an objective record of driver on-duty time, and prevent longer and heavier CMVs from further eroding our Nation's infrastructure. Meanwhile, rulemakings which would result in proven safety benefits by requiring the installation lifesaving safety systems such as AEB and speed limiters fleet wide, ensure adequate oversight of carriers and upgrade the structure of motorcoaches languish at DOT. While the advent of ACMVs offers the potential to finally improve the grim safety record of CMVs, that automated future is still years away. In the meantime, Congress must require DOT to focus on this unfinished safety agenda as the immediate solution to reducing deaths and injuries caused by CMV crashes.

[1] Traffic Safety Facts Research Note: 2016 Motor Vehicle Crashes: Overview, NHTSA, Oct. 2017, DOT HS 812 456, available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812456 (2016 Overview).

[2] 2016 Overview; and Traffic Safety Facts 2015, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, DOT HS 812 384. (2015 Annual Report).
[3] 2016 Overview.
[4] 2015 Annual Report.
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November 9, 2017

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

Millions of hard working American truckers, farmers and small businesses need you to take immediate and decisive action to protect them from a massive new regulation that is scheduled to go into effect just 39 days from today. I am writing on their behalf with a plan to help you do just that.

This December 18th, the U.S. Department of Transportation (DOT) is scheduled to begin implementation and enforcement of the Electronic Logging Device (ELD) mandate[1], a $2 billion regulation written and set in motion by the Obama Administration back in 2015.

In consultation with the Congressional Research Service (CRS), I have identified a course of legal, appropriate action that you can take with Transportation Secretary Elaine Chao to delay this rule and provide much-needed relief to the millions of Americans who will be impacted.

Accordingly, I respectfully request that you issue an Executive Order as soon as possible, instructing the Secretary of Transportation to provide an immediate waiver for all trucking sectors and operations subject to this mandate, until such time as it can be certified that implementation will not cause economic or other harm to the millions who are subject to it.

Provision 49 U.S.C. 31133(a)(10) stipulates that the Secretary of Transportation may "*perform other acts the Secretary considers appropriate*" with respect to regulating commercial motor vehicles[2]. Combined with the DOT and Federal Motor Carrier Safety Administration's (FMCSA) authority to issue waivers and exemptions from the ELD mandate[3], which they have already exercised for certain package delivery[4] and rental truck operations[5], I believe the Secretary, the DOT and the FMCSA not only have the authority but the obligation to extend that same relief to all Americans.

[1] FMCSA ELD Final Rule - 12.16.15
https://www.gpo.gov/fdsys/pkg/FR-2015-12-16/pdf/2015-31336.pdf
[2] 49 U.S. Code § 31133 - General powers of the Secretary of Transportation
https://www.law.cornell.edu/uscode/text/49/31133
[3] 49 CFR Part 381 - FMCSA Regulations; Waivers, Exemptions, and Pilot Programs – 8.20.04
https://www.gpo.gov/fdsys/pkg/FR-2004-08-20/pdf/04-19155.pdf
[4] FMCSA–2017–0054 - Hours of Service; United Parcel Service Inc. Application for an Exemption From Certain ELD Requirements – 10.20.17
https://www.gpo.gov/fdsys/pkg/FR-2017-10-20/pdf/2017-22833.pdf
[5] FMCSA–2016–0428 - Hours of Service of Drivers: Application for Exemption; Truck Renting and Leasing Association (TRALA)– 10.11.17
https://www.gpo.gov/fdsys/pkg/FR-2017-10-11/pdf/2017-21892.pdf

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My preference would be to delay the rule for as long as it takes, but at a bare minimum, I would encourage an initial waiver for all sectors until April 1, 2018. First, a three month delay eliminates the very predictable havoc of trying to implement this massive, complicated regulation just a week before Christmas – perhaps the busiest time for the consumer freight network of the year. Second, this is the same date that the Commercial Vehicle Safety Alliance (CVSA) recently announced they would begin to fully enforce this mandate (with partial enforcement starting December 18th)[6] , their well-intentioned but nevertheless ambiguous path forward for public safety officials to gradually begin enforcing this new requirement. Third, an additional three months will provide FMCSA with the time to continue processing applications for waivers and exemptions that are currently under consideration. And finally, this would set a relatively close new deadline for this issue to be revisited, keeping the pressure on both government and industry to answer the questions and solve the challenges that this mandate clearly presents.

As you may know, I am the lead sponsor of H.R. 3282, the *ELD Extension Act of 2017*, which would implement, by law, an additional two-year delay of this mandate. Since introducing that bill back in July, I have had the privilege and honor to meet hundreds of hard working independent truck drivers and others with deep concerns about this mandate from all over the country. Based on the stories and information they have shared with me, here are just some of the concerns that I believe must be addressed by the new leadership you have installed at DOT before this mandate, which, again, was written by the Obama Administration, goes into effect:

- **COST**
  The Obama Administration itself estimated that this regulation will impose $2 billion a year[7] in compliance costs, with a disproportionate impact on small businesses. With Republicans in control of Congress and the White House, the last thing the American People expect us to do is mandate that every hardworking truck driver in America spend thousands of dollars on the purchase, installation and monthly service fee for a government-approved tracking device.

- **SAFETY**
  Claims that these devices will make our roads and drivers dramatically safer are dubious at best, based on research authorized and gathered by the Obama Administration. In fact, some of the large trucking companies with the worst safety records on the road have already been fully utilizing ELD's in their fleet for years. At a minimum, the reports that the Obama Administration used to justify this rule warrant another review by the team you have put in place at DOT.

---

[6] CVSA Prepares for December 2017 ELD Implementation; Announces April 1, 2018, Effective Date for Out-of-Service Criteria Related to ELD Rule http://cvsa.org/news-entry/2017-eld-implementation/

[7] Report accompanying bill making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2018. (Page 41) https://appropriations.house.gov/uploadedfiles/23928.pdf

- **CYBERSECURITY**
  The ELD device required by the regulation doesn't just sit in the cab of a truck and monitor motion. It connects directly to the engine and onboard computer of the vehicle itself. The implications of this are particularly profound. There is simply no assurance at this time that these ELD's, which are being manufactured with components from around the world and sold by numerous companies across America, are safe from a cyberattack that could cause these trucks, many of which carry hazardous materials, to inflict terror on Americans. The National Motor Freight Traffic Association recently commissioned a study by leading security experts laying out this troubling issue, and I have enclosed a summary of it with this letter.

Mr. President, rolling back the regulatory overreach of the previous administration has been one of our proudest achievements since you took office. Together, we have now used the Congressional Review Act (CRA) to block 15 separate new burdensome regulations from going into effect, and the economy and stock market have responded in kind. **A few powerful interests will tell you that this mandate is good for trucking, and our country, but millions of hardworking people across our country who came together exactly one year ago to elect you president profoundly disagree. I ask that you listen to those millions of voices, and give everyone at least another three months to get this right.**

In conclusion, I respectfully ask that you respond to this letter or otherwise indicate your intentions on this matter no later than December 1st of this year. While I am hopeful you will undertake this course of action, it is also critically important for these truck drivers to have a clear understanding before the scheduled deadline.

Thank you for your consideration of this important matter.

Sincerely,

Brian Babin, D.D.S.
U.S. Representative (TX-36)

cc: Vice President Michael R. Pence
Secretary Elaine L. Chao, U.S. Department of Transportation
Chairman Bill Shuster, U.S. House Committee on Transportation and Infrastructure
Chairman John Thune, U.S. Senate Committee on Commerce, Science and Transportation
Mr. Raymond Martinez, Nominee for Administrator of FMCSA

Issued: November 2002

Future Truck Committee Information Report: 2002-1

A Brief Look at the Far Horizon

An Exploration of What's to Come for Trucking

Developed by The Technology & Maintenance Council's (TMC)
Future Truck Committee Far Horizons Subcommittee

Chairmen: Duke Drinkard, Southeastern Freight Lines
Vic Suski, ATA Engineering Dept.

"There are many things which cannot be imagined,
but there is nothing which may not happen"— Old Chinese aphorism.

"What we anticipate seldom occurs;
what we least expected generally happens."—Benjamin Disraeli

Introduction and Summary

There are two parts to this exploration: a detailed timeline focused on items pertaining to transportation in general and trucking in particular, with explanatory notes for some entries at the end; and a survey of various pictures or scenarios of the future- the environment within which we, and those who come after us, will have to operate.

Looking over the contents of the paper there seem to be a number of implications for truck users:

- Equipment regulations by the NHTSA seem to be decreasing, but environmental regulations will increase.
- Internal industry pressures to be "green" will increase.
- Roadside inspections of commercial vehicles will be modified as diverse new technologies appear on vehicles.
- More and more driver functions will be taken over by the truck itself.
- There will no longer be a single fuel for heavy trucks-various alternative fuels will be in use.

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- There will be more than one propulsion system available.
- Alternative ways of moving goods will gradually erode trucking's share of the transportation market.
- Demand for class 7 & 8 trucks will decrease and demand for smaller classes will increase.
- Liquid fuels will continue to be the primary type of fuel well into mid-century, but they will not necessarily be derived from petroleum.
- Petroleum based diesel fuel may be available over the next 40 years, but it will be very, very expensive.

Bottom Line: Developments in all spheres will come even faster than heretofore, many competing ways to respond, confusion will increase, making decision making even more difficult.

What follows is a timeline of future events that may affect the trucking industry. It is based on a review of published literature, and references for predictions are given where applicable.

PART I
PREDICTED TIMELINE OF EVENTS DIRECTLY IMPACTING TRUCKING

APPROXIMATE AVAILABILITY OF VEHICLES AND EQUIPMENT, SOME REGULATORY MILESTONES (IN BOLD), AND OTHER EVENTS

YEAR

2000
Night vision enhancement (thermal imaging, IR)
Intelligent/adaptive cruise control
On board, real time, continuous emissions measurement
Front axle disc brakes

2002
"Active" aerodynamic devices for drag reduction and braking. See note 1.
Microwave regeneration of particulate traps.
Advanced diesel engine (thermal efficiency = 55%). (See Note 2.)
Driver sleep history monitoring.
50 cetane fuel.
Active/smart suspensions.
Thermoelectric generator.
Automatic (radar) braking and lane keeping/roadway edge detection. (See Note 3.)
Intersection hazard warning.
Vehicle and driver performance monitoring and automatic shutdown systems.

2004
Electronic braking systems for trucks. (See Note 4.)
Reefer remote climate control.
GM and Mercedes will have production ready fuel cell vehicles.

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2005

Turbocompounding on heavy duty diesel engines.
Camless valve activation on heavy duty diesel engines. (See Note 5.)
Dow Jones industrial Average reaches 15,000. (Ref. 1)
Fully automatic ships able to navigate and dock automatically (Ref. 2)
Assisted lane keeping systems in trucks and buses (Ref. 2).
See Note 4 and entry under 2002.
Underride regulations for straight trucks (estimated).
Trucking industry freight volume hits 8.2 billion tons; $446.2 billion gross revenues for the industry (Ref. 3).
Last coal mine closes (Ref. 4).
Hybrid vehicles in use, $87 million market demand (Ref. 5). (See Note 6.)

2006

Frontal aggressivity regulations (tractors) (estimated).
Side underride regulations for trailers (estimated).
Alternative fuel mandate for private fleets (vehicles <8500lbs), (estimated).
U.S. industry will need 155,000 mechanics (up from 137,000 in 2001), (Ref. 6).

2007

EPA requires heavy duty diesel engines emit no more than 0.01 grams/bhp/hr of particulate matter; 0.20 gm/bhp/hr of NOx, and no more than 0.14 gm/bhp/hr of non methane hydrocarbons.
EPA requires diesel fuel sulfur content be reduced to 15ppm.
Regenerative braking systems in trucks capture >50% of wheel braking energy (Ref. 7).
"Electric" truck - accessories driven by electricity rather than belts off the engine, available. (See Note 7.)
Most new major road projects will be supported by tolls or remote fees (Ref. 8)

2008

Passenger cars with automatic steering (Ref. 2).
Tare weight of tractor trailer combinations reduced 20% (Ref. 7).
Rollover avoidance technology available (Ref. 7). (See Note 8.)

2010

(The following items are predicted for the period 2006- 2010):
Automatic fire protection systems in commercial vehicles.
Resonant Macrosonic Synthesis (RMS) refrigeration compressors (acoustic device). (See Note 9.)
Advanced materials (fireproof liquid crystal polymers, carbon/aramid fibers) in use for commercial vehicle construction
Hydrogen fueled vehicles cost competitive with petroleum fueled vehicles (Ref. 9.)
MAGLEV (Magnetically Levitated Vehicle) in limited operation. (See Note 15.)
Steer by wire, brake by wire for passenger cars (Ref.10)
Mach 3 supersonic transport in operation
Tilt rotor aircraft in shuttle runs
First segments of intelligent vehicle/highway system open (2010-Ref. 9) See Note and entry for 2016.
Electrification of truck stops underway on a large scale. (See Note 10.)

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2011 Electric vehicles in use (70% probability) (Ref. 5).
Software will be able to repair itself (Ref. 8). (See 2012 below).

2012 Machine "learning" – computer programs learn by trial and error to adjust their behavior-becomes common (67% probability) (Ref.5).
Aerospace (trans-atmospheric) planes enter commercial service (Ref. 4).
Worldwide air cargo business triples over 1998 (Ref. 11).

2013 Recyclable plastic components used in making 50% of passenger cars (58% probability) (Ref.5).

2014 Ceramic engines for commercial vehicles (no cooling systems). (See Note 11.)

2015 Autonomous (driverless) cars on smart highways (Ref. 2) (See Note 12.)
World population reaches 7.2 billion (Ref. 12). Ref. 2 predicts 7 billion by 2011.
Computers evolve to where they have almost human- like intelligence.
See 2017 entry.

2016 Fuel cell electric vehicles in use (58% probability) (Ref.5)
ITS systems deployed (58% probability) (Ref. 5). (See Note 12.)

2017 Human knowledge exceeded by machine knowledge (Ref.2). (See Note 13.)

2018 Autonomous (driverless) truck convoys using electronic towbar (Ref. 2). (See Note 12.)

2020 Automated highway systems and autonomous vehicles in use (Ref. 9). Ref. 2 predicts this by 2015.
Artificial Intelligence reaches human levels and evolves far more rapidly than biology would permit. (Ref. 4) (See Note 13.)
Computers overtake humans in overall intelligence. (Ref. 2). (See Note 13.)
Half of all goods sold electronically (55% probability) (Ref. 5). (See Note 14.)
Reference 2 predicts this in the period 2010-2014.
Alternate forms of freight transportation e.g. air freight, (perhaps lighter-than-air), high-speed marine vessels, pneumatic tunnels erode trucking market share. (See Note 15.)
Fuel Cell trucks become commercially viable (Ref. 13).
Earliest date forecast for 50% of ultimate oil resources expended, decline in production thereafter (Ref. 13).
Truck traffic expected to have doubled by 2020 over 2000. (Ref. 14).
See Note 15.

NOTES

1. A concept, which involves blowing air around the perimeter of the trailer rear face, has demonstrated a minimum 40% reduction in aerodynamic drag in wind tunnel tests of a model tractor-trailer combination. This concept also can increase the downward force on the trailer by blowing from the top slot thus enhancing braking and possibly eliminating

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the need for engine brake retarders. A full report on the results of the research is in SAE paper 2001-01-2072. Tests using an actual combination vehicle were scheduled for late 2001.

2. This is the LE-55 research project funded by the DOE and conducted by several engine manufacturers. It involves advanced fuel injection systems (30,000-40,000psi), turbocompounding, greater turbocharger efficiency, advanced materials, ceramic intake and exhaust ports. Such an engine will use alternative fuels, one fluid for both lubrication and cooling and is projected to have a durability of 750,000 miles and a brake specific fuel consumption (bsfc, in pounds of fuel per horsepower per hour) of 0.25, compared to 0.31 for current (2000) engines, and a thermal efficiency of 55% compared to 44% for current engines. The project is currently underway.
3. Freightliner and Praxair cooperated in a DOT funded Intelligent Vehicle Initiative (IVI) project and demonstrated a system in 1999-2001 to aid the driver in lane keeping. The system uses a miniature camera, which views the road ahead and transmits the video to an image processor which reads the lane markings and determines the truck's position in the lane.
4. Electronically controlled braking systems are currently (2000-2001) being tested by a large truck fleet as part of the U.S. DOT's Intelligent Vehicle Initiative (IVI).
5. International has demonstrated such an engine. An electrohydraulic system is used for fuel and air management. The engine should have higher torque and an integrated compressor brake. Other estimates for availability are between 2004 and 2007.
6. There are three notable demonstration projects underway. The U.S. Army, Volvo NA, Lockheed Martin Control Systems and Radian, Inc. have combined to produce a class 8 tractor powered by 2-250hp AC induction motors and a 460 hp Cummins N14 diesel engine. It has a lead acid battery pack. It features regenerative braking. Fuel economy is expected to be significantly better and emissions 50% lower than a comparable straight diesel powered tractor. (The same Lockheed HybriDrive system has been tested in a UPS van, an Army 5 ton tactical truck and an Orion bus). It is being tested at a number of Army installations. ISE Research has developed a prototype using natural gas in a spark ignited GM 4.3L engine and a 2200 rpm AC generator in a Kenworth T800B tractor. It has a 300hp battery pack. In 1997 Navistar International announced a concept truck using the Lockheed HybriDrive and a Navistar T444E diesel engine in a 27,000lb GVW medium truck. It has regenerative braking. The truck weighs 1,000lb more than a comparable conventionally powered truck. In 2001 International's Rodica Baranescu announced that they had determined their future medium duty trucks would be hybrids.
7. The DOE has a current project with an engine manufacturer to achieve this. It features an electrically driven turbocharger (rather than being driven by exhaust gases), a combined motor/generator, and electric turbocompounding.
8. The project described in note 4 also includes a "Roll Advisor and Control" system developed by Freightliner with MeritorWabco. Freightliner reportedly plans to make it standard on the Century Class S/T trucks. It uses Freightliner's proprietary roll stability advisor and integrates a rollover control function that cuts power and activates the engine brake at rollover threshold.
9. RMS uses acoustic principles to compress gasses in refrigerators. Sound waves are generated by a specially shaped cavity. Gas pressures can reach hundreds of psi. An acoustic compressor would have no moving parts, and could use any refrigerant. An appliance manufacturer was reported (in 1997) to be working with the technology to develop reliable, durable and energy efficient refrigerators and air conditioners.

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There are other developments in the area of refrigeration, reported in 1997. One is magnetic refrigeration which uses a metal, which heats up when magnetized, and cools down when demagnetized. Another is thermoelectric refrigeration, which uses materials that change temperature when an electric current passes through them. This would replace the mechanical compressor and be quieter, more reliable and efficient. These materials could also be used to convert waste heat from gasoline or diesel engines into electrical power.

10. The New York State Energy Research and Development Agency (NYSERDA) let a contract, in 2000, for electrification of a truck stop on the New York Thruway as a demonstration project. A private company is reportedly "electrifying" three truck stops in Tennessee. This is basically a shore power concept which allows the truck to shut down and plug into the truck stop's power.
11. Research has been going on since the early 1980s on engines with ceramic components. In the mid 1980s An Army truck with a "ceramic" (then termed adiabatic) engine drove from Michigan to Orlando, FL. Technical barriers ultimately restricted development to component parts of the engine. These ceramic components are part of the DOE's LE-55 program described in Note 2.
12. There are a number of predictions ranging from 2010 to 2020. Driverless autos have been demonstrated and automated/smart highways also, but not yet the two together. Trucks using an "electronic towbar" were demonstrated by Daimler Chrysler in 2000, as part of the European "Promote-Chauffer" Program, 1996-1998. In this test two heavy duty tractor-trailer combinations (530hp Mercedes Benz ACTROS 1853LS) were run 18-48feet apart (30 feet appeared to be the optimum spacing). The lead vehicle was driven by a driver and the following vehicle was completely automated and followed every movement of the lead vehicle. Tests were run on a test track at speeds of approximately 36 and 48 mph. Fuel consumption of the following vehicle was reduced from 10-17% (in gallons used per mile) at 36mph and 15-21% at 48 mph. The lead vehicle experienced a 7% reduction in fuel consumption. The lead vehicle had an empty trailer and the following vehicle was loaded to a total of 56,000lb. Plans were to experiment next on public highways. There may in fact be truck convoys using the electronic towbar concept in use in 2018. However, Thomas B. Deen (Ref. 15), Executive Director of the Transportation Research Board (TRB) from 1980 to 1994 believes Intelligent Transportation Systems (ITS) will be deployed less rapidly than expected by advocates of these technologies because of a host of institutional problems. He goes on to say "Many truckers are suspicious that ITS will be the avenue for adding another layer of taxes. Many other potential applications of ITS require a level of cooperation by a number of entities larger than we are accustomed to; therefore progress will be slow".
13. There are various estimates/predictions regarding this, ranging from 2010 to 2025. What is interesting is the large number of people predicting this.
14. Kurt Salmon Associates (KSA) estimated that in 1992 85% of all retail sales were through stores and 15% through phone orders, computer based shopping, etc. For 2010 only 45% of all retail sales are expected to be in store. KSA also believes an ever increasing portion of all types of retailing will require next day delivery, driving freight away from long haul carriers and toward air carriers coupled with LTL and smaller trucks. Reported in Ref. 17.
15. In 2001 the Texas Transportation Institute, part of Texas A&M University concluded that it was technically feasible to build a below ground route for unmanned rail vehicles. Their ongoing 5 year study also found that on a Dallas to Laredo route freight could be moved

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for 1/3rd as much as by tractor-trailer combinations. (Wall Street Journal, Wednesday, August 8th 2001). Transport Topics, July 23rd, 2001 reported that the state of Connecticut funded a study which showed that barges could move freight from New York Harbor to points in eastern Connecticut, Massachusetts and Rhode Island cheaper than could trucks. The Federal Highway Administration and Volpe National Transportation Research Center have concluded that moving freight by cargo carrying capsules below ground is technically feasible, although questions remain regarding the economics of such a concept (linear induction propulsion). The Army Corps of Engineers is studying the advantages of barge traffic vis a vis trucking. A possible concept could be a barge analog to trucking's LTL carriage. In June, 1998 a Minnesota DOT workshop suggested a high speed train/truck (put the whole truck on the train) be used in heavy use corridors such as Chicago to Minneapolis. MAGLEV continues to entice technologists. The U.S. National Energy Strategy of 1991 estimated MAGLEV for commercial transportation would be introduced in 2015. An aircraft manufacturer, American Utilicraft Corp, designed an airfreighter using turboprop engines which, (on paper), could carry 15,000 pounds over 400 nautical miles at an operating cost of 8.5 cents/pound, which the company says is close to trucking costs. Consultants are saying that as many as 62 million more vehicles will be on the highways in 2020 and "the idea that we are going to solve the traffic congestion problem is an illusion". (Anthony Downs, Brooking Institution).

PART II
VARIOUS PICTURES OF THE FUTURE

The studies described below developed scenarios for the future. These scenarios are not meant to be predictions, but plausible alternatives given various assumptions and trends. They may or may not come about and if they do it will be in modified form. The most general and global one is described first and more specific, freight transportation ones last.

1. *Beyond the Limits,* Reference 16
In April 1968, The Club of Rome, a group of thirty individuals from ten countries- scientists, educators, economists, humanists, industrialists and national and international civil servants- met to discuss the then present and future predicament of man. These discussions led to the Volkswagen Foundation financing a computer model of the world's growth, developed at Massachusetts Institute of Technology. The model examined population, agricultural production, natural resources, industrial production and pollution. A layman's version of the final report, "The Limits to Growth," was published in 1972. In 1992 the same team that did the 1972 work published a re-look at the earlier work, "Beyond the Limits." Computer simulations of thirteen scenarios were run. The results caused the authors to conclude that:

a. Human use of many essential resources and generation of many kinds of pollutants have already surpassed rates that are physically sustainable. Without significant reductions in material and energy flows, there will be in the coming decades an uncontrolled decline in per capita food output, energy use, and industrial production.
b. This decline is not inevitable. To avoid it a comprehensive revision of policies and practices that perpetuate growth in ma-

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terial consumption and in population must occur; and a rapid, drastic increase in the efficiency with which materials and energy are used must come about.

c. But even with much more efficient institutions and technologies, the limits of the earth's ability to support population and capital are close at hand, probably not more than a doubling or two away.

The results of the scenario simulations are in Appendix I. In general they show a rise in industrial output, food, pollution, life expectancy, and population after 2000, peaking roughly between 2020 and 2050, then collapsing by 2100. In most scenarios the world of 2100 approximates that of the 1900s. This book is a pitch for sustainability and being environmentally and ecologically sensitive, these being the only ways to avoid collapse. It is strongly recommended that this book be read, not only for the results of the scenario investigations, but the ways in which they were investigated, the systems approach that was taken, and because it gives one a way to relate the various global forces at work to possible business futures.

2. *The Future Highway Transportation System and Society,* Reference 17

This 1997 study was focused on passenger travel but had a few paragraphs on freight transportation. Trends noted were that the U.S. manufacturing base was becoming more decentralized and smaller production facilities were moving closer to population centers to reduce transportation costs. This trend was expected to reduce demand for Class 7 and 8 truck carriers and increase demand for smaller class truck shipments in and around population centers. Another trend noted was continued growth in truck volumes and weights. Long haul carriers would be moving fewer but larger loads. However, Deen Ref. 15, expects 57'-63' trailers, double 48' trailers and triple 40' trailers in use on selected parts of the national Highway System by 2020.

3. *Future Highway Energy Use: a Fifty year Perspective,* Reference 13

This study was conducted by the DOE. A draft was released in January 2001. It looked at various futures for passenger cars, light trucks and heavy trucks. It contains pretty specific scenarios for heavy vehicles and their fuels. The study emphasizes that it is not a prescription but rather an exploration of possible futures. The scenarios involving heavy trucks are as follows:

a. Base Case: 50 year projection assumes no improvement in vehicle fuel economy, continued population and economic growth, a declining rate of growth in VMT.

b. Scenario 1: Enhanced conventional diesel trucks with advanced engines, drivetrains and tires. In 2050 fleet mpg for Class 7 & 8 trucks assumed to be 7.3 mpg; class 3-6 mpg assumed to be 15 mpg. **Energy and oil consumption and carbon production reduced 20% from base case.**

c. Scenario 2: Advanced technology diesel (higher pressure fuel injection) plus use of lighter weight materials in Classes 7 & 8, mpg = 8.6 mpg; hybrid electric in classes 3-6, mpg = 20.8. **Energy, oil, carbon reduced 33%.**

d. Scenario 3: Freight modal shift and efficiency. Considers advanced trucks of scenario 1, advanced locomotive technologies to improve fuel efficiency by 18%, and freight shift from trucks to rail starting in 2001 and reaching 10% by 2050. **Energy, oil and carbon reduced 26%.**

e. Scenario 4: Advanced technology diesel per scenario 2, assumes 1/3 of the diesel fuel market is biodiesel, also used by locomotives. **Energy reduced 33%, oil consumption 55%, and carbon 42%.**

f. Scenario 5: Advanced technology diesel, Solid-oxide fuel cell, hybrid medium trucks and Fischer-Tropsch (FT) diesel fuel. Assumes FT diesel from domestic

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natural gas introduced in 2020 replaces 50% of the diesel fuel by 2050. Diesel – fueled solid oxide fuel-cell trucks (become commercial in 2020) penetrate 20% of the market in 2050. **Energy requirements & carbon production reduced 40%, oil consumption 70%.**

g. Scenario 6: Three fuel future- Hydrogen, biodiesel, petroleum diesel: Hydrogen fuel –cells added to the mix of scenario 5. For fuels assume 5% hydrogen, 33% biodiesel, 50% FT diesel and 12% petroleum diesel. For trucks assume 5% hydrogen fuel cell, 20% SOFC, 75% advanced technology diesel, and hybrid medium duty trucks. **Energy reduced 43%, oil 87% and carbon 59%.**

The report estimates that remaining conventional oil resources combined with economic growth cases for world oil demand implies that 50% of the world's endowment of conventional oil will be used up before 2040 at the latest, or by 2010 at the earliest. (In the U.S. highway energy use is expected to grow 21/2 times by 2050). Long before the 50% exhaustion point is reached a transition to alternative energy sources must begin. Without advanced vehicle and fuel technologies and strong public policies, the most likely transition would be from conventional oil to synthetic fuels (liquid fuels similar to gasoline and diesel derived from natural gas, coal, tar sands, oil shale).

With more intensive refining and at greater cost, conventional petroleum products can be made from unconventional sources. The time to fully implement a new vehicle technology in all vehicles on the road is 30 years or more, and the time to fully implement a new fuel is even longer. Therefore, the U.S. should start transportation's energy transition immediately.

See *www.ott.doe.gov/presentations2.html* for the full report.

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APPENDIX I

Scenarios from *Beyond the Limits*

Each scenario determined the effect of resource consumption, population, pollution, food production, and industrial output (termed the "State of the World") on life expectancy, consumer goods per person, food and services per person (termed the "Material Standard of Living").

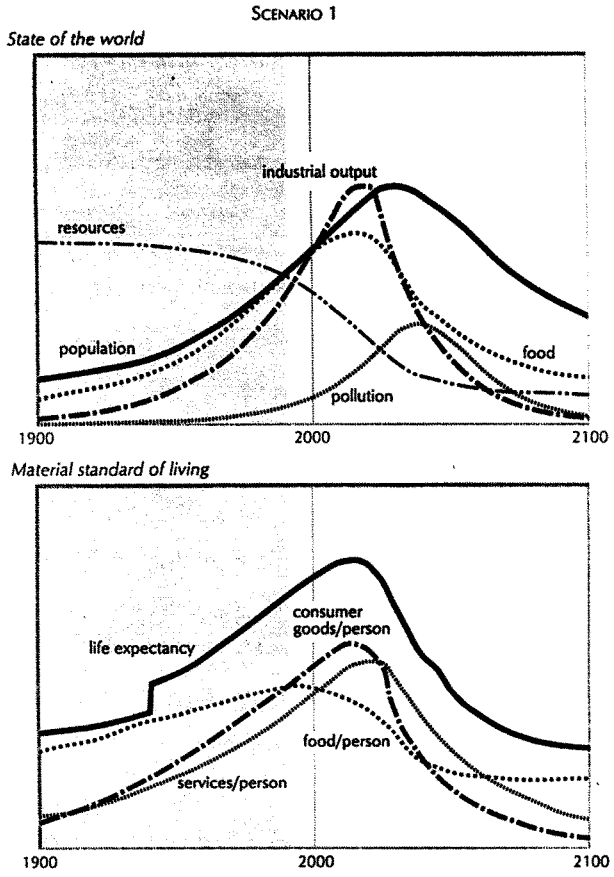
The scenarios are shown in sets of two graphs for each, the upper graph showing the state of the world, and the lower one the effect on the material standard of living.

The first scenario is from the 1972 *Limits to Growth* and is taken as the baseline. It shows peaks sometime after 2000 and then a gradual decline to 2100 when the material standard of living approximates that of the 1900s. This is the general outcome for most of the scenarios. Each of the scenarios has a short description of the measures assumed to be taken to create the outcomes shown. Note that for scenarios 7,8,9,10and 11 the time for corrective action to have been taken has passed.

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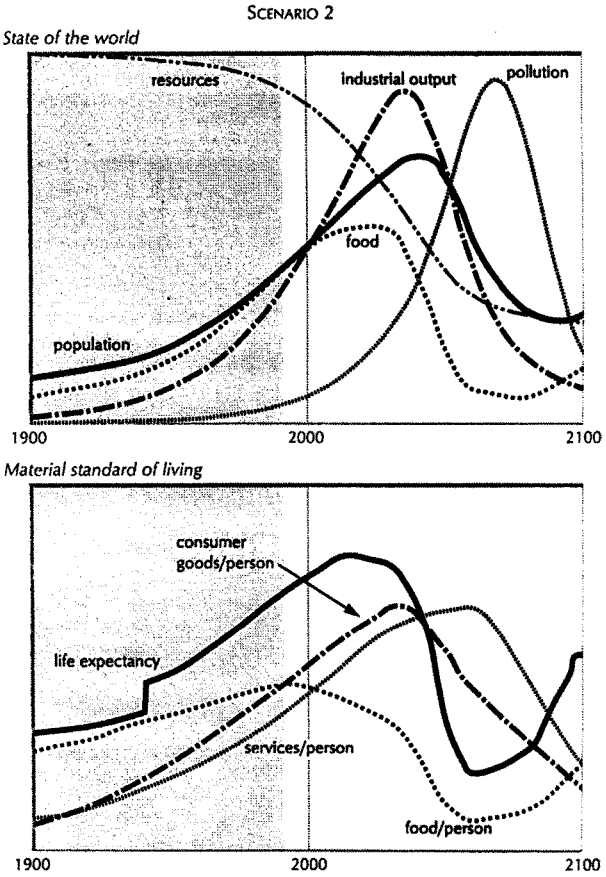
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Scenario 1: The "Standard Run" from *The Limits to Growth*
The world society proceeds along its historical path as long as possible without major policy change. Population and industry output grow until a combination of environmental and natural resource constraints eliminate the capacity of the capital sector to sustain investment. Industrial capital begins to depreciate faster than the new investment can rebuild it. As it falls, food and health services also fall, decreasing life expectancy and raising the death rate.



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Scenario 2: Doubled Resources Are Added to Scenario 1
If we double the natural resource endowment we assumed in Scenario 1, industry can grow 20 years longer. Population rises to 9 billion by 2040. These increased levels generate much more pollution, which reduces land yield and forces much greater investment in agriculture. Eventually, declining food raises the population death rate.



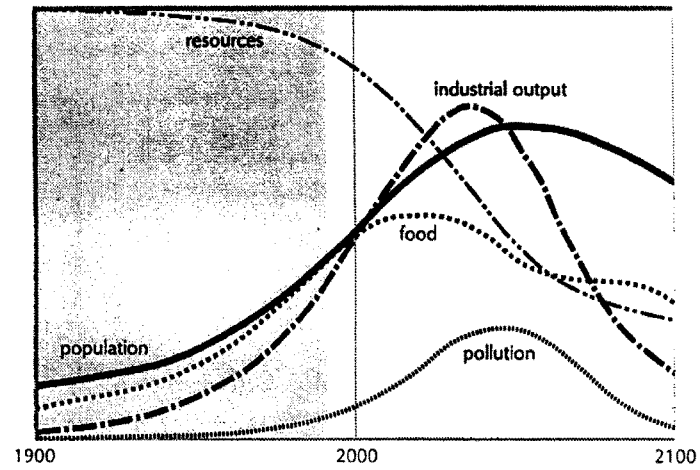
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Scenario 3 DOUBLE RESOURCES AND POLLUTION CONTROL TECHNOLOGY

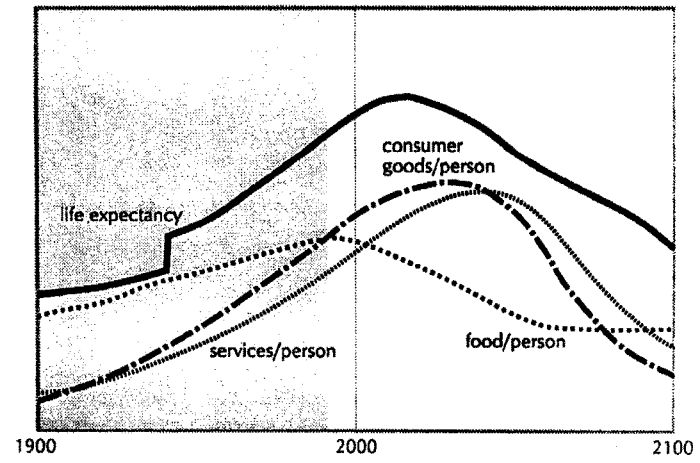
In this scenario we assume doubled resources, as in Scenario 2, and also increasingly effective pollution control technology, which can reduce the amount of pollution generated per unit of industrial output by 3% per year. Pollution nevertheless rises high enough to produce a crisis in agriculture that draws capital from the economy into the agriculture sector and eventually stops industrial growth.

SCENARIO 3

State of the world



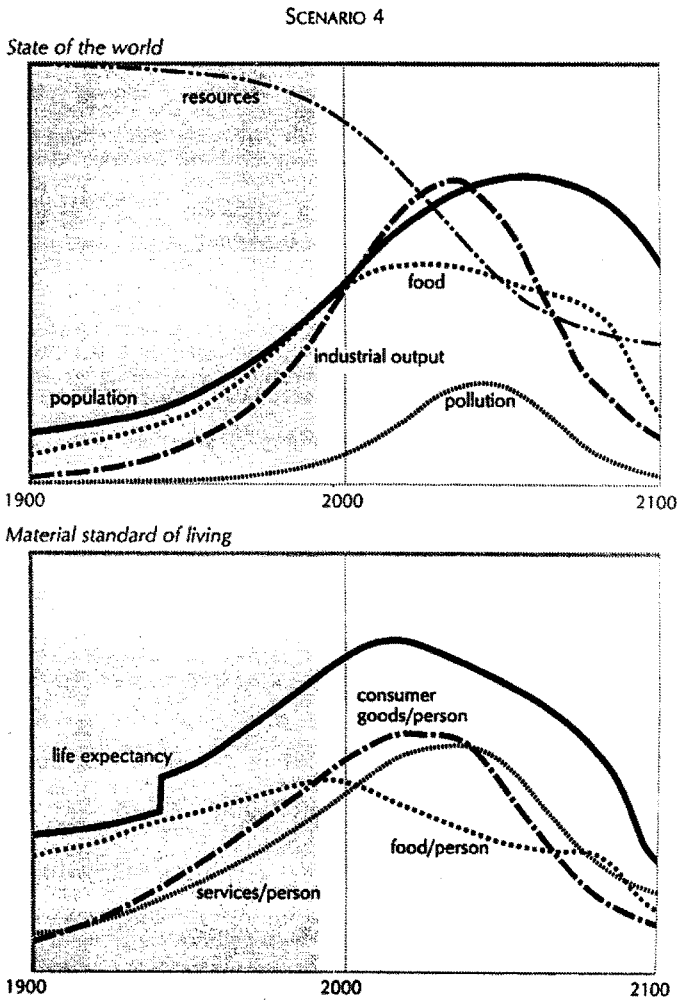
Material standard of living



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Scenario 4 DOUBLE RESOURCES, POLLUTION CONTROL TECHNOLOGY, AND LAND YIELD ENHANCEMENT

If the model world adds to its pollution control technology a set of technologies to increase greatly the yield per unit of land, the high agricultural intensity speeds up land loss. The world's farmers are getting higher and higher yields on less and less land, and at an ever-higher cost to the capital sector.



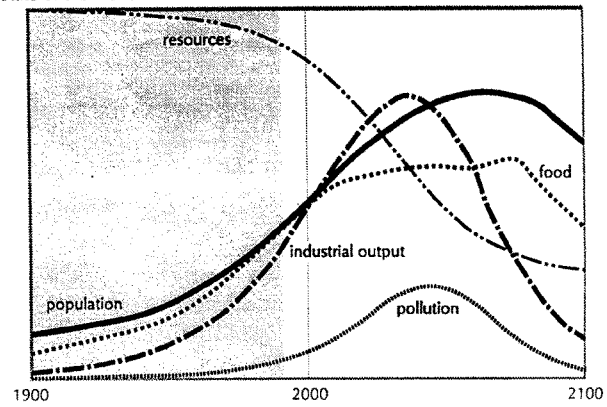
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Scenario 5: Doubled Resources, Pollution Control Technology, Land Yield Enhancement, and Land Erosion Protection

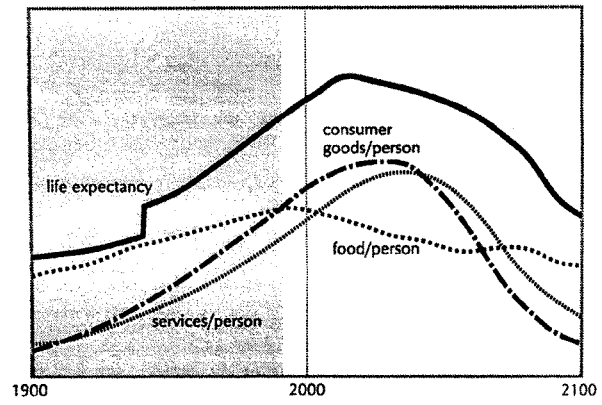
Now a technology of land preservation is added to the agricultural yield-enhancing and pollution-reducing measures already tested. The result is further population and capital growth, which leads to a crisis not in resources, pollution, or land, but in all three at once.

SCENARIO 5

State of the world



Material standard of living

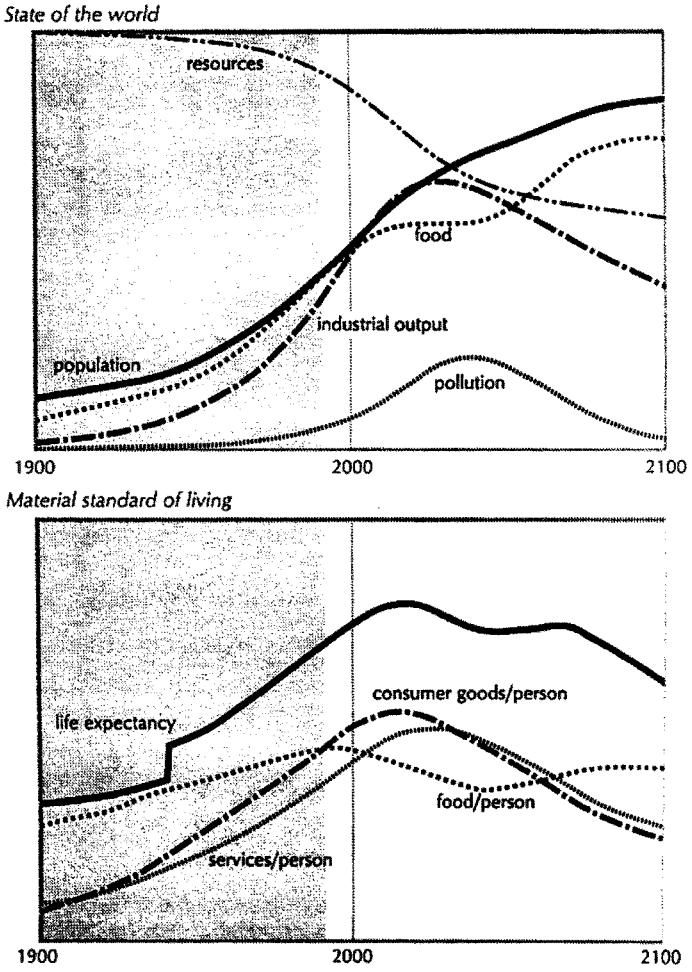


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Scenario 6 DOUBLE RESOURCES, POLLUTION CONTROL TECHNOLOGY, LAND YIELD ENHANCEMENT, LAND EROSION PROTECTION, AND RESOURCE EFFICIENCY TECHNOLOGY

Now the simulated world is developing powerful technologies for pollution abatement, land yield enhancement, land protection, and conservation of nonrenewable resources all at once. All these technologies are assumed to cost capital and to take 20 years to be fully implemented. In combination they permit the simulated world to go on growing until 2050. What finally stops growth is the accumulated cost of the technologies.

SCENARIO 6



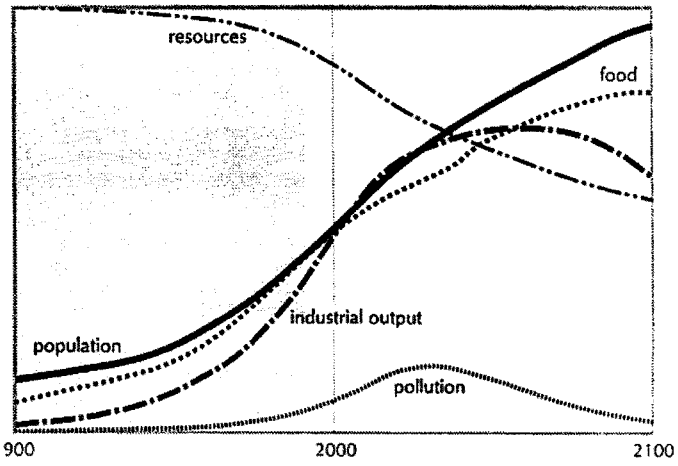
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Scenario 7 ALL TECHNOLOGIES APPLIED WITH SHORTER DELAYS

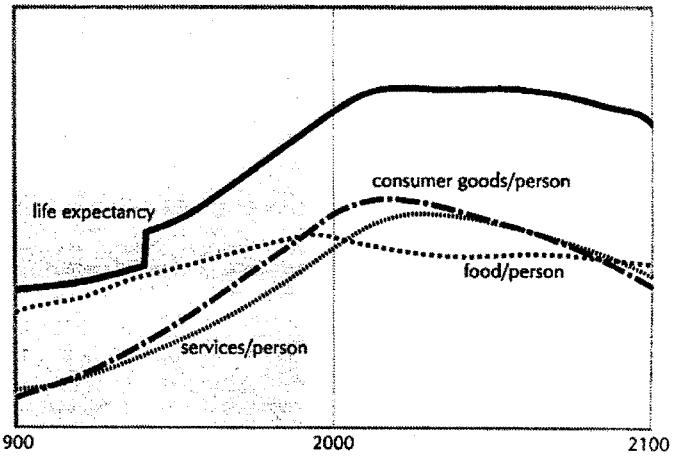
This model run is identical to the previous one, except that technology development is assumed to take only 5 years instead of 20 to have worldwide effect. Industrial output grows 20 years longer than it did in Scenario 6 and population becomes higher by 2 billion. But the material standard of living is falling slowly. The increasing cost of holding off the limits finally stops industrial growth.

SCENARIO 7

State of the world



Material standard of living



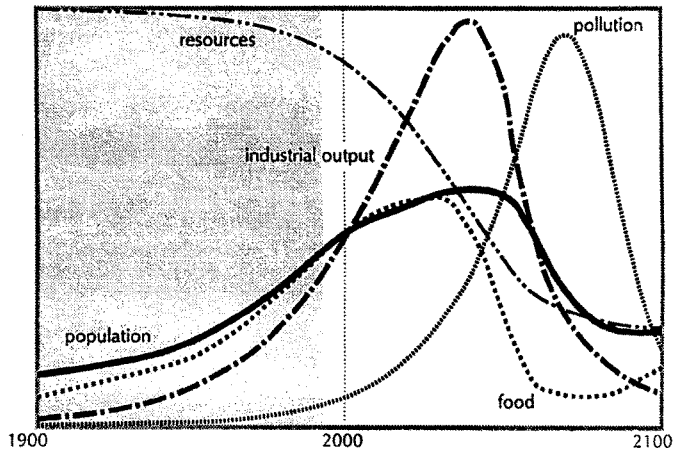
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Scenario 8 WORLD ADOPTS STABLE POPULATION GOALS IN 1995

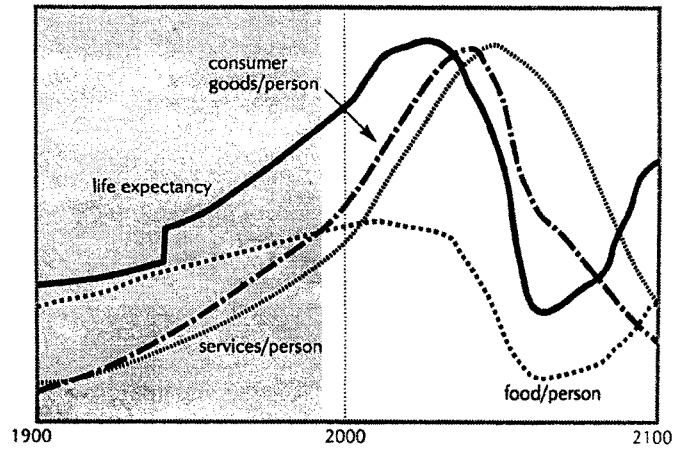
This scenario supposes that after 1995 all couples decide to limit their family size to two children and have access to effective birth control technologies. Because of age structure momentum, the population continues growing well into the 21st century. The slower population growth permits industrial output to rise faster, until it is stopped by depleting resources and rising pollution.

SCENARIO 8

State of the world



Material standard of living



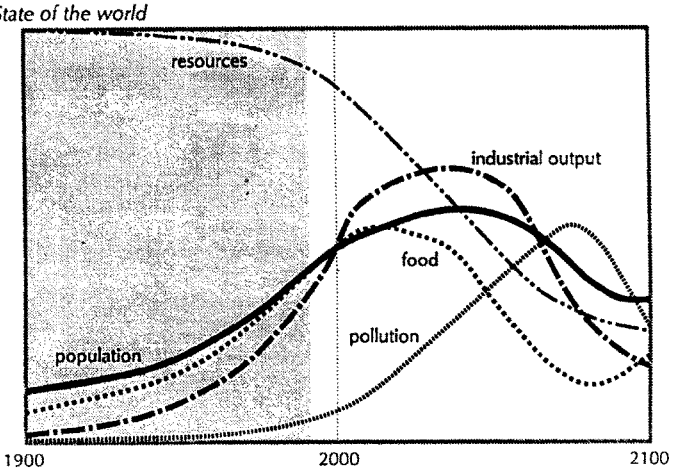
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Scenario 9 WORLD ADOPTS STABLE POPULATION AND INDUSTRIAL OUTPUT GOALS IN 1995

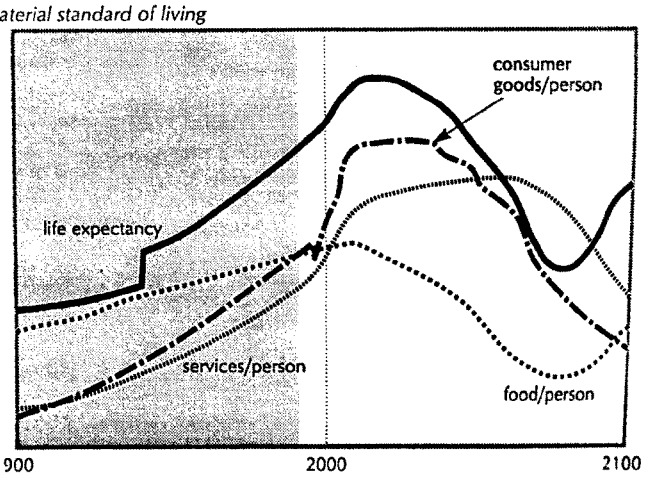
If the population adopts both a desired family size of two children and a deliberately moderated goal for industrial output per capita, it can maintain itself at a material standard of living 50% higher than the 1990 world average for almost 50 years. Pollution continues to rise, however, stressing agricultural land. Per capita food production declines, eventually carrying down life expectancy and population.

SCENARIO 9

State of the world



Material standard of living



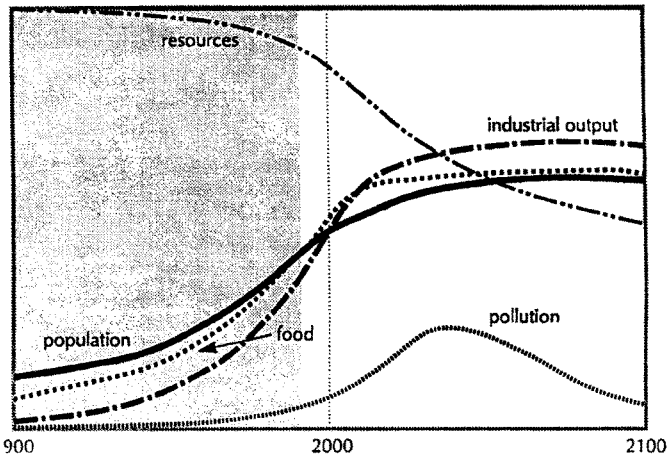
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Scenario 10 STABILIZED POPULATION AND INDUSTRY WITH TECHNOLOGIES TO REDUCE EMISSIONS, EROSION, AND RESOURCE USE ADOPTED IN 1995

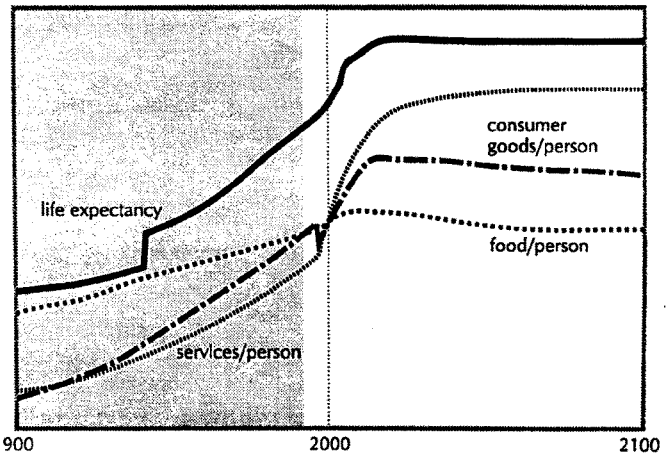
In this scenario population and industrial output per person are moderated as in the previous model run, and in addition technologies are developed to conserve resources, protect agricultural land, increase land yield, and abate pollution. The resulting society sustains 7.7 billion people at a comfortable standard of living with high life expectancy and declining pollution until at least the year 2100.

SCENARIO 10

State of the world



Material standard of living

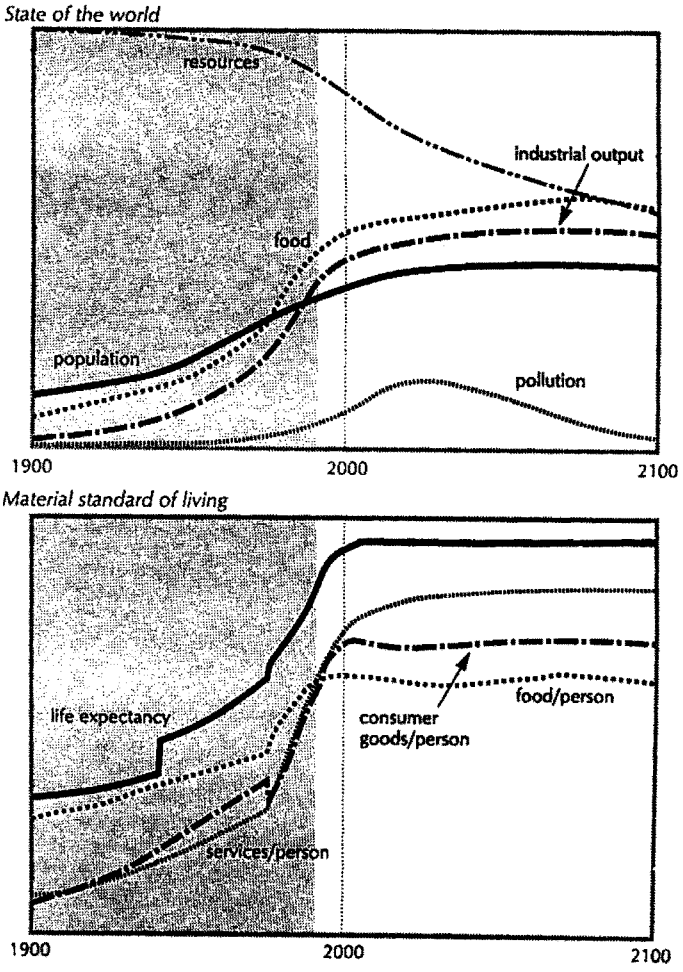


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Scenario 11 STABILIZED POPULATION AND INDUSTRY WITH TECHNOLOGIES TO REDUCE EMISSIONS, EROSION, AND RESOURCE USE ADOPTED IN 1975

This simulation includes all the changes that were incorporated into the previous one, but the sustainability policies are implemented in the year 1975 instead of 1995. Moving toward sustainability 20 years sooner would have meant a considerably lower final population, less pollution, more nonrenewable resources, and a slightly higher material standard of living.

SCENARIO 11



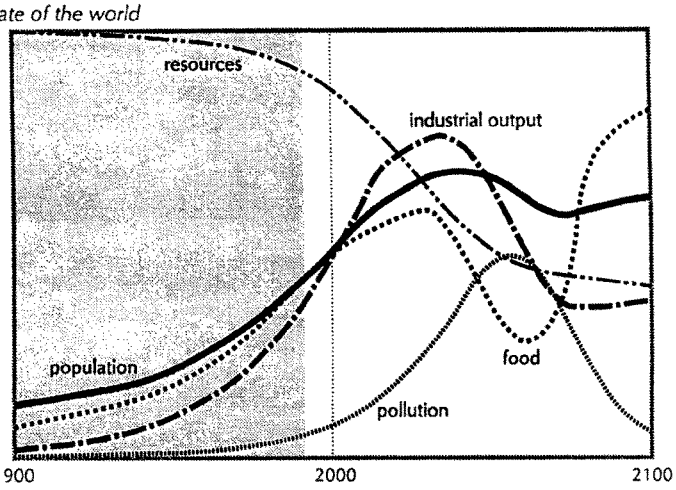
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Scenario 12 STABILIZED POPULATION AND INDUSTRY WITH TECHNOLOGIES TO REDUCE EMISSIONS, EROSION, AND RESOURCE USE ADOPTED IN 2015

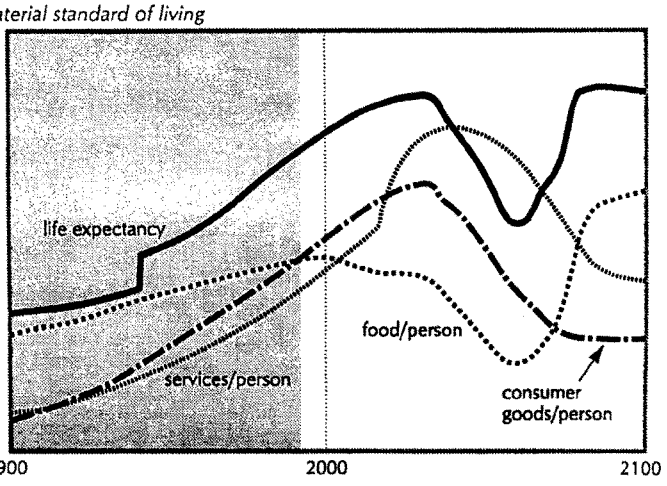
Waiting to implement the sustainability policies until the simulated year 2015 allows population, industry, and pollution to rise too high. Even the effective technologies operating in this scenario cannot forestall a decline, although they do manage to reverse the decline at the end of the 21st century.

SCENARIO 12

State of the world



Material standard of living

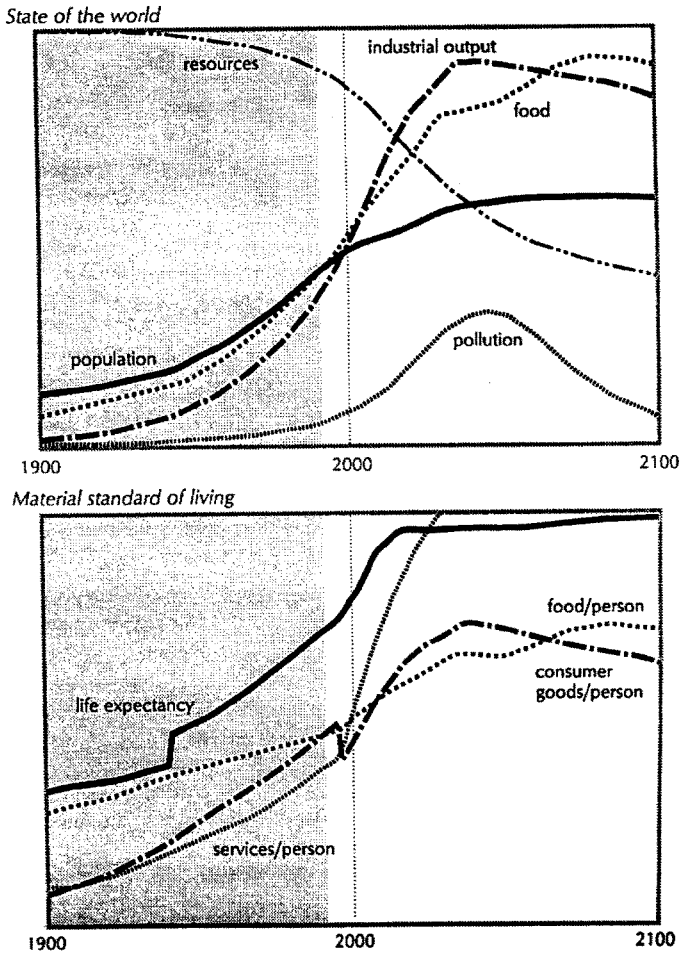


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Scenario 13 EQUILIBRIUM POLICIES BUT WITH HIGHER GOALS FOR FOOD AND INDUSTRIAL OUTPUT

Using the same general policies as were implemented in Scenario 11, but with much higher demands for food and consumption places much greater stress on the global resource base. Initially the living standard is higher, but by 2100 the simulated world shows clear signs of unsustainability.

SCENARIO 13



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APPENDIX II
WILD CARDS

The following is a list of events that could happen in the future at anytime that would significantly impact the trucking industry.

- Another Chernobyl
- Civil war between former Soviet states goes nuclear
- Civil war in the U.S.
- Collapse of the sperm count
- Collapse of world's fisheries
- Encryption invalidated
- End of nation state
- Terrorism gets beyond ability of governments to control
- Global financial revolution
- Global food shortage
- Hackers blackmail the Federal Reserve
- Human mutation
- Ice cap breaks up
- Inner cities arm and revolt
- Life expectancy hits 100 years
- Major chaos in Africa
- Loss of intellectual property rights
- Major U.S. military unit mutinies
- Nanotechnology takes off
- Non-carbon economy
- Nuclear terrorist attack on U.S. or Europe
- Rise of an American dictator
- Social breakdown in U.S. or Europe
- Viruses become immune to all known treatments
- World-wide epidemic
- Whole generation functionally illiterate and cannot effectively read write, think, work
- Computer chip/OS maker blackmails country or world

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